



National Legal Aid Secretariat
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Committee Secretary
Senate Standing Committee on Legal and
Constitutional Affairs
Department of the Senate
PO Box 1600
Parliament House
Canberra ACT 2600

10th September 2008

Dear Committee Secretary

**Re: Inquiry into Sex Discrimination Act 1984 (Commonwealth)
National Legal Aid (NLA) response**

About National Legal Aid

National Legal Aid (NLA) represents the Directors of each of the 8 State and Territory Legal Aid Commissions (Commissions). The Commissions are independent statutory authorities established under respective State or Territory enabling legislation. Commissions are funded by Federal and State or Territory governments to provide legal assistance to disadvantaged people.

NLA aims to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- Obtain access to independent legal advice;
- Afford the financial cost of appropriate legal representation;
- Obtain access to the Federal and State and Territory legal systems; or
- Obtain adequate information about access to the law and legal system

The submissions of Legal Aid NSW (LANSW) and Legal Aid Queensland (LAQ) have been published on the Inquiry website. NLA endorses the general content of those submissions as applicable to all Commissions. The submissions address the aspects of individual complaints and systemic action in which NLA has an interest.

Commission services

Each Commission offers a range of legal services including information and referral, advice, community legal education (including publications and presentations), and upon the making of a grant of legal aid, dispute resolution, and legal representation.

Individual complaints - Commonwealth legal aid agreement funding guidelines

Each State and Territory or the Commission in the respective state has an agreement with the Commonwealth of Australia for the provision of legal assistance services. Each of these agreements specifies Commonwealth Legal Aid Priorities. The Priorities set out matters arising under Commonwealth law on which the funding provided can be used by Commissions in making grants of legal assistance for representation by a lawyer and for dispute resolution services. The Agreements also contain as a schedule the Commonwealth Legal Aid Guidelines (the Guidelines).

The Guidelines provide that a Grant of Legal Assistance (for either an in-house or a private legal practitioner to represent an applicant) may be made if certain tests including "matter type", means, merits of the case, and available funds and competing priorities, are passed. The LANSW submission contains and discusses concerns in relation to the Commonwealth funding guideline in relation to sex discrimination. The extent to which individual Commissions are able to assist an applicant will depend on the application of each of these tests in the guidelines to the particular case when the application is made.

All Commonwealth Legal Aid Commission funding agreements expire on the 31st December 2008. Discussions with the Attorney-General's Department in relation to new agreements have begun. As referred to in the LANSW submission, it is not yet clear whether the anticipated different form and focus of the new agreements will address the issues presented by the current Commonwealth funding arrangements in so far as they relate to sex discrimination. If, as in previous years, NLA is invited to make submissions to the Attorney-General's Department in relation to funding Guidelines, and if the proposed Guideline in relation to Commonwealth discrimination matters reflects the present guideline, then it is likely that NLA will maintain its position that the "substantial benefit by the public or a section of the public" part of the test be deleted.

Preventing discrimination, including by educative means

NLA refers to the LAQ submission, and particularly to the response under the Terms of Reference g) "preventing discrimination, including by educative means, and k) "sexual harassment". The experience of other Commissions is like that of LAQ.

NLA is supportive of a well-resourced education and prevention campaign to target sex discrimination and sexual harassment. While employers should be one of the major targets of this campaign, some broader public education is appropriate.

Commissions are happy to work collaboratively with HREOC and other key stakeholders involved in the area to provide our expertise in the development of the campaign and in addition, if resourced, to provide education and training in the area.

Conclusion

We hope that our endorsement of the submissions of LANSW and LAQ is not too late to be taken into account. If you require anything further from us please do not hesitate to contact us.

A handwritten signature in dark ink, appearing to read 'H. Gilmore', written in a cursive style.

Yours sincerely,
Hamish Gilmore
Chairperson
National Legal Aid