

AUSTRALIAN HUMAN RIGHTS COMMISSION
SEX DISCRIMINATION ACT 1984 (Cth)
Section 44(1)

NOTICE OF GRANT OF APPLICATION FOR TEMPORARY EXEMPTION

By this instrument, the Australian Human Rights Commission grants to the Australian Bureau of Statistics a temporary exemption pursuant to s 44(1) of the *Sex Discrimination Act (Cth) 1984* from the operation of Divisions 1 and 2 of Part II of the SDA, in the terms set out below.

1. SUMMARY

- 1.1 The ABS will conduct a national survey, the Personal Safety Survey (PSS), from February to December 2012.
- 1.2 The PSS collects information about a person's experience of violence, in particular domestic violence. The ABS seeks an exemption in order to use predominantly female interviewers for the PSS.
- 1.3 The temporary exemption is granted from 1 February 2012 to 31 December 2012.

2. THE COMMISSION'S POWER TO GRANT EXEMPTIONS

- 2.1 The ABS has applied for an exemption under s 44 of the SDA.
- 2.2 Section 44 of the SDA provides:

44 Commission may grant exemptions

- (1) The Commission may, on application by:
 - (a) a person, on that person's own behalf or on behalf of that person and another person or other persons;
 - (b) 2 or more persons, on their own behalf or on behalf of themselves and another person or other persons; or
 - (c) a person or persons included in a class of persons on behalf of the persons included in that class of persons;

by instrument in writing, grant to the person, persons or class of persons, as the case may be, an exemption from the operation of a provision of Division 1 or 2, or paragraph 41(1)(e), or paragraph 41B(1)(b) as specified in the instrument.

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- (3) An exemption, or further exemption, from the operation of a provision of Division 1 or 2, or paragraph 41(1)(e) or paragraph 41B(1)(b):

- (a) may be granted subject to such terms and conditions as are specified in the instrument;
- (b) may be expressed to apply only in such circumstances, or in relation to such activities, as are specified in the instrument; and
- (c) is to be granted for a specified period not exceeding 5 years.

3. THE APPLICATION

- 3.1 On 14 November 2011 the ABS wrote to the Commission, seeking a temporary exemption from the SDA in respect of the PSS.
- 3.2 The PSS is a survey that collects sensitive information about a person's experience of violence, in particular domestic violence. It is conducted under the authority of the Census and Statistics Act 1905. However, because of the potential sensitivities of this survey, the ABS advises that the compliance provisions of the Act will not be applied and the survey will be conducted on a voluntary basis.
- 3.3 The survey will be conducted in 2012 by personal interview of around 22,000 adults (aged 18 years or over) nationally (excluding very remote areas of Australia), including around 17,000 female and 5,000 male respondents. It is proposed that approximately 240 interviewers nation-wide will be used.
- 3.4 The ABS advises that as at September 2011, it had 561 interviewers on its panel, of whom 151 were male. Interviewers have been advised that the ABS expects to use predominantly female interviewers for the PSS, and that male and female interviewers not selected for the PSS interviewer panel will be assigned full workloads on other household surveys in 2012.
- 3.5 The ABS is seeking an exemption to use predominantly female interviewers for the PSS, to conduct the private one-on-one interviews with both male and female respondents. The ABS advises that these interviewers will be provided with training about how to recognise and monitor respondent reactions, and how and when to offer a male interviewer. Up to eight male interviewers will be trained for the live survey, to cater for any requests for a male interviewer.
- 3.6 I note that in relation to using female interviewers, the ABS submits:
 - In both the 1996 WSS [Women's Safety Survey] and the 2005 PSS, a significant number of respondents reported incidents of violence to the ABS interviewer which they had never revealed to anyone else.
 - A wide range of experts were also consulted and involved throughout the development of the surveys. The ABS convened Survey Advisory Groups for the development of the WSS and both the 2005 and 2012 PSS. These groups comprised experts in the field of crime, violence and support services. These groups provided ABS with advice throughout the survey development process, and their advice was important to the success of previous surveys. In particular advice around specific procedures catering for the sensitive nature and content of the survey was applied successfully.

- The ABS was (and continues to be) particularly concerned with ensuring respondent comfort, well-being and confidentiality as well as encouraging respondent participation.
- Advice from the Survey Advisory Group about procedures for interviewing male respondents for the 2005 PSS, was that most men will be comfortable providing details of their experiences of physical and sexual violence to a female Interviewer. They also recommended that there be appropriate procedures in place to cater for men (and women) who do not appear comfortable being interviewed by a female.
- During development of the 2005 PSS, discussions about the appropriateness of using female Interviewers to interview male victims were also held with a number of men's counselling services (eg Mensline Australia, No To Violence Male Family Violence Prevention Association, Men's Health Information & Resource Centre). They supported the ABS proposal to use predominantly female Interviewers as long as there was the option of having a male interviewer if requested. These counselling services considered that male respondents would be just as comfortable, if not more comfortable, talking to female Interviewers.
- Similar discussions were held with female support centres and peak bodies for sexual assault and domestic violence (eg Sexual Assault Support Services, Australian Centre for the Study of Sexual Assault, National Association of Services Against Sexual Violence, Australian Domestic & Family Violence Clearinghouse) about using female Interviewers to interview men and women. They too supported the ABS intention to use female Interviewers to interview women and felt that women would be much more comfortable and more likely to disclose information to another woman than to a man.
- It was based on this collective advice that the current procedures, to use mainly female Interviewers, were developed. This advice was well founded as the 1996 WSS and the 2005 PSS had high response rates, high quality data and no instances of respondents requesting a male Interviewer.
- For the 2012 PSS, the ABS again consulted with the Survey Advisory Group regarding proposed interview procedures and they agreed that the past advice remains valid and again supported the ABS proposed interview procedures. Dress rehearsal testing for the 2012 PSS also demonstrated that the use of female Interviewers provides high response rates and quality data, with no respondents requesting a male Interviewer.
- Preparation and testing for 2012 PSS included a review of interview procedures previously used. Preliminary testing was undertaken in October 2010, with known male and female victims of violence organised through Support Centres. Feedback indicated that male victims were comfortable talking to a female Interviewer.

- A very successful large scale Dress Rehearsal was then conducted during May 2011. The Dress Rehearsal training provided to Interviewers covered how to recognise and monitor respondent reactions, and how and when to offer a male Interviewer. A male Interviewer was trained for the Dress Rehearsal, in case of such requests.
- Again, there were no requests for a male Interviewer, out of more than 2,000 dwellings that were approached for the Dress Rehearsal.

3.7 The ABS submits that using female interviewers is necessary for achieving high quality data, which will contribute to a better understanding of the level of violence in Australia.

4. DECISION

4.1 The allocation of training and work on the PSS to predominantly female interviewers may be inconsistent with provisions of the SDA including section 14(2) and section 26(1) of the SDA:

Section 14 Discrimination in employment or superannuation

(2) It is unlawful for an employer to discriminate against an employee on the ground of the employee's sex...

...

(b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or

...

(d) by subjecting the employee to any other detriment.

Section 26 Administration of Commonwealth laws and programs

(1) It is unlawful for a person who performs any function or exercises any power under a Commonwealth law or for the purposes of a Commonwealth program, or has any other responsibility for the administration of a Commonwealth law or the conduct of a Commonwealth program, to discriminate against another person, on the ground of the other person's sex, marital status, pregnancy or potential pregnancy, in the performance of that function, the exercise of that power or the fulfilment of that responsibility.

(2) This section binds the Crown in right of a State.

4.2 None of the permanent exemptions to the SDA applies to these circumstances (see sections 30 to 43), and the PSS is not within the 'special measures' provision of s 7D of the SDA.

4.3 In deciding whether to grant this exemption, the Commission has considered the objects of the SDA, set out in s 3. In broad terms these objects are to:

- Give effect to the object and spirit of the *Convention on the Elimination of All Forms of Discrimination against Women*;
 - Eliminate, as far as possible, discrimination against persons on the ground of sex, marital status, pregnancy, potential pregnancy or family responsibilities, including discrimination involving sexual harassment; and
 - Promote recognition and acceptance within the community of the principle of the equality of men and women.
- 4.4 The Commission appreciates the importance of the PSS and the data that it provides about the experiences of female and male victims of violence. The PSS results are significant for developing prevention strategies as well as services for those experiencing violence.
- 4.5 Given the experience of the ABS in undertaking these surveys in 1995 and 2006, and the expert advice and that both men and women are more inclined to communicate this kind of sensitive information to a female, the Commission is satisfied that granting a temporary exemption in these circumstances is consistent with the objects of the SDA. The Commission notes that a number of male interviewers will also be trained to cater for any requests for a male interviewer.
- 4.2 The Commission has notified the State and Territory Anti-Discrimination Boards and Equal Opportunity Commissions and invited their comment. No comment has been received.
- 4.6 Accordingly, pursuant to section 44 of the SDA, the Commission grants a temporary exemption to the ABS in respect of the PSS from 1 February 2011 to 31 December 2011.

Dated this 2nd day of February 2012



Signed by the President, Catherine Branson QC, on behalf of the Commission.

Please note

Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review of a decision to which this notice relates by or on behalf of any person or persons whose interests are affected by the decision.