

## 8. Sex Discrimination and Equality before the Law

### Additional information from the Human Rights and Equal Opportunity Commission on Australia's adherence to the International Covenant on Civil and Political Rights: Sex Discrimination and Equality before the Law

These issues relate to questions 9 and 10 of the *List of issues to be taken up in connection with the consideration of the third and fourth reports of Australia (CCPR/C/AUS/98/4) (CCPR/C/AUS/98/3)*.

#### Summary of Issues

- **Protection against sex discrimination** - it is illegal to discriminate on the ground of sex in all Australian states and territories. Even though the majority of employees are covered by the *Sex Discrimination Act 1984 (Cth)* or by state and territory anti-discrimination law, some employees remain vulnerable.
- **Women in Australian Society** - the situation of Australian women has continued to improve in many areas of society, however sex discrimination in employment is prevalent, resulting in women being concentrated in the lowest ranks of a relatively small number of female dominated industries.
- **HREOC Projects on Women:**
  - **Pregnancy Discrimination** – the National Pregnancy and Work Inquiry conducted by the Human Rights and Equal Opportunity Commission (HREOC) found that widespread and systemic discrimination on the grounds of pregnancy and potential pregnancy is common, resulting in long-term disadvantage for women and their families.
  - **Maternity Leave** – Australia is one of a few countries that does not provide paid maternity leave for women workers. HREOC has recommended further work be undertaken by the Australian government in this area.
  - **Pay Equity** - whilst pay equity has been a recognised principle in Australia for the last 30 years, in reality women still do not earn as much as men for a range of complex reasons.
  - **Sexual harassment** - sexual harassment permeates educational institutions and workplaces in Australia, remaining the single greatest cause of complaint under the *Sex Discrimination Act 1984 (Cth)*.
  - **Women from Culturally and Linguistically Diverse Backgrounds and Indigenous Women** – women from these two target groups face a range of particular sex discrimination issues, rendering them more vulnerable and less aware of their rights.

## 1. Introduction

Articles 3, 14 and 26 of the ICCPR relate to equality of men and women; Articles 3 and 14 refer specifically to equality before the law. Australia has good domestic mechanisms to achieve equality, and since the passage of the *Sex Discrimination Act 1984* (Cth) (SD Act) much has been achieved. Unfortunately however, sex discrimination is still prevalent within Australian society.

Is it the role of the Australia's Sex Discrimination Commissioner, Susan Halliday, and her policy unit to work towards the equality of women and men by raising awareness of, and adherence to the SD Act. This is undertaken in numerous ways in varied fora, as this submission demonstrates.

## 2. Discrimination Protection

It is illegal to discriminate on the ground of sex in all Australian states and territories. Despite the existence of federal, state and territory legislation, and widespread education campaigns conducted to increase public awareness of these issues, discrimination against women is still systemic and widespread. It has been unlawful to discriminate on the ground of sex within the federal jurisdiction for the last 16 years; some Australian states have also had similar anti-discrimination legislation for an equal length of time.

This section briefly outlines the provisions of the SD Act, examines the extent of sex discrimination in Australia, examines the different state and federal mechanisms which address complaints and details available remedies.

### 2.1 *Sex Discrimination Act 1984* (Cth)

The SD Act makes it unlawful to discriminate on the basis of sex, marital status, pregnancy, potential pregnancy or to dismiss an employee because of family responsibilities. Areas where it is unlawful to discriminate include employment, education, the provision of goods and services, accommodation, the disposing or acquiring of land, and in the administration of Commonwealth laws and programs.

The Sex Discrimination Commissioner of the Human Rights and Equal Opportunity Commission (HREOC) has wide ranging powers under the SD Act, including:

- dealing with complaints lodged under the SD Act<sup>1</sup>;
- conducting public inquiries<sup>2</sup>;
- undertaking research and educational campaigns to promote the objects of the SD Act<sup>3</sup>;
- publishing guidelines for the avoidance of sex discrimination<sup>4</sup>;
- reporting on federal legislation on matters relating to sex discrimination<sup>5</sup>, and
- referring potentially discriminatory industrial awards to the Australian Industrial Relations Commission<sup>6</sup>.

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<sup>1</sup> s 50 *Sex Discrimination Act 1984* (Cth).

<sup>2</sup> s 48(1)(g) *Sex Discrimination Act 1984* (Cth).

<sup>3</sup> s 48(1)(e) *Sex Discrimination Act 1984* (Cth).

<sup>4</sup> s 48(1)(ga) *Sex Discrimination Act 1984* (Cth).

<sup>5</sup> s 48(1)(f) *Sex Discrimination Act 1984* (Cth).

<sup>6</sup> s 50A(1) *Sex Discrimination Act 1984* (Cth).

Despite extensive work in areas as diverse as sexual harassment, pregnancy discrimination, discrimination in employment advertising, discriminatory recruitment practices and other forms of sex discrimination, there is evidence that sex discrimination, especially systemic and indirect discrimination, prevails in Australia.

In the 1998/99 financial year almost 85 percent of complaints made to HREOC concerned discrimination in employment. For this reason, much of the work of Susan Halliday, the Sex Discrimination Commissioner and her policy unit focuses on discrimination in the workplace.

## 2.2 Complaint Statistics: The extent of discrimination in Australia

HREOC complaint statistics demonstrate the continuing nature of discriminatory practices. State and Territory anti-discrimination agencies also independently receive and hear complaints. In addition, private management of complaints is facilitated by independent lawyers, employer organisations, unions and the industrial relations system. Anecdotally we also know that many issues go unresolved. As a result, the following statistical analysis provides an indication of the trend of complaints but cannot be seen as wholly conclusive.

**Table 1** shows the number of formal complaints received under the SD Act by area of discrimination since June 1996. Prior to 1996 Australian State and Territory agencies used different methods to HREOC to count complaints. Data from previous years has therefore not been included as valid comparisons cannot be made.

**Table 1. Sex Discrimination Act complaints received: 1996/97 - 1998/99 by area**

Sex Discrimination Act	Number of complaints		
	1996/97	1997/98	1998/99
Employment	785	477	549
Goods, services and facilities	96	78	56
Land	-	-	6
Accommodation	4	5	10
Superannuation and insurance	6	1	-
Education	9	2	4
Clubs	3	13	5
Administration of federal laws and programs	35	14	20
Application forms etc	2	-	-
Trade unions, accrediting bodies	-	-	-
<b>TOTAL*</b>	<b>940</b>	<b>590</b>	<b>650</b>

\*One complaint may have multiple areas.

Allegations of discrimination in employment dominate, followed by complaints concerning the provision of goods and services. The number of complaints lodged with the central office in Sydney indicate that the proportion of total complaints alleging discrimination in employment have increased over the past 3 years.

**Table 2. Sex Discrimination Act complaints received: 1996/97 - 1998/99 by ground**

Sex Discrimination Act	Number of complaints		
	1996/97	1997/98	1998/99
Sex Discrimination	243	199	210
Marital status	57	35	58
Pregnancy	93	61	107
Sexual harassment	452	273	214
Parental status, Family responsibility	22	15	27
Victimisation	67	21	-
<b>TOTAL*</b>	<b>934</b>	<b>604</b>	<b>645</b>

\*One complaint may have multiple grounds.

**Table 2** shows the spread of complaints between the various types of sex discrimination defined in the SD Act. Sexual harassment remains the single greatest cause of complaint, with sex discrimination the next most numerous ground. Statistics indicate a continual increase in the percentage of sexual harassment complaints.

Over the past three years the majority of complaints under the SD Act were lodged by women. It should be noted that due to constitutional restrictions on federal power, men are restricted to lodging a complaint under the SD Act where the respondent is either a Commonwealth agency, a trading corporation, a financial institution or engaged in interstate trade and commerce. State and Territory anti-discrimination laws are not limited in this way.

### **2.3 Federal Avenues of Redress: Grievance and complaints procedures**

A person who considers that they have suffered sex discrimination can ask that the grievance be dealt with internally by the employer. As an alternative, or at any stage if the individual is not satisfied with the way the grievance is dealt with by the employer, they may bring a complaint under the SD Act or state/territory anti-discrimination legislation. In some cases, federal or state workplace relations legislation may also provide an avenue of redress for concerns.

The SD Act makes Australian employers legally responsible for providing a workplace that is free from unlawful discrimination and harassment. One important step for employers in discharging that legal responsibility is to ensure that they have some form of internal procedures for resolving discrimination and harassment grievances.

The SD Act provides that employers are directly liable for the discrimination that occurs in their workplace.<sup>7</sup> Employers may also be vicariously liable for acts of their employees that could be considered as sex-based harassment for the purposes of the SD Act, unless they have taken all reasonable steps to prevent that harassment.<sup>8</sup> This requires more than just simply producing written policies, there is also a duty to communicate these policies effectively to all employees and members of management, a responsibility for promulgating the policies and taking remedial action when the policy has been breached.

<sup>7</sup> s 14 *Sex Discrimination Act 1984* (Cth).

<sup>8</sup> s 106 *Sex Discrimination Act 1984* (Cth): a person who causes, instructs, induces, aids or permits another person to do an act which is unlawful shall be taken also to have done the act.

One alternative to handling grievances internally is to lodge complaints of discrimination under the SD Act. Until April 2000 the Sex Discrimination Commissioner investigated and attempted, where appropriate, to resolve complaints of discrimination through a process of conciliation.<sup>9</sup>

The passage of the *Human Rights Legislation Amendment Act 2000* (Cth) however, now makes the President of HREOC responsible for the complaint handling functions of complaints lodged under the SD Act. If conciliation of the complaint is unsuccessful or the complaint is terminated by the President for other reasons, the person affected by the discrimination may take the matter to the Federal Court of Australia.

Outcomes available through conciliation or by order of the Federal Court will include:

- a written apology from the respondent;
- changes in working conditions or practices;
- development of anti-discrimination, harassment and equal employment opportunity policies;
- reviews of grievance procedures, and
- financial compensation.

There are some acts of discrimination which are offences under the SD Act. Although the SD Act makes harassment a civil offence, some types of harassment may also be offences under the criminal law. These include physical molestation or assault, indecent exposure, sexual assault, stalking and obscene communications. Civil and criminal proceedings arising from such complaints or charges are not mutually exclusive.

The SD Act also provides that advertising that indicates an intention to discriminate<sup>10</sup> and victimisation of people bringing complaints under the SD Act<sup>11</sup> are offences. There are also a small number of offences that are concerned with obstructing the complaint-handling process.<sup>12</sup>

## **2.4 Coverage of the SD Act in Australian States and Territories**

The vast majority of people in Australian workplaces are covered by the SD Act, or a state/territory anti-discrimination Act.

Sections 10 and 11 of the SD Act provide that the SD Act is not intended to exclude or limit the operation of a state/territory law that is capable of operating concurrently with the SD Act. Section 11 also requires that the state/territory law further the objects of CEDAW. Those sections make clear that the SD Act is not intended to cover the field of sex discrimination law. This means that where provisions of the SD Act and state/territory anti-discrimination Acts are similar, and can operate together, both will apply.

Where a state/territory anti-discrimination Act covers an area that the SD Act does not, then it is probable that the state/territory provision will apply to Commonwealth actions in that

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<sup>9</sup> s 48(1)(a) *Sex Discrimination Act 1984* (Cth).

<sup>10</sup> s 86 *Sex Discrimination Act 1984* (Cth).

<sup>11</sup> s 94 *Sex Discrimination Act 1984* (Cth).

<sup>12</sup> ss89-90 *Sex Discrimination Act 1984* (Cth).

state/territory, provided that the legislation is not inconsistent with the SD Act. However, where the legislation is inconsistent, the SD Act, as a federal Act, generally prevails where applicable.<sup>13</sup>

Generally there is a high degree of consistency between the legislation and the practical application of the legislative arrangements causes little confusion.

#### *2.4.1 Complaints under state/territory anti-discrimination Acts*

Each state/territory anti-discrimination Act has procedures for lodging complaints. These procedures are similar to those under the SD Act.

Attempts to resolve complaints by conciliation are made. However, if the attempts are unsuccessful or it appears that complaints cannot be resolved by conciliation, complaints may be referred to a tribunal or other decision making body.

In circumstances where both the SD Act and a state/territory Act applies, the complainant will have a choice of remedy. As most complainants know little about how the bodies operate, it is likely that accessibility of the remedy will be the significant factor in choosing whether to proceed under the SD Act or the state/territory Act.

There are some differences between the federal and state/territory Acts. This means that complainants may not always have an opportunity to choose which Act is best for their complaint. For example, a woman wishing to complain about discrimination in New South Wales Government employment cannot bring that complaint under the SD Act and a woman wishing to complain about discrimination by a small business employer (depending on the number of other employees in the business) will only be able to bring such a complaint under the SD Act.

#### *2.4.2 Exemptions*

Coverage of the SD Act is limited or non-existent in some areas. The Report of the National Pregnancy and Work Inquiry, *Pregnant and Productive: It's a right not a privilege to work while pregnant*, highlights the uncertainties surrounding coverage of specific groups and examines sections of the Act that require amendment to ensure consistency of coverage and equality between men and women.

Categories of employees not covered by the SD Act include:

- state and territory employees<sup>14</sup>;
- judges and members of parliament<sup>15</sup>, and
- unpaid workers, if they are not considered to be employees and an employment contract does not exist<sup>16</sup>.

Other exemptions include:

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<sup>13</sup> Subject to the provisions of ss 10(3) and 11(3) *Sex Discrimination Act 1984* (Cth).

<sup>14</sup> s 13 *Sex Discrimination Act 1984* (Cth).

<sup>15</sup> The situation in respect to statutory officers is also unclear.

<sup>16</sup> CCH Australia Limited *Australian Labour Law Reporter* CCH Sydney 1998, 1000.

- the recruitment and hiring of domestic workers who work in the home of their employer<sup>17</sup> and workers who are employed to care for a child or children in the employer's home<sup>18</sup>;
- the hiring and dismissal practices at religious bodies and religious schools<sup>19</sup>;
- voluntary bodies in the admissions of persons as members of the body, or in the provision of benefits, facilities or services to members<sup>20</sup>;
- persons from participating in competitive sport in which the "strength, stamina or physique of competitors is relevant"<sup>21</sup>;
- an order of a court<sup>22</sup>;
- an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment<sup>23</sup>;
- a certified agreement<sup>24</sup>; and
- certain federal Acts<sup>25</sup>.

In September 1999 the Pregnancy and Work Inquiry recommended that coverage of Statutory appointees, judges, members of Parliament and unpaid workers be clarified and the Act amended if necessary to cover these workers. The Inquiry also recommended that exemptions relating to religious bodies and religious schools, and acts done under statutory authority be repealed. HREOC is still waiting for a response from the federal government.

There have been a number of other reviews of the SD Act, including a review undertaken in 1992 by the House of Representatives Standing Committee on Legal and Constitutional Affairs, the 1992 Review of Permanent Exemptions undertaken by the Sex Discrimination Commissioner and the 1994 Australian Law Reform Commission's *Equality Before the Law Report*.

None of HREOC's 1992 recommendations to repeal discriminatory sections of the Act or to remove exemptions relating to State instrumentalities, educational institutions established for religious purposes, acts done under statutory authority, voluntary bodies and sport have been realised. Certain recommendations contained in the *Equality Before the Law Report* were implemented in the *Sex Discrimination Amendment Act 1995* (Cth), but these did not include realising recommendations relating to the removal of exemptions.

### 3. Women in Australian Society

The situation of Australian women has continued to improve in many areas of society, for example, increasing numbers of women are entering parliament or undertaking tertiary education. Focusing on employment however, sex discrimination continues, resulting in women being concentrated in the lowest ranks of a relatively small number of female dominated industries. The number of women in management or on committees remains small, there are still relatively few women

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<sup>17</sup> s 14(3) *Sex Discrimination Act 1984* (Cth).

<sup>18</sup> s 35(1) *Sex Discrimination Act 1984* (Cth).

<sup>19</sup> s 38(1) *Sex Discrimination Act 1984* (Cth).

<sup>20</sup> s 39 *Sex Discrimination Act 1984* (Cth).

<sup>21</sup> s 42(1) *Sex Discrimination Act 1984* (Cth).

<sup>22</sup> s 40(1)(d) *Sex Discrimination Act 1984* (Cth).

<sup>23</sup> s 40(1)(e) *Sex Discrimination Act 1984* (Cth).

<sup>24</sup> s 40(1)(f) *Sex Discrimination Act 1984* (Cth).

<sup>25</sup> s 40(2) *Sex Discrimination Act 1984* (Cth).

parliamentarians, and women students remain concentrated in areas traditionally associated with women. The following summary highlights these trends.

### 3.1 Statistical Summary

#### 3.1.1 Managers

- In 1998, 22% of managers and administrators were women<sup>26</sup>;
- Men dominate generalist managerial positions; women dominate as:
  - child care coordinators (71%)<sup>27</sup>;
  - health service managers (58%)<sup>28</sup>;
  - managers in educational institutions (37.7%)<sup>29</sup>;
  - personal and other services (54.5)<sup>30</sup>;
  - retail (44%)<sup>31</sup>;
- There are only 6% of women managers in the fields of engineering, distribution and process managers<sup>32</sup>.

#### 3.1.2 As Board Members

- 11% of public sector boards members were women<sup>33</sup>;
- 8.3% of all private sector board members were women<sup>34</sup>.
- In 1999, of the 47% of Top 300 companies that had women board directors, 63% had only one women director<sup>35</sup>.

#### 3.1.3 Politics

- In 1999, there were 55 women in federal parliament, 22 in the Senate, 23 in the House of Representatives – women’s participation has risen to an all time high of 24.5%<sup>36</sup>;
- Women comprise 21% of Members of Parliament – 23% in House of Representatives, 29% in the Senate<sup>37</sup>.

#### 3.1.4 Occupations

- In 1998, women made up 77% of people employed in the health and community service industries and 68% of education employees<sup>38</sup>;
- Men dominate mining (89%), construction (86%) and electricity, gas, and water supply industries (80%)<sup>39</sup>;

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<sup>26</sup> Office of the Status of Women (OSW). *Women in Australia 1999*, Canberra, OSW, 1999, 61.

<sup>27</sup> Office of the Status of Women (OSW). *Women in Australia 1999*, Canberra, OSW, 1999, 61.

<sup>28</sup> Office of the Status of Women (OSW). *Women in Australia 1999*, Canberra, OSW, 1999, 61.

<sup>29</sup> Affirmative Action Agency. *Action News*, Number 40, December 1999, 9.

<sup>30</sup> Affirmative Action Agency. *Action News*, Number 40, December 1999, 9.

<sup>31</sup> Affirmative Action Agency. *Action News*, Number 40, December 1999, 9.

<sup>32</sup> Office of the Status of Women (OSW). *Women in Australia 1999*, Canberra, OSW, 1999, 61.

<sup>33</sup> Office of the Status of Women (OSW). *Women in Australia 1999*, Canberra, OSW, 1999, 61.

<sup>34</sup> Office of the Status of Women (OSW). *Women in Australia 1999*, Canberra, OSW, 1999, 61.

<sup>35</sup> Corporate Women Directors International (CWDI). *Women Board Directors of Australia’s Top Companies*, Washington, 1999, 3.

<sup>36</sup> Office of the Status of Women (OSW). *Women in Australia 1999*, Canberra, OSW, 1999, 61.

<sup>37</sup> Baird, J. “Winning with women”, *Sydney Morning Herald*, 16 August, 1999, 13.

<sup>38</sup> Office of the Status of Women (OSW). *Women in Australia 1999*, Canberra, OSW, 1999, 38.

<sup>39</sup> Office of the Status of Women (OSW). *Women in Australia 1999*, Canberra, OSW, 1999, 38.



- In 1997, women were 35% of all small business operators<sup>40</sup>; in 1998 it was stated that this figure increases to 60% when joint partnerships are included<sup>41</sup>.
- In 1999, more men than women were employed in the federal and state public service (55%)<sup>42</sup>.

### 3.1.5 Education

- The schooling retention rate is higher for girls than for boys. In 1998, 78% of girls and 66% of boys completed high school<sup>43</sup>.
- The percentage of women undertaking tertiary studies increased from 10% in 1988 to 12% in 1998. Women still predominate in traditional courses of study, for example 30% of all women students study Arts, Humanities and Social Sciences<sup>44</sup>.
- Similarly, women undertaking vocational education and training courses are predominantly enrolled in administration, business, economics and law (almost 40%), social, educational and employment skills (38%), and humanities (almost 30%)<sup>45</sup>.
- Women are embracing new technologies however, with women accounting for 36% of all students enrolled in maths and computing<sup>46</sup>.

## 4. HREOC Projects on Women

The SD Act contains provisions for the Sex Discrimination Commissioner to undertake research and educational campaigns to promote awareness and adherence to the Act. This is a major strategy to achieve equality of women and men in Australia. This section outlines the work undertaken by the Sex Discrimination Commissioner and her policy unit on major sex discrimination issues.

### 4.1 Pregnancy Discrimination

A major focus of the work undertaken by Australia's Sex Discrimination Commissioner and her policy unit over the last eighteen months has focused on pregnancy discrimination. As a result of an increasing number of pregnancy related complaints lodged under the SD Act, in August 1998 the federal Attorney General asked HREOC to conduct an inquiry into pregnancy and potential pregnancy discrimination in the workplace.

In September 1999 the Report of the National Pregnancy and Work Inquiry, entitled *Pregnant and Productive: It's a right not a privilege to work while pregnant* was released. This report details that widespread and systemic discrimination on the grounds of pregnancy and potential pregnancy is common.

The report also found that:

- many instances of pregnancy discrimination go unreported;
- pregnancy discrimination takes many forms...some blatant, some covert, some detrimental to the health of the mother and the unborn child;

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<sup>40</sup> Office of the Status of Women (OSW). *Women in Australia 1999*, Canberra, OSW, 1999, 38.

<sup>41</sup> "It's women who mean business", *The Newcastle Herald*, 29 February, 2000, 22.

<sup>42</sup> Australian Bureau of Statistics (ABS). *1999 Year Book Australia*, ABS, Canberra, 123, Catalog no. 1301.0. This figure does not include employees in government funded educational institutions.

<sup>43</sup> Office of the Status of Women (OSW). *Women in Australia 1999*, Canberra, OSW, 1999, 55.

<sup>44</sup> Office of the Status of Women (OSW). *Women in Australia 1999*, Canberra, OSW, 1999, 55.

<sup>45</sup> Office of the Status of Women. *Women in Australia, 1999*, Canberra, OSW, 58.

<sup>46</sup> Office of the Status of Women. *Women in Australia, 1999*, Canberra, OSW, 58.

- a high level of ignorance and misinformation amongst employees and employers;
- casual workers are particularly vulnerable;
- women with the potential to become pregnant are denied employment, training and promotional opportunities;
- pregnant women suffer harassment and victimisation from colleagues;
- partners had been denied leave to attend significant medical appointments or even the birth of the child;
- employers misuse occupational, health and safety regulations to remove pregnant employees, and
- women conceal pregnancy because they fear discrimination at work.

The Australian Government has yet to respond to the 46 recommendations made in the report. Once a response has been received by HREOC, educative guidelines on managing pregnancy at work will be produced and widely distributed.

#### **4.2 Maternity Leave**

Submissions to the National Pregnancy and Work Inquiry also raised the need for women to be able to access paid maternity leave. Of the 167 signatory countries to the *Convention to Eliminate All Forms of Discrimination Against Women* (CEDAW), 157 provide paid maternity leave. Australia is one of 6 countries that does not provide paid maternity leave, as Australia has a reservation to this CEDAW Article.

The National Pregnancy and Work Inquiry recommended that the Australian government remove the reservation in CEDAW to paid maternity leave, and undertaking economic modelling and analysis of paid maternity leave options.

Australian employees are entitled to 52 unpaid weeks of unpaid maternity leave once they have 12 months continuous service with an employer. This provision does not universally cover all employees as casual employees are excluded under most jurisdictions. Some casual employees however, may be entitled to a period of maternity leave under state or federal awards, legislation or agreements.

The Queensland Government has also legislated to enable casuals who have been employed with the same employer for two years to access maternity leave. The New South Wales Government has a similar bill before parliament.

#### **4.3 Pay Equity**

Article 6 of the ICCPR enshrines the right of equality of women and men before the law. Analogous to this is ensuring that legislature enshrines the right of equal pay for work of equal value for men and women. Whilst pay equity has been a principle underpinning the Australian industrial relations system since 1969, in reality women still do not earn as much as men, for a range of interlocking and complex reasons which have their basis in historical factors.

Studies show that women have consistently earned less than male employees since male/female pay ratios began to be measured in the late 1960s. Even though women's wages have risen since the

1970s, the narrowing of the gender pay gap has slowed in recent years. Some studies state that women are earning 80% of a male wage, others have the figure at 83% or 84%.

The Sex Discrimination Commissioner and her policy unit have been involved in working towards reducing the gender pay gap. In 1998 the NSW Industrial Relations Commission conducted an inquiry into pay equity. HREOC intervened as a party.

The Inquiry paired a number of industries for comparison, one male dominated and one female dominated, to determine whether women are paid less than men. The selected industries were child care workers and metal workers, seafood processors and seafood general hands, public sector librarians and geoscientists, clerical workers and metal workers, hairdressers and motor mechanics, public hospital nurses and miners, clothing industry outworkers and factory process workers.

The Sex Discrimination Commissioner on behalf of HREOC contributed to the Inquiry by providing a human rights and international perspective on pay equity. Final submissions were made to the Inquiry in June 1998 and the Ministerial report was released in December 1998. In 1999 the NSW Government released *NSW Government's Pay Equity Strategy 1999* in response to the inquiry.

The Sex Discrimination Commissioner continues to monitor new law and government policies to gauge possible effects which would either directly or indirectly worsen the gender pay gap. Submissions to various Senate inquiries examining government bills form part of the Commissioner's work in this regard.

#### **4.4 Sexual harassment**

Sexual harassment is overt discriminatory behaviour, which impacts on the psychological, emotional and physical well-being and safety of the individual. Sexual harassment permeates educational institutions and workplaces in Australia. Sexual harassment remains the single greatest cause of complaint under the SD Act.

The Sex Discrimination Commissioner regularly receives and accepts numerous requests to conduct seminars and workshops to address sexual harassment. The demand for sexual harassment publications also remains high and consistent. HREOC has conducted numerous educational campaigns as part of its ongoing work to reduce and ultimately eliminate sexual harassment in public fora.

#### **4.5 Women from Culturally and Linguistically Diverse Backgrounds**

Women from women from culturally and linguistically diverse backgrounds face a range of particular sex discrimination issues. The National Pregnancy and Work Inquiry found that these women are particularly vulnerable and less aware of their rights in relation to sex discrimination. Additionally, migrant and refugee women with low level English language proficiency tend to be clustered in the lowest paying occupations, where they are further subject to inequitable work conditions and sex discrimination, including sexual harassment.

Commissioner Halliday consults with organisations representing migrant and refugee women and speaks with individual women on a regular basis. The Sex Discrimination Unit has published and distributed a range of publications in various languages to inform women of their rights.

Issues faced by women from culturally and linguistically diverse backgrounds are dependent on a range of factors, including English language proficiency and access to English classes, difficulties associated with recognition of prior skills, length of time in Australia, access to support networks and culturally appropriate services, and in the case of refugee women, experiences of rape or torture in their home countries.

Women from culturally and linguistically diverse backgrounds include migrant women who are new arrivals to Australia, refugee women who may have had limited options but to come to Australia, and women who may be first or second generation Australians.

#### **4.6 Indigenous Women**

Many Indigenous women suffer discrimination in Australia. Indigenous women are subjected to high levels of domestic violence and have high rates of unemployment. Those working are concentrated in the lowest paying industries. For this reason, HREOC would like to draw attention to some of the issues facing Indigenous women in Australia, some of which emerged during the National Pregnancy and Work Inquiry.

Submissions to and consultations during the National Pregnancy and Work Inquiry showed that Indigenous women can face difficulties managing pregnancy and potential pregnancy at work due to institutional racial issues and cultural needs which affect their knowledge and enforcement of their maternity and anti-discrimination rights.

Information gathered from submissions and during consultations specifically indicated that many Aboriginal and Torres Strait Islander women are not aware of anti-discrimination laws covering pregnancy and potential pregnancy, nor are they aware of their maternity leave rights and entitlements. In addition, one submission noted that many Indigenous women were reticent to assert their legal rights or to approach management to discuss matters of concern.

HREOC recognises that Indigenous communities are diverse and understands that cultural practices vary from community to community. Issues also vary according to the geographical location of the employee and that of their community. Cultural norms or conditions within certain Indigenous communities sometimes make it difficult for Indigenous employees to comply with traditional Western employment conditions.

Health issues are also of concern. The high incidence of diabetes and other health concerns amongst Indigenous women means that some Indigenous employees require additional sick leave during their pregnancy. For Indigenous women in remote or isolated locations, any illness which may be serious requires both time and travel, which again may require additional sick leave.

The Inquiry indicated while knowledge of race discrimination law was good, knowledge of sex discrimination law was less evident. Even less prominent was the understanding of the intersection between race and sex discrimination.

The impact and practices of sex discrimination on the lives of Indigenous women continues to be under-researched and not properly understood in Australian society. The Sex Discrimination

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Commissioner intends to undertake research and conduct relevant education campaigns to improve awareness on these areas in the near future.

## **5. Conclusion**

While significant gains have been made since the introduction of the SD Act, as detailed in this submission sex discrimination is widespread and endemic in Australian society. Substantial areas of sex discrimination still exist, especially in regards to employment and much work remains to be done. Areas requiring particular attention include discrimination on the ground of pregnancy and potential pregnancy, maternity leave, gender pay inequity and sexual harassment.

Amending the SD Act to remove exemptions would contribute to furthering equality between women and men in Australia. The 1999 Report of the National Pregnancy and Work Inquiry recommends that the SD Act be amended to broaden coverage and that certain exemptions from the SD Act be removed or circumscribed. HREOC is still waiting on a response from the Australian government.

## **6. Request for Clarification**

The Human Rights Committee has asked whether the recommendations contained within the Law Reform Commission's Report, *Equality Before the Law* at paragraph 217 of the third report have been implemented. HREOC would like clarification of the information sought as this report contains only two parts and no paragraph 217.