

**Subject: Australian Government Response to Working Group On Discrimination Against Women in Law and Practice – Questionnaire on good practices**

The Australian Government presents its response to the questionnaire from the Working Group on Discrimination Against Women in Law and Practice – Questionnaire on good practices, dated 4 August 2016.

1. **Identification of a law that has eliminated or substantially reduced discrimination and supported women’s empowerment.**

*Background Information on the Law*

The Australian Government believes that all Australians have the right to be free from discrimination and harassment.

The *Sex Discrimination Act 1984* (Cth) is the key Commonwealth legislation for making discrimination against women unlawful. It prohibits direct and indirect discrimination on the grounds of sex, marital or relationship status, pregnancy or potential pregnancy, breastfeeding, sexual orientation, gender identity or intersex status. It also prohibits discrimination on the ground of family responsibilities in the area of employment. Sexual harassment is also unlawful under the Sex Discrimination Act.

*The Law’s Compliance with CEDAW*

The Sex Discrimination Actgives effect to many of Australia’s obligations under CEDAW, as well as to aspects of the *International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural Rights* (both done at New York on 16 December 1966), the *Convention on the Rights of the Child* (done at New York on 20 November 1989), and International Labour Organization Conventions, including the *Equal Remuneration Convention, 1951* (No. 100), the *Discrimination (Employment and Occupation) Convention, 1958* (No. 111), the *Workers with Family Responsibilities Convention, 1981* (No. 156), and the *Termination of Employment Convention, 1982* (No. 158).

All states and territories across Australia also have anti-discrimination legislation, in addition to the federal Sex Discrimination Act being applicable, which seek to reduce discrimination and support women’s equal participation. Where a state law is inconsistent with a Commonwealth law, section 109 of Australia’s Constitution provides that Commonwealth law prevails to the extent of the inconsistency.

1. **How the law came into being and was implemented**

The Sex Discrimination Act came into force on 1 August 1984, implementing Australia’s international human rights obligations in CEDAW, following ratification by Australia on 28 July 1983.

In 2011, significant amendments to the Sex Discrimination Act came into effect, including:

* ensuring that protections from sex discrimination apply equally to women and men;
* prohibiting direct discrimination against employees on the ground of family responsibilities;
* strengthening protections against sexual harassment in workplaces and schools, and prohibiting sexual harassment through new technologies; and
* establishing breastfeeding as a separate ground of discrimination, allowing measures to protect and accommodate the needs of breastfeeding mothers.

In 2013 the Sex Discrimination Act was amended to make it unlawful to discriminate on the grounds of sexual orientation, gender identity and intersex status. Same-sex couples are now also protected under the definition of ‘marital or relationship status’. These protections apply to lesbian, gay, bisexual, transgender, gender diverse and intersex people.

The Sex Discrimination Act provides a range of permanent exemptions (for example, religious bodies and charities) and gives the Australian Human Rights Commission (AHRC), Australia’s National Human Rights Institution, power to grant temporary exemptions from certain provisions of the Sex Discrimination Act.

The Sex Discrimination Act also allows the use of affirmative action by allowing a person to take ‘special measures’ to achieve substantive equality between men and women. These measures are defined as those that are otherwise discriminatory but designed to promote equality or meet special needs.

1. **The impacts that the law has had for women on the ground**

Complaints of unlawful discrimination or sexual harassment under the Sex Discrimination Act can be lodged with the AHRC. This includes complaints of direct and indirect discrimination and sexual harassment. The AHRC has the power to investigate and attempt to conciliate complaints under the Sex Discrimination Act. If the conciliation is unsuccessful, an application for legal proceedings can be lodged in the Federal Court of Australia or the Federal Circuit Court of Australia, seeking a civil remedy.

In addition to resolving complaints under the Sex Discrimination Act, the AHRC also:

* resolves complaints of discrimination or breaches of human rights
* holds public inquiries into human rights issues of national importance
* develops education programmes and resources for schools, workplaces and the community
* provides independent legal advice to assist courts in cases that involve human rights principles
* provides advice and submissions to parliaments and governments to develop laws, policies and programmes
* undertakes and coordinates research into human rights and discrimination issues.

The AHRC’s 2014/15 Annual Report indicated that 453 complaints were made under the Sex Discrimination Act, with 451 matters being finalised. This constituted 19% of all complaints received by the AHRC in the 2014/15 financial year. The Australian Government does not collect data on all cases in which the Sex Discrimination Act is raised before common law courts.

The Sex Discrimination Act also promotes the principle of gender equality and requires the appointment of a Sex Discrimination Commissioner. The Commissioner is charged with leading the work of the AHRC to promote understanding of and compliance with the Sex Discrimination Act. The Commissioner undertakes a range of activities to address sex discrimination, sexual harassment and other barriers to gender equality. The role includes advocating for law and policy reform, conducting research, public inquiries into human rights issues of national importance, and community education initiatives and resources.