

Chapter 10

Sex and Age Discrimination

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Ms Elizabeth Broderick
Sex Discrimination
Commissioner and
Commissioner responsible
for Age Discrimination



10.1 STATEMENT FROM THE COMMISSIONER

In September 2007, I joined HREOC as the federal Sex Discrimination Commissioner and Commissioner responsible for Age Discrimination. I am honoured to have taken up this appointment.

My first major initiative as Sex Discrimination Commissioner has been to conduct a nationwide Listening Tour. Commencing immediately after the Federal Election, I travelled the length and breadth of Australia, from Launceston to Arnhem Land, the Kimberley region to our nation's capital, Canberra.

My Listening Tour was designed to find out where we are 'at' in our pursuit of gender equality and where HREOC should focus its efforts in the future. During the tour, I personally met over 1000 Australians from all walks of life. Many more members of the public had their say on our Listening Tour on-line blog, with many thousands more following our journey on the internet.

I can report – without reservation – that in 2008, gender inequality remains an everyday lived experience for women and men in Australia. The experiences shared with me provide a powerful human dimension to the statistics that come across my desk every day. The Listening Tour has been an essential part of the setting of my agenda for my term as Commissioner. The findings from the Listening Tour, together with my Plan of Action for Gender Equality, will be reported shortly after the end of this reporting period.

This year, HREOC has once again been a strong advocate for the introduction of a national scheme of paid leave for parents, including paid maternity leave. I have built on the work of my predecessors to prepare a major submission to the Productivity Commission, setting out a two staged proposal for a world class paid leave scheme for parents. Participants in my Listening Tour consistently identified paid maternity leave as a national priority, as well as paid leave for the supporting parent.

If there is one thing that will progress gender equality in our country, it is to support parents to share the paid and unpaid work of caring for children and other loved ones across the life cycle. Paid leave for new parents is an essential part of achieving this goal.

Improving the ability of people with caring responsibilities to obtain flexible work arrangements for both women and men is another component of a gender equality agenda. I have therefore proposed ways to strengthen the new *National Employment Standard on the Right to Request Flexible Work Arrangements*. I am particularly keen to see the right to request extended leave to cover all people with family and caring responsibilities, as well as people with disability. Caring is a part of our lives for the duration. Right now, unpaid caring roles continue to be primarily filled by women. Greater flexibility in paid work for both men and women will enable a better balance in the sharing of care for our families, for our loved ones, and the community as a whole.

Age discrimination remains a major systemic problem in Australian workplaces. As Commissioner responsible for Age Discrimination, I have continued to highlight the importance of adequate legal protection for people who experience discrimination. It is also vitally important that employers foster a culture that values people for their skills and abilities, rather than on myths linked to a person's age.

This year, I am very pleased to have launched a public awareness campaign, *Mature Workers Mean Business*, which is aimed at addressing some of the myths about mature age workers. In a time of skills shortages, it only makes good business sense to support the recruitment and retention of good staff, irrespective of age, and to eradicate discrimination that continues to occur. The campaign also aims to ensure that all people are treated with the dignity and respect to which they are entitled.

I have also continued to call for changes to the Age Discrimination Act which will improve the effectiveness of the law in addressing discrimination in the workplace.

I look forward to building on this work and progressing my equality agenda.

10.2 RESEARCH AND POLICY

10.2.1 Listening Tour

The Sex Discrimination Commissioner's Listening Tour commenced in November 2007. The aim of the tour was to hear directly from people around the country about their experiences of equality between women and men in contemporary Australia. The Tour addressed three key themes:

- Economic independence for women;
- Balancing work and family across the life cycle; and
- Freedom from discrimination, harassment and violence.

The guiding principles of the Listening Tour were participation, inclusion and diversity. The Listening Tour involved visits to all states and territories, including urban, regional and remote settings, as well as an on-line Listening Tour Diary and blog. The tour

included general public consultations, women’s and men’s focus groups from specific industries, business and academic roundtables, and consultations with unions, non-government organisations and government ministers and agencies. The tour was designed to reach diverse groups including women with disabilities, Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, women of diverse sexualities and workers from low paid occupations and industries.

The tour also ensured that both men and women were able to participate and contribute.

The Commissioner held over 100 events, met with over 1 000 people and received on-line blog postings from 128 people, with 39 612 viewers reading the Commissioner’s Listening Tour Diary. There were 66 826 hits on the Listening Tour website during the tour. The findings from the Listening Tour will be published early in July 2008 together with the Commissioner’s new Plan of Action for Gender Equality.

10.2.2 It’s About Time: Women, Men, Work and Family Final Paper

HREOC’s *It’s About Time: Women, Men, Work and Family* Final Paper was launched and disseminated in March 2007. During the reporting period, HREOC has monitored the paper’s 45 recommendations regarding legislative, policy and program changes that aim to improve the ability of women and men to better share paid and unpaid work across the life cycle. A number of those recommendations are now being reflected in government action at the federal level, including: a focus on early childhood education; making work and family balance a policy priority through the new Federal Office of Work and Family; the establishment of the House of Representatives Inquiry into equal opportunities for women in the workforce; and the Productivity Commission’s *Inquiry into Paid Maternity Leave, Paternity Leave and Parental Leave*.

The Commissioner will also be addressing a number of the recommendations from *It’s About Time* as part of her new Plan of Action for Gender Equality.



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The Listening Tour visited all states and territories, including urban, regional and remote areas

10.2.3 A National Paid Leave Scheme for Parents

HREOC has continued to advocate for the establishment of a national scheme of paid leave for parents, including paid maternity leave. This year, the federal government announced the Productivity Commission's *Inquiry into Paid Maternity Leave, Paternity Leave and Parental Leave*. HREOC made an extensive written submission to the Inquiry, drawing on HREOC's previous work in promoting the need for a national paid maternity leave scheme. HREOC has been involved in a number of collaborative events with business, unions and women's organisations to promote the need for a national scheme.

HREOC proposes a two-staged approach to introduction of a world class scheme of paid leave for parents. Stage One would provide 14 weeks of federally-funded paid maternity leave, and two weeks of supporting parent leave, to be implemented immediately. This first stage would be reviewed within two years against key objectives of the scheme. The two year review would be carried out with a view to extending entitlements to achieve a full year of paid parental leave, of which the first 14 weeks are paid maternity leave and four of the remaining weeks are reserved for the supporting parent. HREOC's submission recognises paid maternity leave as a basic human right for working mothers. It also recognises the entitlement of fathers and other supporting parents to have paid leave to share the care of babies in the crucial first year of their lives.

Australia is one of only two remaining OECD countries that does not have paid maternity leave, and has been consistently criticised by international human rights bodies for not providing this minimum gender equality entitlement.

10.2.4 National Employment Standards

Building on the work of the *It's About Time* Final Paper, HREOC prepared a detailed submission to the Federal Government's *Discussion Paper on the New Proposed National Employment Standards*. The submission recommended that the right to request *Flexible Work Arrangements Standard* be extended to apply to workers with all forms of family and caring responsibilities and to employees with a disability. The submission also proposed that the *Flexible Working Arrangements Standard* provide for a dispute settlement mechanism which would allow an employee to refer unresolved disputes to Fair Work Australia, or some other form of conciliatory body, for procedural review.

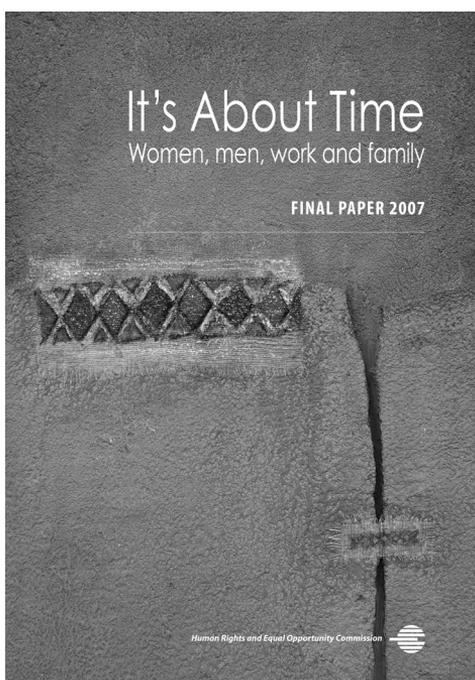
10.2.5 Trafficking in Women

HREOC continues to monitor the situation in relation to trafficking of women in Australia and has regular contact with non-government agencies, academics and government agencies on the issue. HREOC has been involved in making recommendations for improvement to the visa arrangements and support services available for people who may have been trafficked into Australia. These recommendations also call for processes that would allow people to pursue compensation in appropriate cases. HREOC remains committed to advocating for a human rights-based approach to the support provided to women who have been trafficked into Australia for labour purposes.

10.2.6 ARC linkage project: Parental Leave in Australia: Access, Utilisation and Efficacy

HREOC is an industry partner to the ARC Linkage project, *Parental Leave in Australia: Access, Utilisation and Efficacy*. The project aims to provide benchmark information about: access to, and utilisation of, parental leave in Australia; identification of parents' preferences and unmet needs; and the assessment of broader implications for gender equality. Lead researchers are Dr Gillian Whitehouse and Dr Marian Baird.

The project was completed during the reporting period. HREOC will be participating in a major event towards the end of 2008 as part of disseminating the findings of the research both domestically and internationally.



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A number of recommendations from the *It's About Time: Women, Men, Work and Family* Final Paper are being reflected in government action at the federal level. See 10.2.2

10.2.7 ARC linkage project: Trends in Time: Work, Family and Social Policy in Australia 1992-2006

HREOC has agreed to be an industry partner in this new three year project which will investigate trends in work and family time. The project draws upon the *2006 Australian Bureau of Statistics Time Use Survey*. The Chief Investigator is Dr Lyn Craig from the Social Policy Research Centre at the University of NSW. HREOC's Women, Men, Work and Family project, culminating in the *It's About Time* Final Paper, drew extensively on time use data and Dr Craig's work in particular. Other project partners are the Department of Family, Housing, Community Services and Indigenous Affairs and the Australian Bureau of Statistics.

10.2.8 ARC linkage project: 'Impact of Parents' Employment on Children's Well-being: The Influence of Employment Quality, Time and Activities with Children, and Parenting Practices

During the reporting period, HREOC was an industry partner to the ARC linkage project *'Impact of Parents' Employment on Children's Well-being: The Influence of Employment Quality, Time and Activities with Children, and Parenting Practices*. HREOC provided in kind support to the project. Lead investigators were Dr Michael Bittman, Dr Jan Nicholson and Dr Lyndall Strazdins. Other industry partners were the Queensland Commission for Children and Young People, the Queensland Office for Women and the NSW Commission for Children and Young People. The project was completed in September 2007.

10.2.9 ARC linkage project: Australia's Response to Trafficking in Women: Towards a Model for Regulation of Forced Migration in the Asia Pacific Region

HREOC is an industry partner in this research project, designed to evaluate Australia's response to the trafficking of persons, particularly women and children, from the perspective of criminal justice, international human rights law and migration law. Lead investigators are Professor Bernadette McSherry, Associate Professor Susan Kneebone and Dr Julie Debeljak. Other industry partners include the federal Attorney-General's Department and World Vision Australia.

In 2007-2008, the researchers continued to collect and summarise materials for a monograph entitled *Australia's Legal and Policy Response to Human Trafficking in Australia*. The purpose of this book is to explain the legal and policy responses of the Australian Government to the issue of trafficking in Australia, including exploitation for sexual services and for labour. The research team have also continued to create networks and to gather and impart information by taking part in a number of roundtables, as well as presenting research findings at national and international conferences.

10.3 EDUCATION AND PROMOTION

10.3.1 Indigenous Women's Business Gathering

On 10 December 2007, the Commissioner hosted an Indigenous Women's Business Gathering. The Gathering brought together a small group of Indigenous women leaders and corporate sector women leaders. The gathering discussed opportunities for the development of business and community programs and for relationship-building across other sectors. Following the meeting, participants were guests at the HREOC Annual Human Rights Awards Lunch. The gathering fed into the broader consultations with Aboriginal and Torres Strait Islander women as part of the Commissioner's Listening Tour.

10.3.2 e-Festival of Ideas: Reworking Feminism: What Does Gender Equality Mean in the 21st Century

In April 2008, the Commissioner participated in the e-Festival of Ideas to promote discussions among young women and men about the meaning of gender equality in contemporary Australia. The e-Festival is a yearly event presented by Vibe-wire Inc, a non-profit youth media organisation. Participation is at the heart of human rights and this innovative event encouraged young people to have their say to help shape the gender equality agenda for Australia.

10.4 AGE DISCRIMINATION

The HREOC *All About Age Discrimination* brochure was updated this year to provide comprehensive information about people's rights and responsibilities under the *Age Discrimination Act 2004* (Cth).

In April 2008, HREOC participated in the Productive Ageing Forum, Counting on Experience: Preparing for an Ageing Workforce, together with: Unions NSW; the NSW Business Chamber; the Department of Education, Employment and Workplace Relations and relevant service providers; the National Employment Services Association; and the National Council of Social Services. The forum was attended by members of National Seniors as well as several researchers, practitioners and individuals with an interest in mature age workers.

One of the key messages to come out of the forum was the need to stress that ageing is not just about aged care. The forum also highlighted the need for key stakeholders to work together in raising the profile of ageing and age discrimination in the community debate and in political circles in order to bring about policy change.

10.4.1 Mature Workers Mean Business public awareness campaign

As one of the recommendations arising out of social research commissioned by HREOC, a print media and web-based campaign was developed during the reporting period to promote the benefits of employing mature age workers. The *Mature Workers Mean Business* campaign includes positive case studies from mature age workers and their employers and addresses a range of myths and stereotypes regarding older workers. The campaign also highlights the relevance of age discrimination protections in the workplace. The campaign will be launched in the next reporting period.



MATURE WORKERS MEAN BUSINESS

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10.5 INTERNATIONAL ACTIVITIES

10.5.1 Human Rights Technical Cooperation Program

HREOC participated in China-Australia Human Rights Technical Cooperation Program's Domestic Violence Workshop in Shenyang, China, in July 2008.

HREOC also met with delegations from the Iraqi and South Korean Human Rights Commissions to brief them about its work in sex and age discrimination.

10.5.2 UN Commission on the Status of Women

As part of the Australian delegation, the Commissioner and Director of the Sex and Age Discrimination Unit attended the first week of the UN Commission on the Status of Women (CSW) in New York City, from 25-29 February 2008. The experience was an excellent opportunity to build networks with other countries that are working on similar policy concerns and to share innovative strategies for addressing gender-based discrimination.

Following CSW, HREOC participated with representatives from the Australian Government and non-government delegations in a meeting which identified ways to improve Australia's engagement with CSW in future years.

10.5.3 Pacific Conference on Strategies for Promoting Human Rights in the Pacific

From 27-29 April 2008, representatives from HREOC attended the Pacific Conference on Strategies for Promoting Human Rights in the Pacific. Discussions were held regarding the promotion of regional human rights mechanisms and the development of links with Pacific women's networks to further develop opportunities for supporting leadership opportunities in the regional human rights process for Australian women in the Pacific Region.

10.6 EXEMPTIONS UNDER THE SEX AND AGE DISCRIMINATION ACTS

10.6.1 Griffith City Council

Griffith City Council, trading as Griffith Regional Aquatic Leisure Centre, applied for a temporary exemption pursuant to section 44(1) of the Sex Discrimination Act. The centre's proposal was to restrict access to its gymnasium and swimming pool to women only for regular, two and a half hour sessions outside of its ordinary operating hours.

HREOC rejected the application on the basis that the proposal constituted a special measure intended to achieve substantive equality between men and women, in accordance with section 7D(1)(a) of the Act. As such, no exemption is required to conduct the regular 'women only' session at the Leisure Centre.

HREOC accepted the Applicant's submission that a purpose of its proposal was to provide women of certain religious and ethnic backgrounds the opportunity to access fitness facilities that they would otherwise be unable to use. This satisfies the requirement of section 7D(3) that the purported special measure be for the purpose of achieving equality between men and women, whether or not that purpose is the dominant or substantial one.

10.6.2 University of Western Sydney

The University of Western Sydney (UWS) applied for a temporary exemption under section 44 (1) of the *Age Discrimination Act 2004* (Cth) to enable it to offer three 'end of career transitioning schemes' to permanent academic staff. The schemes included an early retirement scheme available to people between 54 and 65 years, a pre-retirement scheme for people 65 years and over and a reduction of full-time hours to part-time hours for people 54 years and over.

HREOC rejected the application on the basis that the schemes constituted positive discrimination under section 33 of the Act. HREOC considered that the schemes would provide a bona fide benefit to older academic staff. Specifically: staff who participate in the EVRS would be eligible for tax concessions; staff who participate in the pre-retirement contract scheme would be eligible for compensatory salary loading; and staff who participate in the reduction of full-time hours scheme would be able to contribute to their superannuation as a full-time employee with UWS contributing at a full-time employer rate. The Schemes would meet an age related need. Voluntary participation in the proposed schemes would assist older workers in making the transition from work to retirement thereby recognising the particular age-related needs of such workers.

10.7 LEGISLATIVE DEVELOPMENT

The Sex and Age Discrimination Unit contributes to legislative developments by making written and oral submissions to parliamentary and other inquiries. A list of these submissions can be found in Chapter 3 of this report, *Monitoring Human Rights*.



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The Commissioner with two staff members at the Fitzroy Crossing Community Consultation of the Listening Tour

10.8 SPEECHES

Commissioner Broderick was involved in approximately 220 meetings and made over 50 speeches during 2007-08. A selection of these can be accessed on HREOC's website at www.humanrights.gov.au/speeches/sex_discrim/index.html

The following speeches were made by Commissioner Broderick during the reporting period:

Listening Tour – Engagement with Indigenous Women and Communities, Indigenous Family Violence Prevention Legal Services National Conference, Coffs Harbour, NSW, 23 October 2007.

The Listening Tour, Community Consultations, various in all states and territories.

Kids Count – Better Early Childhood Education and Care in Australia, Book launch, Sydney, 12 November 2007.

A Vision for the Role of Sex Discrimination Commissioner, Diversity Council Australia's 2007 Annual Conference on Diversity, Melbourne, 22 November 2007.

Women Supporting Women, DLA Phillips Fox: Senior Women in Government discussion forum, Canberra, 30 January 2008.

Work and Family Balance in 2008 – Community Voices, NSW EEO Practitioner's Association Meeting, Sydney, 13 February 2008.

Gender Equality – Let's Not Let It Become a Lost Australian Dream, APS International Women's Day event Melbourne, 7 March 2008.

Sex Discrimination and Paid Maternity Leave Developments, National Personnel and Industrial Relations Group Conference, Canberra, 5 May 2008.

Creating Fairness and Equality in the Workplace: The Role of HREOC 2008 and Beyond, 2nd Australian workplace relations Conference, Sydney, 12 May 2008.

The Listening Tour – What We Heard, National Aboriginal And Torres Strait Islander Women's Gathering, Hobart, 23 May 2008.

Flexible Working Practices in the Law, The NSW Law Society/NSW Women Lawyers Network Work2Suit Forum, Sydney, 5 June 2008.

Women's Achievements: Untold Stories, Black and White Women of Achievement Lunch, Sydney, 17 June 2008.

Best Practice in Workplace Culture for the Attraction and Retention of Women, NSW Public Sector Senior Women's Network Seminar, Sydney, 24 June 2008.