Senate Inquiry into the Effectiveness of the Commonwealth Sex Discrimination Act

1 August 2008

Submission on behalf of
Working Women's Centre South Australia
Northern Territory Working Women's Centre
and
Queensland Working Women's Service

About Working Women's Centres

The Working Women Centres (WWC's) in South Australia and the Northern Territory and the Queensland Working Women's Service are community-based not-for-profit organisations that support women employees whatever their age, ethnicity or work status by providing a free and confidential service on work related issues. All three Centres are small agencies which rely on funding from the Commonwealth (SA and NT), State (SA and Qld) and Territory governments (NT).

The Working Women's Centres opened in 1979 in South Australia and in 1994 in the Northern Territory and Queensland. Since their beginnings, the Centres have worked primarily with women who are not represented by a union, their own lawyer or other advocate. We provide advice, information and support in lodging complaints and claims. We refer women with legal needs to appropriate legal services. Many women who contact our Centres are economically disadvantaged and work in very precarious areas of employment.

WWC's also conduct research and project work on a range of issues that women experience in relation to work. These have included access to child care, Repetitive Strain Injury, outwork, family friendly practices, OHS&W, workplace bullying, the needs of Aboriginal and Torres Strait Island women, pregnancy and parental status discrimination, Community Development Employment Project (CDEP), work/life balance and the impact of domestic violence on women workers and their workplaces. Although some of the issues have changed for women since the Centres began operation, the work that we do remains consistent with the philosophy that all women are entitled to respect, to information about their rights and equal opportunity in the workplace.

In 2007 the three Centres provided information to over 6000 women with approximately 14% of these calls relating to issues about maternity entitlements, pregnancy, sex and family responsibility discrimination, returning to work, child care and balancing work and family. Queensland Working Women's Service have noted an increased incidence for both pregnancy and work and family discrimination in the first quarter of 2008 compared to previous periods. The Northern Territory Working Women's Centre notes an increase in inquiries on pregnancy and work and family discrimination in 2006 - 2007 in comparison with previous years and the figure rose again in 2007 - 2008. The South Australian Working Women's Centre has noted a slight increase in enquiries about maternity entitlements for 2007 – 2008.

The Working Women Centres in South Australia and the Northern Territory and the Queensland Working Women's Service are extremely interested in the outcome of the Senate Inquiry into the effectiveness of the Sex Discrimination Act 1984 and make the following submission to the Senate Inquiry using the reference points listed for the Inquiry.

In this submission Case Studies are included to elaborate on points made. As our Centres offer a confidential service, identifying details have been changed or removed to protect our clients. Clients are advised that case studies may be cited in submissions and research but that no identifying details will be included.

Summary of recommendations:

1. The definition of 'family responsibilities' is currently limited to caring for 'a spouse, de-facto spouse or a dependent child' of an employee. The use of the term 'spouse' should be changed to provide for the more inclusive term 'partner' to acknowledge the rights of employees with same sex partners. The definition should also be extended to cover any kind of caring responsibility eg caring for a parent, a household member, or an adult child;
2. The Senate Inquiry considers appropriation of the Anti Discrimination Act (for example Queensland's) definition of the reasonable person for the purposes of defining sexual harassment in the Act;
3. Provide in the revised Act for compliance with CEDAW Article 11 (2) (b), "*To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowance*" including provisions encouraging employers to enable flexible work arrangements for women fulfilling family responsibilities such as caring for children, partners or elderly relatives;
4. The Sex Discrimination Commissioner be granted further powers to carry out training or ensure that employers do carry out training as required under the Act to prevent sex discrimination and sexual harassment and to implement appropriate training and policies agreed to in conciliation outcomes;
5. The Sex Discrimination Commissioner be conferred with powers to take action against discrimination on the grounds of family responsibility in addition to the already existing powers to take action against discrimination on the ground of sex, marital status, pregnancy or potential pregnancy or against discrimination involving sexual harassment, in particular that termination should not have to occur before a complaint of family responsibility discrimination can be lodged;
6. The powers of the Sex Discrimination Commissioner be enhanced to enable her to make recommendations on matters that should be decided by the Tribunal and funding should be available to support trials that are in the public interest;
7. HREOC and the Sex Discrimination Commissioner be authorized to initiate inquiries into systemic discrimination and the Sex Discrimination Commissioner should be empowered to intervene in whatever proceeding she deems fit with the aim of promoting the objects of the SDA;
8. HREOC and the Sex Discrimination Commissioner have a statutory responsibility to independently monitor and report to Parliament on gender inequality;
9. The powers of the Sex Discrimination Commissioner be broadened to enable her to initiate representative actions on issues such as pay equity and paid maternity leave (as well as the current grounds of the Act);
10. Working Women's Centres recommend that the Sex Discrimination Commissioner have mandatory powers to ensure training is undertaken by staff in administrative authorities to ensure understanding of and compliance with the SDA;
11. Sexuality, trans-sexuality, domestic violence and breast feeding be added as grounds under the Act;
12. An educational and awareness raising campaign about the impact of domestic violence on women workers and their workplaces be conducted which focuses on positive ways of preventing and addressing the impact of domestic violence at work;
13. All state / territory Anti-discrimination Acts should be harmonised but the process of doing so should not adopt the lowest standard;
14. The revised Act should make a statement about the social values and priorities in contemporary society reflecting CEDAW and no longer allow for exemption of religious organisations carrying out secular work under government contracts from the SDA;
15. The SDA be modernised to take into account the use of modern technology such as mobile phones and email when used as tools of harassment;

16. The SDA considers whether discrimination against Muslim women wearing head attire should be addressed as sex discrimination rather than as discrimination on the grounds of ethnicity;
17. The SDC be extended powers to enforce settlement agreements including the payment of any monies agreed to and to not close cases until settlement has been executed;
18. HREOC considers whether there should be one Human Rights Act to remove the complexity for complainants with multiple claims of discrimination eg race, disability and sex;
19. The SDA acknowledges a woman's right to return part time after a period of maternity leave by extending 'an obligation to provide' by an employer rather than an individual women having to negotiate her own arrangements.

a. The scope of the Act, and the manner in which key terms and concepts are defined;

a.1 Meaning of family responsibilities

In the Sex Discrimination Act (SDA), Part I Sect 4A, the meaning of family responsibilities includes caring for 'a spouse, de-facto spouse or a dependent child' of an employee. The use of the term 'spouse' should be changed to provide for the more inclusive term 'partner' to acknowledge the rights of employees with same sex partners. The definition should also be extended to cover any kind of caring responsibility eg caring for a parent, a household member, or an adult child.

The Act's silence on same sex partners highlights the irony of discrimination within an anti discrimination law.

a.2 Definition of sexual harassment

The definition of sexual harassment in the Act, Part II Div3, section 28A, needs serious review and revision. Sexual harassment is defined as follows:

'...a person sexually harasses another person (the person harassed) if:

(a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or

(b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed ***would*** *be offended, humiliated or intimidated.* (Emphasis added).

For a complaint of sexual harassment to be upheld, the Act requires that a reasonable person would have anticipated that offence, humiliation or intimidation would have occurred. The nature of this requirement is limiting in that the reasonable person is required to anticipate that the person actually would be offended. This is a much stricter test than some state legislation.

The Anti-Discrimination Act 1991(Qld) (ADA) provides the following wording regarding what the reasonable person needs to experience before a complaint of sexual harassment can be established:

"...the person engaging in the conduct... does so in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct." (s 119 ADA Qld)

The Queensland legislation requires a broader anticipation of offence, humiliation or intimidation – that is, anticipation that offence etc would be possible, not simply that it would have occurred. The Act's wording concerning the reasonable person arguably allows respondents to limit their responsibility by drawing a distinction between anticipating that actual offence would occur and anticipating the possibility of its occurrence. The possibility of offence, humiliation and intimidation is a much broader consideration and would, we suggest, encourage a broader understanding of what behaviors are unacceptable in the workplace.

We recommend that the Senate Inquiry considers appropriate the ADA (Qld)'s definition of the reasonable person for the purposes of defining sexual harassment in the Act.

Furthermore the SDA, Part II Div 3 Section 28A (1b) & (2), refers to 'conduct of a sexual nature' but does not make it clear that things like viewing pornography in an office environment or displaying posters of a sexual or sexy nature is equivalent to sexual harassment in that it causes offence to women in that environment. As well it implies but does not state that use of modern technological tools such as multimedia SMS messages and the internet can also be the instrument of harassment and cause offence. The definitions in the Act need to include display of offensive imagery in offices, workshops and reception areas.

CASE STUDY

'Julia'

Julia manages a program in a small but busy community based Indigenous organisation. She observes that one of the other male staff in the office views pornography on the internet because he leaves his computer screen open when he leaves the room. She points out to him that this is offensive to her and would like it not to happen again. It does happen again. She raises the issue with the person who supervises them both but the male manager does not see the issue as a problem. When Julia feels ultimately forced to resign due to a lack of support the male staff member is promoted into her more senior position. Other women who are also aware of the problem do not want to work under his supervision but he still gets support from the CEO.

a.3 Discrimination on ground of the employee's family responsibilities

The SDA, Part II Div 1 Sect 14 (3A) states that, 'It is unlawful for an employer to discriminate against an employee on the ground of the employee's family responsibilities by dismissing the employee'. While s 7A states that 'an employer discriminates on the grounds of the employee's family responsibilities if the employer treats the employee less favourably than the employer treats, or would treat, a person without family responsibilities in circumstances that are the same or not materially different...', this is not congruent with either the objects of the act in s 3 (ba) that only focus on eliminating discrimination involving dismissal of employees with family responsibilities, nor s 14, where it is only unlawful for an employer to discriminate against an employee on the ground of the employee's family responsibilities by dismissing the employee.

Working Women's Centres are concerned that the Act does not make it unlawful for discrimination on the basis of family responsibilities to occur in areas such as promotion, training, career development opportunities, etc.

Similarly Working Women's Centres would like to see provision in the Act to encourage employers NOT to deny flexible work arrangements for women fulfilling family responsibilities such as caring for children, partners or elderly relatives. Since such caring roles are mainly filled by women it would be desirable if the Act was able to encompass and support women who fulfill these duties without the risk of discrimination in a work sense. Women who take time out of the paid workforce to care already lose tangible benefits such as full time wages, accumulated superannuation and career advancement as a result of these socially responsible commitments.

a.4 Discrimination against women employees who are victims of domestic violence

The SDA is silent on the real potential of discrimination against women in the workplace who are victims of domestic violence. As the Senate Committee would be aware heinous crimes are regularly committed against women by their partners (and at times other family members) resulting in them being injured (physically, emotionally and/or psychologically), causing lateness to work, interfering in their work by constant phoning, following them to their

workplace and entering the site, preventing them from attending work or impacting on their work in other ways to such an extent that their employers institute performance reviews. The Act should encompass provisions for making it illegal to dismiss or disadvantage an employee on the grounds of being a victim of domestic violence. Instead it should require employers to consider other supportive action which does not further disadvantage a woman experiencing domestic violence. This requires sensitive handling and an education and awareness campaign which speaks about domestic violence as a workplace issue as many women do not feel able to disclose that they are experiencing domestic violence to their co-workers or supervisors, especially if there is no system in place at the workplace to support women experiencing domestic violence.

a.5 Discrimination for attributes only pertaining to women

The Senate Inquiry needs to consider whether the SDA should be strengthened to enable a Muslim woman discriminated against because of wearing head attire required of her for religious beliefs to make a complaint. While a complaint can be made on religious grounds, the example given above is also discrimination against Muslim ***women*** in particular and therefore sex discrimination. A Muslim man could be undetectable in a workplace, educational or other institution but a Muslim woman should still have the right to pursue her religious beliefs without the fear of harassment or discrimination against her because of her sex.

Similarly breastfeeding is also an obligation pertaining to women only yet there is no provision apart from the generic definition of family responsibilities to protect a breastfeeding mother from harassment or discrimination against her because of this obligation pertaining only to her sex.

a.6 Discrimination on the basis of parental status

The SDA contains no provision for protection from discrimination on the basis of parental status. Parental status must be clearly identified as a ground under the act and made distinct from other grounds – in particular, 'family responsibilities'. The Centres believe that discrimination because of assumptions about a woman's current or prospective parental status (which may also be linked to her age) is a significant limiting factor in the achievement of career progression and pay equity for many women. As such it must be clearly identified as a ground of discrimination under the Act.

CASE STUDY

> **'Rachael'**
> *Rachael is an experienced sales representative. She applied for a position at a small-medium sized firm and had a preliminary interview. At this interview she was told that she was at an age where family and children may be 'on the cards' for her. She was advised that, because of this, the company may only be able to offer her a 6 month contract.*

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b*. The extent to which the Act implements the non-discrimination obligations of the Convention of the Elimination of All Forms of Discrimination against Women and the International Labour Organization or under other international instruments, including the*

International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights;

The SDA, Part II Div 1 Sect 14 (3A) states that, 'It is unlawful for an employer to discriminate against an employee on the ground of the employee's family responsibilities by dismissing the employee'. Working Women's Centres are seriously concerned that though women cannot be dismissed for fulfilling their family responsibilities the law does not prevent discrimination against them in other work areas such as promotion, training, career development opportunities, etc. This appears to be in contravention of the *Convention of the Elimination of All Forms of Discrimination against Women (CEDAW)* Article 11 (1)(d) that mandates*, 'the right to equal remuneration including benefits, and to equal treatment in respect of work of equal value, as well as equality in the evaluation of the quality of work'.*

Similarly, Working Women's Centres would like to see provision in the Act in accordance with CEDAW Article 11 (2) (b), '*To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowance'*. Such provisions would encourage employers NOT to deny flexible work arrangements for women fulfilling family responsibilities such as caring for children, partners or elderly relatives. Since such caring roles are most frequently filled by women it would be desirable if the Act were able to encompass and support all employees who fulfill these duties. An employee who takes time out of the paid workforce to care for a loved one already loses tangible benefits such as full time wages, accumulated superannuation and career advancement as a result of these socially responsible commitments.

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c*. The powers and capacity of the Human Rights and Equal Opportunity Commission and the Sex Discrimination Commissioner, particularly in initiating inquiries into systemic discrimination and to monitor progress towards equality;*

There are several matters that Working Women's Centres wish to raise under this point.

c.1 Action on the grounds of family responsibility

In accordance with the concern raised in (b) above the Sex Discrimination Commissioner (SDC) should be conferred with powers to take action on the grounds of family responsibility in addition to the already existing powers to take action against 'discrimination on the ground of sex, marital status, pregnancy or potential pregnancy or' against 'discrimination involving sexual harassment' [Refer to Section 48 (1) (g), (ga) & (gb)].

SDA is also silent on the real potential of discrimination against women in the workplace who are victims of domestic violence. We reiterate points made in (b) above. As the Senate Committee would be aware heinous crimes are regularly committed against women by their partners (and at times other family members) resulting in them being injured (physically, emotionally and/or psychologically), causing lateness to work, interfering in their work by constant phoning, following them to their workplace and entering the site, preventing them from attending work or impacting on their work in other ways to such an extent that their employers institute performance reviews.

The Act should encompass provisions for making it illegal to dismiss or disadvantage an employee on the grounds of being a victim of domestic violence. It should require employers to consider supportive action that does not further disadvantage a woman experiencing

domestic violence. This requires sensitive handling and an education and awareness campaign that highlights domestic violence as a workplace issue as many women do not feel able to disclose that they are experiencing domestic violence to their co-workers or supervisors, especially if there is no system in place at the workplace to support women experiencing domestic violence.

CASE STUDY

'Judy'
Judy worked for 2 months and in that time had been promoted to Manager. Her husband had come in to the workplace one day and caused problems. After another incident at home she rang her boss to say she would be in a bit late as she was at the police station reporting an incident of domestic violence and had been delayed. He sacked her as he said she was just too difficult.

'Kelly'
Kelly worked for a short time in a small boutique in a regional town. Her husband came in to the store and went 'nuts'. The store-owner lives in Victoria so didn't know about the incident but other women who worked there rang and told him. The next weekend Kelly had to go to hospital because her husband had hit her so hard. The hospital didn't have the facilities over the weekend to perform a CT scan so Kelly had to attend a radiologist first thing on Monday morning. She tried to fit this in before work but rang and let the owner know she may be a bit late. The owner then told her she had to choose between her job and the CT scan – he said 'you can't have both.' Kelly was then dismissed for very vague reasons – 'it's not working out, etc'. Kelly rang HR who told her she would be paid a week's notice but the payment never appeared. When she rang to enquire, HR told her that she wouldn't be getting it as she'd been dismissed for 'gross and wilful misconduct'. When she asked what this meant she was told there was an accusation of stealing but they couldn't give any details of what or when she had allegedly stolen something. Kelly asked if she had stolen something why hadn't she been told and why hadn't it been reported to the police. She was given no reason. Kelly now works in the shop next door.

c.2 Power to ensure perpetrators of SH are not 'protected' by their employers

It is a concern that the SDC has no powers to direct an alleged perpetrator of sexual harassment to participate in a conciliation conference. There is further concern if this person has left the workplace or has been terminated and their whereabouts are not known by the applicant.

Cases known to the Working Women's Centres have resulted in an individual respondent against whom a case is made 'disappearing'. On at least one occasion the individual respondent was discovered to have been simply moved elsewhere in the company.

CASE STUDY

'Maria'
Maria worked as a demonstrator for a department store. She was repeatedly sexually harassed by a male storeman and made a complaint through HREOC. When it came to conciliation the individual was reported to no longer work for the store and he appeared to have 'vanished'. Some time later Maria was engaged to do demonstrations at a store in another area of the city and was shocked to find that the man who had sexually harassed her before was once again in a position as a storeman in another store owned by the same company. It would seem that the

company helped to shield him from being accountable for his action that resulted in little or no penalty.

CASE STUDY

'Yohanna'
Yohanna was working as a contracted worker for a large employer and was sexually harassed by a male co-worker, also sub-contracted to the company. The company told Yohanna they could not take action against him as they were not the employer and the labour hire company said it was a work site issue. Until Yohanna sought advice from the WWC she had no idea that she could make a complaint against the company and the contractor.

Other such case studies are common.

Working Women's Centres seek a consideration of imposing penalties on employers who do not participate in conciliation proceedings in good faith, either by not responding to complaints, refusing to participate in a conference or refusing to provide details of employees' whereabouts when there is an allegation of sexual harassment.

c.3 Power to legally enforce attendance at conciliation

It appears that the SDC has insufficient power under the Human Rights and Equal Opportunity Act 1986 (HREOC Act) to require respondents to provide a response to a complaint, to co-operate in an investigation or even to attend conciliation. Working Women's Centres accept that to force an unwilling party to conciliation is not likely to yield positive outcomes.

This however may leave the Complainant in the difficult and expensive position of having to take her case to the Federal Magistrates Court if she is to get her complaint addressed and seek compensation, an apology or other outcome. The Working Women's Centres believe the SDC should have powers to apply penalties or conduct independent investigations into claims of sex discrimination if respondents refuse to participate in good faith. The SDA should also provide powers to the SDC to support a complainant to proceed with a complaint that could not be conciliated by providing access to legal representation. This may require some initial investigation into the complaint to assess its validity but would serve to empower women to take more effective action against sex discrimination without having to bear the legal costs.

CASE STUDY

'Thui'
Thui was employed as a hairdresser in a medium sized company. She was 4 months pregnant. She spoke to her boss because she was concerned about chemicals that they used and the effects they were having on her now she was carrying a child. Her boss told her there was nothing he could or would do about it, and she simply had to deal with it. In the days following Thui's complaint the boss became rude, treated her differently and then dismissed her on the basis of performance.

Thui lodged a complaint of indirect pregnancy discrimination with HREOC. The respondent refused to respond to the complaint through the conciliation process. The Commission had no other option but to terminate the complaint on the grounds that it was unable to be conciliated. This meant that Thui was unable to pursue her matter as she was not in a position to take the matter further. The respondent effectively 'got out' of responding to any responsibility they may have had in regards to the

discrimination. A penalty for failing to participate in good faith would be an appropriate action and one that may assist the complainant in dealing with this process.

c.4 Pressure on the Complainant to accept an out of court settlement payment

Quite often the lack of arbitration power by the SDC under the HREOC Act means that when a complaint reaches conciliation there is pressure on the complainant to accept an out of court settlement payment which could be much less than what is being requested. This pressure weighs most heavily on non-professional and low paid workers who do not anticipate having the means to pursue the case in the Federal Magistrates Court. As a result many complainants settle for less compensation than they may otherwise gain at a hearing represented by legal counsel.

A review of settlements (compensation) attained for women at conciliation for complaints of family responsibilities discrimination for the period 2001-2004 revealed a mean settlement of $3124.62 which is low considering loss of employment was commonly a factor. (This was across HREOC, ADCQ and QIRC jurisdictions).

Such undervalued settlements are commonly referred to as ‘go away money’ in the industrial arena. Many companies can afford to provide a limited form of compensation and make the potential legal case ‘go away’ without having to address the issue or to face up to public scrutiny. This concept of 'go away' money is also used by the business community to deride workers who have genuine complaints and is identified as reason to weaken provisions in the SDA. Working Women's Centres are concerned that these businesses are most likely to re-offend, as the cost of 'go away' money is often less than the cost and effort of implementing policies and training in the workplace to address discrimination for all workers there. During conciliation conferences Working Women's Centres often hear businesses referring to 'making a business or commercial decision' to offer limited compensation to make the matter 'go away.'

During conciliation conferences many employers fail to show that they have taken reasonable steps to prevent sex discrimination and harassment from occurring (as required under the Act).

Small business are equally bound by the provisions of the Sex Discrimination Act but often argue that they don’t have the resources to be proactive or to have taken action to stop unacceptable behaviour from their staff. Equally they offer small settlements because they can’t afford an appropriate amount.

CASE STUDY

'Ada'

Ada worked as a professional in a large international company. All of the supporting documentation indicated that her family responsibilities influenced the harsh treatment she was subjected to and which ultimately resulted in a termination of employment. The employer had the capacity to pay for legal representation and to pay a reasonable amount of compensation. Ada asked for $15000 in her settlement (for ‘general damages’) and she ended up settling for $2500 as she wasn't in a position to take the matter any further.

Working Women's Centres would like to see a strengthening of powers to enable the SDC to make recommendations or commentary about referring the matter to tribunal. State and federal Industrial Relations Commissioners are required to prepare a ‘Certificate’ at the end of an unsuccessful conciliation. The Workplace Relations Act requires that:

If the Commission is satisfied that all reasonable attempts to settle the matter by conciliation are, or are likely to be, unsuccessful so far as concerns at least one ground of the application, the Commission:

> *(a) must issue a certificate in writing stating that it is so satisfied in respect of that ground or each such ground; and*
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> *(b) must indicate to the parties the Commission's assessment of the merits of the application in so far as it relates to that ground or to each such ground; and*
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> *(c) if the Commission thinks fit, may recommend that the applicant elect not to pursue a ground or grounds of the application (whether or not also recommending other means of resolving the matter); and*
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> *(d) if the Commission considers, having regard to all the materials before the Commission that the application has no reasonable prospect of success, it must advise the parties accordingly.*

The Working Women's Centres believe that a similar provision in the SDA would operate to dissuade employers from offering 'go away money' in cases with clear merit, would assist women with complaints of discrimination to engage in post-conciliation negotiations from a position of greater power and may operate to encourage the legal community to 'take a chance' on providing representation in discrimination cases where the Applicant may not be able to afford legal fees.

c.5 Inability to enforce agreements made at conciliation

Similarly to c.4 above the limited powers of the SDC and HREOC result in an inability to enforce agreements made at conciliation with particular regard to the respondent undertaking training and/or the organisation introducing policies to prevent further discrimination and harassment. HREOC does not offer training packages as part of a settlement agreement that would allow employers to improve their understanding of discrimination in a timely fashion. This limitation weakens accountability and enforcement measures.

Working Women's Centres also experience difficulties where employers stall payments of settlements. As it is HREOC's practice to close a case once a settlement has been reached rather than when it is executed, clients sometimes find that their only option is to pursue the settlement through the relevant civil courts (which requires more resources than most of our clients have). Powers should be extended to the SDC to enforce agreements made at conciliation.

c.6 Independent monitoring and reporting to Parliament on gender inequality

The HREOC and the SDC needs to have a statutory responsibility to independently monitor and report to Parliament on gender inequality. Under existing legislation the Commissioner reports to the Minister who then has the discretion to act or not to act in accordance with a political decision rather than by having regard to its obligations under CEDAW and other Human Rights Conventions directly.

c.7 Power to take 'representative actions'

Working Women's Centres would like to see the powers of the Sex Discrimination Commissioner expanded in order to initiate representative actions on issues such as pay inequity and paid maternity leave (as well as the current grounds of the Act). Given this tool the Commissioner would be able to be part of an effort to address gender inequities in Australian workplaces. It would also allow the Commissioner to take action without the need for individual complaints in those workplaces where groups of women fear making such complaints, especially where it is clear that a law or policy is not consistent with the provisions of the SDA.

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d. Consistency of the Act with other Commonwealth and state and territory discrimination legislation, including options for harmonisation;

d.1 Harmonisation with other administrative authorities

Working Women's Centres recommend that the Sex Discrimination Commissioner be given the powers to deliver mandatory training to relevant staff in other administrative authorities to ensure compliance with and understanding of the SDA in other proceedings. Working Women's Centres often find that where discrimination is part of other claims such as dismissal, redundancy, workers compensation or administrative appeals that little is known about the intersection of jurisdictions or of sex discrimination matters generally.

The Sex Discrimination Commissioner may also benefit from extended powers that allow her to raise awareness of sex discrimination and sexual harassment in a range of ways (eg sitting on Tribunals, acting as a 'friend of the court' or providing training on discrimination issues).

d.2 Harmonisation with the state/territory Anti Discrimination Acts

All state / territory Anti-discrimination Acts should be harmonised but the process of doing so should not adopt the lowest standard.

The NT Anti Discrimination Act does not include family responsibilities as a ground of discrimination, but does include parenthood and breastfeeding. Working Women's Centres recommend that similar provisions be included in the SDA.

d.3 Queensland Anti-discrimination Act

As mentioned in a.2 above, the Queensland Anti-discrimination Act has a more workable definition of ‘harassment’ than does the SDA (see page 3 of this submission).

The Queensland Act has the most comprehensive coverage of grounds relating to discrimination on the basis of sex. As mentioned above, the SDA should incorporate parental status as a ground of unlawful discrimination. The Queensland legislation also identifies sexuality, trans-sexuality and breastfeeding as unlawful grounds of discrimination.

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e*. Significant judicial rulings on the interpretation of the Act and their consequences;*

Working Women's Centres have no comment on this area.

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f. Impact on state and territory laws;

There are many provisions in the South Australian Equal Opportunities Act which have been lacking and outdated for some time now. The implementation of a review and improvement to the SDA we feel will assist in prompting the relevant State and Territory Governments to either adopt the provisions of the SDA or improve the provisions of the current State and Territory Acts.

As mentioned above both the South Australian and Northern Territory discrimination legislation are silent on family responsibilities.

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g. Preventing discrimination, including by educative means;

It is the experience of Working Women's Centres that our clients repeatedly advise that they are unaware if their workplace has a policy on sex discrimination or sexual harassment. In many situations if a policy exists it is not made available to employees. Clients also report that there is little effective training delivered in workplaces. It is imperative for the prevention of acts of sex discrimination and sexual harassment that education and training is available on the legislation and that this can be provided in workplaces by HREOC or designated agencies.

Currently the South Australian Working Women's Centre notes that when clients seek a commitment from the respondent to undertake training on Equal Opportunities in Employment as part of the settlement agreement, it is often the case that the respondent will accept this request, however the training which is agreed to is training provided by the South Australian Equal Opportunity Commission (EOC) – based on South Australian Legislation, not the SDA. This is not only confusing but also inappropriate given the disparities between the state legislation and the SDA. It is further worth noting that the State EOC provides this training free of charge to respondents who had signed a Conciliation Agreement as a result of a HREOC conciliation.

It is our belief that there is enormous potential for further training and awareness- raising in relation to the provisions of the SDA and sexual harassment. HREOC regularly releases reports and has information available on its website which assists with information provision. The Working Women's Centres receive frequent requests to provide training that will raise the skills and awareness of participants, most particularly managers who have to deal with complaints. This usually occurs after complaints have been mishandled in workplaces.

It is our belief that few workplaces have an integrated system for the delivery of training on discrimination laws and that generations of employees have missed out on training or awareness sessions. There is definitely an enhanced role for HREOC to play in this respect, but whether this is as a direct provider of services or as a certifier of workplace training will depend on resources. It might be that the SDC be granted further powers to ensure that employers do carry out training or to conduct ‘train the trainer’ style of training.

While all employees should be provided with training on preventing sex discrimination and sexual harassment, managers and supervisors and small business employers should be compelled to undertake more intensive education that includes developing organisational

policy and codes of conduct, understanding the laws against discrimination, and enhancing the organisation's procedures for considering complaints.

In the course of our work we encounter great ignorance about discrimination laws. Of particular concern is the attitude among some members of the business community that we no longer need anti-discrimination legislation as discriminatory attitudes to women in the workplace have effectively been eradicated. The experience of the Working Women's Centres is that this is far from being the case.

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h. Providing effective remedies, including the effectiveness, efficiency and fairness of the complaints process;

h.1 Clear disincentives for women not to proceed with complaints

As we have already outlined, there are a number of clear disincentives for women not to proceed with complaints. These disincentives and obstacles range from the length and duration of the entire process, the lack of powers of the SDC to apply stronger measures that require responses to and participation in the investigation or conciliation process through to the associated emotional and economic costs to women in pursuing matters (with the potential for these costs to increase dramatically if the matter is unable to be resolved at conciliation and proceeds to court). The risk of respondents claiming costs against applicants and the obvious expense of engaging legal representation acts as a deterrent to many women proceeding with matters.

For many low paid women (either because of their job status or because they are employed part time or casual) the low amounts of compensation attached to the settlement process means they have to weigh up whether it will be worthwhile for them to proceed with a complaint, given the stress of being involved in a process against a respondent.

h.2 Proposed incentives for women not to proceed with complaints

We believe there is an inherent need for the **process of complaint – investigation – conciliation to be expedited**. Some cases can take up to 12 months or longer from lodgment to finalisation. Many women find it difficult to move on or begin the healing process from these experiences whilst the complaint process is still underway.

As noted above, there is also a concern that HREOC will close a case file once a settlement has been agreed to, but before the settlement terms have actually been executed. The South Australian Working Women's Centre has seen at least one case where the respondent deliberately stalled in paying the agreed settlement compensation and the client was left with no option but to pursue the settlement through the court. This adds costs for the client and means that their settlement amount may get eaten up. If women do not have the financial capacity to pursue these processes, and the Sex Discrimination Commissioner lacks powers of enforcement, it is not surprising that women are likely to feel less empowered after engaging in this process. Therefore the HREOC **SDC should be empowered to keep case files open and monitor cases until agreements are carried out**.

We feel that more needs to be done to **enforce prevention** of discrimination against women and to expose workplaces where 'repeat offenders' are able to continue to avoid penalties, exposure and accountability by making ‘commercial settlements’, paying 'go away money’ and taking advantage of the 'without prejudice' – 'confidential' conciliation process. Working Women's Centres are particularly concerned that given complaints are of an individual

nature, **if measures are not implemented to address and prevent discrimination** in a workplace after a complaint has been made, other women are likely to be the next target of discrimination.

Working Women's Centres also note that the lodging of complaints which contain multiple issues of discrimination across different grounds (for example, sexual harassment and disability) can become complex. It may be the case that a single 'Human Rights' or Equality Act may address this issue and raise this possibility for the Committee's consideration.

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i. Addressing discrimination on the ground of family responsibilities;

It is a concern of the Working Women's Centres that women are unable to refer complaints under the SDA on the basis of Family Responsibilities discrimination until the employment relationship has been terminated. This is considered a fundamental flaw in the SDA.

CASE STUDY

> **'Sally'**
> *Sally has been employed in her position for 14 years. Sally's toddler has experienced ongoing health issues for the past 12 months, which have resulted in Sally seeking to reduce her hours in order to accommodate her toddler's medical appointments. After struggling with this arrangement for some time, Sally decided to approach her employer about a job share arrangement which Sally felt would allow her the time she needed to accommodate her family responsibilities and also provide many benefits for the workplace. Sally's manager saw the many benefits of this proposal, however when the proposal was put to senior management Sally was told that this was not a possibility and that she would be allowed 12 months unpaid leave or the alternative would be to resign. Sally is faced with the decision of being torn between her child's medical needs and her workplace. Unfortunately Sally is not in a financial position to be unemployed. Sally however has no recourse under the current SDA until she is terminated or is forced to resign.*

A further shortcoming of the family responsibilities provision is that indirect discrimination is not covered. Working Women's Centres have documented cases where indirect discrimination occurs when an unreasonable requirement or condition is imposed that is the same for all employees but which has an unfair or adverse effect on parents (and we know that women are most likely to be the primary caregiver to children). For example, an organisational requirement that all employees be available for shift work or at short notice may be disadvantageous to employees who experience difficulty accessing childcare during non-business hours or without adequate notice.

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j. Impact on the economy, productivity and employment (including recruitment processes);

Working Women's Centres have no formal research to quantify the direct impact of discrimination on the economy, however, based on our experience representing women there is no doubt that women who lose their job or resign because of sexual harassment or sex, pregnancy, family responsibilities or parental status discrimination suffer economically and socially. The South Australian Working Women's Centre has seen incidents where

repeat offenders have a 'revolving door' for female employees. This naturally has negative effects on the economy and of course on the employer's own productivity and profitability. While we note the difficulties for repeat offenders in recruiting and retaining long-term staff members, we are most concerned about the consequences for the women who have to leave employment as a result of experiencing sexual harassment or discrimination. We observe the associated costs for women; the lack of job security, the loss of ability to accrue entitlements, the impact on their superannuation and their loss of confidence and sense of worth in the workplace.

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k. Sexual harassment

Working Women's Centres have a number of significant points to make regarding sexual harassment.

k.1 Forms of sexual harassment reported to Working Women's Centres

For more than 14 years (29 years in the case of South Australia) the Working Women's Centres have documented cases of sexual harassment targeted at women in a wide range of industries, occupations and locations. Our clients have reported the detrimental effects of sexual harassment that have included being forced to leave their employment, job dissatisfaction, absenteeism, low self-esteem as well as prolonged stress and trauma.

There are two major categories for complaints of sexual harassment to the Working Women's Centres which are consistent with findings in the literature.[1] The first type of sexual harassment is accompanied by employment threat or benefit, such as when a submission to an unwelcome sexual advance is an expressed or implied condition for receiving benefits or when refusal to submit to the demands results in the loss of a job benefit or in discharge. The second type of sexual harassment involves relentless and continuing unwelcome sexual conduct that interferes with an employee's work performance or where a reasonable person would view it as an intimidating, humiliating or offensive work environment.

It is difficult to extrapolate how widespread the problem is across workplaces in Australia generally but the consistency of reports that the Working Women's Centres receive annually indicate that sexual harassment is a common problem for women. The Young Workers Advisory Service (auspiced through the Queensland Working Women's Service) has also recorded a significant number of complaints of sexual harassment from young women, some as young as 13 and 14.

In a study commissioned by HREOC in 2004[2], 28 percent of adult Australians had experienced sexual harassment at some time; 41 percent of women and 14 percent of men. However, two-thirds of the targets of workplace sexual harassment did not formally complain because they believed there would be no management support.

We can assume therefore that women contacting the Working Women's Centres for assistance with sexual harassment complaints may be only the 'tip of the ice berg', representing a small percentage of women who experience harassment and who decide to enquire about possible complaints mechanisms, and rights to redress or just to receive some support for their situation.

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[1] Countering sexual harassment. A manual for managers and supervisors'. 1992.*CCH Industrial Law Editors*. Sydney, Australia.

[2] HREOC, 2003, *20 Years On: The Challenges Continue ...Sexual Harassment in the Australian Workplace* quoted in Broderick, E. Opinion Piece in *The Advertiser*, Friday 11 January 2008, pg 18

Information about the types and patterns of behaviour that constitute sexual harassment, as well as the responses in individual workplaces and the courses of action that women choose to undertake when this type of incident occurs in the workplace, is relatively limited. Any efforts made in reviewing the Act to support and encourage more women to make complaints will in our view help to redress the frequency and severity of sexual harassment in Australian workplaces.

k.2 Data from Working Women's Centres

Data from the Working Women's Centres provides some insights that are not available from complaints agencies and includes descriptions of many instances of harassment that, for a range of reasons, never progress to formal complaints to any of the Commissions. It is clear from our experience that women in workplaces that are characterised by lower rates of unionism, smaller numbers of employees, often in the private sector, within certain industries, particularly clerical, sales and personal services are more commonly subject to sexual harassment. Similarly a disproportionate number of indigenous women and those from non-English speaking backgrounds are also subject to harassment of a sexual nature. These groups may experience more sexual harassment because of their limited means of asserting and maintaining power. Sexual harassment complaints are often linked to other types of discrimination and harassment (workplace bullying) and some of the issues around responding to complaints of intersecting types of discrimination and harassment are discussed in section L.

Data from the Working Women's Centres provides an indication of less formal support and assistance sought by women in attending to concerns and their various experiences at work as well as information about circumstances surrounding mediation / conciliation and / or legal processes in attempts to seek more formal redress of sexual harassment.

Contacts for assistance with Sexual Harassment in the Workplace 2007

	Advisory Services	Casework	Representation
Queensland Working Women's Service Inc	181	8	5
South Australia Working Women's Centre	53	22	22
Northern Territory Working Women's Centre	44	6	3
Young Workers Advisory Service	93	10	8
TOTAL	371	46	38

k.3 Joint research by QWWS with Queensland University of Technology (QUT)

A detailed analysis of over 600 sexual harassment complaints made by women collected by the Queensland Working Women's Service (QWWS) between 2001 and 2004 was recently performed in partnership with the QUT and was published recently in the Asia Pacific Journal of Human Resource Management [3].

[3] McDonald. P., Backstrom, S. and Dear, K. 'Sexual Harassment: Quid pro quo versus hostile environment claims and progression to formal redress'. *Asia-Pacific Journal of Human Resource Management*. April 2008.

This research provides a useful analysis of the patterns of behaviour and the processes around formal redress through its examination of 632 episodes of enquiry related to sexual harassment to the QWWS, all of which had received either specialised assistance (N = 531) or more intensive advocacy services (N = 101). [See figure 1 below]

Of the 344 cases that contained enough detail for the details of the harassment to be coded, thirty-seven (10.6%) met the definition of quid pro quo harassment, where unwelcome sexual behaviour was linked to tangible job benefits.

The remaining cases of sexual harassment met the definition of hostile environment claims where relentless and continuing unwelcome sexual conduct interferes with an employee's work performance or where a reasonable person would view it as an intimidating, humiliating or offensive work environment (CCH Industrial Law Editors 1992). Details of the cases were further coded into the five categories: remarks, contact, gestures, dates and propositions (individual cases could include more than one category of harassment).

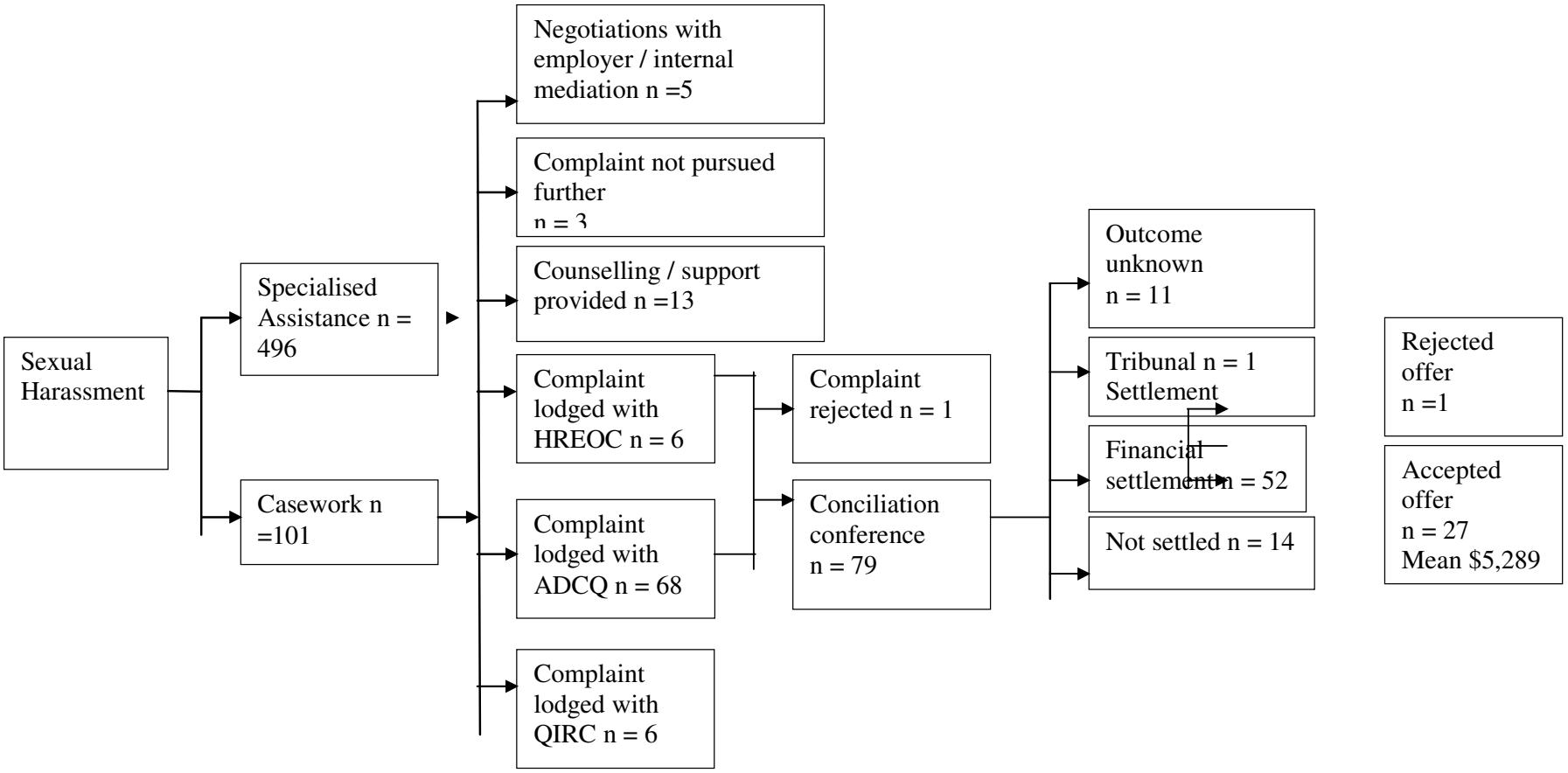
Approximately half of cases (197 cases, 57.3%) involved unwanted sexual teasing, jokes, remarks or comments. These remarks often related to the size of women's breasts and buttocks, requests to see parts of their bodies, offensive language and comments of a degrading nature. Many cases of sexual harassment in this category cannot be directly quoted due to their highly obscene nature. However, some less extreme examples that do not usually reach the formal complaints stage with HREOC include;

> *Client experienced many sexual remarks/comments about her breasts and body. She told the employer who said, 'Well you are attractive. You can expect those comments.' (Factory worker).'*
>
> *Manager sent caller text messages and comments and purchased tickets to Melbourne. When the client refused these he threatened that if she did not go 'life could be made very difficult for her.' (Personal assistant to director of finance company.)*

Around a further one-third of cases (112, 32.6%) involved some kind of unwanted physical contact by the harasser. The nature of this contact included kissing, cuddling, massaging, touching, pinching, grabbing, biting, bra-flicking, hitting, licking, groping, undoing clothes, spitting and forcibly placing the woman's hands on the harasser's crotch. Areas of women's bodies which were particularly targeted were buttocks, thighs, breasts, necks and legs. Most seriously, there were 6 cases of attempted rape and 1 case of actual rape reported.

In 83 cases (24.1%) unwanted gestures were noted. These included 12 cases of indecent exposure or 'flashing'.

Only a small number of sexual harassment cases contained details that met the remaining definitions of sexual harassment types specified a priori, that is, unwanted requests for socialisation or dates (2 cases) and sexual propositions unlinked to job conditions (14 cases).


Sexual Harassment
Specialised Assistance n = 496
Casework n =101
Negotiations with employer / internal mediation n =5
Complaint not pursued further
n = 3
Counselling / support provided n =13
Complaint lodged with HREOC n = 6
Complaint lodged with ADCQ n = 68
Complaint lodged with QIRC n = 6
Complaint rejected n = 1
Conciliation conference n = 79
Outcome unknown n = 11
Tribunal n = 1
Settlement
Financial settlement n = 52
Not settled n = 14
Rejected offer n =1
Accepted offer n = 27 Mean $5,289

Complaints Lodged

80 complaints were formally lodged with a relevant commission; 68 to the Anti Discrimination Commission Queensland (ADCQ), 6 to the Human Rights and Equal Opportunity Commission (HREOC) and 6 to the Queensland Industrial Relations Commission.

Of the 79 cases that went to a conciliation conference at one of the commissions, financial settlement was achieved in 52 of these cases. No settlement occurred in an additional 14 cases. One case proceeded from conciliation conference to trial and in this case the complainant was awarded $20,000 compensation. The majority of cases proceeding to conciliation conference reached some kind of settlement, including general financial compensation, specific compensation for lost wages, medical / counselling treatments, statements / letters of apology, references for employment, agreements over confidentiality or withdrawal of further claims. In the cases that were financially settled and the amount was known, the dollar value ranged from $865 to $23,000, with a mean settlement amount of $5,289.

In several instances lengthy post conference or pre-trial negotiations were effected to give rise to settlement. Two cases of alleged severe sexual harassment in particular stood out in which conciliation failed to deliver acceptable offers of settlement. In both cases, pre-trial negotiations between legal representatives protracted over more than 12 months and periods of nearly 3 years passed since the alleged harassment occurred to when the matter finally settled. These protracted negotiations and trials, delayed at the requests of the respondents, were distressing for the clients who both remained unemployed during the period and sought psychological treatment.

k.4 Reasons for lodging sexual harassment complaint

While the seriousness of many claims is concerning, Working Women's Centre data reveals that the gravity of the act or acts of the perpetrators does not appear to be closely linked with the likelihood of the complaint being lodged or proceeding through formal avenues. Rather, the willingness of the individual to undergo the time-consuming, demanding and invasive process of challenging the harassment in a formal setting is likely to play a major part. (Discussion of Working Women's Centres clients' experiences of attempting formal redress are included in section H)

k.5 SDA - an insufficient deterrent

A review of the effectiveness of the Commonwealth Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality must acknowledge that despite increased community awareness of the problem since the implementation of the Act, sexual harassment is a continuing problem in many workplaces with existing complaints mechanisms and processes obviously failing to serve as a sufficient deterrent. An analysis broader than provided for here must also consider who has benefited from the continued violation of women's human rights and the maintenance of relative powerlessness in the workplace in attempting to be free of these unwanted behaviours.

One of the most common concerns reported by women to the Working Women's Centre is the inadequate way in which their employers and supervisors handled their complaint or concerns about sexual harassment. It is apparent that many workplaces do not

respond appropriately or effectively and are resistant to validating the woman's concerns.

The status of sexual harassment as unlawful under state and federal legislation and the risks of vicarious liability for organisations (despite lip service paid through organisational policies) do not act as sufficient deterrents to sexual harassment occurring nor is this unlawful status sufficient to ensure appropriate courses of action when a complaint is made. In many cases where women in larger organisations have reported concerns of sexual harassment to designated senior staff or contact officers they have met with responses that have been hostile and invalidating. Conversely women reporting sexual harassment in smaller less formally structured organisations have reported a 'head in the sand' response with little or no acknowledgement or action in relation to their complaints. Many clients have reported that the response process of their organisations was tardy, inefficient, victim-blaming and often inappropriate. This exacerbated the damage the woman had already experienced. It is not uncommon for Working Women's Centre clients to report feeling isolated, discredited, victimised and believe that pursuing their concerns of sexual harassment or taking complaints to external agencies will result in their further victimisation.

Many women and in particular young, lower skilled and precariously employed women report to the Centres that they still feel that they have no alternative but to resign or take periods of leave after experiencing sexual harassment, especially when it is ongoing. The Working Women's Centres have also documented numerous cases where the woman has complained internally and the ultimate result is that she is compensated or paid out to terminate her employment but the harasser has remained employed in the organisation and in some cases promoted or moved sideways.

CASE STUDY

> '**Julia and Jess**'
> *The mother of a young 13 year old fast food chain employee reported that her daughter and daughter's work colleague aged 14 were subjected to inappropriate sexual comments about their bodies and told to wear red lipstick as it made them more attractive to male customers. When the fast food chain was confronted they moved the manager to another store. The two young female employees did not return to their workplace for fear of retribution.*

Many women report that their employers who had taken action as the result of a complaint did not demonstrate due care and concern for the woman's experience but acted to avoid damaging publicity or legal action.

Women also often report that they have been victim of serial sexual harassers who have preyed on other women in the organisation previously and often concurrently. In such circumstances there is a risk of reduced reporting when women have witnessed other women's powerlessness in such circumstances. At the same time it is not uncommon for women who do report their concerns to convey that they have done so to stop the perpetrator / organisation treating other women in the same manner.

Many clients of the Centres who access support offered through counseling referrals retain this support for long periods. In some cases support is sought for up to several years in order to assist in coping with the trauma they have experienced. The trauma is

not only through the sexual harassment itself but also from unsupported and invalidated attempts to redress the matter within their own organisations and externally through formal proceedings.

While the Working Women's Centres services are provided free to women, the psychological and emotional costs, as well as costs of medical and clinical treatment, coupled with reduced capacity for employment, are significant. The Working Women's Centres assert that a significant factor in choosing to complain about sexual harassment is the assessment women make in terms of putting something behind them and forgetting about it, compared with their concerns around keeping the issue alive during a potentially lengthy process of investigation, conciliation or formal proceedings.

k.6 What constitutes a sufficient deterrent

The research of the QWWS data (McDonald, Backstrom and Dear 2008) on sexual harassment asserted that recognising the full range of behaviours and sources associated with sexual harassment, as well as taking decisive and appropriate action where it occurs, is an essential prerequisite to allowing women to overcome unequal labour market opportunities based on an imbalance in power relations. Clearly legislation is an important factor in a serious deterrent but this legislation ought to force employers to take responsibility for the actions of their employees.

There is a clear need for a stronger legislative hammer in preventing and responding to sexual harassment in workplaces. The vicarious liability employers risk in avoiding proactive action to prevent harassment, the current legislation needs to be strengthened to allow the SDC to randomly (or given sufficient cause) require workplaces to demonstrate that they comply to minimum standards of education about sexual harassment and discrimination, have processes in place for handling concerns and show that when complaints have arisen they have acted in a fair and appropriate way. The Queensland Workplace Health and Safety Advisory Standard for Workplace Harassment, provides a model for standards which could be adapted to ensure that sexual harassment is not tolerated and that women who experience harassment are appropriately responded to and supported.

Working Women's Centres are aware that workplace cultures that perpetuate sexualisation of women commonly factor in complaints of sexual harassment by our women clients. While reports are more typically from women working in occupations that are highly gender segregated (such as clerical and the para-professions), it is noted that some of the most extreme and organisationally condoned violations have occurred where women are less represented in the workplace or performing jobs that are less typical for women. Such hostile work environments as have been exposed in the mining and construction sectors should be targeted by a reformed Sex Discrimination Act to assess compliance and encouraged to support women to participate through broader application of the Equal Opportunities Legislation.

CASE STUDY

'Luana'

Luana was a metal work apprentice who experienced ongoing sexual harassment. This included sexual innuendos, and rumours spread about her sexual activities. When she approached the manager and asked for support

she was told that the workplace was 'no place for a woman'. When she returned to work the following day her work equipment had been vandalised, with a penis carved into it. She left the workplace and is now unable to find another position in the industry which she had worked hard to join for many years.

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l. Effectiveness in addressing intersecting forms of discrimination;

The Working Women's Centres are aware of situations of multiple disadvantage that women experience in the workplace and reports of intersecting forms of discrimination are not uncommon. Not all discrimination is gender-based but correlations can be made between certain areas of complaints as well as between certain work status and industries that provide an indication that types of discrimination that occur together are more prevalent in certain areas. For example more young women report sexual harassment while age discrimination is more commonly reported by older women. Pregnancy discrimination appears to be more prevalent for low-skilled women, hinting that possession of skills may protect women from poor treatment in the workplace.

Most commonly complaints of intersecting forms of discrimination that move into a formal complaints process are dealt with together at Conciliation. There is no noted reduction in effectiveness when complaints are on multiple grounds although one ground may be significantly stronger or weaker than the others and provide the impetus for conciliation to succeed. Currently, there is no ability for a court to look at the whole act of discrimination in order to adequately address the seriousness of acts of discrimination that occur for a range of reasons. The SDA needs to better protect against discrimination involving both sex / gender and other attributes such as race or disability.

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m. Any procedural or technical issues;

The Working Women's Centres express concern over the lengthy time period often involved in the complaints process. This has been noted above.

We also express concern over the Commission’s lack of power in requiring respondents to provide responses to complaints and participate in conciliation, also noted above.

Working Women's Centres have no further comment on this area.

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n. Scope of existing exemptions;

Statutory exemptions under the Sex Discrimination Act make a statement about values and priorities in society that should be revised to ensure they reflect contemporary society and CEDAW.

Women in all parts of Australia should have access to the same levels of protection against discrimination and sexual harassment when it comes to their employment. Government agencies either at state or federal level should not be immune as employers from the highest and most inclusive Human Rights and Equal Opportunities legislation.

Working Women's Centres can see no reason for religious organisations to be exempt from the provisions of the SDA. Working Women's Centres have dealt with a number of cases involving religious organisations discriminating against 'perceived same sex couples' or lesbians in employment. In one instance a woman was formally warned because of her attire. When she questioned her supervisor about this she was told that she wore 'mannish shirts and an earring in one ear only'. When she asked further why this was a problem she was told that the perception was that she was a lesbian and they didn't believe this was healthy for the residents of the facility where she worked. Given that many religious organisations now tender for government contracts to deliver services Working Women's Centres feel they should abide by the same laws that address discrimination as other organisations.

The Working Women's Centres thank the Senate Committee for the opportunity to make this submission on behalf of working women in Queensland, the Northern Territory and South Australia. Working women in New South Wales, Western Australia, Tasmania and the Australian Capital Territory sadly do not have Centres able to provide information, advocacy, advice and support to women with work-related matters.

We note however that the very short time frame has put pressure on our organisations to meet with the deadline and would recommend that 6-8 weeks would have assisted us to consult further with our members and Boards of Management.

Yours faithfully

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