

## Appendix 5

# Sex Discrimination Act 1984 (Cth): An Analysis of its Effectiveness

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**Australian women have entered the workforce in greater numbers than ever before. Associated factors include an aging workforce and a shortage of skilled staff. Nonetheless, many working women continue to face a gender-pay gap, unpaid maternity leave and inequality in terms of career progression. The Sex Discrimination Act 1984 (Cth) was passed during 1984, just 22 years ago; its goal was to eliminate inequality for women at work in Australia.**

In this paper we assess the effectiveness of the act. Section one provides the context for this discussion; it explores enacted rights and economic pressures. Section two examines selected Australian experiences. In particular, the focus is on the right to equal pay for work of equal value, the right to be promoted on the grounds of merit, and the right not to be discriminated against on the grounds of pregnancy at work. The picture that emerges is uneven. While some significant progress has been made, there remains evidence of little headway on several critical fronts.

## 1. Sex Discrimination Act 1984 (Cth): Rights and Economic Imperatives

The Australian Labor Party won government in early 1983, with Bob Hawke the new prime minister. One of its first initiatives was to ratify the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (Ryan 2003, p. 207). The Sex Discrimination Act (SDA) came into force in August 1984, giving effect to Australia's obligations under CEDAW and International Labour Organisation (ILO) conventions on discrimination in respect of employment, occupation and remuneration which had been ratified in 1973 and 1974 respectively (Ryan 2003, p. 207-08; ACCI Review November 2004, p. 9). The SDA is shaped by the CEDAW and it follows British legislative measures to tackle gender discrimination (Landau 1985, p. 339). Its goals are:

1. To promote equality between women and men.
2. To eliminate discrimination on the basis of sex, marital status or pregnancy and, with respect to dismissals, family responsibilities; and
3. To eliminate sexual harassment at work, in

educational institutions, in the provision of goods, facilities and services, in the provision of accommodation and the administration of federal programs. (HREOC 2004a)

Contrary to state equal opportunity legislation, which had already been introduced in South Australia in 1975, in New South Wales and Victoria in 1977 and in Western Australia in 1984 (Landau 1985, pp. 336-37), the SDA is administered by an independent statutory authority, the Human Rights and Equal Opportunity Commission (HREOC). HREOC was established under the Human Rights and Equal Opportunity Commission Act 1986 (Cth) to promote and protect the human rights of all Australian people. To this end, HREOC not only oversees the SDA and the Human Rights and Equal Opportunity Commission Act 1986 but also the Racial Discrimination Act 1975, the Disability Discrimination Act 1992 and more recently the Age Discrimination Act 2004.

HREOC works as a collegiate, consisting of a president and five commissioners, although these five positions are currently held by three people. Whilst constitutionally independent, the collegiate reports to the federal parliament through the attorney-general. In the last decade, HREOC underwent some major changes: In 1997, the commission's budget was reduced by 40 percent (Gaze 2000, p. 128, cit. in Chappell 2002, p. 479; Summers 2003, p. 131). In the same year, the attorney-general also drafted an amendment to the Human Rights and Equal Opportunity Commission Act 1986 to abolish the roles of all commissioners. While this did not eventuate, other enacted changes restricted the role and impact of HREOC. Examples include the move to transfer all complaint-handling powers to the HREOC president; this has compromised the authority of individual commissioners. In addition, in April 2000, the commissioners also lost their role to hear and determine matters unresolved through conciliation (Charlesworth 2003, p. 567). All discrimination complaints which cannot be conciliated by HREOC are now passed on to the Federal Court for a hearing, leading to increased costs and delays. Some assert that these amendments represent a simplification of legislative mechanisms. But critics disagree, concerned that the new process constitutes a serious disadvantage for women wanting to submit sex discrimination claims (Chappell 2002, p. 479).

The refashioned role of the sex discrimination commissioner is now mainly educational; it involves research and advice to the community on equality between female and male workers. Pru Goward, the

sixth commissioner, sees her main duties as to:

1. Raise awareness on issues including sex discrimination, paid maternity leave and pay equity.
2. Run public education campaigns on issues such as sexual harassment; and
3. Contribute to landmark court cases that have furthered equality for women by, for instance, embedding anti-discrimination principles in the industrial and workplace relations system, advancing pay equity, extending understanding of discrimination against women on the basis of their family responsibilities and ensuring the rights of all women to access IVF and other forms of reproductive technology. (HREOC 2004a)

In August 2004, the SDA had been in operation for 20 years. This period witnessed significant changes in the national labour market. It seems timely, then, to assess the effectiveness of this legislation, especially given Australia's pressing economic challenges such as a skills shortage crisis and an aging workforce, which understandably intensify the economic imperative to facilitate and support women's increased workforce participation. A few years ago, in 2000, Australia was judged to be at the forefront in terms of gender issues globally, ranking number one on the United Nations Development Program Gender Development Index (HREOC 2004a). These days, however, critics of the Howard government are concerned that attempts are under way to wind back women's rights (Chappell 2002, p. 475; Summers 2003). The current sex discrimination commissioner, Pru Goward, points out that certain areas demand attention, such as the "significant and stagnant pay equity gap" as well as the lack of "a universal system of paid maternity leave" (HREOC 2004a).

## 2. Historical and Socio-Political Developments

Laws cannot impose gender equality; nonetheless they may play a vital role alongside social change. Commissioner Pru Goward pointed out in her 20th SDA anniversary speech that this legislation followed rather than preceded social, technological and economic change. The importance of the SDA lies in its intent, as Gaze (2004) explains: "The social meaning of the SDA refers to its significance as a national expression of commitment against sex discrimination."

During the 20 years of the act, a number of inquiries were undertaken and several amendments introduced to clarify, extend and improve its operation. The first inquiry after the inception of the act covered issues concerning pay equity. This report, titled *Just Rewards*, was prepared by then sex discrimination commissioner, Quentin Bryce, in 1992.

*Just Rewards* made reference to the economic imperative of ending unequal pay. It pointed out that such a bias "reduces the national skills base and limits the productivity and efficiency of industry" (HREOC 1992, p. 15). The report contended that pay equity needed to be understood as a fundamental human right, an issue of social justice and a matter of economic efficiency

(HREOC 1992, p. 15). It argued that the need for protection under the act might even increase, given the shift away from a centralised wage-fixing system to a more decentralised, workplace-based system (HREOC 1992, p. 21). The report also noted women's increasing workforce participation at the "periphery of employment", in the form of part-time and casual labour (HREOC 1992, p. 20).

A senate committee chaired by Michael Lavarch reviewed discrimination against women in education and employment. Its 1992 report *Half Way to Equal* led to government sanctions taken against firms which failed to comply with the Affirmative Action Act 1986 (Cth). This act was introduced two years after the Sex Discrimination Act and is labelled as "the government's second landmark legal reform for women" (Ryan 2003, p. 209). Based on the \$10 billion government spending each year on goods and services, the Keating Government decided that it would not do business anymore with firms that did not comply with this act (Ryan 2003, p. 211). During the last decade, the coalition government has shown little inclination to pursue such direct paths. The emphasis has been on education and persuasion.

The Affirmative Action Act was reviewed again in 1998 in a report titled *Unfinished Business*. The rapid technological change of the 1980s had transformed the Australian workplace with much downsizing and restructuring in pursuit of improved performance and profitability. The associated push for flexible employment meant that the equal opportunity requirements under the act became seen as "a mechanical exercise", bureaucratic requirements unrelated to pursuit of business targets (Bevan Committee 1999, p. 80). Among a number of recommendations, the report proposed that equity for women should be seen as a strategic human resource management issue. Matters of a systemic, industry or sectoral character should be referred to the sex discrimination commissioner who could "choose to exercise her present discretion to conduct an inquiry or report to the Minister" (Bevan Committee 1999, p. 81).

Susan Halliday, sex discrimination commissioner 1998-2001, explored the issues challenging pregnant women at work. Her report, *Pregnant and Productive*, was published in 1999. As mentioned earlier, the Sex Discrimination Act covers discrimination on the grounds of pregnancy or potential pregnancy at work. A targeted inquiry seemed relevant given that "erroneous tactics and exploitative practices" were being utilised at work "to remove pregnant women from the workforce and deny pregnant and potentially pregnant women equal employment opportunity" (HREOC 1999, p. xi). The report's recommendations were seen as a tool to inform "all parties to the employment relationship [...] about their rights and responsibilities with regards to workplace discrimination" (HREOC 1999, p. xiii). Later data reinforced the importance of protection in this area; 18 percent of all complaints under the act related to pregnancy discrimination in the workplace in the financial year 2000-2001 (HREOC 2001, p. v). However, even though the focus of the 1999 inquiry did not extend to post-pregnancy issues, the fundamental connection

between pregnancy and post-pregnancy was highlighted in many of the submissions from employers and employees (HREOC 1999, p. 225-29).

Following on from this report, HREOC met with a variety of groups, such as employers, unions and women, but also government, academics, health professionals and legal organisations, to assess the need for a national paid-maternity-leave scheme. In 2002, HREOC's interim paper *Valuing Parenthood: Options for Paid Maternity Leave* (2002b) and its report *A Time to Value: Proposal for a National Paid Maternity Leave Scheme* (2002a) were released. In the report, the current commissioner, Pru Goward, proposed the introduction of 14-weeks, government-funded leave up to the rate of the federal minimum wage for women who had been in paid work for 40 of the 52 weeks prior to their leave. The debate on this issue was intense. Despite significant support for HREOC's proposal, the Australian federal government was reluctant to endorse Article 11(2)(b) of the United Nations' *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), which recommends the introduction of paid maternity leave. To this day only two OECD countries, Australia and the United States, do not provide some form of paid maternity leave (Charlesworth 2005, p. 95).

At the same time as Australia was debating the introduction of paid maternity leave, the OECD Working Party on Social Policy decided to undertake a review of policies supporting the integration of work and family (OECD 2000). This integration, or "collision" as Pocock (2003) more aptly names it, has emerged as a battleground for many Australian families due to significant social and labour-market changes. The Australian government took part in this OECD review with its own report in 2002, titled *OECD Review of Family Friendly Policies: The Reconciliation of Work and Family Life, Australia's Background Report*.

The report was prepared by the Federal Department of Family and Community Services (FaCS) and the (then) Federal Department of Employment, Workplace Relations and Small Business (DEWRSB), with assistance from the Work and Family Life Consortium. It provided an overview of key Commonwealth policies and programs and assessed their impact on the work and family interface in Australia. These measures fall into three broad areas: employment and workplace relations, the tax transfer system and support for parents. The report concluded that "measures to assist workers with family responsibilities have become a pronounced feature of the Australian workplace relations system" (OECD 2000, p. 50). It saw progress as occurring through workplace relations law, agreement making and the award safety net in providing access to family-related forms of leave.

### 3. Pay Equity, Promotions and Paid Maternity Leave: An Analysis

In this section, we will measure the Sex Discrimination Act's 1984 (Cth) effectiveness by exploring three different yet related areas: pay equity, the gender

composition of management and boards, and the spread of paid maternity leave.

## Pay Equity

The famous Harvester case of 1907 was heard in the then Commonwealth Court of Conciliation and Arbitration. Justice Henry Bourne Higgins determined the basic wage for workers. His assessment was based on the assumption that a male worker was married with three children to support and unmarried male workers were saving for marriage (Plowman, 1992, p.9). Women's wages were not mentioned. In 1912, Higgins dealt with another court case, the Fruitpickers' case, where he decided on "equal pay for equal work in men's jobs and less for women's jobs" (Short 2003, p. 37). Even though this concept of male breadwinners with stay-at-home wives on the one hand and working women with no dependants on the other has been challenged by major social and workplace changes, it continues to influence wage determination, as the following discussion will reveal.

The most obvious and determined attempt to tackle entrenched pay inequity came in 1969 in an equal pay case, heard by the then Australian Conciliation and Arbitration Commission. The commission concluded that there should be "equal pay for equal work". Three years later, the ACTU and the National Pay Equity Coalition pointed out that the 1969 decision affected only 18 percent of women (Pocock 2000, p. 280). Consequently, in 1972, following further hearings the commission adjusted the principle to the International Labour Organisation's (ILO) standard version of "equal pay for work of equal value" (Short 2003, p. 38). This adjustment not only brought Australia into alignment with ILO legislative standards, but also took into consideration the highly gendered nature of the Australian workforce. This decision led to a significant decline in the gender-pay gap during the 1970s (Todd and Eveline 2005, p. 238).

The impact on the gender-pay gap resulting from the 1969 and 1972 pay decisions highlights the advantages of centralised-wage determination. In 1974, further supportive steps were taken at federal level with the equalisation of minimum rates between women and men (Whitehouse, Zetlin & Earnshaw 2001, p. 376-77). Another 10 years later, in 1984, the Sex Discrimination Act was introduced. The act does not explicitly mention equal pay, but it "gives legislative recognition to equality practices introduced by the awards system, such as the Equal Pay Award" (Landau 1985, p. 338). Despite these changes, gender segregation in the workforce and pay inequity continued and ultimately led to an inquiry in New South Wales, the 1998 NSW Pay Equity Inquiry. This inquiry provided a valuable examination of gender issues in setting remuneration (Hall 1999, p. 33). Pocock (1999, p. 1) makes the point that only in an environment of "favourable economic, social, institutional and political circumstances" can real gender-pay equity progress be achieved.

Whilst pay inequity is a global phenomenon (Whitehouse 2002), Australia stands out among the OECD countries because of its highly gender-segregated

workforce (Kaul 2001, p. 50). Kidd and Meng (1997), who analyzed the occupational distribution of women and men between 1982 and 1990, found that the strong segregation of women's and men's occupational roles changed little over time. Australian Bureau of Statistics data demonstrate women's concentration (over 60 percent) in sectors such as sales, service and clerical work; these sectors are marked by relatively low pay levels (Cortis 2000, p. 52). This workforce segregation is further enhanced by the ongoing gendered division of domestic labour: "Australia has a very limited range of parental employment policies that could help to encourage a more equal sharing of family-care work" (Whitehouse 2004, p. 5).

Despite the introduction of the Sex Discrimination Act in 1984 and the Affirmative Action (Equal Employment Opportunity for Women) Act in 1986, the growth in women's earnings relative to men's slowed during the 1980s (Kidd & Shannon 2001). The following table demonstrates industry-specific average hourly ordinary-time earnings for men and women in May 2004; further, it details the increase in these earnings over the period May 1994 to May 2004.

The table demonstrates that the growth in average hourly ordinary-time earnings among full-time adult non-managerial employees for this decade was higher for males than females, resulting in a slight widening of the gender-wage gap (ABS *Australian Social Trends* 2005, Cat. No. 4102.0).

The figures reveal that pay inequity continues to be an issue. Justice Mary Gaudron's comment, "We got equal pay once, then we got it again, and then we got it again, and now we still don't have it" (NSW Pay Equity Inquiry 1998a, p. 5, cit. in Pocock 2000, p. 279), indeed still applies. The current enterprise-bargaining changes are predicted to widen the gender-pay gap. Trends away from centralisation and towards increased enterprise bargaining are likely to worsen pay inequity: "Deregulated industrial relations systems have only increased the possibility of continuing or worsening pay inequity." (Short 2003, p.46). Women's occupational segregation in traditionally lower paid jobs (Cortis 2000, p. 52) and their reduced bargaining power due to lower levels of unionisation (Heiler, Arsovska & Hall 1999, p. 18; Whitehouse & Frino 2003, p. 583) remain obstacles to narrowing the gap between male and female earnings.

One Australian researcher points out that "the reasons for persistent pay inequity lie not just in industrial and economic factors but in the values and attitudes of industrial relations participants" (Short 2003, p. 43). Her statement is supported by others who emphasise "the array of factors [...] contributing to the gender-pay gap" (Todd & Eveline 2005, p. 239). They point to the enterprise-bargaining environment and the impact of work and family commitments. The current situation has led some researchers to a reassessment of the anti-discrimination and affirmative action law policies and programs introduced over the past 20 years. Not only is the scope of these policies and programs limited but, importantly, "the adequacy of these mechanisms to address systemic discrimination" (Pocock 2000, p. 283) is criticized by a number of Australian academics. Kidd and Shannon's (2002, p. 161) prediction of a

**Table 1: Full-Time Adult Non-Managerial Employees – May 1994-2004**

	Average hourly ordinary-time earnings			Increase in average hourly ordinary-time earnings since May 1994	
	Male	Female	Male/Female Ratio	Male	Female
Industry (ANZSIC)	\$	\$	%	%	%
Mining	34.30	27.10	0.79	43.2	52.3
Manufacturing	22.40	19.40	0.87	56.1	52.7
Electricity, gas and water supply	28.80	24.50	0.85	64.2	58.2
Construction	23.40	19.60	0.84	52.4	46.0
Wholesale trade	21.60	19.80	0.92	54.2	51.5
Retail trade	18.10	17.00	0.94	48.7	47.6
Accommodation, cafes and restaurants	17.60	17.10	0.97	43.1	47.1
Transport and storage	22.60	20.60	0.91	45.1	42.0
Communication services	26.70	22.40	0.84	54.6	40.4
Finance and insurance	30.30	23.30	0.77	85.0	65.7
Property and business services	24.70	21.70	0.88	55.9	46.6
Government administration and defence	24.70	24.10	0.98	56.1	54.3
Education	27.90	25.50	0.91	33.0	40.2
Health and community services	25.00	21.40	0.86	50.2	40.7
Cultural and recreational services	23.70	22.10	0.93	37.5	39.3
Personal and other services	25.40	20.00	0.79	45.5	39.9
All industries	23.60	21.60	0.92	50.9	47.6

Source: Employee Earnings and Hours, Australia, May 2004 (ABS Cat. No. 6306.0); Distribution and Composition of Employee Earnings and Hours, Australia, May 1994 (ABS Cat. No. 6306.0); ABS 2004 Survey of Employee Earnings and Hours (EEH).

"substantial gap remaining in 2031" highlights the fact that, whilst legislation has some impact on overt discrimination, it cannot eradicate inequity in pay (Whitehouse 2004).

Overcoming the obstacles to pay equity is important given that "gender pay inequity has economic, social and political consequences for individuals, business and governments" (Todd & Eveline 2005, p. 236).

Wajcman (2000) proposes a focus away from the numerical size of the pay gap and, instead, suggests that its causes and potential remedies are addressed. A number of Australian researchers agree that what is needed in this equity quest is “a multi-faceted strategy” (Whitehouse 2004), which can only be found in “a multi-dimensional approach” (Todd & Eveline 2005, p. 239).

Such a multitude of strategies would certainly need to take into account the link between peripheral forms of employment and gender (Pocock, Prosser & Bridge 2005), the undervaluation of skills identified in female-dominated areas of work (Cortis 2000, p. 60), and the associated bias in terms of social expectations about “female” jobs.

## Promotions

Significant changes in workforce demographics have occurred over the last few decades. During the 1960s, the pattern of a male breadwinner and a home-based wife was still predominant. In 1961, only 17.3 percent of married women participated in paid employment (Preston & Burgess 2003, p. 498). In 2001, 65 percent of married women were in paid employment (Preston & Burgess 2003, p. 498). Total employment taken up by women also increased steadily during that period. In 1964, 28 percent of total employment was taken up by women. By 2005, women’s total employment had increased to 44.8 percent. In comparison, in 2005 men’s employment rate stood at 55.2 percent. Women are more likely than men to work part-time. In 2005, they made up 70.9 percent of the part-time workforce, compared with only 29.1 percent of men working part-time (ABS Cat. No. 6105).

As mentioned earlier, the SDA makes it unlawful to discriminate in employment on the ground of gender, which means that this legislation also covers discrimination regarding promotion. In practice, though, promotion discrimination rarely surfaces publicly; it tends to be settled out of court.

To support business’ understanding of the economic necessity and legal imperative for advancing women, the Equal Opportunity for Women in the Workplace Agency (EOWA) has worked together with Catalyst, a North American based, non-profit research and advisory organisation, to produce a national census which measures women’s advancement in the upper echelons of management.

The first such census of women executive managers and women board directors in the nation’s top 200 companies listed on the Australian Stock Exchange (ASX200) was published in November 2002 and since then, two more censuses were undertaken, in 2003 and 2004 respectively.

On the understanding that “what gets measured gets managed”, EOWA collects information on best and worst performing industries with respect to the promotion of women to executive roles and boards. Data were also compiled in 2003 and 2004 which reveal the number of women holding line-management positions, roles which might lead to CEO and CFO appointments. Table 2 following lists these EOWA figures.

**Table 2: Censuses of Women Executive Managers and Board Directors\* (%)**

EOWA Censuses	2002 %	2003 %	2004 %
Women Managers	8.4	8.8	10.2
Women Directors	8.2	8.4	8.6

\*Australian data based on the top 200 companies listed on the Australian Stock Exchange

Source: EOWA Australian Leadership Censuses 2002-2004

Furthermore, EOWA data show that the percentage of women executives holding line-management positions improved slightly, with 4.7 percent women in such roles in 2003, increasing to 6.5 percent in 2004. Despite the upward trend of the Australian statistics above, there is only marginal improvement overall and women remain represented at levels far below their overall proportion in the workforce. Women’s overall labour participation has been around 42 percent to 45 percent for most of 2000 to 2005.

EOWA has asserted that encouraging EEO can deliver substantial benefits to employers in terms of returns for the organisation and improved quality of life for employees. HREOC (2001, p. 47) compiled a list of the many benefits: increased productivity; access to a variety of working options that meet both organisation and employee needs; reduced stress; improved health and well-being of individual employees; improved morale and commitment; reduced occupational health and safety risks; reduced absenteeism; a more diverse workforce; increased staff retention; increased ability to attract and recruit new staff; and an enhanced corporate image.

Overseas research has found that “businesses committed to promoting minority and women workers had an average annualised return on investment of 18.3 percent over a five-year period, compared with only 7.9 percent for those without such policies” (Hudson 2004, p. 8). Inattention to EEO may well be associated with lower levels of performance (HREOC 2005, p. 71). A report of the Equal Opportunity Commission in the UK similarly found that “the underutilisation of women represents a competitive disadvantage” (*Aequus Newsletter*, March 2005).

Some Australian organisations are focused on attracting and retaining women at senior levels. This list of organisations is regularly celebrated at the award ceremonies organised by EOWA and the Diversity Council. But many of the gains reflect merely islands of change: “Women were also seen as concentrated in support areas or in more traditionally female positions such as human resources. Men still dominated core business, particularly in the private sector, where women recognised that they had not entered the key areas.” (Chesterman, Ross-Smith & Peters 2004a, p. 25).

Attitudes towards women in senior positions are influenced by organisational cultures, but these cultures

tend to be perpetuated by outdated social stereotypes about women and women's role. Consequently, "[s]tructural workplace policy changes to increase the representation of women without cultural and attitudinal change are likely to be ineffective. Equal employment opportunity strategies and programs need to be positioned within a wider program of change management in workplaces." (Hudson 2004, p. 13). In one Australian research project, interviewees attributed cultural change to a critical mass of women holding significant positional power (Chesterman, Ross-Smith & Peters 2004b, p. 6). So far, this change has not been widespread: "As long as men preserve the symbols, values and practices of masculine culture in senior positions in organisations, one can expect detrimental effects for women in that hierarchy" (Hudson 2004, p. 27).

## Maternity Leave: Paid and Unpaid

The provision of maternity leave, funded by government or employers, is often cited as a critical item in the larger work and family debate. In early 2006, working mothers who have been permanent employees for 12 months prior to the child's birth are legally entitled to 52 weeks unpaid maternity leave. This leave originated from the Maternity Leave Test Case determination which was handed down by the Australian Conciliation and Arbitration Commission in 1979 (HREOC 1999, p. 227). In August 2005, the Australian Industrial Relations Commission (AIRC) released revised parental leave provisions in its Family Provisions Test Case. These provisions give mothers and fathers the right to request 104 weeks of unpaid parental leave as well as the right to request part-time work until the child reaches school age.

Nonetheless, Australia still struggles with its basic obligations under the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW). In HREOC's Annual Report 2003-04, the sex discrimination commissioner pointed out that Australia has been a signatory to CEDAW for over 20 years.

During this time, it has never indicated its commitment to paid maternity leave in line with CEDAW Article 11(2)(b) (HREOC 1999, p. 227). As mentioned earlier, Australia and the United States are now the only two OECD countries that do not provide such a scheme.

During 2001 to 2004, the sex discrimination commissioner energetically campaigned for the introduction of a national paid maternity-leave scheme but she did not receive much business or government support. Despite arguments suggesting advantages for business (for example, Baird 2002, p. 4), Australian Chamber of Commerce and Industry (ACCI) Chief Executive Peter Hendy stated that ACCI would "fight tooth and nail" against the introduction of a national paid maternity-leave scheme (ABC radio interview, 1 September 2004). It came as no surprise that the federal budget in May 2004 did not allow for a paid maternity-leave provision. Instead, it included a "maternity payment" to all working and non-working mothers of

\$3,000, an equivalent of 6.4 weeks of paid leave at about the minimum wage (HREOC Annual Report 2003-04). Whilst the \$3,000 payment recognises the financial needs of mothers at the time of a baby's birth, it differs from paid maternity leave in that it is not linked to any attachment to the workforce (HREOC 2005, p. 104).

The situation for working mothers has changed little since HREOC published its paper *Valuing Parenthood* in 2002. This stated: "[A]ccess to paid maternity leave depends on the type of organisation and the industry in which women work. Women in smaller organisations and the private sector are less likely to have paid maternity leave compared to those in large organisations and the public sector." (HREOC 2002b, p.1). The Australian Council of Trade Unions (ACTU) has been active in voicing its support of working women, launching a national test case in relation to parental leave before a full bench of the Australian Industrial Relations Commission in 2004. The ACTU argued that "paid maternity leave is a fundamental human right, and it is necessary to address the systemic discrimination and disadvantage that women suffer when they seek to combine their reproductive and productive roles" (ACTU 2004).

According to research cited by the ACTU in 2004, 57 percent of all workplaces do not offer any paid maternity leave to their female employees. Other research reveals significant differences in access to this provision, based on occupation: "[U]p to 65 percent of managers and 54 percent of professional women have access to paid maternity leave while only 18 percent of clerical, sales and service workers and 0.4 percent of casual workers are entitled to it" (Watts & Michell 2004, p. 179, cit. in Todd & Eveline 2005, p. 239).

Furthermore, there are major differences in the length of paid leave, with overall variations between 0.2 to 18 weeks (Baird, Brennan & Cutcher 2002, p. 9). A recent case study, which investigated organisational rationales for introducing paid maternity leave, found that larger organisations viewed such provisions as appropriate reflections of a modern century (Charlesworth & Probert 2005, p. 126).

According to Baird and Todd (2005, p. 3), the federal government has failed to act in step with changing expectations: "[T]he Commonwealth government says the family unit is the most important social structure, yet it provides little incentive to enable women and men to combine work and family".

For example, the "maternity payment" will certainly assist families with the birth of a child, but it will not strengthen women's attachment to the paid workforce or compensate for income lost due to childbirth (Charlesworth & Probert 2005, p. 119). It is interesting to note that some larger organisations introduce or extend paid maternity leave for reasons other than the business-case argument.

These organisations also see the provision as "the right thing to do" in terms of community expectations, social justice and/or gender equity goals, factors which can enhance organisational reputation as well as increase employee commitment (see Charlesworth & Probert 2005, pp. 119-28).

## 4. Where To From Here?

The introduction of the Sex Discrimination Act in 1984 fulfilled an important function in raising women's expectations about equality in the workforce (Sawer 2004). These expectations have been met to a partial extent. A number of factors have stood in the way of more far-reaching change, for example the perceived weakness of the act in contrast to stronger overseas laws, such as in the UK and the US (Gaze 2004). Also, structural problems with enforcing the act mean that individuals or groups of women have to take action with very little institutional assistance and often no legal aid. This presents a considerable barrier to women and might even deter them from taking action. On this ground, Gaze (2004) criticizes existing equality legislation by saying that "Australia's laws have virtually no teeth and little resourcing".

Changes in Australian workforce demographics have been significant. Women's increasing participation in paid employment is seen as vital to "help maintain Australia's economic growth over the coming decades" (HREOC 2005, p. 71). Whilst it seems that this trend will continue, there is little change in sight with regards to Australia's highly gender-segregated workforce in comparison with other OECD countries (Summers 2003, p. 170). In addition to workforce segregation, women remain over-represented in low-paid, low-status and insecure part-time and casual work (HREOC 2005; Pocock, Prosser & Bridge 2005). The over-representation of women in this group poses a problem in relation to improving gender equity in managerial and board positions. Despite legislative and workforce demographic changes, the replication of gendered ideologies of paid and unpaid work is prolonged (HREOC 2005, p. 26ff); "women continue to adopt the primary caring role at home, providing unpaid support for the male breadwinners at work" (Todd & Eveline 2005, p. 237).

For the majority of working women, the increased emphasis on enterprise bargaining and current federal government proposals for further industrial relations reform hold little promise (Baird & Todd 2005). Few women will be able to use the decentralised workplace arena to their advantage when negotiating employment conditions. Despite arguments about the many benefits that result from work/life balance (HREOC 2001, p. 47), most Australian families struggle to find a satisfactory balance (Pocock 2003). And the compelling business case (Hudson 2004, p. 8) has not been enough to encourage widespread gender equality in business circles. The broad-based business case argument outlined in Charlesworth and Probert (2005) is not heard within most Australian organisations. It is in this context that strong government support has the potential to make a difference.

More research is needed on pregnancy at work, maternity leave and return to work. Pregnancy discrimination reveals deep-seated beliefs about women, their worth and their place in society; it is evident that continued attempts at education as well as legislative interventions are vital. The lack of specific, detailed

maternity leave data in Australian organisations needs to be remedied. To do so would help clarify legislative and policy gaps. Further, it seems appropriate to focus specifically on women's income loss due to childbirth because of its direct implications on women's financial position in retirement.

The gender-pay gap, women's promotion to management or board positions and the provision of maternity leave have been used as benchmarks to test the effectiveness of the Sex Discrimination Act 1984 (Cth). While these three areas are not the only ones affected by the act, they can be seen as relevant indicators pointing to the act's impact on equity.

More than 20 years ago, the ratification of the act was seen as reflecting a national commitment to tackle discrimination. There were high expectations. There has indeed been some progress but on closer inspection it is limited. The effectiveness of the act may well have been constrained by a number of factors including lack of government will and the scale of resistance to those seeking greater equality in Australian workplaces and society. This is a cause that continues to demand attention and commitment in the hope of more widespread and rapid progress over the next 20 years.

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