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26 October 2010

Committee Secretary
Senate Legal and Constitutional Committee
Parliament House
Canberra ACT 2600

By email

Dear Committee Secretary

Sex and Age Discrimination Legislation Amendment Bill 2010

The Human Rights Law Resource Centre (HRLRC) welcomes the opportunity to make submissions in relation to the *Sex and Age Discrimination Legislation Amendment Bill 2010* (the Bill).

The Bill introduces a number of positive amendments to Australia's anti-discrimination regime, including:

- (a) the extension of protections from discrimination on the grounds of family responsibilities to both women and men in all areas of employment;
- (b) improved protection from sexual harassment for students and workers;
- (c) affirmation that protections from sex discrimination apply equally to women and men;
- (d) the inclusion of breastfeeding as a separate ground of discrimination; and
- (e) the establishment of an Age Discrimination Commissioner in the Australian Human Rights Commission.

The HRLRC supports the amendments and recommends the expeditious passage of the Bill.

However, the proposed reforms fail to address major shortcomings of the *Sex Discrimination Act 1984* identified in the 2008 report of the Senate Standing Committee on Legal and Constitutional Affairs, *Effectiveness of the Sex Discrimination Act 1984 in Eliminating Discrimination and Promoting Gender Equality* (the Senate Committee Report).

Importantly, the changes do not respond to one of the key findings of the Senate Committee, namely that 'the most fundamental limitation of the Act is its reliance on enforcement through individuals

pursuing complaints'.¹ This recognition demands a transformation in the way our laws deal with discrimination and promote gender equality; moving from a reactive, complaints-based model to a progressive rights-based model which actively promotes equality. Tinkering around the edges is not enough.

The Bill's Explanatory Memorandum states that recommendations contained in the Senate Committee Report which are not reflected in the Bill will be 'considered as part of the work on Australia's Human Rights Framework to streamline federal anti-discrimination legislation into a single, comprehensive Act' (the Consolidation Project).

The Government has described the Consolidation Project as a project to 'harmonise and consolidate Commonwealth anti-discrimination laws to remove unnecessary regulatory overlap, address inconsistencies across laws and make the system more user-friendly'.² The HRLRC is concerned that the Consolidation Project is limited in scope and considers that a stronger commitment to the implementation of the more far-reaching recommendations in the Senate Committee Report is required.

Accordingly, the HRLRC recommends that Government commit to a Consolidation Project that addresses issues beyond regulatory inconsistencies and overlap and implements the recommendations in the Senate Committee Report.

The HRLRC refers the Committee to its policy brief on 'Promoting Equality and Addressing Discrimination in Australia' (Attachment A). The brief argues that the Consolidation Project is an opportunity to adopt a robust and comprehensive legal framework which promotes real equality and addresses all grounds of discrimination. It makes seven concrete recommendations, including legislative amendment, that would contribute to a more fair, cohesive and productive society.

The HRLRC also refers the Committee to a letter dated 5 August 2010 (Attachment B) in which a large coalition of Australian NGOs called on the Government to commit to a Consolidation Project that modernises and strengthens Australia's anti-discrimination regime and promotes equality and fairness for all, in line with the recommendations in the Senate Committee Report.

In summary, the HRLRC recommends that:

Recommendation 1:

The Committee support the expeditious passage of the Bill.

Recommendation 2

The Committee call on the Australian Government to commit to a Consolidation Project that implements the recommendations in the Senate Standing Committee on Legal and Constitutional Affairs' 2008 report, *Effectiveness of the Sex Discrimination Act 1984 in Eliminating Discrimination and Promoting Gender Equality*.

¹ Senate Committee on Legal and Constitutional Affairs, *Effectiveness of the Sex Discrimination Act 1984 in Eliminating Discrimination and Promoting Gender Equality* (2008) [11.77].

² Joint Media Release from the Attorney-General, the Hon Robert McClelland MP, and the Minister for Finance and Deregulation, the Hon Lindsay Tanner MP, 'Reform of Anti-discrimination Legislation', 21 April 2010.

We would be very pleased to supplement this submission with oral evidence to the Committee at any public hearings.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rachel Ball', with a stylized, cursive script.

Rachel Ball

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