

The Senate

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Legal and Constitutional  
Legislation Committee

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Provisions of the Sex Discrimination  
Amendment (Teaching Profession) Bill 2004

May 2004

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ISBN 0 642 71389 8

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Parliament House, Canberra

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# RECOMMENDATIONS

## Recommendation 1

**3.102 The Committee recommends that the Bill proceed subject to being evaluated and reviewed after two years as to its effectiveness in addressing the gender imbalance in the teaching profession.**

## Recommendation 2

**3.103 The Committee supports the implementation of additional broader strategies and programs by the Commonwealth Government and state/territory governments in order to address the complex and long-term issues relating to the gender imbalance in the teaching profession.**



## ABBREVIATIONS

AAT	Administrative Appeals Tribunal
ACER	Australian Council for Educational Research
AEU	Australian Education Union
AISV	Association of Independent Schools of Victoria
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEO	Catholic Education Office
DEST	Department of Education, Science and Training
HECS	Higher Education Contribution Scheme
HREOC	Human Rights and Equal Opportunity Commission
IEUA	Independent Education Union of Australia
LIV	Law Institute of Victoria
SDA, the Act	<i>Sex Discrimination Act 1984</i>
VDET	Victorian Department of Education and Training
VIT	Victorian Institute of Teaching
WAEOC	Western Australian Equal Opportunity Commission



# CHAPTER 1

## INTRODUCTION

### **Background**

1.1 On 23 March 2004, the Senate referred the provisions of the Sex Discrimination Amendment (Teaching Profession) Bill 2004 (the Bill) to the Senate Legal and Constitutional Legislation Committee for inquiry and report by 11 May 2004.

### **Purpose of the Bill**

1.2 The Bill amends the *Sex Discrimination Act 1984* (the Act) to permit the provision of scholarships to one gender in relation to school teaching courses in Australia. The purpose of the Bill is to facilitate measures to address the problem of gender imbalance in the teaching profession, in particular the shortage of males in pre-school and primary school teaching, and the effect of that imbalance on the education of boys.

1.3 The proposed amendments will create a permanent exemption in the Act for the allocation of gender-specific scholarships to students in a teaching course, providing the scholarships are to address gender imbalance in teaching.

### **Conduct of the inquiry**

1.4 The Committee advertised the inquiry in The Australian newspaper on 7 April 2004, and invited submissions by 19 April 2004. Details of the inquiry, the Bill and associated documents were placed on the Committee's website. The Committee also wrote to over 50 organisations and individuals.

1.5 The Committee received 17 submissions, including two supplementary submissions, and these are listed at Appendix 1. Submissions were placed on the Committee's website for ease of access by the public.

1.6 The Committee held a public hearing in Sydney on 30 April 2004. A list of witnesses who appeared at the hearing is at Appendix 2 and copies of the Hansard transcript are available through the Internet at <http://aph.gov.au/hansard>.

### **Acknowledgement**

1.7 The Committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

**Note on references**

1.8 References in this report are to individual submissions as received by the Committee, not to a bound volume. References to the Committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

# CHAPTER 2

## BACKGROUND TO THE BILL

2.1 This chapter briefly outlines the scope of the proposed amendments and provides background to the Bill.

### **The scope of the Bill**

2.2 The Bill amends the Act to provide a permanent exemption for the provision of gender-specific scholarships in relation to school teaching courses. The purpose of the Bill is stated to be to address gender imbalance in the teaching profession, in particular the shortage of males in pre-school and primary school teaching, to improve educational outcomes for boys and to provide both boys and girls with suitable male role models.<sup>1</sup> The Bill has arisen largely because of the decision by the Human Rights and Equal Opportunity Commission (HREOC) to decline to grant a temporary exemption from the Act to the Catholic Education Office, Archdiocese of Sydney (CEO).

2.3 Item 1 of Schedule 1 of the Bill inserts a new section 38A in the Act. Proposed section 38A provides that it is not discriminatory for a person to offer scholarships for persons of a particular gender in respect of participation in a teaching course 'if the scholarships are offered in order to redress a gender imbalance in teaching.' Gender imbalance in teaching is defined as 'an imbalance in the ratio of male to female teachers' in schools in Australia, in a category of schools, or in a particular school.

2.4 The word 'person' is defined in section 22 of the *Acts Interpretation Act 1901* as including a natural person, a body corporate and a body politic.

2.5 A 'scholarship' is defined in proposed subsection 38A(2) to include 'assistance or support that is similar to a scholarship.' This definition is intended to avoid an interpretation of 'scholarship' which might artificially narrow the scope of the provision.<sup>2</sup>

2.6 A 'teaching course' is defined in proposed subsection 38A(2) as meaning 'a course of study that leads to a qualification for teaching students at schools in Australia.' This means that educational authorities and others can implement strategies

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1 *Explanatory Memorandum*, p. 2; the Hon Philip Ruddock MP, Attorney-General, *House of Representatives Hansard*, 10 March 2004, p. 25,607.

2 *Explanatory Memorandum*, p. 2.

for encouraging male teachers into the profession in a manner consistent with the Act.<sup>3</sup>

2.7 Proposed section 38A is in gender-neutral language and would permit discrimination in favour of females if a gender imbalance in favour of males were to emerge generally or in a region or sector.<sup>4</sup>

2.8 The existence of gender imbalance in teacher numbers is the only condition the Bill imposes for an exemption to be granted; the amendment proposes that this exemption would be permanent, would apply universally throughout Australia, with no specific mechanism for review. In addition the Bill does not clearly define when a 'gender imbalance' would be considered to be rectified.

### **The first HREOC decision**

2.9 In 2002, the CEO applied for a temporary exemption under section 44 of the Act so that it could offer 12 primary school teaching scholarships over a period of five years that would be available only to male university students. HREOC conducted an inquiry into the CEO's application and handed down its decision not to grant the CEO the exemption in February 2003. In making its decision, HREOC referred extensively to the report on the inquiry into boys and education entitled *Boys: Getting it right* by the House of Representatives Standing Committee on Education and Training.<sup>5</sup>

2.10 HREOC made four findings of fact:

- a significantly higher number of females than males are employed as primary school teachers in Australia;
- the reasons for the gender imbalance are many and complex, but include the status of teachers in the community, child protection issues, and the pay and conditions of primary school teachers relative to other occupations;
- there was insufficient evidence to support a finding that the gender imbalance in the primary school teaching profession is caused by matters, factors or circumstances that might be remedied by the CEO's proposed scholarship scheme; and
- there was insufficient evidence to support a finding that the gender imbalance in the primary school teaching profession will have adverse

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3 *ibid*; the Hon Philip Ruddock MP, Attorney-General, *House of Representatives Hansard*, 10 March 2004, p. 25,607.

4 *Explanatory Memorandum*, p. 3.

5 House of Representatives Standing Committee on Education and Training, *Boys: Getting it right*, Report on the inquiry into the education of boys, Canberra, 2002. The report is discussed further below.

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social or educational effects or will adversely affect school culture or the education of boys enrolled as students in primary schools.<sup>6</sup>

2.11 HREOC also considered that the granting of scholarships to men only could arguably be a breach of subsections 22(1) and 21(2) of the Act. Subsection 22(1) makes it unlawful to discriminate on the grounds of sex in the provision of goods and services (services include 'the provision of grants'). Subsection 21(2) provides that educational authorities should not discriminate on the grounds of a person's sex.<sup>7</sup>

2.12 The Act already contains permanent exemptions from the operation of Divisions 1 and 2 of the Act. Sections 37 and 38 of the Act give broad exemptions to religious bodies and educational institutions established for religious purposes, respectively. However, HREOC considered that these exemptions may not cover the proposed scholarships.

2.13 In recognition of the fact that it may be appropriate to allow discrimination when the purpose behind it is to foster equality and counteract the historical effects of previous discrimination, the Act also contains a permanent exemption for measures which are taken to redress such situations. The special measures provision in section 7D of the Act allows discrimination when it is designed to achieve substantive equality, that is discrimination which would otherwise violate the non-discriminatory principles of the Act.<sup>8</sup>

2.14 HREOC found that the scholarship plan was not designed to redress specific 'practices said to exclude, disadvantage, restrict or result in an adverse effect' upon male primary teachers, nor would the absence of the scheme 'leave uncorrected the effects of past discrimination against [men].'<sup>9</sup> Rather, the plan was designed to redress the gender imbalance in the teaching profession which had arisen for other reasons.<sup>10</sup>

2.15 HREOC was of the view that the decision taken by males not to become teachers is a choice that they make for reasons other than discrimination between male and female teachers. It pointed to the statistical prevalence of males in leadership positions within the profession to indicate that any male/female discrimination in the profession is not functioning in a manner that is contrary to the interests of male

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6 HREOC, 'Sex Discrimination Act 1984 (Cth), Section 44(1), Notice of Rejection of Application for Exemption', [http://www.hreoc.gov.au/sex\\_discrimination/exemption/decision.html](http://www.hreoc.gov.au/sex_discrimination/exemption/decision.html), p. 3 (accessed 29 March 2004).

7 Department of Parliamentary Services, *Sex Discrimination Amendment (Teaching Profession) Bill 2004*, Bills Digest No. 110 2003-04, 25 March 2004, p. 3.

8 *ibid.*

9 HREOC, 'Sex Discrimination Act 1984 (Cth), Section 44(1), Notice of Rejection of Application for Exemption', [http://www.hreoc.gov.au/sex\\_discrimination/exemption/decision.html](http://www.hreoc.gov.au/sex_discrimination/exemption/decision.html), p. 9 (accessed 29 March 2004).

10 Department of Parliamentary Services, *Sex Discrimination Amendment (Teaching Profession) Bill 2004*, Bills Digest No. 110 2003-04, 25 March 2004, p. 3.

teachers. The reasons for the statistical lack of male teachers have to do with choices made not to enter the teaching profession due to, for example, the lack of adequate remuneration for teachers, or the problems with child protection issues or societal attitudes towards teachers.<sup>11</sup>

2.16 HREOC was also required to consider whether the proposed scholarships would be appropriate in light of the objects and scheme of the Act. The Act is not concerned with ensuring equal numbers of the sexes in any particular profession. While the imbalance of male and female teachers may be of concern to various parties, it has not been shown to be the result of discrimination. HREOC found that the scholarships did not address the reasons why men make the choices they make regarding teaching.<sup>12</sup>

2.17 The CEO decided to appeal to the Administrative Appeals Tribunal (AAT) against HREOC's decision.

### **The second HREOC decision**

2.18 Since the introduction of the Bill, new negotiations were held between HREOC and the CEO which resulted in the original application being withdrawn, the appeal to the AAT being discontinued, a new revised application being submitted for an exemption and that exemption being granted by HREOC. Rather than a scholarship scheme involving male-only scholarships, the new application proposed to award 24 scholarships each year for a period of five years to university students studying to be primary school teachers: 12 to be offered to men and 12 to women.

2.19 This proposal took up the suggestion by HREOC in its first decision that the CEO examine ways of offering scholarships 'on a less discriminatory' basis. While such a scheme still involves discrimination on the basis of sex (because gender-determined positions would be prioritised over merit-based selection), its discriminatory impact would be more diffuse. In the first decision, HREOC also endorsed the recommendation in *Boys: Getting it right* that there should be funding for an equal number of scholarships for male and female students.<sup>13</sup>

2.20 In granting the exemption, HREOC commented that it still regarded the need to explore alternative mechanisms to promote male participation in teaching as important, and reiterated its query as to whether the gender of a teacher is vital to good outcomes for students, asserting that the most important consideration is likely to be the quality of the teacher rather than their gender.<sup>14</sup>

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11 *ibid*, p. 4.

12 *ibid*.

13 *ibid*, p. 18.

14 *ibid*.

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## House of Representatives inquiry into the education of boys

2.21 In 2002, the House of Representatives Standing Committee on Education and Training tabled its comprehensive report entitled *Boys: Getting it right*. The inquiry was referred to that Committee in response to growing community concerns about the education of boys. Its aim was to evaluate evidence of boys' educational under-achievement and disengagement from learning as well as strategies being used by schools to address these issues. The Committee made 24 recommendations.<sup>15</sup>

2.22 In its response to the report, the Commonwealth Government accepted the bulk of the Committee's recommendations. More than half of the recommendations were accepted outright and several of the others were given conditional support. Most of those not accepted fell into state/territory areas of responsibility, or were the responsibility of other relevant bodies.

2.23 One of the recommendations that was rejected by the Commonwealth Government was Recommendation 20. This recommendation stated that the Commonwealth should provide a substantial number of HECS-free scholarships for equal numbers of males and females to undertake teacher training. It closely resembles the exemption granted to CEO in the second HREOC decision previously discussed.

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15 *ibid*, p. 17.



## CHAPTER 3

### KEY ISSUES

3.1 The vast majority of submissions and witnesses appearing at the public hearing opposed the Bill. Only four submissions<sup>1</sup> supported the Bill on a conditional basis, insofar as it should form part of a much broader strategy to increase the numbers of male teachers in Australian schools. This chapter discusses the key issues raised, including policy issues behind the Bill and various legal issues.

#### **Policy issues**

3.2 The majority of submissions and witnesses agreed that the issue of gender imbalance in the teaching profession is more complex than the Bill suggests and identified a number of common key policy concerns. Some questioned the assumption that the lack of male teachers, and consequently male role models, impact negatively on the educational outcomes of boys. Another key issue was whether the focus should be on attracting more quality teachers of both genders, rather than just male teachers. The factors that prevent males from being attracted to the profession were discussed widely; there were also commonly suggested alternative resolutions to the imbalance. These policy issues are discussed in detail below.

#### ***Evidence of the lower male teacher ratio***

3.3 In its submission, the Department of Education, Science and Training (DEST) stated that, in 2003, two-thirds of teachers were female; this gender imbalance of teaching staff towards females is significantly greater at the primary school level than at the secondary level. The proportions are similar across government and non-government sectors, although the proportion of male teachers is somewhat higher in non-government schools.<sup>2</sup>

3.4 However, Ms Janet Smith stated in her submission that 'many of the current claims and assumptions about the decline in male pre-school and primary school teachers are inaccurate and misleading',<sup>3</sup> with the statistics revealing 'an extremely complex and uneven picture of decreases and increases over recent decades'<sup>4</sup>. While there has been a significant decline in the number and percentage of male primary

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1 Association Independent Schools of SA, *Submission 3*; Australian Association of Christian Schools, *Submission 6*; Queensland Department of Education and the Arts, *Submission 11*; Association of Independent Schools of Victoria, *Submission 14*.

2 *Submission 8*, p. 1.

3 Ms Janet Smith, School of Education and Community Studies, University of Canberra, *Submission 2*, p. 2.

4 *ibid.*

school teachers employed in government primary schools, the number and percentage of male primary school teachers in the non-government sector has increased slightly.<sup>5</sup>

3.5 Further, while the number of males completing primary school teacher education courses has decreased, the number and percentage of males enrolling in primary school teacher education courses has increased. Although this is a positive trend, any flow-on effect will only be evident in the longer term, due to the fact that the trend is from a very low baseline.<sup>6</sup>

3.6 Several submissions pointed out that, although only a small percentage of primary school teachers are male, the majority of primary school principals and holders of positions of higher administration are men.<sup>7</sup> This means that there is an 'exodus' of male teachers out of the classroom, which perpetuates the gender imbalance in both senior administrative roles and in the classroom. The Victorian Department of Education and Training (VDET) commented on the reversed gender imbalance of women in higher administrative positions within the profession, noting that:

... the Federal Government has not proposed a Bill to address the gender imbalance in leadership positions in primary schools.<sup>8</sup>

### ***Quality of teachers versus gender balance***

3.7 Several submissions<sup>9</sup> argued that evidence-based research both here and internationally suggests that the quality of teacher is far more important than the gender of the teacher. For example, the ACER's submission argued that:

... the ***quality of teaching and learning provision*** are by far the most salient influences on students' cognitive, affective, and behavioural outcomes of schooling - **not teacher gender**.<sup>10</sup>

3.8 Further, submissions stated that to date there is inconclusive evidence of the relationship between the gender imbalance in teaching (especially in pre-school and primary school education) and the educational outcomes of boys.<sup>11</sup> In its submission, HREOC stated that:

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5 *Submission 2*, p. 2.

6 DEST, *Submission 8*, p. 3.

7 See for example Ms Janet Smith, School of Education and Community Studies, University of Canberra, *Submission 2*, p. 2; AEU, *Submission 4*, p. 7; WA Equal Opportunity Commission, *Submission 7*, p. 2.

8 VDET, *Submission 15*, p. 2.

9 See, for example, ACER, *Submission 1*, pp. 1 & 4; AEU, *Submission 4*, p. 2; HREOC, *Submission 16*, pp. 4-5.

10 ACER, *Submission 1*, pp. 1 & 4.

11 See, for example, HREOC, *Submission 16*, p. 4; ACER, *Submission 1*, p. 1; AEU, *Submission 4*, p. 2.

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... there does not appear to be any evidence which demonstrates that the gender imbalance in the teaching profession has a negative impact on the educational outcomes of boys ... research consistently indicates that it is the quality of the teacher (and school curriculum), not the gender of the teacher which makes the difference to the educational outcomes of both male and female students.<sup>12</sup>

3.9 At the public hearing, Ms Patricia Byrne of the Australian Education Union (AEU), concurred in her evidence, stating that:

We are concerned that the focus on men is going to be at the expense of the focus on quality teaching and quality relationships.<sup>13</sup>

3.10 Similarly, Dr Ken Rowe from the Australian Council for Educational Research (ACER) stated in his evidence that:

... it does not matter a hoot whether or not the teacher is male or female; it depends on the quality of the teaching and learning provision in the classroom ... providing teacher training scholarships for persons of one gender is missing the whole point. We want high-quality people regardless of their gender.<sup>14</sup>

3.11 The House of Representatives Standing Committee on Education and Training stated in *Boys: Getting it right* that:

The quality of the teacher is more important than the gender of the teacher ... many teachers recognise the positive effect of the right type of men can have when they work with boys, but the emphasis is on the right type of men.<sup>15</sup>

3.12 In its submission, the AEU added that:

...we want quality teachers first and foremost and we want them to be there with qualities worthy of replication, not simply because they will reinforce gender stereotypes ...<sup>16</sup>

3.13 However, in evidence at the hearing Dr Peter West argued that the presence of male teachers is important, because the relationships between teachers and students are particularly relevant to 'connecting' with boys:

It seems to me that we need males in schools who can deal with this energy and not condemn it. I would like to agree with my colleague Dr Rowe, but I will not. I think that in a very important sense relationships are the key part

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12 HREOC, *Submission 16*, p. 4.

13 *Committee Hansard*, 30 April 2004, p.15.

14 *ibid*, p. 19.

15 House of Representatives Standing Committee on Education and Training, *Boys: Getting it right*, Report on the inquiry into the education of boys, Canberra, 2002, p. 162.

16 AEU, *Submission 4*, p. 3.

of it. The OECD reports I have cited talk about relationships being the No. 1 factor in what makes good schools. Dr Andrew Martin, in his ACT report on boys, also talked about values being caught, not taught—that boys needed to see these masculine values in boys around them.<sup>17</sup>

3.14 It should be noted that the Commonwealth Government itself recognised the importance of the quality of teachers as opposed to their gender in its response to the *Boys: Getting it right* report and, in rejecting Recommendation 20 of the report (see paragraph 2.23), it stated that a scholarship mechanism would be unlikely to make an impact on the gender imbalance in schools. At the public hearing, a representative of DEST explained the reversal of that position by stating that the proposal regarding HECS-based scholarships was:

... about the number, whereas this amendment is quite different. It is ... about allowing all of the employing authorities to offer potentially as many scholarships as they like. It is an enabling provision. It is quite a different approach to scholarships, and that is the difference.

...

... the mechanism is different and therefore the numerical impact would be less extensive than the current amendment would allow.<sup>18</sup>

### ***A matter of career choice by males***

3.15 Several submissions noted that the reason for the lower ratio of male to female teachers is because men choose not to enter the profession, or not to remain a teacher.<sup>19</sup> Some submissions also argued that the Bill would have merit if there was currently discrimination existing against men who want to enter teaching since the purpose of the Act is to remove barriers where there is entrenched disadvantage. However, there is no barrier that prevents men from being able to enrol in teaching courses or to progress within the teaching profession. Submissions argued that there is a smaller proportion of male teachers than female teachers because men choose not to enter the profession for a variety of reasons such as:

- the status of teachers in the community;
- low salaries;
- limited career opportunities;
- concerns about child protection issues; and

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17 *Committee Hansard*, 30 April 2004, p. 24.

18 *ibid*, pp. 32 & 33.

19 See for example: Ms Janet Smith, School of Education and Community Studies, University of Canberra, *Submission 2*; Australian Education Union, *Submission 4*.

- teaching is considered to be 'women's work' and therefore afforded low professional status, lower remuneration and higher degrees of sex role stereotyping.<sup>20</sup>

3.16 The AEU noted that:

Where professions ... have traditionally been dominated by women, and seen as such as the work of "nurturers", that this has not only resulted in low professional status, but equally lower remuneration ...<sup>21</sup>

3.17 The current Minister for Education, Science and Training has responded to this issue by stating that:

There is no higher goal in my portfolio than raising the quality of professionalism and status of teaching.<sup>22</sup>

3.18 The ACER submitted that evidence underpinning the views that teacher status within the community is low, is at best anecdotal; however these views are widely held both inside and outside the profession.<sup>23</sup>

3.19 In his evidence, Dr Ken Rowe from the ACER, said that:

... teaching is seen as a low-paid, low-status, predominantly female occupation. That is bad in anyone's books.<sup>24</sup>

3.20 In its submission, HREOC quoted the Attorney-General, in his Second Reading Speech for the Bill, who commented that:

... research shows that teaching is not an attractive career option for men for reasons including concerns about salary and a perception of a risk of allegations of abusing children in schools.<sup>25</sup>

3.21 The House of Representatives Standing Committee on Employment, Education and Training's report, *Boys: Getting it right*, reiterated the reasons discouraging men from entering the teaching profession as being:

... generally, the status of teaching in the community, salary, career opportunities and child protection reasons.<sup>26</sup>

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20 *ibid.*

21 *ibid.*, p. 3.

22 ACER, *Submission 1*, p. 3.

23 *ibid.*

24 *Committee Hansard*, 30 April 2004, p. 20.

25 See *House of Representatives Hansard*, 10 March 2004, p. 26,369 quoted in HREOC, *Submission 16*, p. 2.

26 See House of Representatives Standing Committee on Education and Training, *Boys: Getting it right*, Report on the inquiry into the education of boys, Canberra, 2002, p. 155.

3.22 The report also noted that once employed, teachers do not keep pace with salary progression and promotional opportunities outside teaching.<sup>27</sup>

3.23 Ms Pam Smith from the Independent Education Union of Australia (IEUA) discussed the child protection issue in her evidence at the public hearing, stating that:

... we are aware that the impact of unfounded allegations [against teachers] can have a devastating effect, people can leave the profession ... that is more marked in the early childhood and primary sector.<sup>28</sup>

3.24 Submissions commonly argued that amending the Act to offer scholarships for males will not remedy any of these issues.<sup>29</sup> The AEU stated strongly that:

The issue of male teacher numbers ... can be remedied much more significantly and longer term by industrial and other promotional means, than by a small number of scholarships and watering down important legislation.<sup>30</sup>

3.25 The Victorian Institute of Teaching (VIT) reinforced this statement, arguing that:

Offering a scholarship will have no impact on these legitimate concerns [of why men avoid teaching as a career].<sup>31</sup>

3.26 Even the few who were in agreement with the Bill stated that if it were to be introduced, the Bill should be part of a package of changes to address the complexity of reasons for the low number of males entering and remaining in the profession, not just a stand-alone measure.<sup>32</sup>

### ***Perceived lack of male role models***

3.27 In its submission, HREOC questioned the widely held assumption that the lack of male role models in schools is directly related to lower educational outcomes for boys. It noted that there is:

... no consensus amongst educational academics as to the validity of this position.<sup>33</sup>

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27 *ibid*, p. 157.

28 *Committee Hansard*, 30 April 2004, p. 3.

29 See for example AISV, *Submission 14*, p. 5; VIT, *Submission 12*, pp. 7 and 8.

30 AEU, *Submission 4*, p. 3.

31 VIT, *Submission 12*, p. 8.

32 See Association Independent Schools of SA, *Submission 3*; Australian Association of Christian Schools, *Submission 6*; Queensland Department of Education and the Arts, *Submission 11*; Association of Independent Schools of Victoria, *Submission 14*.

33 HREOC, *Submission 16*, p. 6, quoting from M Mills, W Martino and B Lingrad, *Issues in the Male Teacher Debate: Masculinities, Misogyny and Homophobia*, Paper presented to the Hawaii International Conference on Education, Honolulu, Hawaii, 7-10 January 2003.

3.28 HREOC noted that the assumption infers that characteristics required to make a 'male role model' are taken from traditional masculinity; however, it has also been widely suggested that such stereotyped masculine behaviours are at the centre of lower educational outcomes for boys. Consequently, employment of more male teachers may not necessarily result in the improvement in educational outcomes being sought.<sup>34</sup>

3.29 A common thread throughout the evidence presented in submissions and at the public hearing was that providing more male teachers will not automatically provide appropriate role models for boys simply because of their gender. Further, while teachers provide essential development, learning, guidance and inspiration for their students, they are not employed to be substitute parents:

If boys need more male role models, attention should perhaps be focused on greater involvement of fathers ... It is unrealistic for male primary teachers to be expected to be role models and father substitutes.<sup>35</sup>

3.30 There was also agreement that the wider perceived social issues of single parent families, absent parents, youth suicide, violence and crime should not be considered the sole responsibility of teachers and schools.<sup>36</sup>

3.31 Like HREOC, the AEU was of the opinion that the issues of the male teacher shortage, the illiteracy rates of some boys and absent fathers/single parent families/male role models have been wrongly linked. It argued that:

... more male teachers ... do not provide automatic 'role models' for boys simply because of their gender, nor has anyone identified what characteristics or 'masculinity' are desired for young boys, let alone what characteristics these boys are said to be lacking.<sup>37</sup>

3.32 Further:

... no argument has been put that the female teachers in schools have *not* successfully acted as role models for girls and boys ...<sup>38</sup>

3.33 The AEU was also of the view that additional male role models are not necessary, due to the:

... preponderance of male models throughout the media, business and society ... Dominant masculinity saturates the world of boys – and girls.<sup>39</sup>

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34 HREOC, *Submission 16*, p. 6.

35 Ms Janet Smith, *Submission 2*, p. 4.

36 See, for example, AEU, *Submission 4*.

37 *ibid.* p. 2.

38 *ibid.*, p. 3.

39 *ibid.*, p. 7.

3.34 In contrast, Dr Peter West, Head of Research Group On Men and Families at the University of Western Sydney, argued that:

Boys' difficulties are entangled with two related issues: better fathering ... and the lack of males in teaching.<sup>40</sup>

3.35 Dr West also argued that:

... it is not so much role models that seems critical here, but males modelling for boys the way in which they can become educated men. ...it is important for boys ... to see ... models of thoughtful men who read and enjoy reading.<sup>41</sup>

3.36 In his evidence, Dr West reiterated statements within his submission that there needs to be more males in schools, as male teachers better understand how boys learn and behave, having been boys themselves.<sup>42</sup> However, under questioning, Dr West agreed that changing the way boys are taught and having more male teachers are two different issues, and that more male teachers may not result in better learning outcomes for boys:

Perhaps I have been a bit inclined to run those things together. I come at this by the work I have done talking to boys, working out what is not working for boys and trying to find the bit that is missing. One of the bits that seems to be missing is more male teachers. It may not be the only bit missing.<sup>43</sup>

3.37 However, Dr West stated that social reasons are just as important as educational outcomes:

... it is not strictly to do with academic outcomes, but with the behavioural side of things ...<sup>44</sup>

### ***Merit-based selection***

3.38 The VIT submitted that an amendment to the Act 'will not address the real causes or the imbalance'<sup>45</sup> of gender in the teaching profession:

The means by which people are encouraged, selected and financially supported to enter the (teaching) profession should be free of gender based stereotypical assumptions ...<sup>46</sup>

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40 *Submission 9*, p. 5.

41 *ibid*, p. 8.

42 *Committee Hansard*, 30 April 2004, pp. 24 & 28.

43 *ibid*, p. 28.

44 *ibid*, p. 29.

45 *Submission 12*, p. 7.

46 *ibid*, p. 7.

3.39 The VIT also contended that many teachers believe that to have a non-merit based entry selection process is demeaning to the profession and an insult to those currently undergoing teacher training, noting that:

... merit principles must continue to underpin entrance into and promotion within, the profession.<sup>47</sup>

3.40 Repeating the concerns expressed in the VIT submission, the VDET concluded that the Committee should:

... support the principles behind equal employment opportunity legislation which ensure that the highest quality merit-based selection occurs for teacher recruitment.<sup>48</sup>

### ***Suggested strategies to improve the gender imbalance in teaching***

3.41 There were suggested strategies in most submissions and by most witnesses for addressing the imbalance in teaching, many with common themes. Most of them echo the suggested strategies for change made in Recommendations 14-21 of the *Boys: Getting it right* report.<sup>49</sup>

3.42 The HREOC submission concluded that gender imbalance is only one part of a far more complex set of issues and, as such, should not be considered in isolation:

... the gender imbalance in the teaching profession is only one of a number of factors which may impact on the educational outcomes of student and cannot be considered in isolation to those other factors.<sup>50</sup>

3.43 In his evidence at the hearing, Dr Ken Rowe from the ACER said that before any changes to legislation were made, he believed there should be more research into the reasons boys and males are not entering the teaching profession, and that a change to legislation should be based on more than anecdotal evidence:

... we do not know enough about middle-to-senior secondary school students' perceptions of and attitudes towards teaching as a career. ... before any amendment is made to a bill, ... we need to know more about this and about the factors that might encourage more able people – regardless of their gender – to enter the teaching profession.<sup>51</sup>

3.44 The ACER's submission also argued that it is vital that the Commonwealth Government pursue initiatives that encourage persons of the 'highest quality',

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47 *ibid*, p. 5.

48 *Submission 15*, p. 4.

49 House of Representatives Standing Committee on Education and Training, *Boys: Getting it right*, Report on the inquiry into the education of boys, Canberra, 2002, pp. xxix–xxx.

50 *Submission 16*, p. 6.

51 *Committee Hansard*, 30 April 2004, p. 19.

regardless of their gender, to enter teaching training and the teacher profession. It recommended that:

... scholarships be made available to **both** males and female persons of high calibre; ensure that they receive high quality teacher education and training; and are subsequently maintained by on-going, strategic professional development.<sup>52</sup>

3.45 In its submission, the Association of Independent Schools of Victoria (AISV) concluded that the solution to gender imbalance in teachers is not as simple as attracting men to teacher training, as the Bill aims to do. The AISV believes that there need to be incentives for men to stay in the class room, rather than be promoted into administrative roles, while women need encouragement to take on leadership roles within the school systems.<sup>53</sup>

3.46 The Commonwealth Sex Discrimination Commissioner reinforced AISV's belief, stating that an effective strategy to ensure more male classroom teachers would be to introduce programs designed to encourage women into senior administrative positions which are currently dominated by men.<sup>54</sup> The Sex Discrimination Commissioner has also argued that:

One of the problems is that male teachers leave the profession mid-career because of poor remuneration or they are promoted out of the classroom to become principals or assistant principals.

Programs to stop this exodus and to encourage the promotion of a representative number of women teachers into administrative positions in schools would result in more male teachers in the classroom.<sup>55</sup>

3.47 In its submission, the VDET outlined strategies it has already implemented to address the gender imbalance and attract the highest quality applicants to fill vacancies in Victorian government schools. VDET are actively promoting teaching as a career, in particular to young males, through marketing campaigns at university and career expos, as well as on its website. In January 2004, VDET introduced the initiative of offering opportunities for non-teaching professionals to undertake teacher training while being employed as a trainee teacher; VDET also offered refresher courses for teachers seeking to return to the profession. Another strategy picks up on the Sex Discrimination Commissioner's suggestion mentioned in paragraph 3.46, aiming to encourage and equip women with leadership potential to access principal class positions.<sup>56</sup>

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52 *Submission 1*, p. 5.

53 *Submission 14*, p. 6.

54 *Media Release*, 9 March 2004, 'Statement on Sex Discrimination Amendment (Teaching Profession) Bill 2004'.

55 P Goward, 'Better Pay would lure more men into schools,' *The Australian*, 11 March 2004.

56 *Submission 15*, p. 4.

3.48 The Queensland Minister for Education's submission stated that, in 2002, Education Queensland launched the *Strategic Plan for the Attraction, Recruitment and Retention of Male Teachers in Queensland State Schools 2002-2005*. This initiative addresses the factors that impact on the recruitment and retention of male teachers within Education Queensland, and promotes teaching as a respected profession. The Minister noted that the plan included a proposal for male teacher scholarships but the Department of Education and the Arts was advised not to proceed with the scholarship scheme due to concerns in relation to discrimination laws.<sup>57</sup>

3.49 The IEUA proposed a number of strategies to address the gender imbalance in order to attract and retain primary school teachers. These included offering more professional and developmental opportunities; offering improved salaries and conditions; appropriate induction and mentoring; making more positive and supportive statements about the complexity and importance of teaching and offering scholarships in equal numbers to male and female secondary school leavers.<sup>58</sup>

3.50 The AEU also supported most of these strategies in its list of suggestions:

... it is their long held belief that to improve teacher satisfaction and hence retention, several factors need to be addressed; these include remuneration; physical conditions; class sizes; work load; appropriate in-service training and having opportunity for study leave and professional development.<sup>59</sup>

3.51 The IEUA told the Committee that it supports activities which aim to encourage men into the teaching profession. At the hearing, Ms Pam Smith stated that:

The Sydney Catholic Education Office reached an agreement with HREOC to provide equal numbers of male and female scholarships. The union supports that. I think we should be looking at a range of strategies, including scholarships ... We need to look at getting into the schools and getting into the universities. When I say 'we', I do not just necessarily mean our union; I mean governments and Catholic and other independent school employers.

A lot of this starts with the students themselves in primary and secondary schools. If you ask a lot of students what they are going to be, probably not a lot these days say they are going into teaching. We need to look at the reasons for that.<sup>60</sup>

3.52 On the other hand, Ms Patricia Byrne of the AEU informed the Committee that:

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57 *Submission 11*, p. 1.

58 *Submission 13*, p. 7.

59 *Submission 4*, p. 3.

60 *Committee Hansard*, 30 April 2004, p. 6.

We do not have a strategy of getting anybody into teaching. Our focus tends to be on students once they go into the colleges or the universities and once they become teachers.<sup>61</sup>

3.53 At the hearing, Dr Ken Rowe from the ACER gave an example of an extensive, long-term strategic program in a number of Scandinavian countries to address the teacher shortage issue.<sup>62</sup> Remuneration is part of the program, with teachers now paid up to 2.5 times higher than their Australian counterparts. As a result, in these countries it is actually harder to get into teaching than medicine or law courses, with a consequential increase in the quality of the teaching staff.<sup>63</sup> These countries have also implemented a scale of salaries for highly accomplished teachers to encourage them to remain in the classroom, rather than have them promoted into administrative roles.<sup>64</sup>

3.54 In evidence at the hearing, a representative from DEST stated that the proposed changes to the Act were 'direct and active'<sup>65</sup> and a 'very targeted way'<sup>66</sup> to address the lack of male representation in the teaching profession but said that it was 'merely one tool'<sup>67</sup> to achieve this.

3.55 The representative from DEST described the Bill as:

... a policy attempt to respond to concerns about how boys are faring in schools and a recognition of the importance of having a balanced representation of genders in teaching, particularly in primary school.<sup>68</sup>

3.56 The representative submitted that the amendment to the Act would translate into more men in the teaching profession:

We have already had indications ... that the flexibility will be taken up by several employing authorities, and in doing so their intake will be progressively more balanced. I am sure that they will be focusing on the primary school area and possibly even on early childhood education. You would expect that, as the teaching staff turned over, the representation would reasonably quickly become more balanced if this flexibility were used.<sup>69</sup>

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61 *ibid*, p. 16.

62 *ibid*, pp. 19 & 21-22.

63 *ibid*, p. 19.

64 *ibid*, p 22.

65 *ibid*, p. 31.

66 *ibid*.

67 *ibid*.

68 *ibid*, p. 30.

69 *ibid*, p. 33.

3.57 The representative also referred to other initiatives currently being pursued by the Commonwealth Government:

... there is the Quality Teacher Program, where about \$169 million goes directly to trying to enhance the status and the professionalism of teachers through professional development and so on. There is \$10 million for the new National Institute for Quality Teaching and School Leadership, which is directly aimed at raising the status of the profession. But this measure, which offers teacher employing authorities, whether they be a state government, an independent system or indeed an independent school, the flexibility to offer gender based scholarships is one mechanism, like those other ones, which hopefully is targeted at increasing the status of the profession.<sup>70</sup>

3.58 The Committee notes that none of these initiatives are targeted in any way to increasing the number of men taking up teaching.

3.59 The general consensus from evidence presented to the Committee was that the Bill is not the appropriate solution to address the gender imbalance within the teaching profession. It was argued that it is merely a short-term solution to a complex set of interdependent issues:

... we believe that amending our sex discrimination legislation is a short-term, quick-fix strategy to a complex and longstanding problem.<sup>71</sup>

3.60 Further:

Seeking an amendment to the Sex Discrimination Act is not ... a desirable course of action to take with respect to addressing a gender imbalance in teaching.<sup>72</sup>

3.61 There was also a belief that the issues raised needed to be addressed via a consistent Commonwealth and state/territory approach in order to resolve them:

It is an issue that needs to be pursued by all employing authorities in conjunction with State and Federal governments. A consistent approach is required.<sup>73</sup>

## Legal issues

3.62 Several submissions and witnesses identified various legal issues raised in the Bill which, in their view, make the Bill problematic, contrary to the objectives of the Act, and potentially in breach of Australia's obligations under international law. In particular, the vast majority of evidence received by the Committee in relation to legal

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70 *ibid*, p. 31.

71 Ms Pam Smith, IEUA, *Committee Hansard*, 30 April 2004, p. 3.

72 LIV, *Submission 10*, p. 3.

73 Australian College of Educators, *Submission 5*, p. 3.

issues emphasised that altering the Act in such a way is highly inappropriate since it does not address and attempt to resolve the complex long-term policy issues in this area.

### ***Inconsistencies with purpose and objectives of the Sex Discrimination Act 1984***

3.63 The VIT and the LIV argued that the Bill may be contrary to the stated objects in section 3 of the Act, which include the following:

- to give effect to certain provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- to eliminate, so far as is possible, discrimination against persons on the ground of sex, in areas such as work and education; and
- to promote recognition and acceptance within the community of the principle of the equality of men and women.<sup>74</sup>

3.64 HREOC submitted that the Bill is inconsistent with the purpose and objectives of the Act since the Act is not aimed at securing equal numbers of men and women in the areas in which it proscribes discrimination.<sup>75</sup> As the Commonwealth Sex Discrimination Commissioner argued at the hearing:

... it appears to have been suggested that the bill allows a form of positive discrimination, which is said to be consistent with the objects of the Sex Discrimination Act ... the Sex Discrimination Act adopts a very careful and confined approach to positive measures. Such measures are permissible only for the purpose of addressing some form of substantive inequality. In contrast, the bill seems to focus on gender numerical imbalance. Moreover, if in a particular case it could be shown that a sex-specific scholarship scheme were truly a measure directed at overcoming substantive inequality, the existing provisions of the Sex Discrimination Act would already give those wishing to provide those scholarships ample room to do so.<sup>76</sup>

3.65 The Commissioner also emphasised that:

... it is important to bear in mind that women as a group have historically been disadvantaged in their participation in public life. In many areas this disadvantage continues. It presents continuing barriers to women's participation in paid employment and leads to the ongoing undervaluation of work performed by women in female dominated professions such as teaching. That undervaluation is often a major disincentive for men to enter and remain in such professions. The central aim of the convention and the Sex Discrimination Act is to redress that historical and continuing disadvantage and remove discriminatory barriers to women's equal

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74 *Submission 10*, p. 1.

75 *Submission 16*, p. 7.

76 *Committee Hansard*, 30 April 2004, p. 8.

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participation in certain areas of public life. Regrettably, the bill is likely to reinforce and compound such disadvantage.<sup>77</sup>

3.66 The VIT argued that:

The Bill challenges the basis of sex discrimination law that has been accepted as providing appropriate protection for 20 years. The existing law has been tested extensively and is a proven instrument when it comes to ensuring equitable opportunities and economic parity when there have been direct and indirect sex discrimination complaints.<sup>78</sup>

3.67 The VIT also made the point that the Bill directly conflicts with the principles of equality adhered to by society. This means that:

In practice, the proposed amendments will enable and activate discrimination on the basis of sex by offering more favourable treatment and economic benefit to one gender, and further ensure that such practices are protected by law.<sup>79</sup>

3.68 The AEU submitted that amending anti-discrimination legislation to allow for positive discrimination and/or short-term exemptions would result in a substantial weakening of the purpose of the legislation.<sup>80</sup> Indeed:

As a legislative process, the proposed amendment to the Sex Discrimination Act, even though the opportunity is created for initiatives for either gender to redress imbalance where it exists, is ... a flawed concept.<sup>81</sup>

3.69 Ms Pam Smith from the IEUA reiterated this view at the public hearing:

... to amend significant sex discrimination legislation in order to address what is a complex social issue with significant historical basis—attitudes and the way the community values teaching—is a simplistic and quick-fix solution to what is an issue which relates to how society values teachers and how men value working with small children.<sup>82</sup>

3.70 The AEU also argued that amending the Act would create 'confusing and oft misapplied justifications for the very discrimination the legislation is set up to outlaw.'<sup>83</sup> Further:

The issue of male teacher numbers and of the teacher shortage in general can be remedied much more significantly and longer term by industrial and

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77 *ibid.*

78 *Submission 12*, p. 4.

79 *ibid.*

80 *Submission 4*, p. 3.

81 *ibid.*, p. 5.

82 *Committee Hansard*, 30 April 2004, p. 2.

83 *Submission 4*, p. 3.

other promotional means, than a small number of scholarships and watering down important legislation.<sup>84</sup>

3.71 The Western Australian Equal Opportunity Commission (WAEOC) also expressed its concern that the Bill would 'undermine the integrity of the Sex Discrimination Act and other similar State and Federal legislation.'<sup>85</sup> The WAEOC pointed out that this proposal would set a precedent, not only in this area, but in other areas where imbalances might occur from time to time. The proposal is of particular concern given that there is no evidence that males aspiring to be teachers are in any way currently facing discrimination in the teaching profession.<sup>86</sup>

3.72 This view was supported by others. For example, Dr Ken Rowe from the ACER stated that:

... it seems to me that in one sense this is opening up a Pandora's box. The Pandora's box is that advantaging people of certain backgrounds in one occupational group because of a perceived gender imbalance which might change over time opens the door for all kinds of subsequent changes to section 38 of the Sex Discrimination Act 1984. That is something which I am sure not just the Senate but the Australian parliament in general, regardless of which government happens to be in power at any one time, wants to avoid like the plague.<sup>87</sup>

3.73 The LIV noted that some universities which have offered female-only scholarships in the past have been able to do so by virtue of exemptions granted under section 44 of the Act, or by virtue of the special measures provision in section 7D of the Act. None of these previous decisions have involved or necessitated amendments to the Act.<sup>88</sup> The LIV submitted that the Bill will 'allow blanket authority for teaching scholarships to be offered on the basis of gender.'<sup>89</sup> Further:

If an amendment was made with respect to gender based scholarships for teaching courses, it would open the floodgates for a compelling argument that similar amendments should be made for the other disciplines/courses where a gender imbalance exists. Such a situation would defeat the entire premise of the *Sex Discrimination Act*.<sup>90</sup>

3.74 Ms Pam Smith of the IEUA contended that there are no structural barriers preventing males from entering and progressing within the teaching profession:

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84 *ibid*, p. 3.

85 *Submission 7*, p. 4.

86 *ibid*, p. 3.

87 *Committee Hansard*, 30 April 2004, p. 20.

88 *Submission 10*, p. 2.

89 *ibid*.

90 *ibid*, pp. 2-3.

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There are attitudes and there are values out there, but there is no active discrimination to say, 'Sorry, we won't let you into the course.' If anything, they want and would welcome men into teaching courses ...

I cannot identify the discrimination that stops them getting in there. A lot of them are not attracted in the first place—it is getting them into teacher training in the first place. There is no discrimination; there is something else that is stopping them. There is no barrier to them getting into the schools. Once they are in and if they stay they are probably on a fast track to leadership.<sup>91</sup>

3.75 Ms Janet Smith agreed with this argument:

Changes to the Sex Discrimination Act would be justified if it could be shown that there are existing barriers to males becoming primary school teachers. This does not currently appear to be the case, as the statistics reveal an increase in the number of males commencing university degrees to become primary school teachers over the past decade. There is also evidence that male primary teachers already receive positive discrimination when applying for jobs, as primary schools are so keen to employ more males.

The major reason why more males do not want to become primary school teachers is because it is perceived as 'women's work'. Changing the Sex Discrimination Act and offering scholarships for males will not change this perception or address any of the disadvantages and problems experienced by male primary teachers.<sup>92</sup>

3.76 Ms Patricia Byrne of the IEU made the point that the provision of male-only scholarships could be a component of a strategy that helps to address some of the underlying social and economic issues in this area, however the Act should not be amended to achieve this:

It could be a component but I will qualify that by saying that we do not believe that there needs to be an amendment to the Sex Discrimination Act for this to happen. It is quite possible to work within the context of the act, as has been indicated, by having scholarships that are not exclusively for men, because there are a whole lot of would-be teachers, male or female, who would benefit from this. If we are talking about the profession in general then we should be encouraging that. So the answer is yes, with the qualification that you do not need an amendment to do it. It is absolutely important to have scholarships as one strategy amongst several others, which we mentioned earlier in terms of salaries, conditions and things like that.<sup>93</sup>

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91 *Committee Hansard*, 30 April 2004, p. 6.

92 *Submission 2*, p. 4.

93 *Committee Hansard*, 30 April 2004, p. 17.

***Specific aspects of the Bill***

3.77 HREOC made some convincing arguments in relation to the breadth and nature of the proposed amendment. The definition of 'gender imbalance in teaching' in the Bill is broadly expressed, meaning that the proposed exemption:

... will operate wherever there is a numerical imbalance between men and women in a particular school, regardless of whether or not there is generally a numerical parity of men and women in the teaching profession in Australia generally. That is, wherever there is an odd number of teachers in a particular school (which necessarily means that there will be more teachers of one sex than the other), the exemption will potentially apply – regardless of the reasons for that disparity. This is an odd result.<sup>94</sup>

3.78 Further, the Bill does not specify any relevant conditions on which the proposed scholarships are required to be offered:

For instance, the Bill does not require that the recipients of the scholarships commit to teaching in Australian schools. Similarly there is no requirement that the recipients of scholarships offered to remedy a gender imbalance in a particular school, commit to working in that particular school ... the absence of any relevant conditions would significantly diminish the prospects of th[e aims of the Bill] being achieved.<sup>95</sup>

3.79 HREOC argued that existing provisions of the Act could be used to allow scholarships to be granted to one gender only and that the approach taken in the Bill is not consistent with the scheme of the Act. The Act aims to promote the fundamental concept of substantive equality which requires a focus on equality of outcomes rather than equality of treatment (different treatment may be required to remedy systemic disadvantage).<sup>96</sup> This is not an affirmative action measure because it is not based upon evidence of a discriminatory barrier disadvantaging members of a particular sex:

This is the case whether the measure is cast as a special measure under s7D of the SDA or as a legislated exception to the SDA as in the case of the current Bill. Consistency with the scheme of the SDA requires that such measures be devised to address a specific and defined substantive inequality.<sup>97</sup>

3.80 Another argument made against the Bill was that it focuses on numerical gender equality rather than attempting to achieve substantive equality. As Mr Craig Lenehan from HREOC stated:

In the context of 7D under the SDA and special measures as permitted under CEDAW, there is a need not simply to look towards the purpose that

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94 *Submission 16*, p. 13.

95 *ibid*, pp. 13-14.

96 *Submission 16*, p. 7.

97 *ibid*, p. 19.

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is to be achieved, which is that of achieving substantive equality, but also a need to look at the means which are adopted to achieve that end. Quotas are generally seen as a particularly blunt instrument of achieving that particular end.<sup>98</sup>

3.81 It was noted that gender imbalance is not always synonymous with substantive inequality:

The fact that there are fewer men or fewer women working in a particular industry, gaining admission to a particular university or course or attaining leadership roles in a particular profession may or may not be indicative of substantive inequality. The real question is whether a particular gender imbalance has arisen by reason of the operation of structural or historical disadvantage or whether, as is often the case in female dominated professions, the imbalance is merely a reflection of the fact that men do not wish to enter into a profession which is comparatively low-paid and of a lower status to other more male dominated professions.<sup>99</sup>

3.82 HREOC also stated that it appears to be envisaged that the amendments proposed by the Bill will primarily operate as an exemption to the proscriptions of discrimination contained in sections 22(1) and 21(2) of the Act (described at paragraph 2.11). In the case of section 22(1), the proposed amendment will operate as an exemption regardless of whether or not the person offering scholarships is an educational authority.<sup>100</sup>

3.83 HREOC expressed the view that, as a general principle, permanent exemptions are undesirable since they conflict with the overall spirit and objects of the Act. Exemptions should be 'extraordinary and as limited in their scope and duration as possible.'<sup>101</sup> The series of exemptions in Part II, Division 4 of the Act are designed to cover only particular sets of circumstances and areas of activity, while maintaining the unlawfulness of acts of discrimination falling between the exemptions. Many of the exemptions are specific to a particular ground or grounds of discrimination.<sup>102</sup>

3.84 Temporary exemptions under section 44 of the Act may be granted by HREOC on application, for a limited period of time and, where appropriate, dependent on certain conditions. HREOC stated that temporary exemptions will rarely need to be granted because the permanent exemptions and special measures provisions

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98 *Committee Hansard*, 30 April 2004, pp. 9-10.

99 *Submission 16*, p. 9.

100 *ibid*, p. 10.

101 Commonwealth Sex Discrimination Commissioner, *Report on Review of Permanent Exemptions under the Sex Discrimination Act 1984*, AGPS, Canberra, 1992, p. 18, quoted in *Submission 16*, p. 11.

102 *Submission 16*, p. 10.

significantly limit the circumstances in which temporary exemptions will need to be sought.<sup>103</sup>

3.85 HREOC noted that, even if the granting of gender specific scholarships could be seen as a means of addressing relevant substantive equality, the special measures provision (section 7D) and the temporary exemption provision (section 44) provide flexibility within the bounds of the Act and 'might more appropriately accommodate the aims underlying the Bill.'<sup>104</sup>

3.86 At the hearing, a representative from the Attorney-General's Department asserted that, in relation to section 7D, this is not necessarily the case:

It is certainly not clear that you could rely on the special measures mechanism. That was the view that the human rights commission took when the Catholic Education Office made their application to it. Therefore, you could not say to people wanting to offer scholarships, 'Simply rely on the special measures provision in the act.' If you want to achieve the policy outcome of allowing scholarships to be offered to encourage more men into teaching then you need a legislated exemption in the act to go along with the existing exemptions in other areas that are already contained within the act.<sup>105</sup>

3.87 Since existing provisions of the Act do not necessarily allow the outcome sought by the Bill to be achieved, it aims to achieve a level of certainty and flexibility in that regard. The representative from the Attorney-General's Department continued:

The special measures provision is directed at circumstances where there is an existing inequality, where there is an existing disadvantage or unfairness to one gender ...

Where ... [it is] some other policy outcome that you are seeking to achieve then the special measures provision is not the answer. That is because the exemptions that are written into the act ... are for cases where the issue is not overcoming some existing disadvantage or unfairness but allowing for some policy outcome that is sought—in this case, the flexibility to offer scholarships ... I might say that it would certainly be open to a lawyer to mount an argument as to why scholarships in some cases could come within special measures, so I am not saying that that debate is closed. But, because there is doubt and it depends on the circumstances, putting it in the act provides that clear flexibility.<sup>106</sup>

3.88 The representative from the Attorney-General's Department also argued that the proposed amendment gives legal certainty about the capacity of educational

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103 *ibid*, p. 11.

104 *ibid*, p. 16.

105 *Committee Hansard*, 30 April 2004, p. 31.

106 *ibid*, pp. 38-39.

institutions to offer male teaching scholarships if they consider such a measure to be a useful strategy:

What this amendment does, as opposed to what the human rights commission appears prepared to accept, is allow you to offer scholarships purely to males without coupling them with an equal number of scholarships to females. That is the difference. One other difference this will make is that through the process by which the Catholic Education Office was able to get the 12 plus 12 scholarships, which took 18 months from the initial application to the ultimate outcome, by legislating a targeted clear exemption in the act the position of education authorities is made clear on the face of the legislation.<sup>107</sup>

3.89 The representative also told the Committee that HREOC has broad review functions in relation to the proposed amendment:

... it has broad powers both for the government to refer matters to it and for it to initiate review. So it would have the capacity to look at how effective this provision had been, whether it had made a difference and whether any unexpected problems of illegitimate discrimination had arisen in the use of the provision.<sup>108</sup>

3.90 The Committee was also informed that the United Kingdom's *Sex Discrimination Act 1975* contains provisions which allow gender discrimination to redress imbalances in professions generally. However, it is not specifically directed at redressing gender imbalances in the teaching profession.<sup>109</sup>

### ***International law obligations***

3.91 The Committee received evidence that the Bill could potentially breach Australia's international law obligations. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the principal international human rights convention dealing with the human rights of women. CEDAW states that:

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women ... the same opportunities to benefit from scholarships and other study grants.<sup>110</sup>

3.92 HREOC argued that the Bill stands to put Australia at risk of breaching all or some of its obligations under CEDAW, in particular, the obligation to ensure men and

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107 *ibid*, p. 39.

108 *ibid*.

109 *ibid*, p. 40.

110 Article 10(d).

women have equal opportunities to benefit from scholarships and other study grants, and that it 'may cause considerable embarrassment to Australia.'<sup>111</sup>

3.93 The VIT and the LIV also argued that allowing educational institutions to offer scholarships to students on the basis of gender will mean that women will be disadvantaged by reduced access to teaching scholarships and related financial benefits. They argued that this will not allow men and women to benefit equally from scholarships and may mean that the Bill contravenes Australia's obligations under CEDAW.<sup>112</sup>

3.94 The Committee is concerned at the impact of piecemeal amendments to the Act on its integrity and its objectives, and the impact on Australia's compliance with its obligations under CEDAW.

### **The Committee's view**

3.95 The Committee notes the concerns expressed in submissions and by witnesses at the public hearing that the Bill represents a simplistic and 'quick-fix' approach to a complex issue. Evidence received by the Committee suggests that there is no structural discrimination against males entering or remaining in the teaching profession. The Committee also notes that there is no evidence to suggest that increasing the number of male teachers will enhance educational outcomes for boys, nor that the perceived lack of role models for boys in schools (and associated behavioural issues) is in any way linked to their educational outcomes.

3.96 Further, the Committee is mindful of evidence indicating that it is the *quality* of teaching and learning provision and not teacher gender that has the most profound impact on scholastic outcomes. The Committee agrees that the disparity between males and females, particularly in pre-school and primary school teaching, is a labour market issue that requires longer term strategic and labour market planning.

3.97 The Committee also notes that the Bill may not be necessary in light of the agreement reached between HREOC and the CEO and the decision by HREOC to grant the CEO a temporary exemption to grant an equal number of scholarships to males and females. The Committee notes advice from the CEO that it did not request any changes to the Act in the form of the Bill<sup>113</sup> and did not take up an invitation to appear before the Committee.

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111 *Submission 16*, p. 18.

112 *Submission 12*, p. 4; *Submission 10*, p. 2.

113 In correspondence to the Committee from Brother Kelvin Canavan, Catholic Education Office, Sydney dated 27 April 2004, *The Catholic Weekly* of 21 March 2004 and the *Catholic School Teachers Newsletter* of 19 March 2004 were provided. These publications stated that, contrary to media reports, the CEO had not requested a change to the Act.

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3.98 The Committee considers that gender-based scholarships may be one component of a broader initiative to attract men into the teaching profession in greater numbers. The evidence presented to the Committee on this point, however, was not extensive or persuasive. The Committee supports the implementation and development of a range of strategies and programs to address such issues as perceptions of the teaching profession and salary levels, and notes that the Bill may represent one such strategy that goes towards increasing male representation in teaching. However, the Committee believes that without a broader range of strategies and programs the Bill is unlikely to be effective.

3.99 The Committee believes that the effectiveness of the amendments should be subject to evaluation and review after two years by the Commonwealth Government.

3.100 The Committee notes the announcement by the Minister for Education, Science and Training, Dr Brendan Nelson, on 3 May 2004 that the Commonwealth Government will commit \$1 million to provide 500 teacher scholarships for men training to become primary school teachers in 2004/2005.<sup>114</sup>

3.101 The Minister also stated that acknowledging the importance of both men and women in teaching and the Commonwealth Government's commitment to encouraging more men into teaching will play an important role in helping change the perceptions about the role of men in the teaching profession.<sup>115</sup> The Committee agrees that the broader social and economic issues underlying the problem of lack of male teachers, particularly in pre-schools and primary schools, need to be urgently addressed. The Committee strongly encourages the Commonwealth Government to address these issues in the longer term, through initiatives such as the Quality Teaching Program, the National Institute for Quality Teaching and School Leadership, and the Boys' Education Lighthouse Schools' Program.

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114 Dr Brendon Nelson, Minister for Education, Science and Training, 'Scholarships for 500 Male Primary Teachers', Media Release, 3 May 2004, p. 1.

115 *ibid*, p. 2.

**Recommendation 1**

**3.102 The Committee recommends that the Bill proceed, subject to being evaluated and reviewed after two years as to its effectiveness in addressing the gender imbalance in the teaching profession.**

**Recommendation 2**

**3.103 The Committee supports the implementation of additional broader strategies and programs by the Commonwealth Government and state/territory governments in order to address the complex and long-term issues relating to the gender imbalance in the teaching profession.**

**Senator Marise Payne**

**Chair**

## **DISSENTING REPORT BY LABOR SENATORS**

1.1 The Labor Senators oppose the Bill. While Labor Senators support the majority report's consideration of the evidence presented in the course of the Committee's inquiry, they are of the view that the appropriate conclusion should be that the Bill not proceed.

1.2 The Bill represents a simplistic and ineffective approach to a very complex policy issue. There is insufficient evidence to show that there is structural discrimination against males entering or remaining in the teaching profession. Similarly, there is no evidence which suggests that increasing the number of male teachers will enhance educational outcomes for boys, nor that the perceived lack of role models for boys in schools is in any way linked to their educational outcomes. Labor Senators are also concerned that the Bill may put Australia at risk of breaching its obligations under CEDAW.

1.3 Evidence brought before the Committee suggests that the lack of males in teaching is caused by factors such as status (or perceived status), salary and career opportunities. Further, evidence strongly suggests that it is the quality of teaching and learning provision and not teacher gender that has the most profound impact on educational outcomes for both boys and girls. The gender disparity between males and females, particularly in pre-school and primary school teaching, is a multifaceted issue that requires long term strategic planning and development.

1.4 There is insufficient evidence to support the need for the Bill, which is of particular concern in light of the serious nature of creating permanent exemptions under the Act. Labor Senators strongly support the important principles underlying the Act in promoting anti-discrimination, and consider that the Bill represents a serious undermining of these principles. Further, Labor Senators are not satisfied that there was any evidence brought before the Committee indicating that males are not entering the teaching profession due to the costs of studying teaching at university. As a consequence, it appears unlikely that the presence of gender-based scholarships will increase the number of male teachers entering the teaching profession, or remaining there in the longer term.

1.5 Labor Senators strongly support the implementation and development of a range of strategies and programs to address such issues as perceptions of the teaching profession and salary levels. In isolation, the Bill will be completely ineffective as a measure to address the problem of gender imbalance in schools and will do little to promote the teaching profession as an attractive career option for males.

1.6 Labor Senators also believe that the Bill is unnecessary, given that the CEO was eventually granted a temporary exemption under the Act. By requiring the CEO to grant an equal number of male and female scholarships, the CEO was given the power to ensure a guaranteed number of males would be given scholarships. This was achieved without undermining the principle of equality that is protected by the Act.

Labor Senators also note advice from the CEO that it did not request any changes to the Act in the form of the Bill and, further, did not take up an invitation to appear before the Committee.

1.7 Labor Senators also note that the scholarship mechanism, as a means of addressing the gender imbalance amongst teachers in schools, was rejected by the Commonwealth Government itself in its response to Recommendation 20 of the *Boys: Getting it right* report. The Commonwealth Government's policy in relation to this issue is far from consistent; its explanation for such a major 'about-turn' in policy is incomprehensible and unsatisfactory.

1.8 There is insufficient evidence suggesting the need for the Bill, nor that the Bill will in any way address the gender imbalance in the teaching profession. In light of this, and in light of the serious precedent created by inserting a permanent exemption of this nature into the Act, as well as the possible breach by the Bill of Australia's international law obligations, Labor Senators recommend that the Bill not proceed.

## **Recommendation 1**

**1.9 Labor Senators recommend that the Bill not proceed.**

**Senator the Hon. Nick Bolkus**

**Senator Joseph Ludwig**

**Deputy Chair**

**Senator Linda Kirk**

# DISSENTING REPORT BY AUSTRALIAN DEMOCRATS

## Introduction

1.1 No evidence has been provided to show that there is any administrative barrier or legal discrimination that is specifically preventing males from becoming teachers. This Bill is therefore a nonsense, designed to remove barriers that do not exist. The Bill cannot in any real or sustained way increase the number of male teachers in our schools, because it does not address the cause of diminishing male teacher numbers. While The Australian Democrats fully support increasing male teacher numbers in schools, and believe that a broad cross-section of the community should ideally be represented in all walks of life, this Bill cannot meet its objective, as the evidence clearly shows that the low numbers of male teachers has nothing to do with the Sex Discrimination Act.

1.2 The evidence shows that men are not taking up teaching in large numbers because:

- It is perceived by many as ‘women’s work’ and not as a serious ‘male’ profession.
- It has comparatively low salary standards, and many men can earn higher wages in other professions.
- There is a widespread concern that males working with children will be vulnerable to false accusations of child abuse, or vulnerable to suspicions of sexual deviance.

1.3 Nothing in this Bill addresses any of these factors.

1.4 The Bill should be opposed, as it is a dangerous precedent to watering down a human rights Act for no valid reason.

1.5 However, if the Bill should proceed, the Australian Democrats support Recommendation (1) of the Committee, that the Bill is subject to evaluation and review after two years as to its effectiveness in addressing the gender imbalance in the teaching profession.

1.6 We also support Recommendation (2) of the Committee regarding the implementation of additional strategies and programs by the Commonwealth and state/territory governments in order to address the complex and long term issues relating to the gender imbalance in the teaching profession

## **Inconsistency with the SDA**

1.7 The *Sex Discrimination Amendment (Teaching Profession) Bill 2004* was drafted in response to the unsuccessful 2002 application to the Human Rights and Equal Opportunity Commission (HREOC) by the Catholic Education Office for an exemption from the *Sex Discrimination Act 1984* (SDA) that would allow it to offer scholarships exclusively to men as a means of addressing the gender imbalance in the teaching profession.

1.8 As the report of the current inquiry highlights, HREOC found that while the gender imbalance may be of concern to various parties, it has not been shown to be the result of discrimination, and consequently, any program offering scholarships exclusively to males could be in breach of the SDA.

1.9 The Australian Democrats share concerns offered by the majority of those appearing before the Committee that the proposed amendments conflict with long-established principles of equality, would have the effect of seriously undermining the purposes and objectives of the SDA, and may be in contravention of Australian obligations under international law.

1.10 Overwhelmingly, evidence to the Committee concurred with the HREOC ruling of the initial CEO hearing, that reasons other than discrimination impact on men's choices about entering and remaining in the teaching profession.

1.11 Discrimination was not found to be a factor given that the number of men enrolling in education courses has increased and disproportionate numbers of men are found in positions of higher pay and authority within the profession. If anything, evidence points to informal positive discrimination occurring in men's favour as schools seek to boost the number of men they employ on their staff.

1.12 Given the weight of this evidence, The Democrats are of the view that the SDA should not be amended in any way that is likely to undermine its effectiveness and never in circumstances where the issues seeking resolve are not themselves based in sex discrimination.

1.13 Further, given a compromise was reached between the HREOC and CEO subsequent to the Bill's introduction, in which it was agreed scholarships could be offered in equal numbers to male and female applicants, the Democrats believe that there is now even less justification for proceeding with the Bill.

## **Inconsistency with the evidence**

1.14 The Democrats note the overwhelming evidence presented to the Inquiry that three main factors appear to be contributing to men's failure to consider teaching as a viable profession – the status of teachers in the community, child protection issues, and the pay and conditions of primary school teachers relative to other occupations.

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1.15 We share the view that amending the SDA is not an appropriate way in which to address these issues, and consequently, the Bill will not, and can not effectively meet its aim. We fail to see how an exemption under the SDA that allows scholarships to be offered exclusively to men will have any impact whatsoever on status, pay and conditions and fears about child protection issues.

1.16 The Australian Democrats further note the overwhelming evidence presented to the Committee that it is a teacher's skill, quality and methods, rather than gender, that determines his or her efficacy in teaching both female and male students.

1.17 We are concerned that any shift away from merit based selection is a retrograde step. We believe prospective teachers should be accepted into courses of study and employment on the basis of capacity rather than gender, and that a failure to adhere to this basic principle will lead to a gradual erosion of teachers' skill and expertise, in favour of unsubstantiated and otherwise refuted claims regarding the importance of gendered role models.

1.18 The Australian Democrats wish to draw attention to evidence provided by HREOC and the Australian Education Union (AEU) in relation to a perceived lack of male role models, particularly to the extent that definitions of "appropriate" male role modelling are assumed to be drawn from stereotypical constructions of masculinity.

1.19 The Democrats have previously highlighted the view that arguments in support of role models of a particular gender often rely on stereotypical definitions of masculinity and femininity, and that that these definitions themselves are often based in sexism and homophobia.

1.20 The Democrats acknowledge evidence provided to the Committee that the reinforcement of stereotypical gender roles and masculine behaviours may itself be contributing to poor learning outcomes for boys, and that expectations upon male teachers to provide ill-defined masculine role-modelling may add further tension to their teaching role, especially within the broader social context in which teaching is viewed.

1.21 Evidence presented to the Inquiry has highlighted the widely-held view that teaching is seen as women's work, and that men seeking to engage in it are often assumed to be homosexual (for working with women) or paedophiles (for working with children, with the two often being conflated).

1.22 The Democrats note with interest that although fears regarding child protection issues were consistently raised as one of the three core issues impacting on men's decision to enter or remain in teaching, little space was given to exploration of the issue and possible strategies to address it, in either the Committee hearing or report.

1.23 It is with further interest that we note the impetus for the Bill was an application to HREOC by the CEO, yet the Catholic Church continues to link homosexuality with paedophilia and deny employment to gay men in education through its successful pursuance of exemptions in state-based anti-discrimination legislation and federal workplace relations legislation that allows it to discriminate against men (and women) in employment and education on the basis of sexuality.

1.24 The Democrats are of the view that national anti-discrimination legislation to outlaw discrimination on the grounds of sexuality and gender, removal of exemptions to religious organisations that are based upon and reinforce the link between homosexuality and risk to children, and anti-bullying programs in schools that target fear of difference especially in relation to sexuality and gender rigidity would constitute an effective policy response to some of the issues regarding boys learning and attracting and retaining men to the teaching profession.

1.25 Finally, the Australian Democrats are concerned that as the average age of teachers continues to rise, as does the demand for new teachers, increasing numbers of applicants applying to universities are unable to secure places or afford fees. The Democrats are of the view that the Federal Government must respond to these issues to ensure the future supply of highly skilled and qualified teachers, regardless of their gender.

### **Recommendation 1**

**The Australian Democrats recommend that the Sex Discrimination Amendment (Teaching Profession) Bill 2004 not proceed.**

### **Recommendation 2**

**The Australian Democrats support Recommendation 2 of the Committee that additional strategies and programs be implemented by the Commonwealth and state/territory governments in order to address the complex and long term issues relating to the gender imbalance in the teaching profession.**

### **Recommendation 3**

**The Australian Democrats recommend that as a starting point, MCEETYA in conjunction with key stakeholders, develop a consultative mechanism to engage men already in the teaching sector, to identify and develop strategies to attract and retain men to the profession.**

### **Recommendation 4**

**The Australian Democrats recommend that the Federal Government in conjunction with the States/Territories take immediate steps through an**

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**appropriate forum to fully investigate and respond to issues raised in this Inquiry relating to status, pay and conditions for all teachers.**

#### **Recommendation 4**

**The Australian Democrats recommend that the Federal Government immediately review university funding for education places and costs to students of participation in education courses, to remove barriers to entry for prospective students.**

#### **Recommendation 5**

**The Australian Democrats recommend that the Federal Government amend the Workplace Relations Act and State/Territory Governments amend anti-discrimination legislation that provides exemptions to religious organisations in the areas of employment and education.**

#### **Recommendation 6**

**The Australian Democrats recommend that the Federal Government support passage of the Sexuality and Gender Identity Discrimination Bill 2004.**

#### **Recommendation 7**

**The Australian Democrats recommend that the Federal Government fully fund anti-bullying programs through the National Safe Schools Framework that incorporate and specifically target bullying on the grounds of sexuality and gender identity.**

**Senator Brian Greig**



# **APPENDIX 1**

## **SUBMISSIONS RECEIVED**

- 01 Australian Council for Educational Research
- 02 Ms Janet Smith
- 03 Association of Independent Schools of South Australia
- 04 Australian Education Union
- 05 Australian College of Educators
- 06 Australian Association of Christian Schools
- 07 Western Australian Equal Opportunity Commission
- 08 Department of Education, Science and Training
- 08A Department of Education, Science and Training
- 09 Dr Peter West
- 10 Law Institute of Victoria
- 11 Queensland Minister for Education
- 12 The Victorian Institute of Teaching
- 13 Independent Education Union of Australia
- 14 Association of Independent Schools of Victoria
- 15 Victorian Department of Education and Training
- 16 Human Rights and Equal Opportunity Commission
- 16A Human Rights and Equal Opportunity Commission
- 17 Attorney-General's Department

**Correspondence published by the Committee**

Fax from Brother Kelvin Canavan, Executive Director of Schools, Catholic Education Office, Sydney dated 27 April 2004, containing extracts from *The Catholic Weekly* of 21 & 28 March 2004 and the *Catholic School Teachers Newsletter* of 19 March 2004

## **APPENDIX 2**

### **WITNESSES WHO APPEARED BEFORE THE COMMITTEE**

**Sydney, Friday 30 April 2004**

#### **Independent Education Union of Australia (IEUA)**

Ms Pam Smith, Member of IEUA Council and Women's Committee

#### **Human Rights and Equal Opportunity Commission (HREOC)**

Ms Pru Goward, Commonwealth Sex Discrimination Commissioner

Ms Sally Moyle, Director, Sex Discrimination Unit

Mr Craig Lenehan, A/g Director, Legal Section

#### **Australian Education Union (AEU)**

Ms Patricia Byrne, Federal President

Ms Catherine Davis, Federal Women's Officer

#### **Australian Council for Educational Research (ACER)**

Dr Ken Rowe, Research Director

**Dr Peter West, Head, Research Group on Men and Families, University of  
Western Sydney**

**Attorney-General's Department**

Dr Karl Alderson, A/g Assistant Secretary, Human Rights Branch

Ms Alice Ling, Senior Legal Officer, Human Rights Branch

**Department of Education, Science and Training (DEST)**

Ms Lisa Paul, Deputy Secretary

Dr Trish Mercer, Branch Manager, Quality Schooling Branch, Schools Group