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No. 110 2003–04

Sex Discrimination Amendment (Teaching Profession) Bill 2004

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

Bills Digest
No. 110 2003–04

Sex Discrimination Amendment (Teaching Profession) Bill
2004

Kirsty Magarey
Law and Bills Digest Group
25 March 2004

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Sex Discrimination Amendment (Teaching Profession) Bill 2004

Date Introduced: 10 March 2004

House: House of Representatives

Portfolio: Attorney-General

Commencement: On Royal Assent

Purpose

To amend the *Sex Discrimination Act (1984)* (the Act, SDA or the Sex Discrimination Act) to provide a permanent exemption for the provision of gender specific scholarships which can be offered to students in a teaching course. These scholarships must be designed to address gender imbalance in teaching.

Background

Basis of policy commitment

The Bill now before the House is largely in response to a decision by the Human Rights and Equal Opportunity Commission (HREOC or the Commission), which refused to grant an exemption from the Sex Discrimination Act to the Catholic Education Office of the Archdiocese of Sydney (the Sydney CEO) (the first HREOC decision).¹

This Digest examines the first HREOC decision in detail and then looks at the timing and political context of the development since then. It considers the anti-discrimination jurisprudence around affirmative action and special measures, as well as the statistical and social situation of male teachers in the schooling system. It looks at different solutions to the perceived problem that have been suggested by different parties.

The Digest also examines a subsequent decision of HREOC to grant an exemption to the Sydney CEO for 12 teaching scholarships for men and women respectively (the second HREOC decision). It also examines the differences between the proposed Bill and the outcome of the second HREOC decision.

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Summary of the first HREOC decision

In February 2003 the then President of the Human Rights and Equal Opportunity Commission, Professor Alice Tay, gave notice to the Sydney CEO that their application for an exemption from certain provisions of the SDA had been refused. The Sydney CEO had applied for an exemption from the SDA so they could offer male-only scholarships to student teachers for a period of five years. The students were to be students of primary school education. While the application was for a five year exemption, the Sydney CEO said the provision of male-only scholarships might form part of a longer term strategy to encourage males into primary teaching. They commented that the impact of the scheme may not be immediate, but were hoping there would be a flow-on effect once the scholarships were advertised in the first year.²

The Commission conducted an inquiry into the CEO's application and received 11 submissions (5 supporting the exemption³ and 6 opposing it⁴). In making its decision the Commission also drew on the report by the House of Representatives' Standing Committee on Employment, Education and Workplace Relations *Boys: Getting it Right* (*Boys: Getting it Right* report)⁵ and on material supplied by the Sydney CEO and on various statistical sources.

The Commission made four findings of fact:

- there are more women than men primary school teachers in Australia
- the reasons for the gender imbalance are varied, but include
 - the status of teachers in the community
 - child protection issues
 - the pay and conditions of primary school teachers relative to other occupations
- there was insufficient evidence that the proposed scholarships would address the problem, and
- there was insufficient evidence that the gender imbalance was adversely affecting children.

The legal reasoning relied on when refusing the application for an exemption included the findings set out below. It should be kept in mind that the Commission was not required to determine definitively whether the proposed scheme is covered by the SDA, whether it could be the subject of a permanent exemption under the SDA and whether it falls within the SDA's definition of a special measure, but only to resolve these issues to its own satisfaction before deciding whether to grant an exemption.

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Male-only scholarships would probably breach the Act

The supply of the proposed scholarships would, arguably, be a breach of the SDA, in particular subsection 22(1), which makes it illegal to discriminate on the grounds of sex in the provision of goods and services (services include ‘the provision of grants’). Subsection 21(2) may also be violated by the proposed scheme, since it deals with educational authorities and specifies they should not discriminate on the grounds of sex.

Male-only scholarships are probably not covered by the permanent exemptions

There are already, within the SDA, some pre-existing permanent exemptions. Two of these (sections 37 and 38), give broad exemptions to religious bodies and the educational institutions that they establish. Nevertheless these exemptions do not, arguably, cover the proposed scholarships. Section 37 covers questions of ordination and the conduct of religious observances and practices and, along with section 38 (educational institutions established for religious purposes), cover practices which are necessary to ‘avoid injury to the religious susceptibilities of adherents of [the] religion or creed.’ HREOC’s finding, i.e. that the permanent exemptions do not cover the scholarships, depends, in part, on the difficulty of arguing that the offering of the proposed scholarships would be necessary to avoid injury to the religious susceptibilities of Catholics. HREOC’s conclusion also hangs on the limited nature of one of the exemptions offered to educational institutions (the relevant subsection⁶ does not exempt sex discrimination, it only exempts marital status and pregnancy discrimination).

Male-only scholarships do not fall within the ‘special measures’ provisions

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 SDA includes a permanent exemption for measures which are taken to redress such situations. These special measures allow discrimination when it is designed to achieve substantive equality – discrimination which would otherwise violate the non-discriminatory principles of the SDA. The Commission took a broad reading of the provision, drawing on a principle from an earlier case that says a body seeking to rely on this exemption need not establish in full the likely success or suitability of their program, so long as they have a genuine belief in the efficacy of their special measure and that their belief is reasonable.⁷ Nevertheless the Commission 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].’⁸ Rather the plan was designed to redress the gender imbalance in the teaching profession, which the Commission found had arisen for other reasons.

In essence, the Commission found 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

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teachers. Indeed the Commission pointed to the statistical preponderance 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 male teacher's interests. The Commission concluded that the reasons for the statistical lack of male teachers have to do with choices that are made not due to discrimination against men but for reasons such as those outlined in the Commission's initial findings of fact (i.e. choices men make not to enter the teaching profession due to, for instance, the lack of adequate remuneration for teachers, or the problems with child protection issues or societal attitudes towards teachers).

The Commission went on to consider whether it could be said in the alternative that the special measures are designed to redress discrimination experienced by boy students as opposed to girl students, due to the lack of male teachers. It concluded that while there is evidence that boy students are not doing as well as girl students in various fields, there is insufficient evidence to show that this problem is due to the lack of male teachers (see further 'Masculinity in primary schools' below, p. 10).

Finally the Commission is required to consider whether the proposed scholarships would be appropriate in light of the objects and scheme of the SDA. The Commission points out that the SDA is not concerned to ensure equal numbers of the sexes in any particular profession. While the imbalance of male/female teachers may be of concern to various parties, it has not been shown to be the result of discrimination (unlike, for instance, the situation in Western Australia, where a temporary exemption was given to redress the historical discrimination that women had faced in gaining senior positions within the WA Department of Education. While it was predominantly this past discrimination which supported the exemption it was taken into account that the exemption would benefit students). The Commission points out again that the reasons men do not enter the teaching profession have not been shown to include difficulty with funding or entering their teacher training. Consequently the Commission concludes that the scholarships do not address the reasons (as outlined above) why men make the choices they make regarding teaching.

The Commission draws on the *Boys: Getting it Right* report, which recommended that equal numbers of male and female scholarships be granted (a recommendation rejected by the government, see more at p. 17) to argue that less discriminatory schemes are possible. The Commission suggests that such a scheme could nevertheless serve to encourage men into the teaching profession and should be considered by the Sydney CEO rather than allowing it the exemption applied for. Such a scheme still involves discrimination on the basis of sex (in that gender determined positions would be prioritised over merit-based selection), but its discriminatory impact would be more diffuse. (See below 'Further developments – the second HREOC decision', p. 18)

Having come to this conclusion the Commission goes on to explore the issue of how their decision may impact on boy and girl students. They explore one submission that suggests boys benefit from having male teachers but also note that the conclusion in the *Boys*:

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Getting it Right report is that ‘the quality of the teacher is more important than the gender of the teacher.’⁹ The submissions made to the Commission also argued that ‘the assumption of a relationship between teacher gender and student outcomes is unverified’¹⁰ and it concluded there was insufficient evidence before it to support a finding that the gender imbalance in the primary teaching profession will have adverse social or educational effects or will detrimentally affect school culture or the education of boys enrolled as students in primary schools.¹¹

The political context

Timing

The Government has moved quickly to draft and introduce this legislation. The Bill to reverse the effects of the decision by HREOC was introduced into the House on 10 March 2004 and was debated in the House in the week beginning 22 March 2004. This legislative timetable gives a higher priority to this Bill than other Bills seeking to amend the SDA. As an illustration of comparable timeframes: the last amendments made to the SDA were in response to a report by HREOC.¹² The HREOC Report was delivered in June 1999,¹³ with the Government Response being delivered in November 2000, some 17 months later. The Bill was introduced in February 2002 and was assented to in October 2003. In this instance the legislative response took more than 4 years to come to fruition.

According to press reports, at the time the Bill was introduced the Sydney CEO was ‘just preparing [its] appeal (to the Administrative Appeals Tribunal against HREOC’s decision).’¹⁴ According to the same reports the director of schools for the Sydney Archdiocese, Brother Kelvin Canavan, said ‘We hadn’t asked Canberra to do anything: I was taken quite by surprise by their announcement.’¹⁵ Brother Canavan was also reported as being unsure whether the appeal would go ahead in light of the government’s announcement.¹⁶ A HREOC press release dealing with the Bill commented that it was ‘hasty’ and also raised the question of the proceedings before the Administrative Appeals Tribunal, simply saying:

The Bill raises issues which are currently the subject of proceedings before the Administrative Appeals Tribunal in the matter of Catholic Education Office v Human Rights and Equal Opportunity Commission.

These proceedings seek to review the Commission’s decision to decline to grant a temporary exemption to the Catholic Education Office to offer scholarships earmarked for male student teachers under s 44 of the Sex Discrimination Act 1984 (Cth). It is not appropriate for the Commission to comment on those proceedings.¹⁷

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A highly charged issue

The introduction of the Bill and the announcement by the Opposition, Democrats and others that they would oppose the Bill has been the trigger for some acrimonious commentary.

From those in favour of the Bill has come comments largely focussed on the ideological nature of opposition to the Bill. For instance, the Minister for Education, Science and Training, Dr Nelson, is quoted as saying ‘[o]pposition to the legislation is ‘political correctness’¹⁸ and ‘[i]t will do this country no good if we spend the next decade hand-wringing and clinging to misplaced and well-guided ideological purity if we produce a generation of young men who are disengaged...’.¹⁹ The Prime Minister said this ideological focus shows that ‘[t]hose who have a zealous commitment to the Sex Discrimination Act have more power in the Labor Party than those concerned about male role models for boys.’²⁰

Dr Nelson is quoted as saying ‘most of us have had an absolute gutful of people that are trying to frustrate the application of common sense,’²¹ while Mr Howard has commented the Labor Party’s position was ‘the triumph of narrow ideology over commonsense.’²²

From those opposed to the Bill has come the proposition that the government’s approach is a ‘quick fix that will not work,’²³ and the accusation that the scholarships are part of a ‘chauvinistic agenda.’²⁴ Mr Latham observed that ‘[i]n public policy you never want to have to use a sledgehammer to crack a nut...’. Furthermore, said Mr Latham, the scholarship proposal was ‘just a drop in the ocean, you need thousands of extra men in our schools to make a real difference on this crisis of masculinity.’²⁵

A Queensland Union concluded that the scholarships were ‘an exercise in superficiality and pure tokenism’ and also that the legislation was ‘a simplistic and shallow move.’²⁶ The Australian Education Union is reported as saying, similarly, that the proposed changes were ‘simplistic and short-sighted.’²⁷

The crisis in masculinity?

Mr Latham appears to have had an on-going interest in what has been referred to as the ‘crisis in masculinity.’ Before he became Leader of the Opposition he sought to highlight the ‘lack of male role models and mentoring,’²⁸ identifying the ‘loss of male teachers in our primary schools’ as being of particular concern. Upon becoming the Leader of the Opposition his concerns in this area continued to feature prominently, forming part of his initial speech to the National Press Club²⁹ and in early media interviews.³⁰

While discussing this Bill several senior members of the government have commented on Mr Latham’s position. Mr Howard has made comments both in the House:

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The reality is that the Leader of the Opposition, having run around the country and expressed his concern about male role models, being presented with an opportunity to do something practical, has run away from that,³¹

It is one thing to talk the talk. It is one thing to run around the country for three months and profess your concern for the fatherless boys of Australia. But it is another thing, when you have got an opportunity to put your hand up and do something for them, to not do so... On this occasion, the Leader of the Opposition has failed his own rhetoric. For three months he has regaled the Australian nation with his concern about the need for male role models but, when he gets an opportunity to actually do something, he fails the test. He comes at the bottom of the class.³²

and in the media:

Their leader has talked endlessly about helping boys...This is the first opportunity he's had as leader of the Labor Party to put his hand up for something that will help address the crisis in the shortage of supply of male teachers in our schools...This is a triumph of ideological obsession with not changing a word of the Sex Discrimination Act, over common sense. [Mr Latham] talked the talk. But when it comes to doing something, he won't support us. The Labor Party places a greater priority on not changing a single comma in the Sex Discrimination Act than it does in helping boys who need a male role model.³³

Other senior figures have added their reflections. Mr Anderson, the Deputy Prime Minister commented that Mr Latham has gone from 'Mark the Mentor' and 'Mark the Lionheart' to 'Mark the Mouse,'³⁴ and Dr Brendan Nelson, the Minister for Education, Science and Training, has said 'Mark Latham, who has been speaking about the so-called crisis of masculinity, is now not prepared to undertake what is a perfectly reasonable measure to try and get more men in front of our sons and daughters in primary school.'³⁵

The ALP's response to these attacks are summarised in Jenny Macklin's comments:

It is terrific that Mark has really elevated this issue and I just say to John Howard, I know you're trying to catch up with Mark Latham but if we've got a serious problem, let's get serious about addressing it... This is an issue that requires a substantial solution, not just a quick fix by the Prime Minister, who's clearly rattled by Mark Latham raising this issue. Let's deal with the issue seriously and make sure that we can improve the education of boys where it's needed.³⁶

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Special measures/affirmative action

Senator Harradine, an Independent Senator, is reported to have commented about the Bill:

If we can support affirmative action programs to get women into positions where they are under-represented, why not adopt affirmative action principles to encourage men into teaching positions?³⁷

This question raises one of the central questions addressed by HREOC and needing to be addressed when considering the Bill... ‘when is it appropriate to introduce discriminatory measures which may achieve a desirable social purpose?’ One of the points made by the Commission is that special measures are generally designed to redress the effects of historical discrimination and/or the generally disadvantaged position of a particular gender. The Commission found that in this case men had not experienced discrimination in their choices about entering or not entering the teaching profession, and were not directly disadvantaged... rather they chose not to enter the profession because it is insufficiently remunerated or respected, or because of the societal problems caused by issues raised by child protection. Consequently, according to the traditional principles of anti-discrimination law, it would be inappropriate to offer men a gendered advantage over women.

Both in its decision refusing the application for an exemption and in its subsequent comments through Ms Pru Goward, the Sex Discrimination Commissioner, HREOC has made it clear that it believes affirmative action programs are inappropriate in this context. On the one hand Pru Goward has called into question the wisdom of affirmative action for either gender, asserting her belief that the ‘merit principle’ should be given primacy,³⁸ commenting:

... it’s just that whole issue of fairness and how we reward merit. Australia has always prided itself on the merit principle, and I’m sticking to it. You wouldn’t be surprised if a lot of other people thought this was not fair to them, to their daughters and to their interest, and why have we had to do this before we’ve explored some other options?³⁹

On the other hand Pru Goward has also sought to draw attention to the generally less privileged position of women in Australian society and the consequences that would follow if the principles embodied in the Bill were to be consistently applied:

...if that is the way forward, then the government should immediately introduce programs that pay a premium to women who enter parliament or seek positions as executive board members, university professors, surgeons, engineers, senior military officers or judges, where women are still disadvantaged and are seriously underrepresented. Women and girls need role models too.⁴⁰

The Commissioner has also pointed out that given the statistical imbalance which can be seen in the promotion of male and female teachers into administrative positions (whereby

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a proportionately greater number of men than women are promoted) an effective way to ensure more male classroom teachers would be to introduce programs designed to encourage women into those senior administrative positions.⁴¹

The Democrat's schools spokeswoman, Senator Lyn Allison, also reflected on these matters when she said it was unfair to give men advantages in female-dominated careers when the same was not being done for women in male-dominated industries.⁴²

The question of what constitutes affirmative action could in part explain the difference in perspective between Senators Harradine and Allison. On the one hand there are forms of affirmative action which require the approval of the Commission under the Act, and on the other there are schemes which could fall under the special measures provisions which would not need to be approved by the Commission. The Commission has not granted any 'meaningful' temporary exemptions since 1993. The exemptions that have been granted have, in a sense, been uncontroversial and not the product of schemes designed to offer gender specific financial assistance. Exemptions have been granted, for instance, to Departments which need time to develop alternative policies to deal with the introduction of the prohibition on marital status discrimination, or to allow for regulations under civil aviation (for instance preventing women who are in late pregnancy from flying) or more recently to allow for the institution of a gender and age specific scheme to cater for female and younger asylum seekers at Woomera. A table of the exemptions granted is attached to this Digest.

Schemes which might fall under the special measures provision in the SDA would not need to be approved by HREOC so it is more difficult to gather data on whether they are being pursued. Interestingly *Australia's 4th and 5th Reports on the Convention on the Elimination of all forms of Discrimination Against Women* included data on programs designed to promote women working in non-traditional areas. While the Report was published in 2003 the programs referred to finish in 1999. It is unclear whether this cessation represents an ending of such programs generally or whether the limitation is simply because the data in the Report is limited.

The international instrument that underlies the SDA is the United Nations *Convention On The Elimination of All Forms of Discrimination Against Women*. Unlike the SDA, the Convention is not gender neutral in its prohibition against discrimination, focussing specifically on eliminating discrimination against women because, as the Committee which has oversight of the Convention comments, 'the Convention focuses on discrimination against women, emphasizing that women have suffered, and continue to suffer from various forms of discrimination because they are women.'⁴³ While it might be a fruitless debate, given the government has ruled out participation in a complaints mechanism under CEDAW, it would nevertheless be interesting to examine whether the provision of male-only scholarships could be said to breach the Convention. While the language of the proposed amendment is phrased in gender-neutral language, monitoring the Convention requires that the practical realities, the context and the effects of legislation should be examined.

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Pru Goward has sought to highlight the fact that women in Australian society still bear the brunt of discriminatory behaviours.⁴⁴ The government also recognises that as a general rule it is women who are in a marginalised position – for instance its Report on *Women in Australia* points out ‘[w]omen continue to earn substantially less than men,’ and, more specifically, the Equal Opportunity for Women in the Workplace Agency comments:

[W]hile women make up 45 per cent of the Australian workforce, they still earn only 84 cents for every dollar men earn, and that while women now account for 50 per cent of management and commerce graduates, they occupy less than nine per cent of senior management and board positions in the country’s top 200 listed companies.⁴⁵

Another feature of Australian workplaces is that ‘Australia has a highly gender segmented workforce.’⁴⁶ This has been identified by the government as an area of concern,⁴⁷ and questions have been raised with respect to this Bill about what precedent will be established for the treatment of other gendered professions.

The Prime Minister has not generally appeared to be a strong supporter of affirmative action. He commented during the debate on the passage of the original SDA that:

In deciding to vote for the third reading of the Bill, I should say I certainly have major reservations about the concept of affirmative action legislation and I certainly do not regard support of this legislation as being indicative of support for that.⁴⁸

More recently he said:

I do have a comment on the affirmative action. I think that affirmative action rules are insulting to women. I think quotas are patronising to women and most women I know who are interested in politics don’t want the patronising existence of quotas. They want to get there on their own merit.⁴⁹

Boys and male teachers in schools

Masculinity in primary schools

The fact that there are few male teachers in primary schools is not in contention. Australian Bureau of Statistics (ABS) schools data indicate that in the last ten years the proportion of male primary school teachers declined from 25.6 per cent in 1993 to 20.9 percent in 2003. This decline has affected government schools more than non-government schools, with the proportion of male primary teachers in government schools declining from 26.7 per cent in 1993 to 21.1 per cent in 2001, a decline of 5.6 per cent. The decline of male primary school teachers in non-government schools was only 1.7 per cent. Within the non-government sector there is a significant variation in the proportion of male primary school teachers, with Catholic schools having the lowest proportion overall and independent schools the highest.

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This phenomenon is not exclusive to Australia. In 2001 in all OECD countries for which data was available, primary school teachers were predominantly female (64 per cent or higher).⁵⁰ Australian data was not included in the OECD analysis. However, using ABS data, 78.7 per cent of primary school teachers in Australia in 2001 were female, virtually the same as the 2001 OECD country mean of 78.6 per cent.

The other issue that is not the subject of contention is that boys are facing problems within the schooling system. The *Boys: Getting it Right* report⁵¹ identified this as an issue, and more recently the Minister for Education, Dr Nelson, highlighted the matter:

The situation in Australia at the moment is that boys, particularly in adolescence, are not doing as well in education, particularly in basic literacy, as they were 35 years ago. Further, the problem is not so much that girls are staying on to year 12 and doing much better than boys in year 12; the problem is much more that boys are represented more than two to one in the bottom 25 per cent of performance at school.

Boys are falling behind girls some three to four percentage points in operational literacy right throughout the assessed cognitive curriculum from early primary to late secondary school. If you add to that that boys represent 80 per cent of all schoolchildren in school disciplinary programs and close to 100 per cent of those expelled from school, that they are more likely to be involved in drug related incidents and in assault and that they are three times more likely to die in a motor vehicle accident and five times more likely to take their own lives, it is obvious that our country has a problem.⁵²

In HREOC's decision refusing an exemption for the Sydney CEO, it concluded there was insufficient evidence that boys were suffering due to the lack of male teachers. An element of this conclusion involves questioning the extent of the educational problems faced by boys, pointing out that, at a national level the gender gap in results in Year 3 Literacy Benchmark tests for 1999 was 4.1 per cent in favour of girls, and in Year 5 it was 5 per cent in favour of girls. However, the gender gap decreased to 3.4 per cent in 2000 for Year 3 students, and to 4.4 per cent for Year 5 students. These figures came from the *Boys: Getting it Right* report, which went on to note that '[t]here are also likely to be social, biological or developmental reasons why boys' levels of attainment are lower than girls'.⁵³ Dr Molly de Lemos, of the Australian Council of Education Research, is also reported to have commented that 'research indicates the real reasons are far less simple, possibly including slower rates of maturation among boys and genetically determined differences in temperament'.⁵⁴

While the reasons for the various statistical demonstrations of an imbalance in the results may be an open question, there is no dispute that boys are having problems in a range of areas in schools, including even their capacity to stay at them. Boys are much more likely to leave school early, particularly in lower socio economic status areas.⁵⁵ Boys also have a disproportionate representation in juvenile delinquency, representing 90% of juvenile offenders, are six times more likely to commit suicide when young and their performance

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in the educational area of literacy is ‘poor and declining,’ with educational outcomes generally showing a range of problems.⁵⁶

Does the absence of men matter?

While there may be a general acceptance that there are problems being faced by boys in the schooling system, the unresolved and contentious issue is whether there is a causal link between the lack of male teachers and these ‘problems’. In his second reading speech for the Bill the Attorney-General, Mr Ruddock, stated that ‘[s]tudents throughout Australia will benefit from having both male and female role models in the teaching profession.’⁵⁷ Certainly this is a commonly held belief but the evidence for the assertion may not go further than ‘commonsense.’

Janet Smith, an academic who has studied the issue of male primary teachers, recently gave her PhD Completion Seminar at which she pointed out that there has been no substantial research in Australia illustrating the effects (positive or negative) of the gender of a teacher on the educational outcomes of a student.⁵⁸ British research has found no discernible correlation between staff gender balance and the attainment levels of 9 year olds. The study examined the relation between the proportions of male and female teachers in primary schools and pupil achievement at the end of Key Stage 2 (7 to 9 years). The gender difference they did find was a slightly better maths performance by male headed schools.⁵⁹ Other research from England, moreover, found that there was no link between the number of male teachers in a primary school and student performance.⁶⁰ Meanwhile a study of Finnish students found that students did not consider gender relevant, appreciating good teachers regardless of gender.⁶¹

Two reports by the British Office for Standards in Education identified a number of characteristics common to schools where the gap between boys’ and girls’ attainment was significantly smaller than the norm or where boys were improving faster than girls. These characteristics predominantly related to school teaching styles and school culture. There was no reference to gender factors. The characteristics included:

- a ‘non-macho’ culture of learning where pupils benefit from a strong sense of community;
- pupils feel valued by an ethos that celebrates achievement;
- teachers provide prompt and detailed feedback in marking pupils’ work;
- pupils are set short-term tasks that can be tackled in clear stages; and
- teaching is enthusiastic with good use of humour.

The Office concluded from these reports that boys do well where the traditional ‘three R’s’ are complemented by a fourth ‘R’: respect.⁶²

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These findings reinforce the views of those who argue that the quality of teaching is the most important factor contributing to the success of all students, a view endorsed by the *Boys: Getting it Right* report.⁶³ In coming to this conclusion the Committee may have drawn on the conclusions of one of the more substantive submissions to the Committee. This submission found that, having examined the evidence based findings of key factors affecting boys' and girls' educational experiences and outcomes:

... the quality of teaching and learning provision ... are by far the most salient influences in students' cognitive, affective, and behavioural outcomes of schooling – regardless of either student or teacher gender.⁶⁴

Dr Ken Rose, a research director at the Australian Council of Education Research puts this more bluntly when he said 'The real issue is quality of teaching and it doesn't make a hoot of difference whether the teacher is male or female.'⁶⁵

While it is difficult to find evidence linking the presence of male teachers with improved educational attainment for boys, there is some academic thinking which concludes, chiefly by referring to the experiences of feminist teachers in the 1970s and 1980s, that matching students and their teachers by gender (and ethnicity) can have a positive effect on other aspects of students' school experiences. The suggestion is made that 'where teachers share a range of critical experiences with their students they will be more likely to act to bring about a change in the status quo'.⁶⁶

An Australian academic supporting the call for more male teachers is Dr Peter West, head of the University of Western Sydney's research group on men and families. A recent media article summarises West's position:

He says men and women are different – that's why they compete in separate categories in sporting events – and are taught differently.

Most children have many women around, especially a mother, he says. And women teachers talk 'mother-ese' and emphasise a please-and-thank-you environment. Male teachers are different. They have louder voices, are more down to earth and organise more hands-on activities for children in the classroom.

Some people say 'a teacher is a teacher is a teacher', regardless of gender. 'This is a huge contradiction no-one wants to address' says West.

The importance of male teachers is not so much their contribution to academic outcomes, but in boys' overall development. A boy knows he will become a man, West says, and a male teacher gives him a sense of the direction in which his life is going.⁶⁷

The central thesis behind the call for more male teachers is that they are needed to provide 'male role models.' This need, according to a variety of sources, is made more acute by the increasing numbers of children growing up in single-parent families. Dr Nelson is reported as having said:

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We have mothers in this country who stand in public meetings in tears because their sons from fatherless families, through no fault of their own, have reached their adolescence without ever having had a male role model in their lives.⁶⁸

In contrast, Janet Smith, the Canberra based academic referred to above, has raised the question as to why there aren't more calls for fathers to take greater interest in their children 'rather than putting the responsibility on teachers,' and also suggests the focus could be on the responsibility of single-parents to seek out appropriate role models.⁶⁹

An article in the British *Journal of Education Policy*, recently questioned the validity of 'role model' theory as a panacea for improving boys' school performance. The article said that the concept is of far less prominence in current sociological and psychological literature. The article warned of the perils of gender modelling. Not only may male role modelling reinforce the very behaviours by boys that educationalists and policy makers are trying to overcome, but it may also inadvertently carry with it negative messages about female teachers and have negative consequences for girls' schooling. Another UK article recently observed:

Concepts of role model and socialization theory are widely challenged in the literature on gender, but used rather unproblematically in the 'common sense' comment around teacher recruitment in the press.⁷⁰

A further difficulty with the current discussion about the need for male role models is that there are very few, if any, definitions of what it means to be a role model or what, in a practical sense, is envisaged for the role of male primary school teachers. As some UK academics have concluded: 'current policies aimed at broadening the composition of the teaching workforce are apparently uninformed by the findings of research on role models'.⁷¹ Yet other academics emphasise that boys are not a homogenous group, and that popular concerns about boys and schooling 'rarely challenge the dominant views of masculinities' and fail to critique masculinity.⁷² Janet Smith reports that in interviews for her research into the experiences of male primary school teachers, some responded that they did not know what it meant to be a 'male role model', that they did not know how to go about being a male role model, and that their priority was to be regarded as a good teacher.⁷³

Solutions to the 'problem'

The Government's solution to the 'problem' of a paucity of male primary teachers is contained, in part, in the Bill, which gives freedom to other bodies to offer scholarships on a discriminatory basis. Dr Nelson points out there are other programs in place designed to address the matter:

The government has initiated a number of things to address the educational needs of boys and girls but most recently that of boys in particular. The government has funded some 230 schools in 110 projects to examine best practice models in relation to the

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education of boys. Very shortly, on behalf of the government, I will be announcing funding, on an ongoing basis, for 30 clusters of schools right throughout Australia to be working models in relation to boys' education. The government has also taken on the gender equity framework from the Keating government, and that has evolved. That governs the education of all children, boys and girls.⁷⁴

The Attorney-General, Mr Ruddock, also articulated additional programs designed to address the lack of male teachers in his second reading speech:

This bill complements the government's other major strategies for addressing the particular challenge of increasing education outcomes for boys, including: Boys' education is a priority area for the \$159.2 million Australian Government Quality Teacher Programme. This includes \$6 million committed to the Boys' Education Lighthouse Schools Programme to identify best practice in boys' education, with a further \$500,000 committed to research.⁷⁵

The Government supports a range of initiatives for boys in education through the Department of Education, Science and Training.⁷⁶

Pru Goward has drawn attention to the alternative solutions to the perceived need to increase the number of male teachers. She has focussed most particularly on the need to supply better financial remuneration to teachers, for instance:

There are any number of alternative programs that are not discriminatory,' Ms Goward said ... 'The simple fact is that young men are not attracted to teaching because they can earn better money elsewhere. As 'women's work' it has never been remunerated properly.'⁷⁷

Dr Peter West, who argues strongly that a greater number of male teachers are needed in order to benefit boy students, also comments that: 'we need more men, but only good men, in teaching. We will probably have to increase teachers' salaries a great deal to achieve this.'⁷⁸ The Labor Party, the unions and a range of academics and commentators, agree with the need to increase the financial remuneration of teachers. The *Boys: Getting it Right* report recommended this remuneration be increased, but the recommendation was directed at the States and Territories, with the Commonwealth government responding to the recommendation by stating that this was wholly a matter for the States and Territories and for non-government education authorities and schools.⁷⁹

The Sex Discrimination Commissioner, Pru Goward, suggests that successful programs which have worked to allow more women into traditionally male-dominated professions can be adapted to encourage young men into teaching:

For example, sending young male teacher students to schools to encourage young men to consider the career or supporting career counsellors to promote the benefits of a teaching career could be useful beginnings.

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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 senior administrative positions in schools would result in more male teachers in the classroom.

There are any number of alternative programs that are not discriminatory and that do not need a legislative amendment...⁸⁰

In addition, Pru Goward, suggests that:

Instead you market teaching in a different way. You market so that it is attractive to boys instead of a profession that is not of interest to them.⁸¹

Similarly an academic from the Australian Catholic University, Dr Janelle Young, suggests that:

perhaps we need to get into the high schools a little bit more and talk to both male and female students about the profession itself...Perhaps offer them a little bit more in workplace opportunities while they're still in secondary school and perhaps attract more applications particularly from male students.⁸²

In light of Pru Goward's suggestion that the experience of initiatives designed to assist women into male dominated areas of employment be examined this Digest includes as an attachment data from *Australia's 4th and 5th Reports on the Convention on the Elimination of all forms of Discrimination Against Women*. The Report documents initiatives taken to increase women's entry and retention in non-traditional areas of employment.

It would also be possible, presumably, to draw on the experience of other attempts that have already been made to increase the number of male teachers. The Teaching Training Agency in England was aiming by 2002-03 to increase to 15 per cent the proportion of male entrants to primary initial teaching training. Its strategies included using advertisements to change opinions of the worth of teaching, encouraging colleges to reach a target number of men and giving grants to local authorities for schemes aimed at men.⁸³

There are also reports of both general and male specific programs in Australia to promote greater numbers into teaching. The 'Step Up Into Teaching' program, run by the Parramatta Catholic Education Office and the Australian Catholic University, is offered to selected male and female Year 11 and 12 students. The Program's object is to encourage them into teaching by allowing the commencement of university studies in teacher education while still at school.⁸⁴

The Labor Party's perspective on solutions to the 'problem' include a need to pursue the recommendations in the *Boys: Getting it Right* report and refers to Labor's five point plan to get more men into primary schools:

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- a National campaign for attracting quality entrants to teaching, targeting men with relevant skills and backgrounds
- encouraging more male mentors to work with schools and parents - including involving fathers - in reading to students, using technology, vocational education, music and drama, and sporting activities
- incentives for quality teaching, including for teachers who have the skills needed to improve the learning outcomes of boys
- targeting improvements in teaching skills for boys in the Commonwealth's Professional Development program and in the development of National Teaching Standards and
- student discipline and welfare programs - much of which will be targeted at boys.⁸⁵

In its response to the *Boys: Getting it Right* report the government accepted the bulk of its recommendations. More than half of the recommendations were accepted outright, and several of the others were given conditional support. Most of those not taken up by the government fell into state and territory areas of responsibility, or were the responsibility of another agency or of the school system's management. One of the few rejected recommendations was recommendation 20, which was to the effect that the Australian Government should fund equal numbers of scholarships for male and female students. The recommendation was rejected by the government on the grounds that:

...other means of achieving the objective of this recommendation should be explored.

The objective of the report's recommendation is based on the reasoning that more male teachers are needed because of the importance of providing good role models to boys. *Boys: Getting it right* also argued that women and men can be equally good teachers of both boys and girls, and that the quality of a teacher is more important than his or her gender.

The Government is sympathetic to this line of reasoning. However, it rejects the proposed HECS (Higher Education Contribution Scheme) free scholarship mechanism, because:

- it is likely to have little impact on the gender balance among teachers in schools, because such scholarships would inevitably be limited in number and many would probably go to students (whether male or female) already committed to teaching;
- the evidence suggests that HECS is not a major determinant in student choices; and
- such scholarships would set an undesirable precedent, as the same principle could be applied to many University courses which have unequal gender representation.⁸⁶

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The Bill does not propose that the government offer scholarships itself. Indeed it could be said the strength of the Bill is that it doesn't mandate any particular behaviour by any body, it just facilitates the situation where those who want to can fund the training of male teachers.

Main provisions

The Bill's effect is quite straightforward – it inserts a **proposed section (38A)** into the SDA's Part II (Prohibition of discrimination), Division 4 (Exemptions). The **proposed section** provides that it is not discriminatory to offer scholarships to students in a teaching course 'if the scholarships are offered in order to redress a gender imbalance in teaching.' Gender imbalance in teaching is defined to mean 'an imbalance in the ratio of male to female teachers' in schools (schools are defined to include childcare and both primary and secondary schools, and the gender imbalance is defined so as to include 'region or sector specific initiatives')⁸⁷.

Further developments – the second HREOC decision

With a speed rivalling the projected progress of the Bill, HREOC announced on 19 Friday March 2004 (less than two weeks after the Bill was introduced) that they had given a temporary exemption to the Sydney CEO in response to a new application. The new application proposed a modified version of the original application. Rather than a scholarship scheme involving male only scholarships the application sought (and was granted) an exemption for a proposal to provide equal numbers of scholarships to men and women (it specified there would be 12 for each gender). This took up the suggestion by HREOC in its first decision that the Sydney CEO examine ways of offering scholarships 'on a less discriminatory basis.'⁸⁸ In that decision the Commission also endorsed the recommendation of the *Boys: Getting it Right* report that there should be funding for an equal number of scholarships for male and female students.⁸⁹

In granting the exemption the Commission 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.⁹⁰ Nevertheless, and given the new scholarships did not negatively impact on the existing scholarship arrangements offered by the Sydney CEO (and their Trustees), and given also that the Sydney CEO would continue to investigate alternative options to promote male participation, the Commission decided that the scheme was reasonable.⁹¹

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With the grant of its temporary exemption the Sydney CEO has achieved for itself the results that would have followed from the passage of the Bill (albeit having had to introduce a matching set of female scholarships to achieve the exemption). It was also saved the effort of going to the Administrative Appeals Tribunal, having discontinued its application for review upon the granting of the exemption.

While the Sydney CEO may no longer acquire a direct benefit from the amendments in the Bill the question remains as to the fate of the Bill. The differences between the results offered by the temporary exemption process and the results of the permanent exemption are highlighted by the decision of the Commission.

In summary the Bill proposes an exemption which is, in contrast to the current form of HREOC approved exemptions,

- universal
- effectively unconditional, and
- permanent.

Universal

Other educational institutions will not be covered by the temporary exemption extended to the Sydney CEO. Pru Goward comments that the Commission is required to consider applications on a case by case basis and ‘generally does not grant temporary exemptions unless they are appropriate in light of the objects and scheme of the Sex Discrimination Act.’⁹²

Dr Nelson is concerned by the issue of costs under such a scheme:

The Catholic Education Commission by virtue of its size can afford to go to the Administrative Appeals Tribunal and spend thousands of dollars on lawyers...[whereas] if you are running a small Aboriginal community college, a Montessori school, an Anglican or a Christian school, you don't have the money or the time to do these things.⁹³

He went on to suggest that the government needs to ‘create a situation where any school provider can, without fear of crippling ideology, offer male-only scholarships to attract men to apply for teaching and then get in purely on the basis of merit...’⁹⁴

It is difficult to ascertain what costs might be involved in an application for an exemption. Presumably if it is a non controversial application it could be neither expensive nor time consuming. For instance if an institution were to make an application for an exemption similar to the one granted to the Sydney CEO it could expect to have few difficulties.

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Requiring an institution wishing to offer discriminatory scholarships to approach HREOC for an exemption certainly creates administrative, and possibly financial barriers as well, while the permanent exemption would remove these.

Unconditional

In granting a temporary exemption HREOC is able to determine conditions upon which an exemption is granted. So, for instance, the exemption granted to the Sydney CEO specified there must be no derogation from their pre-existing scholarship arrangements and also that the Sydney CEO would 'investigate and implement further non-discriminatory strategies that address the underlying causes of the gender imbalance in the primary teaching profession.'⁹⁵ The exemption provided by the Bill would impose no conditions other than the base level qualifying condition, i.e. that there is a gender imbalance in the teacher numbers (either at the particular school or on an Australian wide basis).

Because it holds the power to refuse or grant an exemption the Commission is able to set base level conditions, so, for instance, the proposal to have an equal number of gender specific scholarships set the conditions on the grant of the exemption to the Sydney CEO. Dr Nelson is reported as having said that the Commission's decision was 'absurd,' questioning 'how offering more scholarships to women will attract more men into teaching.' Dr Nelson also said the decision will not solve the problem of a lack of male teachers and the Government will press ahead with changes to the Sex Discrimination Act.⁹⁶ Pru Goward commented with respect to the conditions imposed that when considering an application, the Commission will have regard to the reasonableness of the exemption sought and the principle of the equality of men and women:

The Commission's work is always evidence based. Our only starting point is a very clear focus on the equality of men and women. As this decision shows, we are flexible as to how that can be achieved.⁹⁷

Permanent

The Commission can limit its exemptions to whatever duration seems appropriate to it. For instance, the exemption given to the Sydney CEO was limited to five years.

The Bill proposes amendments which would impose no time limit on the exemption, however the condition that the exemption only applies in circumstances where there is a gender imbalance in teacher numbers would mean that there is at least a theoretical ending point.

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Concluding comments

An interesting question raised by the Bill is whether the new provisions could extend to cover scholarships which might be offered to women to assist them to achieve appointments as Principals or Deputy Principals. Such measures have been suggested as one means to redress the gender imbalances in the teaching profession.⁹⁸ The proposed amendments apply specifically to study that leads to a qualification for teaching students. While it is unclear whether the courses that might assist female promotion would qualify under this definition it would be interesting to see if such measures would be exempted.

As outlined above, in contrast to the mechanism in the SDA which allows for the grant of a temporary exemption after its review for suitability by the Commission, the Bill proposes a permanent exemption which applies to anyone, at any time. The mechanism for reviewing its suitability or its consonance with the aims of the SDA would be through the courts rather than HREOC. The proposed exemption applies to both primary and secondary schools.⁹⁹

There is an implicit assumption in the discussions of the Bill that it will be utilised as a means of achieving gender equity, however this may not be the motivation of every educational institution. For example it would not be beyond the realms of possibility that a fundamentalist religious schools may take the opportunity to offer male-only scholarships, presuming there continues to be an Australia-wide shortage of male teachers. This would be an extension of the current exemption arrangements for religious schools.¹⁰⁰

A more cautious legislative approach might regard it as appropriate to have a mechanism for review of the scholarship schemes, and possibly a sunset clause. The government might argue that the provision which stipulates that discriminatory practices are only suitable if there is a 'gender imbalance' would ensure the practice is not pursued in perpetuity. However it is unclear whether the definition of 'gender imbalance' means that it would only be a 50% balance that ends the effect of the exemption. It could be argued that a cessation of discriminatory scholarships might be desirable at some point before a 50/50 gender balance is achieved. Furthermore, the Bill stipulates that the gender ratio can be considered from a perspective as broad as across Australia generally (proposed subsection 38A(2)(a)), to a perspective as local as an individual school (proposed subsection 38A(2)(c)), without explicitly tying the appropriate gender imbalance to the provision of the scholarships. This may leave open the possibility of anomalous results.

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Endnotes

- 1 Human Rights and Equal Opportunity Commission, '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. For instance, the Prime Minister, Mr Howard, commented in the House that it was the Commission's decision that 'brought about the decision of the government to seek a commonsense amendment to the act' (House of Representatives, *Debates*, Thursday 11 March 2004, p. 25785) and said on ABC Radio that the decision underlined 'a flaw in the legislation' ('Sex Discrim Act flawed if it stops church employing men: PM,' AAP, 1 Feb 2004).
- 2 The application letter from the Sydney CEO is available from HREOC at http://www.hreoc.gov.au/sex_discrimination/exemption/letter1.html
- 3 Submissions came from five private individuals.
- 4 Submissions came from the Victorian Institute of Teaching and the Independent Education Union of Australia, as well as four private individuals.
- 5 Commonwealth of Australia, Canberra, 2002.
- 6 Subsection 38(3).
- 7 *Proudfoot & Others v ACT Board of Health and Others* (1992) EOC 92–417.
- 8 Human Rights and Equal Opportunity Commission, '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.
- 9 Standing Committee on Employment, Education and Workplace Relations, *Boys: Getting it Right*, Commonwealth of Australia, Canberra, 2002, p162. Quoted in the Human Rights and Equal Opportunity Commission, 'Sex Discrimination Act 1984 (Cth), Section 44(1), Notice of Rejection of Application for Exemption', para 3.39, http://www.hreoc.gov.au/sex_discrimination/exemption/decision.html
- 10 *ibid.*, para 3.40.
- 11 *ibid.*, para 3.41.
- 12 The Bill was the Sex Discrimination Amendment (Pregnancy and Work) Bill 2002, which became the Sex Discrimination Amendment (Pregnancy and Work) Act 2003 No. 103 of 2003.
- 13 *Pregnant and Productive: It's a right not a privilege to work while pregnant*, Human Rights and Equal Opportunity Commission, Sydney, 1999.
- 14 'Sex laws to be changed to encourage more male teachers', Maria Hawthorne and Linda McSweeney, AAP, 9 March 2004.
- 15 *ibid.*
- 16 'Sex laws to be changed to encourage more male teachers', Maria Hawthorne and Linda McSweeney, AAP, 9 March 2004.

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- 17 'Statement on Sex Discrimination Amendment (Teaching Profession) Bill 2004,' HREOC Media Release, 9 March 2004, http://www.hreoc.gov.au/media_releases/2004/12_04.html
- 18 Dr Brendan Nelson, Education Minister, quoted in 'Latham unreasonable on male teacher scholarships – govt' AAP, 10 March 2004.
- 19 Dr Brendan Nelson, Education Minister, quoted in 'Latham unreasonable on male teacher scholarships – govt' AAP, 10 March 2004
- 20 The Prime Minister, Mr John Howard, House of Representatives, *Debates*, 11 March 2004, p. 25785.
- 21 'Latham unreasonable on male teacher scholarships – govt' AAP, 10 March 2004.
- 22 The Prime Minister, Mr John Howard, House of Representatives, *Debates*, 10 March 2004, p. 25650. The word 'commonsense' has been a recurrent theme in the government's discussions of the Bill. Mr Howard has called the Bill 'a commonsense amendment to the act.' (House of Representatives, *Debates*, 11 March, p. 25785), and, when answering a question without notice regarding the Bill, he used the word 'commonsense' throughout his response – with his closing paragraph using the word five times over.
- 23 The comments are attributed to 'Labor, the Greens and the Australian Democrats' in 'Unions warn against male-teacher plan: Education Daylead' AAP, Thursday 11 March 2004.
- 24 Democrats Senator John Cherry, quoted in 'Male leadership crisis in schools downplays women – Cherry' AAP, 10 March 2004.
- 25 'Govt using sledgehammer to change sex discrimination act', AAP 11 March 2004.
- 26 'Scholarship plans superficial, says Union,' AAP, 10 March 2004.
- 27 'Govt misses the point on male teachers, union', AAP, 10 March 2004.
- 28 For example, 'Children need a message of hope,' Mark Latham, *The Daily Telegraph*, Monday 6 August 2001; See also 'Dad needs to be heard', *Herald Sun*, 30 August 2002.
- 29 'Work, family and community: a modern Australian agenda,' *National Press Club*, 18 February 2004.
- 30 'Opposition Leader elaborates on his policies for schools, health care, refugees, tax cuts and mentoring of young boys,' *7.30 Report*, 29 January 2004.
- 31 Mr Howard, House of Representatives, *Debates*, 11 March 2004, p. 25785.
- 32 Mr Howard, House of Representatives, *Debates*, 11 March 2004, p. 25785.
- 33 Mr Howard, quoted in 'Sex law changes could be defeated in Senate,' AAP, 10 March 2004.
- 34 House of Representatives, *Debates*, p. 25651.
- 35 'Canberra acts to encourage male teachers', Marcus Pries, *Australian Financial Review*, quoting Dr Brendan Nelson, Education Minister, 10 March 2004.
- 36 Jenny Macklin MP, Transcript of Doorstop – Canberra 10 March 2004; also quoted in 'Sex law changes could be defeated in Senate,' AAP, 10 March 2004
- 37 'Unions warn against male-teacher plan', AAP, 11 March 2004.

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- 38 Pru Goward has pointed out that no temporary exemptions have been given for female only scholarships since 1993, and has said that she has never granted such an exemption, believing that ‘merit and fair go and equal opportunity is the best way to do it.’
- 39 Pru Goward, on *AM*, 11 March 2004.
- 40 ‘Statement on Sex Discrimination Amendment (Teaching Profession) Bill 2004,’ 9 March 2004: http://www.hreoc.gov.au/media_releases/2004/12_04.htm
- 41 *ibid.*
- 42 Quoted in ‘Sex Law changes could be defeated in Senate,’ *AAP*, 10 March 2004.
- 43 Committee on the Elimination of Discrimination against Women, *General recommendation No. 25, on article 4, paragraph 1, of the Convention on The Elimination of All Forms of Discrimination Against Women, on temporary special measures*, 30 January 2004, CEDAW/C/2004/I/WP.1/Rev.1.
<http://www.un.org/womenwatch/daw/cedaw/cedaw30/GenRecWP1-auv.PDF>
- 44 Ms Goward said Australian women ‘have a long way to go before we achieve true equality with men.’ Quoted in ‘Libs scolded on mothers’ plight’, Emma-Kate Symons, *The Australian*, 9 March, 2004.
- 45 Chief Executives Unplugged: Business Leaders Get Real About Women in the Workplace, by Josephine Brouard, Lisa Annesse, Fiona Krautil, Equal Opportunity for Women in the Workplace Agency, 2004, p. 7.
- 46 Office of the Status of Women, *Women in Australia 2001*, 2002 p. 132.
- 47 *Australia’s 4th and 5th Reports on the Convention on The Elimination of All Forms of Discrimination Against Women*, Department of the Prime Minister and Cabinet, Office of the Status of Women, 2003, p. 8.
- 48 House of Representatives, *Debates*, 7 March 1984, 671 (Third Reading, Sex Discrimination Bill 1983).
- 49 Transcript of the Prime Minister the Hon John Howard MP Press Conference, Dunmore Lang College, Sydney, 6 October 2002. Commenting on the changes to the ALP’s affirmative action pre-selection rules.
- 50 See Table D8.2, *Education at a Glance: OECD Indicators*, 2003, p. 409. Data not available for Greece, Switzerland and Turkey.
- 51 House of Representatives’ Standing Committee on Employment, Education and Workplace Relations, Commonwealth of Australia, Canberra, 2002.
- 52 House of Representatives, *Debates*, 9 March 2004, p. 25539.
- 53 HREOC, in Human Rights and Equal Opportunity Commission, ‘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 quoting the House of Representatives Standing Committee on Employment, Education and Workplace Relations *Boys: Getting it Right*, Commonwealth of Australia, Canberra, 2002, p. 8.

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- 54 Quoted in ‘Men’s primary problem,’ by Catherine Armitage in *The Australian*, Monday 15 March 1999, p. 20.
- 55 Richard Teese and John Polesel, *Undemocratic Schooling*, 2003.
- 56 *Boy Troubles: Understanding Rising Suicide, Rising Crime and Educational Failure*, Jennifer Buckingham, Centre for Independent Studies, 2000:
<http://www.cis.org.au/Publications/summaries/PM46summ.html>
- 57 House of Representatives, *Debates*, 10 March 2004, p. 25607.
- 58 The PhD research will be entitled *Male Primary Teachers: The Experience of Crossing-Over Into Pink-Collar Work*. See also ‘We Need More Males in Primary Teacher Education! Or do we?’, Janet Smith, paper presented to the Australian Association for Research in Education Conference Melbourne, November 1999. <http://www.aare.edu.au/99pap/smi99558.htm>.
- 59 Bricheno, Pat and Thornton, Mary, ‘Staff gender balance in primary schools’, *Research in Education*, Iss. 68, pp. 57+ [7p.]
- 60 Lesley Froude, ‘Study Defies the Boys Need Men Credo’, *Times Educational Supplement*, 8 March 2002, p. 3.
- 61 Lahelma, Elina, ‘Lack of male teachers: a problem for students or teachers?’, *Pedagogy, Culture and Society*, vol. 8, no. 2, 2000, pp. 173–186.
http://www.triangle.co.uk/cus/content/pdfs/8/issue8_2.asp
- 62 Great Britain. Office for Standards in Education, ‘Ofsted finds extra ‘r’ helps boys perform well at school’, Press Release, NR 2003-89, 11 July 2003:
<http://www.ofsted.gov.uk/news/index.cfm?fuseaction=news.details&id=1468>
- 63 House of Representatives Standing Committee on Education and Training, *Boys: Getting it Right*, 2002, p. 162.
- 64 Rowe, Kenneth J. and Rowe, Katherine S., ‘What matters most: evidence-based findings of key factors affecting the educational experiences and outcomes for girls and boys throughout their primary and secondary schooling’, *Supplementary Submission to the House of Representatives Standing Committee on Education and Training: Inquiry into the Education of Boys*, 2002, http://www.aph.gov.au/house/committee/edt/eofb/subs/subs111_1.pdf.
- 65 Quoted in ‘Lessons in cheques and balances’, Tess Lingstone, *Courier Mail*, Saturday 13 March 2004, p. 33.
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- 85 Jenny Macklin, 'Labor's five point plan to get more men into primary schools,' *Media Releases & Published Articles*, 9 March 2004: <http://www.jennymacklin.net/infocentre.asp?data=480D020101054F5851515E587E45555F48454B4E>
- 86 *Report by the House of Representatives Standing Committee on Education and Training: Boys: Getting it right: The Government Response to the Report*, p. 23.
- 87 Explanatory Memorandum, Sex Discrimination Amendment (Teaching Profession) Bill 2004, p. 2.

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- 88 Human Rights and Equal Opportunity Commission, 'Sex Discrimination Act 1984 (Cth), Section 44(1), Notice of Rejection of Application for Exemption', para 3.34. http://www.hreoc.gov.au/sex_discrimination/exemption/decision.html
- 89 *ibid.*
- 90 'Notice of Grant of Temporary Exemption,' 19 March, 2004, para. 2.8 ff. The Commission relied in part on a Statement of Dr Martin Mills dated 9 March 2004. http://www.hreoc.gov.au/legal/sda_exemption/ceo_exemption.html
- 91 *ibid.*, para 2.3. It should be noted that, prior to making this finding it had also concluded that the scheme could form the basis of a valid complaint under the SDA's provisions.
- 92 'Commission grants temporary exemption to CEO after new application offers equal number of male and female scholarships', *HREOC Electronic Mailing List Service*, 19 March 2004.
- 93 Transcript of interview with Brendan Nelson, Minister for Education, Science and Training on *Insiders*, Sunday 14 March 2004.
- 94 *ibid.*, Dr Nelson's reconciliation of gender specific scholarships with the principle of merit selection seems unusual – they are usually offered in the alternative because a gender limited scholarship would preclude the operation of what is conventionally regarded as merit selection.
- 95 Human Rights and Equal Opportunity Commission, Sex Discrimination Act 1984 (Cth), Section 44(1), 'Notice of Grant of a Temporary Exemption,' 19 March 2004, para 4.2. http://www.hreoc.gov.au/legal/sda_exemption/ceo_exemption.html
- 96 'Catholic schools will now offer male and female teaching scholarships.' *ABC*, 19 March 2004. <http://www.abc.net.au/news/newsitems/s1069836.htm>
- 97 Commission grants temporary exemption to CEO after new application offers equal number of male and female scholarships', *HREOC Media Release*, 19 March 2004.
- 98 For instance this suggestion was made by Pru Goward, 'Statement on Sex Discrimination Amendment (Teaching Profession) Bill 2004,' 9 March 2004, http://www.hreoc.gov.au/media_releases/2004/12_04.htm
- 99 The lack of male teachers is more pronounced in the primary sector. The focus of the Sydney CEO's application was clearly on primary teaching. It would presumably have been possible to confine the proposed exemption to scholarships at a primary school level.
- 100 The current exemption is in subsection 38(1) of the SDA.

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Attachments

Initiative on Women working in non-traditional areas

From *Women in Australia: Australia's Combined Fourth and Fifth Reports on Implementing the United Nation's Convention on the Elimination of all Forms of Discrimination Against Women*

Office of the Status of Women, Department of the Prime Minister and Cabinet, 2003, p. 44, Since 1995, the Government has undertaken a wide range of initiatives to increase women's entry and retention in non-traditional areas of employment. For example:

- the *Special Equity Measures Programme* (1995-1999) funded projects to improve women's access to training in areas of non-traditional employment. These included several projects to promote non-traditional occupations as career options for young women and the provision of training through the *Special Preparatory Courses for Women*;
- the *Women in the Australian Defence Force* report (1997) examined women's employment in the defence force and identified strategies to further enhance recruitment and careers for women;
- the *Women in submarines* booklet (1998) was designed to assist in addressing issues raised in the Submarine Integration Study in relation to women serving in the Collins Class submarines. It also covered women in the Royal Australian Navy in general;
- the Australasian Council of Women in Policing received funding to produce a guide (*Fitting In or Standing Out?*) for women entering the police profession;
- the Women in Engineering Committee received funding (1999) to produce *Engineering a Better Workplace (Valuing Diversity and Engendering a Culture of Inclusivity)*, a resource kit for engineering managers and women engineers;
- several projects (1997-1998) developed strategies and resources to improve access to training in the metals, engineering and constructions industries;
- a research project (1998) examined barriers to women's participation in apprenticeships in nontraditional areas and developed new models to increase their entry and retention.

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The HREOC register of sex exemptions granted

No.	Applicant	Duration of exemption/ Date of comfort letter	Date Gazetted	Summary
1.	The Australian Journalist Association	31 Aug 88 – 30 Aug 90 extended 31.12.90	28 Sept 1988 7 Mar 1990	Exemption to cover AJA rules which govern the election of its Federal Council. The rules ensured a minimum and proportionate representation of women AJA members at the Federal Council.
2.	Australian Federal Police	19 Oct 89 – 19 April 90	22 Nov 1989	Exemption to enable the Commissioner of Police to select one woman only in the AFP's AUSTCIVPOL contingent in Cyprus
3.	Broken Hill Associated Smelters Pty Ltd	26 May 88 – 23 Feb 89 (dec was appealed, on 17.2.89, AAT set aside Comm dec & granted exemption until 16.9.90 4 Feb 91 – 31 May 91 31 May 91 - 31 Dec 92	~Feb 1991 ~May 1991	Exemption to cover the exclusion of women from employment in lead processes.
4.	University College, the University of New South Wales, Australian Defence Force Academy	6 Aug 91 – 31 Dec 94	~Aug 1991	Exemption to enable the University College to offer a prize for female students completing a postgraduate degree or diploma at the College.
5.	The Australian National University	8 Sept 92 – 31 Dec 95	21 Oct 1992	Exemption to allow the ANU to offer "re -entry scholarships" to women who wish to resume academic studies after a significant absence.
6.	A.C.T Housing and Community Services Bureau	31 July 91 – 31 July 92	28 Aug 1991	Exemption in respect of the operation of the Adoption of Children Act 1965 (and regulations there under). This is to allow the amendment of that act to be finalised.
7.	Department of Defence	31 July 91 – 31 July 92	28 Aug 1991	Exemption in respect to the operation of Part IV of the Defence Act, which relates to compulsory military service in time of war.

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No.	Applicant	Duration of exemption/ Date of comfort letter	Date Gazetted	Summary
8.	Attorney General's Department (NSW)	1 – 31 Aug 91 re s.36 of the Act 1 Aug 91 – 30 June 92 re s.40 of the Act	16 Oct 1991	Exemption in respect of s.36 \$ s.40 of the Factories and Shops and Industries Act 1962 and accompanying reg. The exemption is until the Occupational Health and safety Manual handling Regulation 1991 takes effect.
9.	Office of Cabinet of Queensland	28 February 1992	~Mar 1992	Exemption to allow women only at a Women's InfoLink Seminar
10.	Office of Cabinet of Queensland	9 April 1992	~Mar 1992	Exemption to allow women only at a second Women's InfoLink Seminar.
11.	The University Of New South Wales	18 Mar 93 – 18 Mar 96	31 Mar 1993	Exemption to allow the UNSW to offer an engineering research award to women, to increase the number of women in engineering research and academic positions.
12.	Department of Employment, Education and Training ("DEET")	1 st Scheme 1.8.94 – 31.12.94 2 nd Scheme 1.8.94 – 31.12.95	31 Aug 1994	Exemption to cover the ABSTUDY and AUSTUDY schemes, while the Government proceeds to remove the discriminatory aspects of these schemes (primarily marital discrimination).
13.	Department of Employment, Education and Training ("DEET")	21 Dec 94 – 31 Dec 95	11 Jan 1995	Extension of exemption of AUSTUDY scheme, and application for exemption to cover the Youth Training Allowance (YTA).
14.	Department of Employment, Education and Training ("DEET")	27 Mar 95 – 31 Dec 96	19 Apr 1995	Extension in exemption of AUSTUDY and ABSTUDY schemes.
15.	Department of Employment, Education and Training ("DEET")	1 Jan 97 – 31 Dec 97	12 Jan 1997	Extension in exemption of AUSTUDY and ABSTUDY schemes.
16.	Australian Bureau of	1 Apr 95 - 30 Apr 96	3 May 1995	Exemption to allow a Women's Safety Survey to be undertaken by female

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No.	Applicant	Duration of exemption/ Date of comfort letter	Date Gazetted	Summary
	Statistics			interviewers only
17.	Multicare Pty Ltd	14 Oct 97 – 3 Feb 00	~Oct 1997	Exemption to allow employment of attendant carers on the grounds of their sex.
18.	Department of Immigration and Multicultural Affairs	Aug 01 - Aug 02	10 Oct 2001	Exemption to allow Woomera residential housing project whereby female detainee and male detainees up to the age of 12 at the Woomera Immigration Reception and Processing Centre will be eligible to participate in alternative detention arrangements, namely accommodation in houses outside the Centre
19.	Department of Immigration and Multicultural Affairs	16 Aug 02 – 15 Oct 02	11 Sept 2002	Extension of time for the Woomera residential housing project
20.	Department of Immigration and Multicultural Affairs	14 Oct 02 – 14 Oct 03	6 Feb 2002	Extension of time for Woomera residential housing project
21.	Civil Aviation Safety Authority	26 Nov 02 – 26 Nov 07	4 Dec 2002	Exemption allows assessment of pregnant women before a licence can be issued to apply where it prevents the person from safely fulfilling the inherent requirements of the role covered by the licence concerned.
22.	Department of Immigration and Multicultural and Indigenous Affairs	19 Sept 03 – 18 Sept 05	15 Oct 2003	Exemption to allow female detainees and male detainees up to the age of 18 at any immigration detention facility are eligible to participate in alternative detention, namely accommodation in houses in Woomera
23.	Department of Immigration and Multicultural and Indigenous Affairs	19 Sept 03 – 18 Sept 05	15 Oct 2003	Exemption to allow projects to be conducted by DIMIA at Port Augusta, SA and Port Hedland, WA known as Residential Housing Projects whereby female detainees and male detainees up to the age of 18 at any immigration detention facility are eligible to participate in the alternative detention arrangement.

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