



**This is a new edition of a Bills Digest (no.110, 2003–04) previously prepared for the 40th Parliament**

## **Sex Discrimination Amendment (Teaching Profession) Bill 2004**

Kirsty Magarey  
Law and Bills Digest Section

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## **Sex Discrimination Amendment (Teaching Profession) Bill 2004**

**Date Introduced:** 17 November 2004

**House:** House of Representatives

**Portfolio:** Attorney-General

**Commencement:** On Royal Assent

### **Purpose**

To amend the *Sex Discrimination Act (1984)* ('SDA' or '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 has been introduced twice before in the same form. The first Bill was rejected by the Senate in June 2004 after a Senate Committee inquired into it, while the second Bill (introduced in August) lapsed on the calling of the Federal Election.

The Digest for the first Bill (*Sex Discrimination Amendment (Teaching Profession) Bill 2004* [Bills Digest No. 110 2003–04](#)) contains an analysis of the history of the Bill and the provisions of the Bill (which are identical in all three Bills introduced). For a more detailed analysis the previous Digest should be consulted, however a shortened version is offered here, as well as an update on developments.

The Bill was initially introduced in response to a decision by the Human Rights and Equal Opportunity Commission ('HREOC' or 'the Commission'), not to give a temporary exemption to the Archdiocese of Sydney Catholic Education Office ('Sydney CEO' or 'CEO') who had applied for permission to give male only scholarships. The Commission had conducted an inquiry into the CEO's application and received 11 submissions (5 supporting the exemption<sup>1</sup> and 6 opposing it<sup>2</sup>). 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)*<sup>3</sup> and on material supplied by the Sydney CEO and on various statistical sources.

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The Commission made four findings of fact:

- there are more female than male 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 Commission also decided that male-only scholarships would probably breach the SDA, that they do not fall within the exemptions in the SDA and that they do not fall within the ‘special provisions’ of the SDA. This was largely because decisions taken by males not to become teachers are choices that they make for reasons other than discrimination between male and female teachers. Consequently male-only scholarships would not be remedying discrimination experienced by men. In fact 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 had to do with reasons such as those outlined in the Commission’s initial findings of fact rather than discrimination (i.e. choices men make not to enter the teaching profession may be due to, for instance, the lack of adequate remuneration for teachers, or the problems with child protection issues or societal attitudes towards teachers).

After the introduction of the Bill into the Parliament and some exchanges between the two leaders, Mr Howard and Mr Latham, on their positions with regard to the situation of boys without male role models in their lives, the HREOC case was resolved. The Sydney CEO came back to HREOC with a revised application for a temporary exemption to the SDA and this proposal was accepted by HREOC. The outcome was an exemption which allowed an equal number of scholarships for men and women to be offered. This is a departure from a strict application of the merit principle. An illustration of this is that if 50 women and 20 men apply for 10 male only scholarships and 10 female only scholarships it is quite likely that the group of male scholarship recipients drawn from the smaller pool of applicants will not reflect the wider merit ranking that would be achieved from pooling the available scholarships. Nevertheless HREOC concluded that with this modification the scheme would be acceptable and, as is apparent below, the Sydney CEO also expressed their satisfaction with the outcome.

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The Government decided to press ahead with the amendment. The rationale for this included the proposition that the specific exemption granted the Sydney CEO would not apply across the board. The Government wanted the exemption to be available more broadly. The Government also issued a press release announcing \$1 million to be put towards male only scholarships (the funds were to go towards 500 scholarships at \$2 000 each).<sup>4</sup> The difference between the exemption HREOC granted and what the Bill proposes is that the Bill's exemption is universal, effectively unconditional, and permanent.

Since the publication of the previous Digest for this Bill there has been a Senate Committee inquiry and Report (*Provisions of the Sex Discrimination Amendment (Teaching Profession) Bill 2004*, Senate Legal and Constitutional Legislation Committee, May 2004<sup>5</sup>). The Report of the Majority (chaired by Senator Marise Payne) spent some time documenting the various concerns regarding the Bill (the significant majority of submissions were opposed to the Bill) and came to a rather tepid acceptance of the Bill:

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 [the Archdiocese of Sydney Catholic Education Office] 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' and did not take up an invitation to appear before the Committee.

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

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teaching. However, the Committee believes that without a broader range of strategies and programs the Bill is unlikely to be effective.

1. 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.<sup>6</sup>

The Democrat and ALP Reports essentially endorsed the Majority's account of the evidence presented, but came to the conclusion that in the light of these findings it was inappropriate to continue with the Bill. The ALP Report also endorsed the Majority's Recommendation No 1 that the operation of the Bill be subject to a review after two years. This proposal for a review has not, so far, found legislative expression.

The November 2004 reintroduction of the Bill has not seen a great deal of public interest generated. The Government issued a Press Release examining the need to redress the decline in male teacher numbers, while the Women's Electoral Lobby issued a strongly worded Press Release describing the Bill as a 'slap in the face to all the women who enter the primary teaching profession despite its poor pay, high demands and low status'. They focussed particularly on the implications of the Bill for women, raising the question of how women teachers faced with a HECS debt would feel when their male colleagues had received their training for free.<sup>7</sup> The Government's Media Release also focussed on other schemes that the Government has instituted to redress the decline in male teacher numbers:

The Bill currently before the Parliament is just one of a number of the Government's strategies to support male teachers and address the particular education needs of boys.

The Bill complements the Government's provision of \$27 million over six years to 2008 for boys' education.

This includes more than \$19 million for the Success for Boys initiative through which grants will be provided to 1600 schools to implement projects focusing particularly on opportunities for boys to benefit from positive male role models; around \$8 million already committed to initiatives such as the Boys' Education Lighthouse Schools (BELS); and research into significant areas of education relevant to boys' education.<sup>8</sup>

## **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 pre-schools and both primary

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and secondary schools, and gender imbalance is defined so as to include ‘region or sector specific initiatives’<sup>9</sup>.

## Endnotes

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- 1 Submissions came from five private individuals.
- 2 Submissions came from the Victorian Institute of Teaching and the Independent Education Union of Australia, as well as four private individuals.
- 3 Commonwealth of Australia, Canberra, 2002.
- 4 Commonwealth Dr Brendan Nelson, Minister for Education, Science and Training, 'Scholarships for 500 Male Primary Teachers', *Media Release*, 3 May 2004, p. 1.
- 5 [http://www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/sexdisc\\_04/index.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/sexdisc_04/index.htm)
- 6 *Provisions of the Sex Discrimination Amendment (Teaching Profession) Bill 2004*, Senate Legal and Constitutional Legislation Committee, May 2004, pp. 30-31.
- 7 Ms Eva Cox, Women’s Electoral Lobby, ‘Howard government discriminates in favour of men!’, *Media Release*, 1 December 2004.
- 8 The Attorney-General Mr Philip Ruddock, MP, ‘Government Moves To Address Male Teacher Decline’, *Media Release* 186/2004, 17 November 2004.
- 9 Explanatory Memorandum, Sex Discrimination Amendment (Teaching Profession) Bill 2004, p. 2.

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