

ATTENTION

**The Hon. Senator Meg Lees
322A The Parade
Kensington SA 5068**

Submission to the Senate Legal and Constitutional Legislation Committee

**Inquiry into the Sex Discrimination Amendment
(Teaching Profession) Bill 2004**

from

The Victorian Institute of Teaching

1. ABOUT THE VICTORIAN INSTITUTE OF TEACHING

- 1.1 The Victorian Institute of Teaching is an independent representative professional body for the teaching profession. Established by an Act of the Victorian Parliament in December 2001, it is a statutory authority operating along similar lines to the Medical Practitioners Board, the Legal Practice Board and the Nurses Board of Victoria.
- 1.2 The Victorian Institute of Teaching Act 2001 requires the Victorian Institute of Teaching to promote and regulate the profession of teaching. An historic first, the Institute covers all teachers and principals working in Victorian schools, across all sectors (i.e. primary, secondary and special education in government, Catholic and independent schools).
- 1.3 The Institute registers teachers and principals working in Victorian government, independent and Catholic schools. As with other professions where individuals occupy positions of trust and responsibility, teachers are required to be qualified and registered in order to practise their profession. The Institute has some 92,000 professionals on the register.
- 1.4 The Institute also has a legal obligation to promote the profession. It is important to note that promotion of the profession equates to activities and initiatives that progress the worth and professional standing of teachers and principals. Involvement in research relevant to the profession, educating the broader community about the complex nature and diverse roles of teachers, providing support to ensure the maintenance of the credibility of the profession, and activity that celebrates the endeavours of teachers, are examples of how the Institute Council progresses the responsibility of promoting the profession. Such activities and initiatives are undertaken in a fair, legal, developmental and non discriminatory manner. Further all support the Institute extends to the profession and those entering the profession seeks to firmly ensure that teachers are held in high esteem as professionals first, based on qualifications and merit based assessment, including having fulfilled Victorian Institute of Teaching Act requirements to be of proper character and fit to teach. Personal attributes or characteristics and individual circumstance (eg race, gender, family responsibilities, age, religion, sexuality etc) external to this framework, remain irrelevant to the regulation and promotion of teachers.
- 1.5 The Institute is governed by a twenty member Council, the majority of whom are practicing teachers. Ten members of the Council comprising eight teachers and two principals are elected by teachers and principals. Teachers working in government, Catholic and independent schools are represented on the Council. The Council is the voice of the profession. With extensive and diverse experience from metropolitan and regional environments, the Council also reflects age and gender diversity.
- 1.6 Nine members of the Council are appointed by the Minister for Education. They include the Chairperson, three teachers, one principal and representatives of key stakeholder groups such as parents, teacher employers and teacher educators. The Secretary of the Department of Education & Training or a nominee of the Secretary also sits on the Council. The Institute undertakes the following core duties:

- Registers all teachers to ensure only qualified people are employed
- Approves teacher education courses that qualify future teachers for entry to the profession
- Works with teachers to develop high professional standards for future registration of new and current members of the profession
- Investigates and makes findings on instances of serious misconduct to protect the integrity of the profession
- Provides advice to teachers to assist their professional learning and ensure programs are of the highest quality
- Works to raise the standing of the profession in the community
- Celebrates the achievements of teachers
- Is a public voice for the teaching profession

2. UNDERSTANDING OF THE BILL

- 2.1 It is our understanding that this Inquiry seeks to obtain views in relation to proposals to amend the federal *Sex Discrimination Act 1984*. Further it is our understanding that such amendments would provide a permanent exemption for the provision of gender specific scholarships. Finally it is our understanding that while the amendment has been drafted in gender neutral terms, it is to be used to provide male students with scholarships on the basis of gender.
- 2.2 Theoretically, as we understand it, the Bill has emerged to facilitate measures to address the problem of imbalance in relation to the number of male school teachers, compared to female school teachers.
- 2.3 Further having reviewed parliamentary debate it is understood that two key arguments were put by the coalition government
- A) that the effect of the current imbalance has directly disadvantaged male students
 - B) that employing male teachers (having encouraged their interest in the profession via scholarships based on gender) will in the future reduce the number of male students falling into the “at risk” category, improve levels of school retention as male teachers provided positive role models when it came to learning that were more influential for male students, provide and clarify for young males acceptable definitions of masculinity and responsibility, as well as generally help reduce social and moral decline across the Australian community.

3. RESPONSE TO THE BILL

- 3.1 The Victorian Institute of Teaching **does not support** the Bill.

- 3.2 The Bill is contrary to the stated objectives of the federal *Sex Discrimination Act 1984* which include:
- to 'give effect to certain provisions of the Convention on the Elimination of All Forms of Discrimination Against Women' (CEDAW)
 - to eliminate, so far as possible, discrimination against persons on the ground of sex, in areas including work and education
 - to promote recognition and acceptance within the community of the principle of the equality of men and women.
- 3.3 Article 10 of CEDAW states that 'State Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women the same opportunities to benefit from scholarships and other study grants.'
- 3.4 As the amendment does not indicate in any way that equal numbers of scholarships and related financial benefit is to be granted to male and female persons, the amendment contravenes Australia's obligations under international law.
- 3.5 The Bill challenges the basis of sex discrimination law that has been the accepted as providing appropriate protection for 20 years. The existing law has been tested extensively and is a proven instrument when it comes to ensuring equitable opportunities and economic parity when there have been direct and indirect sex discrimination complaints.
- 3.6 The Bill presents a position that is in direct conflict with the principles of equality adhered to by society. In practice, the proposed amendments will enable and activate discrimination on the basis of sex by offering more favourable treatment and economic benefit to one gender, and further ensure that such practices are protected by law.
- 3.7 Given on-going issues of more subtle (albeit illegal) gender discrimination be it direct, indirect or systemic, it is noted that despite the disparity between the representation of men and women in the teaching profession today, in primary schools particularly, men still earn on average 12% more than women in the education sector. There is also a range of evidence to show that men move more quickly through the hierarchical ranks than women in many areas of education.
- 3.8 Ms Di Sisely – Chairperson of the Australian Council of Human Rights Agencies recently stated that she believed one of the consequences of a change to the federal Sex Discrimination Act would be to give "men a free ticket into teaching further entrenching the disadvantage already faced by female teachers who never make it out of the classroom to senior positions or principals."¹

¹ Media Release by Dr Sisely, 11 March 2004

- 3.9 Ms Pru Goward - Federal Sex Discrimination Commissioner recently stated that “front loading the pay of male teacher students through a scholarship, effectively relieving them of the HECS burden their female counterparts will carry into their professional careers, entrenches this inequity and has not been demonstrated to address the disparity in numbers of male and female teachers in the long term”²
- 3.10 The Institute is deeply concerned by the view that it is reasonable and beneficial to create inequitable opportunities and entry levels for trainee teachers, given that teaching has for many years been one profession where there has been legitimate ability for men and women to enter the profession of their own free will minus any form of gender based bias at entry level.
- 3.11 Teaching is a unique and rewarding discipline, requiring intelligence, aptitude and a range of area specific abilities. Refined communication skills and a strong commitment to developing children and adolescents, both academically and personally are also key criteria for teachers.
- 3.12 Teachers are talented dedicated people – they are professional first, men and women second. Gender is irrelevant to their professional status; merit principles must continue to underpin entrance into, and promotion within, the profession.
- 3.13 To initiate more favourable treatment, and provide greater financial benefit to one group on the basis of gender, is neither appropriate nor fair. Indeed gender based scholarships fall short of the proper way in which to encourage potential high calibre applicants to enter the profession of teaching.
- 3.14 The situation would be entirely different, if for example there were equivalent numbers of scholarships offered to high calibre students, both male and female in equal numbers, or scholarships were offered purely on academic results, irrespective of gender. However, in its current form, the allowances made by the Bill are in direct conflict with the spirit and intent of anti discrimination law.
- 3.15 If the amendment was introduced it would automatically impact on the Victorian environment. Further, as Catholic and independent schools are private sector operations, they are directly covered by the federal Sex Discrimination Act.
- 3.16 As the Victorian Institute of Teaching aims to promote and support the existing teaching profession and new and future entrants to the teaching profession, based on merit (i.e. achievement of appropriate university entrance scores, skill, qualifications, experience and aptitude) as well as adherence to the registration requirements of the *Victorian Institute Teaching Act* 2001, the inequitable treatment promoted by the Bill would be in direct conflict with the Institute’s core values, principles and modus operandi.

² The Weekend Australian, 8 March 2004

- 3.17 Further it has been noted by many teachers that a non merit based entry and ‘funding opportunity’ is considered a slight on the profession and an insult to individuals alike, be they male or female, who are currently training at university or working to enter the profession.
- 3.18 There has been some debate in the public arena that suggests that the amendment could be considered or introduced under the auspices of a ‘special measure’. It should be noted that according to the *1996 Guidelines for Special Measures under the Federal Sex Discrimination Act 1984* that the proposed amendment does not qualify as a “special measure”. The Guidelines state that a “special measure” is
- “... (act, practice, program, plan, policy, arrangement, mechanism or activity) which is taken for the purpose of achieving substantive equality between these groups ... The concept of substantive equality recognises that creating equal opportunities for people or treating people equally may lead to serious inequality for groups that have been disadvantaged by system which fails to take their situation and perspectives into account. Substantive equality is concerned with changing aspects of that system which has disadvantaged particular groups. It is concerned with equality of outcomes.”³*
- 3.19 Given the definition of a “special measure” and the current law on how a special measure applies, it is clear that changes to the *Sex Discrimination Act* can not be justified in the name of pursuing or invoking a “special measure”. There is no cultural or historical disadvantage or imposed discrimination for which a “special measure” needs to be designed or applied.
- 3.20 Put simply, men have chosen in fewer numbers than women to enter the teaching profession – this is a reflection of freedom of choice. There is no need to redress specific practises that “exclude, disadvantage, restrict or result in an adverse effect upon male primary teachers” as they do not exist. “Nor would the absence of the scheme leave uncorrected the effects of past discrimination”⁴ against men, because there is no past discrimination, or cultural or historical disadvantage that male applicants suffer on the basis of gender – be they be past, present or future applicants.
- 3.21 Men have clearly made informed choices as to whether or not to participate in the teaching profession, be it in primary, secondary or special education. In the light of these circumstances, according to the principles, spirit and intent of anti discrimination law, it would be inappropriate to offer male trainee teachers a sex based advantage and economic benefit over their female peers.

³ 1996 Guidelines for Special Measures Under the Sex Discrimination Act 1984, HREOC

⁴ HREOC “Sex Discrimination Act 1984 Section 44(1), Notice of Rejection of Application for Exemption”

- 3.22 The fact that there are fewer male teachers in our schools is not in contention, nor is there any doubt that it is extremely important to have male and female teachers with diverse backgrounds in our schools, working with children and adolescents. The means by which people, irrespective of gender, are encouraged into the profession however, needs to be credible and fair. This outcome can only be achieved if the appropriate decision making process exists and proceeds on the basis of merit. The means by which people are encouraged, selected and financially supported to enter the profession should therefore be free of gender based stereotypical assumptions and ‘useful’ generalisations, about the level and type of contribution that can be made due to gender. Individuals should not be assessed and rewarded on the basis of gender, or expected to have a specific impact due to gender (ref point 2.3 B) nor for that matter insulted and devalued on the basis of gender (ref point 2.3 A). Some of the arguments that have been aired in order to pursue this Bill have been aired minus the support of credible research. Even if there was specific evidence to support the issues raised in 2.3 A and 2.3 B which there is not, an individual’s human rights and civil rights should not be eroded or denied in order to attempt to address social problems.
- 3.23 Historically the long and short term financial disadvantage experienced by women across society (that will continue to have an impact on women for many decades) can be directly linked to women being paid less, being denied access to education and training, and lack of access to benefits and conditions (eg superannuation and the benefits of continued service after childbirth etc). This is sex discrimination. Reversed, the argument runs – historically the long and short term financial advantage experienced by men can be directly linked to being paid more, being granted access to education and training, and access to more favourable benefits and conditions. This Bill fails to pursue equity; rather it guarantees the opposite, fostering the long and short term advantage of the reverse argument. This is most unfortunate given that the teaching profession has shown leadership and successfully pioneered equitable practice on many fronts over recent decades.

4. CONCLUSION

- 4.1 The Victorian Institute of Teaching is of the considered view that there are a range of reasons as to why a gender imbalance exists amongst teachers. An amendment to the federal *Sex Discrimination Act 1984* will not address the real causes or the imbalance – it will however place in jeopardy decades of work that has been progressed to ensure equality in education and the workplace.
- 4.2 The recent report by the House of Representatives’ Standing Committee on Employment, Education and Workplace Relations - *Boys: Getting it’ Right*⁵ 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.”

⁵ House Representatives’ Standing Committee on Employment, Education and Workplace Relations –“Boys: Getting it Right”

- 4.3 The premise that awarding scholarships to men only, will entice more men to become teachers is flawed. As found the in the ‘Boys: Getting it Right’ report, the primary reasons for males not identifying teaching as an attractive career option included concerns about
- The status of teachers in the community
 - Perception of a risk of allegations in relation to child protection issues
 - The pay and conditions of primary school teachers relative to other occupations is not considered ‘attractive’ and therefore men choose other professions where by better salary and conditions will be achieved elsewhere.

These findings point directly to the real reasons why men avoid teaching. Offering a scholarship will have no impact on these legitimate concerns.

- 4.4 It is important to increase the numbers of men entering the teaching profession, and indeed there are strategic ways to encourage men to enter the teaching profession - that said, removing merit based entry standards and discriminating against their female colleagues in the process, is not one of them.
- 4.5 The Victorian Institute of Teaching does not support the Bill and remains adamant that the most capable and professionally qualified teachers should be working with Victorian students. Gender is not a factor into this equation – and hence it should not in any circumstances be utilised as a key criteria for determining who has access to the teaching profession in the future.

SUSAN HALLIDAY
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