



Australian  
Human Rights  
Commission

*everyone, everywhere, everyday*

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# Inquiry into the Sex and Age Discrimination Legislation Amendment Bill 2010

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Australian Human Rights Commission Submission  
to the Senate Legal and Constitutional Affairs  
Committee

3 November 2010

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## **1 Introduction**

1. The Australian Human Rights Commission makes this submission to the Senate Legal and Constitutional Affairs Committee in its Inquiry into the Sex and Age Discrimination Legislation Amendment Bill 2010 (the Bill).

## **2 Summary**

2. The Commission welcomes the Bill and recommends that it be passed at the earliest opportunity.
3. However, the Commission notes that a number of the recommendations for amendments to the *Sex Discrimination Act 1984* (Cth)(SDA) made by:
  - the Commission in its Submission to the Senate Legal and Constitutional Affairs Committee on the inquiry into the effectiveness of the SDA in eliminating discrimination and promoting gender equality (the Senate Committee); and
  - the Senate Committee as a result of its inquiryare not implemented by this Bill.
4. The Commission recommends the Government consider all outstanding recommendations as part of the Government's ongoing project on the consolidation of federal anti-discrimination laws (the Consolidation Project), which forms part of the Government's response to the National Human Rights Consultation.
5. In the event that any of these recommendations are not addressed within the Consolidation Project, that the Government ensures that all unaddressed recommendations are considered at the earliest opportunity.
6. The Commission notes that the Bill contains an exemption which provides that it is not unlawful to refuse to alter an official record of a person's sex if a law of a State or Territory requires the refusal because the person is married. The Commission encourages the Government to take a leadership role in ensuring there is a consistent national approach to the legal recognition of sex in official records.
7. The Commission welcomes the creation of the statutory office of Age Discrimination Commissioner.
8. However, the Commission encourages the Government to move promptly review and increase the protection against discrimination afforded by the *Age Discrimination Act 2004* (Cth) (ADA).

## **3 Recommendations**

9. The Commission recommends that:

- **Recommendation 1:** That the Bill be passed at the earliest opportunity.
- **Recommendation 2:** That all outstanding recommendations contained in the Commission's submission to the Senate Committee and the Senate Committee's Report be considered as part of the Government's Consolidation Project and that all unaddressed recommendations are considered at the earliest opportunity.

## **4 The Bill**

10. The Commission considers that the Bill is an important step in strengthening federal anti-discrimination laws.
11. The Bill extends the scope of the SDA to provide greater coverage for men and women on the ground of family responsibilities in all areas of work. The Bill also provides greater protection for workers and students from sexual harassment and establishes breastfeeding as a separate ground of discrimination.
12. The Bill establishes the statutory office of Age Discrimination Commissioner. The establishment of this office sends an important message that combating age discrimination is as important as combating other forms of discrimination. The Age Discrimination Commissioner will be an important advocate for the elimination of age discrimination. The Commissioner will also educate the community about the damaging effects of age discrimination.
13. The Commission welcomes the Bill and recommends that it be passed at the earliest opportunity.
14. **Recommendation 1:** That the Bill be passed at the earliest opportunity.

## **5 Commission's recommendations for amendments to the SDA**

### **5.1 Commission's submission to the Senate Committee**

15. In late 2008 a Senate Committee was convened to review the effectiveness of the SDA in eliminating discrimination and promoting gender equality.
16. The Commission made a submission to this Committee which recommended a number of amendments to the SDA to improve its effectiveness (Appendix A).
17. In its report on the inquiry, the Senate Committee also recommended a number of amendments to the SDA.
18. Some of the recommendations for amendments to the SDA made by the Commission and by the Senate Committee were accepted by the Government and are reflected in the Bill. This is welcomed by the Commission.

19. Other recommendations of the Commission and of the Senate Committee are not reflected in the Bill.
20. A number of the Commission's recommendations for amendments to the SDA are relevant to all federal discrimination laws. The Commission notes the Government's Response to the inquiry and its comments in the explanatory memorandum to the Bill, which indicate that these recommendations will be considered in the course of the Consolidation Project.
21. To the extent that any recommendations are not considered within the Consolidation project, they should be subject to a further review at the earliest opportunity.
22. **Recommendation 2:** That all outstanding recommendations contained in the Commission's submission to the Senate Committee and the Senate Committee's Report be considered as part of the Government's Consolidation Project and that all unaddressed recommendations are considered at the earliest opportunity.

## **5.2 *The official records of a person's sex***

23. In 2009, the Commission completed a consultation regarding the legal recognition of sex in identity documents and government records for people who are sex diverse and/or gender diverse. The Concluding Paper of this project was titled *Sex Files: the legal recognition of sex in documents and government records* (Sex Files). The report is available at [http://www.humanrights.gov.au/genderdiversity/sex\\_files2009.html](http://www.humanrights.gov.au/genderdiversity/sex_files2009.html).
24. During the consultation, people of diverse sex identities and/or gender identities raised a range of concerns regarding the existing process for the recognition of their sex on identity documents.
25. In the *Sex Files* Concluding Paper, the Commission made a range of recommendations, including that being married should not prevent a person from changing the notation of their sex on their identity documents such as birth certificates.
26. The Commission is concerned that the exemption contained at Item 62<sup>1</sup> of the Bill will allow States and Territories to continue to discriminate against people who wish to alter the official record of their sex on identity documents (such as birth certificates) on the basis of their marital status.
27. The Commission trusts that, if enacted, this exemption will be temporary and encourages the Government to take a leadership role in ensuring that there is a nationally consistent approach to the legal recognition of sex official records.

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<sup>1</sup> See also Item 9 which refers to 'official record of a person's sex'.

## **6 Amendments to the Age Discrimination Act 2004**

### **6.1 Age Discrimination Commissioner**

28. The Commission welcomes the proposed amendments necessary to create the statutory office of Age Discrimination Commissioner and to make the holder of that office a member of the Commission. The Commission supports the proposed amendments on the basis that the Bill gives the Age Discrimination Commissioner functions and powers equivalent to those of the existing special purpose Commissioners.
29. When the ADA was passed in 2004, unlike the other three federal discrimination Acts, the ADA did not create a statutory office of Age Discrimination Commissioner.
30. The Commission supports the establishment of an Age Discrimination Commissioner for the following reasons:
  - The age profile of Australia generally has and will continue to change, with the proportion of older people increasing. A special purpose Age Discrimination Commissioner will provide an important structural guarantee ensuring the protection of the rights of vulnerable age groups (both older and younger) through targeted education and advocacy and in combating broader systemic ageism within our community.
  - As with the other special purpose Commissioners, the Age Discrimination Commissioner will be a member of the Commission, Australia's independent national human rights institution. The Age Discrimination Commissioner will lead the work of the Commission in raising awareness of age discrimination, educating the community about the impact of age discrimination, and monitoring and advocating for the elimination of age discrimination.
  - As the other federal discrimination Acts each create an office of a special-purpose Commissioner the creation of the office of Age Discrimination Commissioner simply places age discrimination on an equal footing with the other areas of discrimination in this regard.
  - Appointing an Age Discrimination Commissioner will facilitate the focussed and specialist development of a full policy program of work and expertise in the area of age discrimination across all areas of public life. This will include conducting research, collaborating with community and business sectors, assisting courts as amicus curae or intervening where there is a breach of human rights, and investigating and reporting publicly on relevant issues. The Age Discrimination Commissioner will also ensure that issues specific to age are addressed in human rights analysis and the Commission's work generally.
31. The Age Discrimination Commissioner's role includes educating the community about what age discrimination is and increasing awareness about

the Commission's role to inquire into and attempt to resolve complaints of age discrimination. Greater awareness of the ADA and of the Commission's complaint handling process is likely to lead to increased complaints of age discrimination.

## **6.2 Reform of the ADA**

32. The Commission notes that in a number of other respects the ADA offers a lower level of protection from discrimination compared with the other federal discrimination Acts, particularly with respect to the exemptions. The Commission understands that inconsistencies between the federal discrimination Acts will be addressed within the Government's Consolidation Project.
33. The Commission notes that in the course of the Consolidation Project, consideration should be given to increasing the protection against age discrimination currently provided by the ADA.

## 7 Appendix A: Commission recommendations to the Senate Committee

### Table of Recommendations and Options for Reform

Issue	Recommendations (Stage One) or Options for Reform (Stage Two)
Two Stage Reform Process (Page 45)	<p>Recommendation 1: A Two-Stage Inquiry Process</p> <p>(1) Support a two-stage inquiry process for the SDA, with some amendments made now to the existing law (Recommendations), and the rest completed within three (3) years (Options for Reform)</p> <p>(2) Complete reforms as part of an inquiry into an <i>Equality Act</i> for Australia</p> <p>(3) Alternatively, refer stage two of the SDA inquiry to the ALRC or other suitable body</p>
Objects and interpretation (Page 48)	<p>Recommendation 2: Objects of the SDA (Stage One)</p> <p>Amend the objects of the SDA to remove 'so far as is possible' and fully reflect the obligations of CEDAW and other international legal obligations under the ICCPR, ICESCR and ILO Conventions to eliminate discrimination and promote substantive gender equality.</p>
(Page 49)	<p>Recommendation 3: Interpretation of the SDA (Stage One)</p> <p>Insert in the SDA the express requirement that it be interpreted in accordance with Australia's international legal obligations, including relevant provisions of CEDAW, ICCPR, ICESCR and ILO Conventions</p>
CEDAW (Page 50)	<p>Recommendation 4: Removal of Paid Maternity Leave Reservation under CEDAW (Stage One)</p> <p>The Australian Government should remove its reservation under art 11(2)(b) of CEDAW about paid maternity leave</p>



Issue	Recommendations (Stage One) or Options for Reform (Stage Two)
Definition of discrimination (Page 54)	Recommendation 5: Direct Discrimination (Characteristics extension) (Stage One)  Amend the wording of the characteristics extension in the definitions of direct discrimination to include characteristics that are actually imputed by the alleged discriminator, even if not generally imputed by others
Definition of discrimination (Page 62)	Recommendation 6: Removal of comparator element (Stage One)  Amend the definition of direct discrimination to remove the comparator element, along the lines of the equivalent definition in the ACT
Definition of discrimination (Page 65)	Recommendation 7: Clarifying causation (Stage One)  In making any changes to the definition of direct discrimination, parliament should make clear its intention, either via legislation or even extrinsic materials such as explanatory memoranda or second reading speech to any amending Bill, that the SDA does not require an applicant to prove that the relevant ground of discrimination was the true basis or real reason for the impugned conduct and confirm the operation of s 8 of the SDA
Definition of discrimination (Page 71)	Recommendation 8: Shifting the onus (Stage One)  Amend the SDA to make establishing causation more achievable, such as by: <ul style="list-style-type: none"> <li>(a) directing courts to draw an adverse inference where a respondent fails to establish a non-discriminatory basis for its conduct;</li> <li>(b) shifting the onus to the respondent to establish a non-discriminatory basis for its conduct in circumstances where its conduct was plausibly based (in whole or in part) on a protected attribute or characteristic, such as along the lines of s 63A of the <i>Sex Discrimination Act 1975</i> (UK); or</li> <li>(c) reversing the onus of proof in relation to establishing causation, along the lines of s 664 of the <i>Workplace Relations Act 1996</i> (Cth)</li> </ul>

Issue	Recommendations (Stage One) or Options for Reform (Stage Two)
Definition of discrimination (Page 76)	<p>Recommendation 9: Requirement, condition or practice element (Stage One)</p> <p>Amend the SDA to remedy the narrow approach taken in certain cases to the requirement, condition or practice element, such as by providing that an applicant must simply establish that the relevant circumstances (including any terms, conditions or practices imposed by the respondent) disadvantaged women (or other relevant groups). The onus would then shift to the respondent to establish that the relevant circumstances were reasonable</p>
Definition of discrimination (Page 79)	<p>Recommendation 10: Reasonableness standard (Stage One)</p> <p>Review the standard of reasonableness as part of the definition of indirect discrimination to become more closely aligned with human rights based principles of legitimacy and proportionality</p>
Definition of discrimination (Page 82)	<p>Option for Reform A: Positive duty to eliminate discrimination and promote gender equality (Stage Two)</p> <p>Consider inserting into the SDA a positive duty to take reasonable steps to eliminate discrimination and promote gender equality, in addition to the prohibition on discrimination</p>
Definition of discrimination (Page 84)	<p>Recommendation 11: Proposed treatment (Stage One)</p> <p>Amend the definitions of discrimination to cover proposed treatment</p>
Definition of discrimination (Page 84)	<p>Recommendation 12: Associate of a person (Stage One)</p> <p>Amend the definitions of discrimination to cover disadvantage suffered as a result of an association with a person with a protected attribute or characteristic</p>
Definition of discrimination (Page 84)	<p>Recommendation 13: Unfavourable or less favourable treatment (Stage One)</p> <p>Clarify that it is not necessary for an applicant to establish</p>

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Issue	Recommendations (Stage One) or Options for Reform (Stage Two)
	that the respondent regarded the relevant treatment as unfavourable or less favourable
Definition of discrimination (Page 87)	Option for Reform B: Equality before the law (Stage Two)  Consider the merits of amending the SDA be amended to provide equality before the law, along the lines of s 10 of the RDA or by giving binding effect to paragraph 2 of the Preamble to the SDA (including family and carer responsibilities)
Grounds of discrimination (Page 90)	Recommendation 14: Breastfeeding as a separate ground (Stage One)  Amend the SDA to specifically prohibit discrimination on the ground of breastfeeding as a protected attribute.
Grounds of discrimination (Page 91)	Recommendation 15: Ensure equal protection from discrimination on the grounds of couple status for all couples (Stage One)  Amend the SDA to replace the protected ground of 'marital status' with 'couple status' and ensure that definitions such as 'de facto spouse' are amended to give all couples equal protection under the SDA, including same-sex couples
Grounds of discrimination (Page 92)	Option for Reform C (Stage Two): Protection from discrimination on the grounds of sexuality, sex identity and gender identity  Consider securing the legal protection from discrimination on the grounds of sexuality, sex identity or gender identity as part of a stage two inquiry into improving equality laws in Australia, for example, through a federal <i>Equality Act</i> .

Issue	Recommendations (Stage One) or Options for Reform (Stage Two)
<p>Family responsibilities (Page 104)</p>	<p>Recommendation 16: Extend family and carer responsibilities protection under the SDA (Stage One)</p> <p>(1) Make direct and indirect family and carer responsibilities discrimination unlawful in all areas covered by Part II Div 1</p> <p>(2) Extend the definition of family responsibilities to include family and carer responsibilities which is inclusive of same-sex families, and provide a definition of family members and dependents which ensures adequate cover for both children and adults to whom care is being provided.</p>
<p>Family responsibilities (Page 104)</p>	<p>Option for Reform D: Include family and carer responsibilities as a specified ground in a potential Equality Act, or enact specialised legislation (Stage Two)</p> <p>If an <i>Equality Act</i> is adopted, insert family and carer responsibilities as a specified protected ground. Alternatively, a specialised piece of federal equality legislation could be enacted, as recommended in <i>It's About Time (2007)</i></p>
<p>Family responsibilities (Page 109)</p>	<p>Recommendation 17: Positive duty to reasonably accommodate the needs of workers who are pregnant and/or have family or carer responsibilities (Stage One)</p> <p>Introduce a positive obligation on employers and other appropriate persons to reasonably accommodate the needs of workers in relation to their pregnancy or family and carer responsibilities. Failure to meet this obligation would be an actionable form of discrimination</p>
<p>Coverage (Page 113)</p>	<p>Option for Reform E: Protection from discrimination in any area of public life (Stage Two)</p> <p>Consider the merits of amending the SDA to include a general prohibition against discrimination in all areas of public life, along the lines of s 9 of the RDA</p>
<p>Coverage (Page 116)</p>	<p>Recommendation 18: Extend coverage to state and state instrumentalities (Stage One)</p> <p>Repeal s 13 of the SDA</p>

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Issue	Recommendations (Stage One) or Options for Reform (Stage Two)
Coverage (Page 116)	<p>Recommendation 19: Extend coverage to bind the Crown in right of the state (Stage One)</p> <p>Amend s 12(1) of the SDA to comprehensively bind the Crown in right of the State, along the lines of s 14 of the DDA, s 6 of the RDA and s 13 of the ADA.</p>
Coverage (Page 117)	<p>Recommendation 20: Provide equal coverage for men and women (Stage One)</p> <p>Amend s 9(10) of the SDA to ensure equal coverage for men as women, such as along the lines of s 12(8) of the DDA.</p>
Coverage (Page 119)	<p>Recommendation 21: Extend coverage to volunteers and other unpaid workers (Stage One)</p> <p>Provide equivalent protection to volunteers and other unpaid workers as with paid workers</p>
Coverage (Page 120)	<p>Recommendation 22: Extend coverage of independent contractors (Stage One)</p> <p>Provide equivalent protection against discrimination and sexual harassment to independent contractors as applies to other categories of workers</p>
Coverage (Page 123)	<p>Recommendation 23: Liability of individual employees (Stage One)</p> <p>Amend s 14 of the SDA to confer personal liability on the individual employee, or other worker, who engaged in the discrimination rather than just the employer.</p>
Coverage (Page 124)	<p>Recommendation 24: Abolish minimum size regarding partnerships (Stage One)</p> <p>Amend s 17 of the SDA to abolish the minimum size requirement of partnerships and proposed partnerships</p>
Coverage (Page 125)	<p>Recommendation 25: Extend coverage to statutory appointees et al (Stage One)</p> <p>Clarify that statutory appointees, judges and members of</p>

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Issue	Recommendations (Stage One) or Options for Reform (Stage Two)
	parliament are adequately protected, as well as personally liable, under the SDA.
Coverage (Page 126)	<p>Recommendation 26: Review coverage to ensure all types of workers protected (Stage One)</p> <p>Review Part II Div 1 of the SDA to ensure that all potential categories of workers are protected</p>
Coverage (Page 127)	<p>Recommendation 27: Expand definition of services (Stage One)</p> <p>Expand the definition of services under the SDA or, alternatively, amend the definition to be non-exhaustive</p>
Coverage (Page 128)	<p>Recommendation 28: Administration of state and territory laws and programs (Stage One)</p> <p>Amend the SDA to make discrimination in the administration of State (including Territory) laws or programs unlawful.</p>
Coverage (Page 130)	<p>Recommendation 29: Extend coverage of ancillary liability (Stage One)</p> <p>Amend s 105 to include acts that are unlawful under the SDA generally, rather than being limited to acts that are unlawful under Divisions 1 or 2 of Part II only.</p>
Sexual harassment (Page 138)	<p>Recommendation 30: Amend the reasonable person standard (Stage One)</p> <p>Amend the definition of sexual harassment in relation to the reasonable person standard, along the lines of the relevant provisions in Queensland and the Northern Territory.</p>
Sexual harassment (Page 140)	<p>Recommendation 31: Extend coverage of sexual harassment to better protect workers (Stage One)</p> <p>Amend the SDA to protect workers from sexual harassment by customers, clients and other persons with whom they come into contact in connection with their</p>

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Issue	Recommendations (Stage One) or Options for Reform (Stage Two)
	employment
Sexual harassment (Page 141)	<p>Recommendation 32: Extend sexual harassment protection to all students regardless of their age (Stage One)</p> <p>Amend s 28F (2)(a) of the SDA by removing the words 'an adult student' and replacing with the words 'a student'.</p>
Sexual harassment (Page 142)	<p>Recommendation 33: Extend sexual harassment to provide protection to students from all staff members and adult students, not just those at their own education institution (Stage One)</p> <p>Amend s 28F of the SDA to ensure that students who are sexually harassed in connection with their education or attendance at school-related activities are entitled to bring a claim against the perpetrator, irrespective of whether the harasser is from the same or a different educational institution.</p>
Sexual harassment (Page 143)	<p>Option for Reform F: Enact a free standing prohibition against sexual harassment in public life (Stage Two)</p> <p>Consider amending the SDA to include a general prohibition against sexual harassment in any area of public life, along the lines of s 9 of the RDA</p>
Sexual harassment (Page 145)	<p>Option for Reform G: Positive duty to avoid sexual harassment (Stage Two)</p> <p>Consider imposing a positive obligation on employers (and other appropriate respondents) to take all reasonable steps to avoid sexual harassment of or by their employees</p>
Victimisation (Page 150)	<p>Recommendation 34: Protected action need only be a reason (Stage One)</p> <p>Amend s 94 of the SDA to clarify that an applicant need only establish that a protected action was a reason for the victimising conduct even if not the dominant or a substantial reason.</p>

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Issue	Recommendations (Stage One) or Options for Reform (Stage Two)
Victimisation (Page 150)	<p>Recommendation 35: Extend vicarious liability (Stage One)</p> <p>Amend s 106(1) to apply to any act that is unlawful under the SDA, including victimisation.</p>
Exemptions (Page 157)	<p>Recommendation 36: Temporary exemptions in accordance with the objects of the SDA (Stage One)</p> <p>Amend s 44 of the SDA to make it clear that the power to grant a temporary exemption is to be exercised in accordance with the objects of the SDA</p>
Exemptions (Page 159)	<p>Recommendation 37: Consolidate permanent 'exemptions' which are consistent with gender equality with s 7D about temporary special measures (Stage One)</p> <p>Remove permanent exemptions, such as 31 and 32 which are consistent with gender equality, from Division 4, and consolidate with s 7D regarding temporary special measures.</p>
Exemptions (Page 164)	<p>Recommendation 38: A three (3) year sunset clause on permanent exemptions (Stage One)</p> <p>(1) Place a three (3) year sunset clause on all permanent exemptions and exceptions that limit gender equality</p> <p>(2) Refer all permanent exemptions to a second stage of review, with a view to them either being removed, or narrowed on human right grounds</p>
Exemptions (Page 164)	<p>Option for Reform H: Process for removing permanent exemptions (Stage Two)</p> <p>(1) Consider removal of all permanent exemptions, or narrowing on strictly human rights grounds</p> <p>(2) Consider introducing a general limitations clause which is strictly compliant with human rights principles</p>



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Issue	Recommendations (Stage One) or Options for Reform (Stage Two)
Funding (Page 203)	<p>Recommendation 39: Increase funding for complaint handling service (Stage One)</p> <p>Increase funding to ensure that HREOC is adequately resourced to (i) continue to provide information to ensure people understand the law and rights and responsibilities under the law and (ii) ensure the ongoing provision of an efficient and effective complaint service.</p>
Funding (Page 203)	<p>Recommendation 40: Increase funding for free and low cost legal services (Stage One)</p> <p>Increase funding provided to Working Women’s Centres, Community Legal Centres, specialist low cost legal services and Legal Aid to assist people make complaints under federal anti-discrimination law. This may also require changes to Legal Aid funding guidelines.</p>
Complaints (Page 204)	<p>Recommendation 41: Extend time limit for taking court action (Stage One)</p> <p>Amend the HREOC Act to extent the time limit for taking court action from 28 to 60 days</p>
Complaints (Page 209)	<p>Recommendation 42: Extend standing to public interest organisations to bring proceedings (Stage One)</p> <p>Review the provisions in the HREOC Act relating to standing to bring claims under the SDA (and other federal discrimination Acts) to widen the scope for proceedings to be brought by public interest-based organisations.</p>
Funding (Page 219)	<p>Recommendation 43: Impact of Reduction in Funding (Stage One)</p> <p>Increase funding to HREOC to perform its existing policy development, education, research, submissions, public awareness and inquiry functions to eliminate discrimination and promote gender equality.</p>
Powers	<p>Recommendation 44: Broad inquiry function (Stage One)</p> <p>Amend the SDA to include a broad formal inquiry function</p>

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(Page 224)	in relation to the elimination of discrimination and the promotion of gender equality in Australia.
Funding (Page 225)	<p>Recommendation 45: Dedicated funding to be made available for formal inquiries, particularly on referral from the Minister (Stage One)</p> <p>Where HREOC undertakes a formal inquiry, particularly when undertaken on referral from the Minister, adequate resources should be made available, in order to preserve the capacity of HREOC to undertake other ongoing functions relevant to addressing systemic discrimination and promoting gender equality.</p>
Powers (Page 229)	<p>Recommendation 46: Self-initiated investigation (Stage One)</p> <p>(1) Insert a function for the Sex Discrimination Commissioner to commence self-initiated investigations for alleged breaches of the SDA, without requiring an individual complaint. The new function would include the ability to enter into negotiations, reach settlements, agree enforceable undertakings, and issue compliance notices.</p> <p>(2) Insert a function for HREOC to commence legal action in the Federal Magistrates Court or Federal Court for a breach of the SDA.</p>
Powers (Page 231)	<p>Recommendation 47: Certification of special measures (Stage One)</p> <p>Amend s 7D of the SDA to give HREOC power to certify temporary special measures for up to five (5) years.</p>
Powers (Page 235)	<p>Recommendation 48: Extend the <i>amicus curiae</i> function (Stage One)</p> <p>Amend s 46PV of the HREOC Act to include appeals from discrimination decisions in the Federal Court and Federal Magistrates Court.</p>

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Issue	Recommendations (Stage One) or Options for Reform (Stage Two)
Powers (Page 235)	<p>Recommendation 49: Intervening or appearing as <i>amicus curiae</i> as of right (Stage One)</p> <p>Consider empowering HREOC to intervene, and the Sex Discrimination Commissioner to appear as <i>amicus curiae</i>, as of right.</p>
Powers (Page 235)	<p>Recommendation 50: Broadening the intervention power (Stage One)</p> <p>Consider redrafting s 48(1)(gb) of the SDA to operate more broadly.</p>
Powers (Page 240)	<p>Recommendation 51: Independent monitoring of national gender equality indicators and benchmarks (Stage One)</p> <p>(1) Insert into the SDA a specific function for the Commissioner, on behalf of HREOC, to undertake periodic, independent monitoring of gender equality indicators and benchmarks and report to the Australian Parliament, subject to appropriate and specific funding being made available.</p> <p>(2) Consider the merits of inserting this function as a statutory duty, taking into account the concerns of HREOC about the need for tied funding.</p>
Powers (Page 245)	<p>Option for Reform I: Implement legally-binding standards (Stage Two)</p> <p>Consider inserting into the SDA the ability to adopt legally-binding standards</p>
Powers (Page 248)	<p>Option for Reform J: Gender Equality Action Plans (Stage Two)</p> <p>Consider introducing the ability for EOWA and/or HREOC to receive Gender Equality Action Plans, from bodies other than employers currently covered by the EOWW Act.</p>
Powers	<p>Option for Reform K: Auditing function (Stage Two)</p> <p>Consider amending the EOWW Act or the SDA Act to</p>

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Issue	Recommendations (Stage One) or Options for Reform (Stage Two)
(Page 249)	provide for an auditing function of Gender Equality Action Plans which is properly resourced.
Powers (Page 249)	<p>Recommendation 52: New functions will require new funding (Stage One)</p> <p>If new functions are created for HREOC or the Commissioner, provide new funding reasonably necessary for the effective use of that function.</p>
Powers (Page 250)	<p>Recommendation 53: Purchasing power of the Australian Government (Stage One)</p> <p>Consider how the Australian Government can best use its purchasing power to promote gender equality and address systemic discrimination.</p>
Harmonisation (Page 258)	<p>Recommendation 54: Harmonisation should promote 'best practice' in equality law and ensure compliance with international legal standards (Stage One)</p> <p>Any process of harmonisation should: (a) Ensure laws comply with international human rights standards; (b) Promote 'best practice' models rather than the 'lowest common denominator' from each jurisdiction; (c) Provide greater clarity about the practical application of equality rights and responsibilities in specific contexts; (d) Reduce the transactional costs for both applicants and respondents; and (e) Promote access to justice, with particular focus on improving access for people who are mostly intensely affected by inequality and violation of other human rights in Australia.</p>