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Paid Work and Family Responsibilities Submission  
Sex Discrimination Unit  
Human Rights and Equal Opportunity Commission  
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Sydney NSW 2001

By email to: [familyresponsibilities@humanrights.gov.au](mailto:familyresponsibilities@humanrights.gov.au)

Dear Sir/Madam,

### **Striking the Balance: Women Men, Work and Family**

The Law Institute of Victoria (*LIV*) is pleased to be able to comment on HREOC's "Striking the Balance: Women Men Work and Family (*the Discussion Paper*).

#### **Introduction**

The Discussion Paper proposes to create a framework for examining the barriers faced by men and women in their efforts to combine paid work with family obligations. It seeks to:

- Identify systemic barriers in employment faced by men and women in balancing paid work and family responsibilities;
- Identify how gender roles in unpaid caring work affect the participation of men and women in paid work;
- Examine data on access to family friendly employment provisions, community attitudes towards unpaid caring work and gender dimensions of efforts to achieve work and family balance; and
- Examine legislation, policies, practices and services to ensure that men and women are able to combine their paid work and family responsibilities.

It is on this final point that the LIV will be focussing their comments.

#### **Anti-discrimination legislation**

Chapter 7 of the Discussion Paper deals with anti-discrimination legislation and family responsibilities issues. The LIV comments in relation to questions 23, 25 and 26 are set out below.

*Q23 Can anti-discrimination systems assist men and women better balance their paid work and family responsibilities? Why or why not?*

*Q25 Should the Sex Discrimination Act be amended to give greater assistance to men and women to address any workplace disadvantage they may face on the basis of their family responsibilities? If so, what particular amendments are necessary? If not, why not?*

*Q26 Can an individual complaints mechanism adequately deal with discrimination on the basis of family responsibilities? If not, what other changes may be necessary?*

In order to achieve the stated policy aim of ensuring that men and women are able to combine their paid work and family responsibilities, Federal anti-discrimination laws should prohibit discrimination on the ground of family responsibilities. This ground should also cover the entire area of employment rather than the current restriction to discrimination regarding termination of employment. We note that other federal anti-discrimination legislation is not similarly restricted.

The external affairs power could be used to introduce this legislation as Australia is a party to the ILO Convention Concerning Equal Opportunities and Equal Treatment for men and Women Workers: Workers with Family Responsibilities (ILO 156). The rationale behind the introduction of such legislation would be:

- State legislation makes it unlawful to discriminate on the area of family responsibilities, status as a parent or carer, and it is inconsistent to have federal legislation omitting this ground;
- It will recognise that some men have family responsibilities, and give them an opportunity to make complaints in the federal jurisdiction; and
- It will permit women to make complaints in the federal jurisdiction on this ground rather than having to make such complaints under the area of sex discrimination.

The LIV also recommends that such new legislation draw upon Part 3 of the *Disability Discrimination Act 1992(Cth)* and its provisions on disability plans. Disability plans assist in the goal of achieving structural change. The new legislation could have family responsibilities plans. This would encourage workplaces to implement change at a local level.

### **Workplace relations, policies and practices**

Chapter 8 of the Discussion Paper examines the workplace relations framework and how it impacts on the ability to balance paid work and family responsibilities. The LIV's comments in relation to question 27 are set out below.

*Q27 Are amendments necessary to the workplace relations system needed to give greater assistance to men and women to address any workplace disadvantage they may face on the basis of their family responsibilities. If so, what particular amendments are necessary? If not, why not?*

The LIV considers that amendments to the workplace relations system are necessary to address workplace disadvantage based on family responsibilities. It is noted that part of the Federal Government's reform of the workplace relations system will involve certain minimum conditions becoming enshrined in legislation. The LIV recommends that these minimum conditions include the model award provisions from the recent *Family Provisions Decision* by the Full Bench of the Australian Industrial Relations Commission. The rationale behind the introduction into legislation of such provisions is that they:

- Introduce change in a practical way that is likely to have the consent of employee and employer groups as the provisions are drawn from the *Family Provisions Decision*;
- Are consistent with anti-discrimination case law;
- Provide guidance for employers (and further guidance can be found in the United Kingdom's implementation of similar law);
- Provide employees with a framework to request work arrangements to assist them to balance their work and family responsibilities; and
- Ensure national consistency for Australian workers.

The LIV recommends that the legislation be drafted with a sunset clause so that a parliamentary committee review the legislation in two to three years from now to ascertain the level of implementation, so that it could recommend whether any further reform is necessary.

The LIV would welcome the opportunity to discuss the above further.

Yours sincerely

V.E. Strong.

**Victoria Strong**  
President  
Law Institute of Victoria