Submission

on the

Consolidation of Commonwealth Anti-discrimination Laws

to the

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TABLE OF CONTENTS

Introduction

The Government has announced its intention to consolidate existing Commonwealth anti-discrimination legislation into a single, comprehensive law. As part of this project, the Government is also intending to introduce new prohibitions on discrimination on the basis of sexual orientation and gender identity.

A discussion paper, *Consolidation of Commonwealth Anti-Discrimination Laws*, was released in September 2011 and submissions invited on the questions raised. Submissions are due by 1 February 2012.

1. Defining discrimination

The government has made it clear that it won't adopt any new definition of discrimination that "diminishes protection". However, the government should also be attentive to the burden any expanded definition of discrimination may place on business and other sectors of the community where allegations of discrimination may be made.

The Senate Legal and Constitutional Affairs Committee's *Inquiry into the Effectiveness of the Sex Discrimination Act 1984* recommended replacing the comparator test with a test of unfavourable treatment.[1]

However, Liberal Senators dissented from this recommendation pointing out that it could "impose significant compliance costs on employers and to encourage and facilitate unfounded claims."

They cited evidence that "many employers already feel compelled to settle speculative claims under the Act, irrespective of the strength of the applicant's case, in order to avoid the costs of litigation or damage to their reputation. In unnecessarily and inappropriately broadening … the definition of discrimination … the recommendation of the Chair's Report would simply exacerbate this problem."[2]

Recommendation 1:

No new definition of discrimination that is broader than the current definition in Commonwealth law should be adopted.

2. Allocating the burden of discrimination

Commonwealth anti-discrimination law currently places the burden of proving discrimination has occurred on the complainant. This is consonant with the general legal principle that in civil actions the onus is on the complainant. It is for the complainant to establish that an allegedly discriminatory action was carried out for a particular reason or with a particular intent.

Anti-discrimination law already imposes significant burdens on those who are alleged to have breached it. It would unjustifiably increase these burdens to shift the onus of proof onto respondents. It would also encourage frivolous claims.

Liberal Senators in their dissenting comments in the Senate Legal and Constitutional Affairs Committee's 2008 report on the *Effectiveness of the Sex Discrimination Act 1984* opposed recommendation 22 in the Chair's report which proposed reversing the burden of proof for complaints under the Sex Discrimination Act 1984.[3]

Recommendation 2:

In accordance with the general rule for civil actions the burden of proof should remain with the complainant and not be imposed on the defendant.

3. Special measures

Special measures include "*employment assistance programs, education and training programs, scholarship programs and adopting quotas to achieve greater representation of certain persons in particular activities*".

Equality of outcome should not be seen as a goal in itself. Special measures such as quotas should not be used to arbitrarily seek to achieve, for example, equal participation of women and men in some profession just for the sake of an idealised equality.

However, strict application of anti-discrimination law can operate to prevent sensible measures being taken to remedy a real social problem.

For example, the Human Rights and Equal Opportunity Commission objected to the Howard government proposal to amend the *Sex Discrimination Act 1984* to allow scholarships to be offered to attract more men into primary school and other teaching sectors. The aim of the proposal was to improve boys' education by ensuring that they were exposed to more male role models during their schooling.

Liberal Senators in their dissenting comments in the Senate Legal and Constitutional Affairs Committee's 2008 report on the *Effectiveness of the Sex Discrimination Act 1984* supported amending the Act to make it lawful for a person to "*offer scholarships for persons of a particular gender in respect of participation in a teaching course. The section would apply only if the purpose of doing so is to redress a gender imbalance in teaching—that is, an imbalance in the ratio of male to female teachers in schools in Australia or in a category of schools or in a particular school*".[4]

Recommendation 3:

Special measures should not be used to achieve an idealised "equality of outcome". However, they should be permitted to meet a real social need such as correcting the low male participation rate in teaching to help improve boys' education.

4. Duty to make reasonable adjustments

Broadening the duty to make reasonable adjustments to cover other attributes than disability would impose additional burdens on employers and service providers and is not justified.

Recommendation 4:

The duty to make reasonable adjustments should not be expanded to cover attributes other than disability.

5. Positive duty to eliminate discrimination

Imposing a positive duty on the public sector to eliminate all discrimination and harassment would be to impose an open-ended "blue sky" task. It would be hard for anyone on whom the duty would be

imposed to ever be confident that it had been completely observed, namely that they had taken all measures that could be considered reasonable and proportionate.

The threat of a possible investigation of those on whom this duty is being imposed would be likely to lead them to err on the side of introducing measures that impose significant costs on the public sector and distract management of the public sector from focusing on its real business of serving the public.

Recommendation 5:

No positive duty to eliminate all discrimination and harassment should be imposed on the public sector.

6. Harassment

As the discussion paper points out (p 18) case law already includes serious harassment of persons based on a protected attribute as discrimination. There is no need to make specific provisions about harassment which could result in broadening the range of acts potentially considered harassment to include relatively trivial speech such as jokes and friendly teasing.

Doing so would be likely to increase the administrative burden on business and others.

Recommendation 6:

No specific provisions prohibiting harassment on the basis of all protected attributes should be included.

7. Sexual orientation and gender identity

Laws which prohibit discrimination in the areas of employment, provision of goods and services and other areas of daily life necessarily impact on the general right of citizens to determine their own affairs.

In particular such laws necessarily trespass on the right to freedom of association and its co-essential corollary the right not to associate,[5] the right to freedom of religion and belief and the right to freedom of expression.

The nature of sexual orientation and so-called gender identity are hotly contested issues in our society.

Many Australians, including but not limited to religious believers, continue to share the view, that was virtually universal until recent years, that sexual acts between persons of the same sex are inherently disordered – that is contrary to the nature of human beings as male and female and the purpose of sex as directed at procreation and the unity of a man and a woman in the intimate, lifelong union of marriage.

Such Australians should be free to express their disapproval of sexual acts between persons of the same sex, especially their disagreement with those who actively advocate or flaunt their involvement in such activity. Laws to prohibit such disapproval or disagreement are unwarranted.

Similarly many Australians reject the notions that as well as male and female there is a third sex, or that individuals can change their sex at will.

7.1 Constitutional issues and international law

Any Commonwealth anti-discrimination law with broad application would need to derive its constitutional validity from the external affairs power. The Commonwealth has no general power to make broad anti-discrimination laws.

For a Commonwealth anti-discrimination law prohibiting discrimination on the grounds of sexual orientation or gender identity to be valid it would need to be clear which international treaty or treaties founded the exercise of the external affairs power.

7.1.1 International Covenant on Civil and Political Rights

Nothing in the text of the *International Covenant on Civil and Political Rights* makes any explicit reference to sexual orientation or gender identity.

Some decisions of the Human Rights Committee have claimed to find implicit references in either Article 2(1) or Article 26. It is instructive that those members of the Committee who infer such references are divided over whether "sexual orientation" should be read into the word "sex" or into the phrase "other status".

Neither claim is persuasive or decisive.

In *Toonen (488/1992)* the Committee confined "itself to noting, however, that in its view the reference to "sex" in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation." The Committee declined to comment on whether "sexual orientation" was included under "other status".

In *Joslin* (902/1999) the Committee found that the right to marry under the ICCPR only established a right for a man and woman to marry and that there was no obligation for States to provide for same-sex marriage.

In *Danning* (180/1984) the Committee upheld the right of a State party to discriminate between married couples and cohabiting couples.

In *Young* (941/2000) the State party (Australia) because it held that Mr Young was not entitled to the veteran's dependent's pension on other grounds simply failed to address whether denying the pension to the same-sex partners of veterans is reasonable. The individual opinion of Mrs Ruth Wedgwood and Mr Franco DePasquale is worth noting.

> *The current case of Edward Young v Australia poses a broader question, where various states parties may have decided views - namely, whether a state is obliged by the Covenant on Civil and Political Rights to treat long-term same-sex relationships identically to formal marriages and "marriage-like" heterosexual unions - here, for the purpose of awarding pension benefits to the surviving dependents of military service personnel. Writ large, the case opens the general question of positive rights to equal treatment - whether a state must accommodate same-sex relationships on a par with more traditional forms of civil union …*
>
> *In every real sense, this is not a contested case …*
>
> *In the instant case, the Committee has not purported to canvas the full array of "reasonable and objective" arguments that other States and other complainants may offer in the future on these questions in the same or other contexts as those of Mr Young. In considering individual communications under the Optional Protocol, the Committee must continue to be mindful of the scope of what it has, and has not, decided in each case.*

It is noteworthy that a proposed "Resolution on Human Rights and Sexual Orientation" has been stalled at the United Nations Human Rights Commission due to the lack of international consensus on this issue.

None of these cases seems to provide sufficient grounds to found an alleged right to protection from discrimination on the grounds of sexual orientation or gender identity in the *International Covenant on Civil and Political Rights.*

Recommendation 7:

As there is no evident constitutional basis for the Commonwealth to enact a general law prohibiting anti-discrimination on the grounds of sexual orientation or gender identity, and any such law would necessarily interfere with the freedom of Australians to act on their own deeply held views about sexual behaviour and gender identity, no such law should be proposed.

8. Attributes of associates

Expanding anti-discrimination law to cover attributes of an associate would unjustifiably impose additional burdens on business.

Recommendation 8:

Anti-discrimination law should not be expanded to cover attributes of an associate.

9. Protected attributes

In consolidating anti-discrimination law, there is no need to add additional attributes not already covered under specific laws.

Recommendation 9:

No additional attributes should be protected.

10. Intersectional discrimination

There is no specific need to provide for intersectional discrimination. A person discriminated against on the basis of two or more protected attributes already has sufficient grounds to proceed with a complaint.

Recommendation 10:

No specific provision should be made for intersectional discrimination.

11. Right to equality before the law

Under common law all persons (at least after birth) are already treated as equal before the law. Introducing a right to equality before the law based on sex or other protected attributes is likely to give rise to legal uncertainty as to what this means. There is no clear case for doing so.

Recommendation 11:

No provision should be made for a specific right to equality before the law based on sex or any other protected attribute.

12. Areas of public life

Any broadening of the areas of public life to which anti-discrimination law applies would be likely to increase the burden it imposes on business and other sectors as well as to unjustifiably limit freedoms.

Recommendation 12:

There should be no broadening of the areas of public life in which anti-discrimination law applies.

13. Voluntary workers

In their dissenting remarks in the Senate Legal and Constitutional Affairs Committee's 2008 report on the *Effectiveness of the Sex Discrimination Act 1984* Liberal Senators expressed their opposition to Recommendation 25 in the Chair's report which proposed having voluntary workers covered by sex discrimination law.

> *Voluntary organisations make a major contribution to our community. This is evidenced in a range of reports from the Australian Government and Volunteering Australia. Removing the exemption in section 39 would require these organisations to comply with the prohibitions on discrimination in Divisions 1 and 2 of Part II of the Act. This may impose significant compliance costs on such organisations that would only serve to lessen their ability to sustain this contribution. Furthermore, there was no evidence that discrimination by voluntary organisations in relation to membership is a widespread problem. Rather the arguments for removal of this exemption rested almost entirely on an ideological objection to the provision and the theoretical possibility of such discrimination occurring.*[6]

Recommendation 13:

Voluntary workers should not be covered by anti-discrimination law, as to do so would impose unnecessary administrative burdens on the voluntary sector which makes a vital contribution to the community.

14. Domestic workers

People should remain free to make decisions about who to employ in their own home without being subject to possible claims of discrimination under Commonwealth law. Interference in a person's home is a mark of totalitarian rather than democratic, free societies.

Recommendation 14:

Domestic workers should not be covered by Commonwealth anti-discrimination law.

15. Clubs and member-based associations

Freedom of association is a fundamental human right. Clubs with single sex membership or limited to members based on some other attribute should be allowed without needing to get an exemption or any form of permission from the government.

Recommendation 15:

Clubs and member-based associations should not be covered under Commonwealth anti-discrimination law.

16. Partnerships

Partnerships are a form of association in which groups of professionals decide to work together. People should be free to choose those with whom they wish to form a partnership, without being subject to possible discrimination claims.

Recommendation 16:

There should be no expansion of the partnerships covered under Commonwealth anti-discrimination law.

17. Sport

In some sports the physiology of men and women necessitates separate competitions, to be fair to all participants. In some cases, separate competitions may be needed for the safety of participants. For example in full body contact sports, such as Australian Rules football or either rugby code, women are never likely to be able to compete with men and may be at greater risk of harm if they did so. The development of women's competitions is an appropriate approach in these sports.

In sports where physiological sex differences are of less consequence, such as lawn bowls, there is no obvious justification for outlawing single sex competitions for those who prefer to socially interact in this way with people of the same sex. Those who prefer a mixed competition are free to create one.

If gender identity became a protected attribute under Commonwealth anti-discrimination law it should not apply to sport. In many single sex competitions male-to-female transsexuals are likely to have a competitive advantage over biological females based on their underlying male physiology. It would be wrong to prevent those responsible from ensuring fair competition based on actual rather than constructed sex.

Recommendation 17:

Commonwealth anti-discrimination legislation should not cover sport, but if it were to do so then there should be exemptions allowing for single sex competitions and for the exclusion of transsexuals from competing in single sex competitions as their constructed sex.

18. Discriminatory requests for information

Merely asking a question about a protected attribute should not be treated as discriminatory. Only where the purpose of asking the question is clearly discriminatory should it be treated as discrimination.

Recommendation 18:

Requests for information about a protected attribute should only be treated as discriminatory if the purpose of asking the question is discriminatory.

19. Vicarious liability

Holding employers vicariously liable for the actions of their employees imposes administrative burdens and costs on them. Requiring them to take "all reasonable steps" to prevent their employees engaging in discriminatory acts would, according to evidence given to the Senate Legal and Constitutional Affairs Committee by the Australian Chamber for Commerce and Industry be to impose "*a general amorphous obligation on employers*" which would make it "*very difficult for the employer to ensure that they comply with it*".[7]

Recommendation 19:

Vicarious liability should only apply in narrow circumstances where an employer was aware of discriminatory actions by an employee and took no reasonable steps to stop the action.

20. General limitations/exceptions

As argued above in response to questions 13-17 and below in relation to religious organisations there should be very broad areas of exemption from Commonwealth anti-discrimination law. It seems unlikely that any general phrasing could cover all the desirable specific exceptions and these need to be specified in the law, perhaps in addition to a more general limitations clause.

Recommendation 20:

Any general limitations clause should be seen as additional to specific exemptions to anti-discrimination law rather than replacing these.

21. Inherent requirements

A general exemption covering the inherent requirements of a job could be included provided it does not replace broader exemptions such as those for religious organisations.

Recommendation 21:

A general exemption covering the inherent requirements of a job could be included but it should not replace broader exemptions such as those for religious organisations.

22. Religious exemptions

Exemptions for religious organisations from anti-discrimination law are well-founded as they are firmly grounded in the right to freedom of thought, conscience, religion and belief of the person or persons discriminating.

For example, one church may refuse, in accordance with its doctrine, not to ordain homosexuals to its ministry, based on the attribute of engaging in a particular lawful sexual activity, namely homosexual sex. Another church, with a different doctrine on homosexual behaviour, may refuse to ordain anyone who disapproves of homosexual behaviour, based on the attribute of religious belief, namely that there is no divine disapproval of homosexual behaviour on the attribute. Broad religious exemptions rightly leave each church free to act in accordance with its doctrine.

Any suggestion that religious bodies or religious schools should be forced to act against their own religious beliefs or principles should be rejected as an unwarranted attack on the right to freedom of religion.

Similarly, individual persons ought to remain free to act in accord with their own genuine religious beliefs or principles.

The right to freedom of thought, conscience, religion and belief is not limited to acts of worship as part of a community. It includes observance and practice. For Christianity, as for all major world religions, religion involves extensive beliefs about ethical behaviour – how to behave towards others in all aspects of life. This naturally includes the behaviour of individual believers not just the activities of religious bodies.

In regard to employment there should be no onus of proof imposed on a religious body or school to prove that conformity with the doctrines, beliefs or principles of the religion is an inherent requirement of the particular position or that a person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity means that he or she does not meet that inherent requirement.

Speaking at the Human Rights for Ethnic and Religious Minorities: A Charter for All Federation of Ethnic Community Councils of Australia Annual Conference on 29th October 2009 Dr Helen Szoke, Commissioner, Victorian Equal Opportunity and Human Rights Commission addressed the proposal to include an "inherent requirement" test in Victorian anti-discrimination law.[8]

> *The question may be asked – what is reasonable in the circumstances in assessing the boundaries of religious doctrines and the inherent requirements of a job? Just how do personal attributes impact on religious teachings and modeling in a school situation or in a work situation more generally? We have already heard many people question whether it is relevant that a maths teacher is a single parent if she is a good maths teacher? Similarly, how does the sexual orientation of the physical education teacher impact on their ability to provide a high class program of activities for students?*
>
> *At this stage, the Commission has not seen the detail of what has been proposed and there are more questions than answers about how these exceptions will apply. What we anticipate is that there will be varying interpretations of how they apply.*

These remarks indicate that the Commissioner herself does not have a good grasp of the nature of religious schools. Anyone who does would understand instinctively that whether the maths teacher – or the canteen staff for that matter – uphold the religious beliefs and principles of the school is naturally a pertinent issue.

Dr Szoke suggests that if such a test is imposed by the law then "*religious bodies and schools"* will be required *"to be thoughtful, consistent, transparent and accountable in saying what jobs have such a requirement, or else run the risk of losing a claim at the tribunal."*

It is an undue imposition on religious freedom to require religious bodies and schools to be subject in this way to the views of a tribunal as to whether they have satisfactorily made out a "thoughtful" and "consistent" case for particular jobs having an inherent requirement that the person uphold the values of the body employing them. Should religious freedom depend on the capacity for thoughtfulness and consistency, let alone on the ability to persuade a secular tribunal of this capacity?

Dr Szoke also alerts us to the likelihood that "inherent requirement" provisions will be subject to "*varying interpretations of how they apply"*. Law should create certainty.

Religious bodies and schools should not have the burden of proving their right to exercise freedom of religion.

The imposition of an inherent requirement test that would effectively operate to limit the exercise of the right freedom of religion by religious bodies and religious schools in relation to employment practices cannot be "demonstrably justified".

Any inherent requirement provision would also conflict with the *Fair Work Act 2009* which in Section 351 (2) (c) provides a blanket exception in relation to adverse action against an employee or prospective employee for "*an institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed*" where the action is "*taken in good faith; and to avoid injury to the religious susceptibilities of adherents of that religion or creed*."

Recommendation 22:

Religious organisations, including schools, should enjoy broad exemptions from anti-discrimination law including blanket exemptions in relation to any new attributes of sexual orientation or gender identity. In relation to employment there should be no obligation to establish that discrimination was necessary because of an inherent requirement of the job.

23. Temporary exemptions

Broad permanent exemptions are more helpful but where these are not available temporary exemptions may have a role.

Recommendation 23:

Temporary exemptions should be retained.

24. Compliance mechanisms

The proposal to require businesses to produce action plans in relation to additional attributes other than disability would impose further burdens on business and is not warranted.

Recommendation 24:

There should be no additional requirements for business to produce action plans.

25. Conciliation process

Voluntary arbitration or mediation should be considered as possible approaches alongside the current process of conciliation by the Commission.

Recommendation 25:

Voluntary arbitration or mediation should be included as options alongside the current conciliation process.

26. Court process

The Discussion Paper notes that: "Under the current system, the unsuccessful party in a litigation matter must pay the costs of the successful party (although the courts have discretion in how they award costs)." This provides appropriate protection for an innocent party from frivolous or vexatious complaints.

The proposal for each party to bear their own costs is not fair. Complainants would be more likely to pursue unjustified claims and every party accused of discrimination would be left with a financial burden even if the claim was proved to be unfounded.

Recommendation 26:

The proposal for each party to bear their own costs should not be implemented.

27. Australian Human Rights Commission

There should be no expansion of the role of the Australian Human Rights Commission.

The current Commission has shown an extraordinary lack of judgement about its proper place in Australian affairs.

The Commission chose deliberately to participate in the Durban Review Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Geneva from 20 to 24 April 2009 despite the decision by the Australian Government not to participate in this conference. The Government was concerned about an unbalanced criticism of Israel in the draft document being considered by the conference, the likelihood of the conference being "used as a platform to air offensive views, including anti-Semitic views" and "the suggestions of some delegations in the Durban process to limit the universal right to free speech".[9]

The outcome document of the conference did, as Minister for Foreign Affairs the Hon Stephen Smith feared, reaffirm the Durban Declaration and Programme of Action (DDPA), as it was adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001.[10] This declaration singles out Israel as an alleged racist oppressor state.[11] It did provide a platform for the President of Iran, the only head of state to participate, to deliver a viciously anti-Semitic speech[12].

However, the President of the Australian Human Rights Commission, the Hon Catherine Branson, claimed that the outcomes document was acceptable because it "does not mention the Middle East at all, but does deplore anti-Semitism and Islamophobia".[13] Despite her claim to have "read carefully the review and in particular the outcomes document from the more recent review", Ms Branson seems to either have missed the significance of paragraph 1 of the outcomes document reaffirming the Durban

Declaration and Programme of Action, including its singling out of Israel as a racist oppressor state or to be feigning ignorance of this critical fact.

Rather than expanding the role of the Commission, its role should be wound back, or better still, the Commission should be dissolved.

Recommendation 27:

No additional role should be assigned to the Australian Human Rights Commission.

28. Fair Work Act

In any consolidation of Commonwealth anti-discrimination law, it should remain clear that possibly overlapping complaints under the *Fair Work Act 2009* cannot be pursued under both laws.

Recommendation 28:

It should be made clear that any overlapping complaint under the Fair Work Act 2009 and any Commonwealth anti-discrimination law cannot be pursued under both laws.

29. Interaction with State laws

Any consolidated Commonwealth anti-discrimination law should not seek to cover the field but should explicitly allow for the concurrent operation of State laws, while excluding parallel complaints about the same matter.

Recommendation 29:

Any consolidated Commonwealth anti-discrimination law should not seek to cover the field but should explicitly allow for the concurrent operation of State laws, while excluding parallel complaints about the same matter.

30. State instrumentalities

In their dissenting comments in the Senate Legal and Constitutional Affairs Committee's 2008 report on the *Effectiveness of the Sex Discrimination Act 1984* Liberal Senators noted that they did not "*support recommendation 11 [in the Chair's report] which, contrary to the federal nature of the Australian constitution, would amend the Act to provide that the Crown in right of the states and state instrumentalities are bound by the provisions of the Act. There is no need for such an amendment given that all states and territories have their own anti-discrimination legislation*."[14]

This objection would likewise be relevant to a consolidated Commonwealth anti-discrimination law.

Recommendation 30:

Any consolidated Commonwealth anti-discrimination law should not attempt to bind the Crown in the right of the states. The states should remain responsible for anti-discrimination laws covering their own instrumentalities.

31. Endnotes

1. Senate Legal and Constitutional Affairs Committee *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality*, December 2008, Recommendation 5, p xiii: http://www.aph.gov.au/senate/committee/legcon_ctte/sex_discrim/report/report.pdf

2. Ibid., p 172.

3. Ibid.

4. Ibid., p 170.

5. Detrick, S., *A commentary on the United Nations Convention on the Rights of the Child*, Martinus Nijhoff, 1999, p 261, citing Karl Joseph Partsch, "Freedom of Conscience and Expression, Political Freedoms", in Louis Henkin (ed.), *The International Bill of Rights: The Covenant on Civil and Political Rights* (New York: Columbia University Press, 1981), p 235.

6. Senate Legal and Constitutional Affairs Committee *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality*, December 2008, p 173: http://www.aph.gov.au/senate/committee/legcon_ctte/sex_discrim/report/report.pdf

7. Ibid., p 120.

8. Szoke, H, "Human Rights for Ethnic and Religious Minorities: A Charter for All", presented at *FECCA Biennial Conference*, 29th October 2009, Shepparton, pp 7-8: http://www.fecca.org.au/conf09/Presentations/Helen_Szoke.pdf

9. Smith, S, "Durban Review Conference", 19 April 2009: http://www.foreignminister.gov.au/releases/2009/fa-s090419.html

10. Outcome document of the Durban Review Conference, 2009, para 1: http://www.eyeontheun.org/assets/attachments/documents/7953.pdf

11. *World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance Declaration*, 2001, para 63: http://www.eyeontheun.org/assets/attachments/documents/durban_declaration.pdf

12. http://www.eyeontheun.org/assets/attachments/documents/7952.doc

13. Proof Committee Hansard Senate Legal And Constitutional Legislation Committee Estimates (Budget Estimates) Monday, 25 May 2009, p 21: http://www.aph.gov.au/hansard/senate/commttee/S12039.pdf

14. Senate Legal and Constitutional Affairs Committee *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality*, December 2008, p 172: http://www.aph.gov.au/senate/committee/legcon_ctte/sex_discrim/report/report.pdf