

Towards a unified Equality Act: Why this matters for business

1 December 2011



Background

The Australian Government has decided to consolidate existing federal anti-discrimination legislation into a single, comprehensive law. The Government has also committed to introduce new prohibitions on discrimination on the basis of sexual orientation and gender identity.

Currently, anti-discrimination law is spread over four federal statutes – all of which apply to business. These are:

- the *Racial Discrimination Act 1975*;
- the *Sex Discrimination Act 1984*;
- the *Disability Discrimination Act 1992*; and
- the *Age Discrimination Act 2004*.

The *Australian Human Rights Commission Act 1986* establishes the Australian Human Rights Commission and regulates the complaints process under the other four Acts. There are provisions relating to discrimination in employment in the *Fair Work Act 2009*. In addition, there is legislation in every State and Territory prohibiting discrimination on a number of attributes.

The Government has outlined four key principles for reform:

- a reduction in complexity and inconsistency in regulation to make it easier for individuals and business to understand rights and obligations under the legislation;
- no reduction in existing protections in federal anti-discrimination legislation;
- ensuring simple, cost-effective mechanisms for resolving complaints of discrimination; and
- clarifying and enhancing protections where appropriate.

The Government is also particularly interested in possible mechanisms to assist business in understanding and carrying out their obligations.

The Government has recently published a discussion paper calling for submissions to be made by 1 February 2012.

Why should business get involved in the law reform process?

Minimising discrimination in the workplace

The majority of discrimination and harassment complaints relate to the workplace and the provision of services.¹ Many employers have developed policies and procedures to minimise discrimination or

harassment in the workplace. There is a strong business case for diverse and inclusive workplace cultures that counteract discrimination.

Recognition as a model employer

There are benefits to employers in achieving recognition as a business with a discrimination-free culture. Business has an opportunity to take positive action as part of its diversity commitment and improve recognition as a 'model employer'.

Deregulation and Simplification

The consolidation of these five acts into one law will simplify regulation for business. The Government is asking what it can do to assist businesses to comply with their obligations.

Ultimately, anti-discrimination law will continue to apply to business, and the current process represents a rare and valuable opportunity to provide input into the law reform process.

How can business get involved?

- Join Mallesons in an open letter to the Attorney-General endorsing the following key principles for reform.
- Have input into the submission by Diversity Council Australia (for member organisations).
- Write a submission to the Government. Submissions are due by 1 February 2012.

Join Mallesons in endorsing the following key principles

1. We are committed to building and maintaining a workplace that is diverse, inclusive and free of discrimination.
2. We believe that a clear and robust anti-discrimination regime promotes equality and the elimination of discrimination.
3. We believe that it should be unlawful to discriminate on the basis of sexual orientation or gender identity.
4. We endorse the Australian Government's key principles for reform of anti-discrimination law:
 - *a reduction in complexity and inconsistency in regulation to make it easier for individuals and business to understand rights and obligations under the legislation;*
 - *no reduction in existing protections in federal anti-discrimination legislation;*
 - *ensuring simple, cost-effective mechanisms for resolving complaints of discrimination; and*
 - *clarifying and enhancing protections where appropriate.*
5. We call on the Government to provide guidance and support to businesses to understand and meet their obligations.
6. We believe that enhanced protection of human rights and better outcomes for businesses can be achieved concurrently.

Telstra and its Disability Action Plans

In 1996, Telstra became one of the first major Australian corporations to create and lodge a Disability Action Plan with the Australian Human Rights Commission. Telstra is currently implementing its Fifth Disability Action Plan 2010-2012.

Each action plan has been reviewed at its conclusion, and the last four have been independently reviewed. The independent review of the Fourth Plan 2007-09 found that of the 42 items, 33 were complete or ongoing with high achievement, there was extensive progress on four items, and five items remained in progress. One of the highlights of that plan was the development of the EasyTouch Discovery mobile phone, which has become a very popular phone for Telstra's customers with a disability.

The development of Telstra's Disability Action Plans has been more than just a response to the Disability Discrimination Act. As Telstra said in its Fifth Disability Action Plan:

*"There are strong business and customer service imperatives behind our Plans, which continue to be a key element of our company policy on disability services and our company and board policies on diversity and inclusion. This Plan is endorsed by Telstra's CEO, Diversity Council and senior management team. It demonstrates Telstra's ongoing commitment to Australians with a disability, which includes many older Australians."*²

Telstra's engagement with the disability sector, through its Disability Forum and partnerships with national and grass roots community organisations, also led Telstra to make a submission to the Productivity Commission in support of the National Disability Insurance Scheme.

Discrimination on the basis of sexual orientation and/or gender identity

The Williams Institute at the University of California School of Law (UCLA Law) recently conducted a study of the top 50 Fortune 500 companies in the United States.³ Almost all (96%) stated that policies promoting employee diversity in general are good for their business. In addition, 63% of companies surveyed linked policies prohibiting discrimination against lesbian, gay, bisexual and transgender people to improving their bottom line. Specified benefits included improved recruitment and retention, ideas and innovation, customer service, employee productivity, public sector clients, and employee relations and morale.

Jeff Immelt, Chairman and CEO of General Electric, has commented: *"It's very important for us to have an inclusive culture where everyone feels comfortable they can get any job when they walk through the door and people can prosper in this company... That's been true about gender and about race and it's going to be true in the future about gay and lesbian rights."*

Woolworths gender diversity journey

In 2004, 55% of Woolworths' workforce was female, but women represented only 16% of the senior management team. Woolworths began to focus on gender diversity and identified the root causes of why women were not reaching the senior ranks. New programs were instituted, including flexible work and parental leave, mentoring for senior women and career resilience training for junior staff. These initiatives led to an increase of women in senior roles to 20% by 2007.

CEO Michael Luscombe introduced a new leadership model, striving for leaders who could challenge the status quo and stay ahead of the market and consumer trends. He appointed two women into line roles in the senior executive team – Julie Coates as Head of Logistics, then Head of Big W; and Debra Singh as Head of Consumer Electronics. Woolworths introduced paid parental leave in June 2008 and by 2011, the proportion of women in top roles had increased by 69% from 2004 (now 27% of the senior management team are women).⁴

United Kingdom Equality Act 2010

The United Kingdom consolidated 9 existing pieces of legislation into a single Equality Act in 2010. Caroline Waters, BT's Director of People and Policy, reflected:

"While legislation clearly doesn't hold all the answers, I believe the Equality Act has created a clear framework in which we can look at the concept of total inclusion at work and in society and move away from the 'strands' that simply don't reflect the complexity of real life and real people.

*The Act makes equality law easier to understand and implement. It has also introduced much-welcomed consistency, both between protected groups and between employees, customers and other individuals upon whom we as businesses have an impact."*⁵

Endnotes

- 1 Attorney-General's Department, 'Consolidation of Commonwealth Anti-Discrimination Laws' (Discussion paper, September 2011) 43.
- 2 Telstra, *Telstra's Fifth Disability Action Plan 2010-2012*, 5 <<http://www.telstra.com.au/abouttelstra/download/document/telstra-fifth-disability-action-plan.pdf>>.
- 3 Brad Sears and Christy Mallory, The Williams Institute, *Economic Motives for Adopting LGBT-Related Workplace Policies* (October 2011) <<http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corporate-Statements-Oct-20111.pdf>>.
- 4 Extracted from Male Champions of Change, *Our experiences in elevating the representation of women in leadership – A letter from business leaders* (2011) 32-33 <http://www.humanrights.gov.au/sex_discrimination/publication/mcc/mcc2011.pdf>.
- 5 David Woods, *Government's Red Tape Challenge can improve equality law and create greater business opportunities, says BT director* (27 June 2011) <<http://www.hrmmagazine.co.uk/hro/news/1019694/government-s-red-tape-challenge-improve-equality-law-create-business-opportunities-bt-director>>.