

AUSTRALIAN HUMAN RIGHTS COMMISSION
SEX DISCRIMINATION ACT 1984 (Cth)
Section 44(1)

NOTICE OF GRANT OF APPLICATION FOR EXEMPTION

By this instrument, the Australian Human Rights Commission grants to the Australian Bureau of Statistics (ABS) a temporary exemption pursuant to s 44(1) of the *Sex Discrimination Act 1984 (Cth)* (SDA) from the operation of Divisions 1 and 2 of Part II of the SDA, in the terms set out below.

1. SUMMARY

- 1.1 The ABS will conduct a national survey, the Personal Safety Survey (PSS), from 1 October 2016 to 30 June 2017.
- 1.2 The PSS collects information about a person's experience of violence, in particular domestic violence. The ABS seeks an exemption in order to use predominantly female interviewers to conduct the PSS. The ABS proposes to:
- allocate the PSS work to female rather than male interviewers on its existing panel of casual interviewers;
 - advertise for and recruit approximately 50 female non-ongoing interviewers to conduct the PSS; and
 - train and provide professional development opportunities to the predominantly female interviewers selected to conduct the PSS.
- 1.3 The temporary exemption is granted on the terms and conditions set out below with immediate effect until 30 June 2017.

2. THE COMMISSION'S POWER TO GRANT EXEMPTIONS

- 2.1 The ABS has applied for an exemption under s 44 of the SDA.
- 2.2 Section 44 of the SDA provides the Commission with the power to grant, by instrument in writing, an exemption from the operation of a provision of Division 1 or 2 of the SDA as specified in the instrument. The power is enlivened on application by a person, persons or class of persons, as the case may be.
- 2.3 Section 44(3) of the SDA states that an exemption:
- a. may be granted subject to such terms and conditions as are specified in the instrument;
 - b. may be expressed to apply only in such circumstances, or in relation to such activities, as are specified in the instrument; and

c. is to be granted for a specified period not exceeding 5 years.

3. THE APPLICATION

3.1 On 26 May 2016, the ABS wrote to the Commission, seeking an exemption from the SDA to use predominantly female interviewers to conduct the PSS and in particular to enable it to:

- allocate the PSS work to female rather than male interviewers on its existing panel of casual interviewers;
- advertise for and recruit approximately 50 female non-ongoing interviewers to conduct the PSS; and
- train and provide professional development opportunities to the predominantly female interviewers selected to conduct the PSS.

3.2 The PSS is a survey that collects sensitive information about a person's experience of violence, in particular domestic violence.

3.3 The survey will be conducted in 2016 and 2017 by personal interview of around 22,000 adults (aged 18 years or over) nationally (excluding very remote areas of Australia). It is proposed that approximately 280 interviewers nation-wide will be used.

3.4 The ABS advises that it currently has 390 interviewers on its panel, of whom 124 were male. Interviewers have been advised that the ABS expects to use predominantly female interviewers for the PSS, and that male and female interviewers not selected for the PSS interviewer panel will be assigned full workloads on other household surveys in 2016 and 2017.

3.5 The ABS is seeking an exemption to use predominantly female interviewers for the PSS, to conduct the private one-on-one interviews with both male and female respondents. The ABS advises that these interviewers will be provided with training about how to recognise and monitor respondent reactions, and how and when to offer a male Interviewer.

3.6 The ABS submits that using female interviewers is necessary for achieving high quality data, which will contribute to a better understanding of the prevalence of violence in Australia. The ABS made the following submissions and provided the following evidence in support of this claim:

- Expert advice indicates that both men and women are more inclined to communicate sensitive information to female interviewers, in particular:
 - In 2016, the National Association of Services Against Sexual Violence endorsed the ABS' proposed methodology;
 - In 2016, the Sexual Assault Support Services endorsed the ABS' proposed methodology;

- In 2016, Mensline Australia stated that ‘out of 124 messages left on its voice message service over 2015-2016, only 10 messages left by callers requested to speak to a counsellor of their preferred gender’.¹
- In 2005, advice from its Survey Advisory Group (comprised of experts in the fields of crime, violence and support services) supported the use of female interviewers.
- In 2005, Men’s counselling services (e.g. Mensline Australia, No to Violence Male Family Violence Prevention Association, Men’s Health Information & Resource Centre) supported the use of predominantly females interviewers to interview men and women as long as male interviewers were available on request.
- In 2005, women’s support centres (e.g. Sexual Assault Support Services, Australian Centre for the Study of Sexual Assault, National Association of Services Against Sexual Violence, Australian Domestic & Family Violence Clearinghouse) supported use of female interviewers and stated that women would be more comfortable and more likely to disclose information to another woman than to a man.
- In 2016, Women’s Support Network (WESNET), (the national peak body for Australian Domestic and Family Violence Services) considered it to be paramount that the interviewers be female, stating:

The evidence is clear that most violence of both males and females is by other males. The evidence also clear that women are more likely to experience intimate partner or domestic violence than men
...

[One of WESNET’s member organisations] has provided on site counselling support for debriefing and support after the [PSS pilot interviews] because the questions can trigger flashbacks and emotional responses for the person being interviewed, particularly if the abuse has been recent and/or severe. Our experience and discussions with women has shown that women victims/survivors feel much safer with and affirmed by female counsellors than male counsellors.... Because the interview is very personal, and may cause an adverse triggered response for the person getting interviewed, and that the abuse was more likely to have been from a male, it is critical that the interviewer not be male.²

- ABS experience in 1996,³ 2005 and 2012 is that quality data was obtained using female interviewers and that no requests for male interviewers were made. In particular, ABS reported that in both the 1996 WSS and the 2005/2012 PSS, a significant number of respondents reported incidents of

¹ It is noted that this submission tends to support the view that callers to Mensline in 2015-2016 had no preference on the grounds of gender.

² Email from Julie Oberin, National Chairperson WESNET, to Sanna Coombs, Assistant Director (Personal Safety Survey), Australia Bureau of Statistics, dated 10 August 2016.

³ The survey was called the Women’s Safety Survey (WSS) in 1996.

violence to the ABS interviewer which they had never revealed to anyone else.

- During the testing phase of the 2016 PSS, the Survey Advisory Group did not raise any objections to the ABS' proposed methodology. Dress rehearsals with female interviewers yielded quality data and no respondents requested a male interviewer.
- The ABS has considered that those experiencing violence by a woman may have an issue being interviewed by a woman. However, based on data obtained in the 2012 PSS, it is estimated that only 1.4% of men experienced violence by a woman in the previous 12 months and 1.7% of women experienced violence by a woman in the previous 12 months. The ABS intends to cater for the small number of people in these circumstances by providing the option of a male interviewer on request and/or a computer for respondents to answer more sensitive questions.
- A major 2014 EU violence-focussed survey used only female interviewers.

4. CONSULTATION

- 4.1 The Commission notified the State and Territory Anti-Discrimination Boards and Equal Opportunity Commissions of the exemption application and invited their comment. The Anti-Discrimination Commissions in NSW, WA, SA and Tasmania support the grant of an exemption.
- 4.2 The Commission sought the views of ABS employees. Of the 124 male and 266 female interviewers employed by the ABS, 10 male employees responded to the Commission's call for submissions. Additionally, the Community and Public Sector Union (CPSU) made a submission on behalf of male employees at the ABS. Three of the submissions supported the use of predominantly female interviewers to carry out the PSS and 7 strongly opposed it.
- 4.3 In summary, those opposing the exemption questioned whether there was any specific evidence to support the use of female interviewers and considered that it was inappropriate to make assumptions about the suitability or professionalism of any individual based on gender. In particular, one submitted that the Commission should 'eliminate another barrier which stereotypes both men and women into categories which are no longer relevant to our present society'. Several men noted that they had extensive training and experience in interviewing domestic violence and sexual assault victims.
- 4.4 The CPSU submitted that the grant of an exemption was likely to result in a significant decrease in the workload (and commensurate remuneration) of the male interviewers on the ABS' pool of casual interviewers.

5. CONSIDERATION AND REASONS FOR DECISION

- 5.1 The following proposed activities of the ABS may be inconsistent with provisions of the SDA, including ss 14(1) and (2) and 26(1):

- The allocation of the PSS interviewing work to female rather than male interviewers on its existing panel of casual interviewers;
- The recruitment of approximately 50 female non-ongoing interviewers to conduct the PSS; and
- The training and provision of professional development opportunities to the predominantly female interviewers selected to conduct the PSS.

5.2 Section 14(1) and (2) and 26(1) of the SDA provide:

Section 14 Discrimination in employment or superannuation

- (1) It is unlawful for an employer to discriminate against a person on the ground of the person's sex, ...:
- (a) in the arrangements made for the purpose of determining who should be offered employment;
 - (b) in determining who should be offered employment; or
 - (c) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of the employee's sex...

...

(b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or

...

(d) by subjecting the employee to any other detriment.

Section 26 Administration of Commonwealth laws and programs

- (1) It is unlawful for a person who performs any function or exercises any power under a Commonwealth law or for the purposes of a Commonwealth program, or has any other responsibility for the administration of a Commonwealth law or the conduct of a Commonwealth program, to discriminate against another person, on the ground of the other person's sex, marital status, pregnancy or potential pregnancy, in the performance of that function, the exercise of that power or the fulfilment of that responsibility.

- 4.2 None of the permanent exemptions to the SDA apply to these circumstances (see sections 30 to 43), and the PSS is not within the 'special measures' provision of s 7D of the SDA.
- 4.3 In deciding whether to grant this exemption, the Commission has weighed up the nature and extent of the discriminatory effect against the reasons advanced in favour of the exemption.
- 4.4 The Commission has relied upon and had regard to:

- The ABS' application and submissions;
 - The submissions from State and Territory Anti-Discrimination Boards and Equal Opportunity Commissions;
 - The submissions from other interested parties;
 - The terms and objects of the SDA; and
 - The Commission's Guidelines for the grant of exemptions under the SDA.
- 4.5 The Commission accepts the importance of the PSS and the data that it collects about the experiences of female and male victims of violence. The PSS results are significant for developing prevention strategies as well as services for those experiencing violence.
- 4.6 The Commission also accepts that many men may have the requisite skills to carry out the PSS. The Commission notes, however, the submission of WESNET that there is a risk that a male interviewer might cause some respondents who have experienced violence by another man to have an adverse triggered response to the sensitive questions asked during the PSS due to the fact that the interviewer is a man (regardless of how skilled he is). Further, the Commission notes the ABS' experience, that respondents are more likely to reveal violent incidents to women.
- 4.7 The ABS has not provided any quantifiable evidence or peer-reviewed literature to support these submissions. However, the submissions of WESNET are based on the long term and extensive experience and observations of its members working with women victims/survivors of violence. The views of the ABS are based on its experience of designing and conducting the PSS three times in the past, in consultation with experts in the field (refer to [3.6] above).
- 4.8 While the use of predominantly female interviewers to conduct the PSS is discriminatory, the Commission considers that the success of the PSS in collecting high quality data, and the avoidance of any adverse reactions by respondents are significant factors weighing in favour of the grant of the exemption.
- 4.9 Accordingly, pursuant to section 44 of the SDA, the Commission grants a temporary exemption on the terms and conditions set out below to the ABS with immediate effect until 30 June 2017 to:
- allocate the PSS interviewing work to female rather than male interviewers on its existing panel of casual interviewers;
 - recruit approximately 50 female non-ongoing interviewers to conduct the PSS; and
 - train and provide professional development opportunities to the predominantly female interviewers selected to conduct the PSS.

This exemption is granted on the condition that the ABS report to the Commission at the end of the PSS on the proportion of male and female respondents who use the computer to respond to the violence-related questions.

- 4.10 The Commission notes that the PSS is likely to be repeated again and that best practice methodologies for surveys are continually evolving. The Commission considers the ABS should build a more solid evidence base supporting the ABS' use of female interviewers into the future. Further, the proposed methodology for the 2016 PSS incorporates the use of computers for respondents to answer the questions about violence for the first time. This may change the dynamic of the interview, including the impact of the interviewer on the respondent.
- 4.11 In light of these considerations, there can be no assumption that further exemptions will be granted to the ABS. Detailed evidence establishing the justification for predominately female interviewers would be required to justify the grant of any further exemptions.

Dated this 6th day of September 2016

A handwritten signature in black ink, appearing to read "Gillian Triggs". The signature is fluid and cursive, with a prominent loop at the end.

Signed by the President, Gillian Triggs, on behalf of the Commission.

Please note

Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review of a decision to which this notice relates by or on behalf of any person or persons whose interests are affected by the decision.