

The Clare Burton Memorial Lecture 2007

Understandings of Sex Discrimination in the Workplace: Limits and Possibilities

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Introduction

I am very honoured to have been asked to deliver the 2007 Clare Burton Memorial Lecture. I did not have the pleasure of ever meeting Clare Burton. However, my interests in women's equality in employment have been very much shaped by her work, as have the research, policy and advocacy endeavours of many of us working in this area.

Clare's work was wide-ranging. It included academic research and practical implementation of equal employment opportunity (EEO) at the organisational level, in her capacity as both as an independent researcher and head of public sector EEO agencies in NSW and Queensland. She conducted several major EEO reviews — in the public sector, in universities and in the defence force. One of the things most important to Clare was that her work contribute to a more equal society (Kemmis 2000). As well as her intellectual contribution, Clare was a committed activist, as evidenced in her union work in the 1980s, her role in the establishment of the National Pay Equity Coalition and her work in the Women's Electoral Lobby in the 1990s (Hunter 2000: 27).

Clare's work and insights remain fresh and very relevant today, particularly through her focus on the workplace as both a site for the reproduction of gender inequality and disadvantage and for change. In particular, Clare's work underscores the critical role of organisational decision-making processes, work organisation and workplace culture in the struggle for substantive and sustainable equal opportunity in women's employment.

Her study of gender equity in Australian universities, for example, documents the difference in men's and women's perceptions of sex discrimination and the 'problem of women' within the workplace (Burton 1997). In this and other workplace studies she shows how discrimination can take different forms. For example, while EEO programs may successfully eliminate discriminatory rules, discriminatory *practices* based on the interpretation of rules (which may not be discriminatory in themselves but which produce discriminatory effects) can go relatively unnoticed at the organisational level (see also Burton 1991: 14).

If we want to see both remedial and positive action taken to achieve gender equality, we need to better comprehend both the ways in which gender works at the workplace level and how prohibitions against sex discrimination are understood and interpreted. While my focus is on the latter in this lecture, I would argue that framings of what constitutes and does not constitute sex discrimination also help to illuminate gender at work.

In this lecture I want to address the effectiveness of Australian sex discrimination laws from the workplace perspective. I will start first with a quick outline of the historical context of the federal *Sex Discrimination Act 1984* and the conceptions of both gender equality and discrimination on which it draws. I will look at how the proscription of sex discrimination is understood in the workplace, particularly by women who have made formal discrimination complaints, but also their employers and managers. I will argue that the narrow and contingent framing of women's disadvantage revealed in

these understandings limits the practical effectiveness of sex discrimination laws, particularly in a deregulated labour market. I will then canvass alternative ways of framing women's disadvantage and argue for new equality laws that could link both remedial and positive measures in working towards greater gender equality in paid employment.

There are, however, some qualifications that need to be made before I continue. Firstly, while I focus on the practical effectiveness of legislative provisions, I recognise that law is limited and accept that anti-discrimination laws, even recast as more comprehensive equality laws, cannot be the only measure used to redress women's disadvantage at work.¹ Secondly, my focus on paid employment means that I do not give the weight due to the relationship between paid and unpaid work in maintaining and recreating gender inequality, or to the reliance of workplaces on the unpaid domestic and care work provided by women (see Conaghan 2002; Rittich 2004). Finally, I do not attempt to deal with the nature, extent or intersectionality of the disadvantage experienced in paid employment by *different* groups of Australian women, including Indigenous women, those from minority ethnic groups and those with disabilities.

Legislative Background

Sex discrimination provisions were first introduced in Australia 32 years ago in the *Sex Discrimination Act 1975* (SA), and in the federal jurisdiction more than 23 years ago in the *Sex Discrimination Act 1984* (Cth) (SDA). Women's unequal access to the labour market and to the wages and conditions enjoyed by men, despite growing female participation in paid work, led to employment being recognised as an important site of discrimination. The impetus for the legislation came from a variety of sources, influenced by both the women's movement and domestic changes in community attitudes towards women's role. International developments like the proclamation of the United Nations Decade for Women in 1976, and the subsequent drafting of the *Convention on the Elimination of All Forms of Discrimination Against Women 1979* (CEDAW) were also important catalysts.

The enactment of the SDA came after the failure of an earlier Private Members Bill introduced by Susan Ryan in 1981, while Labor was in opposition. As well as anti-discrimination complaint machinery, the Bill included affirmative action provisions that required employers to establish active and systematic hiring, training and promotion policies for female employees (Ryan 2004: 3). Re-introduced in 1983 after Labor gained office, the Sex Discrimination Bill led to lengthy parliamentary debate as well as loud protests. In the numerous amendments and subsequent redrafting of the Bill, the affirmative action provisions were dropped due to government concern over widespread confusion about and misrepresentations of affirmative action. These provisions were later introduced as separate legislation in 1986 as the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* (AAA).² The legislative separation of mechanisms for individual complaints and those designed to address systemic discrimination was crucial, a point to which I will return.

The SDA introduced two concepts of discrimination: direct discrimination, which draws on an equal treatment model of gender equality; and indirect discrimination, which gestures towards a more substantive conception of equality, or equality of outcomes.³ Unlike CEDAW's definition, the SDA's narrower concepts of discrimination use a comparator model. In this model direct discrimination only exists where women are similarly situated as, but treated differently from, men. Indirect discrimination is limited to situations where disparate or adverse impacts on women compared to a comparator group

¹ For example, other necessary measures would include institutional support such as accessible, affordable, quality child care, disability and aged care services, paid maternity leave, and a progressive individual tax system that would support men and women moving between paid work and unpaid family work.

² This was after a 12-month pilot program involving 28 major companies, the universities, representatives of women's groups, the ACTU and members of the opposition (Ryan 2004: 3).

³ For more detailed and nuanced discussion of the concepts of equality drawn on in the SDA, see Thornton (1990), Hunter (1992), Gaze (2004), and Graycar & Morgan (2004).

can be demonstrated. In practical terms the requirement for a male, or 'ideal worker', comparator has been central to the implementation of the SDA. It is also central to understandings of how the Act works and what the attainment of equality means.

Article 1 of CEDAW defines discrimination against women as:

...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

CEDAW emphasises that such discrimination violates the principles of equality of rights and respect for human dignity. This indicates an explicit recognition of women's disadvantage, including in paid employment, with the CEDAW preamble noting that 'extensive discrimination against women continues to exist'.

In contrast to the AAA, now the *Equal Opportunity for Women in the Workplace Act 1999*, which has been weakened both in terms of legislation and practical implementation,⁴ the legislative provisions of the SDA have been strengthened, to some degree, over time (Gaze 2004: 59).⁵ On a number of levels the SDA and other sex discrimination laws are examples of successful law reform in that many of the formal barriers to women's participation in paid employment have been removed (Ryan 2004). As Beth Gaze points out, their social significance lies in them being a public expression of condemnation of discrimination against women which 'works to create a space and a vocabulary for different understanding of sex discrimination, not just as something that happens but as something unlawful' (Gaze 2004: 58). This has been particularly important in the naming of sexual harassment as a workplace harm.

Women's Disadvantage in the Workplace & Sex Discrimination Laws

My starting point in this lecture is the complex and systemic way in which workplaces and work organisations fail women, and the persistence of women's inequality or disadvantage in the workplace. While I acknowledge that this focus on disadvantage can make women a problem to be 'fixed', I will argue that we need to frame disadvantage in such a way that *it* becomes the organisation's problem, and one that requires action.⁶

⁴ In 1998 shifts in government policy and business concern over the cost of compliance led to a review of the AAA and the enactment of the *Equal Opportunity for Women in the Workplace Act 1999* (Cth). The new Act significantly watered down the minimal reporting requirements of the AAA and moved from an emphasis on compliance to 'reasonably practicable' actions, explicitly limiting the achievement of EEO to the 'capacity to comply' of employers. The new Act also provides for the waiving of reporting requirements for periods of up to three years for those organisations deemed to be compliant with the Act for three consecutive years. In 2006, the federal government announced that reporting to the Equal Opportunity for Women in the Workplace Agency will become biennial for most employers in the future, rather than annual, as has been the case (Australian Government 2006: 26).

⁵ There have, however, been more recent attempts to weaken the SDA legislation, such as exempting the provision of male-only teacher scholarships and access to infertility treatment from the reach of the Act (Charlesworth & Charlesworth 2004: 24; Gaze 2004: 59).

⁶ While women's disadvantage might at times be more strategically framed as the 'politics of advantage' (Eveline 1994) or the 'patriarchal dividend' (Connell 2005: 1808) to draw attention to the privileging of men, including through gender inequality, the reality is that inequality or disadvantage is experienced by women, both as individuals and as a group. As Graycar and Morgan point out, disadvantage is less concerned with formal similarities with and difference from men and more with where women's lives are characterised by incidences of lesser social power, such as being paid less than men in paid work and in having their work undervalued generally (2004: 6).

The poor state of gender equality in employment today has been well documented along a range of indicators (Preston et al 2006; Maddison & Partridge 2007; see also Preston & Burgess 2003). Women's participation in paid work has increased from 49 per cent in 1984 to more than 69 per cent in 2006 (Campbell 2007a: 44) and we have seen a steady rise in female educational attainment (Campbell & Charlesworth 2004: 15). However, despite the closing of the gender participation gap, much of the employment growth for women has been in part-time work where career advancement opportunities are limited; where wages growth is below average (Preston 2007); and where a small but growing proportion of women are in fact underemployed; that is they want to work more hours (Campbell 2007b). The majority of these part-time jobs are casual and there are signs of a deterioration of conditions even in the remaining sector of 'permanent' part-time work (Campbell 2007a: 30). Occupational and industry segregation by gender remains important, with women concentrated in a narrow band of occupations in the service sector (Campbell 2007a: 30). The gender pay gap has remained stubbornly persistent. Despite some gradual and small reductions over the last 25 years, there is recent evidence of this gap widening (Preston 2007; Peetz 2007).

The effectiveness of SD law in the workplace is often measured against evidence of such disadvantage, which in my view is somewhat unfair. The promise of sex discrimination provisions in federal and state law was not to redress the systemic inequality that women experience in the workplace but to provide forums for the resolution of individual discrimination complaints. The legal provisions that provide for individual redress have been criticised for their narrowness — especially the use of the comparator version of discrimination — and the complexity of indirect discrimination provisions (Guest 1999; Gaze 2002, 2004; Hunter 2002a; Thornton 2004). The enforcement process, which places the burden on the woman discriminated against to take action, and the conciliation process, which has become increasingly legalised,⁷ have also emerged as structural problems (Gaze 2004: 59-60). Nevertheless, within these limits the law is assumed to provide at least some redress for those making complaints about direct or more blatant discrimination.

I will argue, however, that even within these limits, the individual complaint system is not travelling very well. Not only are there problems dealing with the new forms of discrimination that have arisen in an increasingly deregulated economy (Owens 2006; Hunter 2002b: 61), but there clearly remain significant difficulties dealing with the 'same old' discrimination. This is evident in the persistence of sexual harassment (HREOC 2004) and direct pregnancy discrimination (Charlesworth & Macdonald 2007). The ailing state of the individual complaint system is reflected in a decline in the number of complaints across discrimination jurisdictions in the past five years and in the paucity of case law, at a time when labour market and employment deregulation is arguably producing a lot of unfairness for women (Preston & Burgess 2003; Preston et al 2006). The decline in formal complaints contrasts sharply with the case in the United Kingdom where complaints under the *Sex Discrimination Act 1986* (UK) and the *Equal Pay Act 1970* (UK) are growing rapidly.⁸

⁷ The increased legalism of the conciliation process under the SDA is shown vividly in HREOC data, which indicates that legal representation of complaints increased from 22 per cent in 1998 to 33 per cent in 2004 (Table 6). Moreover, HREOC survey data suggests that parties to complaints under the SDA have markedly higher levels of legal representation in conciliation than parties to complaints under other federal anti-discrimination legislation (Table 13) (HREOC 2005).

⁸ A search of the relevant annual reports shows, for example, that in all areas under the SDA, the number of complainants lodging complaints fell from 399 in 2001/2002 to 347 in 2005/2006. Under the NSW *Anti-Discrimination Act 1997*, the number of complainants lodging complaints on the grounds of sex (including pregnancy and sexual harassment), carers' responsibilities and marital status in the area of employment, dropped from 413 in 2001/2002 to 259 in 2005/2006. (It should be noted that most of the other state jurisdictions do not provide disaggregated data or indeed any data on the number of complainants lodging complaints. While data is provided on the number of complaints, these include all the grounds claimed in individual complaints as separate complaints.) In the United Kingdom, the number of formal claims received for conciliation at the Advisory, Conciliation and Arbitration Service (ACAS), where the main jurisdiction was the *Sex Discrimination Act 1986* (UK), increased from 4443 in 2004 to 8095 in 2006, while where the main jurisdiction was the *Equal Pay Act 1970* (UK) complaints increased from 6607 in 2004 to 25,265 in 2006 (ACAS 2007: 55).

In 2006 only ten employment matters under the SDA were determined in the Federal Court or the Federal Magistrates Court, with three of these being procedural matters only.⁹ In the same year in Victoria, only seven cases concerned with different manifestations of sex discrimination in employment under the *Victorian Equal Opportunity Act 1995* were determined by the Victorian Civil and Administrative Tribunal (VCAT), with four of these being procedural matters only.¹⁰ The slowdown in complaints and the lack of case law means that much of the influence anti-discrimination law can have on workplace practices and culture is greatly diminished.¹¹

Understanding Discrimination in the Workplace

While the legislation sets parameters for what needs to be established in cases of direct and indirect discrimination, how employees understand what is happening to them as ‘discrimination’ and make a formal complaint about it is a complex process of ‘naming, blaming, claiming’ (Felstiner et al. 1980–81). That is, to get to the point of making a formal complaint, the complainant first has to ‘see’ an action or an experience as detrimental and as discrimination (naming); she has to hold another person or organisation responsible for the perceived injury (blaming); and then she must voice her grievance to the person or organisation believed to be responsible and seek a remedy (claiming).

Importantly, in order to ‘name’ discrimination you have to be able to ‘see’ it. Working in a female-dominated workplace, or one where most of the employees have carer responsibilities, for example, can make it difficult for a woman to construct her experiences as less favourable treatment: it is hard to see discrimination if most of your co-workers are treated the same way as you are. However, while less favourable treatment may be more obvious to women working in male-dominated workplaces, identifying discrimination as a problem may be just as hard. For instance, ‘seeing’ discrimination may undermine attempts by women to ‘fit in’; or it may also undermine the carefully constructed identities of those women who see themselves as ‘gender-neutral’ workers (Hunter 2006). In Rosemary Hunter’s study of female barristers at the Victorian Bar, for instance, the group of interviewees described as the ‘no-yes-but’ group used a variety of strategies ‘to simultaneously deny, admit, minimise, and excuse discrimination against women at the Bar’ (Hunter 2002c: 123). Some admitted instances of discrimination, but consigned them to the ‘bad old days’; others claimed that while they may have been treated disrespectfully, they had not particularly noticed it, so no harm was done. (Hunter 2002c: 123–124).¹²

Where women are concerned about their treatment at work or see it as unfair they may contact an employment inquiry agency or an equal opportunity agency. But perceived unfairness or a sense of harm does not automatically translate into the naming and claiming of discrimination. In a recent study

⁹ A search of the relevant Austlii data base indicates that the substantive matters were: *Ingram-Nader v Brinks Australia Pty Ltd* [2006] FCA 624 (26 May 2006); *Ilian v ABC* [2006] FMCA 1500; *Hewett v Davies & Anor* [2006] FMCA 1678; *Fenton v Hair & Beauty Gallery Pty Ltd & Anor* [2006] FMCA 3 (20 January 2006); *Sheaves v AAPT Limited* [2006] FMCA 1380; *Cross v Hughes & Anor* [2006] FMCA 976; *Wiggins v Department of Defence — Navy (No. 3)* [2006] FMCA 970. The procedural matters were: *Gauci v Kennedy* [2006] FCA 869 (6 July 2006) (application to file a notice of appeal); *Choundary v Capital Airport Group* [2006] FMCA 530 (contempt proceedings); *A v B* [2006] FMCA 454 (application for an injunction).

¹⁰ The substantive matters were: *Ward v Australian Integration Management Services Corporation Pty Ltd* (Anti-Discrimination) [2006] VCAT 2045 (13 October 2006); *AB v Adult Multicultural Education Services* (Anti Discrimination) [2006] VCAT 1862 (15 September 2006); *Gonsalvez v MAS National Apprenticeship Services* (Anti Discrimination) [2006] VCAT 1648 (16 August 2006). The procedural matters were: *Te Papa v Woolworths Ltd trading as Safeway* (Anti Discrimination) [2006] VCAT 1222 (3 March 2006) (a strike out application); *Tenoldebrhan v Australian Safeway Stores Pty Ltd* (Anti Discrimination) [2006] VCAT 2291 (14 November 2006) (a strike out application); *Spencer v Telstra* (Anti Discrimination) [2006] VCAT 1550 (28 July 2006) (application for an extension of time); *Women’s Health Victoria* (Anti Discrimination Exemption) [2006] VCAT 1858 (12 September 2006) (exemption application).

¹¹ In contrast, there are an increasing number of cases in Great Britain determined by the Employment Tribunal. In 2006/2007 there was a total of 1568 sex discrimination and equal pay cases determined by the Employment Tribunal. This figure does not include unfair dismissal claims (including those on the basis of pregnancy) (Employment Tribunal 2007).

¹² On this phenomenon of the denial of discrimination in the banking industry see also Charlesworth (2004).

looking at pregnancy discrimination Fiona Macdonald and I found that few women making inquiries about their rights or seeking advice described what had happened to them as discrimination (Charlesworth & Macdonald 2007).¹³ Many of these inquiries related to situations where the callers had been dismissed or made redundant when pregnant, been denied promotion, made casual, or placed in an inferior job on their return to work. These instances not only breached the meagre unpaid parental leave standard but, arguably, constituted discriminatory treatment on the grounds of pregnancy or family responsibilities.

In in-depth interviews conducted as part of this project, we asked 13 women who had contacted the Victorian Workplace Rights Advocate if they thought what they had experienced was discrimination. In one case, Trudy had transferred into a very senior role in a large public sector organisation on a six-month fixed-term contract, after which time the position was to be advertised as a permanent job. Trudy received very positive feedback from her managers and a pay rise on the basis of an excellent performance review. While the selection process for the permanent position was underway Trudy told her manager she was pregnant. Her application for the job was not successful and an external candidate was appointed. Trudy was shocked. She said that she should never have told the manager she was pregnant. In this instance she believed she had been discriminated against. However she did not see the manager's suggestion that 'now she was pregnant her priorities would change' as discriminatory. She said:

I think it was actually a little bit of concern, like I think it was quite protective, you know, 'this will change your priorities, this will change your focus' and I think it was actually quite well intentioned, but it was inappropriate.

Trudy drew a distinction between inappropriate treatment (stereotyping) and discrimination (not being permanently appointed to a position she had occupied and performed well in).

Shelley, who was made redundant shortly after returning to work from maternity leave, did not initially frame her treatment as discrimination. Only after she had done a lot of reading and searching on the internet did she change her mind:

Like I had no idea about parental care discrimination. You hear about sexual discrimination and racial discrimination and things like that but you don't hear about pregnancy or parental care or things like that.

While both the presence and knowledge of legislative provisions that proscribe discrimination are important in naming discrimination, so too are the 'gate-keeping' agencies that, in managing inquiries and complaint handling procedures, also interpret what discrimination means.¹⁴ In Claire's case, while she had been told that she would be able to return to work on a part-time basis after maternity leave, when the time came for her to return her employer refused to offer her ongoing work. Claire called the Victorian Equal Opportunity and Human Rights Commission and the Workplace Rights Information Line. She understood from the advice she was given that she had a legal right to go back to her full-time job, but not to part-time work. She was taken aback and disappointed to hear this:

¹³ Inquiry data provided both from Job Watch (440 inquiries) and the Workplace Rights Information Line (107 inquiries) for the period 30 April 2006–30 April 2007 included summaries of calls to the phone service. These summaries, made at the time of the call by inquiry staff, provide both a broad indication of the substance of the inquiry and the way in which the caller had expressed her inquiry. See Charlesworth & Macdonald 2007: 87–103.

¹⁴ Interestingly, the Job Watch and Workplace Rights Information Line inquiry staff variously use the categories of 'maternity'; 'pregnancy/breastfeeding discrimination'; and/or 'parental/carer status discrimination' to record these inquiries (Charlesworth & Macdonald 2007: 89–106). There was, however, little difference in substance of many of these inquiries, which suggests that these 'gatekeepers' also hold and form different views as to what might constitute discrimination.

I was sure that what was happening was wrong and that legally it couldn't have been right but when I looked into it, it was. Yeah, so that was a big shock as well.

In Claire's view, being told that she had no legal right to return to part-time work meant that she had experienced unfairness rather than illegal discrimination, despite a small body of case law that suggests unreasonable refusal of part-time work may indeed constitute discrimination (see, for example, Gaze 2005).

Complaints of Discrimination: Contested and Shared Meanings

What happens where women frame their grievances as discrimination in a formal complaint? Here I will explore the different but overlapping understandings of discrimination of a group of women, who in 2004 claimed discrimination on one or more sex discrimination grounds under the Victorian Equal Opportunity Act, and their employers/managers (see Charlesworth 2005, 2006). I will focus on the 63 formal complaints lodged by women, which fell into three main groups: sexual harassment (30 complaints); work/family complaints, which included discrimination on the basis of pregnancy, parental and carer status (18 complaints); and sex discrimination, which included discrimination on the grounds of sex, marital status and sexual orientation (15 complaints).

The complaint files contain a great deal of background and contextual material, both in the statement of complaint and in employer responses. This material provides a glimpse of other aspects of the treatment of these women which was not, apparently, seen or claimed as discrimination. In several complaints women had been forced to convert to casual status when they announced they were pregnant. Mary and Rhonda,¹⁵ for example, both complained only about the reduction in their working hours post maternity leave, made possible by their shift from permanent to casual status. They appeared to accept the forced transfer to casual status as just the 'way things are' (Hunter 2006: 93) rather than as discrimination. Mary stated that while she had wanted to remain permanent, she understood that moving her onto casual status was a 'commonsense approach' from the company's perspective as her doctor's appointments would then be on her own and not the company's time. In a sexual harassment complaint, Jane claimed she had been subjected to persistent sexual comment and innuendo in her work as a project manager on a building site. She chose, however, to lodge her complaint only against her line manager and a co-worker. She said that they 'should know better' than the labourers on the site who had also harassed her and whom she described as 'unaware of the way to treat women in the industry'. 'Claiming' discrimination in this case was modified by Jane's different expectations of 'appropriate' behaviour from professional and non-professional workers. She attributed the harassment to an assumed ignorance of the labourers about appropriate behaviour.

Unsurprisingly the respondent employers and managers in the above cases were unwilling to concede that the treatment in question constituted discrimination. However, in very few cases did they dispute the facts: most respondents argued only about the interpretation of what had happened (Charlesworth 2006: 90–1). Many respondents reframed the agreed facts and the rationale for any detrimental treatment as related to the poor performance of the complainant and/or the operational or business requirements of the organisation, the assumption being that operational requirements in and of themselves were reasonable and that any negative impact they may have was not capable of constituting discrimination.¹⁶ Both sorts of responses work to deflect managerial or any broader organisational responsibility for discrimination.

¹⁵ Pseudonyms are used to preserve the anonymity of complainants.

¹⁶ The 'reasonableness' of the condition or requirement in the circumstances can of course be invoked as a defence in cases of indirect discrimination. Australian case law in this area suggests that the issue of reasonableness, or what is 'not reasonable' in the circumstances, may include a consideration of business requirements as well as the nature and the extent of the discriminatory requirement or condition (Ronalds & Pepper 2004: 49–52). However, in those complaints that raised issues of indirect discrimination there was rarely any argument presented as to why certain requirements or conditions were reasonable in the specific circumstances of the particular workplace (Charlesworth 2006: 91).

Many respondents, then, had no difficulty seeing that the system of work or operational requirements had caused the problem but, paradoxically, this blinded them to both the direct and systemic discriminatory effects on both the individual complainant and other women in the workplace. In employer responses to claims of work/family discrimination, where the complaint was the failure of the workplace to accommodate employee needs for work/family balance, or where changed operational requirements made work/family balance more difficult or impossible, there was little evidence of attempts to consider alternatives that might have had fewer discriminatory outcomes.

Despite the differences between complainants and respondents as to the merits of the particular discrimination claims, a number of understandings about sex discrimination seem to have been shared (Charlesworth 2006: 91–3). Firstly, it would seem, sex discrimination has to be *overt* to be considered discrimination. Many of the complaints were about tangible harms and very unsubtle forms of discrimination, from the termination of employment to incidents of physical sexual harassment.¹⁷ In other cases the background context of the complaints, from gendered workplace cultures to sex segregated work, were not in themselves used as evidence of discrimination. As Margaret Thornton has noted, sex discrimination ‘is replicated on a daily basis so that it saturates normal life’ (Thornton 2004: 2). Its sheer ubiquity and taken-for-grantedness can work to create ambiguity about what might constitute sexual harassment and sex or work/family discrimination and thus hide both direct and more systemic forms of discrimination.

A second and related understanding that emerges in the complaints and employer responses to them is that sex discrimination is an *individual* experience.¹⁸ Even in claims of indirect discrimination, where the focus is typically on the effect of apparently neutral rules or conditions, a workplace understanding of discrimination as something that occurs between or to individuals meant complainants and respondents rarely saw it as the organisation’s problem. For example, most of the work/family complaints were concerned only with the individual worker and in many cases related to a reasonable accommodation of individual needs with workplace requirements rather than to any systemic disadvantage that workplace arrangements may have created. Complainants focused on the intransigence/discretion of individual managers to accommodate their needs. None raised the scheduling of work hours or the organisation of work as creating difficulties more generally for those with family responsibilities. Both complainants and respondents appeared to accept that the organisation of work is both fixed and gender-neutral.¹⁹

A third understanding that emerges in the complaints and responses to them is that it is discrimination only if it is *intentional*. We see this reflected in Mary and Rhonda’s statements of complaint. While both women indicated that they were unhappy about being made casual after announcing their pregnancies, they believed their managers had the right to make the decisions they did; in Mary’s case because it suited the business and in Rhonda’s because the manager’s ‘intentions were good’. Several other respondents felt the same: because the implementation of certain work practices were not intended to

¹⁷ The likelihood that only the more blatant and obvious harms will be reported is supported by HREOC research, which indicates that the more severe sexual harassment is, the more likely victims are prepared to report it (HREOC 2004). That is, where sexual harassment involves some type of physical harassment victims are more likely to see it as sexual harassment than ‘just’ inappropriate behaviour. In several of the non-physical sexual harassment claims, the complainant’s own uncertainty about reading the initial behaviour as sexual harassment — a very common reaction to sexual harassment — was invoked by the employer respondents to assert that their manner or behaviour had been misread.

¹⁸ While the complaints saw the treatment of them or the impact of operational requirements on them as the issue, respondents were more likely to see the complainant as the problem. This was particularly the case in a number of sexual harassment complaints where respondents conceded that a sexualised workplace climate existed, but laid the responsibility with the complainant: that she had, for example, participated in workplace banter and was therefore not a victim.

¹⁹ The only time the impact of the issues in dispute on others in the particular workplace was raised was where the respondent asserted a ‘flood-gates’ argument — ‘if we bend the rules to accommodate one person we will have to do this for everyone’; that is, the accommodation or benefit sought would in effect amount to ‘more favourable’ treatment of the complainant compared to other co-workers.

be discriminatory, they were not considered to be so, despite there being no requirement for intentionality in the legislation.²⁰ An understanding of discrimination as an intentional and overt act can blind employees and employers/managers to the institutionalised nature of discrimination.

Human Dignity

The women complainants in this study used more than one frame to describe their treatment and the effect it had on them. While they framed their treatment as discrimination, many also used what could be described as a 'human dignity' frame (see Fredman 2002a, 2002b). This included descriptions of being offended, humiliated and upset, of wanting to have their voices heard, and justice, fairness and decency. Sexual harassment provisions explicitly recognise harassment as demeaning, as constituting a profound affront to the dignity and self-respect of the victim, both as an employee and as a human being (Fredman 2002b: 120). However, humiliation, loss of dignity and offence were also described by the women who made work/family discrimination complaints.

Bridget was not offered a sales position for which she had applied. She claimed that in the first job interview she was asked if she was married, if she had children and whether she felt comfortable working with men, none of which was denied by the respondent. In the second interview she was again asked if she had children and if so, how many. She told them she had three children. The interview was cut short and she was not asked about her qualifications for the position. She later received a letter advising her she had not got the job. In her statement to the Commission she said she felt both hurt and humiliated:

I felt totally destroyed when I received the letter. I feel as though I had no chance because I'm female and have children. I have never been asked these sorts of questions before in an interview and felt them to be very invasive. Can they ask these sorts of questions? Can they make derogatory remarks and think nothing of it? I feel that it was totally inappropriate. I act in a professional manner and expect them to take me seriously. Not treat me like a stupid female who has got children and can't possibly work.

Concerns about human dignity were also present in sex discrimination complaints. Abby, who had been working for more than ten years in a male-dominated manufacturing company, lodged a complaint on the grounds of sex discrimination. Abby claimed that she had been bullied and demeaned, including in front of clients, to the extent that she was made to feel inferior and worthless. She believed that her experience and knowledge were not taken seriously and that her treatment was due to her status as the only woman in her department.

Responding to such claims, employers and or managers overwhelmingly see only hurt feelings, for which they see themselves as having little responsibility, rather than as discrimination. In Abby's case, she had sought an apology from the company and her manager for the bullying and harassment. The conciliated settlement consisted of an apology issued in the following terms:

It is our understanding that you believe that you were discriminated against in circumstances that led to the complaint being lodged with the Commission. We regret that if you have experienced harassment or hurt. We apologise without reservation if this is the case. Please be aware it was never our intention to create any impression of discrimination or to cause you hurt.

²⁰ For example, the *Victorian Equal Opportunity Act 1995* expressly provides in section 10 that motive is irrelevant to discrimination, as is the case in most other state discrimination laws. While the SDA is silent on this issue, it is generally accepted in the case law that intention and motive are not required to prove discrimination (see Ronalds & Pepper 2004, 40).

Even where discrimination complaints are settled it seems it is still possible for the claim of discrimination to be contested.

I will return to the concept of human dignity shortly and argue that recognising the right to dignity and other human rights suggests possible paths forward in reframing discrimination and gender equality.

The Social, Political and Policy Context

The narrow understandings of discrimination I have outlined and illustrated are shaped to some extent by existing anti-discrimination legislation and the individual complaint-based model, which plays down systemic sex discrimination in the work settings and practices in which the individual experience of discrimination is located (Thornton 2004: 5). Workplace understandings of sex discrimination and the practical effects of sex discrimination law are also shaped by the broader social and political context. The last two decades have seen the ascendancy of the neo-liberal agenda and neo-liberal discourses of economic efficiency, rational choice and managerial discretion (Thornton 2001, 2004). Any focus on equal employment opportunity or gender equality for women, at its height in the 1980s and early 1990s, has gradually receded from policy and political discourse.²¹ Since that time women's policy machinery has been largely dismantled, particularly at the federal level, the women's non-government sector has been effectively marginalized, funding has been withdrawn from HREOC (Maddison 2007: 5) and the Equal Opportunity for Women in the Workplace Agency has been inadequately staffed and resourced (Maddison & Partridge 2007: 27).

The last decade in particular has seen the crowding out of gender (in)equality issues by the problem of work/family imbalance which, interestingly, is framed very much as a women's issue. Arguably, the absence of gender equality discourses in the work/family policy debate means that the gendered nature of access to work/family benefits and the price many women pay for accessing flexibilities like part-time work are not made visible. Indeed this absence also aids in constructing the disadvantage women experience when trying to balance work and family as a consequence of personal choice, (see, for example, Albrechtsen 2007) — a framing of the issue that works to absolve employers and particularly governments of responsibility in this area.

Workplace discourses about discrimination have also been influenced by the way the 'business case' has been used to promote EEO, and more recently diversity, to employers. The business case agenda has typically focused on cost-effectiveness measured in the short term. It is not concerned with the sexual division of labour, power differentials between men and women, or revaluing work at the bottom of the hierarchy. The business interests of employers are assumed to be compatible with EEO and that the good of the business will further the good of all (Fredman 2002b: 25). Any tension between compliance with legal obligations under anti-discrimination law and management goals is rarely acknowledged. As a result, the business case for unequal employment opportunity and business advantages in women's disadvantage, such as in the gender pay gap and the poor quality of part-time work, can remain hidden from view.

If, as Clare Burton argued, one purpose of sex discrimination law is for it to act as a spur or catalyst to cause employers to self-evaluate their employment practices (Burton 1998), then we have to say that the current laws have had limited success. In a number of larger, so-called best practice organisations there is some evidence that anti-discrimination norms can act as a context, if not a driver, for EEO and diversity action (Charlesworth et al 2005). However, in many workplaces both within and outside the

²¹ While it is not the case in many other developed countries, in Australia only rare references are made to gender equality as a policy goal. Interestingly, in commenting on the release of the HREOC report 'It's About Time: Women, Men, Work and Care', Janet Albrechtsen in her column in *The Australian* complained that HREOC had mentioned gender equality 38 times (Albrechtsen 2007).

best practice ‘tent’, a lack of knowledge and/or the trumping of anti-discrimination legal norms by the primacy of managerial norms limit the potential reach of the law.

So how might we frame women’s disadvantage at work in a way that harnesses the political, policy, legislative and organisational will to address it? How do we make women’s disadvantage a problem again?

I have been thinking about this ever since the groundbreaking NSW Pay Equity Inquiry in 1998 (to which Clare Burton gave evidence and which was the subject of the inaugural Clare Burton lecture by Rosemary Hunter). The Pay Equity Inquiry shifted the focus in determining pay inequity from having to prove discrimination by comparing men’s and women’s pay in comparable jobs to the undervaluation of women’s work *per se* (Hunter 2000: 12), which ultimately underpinned a new equal remuneration principle.²² The Inquiry report also argued for a much broader definition of discrimination than that contained in the SDA, and proposed a definition²³ very similar to CEDAW’s more expansive framing of discrimination, as meaning any distinction, exclusion or restriction made on the basis of sex. Undervaluation is seen as arising from such exclusions and restrictions; from gendered assumptions in work value assessments; different returns to women on the basis of sex for equivalent or comparable levels of skill; inadequate classification; occupational segregation; and factors that contribute to the poor bargaining position of women (Probert et al 2002: 11).²⁴

From Anti-Discrimination to Equality Laws

But we need more than just a broader concept of discrimination that can incorporate undervaluation of women’s work. We need a recasting of gender equality so as to pick up on the human rights values embedded in CEDAW, including respect for human dignity. We need to reconfigure, reframe and reconnect laws designed to deal with individual and systemic instances of disadvantage in the workplace.

What I am proposing is an integrated law: an Equality Law. Such an approach would build on and develop that first envisaged in the original Sex Discrimination Bill in 1981, which contained both an individual complaints mechanism and positive action measures to address systemic disadvantage.²⁵ Reframing anti-discrimination laws as equality laws would create the space to engender both community and workplace debates about what constitutes equality. Further, as discrimination claims became equality claims, attention would be drawn to the absence of equality and its effect on individual and group claimants, which could then be linked to positive measures to address the systemic disadvantage from which such claims spring. Reliance on individual or even group litigation means much unlawful discrimination is not addressed if there is no complaint. Positive duties, sometimes referred to as fourth generation anti-discrimination provisions (Fredman 2002b: 122), shift the burden onto the workplace to identify and address systemic disadvantage regardless of any receipt of complaints.

²² This was strategically very important as it allowed the Commission to side-step the hurdle of proving discrimination, a hurdle that had represented such a barrier in earlier federal pay equity cases, most notably *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and HPM Industries* (1998) 94 IR 129.

²³ The ILO Discrimination (Employment and Occupation) Convention (ILO No. 111), ratified by Australia in 1973, defines discrimination in Article 1 as: ‘Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.’

²⁴ In highlighting the poor bargaining position of women, the Inquiry noted what it termed the ‘wider dimensions of undervaluation’, which included low levels of unionisation, high incidence of part-time and casual employment, disproportionate employment in small workplaces and in the service sector, high incidence of consent award wage movements and lack of access to overaward payments (cited in Probert et al 2003: 11–12).

²⁵ This would thus be more a specific and focused regulatory framework than the broad equality statutory guarantee proposed by the Australian Law Reform Commission in 1994 (ALRC 1994).

Equality Goals

I turn now to the United Kingdom where a number of recent developments in thinking and action around discrimination and equality have been profoundly influenced by European Union (EU) law and directives, not least in the explicit articulation of gender equality as one of the four pillars of EU employment strategy.

Sandra Fredman, one of the United Kingdom's leading discrimination experts, argues that any new concept of equality needs to move beyond understanding equality as equal treatment to a more substantive understanding imbued with human rights values. She proposes that this new concept encompass four central aims (Fredman 2002a; Fredman & Spencer 2006). What might these specific equality aims in a new equality law mean for women in the paid workforce, both in terms of individual claims and positive measures?

- **Equal life chances:**²⁶ This aim is about breaking the cycle of disadvantage associated with being a member of a particular group, such as being a woman. It incorporates an understanding of equality as equality of outcomes, such as the fair representation of women in the workplace and the achievement of equal pay. It also incorporates an understanding of equality as the achievement of effective freedom of choice. Redressing disadvantage would thus underpin the rationale for positive measures like family-friendly scheduling of hours and a cap on long hours. Framing the problem as actual disadvantage, Fredman argues, means that equality laws could then target disadvantaged groups not advantaged groups (Fredman 2002a: 11).
- **Equal dignity and worth:** The core of the notion of dignity is that individuals deserve respect on the grounds of their innate humanity. To promote respect for the equal dignity and worth of women means redressing stigma, stereotyping and degrading treatment, not just in respect of sexual harassment, but also through the equal valuing of work performed and the women performing it. Human dignity thus underpins both remedial and positive action.
- **Accommodation and affirmation:** Fredman argues that we should not only focus on disadvantage but aim towards positive affirmation of the individual so as not to abstract the individual from her characteristics but rather to change the public space to reflect and respect them (Fredman 2002a: 15). For work and family this means a focus on the transformation of work organisation to reflect better the needs and rights of carers.
- **Equal participation:** To facilitate full participation in society there must be mechanisms that ensure women have an equal voice in decision making in the workplace. This aim also recognises the need for institutional support to enable equal participation by women, such as through the provision of affordable quality child care services and paid maternity leave.

Fredman argues that that this concept of equality, imbued with human rights values, also facilitates respect for 'multiple identities', addressing cumulative discrimination by recognising that age, disability and ethnicity compounded with gender create multiple barriers to women's advancement (Fredman 2000a: 41).

²⁶ In 'equal life chances', Fredman builds on her earlier framing of 'breaking the cycle of disadvantage' (Fredman 2002a) to incorporate Sen's concept of capabilities, illuminated in the 2006 Clare Burton Memorial lecture given by Barbara Pocock (Pocock 2006). The United Kingdom's Equalities Review has proposed that equality of capability be the guiding principle in both the modernisation of equality legislation towards a Single Equality Act, and the development of the new Commission for Equality and Human Rights (Equalities Review 2007).

The realisation of such equality aims requires radical change at the legislative and at the institutional level, both in the regulatory bodies and within work organisations (Cohen 2005: 6). I will very briefly sketch out just some of the elements that would need to be considered to support a new gender equality law to reflect the human rights values proposed by Fredman. I want to stress that while proposals for legislative reform in this area are often centered on better mechanisms for redressing systemic disadvantage, without fundamental change to existing remedial mechanisms for individual and group claims any new equality regulatory framework will be ineffective and dominant workplace understandings of discrimination will remain unchallenged.

Linking Remedial and Positive Action

In my view HREOC would be the appropriate regulatory agency to ensure the implementation of any new federal gender equality laws. It could build and expand on its current remedial complaint function and incorporate measures for more goal-orientated positive action that was envisaged under the original affirmative action provisions in the 1981 Sex Discrimination Bill. HREOC would thus provide a link between both types of measures, a role which could be taken up at the state level by the various state equal opportunity bodies.

Remedial action for individuals and groups making an equality claim would be underpinned by the CEDAW understanding of discrimination. This would involve establishing a complaint process capable of focusing on discrimination in individual and group claims in a way that looks at disadvantage as the problem, not the person or persons. In claims raising indirect discrimination, it will be important that provision be made to ensure operational issues do not undermine equality claims. Clearly, the capability of individual work organisations to meet equality claims will vary. But strict standards need to be set requiring employers to prove there is no less discriminatory alternative to the organisation of work or treatment that is the subject of an equality claim (see Fredman 2002b: 26). Ideally, too, we need to reform the complaint process so that it relies less upon enforcement by individual victims of disadvantage and more upon an enforcement agency, such as HREOC. In the United Kingdom, for example, the Equal Opportunities Commission (EOC) has had the power to conduct formal investigations into specified unlawful sex discrimination (Fredman 2002b: 175).²⁷

This individual and group claim process needs to be linked to positive action. Making an equality claim should trigger discussion with the organisation in which the claim has arisen about taking proactive steps to address any systemic disadvantage identified in the claim. In the United Kingdom, for example, Employment Tribunals have the power to make an ‘action recommendation’ to ensure steps are taken to improve an employer’s policies and practices as they relate to the complaint.²⁸ There should also be links made with other action-based and goal-oriented equality duties, such as those recently implemented in the United Kingdom’s Gender Equality Duty. This places the legal responsibility on public authorities to promote gender equality and to eliminate sex discrimination in respect of employment, provision of services and policy making. Public authorities in England, Wales and Scotland are also required to meet special duties to identify and then take steps to eliminate disadvantage and inequality. For example in England, the specific duties require public authorities to (EOC 2007):

- prepare and publish a gender equality scheme, showing how it will meet the authority’s general and specific duties and setting out its gender equality objectives;

²⁷ However, as both Fredman and Dickens note, these powers of the EOC and other United Kingdom equality bodies have been relatively underused for a number of reasons, including legal challenges and failure by the equality bodies to use these powers strategically (Fredman 2002b: 175; Dickens 2007: 475–6).

²⁸ Although as Rubenstein points out such recommendations have been limited to its effect on the individual claimant and that this provides a limit to its efficacy as a remedy (Rubenstein 2007: 7).

- consider, in formulating the authority's overall objectives, the need to include objectives that address the causes of any gender pay gap;
- gather and use information on how the authority's policies and practices affect gender equality in the workforce and in the delivery of services;
- consult stakeholders (i.e. employees, service users and others, including trade unions) and take account of relevant information in order to determine the authority's gender equality objectives;
- assess the impact of the authority's current and proposed policies and practices on gender equality;
- implement the actions set out in the authority's scheme within three years, unless it is unreasonable or impracticable to do so; and
- report on the scheme every year and review it at least every three years.

In many ways these specific duties are an expanded, more accountable and more transparent version of the original affirmative action provisions in the former Australian AAA. Most importantly, however, both the United Kingdom's general and specific duties provide for enforcement.²⁹ Under a positive duty, evidence of a group-based inequality (such as the underrepresentation of women or unequal pay) triggers a response. There is no need to prove that the organisation has caused the inequality. Rather the responsibility falls on the organisation because it is in a position to remedy it (Fredman 2002a: 32). The collection of adequate data in the preparation of the organisational diagnosis and action plan and their publication and transparency are critical to the process and to the monitoring and review of outcomes.

There is a robust debate in the United Kingdom about these equality duties being limited to the public sector.³⁰ But it is worth noting that private sector organisations providing goods or services on behalf of public sector organisations also have to comply with the requirements of the specific equality duty.

Enforcement and Compliance

We need a total rethinking of the claims process in respect of individual and group claims to encourage an increase in the number of claims and to promote easier procedures for claimants. There is a case, I believe, for having a separate body to manage such claims, both in conciliation and determination, as is the case in the United Kingdom (see also Gaze 2004). This would leave the regulatory equality agencies free to advocate for equality and equality claims and enforce the outcomes, rather than attempting to be neutral in the conciliation process, which is particularly difficult given the unbalanced and gendered power relationship that characterises employment.³¹

In academic and political proposals for a new Australian labour law regime currently being discussed, it would be worth considering bringing gender equality claims in the area of employment into whatever

²⁹ The duty will be actively enforced by the Equal Opportunities Commission (EOC) then by the Commission for Equality and Human Rights (CEHR) from October 2007. The CEHR will be able to issue compliance notices to authorities that are failing to meet the general duty. The EOC, then the CEHR will be able to issue compliance notices on the specific duties. These are enforceable in the courts. Notices state that the authority must meet the duty, and must instruct them to inform the EOC or CEHR within 28 days of what they have done to comply (EOC 2007).

³⁰ See, for example, Rubenstein 2007; Dickens 2007: 474.

³¹ Indeed there is conflict between the search for compromise, which is the centre of conciliation, and the pursuit of rights (Dickens 2007: 479). This would suggest that consideration should be given in any new system to a more rights-based form of mediation that would prioritise legal rights and elimination of discrimination, rather than conciliation.

conciliation and arbitration mechanism that ultimately emerges. This would bridge the less than helpful gap between the current industrial relations and anti-discrimination jurisdictions into which many working women fall (Charlesworth 2004). It would also bring industrial relations expertise into the consideration of equality claims and anti-discrimination expertise into the consideration of industrial relations matters in a forum that would be far less formal than the courts and tribunals that currently handle sex discrimination matters.³²

In ensuring that positive duties are implemented and are effective, there would need to be an appropriate and well-resourced compliance regime with sanctions that are employed. Fredman argues for a number of steps in the compliance pyramid, moving from encouragement and support to promote a co-operative rather than adversarial approach, to scrutinising report and equality plans and their implementation, with provision for sanctions as appropriate (Fredman 2005). Under such a regime HREOC would be responsible for issuing compliance orders and penalties.³³ We also need to examine other measures, such as a more extensive use of contract compliance or government procurement policy that would require those organisations supplying goods or services to government to meet an equality standard.³⁴

Conclusion

The political, social and employment context today is very different from when sex discrimination laws were first introduced in Australia. Action is needed on many fronts but legislation has an important role to play, both symbolically and practically, as part of a comprehensive strategy for tackling inequality, discrimination and disadvantage (Dickens 2007: 486). New equality laws need to be introduced to refocus attention both on gender inequality at work and remedial and positive action needed to address it. Clearly, in the current Australian context any such new equality laws would have to be supported by industrial relations legislation that provided for a comprehensive set of minimum standards to support decent work.³⁵ We need a stronger, clearer and more supportive policy and legislative framework that sees gender equality in terms of the equal human rights and dignity of women and men, as set out in CEDAW. This would work to broaden understanding and support for gender equality in the workplace.

To get there we need to reinvigorate a broader gender equality agenda and highlight the issues that are currently being obscured. There are several small but encouraging developments on this front. One is the reawakening of action by women's groups around paid maternity leave and the impact on women of WorkChoices. Another is the recent review of the West Australian *Equal Opportunity Act 1984* (WAEOC 2007), which has recommended a gender equality duty.³⁶ A third is the current review of the

³² Rubenstein points out that the tens of thousands of employment claims each year has meant that the employment tribunals in the United Kingdom have developed considerable experience and expertise in discrimination matters compared to the courts that handle non-employment matters (2007: 11).

³³ In Belinda Smith's innovative proposal for a new Australian regulatory regime to better 'prompt, facilitate and universalise' workplace initiatives to integrate employees who undertake both paid work and unpaid care work (Smith 2006), she proposes a role for HREOC as the regulatory agency enforcing this regime. While her focus is on prompting and enabling self-regulation, she also envisages extending enforcement powers to HREOC and expanding non-compliance orders to encompass a pyramid of sanctions to enable HREOC to regulate responsively (Smith 2006: 723).

³⁴ The Victorian government has, for example, an Ethical Purchasing Policy designed to encourage employers to provide a mandatory safety net of fair employment standards for employees in nominated vulnerable sectors (security services, catering, cleaning services and the textiles, clothing and footwear industries) who are engaged in the provision of goods or services to Victorian Government public sector entities.

³⁵ The ILO defines decent work as involving opportunities for productive work and a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives, and equality of opportunity and treatment for all women and men.

³⁶The report was released in May 2007. The WA Government is yet to respond.

Victorian *Equal Opportunity Act 1995*. We need to use such developments to throw the door open to a wider discussion about gender inequality in paid work.

As a starting point, a wide-ranging inquiry, such as the Women and Work Commission in the United Kingdom, is needed to investigate the status of women in employment in Australia. The Commission's recommendations and legislative action around an equality law and the debate it is generating in the United Kingdom not only offer a range of useful templates or models for consideration but also can be used in Australia to provide a stimulus to action. The last major inquiries to be held in Australia were the Lavarch Inquiry in 1991 and the Australian Law Reform Commission's Equality Before the Law reference in 1993. It is time for a new investigation. Not only to review the current status of women in paid work, but also to radically overhaul the legislative and regulatory framework designed to address it.

Acknowledgements

I would like to thank the ATN-WEXDEV for inviting me to present the 2007 Clare Burton Memorial Lecture and Susan Harwood, Donna Bradley and the very efficient network of the ATN's diversity officers at the host universities, including Lyn Browning, Janice Burmaz, Dianne Coward, Joanna Leonard, Kym Mayers and Rachel Thornton for making all the organisational arrangements for the lecture.

The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) complaint data on which this paper draws was collected as part of a larger research project funded by an Australian Research Council (ARC) Post Doctoral Fellowship (DP0449672). I am grateful to both the ARC and the VEOHRC for making this research possible. The views expressed in the paper are my own.

I would also like to thank Helen Marshall for her insightful NVIVO analysis of the VEOHRC complaint data, Estelle Tang who provided helpful research assistance, Alison Caddick for careful copy editing and Jenine Davidson for her creative input on the lecture powerpoint show.

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