

Women's Rights

CASE STUDY

Equal pay

Anna worked as a process worker in a factory in Sydney where all the women were classified as Level 12 packers. Men who did a similar job, of equal value and using similar skills, were employed under a different classification, and paid at a higher rate. Anna and her workmates used their union to make a legal case, and won equal payment for their work.¹

Federal and state industrial laws are supposed to support equality in the workplace, including equal pay for women. However, occupations dominated by women are still generally paid less than those dominated by men. If we keep going at the current rate, it will be years before full pay equity is achieved.

CASE STUDY

Paid maternity leave

Valentine is a sole parent shift worker with little child-care support. Valentine's employer does not offer paid maternity leave. The government parenting payment is less than Valentine's minimum mortgage payment, so she has no choice but to return to full-time shift work soon after her child is born to maintain their home.²

Most Australian women who work have the right to twelve months' unpaid maternity leave.³ However, over 60 per cent of women employees do not have rights to any paid maternity leave.⁴ Where paid maternity leave is provided, it is often less than the international standard of 14 weeks' paid leave. Women who are in part-time or casual work, or who have lower skill levels, are less likely to have access to paid maternity leave.⁵



Women's rights in international conventions

The right to equality regardless of sex is recognised in the *Universal Declaration on Human Rights*, the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

The United Nations *Convention on the Elimination of All Forms of Discrimination Against Women* ("the Women's Convention") specifically protects the human rights of women in the following areas:

- public life (including the right to vote and stand for election)
- education
- employment (including equal pay for equal work)
- family
- access to health services
- violence against women; and
- trafficking of women.

The right to equal pay for equal work is recognised in numerous international conventions, including the Women's Convention, the ICESCR, and International Labour Organisation (ILO)

Conventions on Equal Remuneration and Elimination of Discrimination in Respect of Employment.⁶ Australia has signed all of these conventions.

International human rights standards require governments to guarantee a minimum of 14 weeks' paid maternity leave.⁷ Australia has a reservation to the relevant Article in Women's Convention and has not signed the ILO Convention on paid maternity leave, which means that it has not agreed to ensure this basic human right.

In 2002, an Optional Protocol to the Women's Convention was introduced so that individual women, or groups of women, who have exhausted all possible legal avenues in their own country, could take a human rights complaint to the United Nations. The Australian Government has refused to sign this Optional Protocol.

Current Australian policy on women's rights

The federal *Sex Discrimination Act 1984* provides some protections for women against sex discrimination and sexual harassment.

CASE STUDY

Marital status discrimination

Leesa Meldrum, a single woman living in Victoria, wanted to have a baby, but she required infertility treatment. In Victoria the Infertility Treatment Act 1995 required that to be eligible for infertility treatment a woman must either be married or living in a de facto relationship.

Until the Federal Court declared in 2000 that the Victorian Act was inconsistent with the Sex Discrimination Act 1984, it was illegal for a doctor to give a single woman or lesbian infertility treatment.⁸ In 2001, with support from the Federal Government, the Australian Catholic Bishops Conference appealed this case in the High Court. However, the appeal was rejected.

In late 2000,⁹ and again in 2002,¹⁰ the Federal Government proposed an amendment to the Sex Discrimination Act 1984, which would enable states to discriminate on the grounds of marital status in relation to reproductive technologies. Neither of these bills has been passed in the Senate. However, access to reproductive technologies varies between states and territories. For example, in Victoria it continues to be extremely difficult for single women and lesbians to access reproductive technologies.

The *Sex Discrimination Act 1984* and state anti-discrimination legislation make it unlawful to sexually harass a person or to treat someone less fairly than another person because of their sex, marital status, pregnancy or potential pregnancy in various situations. These include:

- at work
- in educational institutions
- in the provision of goods, services and accommodation
- in the administration of Federal Government programs; and
- dismissal from work because of family responsibilities.

Women's rights not protected in Australia

Current sex discrimination laws and government policies do not protect all women in all situations.

The case studies show that Australian laws and policies do not provide paid maternity leave, protection against discrimination based on marital status, or discrimination based on a combination of sex and other factors, like race.

Discrimination on the grounds of "marital status" is prohibited in the federal *Sex Discrimination Act 1984* but only includes living in a de facto relationship with someone of the opposite sex. It does not include living in a de facto relationship with someone of the same sex.

Australia's failure to sign the ILO Convention on paid maternity leave and its refusal to sign the Optional Protocol to the Women's Convention shows the Federal Government's lack of commitment to the protection of women's rights in Australia.

CASE STUDY

Sex and race discrimination

Anh and Thanh are Vietnamese women, both of whom were employed on a temporary basis by Australia Post. When they applied for permanent positions they were both denied employment for failing to meet minimum body-weight requirements, despite the fact that they were able to do the work. Anh and Thanh claimed their body weight was considered "too low" because they were Asian women of slight build. An Asian man or Caucasian woman may not have been excluded by this rule. They believed they had been treated less favourably because of their race and sex.¹¹

Anh and Thanh were eventually offered permanent positions with Australia Post. However, current discrimination law may still not be able to deal with discrimination that is based on both race and sex.¹²

Improving women's rights in Australia

While Australia has a good history of promoting equality between women and men, there are no guarantees that the protections that do exist are accessible to all women or that they will continue to be protected in the future.

The proposed amendments to exclude reproductive technologies from the *Sex Discrimination Act 1984* (see Marital status discrimination case study) illustrate how easy it is for a government to reduce human rights protections.

Protection of women's rights in line with international standards is required to ensure equality regardless of sex.

"What form should the protection of human rights take?"

➡ For options about protecting human rights through a Charter or Bill of Rights see fact sheet N^o 1: **Background to Human Rights**

REFERENCES

- ¹ Case study based on Australian Industrial Relations Commission, HPM/AMWU C.No.23933, 1995.
- ² Based on Verlaine Bell's Submission 19 to the Human Rights and Equal Opportunity Commission (HREOC) Maternity Leave Inquiry, p 1.
- ³ Under the *Workplace Relations Act 1996* (Cth) permanent full-time and part-time employees who have worked with their employer for at least 12 continuous months have a minimum entitlement to 52 weeks of unpaid parental leave following the birth or adoption of a child.
- ⁴ ABS 6361.0 Survey of Employment Arrangements and Superannuation, April-June 2000, unpublished data cited in HREOC Inquiry.
- ⁵ HREOC, *A Time to Value: Proposal for a national paid maternity leave scheme*, (2002) Section 3.3.6.
- ⁶ ILO *Equal Remuneration Convention 100*, 1951, and *Discrimination (Employment and Occupation) Convention 111*, 1958; Women's Convention Article 11(1)(d); ICESCR Article 7(a)(i).
- ⁷ Women's Convention Article 11(2)(b) and ILO *Maternity Protection Convention 2000* (No. 183) Articles 4 and 6.
- ⁸ *McBain v State of Victoria* [2000] FCA 1009.
- ⁹ Sex Discrimination Amendment Bill (No. 1) 2000.
- ¹⁰ Sex Discrimination Amendment Bill 2002.
- ¹¹ *Dao v Australian Postal Commission* (1987) 162 CLR 317.
- ¹² HREOC, *Gender and Race Intersectionality*, 2001, p 6.