

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION
SEX DISCRIMINATION ACT 1984 (Cth)
Section 44(1)

NOTICE OF GRANT OF APPLICATION FOR TEMPORARY EXEMPTION

By this instrument, the Human Rights and Equal Opportunity Commission ('the Commission') grants to the Australian Bureau of Statistics ('ABS') a temporary exemption pursuant to s 44(1) of the *Sex Discrimination Act (Cth) 1984* ('the SDA') from the operation of Divisions 1 and 2 of Part II of the SDA, in the terms set out from 1.1 to 1.3 below.

1. TERMS OF THE EXEMPTION

- 1.1 From 1 August 2005 to 30 November 2005, the ABS will conduct a national survey, called the Personal Safety Survey ('PSS'), with the results intended to provide data about the experiences of female and male victims of violence. The temporary exemption is granted in respect of the intention of the ABS to provide the necessary training for conducting the PSS, and allocating the work of the PSS, to primarily female interviewers from its current panel of employee interviewers.
- 1.2 The temporary exemption is to commence on 1 August 2005 and will conclude on 30 November 2005.
- 1.3 The temporary exemption is granted subject to the condition that when arrangements are being made with a respondent to be interviewed, the respondent should be given a choice as to the gender of their interviewer, or they can advise that they do not have a preference.

2. BACKGROUND

- 2.1 The ABS has applied for an exemption in respect of the PSS under s 44 of the SDA in order to allow it to provide the necessary training for conducting the PSS, and allocating the work of the PSS, to primarily female interviewers from its current panel of employee interviewers.
- 2.2 Section 44 provides as follows:

44 Commission may grant exemptions

- (1) The Commission may, on application by:
 - (a) a person, on that person's own behalf or on behalf of that person and another person or other persons;
 - (b) 2 or more persons, on their own behalf or on behalf of themselves and another person or other persons; or

- (c) a person or persons included in a class of persons on behalf of the persons included in that class of persons;

by instrument in writing, grant to the person, persons or class of persons, as the case may be, an exemption from the operation of a provision of Division 1 or 2, or paragraph 41(1)(e), or paragraph 41B(1)(b) as specified in the instrument.

....

- (3) An exemption, or further exemption, from the operation of a provision of Division 1 or 2, or paragraph 41(1)(e) or paragraph 41B(1)(b):
 - (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.

2.3 The following information was provided in email communication from the ABS dated 12 May, 6 July, 14 July and 19 July 2005:

2.3.1 The broad objectives of the PSS are to:

- Provide information on people's safety at home and in the community and, in particular, on the nature and extent of violence against men and women in Australia;
- Inform public discussion and debate about violence against men and women; and
- Inform the further development and evaluation of policies and programs aimed at prevention and responses to violence.

2.3.2 The ABS advises that the PSS will provide much needed data about the experiences of female *and* male victims of violence that is not available in as much detail from other collections.

2.3.3 The PSS will collect information relating to physical violence, physical threat or attempt, sexual assault, sexual threat or attempt, stalking, partner violence, general safety and harassment, experience of emotional abuse, experience of child abuse and socio-demographic information. The data sought on violence and some related information (particularly fear of violence and action taken as a consequence of violence) will be considerably more comprehensive than any current ABS survey on this topic. In particular, it will expand on the Women's Safety Survey ('WSS') carried out by the ABS in 1996 by including a male component and

will also enable analysis of the relative changes in women's personal safety over time based on the comprehensive national benchmark provided by the WSS.

- 2.3.4 A sample of approximately 22,700 households will be visited in order to achieve 12,760 fully responding females and 5,000 fully responding males. Households from both metropolitan and non-metropolitan areas will be targeted. However, due to cost and operational constraints, very remote areas will not be surveyed.
- 2.3.5 First contact with a household will take place in person by an interviewer. Demographic information will be collected that will then be used to randomly select the appropriate respondent in the household. Arrangements will then be made for the respondent to be interviewed in private and fully informed of the nature of the survey. At any stage throughout the interview the respondent can elect not to participate in the survey. While respondents will not be given a choice as to whether they are interviewed by a male or female, they can request a specific gender. Interviewers will receive training to use this first interview to assess whether the respondent would be more comfortable being interviewed by a person of a particular gender. Conducting the interview by telephone is also an option.
- 2.3.6 The ABS regard as extremely important the training of ABS field staff in the subject of violence in their community, training in the management of respondents (and their own) adverse reactions to the topic and training in methods of reducing the chances of this survey being the cause of further violence being directed at any respondents or towards the interviewer. The ABS is working to ensure such problems are minimised also by the survey design and methodology. In this regard, no publicity for the survey and its content will be undertaken.
- 2.4 The ABS is of the view that the highest quality data can only be achieved by using predominantly female interviewers and seeks the exemption from the SDA on this basis. The ABS relies on the following matters in support of its view:
- 2.4.1 Experience gained from the 1996 Women's Safety Survey (WSS)¹
- Planning for the PSS has drawn heavily on the experience gained from conducting the WSS in collecting sensitive information from women. This

¹ Contained in document entitled 'Briefing Note – Personal Safety Survey (PSS)' provided to the Commission by email on 6 July 2005 from Ms Monica Byatt, National Workplace Diversity Adviser, Australian Bureau of Statistics.

included using female only interviewers which was evaluated as being instrumental in the success of the survey and the delivery of high quality data (the Commission granted a temporary exemption on 2 April 1995 from the operation of the SDA to allow only female interviewers to carry out the work of the WSS).

2.4.2 Expert advice supporting the use of female interviewers²

- The ABS has consulted with a wide range of experts throughout the development of the PSS.
- A Survey Reference Group was formed for the PSS and comprises experts in the field of crime and violence. Advice from the Survey Reference Group about procedures for interviewing men has been that most men will be comfortable providing details of their experiences of physical and sexual violence to a female interviewer. They also recommended that the ABS develop appropriate procedures to cater for men who do not appear comfortable being interviewed by women.
- Discussions about the appropriateness of using female interviewers only were also held with a number of men's counselling services (including Mensline Australia, No To Violence Male Family Violence Prevention Association, Men's Health Information and Resource Centre) and they supported the ABS proposal to use predominantly female interviewers as long as there was the option of having a male interviewer if requested. Overseas experience, particularly a Canadian Safety Survey, supports the approach of using female interviewers.
- Similar discussions were held with female support centres and peak bodies for sexual assault and domestic violence (including Sexual Assault Support Services, Australian Centre for the Study of Sexual Assault, National Association of Services Against Sexual Violence, Australian Domestic and Family Violence Clearinghouse). They supported the ABS intention to use female interviewers to interview women and were of the view that women would be more comfortable and more likely to disclose information to another women than to a man.
- The ABS have also considered the incidence of males experiencing violence by a woman and whether this would potentially impact on males providing details of their experiences of violence to a female interviewer. An option will be provided of a male interviewer to cater for any men who would prefer to speak to a male.

2.4.3 Development and field testing results³

- Given the success of female only interviewers for the WSS, the ABS considered it appropriate to continue with these procedures for the PSS, adapting them appropriately to cater for the inclusion of men in the survey. An important consideration in conducting the preliminary field test this way was based on over 70% of the survey being female.
- During the two field testing phases of the survey, female interviewers were predominantly used. There were no instances where male respondents requested a male interviewer. Interviewers did not report

² Ibid.

³ Ibid.

any specific issues for male respondents and felt they were comfortable being interviewed by a female.

- In the second field test, one male interviewer conducted a full work load (interviewing male respondents only) primarily to test respondent reaction. Feedback from this interviewer was that he experienced a higher refusal rate than he expected which he attributed to his gender.

2.4.4 Sample and operational arrangements⁴

- The ABS has an ongoing interviewer panel of about 600 with a ratio of male to female interviewers of approximately 1:6. The sample selection has resulted in the areas being covered in the survey having a higher proportion of females who would normally be allocated the workloads and, as a result, it will be predominantly a female interviewer workforce in any event.
- The ABS is training a small number of male interviewers in each State and Territory to work on the survey. Male interviewers will be available on request to any respondent in the event they are not comfortable talking to female interviewers.
- Male interviewers not trained for this survey will be offered work on other ABS surveys. It is not anticipated that there will be many requests for a male interviewer based on the findings of the field tests.
- In addition, the ABS will ensure that all interviewers, as part of the sensitivity training they receive, are provided with guidance to assist them in detecting cases where respondents may be more comfortable talking to an interviewer of the opposite sex.

3. FINDINGS ON MATERIAL QUESTIONS OF FACT

3.1 Based on the evidence referred to in paragraphs 2.3 – 2.4 above, the Commission makes the following findings on material questions of fact in relation to this application:

3.1.1 The ABS will carry out interviews for the PSS from 1 August to 30 November 2005.

3.1.2 It is intended that all aspects of conducting the survey interviews will be carried out by female interviewers. In making arrangements for an interview, respondents will not be given a choice as to whether they are interviewed by a male or female. Male interviewers will only be made available if the respondent requests a male interviewer or if an interviewer forms a view that the respondent will be more comfortable speaking with a specific gender.

⁴ Ibid.

3.1.3 The ABS is of the view that the highest quality data can only be achieved by using predominantly female interviewers for the following reasons:

- Experience gained by the ABS in carrying out the Women's Safety Survey in 1996 in which only female interviewers were used was evaluated as being instrumental in the success of the survey and the delivery of high quality data.
- Expert advice and evidence that indicates that both men and women are more inclined to communicate the kind of sensitive information to be collected during the PSS to a female.
- Findings from recently undertaken field tests for the PSS support the expert advice received.
- Sample and operational requirements.

4. REASONS FOR GRANTING AN EXEMPTION

4.1 It is likely that the allocation of training and work on the PSS to primarily female interviewers would be inconsistent with provisions of the SDA including section 14(2) (contained in Division 1 of Part II) and section 26(1) (contained in Division 2 of Part II) of the SDA:

Section 14 Discrimination in employment or superannuation

(2) It is unlawful for an employer to discriminate against an employee on the ground of the employee's sex, marital status, pregnancy or potential pregnancy:

...

(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.

(2) This section binds the Crown in right of a State.

4.2 It is also possible that the allocation of training and work on the PSS to primarily female interviewers could lead a male respondent to the survey

to make a complaint of indirect discrimination (section 5(2) of the SDA) under section 22 of the SDA (contained in Division 2 of Part II):

- (1) It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's sex...:
 - (a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person;
 - (b) in the terms or conditions on which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person; or
 - (c) in the manner in which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person.

- 4.3 The Commission appreciates the significance of the PSS in that it will collect much needed data about the experiences of female *and* male victims of violence as well as enabling analysis of the relative changes in the experiences of women who are subject to violence since the Women's Safety Survey was carried out in 1996. The PSS could make a significant contribution to a greater understanding of violence against men and women in the Australian community which will hopefully assist all levels of government in developing more effective prevention strategies as well as better services for those experiencing violence.
- 4.4 While the Commission accepts that the ABS has the appropriate expertise to determine how best such data is to be collected,⁵ including the use of primarily female interviewers, the Commission is also of the view that the training of, and allocation of the work of the PSS to, male interviewers would be beneficial in helping to break down the gender stereotyping which informs community perceptions that men are less sensitive to the issue of violence.
- 4.5 For this reason, the Commission is prepared to grant the exemption requested by the ABS, but subject to a condition that when arrangements are being made with a respondent to be interviewed, the respondent should be given a choice as to the gender of their interviewer, or they can advise that they do not have a preference. In the Commission's view, this will minimise any disadvantage that may be experienced by male victims who may feel stigmatised by their experience of violence within intimate partner relationships.
- 4.6 Accordingly, pursuant to section 44 of the SDA, the Commission grants the temporary exemption sought by the ABS from 1 August 2005 to 30 November 2005 subject to the condition that when arrangements are being made with a respondent to be interviewed, the respondent should

⁵ Details of which are set out at 2.3-2.4 above.

be given a choice as to the gender of their interviewer, or they can advise that they do not have a preference.

Dated this 1st day of August 2005

A handwritten signature in black ink, reading "John von Doussa". The signature is written in a cursive style with a large, looping initial "J".

Signed by the President, John von Doussa QC, 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.