



AUSTRALIAN HUMAN RIGHTS COMMISSION

SEX DISCRIMINATION ACT 1984 (Cth), Section 44(1)

NOTICE OF DECISION ON APPLICATION FOR TEMPORARY EXEMPTION: AUSTRALIAN BUREAU OF STATISTICS

By this instrument, under section 44(1) of the *Sex Discrimination Act 1984* (Cth) (SDA), the Australian Human Rights Commission (Commission) grants a temporary exemption to the Australian Bureau of Statistics (ABS), from the operation of ss 14 and 26 of the SDA, in the terms set out below.

1. THE APPLICATION

- 1.1 In 2020, the ABS will be conducting its fourth iteration of the Personal Safety Survey (PSS). The ABS have sought an exemption from the SDA in order to use only female interviewers to conduct private one-on-one interviews with female PSS respondents.
- 1.2 The use by the ABS of only female interviewers for interviews with female respondents may be inconsistent with provisions of the SDA, including ss 14(1) and (2) and 26(1).
- 1.3 Sections 14(1) and (2) and 26(1) of the SDA provide:

Section 14 Discrimination in employment or superannuation

- (1) It is unlawful for an employer to discriminate against a person on the ground of the person's sex ... :
 - (a) in the arrangements made for the purpose of determining who should be offered employment;
 - (b) in determining who should be offered employment; or
 - (c) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of the employee's sex ... :
 - ...
 - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or
 - ...
 - (d) by subjecting the employee to any other detriment.

Section 26 Administration of Commonwealth laws and programs

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

2. DECISION OF THE COMMISSION

- 2.1 The Commission has decided that it will grant the ABS a temporary exemption to ss 14 and 26 of the SDA on specified conditions until 31 December 2020.

3. CONSIDERATION AND REASONS

- 3.1 In reaching its decision, the Commission considered the following:
 - 3.1.1 The application by the ABS
 - 3.1.2 Submissions from other interested parties, and
 - 3.1.3 The response of the ABS to submissions received from other parties.
- 3.2 In reaching its decision, the Commission had regard to the terms and objects of the SDA and the *Commission Guidelines: Temporary Exemptions under the Sex Discrimination Act (2009)*.
- 3.3 The history of the application and the reasons for the Commission's decision are set out below.

4. THE COMMISSION'S PROCESS

- 4.1 On 18 July 2019, the ABS submitted an application for an exemption from the SDA to use only female interviewers to conduct face-to-face interviews with female respondents as part of the 2020 PSS.¹
- 4.2 Following receipt of the application, the Commission notified the State and Territory Anti-Discrimination Boards and Equal Opportunity Commissions of the exemption application and invited their comment. The Equal Opportunity Commission of South Australia had no objection to the application. No further responses were received.
- 4.3 The Commission also prepared a consultation notice seeking the views of male ABS employees. This was posted by the ABS on behalf of the Commission to a database that interviewers frequently log onto. 5 male employees responded to the Commission's call for submissions. 1 of the submissions supported the use of predominantly female interviewers to carry out the PSS and 4 opposed it.
- 4.4 Additionally, the Commission provided a copy of the application to the Community and Public Sector Union (CPSU) in order to seek its views. On 28 August 2019, the CPSU provided the Commission with a submission on behalf of its members employed by the ABS, opposing the exemption.
- 4.5 On 13 September 2019, the ABS provided a response to some of the issues raised by the CPSU and individual submitters. On 23 October 2019, the Commission

provided this response to the CPSU and the individual submitters. The CPSU provided a reply on 31 October 2019.

- 4.6 Consistent with the fundamental principles of procedural fairness, the Commission considers that the process outlined above has provided the applicant, interested parties and affected persons with an adequate opportunity to comment on this application for a temporary exemption.

5. RELEVANT LAW AND THE COMMISSION'S POWER TO GRANT EXEMPTIONS

- 5.1 The Commission may grant an exemption from the operation of a provision of Division 1 or 2 of Part II of the SDA.² An exemption may be granted subject to terms and conditions specified in the instrument, and may be expressed to apply only in circumstances, or in relation to particular activities, as specified in the instrument.³ Exemptions are to be granted for a specified period not exceeding five years.⁴ It is not unlawful for a person to act in accordance with an exemption.⁵
- 5.2 Pursuant to s 14 of the SDA, it is unlawful to discriminate on the ground of sex in employment, and pursuant to s 26, on the ground of sex in the administration of a Commonwealth law or program. These provisions are located in Divisions 1 and 2 of Part II of the SDA. Therefore, the Commission may grant the ABS an exemption from the operation of ss 14 and 26 of the SDA.

6. DECISION AND REASONS

- 6.1 The PSS is a survey that collects sensitive information about a person's experience of violence, including family, domestic and sexual violence.
- 6.2 The survey will be conducted by personal interviews of around 23,000 adults (aged 18 years or over) across Australia (excluding very remote areas). It is proposed that approximately 300 interviewers nation-wide will be used.
- 6.3 The ABS advises that as at July 2019 there are 410 interviewers on its panel, of whom 130 were male. Approximately 300 interviewers will be required to enumerate the PSS between March and September 2020. The PSS interviewer panel will be comprised of interviewers who voluntarily choose to work on the survey. The ABS will continue to allocate a minimum of 30 hours work per month to all interviewers throughout the PSS enumeration period, as required under the terms of the ABS Interviewers Enterprise Agreement 2017.
- 6.4 The ABS submits that using female interviewers for female respondents is necessary for achieving high quality data, in order to "build the evidence base on the nature, extent and characteristics of violence in Australia and to monitor and evaluate governments' success in achieving priority actions and strategic outcomes of the *National Plan to Reduce Violence against Women and their Children 2010-2022*". In support of its application, the ABS relied on:
- Information gathered by the ABS from respondents in the 2016 survey on their preferences regarding the sex of the interviewer. As discussed below, these results showed that female respondents, especially women who have experienced violence in their lifetime, have a stronger preference for female interviewers

- Learnings from previous iterations of the PSS (in 2005, 2012 and 2016) and the 1996 Women's Safety Survey. In developing the PSS methodology, the ABS has drawn on the experience gained from conducting—and successfully collecting sensitive information from those who participated in—the earlier surveys
- Advice received from the PSS Advisory Group,⁶ that due to the sensitivity of the topics, male interviewers may inhibit the willingness of female respondents to disclose their experiences of violence, and
- International best practice guidelines developed by the United Nations for collecting statistics on violence against women, which states:

“the most important personal characteristic to be considered when choosing interviewers for a survey on violence against women is their sex: the interviewer must be female. Utilizing female interviewers increases the disclosure of sensitive information, particularly that relating to experiences involving sexual victimization and violence perpetrated by male partners. Female interviewers improve the disclosure of these events ... (UNOCD and UNECE, 2010).”

6.5 At the conclusion of the 2016 PSS, on a voluntary basis, the ABS asked survey participants about their preferences regarding the sex of the interviewer. Responses were received from almost 5,000 respondents. Approximately 42% of those who completed the sensitive component of the survey with the assistance of the interviewer (as opposed to completing it by themselves using the interviewer's laptop) indicated a preference for a female interviewer. For those who had experienced abuse before the age of 15, or violence since the age of 15, the proportion was considerably higher (63% and 57%).

6.6 The individuals who opposed the exemption questioned whether there was a sufficient evidence base underlying the application, and objected to gender-based assumptions about the suitability or professionalism of men interviewing women. The men also noted that they had extensive training and experience in interviewing both men and women on sensitive issues, including violence, and none had encountered resistance from women in these situations.

6.7 In its submission, the CPSU stated:

Some of the CPSU Interviewer members who have raised concerns are highly trained males who work in or have previous experience with domestic violence and rape crisis services. These skills would be of great benefit to the proposed survey process if supported by the respondent.

The ABS undertakes another survey called the Multi-Purpose Household Survey (MPHS). This survey asks about 3,200 respondents every month about instances of violence (including domestic violence) as well as a question about sexual assault. MPHS is undertaken by all male and female ongoing Interviewers. There is no exemption in place for MPHS.

The CPSU has a range of industrial concerns about how the ABS has handled this matter, including the failure to genuinely consult with staff and the impact this may have on the work available to ABS Field Interviewers, in particular the potential to impose excessive workloads on female interviewers.

6.8 The ABS provided a response to a number of the issues and concerns raised by the CPSU and individual submitters, noting:

- “While the ABS believes that both male and female interviewers are capable of conducting these interviews, there is strong evidence suggesting that female

respondents who have experienced violence may not respond in the same way if they are being interviewed by a male interviewer as they would if it was a female interviewer.

- Given that the skills and experience of the interviewer may not be evident to a respondent when they make the choice on whether to respond honestly to the survey, or undertake the voluntary component it is considered likely that some would choose to respond differently based on the gender of the person undertaking the interview. Should even a small number of respondents choose to do this, the quality of this survey could be significantly impacted.
- The PSS and MPHS are significantly different in terms of the scope of data collected and the methods used.
- The MPHS collects very limited information about recent incidents of physical assault, physical threat, sexual assault and robbery that occurred in the 12 months prior to the survey. The in-depth nature of [the PSS] compared to the MPHS is indicated by the fact that it can take up to 90 minutes to complete the sensitive topics in the PSS, depending on the extent of respondent's personal experience, compared to around 1 or 2 minutes for the MPHS questions.
- ... much higher rates of people experiencing violence are reported through the PSS than through the MPHS, and it is considered the most accurate source for this information both in Australia and overseas. It is critical that the ABS does not risk this level of response.
- The ABS has a number of consultative mechanisms with which it consults with Interviewer representatives (including the CPSU) on operational matters. The interviewer panel, and CPSU, has been kept informed of the ABS thinking about the use of male interviewers.
- The ABS does not agree that the approach to panel make-up will impose excessive workloads on female panel members. The ABS considers that there are sufficient female interviewers to support this survey.
- The introduction of the CASI option (self-complete using the interviewer laptop) has provided an ability for respondents to report sensitive information without direct interaction with the interviewer, however CASI respondents have indicated that they still want a female interviewer. ... In addition, survey procedures still require the interviewer to sit and observe the female responding to the questions, even if they can't see the answers. This passive observation may cause discomfort to some female respondents ..."

6.9 In reply, the CPSU submitted that it believed there was a practical way for male interviewers to participate in the survey without affecting the quality of the data collected.

6.10 The Commission notes that none of the permanent exemptions to the SDA apply to the use by the ABS of only female interviewers for female PSS respondents (see sections 30 to 43), and the PSS is not within the 'special measures' provision of s 7D of the SDA.

6.11 In deciding whether to grant this exemption, the Commission has weighed up the nature and extent of the discriminatory effect against the reasons advanced in favour of the exemption.


6.12 The Commission accepts the importance of the PSS and the data that it collects about the male and female experiences of violence. The PSS is an important source

of information to assist in developing prevention strategies as well as informing and supporting services for those experiencing violence.

- 6.13 The Commission also accepts that many men may have the requisite skills and experience to professionally and capably conduct surveys that collect sensitive information. The Commission welcomes the ABS decision to use both male and female interviewers to interview male respondents given the findings on (lack of) preference from male respondents in the 2016 survey.
- 6.14 The Commission notes, however, the preferences of those who completed the 2016 survey, the advice of the PSS Survey Advisory Group and the United Nations best practice guidelines. The Commission accepts, on the basis of this evidence, that female respondents are more likely to disclose sensitive information to a female interviewer.
- 6.15 While the sole use of female interviewers to conduct interviews with female respondents as part of the PSS is discriminatory, the Commission considers that the success of the PSS in collecting high quality data, and mitigating or preventing adverse reactions by female respondents are significant factors weighing in favour of the grant of the exemption.
- 6.16 The Commission also notes that male interviewers who opt-in and are selected for the PSS panel will be allocated to conduct interviews with male respondents (and with any female respondents who specifically request this), and that the guaranteed level of work required under the terms of the ABS enterprise agreement will apply to interviewers not working on the PSS.⁷
- 6.17 Accordingly, pursuant to section 44 of the SDA, the Commission grants a temporary exemption to ss 14 and 26 of the SDA to the ABS with immediate effect until 31 December 2020 to use only female interviewers on its existing panel of interviewers for the conduct of interviews with female PSS respondents.
- 6.18 This exemption is granted on condition that the ABS continue to collect data from respondents about their preferences regarding the sex of the interviewer, and report this data to the Commission at the end of the survey.

7. REVIEW OF DECISION

- 7.1 Subject to the *Administrative Appeals Tribunal Act 1975* (Cth), any person whose interests are affected by this decision may apply to the Administrative Appeals Tribunal for a review of the decision.



Signed by the President, Emeritus Professor Rosalind Croucher AM, on behalf of the Commission.

6 November 2019

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- ¹ Both male and female interviewers will be used to conduct face-to-face interviews with male respondents.
- ² SDA, s 44(1) and (2).
- ³ SDA, s 44(3)(a) and (b).
- ⁴ SDA, s 44(3)(c).
- ⁵ SDA, s 47.
- ⁶ Comprised of representatives from Commonwealth and State and Territory governments, and experts in the field of crime, violence and domestic violence research and support services
- ⁷ The ABS stated that: Workloads for those [interviewers not working on the PSS survey] will be made up of survey work for the numerous other household surveys the ABS will be running during the time the PSS is in the field. These include the Monthly Population Survey, the General Social Survey, the Time Use Survey, the National Health Survey, the Longitudinal Study of Australian Children, and tests and dress rehearsals for a number of other surveys.