



AUSTRALIAN HUMAN RIGHTS COMMISSION

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

NOTICE OF DECISION ON APPLICATION FOR TEMPORARY EXEMPTION: AUSTRALIAN BUREAU OF STATISTICS (2025)

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 Starting in 2025, the ABS will be conducting its fifth iteration of the Personal Safety Survey (PSS). The ABS has sought an exemption from the SDA in order to use only female interviewers to conduct face-to-face interviews with female PSS respondents, including recruiting additional non-ongoing female interviewers (as required).
- 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.
- 1.3 Sections 14(1) and (2) and 26 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 ... :
 - (a) in the terms or conditions of employment that the employer affords the employee;
 - (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;

...

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

Section 26 Administration of Commonwealth laws and programs

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, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy, or breastfeeding, 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 2026.

3 CONSIDERATION AND REASONS

3.1 In reaching its decision, the Commission considered the following:

- the application by the ABS
- submissions from other interested parties, and
- 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 4 October 2024, 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 PSS starting in 2025, including recruiting additional non-ongoing female interviewers as required.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 Anti-Discrimination Board of NSW responded in support of granting the exemption. No further substantive responses were received.

4.3 The Commission also provided a copy of the application to the Community and

Public Sector Union (CPSU) in order to seek its views but received no response.

4.4 Additionally, the Commission 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. Three employees responded to the Commission's call for submissions. Two of the submissions supported the use of female interviewers to conduct private face-to-face interviews with female respondents in the PSS and raised no concerns. One of the submissions supported the concept of female respondents being interviewed by females but had some concerns about the impact on male interviewers.

4.5 On 10 January 2025, the ABS provided a response to the concerns raised by the ABS employee.

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.

5.3 The Commission notes that it has previously granted the ABS a temporary exemption under s 44 of the SDA to conduct the PSS in 2005, 2012, 2016, 2019 and 2020.

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 24,000 adults (aged 18 years or over) across Australia (excluding very remote areas).

- 6.3 The ABS advises that as at October 2024 there are 307 interviewers on its panel, of whom 108 are male. Approximately 280 interviewers will be required nation-wide to enumerate the PSS between November 2025 and June 2026. The PSS interviewer panel will be comprised of interviewers who voluntarily choose to work on the survey. The ABS also advises that there are potentially insufficient female interviewers who volunteer to participate in the PSS, therefore targeted advertisements for female non-ongoing interviewers may be used to support the larger female sample requirements. It is anticipated that up to 100 non-ongoing female interviewers may need to be employed for the period of the PSS enumeration.
- 6.4 The ABS advises that it will continue to allocate the minimum number of hours work per month as required under the terms of the interviewer employment agreement for all interviewers. Under the ABS Interviewers Enterprise Agreement 2024-2027, ongoing interviewers are allocated a minimum of 45 hours work per month and non-ongoing interviewers a minimum of 15 hours per month.
- 6.5 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 End Violence against Women and Children 2022-2032*. In support of its application, the ABS relied on:
- Information gathered by the ABS from respondents in the 2016 and 2021-22 surveys 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, tend to have a stronger preference for female interviewers.
 - Learnings from previous iterations of the PSS (in 2005, 2012, 2016 and 2021-22) 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 Survey Advisory Group,⁶ that females would be more comfortable and more likely to disclose sensitive information regarding experiences of violence to another female than to a male.
 - 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).

- 6.6 At the conclusion of both the 2016 and 2021-22 PSS, the ABS asked survey participants about their preferences regarding the sex of the interviewer. In the 2016 PSS, 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%).
- 6.7 In the 2021-22 PSS, responses were received from 11,898 respondents (nearly all the respondents). Approximately 48% of female respondents indicated a preference for a female interviewer, while no female respondents had a preference for a male interviewer. For those who had experienced abuse either before the age of 15, or violence since the age of 15, the proportion who indicated a preference for a female interview was higher (up to 58% and 62% depending on the mode of the interview). For male respondents, approximately 88% had no preference for male or female interviewers, but for those who did have a preference, 8.5% preferred a female interviewer and 3% preferred a male interviewer. The proportion of men preferring a female interviewer also increased for those who experienced abuse either before the age of 15, or violence since the age of 15 (14% and 10%), while the preference for a male interviewer remained around 3%.
- 6.8 The Commission received no submissions that opposed the exemption, though one individual raised concerns regarding the impact on male ABS employees. These concerns were:
- whether there have been similar investigations into whether male respondents are more inclined to disclose sensitive information to male interviewers and that for gender equality it may be that the same rules should apply,
 - whether the ABS has the current capacity to allocate female interviewers to the PSS without engaging additional non- ongoing female interviewers,
 - that male interviewers will be provided the minimum number of hours, whereas female interviewers will have their hours significantly augmented with the PSS.
- 6.9 The ABS provided the following response to the concerns raised:
- As the majority of male respondents who participated in the 2021-22 PSS did not have a sex preference for an interviewer, and where they

did, 8.5% of male respondents preferred female interviewers as opposed to 2.9% who preferred male interviewers, it would be incongruent with the preferences of males who have a higher propensity to prefer female interviewers to allocate only male interviewers to male respondents.

- The ABS will consider engaging non-ongoing interviewers in the event the current Interviewer Panel does not have capacity to deliver the PSS (and other household survey work). Historically, many ongoing female interviewers have chosen not to work on the PSS Interviewer Panel (which is voluntary due to the sensitive nature of the collection), and the ABS anticipates that it will be highly likely additional female capacity will be required.
- “Each ABS Interviewer has a part-time work agreement that specifies the minimum number of hours the Interviewer will work each week. All part-time work agreements meet, and in most cases exceed, the minimum hours of work required under the terms of the ABS Interviewers Enterprise Agreement 2024- 2027, except where an Interviewer has negotiated lower minimum hours of work. The hours of work in part-time work agreements may be varied on a permanent or temporary basis. The quantum of hours in part-time work agreements is driven by the amount of work available, where work is located (where applicable), Interviewer availability and Interviewer preferences (where applicable). Both male and female Interviewers will be provided work in accordance with the hours in their part-time work agreement. Working on the PSS does not guarantee an offer of additional hours.”

- 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 43A of the SDA), 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.
- 6.14 The Commission notes that under the PSS collection methodology, each household is randomly selected and pre-assigned a ‘sex of respondent’. Households that are pre-assigned ‘sex’ of male will be allocated male

interviewers. However, if it becomes known prior to an interviewer visiting a household that the respondent's sex is not the pre-assigned sex (for example, that a pre-assigned 'sex' of male household has only females in the household), then female respondents will be reallocated to a female interviewer, and male respondents may be allocated to a male or female interviewer. The Commission welcomes the ABS decision to use both male and female interviewers to interview male respondents given the findings on general lack of preference from male respondents in the 2016 and 2021-22 surveys.

- 6.15 The Commission notes the preferences of those who completed the 2016 and 2021-22 surveys, 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.
- 6.16 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.
- 6.17 The Commission welcomes the assurance from the ABS that recruitment of additional non-ongoing female interviewers for the PSS Interview Panel will only occur if the current interview panel does not have the capacity to meet the operational requirements of the PSS and other household survey work.
- 6.18 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 that the guaranteed minimum level of work required under the terms of the ABS enterprise agreement will apply to all interviewers throughout the PSS enumeration period (whether the interviewer is working on the PSS or on one of the other surveys being conducted).
- 6.19 Finally, the Commission considers that the exemption sought is consistent with the objects of the SDA, including that of eliminating sexual harassment and related conduct and of achieving substantive equality between men and women, given the role of the PSS in the *National Plan to End Violence against Women and Children 2022-2032*.
- 6.20 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 2026 to use only female interviewers to conduct face-to-face interviews with female PSS respondents, including recruiting additional non-ongoing female interviewers (as required).
- 6.21 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, Hugh de Kretser, on behalf of the Commission.

30 January 2025

¹ Both male and female interviewers may 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.