

1993.7. Equality before the Law

Submitted 29 September 1993 to the Australian Law Reform Commission

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The following is a summary of views expressed at the discussion group, convened on 10 October 1993, to compile a submission to the Australian Law Reform Commission. The submission based on this group discussion was submitted on behalf of the HSV by the Convenor, Halina Strnad.

General Remarks

It was acknowledged that many examples of gender bias against women remain etched in law. Much of this bias stems from religious dogma, which espouses the view that women are inferior to men and should be subservient to men. Even today, so-called “spiritual advisers” still attempt to deny women the right to control their fertility, and to enforce age old double standards on female spouses.

Specific Comments

We support the proposal for uniformity of legislation throughout Australia. We believe it is essential for Australia to comply with its obligations under the international covenants to which it is a signatory. It was noted that an investigation of gender bias was undertaken in Canada. Given the cultural and social similarities between our countries, it was believed that a study of the Canadian experience would be of benefit to us. It was noted that many complaints have been made regarding discrimination in “women’s clinics”. It was agreed that the setting up of special “male clinics” for vasectomies and for ailments such as prostatic carcinoma, sexual impotence, etc., could help to “balance” the system. The Discussion Group noted the following several factors that have a negative impact upon equality:

- The media still tends to trivialise women as “housewives”, or focus on them as fashion models or “sex symbols”.
- Women still face significant inequality in employment, in the church and in family responsibilities.
- Domestic violence against women is of major concern. It was the view of the group that women still do not receive adequate protection from the Police, or a “fair go” from the courts.
- It was noted that the law is still based on the perspective of the “reasonable *man*”. The female approach to conflict resolution, competing interests and the use of power is given no expression in law.
- Recent well publicised court judgements have highlighted the insensitivity of the “powers that be” to the plight of women. It was agreed that “expressed bias” in court proceedings should be a valid cause of complaint against a judge.
- Many women are unaware of their legal rights, due to their lifestyles and traditional social and family preoccupations. It was agreed that the most disadvantaged in

terms of equality before the law are the Aboriginal and Torres Strait Islander women, with racism compounding gender bias. These women must exist in two vastly different cultures and codes of law. Their opportunities to protect their rights are scant. It was the view of the discussion group that education was the key. The rights of women and children should be part of both primary and secondary education. The use of the media to promote equal rights (also broadcast in foreign languages for migrant groups) could also be beneficial.

It was suggested that an office or “tribunal” could be set up to deal with cases of bias. This tribunal could also report cases to the Attorney-General. It was agreed that there are many other groups in society, apart from women, who are regularly the victims of bias: migrants, homosexuals, atheists, members of less “orthodox” religions, and those who choose “alternate lifestyles”. Bias against these groups should also be opposed. It was suggested that members of the Judiciary be given special courses dealing with bias, and that these courses could also be part of the Law Studies curriculum.

On Family Relationships and Marriage

The discussion group supported the recommendation to treat marriage, under the law, as a partnership with equal rights. De facto relationships of the same or opposite gender should be defined uniformly throughout the States on the basis of:

- length of cohabitation;
- stability;
- evidence of commitment; and
- sharing of properties and duties.

A contract relating to ownership of assets would be helpful. Domestic violence has not been dealt with adequately. Both the Police and the courts require a serious change of attitude to this major social problem. “Wife bashing” has been regarded as acceptable and normal by a significant portion of our society. Intensive educational campaigns, publicity and prosecutions for criminal assault would help speed up this change of attitude. In competing interests and needs upon a family break-up, the interests of the child should remain paramount. The role of all significant adults should be encouraged and supported by the courts.
