DISCRIMINATION

With friends like these!

DOROTHY BROOM reports on the recent case in which women's health services were jeopardised by the operation of the Sex Discrimination Act!

Reflecting on some recent cases before the Human Rights Commission, one might wonder about the original purpose of Australia's *Sex Discrimination Act* 1984. Officially, a major objective of the Act is to give effect to our signing the UN Convention on the Elimination of All Forms of Discrimination Against Women. Although many women have been able to use it effectively, weaknesses in the Act have made it useful to men seeking to constrain women's claims and inhibit affirmative action. The 'Proudfoot' complaint against the women's health centres is a cautionary case in point.

In July 1990 Dr Alex Proudfoot, Principal Adviser to the Therapeutic Goods Division of the Commonwealth Department of Health, Housing and Community Services, filed a complaint with the Human Rights Commission. The complaint alleged that special women's health services are discriminatory under the *Sex Discrimination Act* because men cannot access them, because men's health is worse than women's, and because the services address problems that are not unique to women. (Gynaecological and reproductive health services are not included in the complaint; only services and information concerning conditions that occur in both sexes.)

Proudfoot named the ACT Government, the ACT Board of Health, and the Canberra Women's Health Centre as respondents. This was a pre-emptive strike. At the time, the Canberra Women's Health Centre did not even exist. It had an interim management committee, and was in the early planning stages, but there were no premises, staff or services available from the Centre. The ACT Board of Health has run a women's health service for several years, and this is also under threat. Subsequent to the original complaint, two other men (a software consultant, Jack Smith, of the ACT, and a Victorian anaesthetist, Dr Roger Henderson) filed related complaints concerning funding under the National Women's Health Program. The three complaints were considered jointly.

Respondents in the case were the Commonwealth of Australia (employer of the original complainant), the ACT Government, the ACT Board of Health (ACT's version of a health department), and the Canberra Women's Health Centre (an independently incorporated community-based women's health centre presently funded under the National Women's Health Program by the Commonwealth and ACT Governments). The Commonwealth sought to have itself joined to the original complaint because it recognised the relevance of the complaint to its National Women's Health Program. However, only Smith and Henderson actually named the Commonwealth as a respondent. Hence, there is no legal basis for the understandable outrage that a senior public servant was seeking orders to prevent his own department from implementing government policy. Strictly speaking, he named only ACT respondents, and hence technically was not suing his employer.

The case absorbed months of time. ACT women's health workers have been deflected from their important constructive tasks to fight a defensive battle for the survival of the services, and for the survival of women's health centres all over the country. There were four days of hearings, hundreds of pages of evidence, submissions and transcripts. Distinguished witnesses presented affidavits and gave evidence defending women's health initiatives. Three barristers, four solicitors and numerous public servants from the ACT and the Commonwealth applied their expertise to the matter. No-one knows how expensive it has all been.

The result

In March, the President of the Human Rights Commission handed down his judgment. The bottom line — quite literally — of Justice Wilson's decision is that he found 'all the complaints unsubstantiated. They are therefore dismissed'. All the effort and expense produced no positive advance, nor could this case have ever produced any improvement in anyone's well-being. The complaint was formulated not to advance the health of men, but to close down services for women. The decision results simply in legal legitimation for women's health services to continue doing what they were doing before they were interrupted by the intrusion of the complaint.

Wilson found that the services are discriminatory under the *Sex Discrimination Act*, but that they are exempted, either by s.32 (which permits 'services the nature of which is such that they can only be provided to members of one sex') or s.33 (the so-called 'affirmative action' or special measures section). Thus, the women's health services in the ACT are lawful, and so, presumably, are similar services around the country. None of the complainants appealed the decision.

The important fact is that the services are now free to get on with the job. The judgment acknowledges that women are disadvantaged in obtaining adequate and appropriate health services, that some of their health needs (not only reproductive and gynaecological) are best addressed through special, targeted services. Furthermore, it confirms that it is not unlawful to fund or deliver such services. However, the conduct of the case, and the formulation of the decision, reveal a number of problems that remain unresolved.

It is surely remarkable and ironic that our unique and precious heritage of community-based women's health services (a vital part of its overall network of community health services) was jeopardised by the operations of the *Sex Discrimination Act*! One might well wonder about a legal definition of discrimination that would permit women's health services to be found discriminatory even though — as Wilson acknowledges — men suffer no detriment from their activities. Women's health workers are correctly outraged at the diversion of their time and energy into the case, and they ask how the case can have escalated as far as it did. That is a good question for law reformers!

The decision does not make clear why s.32 was applied to the ACT Women's Health Service, but not to the Canberra Women's Health Centre. Nor is it apparent to the lay reader why the argument about women's distinctive health needs (which forms the basis of Wilson's decision to accept s.32) was not applied to the fundamental question of discrimination. The apparent inconsistency reinforces the impression that the Act's definition of discrimination is flawed.

Reliance on s.33 to protect women's services, although effective at the moment, must leave one with a sense of unease. During the hearing, the complainants harped constantly that services women said they wanted were merely to meet 'subjective' and not 'real' needs. The recent report of the House of Representatives Standing Committee on Legal and Constitutional Affairs acknowledges that women's needs should be defined by women themselves (p.248), but in its recommendations, it merely suggests that the Attorney-General's Department consult with HREOC to 'determine if an amendment is necessary to s.33' (p.265). After Proudfoot, one would think an additional inquiry was superfluous! When other affirmative action initiatives (such as the ANU's special admission scheme for Aboriginal students) are being dismantled, one is prompted to wonder how durable a s.33 exemption will be, and on what basis it might be terminated.

Most of the people at the hearing were women. However, all but one of the women were literally and formally peripheral. The exception was one barrister. It was not women, but an inner circle of men who were in authority, who did the talking and who stage-managed the proceedings. A man initiated the legal action, two of three barristers were men, a man presided and wrote the decision. If his decision were appealed, more men would sit in judgment.

Nothing unusual in a male-dominated legal setting, you remark, and of course you are right. What distinguished this case from many others in which men call the legal tune was that this time, the case was about women's bodies — not the body of an individual woman as with rape, but the female body as an object of the male gaze, medical manipulation and legal definition. At stake was the future of women's health centres, potentially of other women's services and perhaps targeted services to other disadvantaged groups. Our modest but precious accomplishments, hard won by decades of struggle, were on the line, threatened by the law's unwillingness to recognise that the body of the legal 'person' is actually a male body. The case shows yet again that if we rely on a formal, sexless concept of equality, we stand to lose as often as we gain.

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CONSUMERS

Consuming futures

GRAEME WIFFEN looks at the movement of which all of us are members, although some are more so than others.

Is the consumer movement still moving, or is it *passe* — a bit too 60s? Two recent conferences attest to the movement's vitality, but raise the issue of the direction it might take in the near future.

'Consuming Futures' was the title of the Biennial Conference of the Australian Federation of Consumer Organisations (AFCO) held in Canberra on 15-17 May 1992. 'Consumer Power in the Nineties' was the more aggressive title of the 13th World Congress of Consumer Unions (IOCU), in Hong Kong in July 1991.

AFCO describes itself as the peak body of Australian consumer organisations. It represents some 56 diverse groups, from those with a general focus, like the Consumers Association of South Australia and the Country Women's Associations, to those with a focus on a single issue. Prominent among the latter are the consumer credit and credit counselling groups, and the many home economics groups. Almost a separate category of its own is the Sydney-based publisher of *Choice*, the Australian Consumers Association, which, while a member, is far greater in size than the peak group.

The International Organisation of Consumer Unions is a federation of national consumer groups and includes among Australian members, both the Australian Federation of Consumer Organisations and the Australian Consumers Association.