

Equality Agenda F+E Con 2024 Video.m4a

[00:00:00] I'm going to ask our panel now to make their way to the stage. It is Equality Agenda, reflecting on the 40th anniversary of Australia's Sex Discrimination Act and moderating our final discussion for the Free and Equal Conference. Please welcome Australia's Sex Discrimination Commissioner, Dr. Anna Cody.

[00:00:30] Thanks, Anna.

[00:00:57] Welcome everyone, and it's really great to be in this session, the last of the day. And I wanted to begin by acknowledging the traditional owners of this land, the Gadigal people of the Eora Nation. And come full circle where Ros started this morning, just recognising Barangaroo, a Camaragal woman. It's most important that we recognise her because of what we're talking about today - the Sex Discrimination Act. And I learnt a little bit more about her today, about her strength, her independence, the fact that she was a hunter and provider for her people, that she used to fish herself, but she would only fish enough to feed herself and feed her family and her community; she didn't overfish, which I think is another lesson for us.

[00:01:45] And one of the other things that I learnt about her was that when she was offered to come and join with the European, the British at that time, and eat their food, wear their clothes She resisted that, so I just thought it would be really nice to recognize her strength of character as we think about women and LGBTQI+ people within the Sex Discrimination Act this afternoon. So, we have a fantastic panel here today, we have Nicole Hutton-Lewis, who is a Garawa woman and a screenwriter, and has been doing some writing around climate justice; we also have Aisha Zaharin, who is from the GLBTQIA Multicultural Council; we have Chris Ronalds, who is a very senior barrister within New South Wales, who is one of the creators of the Sex Discrimination Act - actually, if the only creator actually of the Sex Discrimination Act. We also have Samantha Connor, who's from People with Disability Australia, and Ramona Vijayarasa from UTS, who's a global scholar on gender equality; Anna Brown, who's the CEO of Equality Australia.

So, please join with me in welcoming our panel.

[00:03:12]

So, we know that the Sex Discrimination Act has been around for four decades - so, really quite a lengthy period. It's been a real emblem of social change and an incredible instrument for delivering sexuality and gender equality in our country. So we're going to have a chance to talk about some of the achievements of the Sex Discrimination Act, what it has done, and what it has done for us. So let's get started. been able to mean for people in Australia as well as what some of the changes or challenges that we continue to face. We know, just as a brief update, Vijayar has told us that we still have a gender pay gap, 21.7% is our gender pay gap, that migrant and refugee women are more likely to work in low-income, low-skill, insecure jobs,

[00:04:01] that women with disability face compounding discrimination and bias, and that

women with disability face compounding discrimination and bias, and that women with disability face compounding discrimination and bias, and that Aboriginal and Torres Strait Islander women have substantially lower rates of workforce participation. We also know that violence continues to be a significant, severe, endemic issue within our community. Two in five women have experienced violence since the age of 15. Men are more commonly the perpetrators of physical violence, sexual harassment, and sexual violence. And we know that one in five women has experienced violence since the age of 15. And we know that one in five women has experienced violence sexual violence since the age of 15. We also know that LGBTQ+I plus women and people experience higher rates of sexual violence than heterosexual women, that three in five Aboriginal and Torres Strait Islander women have experienced physical or sexual violence.

[00:04:52] In March 2020, the Commission released the Respect at Work report, the final report of the National Inquiry into Sexual Harassment. And again, we know the extensive rate of sexual harassment in our community is higher than in the past five years. Again, we know that one in three Australian workers has experienced workplace sexual harassment in the last five years, and that those rates are higher for LGBTQ+I plus workers, young workers, Indigenous workers, and culturally, racially marginalized workers. So, that's our current scenario. So, turning to our first question for Chris Ronalds, what do you think? Can you tell us a little bit about the beginning of the Sex Discrimination Act? And why did it originally come into existence? Thanks, Anna. I thought that'd take us back to what the culture was in 1983 and 1980.

[00:05:44] Unfortunately, I'm not in charge of technology. I think if you keep talking, someone will. Maybe now they'll find me. No, not yet. Okay, here comes a handheld one. This is a replica of last night. I hope they've fixed it by now. Obviously not. Oh, I could start sobbing pathetically. No, I don't. Don't. I don't know how to turn that one on either. What is she doing? Sorry, I don't know how to turn that one on. It is on. It's now on. Just put it up here. How's that? How's that? No? Further up? Further up? Yep, there we go. I was only given three minutes. No, I didn't. I thought before we looked. And most of the other questions relate to where we'll go in the future.

[00:06:38] I thought I'd take you back to the nightmare that was 1983 and 1984. And why should I leave this trauma by myself? So I'm going to share with you a few stories of how difficult it was. And it's now impossible to realise, but it was. So that I was in Canberra and Susan Ryan, who some of you would know, and who sadly left us recently, was elected as an ALP senator in December 1975 as Whitlam was voted out. She and I became close friends and we worked for many years on women's issues that she would raise from the opposition bench. I then drafted her a private member's bill, which was the sex discrimination bill, and which also had affirmative action in it, which she introduced in December 1981 as a private member's bill.

[00:07:22] It was the biggest, most extensive private member's bill ever introduced. Sorry, Chris. No, keep going. No, if you knew how, Dad, you actually wouldn't want me to do this. And it then lapsed due to some lack of support and complete lack of interest in the parliament from the coalition government then led by Malcolm Fraser. The demands of the women's movement, particularly through the women's electoral lobby, had made no impact on any legislative recognition of women's rights during that period. However, Well was very active, but unsuccessful.

Once the Hawke government was elected in March 1983, there was an immediate, an immediate change of legislative focus. Hawke had promised Susan and I that this would be a priority. And in fact, it was the first substantial legislation introduced.

[00:08:14] He was; the Hawke government was committed to it, but when it went to cabinet, I wasn't there; they split off affirmative action from the and we proceeded with what we now know as the Sex Discrimination Act. During the intervening years, I'd been seriously rethinking the concept of sexual harassment and how it fitted or didn't fit into the legislative class. I'd been thinking about the concept of sex discrimination. The first Australian sexual harassment case, O'Callaghan and Loader, which was a 1984 New South Wales court decision, had been churning through the courts for years. And there were other complaints that had gone to the New South Wales anti-discrimination board where I worked, which meant difficulties fitting into the direct definition, direct discrimination definition.

[00:08:57] In the US, in the late 1970s, feminist academics had invented and promoted the term 'sexual harassment', especially Catherine Wynne. Catherine Wynne's groundbreaking work, *Sexual Harassment of Working Women*, in 1979, followed by Lynne Farley's book, *Sexual Shakedown: The Sexual Harassment of Women on the Job*, in early 1980. The women's movement in Australia embraced the term as a descriptor of the events and identified their sexual content as being an integral part of the inequality of women in the workforce. So, drafting of the sex discrimination bill began almost as soon as the Hawke government was elected, but it was no easy task. There was significant bureaucratic opposition from within the Attorney-General's department, then a very conservative department, and PM and C's Parliamentary Counsel, who were the drafters of all legislation, were completely opposed to the definition that I proposed for direct and indirect discrimination, and claimed it was not proper legislation and could never be presented to Parliament.

[00:09:59] The sexual harassment definition was an issue they considered should not end up in Parliament. It would never be covered by legislation. It was just not appropriate, was the term they used, as it fails to actually address a real issue that legislation was really meant to be addressed. So, I had to keep pushing on and on. There were hours of heated debates between the two ministers, Susan and Gareth Evans, who was the Attorney General, their advisors, mainly me, and the head and the second in charge of Parliamentary Council. After one particularly tumultuous meeting at Parliament, I was told that I was going to have to leave. At Parliamentary Council, where unusually the Attorney General was actually present in the bureaucrats' office, at 1 AM, Gareth lost it, which he was famous for, and yelled and yelled at the senior OPC staff.

[00:10:48] Just give her what she wants! I authorize anything she says is okay, and he stormed out of Tony Daywood's office, but left me there. We then stayed until 3:00 AM and went under the speakers exactly beneath the exactly Council of Bureaucrats. Thank you. Don't work those hours sorting out the finer details when the head of drafting lost it; he shouted at me in relation to the sexual harassment provisions. 'You can have it,' I give up, 'it will never work.' The courts will reject it again and again, and in three years, I want you back here apologizing to me, then I'll draft the bill repealing the section with the greatest satisfaction. I remember smiling wistfully; a victory is a

victory after all. I never went back to see him until we were drafting the Affirmative Action Act, but that's another story.

[00:11:42] So, the direct and indirect discrimination and the sexual provisions were finally allowed into the draft bill, and it was introduced two days later in fact it was the first legislation in the world that used the term 'sexual harassment.' And you... I'm still waiting for the head. Of drafting to apologize to me, but I kind of get it after 40 years. I don't think it's going to happen, and while this argument was going on, there was another serious dispute about the legal foundation of the bill itself. The liberals and the conservatives had for many years disputed the use of international conventions as the basis for federal legislation, claiming the external affairs power in Section 53 (5129) of the Constitution did not extend to international conventions.

[00:12:35] And the SDA relied heavily on the UN Convention on the Elimination of All Forms of Discrimination Against Women. Some of the vehement public Conservative objections to the SDA were because of this reliance, and again I was in complete disagreement with the senior attorney general's staff department. The staff as they considered that it just couldn't happen, and they were very vehement and entrenched in their view, saying it repeatedly to the attorney when asked, and indeed frequently when not asked. During one feisty meeting with Attorney General Evans, and then Gareth invited me to explain my views to them, which I did briefly. One senior official in AG's looked into the distance, didn't even bother to look at me, and said loudly and aggressively that any person who was a member of the SDA was a member of the SDA.

[00:13:24] The person who considered the high court would support the use of international conventions for domestic legislation was an idiot and should be struck off the role of lawyers. I'm pleased to tell you 40 years later, I'm still on the role of lawyers. Inconveniently for him, on the 1st of July 1983, which was during this period when we were doing it all, the High Court delivered its judgment in what's known as the Tassie Dam's case. And in a fourth decision, it largely upheld the validity of Commonwealth laws based on a UN convention. Of course, it's now firmly accepted that that is, can be done; the Commonwealth has wide constitutional powers to make laws on many subjects, not just environment laws but also discrimination laws.

[00:14:11] So that turns out I wasn't it or maybe I am, but on that particular point, I managed to get the High Court to agree with me at least. So, on the 1st of August 1984, against great resistance, the SDA became law. And since then, there have been many substantial amendments made, which I think are wonderful and the positive duty requirements. Of course, from December 20, 2023, these requirements are just fantastic, but let me tell you, they were unimaginable in 1983. But what I often wonder is this, and I think this is the question for the future. Why is the sexual harassment law considered a law by many blokes one that they don't have to comply with? They comply with most other laws. Why is that it's considered somehow not compulsory?

[00:14:57] If you think about it, everyone under 40 sexual harassment has been unlawful since they were born. Everyone under 58, it's been unlawful since they became an adult and started working; really, that's just most the vast majority of the workplace. So, but the last few weeks we've got a big media company, a big clothing company, and there's a report on the water force. It shows

that many still consider it an optional law. And how many times have I heard, in cases I'm involved in, 'oh, that wasn't really sexual harassment; that didn't breach the law.' Well, it actually did, and it's well past the time that it stopped. Thank you. Thank you so much, Bruce. And I think what that reveals... we'll just leave it with you until the next person is the persistence.

[00:15:49] Strong woman, and what a great achievement that you; we give you credit to. So thank you so much for all of your work and inspiring us as well. And you did allude to some amendments that came into place in 2013. And so we know that the Sex Discrimination Act was amended to provide protection for those on the basis of discrimination on the basis of sexual orientation, gender identity, and intersex status, as well as extending coverage to same-sex couples. Anna, did you want to comment on those and what the impact of that amendment has been? And then I'll flick to you. Thanks, Chris, and that was so enlightening, and yeah, huge respect for you and everything it did. Well, in 2013, these amendments I remember were overshadowed by a changing prime minister just around the time, to see if people some political context.

[00:16:46] But obviously, for LGBTIQ+ communities, they were incredibly important because they filled gaps in protection. Protection some places across the country and strengthened protections in other parts of the country. For the first time in Australia, we had protections on the basis of sexual orientation, gender identity, expression, and intersex status. And it was actually Australia; we were the first jurisdiction in the world to protect intersex people under our discrimination laws in that way. South Africa had intersex protections in its constitution, but we were the first discrimination law. And it's been really wonderful to see other jurisdictions follow since 2013 across the world. We didn't have as many, I didn't have as many threats at the time and nasty conversations, but we certainly; there was a lot of advocacy by so many people in the community and lots of incredibly powerful stories that were told.

[00:17:40] And the drafting, like most drafting was not perfect and there's plenty of improvements you could make, but it was still really important for the first time to have these national protections for our community. And I'm sure this has been covered earlier, but the way it's unfolded, we haven't seen a lot of jurisprudence for LGBTI communities under these provisions; we haven't seen a lot of cases run to trial. And I think the reasons for that are well known. We've got so many barriers to bringing a discrimination complaint: the cost disincentive, the emotional and financial resources required by someone who's already been a, you know, is a victim of discrimination. It's a really high barrier. But one example of how these provisions have really improved the lives of LGBTI people is a complaint that Equality Australia brought just recently.

[00:18:35] So, section 26 of the Sex Discrimination Act requires, you know, nondiscrimination in the administration of Commonwealth government programs. And when you think about it, and there's been a lot of talk about a human rights act, and there's been a lot of talk about a human rights act, and there's been a lot of talk about a human rights act in this country. Well, this provision really does require the government to hold itself to the standard of private actors. And in a way, it's got really strong potential as a bill of rights of sorts for the communities protected by the Sex Discrimination Act, at least in the area, obviously, of discrimination. So we worked with April Long, an incredibly wonderful and brave non-binary parent of a rainbow family, and brought a complaint

against the ABS, arguing that the lack of data collection in the census was the omission of data, and the lack of the data being properly collected was a form of discrimination, or was unlawful discrimination.

[00:19:41] Now, it was kind of ironic because we had the data collection about our communities that we didn't want or need in 2017. And here we were in 2017, and we were in 2021. And I think for those of us who filled out the census, and were asked, 'If you have a rainbow family, who the mother and father of your child?', it was quite visceral, the reaction. I know amongst my friends and other community members, just that feeling that we can't have our families counted properly. We can't, you know, we can't give the government information about who we are in a way that could actually inform government decision making about how programs and services by government are funded properly around the country to meet the needs of our communities.

[00:20:27] And we all know we're all into human rights; we all know that data drives progress and change. So, we don't have the national story about LGBTI people, which is why we brought the complaint. And, obviously, the complaint, the settlement, it was settled privately. But I can say that following the complaint, the ABS released a statement of regret about the 2021 census, and also made a number of commitments to take forward a process around setting up an advisory group and testing; moving forward with those questions. And I do want to pay particular tribute to our legal director, Ghassan Kassasia, who I think some of you heard from earlier today, who ran the complaint and the pro bono legal team that we worked with. And of course, April Long and her wonderful family.

[00:21:12] But that is an example of the SDA doing what it should, which is improving and realising the human rights of all people. And I think that's a really important point. And I think that's a really important point. And I think that's a really important point. And I wouldn't be doing my job if I didn't, before I hand it over, say there's of course some more work to do to strengthen some of the gaps in protection. And it's been in the news of late. But we do have carve-outs in the SDA for religious organisations, both in employment service provision, and for educational institutions that impact on women, that impact on unmarried couples, that impact on people. And I think that's a really important point.

[00:21:50] that are pregnant and LGBTIQ plus communities at the moment it is legal for a religious school to hire or you know to discriminate or fire or in hiring or firing of a teacher to expel a student simply because of their sexuality gender identity or other attribute and that is simply unthinkable in 2024 in Australia and it doesn't reflect where we are as a country and it needs to change. I'll end it there. Thanks very much Anna and Aisha did you want to have any share any reflections on the impact of those amendments or any particular challenges facing LGBTIQ plus communities now? Yeah. Talk and I think it comes on. Hello. Hello. Keep talking. So yeah I can actually certainly talk about how

[00:22:47] you know there's a there's a case court that is going on at the moment Tickle versus Giggle if you not aware of that it's about how these trans women try to get justice when these media platforms try to you know discriminate her identity by saying that she's not a woman in a

way that so what happened in this particular case which is this is still ongoing in the court that she set up I'm an account in a in a in a social media code deagle and the social media platform it explicitly. Restricted only to women, so when she uploaded her photos at the seven-seven up to that well, she recognized by the AI system that she's a woman. But after that, what happened?

[00:23:44] The one of the manager of that app and then I swear to God, I still get the gas caps. I just got jagged. I still lost my then exam; I spoke no longer. I was always feeling my time. Just saying, she's not a woman, so that's why I'm saying that because based on her photos. So, what I'm trying to say is that, um, that kind of narrative it could actually contribute to the trans misogyny, when I said trans misogyny, it's a branch of transphobic where um a person can be you know committed to discrimination because she's not a you know she's not a woman because maybe for whatever reason, for cultural or specifically any kind of reason.

[00:24:21] That she's not a woman but um, and it's interesting to see how in the discrimination um sex discrimination act that um sex is not really defined as they don't really have definitions in that whereas intersex is defined um, it's it's... But then um, I think it should not also be a problem because we do have our trans women as women, trans women regardless if she has um you know surgeries or not, as long as they manage to um change gender legally um under the constitutions and whatnot. So that's the argument that I'm pretty sure you're aware of because it's something that that that um, yeah that the the application so what I'm trying to say is that when I talk about trans misogyny, trans Misogyny can lead to trans violence.

[00:25:14] Um, a lot of trans people have a role, especially trans women of color. They're subject to discrimination based on their identity, based on how they can pass as a woman, and this is problematic because it's conformed to the normative um of heterosexual standards of how a woman should look like. And when I say it's a problem, it is a problem. It's also problems that derive from colonization. If you think about how the Spanish um when they invaded North America, they killed some of the women who were trans women and they were trans women and they were trans women so many indigenous people. Um, the two-spirit people. Um, by telling you this is um actually you know part of Christianity and um think about how in Britain too back in the 19th, 18th centuries where they introduced a law that discriminated um transgender and uh and gender-diverse people during that time in the in in the Mughal Empire where you know um as we know that

[00:26:17] the traditions of trans people we exist in a fabric of histories of um Islamic traditions that we were the protectors, the guardians of the harems and we did a lot of things when it but when the British came they introduced the law that discriminated is because they say um our identity is hardly to govern that is not aligned with christianity that's one of the example um speaking from my experience as a trans muslim of color i'm not a trans muslim i'm not a trans or migrans you know norah talked about how she had multiple identity um i do have additional to whatever norah mentions i'm also my uh like a citizen citizen by naturalizations and also a trans muslim and also you know um episodes of color and this kind of overlapping identity um

[00:27:13] contribute more to how i can be discriminated against my experience before I came

out back in 2019 when I started doing advocacy on trans right I was pretty fine when I went to the Mosque, when they didn't know I'm a trans or Muslim, my Muslim friends during that time they were okay with me because knowing that I'm just like another woman wearing my headscarf and we always shake hands and and whatnot. But things changed when excited to find out that I'm a trans. You know, this kind of discrimination that we don't only talk about how it's like that I'm because I am being discriminated based on my religion as in you know by other people from my religion. And it's very disheartening, this kind of experience that I have to go through.

[00:28:08] I lost a lot of friends through this process, but I also maintain love for others. love for other lots of other Muslim friends who still want to be with me because they see me as a person, they see me as human being. Phrase more than um, what their uh sort of like pseudo-religious tell them, because I also write articles about um Islamic conservatism, how to, how, how they actually my identity. Um, one of the one of my experiences previously dealing with this was that when the Islamic Councils of Victoria um accused transgender uh Victoria, one of the pages that we promote, islamophobia by having a woman wear hijab. So after that discussion um, with them, we found out that they just find it, they find transgender Victoria, um, page

[00:29:07] uh islamophobia by only exclusively showing trans women with hijab, and the the conclusion is that they want um to put like maybe Christian um representation, so that so that they can then they cannot call that as Islamophobia, you know it's just weird and um it's it's very reductive, but that's all I can say. And I think what you've led us into is some of the challenges that we face within the Sex Discrimination Act when we have complex identities, and how the sex discrimination act struggles and our discrimination law system struggles really with people who all have complex identities, but how how It deals with that, and maybe Nicole I could um turn to you if you wanted to share your thoughts on how the sex discrimination has both protected um first nations women but also some of the challenges that first nations women face.

[00:30:07] Thank you um oh it worked um first I want to acknowledge um traditional owners of where we're meeting um and also before I talk I want to acknowledge all of the first nations people who've contributed to um you know, where we are today um, you know at the start of the session, we kind of heard a really long list of things making up why we are not where we need to be. And I think that's because of intersectionality. Um, needs not being met. Um, so I guess like first I want to talk about um a quote or um a theory that I really like and it really helps me when I'm thinking about how we're going to be able to meet intersectionality needs when we're talking about um gender equality and stopping gendered violence.

[00:31:01] It's by Audre Lorde, which is um talking about the master's house and um a theory that I kind of learned about while I was participating in a program called WellA, which is the Environmental Leadership Australia for women, and basically talking about how the master's house can be made up of three pillars, so um white supremacy toxic Masculinity and capitalism, and we're not going to be able to destroy that master's house. I'm going to talk about the master's house. Something we're talking about um, you know. The only thing that that particularly hits me is the fact that you know, we have you know, we have uh, you know an abundance of institutions and we have institutions that are above us that kind of keep us down and and keep us from moving forward,

and the progress that you know we want to see um, and while we're still kind of walking forwards, and not looking at how um, how racism and white supremacy is contributing to gendered violence and capitalism.

[00:31:56] We can't just kind of focus on our one corner and focus there. We need to kind of work across, and as a first nations person, um, who has worked mostly in grassroots campaigning and also in the film industries, my experience has been that I've seen mostly um, women and gender diverse people who are leading these campaigns and leading um, the work that's been done to fix our communities from the things that institutionally um, and colonization has impacted us. So, we're seeing a bunch of young women, a bunch of mob, and a bunch of young people as well um, working to fix these things. And I always thought to myself, where are The leaders I know, we're seeing all the stats that a lot of um, the leaders and high-up jobs are being held by men.

[00:32:48] And when we're looking at places that are really needed, like grassroots spaces, we're seeing them kind of stepping out because I guess that's not giving the power that they're desiring. But anyway, um, and yeah. And also as someone who's working in a film background, I'm a writer and a director. It's something that you see on the ground every day, you go on a film set, and you're seeing majority of the people who are on the ground um being males. You know, it's something that's... I know, I know that we've got um, we've had this issue for a long time. Set in law for a long time now, but um, we've really got a long way to go because um, you know. As we've been seeing, we've seen a lot of gendered violence, especially for First Nations women.

[00:33:37] As someone who's a domestic violence survivor myself, um, when I was going through that experience, I didn't personally know um what kind of supports I had what was out there for me. And knowing that there are other people going through that and that a lot of things aren't being done, and I think that's a big part of the um, it's especially concerning, especially for First Nations um, people um who may not have the kind of um background and understanding. Especially mob in remote communities, um, where we're seeing educational differences happening. On my mother's coming, um, come from East of Borla, they're in the Northern Territory, and our education, um, our education, I guess, graduation results are a lot lower than places in cities.

[00:34:26] And we're seeing places like, um, my community, where our young people are having to be moved out of our communities and into cities, where um, there's more access to education. For example, my mom is, um, someone who cares for two of my nieces, um, and we're seeing a lot of our women, First Nations women, who are the center of a lot of our communities, and who Are taking on a lot of the care work, that's um, you know education really should be something that our governments are providing and are making sure those needs are being met for our communities. But really, a lot of those roles are being taken on by our women, and there's not enough support for um, the people that are doing this. So yeah, thanks very much Ramona.

[00:35:11] Any reflections from you on both the achievements and then also some of the challenges that particularly women of color face um, through and the use of the sex discrimination act sure? And I just want to start by um, thanking Aisha and Fiona for bringing their personal experiences. Experiences, to help us with this conversation, I really like the Master's House analogy

because we do have the master tools which is the law and the legal system. And I think Chris's introduction to the battle that was fought really tells us that we do have the SDA. Like all laws, it has been amended to keep working better protect our rights. Um, and I think if for those who weren't following the positive obligations, you can't hear me.

[00:36:02] So I just want to comment on the Master's House um, I think it's great to have heard the battle that Chris and others fought to get us here because we do have the SDA and it has evolved over the time which is what law has the capacity to do it has the capacity to evolve so the 2022 positive duty that was introduced was in response to the respect at work sexual harassment inquiry and i think any australain woman who's been in a workplace doesn't need to be asked why we need to keep addressing sexual harassment it is so real one in two australain women will experience sexual harassment in their lifetime and i'm looking out and there are a very large number of people who identify as women here and that's one in two at every table just imagine that kind of reality and what the 2022 positive duty did is it placed the Obligation backing on employers to be able to address sexual harassment,

[00:36:52] which is quite unusual in a human rights context because normally positive obligations go to governments. But here, we were putting it back on the businesses to do something, which in this case is to take reasonable and proportionate measures to prevent sexual harassment and hostile work environments. And just that very language, 'reasonable and proportionate', also reminds us the limitations of the law when we're talking about you know women's lives and lived experiences. Um, but in terms of the question of well, okay, there's these great amendments how Do other women, or women diverse women, or women of color utilize these these positive developments, these changes in the law? I think it reminds us of how limiting we can be when we're talking about being boxed in.

[00:37:34] So, I spent 11 years working internationally as an international women's rights lawyer and I was heading up the women's rights team at a very large international non-governmental organization for the headquarters. And they sent me to Tanzania to evaluate one of our programs. So, I got on this very rickety plane from with eight seats and landed in this very remote community and met a woman farmer living with HIV.

And she said to me on Monday, 'I go to the group that you set up for women on Tuesday, I go to the farmers' group and on Thursday, I go to the HIV group,' so I'm really busy. And my heart absolutely sank thinking we created this, as a non-governmental organization, very well-meaning, created this for a community emulating the global human rights system that is so easy to do, to emulate these silos.

[00:38:22] And so I think we do need to use this as an opportunity to reflect on what those silos mean when you have a woman trying to claim a case of sexual harassment using the structure of the law. So a woman has to think, 'Was I harassed because I'm brown?' Was I harassed because I'm a woman? And where do I find my way through this complex system to navigate my claim? So, I think that to me is is one of the real challenges. It's interesting because Australia is late to this conversation and we've heard that we're the last liberal democracy to have this that we hope comes to fruition to get a bill of rights or a human rights act.

[00:38:56] And maybe being late to the conversation, we have an opportunity to do things a little bit differently and challenge the silos. And use this a platform to go in a slightly different direction. I know we're tight for time, so I'll just add one more thing. Been a lot of dialogue today and last night around human rights-mindedness, and the other thing I noticed coming home after so many years is how little engagement there is with human rights language and human rights discourse. And we can talk about that a little bit more, but I think it's really important for us to think about: how do we get this conversation outside of this room? Who's in favor of a human rights act? You're here because you're in favor of a human rights act.

[00:39:27] How do we get this conversation outside of the room so that we start to educate the strangers, to really use this language and to buy into the agenda, because it's So much bigger, I and I have to say that I think some of the people whose rights are least protected are probably not the very privileged among us who are here to have this conversation today. Thanks so much, Ramona, and to you, Samantha, your reflections on the issues that you're talking about what some of the achievements but also some of the ongoing challenges for women with disabilities. I'm a little bit terrified because if the microphone works or not it does, it does. Excellent, I'm one of the chosen people, totally so last year, I maybe would have told you a very sad story about how as a woman with endometriosis and who's a wheelchair user worked as a manager at a TAFE and, um, had to there was no accessible toilet and I had to take them to the Human Rights Commission for uh mediation.

[00:40:25] La la la la. Ended up losing my job but it wasn't before huge amounts of trauma and heartache. I said, you know, I get periods that's you know not because I'm disabled but because I'm a woman. Um, what does that look like? Um, two years of trauma for me was um, you know, sending line managers photos of my periods every month because I'm funny. Um, when it got to that point, um, but it became this enormous thing and I didn't know where to go in terms of um, taking it through the Sex Discrimination Act. The disability discrimination act it was a real thing for me. Um, the most profound thing that I've heard during this conference is that we're just a big diverse world.

[00:41:06] You know, we tend to bunch into groups of people because we have shared and common experiences. And it's too difficult for me to dissect my identities and say that I'm a woman and I'm a disabled woman and I'm autistic and ADHD um, I'm also a parent of lots of kids um, I am also a transparent, I love the term 'transparent' um, and um celebrating having a wonderful daughter. I now have three daughters and three boys which I think is fantastic. I got to take my daughter clothes shopping for the first time a couple of weeks ago which was fantastic um we've got so many identities within who we are and across the world that really the minorities there aren't any minorities

[00:41:52] just people grouping each other into smaller and smaller groups the minorities are people who perpetrate violence who perpetrate exclusion and systemic inequalities but it just seems so big from our experience um we have at the moment um a government that bangs on about um you know individual responsibility and um ruggedly pulling up your own socks and that

kind of thing that would be great if everyone took personal responsibility For discrimination, right? And we have to rely on the law, so the Sex Discrimination Act, I think Chris is talking about, you know, 1983 was it, which I remember quite well. Um, it really was groundbreaking then. Now everyone's moving to this idea of intersectionality and that's, you know, we've introduced progressive changes in the AMI losing no okay, so we we're introducing project progressive changes into our legislation with those things.

[00:42:51] We really have to rely on the law, and the laws, and we really have to rely on the law to need to make sure that people do take personal responsibility and collective responsibility, and we don't just rely on the law, because the law just doesn't do everything, and that includes the sex discrimination act, the disability discrimination act. We need to make sure that people stand up personally and say: 'Say it loud and say it clear,' trans people are welcome here, disabled people are welcome here, Aboriginal people are welcome here. And we make sure that people are focused on on championing the rights of every single human being, because if we affirm that we're not just affirming our own humanity but we're also committing ourselves to a just and equitable world, and that's the thing that we're all fighting towards.

[00:43:33] Thank you so much, Samantha. And I think some of the richness of this panel has been the absolute generosity as as recognized by Ramona in sharing personal stories, so thank you very much. And I think I'm going to hand over to you for the next slide. Thank you to each of you for doing that, because I think it adds a texture and an understanding of what some of the challenges are when we're using the Sex Discrimination Act to try and fit our complex lives into those legal categories, which is a challenge of our law. I thought I would just take five minutes if we have, say, two questions from the floor, if anyone wanted to ask any questions of our panel. The woman with the hand up, and then the woman at the mic. Which woman with the hand up? There's a woman sitting at that table with a red cardigan on. Virginia, her name is. Thank you.

[00:44:43] Thank you, Commissioner Cody, for putting the panel together and also for recognizing the fact that the SDA is also incredibly unworkable for certain categories of women or for certain groups of women because of its inability to actually cater to or to represent the experiences of women who experience compounding marginalities, such as calm. Women, because we're noticing with the work that we're doing at the Diversity Council Australia, working with culturally and racially marginalized women, that it's not actually just gender or like gender discrimination that's relevant, but actually racialized sexism, which is really important. And so, it won't work if we just focus on gender. I'm curious to know, Commissioner Cody, or anybody on the panel, if you can talk to that. So, I did speak on the panel, if I could make a recommendation, I do.

[00:45:49] Commissioner C escappa, and then you, if you're qualified for legal listening, you can talk to her, and then the question will be put out to you and Ito will go to you, and then you can explore the business, and then we work through the system e your questions at thePacific's website and all that information aboutorealy. So, that kind of I was looking at emojis like 🗨️ to make it convenient people who use these types of almost traditional forms of words and not just this... I'm actually I'm not Chopbo book how much there are so to read Dr. Edwas and have a look at Thank you very much, you've said um... So as a result of the Taylor and Pemberton decision that was

handed down last year, there's an acknowledgement that lawyers conduct in defending discrimination claims conform the basis of a victimization claim.

[00:46:26] How do we as lawyers ensure that we balance our clients' instructions with our broader responsibilities to the court and anti-discrimination laws more generally? Fantastic, thank you um... Perhaps um, who would like to have a first go? Perhaps Ramona did you want to have a go on the first question from Virginia or Aisha? I think it's a really good question. Virginia, but I suppose the answer to me doesn't come back to the SDA and if we're on the brink of a human rights act that gives us a much wider platform to talk about intersectional issues and to protect rights... But I also want to revert back to something um Justice Kirby said yesterday, which is these are not new rights our government has been bound by these rights for decades we have been a state's party to the convention on the elimination of all forms of discrimination against women since 1983

[00:47:22] so one year on for the sda which is why the sda could annex the convention to the law and these frameworks are not perfect they're not going to solve everything nor will a human rights act but they're stronger at this point and they're going to solve everything nor will a human rights act but they're going to solve everything nor will a human rights act but they're going to solve everything it's the umbrella was discussed earlier Today, whereas right now we've got holes, I think the answer doesn't lie with the SDA. The answer lies to a future where we can have a community in Australia that's really engaging with this human rights language and rhetoric, and talks about intersectionality.

[00:47:51] But Virginia, you also asked about a wish list, and at the risk of making the mistake that Commissioner Giri made earlier, you know I think we don't have young voices on the panel, but I'm hoping that the future conversation looks different. You know I have two young girls, 8, and I don't want this to be the conversation they're having having in 20 or 30 years' time. So let's Start very early around curriculum reform and talk about intersectionality, and talk about consent, and talk about human rights as part of our education system, very early, so that human rights-mindedness seeps into the culture from the very beginning. Thanks, um, I sat and then I think whoever, yeah, I just want to talk about, um, uh, an issue that has been not really,

[00:48:34] you know, a talking point where the rights of trans women in prisons, or incarceration in incarcerations, at the moment what happened is the trans people's in prisons they would, um, they would, they would be put in a jail, whether it's a female some male jail. based on you know if they have bottom surgery or not and this it this is itself a discriminant discriminations um what i'm trying to say is that um most of the time we think about how you know because we don't really give them right because they're things that they're criminals but um that's not the case because you know um some of people's that go to jail sometimes they don't really get that kind of justice that they need to and and people do not um understand that um you know people who get involved in criminals normally they it comes from a place of the systemic violence that they have economic socioeconomic problem

[00:49:34] that they have um you know we need to address that issue especially for for trans

people who need to transition at an early age or the and how the society has been discriminated against um giving us the rights and and it's just that um you know socioeconomic is one of the issues that people don't see how um like a trans people can commit um to a crime because because that's because it's a crime and it's a crime and it's a crime and it's a crime and it's a crime and it's a crime it's it's not easy to be a trans um in in the world thank you and samantha did you want to yes um one of the biggest things i think is making sure that everybody is in The room and the room has to be accessible and safe to everybody, in order to fit us all.

[00:50:22] Um, if you have a room full of white cisgender, um, heterosexual voices who are able-bodied people, then you're going to get a policy or a law that actually fits people who fit that demographic and doesn't fit the anybody else. And the challenge is that we're in a really big country. We have diverse states and territories, um, we have diverse populations, you know, not for any particular reason. Um, there's a woman here today named Heike who is my friend, um, her son died um on the 12th of May, 26 days ago, and some of you will be aware of the fact that um Bodhi's Last act was to say that I wish that my chosen gender and who I was was able to be on my birth certificate.

[00:51:05] Um, really, really powerful advocate throughout the 18 years of this young man's life. Um, we need to make sure that the bodies of the world are the people sitting at the table to make sure that our laws reflect every circumstance that humans are going to fit under. Thank you. And I think what's coming through really clearly is that complexity of our lives and the way in which we try and use law in the best way that we possibly can, but that it needs renewal in the same way that we saw in 2013. That renewal, and so thinking about Where are some models, and whether that be the Human Rights Act or education as other ways uh to amplify or think more broadly.

[00:51:52] Anna did you want to have a go on the question from I was going to put lawyers, oh yes indeed victimization question though around um lawyers' role in that decision that was handed down. I've never really found the problem apart from trying to make sure that the story that uh you're cross-examining about is in fact the real story. Um and this may surprise you but some blokes accused of sexual harassment tell fibs even in the witness box under cross-examination, that's been the biggest problem I've ever found them I think but uh that also can lead to some fun well if you have my weird sense of um so yeah it's a problem but you've

[00:52:45] you've got your normal ethical duties that you always have important so I don't see it raises any extra special wins thanks Chris and to Anna and then to Nicole and then we'll finish up um I just thought since we're rattling off some things in our wish list um particularly around the issue of 있다 northernIf a 도 was really eager to sign it american senate yolk was actually proposing that along and really extended that I have to look at that there's really Until around you know obviously it's human rights More broadly, for women and all women, but also when it comes to the Sex Discrimination Act, ensuring that intersectional or compound discrimination is captured. We obviously have the attempt that's probably been discussed earlier today; I'm sorry, I wasn't here, but the Human Rights and Anti-Discrimination Bill back in 2012-13 that fell over that was the last attempt.

[00:53:23] We need to, I think, renew efforts to ensure that our discrimination laws across the board protect and include everyone, and currently they don't. And we don't have an Act that protects people of faith, and that's something this Labour government's committed. To as well, so we need to make sure that everyone, wherever they are in Australia, are protected from discrimination. And then we've got, you know, the difficulties caused by the comparative the way the comparative test works - the burden is so much, the burden on the individual is so great at the moment. We just need to slowly but surely take those steps to improve and increase access to justice for victims of discrimination. I touched on the religious exemptions earlier, but we have a really great success story when those in 2013, when those protections for LGBTI people were included.

[00:54:17] We actually narrowed the religious exemptions. When it came to Commonwealth-funded aged care, so we had a really good one. Mark Butler had run a consultation for an LGBTI-aged care and strategy and that gave an evidence base of aged care homes and people within those environments a bit like detention, really vulnerable environments where people absolutely need protection from harm. And on that basis, the Labour government, then the labour government, introduced a limitation on the exemption on the exception. And what did we see happen? We saw aged care homes and aged care services be inclusive and welcoming for LGBTI people. And the sky didn't fall in, and we need to learn from that example. ensure that

[00:55:03] there's many religious organizations out there that want to do the right thing that are doing the right thing and at the moment the law does not hold them to an adequate standard and that needs to change and i would just echo sam's remarks about birth certificates and say that that is you know a really fundamental human rights well yeah the new south wales is the last state in australia to require the right to do the right thing and i think that's a really crucial thing i can only imagine that that is we need to but there is just a need to draw on this thing i don't think it's necessary to we need to be ah i think 忍

[00:55:43] we need to be a force of your own you need to recognize that trans women are the ones who Zhou Jie g 謝謝 acqu mostra turn this paper first to her again sorry and that that should continue and of course um and that there's a small minority of activists um that are trying to that are attacking trans women and i think we just all need to stand in solidarity with aisha and all trans women we need to build a trans inclusive form of feminism that includes intersex women trans women non-binary people recognizing that marginalized genders do not always fall within male and female categories and that's the reality of the world we live in today, and that's the sort of Australia that this act needs to protect and uphold.

[00:56:35] Thank you, and I'm going to give the last word to Nicole if you wanted to make any comments, yeah? Thank you. I echo a lot of what's been said on the panel; some amazing people to hear from today. Um, I think I guess like what I'm thinking about when I'm hearing you know all the stories and all the expertise is that it's sometimes it's not going to be an easy thing to do to make these changes that it's going to make um, make this more and more intersectional world um, it's not going to be cheap; it's not going to be easy. A lot of the people who need to be at the Table aren't at the table, um, and you know sometimes they're incarcerated or, um, in remote

communities or, um, simply not being invited.

[00:57:30] So, um, I just want to reflect on that, and also, um, on the culture of, um, white Australia and how that is one of the leading causes to this. Like, you just need to log on to a Facebook comment section, um, and see that it's pretty obvious now. And I think that, um, you know we need to have our leading organizations, our leading media organizations, and, um, the things and the institutions that are driving culture in, um, this country. They need to be held accountable for the um for contributing To the ongoing violence, um, thank you, thank you. So please join me in thanking our rich, diverse, very honest, and generous panel for this story that we have all shared, and for their strength, resilience, and their resilience and the amazing work that they've done through the Sex Discrimination Act. Thank you.