

Reform of the
***Equal Opportunity for Women in the
Workplace Act 1999***

REGULATION IMPACT STATEMENT

BACKGROUND TO THE REFORMS

The *Equal Opportunity for Women in the Workplace Act 1999* (the EOWW Act) forms part of the suite of Commonwealth anti-discrimination and workplace relations legislation. Originally enacted in 1986, the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* was renamed the Equal Opportunity for Women in the Workplace Act, following an independent review in 1998-99.¹

In the decade since the last review, there have been a number of changes in Australia's society and economy, and in the Australian Government policy settings.

The twin goals of social inclusion and increased workforce participation have become key to the Australian Government's policy platform. For example, in response to the third Intergenerational Report *Australia to 2050: Future Challenges*, the Government noted that a sustained, strong and long-term national effort is needed to raise productivity and remove barriers to people participating in the workforce.

The *Fair Work Act 2009* has introduced significant reforms to the workplace relations system, including to institutional arrangements for oversight of workplace relations.

Additionally, in 2008-09, the Attorney-General appointed an independent committee to undertake national consultation on ways to protect and promote human rights; a Senate Committee considered the effectiveness of the *Sex Discrimination Act 1984*; and a House of Representatives Committee examined pay equity and women's workforce participation.

In this context, the Minister for the Status of Women, the Hon Tanya Plibersek MP, determined that a review of the EOWW Act was timely and necessary, to address contemporary challenges and ensure a coherent legislative workplace and human rights framework.

The Office for Women in the Department of Families, Housing, Community Services and Indigenous Affairs led the review focusing on the effectiveness and efficiency of the EOWW Act and the Equal Opportunity for Women in the Workplace Agency (EOWA), announced on 1 June 2009.

This statement examines proposals to reform the EOWW Act, drawing on the outcomes of the extensive community consultation and international and domestic research conducted as part of the review.

STRUCTURE OF STATEMENT

This statement is structured as follows to comply with best practice regulation guidelines as promulgated by the Office for Best Practice Regulation. This statement seeks to identify and examine:

- **The Problem:** *Section One: Is gender equality in Australian workplaces important? identifies the costs and benefits to Australian women and men, as well as the community, employers and the economy of pursuing, or failing to pursue, the goal of gender equality. It establishes gender equality as an appropriate social and economic goal for governments.*

Section Two: Is there gender equality in Australian workplaces? examines the extent to which the goal of gender equality has been met.

- **The Objective:** *Section Three: What are the barriers to achieving gender equality in Australian workplaces? outlines the key barriers to gender equality in Australian workplaces, and key points where the Government can intervene to optimise choices for Australian women and men.*
- **Options:** *Section Four: What are the current arrangements for achieving gender equality in Australian workplaces? identifies the current arrangements, with a focus on the EOWW Act and its interaction with other legislation and institutional arrangements.*

Section Five: The effectiveness and efficiency of the EOWW Act examines the efficacy of the EOWW Act in terms of its capacity to support progress towards gender equality.

Section Six: Options to improving gender equality in the workplace considers the range of regulatory approaches to improving gender equality, including no regulation through to prescriptive legislation, and puts forward the case for continuing a 'light touch' regulatory framework, as currently exists, but with improvements.

- **Impact analysis:** *Section Seven: Impact analysis of the current system and recommended reforms builds on sections five and six to examine in further detail the costs and benefits for individuals, business and the community and the economy of the current and proposed approaches.*
- **Consultation:** *Section Eight: Consultation outlines the extensive consultation process undertaken as part of the review of the EOWW Act.*
- **Implementation and Review:** *Section Nine outlines the recommended approach to implementation and review of the proposed reforms.*

Review of *the Equal Opportunity for Women in the Workplace Act 1999*

TERMS OF REFERENCE

The terms of reference for the Australian Government's review of the EOWW Act are to:

- examine the contribution that the EOWW Act has made to increasing women's employment opportunities and advancing women's equality in the workplace;
- examine the role that the EOWW Act and Agency have in gathering and reporting on workplace data;
- consider the effectiveness of the existing legislation and arrangements in delivering equal opportunity for women;
- provide advice on practical ways in which the equal opportunity for women framework could be improved to deliver better outcomes for Australian women;
- consider opportunities to reduce the cost of existing regulation and/or ways to ensure that any new legislation is cost-effective and well-targeted;
- consider the EOWW Act and Agency within the framework of existing and proposed human rights and workplace-related legislation, policy and administration, with a view to maximising complementarity and reducing overlap; and
- have regard to the effects of the Act, or any proposed recommendations resulting from this review, on social inclusion, the economy, the labour market, business competitiveness and the general wellbeing of the Australian community.

Reform of the *Equal Opportunity for Women in the Workplace Act 1999*

SECTION ONE: IS GENDER EQUALITY IN AUSTRALIAN WORKPLACES IMPORTANT?

Equal employment opportunity (EEO) and gender equality

In conducting the review of the EOWW Act it was an explicit term of reference that it be considered in the context of its effectiveness in delivering equal opportunity for women.

'Equality of opportunity' or EEO has long been entrenched within Australian legislation and human resource practice. The EOWW Act has, in both its incarnations, expressly referred to EEO in its title and objects. Historically this was seen as an important distinction between creating a 'level playing field' (EEO) versus a more interventionist approach to achieving prescribed outcomes, for example by the use of quotas. This was seen as enabling choice, without inappropriately intruding on an employer's right to choose and promote staff on the basis of merit alone.

EEO, in the Australian context, often referred to a discrete program that an employer may have in place to consider disadvantaged groups. EEO was a program or a process centred towards addressing disadvantage, rather than a significant cultural shift driven by a productivity or social imperative.

It became apparent throughout the review that contemporary human resource practice has largely moved on from this approach, driven by skills shortages, changing demographics, and more sophisticated approaches to people management. Gender equality is not taken to mean the same outcomes regardless of gender but the concept "that all human beings are free to develop their personal abilities and make choices without limitations set by strict gender roles; and that the different behaviours, aspirations and needs of women and men are considered, valued and favoured equally".²

In the context of gender equality in the workplace, it is about recognising that men and women have a right to benefit from the rewards that both care-giving and paid work deliver. It is about improving genuine choice that is not circumscribed by assumptions about gender, including the denial of choice to men to work flexibly or take time out to care for children.

Costs and benefits to the Australian community

The current picture of gender inequality in the workplace carries clear costs and benefits for Australian women and men, individual organisations and the economy. A more detailed summary is at Attachment A, but is summarised below.

Costs and benefits for Australian women and men

Overall, women's earnings, assets and economic and financial security are lower than men throughout their lives, and the implications of this inequity are clear. Single elderly female households have the highest incidence of poverty of all household types and are also at the greatest risk of persistent poverty.³

In 2004, two thirds of fathers surveyed in the Longitudinal Study of Australian Children (LSAC) reported having missed out on taking part in home or family activities because of their work responsibilities.⁴ Research has found that a new generation of fathers is seeking the opportunity to play a more active role in family and community life.⁵

Improving women's access to quality paid work and increasing their earning capacity is very likely to reduce pressure on men to be primary breadwinners.

Costs and benefits for business

Two of the primary concerns and most significant costs of business relate to attracting and retaining talent, and understanding and accessing consumers. Ensuring an equitable proportion of women within an organisation's workforce, and providing appropriate pay and conditions can help to manage these concerns.

Firstly, in Australia, as in most industrialised nations, the costs of staff turnover are one of the largest business costs of all types of organisations. Mercer estimates that staff turnover costs range from 50 per cent to 150 per cent of annual salary, depending on the role and level of seniority.⁶

Leadership is another area where replacement costs of personnel are high. Australian CEOs are performing better but departing sooner, making retention a challenging task for boards. Australian companies report a leakage of CEO talent overseas. Booz & Company's annual CEO Turnover Study shows that the CEO turnover rate in Australia jumped from 13.4 per cent in 2006 to 18 per cent in 2007. The rate was the highest on record since the study began in 2000 and outstrips the global average of 13.8 per cent.⁷ Meanwhile, women represent a vast untapped reserve of talent.

Secondly, research has shown that by improving gender equality in the paid workforce organisations and business may perform more effectively.

There is a growing body of evidence concerning the benefits of gender diversity to the productive capacity of organisations and, in turn, to the economy. A recent report from Catalyst, for example, found that in four out of five industries in the United States, the companies with the highest women's representation on their top management teams experienced a higher total return to shareholders than the companies with the lowest representation of women.⁸

Finally, in addition to the benefits equal opportunity policies offer to organisations in terms of attracting and retaining talent, women employees are also an important avenue to understanding and accessing products, consumers and service users, as women carry the majority of household responsibility for finances and purchasing.⁹

Costs and benefits for the economy

Australia's productivity performance has slowed in the recent past, averaging only 1.4 per cent in the past decade compared with 2.1 per cent in the 1990s. The third Intergenerational Report, Australia to 2050: Future Challenges (IGR) has assumed that the current 30-year historical average of 1.6 per cent will continue. The IGR identifies the ageing of our population as a central challenge for Australia. The ageing of the population will see the number of people aged 65 to 84 years more than double and the number of people 85 years and over more than quadruple in the next 40 years.¹⁰

Productivity is not only critical in generating national wealth, but it also reduces calls upon public resources, such as via the income support system.¹¹ In Australia, 57.4 per cent of all age pensioners and 71.8 per cent of single age pensioners are women.¹² This is a highly significant figure for the national economy given that, in the financial year 2009-10 the expenditure for delivering the Aged Pension to 2,125,340 customers was \$29.2 billion.¹³

Growth in productivity is the main source of improvements in living standards and real gross domestic product (GDP) growth. Faster labour productivity growth enables higher growth for real GDP, real GDP per person and real wages.¹⁴

The World Economic Forum has clearly identified the link between productivity and better use of women in the workplace:

*There is a strong correlation between the gender gap and national competitiveness...a nation's competitiveness depends significantly on whether and how it educates and utilizes its female talent.*¹⁵

Compelling new research by Goldman Sachs JB Were concurs. It found that closing the gap between male and female workforce participation rates would have important implications for the Australian economy, boosting the level of Australian GDP by an estimated 11 per cent.¹⁶

Recent research from NATSEM supports these findings.¹⁷ NATSEM estimated that a decrease in the gender wage gap of one percentage point from 17 per cent to 16 per cent would increase GDP per capita by approximately \$260. This equates to around \$5.497 billion (2007 dollars) or 0.5 per cent of total GDP, based on current population. NATSEM's results also indicate that eliminating the whole gender wage gap from 17 per cent to zero, could be worth around \$93 billion or 8.5 per cent of GDP.¹⁸

Benefits for Australia's international standing

The Australian Government is a signatory to binding international human rights and labour rights instruments which impose obligations on the Australian Government to achieve substantive gender equality in Australian workplaces.

The workplace-based gender inequality outlined in Section 2 could suggest a failure to meet these obligations. The importance of taking such obligations seriously is even more critical at a time when global cooperation on the economy and environment require mutual trust and confidence.

Conclusion

As has been widely accepted across the OECD, gender equality delivers benefits to individuals, business and the community. It is an appropriate social and economic goal for governments.

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SECTION TWO: IS THERE GENDER EQUALITY IN AUSTRALIAN WORKPLACES?

While Australians enjoy world-leading levels of development as measured by their health, longevity, education, literacy and living standards,¹⁹ Australian women experience lower levels of economic security than men.²⁰

Paid work drives economic security. With work comes the opportunity to contribute to the family budget, build assets, establish financial independence and enjoy a secure retirement. Paid work is widely recognised as key to addressing disadvantage and to contributing to social inclusion.²¹

The labour force participation rate of women in Australia has increased significantly over the last 30 years. Between February 1978 and April 2010, the labour force participation rate of women increased from 43.5 per cent to 58.4 per cent.²² However, a number of problematic features of the work profile of women persist. A more detailed summary is at **Attachment B**.

Participation rates

Women's labour force participation rate is considerably lower than that of men, and those women who do work are far less likely than men to do so on a full-time basis.

A snapshot

In April 2010, Australia's total female labour force participation rate was 58.4 per cent, compared with 72.2 per cent for men. Only 54.1 per cent of all women in employment were working full time compared with 83.5 per cent of all men.²³

In April 2010, women comprised just under 70 per cent of the part-time workforce.²⁴

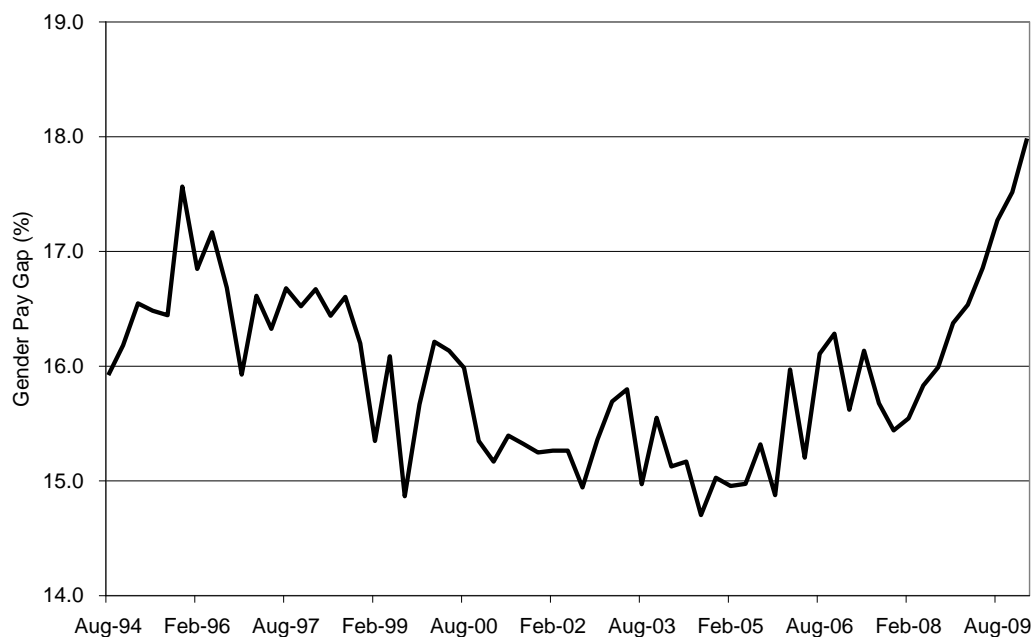
In 2007, Australia had the 4th lowest maternal employment rate with the youngest child aged between three and five, after Turkey, Mexico and Japan.²⁵

In 2006, at 72.9 per cent, Australian women of child bearing age (25-44) had the 8th lowest participation rate of women in OECD countries.²⁶

Earnings

When compared with similar OECD countries, Australia has the fifth largest gender pay gap.²⁷ In February 2010, the gender pay gap was 18.0 per cent, based on the average weekly ordinary time earnings of full-time adult employees. Chart 1 shows trends in the gender pay gap between August 1994 and February 2010.²⁸ While the gender pay gap narrowed slightly between August 1994 and August 2004 from 15.9 per cent to 14.7 per cent, it has since widened and is currently at its highest level in 15 years.

Chart 1: Gender pay gap based on the average weekly ordinary time earnings of adults, August 1994 to February 2010



Source: Australian Bureau of Statistics *Average Weekly Earnings*, Australia, February 2010 (Cat No 6302.0), seasonally adjusted data

A snapshot

In February 2010, the gender pay gap was 18.0 per cent²⁹

In 2009, new male graduates earned median starting salaries of \$50,000 compared with \$47,000 for women.³⁰

The average superannuation balances for Australians aged 15 years and over with superannuation coverage were \$87,589 for men and \$52,272 for women.³¹

Leadership

Fewer women than men occupy leadership positions across virtually every sector of the paid workforce.

A snapshot

Only 10.7 per cent of executive managers in the ASX200 are women.³²

Women chair two per cent of ASX200 companies (four boards) and hold 8.3 per cent of board directorships. There are more than 10 men to every one woman ASX200 board director and 49 male CEOs for every female CEO.³³

Women outnumber men in the Australian Public Service but comprise 45 per cent of executive level employees and 37 per cent of the Senior Executive Service³⁴

Half of lecturing staff in Australian universities are women, but only 39 per cent of senior lecturers and only 24.5 per cent of academic staff above senior lecturer.³⁵

Work/family balance

Men's uptake of work arrangements to care for children is still low, but it is increasing. In 1999, only 18 per cent of fathers used flexible hours to balance work and family, and 73 per cent did not use family-friendly provisions. In 2007, 30 per cent of fathers used flexible hours to balance work and family and 59 per cent did not use any family-friendly provisions.³⁶

Research has found that masculine identity and the role of economic provider (breadwinner) are powerfully entwined and that despite the enthusiastic adoption of a child centred view of family life and a commitment to the ideal of shared parenting, most of male employees tend to give work priority over family.³⁷

Conclusion

Although some progress has been made, gender equality has not been achieved in Australian workplaces.

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SECTION THREE: WHAT ARE THE BARRIERS TO ACHIEVING GENDER EQUALITY IN AUSTRALIAN WORKPLACES?

It is a key objective of the Government to raise productivity and remove barriers to people participating in the workforce³⁸ and to remove barriers to people making choices without limitations set by strict gender roles.³⁹

The review of the EOWW Act, and the consultation process supporting it, closely examined barriers to achieving gender equality for women and men. A more detailed summary is at **Attachment C**, but key findings are outlined below.

Several of the barriers intersect and overlap. For example, cultural attitudes drive community approaches to managing care responsibilities, undertaking recruitment and selection and offering workplace training opportunities. Similarly, women's caring responsibilities often lead them to education and work choices which do not require relocation or are in industries they perceive to be family friendly.

Socio-cultural barriers

Socio-cultural values and beliefs, including the range of community attitudes, assumptions and stereotypes which impact on women and men in the workplace, are at the heart of many of the barriers to realising equal employment opportunity.

A common refrain in relation to inequitable workplace outcomes is that they result from women's choices. However, discriminatory attitudes are transmitted to both women and men from infancy and span every facet of decision-making in their lives: personality and skills development, education, family, career and financial choices.^{40,41}

Findings from EOWA surveys suggest that most organisational cultures continue to reflect the assumption of a male norm and as female deviations from that norm.⁴²

Inequitable impact of caring

A major obstacle to equal employment opportunity is the capacity for women and men to manage their paid work, life and family responsibilities. The workforce participation of mothers in Australia is low by international standards. Of Australian mothers with their youngest child under two, 82 per cent worked part-time and nearly half (45 per cent) worked 15 hours or less per week.⁴³ The main barrier to full participation in paid work for women is difficulty balancing paid work and care responsibilities.⁴⁴

Experiences of sexual harassment

Sexual harassment continues to affect women across all sizes of employer, and the Australian Human Rights Commission describes the continuing presence of sexual harassment in the workplace as a key marker of gender inequality in the workplace and one reason women do not progress.⁴⁵

Bias in recruitment and selection

Approaches to recruitment and selection which inherently favour men are consistently identified as a barrier to achieving gender equality. The way merit itself is defined can be discriminatory, or a decision-maker can be biased towards gendered attributes.

Male dominated industries

Australian industry is highly segregated along gender lines, with women concentrated in industries such as child care, aged care, health and community services and men concentrated in engineering, banking, finance and manual trades.⁴⁶ Male dominated industries are those which experience higher rates of pay, better conditions and more secure work structures.

Poor data

A significant limitation in addressing inequities in employment is the failure to adequately capture the full picture of gender-based disadvantage in the workplace. This gap was highlighted by the full spectrum of participants in the consultation process to the review of the *Equal Opportunity for Women in the Workplace Act 1999*, with some groups focusing on the lack of utility of the current reporting format, and others focusing on data gaps at the broader level.

Conclusion

To achieve the Government's broad objectives with respect to workforce participation and gender equality, there are a number of barriers that still exist which need to be addressed.

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SECTION FOUR: WHAT ARE THE CURRENT ARRANGEMENTS FOR ACHIEVING GENDER EQUALITY IN AUSTRALIAN WORKPLACES?

Relationship of the EOWW Act and EOWA to other legislation and agencies

The existing anti-discrimination legislation, in the context of gender, consists of the new *Fair Work Act 2009* which commenced on 1 July 2009 and the *Sex Discrimination Act 1984*. These laws and their associated agencies rely largely on an individual complaints-led model to advance gender equality in the workplace.

There has been a strong international⁴⁷ and domestic⁴⁸ shift moving away from sole reliance on an anti-discrimination framework, and moving towards the promotion of equality through reducing systemic discrimination, and developing strategies to promote attitudinal change. The EOWW Act, having historically focused on cultural change and the removal of barriers to women's equal employment opportunity, is well positioned to continue its different, yet complementary role, to anti-discrimination and workplace relations legislation, and to take forward a gender equality in the workplace agenda.

A detailed summary of the relevant legislation and institutional arrangements, and their interactions, is at **Attachment D**.

Current features of the EOWW Act *Objects and coverage of the EOWW Act*

The EOWW Act requires certain employers to promote equal opportunity for women in employment. The principal objects of the EOWW Act are to:

- promote the principle that employment for women should be dealt with on the basis of merit;
- promote the elimination of discrimination, both direct and indirect, and the provision of equal employment opportunity for women in relation to employment matters among employers; and
- foster workplace consultation between employers on issues concerning equal opportunity for women in relation to employment.⁴⁹

The EOWW Act applies to organisations with 100 or more employees, including from private sector organisations; not-for-profit/community organisations; non-government schools; trade unions; higher education institutions and group training organisations. These organisations are collectively known as 'reporting organisations'. The identification of reporting organisations is largely based on self-identification and disclosure by organisations.

Workplace programs, reporting and compliance

The EOWW Act requires that employers develop strategies to prevent discrimination and achieve equal employment opportunity for women. It requires reporting organisations to develop and implement an annual workplace program aimed at eliminating discrimination and contributing to equal opportunity for women in the

workplace. Relevant employers must prepare an annual public report about the outcomes of their workplace programs.

Reporting requirements may be waived by EOWA if the employer has complied for a period of no less than three consecutive years and can demonstrate to EOWA that all reasonably practical measures have been taken to address equal opportunity for women in their workplace.

The EOWW Act's enforcement provisions focus on the situation where a reporting organisation fails to lodge an annual report. In these circumstances, EOWA may identify non-compliant organisations in its annual report to the Minister. This annual report is tabled in Parliament.

A further compliance incentive is that the Australian Government Procurement Guidelines prevent government departments from buying goods and services from, or entering into contracts with, non-compliant organisations. Non-compliant organisations may also be ineligible for grants under specified industry assistance programs.

The role and activities of EOWA

Organisational structure, resourcing and staffing

EOWA is an Australian Government statutory authority. Following the change of government in 2007, EOWA joined the portfolio of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) from the former Employment and Workplace Relations portfolio. The Director of EOWA reports directly to the Minister for the Status of Women. In 2008-09, EOWA had a total actual expenditure of \$3.4 million.

Role and functions of EOWA

The primary role of EOWA is to administer the EOWW Act and to provide information, advice, education and communication to reporting organisations and members of the broader community to achieve equal opportunity for women in the workplace.⁵⁰

Key activities

EOWA advises and assists relevant employers in the development and implementation of their workplace programs and monitors the lodging of reports by relevant employers.

EOWA is also active in offering a range of education programs, events, awards and workplace tools to support and encourage Australian employers to improve equal opportunity outcomes for women in the workplace.

EOWA undertakes and/or commissions a range of research. Since 2002 the EOWA Australian Census of Women in Leadership has measured the status of women on boards and women executive managers in Australia's top 200 organisations listed on the Australian Stock Exchange. This research is internationally comparable. Other research includes further analysis of the Census data, such as *Pay, Power and Position: Beyond the 2008 EOWA Australian Census of Women in Leadership and (A)Gender in the Boardroom*.

EOWA also provides workplace tools to assist organisations to achieve the objectives of the EOWW Act including the Pay Equity Tool to help employers audit

and analyse the gender pay distribution throughout their workplace, and the *Bullying and Harassment Prevention Tool*.

Conclusion

There is no evidence that there is significant overlap or duplication in the roles of anti-discrimination legislation, workplace relations legislation and the EOWW Act, or in terms of the institutional arrangements that support them. Some of the tools and publications produced by the different agencies could be better co-ordinated, and would benefit from better liaison and communication across relevant agencies. The EOWW Act and Agency have a unique focus on improving human resource practice to promoting cultural and attitudinal change in large organisations. This role is valuable and operates in a complementary fashion to the other relevant laws and institutions.

Reform of the *Equal Opportunity for Women in the Workplace Act 1999*

SECTION FIVE: THE EFFECTIVENESS AND EFFICIENCY OF THE EOWW ACT

Overall effectiveness in delivering gender equality

Outlined below is an analysis of the components of the Act drawn from the consultation process conducted as part of the review and the evidence of the problem provided in Sections Two and Three. A more detailed analysis can be found at **Attachment E**.

Objects and coverage of the EOWW Act

Name and objects of the EOWW Act

The primary issue which emerges from research and consultation in relation to the name and objects of the legislation relates to its sole focus on women. This focus was retained during the 1998-99 review because women faced (and still face) considerable inequity in the workplace and it is this inequity which needs to be the focus of remedial efforts. However, across the breadth of this consultation process, participants recognised that the workplace situations of men and women are inextricably bound together and influence each other.

Coverage of the EOWW Act

During consultation, 37 per cent of all submissions suggested the current coverage of the legislation was inappropriate, with the majority seeking extended coverage. Only one submission (peak body) expressed the view that the coverage of the EOWW Act should be reduced.

A second 'coverage' issue emerging was that of employers with a large number of subsidiaries. Currently, such entities are able to provide a single report, which can mask discriminatory trends or other problems in particular corporate segments.

Extending the EOWW Act's coverage to government agencies, departments and statutory authorities was also raised in submissions, roundtables and interviews. Twenty-seven per cent of submissions expressed the view that the public sector should be covered. Round-tables situated the exclusion of the APS as particularly significant, especially given its size and scale as an employer of women.

While only nine per cent of public submissions raised the issue of extending the coverage of the Act to boards in order to address the inequities in membership, this was an issue that was raised repeatedly in individual interviews and by the Project Reference Group.

Submissions from the Australian Human Rights Commission and a number of individual women, advocated that leadership by government is required and this should involve increasing the representation of women on government boards.

Currently, several State and Territory Governments have in place targets for achieving 50 per cent representation on government boards (including Victoria, South Australia, ACT, and Queensland). Some also have targets in relation to the representation of women in senior leadership positions (South Australia and ACT).

Workplace programs

While the EOWW Act does not define equal opportunity itself, the Act defines an 'Equal Opportunity for Women in the Workplace' program as appropriate action to eliminate discrimination and contribute to the achievement of equal opportunity for women.⁵¹ In practice, the variation between organisations in how they interpret and apply the requirement to develop workplace programs has been great, and outcomes for women are variable and uncertain.⁵²

The pattern of preparing workplace programs and reporting on them suggests that employers have found it difficult to sustain analytical and evaluation activity over time. The result is that reporting can tend to become perfunctory or generalised, and innovation and specificity can be supplanted by retrofitting a largely notional equal opportunity program.⁵³

Reporting obligations

Following the 1998-99 review of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*, a new flexible reporting format was introduced to enable employers to tailor their reports to individual workplace requirements. The strong and compelling view expressed during consultation was that this approach has not supported outcomes-based reporting but instead generated uncertainty about standards required for both the programs themselves and reports.

Compliance and enforcement

Compliance reports, and the names of non-compliant organisations, are currently listed on EOWA's website. As of 17 October 2008, there were over 2,500 reporting organisations that complied with requirements of the EOWW Act and 12 organisations that were deemed to be non-compliant.⁵⁴

There is also a strong and consistent view across the community that penalties under the EOWW Act are weak.⁵⁵ Most stakeholders in consultation were generally dissatisfied with available penalties, sanctions and enforcement powers under the EOWW Act. Experts, unions, government and peak bodies were more likely to see penalties as insufficient. Only one per cent of submissions suggested enforcement was too strong (one peak body submission).

The role and activities of EOWA

Organisational structure, resourcing and staffing

In considering the appropriate structure of EOWA, there was a clear view from consultation that an agency with an important industry interface role needs to retain the authority conferred by strong government backing while ensuring some separation from the business of government. Consideration of appropriate placement of EOWA tends to result in discussion of three possibilities:

- placement alongside or within anti-discrimination agencies, effectively creating a gender equality jurisdiction;
- positioning with employment functions; and
- retaining independent statutory status but with enhanced role and status.

A large aspect of the role of EOWA is in changing workplace practices and culture.

Overall, participants in consultation favoured the third option outlined above, to retain EOWA's independent statutory positioning.

Provision of information, advice and education

This role was highly valued by those consulted, with 39 per cent of submissions positioning it as EOWA's most valuable and effective function. However, consultation participants were interested to see this function extended, with 32 per cent suggesting EOWA's current role in promoting understanding, acceptance and public discussion of equal employment opportunity was not adequate or appropriate.

Research and data

One of the key findings from the consultation was that the breadth of organisations which recommended that EOWA should collect data against key outcome metrics and use it to track improvement and disseminate this information publicly. The data should be disaggregated to a much greater level of detail than current data sets. EOWA submitted that, under a reformed regime, aggregated data from organisations' Gender Equality Self-Audits (an amended Public Report Form that requires employers to complete a self-audit against a specified set of gender equality standards and measures) should form a part of the Agency's annual report and be made available to the Sex Discrimination Commissioner and appropriate others, including bona fide researchers.

Other events, awards, tools

The key finding from consultation was that the activities of EOWA need to focus on its primary value add – influencing change in the behaviour of organisations.

Submissions from industry, government and the community sector preferred cultural change and education solutions above all others.

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SECTION SIX: OPTIONS TO IMPROVING GENDER EQUALITY IN THE WORKPLACE

This section examines potential options to addressing the employment inequity identified in Section Three. The four potential approaches span the regulatory spectrum, from self regulation through to strict regulation. Each is reviewed for effectiveness and international application, and then applied to the EOWW Act context. A detailed summary of each can be found at **Attachment F**, which also provide international examples.

Four options for a reformed EOWW Act are distilled from this process, reflecting the breadth of views raised in consultation, and the potential impact of each is then tested against a range of economic, social and international markers.

Range of Regulation Approaches

Reducing regulation - no regulation or self-regulation

A 'no regulation' option would see the removal of government intervention and statutory controls, in favour of a return to individual freedom of contract and market-based governance.⁵⁶ The approach still allows for the development and implementation of behaviour change and educational campaigns by government.

Self-regulation, on the other hand, encourages "market steering", as opposed to command and control regulation or deregulation.⁵⁷ Self-regulation is generally characterised by industry formulating rules, standards and codes of conduct, and having sole responsibility for enforcement. Self-regulation mechanisms can include the establishment or use of industry councils to develop industry standards or codes of practice which are essentially voluntary, but are enforced by industry.

While the lowest intervention option would remove all regulation of workplace equity approaches, the 'no regulation' option is not pursued further as it is very likely to be unacceptable given the scope of the problem identified in Sections One and Two, Australia's international obligations and the approaches of like nations.

There is little evidence available to indicate the impact a voluntary regime would have on the risks identified from current workplace inequities, as other comparable (OECD) jurisdictions all have some form of regulated reporting and monitoring. Furthermore, a fully self-regulating regime would be unlikely to meet international expectations.

A self-regulating regime would offer even weaker incentives for compliance than the current regime, and may further erode reporting coverage. This would make a move to measuring outcomes and tracking progress on gender equality in the workplace more challenging.

This approach is not recommended. There is no evidence to suggest that this option would be more effective than the current regime to remedy the problem identified in Sections One and Two.

Light and responsive regulation

A light-handed or quasi-regulatory approach also involves the creation of rules that may not be legally binding, however it is backed by government initiatives that influence compliance but do not require it under law. Some examples of quasi-regulation include government-endorsed industry codes of practice or standards, government-issued guidance notes, industry–government agreements and national accreditation schemes.

There are a number of specific ways in which government may encourage compliance with quasi-regulatory rules. These include endorsing industry-based regulation, for example through codes of practice or behaviour; threatening binding regulation in the event of non-compliance with a voluntary scheme; and making compliance with codes or standards a precondition for involvement in government contracts or other government benefits.⁵⁸

Light-handed approaches can also involve incentives to encourage companies to pursue equal opportunity. This type of regulation takes many forms with the most common involving taxes, user charges or subsidies. Advantages include the creation of economic pressures to instigate behaviour change. This approach is often considered to be non-regulatory, however, it does require a different or more generic form of regulation that is usually applied through taxation law.

A middle ground option to achieve the correct regulatory balance between capacity building and sanctions is that of responsive regulation.

Responsive regulation seeks to replace either punitive or permissive regimes with a responsive and escalating pyramid of interventions, appropriate to the circumstances and responses of the person or entity being regulated. The bottom level of the pyramid would be made up of soft corrective tools, such as advice and warnings. These are used most frequently and are most effective if the agency is also able to deploy punitive sanctions such as, in the case of the existing EOWW Act regime, government contracting exclusions and public naming.

This approach is the preferred option. Detailed features and a detailed examination of the impact of the proposed reforms are provided at Section Seven.

Prescriptive regulation

The prescriptive approach to regulation is based on detailed controls on behaviour of organisations, and supported by civil or penal sanctions for non-compliance.

This approach is generally considered appropriate where: the rules address issues of high risk or significance (including public health and safety); government requires the certainty of higher levels of compliance; universal application is required; there is a history of systemic non-compliance with industry-led or softer regulatory approaches; and existing industry bodies do not have comprehensive coverage or are not committed to the need to change behaviour.

This approach could respond to the views expressed in the consultations that the EOWA agency lacks adequate powers to undertake its role effectively. It could extend on the current arrangements but with increased enforcement powers built in to the statutory regime. It could introduce mandatory quotas that require certain proportions of women to be represented at all levels within organisations.

The issue to be considered in projecting the likely impact of this approach is whether more stringent requirements, increased powers and heightened sanctions would be more effective in producing better outcomes than the current arrangements or the preferred model.

While increased penalties and the introduction of quotas may ensure faster progress, they may also generate a degree of opposition from business, employer and industry groups and concerns about the cultural impacts. Any movement to quotas, for example, may be more compelling, and more likely to generate acceptance and commitment, if it is initiated following a period of trying voluntary targets, and in response to a clear failure of those targets.

It is highly likely that the benefits of this approach would be most likely to be felt by women from disadvantaged groups, and those in employment arrangements which are not well served by existing anti-discrimination and employment machinery. Although this may produce a more immediately effective impact on women's workplace equality, it may also produce a negative cultural backlash which, at least in the short term, erodes cooperative community efforts.

The costs of this regime to non-compliant business would be greater than existing arrangements and the preferred model, although they would be comparable for compliant organisations. However, perhaps the greatest impact of this approach would be to the relationship between the Agency and reporting organisations, which would move from one of support and advice to a more adversarial model, less conducive to influence. This may affect the willingness of organisations to accept information and training from the Agency, and to utilise tools developed by the Agency. Such isolation would increase the costs to organisations of developing gender equality initiatives, as they would be doing so without free or inexpensive expert support and advice.

The introduction of quotas for women may also generate a business and community backlash in so much as this action may be perceived to constitute discrimination against men.

This approach is not the preferred approach at this time.

Conclusion

The preferred approach retains the existing level of regulation, but seeks to address current problems to shape a tight and responsive regime focused on addressing barriers and driving improved gender equality.

While a more prescriptive approach could offer gains in increased short term compliance, continuation of a light and responsive regulation, but with improvements, promises to most effectively address the concerns about the current regime raised in Section Three. It balances the potential for short term progress with maintaining the strong lines of communication and persuasion essential to sustain change.

Reform of the *Equal Opportunity for Women in the Workplace Act 1999*

SECTION SEVEN: KEY FEATURES AND IMPACT ANALYSIS OF THE RECOMMENDED REFORMS

Key features of the reforms and impacts

Amending the name and objects of the Act

Under the proposed reforms the name of the Act and Agency and the objects of the Act would be changed to reflect the goal of gender equality, in particular, to include men as well as women and recognise the caring roles of both women and men.

The cost of maintaining the name and objects of the Act to solely focus on women's equal opportunity in the workplace has been identified in the research and consultation process to the review. The consultation identified the requirement to enable both men and women to access flexible working conditions in understanding the interrelationship between men's participation in care-giving and women's uptake of paid work.

Renaming the legislation and amending the objects of the Act will not impact significantly, if at all, on the economy or business. It will however send a strong message to the community about the shifting socio-cultural attitudes about appropriate roles for women and men in paid and unpaid work. As identified in Section One there are clear benefits to increasing women's workforce participation and men's care giving opportunities for the individuals involved, for business and for and the economy and community at large.

Very modest costs will be incurred by Government in affecting changed signage and branding for the Agency.

Improving the coverage of the Act

Coverage of the Act will be improved.

- It will be broadened to encompass women and men, particularly in relation to caring responsibilities.
- It will be improved with a mechanism to enable the Agency to identify employers with 100 or more employees who should be reporting.
- Employers will be required to report on the gender composition of their boards.
- Smaller organisations (less than 100 employees) will be covered by the Act, but will not be required to report.

The existing coverage was identified by a majority of submissions to the consultation as not adequate. Many submissions believed that priority should be given to ensuring that those organisations that are already covered meet their legislated responsibilities to implement and report on equal opportunity measures and practices. Although many women and men are employed by smaller businesses with less than 100 employees it was identified in the consultation process that the

resource implications on small business to have a legislated requirement to report would be considered too onerous.

Furthermore, EOWA has found that the additional funding required for the Agency to process the additional reports from businesses with less than 100 employees as excessive and not the most cost effective way to encourage equal opportunity in the workplace for these organisations. It has been estimated that it would cost an additional \$600,000 a year to extend the legislated requirement to report to businesses with 80 employees and over. It has been proposed that this funding would produce stronger equal opportunity in the workplace outcomes if allocated to education programs for smaller businesses and research within the Agency.

According to ABS advice to EOWA, up to one third of a possible 4500 organisations with 100 or more employees have not been identified by the Agency and, therefore, have escaped their legislated requirement to report. Due to limitations with the way that EOWA collects and categorises data it is difficult to estimate whether organisations that do not meet their legislated requirement to report are concentrated in particular industries.

EOWA collects industry data for the reporting organisations but does not collect the industry data of the subsidiaries that the reporting organisations are reporting on behalf of. Therefore, the only data available is the percentage of reports submitted by industry from approximately 2500 organisations that submit a report on behalf of 7000 organisations.

EOWA classifies industry using the 2006 Australian and New Zealand Standard Industrial Classification (ANZSIC) whereas the latest ABS data that counts business by industry and employment size uses the 1993 ANZSIC. Consequently, an analysis of the proportion of industry with over 100 employees to the proportion of reports submitted to EOWA is not directly comparable. For example, when comparing the available EOWA and ABS data it appears the biggest disparity between the proportion of an industry with over 100 employees and the proportion of reports submitted to EOWA in that year occurred in what was classified "Property and Business Services", using the 1993 classification, which is now classified "Rental, Hiring and Real Estate Services". According to the ABS data, "Property and Business Services" made up approximately 20 per cent of industries with employees over 100 employees but according to the EOWA data, the closest comparable classification, "Rental, Hiring and Real Estate Services", only submitted one per cent of the reports.

This analysis would indicate that real estate type organisations are not meeting their legislated requirement to report, however, the 2006 ANZSIC has new industry categories that may now capture the types of industry that may have previously been classified "Property and Business Services", for example "Administrative and Support Services", "Professional, Scientific and Technical Services" and "Public Administration and Safety". When the number of reports submitted from these industries is included with the "Rental, Hiring and Real Estate services" category the difference between proportion of industry with over 100 employees and the proportion of reports submitted significantly decreases. It is evident, however, that any estimates generated from this analysis should be viewed cautiously due to the aforementioned limitations of the data.

Of the organisations that submitted a survey response to the consultation, 11 percent strongly agreed and 37 per cent agreed that the benefits of complying with the EOWA Act outweigh the costs. Thirty one per cent neither agreed nor disagreed.

In the industry breakdown, only the classification “Electricity, Gas, Water and Waste” submitted that the costs outweighed the benefits. This industry is typically a male dominated industry and these industries are more likely to be resistant to gender equality initiatives.⁵⁹ It is worth noting, in terms of overall impact, that the “Electricity, Gas, Water and Waste” category makes up only one percent of the industries with over 100 employees.

It is proposed that coverage of the Act will be improved by amendment to taxation legislation to enable the Australian Taxation Office to provide the Agency with a list of all employers employing 100 or more people. This would ensure that there was an equal impact on all businesses employing 100 or more people and not just on those businesses who meet their legislated requirement to report. There will also be a mildly positive impact on business competitiveness by ensuring that all private sector organisations with 100 or more employees are required to report on the same terms. And it will have a positive impact on employees of those organisations who will now be required to report, and who now will be able to access the educative and assistance functions of the Agency.

The reforms will result in increased compliance costs for businesses who have not previously been compelled to report. They will need to consider allocation of the responsibility of undertaking the reporting and will incur an ongoing cost to comply with the Act’s annual reporting requirements. To fulfil the new reporting requirements it has been estimated that the cost to business will decrease on average from approximately \$1200 to \$450 per annum in resourcing costs – but this is still an increase of \$450 per annum for those organisations who did not previously incur any compliance costs. Estimates have been taken from the Business Cost Calculator report at **Attachment G**.

Small business will continue not to be required to report, but the general principles of the Act will expressly apply to all employers. This will provide the Agency with a mandate to consider small business in the development of strategies and resources and it will enable the Agency to extend its incentive activities, such as the Employer of Choice citation, to small business.

There will be an expectation that small businesses would take the time to familiarise themselves with the objects of the Act and this is expected to have a small positive impact on human resource practice within business. Small business will gain the capacity to report voluntarily and to engage with the renamed Agency’s education and incentive activities such as the Employer of Choice citation.

The extension of the Act to cover boards and women and men will have no impact on business beyond the broader impact of the proposed revised reporting requirements, but is likely to have a positive impact on the community, the economy and individuals by compelling employers to consider and report on these issues within their workplaces.

Focusing reporting on outcomes

The reporting regime will be refocused on outcomes.

- Reports will be on outcomes against identified equality indicators, including workforce composition and pay, and the availability and utility of employment conditions and practices, including in relation to family-friendly and flexible work practices for women and men.

- The requirement for organisations to develop prescriptive equal opportunity for women in the workplace programs will be removed, as will the capacity for waiving of reporting.
- CEOs and employee representatives will be required to sign off on reports, and employers will be required to make their reports accessible to employees and shareholders.

Relevant organisations would be required to report in a common format against a number of equality indicators. This will deliver certainty to organisations in what they are required to report on, and will provide the Agency and the Government with a sound means of measuring progress over time and the impact of broader employment-based initiatives.

The Agency will be provided with the information technology capability to implement an on-line reporting system, underpinned by a data collection and management system that would enable industry-based benchmarks to be developed and promulgated. This will require a one-off funding injection by Government, but will deliver very useful information to employers which is likely to be used in a broader context other than just in relation to the compliance requirements of the Act.

There is a need to balance concerns about the frequency of reporting with ensuring momentum in driving forward improved outcomes. Reporting will continue to take place annually, and the provision relating to waiving will be removed from the Act.

The Director of the Agency would be provided with the discretion to introduce these equality indicators incrementally to enable organisations to develop the necessary data collection mechanisms.

While the new framework, if adopted, will carry a more prescribed reporting requirement than under the existing arrangements, the time costs for reporting organisations would be, at the very least, comparable to the existing regime.

There may be a slightly increased time burden in the initial stages of implementing the new requirements, as organisations learn the new system, however the implementation time-line outlined at Section Nine offers considerable lead time for organisations, and envisages intensive personal support during the change-over period.

Time use mapping suggests that after this initial investment the outcomes-based reporting regime proposed under the reforms would actually streamline organisational reporting requirements, particularly with the on line reporting option, and the capacity it offers for tracking year by year. For organisations already measuring employment outcomes and giving attention to equality at work reporting is expected to be simpler and quicker.

Strengthening compliance

Compliance will be strengthened and made more transparent.

- The Agency will be provided with the authority to conduct organisational reviews.
- Organisations will be deemed to have failed to comply with the Act if they: fail to lodge a report; fail, upon review, to substantiate claims made in their report; or if they are performing at a low level against an industry benchmark and fail to improve over a two year period without a justifiable reason.

- Non-compliant organisations will continue to be named in Parliament and the legislation will expressly provide for the list to be circulated more widely.
- The onus will be placed on organisations to produce certification that they are compliant with the Act when they apply for Australian Government grants, tenders, contracts or industry assistance.

Legislation would be amended to include provision for the Agency to conduct organisation reviews to verify information supplied on their report. Those organisations selected for review would be asked to produce documents and any other evidence to support their reports. If this evidence is not forthcoming, or if it fails to support claims in a report, the organisation may also be deemed non-compliant.

The time burden would be increased if an organisation becomes subject to an organisational review. It has been estimated that the cost to business would be approximately \$1,300. This estimate is modelled on organisations that have kept the appropriate records up-to-date and accessible. (see Business Cost Calculator at Attachment G).

Enhancing industry assistance

- The Agency will have an enhanced role in supporting and advising industry.
- It will develop industry-based benchmarks and industry-specific approaches.
 - It will provide advice, resources and referrals, including through mobile support teams.
 - It will develop, maintain and promote data collected via organisational reports.

The regime proposed under the reforms offers a gradually escalating suite of interventions, with great potential to improve outcomes and reduce the risks identified at Section Three, for example through:

- retaining a strong education, information and influence role,
- developing the technical support role, including advice and referrals,
- compelling not only reporting, but progress,
- retaining the link between reporting and interventions, to ensure responsiveness to organisational needs and the development of end-to-end relationships,
- building an effective research capacity, with which to prove the business case and tailor effective community and organisation, sector and industry specific interventions.

The responsiveness of the reforms better positions it than the existing arrangements to secure progress against the problem and risks identified at Section Three. Reporting about outcomes is linked to satisfactory measurement of the size of the problem, as well as the ability to demand changes to outcomes.

Overall impact

The overall impact of the recommended reforms is likely to be positive.

Impact on gender equality

It is projected that this option – with its combination of reporting, review, assistance and support – offers the greatest chance of improving workplace equality.

It has been widely acknowledged that both deterrence and accommodative approaches to regulatory enforcement offer advantages but also have limitations if regulators choose to adopt one exclusively over the other.

Punitive policies can foster resistance to regulation and may produce a culture that facilitates the sharing of knowledge about methods of legal resistance and counterattack.⁶⁰ In the context of gender equality, such an outcome is particularly concerning where affected women must continue to operate in the disaffected workplace.

Research suggests that responsive regulation reduces the need to resort to punishment and therefore represents a more efficient use of resources. Persuading people to comply engages them in the process and provide more information for regulators, all of which results in higher degrees of compliance. Both sides avoid expensive enforcement or litigation and more resources are able to be directed towards expanding regulatory coverage.⁶¹ The sheer size of the enforcement challenge in the gender equality context means that encouraging voluntary compliance is critical if overall practice is to change.

Regulation is more likely to be effective if it is responsive to diverse motivations to promote good behaviour and discourage undesirable behaviour. To this end, it has been determined that building the capacity of organisations can move them from minimal compliance. This involves identifying strengths or successes and developing mechanisms such as informal praise, prizes, grants, and other resources and assistance to promote the desired behaviour.⁶²

Impact on social inclusion and community wellbeing

The reforms offer increased incentives for real progress from organisations, and are therefore more likely to ameliorate women's overall labour market exclusion and disadvantage.

It is also more likely to enable effective interventions to be devised for women from differently disadvantaged social groups, as it enables a specific review focus on sectors or organisations where women with particular labour market disadvantage cluster, or on particular employment arrangements which are not adequately covered by other arms of government's protective machinery.

Retaining the monitoring role within a government agency would also enable a more effective joined-up response with other agencies of government. Data could be captured and tracked in ways most conducive to formulating nimble and effective interventions, including, for example, community or industry education campaigns.

Impact on the economy

Improving the workforce participation of women (and their financial outcomes from it) is the key to boosting Australia's GDP. Adequately capturing workplace failures to make progress enables more targeted interventions that are more likely to improve workplace outcomes and, in turn, women's participation.

Impact on business

Due to the true savings to fulfil reporting requirements, it has been estimated that the cost to business will decrease on average from approximately \$1200 to \$450 per annum in resourcing costs. Estimates have been taken from the Business Cost Calculator report at **Attachment G**.

Alternatively, organisations which report regularly and demonstrate progress against equal employment markers are likely to experience positive effects across the spectrum of their organisation, including to their bottom lines. The data about increased business competitiveness from investment in equality programs is convincing.

In summary, impacts under Option Two will increase with non-compliance. There may be a moderate business impact on non-compliant organisations, but it would be offset by increased efficiencies for compliant businesses. Impacts will be minimal for compliant organisations after the initial investment of setting up new systems.

Compliance with international obligations and standards

The reforms are more likely than the existing arrangements to meet the requirement for Australia to take active steps to achieve equality of employment opportunity.

Reform of the *Equal Opportunity for Women in the Workplace Act 1999*

SECTION EIGHT: CONSULTATION

The review of the EOWW Act was underpinned by an extensive consultation process, beginning with the release of an issues paper on 1 September 2009 and a call for public submissions. Further targeted consultation was undertaken in late 2009 with employers, employees, unions, women's advocacy groups and other key stakeholders.

The final consultation report is publicly available on the FaHCSIA website:
http://www.fahcsia.gov.au/sa/women/pubs/general/eowa_kpmg_rpt/Pages/default.aspx

The consultation report demonstrates the high level of interest in the community about gender equality in the workplace. One hundred and thirty six submissions were received from businesses, unions, employers, employees, women's groups and other interested parties.

Reporting organisations were invited to respond to a survey and seven hundred and forty-four (744) responses were received. A survey of employees attracted eight hundred and fifty-nine (859) responses.

Twenty-one (21) individual interviews with key stakeholders were conducted. Targeted roundtable consultations were held in Perth, Melbourne, Brisbane, Sydney and Adelaide from 12 October to 28 October 2009. Two hundred and thirty (230) invitations were issued for these roundtables.

Reform of the *Equal Opportunity for Women in the Workplace Act 1999*

SECTION NINE: IMPLEMENTATION AND REVIEW

Timing

The full implementation and first review of the proposed option could occur over the next five years. The following timeline indicates how the process could take place.

Development work – 2010/11

- Preparation and passage of legislation
- Development of information technology capacity to facilitate on-line reporting and collaborative tools
- Establishment of implementation advisory committees
- Preparation of reporting forms and records of compliance and non-compliance
- Information to and initial training for reporting organisations

Introductory implementation year – 2011/12

- Initial advice to organisations identified as those which do not report
- Initial reporting cycle using introductory version of the new report
- Settling final indicators with advisory committees

Partial implementation year – 2012/13

- Intensive training cycle in relation to indicators and benchmarks and how to demonstrate they have been met, and ongoing progress
- First reporting cycle using second iteration of the report form

Full implementation year – 2013/14

- First full reporting cycle
- Development of implementation plans and reviews for non-compliant organisations

Review – 2015/2016

As part of the Australian Government's best practice regulation requirements, the legislation will be reviewed every five years. The review process will examine:

- whether the problem was adequately identified and accurately estimated in the initial assessment;
- what impact government intervention has had on increasing gender equality (whether gender equality has been reduced, increased or otherwise changed);
- whether the selected government intervention is still appropriate; and
- whether or not (if at all) the intervention should remain to reach an acceptable level of reducing the problem and increasing gender equality.

NOTES

- ¹ Department of Workplace Relations and Small Business, Affirmative Action Review Secretariat: *Affirmative Action (Equal Employment Opportunity for Women) Act 1986(Cth)*. Issues Paper. (March 1998).
- ² Etta Olgiati and Gillian Shapiro (2002) *Promoting Gender Equality in the Workplace European Foundation for the Improvement of Living and Working Conditions*, Luxembourg, 3.
- ³ R Tanton, Y Vidyattama, J McNamara, Q Ngu Vu and A Harding, *Old Single and Poor: Using Microsimulation and Microdata to Analyse Poverty and the Impact of Policy Change Among Older Australians* p 15, Paper for the UNU-WIDER Conference on Frontiers of Poverty Analysis, Helsinki, 26–27 September, 2008.
- ⁴ Alexander, M. and Baxter, J. 2005, *Impact of work on family life among partnered parents of young Children*, Family Matters 72 18–25.
- Baxter, J. and Gray, M. 2006, "Paid work characteristics
- ⁵ Pocock, Barbara. & Clarke, Jane. & Australia Institute. 2004 *Can't buy me love? : young Australians' views on parental work, time, guilt and their own consumption* / Barbara Pocock, Jane Clarke Australia Institute, Deakin, A.C.T. :
- ⁶ Mercer Human Resource Consulting, *What's working - Mercer Survey of Australia at Work*, March 2004.
- ⁷ Australian Institute of Company Directors (AICD), *The Boardroom Report*, Vol 6, Issue 22, 19 Nov 2008. At <http://www.companydirectors.com.au/Media/The+Boardroom+Report/Vol+6.+2008/Vol.6+Issue+22.+Nov+19+2008.htm?LM> (viewed 28 January, 2010)
- ⁸ Catalyst, *The Bottom Line: Connecting Corporate Performance and Gender Diversity*, New York, (2004), p.2. At <http://www.catalyst.org/publication/82/the-bottom-line-connecting-corporate-performance-and-gender-diversity> (viewed 28 January, 2010)
- ⁹ B McKinnon, *The Hard Sell, The Open Road* (2000) May/June, p 11.
- ¹⁰ Department of Treasury, Intergenerational Report, Australia to 2050: *Future Challenges*, (2010) at <http://www.treasury.gov.au/igr/igr2010/default.asp> (viewed 18 February, 2010)
- ¹¹ Toohey, T., Colosimo, D., & Boak, A., (2009) *Australia's Hidden Resource: The Economic Case for Increasing Female Participation*, Goldman Sachs JB Were.
- ¹² Harmer, J., *Pension review report* 27 February 2009, Department of Families, Housing, Community Services and Indigenous Affairs, Canberra, 2009, pages10-11
- ¹³ Administrative data, Department of Families, Housing, Community Services and Indigenous Affairs, Canberra, 2009, October 2009 http://staffnet/InfoResources/the_evidence_book/payment_profiles/Pages/default.aspx (viewed 28 January, 2010)
- ¹⁴ Department of Treasury, Intergenerational Report, Australia to 2050: *Future Challenges*, (2010) at <http://www.treasury.gov.au/igr/igr2010/default.asp> (viewed 18 February, 2010)
- ¹⁵ World Economic Forum, *Global Gender Gap Report 2009* (2009), p 63. At www.weforum.org/pdf/gendergap/report2009.pdf (viewed 28 January, 2010).
- ¹⁶ Toohey, T., Colosimo, D., & Boak, A., (2009) *Australia's Hidden Resource: The Economic Case for Increasing Female Participation*, Goldman Sachs JB Were.
- ¹⁷ Cassells, R., Vidyattama, Y., Miranti, R., and McNamara, J., NATSEM, Canberra, *The Impact of a Sustained Gender Wage Gap on the Australian Economy*, Report to the Office for Women, Department of Families, Housing Community Services and Indigenous Affairs, November 2009 www.fahcsia.gov.au/sa/women/pubs/general/gender_wage_gap/Pages/default.aspx
- ¹⁸ The findings presented in this paper are subject to the limitations and assumptions of the underpinning microeconomic and macroeconomic models. The use of different data sets coupled with ongoing developments and improvements in methodological techniques may potentially produce different results.
- ¹⁹ United Nations Development Program (UNDP), *Human Development Report 2009* (2009). At <http://hdr.undp.org/en/reports/global/hdr2009> (viewed on 28 January, 2010)
- ²⁰ Between 2000 and 2005, single elderly female households had not only experienced the highest incidence of poverty compared to other household types, but also have been at the greatest risk of persistent poverty: See R Tanton, Y Vidyattama, J McNamara, Q Ngu Vu and A Harding, *Old Single and Poor: Using Microsimulation and Microdata to Analyse Poverty and the Impact of Policy Change Among Older Australians* (2008) p 15. At https://guard.canberra.edu.au/natsem/index.php?mode=download&file_id=880 (viewed 9 February 2009)

- ²¹ F Dempster, 'Family and Work: Issues and Risk across the Life Course'. Paper presented to 8th Australian Institute of Family Studies (AIFS) Conference, Melbourne, (February 2003). At <http://www.aifs.gov.au/conferences/aifs8/dempster.pdf> (viewed on 28 January, 2010).
- ²² Australian Bureau of Statistics, *Labour Force Survey, April 2010*, ABS cat no. 6202.0, seasonally adjusted data, Australian Government Publishing Service, Canberra (2010).
- ²³ Australian Bureau of Statistics, *Labour Force, Australia, April 2010, Cat. No 6202.0* seasonally adjusted data, Australian Government Publishing Service, Canberra, (2010)
- ²⁴ Ibid
- ²⁵ OECD Social Policy Division, March 2010, *Gender Brief*, OECD, Paris, at http://www.oecd.org/department/0,3355,en_2649_33933_1_1_1_1_1_1_1_00.html (viewed 10 March 2010)
- ²⁶ Abhayaratna J, Lattimore R, 2006, *Workforce Participation Rates: How does Australia Compare?*, Productivity Commission, Melbourne.
- ²⁷ R Cassells, R Miranti, B Nepal & R Tanton, 'She works hard for the money: Australian women and the gender divide', *AMP.NATSEM Income and Wealth Report*, Issue 22, (2009), p 18. At <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjA5fENoaWxkSUQ9LTF8VHlwZT0z&t=1> (viewed on 28 January 2010).
- ²⁸ The ABS has recently made several changes to the *Average Weekly Earnings Survey* (Cat No 6302.0) including the presentation of industry estimates on the basis of the 2006 Australian and New Zealand Standard Industrial Classification (ANZSIC) rather than the 1993 edition of ANZSIC. Commencing with the release of the August 2009 data, these changes have meant that the Average Weekly Earnings series now only goes back to August 1994 not November 1983. It should also be noted that estimates drawn from publications after August 2009 are not comparable with those based on publications before August 2009.
- ²⁹ Australian Bureau of Statistics, *Average Weekly Earnings, February 2010*, ABS cat no. 6302.0, seasonally adjusted data, Australian Government Publishing Service, Canberra (2010).
- ³⁰ Graduate Careers Australia, *GradStats*, Number 13, December 2009 (2009). At www.graduatecareers.com.au/content/view/full/24 (viewed 17 February, 2010).
- ³¹ Australian Bureau of Statistics, *Employment Arrangements, Retirement and Superannuation, Australia*, April to July 2007 (Re-issue), ABS cat no. 6361.0, Australian Government Publishing Service, Canberra (2009) At [http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6361.0Apr%20to%20Jul%202007%20\(Re-issue\)?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6361.0Apr%20to%20Jul%202007%20(Re-issue)?OpenDocument)
- ³² Equal Opportunity for Women in the Workplace Agency, *Pay, Power and Position: Beyond the 2008 EOWA Australian Census of Women in Leadership* (2009), p. 7. At [www.eowa.gov.au/Australian Women In Leadership Census/2008 Australian Women In Leadership Census/Pay Power Position/Pay Power Position Beyond the Census.pdf](http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census/Pay_Power_Position/Pay_Power_Position_Beyond_the_Census.pdf) (viewed 28 January, 2010)
- ³³ Ibid
- ³⁴ Australian Public Service Commission, *State of the Service 2008/09* (2009). At www.apsc.gov.au/stateoftheservice/0708/index.html (viewed 28 January, 2010).
- ³⁵ University of Sydney, *Annual Report 2008* (2009) At www.usyd.edu.au/about/publications/annual_report/2008/hr_annual_report_2008.pdf (viewed 28 January, 2010)
- ³⁶ Australian Bureau of Statistics, *Child Care June 1999*, Cat. No.4402.0, ABS, Canberra, 2000; Australian Bureau of Statistics, 2008, *Childhood Education and Care*, (Reissue) Cat No 4402.0, ABS, Canberra, 2008.
- ³⁷ Department of Family and Community Services, *Policy Research Paper 22: Men's uptake of family-friendly employment provisions*, M Bittman, S Hoffman, & D Thompson, FaCS, Canberra, 2004.
- ³⁸ Department of Treasury, Intergenerational Report, Australia to 2050: *Future Challenges*, (2010) at <http://www.treasury.gov.au/igr/igr2010/default.asp> (viewed 18 February, 2010)
- ³⁹ The Hon Tanya Plibersek MP, *Women and Men - A new conversation about equality*, The Sydney Institute, Sydney, 7 November 2008
- ⁴⁰ AHRC, 2009, *Accumulating poverty? Women's experiences of inequality over the lifecycle*, Sydney.
- ⁴¹ Nicole M Fortin, 2005, "Gender Role Attitudes and the Labour-market Outcomes of Women across OECD Countries" *Oxford Review of Economic Policy* 21(3):416-438, University of British Columbia
- ⁴² Equal Opportunity for Women in the Workplace Agency, *Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009) At [http://www.eowa.gov.au/Information Centres/Resource Centre/EOWA Publications/EOWA Review Submission.pdf](http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/EOWA_Review_Submission.pdf) (viewed 28 January, 2010)

⁴³ S Arun, T Arun & V Borooh, "The effect of career breaks on the working lives of women" *Feminist Economics* 10 (1), March 2004, pp 65-84.

⁴⁴ Human Rights and Equal Opportunity Commission, *Striking the Balance: Women, men, work and family* (2005), p 35. At www.humanrights.gov.au/sex_discrimination/publication/strikingbalance/index.html (viewed 28 January, 2010).

⁴⁵ Australian Human Rights Commission, 'Current State of Gender Equality in Australian Workplaces', *AHRC Resource Paper No 1*, (2009) At

www.hreoc.gov.au/word/sex_discrim/eowa/1_gender_equality.doc (viewed 28 January, 2010)

⁴⁶ Equal Employment Opportunity for Women in the Workplace, Occupational Segregation, James Cook University, At http://www.jcu.edu.au/eo/women/JCUDEV_012168.html , (viewed 28 January, 2010)

⁴⁷ UK Women and Work Commission (2005) Interim Statement.

⁴⁸ Victorian Government (2004) Attorney General's Justice Statement. *New Directions: the Victorian Justice system 2004-2014*.

⁴⁹ *Equal Opportunity for Women in the Workplace Act 1999* (Cth) (EOWW), s2A; Equal Opportunity for Women in the Workplace Agency, *Equal Opportunity for Women in the Workplace Act 1999: The Act at a Glance*. At http://www.eowa.gov.au/About_EOWA/Overview_of_the_Act/Act_At_A_Glance.asp (viewed on 28 January, 2010).

⁵⁰ Equal Opportunity for Women in the Workplace Agency. *Annual Report 2007-2008* (2008). At http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/Annual_Reports/EOWA_Annual_Report_07_08.asp (viewed on 28 January, 2010), p10.

⁵¹ *Equal Employment for Women in the Workplace Act 1999* (Cth), s 3

⁵² Strachan, Glenda, John Burgess and Lindy Henderson 2007. 'Equal Employment Opportunity Legislation and Policies: the Australian Experience', *Equal Opportunities International*, vol. 26, no. 6, pp. 525-540

⁵³ Equal Opportunity for Women in the Workplace Agency, *Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009) At http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/EOWA_Review_Submission.pdf (viewed 28 January, 2010)

⁵⁴ Ibid

⁵⁵ Burgess, John, Anne Sullivan and Glenda Strachan 2004. 'Australian Workplace Agreements, EEO and family friendly arrangements in the retail sector,' *Employment Relations Record*, vol.4, no. 2, pp. 61-70.

⁵⁶ S Deakin & C McLaughlin, 'The Regulation of Women's Pay: From Individual Rights to Reflexive Law?' *Working Paper No. 350*, Centre for Business Research, University of Cambridge (2007). At <http://www.cbr.cam.ac.uk/pdf/WP350.pdf> (viewed 28 January, 2010)

⁵⁷ Christopher McCrudden (2007), "Equality Legislation and Reflexive Regulation: a response to the Discrimination Law Review's Consultative Paper", *Industrial Law journal* 36(3)

⁵⁸ Commonwealth Government (2007) *Best Practice Regulation Handbook*, p.97.

⁵⁹ French E & Strachan G, (2006), *The Impact of EEO: Women in Management in the Transport Industry*

⁶⁰ K. Murphy, *Moving towards a more effective model of regulatory enforcement in the Australian Taxation Office*, Working Paper 45, November 2004, Centre for Tax System Integrity, ANU.

⁶¹ Ibid.

⁶² Smith, B, (2008) "It's about Time – for a new regulatory approach to equality" *Legal Studies Research Paper No. 08/23*, Sydney Law School, The University of Sydney.

Reform of the
***Equal Opportunity for Women in the
Workplace Act 1999***

REGULATION IMPACT STATEMENT

ATTACHMENTS

A. SECTION ONE: IS GENDER EQUALITY IN AUSTRALIAN WORKPLACES IMPORTANT?

Costs and benefits to the Australian community

Costs and benefits for Australian women and men

In September 2009, The Sex Discrimination Commissioner released a major Issues Paper, *'Accumulating Poverty?: Women's experiences of inequality over the lifecycle.'* The Issues Paper highlights that:

[i]ncreasing women's labour market participation and increasing women's earnings across the lifecycle is critical to closing the gender gap in retirement savings. Measures to support women's labour market participation and address the gender pay gap must feature as a strategy to build women's financial security [across the lifecycle and] in retirement.⁶³

Costs and benefits for organisations

In Australia, as in most industrialised nations, personnel are one of the largest business costs of all types of organisations. The costs of staff turnover include:

- opportunity costs while seeking replacement staff,
- losses incurred from other staff members covering vacated positions,
- possibility of resignations creating a chain reaction of resignations,
- opportunity costs of such subsequent resignations,
- costs involved with finding a selecting a suitable replacement, including
 - advertising costs,
 - recruitment agency fees,
 - HR Department costs,
 - HR Department opportunity cost,
 - initial placement fee for replacement,
 - costs incurred while replacement learns new role (including the results of low productivity and opportunity costs),
- training costs of replacement staff members.⁶⁴

These costs are even higher where personnel have special skills or are in management or leadership roles. Many organisations have recognised the need to retain effectively performing staff because of turnover costs. Mercer estimates that staff turnover costs range from 50 per cent to 150 per cent of annual salary, depending on the role and its level of seniority. Mercer forecast the costs of turnover as more than \$3 million annually for a company with 250 employees earning an average annual salary of \$49,000 each, based on a projected staff attrition rate of 25 per cent. Furthermore, if that same company had annual revenues of \$30 million and a profit margin of 12 per cent, staff attrition would represent 10 per cent of total revenues, and 85 per cent of profits.⁶⁵

Sydney-based pharmaceutical company AstraZeneca has recognised that most of its 650 employees have higher degrees and specialist qualifications. The majority are also women. The company estimated that it could cost up to \$60,000 to recruit one staff member. The return to work rate of women after maternity leave has jumped from 60 per cent to 92 per cent since the introduction of an on-site holiday program,

estimated to cost \$30,000 annually, and other family-friendly practices. The organisation has estimated a saving of \$1.4 million annually.

Over half of graduates of Australian universities are women, but 51 percent of ASX200 companies have no women directors and 45.5 per cent of ASX200 companies have no women at all on their executive teams.⁶⁶ It is projected that on the current trajectory it will take over 150 years for women to hold a similar number of senior positions as men.⁶⁷

This is particularly concerning given the positive impacts of women's decision-making on corporate performance noted in the next section,.

Improving gender equality in the paid workforce assists organisations and business to perform more effectively. Research indicates that a lack of women in leadership positions results in greater scarcity in talent within organisations and reduced employee engagement. ⁶⁸

The ILO posits that equal employment opportunity improves the capacity of organisations to attract a broader range of quality employees in a competitive job market, reduces staff turnover, absenteeism and lateness, enhances staff performance and motivation and improves productivity, competitive edge and innovation, all of which contribute to improved effectiveness. ⁶⁹

In addition to the benefits equal opportunity policies offer to organisations in terms of attracting and retaining talent, women employees are also an important avenue to understanding and accessing products consumers and service users, as women carry the majority of household responsibility for finances and purchasing.⁷⁰

Daly recently reported his findings about 30 global companies that are well-positioned to benefit from relative gains in female disposable income. The companies within this Women 30 Index were drawn predominantly from sub-sectors that sell products primarily to women. The Women 30 Index has significantly outperformed global equities over the past 10 years, and demonstrates that having women on the team ensures responsiveness to the needs and preferences of women consumers.⁷¹

Costs and Benefits for the economy

High levels of national productivity require strong linkages between investments and outcomes. The resource offered by women's skills and investments is used inefficiently. For example, the gap between educational attainment and workforce participation is a critical point where significant social and individual investments are squandered. Even where women do enter the workforce, there is significant evidence that they work below their skill level.

A critical skills shortage has been identified as one of the barriers to achieving greater national productivity. The Australian Government has identified the risk of a skills shortage as the economy recovers from the Global Financial crisis.⁷² In such a context, talent must be used efficiently and investments such as education fully capitalised upon.

In a system in which retirement incomes are dependent on workforce participation, clearly removing barriers to participation faced systematically by half the population will make a significant contribution to ensuring a sustainable system for retirement incomes into the future.

⁶³ Australian Human Rights Commission, *Accumulating Poverty? Women's experiences of inequality over the lifecycle: An issues paper examining the gender gap in retirement savings* (2009) p 24. At www.humanrights.gov.au/sex_discrimination/publication/gender_gap/index.html (viewed 28 January, 2010)

⁶⁴ Mercer Human Resource Consulting, *What's working - Mercer Survey of Australia at Work*, March 2004.

⁶⁵ Ibid

⁶⁶ An overview of this research is provided in Chief Executive Women, 'The Business Case for Women as Leaders: One Woman is Not Enough', *CEW Discussion Paper*, February, (2009) pp.4-7. At <http://www.cew.org.au/pages/issues/documents/TheBusinessCaseforWomenasLeaders.pdf> (viewed 28 January, 2010)

⁶⁷ Ibid

⁶⁸ Ibid

⁶⁹ International Labour Organisation, 'The 'family friendly' workplace', *Information Sheet number WF-3*, (2004). At <http://www.ilo.org/public/english/protection/condtrav/pdf/infosheets/wf-3.pdf> (viewed 28 January, 2010).

⁷⁰ B McKinnon, *The Hard Sell, The Open Road* (2000) May/June, p 11.

⁷¹ K. Daly, *Gender Inequality, Growth and Global Ageing*, Goldman Sachs Global Economics Paper 154, 2006

⁷² Department of Employment, Education and Workplace Relations (DEEWR), *Vacancy Report November 2009*, (2009). At <http://www.workplace.gov.au/workplace/Publications/LabourMarketAnalysis/VacancyReports/> (viewed 27 November 2009)

B. SECTION TWO: IS THERE GENDER EQUALITY IN AUSTRALIAN WORKPLACES?

Australian women and work

Fewer women work

Women's workforce participation dips markedly between 25 and 44. Australia has a lower participation rate for mothers with young children than the OECD countries of Canada, Sweden, the United Kingdom and the United States.

In 2009, the World Economic Forum Global Gender Gap Index ranked Australia number 50 among the developed countries in terms of its workforce participation rate for women. One year ago, in 2008, Australia ranked number 40 on this scale – a slide of ten places.⁷³

International research suggests that more women would like to be in paid work than are currently able to due to the constraints of having to care for children in the home.

For example, the OECD (2001) conducted research which revealed that, while 77 per cent of European couples believe that the ideal family arrangement is one in which both partners are either in full or part-time employment, only 53 per cent of couples manage to live in such an arrangement.⁷⁴

While women's part-time employment is a key strategy used by Australian families to balance work and family responsibilities, many of the women who are employed part-time are working quite short hours and many would prefer to work more.

A snapshot

Detailed data from for women in 2008 show:

- 20% of those employed part-time prefer to work more hours;
- younger part-time employees are more likely than older part-time employees to prefer working long hours - longer working hours are preferred by:
 - 28% of those aged 15-24 years
 - 25% of those aged 25-34 years
 - 19% of those aged 35-44 years
 - 18% of those aged 45-54 years
 - 12% of those aged 55-64 years
 - 5% of those aged 65 years and over; and
- among those working short part-time hours (fewer than 16 hours per week), 24% would prefer to work more hours, while among those working 16-34 hours, 18% would prefer to work more hours⁷⁵

Women receive lower pay

Recent unpublished research from the National Centre for Social and Economic Modelling (NATSEM) confirms that simply being a woman is the major contributing factor to the pay equity gap in Australia, accounting for 60 per cent of the difference

between women’s and men’s earnings. Indeed, if the effects of being a woman were removed, the average wage of an Australian woman would increase by \$1.87 per hour, equating to an additional \$65 per week or \$3,394 annually, based on a 35 hour week.

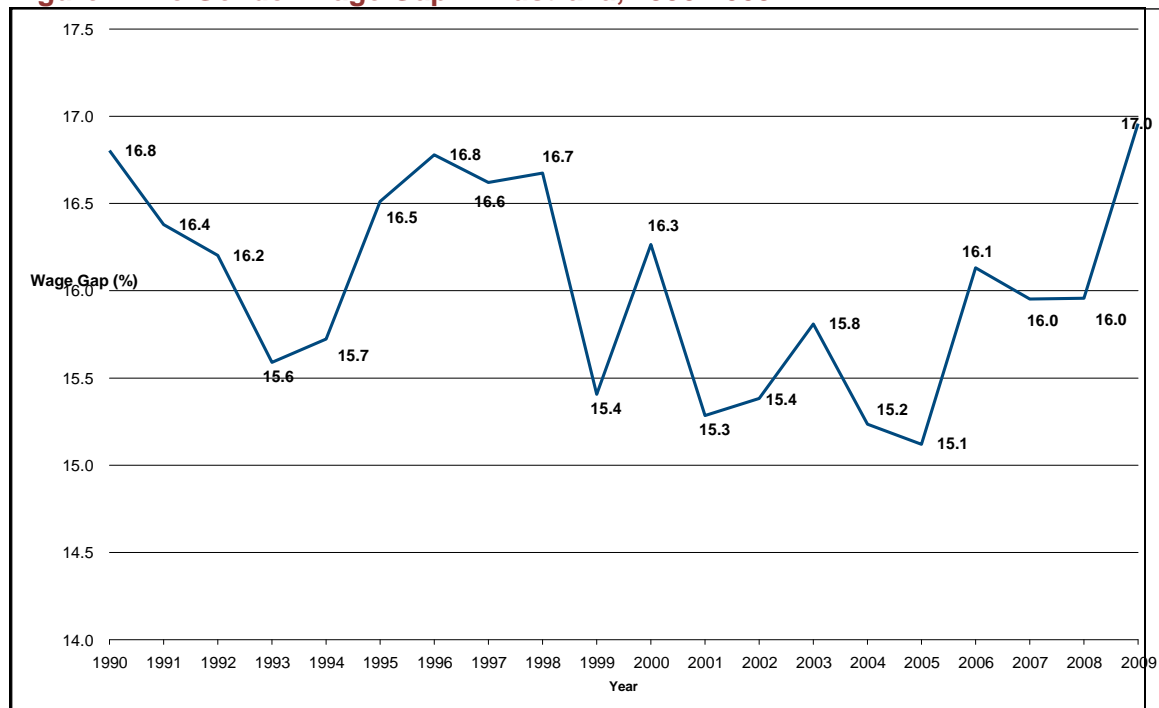
In considering Australian women in leadership, decomposition methods clearly demonstrate that between 70 and 90 per cent of the pay differential between men and women managers is not explained by a large range of demographic and labour market variables. As much as 70 per cent is ‘simply due to women managers being female’.⁷⁶

Young women are up to five times more likely than men to have average weekly income of less than \$150 per week and twice as likely to have average weekly income less than \$600 per week. In the prime working age brackets of 35-64, the number of women earning above \$1,300 per week is less than half that of their male colleagues. Above \$2,000 a week, the proportion slips to less than 25 per cent.⁷⁷

These pay differences have a stark cumulative impact on women’s long term economic security, with men holding approximately two third’s of superannuation balances.⁷⁸ One tangible result of this disparity is that almost three quarters of those Australians receiving the single rate of the Age Pension are women.⁷⁹

Figure 1 shows the gender wage gap in Australia from 1990 – 2009. Note that the gap is at its largest, at over 17 per cent, over this duration.

Figure 1 The Gender Wage Gap in Australia, 1990-2009⁸⁰



A snapshot

Including part-time and casual work, women earn two-thirds of men's income.⁸¹

The pay gap between key men and women managers in ASX2000 companies is 11.1 per cent higher than the national average, at 28.3 per cent.⁸²

A 25-year-old man is likely to earn a total of \$2.4 million over the next 40 years, more than one-and-a-half times the \$1.5 million prospective earnings of a woman.⁸³

In 2007, 75.7 per cent of all Australian men aged 15 and over had superannuation coverage, compared to 66.3 per cent of women aged 15 years and over.⁸⁴

The industries where women have been most disadvantaged rates of pay in descending order are:

- Finance and insurance (paid 27 per cent less than males)
- Health and community services (23 per cent)
- Mining (22 per cent)
- Property and business services (21 per cent)
- Personal and other services (18 per cent)
- Construction (17 per cent)
- Cultural and recreational services (13 per cent)
- Communication services (13 per cent).⁸⁵

One size does not fit all – different women experience different disadvantage

In addition to the diverse picture presented by this data, workforce participation levels are lower for particular groups of women, including sole mothers, Indigenous women, women with disability and women from culturally and linguistically diverse backgrounds or rural and regional areas.

The Australian Human Rights Commission (AHRC) suggests that women from these groups face barriers to equal employment opportunity including the non-recognition of overseas qualifications, discrimination based on race and disability and limited employment opportunities in rural and remote communities.⁸⁶

AHRC also notes that older women face particular barriers to paid workforce participation across all elements of employment (recruitment, training, promotion, employment conditions and phased retirement) due to 'gendered ageism', which sees gender discrimination exacerbated by age discrimination.

A snapshot

Aboriginal and Torres Strait Islander people have a labour market participation rate of 56 per cent.

Sixty-five per cent of Indigenous men participate in the workforce, compared to 48 per cent of Indigenous women.⁸⁷

Women with disability are less likely to be in the paid workforce than men with disability.⁸⁸

In 2004, migrant men had a similar age standardised labour force participation rate (74 per cent) to Australian-born men (75 per cent).

Migrant women's age standardised labour force participation (52 per cent) was lower than Australian-born women (60 per cent), and much lower than migrant men.⁸⁹

Educational gains do not translate into employment gains

Australian women perform strongly in educational participation and attainment. The World Economic Forum ranks Australia first among the developed countries on this measure.⁹⁰ Australia's young women not only demonstrate higher educational attainment than their mothers, but the number of young women completing Year 12 exceeds the number of young men. In higher education, women are just as likely as men to complete a post graduate qualification and more likely than men to achieve a bachelor degree or advanced diploma.⁹¹

It would be reasonable to assume these figures would translate into high workforce participation figures, as well as high levels of women entering skilled or professional employment post graduation. However, educational choices and outcomes impact on the overall picture of women's employment, such that some women, including Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse backgrounds, and women with disability, are not well represented in this success story, and face real barriers to accessing education.⁹²

A snapshot

The percentage of Australian women aged 25-64 with tertiary education is above the OECD average,⁹³ and women account for over half of all students enrolled in higher education and students who complete a higher education award.⁹⁴

In 2009, new male graduates earned median starting salaries of \$50,000 compared to \$47,000 for women.⁹⁵

Women outnumber men by three to one in health and education courses and men outnumber women by five to one in engineering courses.⁹⁶

The average weekly earnings of a person working full-time in the health and community services industry is \$1,227.40 and the average weekly earnings of a person working full-time in electricity, gas and water supply industry is \$1,421.30.⁹⁷

Women are under-represented in leadership roles

Fewer women than men occupy leadership positions across virtually every sector of the paid workforce.

In the US, 85.2 per cent of leading companies have at least one woman in executive management positions. For Canada, the UK and South Africa the percentages are 65.6 per cent, 60 per cent and 59.3 per cent respectively.⁹⁸ In Australia, only 54.5 per cent of ASX200 companies have at least one woman in executive management.

Another visible marker of women's access to senior positions is board membership. Between 2006 and 2008 the total number of ASX200 board positions increased while the number of companies with more than 25 per cent women directors halved.⁹⁹

One troubling aspect of the exclusion of women's voices from leadership roles is that pathways into senior leadership can themselves exclude women. For example, the route into senior corporate positions is often via expertise in 'line management': responsibility for profit and loss and direct client service.

Female executive managers are far less likely than men to be classified as line managers (39.6 per cent of female executive managers versus 75.3 per cent of male executive managers). Most are classified 'support managers',¹⁰⁰ and this trend is increasing. In 2007, women held 7.5 per cent of line executive management positions. The next year this dropped to 5.9 per cent.¹⁰¹

⁷³ R Hausmann, L Tyson & S Zahidi, *The Global Gender Gap Report 2009* (2009), World Economic Forum, Geneva, p 63. At <http://www.weforum.org/pdf/gendergap/report2009.pdf>
<http://www.weforum.org/pdf/gendergap/report2009.pdf> (viewed on 28 January, 2010).

⁷⁴ K. Daly, *Gender Inequality, Growth and Global Ageing*, Goldman Sachs Global Economics Paper 154, 2006

⁷⁵ Australian Bureau of Statistics Monthly Labour Force data *ABS Monthly Labour Force spreadsheets, February 2008*.

⁷⁶ Equal Opportunity for Women in the Workplace Agency, *Pay, Power and Position: Beyond the 2008 EOWA Australian Census of Women in Leadership* (2009), p. 6. At [www.eowa.gov.au/Australian Women In Leadership Census/2008 Australian Women In Leadership Census/Pay Power Position/Pay Power Position Beyond the Census.pdf](http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census/Pay_Power_Position/Pay_Power_Position_Beyond_the_Census.pdf) (viewed 28 January, 2010).

⁷⁷ Toohey, T., Colosimo, D., & Boak, A., (2009) *Australia's Hidden Resource: The Economic Case For Increasing Female Participation*, Goldman Sachs JB Were.

⁷⁸ R Clare, *Retirement Savings Update* (2008), Association of Superannuation funds of Australia Research and Resource Centre, p 3. At www.superannuation.asn.au/Reports/default.aspx (viewed 28 January, 2010).

⁷⁹ J Harmer, Department of Families, Housing, Community Services and Indigenous Affairs, *Pension Review Background Paper* (2008) p 6. At www.fahcsia.gov.au/sa/seniors/progserv/PensionReview/Documents/pension_review/pension_review_paper.pdf (viewed 28 January, 2010).

⁸⁰ Australian Bureau of Statistics, *Average Weekly Earnings, May 2009*, ABS cat no. 6302.0, seasonally adjusted data, Australian Government Publishing Service, Canberra, (2009) At <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6302.0>

Note: The gender wage gap is calculated for full time, ordinary time adult employees, using original data. The reference period for data used in this figure is February for each year.

⁸¹ Australian Bureau of Statistics, *Average Weekly Earnings, May 2009*, ABS cat no. 6302.0, Australian Government Publishing Service, Canberra (2009) At www.abs.gov.au/ausstats/abs@.nsf/mf/6302.0

⁸² Equal Opportunity for Women in the Workplace Agency, *Pay, Power and Position: Beyond the 2008 EOWA Australian Census of Women in Leadership* (2009), p. 6. At [www.eowa.gov.au/Australian Women In Leadership Census/2008 Australian Women In Leadership Census/Pay Power Position/Pay Power Position Beyond the Census.pdf](http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census/Pay_Power_Position/Pay_Power_Position_Beyond_the_Census.pdf)

[_Census/Pay Power Position/Pay Power Position Beyond the Census.pdf](#) (viewed 26 October 2009)

⁸³ R Cassells, R Miranti, B Nepal & R Tanton, 'She works hard for the money: Australian women and the gender divide', *AMP.NATSEM Income and Wealth Report*, Issue 22, (2009), At <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjA5fENoaWxkSUQ9LTF8VHlwZT0z&t=1> (viewed 28 January 2010).

⁸⁴ Australian Bureau of Statistics, *Employment Arrangements, Retirement and Superannuation, Australia*, April to July 2007 (Re-issue), ABS cat no. 6361.0, Australian Government Publishing Service, Canberra (2009) At [http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6361.0Apr%20to%20Jul%202007%20\(Re-issue\)?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6361.0Apr%20to%20Jul%202007%20(Re-issue)?OpenDocument)

⁸⁵ Toohey, T., Colosimo, D., & Boak, A., (2009) *Australia's Hidden Resource: The Economic Case For Increasing Female Participation*, Goldman Sachs JB Were.

⁸⁶ Australian Human Rights Commission, *Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009) At http://www.hreoc.gov.au/legal/submissions/2009/20091030_EOWA.html (viewed 28 January, 2010)

⁸⁷ Australian Bureau of Statistics, *Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians, Estimates from the Labour Force Survey, 2007*, ABS cat no 6287.0, Australian Government Publishing Service, Canberra (2008)

⁸⁸ Human Rights and Equal Opportunity Commission, *Issues paper 1: Employment and Disability – the Statistics* (2005). At www.humanrights.gov.au/disability_rights/employment_inquiry/papers/issues1.htm (viewed 29 January, 2010).

⁸⁹ Australian Bureau of Statistics, *Australian Social Trends 2006*, ABS cat no 4102.0, Australian Government Publishing Service, Canberra, (2006).

⁹⁰ R Hausmann, L Tyson and S Zahidi, *The Global Gender Gap Report 2008* (2008) p 43. At <http://www.weforum.org/pdf/gendergap/report2008.pdf> .

⁹¹ Toohey, T., Colosimo, D., & Boak, A., (2009) *Australia's Hidden Resource: The Economic Case For Increasing Female Participation*, Goldman Sachs JB Were.

⁹² Australian Human Rights Commission, *Accumulating Poverty? Women's experiences of inequality over the lifecycle: An issues paper examining the gender gap in retirement savings* (2009) At www.humanrights.gov.au/sex_discrimination/publication/gender_gap/index.html (viewed on 28 January, 2010)

⁹³ Organisation for Economic Co-operation and Development (OECD, *Women and Men in OECD Countries, Education* - Chapter 2, p 12. At <http://www.oecd.org/dataoecd/45/34/37963497.pdf> (viewed 28 January, 2010)

⁹⁴ Australian Government Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Women in Australia 2009* (2009) Chapter 2, p3. At www.fahcsia.gov.au/sa/women/pubs/general/womeninaustralia/2009/Pages/chapter4.aspx (viewed on 28 January, 2010)

⁹⁵ Graduate Careers Australia, *GradStats*, Number 13, December 2009 (2009). At www.graduatecareers.com.au/content/view/full/24 (viewed 17 February, 2010).

⁹⁶ Australian Government Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Women in Australia 2009* (2009) Chapter 2, p3. At www.fahcsia.gov.au/sa/women/pubs/general/womeninaustralia/2009/Pages/chapter4.aspx (viewed on 28 January, 2010)

⁹⁷ Australian Bureau of Statistics, *Average Weekly Earnings, August 2009*, ABS cat no. 6302.0, Australian Government Publishing Service, Canberra (2009), At www.abs.gov.au/ausstats/abs@.nsf/mf/6302.0 .

⁹⁸ Equal Opportunity for Women in the Workplace Agency, *Pay, Power and Position: Beyond the 2008 EOWA Australian Census of Women in Leadership* (2009), p. 6. At www.eowa.gov.au/Australian Women In Leadership Census/2008 Australian Women In Leadership _Census/Pay Power Position/Pay Power Position Beyond the Census.pdf (viewed on 28 January, 2010).

⁹⁹ Ibid

¹⁰⁰ Ibid

¹⁰¹ Ibid

C. SECTION THREE: WHAT ARE THE BARRIERS TO ACHIEVING GENDER EQUALITY IN AUSTRALIAN WORKPLACES?

Socio-cultural barriers

Beliefs and expectations about appropriate roles for women are implicit in women's decisions about education and training, preferred occupations and desirable industries. Views about appropriate child rearing and care impact the options of women with family responsibilities, the decisions women make in relation to those responsibilities and the way work obligations and opportunities are allocated within families. Attitudes about responsibilities for domestic chores affect the load carried by women outside paid work and restrict their capacity and energy for certain types of roles.

The attitudes and beliefs of men in the workplace also affect equal employment opportunity for women. Many people in our community believe that women are better at certain types of roles. When such attitudes are held by men in senior decision-making roles, they can lead to women's skills being pre-judged, underestimated and under-valued.¹⁰² They can limit access to training, promotion and development opportunities. Such missed opportunities further limit career prospects.

In certain, male-dominated industries, stereotypical attitudes and beliefs can permeate the culture, making them less attractive or openly hostile to women.

Another important area where attitudes and values intersect with women's options is in workplace assessments of merit or strength. Such assessments occur during recruitment and selection, but also in an ongoing way, for example during regular reviews of performance or when considering suitability for promotion.

Merit or strength can be defined in ways that implicitly place higher value on characteristics associated with men, such as assertiveness, competitiveness and command leadership styles. They can also be defined to value activities that may be harder for some women, such as working long hours or attending frequent networking events outside work hours. Cultural mores about working hours are a particular challenge for women. Australians work among the longest hours in the OECD,¹⁰³ and this culture of long working hours obscures consideration of work quality and productivity, and disadvantages women with caring responsibilities who carry extra care and domestic work burdens.

Socio-cultural beliefs even affect attitudes to equal employment opportunity legislation itself, undermining the credibility of senior women who may be seen as having been advantaged by the legislation.¹⁰⁴

While attitudes and beliefs are an area where causal links can be difficult to disentangle, over forty per cent of submissions to the EOWA review indicated that social-cultural barriers were a key barrier to equality for women in the workplace.

Inequitable impact of caring

Long and inflexible working hours may preclude many workers with family responsibilities from pursuing particular career paths or job opportunities. This is especially significant for women, who perform most unpaid work in households.¹⁰⁵ Pre-existing inequality in the division of unpaid work in homes widens once children enter a family as women undertake less paid work and more domestic chores.¹⁰⁶

Socio-cultural attitudes intersect with decisions about care provision, and the responses of workplace to both these choices and the demands caring places on workers. Men are far less likely to access flexible work opportunities, and women continue to engage less in paid work. These choices may be influenced by individual or family preferences, but they can also be impacted by discrimination or stereotypes based on sex. For example, a recent study suggested that men's requests for flexible working hours are more likely to be denied than women's.¹⁰⁷

Another aspect of this barrier is the discrimination commonly experienced by women in relation to pregnancy. Almost one in every five pregnant working women experiences at least one difficulty in their workplace in relation to being pregnant.¹⁰⁸

The issue of pregnancy discrimination was raised by 11.5 per cent of submissions, and the submission of the Australian Human Rights Commission discussed this issue in some detail. It noted that this discrimination can take many forms: demotions, missing out on promotions, redundancies, denial of family friendly conditions and even bullying in some cases.¹⁰⁹

Workforce re-entry also proves difficult for many women. Women frequently report:

- being denied work at the same level,
- having little access to flexible work arrangements or control over hours,
- lack of family friendly workplace policies, and
- difficulty accessing appropriate and affordable child care.

Research conducted by the Australian Public Service Commission (APSC) for their submission to the Australian Government's to the House of Representatives Standing Committee on Employment and Workplace Relations on the Inquiry into Pay Equity and associated issues related to increasing Female Participation in the Workforce found that female public sector employees who had accessed paid time off work for birth of a child were less likely to achieve promotion.¹¹⁰

The survey revealed 65 per cent of women who accessed paid maternity leave in 2000-1 failed to achieve promotion by June 2007. By contrast, only 42 per cent of women who had not had children in the same period failed to achieve career progression. ¹¹¹

A Queensland survey found that 26 per cent of women re-entering the workforce to assume the same job reported a decrease in their seniority or employment status. The survey also found that 40 per cent of women who rejoined the workforce in a different job reported a loss in status or seniority.¹¹²

While there has been much focus on flexible work arrangements, there is a risk that 'flexible' work becomes code for deregulated working hours and conditions, including longer working days, a longer working week, and increased numbers of part-time and casual (temporary) workers who have little access to full-time or permanent work, employment benefits or career path.¹¹³

It has been found that choice and power in the employment relationship are critical determinants of whether arrangements are beneficial to employees in managing work and family commitments. ¹¹⁴

Responding appropriately to the challenges of combining work and caring responsibilities, including exploring new approaches to flexible work, are important for two major reasons.

Firstly, decisions made at the time of having a child and re-entering the workforce are critical to women's long-term financial security, and to sustaining the ongoing gender pay gap.

When superannuation balances are broken down by age, the largest widening of the gender gap occurs between the 23-34 and 35-44 age brackets, coinciding with the time when women commonly have children.¹¹⁵ It is projected that women who have children will earn around half that of men with children.

Partnered men with children are expected to earn \$2.6 million over their lifetime, compared to \$1.3 million for partnered women with children. This compared to \$1.9 million for women without children.¹¹⁶

Secondly, the relationship between the gender pay gap and caring decisions is cyclical. In planning after having a family, pay disparity between men and women is a key factor influencing the higher earner to take on the majority of paid work while the lower earner, usually female, takes on unpaid caring work. The outcome is to reduce women's participation in the paid workforce and with it their future earning potential.

A snapshot

The proportion of female full-time workers working 50 or more hours a week ('very long working hours') almost doubled from nine per cent in 1985 to 16 per cent in 2005.

Almost one third of men now work very long hours.¹¹⁷

In 2006, the total hours of paid and unpaid work for mothers whose youngest child was between 0-4 was 85.9 hours weekly, compared to 79.6 hours for fathers, 61.3 hours for men without children and 55.5 hours for women without children.¹¹⁸

71.3 per cent of people who provide the majority of the informal help needed by a person with a disability are women.¹¹⁹

In 2005 it was estimated that informal carers provided approximately 1.2 billion hours of care in Australia at an estimated replacement value of \$30.5 billion.¹²⁰

Experiences of sexual harassment

While the number of people who formally reported or made a complaint after experiencing sexual harassment significantly decreased between 2003 and 2008,¹²¹ over one fifth of women have experienced sexual harassment in the workplace in their lifetime. In 2008, only 16 per cent of those who have been sexually harassed in the last five years in the workplace formally reported or made a complaint, compared to 32 per cent in 2003.

For those who did not make a complaint:

- 43 per cent did not think it was serious enough;

- 15 per cent were fearful of a negative impact on themselves;
- 21 per cent had a lack of faith in the complaint process; and
- 29 per cent took care of the problem themselves.

A snapshot

Nearly one in five complaints to AHRC under the SDA are of sexual harassment.¹²²

22 per cent of women and five per cent of men aged 18-64 have experienced sexual harassment in the workplace in their lifetime.¹²³

In 2008, a total of 22 per cent of respondents who made a formal complaint reported that the outcome of their complaint resulted in a negative impact on them.

The negative impacts include the person who experienced the harassment being transferred or changed shifts, resigning, being dismissed, demoted or disciplined or being laughed at and ostracised.¹²⁴

Bias in recruitment and selection

Bias against women can be built into selection processes from the outset, including through wording of job advertisements, which may deter women by highlighting the need for skills assumed to be held primarily by men, or by highlighting conditions or requirements which implicitly exclude those with heavy domestic or care responsibilities. Similarly, selection criteria may not value women's skills, by being weighted in favour of attributes traditionally understood to be male strengths.

Strachan and French note that the proportion of women in management and non-traditional roles in the highly gender segregated transport and finance industries has remained static for the past two decades, despite increasing numbers of women in these industries and legislative requirements of antidiscrimination and equal employment opportunity. Few organisations in either industry are developing proactive strategies to recruit, promote, and retain women. In contrast, organisations were proactive in addressing work and life requirements ensuring equality in participation but not in access, or movement into management or leadership roles.¹²⁵

EOWA's own findings support this. It noted that employers have tended to prioritise measures to increase organisational flexibility, while there has been little or no progress in the more difficult areas of pay equity and the promotion and advancement of women, especially into positions of leadership.¹²⁶

Submissions to the EOWW review suggested that women are more likely than men to lack the confidence to apply for jobs, or to see failed applications as more significant setbacks than their male counterparts.

Concerns about inherent bias in recruitment and selection are significant given that reporting organisations framed the ability to recruit women as the second highest challenge to achieving equal employment opportunity. It was listed as the highest or second challenge for the following industries: agriculture, forestry and fisheries, mining, public administration, safety, and the transport, postal, warehousing, wholesale trade industries.

While larger organisations were more likely to report this as an issue than smaller organisations, many of larger organisations are in male-dominated industries. This suggests the need for organisations to tackle the reasons women are deterred from or selected out of certain industries and organisations from the outset.

A snapshot

A woman is approximately 50 per cent less likely to be employed as a manager, despite being equally likely to be in a full-time role in a professional capacity.¹²⁷

Male dominated industries

Women are more likely to be clerical, sales and community and personal service workers, and under-represented in the manual trades (less than two per cent in Australia). Men are more likely to be technicians and trades workers, machinery operators, drivers and labourers.¹²⁸ Australian women are more likely to work under minimum conditions and be engaged in low paid, casual and part-time work.¹²⁹

The increase in women's workforce participation and education levels over the past 30 years has not reduced occupational and hierarchical segregation by gender in organisations and, given current patterns, even technological shifts are likely to retain patterns of gender segregation.¹³⁰ Indeed the mining boom saw a widening of segregation, especially in Western Australia.¹¹

The gender divide in education and training contributes to this segregation. However, public submissions also suggested that some industries have a culture which deters women, and that the type and location of work may also be unattractive.

The lack of women in senior roles and the negative attitudes of men in male-dominated industries were also seen as perpetuating the low numbers of women.

A snapshot

Women workers are concentrated in the sectors of health care and social assistance and education and training (30 per cent of all female hours worked).¹³¹

When combined with the retail industry, 44 per cent per cent of total female hours worked are concentrated in just three industries.¹³²

There is not a single industry in Australia in which women are paid more than men.¹³³

Lack of pay transparency

In recent years, Australian organisations have increasingly moved to opaque pay structures, so that it is difficult for workers to know and understand the basis of remuneration.

Remuneration, especially the use of bonuses, has been a significant lever enabling organisations to attach desirable pay conditions to long working hours, rather than quality or productivity, which has impacts for women who shoulder a greater slice of the burden of unpaid care and domestic labour.

Without scrutiny, it is also impossible for women, or the organisations which represent them, to determine the basis for pay differentials in order to assess whether they are founded on discriminatory issues and if so, contest them.

During consultation for the EOWA Review, reporting organisations did not see pay transparency as a significant barrier to achieving equal employment opportunity, but employees, particularly in private sector organisations, cited it as the third most significant barrier.

Access to education and training

In addition to gender disparities in pre-employment education and training, women frequently report less access to workplace education, training and development. In particular, women in part-time work report limited access to these opportunities.

Women also report feeling less comfortable accessing development opportunities, or in some cases being actively blocked from such opportunities.

This is sometimes connected to women's heavier family commitments, which reduce the capacity to network which is seen as lying at the heart of subjective decisions about employee potential and allocation of extra opportunities.

Few employers saw this as a challenge in promoting equal employment opportunity, whereas over two-thirds of employee participants considered equal access to training and development was an important factor supporting and contributing to equal employment opportunity in the workplace.

In 2005, the year of the last release of the ABS Education and Training Experience survey, men were more likely to obtain a pay rise or promotion due to work-related training completed (61 per cent of men compared to 39 per cent of women).¹³⁴

Poor data

Overall, participants in consultation during the EOWA review highlighted an urgent need for outcomes-based, comparable data about organisations, able to be used to build the business case to drive equal employment opportunity across industry and the community and plan specific interventions to address sectoral inequities and tackle socio-cultural barriers.

Some commentators have suggested that, in the absence of good comparative data, there are no objective standards by which to measure the success of different programs, and it is unclear what constitutes a successful workplace program – a concern in an era emphasising quality assurance of products and services.¹³⁵

In addition to this broader data issue, submissions received during consultation drew attention to specific knowledge gaps, including:

- industry pay differentials between men and women,
- the extent and characteristics of the multiple and overlapping disadvantage experienced by some groups of women, and
- the nature and extent of structural barriers, such as lack of availability of child care/transport, and how this impacts work decisions.

Consultation participants also highlighted areas where some data exists currently, but better data is essential to a more complete understanding of an issue. Training and development was one example, where it was suggested better data is required to demonstrate that provision of the same amount of training between men and women does not necessarily mean the provision of equitable leadership training.

The consultation participants also raised the issue of collecting better data about what really happens to women returning to work after maternity leave regarding their job and their pay level. Eight per cent of the submissions, two roundtables and two interviews expressed the view that many inequitable outcomes do not result from formal organisational decisions, but from informal discrimination or bullying, or even from women making tactical decisions to avoid such outcomes or to better manage the full spectrum of their responsibilities.

A strong view emerged from consultation that it is essential to make better use of data, to raise awareness and tailor responses to drive change, and that EOWA is ideally positioned to undertake this role. However, this suggestion was usually accompanied by an acknowledgement that undertaking such a role would require increased resources for the agency.

In comparable areas of social reform, such as Indigenous policy, disaggregated outcomes data has been used highly effectively to raise awareness of overarching and specific inequities, build the case for reform and tailor specific strategies, (for example, the Australian Government's "Closing the Gap" commitments).

Lack of understanding about why equal employment opportunity matters

The data issue is closely linked to the perceived need for better communication about why equal employment opportunity matters. There was a pervasive sense from consultation during the EOWA review that a broader understanding of the costs and benefits of equal employment opportunity has not been effectively achieved, and a concern that this failure stifles effective action on the part of business.

While the focus of discussion about equal employment opportunity frequently centres on how it benefits women's economic security, it is critical to demonstrate the benefits of equal employment opportunity to business, the community and the economy. Dr Sara Charlesworth's in depth case study of nine reporting organisations suggests that other motivations can be as effective as a narrow profit-driven business case in driving and sustaining change to employment practice.¹³⁶

The following section examines the implications of failing to adequately address the current inequities in employment for women, and outlines the issues which could be better promoted by an appropriately resourced EOWA.

¹⁰² Australian Human Rights Commission, *Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009) At

http://www.hreoc.gov.au/legal/submissions/2009/20091030_EOWA.html (viewed 28 January, 2010)

¹⁰³ OECD Family Database, OECD - Social Policy Division - Directorate of Employment, Labour and Social, *Usual Working Hours by Gender* (2007). At

http://www.oecd.org/document/4/0,3343,en_2649_34819_37836996_1_1_1_1,00.html (viewed 28 January, 2010)

¹⁰⁴ Sydney Roundtable, Australian Government Office for Women on the Inquiry into the *Equal Opportunity for Women in the Workplace Act 1999* and Equal Opportunity for Women in the Workplace Agency (2009).

¹⁰⁵ R Cassells, R Miranti, B Nepal & R Tanton, 'She works hard for the money: Australian women and the gender divide', *AMP.NATSEM Income and Wealth Report*, Issue 22, (2009), p18?? . At <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjA5fENoaWxkSUQ9LTF8VHlwZT0z&t=1> (viewed 28 January, 2010)

¹⁰⁶ Human Rights and Equal Opportunity Commission, *Striking the Balance: Women men, work and family* (2005) p 35. At www.humanrights.gov.au/sex_discrimination/publication/strikingbalance/index.html (viewed 28 January, 2010)

¹⁰⁷ B Pocock, N Skinner, and R Ichii, *Work, Life and Workplace Flexibility*, Centre for Work and Life, University of South Australia (2009).

¹⁰⁸ R Cassells, R Miranti, B Nepal & R Tanton, R Cassells, R Miranti, B Nepal & R Tanton, 'She works hard for the money: Australian women and the gender divide', *AMP.NATSEM Income and Wealth Report*, Issue 22, (2009), p18 . At <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjA5fENoaWxkSUQ9LTF8VHlwZT0z&t=1> (viewed 28 January, 2010)

¹⁰⁹ Australian Human Rights Commission, *Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009) At http://www.hreoc.gov.au/legal/submissions/2009/20091030_EOWA.html (viewed 28 January, 2010)

¹¹⁰ Australian Public Service Commission, 2008, *Submission to the House of Representatives Standing Committee on Employment and Workplace Relations on the Inquiry into Pay Equity and associated issues related to increasing Female Participation in the Workforce* (2008) , At <http://www.aph.gov.au/house/committee/ewr/payequity/subs.html>, (viewed 28 January, 2010)

¹¹¹ Ibid

¹¹² D Houston & G Marks, "The Role of Planning and Workplace support in returning to work after Maternity Leave", *British Journal of Industrial Relations*, Vol 41:2 June 2003 0007-1080 pp.197-214

¹¹³ J Burgess, L Henderson, G Strachan, 'I just juggle': work and family balance in Australian organisations', *Hecate*, Vol: 33, Iss: 1, 2007, pp 94-111. At <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=26511703&site=ehost-live>

¹¹⁴ Burgess, John and Glenda Strachan 2005. 'Integrating Work and Family Responsibilities: Policies for Lifting women's labour activity rates,' *Just Policy*, no. 35, pp. 5-12.

¹¹⁵ R Clare, *Retirement Savings Update* (2008), Association of Superannuation funds of Australia Research and Resource Centre, At www.superannuation.asn.au/Reports/default.aspx (viewed 28 January, 2010)

¹¹⁶ R Cassells, R Miranti, B Nepal & R Tanton, 'She works hard for the money: Australian women and the gender divide', *AMP.NATSEM Income and Wealth Report*, Issue 22, (2009), p34 . At <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjA5fENoaWxkSUQ9LTF8VHlwZT0z&t=1> (viewed 28 January, 2010)

¹¹⁷ Australian Bureau of Statistics, *Australian Social Trends 2006*, ABS cat no 4102.0, Australian Government Publishing Service, Canberra, (2006). At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4102.02006?OpenDocument>

¹¹⁸ L Craig & K Mullan, "The impact of gender and parenthood on men's and women's total work in Australia 1992-2006", paper presented to the Australian Labour Market Research Workshop, 11-12 December, Wellington, New Zealand 2008, p 12.

¹¹⁹ Australian Bureau of Statistics, *Survey of Disability Ageing and Carers: Summary of Findings 2003*, ABS cat. no. 4430.0, Australian Government Publishing Service, Canberra (2004), . At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/4430.0>

¹²⁰ Access Economics, *The Economic Value of Informal Care*, (2005) <http://www.accesseconomics.com.au/publicationsreports/getreport.php?report=6&id=6> (viewed 28 January, 2010)

¹²¹ This includes complaints within workplaces and to external agencies such as the State and Territory equal opportunity commissions and the Australian Human Rights Commission.

¹²² Human Rights and Equal Opportunity Commission, *Annual Report 2007-08* (2008) At www.humanrights.gov.au/about/publications/annual_reports/index.html (viewed 28 January, 2010).

¹²³ Australian Human Rights Commission, *Sexual harassment: Serious business*

Results of the 2008 Sexual Harassment National Telephone Survey (2008). At

www.humanrights.gov.au/sexualharassment/serious_business/index.html (viewed 28 October 2009).

¹²⁴ Australian Human Rights Commission, *Current State of Gender Equality in Australian Workplaces* AHRC Resource Paper No 1, October 2009 at

http://www.hreoc.gov.au/word/sex_discrim/eowa/1_gender_equality.doc (viewed 17 February, 2010)

¹²⁵ G Strachan & E French, 'EEO: Is it Living Up to Its Promise of Achieving Gender Equity?' . Paper presented to 22nd Conference of the Association of Industrial Relations Academics of Australia and New Zealand Conference - Workers, Corporations and Community: Facing Choices for a Sustainable Future, Melbourne (2008). At <http://eprints.qut.edu.au/15229/1/15229.pdf> (viewed 28 January, 2010)

¹²⁶ Equal Opportunity for Women in the Workplace Agency, *Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009) At

http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/EOWA_Review_Submission.pdf (viewed 28 January, 2010)

¹²⁷ Toohey, T., Colosimo, D., & Boak, A., (2009) *Australia's Hidden Resource: The Economic Case For Increasing Female Participation*, Goldman Sachs JB Were.

¹²⁸ F Shewring, *The Female 'Tradie'; Challenging employment perceptions in non-traditional trades for women* (2009). At http://www.ncver.edu.au/research/proj/nr08605_4.pdf (viewed 28 January, 2010)

¹²⁹ For example approximately 45per cent of women in the workforce are employed part-time compared with approximately 16per cent of men: Australian Bureau of Statistics, *Labour force status by Sex – Table 03, Labour Force 2009*, ABS cat no 6202.0, Australian Government Publishing Service, Canberra, 2009. At

[www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0/2DE8EA310F563A2BCA257648001518D9/\\$File/6202_003.xls#A163137K](http://www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0/2DE8EA310F563A2BCA257648001518D9/$File/6202_003.xls#A163137K)

¹³⁰ G Strachan & E French, 'Equal Opportunity: Disentangling Promise from Achievement'. Paper presented to 'Gender, Work and Organisation': 5th Biennial International Interdisciplinary Conference Keele University, United Kingdom (2007) At <http://eprints.qut.edu.au/9154/1/9154.pdf>

¹³¹ Australian Bureau of Statistics, *Average Weekly Earnings, August 2009*, ABS cat no. 6302.0, Australian Government Publishing Service, Canberra (2009),

¹³² Toohey, T., Colosimo, D., & Boak, A., (2009) *Australia's Hidden Resource: The Economic Case For Increasing Female Participation*, Goldman Sachs JB Were, p.6.

¹³³ Ibid

¹³⁴ Australian Bureau of Statistics, *Education and Training Experience*, ABS cat no 6278.0, Australian Government Publishing Service, Canberra, (2005), At

<http://www.abs.gov.au/ausstats/abs@.nsf/mf/6278.0>

¹³⁵ Strachan, Glenda, John Burgess and Lindy Henderson 2007. 'Equal Employment Opportunity Legislation and Policies: the Australian Experience', *Equal Opportunities International*, vol. 26, no. 6, pp. 525-540

¹³⁶ Charlesworth, S, Hall, P and Probert, B (2005) *Drivers and Contexts of Equal Employment Opportunity and Diversity Action in Australian Organisations*, RMIT Publishing, Informit E-library.

D. SECTION FOUR: WHAT ARE THE CURRENT ARRANGEMENTS FOR ACHIEVING GENDER EQUALITY IN AUSTRALIAN WORKPLACES?

Relationship of the EOWW Act and EOWA to other legislation and agencies

The EOWW Act forms part of a suite of legislation that aims to promote and protect human rights and achieve equal opportunity for women in the workplace. The role and functions of EOWA complement those of the Australian Human Rights Commission, the Australian Government Office for Women, Fair Work Australia and the Fair Work Ombudsman.

Australian Government Office for Women

The Office for Women (FaHCSIA) plays a key role in the promotion of equal employment opportunity for women.

The Office for Women has led this review of the EOWW Act and EOWA. Its other key roles include:

- providing high level advice to the Minister for the Status of Women to improve outcomes for women in three priority areas:
 - reducing violence against women;
 - improving economic outcomes for women; and
 - ensuring women's equal place in society.

To address these priorities, the Office for Women undertakes a range of work, including:

- Whole of government leadership in policy development on gender equality;
- Initiatives that reduce violence against women and their children with a focus on primary prevention, research, improved expert services for victims and their families, and that lead to the development and implementation of a National Plan to Reduce Violence against Women and their Children through COAG;
- Initiatives to build women's capacity to take on leadership responsibilities, communicate and consult with a variety of women's groups and organisations, and undertake research into women's issues; and
- Administration of the Support for Victims of Trafficking Program.

Australian Government Office of Work and Family

The Australian Government has also created an Office of Work and Family within the Department of Prime Minister and Cabinet, to ensure that the formulation of policies aimed at striking the right balance between paid work and family life occurs at the highest level and is central to all policy decisions.

Given that women make up the majority of primary carers of children, paid work and family policy has a significant impact on equal employment opportunity for women.

Australian Government Paid Parental Leave Scheme

The Australian Government will introduce a paid parental leave scheme from 1 January 2011. The scheme will be funded by the Australian Government and in most cases recipients will receive the payment through their employer.

Paid parental leave has the capacity to significantly benefit women in the workplace, as it will provide eligible primary carers of newborn or adopted children with up to 18 weeks of payments while they take time off work to care for their child.

The full minimum wage will also be available to eligible part-time employees, as well as eligible contractors, casual workers and self-employed workers.

Australian Government programs to support work-family balance

The Australian Government also funds a national awards and accreditation scheme to encourage businesses to help their staff better balance their work and family life. The 2009 National Work-Life Balance Awards and Accreditation Scheme will provide public recognition for organisations that are leaders in their industry, successfully integrating work-life balance practices whilst managing business demands.

Additionally, the Australian Government recently launched the Fresh Ideas for Work and Family Program, which provides grants of between \$5,000 and \$15,000 to assist businesses to implement practices designed to help employees balance work and family life and improve employee retention and productivity. The Australian Government has also committed \$12.8 billion over the next four years to help families with child care costs.

Workplace Relations legislation

The new *Fair Work Act 2009* commenced on 1 July 2009 and provides a range of support and protections for women in the workplace. The Fair Work Act expands protections against workplace discrimination which were available under the *Workplace Relations Act 1996*.

Protections against discrimination contained in the Workplace Relations Act applied only to existing employees and were limited to termination from employment for a prohibited reason (for example, on grounds such as sex, race or family responsibilities).

The Fair Work Act provides enhanced prohibitions against discrimination by providing that an employer must not take 'adverse action' against an employee or a prospective employee for a range of reasons including the person's sex, marital status, family or carer's responsibilities, or pregnancy. The Fair Work Act also includes caring responsibilities as a new ground for unlawful termination claims.

While the expanded anti-discrimination protections in the Fair Work Act are intended to provide comprehensive protection from discrimination in the workplace, they also preserve the operation of Commonwealth, State and Territory anti-discrimination laws.

The Fair Work Act contains expanded equal remuneration provisions, which enable Fair Work Australia to make orders to ensure that there will be equal remuneration for work of equal or comparable value.

The inclusion of the words 'and comparable value' is significant as it removes one of the historical barriers to running federal equal remuneration cases, which was the requirement to demonstrate discrimination in setting wages. It also allows for comparisons to be carried out between different, but comparable work. Equal remuneration orders can be sought on the application of an affected employee, an employee organisation representing affected employees, or the Sex Discrimination Commissioner.¹³⁷

The Fair Work Act includes other measures relevant to women's pay. For example, the Fair Work Act allows for minimum wages to be varied on 'work value' grounds (the ability to make a work value claim was removed under the Work Choices amendments).

The Act also includes provisions that facilitate multi-employer bargaining for low paid employees who have not historically had the benefits of enterprise level collective bargaining (this is particularly important in some feminised industries where levels of enterprise bargaining is low).

In addition, the Fair Work Act introduces the National Employment Standards (NES) which will come into effect from 1 January 2010, setting a safety net of minimum conditions for employees in the federal workplace relations system.

The NES guarantee conditions that support women to balance work and family responsibilities. For example, it doubles the amount of unpaid parental leave available to parents, from 12 months shared between both parents to separate periods of 12 months for each parent.

In addition and subject to complying with certain conditions, employees will be able to request up to 12 months extra parental leave under the NES.

The NES will also afford a new right for parents to request flexible working arrangements where they have responsibility for a child under school age or a disabled child under 18.

The Fair Work Ombudsman is an independent statutory office created under the Fair Work Act to help employers and employees understand and comply with the new workplace relations system. The Fair Work Ombudsman provides information and advice, investigates alleged breaches of workplace relations legislation and enforces provisions of the Fair Work Act.

Fair Work Australia

Fair Work Australia has been established under the Fair Work Act and has been fully operational since 1 January 2010. Fair Work Australia is the national workplace relations tribunal and is an independent body.

Fair Work Australia's powers are broader than the powers of the Australian Industrial Relations Commission and include the power to:

- vary awards;
- make minimum wage orders;
- assess agreements using the better off overall test;
- approve agreements;

- determine unfair dismissal claims;
- make orders on such things as good faith bargaining and industrial action;
- vary or modify the application of transferring employment instruments in a transfer of business;
- assist employees and employers to resolve disputes at the workplace;
- deal with matters arising under right of entry provisions;
- deal with issues arising under general protections and unlawful termination provisions; and
- deal with the extension of National Employment Standards entitlements.

Fair Work Ombudsman

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The Fair Work Ombudsman appoints Fair Work Inspectors to assist employers, employees and organisations to comply with the new workplace relations laws and, where necessary, take steps to enforce the laws through the court system.

Fair Work Inspectors carry out targeted education campaigns; conduct compliance audits; investigate workplace complaints; investigate suspected contraventions of workplace laws; and may take steps to enforce workplace laws through the court system.

Inspectors are able to investigate and enforce breaches of contracts or the National Employment Standards on behalf of an employee, where they are investigating or enforcing the National Employment Standards, a modern award, enterprise agreement, workplace determination, or minimum wages order or equal remuneration order.

Importantly, Fair Work Inspectors also have new powers to investigate discrimination matters. Under the Fair Work Act, the Fair Work Inspectors have the power to investigate claims by employees or employee organisations of discrimination in an employer's workplace and may institute court proceedings.

Sex Discrimination Act

The key piece of federal anti-discrimination legislation protecting women in the workplace is the Sex Discrimination Act 1984. The Sex Discrimination Act makes it unlawful to discriminate on the basis of sex, marital status, pregnancy or potential pregnancy or family responsibilities in a range of areas of public life, including within employment, although discrimination based on family responsibilities is limited to instances of dismissal in the employment context.

Complaints of unlawful discrimination can be made to the Australian Human Rights Commission (AHRC). If a complaint cannot be conciliated, or is terminated by the AHRC, the complainant may apply to the Federal Court or the Federal Magistrates Court for a legally enforceable determination.

The Senate Standing Committee on Legal and Constitutional Affairs recently reviewed the Sex Discrimination Act and its report, released in December 2008, makes many significant recommendations relating to changes to the Sex Discrimination Act, the *Australian Human Rights Commission Act 1986* and the EOWW Act.

These include the recommendation for the Australian Government to consider incorporating the obligations in the EOWW Act into the Sex Discrimination Act, and combining the functions of the AHRC and EOWA. This report is currently being considered by the Australian Government.

The National Human Rights Consultation is another significant initiative in the anti-discrimination and human rights arena. The Attorney-General established the consultation in December 2008 to seek the Australian community's views on how best to protect and promote human rights and freedoms enjoyed by all Australians.

An independent committee conducted 66 community roundtables in 52 locations across Australia and received around 35,000 submissions. The National Human Rights Consultation Committee handed its report to the Attorney-General, the Hon Robert McClelland MP, on 30 September 2009. The Australian Government will use the outcomes of the consultation to guide its decisions on how best to protect and promote human rights in Australia.

Each state and territory also has its own anti-discrimination legislation.

Australian Human Rights Commission and the Sex Discrimination Commissioner

The Sex Discrimination Commissioner is a statutory office created under the Sex Discrimination Act. The Commissioner is appointed by the Governor-General and, by convention, the appointment is made on the advice of the Federal Attorney General.

Under the Sex Discrimination Act, the majority of the functions and powers relevant to the Sex Discrimination Act are given to the Australian Human Rights Commission and the Sex Discrimination Commissioner is a member of the Commission. The Sex Discrimination Commissioner is currently also responsible for age discrimination.

The Sex Discrimination Act sets out a range of functions to be carried out by the Commission, including:

- granting temporary exemptions;
- promoting understanding and acceptance of, and compliance with, the SDA;
- conducting research and education, and other programs on behalf of the Commonwealth;
- examining laws or (where requested by the Minister) proposed laws and reporting to the Minister;
- reporting to the Minister on new laws or action that should be taken by the Commonwealth about unlawful discrimination or sexual harassment;
- preparing non-legally binding guidelines; and
- intervening in any court proceedings, with leave of the court.

In addition to these functions under the Sex Discrimination Act, the Commission also has general duties, functions and powers under the Australian Human Rights Commission Act which may be used to promote human rights. Human rights are defined to include the right to non-discrimination and equality on the ground of sex.

Interaction between gender equality institutions

While strong informal relationships exist between the EOWA and the Sex Discrimination Commissioner/AHRC and Fair Work Australia/Ombudsman, there is currently no institutional relationship between the three.

The AHRC handles individual complaints, and the President of the AHRC has powers to refer matters to Fair Work Australia under the new Fair Work Act. The Sex Discrimination Commissioner (SDC) has standing to apply to Fair Work Australia for equal remuneration orders,¹³⁸ and is entitled to make submissions to Fair Work Australia for consideration within the review process.¹³⁹ However, the SDC has never made an application under this power.¹⁴⁰

The President of the AHRC also has the power to refer discriminatory industrial instruments to Fair Work Australia and discriminatory determinations to the Remuneration Tribunal or the Defence Force Remuneration Tribunal.¹⁴¹ The Commission may also intervene, with leave of the court involved, in any matter that involves issues of discrimination on the ground of sex, marital status, pregnancy or potential pregnancy or discrimination involving sexual harassment – this includes matters before Fair Work Australia.¹⁴²

The EOWW Act, the Sex Discrimination Act and the Fair Work Act together make-up the federal legislative framework in addition to State and territory anti-discrimination legislation. Under the federal legislative framework the statutory agencies form an integrated system. The Sex Discrimination Act and the Fair Work Act both provide for individual complaints to be handled by the Australian Human Rights Commission and the Fair Work Ombudsman.

While the Australian Human Rights Commission and the Fair Work Ombudsman each handle individual complaints, both agencies and EOWA are empowered to undertake systemic action to progress gender equality in the workplace. Each institution, for example, is tasked with an educative and research role relating to employment equity. The Australian Human Rights Commission, in considering this overlap concluded that:

*There is a lack of clarity about which statutory authority is responsible for which lead roles, particularly in taking systemic action to achieve gender equality in the workplace. For example, it is possible that any one of these authorities could be responsible for driving systemic action to close the gender pay gap in Australia. The same could be said for reporting on progress to achieve gender equality in the workplace.*¹⁴³

¹³⁷ Fair Work Act 2009 (Cth), s302.

¹³⁸ Fair Work Act 2009 (Cth), Part 2.7, s 302.

¹³⁹ Fair Work Act 2009 (Cth), s 161.

¹⁴⁰ See further Australian Human Rights Commission (AHRC), *Submission to the House of Representatives Standing Committee on Employment and Workplace Relations on the Inquiry into Pay Equity and associated issues related to increasing female participation in the workforce* (2008), p 19. At

www.humanrights.gov.au/legal/submissions/2008/20080923_pay_equity.html#Heading368 (viewed on 28 January, 2010)

¹⁴¹ *Australian Human Rights Commission Act 1986* (Cth) (AHRCA), ss 46PW, 46PX and 46PY.

¹⁴² *Sex Discrimination Act 1984* (Cth), (SDA), s 48(gb).

¹⁴³ Australian Human Rights Commission, *Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009) At http://www.hreoc.gov.au/legal/submissions/2009/20091030_EOWA.html (viewed on 28 January, 2010).

E. SECTION 5: THE EFFECTIVENESS AND EFFICIENCY OF THE EOWW ACT

Overall effectiveness in delivering equal employment opportunity

The EOWW Act's success can be measured by reference to three sources: subjective assessments of EOWA's efficacy (through organisational surveys), examination of changes to organisational practices, and consideration of changes to overall outcomes for women in the workplace.

EOWA measures its performance through a survey of reporting organisations, which seeks their views on the advice and information EOWA provides, its products and services, their relationship with EOWA, and the value they place on the legislation it administers. This survey was last conducted in 2006, and prior to that in 2003.

In 2006, this survey found that most reporting organisations thought EOWA was effective in providing advice and information to assist in the improvement of outcomes for working women. More than two in five organisations believed EOWA to be 'very effective' or 'extremely effective'. This represented an increase of 15 per cent from the 2003 survey.¹⁴⁴

Whether such satisfaction translates successfully into changes to organisational practice is a separate issue. The EOWA 2009 Annual Report reveals an increase in EOWA reporting organisations providing paid maternity leave from 48.9 per cent in 2007 to 53.4 per cent in 2009.¹⁴⁵

Almost all reporting organisations have formal procedures for dealing with sex-based harassment in the workplace, but only just over half provide training to staff (59.1 per cent) and even fewer provide training to managers (55.4 per cent).

The average gender pay gap in 2009 EOWA Employer of Choice for Women organisations was 10.9 per cent, 4.7 per cent lower than the national average¹⁴⁶. Less than half conduct an annual gender pay equity analysis although over a third believe a gender pay gap exists in their organisation.

Another indicator of organisational practice which could be expected to result in equal employment opportunity for women is organisations receiving a waiver of reporting requirements, or achieving a 'waived standard'. This means that they have done everything reasonably practicable to address issues for women in their workplace across all seven employment matters.

In the 2008-09 reporting year, out of a total of 2,574 reporting organisations, only 116 were waived.

Another potential measure of success for employer organisations is becoming an EOWA Employer of Choice for Women or becoming a finalist or winner in EOWA's annual Business Achievement Awards.

Employers seeking Employer of Choice for Women certification are required to exceed the standards outlined above for waiving, exhibit outcomes for women and demonstrate an organisational culture that is broadly and strategically supportive of equal opportunity. To receive certification as an EOWA Employer of Choice for Women, an organisation must meet six pre-requisites:

- equal opportunity for women is a standing agenda item on a Committee chaired by the CEO or his/her direct report,
- female managers can work part-time,
- a minimum of six weeks' paid maternity leave is offered after 12 months of service,
- sex-based harassment training is conducted at induction for all staff (including management, contract staff and casual staff) and refresher education or updates are received by all staff (including management, contract staff and casual staff) at least every two years,
- the Pay Equity Gap between average male and female salaries at each level of the organisation is less than the national gender gap in ordinary time earnings identified by ABS research, and the organisation's overall pay gap must be less than the organisation's industry's average pay gap, based on current ABS statistics, and
- the percentage of female managers is equal to or greater than the ABS average across all industries or is greater than the industry sector average.

Six additional criteria need to be met by organisations applying for the Business Achievement Awards. They must:

- have policies in place (across employment matters) that support women across the organisation,
- have effective processes (across employment matters) that are transparent,
- have strategies in place that support a commitment to fully utilising and developing their people (including women),
- educate employees (including supervisors and managers) on their rights and obligations regarding sex-based harassment,
- have an inclusive organisational culture that is championed by the CEO, driven by senior executives and holds line managers accountable, and
- deliver improved outcomes for women and the business.

In 2009, only 111 organisations out of 126 applicants and a total of 2,574 reporting organisations received the EOWA Employer of Choice for Women certification. The Business Achievement Awards consisted of eight categories that could be won by either an organisation or an individual in a leadership position.

EOWA's submission to the consultation process interprets these results thus.

Relatively few organizations have reached the stage of 'turning the ship', where the implementation of policies and practices affects organisational culture and organisational culture affects the implementation of policies and practices until there is an overall change of direction.¹⁴⁷

All three progress indicators (waiver, Employer of Choice certification and Business Achievement awards) are contested measures of robust changes to organisational practice. Firstly, organisations must apply for waiver, and high performing organisations may elect to continue to report even if they meet the standards for waiver, out of recognition of the positive benefits of reporting to consolidating progress.

Secondly, it was suggested during the consultation process that minimal activity on the part of organisations can secure these awards, and that requirements and criteria should be strengthened, to ensure they reflect genuine progress in outcomes for women in the workplace.

While assessments of EOWA's performance and progress in some organisations may be encouraging in relation to progressive changes to organisational practice in reporting organisations, Section Three highlighted overall results for Australian women in the workplace which paint a more pessimistic picture. These results suggest the EOWW Act and EOWA have failed to make substantial inroads into changing outcomes overall, particularly along the key axes of increasing workforce participation, closing the pay equity gap and achieving a more equitable distribution of women across male dominated industries and occupations and in leadership roles.

The House Standing Committee on Employment and Workplace Relations agreed. Its report on into pay equity and associated issues related to increasing female participation in the workforce, *Making it fair*, recommended a framework for systematically addressing pay equity including the abolition of the EOWW Act and incorporation of its current functions into a proposed Pay Equity Act.

Under the Committee's proposal, there would be no separate agency. Instead, a Pay Equity Unit within Fair Work Australia (FWA) would perform the current functions of the Equal Opportunity for Women in the Workplace Agency (EOWA) but with expanded functions including pay equity functions related to the *Fair Work Act 2009*.

The key relevant recommendation of the Committee was that the proposed Pay Equity Unit would:

- be the responsibility of a Deputy President of FWA,
- have an advisory board comprising government agencies, union, employer and employee representatives,
- require federal public sector organisations to report biennially on diversity plans and a gender equity duty to increase pay equity,
- require all organisations of 100 or more employees to report biennially on diversity plans to increase pay equity,
- establish mandatory reporting by small to medium sized firms on request from a Pay Equity Unit officer,
- expand the Employer of Choice awards to include small and medium size firms,
- be enabled to gather aggregate wages and salary and other relevant information from the Commissioner for Taxation (requiring an amendment to the Taxation Administration Act 1953).

While the Committee recommended that the proposed Pay Equity Unit replace EOWA, it only described pay monitoring and related functions for the replacement unit. EOWA's current remit includes but goes beyond pay matters to cover employment arrangements, conditions, recruitment, promotion and a host of other issues impacting women in the workplace. To collapse all of EOWA's functions into consideration of pay equity, without careful consideration, could forfeit the other critical reporting, support and educative functions of EOWA.

One of the critical aspects of this review is to consider ways to better define the respective roles of EOWA, Fair Work Australia and the AHRC in working on the issue

of employment equity. There is potential for considerable role confusion if the broad functions of EOWA were collapsed into a pay equity unit residing within Fair Work Australia.

EOWA's key role is one of education and system change. Its reporting functions, and even proposals to strengthen the utility of reporting by adding powers to undertake compliance audits, exist merely to support that educative and system change function. Unlike both Fair Work Australia and the AHRC, it has no individual complaints mechanism

The Fair Work Australia, on the other hand, has a strong complaints focus across the spectrum of employment areas and potential grounds for discrimination. It would be anomalous to mandate a broader role for Fair Work Australia in one particular area of its coverage only. The AHRC, on the other hand, has both dispute resolution and advocacy roles, however it has experienced some tension in managing this dual focus.

It is preferable to maintain and strengthen clear demarcation lines between EOWA, which gathers critical data and uses it to plan organisational, sector/industry and systemic interventions, and the two complaints handling bodies (Fair Work Australia and AHRC) which pursue individual complaints and broader determinations.

While the focus on pay equity is timely and critical, many of the recommendations of the Committee could be implemented by EOWA or its successor. Indeed, several of the key recommendations of the Inquiry are considered in this report, for example:

- the need for strengthened reporting and mandated progress on pay equity,
- the establishment of advisory boards to support the development of sector/industry based outcomes benchmarks,
- coverage of smaller organisations where problems have been identified, through reporting, the provision of tailored advice and assistance, and the expansion of the Employer of Choice awards to smaller organisations.

It is clear that the roles and operation of EOWA require reform to operate optimally and ensure a focus on improving outcomes. The following section considers existing research and the results of consultation to scrutinise each aspect of the EOWW Act, determine its contribution to equal employment opportunity, and identify any problems with its effectiveness.

Objects and coverage of the EOWW Act

Name and objects of the EOWW Act

Over a quarter of public submissions argued that the objects of the legislation should be amended to include consideration of the role of men as father and carers. These views appear rooted in the recognition that without shifts in men's choices and behaviour, particularly around family and domestic responsibilities, women's choices will remain limited. More than a third of submissions believed the EOWW Act needed a greater focus on enabling men and women to share paid work and caring responsibilities, while a fifth of submissions suggested employers should focus on encouraging men to take up flexible opportunities.

This view also came through particularly strongly from respondents to the employee survey, with 89 per cent agreeing the focus should be on men and women being encouraged to share paid work and unpaid work more equally.

EOWA submitted that the objects and possibly name of the Act and Agency should acknowledge a focus on gender equality. In doing this, the Agency also recognised that barriers to equality are not the same for women and men; that the strategies for responding to them are not likely to be symmetrical; and that its own strategies must continue to focus on women while at the same time encouraging broader access to and use by men of measures to support caring responsibilities.¹⁴⁸

It should be noted at the outset that in considering the name and objects of legislation, employer groups placed on the record their views that regulation was not the most effective means of addressing the root causes of inequality.

Key Issues

The title and objects of any reformed regime should focus on outcomes, and consider the role of interventions related to men in securing employment equity for women.

Coverage of the EOWW Act

Discussion focused on the exclusion of equal opportunity groups other than women, businesses with less than 100 employees, Commonwealth public sector agencies, equity partners in professional firms and board members, with the organisational size threshold being the issue considered most comprehensively.

Of those public submissions that commented on coverage of the Act, 40 per cent felt coverage should be expanded, while only one per cent felt it should be decreased. A significant proportion (21 per cent) recommended extending coverage to smaller organisations.

Proponents suggested the significant numbers of women employed in smaller workplaces argued for extending coverage to those organisations.

While the size of the female workforce in smaller organisations is significant, mandatory reporting may not be the best mechanism to encourage equal opportunity practices. Alternate methods for providing support and encouragement to smaller organisations could be considered, for example allowing them to access information, tools and awards.

Despite the clear focus of consultation on increasing the coverage of the EOWW Act to more organisations, 18 percent of the public submissions felt that better identification of eligible organisations under the EOWW Act was required. The Roundtables were divided on the issue of extending coverage, with some participants suggesting it was critical to increase compliance from those already covered before extending coverage further

Currently, organisations largely come to the attention of EOWA and become subject to its regime through self-reporting. A large number of organisations do not identify themselves to the Agency. The ABS has estimated that there are around 13,000 organisations in Australia employing 100 or more people.¹⁴⁹ Some 8500 are both covered by the Act and have made themselves known to EOWA. This suggests that that only 65 to 70 per cent of all relevant employers are meeting their legislated

responsibilities under the EOWW Act, and that there are around another 4500 organisations which are not currently meeting their obligations.

EOWA's concerns about this situation led it to position better identification of covered organisations as one of its main priorities in the review. It suggested that the PAYG Payment Summary statement, through which employers notify the Australian Tax Office (ATO) of the number of payment summaries they have issued to their employees, could be used to identify eligible organisations and access addresses for employers.

However, section 16(2) of the *Income Tax Assessment Act 1936* (the Tax Act) prohibits sharing of this information, except via a number of limited and specific exemptions. EOWA submitted that the Government should amend the Tax Act to enable it to receive an annual list of organisations employing 100 or more people.

The issue of ensuring identification of all eligible organisations was important to other participants as well. Of all public submissions, 39 per cent supported creating links to data from other areas of government, for example Taxation, Australian Securities and Investment Commission (ASIC) or the ABS, in order to identify eligible organisations.

Employer organisations also expressed concern about the current 'hit and miss' approach to ensuring reporting by eligible organisations. Seventeen per cent drew attention to the perverse outcomes that result from self-identification. A self-identifying organisation may become subject to sanctions for failing to report, or inadequate reporting, whereas an organisation which has avoided self-identification faces no consequences at all.

Extending the EOWW Act's coverage to government agencies, departments and statutory authorities was also raised in submissions, roundtables and interviews. Twenty-seven per cent of submissions expressed the view that the public sector should be covered. Round-tables situated the exclusion of the APS as particularly significant, especially given its size and scale as an employer of women.

In 2009, the long-term trend of increasing female employment in the APS continued. The total number of women rose from 92,012 to 93,683, an increase of 1.8 per cent. Women now account for 57.5 per cent of ongoing employment and 57.8 per cent of total employment.¹⁵⁰

However, the size of the public sector workforce may itself be a compelling reason to defer its inclusion in the regime. Significant extra resources would be required to monitor and work with these organisations, as well as a specific skill set which has not been developed in EOWA to date. The role of EOWA has focused on the private sector and it has developed skills and relationships to facilitate this role.

This private sector focus is appropriate given that a comparable scheme to the EOWW Act regulates federal public sector employment. Employees of government departments are covered by the *Public Service Act 1999*¹⁵¹ and employees of statutory authorities by the *Equal Employment Opportunity (Commonwealth Authorities) Act 1987*. Section 18, Promotion of employment equity, of the *Public Service Act 1999* sets down that "an Agency Head must establish a workplace diversity program to assist in giving effect to the Australian Public Service (APS) Values."

The Australian Public Service Commission (APSC) under s.10 (b) (l) of the *Public Service Act 1999* administers the regulation of equal employment opportunity for Australian federal government bodies¹⁵². The APSC release an annual State of the Service Report reflecting the status of employment equity for women in the Australian Public Service¹⁵³.

A number of States also have their own equal employment opportunity legislation for public sector employment.¹⁵⁴

Public sector organisations also tend to perform better on indicators of employment equality, for example:

- Public sector earnings, for both women and men, are greater than private sector earnings.
- Women, in the APS, received 61 per cent of the promotional opportunities in 2008-09.¹⁵⁵
- 90 per cent of APS employees who nominated 'flexible working arrangements' as contributing to their job satisfaction were satisfied with the arrangements.¹⁵⁶

Given this public sector progress, it may be appropriate for EOWA to continue to focus on sectors and industries with lower performance. It would however also be appropriate for the APSC to work with EOWA to maximise complementarity of approaches and data collection.

Some interesting recommendations in the public submissions and consultations included:

- the one-off creation of a new position on all boards for the appointment of a woman¹⁵⁷,
- mandatory targets for government boards and voluntary targets for private sector boards, to be followed by mandatory quotas if substantial inroads into improving the gender mix of membership are not achieved within five years¹⁵⁸, and
- including EOWA reporting as part of the suite of corporate governance annual reporting matters within the ASX framework¹⁵⁹.

Since the consultation process has concluded, the ASX Corporate Governance Council proposed to expand their principles-based framework, the *Corporate Governance Principles and Recommendation*, to require publicly listed companies to establish and report, on an "if not, why not?" basis, against gender targets at all levels of their organisations.

While the *Corporations and Marketing Committee Report 2009* noted that the public sector is doing much better than the private sector and is modelling best practice in increasing women's representation on boards, these achievements vary significantly across portfolios. Few departments have achieved a reasonable gender balance, in which men and women represent at least 40 per cent of sitting board members.

Key Issues

Poor identification of organisations which are already eligible to report should be the focus of reform before formal coverage is extended to more organisations.

Consideration should be given to ensuring support and encouragement to smaller organisations through extending coverage under the EOWW Act but without a compulsory requirement to report.

Government consider setting an example by establishing a target of at least 40 per cent women and 40 per cent men in each portfolio's board appointments within three years.

Workplace programs

Section Three canvassed the growing body of evidence concerning the benefits of greater gender balance to the productive capacity of organisations. In a survey of organisations covered by the EOWW Act, 46 per cent of the responses found that preparation of workplace programs had a positive influence on their organisation's equal employment opportunities for women. Only 21 per cent either disagreed or strongly disagreed with a workplace program's benefits. Those with higher compliance were more likely to see the programs as beneficial. However, of great significance was that a large number of employees were not aware of developing or evaluating workplace programs.

Nevertheless, developing and implementing a workplace program can impose costs on employers. For example, additional costs may relate to dedicated human resources staff and implementation costs of new programs and activities.

Consultation yielded some support for the requirement to prepare workplace programs, but far less support for the utility of the programs that resulted. Public submissions were reasonably evenly divided between respondents who submitted that the process of preparing workplace programs, and their content, was useful and appropriate, and those who submitted that it was not.

By far the most consistent view was that the planning and reporting regime did not support development of evidence-based programs. This finding is discussed in more detail below.

Reporting obligations

Currently, the EOWW Act defines those 'employment matters' which reporting covers in neutral process terms. Section 8(3) of the Act says employers should prepare an analysis of "issues relating to employment matters that the employer would need to address to achieve equal opportunity for women." There was strong support for continued public reporting across submissions, but the vast majority of public submissions felt reporting needed to be simplified with a focus on outcomes.

Many submissions suggested reporting should occur against a set of industry benchmarks or indicators of performance. Indeed, 21 per cent of public submissions favoured setting explicit targets (36 per cent of all submissions that supported a regulatory role for government were of this view). Targets were understood as

voluntary goals for organisational performance in relation to measures of employment equality, which are reported against publicly.

While there was no consensus about the levels at which these targets should be set, most participants agreed targets should be supported by industry benchmarking, and the following principles were suggested by some respondents.

- The ACTU recommended clear, achievable minimum standards established via a tripartite group including industry, union and government equal employment opportunity representatives.
- The AHRC recommended targets of 40 per cent of women on government boards within three years, with other boards being required to set three to five year disclosable targets for improving gender diversity in their composition. After five years, mandatory gender quotas should be considered for ASX publicly listed companies.
- The Sydney roundtable discussion reached a consensus view that a target should be set of 40 per cent representation of women at all organisational levels over the next three to five years. If this could not be achieved, mandatory quotas should be set.
- EOWA recommended that organisations should be required to make and report actual progress over time against a specified number of concrete gender equality measures, in a clear and factual self-audit format. There should be a range of such measures including those that are industry specific, and those that relate to boards, middle, and senior management. These would be based on appropriate and realistic averages as well as what is considered best practice, and there would be scope to revise these industry standards over time to reflect improved industry conditions and changing community expectations regarding employment arrangements.

Employer groups expressed concern about targets, instead supporting alternate methods to seek out and utilise talent. One submission suggested establishing a register of appropriately qualified women for board membership would be a useful avenue to use the skills of small business women in particular.

Employer, industry and business groups were all also particularly concerned about the introduction of mandatory quotas, which they saw as running counter to the merit principle and being counter-productive for the women concerned. Only four per cent of employees felt quotas would have the greatest impact.

A recent report by Goldman Sachs JB Were recommended that the Government provide a timetable for increased female participation in Australia's top 200 boards and executive teams with a minimum quota of two women on each board and an audit on female representation at the executive level.¹⁶⁰

Goldman Sachs JB Were suggested that better decisions may be reached as a result and that the second round impacts on mentoring and visibility of women would encourage a lift in female participation and a more even distribution of women across the workforce.¹⁶¹

Of the participants in the consultation, six per cent of submissions from academics, 33 per cent of submissions from the expert category, 17 percent of submissions from individuals and four per cent of industry submissions suggested that the key omission from existing reporting requirements was that of a concrete measurement of pay

equity. While some measures of pay equity are currently included as part of applications for waiver or citations, this is not comprehensive or consistent.

The pay equity findings detailed in Section Three were frequently canvassed by submissions, and better reporting of this issue as a separate employment matter was seen as critical to addressing these inequities.

A small proportion (eight per cent) suggested that the ASX corporate governance statement in annual reports could be used to facilitate reporting by publicly listed companies, with action towards targets being explained using the same process used for other reporting matters, that is, on an 'if not, why not' basis.

The frequency and timing of reporting was another issue which attracted significant comment during consultation, although opinion was fairly even divided.

From the employer's perspective, the reporting cycle begins in 1 April and ends on 31 March in the reporting year. Reports cover the year prior to the reporting date and may be submitted any time within the two months prior to 31 May. This reporting cycle was determined following extensive consultation during the 1998-99 review.

This timetable enables a list of non-compliant organisations to be prepared and incorporated in the Agency's own annual report, which is tabled in the Parliament in October consistent with standing guidelines. This means that the Agency's staffing arrangements have been geared to an uneven workload, with consultants employed on a temporary basis for the period May to September each year.

Those consultation participants who supported reduced frequency of reporting cited the need to reduce the reporting burden, as well as to enable time for interventions to bear fruit, and to align with the biennial EOWA reporting process.

The Equal Opportunity Network of Australasia (EEONA) recommended allowing organisations to set three- five year goals, with regular progress reports to the Agency, in recognition that achieving gender equity is a long-term process.

Conversely, there was a concern expressed in a couple of submissions about the potential for momentum to be lost if reporting became less frequent.

A move to a voluntary reporting regime was proposed by only one peak body.

The most frequent suggestion in relation to these matters was to increase the specificity of reports, and enhance their usability, potentially via use of a self-audit format and/or an e-reporting tool. Although there is currently flexibility, more than three quarters of reporting organisations use a version of the public report form, a template offered by the Agency and available online. EOWA has also developed voluntary self-audit instruments, including a Workplace Analysis Toolkit, a Bullying and Harassment Tool and a Pay Equity Tool.

Publication of reports is currently undertaken in a piecemeal manner. Results from surveys conducted during the EOWW Act Review found that forty per cent of reporting organisations noted that employees were not provided with a copy of the report, and only nine per cent of employees agreed that they were consulted on its development. Roundtable discussions yielded considerable support for the notion that consultation requirements should be formal and enforceable.

Key Issues

Reporting needs to focus on a set of specific outcomes, with clear targets.

Pay equity should be included as a separate employment matter.

The timing of the reporting cycle is less critical than simplifying the reporting format, clustering outcomes logically, and offering a self-audit and e-report option.

Better and wider publication of reports is essential.

Compliance and enforcement

Under the existing regime, non-compliance is associated with the failure to provide information rather than any clear basic standard of equitable employment outcome. EOWA submitted to the review that some marginal employers regard the existing standard for non-compliance as contestable, and that sanctions for non-compliance offer only a weak incentive for some organisations to comply with the law.

Sixty-seven per cent of submissions addressed the issue of penalties, and only 13 per cent felt penalties were sufficient. Naming in Parliament alone appears to lack a deterrent effect and indeed, EOWA suggests that some organisations take a perverse pride in being named year after year.¹⁶²

There was also general agreement through consultation that existing compliance mechanisms are not strong enough. The potential for random compliance auditing was explored by several submissions, with 24 per cent suggesting a need for compliance auditing. The most common suggestion was that this role be undertaken by the Office of the Fair Work Ombudsman, which already has a related role.

The calls for greater compliance auditing were stronger than those for increased penalties (11 per cent of submissions) but only two per cent recommended all penalties be removed (2 peak body submissions). Stronger sanctions were opposed by employers and some industry groups, but were relatively popular among employee surveys.

Submissions also explored the role of procurement in effecting behaviour change. It was suggested that this lever could have greater impact and be extended to include restricted access to grants. Roundtable discussions suggested that procurement consequences were not significant in their current form, as many eligible organisations do not apply for tenders at all, and even for those which do, the current regime relies on them declaring any non-compliant status.

Several submissions suggested that proof of compliance should rest with the applicant, but that this could be facilitated by EOWA having the capacity to issue certificates of compliance.

Certificates of compliance offer a simple avenue to prove compliance, enable publication and facilitate procurement sanctions. However, given misgivings about marginally compliant reports being rated compliant, some participants in consultation suggested that heightened selection criteria are required to ensure certificates of compliance reflect reasonable standards.

Key issues

The current sanctions regime is weak and ineffective by itself in ensuring compliance with reporting requirements.

Compliance would be improved by the introduction of organisational reviews.

Organisational reports should meet strong minimum outcomes standards in order for organisations to be found compliant. If they do, organisations should be issued with a certificate of compliance.

The role and activities of EOWA

Organisational structure, resourcing and staffing

Placing the functions of EOWA within the discrimination jurisdiction may make the role of the agency more difficult, given the focus of the anti-discrimination framework on complaints handling. While the Australian Human Rights Commission has an advocacy role that works effectively alongside its complaint handling role, a requirement for employers to provide detailed information about employment practices may create a perception of conflict of interest and lead to discomfort among employers and role confusion for the Australian Human Rights Commission.

Employers may be more inclined to take advice on good practice in employment conditions and pay equity from an organisation that is positioned within the employment jurisdiction but the same potential problems apply to Fair Work Australia and the Fair Work Ombudsman as apply to the Australian Human Rights Commission. EOWA benefits from its current statutory position outside the mainstream anti-discrimination and workplace relations machinery, given its reliance on building and maintaining good relations with reporting organisations. EOWA has operated on the expectation that employee pressure and compliance incentives will promote and sustain cultural change.

Another key issue in the EOWA establishment is resourcing. Participants in consultation generally saw the existing resources of EOWA as insufficient particularly to enable it to fulfil its data collection and analysis roles. Only eight per cent of the submissions believed that the data was adequate compared to 22 per cent which did not. 39 per cent of submissions considered EOWA's education and its awareness-raising role the most successful function of the Agency although it was noted that it is not sufficient. Conversely, 32 percent of submissions found EOWA's role at promoting understanding, acceptance and public discussion of equal opportunity either inadequate or inappropriate.

A related issue is whether there is sufficient clarity of roles and responsibilities between EOWA, the AHRC and the Fair Work Australia. Submissions were divided on this issue, but key government agencies (the Australian Human Rights Commission and the Fair Work Ombudsman (by interview)), cited some lack of clarity in roles and responsibilities, especially in addressing systemic discrimination and driving systemic reform.

Reviewing workplace programs and reports

The EOWW Act is silent on standards as to amount or quality of reporting information required, or the extent to which EOWA can require an employer to take action. Due

to time and resource constraints, under the current approach not every report from the previous year is compared to the current year's report to determine if it is the same version.

One result is that, in the current program and reporting model, employers that report having identified 'no issues' frequently fail to provide a substantive report as to what this means and EOWA is obliged to either accept this or to initiate a further exchange with the employer.

While it is time consuming and resource intensive for the Agency to pursue follow up minimal responses, failure to do so can set a difficult precedent for requiring more comprehensive reporting in future years.

Thirty-seven per cent of public submissions did not consider EOWA's role adequate (only eight per cent believed it to be adequate).

Roundtables suggested that EOWA currently has insufficient resources and data collection powers to adequately fulfil all of its roles. In particular, concern was expressed that EOWA does not compare results from organisations year by year, which prevents tracking of progress and examination of changes in the types of programs being delivered.

Interviews with employers suggested that more support for reporting and program preparation would be helpful.

Provision of information, advice and education

Participants in consultation were particularly interested in:

- education and awareness-raising activities that were affordable, and on-site where possible, and
- enhanced opportunities for networking with other organisations.

Research and data

At the organisational level, EOWA encourages organisations to measure their success in a variety of ways, and provides tools to help them gather data, identify issues for women workers and determine their priority areas to take action and measure outcomes.

EOWA uses information it collects from reporting organisations to build a data set to measure progress in workplace programs over time. This data is also used to educate employers on best practice and is used to set and revise benchmarks for its EOWA Employer of Choice for Women citation.

Only eight per cent of submissions believed the current data set was adequate.

Participants by submission and by interview, such as the Australian Education Union and Queensland Government, also suggested that there should be improved links to other data sources across government. In particular, data should be collected in the common areas of discrimination – workforce participation, superannuation and long term financial security, leadership, occupational segregation, and intersecting disadvantage (such as when women belong to another group experiencing employment disadvantage).

Other respondents also suggested EOWA develop a publicly available data set for all reporting organisations, similar to the Australian Workplace Industrial Relations Survey (AWIRS), to undertake detailed scrutiny of employment patterns and work/life balance issues.

Other events, awards, tools

The utility of incentives and awards did not come through strongly in the surveys, although roundtables suggested they were significant, and about a third of reporting organisations felt the Employer of Choice Awards were a good incentive to work towards.

When asked about roles for EOWA moving forward individual interviewees and submissions cited the development of tools and resources to support organisations with the equal employment challenge second most frequently cited. Recommended tools included gender equity balanced scorecards with KPIs for managers.

The individual interview consultation activity identified strong support for a strengthened educative role for EOWA as did the survey of reporting organisations. Many of the levers for change that were identified are aimed at tackling the attitudinal and cultural barriers to equality for women in workplaces.

This revised EOWA role proposed by a number of submissions was seen as focusing on behaviour change including:

- research leadership, especially building and articulating the business case for equal employment opportunity,
- conducting major business and community campaigns about the benefits of family friendly practices, or the gender pay gap,
- forging stronger links with industry, both the organisational arms and individual employees through tools such as employee blogs to share success stories,
- rebuilding the credibility of citations and awards through tightening criteria, or even setting out tiers of awards to recognise different levels of effort and outcome.

¹⁴⁴ ACA Research, *Equal Opportunity for Women in Workplace: Research into Service Delivery*. Unpublished report to EOWA (2006)

¹⁴⁵ Equal Opportunity for Women in the Workplace Agency. *Annual Report 2007-2008* (2008) At http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/Annual_Reports/EOWA_Annual_Report_07_08.asp (viewed January 28, 2010)

¹⁴⁶ 15.6 per cent was the industry average for full-time ordinary time earnings from Australian Bureau of Statistics *Average Weekly Earnings Cat No. 6302.0, table 10 and timeseries data, May 2008*.

¹⁴⁷ Equal Opportunity for Women in the Workplace Agency, *Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009) At http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/EOWA_Review_Submission.pdf (viewed 28 January, 2010)

¹⁴⁸ Equal Opportunity for Women in the Workplace Agency, *Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009) At http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/EOWA_Review_Submission.pdf (viewed January 28, 2010)

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- ¹⁴⁹ Australian Bureau of Statistics, *Counts of Australian Businesses, including Entries and Exits, Jun 2003 to Jun 2007*, ABS cat no 8165.0, Australian Government Publishing Service, Canberra, (2007)
- ¹⁵⁰ Australian Public Service Commission, *Australian Public Service Statistical Bulletin-The State of the Service Report 2008-09*(2009), Canberra, At <http://www.apsc.gov.au/stateoftheservice/index.html> (viewed 10 Dec 2009)
- ¹⁵¹ *Public Service Act 1999*(Cth), s 10 and s 18
- ¹⁵² *Public Service Act 1999*;
[http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/1DD68BE56B217C28CA256F82001C0C9F/\\$file/PublicService1999WD02.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/1DD68BE56B217C28CA256F82001C0C9F/$file/PublicService1999WD02.pdf)
- ¹⁵³ Australian Public Service Commission, *State of the Service Report 2006-07*,
<http://www.apsc.gov.au/stateoftheservice/0607/index.html>
- ¹⁵⁴ See *Equal Opportunity in Public Employment Act 1992* (Qld); *Anti-Discrimination Act 1977* (NSW) Part 9A; *Equal Opportunity Act 1984* (WA) Part IX; *Public Administration Act 2004* (Vic); *Public Sector Management Act 1994* (ACT) Part 3; *Public Sector Employment and Management Act* (NT).
- ¹⁵⁵ Australia Public Service Commission, 'Table 32 – Promotions by classification promoted from and to, and sex – 2008-09', *Australian Public Service Statistical Bulletin, The State of the Service 2008-09*, Canberra, 2009, At <http://www.apsc.gov.au/index.html> (viewed 14 December 2009).
- ¹⁵⁶ Ibid
- ¹⁵⁷ Australian Human Rights Commission, Submission - Review of the *Equal Opportunity for Women in the Workplace Act 1999*
- ¹⁵⁸ Anne Summers, Submission - Review of the *Equal Opportunity for Women in the Workplace Act 1999*
- ¹⁵⁹ Australian Human Rights Commission, Submission - Review of the *Equal Opportunity for Women in the Workplace Act 1999*
- ¹⁶⁰ Toohey, T., Colosimo, D., & Boak, A., (2009) *Australia's Hidden Resource: The Economic Case For Increasing Female Participation*, Goldman Sachs JB Were.
- ¹⁶¹ Ibid
- ¹⁶² Equal Opportunity for Women in the Workplace Agency, *Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009) At http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/EOWA_Review_Submission.pdf (viewed 28 January, 2010)

F. SECTION SIX: OPTIONS TO IMPROVING GENDER EQUALITY IN THE WORKPLACE

Reducing regulation - no regulation or self-regulation

International examples

No comparable jurisdictions have a completely deregulated or self-regulated model in place. The regulation of at least some aspects of equal opportunity, such as pay equity or anti-discrimination law, is present in all developed countries.

In OECD countries, equal opportunity laws and policies are unique in each jurisdiction as a result of the country's starting point, prior practice, cultural expectations, political and industrial systems and economic circumstances, however some form of government regulation of equal employment opportunity for women is universal.¹⁶³

The US, for example, exhibits elements of a self-regulatory approach in its San Francisco Gender Equality Principles Initiative, but has also implemented laws that provide an overarching gender equality framework.

In New Zealand, despite an extensive public sector reporting regime, private sector organisations are not required to establish equal employment opportunity programs. Although complaints can be made against employers, there is no systemic compulsory reporting or review process that tracks organisational progress towards equal employment opportunity for women.

As a result, there is little publicly available information on the status of equal employment opportunity in most workplaces and individual organisational policies.¹⁶⁴ Most employers in New Zealand are under no obligation to proactively consider the barriers that their employees and potential employees face in terms of equal employment opportunity.

There are indications that in the New Zealand private sector in particular, the "no-government approach" is only enabling slow progress with women's workforce participation and representation.¹⁶⁵ There has also been slow progress in closing the gender pay gap, with the female/male earnings ratio in the June 2008 Quarterly Employment Survey 87.4 per cent for average hourly earnings and 79.6 per cent for weekly earnings.

New Zealand's women workers are concentrated in the service industries, and their increasing participation in the workforce has coincided with growth in these industries over recent years. In 2001, 83 percent of women worked in service industries, compared with 60 percent of men.¹⁶⁶

The income of women is also unevenly distributed among the total population. Women are overrepresented in the lowest three income quintiles and under-represented in the top two.¹⁶⁷

Option One – Self-regulation

The spectrum of self-regulatory approaches is great, but given the significance of this issue to the entire population, and to the economy, self-regulation of gender equality in the workplace would necessarily involve more than atomised organisational

approaches. It would require some structured oversight of organisational action and results, including the establishment of, at the very least, industry or sector specific targets against each of the outcome areas.

Therefore, the approach to self-regulation which will be considered is one which:

- sees the development of a series of voluntary industry or sector-based codes to guide action and indicate appropriate outcomes benchmarks across the same range of employment matters to be considered under the other options, that is:
 - profile of workplace by occupation, classification, management responsibility,
 - pay equity, including such issues as over-award payments, overtime and benefits and pay level,
 - outcomes of recruitment and selection processes (including job design matters),
 - promotion, transfer and termination outcomes,
 - training and development outcomes,
 - career progression including availability of quality of part-time work, access to training and promotions,
 - profile of employees accessing flexible work arrangements (including type of arrangement),
 - number of complaints about sex based harassment of women, and outcomes of processes for managing those complaints,
 - arrangements for dealing with pregnant or potentially pregnant employees and those breastfeeding their children
- invites organisations of any size to participate via reporting against the outcome areas, and
- is overseen by existing or purpose-built industry/sector councils which:
 - collate data and report on trends and issues,
 - offer support to organisations requiring extra assistance, and
 - publicise results and plan systemic remedies to issues arising.

For publicly listed companies, the ASX corporate governance reporting framework could be used to fulfil this oversight function. It could also lend weight to review of targets through use of the “if not, why not” explanatory mechanism used for other aspects of corporate governance reporting.

However, only a small percentage of organisations would be covered by this mechanism. The remainder would rely on existing industry bodies to monitor reporting, track results and lead remedial action, or alternately develop new structures for this purpose.

The key difference between a self-regulation regime and the current regulatory regime would be that the content and format of the reporting regime would be decided by organisational representatives themselves; those representatives would review and monitor results and provide peer support; and penalties for failure to report or to achieve outcomes would be non-existent beyond the direct control of the government.

Impact analysis

Impact of this option on promoting gender equality

Strachan notes that what an organisation does to promote gender equity is variously determined by its history and ethos, the tightness of its specific labour market and the minimum standards set by legislation. When employers and employees are faced with a range of options about the way working arrangements are decided and work itself is organised, even if it is underpinned by legislative minima, outcomes for employment equity are difficult to uncover and unlikely to be consistent among workers and across employers in similar industries.¹⁶⁸

As a general guide to whether self-regulation is appropriate, a 2000 Report prepared by the Department of Treasury, set up to inquire into and report on aspects of self-regulation in consumer markets, put forward that self-regulation be considered where:

- there is no strong public interest concern, in particular, no major public health and safety concern,
- the problem is a low risk event, of low impact/significance, in other words the consequences of self-regulation failing to resolve a specific problem are small, and
- the problem can be fixed by the market itself, in other words there is an incentive for individuals and groups to develop and comply with self-regulatory arrangements (for example, for industry survival, or to gain a market advantage).¹⁶⁹

Section Three clearly illustrated both the magnitude of the current problem of employment inequity and the potential implications for the Australian community and economy. The breadth of this issue, and the enormity of its potential costs, mitigate against the use of self regulation.

It is also dubious whether the market alone could correct the problem identified in Section Three. Gender bias in recruitment, selection and distribution of employment benefits is in itself a market failure. It interferes with the capacity of the market to select personnel based on merit, which stunts strong productivity outcomes. The bias itself needs to be eliminated before the market can function effectively.

It is useful to consider the differences which have resulted in employment outcomes for women between the public and private sectors in Australia, in order to observe the impact that mandatory equal employment provisions have been able to achieve. The APS has provided paid maternity leave since 1973 and has progressively introduced a range of flexible working conditions to help all employees balance paid work and life responsibilities.

While women's representation, promotion and pay still lag behind those of men in the public sector, the net result of these provisions has been better representation and outcomes of women in the APS than in the private sector which does not offer these provisions, for example.

- In 2008, women comprised 33 per cent of the total membership of Australian Government boards and bodies¹⁷⁰ compared to 8.3 per cent of board directorships in ASX 200 companies.¹⁷¹ Women in the APS also held 22 per cent of Chair or Deputy Chair positions.¹⁷²

- Women's representation at all levels of the senior executive staff (SES) sat at 37 percent overall,¹⁷³ compared to the 10.7 per cent of women who held executive manager positions in the ASX200 companies.¹⁷⁴

These results suggest that mandating equal employment practice counteracts market failures and yields results in terms of more equitable workplaces.

Additionally, the nature of employment inequity, and the organisations it affects create particular challenges for self-regulation. The 2000 Treasury Report, cited above, defined the following success factors for self-regulatory industry schemes:

- presence of a viable industry association,
- adequate coverage of the industry by the industry association,
- cohesive industry with like minded/motivated participants committed to achieving the goals,
- voluntary participation - effective sanctions and incentives can be applied, with low scope for the benefits being shared with non-participants, and
- cost advantages from tailor-made solutions and less formal mechanisms such as access to quick complaints handling and redress mechanisms.¹⁷⁵

The size and breadth of this issue and its applicability to all workplaces makes its regulation a large and daunting undertaking for voluntary industry bodies, particularly as they may have little existing expertise to devise effective strategies.

The most likely result is that reporting and planning would be managed by existing industry bodies, for whom it may be one of many competing priorities, and which may not have strong links with other industry bodies undertaking similar functions with whom to identify common trends and share information and ideas.

Even if self-regulation were to be accompanied by ongoing advice, support and education from a government-funded body, the de-coupling of reporting and intervention would limit responsiveness to organisational issues and requirements.

Given these considerations, factors which may impede the effectiveness of a self-regulating regime include:

- increasing the burden on individual industry or sector councils,
- fractured responses from diverse industry bodies, in terms of outcomes measured, strategies implemented and results achieved, and
- difficulty drawing out comparable disaggregated data to guide national action on the issue.

Segal contends a key requirement for self-regulation to be effective is that it must have vigorous and active accountability mechanisms. She suggests that the old-style model for self-regulation of "set and forget" is not viable going forward. Without accountability, the risk is not just that self-regulation will be ineffective, but that it may be harmful as industry and regulators devote resources elsewhere on the assumption that self-regulation is working.¹⁷⁶ It is difficult to envisage an equal employment self-regulation regime, operating across the breadth of eligible organisations, which could carry sufficiently robust accountability for all.

A strong critique of the current regime which emerged through consultation is that it has failed to achieve traction because it merely reports processes, rather than measuring and requiring change against outcomes. Participants overwhelmingly recommended a move to outcomes-based reporting that requires real change to be against outcomes as the most effective way to:

- accurately assess the current scale of the problem,
- measure whether strategies are having an impact in reducing it, and
- demand change.

A move to a voluntary regime would make rigorous outcomes-based reporting more difficult, as neither reporting nor progress could be compelled.

A very concerning potential outcome of such a regime is that those organisations where the women with the least market power are clustered tend to be those with the least organisational resources.

Such organisations may, therefore, be those least likely to report under a voluntary regime: a negative impact for those organisations and the women they employ.

Finally, it is significant that only one per cent of submissions during consultation suggested that enforcement was currently too strong, so it appears that interested parties do not believe that removing sanctions for non-reporting would lead to more effective employment equity outcomes.

Impact on business

The only way a voluntary regime would result in lower time costs to organisations would be if it covered substantially fewer areas, or if organisations chose to disregard the invitation to participate. However, reporting organisations themselves indicate that the programs which result from the EOWA regime yield benefits to business in other ways, including a significant impact on the bottom line. This assertion is supported by the research discussed at Section Three, which demonstrated the fiscal pay-off for organisations taking pursuit of equal employment opportunity seriously.

The development of voluntary codes, their monitoring, management and tracking would require considerable input from individual sectors and industries, and it may be difficult to ensure a consistent approach between these areas.

A self-regulation model may or may not include a government-funded support agency. However, even if it did, it is probable that the de-coupling of reporting and monitoring from intervention would constrain the effectiveness of that agency, and organisations would receive less timely advice. Given that the educative functions of EOWA were those most highly regarded during consultation, any approach which lessened their impact would be a negative impact from the point of view of business.

Only eight per cent of submissions suggested a non-regulatory approach, suggesting that it is not the mandatory nature of reporting which is seen as problematic, but the format of reporting. Some participants expressed concerns related to the time cost of reporting, the format of reports, the utility of content and the requirement to prepare paper reports.

Such concerns could be addressed without removing the legislative requirement for certain organisations to report, given the unknown impact this may have on reporting levels.

Compliance with international obligations and standards

Australia's international obligations require it to take active steps to achieve equality of employment opportunity. These obligations tend to have been interpreted by like nations and international institutions as requiring some national gender equality mechanisms. National gender equality mechanisms can include mechanisms within government such as specific ministries and gender units as well as statutory bodies and commissions, and civil society mechanisms such as advisory and consultative bodies or non government organisations.

The CEDAW Committee and international policy making bodies including the United Nations Commission on the Status of Women have detailed the obligation to maintain effective and adequately resourced national gender mechanisms as a crucial part of fulfilling international human rights obligations to women.¹⁷⁷

Light and responsive regulation

Light-handed approaches can involve incentives to encourage companies to pursue equal opportunity. This type of regulation takes many forms with the most common involving taxes, user charges or subsidies. Advantages include the creation of economic pressures to instigate behaviour change. This approach is often considered to be non-regulatory, however, it does require a different or more generic form of regulation that is usually applied through taxation law.

A middle ground option to achieve the correct regulatory balance between capacity building and sanctions is that of responsive regulation.

Responsive regulation seeks to replace either punitive or permissive regimes with a responsive and escalating pyramid of interventions, appropriate to the circumstances and responses of the person or entity being regulated. The bottom level of the pyramid would be made up of soft corrective tools, such as advice and warnings. These are used most frequently and are most effective if the agency is also able to deploy punitive sanctions such as penalties, licensing suspensions, or government contracting exclusions.

International examples

Although the United States has a range of regulatory initiatives ranging from light-handed to prescriptive regulation, the United States Equal Employment Opportunity Commission is similar to Australia's EOWA, albeit with significantly more powerful remedies and enforcement actions.

The United States' recent economic participation and opportunity ranking in the 2009 Global Gender Gap Report indicates that there are still barriers to women's equal participation in the workforce. The United States' ranking has dropped over the past four years, from third in 2006, to 14th in 2007, to 12th in 2008, and to 17th in 2009.¹⁷⁸

Progress in closing the gender pay gap has slowed considerably since 1990, as whilst the gender earnings ratio for annual earnings increased by 11.4 percentage points from 1980 to 1990, it grew by only 5.5 percentage points over the next 18 years. There is still a significant and persistent gender wage gap in the United States hovering at 22.9 per cent in 2008.¹⁷⁹

Economic conditions also appear to have affected women's status in the workplace, with women's annual earnings falling two per cent from 2007 to 2008, compared with men's, which fell just one per cent.¹⁸⁰

The United Kingdom's regulatory approach to equal employment opportunity also combines aspects of light-handed and prescriptive regulation. However, it recently revised its legislative regime, because it projected that without further action, its gender pay gap would not be closed until 2085.¹⁸¹

The United Kingdom is currently ranked 35th on the economic participation and opportunity ranking in the 2009 Global Gender Gap Report.¹⁸² On average, women earn 22.6 per cent less per hour than men¹⁸³, and only 12.2 per cent of directors on FTSE 100 boards are female. There has been a decline in the number of FTSE 100 companies with female executive directors from 16 to 15, and a decline in the number of FTSE 100 boards with multiple women directors, from 39 to 37 between 2008 and 2009. Additionally, there has been a decline in the overall number of companies with women on FTSE 100 boards, with one in four companies having exclusively male boards.¹⁸⁴

The United Kingdom's Equality Bill 2009 sets a framework for a light-handed approach to regulation, but includes provisions to enable regulations to be made if it is found that the light-handed approach is not being effectively utilised or complied with. This arrangement demonstrates a responsive approach to regulation as it enables employers to demonstrate their willingness to voluntarily comply whilst being clear about the possible consequences of non-compliance.¹⁸⁵

Australia's current EOWW Act provisions are similar to those under the United Kingdom's existing *Equality Act 2006*. The Equality Act requires that public sector bodies publish a gender equality scheme demonstrating how they will fulfil the Gender Equality Duty (similar to the requirement under the EOWW Act that reporting organisations develop a workplace program and report annually to EOWA). However, United Kingdom's model has a more developed and elaborate mechanism for ensuring compliance and accountability.

Prescriptive regulation

The prescriptive approach to regulation is based on detailed controls on behaviour of organisations, and supported by civil or penal sanctions for non-compliance.

This approach is generally considered appropriate where the rules address issues of high risk or significance (including public health and safety), government requires the certainty of higher levels of compliance, universal application is required, there is a history of systemic non-compliance with industry-led or softer regulatory approaches, and existing industry bodies do not have comprehensive coverage or are not committed to the need to change behaviour.

One critique of prescriptive or 'command and control' regulation is that there are limits to the effectiveness of legal regulation because of alternative and competing behavioural norms beyond the law, such as formal systems of self-regulation and informal social norms.¹⁸⁶ The more detailed and prescriptive the attempts at regulation are, the more difficult the compliance task is for organisations and the less successful they tend to be in achieving the desired goal.¹⁸⁷

International examples

The use of a more interventionist approach to equal employment opportunity regulation has seen some success in Norway, which has achieved positive outcomes for women across some indicators.

The Norwegian approach to equal opportunity for women in the workplace is similar to the Australian approach, but with more demanding duties on employers. Relevant organisations have both positive duties and quotas imposed in order to support equal opportunity. The Equality and Anti-Discrimination Tribunal has powers to remedy a discrimination issue and to order coercive fines in certain circumstances.

In 2009, Norway had the third narrowest gender gap in the world according to the overall ranking in the World Economic Forum's *Global Gender Gap Report 2008* (falling from first place in 2008).

The introduction of quotas in Norway has had a significant impact on the number of women on both public and private boards, with an increase from 22 per cent in 2004 to 44.2 per cent in 2008. This followed from a phased approach to board membership, beginning with public sector entities and moving to private sector companies and which, between 2004 and 2008, required that at least 40 per cent of board seats of state-owned and public limited companies in the private sector have to be filled by women and at least 40 per cent have to be filled by men.

Although Norway's prescriptive approach to regulation was initially criticised, the Confederation of Norwegian Enterprise is no longer campaigning against the law, but instead wants to amend the penalty regime to focus on fines rather than dissolution of non-compliant boards.¹⁸⁸ It is apparent that Norway's strengthened enforcement and investigative powers are positively associated with its progress towards equal employment opportunity.

Option Three - Smarter regulation with increased enforcement powers

This option is founded upon the core elements identified in Option Two, but with increased enforcement powers built in to the statutory regime. This option responds to the views expressed in consultation that the agency lacks adequate powers to undertake its role effectively.

It relies on establishing a much closer relationship with the new workplace relations regime, especially the Office of the Fair Work Ombudsman. It assumes that compliance audits would be undertaken by officers of that organisation, and that the EOWW Act would be amended to enable this.

Ability to institute enforcement action

As a response to concerns that the Agency has no power to compel organisations to undertake certain activities, this option would effect legislative change to confer appropriate powers on the Agency or the Fair Work Ombudsman (FWO) to enable workplace inspectors to visit non-compliant workplaces, issue compliance notices and enforce compliance using the sanctions inherent in the workplace relations regime.

The activities which would trigger such action would include:

- failing to submit an annual self-audit,

- failing to produce documents or cooperate with an audit,
- failing to meet industry standards,
- failing to take action to remedy lack of progress over time

Increased grounds for finding an organisation non-compliant

In addition to the grounds cited above, this option would see organisations able to be issued with a certificate of non-compliance once the Agency or the FWO officers have established:

- failure to submit an annual self-audit,
- failure to produce documents or cooperate with an audit,
- failure to meet industry standards,
- failure to take action to remedy lack of progress over time
- wilfully misrepresenting their situation on their annual report to the Agency or in follow-up audits,
- failure to cooperate with audits, including through failure to answer questions and supply required documents, and
- failure to supply reports and compliance/non-compliance certificates to employees and unions, and publish to web site.

Jurisdiction to award penalties

Consultation identified the current sanctions regime as inadequate. Option Two seeks to address this by enabling more eligible organisations to be identified and followed up for reporting, and bringing other organisations into the reporting regime where there are concerns about their practice. It also details more grounds for finding organisations non-compliant, with the attendant sanctions of naming in Parliament and restricting access to grants and procurement processes.

Option Three would see EOWA also able to take action through relevant courts and tribunals to seek an award of penalties. It would be achieved by having the new Act declared a workplace law for the purposes of the Fair Work Act, which would enable access to the workplace relations sanctions regime.

There are various stages in a current FWO investigation and depending on what the inspector finds the investigation may not proceed to the latter stages. In the initial stage, assisted voluntary resolution (AVR), the inspector may not find that there has been a breach of Commonwealth workplace legislation and both parties will work to resolve the complaint. The second stage, full investigation and compliance, is entered into if the complaint cannot be resolved by an AVR. This stage often involves formal mediation. If the Inspector determines that there has been a contravention of Commonwealth workplace legislation, a compliance notice may be issued that identifies how the contravention can be fixed. If it is voluntarily fixed by the organisation, then the investigation ceases. Alternatively, if the contravention is not voluntarily fixed the investigation proceeds to the enforcement stage. This stage may involve litigation or other enforceable orders.

Option Four - Smarter regulation with quotas

This option builds on the regulatory option detailed in Option Two, but replaces industry benchmarks with mandatory quotas requiring certain proportions of women to be represented at all levels within organisations, within three and five year timeframes. It introduces quotas for women in defined levels and classifications in all eligible organisations.

The setting of quotas was recommended by nine per cent of the submissions received. A roundtable in Sydney proposed that at least 40 per cent of female employees should be represented across all levels and classifications of organisations.

The quotas would be based on realistic goals established through a cooperative process between government, industry, unions, employer and employee groups. They would be tailored by industry or sector, and include progress targets to be reported against pending achievement of the mandatory quota.

In addition to other matters to be reported against on the self-report, organisations would be required to detail annual progress toward the quotas, and provide explanatory statements where they are not meeting progress targets. Organisations providing such statements would receive extra support from EOWA.

Organisations which do not meet quotas at the conclusion of the three year period would be assessed as non-compliant, and subject to the same sanctions highlighted under Option Two. However, a legislative power to extended quota time frames would be included. This power would only be exercised where compelling reasons are provided, along with detailed action plans. The circumstances constituting 'compelling reasons' and the format and criteria for the action plans will be closely prescribed by the legislation. No more than one extension will be permitted before an organisation is deemed non-compliant.

The legislation would also include a process for re-convening quota committees to review quotas under certain exceptional circumstances, for example, an industry-wide crisis. Again, the circumstances under which such a process would be permitted would be closely prescribed by legislation.

Impact analysis of Options Three and Four***Impact on risk***

The issue to be considered in projecting the likely impact of both Option Three and Option Four is whether more stringent requirements, increased powers and heightened sanctions would be more effective in producing better outcomes than a strict requirement to report, coupled with broad sanctions.

It is probable that the capacity to drive compliance through compliance notices and application of workplace relations sanctions would improve rates of compliance. Facing such compulsion, organisations would report, and they would be required to demonstrate positive change. In particular, it is highly probable that both Options Three and Four are more likely to yield better results from organisations which would otherwise be more likely to be non-compliant.

However, in considering these potential benefits, it is also important to recognise that reporting is an important element of change but that a second limb, and the one most highly valued and recognised by those impacted by the system, is the educative and change function. This effectiveness of the latter role is heavily influenced by the relationship between organisations and the agency.

In lieu of specific and targeted sanctions, Option Two utilises a responsive approach to regulatory enforcement, and would rely on work with organisations to change practice, and the market power of tools such as corporate reputation indexes, to alter patterns of behaviour.

While increased penalties and the introduction of quotas may ensure faster progress, they may also generate a degree of opposition from business, employer and industry groups and concerns about the cultural impacts. Any movement to quotas, for example, may be more compelling, and more likely to generate acceptance and commitment, if it is initiated following a period of trying voluntary targets, and in response to a clear failure of those targets.

Impact on social inclusion and community wellbeing

It is highly likely that the benefits of Options Three and Four would be most likely to be felt by women from disadvantaged groups, and those in employment arrangements which are not well served by existing anti-discrimination and employment machinery.

While Options Three and Four may produce a more immediately effective impact on women's workplace equality, they may also produce negative cultural backlash which, at least in the short term, erodes cooperative community efforts.

Impact on economy, including labour market

These Options are more likely to drive progress faster and therefore yield economic benefits more quickly.

Impact on business

The costs of this regime to non-compliant organisations would be greater than either Option One or Two, although they would be comparable for compliant organisations.

For organisations which have made great efforts to make progress against benchmarks and failed, a process to consider and manage that shortfall is included to ensure they are not disadvantaged.

However, perhaps the greatest impact of this option would be to the relationship between the Agency and reporting organisations, which would move under these options from one of support and advice to a more adversarial model, less conducive to influence. This may affect the willingness of organisations to accept information and training from the Agency, and to utilise tools developed by the Agency. Such isolation would increase the costs to organisations of developing equal employment programs, as they would be doing so without expert support and advice.

Compliance with international obligations and standards

While Australia is obliged to take action to eliminate discrimination between men and women in the workplace, one concern about the introduction of quotas is that such action may constitute discrimination against men.

However, international law contemplates and sanctions the use of temporary special measures to accelerate equality between men and women and does not define them as discrimination at international law. Article 4 of CEDAW provides:

1. *Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.*
2. *Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.*¹⁸⁹

Australia's Sex Discrimination Act has a similar provision, using a similar definition.¹⁹⁰

*According to the CEDAW Committee, the purpose of art 4(1) is to accelerate the improvement of the position of women to achieve their de facto or substantive equality with men, and to effect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women.*¹⁹¹

The CEDAW Committee also provides a rejoinder to those who argue that quotas interfere with application of the merit principle:

*as temporary special measures aim at accelerating achievement of de facto or substantive equality, questions of qualification and merit, in particular in the area of employment in the public and private sectors, need to be reviewed carefully for gender bias as they are normatively and culturally determined.*¹⁹²

¹⁶³ Simon Deakin & Colm McLaughlin, (2007), *The Regulation of women's pay: From individual Rights to Reflexive Law?* Working Paper No 350, Centre for Business Research, University of Cambridge.

¹⁶⁴ New Zealand Human Rights Commission (2004) *Framework for the Future: Equal opportunities in New Zealand*.

¹⁶⁵ Prue Hyman (2008) "Pay Equity and Equal Employment Opportunity in New Zealand : Developments 2006/2008 and Evaluation" *New Zealand Journal of Employment Relations* 33(3) pp1-15

¹⁶⁶ Statistics New Zealand (2005) *Focusing on Women*

¹⁶⁷ Ibid

¹⁶⁸ Strachan, Glenda, John Burgess and Lindy Henderson 2007. 'Equal Employment Opportunity Legislation and Policies: the Australian Experience', *Equal Opportunities International*, vol. 26, no. 6, pp. 525-540.

¹⁶⁹ Department of Treasury, *Industry Self-Regulation in Consumer Markets, Report prepared by the Taskforce on Industry Self-regulation*, Canberra, August 2000.

¹⁷⁰ Australian Government Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Women in Australia, 2009*. At <http://www.fahcsia.gov.au/sa/women/pubs/general/womeninaustralia/2009/Pages/chapter4.aspx#2a> (viewed 28 January, 2010)

¹⁷¹ Equal Opportunity for Women in the Workplace Agency, *2008 EOWA Australian Census of Women in Leadership* (2008), At http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census.asp (28 January 2010)

¹⁷² Australian Government Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Women in Australia, 2009*. At <http://www.fahcsia.gov.au/sa/women/pubs/general/womeninaustralia/2009/Pages/chapter4.aspx#2a> (viewed 28 January, 2010)

¹⁷³ Australian Public Service Commission, *Australian Public Service Statistical Bulletin-The State of the Service Report 2008-09*(2009), Canberra, At <http://www.apsc.gov.au/stateoftheservice/index.html> (viewed 10 Dec 2009)

¹⁷⁴ Equal Opportunity for Women in the Workplace Agency, *2008 EOWA Australian Census of Women in Leadership* (2008). At http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census.asp (viewed 28 January, 2010).

¹⁷⁵ Department of Treasury, *Industry Self-Regulation in Consumer Markets, Report prepared by the Taskforce on Industry Self-regulation*, Canberra, August 2000.

¹⁷⁶ Institutional self-regulation: what should be the role of the regulator? *An address by Jillian Segal, Deputy Chair of the Australian Securities and Investments Commission, to the National Institute for Governance Twilight Seminar, Canberra 8 November 2001.*

¹⁷⁷ See CEDAW Committee, General Comment No. 6: Effective National Machinery and Publicity (1988). At www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recomm6; Beijing Declaration and Platform for Action (1995), Fourth World Conference on Women, 1995, A/Conf.117/20 and A/Conf.117/20/add.1.

¹⁷⁸ World Economic Forum, Global Gender Gap Index website at <http://www.weforum.org/en/Communities/Women%20Leaders%20and%20Gender%20Parity/GenderGapNetwork/index.htm> (viewed 16 February, 2010)

¹⁷⁹ Institute For Women's Policy Research, *The Gender Wage Gap: 2008* at <http://www.iwpr.org/index.cfm> (viewed 16 February, 2010)

¹⁸⁰ Ibid

¹⁸¹ UK Government Equalities Office, *A Fairer Future: The Equality Bill and other action to make equality a reality* at http://www.equalities.gov.uk/equality_bill.aspx (viewed 16 February, 2010)

¹⁸² World Economic Forum, Global Gender Gap Index website at <http://www.weforum.org/en/Communities/Women%20Leaders%20and%20Gender%20Parity/GenderGapNetwork/index.htm> (viewed 17 February, 2010)

¹⁸³ UK Government Equalities Office, *A Fairer Future: The Equality Bill and other action to make equality a reality* at http://www.equalities.gov.uk/equality_bill.aspx (viewed 17 February, 2010)

¹⁸⁴ Dr. Ruth Sealy, Professor Susan Vinnicombe OBE and Elena Doldor, *Female FTSE Index and Report 2009*, at www.cranfieldknowledgeinterchange.com/kihtml/topic/.../0028/Report.pdf (viewed 17 February, 2010).

¹⁸⁵ UK Government Equalities Office, *A Fairer Future: The Equality Bill and other action to make equality a reality* at http://www.equalities.gov.uk/equality_bill.aspx (viewed 17 February, 2010)

¹⁸⁶ Simon Deakin & Colm McLaughlin, (2007), *The Regulation of women's pay: From individual Rights to Reflexive Law?* Working Paper No 350, Centre for Business Research, University of Cambridge.

¹⁸⁷ Ibid.

¹⁸⁸ New Zealand Human Rights Commission, *New Zealand Census of Women's Participation 2008.*

¹⁸⁹ Note that Article 5 of the *International Labour Organisation (ILO) Convention No 111* also provides that special measures to protect groups of workers for reasons such as sex shall not be considered discrimination.

¹⁹⁰ See s 7D(2) of the *Sex Discrimination Act 1984* (Cth) (SDA) which provides that a person does not discriminate against another person by taking special measures.

¹⁹¹ Report of the Committee on the Elimination of Discrimination against Women Committee (CEDAW Committee), UN GAOR 59th sess, Supp No 38, UN Doc A/59/30 (2004), [15].

¹⁹² *CEDAW Committee, General Recommendation No. 25 (2004), [27] in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc HRI/GEN/1/Rev.9 (Vol. II) (2008), CEDAW Committee, p 320.*

Business Cost Calculator report (variable ongoing cost)		
Option 1		
Option name	Status quo	
Option description	Current reporting format without new data management system.	
Businesses affected	13,327	
Timeframe (years)	1	
	Cost per business	Total cost for all businesses
Start up cost	\$0.00	\$0.00
Average ongoing compliance cost per year	\$1,218.82	\$16,243,180.00
Option 2		
Option name	Reform	
Option description	New data management system	
Businesses affected	13,327	
Timeframe (years)	1	
	Cost per business	Total cost for all businesses
Start up cost	\$0.00	\$0.00
Average ongoing compliance cost per year	\$432.00	\$5,757,264.00
Option 3		
Option name	Organisational Reviews	
Option description	A small number of organisations will be randomly audited each year	
Businesses affected	200	
Timeframe (years)	1	
	Cost per business	Total cost for all businesses
Start up cost	\$0.00	\$0.00
Average ongoing compliance cost per year	\$1,296.00	\$259,200.00

Note: An assessment of compliance costs in itself do not provide an answer to the most effective and efficient regulatory proposal. Rather, it provides information that needs to be considered alongside other factors when deciding between policy options.