

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

**NATIONAL PAY EQUITY COALITION
and**

WOMEN'S ELECTORAL LOBBY AUSTRALIA Inc

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Recommendations

1. *The Federal government should establish a major inquiry into skills, with a focus on those in use in expanding areas and in female-dominated occupations, as a contribution to better and more contemporary assessment of work value.*
2. *The Australian Bureau of Statistics and Fair Work Australia should contribute to the development of new and alternative models of good workplace practices based on flexibility and decent hours rather than rigid concepts of part and full time work as different employment categories. Related work should include the Productivity Commission examining barriers to flexibility in changing working hours, especially in relation to taxes and costs (such as workers' compensation).*

Objects and coverage of the EOWWA

3. *That the Act and the Agency be refocused on gender equality.*
4. *That the Agency should be provided under the Income Tax Assessment Act 1936 with an annual list of organisations whose corporate structure employs more than 100 people so assessments can be made as to which organisations are covered by the Act.*
5. *Organisations should continue to have the choice about reporting level. However the Agency should develop guidelines about the principles involved in making those decisions and about reporting on the basis on which the organisations have reached their decisions about reporting level.*
6. *That coverage under the EOWWA be extended to Commonwealth agencies with 100 or more employees.*
7. *Over the next five years, the Agency should produce a robust and workable plan with timeframes, milestones and resourcing estimates for achieving the recommended completed total coverage of the Act.*

Workplace programs, reporting and compliance Standards

8. *Reporting standards should be developed for each of the requirements of the Act, including preparing the workforce profile, developing a program, consulting with employees and unions, and evaluating programs.*

9. *The Act's requirement to take "all reasonably practicable measures" should be carefully defined in regulations under the Act, and indicators, requirements and techniques for investigation clearly specified in related guidance from the Agency.*

10. *The Agency should explore the development of an assurance system for reporting including reporting standards and specifications (including stakeholder perspectives), an accredited auditor training system, a requirement to use an independent auditor and a framework for legal requirements for use of the assurance system.*

11. *The Agency should identify and prioritise the development of codes, standards and guidance in conjunction with advisory bodies including employers and unions, and practitioners.*

Consultation

12. *Consultation with employees and unions should be a legally required part of program development at the workplace including a requirement that participants receive appropriate education and training to support their participation in program development, reporting and monitoring.*

Reporting

13. *More structured and explicit requirements should be set for reporting and should include a requirement to conduct and report on a pay equity analysis and report on progress in implementing necessary actions arising from the pay equity analysis.*

14. *Workforce profiles should be required to use standard classifications of industry and occupations.*

15. *The Agency should develop online reporting facilities.*

16. *The Agency should develop a rolling program of industry studies, beginning with industries with greater gender gaps.*

17. *Waiving should be discontinued.*

Pay equity

18. *Pay equity should be specifically identified as an employment matter and organisations should be required to undertake a pay equity review every three years and to report annually on action being taken in response to the findings of the review.*

19. *The pay equity review should be conducted using the Pay Equity tool or another methodology that can be shown to provide an adequate analysis of payroll data.*

20. *The pay equity requirements should include both the need to stop human resources and management practices that cause pay equity problems, and the need to take remedial action to make good the effects of those practices by those who have already been affected by them.*

21. *The Agency should provide specific guidance on what needs to be covered and reported in a pay equity review.*

22. *The Agency should contribute its information and analysis on pay equity to the Equal Remuneration Commissioner of the Equal Remuneration Division of Fair Work Australia, if they are established.*

23. *The Agency and FWA should develop some guidance for organisations on the gender implications of various approaches to establishing work value and setting remuneration.*

Performance auditing

24. *The Agency should conduct a program of performance auditing, carrying out an in-depth review of reports and performance of a small sample of organisations each year.*

25. *The OFWO should also contribute to performance auditing, by including EOWWA responsibilities in routine workplace audits, including whether if the organisation has more than 100 employee:*

- *it is covered by the Act*
- *it has registered with the Agency*
- *it has reported to the Agency, and (if adopted)*
- *met the new requirement to provide its report and the Agency's certificate of compliance or non-compliance to employees and unions.*

26. *The Director should be authorised to refer organisations named for non-compliance with the Act to the OFWO for issuing of compliance notices.*

27. *The OFWO should also be empowered to carry out checks of the information provided in reports if it receives a request from the Director providing reasons for the request.*

28. *Misrepresentation or failure to keep required records should attract the same sanctions as apply for other breaches of recordkeeping requirements under other workplace legislation.*

Compliance and non-compliance

29. The Act should specifically provide that its core sanction – naming organisations that do not meet the Act’s requirements – applies in a range of situations including:

- failure to register with the Agency*
- failing to provide a required report in the specified timeframe*
- failing to provide additional information sought by the Director, including failing to provide evidence of the veracity of information that has been provided, if required*
- failing to provide a report that meets the requirements set by the Agency from time to time as performance measures for meeting the objects and requirements of the Act (these may include meeting industry benchmarks, making progress over time, undertaking a pay equity audit and implementing remedial measures)*
- failing to meet the (new) requirement under the Act that employees and unions be provided with reports and the Agency’s certificates of compliance and non-compliance.*

Other measures to support compliance with the Act should include:

- named organisations are ineligible for government contracts or industry assistance*
- the sanctions provided in the FWA for misrepresentation and/or not meeting the requirements of the EOWWA, as workplace legislation.*

Contract compliance

30. Existing contract compliance requirements should be strengthened through requiring positive evidence of compliance in the form of a certification from the Agency that an organisation has complied with its reporting requirements and will cooperate with an audit of how it has met its obligations, if need be.

31. Organisations that are not within the coverage of the Act and wish to access government contracts or industry assistance should still be required to provide a workforce profile by gender and evidence of their gender equity policies and strategies and an agreement to cooperate with an audit if required.

32. Broader participation in the contract compliance program should be encouraged through the Council of Australian

Governments from State and Territory governments, and from local government.

33. Other organisations, especially those with the Employer of Choice certification, should also be encouraged to participate.

Role and activities of EOWA

34. The Agency should develop and support a Community of Practice (CoP) among human resources practitioners and other interested participants, including academics and union representatives.

35. Online education and training courses should be developed to build capacity among practitioners. The report form should include a requirement to state whether the staff undertaking the review and reporting process have undertaken the online course, and to state any other education undertaken.

36. The Agency should explore with tertiary institutions and human resources and management professional organisations how gender equity in employment can be addressed through existing and new courses. There may be value in joint approaches with the Sex Discrimination Commissioner.

37. Funding should be provided for the Agency and the Sex Discrimination Commissioner to offer culture change workshops to organisations that are failing to make progress on improving the position of women.

38. That the Agency review its program of awards and promotional activities, taking account of other organisations' awards and promotions, including research and analysis of how the various activities provide leverage for EEO improvements.

39. The criteria for the Employer of Choice certification should be reviewed, especially in relation to measures that rely on being better than the industry average where that is still less than the standard of gender equity.

40. Review of the certification should also include developing a validation process to secure the integrity of the certification.

Relationship with other legislation and institutions

41. Structurally, the Agency should remain a statutory body.

42. The EOWWA should be added to the list of workplace legislation in the FWA Act and relationships with both FWA and OFWO strengthened.

43. Periodic cooperative analysis, planning and reporting should be undertaken under the leadership of the Sex

Discrimination Commissioner, with requirements for cooperation of the various agencies whose work relates to gender equity.

44. Engagement of employers and unions, relevant professional bodies and women's organisations should be strongly pursued especially in relation to any necessary changes in the framework or the role(s) of particular participants.

45. An overall report on gender equity in employment should be provided to Government every two years.

46. The effectiveness of the arrangements for integrating and coordinating work across the various bodies should be reviewed in the light of the Government responses to the review of the Sex Discrimination Act, and the House of Representatives Pay Equity Inquiry, and subsequently in relation to completion of the award modernization process.

Measuring the success of the EOWWA and EOWA

47. That an AWIRS (with substantially better coverage of equal employment opportunity issues) be conducted every five years

48. That ABS conducts and publishes the Distribution and composition of employee hours and earnings each year.

49. That ABS develop and report regularly on an occupational segregation index.

50. It would be extremely useful for the Office for Women to run a project for these information sources to be drawn together and an analysis made of the gaps in the collections.

Executive summary

We have made significant progress in women's employment since the introduction of the Affirmative Action Act and the Affirmative Action Agency (the Agency).

Progress has varied over time and stalled in some areas. Some changes reflect women's improved levels of education and workforce experience. Others reflect changes in the regulatory environment – discrimination law, employment relations law, parental leave provisions, flexible work arrangements and so on.

There are three important constraints on further progress:

- the lack of resources in the Agency to implement the level and scope of workplace change needed;
- our poor understanding of gender issues and how we address them at work; and
- the inadequate mandates and sanctions in the Act.

The Agency does not have the resources to meet the objects of the Act or service the number of registered organisations.

The Act and the Agency have made significant progress with "light touch" regulation. We now need a wider range of mandates and sanctions. The Government should show its leadership by extending coverage of the Act to its own employees and by using its purchasing and funding to support EEO.

The objects of the Act are broadly right but it is time to re-frame them. Gender equality needs to be understood in terms of dynamic and interactive gender relations between women and men within and outside the workplace.

The coverage of the Act is suitable for the existing resourcing/ funding? of the Agency but should be consolidated. The main priority is to ensure that all organisations that should be registered are registered. This could be done by providing the Agency with tax records and by using the naming sanction on those who do not register. We need a longer-term plan to improve EEO in organisations below the current threshold, including any recommended extensions in coverage.

We need to raise the standards for reporting and performance. There should be greater structure and clarity about what is required. Pay equity should be specified as an employment matter and organisations should undertake pay equity reviews and implementation plans.

We need to strengthen the requirements about consultation and education and training, and provide information for employees and unions. We need measures to provide better quality assurance about information provided in reports.

The EOWWA should link to Fair Work Australia and the Fair Work Ombudsman. By including the EOWWA as workplace legislation under the FWA, it can draw on the same investigative powers and resources that apply to other employment legislation.

The EOWWA has achieved a great deal with very limited resources and mandates. But we need greater accountability and transparency, especially about the exercise of the Director's discretions. The Agency will need to reorient resources to give feedback to poorer performers and conduct in-depth audits of a small sample of reports.

The Agency needs to use technologies that improve efficiency. These include online reporting, education and training, communities of practice, automated report analysis, and use of remote communication technologies to consult with employers, unions, and practitioners.

Australia should produce a coherent system for improving gender equity at work across the various organisations with a part to play. There is an unprecedented chance to do this because of current inquiries and changing legislative and institutional arrangements. We need to consider relationships within the current processes, and develop ways of integrating and coordinating activities, including sharing knowledge and reporting to Government.

We need further improvements in data collection and analysis, so that we can track the contribution of the changes underway to improving gender equity and we can report to and advise Government on progress achieved and needed. Most importantly, we need much better information at workplace level, where most decisions affecting women's experiences and outcomes are made.

The value and impact of equal employment opportunity for women

There is an extensive body of evidence that closing the gender equality gaps would improve productivity and gross domestic product while improving the lifelong economic circumstances of women and their families. Appendix 4 of the NPEC/WEL Submission to the House of Representatives Pay Equity Inquiry sets out a range of research reports on these issues. A copy is forwarded with this submission and the two are closely interrelated and should be read together. While this submission focuses mainly on the EOWWA, it also looks back to the preceding legislation, since many of the issues have been the same throughout the history of proactive EEO legislation in Australia.

This submission is based on recognising that equal employment opportunity can improve economic efficiency and welfare for women, the organisations employing women and the economy. The state also has interests in maximising economic development across organisations and sectors of the economy, improving women's lifelong and intergenerational economic independence, and minimising the labour market failures that occur when gender affects employment and labour is not attracted and retained in its most productive location and circumstances. The performance of the labour market in generating a sufficient supply of skilled labour in the caring workforce to meet the needs of Australia's aging population will be critically affected by gender equity, including pay equity. The workforce in many professions now comprises a soon-to-retire male cohort and an increasing proportion of young women – unless working conditions and arrangements become more appropriate for women, there will be labour and skills shortages.

Alongside the economic benefits of equal employment opportunity, there are also critically important human rights at stake. A range of international conventions and Australian laws recognize that people should not be discriminated against on the basis of sex, marital status, family responsibilities, or pregnancy, among other grounds.

While there have been significant improvements in women's levels of education over the last three decades, there has been less improvement in the gender pay gap, and in occupational segregation by job type and job level. There have been some improvements in the fit between paid and unpaid work, including increased access to part-time and casual work, flexible working arrangements, increased

childcare provision, and improved maternity leave. However, many of these measures are still associated with disadvantages for women in employment including in relation to pay and progression and access to the full range of jobs.

There is also a significant literature on the benefits to organisations of equal employment opportunity – the business case. Some research suggests that not all EEO measures benefit each and every organisation. For example, one employer may reap the benefits of another employer's investment in improved training and development. Matching remuneration more fairly and equitably to job value may result in higher costs for the same labour input. While the outcome is a more efficient labour market, particular employers may not regard it as a benefit to them. Many employers would find it difficult to assess the costs and benefits of their gender equity initiatives, because the required data are not collected or analysed, or because the outcomes are affected by other contexts and initiatives. Many human resources and management decisions are not made on the basis of cost/benefit analysis or a quantified business case and are based on a broad sense of what will improve the functioning of the organisation.

Of course, the legitimacy of the equal employment opportunity policies and legislation does not rest on the economic benefits to particular organisations or to the economy more generally.

The discussion paper summarised similar provisions in other comparable countries and these indicate that the legislation and monitoring often includes a wider group of target populations than the EOWWA. This is also the case in Australia in other areas where legislative requirements cover discrimination on a range of grounds. Equity structures in the public service and the private sector often cover a range of identified "out groups". EOWWA specifically covers the area of women and employment. The arguments for this are obviously both the size of the target group (potentially over half the population), and the size and complexity of employment issues. The demands that managing this makes on the Agency's current staff and budget suggest that the resources are already inadequate. The Review question suggests that current structure is in question and the existence of parallel or complementary responsibilities in new structures such as Fair Work Australia raises issues of roles and relationships.

The need for a dedicated structure for delivering what was first tagged affirmative action and now equal opportunity, was obvious in the

earlier days of changing roles of women in paid work. There were major problems of structural and systemic barriers built into workplaces that needed urgent attention. The last 30 years have seen serious changes in these aspects of workplaces structures and practices but these changes have not created the de-gendered workplaces women's organisations hoped would be the norm. There are still serious gender differences in pay, in gender segregated jobs, in promotion, in senior positions - in almost all areas of paid work rewards and power. While progress has been made over the past three decades, it seems now to have stalled and ground is being lost in some areas.

These results suggest that the problem is much bigger than one agency can change, even with the contribution of the Sex Discrimination Commissioner and new provisions in the Fair Work legislation. There are new challenges being offered by changing work places and jobs, and very different requirements than the model of work organisation inherited from the Harvester decision. The 1980s model in part assumed that the basic assumptions could be changed by increasing the proportion of women in decision making jobs, and that technology would probably reduce hours and therefore create more options for work/life balance for everyone.

This set of assumptions was flawed and a broader agenda needs to be considered, including the very different 24/7 workplace model, increased technologies that reduce the necessity of some workers to be present in the workplace, and different workplace structures that have increased work intensity and virtually obliterated some forms of less skilled work. Manufacturing is considerably reduced, service industries have increased. Governments have reduced their service delivery, and contract out many services, the not-for-profit sector has increased its activities but is often tied to limited funding, and women are still massively over-represented in undervalued service jobs. Men have lost many of their unskilled jobs but have gained in areas like mining and developing high technology areas.

Despite these changes, or maybe because of them, work has become more intensive and productivity is often equated with long hours worked. Productivity is not increasing in Australia at similar levels to other developed countries; women who are often better educated, are comparatively low on the participation scales and workplace models still value singular commitment to the paid work role as evidence for hiring and promotion. In a similarly outdated set of assumptions, the ways that skills are valued still sometimes are based on competency

models that were devised in the early nineties and incorporate sexist assessments, and often fail to look at new job demands and include the so-called 'soft' skills needed in the expanding service sectors. The NZ Department of Labour developed *Spotlight: A Skills Recognition Tool* to improve recognition and description and evaluation of the types of skills most often overlooked and/undervalued in women's occupations – the skills of weaving streams of work together across jobs, and the skills involved in emotional labour.

Major workplace cultural change is needed

Current workplace cultural assumptions and valuing of both workers and skills are seriously flawed. Australian bosses are neither assessing their workers fairly nor recruiting the best people for the jobs. By making an unnecessary and often rigid distinction between full-time and part-time workers, many good employees are excluded from appropriate jobs. By confusing long working hours with value and productivity, many managers encourage inefficient use of time and skills.

It seems that the scope and scale of workplace cultural change needed for women to have equal employment opportunities was greater than had been expected. Entry of women into senior ranks was slow, and depended more on fitting women in than changing the cultures per se.

It is unclear whether senior management has any wider appreciation of diversity of opinions cultures and experiences than it did a quarter of a century ago. In the absence of that, EEO may offer access to jobs, particularly more senior ones, primarily based on how well the 'outsiders' fit in, while many senior women in management act very much the way men would. The older corporate cultures of white Anglo masculinity can often still ensure appropriate socialisation and assimilation has taken place. The dominant values have been adopted by many of the women who move into senior ranks, so the project of broadening the advice, experiences, and values of the organisations has not occurred.

Equity grounds support the proposition that women have equal rights to occupy the senior ranks and enjoy the privileges these offer. However, feminism is also about changing the way things work to ensure that women's viewpoints and needs are included in any decisions, making organisations better and policies and processes fairer.

There may be value in reconstructing EEO debates as an essential constituent of the modes of practice of ethical organisations. EEO practitioners could explore ways in which an ethical organisation, validated by a social and ethical audit, would incorporate EEO for women. This would involve recognising that diversity of people and views, as well as capacity for debate, are the core of capacity building and resilience in socially sustainable institutions such as corporations, public services, and not-for-profit groups.

The common strands in assessing the ethical possibilities also relate to equal opportunity cultures. Factors such as fairness, transparency and accountability are part of ensuring that those affected by the organisation in employment, products, services or whatever are not harassed or discriminated against.

There are legal frameworks, complaints systems, and formal training programs but these have been insufficient in changing organisational cultures. For example, the assumptions about appropriate female behaviour, real acceptance of lives and responsibilities outside the workplace, or other aspects of gendered private/public differences still remain unchanged in many places.

The requirements for equal opportunity have much in common with those for ethical organisations. The ethos of organisations is a current part of debates in the community, public and business sectors. The main focus so far has been on what an organisation does in terms of its products and/or services but there is increasing interest in social and ethical auditing of its core operations. There need to be measures of internal cultures, such as people's expectations of fairness, levels of trust, openness to new ideas, and capacities to deal with conflict, diversity, changes, and problem solving. These are also the characteristics of good equal opportunity practitioner organisations. The relationships and processes among people, within and across groups give the best ways of assessing the cultural quality of formal organisations and offer opportunities to put EEO into a wider perspective.

Equal opportunity needs to move past formal processes, setting standards for recruitment, promotion and other definably rule driven processes. The main resourcing in many EEO programs used to be directed at meeting the formal statutory requirements rather than looking at how to achieve real organisational culture changes. This was assumed to follow training and changing numbers of women in senior

ranks. The current static situation suggests the need for a specific emphasis on cultural changes.

Two highly significant areas of workplace cultural change, how skills are understood, and how working time is organised, need to be addressed.

Recommendations

The Federal Government should establish a major inquiry into skills, with a focus on those in use in expanding areas and in female-dominated occupations, as a contribution to better and more contemporary assessment of work value.

The Australian Bureau of Statistics and Fair Work Australia should contribute to the development of new and alternative models of good workplace practices based on flexibility and decent hours rather than rigid concepts of part and full time work as different employment categories. Related work should include the Productivity Commission examining barriers to flexibility in changing working hours, especially in relation to taxes and costs (such as workers' compensation).

The underlying logic of the EOWWA

This review of the Act and the Agency provides an opportunity to examine how the Act has worked throughout its history. An important area to consider is whether the model of organisational change embedded in the original Act and modified subsequently is still relevant to the ways organisations now approach areas of organisational change they regard as highly significant. This requires consideration of current change management and organisation development practice in leading organisations, and analysis of developments in professional and academic theory. The eight step process in the original Act reflected a then prevalent view of change management and was left unchanged following the 1992 Review.

Following the 1998 Review the requirements became to confer responsibility on a person with sufficient status in the organisation and to consult employees or their representatives in developing a program. The program preparation has to involve a workforce profile and review of EEO issues in relation to the employment matters set out in s.3(1). It also has to provide for actions addressing identified issues and evaluation of the effectiveness of actions taken. This framework kept most elements of the eight step process, with some weakening of the specific requirement to consult with unions. The changes were

intended to bring a more strategic and less procedural approach. The public reports often do not document how these requirements have been met although the report requires information on program plan preparation, the program itself, a post-program evaluation and actions planned for the following year(s).

There should also be consideration of the effectiveness of the sanction of naming non-compliant organisations in motivating significant organisational change, and of the logic underlying that approach to sanctions. A small number of organisations repeatedly named for non-compliance clearly do not regard the sanction as powerful. The sanction relies on the view that being named by a government agency as having not met legal requirements and as not demonstrating being a good employer in relation to women would motivate consumers to boycott products and services, motivate shareholders and directors to raise the issues and seek improvements, motivate unions to investigate and pursue the issues, and damage the organisation's reputation in the community.

The naming process has often provided the Agency with opportunity to engage with organisations that were on their way to being named as non-compliant and to raise public awareness of gender equity issues through the media. Little is known about how the sanction has worked (although early in the Act's history there were some cases of consumer demonstrations and boycotts of non-complying organisations). It may be that the naming sanction is sufficient to secure compliance with a requirement to report (which is often met superficially), while in some organisations, it is not sufficient to secure worthwhile programs that would make progress on the Act's objectives. Experience to date is that it is unlikely significant progress will be made without much more substantial and integrated programs, remedial actions to make good identified problems (and not simply measures to prevent them occurring in future), and affirmative action measures to take positive steps towards more rapid change.

Another aspect of the EOWWA's "light touch" regulatory approach may have been the idea that as organisations came on stream with programs and reports under the Act, the benefits would be obvious and demonstrable. The business case for EEO may be less compelling for many employers than had been anticipated, and the challenges of change more demanding. Modern regulatory theory emphasises the importance of the regulatory pyramid, with enforcement measures applying to a small number of organisations at the top of the pyramid and most focus on enabling and supporting improved understanding

and practice. With the EOWWA, the pyramid is so truncated that the incentives for improved understanding and practice are severely undermined. The measures proposed in this submission to strengthen verification, penalise non-compliance, and provide additional incentives for compliance can be expected to enhance the effectiveness of the non-compliance oriented activities supporting the Act.

There have been reviews of the Act in 1992 and 1998 and it is important to review the issues identified in those reviews, the actions recommended, and whether/how those recommendations have been put into effect. To some extent, the two reviews identified similar issues, and some of them are similar to issues being identified in this current review. It will be important to understand what has affected the effectiveness of implementation of the measures recommended, especially since considerable work was undertaken on them and some approaches that seemed to make sense may not actually be workable. For example, previous reviews have identified practitioner capability, means of engaging employers and unions in gender equity programs, and setting standards for performance, among other issues and those are still matters of concern.

A fundamentally important part of assessing the operation of the Act and the Agency is the level of resources that has been provided for the Agency's work and for meeting the Act's requirements. The size of the budget and the staffing compared to the number of organisations reporting and the range of functions the Agency is expected to carry out has always been a major constraint on what could be achieved and that constraint has worsened. At the 1992 Review, the ratio of Agency staff to reporting organisations was 1:125. The Agency now estimates that each full time client consultant works with 250-300 clients a year. In a broad sense, the Agency's resources should be set according to what is required to provide a specified level and type of service to each reporting organisation, as well as funding for its other activities.

The Agency has had the benefit of a great many hard-working, creative and committed staff over the years and they have carried out some outstanding work, while the leadership has sometimes been disappointing. While improvements in efficiency can always be made, achieving more progress on the objects of the Act will certainly require more resources. Comparisons of the level of resourcing provided in other jurisdictions (for example, Canada) for comparable responsibilities to those the Agency has would demonstrate clearly that the level of resourcing is well short of what is provided elsewhere. Most progress is likely to be made in engagement with workplace

participants on workplace change, especially human resources practitioners, which is necessarily resource-intensive. Without engagement and change management processes, regulatory systems are likely to be hollow.

What can be safely concluded is that a great deal more action has occurred in relation to EEO with the Agency and the Act than would have occurred without. Practitioners have often commented that without the reporting requirement it was unlikely their organisation would have taken EEO measures. The basis of the introduction of the Affirmative Action Act in 1986, following pilots with volunteer organisations, was their advice that without legislation, organisations generally would not undertake EEO programs. Client surveys carried out for the Agency in 2003 and 2006 found that reporting organisations consider the legislation plays an important role in keeping EEO on organisational agendas.

The level of progress also significantly depends on the resources organisations devote to developing and implementing programs. Evidence from AWIRS in the 1990s showed that low levels of resources were allocated for EEO and there is no evidence that this situation has improved. Significant workplace change cannot be achieved without significant resources.

Objects and coverage of the EOWWA

The Act and the Agency should move to a focus on gender equality, recognising that changes in gender relations are dynamic. In the past there has been some concern that a focus on gender might lead to diminished focus on women's needs and aspirations, and a failure to recognize that while both women and men are affected by gender in employment, women have been more disadvantaged and discriminated against than men.

There are some signs that younger men have become more interested in changing gender relations in workplaces, and in taking a greater share of family and household work (for example, Time Use Survey findings on men's increasing share of childcare). It may be that some changes in workplace arrangements that benefit men will also allow greater change in the situation of women. A gender focus also makes it clear that gender equality is an issue affecting all workers and may make it easier to articulate shared responsibility and commitment for improving gender equality. It has sometimes been considered that an exclusive focus on women is seen as divisive. There have also been some concerns that EEO has a policy objective of increasing women's

participation in paid work irrespective of other choices women and their families might prefer. A fundamentally important message is that gender equity is to make it possible for women and men to make their own choices about how they share paid and unpaid work, without their choices being predetermined by gender. At the heart of this is resolving the inequities in the current situation, that women do not get paid enough and men work too many hours.

The change to a focus on gender could be misunderstood and a careful communications plan should be developed in conjunction with workplace participants.

Recommendation

That the Act and the Agency be refocused on gender equality.

Organisations that do not register

The highest priority is to ensure that organisations that are already required to report do register and report, and that will add significantly to the Agency's workload. Additional resources will be required and should be provided. Consolidation of the current coverage is fundamentally important for the legitimacy of the Act. The existing level of non-registration by employers who do fall within the coverage of the Act is too high. The Agency estimates 65-70% compliance, but there is considerable uncertainty about the real level in view of the difference between the Act's provisions relating to coverage and the way ABS collects and reports information about organisation size. It is difficult to ascertain precisely the level of non-compliance because organisations can choose to report at various levels of corporate structure.

The level of non-registration undermines the legitimacy of the Act and the Agency's administration of it. The Agency has undertaken various strategies over the years to increase the level of registration, including through the use of business registers and promotional campaigns. It is likely that some organisations have been non-compliant throughout the entire history of the legislation.

Ensuring that organisations covered by the Act register and report requires a means of comparing the Agency's current register of reporting organisations with a comprehensive data base of organisations by size. The best such data base is the records under the Income Tax Assessment Act 1936 and that Act should be amended to allow the Agency access to it. The Agency should publicise the

proposed legislative amendment in advance and encourage organisations to self-identify and register with the Agency, in an effort to minimise the number that will be found to be non-compliant because they have not registered, when the legislative amendments are made. In view of the efforts that have been made to secure voluntary self-registration, not taking a legislative option to identify those covered would amount to condoning widespread non-compliance with the Act.

Recommendation

That the Agency should be provided under the Income Tax Assessment Act 1936 with an annual list of organisations whose corporate structure employs more than 100 people so assessments can be made as to which organisations are covered by the Act.

Reporting level

It is likely that the more remote the relationship between the organisation level preparing the program and report and the subsidiary, the less the process will be engaging, participatory and seen as relevant, although large organisations can and do develop meaningful ways of involving employees. While reporting by functional units provides a more fine-grained picture of the gender distribution in the subsidiary, reporting at a higher level may provide a more comprehensive picture of the employment practices throughout the reporting entity and facilitate comparisons across the group. A fundamental issue is the extent to which the subsidiaries can make decisions about employment policies and practices. Reporting at too low a level restricts comparisons that can be drawn about remuneration and job value, with particular implications for pay equity analysis. The general principle in pay equity jurisdictions has been that comparisons can be drawn across all the employees whose employment is affected by a single source and that will be a relevant principle for reporting about gender equity in employment.

Recommendation

Organisations should continue to have the choice about reporting level. However the Agency should develop guidelines about the principles involved in making those decisions and about reporting on the basis on which the organisations have reached their decisions about reporting level.

Commonwealth agencies

There is merit in extending coverage of the Act to Commonwealth agencies with more than 100 employees. This would demonstrate Government leadership in applying to its own employees the same requirements applying to those organisations already covered by the Act. Employment practices have become increasingly similar across public and private sectors and the other areas covered by the Act. There would also be an educative effect for Commonwealth agencies in participating in the processes required under the Act and Commonwealth agencies could benefit from access to the Agency's tools and resources, including participation in a Community of Practice (CoP) (discussed below). In turn, the contribution to the community of practice from the Commonwealth agencies would be valuable. Commonwealth agencies would also develop a better understanding of the requirements of the Act, which would be relevant to their administration of the contract compliance provisions in relation to their own purchasing decisions. Extending coverage to Commonwealth agencies would mean a relatively small increase in the Agency's workload and would be symbolically important.

Commonwealth agencies would need to continue their reporting requirements in relation to other groups covered by requirements for diversity programs. Providing the required reports under the Act in relation to gender should be specified as meeting the workplace diversity program requirements in respect of gender. There is some evidence that public sector EEO and workplace diversity programs currently are more focused on other issues (for example, disability, and age) than on gender.

Recommendation

That coverage under the EOWWA be extended to Commonwealth agencies with 100 or more employees.

Smaller organisations

Significant additional resources would be required to extend coverage to smaller organisations (organisations employing 80, or 50). It is likely that reducing the threshold for coverage to 50 would double the number of reports and result in a relatively small increase in the proportion of private sector employees covered by the Act. The issue of extending coverage of the Act to organisations with fewer than 100 employees has been considered at each review and has not been recommended because of the resourcing implications. The issue is recurrently raised because women's employment is more concentrated

in smaller workplaces and coverage under the Act has not yet reached the majority of women employees.

Many smaller organisations would struggle with data collection and analysis requirements and expertise to carry out sound reviews and provide reports, and would find it very difficult to resource the process from their existing resources. Human resources functions, if they are present at all, are often run very lean and there are not spare resources to devote to these new responsibilities. If coverage is extended to smaller organisations, serious consideration should be given to providing a contestable fund to resource the process.

Over the next five years, the Agency should develop principles and a strategy for progressively extending coverage of the Act, recognising that smaller organisations (perhaps those with fewer than 50 employees) are less likely to have specialized human resources practitioners. A relevant consideration is the break-even point where the additional reporting workload for the Agency is justified by the benefits of the organisation's program for employees and organisations.

Another consideration is what other means could be used to raise awareness of gender equity issues and strategies in areas outside the coverage of the Act and provide incentives to undertake gender equity programs including encouraging voluntary use of the Agency's tools and resources (with or without voluntary reporting with related resourcing impacts for the Agency). Also relevant is the extent to which gender equity improvements in areas covered by the Act can be transmitted through labour market and employment relations mechanisms (including collective bargaining) into areas outside the Act's coverage and whether those transmission processes can be strengthened.

While organisations below a certain size probably cannot run a worthwhile EEO program, all employers can be expected to have non-discriminatory employment policies and practices. Measures to eliminate employment discrimination against women in smaller organisations should be explored with the anti-discrimination and equal opportunities bodies and with employer organisations, unions and relevant professional bodies. Many of the issues canvassed here require significant research and consultation to produce a robust and workable plan with timeframes, milestones and resourcing estimates for achieving the recommended completed total coverage of the Act.

Recommendation

Over the next five years, the Agency should produce a robust and workable plan with timeframes, milestones and resourcing estimates for achieving the recommended completed total coverage of the Act.

Workplace programs, reporting and compliance

Standards

There is a need for clearer standards and expectations about what employers are expected to do and to report.

Relevant standards are:

- those set by the objects of the Act and other requirements of the Act
- industry benchmarks
- performance assessments relative to other organisations in relation to the Act's requirements
- performance assessments relative to the organisation's own progress over time.

The fundamental standard set by the Act is gender equity and the same standard is set by other legislation and international conventions. The requirement is that work experiences and outcomes not be affected by gender, and that is indicated by identification of gender differences and examination to see whether they are explainable and justifiable, and if they are not, developing and implementing a program to address them. While the existence of various EEO policies and practices may be relevant for considering whether efforts towards EEO are being made, what really counts is the outcomes for women and whether the reasons for gender differences are justifiable or are in effect a proxy for gender effects on employment.

While industry averages can provide benchmarks or milestones, they do not themselves constitute standards. While meeting industry averages can provide incentives for poorer performers to improve, that is not an incentive for better than average performers who may still fall short of the standard embedded in the Act. Using an industry average as a standard can lead to complacency about the level of performance achieved.

There has been concern about the quality of programs throughout the Act's history. From the commencement of the Act, the Agency developed performance standards for reports, according to

performance on each of the eight steps required by the Act. The 1992 Review of the Act reported on how performance had been rated, using those standards. That Review identified the need for standards to be developed and the Agency undertook significant further work on performance standards in 1994-95. The performance standards related to assessing the adequacy of reporting and an outcomes-based report form. Organisations were to set their own targets in relation to outcomes, as a way of securing ongoing improvement over time. The standards related to processes undertaken. If further work is undertaken on developing standards, it would be worthwhile to revisit this earlier work, including the obstacles and challenges encountered.

In the current situation, the standards are not well-specified and assessment against them is not transparent and rigorous. The Director has a great deal of latitude in assessing compliance and limited accountability has been provided for the exercise of the Director's discretion. The feedback provided to organisations by the Agency's consultants may well contribute to a misplaced confidence that the measures being undertaken meet the Act's requirements and advance progress on its policy objectives to a much greater degree than they actually do. A combination of awards for good performers and a very low level of naming of non-compliant employers may also contribute to a sense that the existing level of performance is better than it is. The fact that clients are positive about the Act and the Agency's services may mean that clients' understanding of good performance in undertaking the measures necessary to achieve significant progress towards the Act's objectives is not well-informed.

The Agency's assessments of the level of compliance shows that many organisations fall well short of undertaking the planning and remedial action needed to bring real change. Organisations are assessed as complying marginally, moderately or highly, or not complying. Another performance assessment rating scale used in the Equality Framework in local government in the UK is whether organisations are developing, achieving, or excellent in their journey towards achievement of equality.

Benchmarks might usefully be developed at the industry level, and the development process would benefit from tripartite engagement, as has been the approach in developing many occupational health and safety standards. More buy-in from employers and unions is needed, to develop and agree worthwhile and practical standards, increase commitment from workplace participants, and engage wider contribution of resources and support to equal employment

opportunity. The Agency has previously worked on developing reporting standards, with employers and unions, following the introduction of provisions into the Act relating to establishing advisory committees after the 1998 review. It proved difficult to reach agreement on the standards and ultimately the committee was disbanded because of lack of resources. There is a risk that the standards can be seen as arbitrary and unworkable without the participation and endorsement of workplace participants. There are now greatly improved information and communication technologies to support consultation without the time and cost involved in travelling for face to face meetings and they should provide the usual basis for consultation.

Reporting standards should be developed for each of the requirements of the Act, including preparing the workforce profile, developing a program, consulting with employees and unions, and evaluating programs. Active engagement with practitioners will be needed to ensure the measures developed are workable and fit as well as possible with existing systems and processes.

The Act's requirement to take "all reasonably practicable measures" needs to be carefully defined and indicators, requirements and techniques for investigation clearly specified in regulations. This is an area in which extensive work has been undertaken in the occupational health and safety field. The discrimination jurisprudence also provides useful reasoning as to how the requirement not to discriminate can be weighed up against business necessities and costs involved in meeting the requirements and in the various alternative courses of action available. Without adequate guidance, there is a risk that the bases on which the assessment is made will not be made explicit and/or not be valid.

Recommendations

Reporting standards should be developed for each of the requirements of the Act, including preparing the workforce profile, developing a program, consulting with employees and unions, and evaluating programs.

The Act's requirement to take "all reasonably practicable measures" should be carefully defined in regulations under the Act and indicators, requirements and techniques for investigation clearly specified in related guidance from the Agency.

An alternative (or possibly complementary) model would involve EOWA developing standards for reporting that include an assurance model. This would be similar to the processes used in social auditing and, in fact, most other forms of auditing. This would involve the following:

- Develop an accredited reporting system set of standards – for example, with Standards Australia
- Establish the range of required components within the report, including stakeholder reporting on their perceptions of progress, for example independent voices as part of the process
- Develop an accredited auditor training system to achieve competencies in the standard
- Require all reporting entities to use an independent auditor to verify the quality of the reporting and establish whether standards are met
- Incorporate assurance standards and processes for reporting that can be used independently to verify the quality of both data and interpretation
- Work towards this type of reporting being mandated in law for any organisation's annual reporting if they wish to be involved in any government contracts.

Such a system would take time to develop but would change the role of EOWA to something more similar to ASIC - making sure the rules are followed and not needing to check each report. The development of such a system would allow the inclusion of a wider group of organisations without exponentially increasing EOWA resources. Related work could include development of measures of organisational capacity to manage change and equity.

Further development of the concepts of putting a gender perspective into operation, and taking remedial action, is provided in the United Nations Human Rights Commission's paper, *Integrating a gender perspective into the "Protect, respects and remedy" framework* (NY June 29 2009).

Recommendation

The Agency should explore the development of an assurance system for reporting including reporting standards and specifications (including stakeholder perspectives), an accredited auditor training system, a requirement to use an independent auditor and a framework for legal requirements for use of the assurance system.

The current state of technical development for equal employment opportunity is inadequate. There is a need to develop and regularly update codes and standards on aspects of human resources management and employment relations that have particular implications for gender equity. There is also a need for tools and education and training resources and courses to build practitioner capacity. The need for capacity-building was identified in the 1992 Review and the need is still evident. Technical development that would support pay and employment equity was outlined more fully in the WEL/NPEC Submission to the Pay Equity Inquiry.

Recommendation

The Agency should identify and prioritise the development of codes, standards and guidance in conjunction with advisory bodies including employers and unions.

Consultation

Success in improving gender equity at work needs sustained commitment from a wide range of workplace participants, including unions, and ongoing engagement in developing understanding of issues and solutions. The consultation arrangements proposed for ongoing development and maintenance of the modern award framework provide a useful model for consultation on gender equality. Consultation also provides an ongoing accountability mechanism in relation to the integrity of information and reporting as well as contributing to better quality programs and commitment to their implementation. The consultation requirements should include a requirement for each employee to be provided with a summary of the completed report and access to the full report if requested, and ongoing progress reporting on implementing the strategies included in the report. Reports should also be provided to unions at the workplace.

Consultation with employees and unions should be a required part of program development at the workplace. There are many ways of engaging with employees about gender equity issues and solutions, including through online surveys, which are used routinely by many organisations. They offer the advantage of automated survey delivery

and analysis and can be quickly and cheaply conducted. The options for consulting with unions and employees should be carefully considered. The New Zealand experience was that the use of joint committees of employees, unions and employers did involve significant cost and time, in educating participants and the operation of the committees in areas where they often lacked experience. It did spread awareness of gender equity issues, and over the five years the 85 pay and employment equity reviews were carried out, one in seven NZ workers was covered by the reviews, and many hundreds of people undertook training and participated in the committees while many thousands contributed to the reviews in various ways. This awareness raising and engagement may contribute to sustainable improvement in gender equity.

It will be important to assess how a committee or reference panel might be used or other consultation processes used, the value produced and resources required. These issues are considered in the NZ Department of Labour 2009 overview paper on the models and operation of the pay and employment equity review process. There are many possibilities, from merely providing the report to employees or unions before it is lodged to active participation in every step of the process. A committee may not always be the best approach to consultation. If joint committees are used, it is beneficial for all members to undertake the same training together and for members to work out how they will work together and solve problems. A partnership approach to joint inquiry and strategy development can help the process to keep clear of industrial negotiations, majority voting and other processes that can obstruct cooperation and engagement.

Meaningful consultation will require education about the gender issues and the processes involved in program development and reporting.

There has been provision for consultation with unions for most of the Act's history, and the 1998 changes still provided for consultation with employees or their nominated representatives. With a few exceptions, union participation has been limited and unions have not played a significant role in seeking accountability during the program development, reporting and implementation processes, nor in pursuing implementation through collective bargaining. In the 1992 Review, unions reported that employers avoided consultation and would not provide information, while employers said unions were uninterested or hostile, did not raise affirmative action and did not request information or reports. It will be worth exploring why unions have had the role(s)

they have, and what resources and support would be necessary to enable fuller participation.

Recommendations

Consultation with employees and unions should be a legally required part of program development at the workplace including a requirement that participants receive appropriate education and training to support their participation in program development, reporting and monitoring.

Reporting

Existing reports show very wide variation in what is reported and how well. Some organisations do not even provide a gender breakdown of their workforce profile. Many do not report the data or analysis on which they base their assessments that they have no EEO issues or that they have done everything reasonably practicable about them. Some do not use standard classifications of industry and occupation which in turn affects whether the information collected under the Act can be meaningfully related to other data. Many report on policies or strategies rather than on workplace outcomes and experiences of women. The absence of reports from the waived organisations removes what have been assessed as reports on the better programs from the publicly available report data base (although the waived organisations are a small proportion of reporting organisations).

More structured and explicit requirements should be set and should include a requirement to conduct and report on a pay equity analysis and report on progress in implementing necessary actions arising from the analysis. Organisations should be encouraged to report fully on pay data. It should be possible for them to be assessed as meeting this requirement if they report on gender ratios for employees whose work has been analysed as being of equal value, without reporting dollar figures for the remuneration of particular groups of employees.

It is likely that more structured report templates can save some employers time and uncertainty about what is needed to produce a good quality diagnosis, program and report. Part of the development of a new report template should involve testing of the time and resources required for a range of organisations. While comment has often been made about "compliance costs" there has been little reliable information about what these costs are and what drives them. Some significant cost drivers arise from inadequacies of existing data collections and human resources management practices.

Workforce profiles should be required to use standard classifications of industry and occupations. The level of aggregation in classification would always be affected by the size and distribution of the workforce. One or two digit occupation or industry classifications do not provide a rich picture of the composition of the workforce, especially since the coverage of the Act is of larger organisations that would be able to use more disaggregated classifications. The finer the level of classification the more robust the conclusion that jobs are of comparable value can be. It may be necessary for the Agency to support reporting organisations by preparing concordances relating existing or commonly used job classifications and job titles to ANZSCO and ANZSIC classifications. Past experience with the Affirmative Action Act requirements for organisations to code their jobs to ANZSCO was that they regarded the task as onerous. In many organisations it is likely that the quality and currency of job descriptions will not support robust and accurate classification. Unless standard classifications are used it is difficult to examine the relationships among job levels and remuneration, or the patterns of participation and distribution in organisations.

It may be possible to provide an exemption from using the standard classifications if it can be demonstrated that another meaningful classification system is being used. For example, some organisations use job classifications/grades drawn from groupings of points from points/factor job evaluation systems. These groupings can provide a meaningful basis for grouping jobs of equal value in order to examine remuneration by job value and gender. Whether or not the job evaluations producing the job scores have been carried out in a gender-neutral way is a separate question and needs to be examined as part of an overall consideration of how work has been valued. In New Zealand, there has been considerable work on standards, guides and resources for gender-neutral job evaluation, and that is available from the NZ Department of Labour. There has also been a data analysis tool for payroll analysis, structured around ANZSCO classifications of jobs.

It is likely that reporting requirements will be easier for employers to understand and meet if the report form becomes a highly structured and standardized template. Such reports would be easier for the Agency to analyse and report on, including in relation to industry benchmarks, and it may be possible to automate a significant amount of the analysis and processing. For specific studies, discourse analysis software may provide a means of analysing free text comment, while checkbox responses would be easily automatically analysed and

reported. By using a range of numeric indicators, it may be possible through regression analysis to identify some variables that have high predictive power for the general level of EEO performance and these indicators could be used in indexes, ratings and performance reporting. They could be used to provide a more robust basis for Employer of Choice certification and for other assessments of levels of performance and compliance.

The Agency should develop online reporting facilities, recognising that some reporting organisations may have security concerns about using them.

As the use of standard classifications increases and reporting becomes more structured, it should be easier for the Agency to produce industry studies identifying important EEO issues and strategies. The Agency should develop a rolling program of industry studies, beginning with industries with greater gender gaps. Analysis of the current and emerging labour market and employment relations challenges facing specific occupations and industries, firms and sectors may also be useful in identifying how improving gender equity can contribute to meeting those challenges, and areas where the challenges in part arise from obstructions to women's full and productive participation in the workforce.

Waiving was introduced to provide an incentive to improve performance, apparently relying on the assumption that organisations would prefer not to report and that reporting is a significant burden. Waiving also provided a measure of endorsement of the organisation's program – available only by not reporting. The Employer of Choice certification was added later and it serves the purpose of providing an endorsement of an organisation's program without resulting in removing better organisations from reporting. It has been commented on in this and previous reviews of the Act that reporting is often seen by practitioners (and by the Agency) as a useful way of keeping EEO on the agenda and waiving removes that lever. Waiving should be discontinued since the "reward" function can be provided through the Employer of Choice certification. This would free up the resources the Agency currently uses on assessing organisations for waiving and improve the quality of the reporting data base.

Recommendations

More structured and explicit requirements should be set for reporting and should include a requirement to conduct and report on a pay

equity analysis and report on progress in implementing necessary actions arising from the pay equity analysis.

Workforce profiles should be required to use standard classifications of industry and occupations.

The Agency should develop online reporting facilities.

The Agency should develop a rolling program of industry studies, beginning with industries with greater gender gaps.

Waiving should be discontinued.

Pay equity

Research by the Agency shows a small take-up of pay equity analysis and action, while pay equity is a fundamental employment matter for women, one on which progress has stalled. Pay equity needs to be addressed by proactive strategies such as those required under the EOWWA, whatever the other legal and institutional arrangements for addressing it. Pay equity certainly cannot be achieved one court case at a time. While sometimes the rigour with which the issues can be examined at the workplace level will be less than it would be in courts and tribunals, some progress can be made on better recognition of skill and other aspects of work value and awareness of the sources of pay inequity can be raised. It is now time to move beyond providing the tools and encouraging organisations to undertake pay equity reviews to requiring them to undertake those reviews including through specifying pay equity as a separate matter in the legislation and having a pay equity review as part of the organisation's self-audit.

However, it should not be required that a full review be carried out each year – every three years would be adequate, in view of the time it takes to take remedial actions on many of the pay equity issues, and in view of the need organisations are likely to identify to improve their human resources information systems and their human resources practices. Organisations that are unable to group all jobs in a single scale according to their relative value using robust job evaluation and classification methods will not be able to carry out a sound and comprehensive pay equity analysis. It is important to recognize that there is an irreducible complexity in carrying out an effective pay equity review and that many organisations will struggle with the requirement and the Agency will need to undertake work to develop its own capacity and that of others to carry out the work. The pay equity

jurisprudence internationally shows how demanding it often is to collect and analyse the necessary data to establish that there is not equal pay for work of equal value for men and women workers. Yet the processes involved need to be robust if they are to ground the significant pay increases that will be needed to make progress on this issue. Superficial reviews may actually exacerbate the problem by enabling organisations to claim they have carried out the necessary analysis, and demonstrated they do not have gender pay gaps.

It will be particularly important to build capacity among human resources practitioners. The Auspoll research commissioned by the Agency and reported on its site shows that fewer than one in eight people and two in five human resources practitioners understand pay equity as meaning equal pay for work of equal value, although that has been embedded in industrial relations principles and legislation since 1972. In view of this finding and of the finding from the Agency's survey that few organisations had conducted a pay equity study, it is hard to know what to make of the finding that just over a third of reporting organisations believed there was a gender pay gap in the reporting organisation.

The pay equity review should be conducted using the Pay Equity tool or another methodology that can be shown to provide an adequate analysis of payroll data. The data needs to include gender, job title and a robust job classification, remuneration, proportion of full time hours for each employee. These items are necessary for analysis of the overall relationship of gender and remuneration. A range of other variables in addition to those in the Pay Equity Tool is also relevant to understanding the sources of gender pay gaps. Useful items include age, tenure, starting rates, performance ratings and payments, components of remuneration other than base pay, and information about the methods used in evaluating jobs, including job evaluation systems and practices. These items can help pinpoint possible explanations for gender differences, which may be valid or invalid, depending on the circumstances. It may be that the new regulations under the FWA (3.31 – 3.44) with OFWO supervision will contribute to an improvement in employment-related record-keeping, promote more transparency and accountability about employment terms and conditions, and better enable pay equity reviews.

The organisation focus of the EOWWA will mean that only some pay equity issues will be revealed. While the pay equity analysis can investigate relativities within the organisation, and examine starting rates, bonus and other additional payments and progression, overall

gender undervaluation at the occupational level will often be visible only by looking across organisations. Where organisations find that they may be underpaying some jobs for their measured size, but the market rates for the occupation are at the level they currently pay, they may be reluctant to take any remedial action in advance of some broader movement that affects all other employers of that occupation – for example, in an award review or an equal remuneration case. The data collected from pay equity reviews may facilitate identification of occupations that may be undervalued on a gender basis.

The Agency should contribute its information and analysis from pay equity reviews to the Equal Remuneration Commissioner or the Equal Remuneration Division of Fair Work Australia if they are established, as was recommended in the NPEC/WEL Submission to the Pay Equity Inquiry.

The Agency and FWA should develop some guidance for organisations on the gender implications of various approaches to establishing work value and setting remuneration. A project like this would be consistent with FWA's research role.

The NSW Pay Equity Inquiry examined a number of approaches to work value, including competency assessments and job evaluation, and set out areas in which those approaches could be improved from a gender perspective. This material is probably not well known and could be used to build better understanding of how gender can affect remuneration. While industrial tribunals have an extensive record of flexibly using their expertise in many different approaches in assessment of work value, workplace participants need to play a greater role in gender-proofing how they evaluate and classify work and set remuneration. It will never be possible for the FWA to examine these issues for all occupations, industries and workplaces.

While organisations may be reluctant to provide pay data to the Agency, it should be required that they report gender pay ratios for job classifications/grades and required that organisations provide pay data to the OFWO, which could report to the Agency on whether the organisation had appropriately met its requirements to undertake a pay equity review.

The pay equity requirements should include both the need to take action to prevent continuance of human resources and management practices that cause pay equity problems, and the need to take remedial action to make good the effects of those practices by those

who have already been affected by them. If the only action undertaken is to prevent the recurrence of the problem, change in the gender pay gap will be extremely slow, since the stock of existing employees is so much greater than the flow of new entrants. It is a matter of economic justice that once pay inequities are identified, they should be made good for the future for the affected employees. It is probable and consistent with Australian industrial practice that making good the pay inequities should be prospective and not retrospective, and generally not involve back-pay or damages (except in circumstances where employers have persistently sought to frustrate the pay equity requirements). These matters are canvassed more comprehensively in the NPEC/WEL submission to the House of Representative Pay Equity Inquiry.

Recommendations

Pay equity should be specifically identified as an employment matter and organisations should be required to undertake a pay equity review every three years and to report annually on action being taken in response to the findings of the review.

The pay equity review should be conducted using the Pay Equity tool or another methodology that can be shown to provide an adequate analysis of payroll data.

The pay equity requirements should include both the need to stop human resources and management practices that cause pay equity problems, and the need to take remedial action to make good the effects of those practices by those who have already been affected by them.

The Agency should provide specific guidance on what needs to be covered and reported in a pay equity review.

The Agency should contribute its information and analysis on pay equity to the Equal Remuneration Commissioner of the Equal Remuneration Division of Fair Work Australia, if they are established.

The Agency and FWA should develop guidance for organisations on the gender implications of various approaches to establishing work value and setting remuneration.

Performance audits

The existing system of self-reporting without any independent auditing of reports and performance means the real level of compliance with

the Act's requirements is unknown and there is a risk that the veracity of reporting may be compromised, or doubted, which would undermine the Act. The workload involved in auditing all reports clearly would not be sustainable for the Agency, and probably would not be worthwhile. However, selection of a small sample of reports for in-depth review each year would provide useful intelligence for the Agency, opportunities for close engagement with clients, and would raise the standard of reporting and performance. The in-depth reviews could include site visits, inspection of records, and interviews and other forms of consultation. Sufficient authority for the performance audits is probably provided in the Director's powers to request further information and name as non-compliant organisations that do not respond satisfactorily to the request, or whose information shows they have not met the requirements of the Act.

The performance audit program should commence as soon as the methodology can be developed and tested, beginning in the first two years with organisations that volunteer for the audit, so any necessary refinements can be made, estimates of time and resources involved can be developed and case studies provided to illustrate the process before the random audits begin. Organisations that are certified as Employers of Choice may be likeliest to undertake performance audits on a voluntary basis. In view of commonly stated (often poorly-evidenced) concerns about compliance costs, it will be important that careful estimates of the time and resources required to carry out good quality audits are kept.

The OFWO should also contribute to performance auditing, by including EOWWA responsibilities in routine workplace audits, including whether if the organisation has more than 100 employees, it is covered by the Act, whether it has registered with the Agency, whether it has reported to the Agency, and (if adopted) met the new requirement to provide its report and the Agency's certificate of compliance or non-compliance to employees and unions. The OFWO would report apparent non-compliance to the Agency, for its investigation and possible naming. The OFWO would be able to issue a compliance notice to the organisation arising from its audit. The Director should be authorised to refer organisations named for non-compliance with the Act to the OFWO for issuing of compliance notices. This is likely to be particularly appropriate for the very small number of organisations that repeatedly and publicly flout the requirements of the Act.

The OFWO should also be empowered to carry out checks of the information provided in reports if it receives a request from the Director providing reasons for the request. The OFWO inspector would be able to review pay data if it had been reported only as ratios or kept confidential, to report on whether the data supports the report provided to the Agency. Misrepresentation or failure to keep required records should attract the same sanctions as apply for other breaches of recordkeeping requirements under other workplace legislation.

This approach, of supporting a largely self-reporting and self-responsibility system with occasional in-depth reviews and targeted and random checks, is not uncommon. Various approaches like this are used in the tax system, aspects of employment relations, occupational health and safety and quality management systems.

Recommendations

The Agency should conduct a program of performance auditing, carrying out an in-depth review of reports and performance of a small sample of organisations each year.

The OFWO should also contribute to performance auditing, by including EOWWA responsibilities in routine workplace audits, including whether if the organisation has more than 100 employees, it is covered by the Act, whether it has registered with the Agency, whether it has reported to the Agency, and (if adopted) met the new requirement to provide its report and the Agency's certificate of compliance or non-compliance to employees and unions.

The Director should be authorised to refer organisations named for non-compliance with the Act to the OFWO for issuing of compliance notices.

The OFWO should also be empowered to carry out checks of the information provided in reports if it receives a request from the Director providing reasons for the request.

Misrepresentation or failure to keep required records should attract the same sanctions as apply for other breaches of recordkeeping requirements under other workplace legislation.

Compliance and non-compliance

There are several ways in which organisations can fail to meet the requirements of the Act. They are currently not separately itemised and it could appear to some that the sanction of naming applies only

to not lodging the required report or refusing to provide information requested by the Director. It will be useful for the Act to specify the various ways in which requirements would not be met, although these are arguably implicit in existing requirements.

Recommendations

The Act should specifically provide that its core sanction – naming organisations that do not meet the Act’s requirements – applies in a range of situations including:

- *failure to register with the Agency*
- *failing to provide a required report in the specified timeframe*
- *failing to provide additional information sought by the Director, including failing to provide evidence of the veracity of information that has been provided, if required*
- *failing to provide a report that meets the requirements set by the Agency from time to time as performance measures for meeting the objects and requirements of the Act (these may include meeting industry benchmarks, making progress over time, undertaking a pay equity audit and implementing remedial measures)*
- *failing to meet the (new) requirement under the Act that employees and unions be provided with reports and the Agency’s certificates of compliance and non-compliance.*

Other measures to support compliance with the Act should include:

- *named organisations are ineligible for government contracts or industry assistance*
- *the sanctions provided in the FWA for misrepresentation and/or not meeting the requirements of the EOWWA, as workplace legislation.*

It can be expected that implementing recommendations included in this submission (and others) would result in a significant increase in the number of organisations named as non-compliant. That might increase further as measures are taken to increase the number of organisations registering with the Agency. There has been reluctance in the past to name a large number of employers, in part because of the lack of robust specifications about what is required in programs and reporting. Another issue is that naming a large number of employers as non-compliant could suggest the legislation is not respected and is widely disregarded which could provide support for further non-compliance, especially since there are few further sanctions following naming.

It will be important to develop a careful communications plan for managing naming as non-compliant an increased number of organisations. Key messages would include:

- that the “light touch” approach has reached its limits
- despite every opportunity and assistance to comply, some refuse to comply
- the Government seriously intends to use its leverage as in other areas of employment law in support of EEO and is concerned at the slow rate of progress
- new sanctions have been provided and will be used
- employment standards and the efficiency of the labour market in Australia are undermined where poor employers seek to compete by refusing to meet required standards for decent work
- women are legally entitled to and deserve better treatment at work, together with the human stories about problems related to lack of EEO and
- that consumers, shareholders and the community expect better from organisations today.

It is probable that the shock value of an increased number being named, together with the concerted communication plan involving Ministers and engaging business and union support, would result in a significant reduction in named organisations the following year, which will also provide an opportunity for further communication.

Government support of EEO through purchasing

Government already does use its purchasing power in support of EEO, since the 1992 review, and should now take further measures to ensure that only organisations that have met their requirements under the Act are eligible for government contracts and industry assistance. Existing requirements should be strengthened through requiring positive evidence of compliance in the form of a certification from the Agency that the organisation had complied with its reporting requirements and will cooperate with an audit of how it has met its obligations, if need be. The requirement for a positive certification of compliance is needed since many organisations that have not been named as non-compliant with the Act could not be named since they had never registered with the Agency as organisations required to report. Organisations that are not within the coverage of the Act could still be required to provide a workforce profile by gender and evidence of their gender equity policies and strategies and an agreement to cooperate with an audit if required.

Broader participation in the contract compliance program should be encouraged through the Council of Australian Governments from State

and Territory governments, and from local government, among other means. Other organisations should also be encouraged to participate, especially those with the Employer of Choice certification. It is open to any organisation contracting for the provision of goods and services to set conditions for assessing the adequacy of tenders, including how people are managed. There are many models for requiring organisations to provide evidence of equal employment opportunity policies and workforce data, and many private sector organisations apply a range of conditions related to environmental and social sustainability to their contracts and report through triple bottom line reporting. A comprehensive account of the use of contract compliance in support of social objectives is provided in Christopher McCrudden's book, *Buying Social Justice*. This book forensically describes and analyses the history of using contract compliance in support of social objectives, and sets out what has been found legitimate and non-legitimate from a competition perspective.

An important benefit of using the naming of non-compliant organisations in Parliament as an indicator of meeting the EOWWA requirements is its simplicity, and this measure can be readily adopted by any organisation since the information about non-compliance is public.

Recommendations

Existing contract compliance requirements should be strengthened through requiring positive evidence of compliance in the form of a certification from the Agency that an organisation has complied with its reporting requirements and will cooperate with an audit of how it has met its obligations, if need be.

Organisations that are not within the coverage of the Act and wish to access government contracts or industry assistance should still be required to provide a workforce profile by gender and evidence of their gender equity policies and strategies and an agreement to cooperate with an audit if required.

Broader participation in the contract compliance program should be encouraged through the Council of Australian Governments from State and Territory governments, and from local government.

Other organisations, especially those with the Employer of Choice certification, should also be encouraged to participate.

Education and promotion

Community of Practice

The Agency should develop and support a Community of Practice (CoP) among human resources practitioners and other interested participants, including academics and union representatives. The primary purpose of the CoP would be to support and enable peer-to-peer exchanges in real time in responding to challenges as they arise. Judgements will have to be made about establishing sub-communities around particular areas of interest, and participants in different situations and roles. It may be that having all areas open to everyone will operate against free exchange about problems and solutions. Some synergies may be achieved by developing the CoP in conjunction with the Australian Human Resources Institute and/or other relevant professional organisations, as well as the existing practitioner networks (for example, the National Equal Opportunity Network of Australia).

There would be a one-off and continuing cost for the Agency in developing and supporting the community since it would be necessary to monitor postings to the CoP and for the Agency to contribute to the CoP. While the CoP should be largely online, a high profile annual conference should continue to be held each year to share experience and promote engagement among practitioners. The UK local government CoP provides a worthwhile model for building networks to build and share knowledge in a highly distributed way. Other examples are plentiful, including in the knowledge management field.

Over time, the CoP could provide a platform for developing a peer review system, in which practitioners review each other's programs, using an agreed methodology, on a confidential basis, with a view to promoting active engagement and learning. Peer review could also form part of an assurance system for reports, complementary to the Agency's compliance certification process and performance audits. Peer review forms part of the assessment process regarding the Equality Framework in local government in the UK.

Recommendation

The Agency should develop and support a Community of Practice (CoP) among human resources practitioners and other interested participants, including academics and union representatives.

Online education and training

Practitioner capability was identified as an issue in the 1992 review of the Act and still needs to be addressed. The Agency should explore with tertiary institutions and human resources and management professional organisations how gender equity in employment can be addressed through existing and new courses. There may be value in joint approaches with the Sex Discrimination Commissioner.

If unions are to make a meaningful contribution to improving gender equity analysis and strategies, education and training will need to be provided for members, delegates and officials.

Online education and training courses should be developed to build capacity among practitioners. The report form should include a requirement to state whether the staff undertaking the review and reporting process have undertaken the online course, and to state any other education undertaken.

In particular, there should be online resources on pay equity, in view of the generally poor understanding of equal pay for work of equal value. The UK Trades Union Council has produced some excellent DVDs with notes and education resources on the major UK equal pay cases, including those of the dinner ladies, the sewing machinists and the fish packers. The NZ Council of Trade Unions has also produced a useful DVD, *On the level*. These resources make accessible what can often seem complex and technical issues, and could be streamed from the Agency's website. They would also be useful in any school education activities undertaken on pay equity.

It needs to be recognised that if there is to be a real change, strong support through education and training will be needed. Awareness of how gender affects employment and of successful strategies for change is limited and there are few avenues for developing it. Improved awareness is fundamental to achieving sustainable change. The significance of education and training for effective change management is well-demonstrated in other areas of organisational life recognised as important – for example, the rollout of new technologies. In relation to each area of employment where it has been found there is a need for improved gender equity, it is worth considering how the decision makers will be equipped to understand and address the change. And change is needed from decision makers other than human resources practitioners, including from line managers, who will also need education and other support for change.

Recommendations

Online education and training courses should be developed to build capacity among practitioners. The report form should include a requirement to state whether the staff undertaking the review and reporting process have undertaken the online course, and to state any other education undertaken.

The Agency should explore with tertiary institutions and human resources and management professional organisations how gender equity in employment can be addressed through existing and new courses. There may be value in joint approaches with the Sex Discrimination Commissioner.

Funding should be provided for the Agency and the Sex Discrimination Commissioner to offer culture change workshops to organisations that are failing to make progress on improving the position of women.

Awards and promotion

The Employer of Choice certification does seem to be a well-supported and respected promotional and recognition activity by the Agency. It would be useful to carry out some research on how the certification and associated promotional activities actually do work to reward and encourage better practice. Holders of the certification (both the practitioners and the chief executives) could be surveyed and/or interviewed. This research might lead to useful insights about promotion of gender equity. The criteria for the Employer of Choice certification should be reviewed, especially in relation to measures that rely on being better than the industry average where that is still less than the standard of gender equity. Review of the certification should also include developing a validation process to secure the integrity of the certification. Although it might not be possible to check all the information provided, the knowledge that targeted or random checks may be conducted could contribute to improving the quality of what is provided.

The holders of the certification would be a logical core group for a community of practice since their performance has already been assessed as exemplary and their participation would establish the community as having a high value offering. The value of the Business Achievement Awards should also be investigated in view of the resources involved for such a small Agency, and account should be taken of the DEEWR National Work Life Balance Awards.

Equal Pay Day has been a useful innovation by the Agency and development of it should be ongoing. Efforts should be made to secure the participation of government, business and union leaders, among others, in explaining pay equity and measures needed to address it. Government in particular – State, Commonwealth and Territory – should be encouraged to address events, make speeches and issue media releases (as Bill Clinton used to do for Equal Pay Week, as US President). Businesses could be requested to provide discounts for women on the day, to reflect women’s lower earnings and promote the support of those businesses for pay equity (as was done in 2009 in New Zealand).

An important aspect of an education campaign on pay equity and occupational segregation would be to improve the quality of information about remuneration that is provided to young people considering work experience, subject choices and vocational option. UK research by the former Equal Opportunity Commission showed that 70% of girls who chose childcare as work experience would not have done so if they knew the pay. Most young people still do know about a limited range of occupations (and girls know fewer than boys) and often know very little about the relative remuneration of occupations so there would be value in improving the information provided (and the work experience opportunities although that is not a matter for this review).

Recommendations

That the Agency review its program of awards and promotional activities, taking account of other organisations’ awards and promotions, including research and analysis of how the various activities provide leverage for EEO improvements.

The criteria for the Employer of Choice certification should be reviewed, especially in relation to measures that rely on being better than the industry average where that is still less than the standard of gender equity.

Review of the certification should also include developing a validation process to secure the integrity of the certification.

Ongoing integration of gender equity into employment legislation, institutions and frameworks

There are significant opportunities for enhanced gender equity in employment in considering the roles of the various agencies involved in it, including the Sex Discrimination Commissioner, Fair Work

Australia, the Workplace Ombudsman, the DEEWR and related State and Territory bodies. The Commonwealth Office for Women and the related State and Territory bodies also have a role to play especially in relation to monitoring and coordination. The relationships among all these agencies in an integrated system for improving gender equity should specifically be set out in the final report of this review. The existing arrangements result in gaps and overlaps in actions undertaken and do not effectively manage the knowledge developed as these organisations carry out their functions. There is a significant potential for policy conflict which would undermine what is being achieved. For example, if the award modernization process and reviews are not undertaken consistently with gender equity, a real opportunity will be lost and much of what is done in other areas will be addressing the problems that arise from not integrating gender equity into other areas of the employment framework. Significant synergies can be expected from deliberate engagement and collaboration among the various organisations mandated to improve gender equity in employment.

The OFWO inspectors can contribute to embedding EEO and anti-discrimination and pay equity in mainstream employment arrangements. The OFWO will be able to mediate discrimination complaints and refer discrimination cases to the Federal Court and Federal Magistrates Court.

Structurally, the Agency should remain a statutory body. The EOWWA should be added to the list of workplace legislation in the FWA Act and relationships with both FWA and OFWO strengthened. This offers the best opportunity of moving the mainstream employment relations framework towards gender equity.

Structural integration is not necessary to achieve better conceptual and operational integration and to be able to report more effectively to Government about progress on gender equity and the contribution of various areas of government activity to it. Periodic cooperative analysis, planning and reporting should be undertaken under the leadership of the Sex Discrimination Commissioner, with requirements for cooperation of the various agencies whose work relates to gender equity. Engagement of employers and unions, relevant professional bodies and women's organisations should be strongly pursued especially in relation to any necessary changes in the framework or the role(s) of particular participants. An overall report on gender equity in employment should be provided to Government every two years. The primary purpose of the report would be to inform Government and the

community and it would also contribute to Australia's reporting on its international obligations. The Sex Discrimination Commissioner would require specific resources to undertake this work, as it would be substantial, while it would make a significant contribution to improving the evidence base for policy across a range of organisations and activities.

The Sex Discrimination Commissioner may find it necessary, in the light of the information provided in this process, the Agency's industry studies, and the publication of the named organisations, to launch inquiries into sex discrimination in specific industries. The Sex Discrimination Commissioner may find it appropriate to refer an equal remuneration complaint to FWA.

It will be necessary to consider the effectiveness of the arrangements across the various bodies in the light of the Government responses to the review of the Sex Discrimination Act, and the House of Representatives Pay Equity Inquiry, and subsequently in relation to completion of the award modernization process.

It will be desirable for tests and demonstrations of the uses of the new provisions to be implemented early in their life, since that will amplify the effects of other educational and promotional activities, in the light of possible legislated and institutional responses.

Recommendations

Structurally, the Agency should remain a statutory body.

The EOWWA should be added to the list of workplace legislation in the FWA Act and relationships with both FWA and OFWO strengthened.

Periodic cooperative analysis, planning and reporting should be undertaken under the leadership of the Sex Discrimination Commissioner, with requirements for cooperation of the various agencies whose work relates to gender equity.

Engagement of employers and unions, relevant professional bodies and women's organisations should be strongly pursued especially in relation to any necessary changes in the framework or the role(s) of particular participants.

An overall report on gender equity in employment should be provided to Government every two years.

The effectiveness of the arrangements for integrating and coordinating work across the various bodies should be reviewed in the light of the Government responses to the review of the Sex Discrimination Act, and the House of Representatives Pay Equity Inquiry, and subsequently in relation to completion of the award modernization process.

Measuring the impact of the EOWWA and EOWA

Data and information

Information about the experiences and outcomes for women in the workplace needs to improve. Information about workplaces is generally poor in Australia. Since the last AWIRS there has been no reliable information about a range of human resources and employment relations matters at the workplace including the incidence of EEO policies and practitioners. Other relevant information is the methods used in evaluating work and setting remuneration and the human resources data and information held and analysed in workplaces. While Australian legislation provides a wide range of employment rights, there is limited information available about how effectively these rights are secured and about people's experiences in relation to knowing about them and using them. There is a wide range of approaches in the various areas of employment regulation including employment relations, occupational health and safety, and industrial instruments and it would be useful to have workplace-based analysis from employees and employers about how the various approaches work.

An important contribution to the robustness and reliability of the AWIRS was its use of matched employee/employer surveys. The AWIRS should include questions collecting information about workplace attitudes to EEO, along the lines of those included in the Workplace Attitudes Survey conducted as part of the 1992 Review of the AAA. Periodic assessment of the values base for EEO is important for understanding what enables and obstructs the workplace changes needed.

The ABS Distribution and composition of employee earnings and hours series is conducted too infrequently. The current data and information does not make it possible to provide a robust evidence-based assessment of the current status and trends in women's work experiences and outcomes although the workplace is the site of many of the decisions that critically affect women's employment experiences and outcomes. While the reports to the EOWA provide a lot of

information, the information is entirely self-reported and varies considerably in its depth and scope, in the issues covered, and in the classifications and categorisations used for reporting data.

High level indicators on women's share of senior jobs and the gender pay gap show that limited progress is being made, and the situation is deteriorating in some areas. While from time to time academic studies have been carried out on occupational segregation, a regular report should be prepared on this by ABS, using a methodology that enables assessment of trends over time, and international comparisons. A detailed report should be prepared after each Census, with less detailed reports and indicators between Censuses.

It is common in Australia for the gender pay gap to be reported in terms of ordinary time or average earnings for full time equivalent workers. This has the effect of obscuring an important dimension of the gender pay gap – that women get paid less because they work fewer hours in order to carry out caring responsibilities. Women's experience of the gender pay gap is being paid less per week, per year and over a working lifetime, and of the effects of that for their standard of living and opportunities. As part of ongoing education about the importance of pay equity and the extent of the existing problems, these other measures need also to be reported along with full-time equivalent earnings.

There are many sources of information about gender and work including ABS publications and HILDA. It would be extremely useful for the Office for Women to run a project for these information sources to be drawn together and an analysis made of the gaps in the collections.

Recommendations

That an AWIRS (with substantially better coverage of equal employment opportunity issues) be conducted every five years

That ABS conducts and publishes the Distribution and composition of employee hours and earnings each year.

That ABS develop and report regularly on an occupational segregation index.

It would be extremely useful for the Office for Women to run a project for these information sources to be drawn together and an analysis made of the gaps in the collections.