

SUBMISSION TO REVIEW OF THE EQUAL OPPORTUNITY FOR WOMEN IN THE WORKPLACE ACT AND AGENCY

**by
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This brief submission expands upon one particular issue canvassed in Roundtable discussions in Brisbane on 28 October 2009.

The group of women that are probably most disadvantaged in relation to access to equal employment opportunity are those employed in private sector organisations with less than 100 employees. These are the organisations which are least likely to have a specialised HR function, least likely to be aware of EEO issues and least likely to promote EEO. Yet they are also the organisations that are exempt from coverage of the EOWW Act. They also account for a significant proportion of employees, probably around two fifths.

One obvious solution to this problem, raised in some submissions, is to extend the coverage and reporting requirements of the EOWW Act to these workplaces. However, the administrative implications of this would be impossible to manage within feasible available resources. The vast majority of *organisations* are within this category, and so a simple extension of the Act to this group would increase the workload of the Agency by perhaps a hundred fold. It would also impose a significant administrative burden on organisations that are in the weakest position to handle it.

We propose a solution that instead draws upon recommendations from two submissions. In particular, the ACCI submission (p36) recommends ‘more support for smaller firms’ through increased education for non-reporting firms. ACCI notes that smaller firms ‘do not have the resources, specialised HR personnel or time’ and recommends providing them:

with free information and tools on designing policies, implementing programmes or ideas for their workplace. This should be on a voluntary basis and will encourage smaller firms to continually refine, within their operational and budgetary constraints, their own arrangements. It also recognises that employers and employees are best placed to design and implement solutions that they build through collaboration.

The Commonwealth should also consider whether extra funding should be provided to the Agency (or any successor) to assist with this educational role, which, in conjunction with utilising business organisations, will enhance the Agency’s reputation as a leading agency to assist firms in equal opportunity.

On its own, however, this recommendation would be unlikely to have any noticeable effect because the firms that would be most in need of such assistance would be likely to ignore it. They would not only be unaware of the business benefits of EEO (a phenomenon shared by many organisations, not just smaller ones, in part because the returns mainly accrue over the longer term), they would face no direct incentive to participate in such education.

To resolve this dilemma, we turn to a recommendation from another submission, by the Australian Women’s Coalition. It recommends that:

a positive duty to promote equality, remove discrimination and take reasonable steps to avoid sexual harassment be imposed on employers under the Act.

In doing so, the Coalition noted that

The 2008 report of the Senate Inquiry into the Sex Discrimination Act 1984 recommended (in paragraphs 11.93 and 11.94) that positive duties to promote equality, remove discrimination and take reasonable steps to avoid sexual harassment, be incorporated in the Equal Opportunity for Women in the Workplace Act.

A positive duty along these lines, applying to *all* employers, would elucidate an obligation that smaller firms presently do not explicitly have and would create an incentive for them to pay attention to and make use of education and information provided by or on behalf of the Agency.

The Agency would be given the power to consult with employers which it believes are at high risk of having poor performance on EEO. The Agency could, if it believes it appropriate, provide training for such employers and/or require them for a defined period to provide reports on progress broadly along the lines of those required of larger organisations. Firms which refuse to cooperate would be subject to the same penalties as those applying to larger firms, including being named in Parliament and exclusion from government contracts.

This approach would provide a 'light touch' form of intervention in smaller firms who otherwise might end up falling foul of complaints-based legislation prohibiting sex discrimination and sexual harassment – or at least of alerting them to the danger that they could eventually be caught up in such complaints. Equally, as many victims of discrimination and harassment do not pursue complaints because of the cost and likely impact on their employment or careers, it would provide a means of improving the situation for workers in firms who otherwise might continue to be subjected to low level harassment and discrimination.

In other words, it would fill the gap, between complaints-based legislation (with all its limitations) and doing nothing, a gap that for larger firms is filled by the EOWW Act.

We envisage that relatively few smaller forms would be directly targeted for consultation under this approach. Far more would be reached by training programs provided by, or with, employer organisations, as these organisations have ready access to smaller firms through their membership networks. The existence of the general duty to promote equality, remove discrimination and take reasonable steps to avoid sexual harassment (in combination with the new protections against adverse action in the Fair Work Act) would provide a hook by which the Agency and employer organisations could alert smaller firms of their need to be aware of their general duties and understand the steps that can lead to the achievement of EEO (and the associated business benefits).

The Agency would target firms in industries or locations with poor performance in EEO, as well as organisations which had developed reputations for questionable practices but which may have not necessarily been subject to specific complaints through sex discrimination provisions.

In order to not dilute the efforts of the Agency in relation to larger firms already subject to the reporting provisions of the Act, additional resources would need to be provided to the Agency to undertake these activities.

