

**Women and Work Research Group
University of Sydney**

**Submission to the Review of the Equal Opportunity for Women in the
Workplace Act and Agency**

4 November 2009

Prepared by: Marian Baird, Director, Women and Work Research Group
and Alexandra Heron, Research Associate, Women and Work Research Group

1. Introduction

The Women and Work Research Group (WWRG) is a research group within the Faculty of Economics and Business at Sydney University.

The WWRG has three main goals:

1. To provide a scholarly environment in which a community of inquiry on all aspects of women, work, employment, family and community is created.
2. To provide the bridge between academic work and policy work and to provide the research for the development of evidence based policy in matters pertaining to women, work and family.
3. To provide a focal point for collaboration with established and emerging scholars in the field, and with research centres with similar interests in the Asia-Pacific region and beyond.¹

As Director (Marian Baird) and Research Associate (Alexandra Heron) of the WWRG we welcome the opportunity to make a submission to the Review of the Equal Opportunity for Women in the Workplace Act (the Act) and Agency (EOWA). We endorse Dr Sara Charlesworth's submission and outline below some general principles which we consider critical to achieving positive change for women at work.

Woman's position in the workplace has improved only marginally in the last ten years. Furthermore, it now appears that on some important measures the status of women in the workplace and in the labour market may be deteriorating.² We believe that the current rate (or lack) of progress is unacceptable.

This situation undermines the Federal Government's intentions to promote "fair, cooperative and productive workplaces in which employees are treated fairly and with respect"³ and its drive for social inclusion. Strengthening the Act and providing sufficient resources to EOWA to enforce it is essential to fulfilling the government's vision for Australian workplaces. Improving women's position at work - particularly in relation to pay equity - will result in dividends for women, their families and the economy as a whole.

¹ Its website is at:

<http://wwrg.econ.usyd.edu.au/index.html>

² Evidence of this is provided in many submissions, for example, those by the Australian Women's Coalition and the ACTU.

³ Media release by Minister for Education, Employment and Workplace Relations, "Contractors must meet Fair Work Principles to secure Government work" dated 31 July 2009, viewed on 2 November 2009 at:

http://www.deewr.gov.au/Ministers/Gillard/Media/Releases/Pages/Article_090731_094936.aspx

2. An Act focused on women

A positive duty for employers to promote equality for women at work and remove discrimination, should be a goal of the Act as it is women who suffer systemic disadvantage at work. This objective should also be viewed as promoting men's equal right and responsibility to care as this is integral to achieving women's equality at work.

A specific requirement to promote equality at work in relation to women of all backgrounds, including women with disabilities, Indigenous women, women from culturally and linguistically diverse backgrounds, lesbian and older women should also be a goal of the Act. Making this central to the Act will assist in implementing the Federal Government's commitment to promoting social inclusion. It will make it clear that where working women suffer multiple disadvantage, targeted employer action may be necessary.

EOWA should remain an independent statutory authority.

3 Community education and stakeholder involvement

Community education campaigns, proposed by EOWA and others are essential to promote wider community understanding of equity issues for working women. Such campaigns would also promote awareness amongst employees which will facilitate their participation in workplace consultations.

However, substantial changes in the framework promoting women's equality at work are needed and are advocated for in many submissions to the Review. We believe that the current consultation on the Review should be seen as a preliminary step prior to in-depth consultation on the range of detailed proposals which will emerge from it.⁴ This is vital to inform and engage stakeholders, drawing on their practical experience to produce a workable system within the overarching principle that significant and measurable progress for women must now occur.

A wide range of stakeholders should be engaged in this process. Along with employers, trade unions and government, non-government advocates for working women are key. The last have a significant role to play in such consultations, adding to the diversity of voices heard by government on this issue.⁵ For example, the NGO Asian Women at Work⁶ through its evidence-based submissions to the Inquiry into the Fair Work Bill, played an important part in achieving changes to Individual Flexibility Arrangement regulation to better

⁴ For example, if EOWA's proposals for gender equality standards and measures are adopted.

⁵ Such organisations should be appropriately resourced to enable them to fulfil such a role.

⁶ 'Asian Women at Work is working to empower Asian women workers, who experience significant injustice and exploitation in our Australian society' from their website, viewed on 3 November 2009 at:

<http://www.awatw.org.au/>

accommodate the particular difficulties faced by women workers from non-English-speaking background.⁷

4. Employee consultation

We support the view expressed in EOWA's submission that the existing requirements for an employer to consult employees and their representatives prior to developing their equal opportunity program, should be strengthened. This is due to the imprecision of many organisations' reports about their employee consultations. As EOWA notes, such consultations are important to fostering cultural change.

Changes to such consultation arrangements must include more specific mechanisms to involve women in them and identify their concerns. Provision for employees to comment on draft plans should also be made.

We also propose that consultation with employees and their representatives (unions where present) occur about the content of the report prepared for EOWA by an organisation, prior to its being submitted. There should be a requirement that employee views (comments, criticisms or a view that the Act has not been complied with) about the report's contents are contained in part of the report and signed by a representative.

We agree with Dr Charlesworth's suggestion that serious consideration be given to developing a network of union workplace equality representatives. Preliminary evaluations conducted of the performance of such equality representatives in Wales⁸ and of the TUC training provided to English equality representatives⁹ have both been positive.

5. Equality planning

5.1 Requirements of employers

As mentioned in the introduction, the lack of improvement in women's position in the workplace over the past 10 years is pronounced. This is demonstrated by persistent pay inequity, the extent of casualisation of the female workforce, work flexibilities principally benefiting employers, sex segregation in jobs, insufficient women managers particularly at the most senior corporate levels.

⁷ Submission (para 58) by the Asian Women at Work to the Senate Inquiry into the Fair Work Bill 2008, viewed on 2 November 2009:

<https://senate.apf.gov.au/submissions/committees/viewdocument.aspx?id=5a0fa40a-adfc-47a6-8bf5-f7559feaf97e>

⁸ Bacon, N and K. Hoque (2009), Wales TUC Union Equality Representatives Survey 2009 (unpublished).

⁹ Trades Union Congress (2009), *TUC Equality Reps Project Report*, viewed on 4 November 2009 at:

<http://www.tuc.org.uk/equality/tuc-16605-f0.pdf>

We agree with the Report of the Inquiry by the Senate Standing Committee on Legal and Constitutional Affairs into the *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality*, where it states in relation to the Act:

“Legislation aimed at promoting equal opportunity for women in the workplace should require something more than the development of a program and reporting on that program: *it should require progress* [emphasis added].” (para 11.93)¹⁰

We broadly agree with the proposals of EOWA in its submission to require organisations

- to provide a workforce profile;
- to undertake a Gender Equality Self-Audit against specified gender equality standards as to policies and practices;
- to make “actual progress over time against a specified number of concrete gender equality measures”.¹¹

We wish to emphasise our support for there to be a requirement in the Act that an employer covered by it make measurable progress towards women’s equality at their workplace. To support this, a requirement that employers set and meet (demanding) time bound numerical targets for change must be imposed.

A comprehensive audit of the issues to be tackled by gender equality measures should be undertaken. Decisions about the workforce profile data needed to inform targets and identify progress relating to the measures will have to be made, and the standards for employers to meet will have to be developed. Stakeholders, as suggested above, should be actively involved in each of these steps.

We also propose that the waiving of reporting by best practice organisations is discontinued as these are the organisations whose examples can most usefully be followed by other employers.

5.2 EOWA’s focus

We support moves to strengthen women’s representation in management particularly at the higher corporate levels. However, the role of the Act and EOWA in relation to low paid women needs to become more prominent.

In 2007 the WWRG published “Down and Out with Work Choices: The Impact of Work choices on the Work and Lives of Women in Low Paid Employment”¹² This

¹⁰ The Report was published on 12 December 2008, see at:

http://www.aph.gov.au/Senate/committee/legcon_ctte/sex_discrim/report/index.htm

¹¹ Pp36 and 38 of the EOWA submission.

¹² Baird, M., Cooper, R. and Oliver, D. (2007), a report to the Office of Industrial Relations, Department of Commerce, NSW Government. Available at:

http://wrrg.econ.usyd.edu.au/Events/2007/Women_and_Work_Choices_Report_2007.pdf

qualitative research explicitly presented the experiences and views of women in low paid work. Issues highlighted included:

- a large number of issues around pay ranging from employer failure to increase wages in line with minimum wage adjustments, underpayment, late payment, being moved from casual to part-time status to reduce the hourly rate, loss of penalty rates;
- unpredictable hours in terms of number of hours and shifts, too few hours being made available and too few hours per shift;
- intensification of shifts, refusal of breaks, denial of leave entitlements;
- dismissals, either suddenly and/or without reasons being provided.

Although related to how they had been affected by Work Choices, much of what the women interviewed said gives an idea of the issues which data collection, targets and standards should address in relation to low paid work. For example, given the feminisation and poor quality of casual work,¹³ progressively requiring organisations to confine such work to genuinely casual employment¹⁴ would improve women's participation in work and experience of it.

6. Resourcing and enforcing the Act

Effective enforcement provisions (missing up to now from the framework promoting women's equality at work) are clearly needed. We support proposals to use government public procurement powers much more effectively and would also support making all government funding dependent on compliance with the Act.

Tools such as those available to other institutions such as the Fair Work Ombudsman and occupational health and safety bodies (compliance notices, the ability to take proceedings for fines etc) also need to be available under the Act to enforce compliance with it.

EOWA should be resourced to administer the Act in its totality, including the compliance function. This will enhance its institutional capacity to understand organisational dynamics and utilise that experience in exercising its functions. It was also enhance its ability to advise government about the Act. For it to rely on another agency for the crucially important enforcement role may create a number of difficulties including differing priorities and strategies regarding enforcement.

We are aware that EOWA is a small organisation and would need to expand substantially if (as we hope) it is to administer and enforce an Act designed to effect a radical improvement in women's position in the workplace. We consider a serious discussion must be held about the level of resourcing it will realistically

¹³ See Pocock, B., Buchanan, J. and Campbell, I. (2004), *Securing Quality Employment: Policy Options for Casual and Part-time Workers in Australia*, prepared for the Chifley Research Centre.

¹⁴ 57% of casual workers have worked for over one year with the same employer, see Pocock et al. (p.10) referring to HILDA data.

need to do this, and that committing sufficient resources to it will be practical evidence of the political will to bring about real change.

7. Research and evaluation into the effect of the Act should be undertaken.

A framework to evaluate the effect of a revised Act should be devised at the same time as any new legislation is drawn up. This will provide, in years to come, a clear idea of what works and what does not and where adjustments are needed.

At the same time, the Australian Office for Women should investigate with the relevant stakeholders establishing improved data collection in relation to working women and developing a woman at work research programme.

The development of a set of national indicators as they relate to women and work should also be progressed.