



Australian Women's Coalition Inc

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

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1. Executive Summary and Recommendations

Executive Summary

The facts and figures provided below demonstrate why the Equal Opportunity for Women in the Workplace Agency (EOWA) and others consider women's progress at work has stalled. Far fewer women than men work at all. Even fewer work full-time. Part-time workers suffer from lack of career advancement. Women are not in the better paid occupations and industries in equal numbers with men. The work they do, even when of comparable worth to men's, is valued and paid less. These facts have detrimental impacts on women's lifetime earnings and income in old age. Together they indicate that more, rather than less, focus and action is needed to remedy the lack of gender equality at work for women.

The Australian Women's Coalition therefore welcomes the timely Review of the the Equal Opportunity for Women in the Workplace Act (the Act) and EOWA with its purpose of advising on practical ways to deliver better outcomes at work for Australian women.

In summary its submission recommends that:

- the Act require employers to promote gender equality at work including for women of diverse backgrounds;
- a statutory agency such as EOWA be retained (with the independence from government which that implies) with a specific focus on women and work;
- EOWA be adequately resourced to administer the Act, strengthened as recommended below;
- government and EOWA engage in national education campaigns to increase awareness and understanding of gender inequity in the workplace, its causes and effects and the need to remedy it;
- more demanding and specific requirements be imposed on employers to make measurable progress for women;

- greater powers be provided to EOWA and any other appropriate statutory agencies to enforce those requirements;
- government initiate a high profile consultative process about the detail of the changes to the framework promoting gender equality at work, which will emerge from this Review. Such a process should include:
 - issuing detailed discussion papers on different topics (e.g. measuring pay equity; the nature of the data to be collected and analysed by employers) drawing on Australian and international research as to what works to improve women's labour market position;
 - presenting a range of options for achieving such improvement in Australia;
 - resulting in a coherent package of measures encompassing the legislative and other changes needed to achieve gender equality at work.

Recommendations

Overview

- **That government initiate (in conjunction with the proposed public education campaigns recommended below) a high profile consultative process about the detail of the changes to the framework promoting gender equality at work, which will emerge from this review. Such a process should include:**
 - **issuing detailed discussion papers on different topics (e.g. measuring pay equity; the nature of the data to be collected and analysed by employers) drawing on Australian and international research as to what works to improve women's labour market position;**
 - **presenting a range of options for achieving such improvement in Australia;**

- **resulting in a coherent package of measures encompassing the legislative and other changes needed to achieve gender equality at work. [Rec 1]**

Aiming higher, achieving: achieving gender equality at work

The goals of the Act

Promoting gender equality at work for all women

- **That the goals of the Act include a provision that employers facilitate the ability of both men and women to genuinely choose how they combine work and care. [Rec 2]**
- **That a positive duty to promote equality, remove discrimination and take reasonable steps to avoid sexual harassment be imposed on employers under the Act. [Rec 3]**
- **That the goals of the Act explicitly include their application to women of all backgrounds including women with disabilities, Indigenous women and women from culturally and linguistically diverse backgrounds. [Rec 4]**

An agency for all working women

- **That the agency responsible for administering the Act should remain an agency promoting women's equality at work and a statutory authority operating at arms length from government with appropriate independence to advocate on behalf of women at work. [Rec 5]**

Consultation

- **That encouraging employer/employee consultation on gender equality issues at work continue to be a goal of the Act. [Rec 6]**
- **That consultation be defined in the Act and an obligation imposed on employers to undertake it in good faith including through union and other employee representatives. [Rec 7]**
- **That scrutiny of consultation arrangements, outcomes and how these have been acted on by employers should be part of a revised, uniform and mandatory reporting process. [Rec 8]**

The Act's coverage

Organisations with less than 100 employees

- **That priority be given to ensuring organisations of 100+ employees comply with their reporting obligations. [Rec 9]**
- **That consideration be given to gradually extending the Act's coverage to smaller employers with appropriate adjustments to compliance obligations. [Rec 10]**

Other extensions of coverage

- **That the coverage of the Act be expanded to include:**
 - **the Australian Public Service;**
 - **equity partners in professional firms and non-executive board members;**
 - **professional training bodies [Rec 11]**

Measuring progress, achieving change

Data collection and analysis

- **That the extensive experience of EOWA in analysing employer reports be drawn on to prepare consultation papers canvassing**
 - **which employee data should be uniformly collected by reporting employers and**
 - **how targets should be set and assessed. [Rec 12]**
- **That employers be required to collect, analyse and report on specified gender equality data including gender pay gaps, and set targets for change over 3-5 years, publish annual evaluations and provide non-discriminatory justifications for lack of progress should this occur. [Rec 13]**

Education and training: generating culture change at the workplace and in society

Education and awareness raising

- **That EOWA continue and expand its educational and advice giving roles, which will be more effective in a compliance oriented environment. A particular focus should be on helping any smaller organisations which may be brought within the Act's ambit. [Rec 14]**
- **Specialist industry advisers should be employed by EOWA who are able to make regular site visits as a supplement to EOWA's scrutiny of reports. They would have educative, advice and compliance roles. [Rec 15]**

Advocacy and education role for the whole of government

- **That government in conjunction with EOWA fund and conduct major public and public service education campaigns to explain gender inequity in the workplace including unequal pay, its link to unequal caring responsibilities and its implications for child poverty in sole parent families, and for poverty amongst women in old age. [Rec 16]**

Making progress happen – compliance mechanisms

Contract compliance and similar mechanisms using government purchasing/funding powers

- **That the use of government procurement powers to obtain compliance with the Act's requirements be revised building and extending on their use in the Fair Work Principles. [Rec 17]**
- **That the receipt of any government funding including grants and monies made available under industry assistance schemes should be subject to recipient organisations covered by the Act complying with it strengthened requirements. [Rec 18]**

Investigative powers and non-compliance penalties

- **That a comprehensive and effective compliance strategy drawing on that devised by the Fair Work Ombudsman (FWO), with appropriate statutory powers be devised to ensure compliance with the revised obligations under the Act.¹ [Rec19]**

Publicity and public scrutiny

- **That employers' anonymised EEO data, targets and evaluations of progress be easily available on their websites and on EOWA's. [Rec 20]**
- **That the names of non-complying organisations be publicised more widely. [Rec 21]**
- **That the waiving of reporting for best practice organisations be ended. [Rec 22]**

Incentives for small employers

- **That incentives for example by way of tax relief should be investigated to encourage small employers in particular to comply with any obligations imposed on them. [Rec 23]**

Resources and research

- **That changes to the framework promoting equality at work for women be accompanied by sufficient government resources to ensure change occurs. [Rec 24]**
- **That an ongoing research programme be established to evaluate any changes to the gender equality at work framework which are implemented. [Rec 25]**
- **That the work being done in various institutions on the development of gender statistics relating to women and work be sponsored by the**

¹ It is not recommended that criminal proceedings be possible under the Act, only civil ones.

Australian Government to provide a high level set of indicators to measure the progress of Australian women at work. [Rec26]

2. Introduction to the Australian Women's Coalition²

The Australian Women's Coalition (AWC) is one of four national women's alliances funded by the Australian Government Office for Women. The AWC aims to:

- increase communication within the women's sector;
- clearly identify the needs of women represented by the partners of the coalition;
- initiate policies, programs and partnerships to address these needs; and
- advocate on women's issues to government and the community.

² See at:
<http://www.awcaus.org.au/>

The AWC has 19 member organisations representing approximately 3 million women in Australia.

Members of the Australian Women's Coalition

Aboriginal Legal Rights Movement Inc

Australian Church Women

Australian Bosnian Women's Cultural Association Inc

Australian Federation of Medical Women

Catholic Women's League Australia Inc

Conflict Resolving Women's Network Australia

Council on the Ageing National Seniors Partnership Australia Ltd

Girl Guides Australia

Hindu Women's Association of Australia

Mothers Union Australia

Muslim Women's National Network Australia

National Council of Jewish Women of Australia

National Council of Women Australia

Pan Pacific and South East Asia Women's Association Australia Inc

Soroptimist Australia Inc

The Salvation Army

UNIFEM Australia

VIEW Clubs of Australia

Zonta International District 24 and District 23

3. Introduction to this submission

3.1 The Review of the Equal Opportunity for Women in the Workplace Act and Agency

In July 2009, the Australian Government announced a review of the Equal Opportunity for Women in the Workplace Act (the Act) and the Equal Opportunity for Women in the Workplace Agency (EOWA) and welcomed submissions from the community.

The Act is very significant as it is one of the principal ways in which government promotes equal employment opportunity (EEO) for women. It covers employers of 100+ staff (private companies, NGOs, non-government schools, higher educational institutions and trade unions - but not Commonwealth or State public services).

3.2 The Equal Opportunity for Women in the Workplace Act

The objective of the Act is to promote EEO for women. It does this by requiring the organisations it covers to:

- **implement a program** to address issues for women in the workplace.

This involves:

- **consulting** with employees particularly with women;
- preparing a **workplace profile**;
- **analysing specific employment matters** which need addressing to achieve EEO i.e. *recruitment, conditions of service (pay equity is not specifically mentioned), pregnancy at work, and work organisation (e.g. flexible and part-time work opportunities), sexual harassment, progression at work*;
- **stating actions** to be taken to tackle the priority issues identified;
- a **self-evaluation of the effectiveness** of these in progressing EEO;

- **report** to EOWA each year on the program (the evaluation need not be made public).

3.3 The Equal Opportunity for Women in the Workplace Agency

EOWA monitors reports for compliance with the Act and encourages promotion of EEO within employer organisations (see Appendix 1 for more information on the Act and EOWA).

3.4 Preparation for the AWC submission - a consultative process

The AWC commissioned the Women and Work Research Group (WWRG)³ at the University of Sydney to prepare its submission. In the course of doing this, the WWRG:

- gave a presentation to and led discussion with AWC members at a consultative forum⁴ held on 15 August 2009 on women's labour market position in Australia, the Act and the work of EOWA;
- circulated a discussion paper about the review and subsequently a draft submission for AWC members' consideration;
- interviewed by telephone 12 representatives (or their colleagues in the same organisation), from 11 AWC member organisations;⁵
- received other comments by email or telephone; and

³ See at:

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

⁴ The consultative forum was held during the AWC's General Meeting of national member delegates in Sydney on 15 August 2009.

⁵ Aboriginal Legal Rights Movement Inc; Australian Bosnian Women's Cultural Association Inc; Australian Federation of Medical Women; Conflict Resolving Women's Network Australia; Girl Guides Australia; Hindu Women's Association of Australia; Muslim Women's National Network Australia; National Council of Jewish Women of Australia; Soroptimist Australia Inc; The Salvation Army; Zonta International District 24 and District 23.

- analysed 51 short questionnaires on equal opportunities for women at work returned by attendees at a regional conference held in Canberra by Zonta International in September 2009 (see Appendix 2).

4. Overview

4.1 Background: women's unequal position in the workforce

Despite the recent lack of progress in women's position at work (as detailed below) much change has occurred over the last 30 years. It is important to recognise and celebrate this with a view to achieving more in the future.

"My experience of how good legislation can work was just after the introduction of the 1984 Sex Discrimination Act (SDA). I was being prevented from moving to a job as a Shipping Master (a public service post responsible for signing seamen on and off ships), located in the Pilbara because it had been determined "it wasn't a job for a woman" due to its remoteness. I was turned down three times even though no other appointment to the job was made and a lot of money was spent sending people out there to do it temporarily. After the Act came into force, a senior male colleague intervened and after he had had a quiet word with the Director of the Department and made mention of the powers of the SDA, the job was suddenly quite suitable for a woman and I filled the position for three years. It took me quite a while to realise how powerful an effect that Act had had on my career"

Margaret Findlater-Smith, Soroptimist International of Australia Inc

Having said this, it has to be emphasised that on many measures such as the gender pay gap, Australian women are not at present faring well at work. Some of these measures are described in Appendix 3. In summary, the hourly gender pay gap, the one which shows the least difference between men and women's wages - has been increasing since its low of 9.6% in 2001 and it now stands at

13.1%. The average weekly ordinary time (i.e. full-time) earnings (excluding overtime) gender pay gap has also been trending upwards in recent years and was 17.4% in May 2009. The overall pay gap, which takes into account the reduced number of hours women work stands at nearly 35%.

Women fill only just over 10% of very senior management positions⁶ whilst recent research indicates that female managers working full-time should expect to earn 25% less than their male colleagues.⁷

The AWC recognises EOWA's excellent work with employer organisations to promote equal opportunities at work for women. However, it operates with little power to compel poorly performing organisations to lift their game. Employing organisations reporting to it cover less than one third of Australian women employees. EOWA itself has recently referred to women's progress at work as having "stalled".⁸ The economic environment and industrial relations changes of recent years have impacted severely on women's progress in the workplace. The interplay of such factors has to be recognised in any changes to promote women's equality at work. A comprehensive package of measures is necessary to kickstart the process of change.

4.2 Overview of the submission

The AWC welcomes the review of the Act and EOWA with its purpose of advising on practical ways to improve the equal employment opportunity framework to deliver better outcomes for Australian women at work.

⁶ EOWA (2008) *Australian Census of Women in Leadership*, research conducted by Macquarie University, p8. See at:

http://www.eowa.gov.au/Australian_Women_In_Leadership_Census.asp

⁷ Watson, I (2009) *The gender wage gap within the managerial workforce: an investigation using Australian panel data*, 2009, HILDA Survey Research Conference, University of Melbourne, 17 July 2009.

⁸ EOWA press release, at:

http://www.eowa.gov.au/About_EOWA/Review_2009/Review2009_EOWA_release.pdf

It supports the need for change. Many AWC members have experience of running organisations and working in business. They consider that fair and equal workplaces are achievable as well as desirable for business and society. The AWC believes that the community will agree. Along with many others, the AWC is convinced that improvements in women's labour market and economic position can only be beneficial for social inclusion, the economy and employers, as well as for women themselves. The AWC believes, too, that many organisations want to promote women's equality at work and would welcome a level playing field between all employers in terms of requirements to do this.

In the sample of professional and business women questioned at a recent conference run by Zonta International District 24, an AWC member organisation, 48 out of the 51 respondents agreed that employers in the public, private and not-for-profit sectors should be expected to do more to promote women's opportunities at work including pay equity (for more details see Appendix 2).

The AWC therefore urges the government to use the review, the report of the House of Representatives Pay Equity Inquiry expected in October 2009 and the recommendations of the Senate Inquiry into the 1984 Sex Discrimination Act⁹ to start a process which will set Australia firmly on track for a radical improvement in women's position in the workforce and in their economic well-being.¹⁰ With strong government leadership, the political argument that change is needed will be won.

Recommendation

- **That government initiate (in conjunction with the proposed public education campaigns recommended below) a high profile**

⁹ 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*, published on 12 December 2008, see at: http://www.aph.gov.au/Senate/committee/legcon_ctte/sex_discrim/report/index.htm

¹⁰ Whilst we do not address this issue here, part of this framework to women's equality must include affordable and available childcare and respite care for those caring for the frail elderly and adults with a disability.

- **issuing detailed discussion papers on different topics (e.g. measuring pay equity; the nature of the data to be collected and analysed by employers) drawing on Australian and international research as to what works to improve women's labour market position;**
- **presenting a range of options for achieving such improvement in Australia;**
- **resulting in a coherent package of measures encompassing the legislative and other changes needed to achieve gender equality at work. [Rec 1]**

The rest of this submission comprises sections proposing changes to the Act's aims, coverage and expectations of employers (section 5), to generate culture change at the workplace and in society (section 6) and improvements in compliance mechanisms (section 7). Four appendices are attached.

5. Aiming higher, achieving more: insisting on gender equality at work

5.1 Introduction

A questionnaire distributed to the 100 attendees at a Zonta International¹¹ conference in Canberra in September was completed by 51 people (see box above and Appendix 2). This was not intended to be a representative survey. It is, however, indicative of the views and experiences of today's professional working women regarding discrimination and equal opportunities for women at

¹¹ Founded in 1919, Zonta International is a global organization of executives and professionals working together to advance the status of women worldwide through service and advocacy.

work. It is significant that nearly 75% of respondents said they had experienced workplace discrimination or knew of a colleague who had. Other surveys suggest widespread discrimination occurs but is seldom acknowledged in the public arena (see for more detail Appendix 3).¹²

The recommendations in the following submission are informed by AWC members' awareness that sex discrimination is alive and well in the Australian workplace and that there is a long way to go to achieve gender equality at work.

5.2 The goals of the Act

Currently these are to:

- promote merit in employment
- promote equal employment opportunity and eliminate discrimination
- encourage employer/employee consultation on these issues

5.2.1 Promoting gender equality at work for all women

The Act's goals need revision to be contemporary and forward-looking. In particular, they should reflect the need to enable both women and men to work and care. The fact that women are the primary carer in most families determines their individual working lives. They choose occupations and subsequently the part-time or flexible hours patterns which enable them to balance work and family responsibilities. The part-time gender pay gap which measures the difference between male and female average weekly earnings including part-time workers was 35% in November 2008.¹³ Whilst families should be free to choose the extent to which they provide parental/family care (e.g. elder care), men and

¹² For example, the ABS Pregnancy and Employment Transitions Survey 2005, (2005) *Pregnancy and Employment Transitions, Australia*, cat. No. 4193.0 at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4913.0Main+Features1Nov%202005?OpenDocument>;

Australian Human Rights Commission (2008), *Sexual harassment: Serious business, Results of the 2008 Sexual Harassment National Telephone Survey*, Sydney, at:

http://www.hreoc.gov.au/sexualharassment/serious_business/index.html

¹³ EOWA pay equity statistics (Nov 2008 figure supplied by EOWA) at:

http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/Pay%20Equity%20Resources/EOWA_Pay_Equity_Statistics_2008.pdf

women should be equally able to provide this. One measure of whether this is happening will be a decline in the part-time gender pay gap.¹⁴

Murray¹⁵ illustrates how men and women become trapped at work by stereotypical expectations in a recent small-scale study. He identified three groups of men and women at different stages of student and work life: as undergraduates, during the first couple of years of work and about 10 years after graduation. Amongst other issues, he asked them about their plans for combining working life and children. He found that the women in all three samples made career related decisions with the need to combine work and childcare responsibilities in mind. With the men future childcare responsibilities did not enter into career planning at all, only breadwinning. Once they had children, the men faced a conflict between maintaining their image with their employers as committed workers while simultaneously wanting to spend more time at home.

In its report, "It's About Time", the then Human Rights and Equal Opportunities Commission (HREOC, now the Australian Human Rights Commission (AHRC)) identified that Australian men told its Inquiry "that they want to share care, and in many cases are already doing so, particularly care of their children."¹⁶

"Men, young fathers, want to care for their children. Enabling them to work flexible hours acknowledges the importance of the father to the family unit."

Zubeda Raihman, Muslim Women's National Network Australia

¹⁴ Which measure may be replaced by a carer's pay gap but this is not an issue which is addressed here.

¹⁵ Murray, J. (2009). *Great Expectations: Individuals Work and Family*, Unpublished PhD Thesis, Sydney University.

¹⁶ Australian Human Rights Commission (2007), *It's About Time: Women, men, work and family*, Sydney, p.100, at: http://www.humanrights.gov.au/sex_discrimination/its_about_time/

Recommendation

- **That the goals of the Act include a provision that employers facilitate the ability of both men and women to genuinely choose how they combine work and care.** [Rec 2]

The 2008 report of the Senate Inquiry into the Sex Discrimination Act 1984¹⁷ 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. The AWC would also endorse this approach.

Recommendation

- **That a positive duty to promote equality, remove discrimination and take reasonable steps to avoid sexual harassment be imposed on employers under the Act.** [Rec 3]

The AWC represents women from all sections of the community (see above, list of members). It proposes that the Act explicitly require employers to promote equality at work for women of all backgrounds including women with disabilities, Indigenous women and women from culturally and linguistically diverse backgrounds. It considers that making difference amongst women explicit will promote inclusion at work of those from diverse backgrounds within the Australian community.

"Being too generalist can in practice be exclusionary"

Jennifer Begent, The Salvation Army - Tasmania Social and Community Services.

¹⁷ See footnote 9.

Examples of how this would benefit women of diverse backgrounds were provided by some AWC member organisations. Such an obligation would, for example, draw employers' attention to the need for flexible working to enable women practising religions other than Christianity to enter the workforce. For many women from non-Christian backgrounds, a degree of flexibility at work is necessary in order to enable them to pray at appropriate times and use their leave to cover particular religious festivals.

"It's important for women from religious/culturally diverse backgrounds that their religious practices can be catered for at work: workplaces which accommodate such practices are ones which respect their employees and this assists women from culturally diverse backgrounds to find and keep work when they wish to work and continue to be observant. It can also be argued that a workplace which has mainstreamed flexible working in its HR practice, should not find this difficult to do as it will have made the culture shift to accommodating varied working patterns."

Rysia Rozen, National Council of Jewish Women Australia

Pay equity for Aboriginal Australian women was raised as a particular concern by an AWC member as needing to be addressed by employers.

"Aboriginal Australian women should be an explicit focus of laws promoting equality for women at work. It's important to recognise that women of diverse backgrounds bring different skills to the workplace and enrich it. In particular, pay equity is a big issue for Aboriginal Australian women which legislation should ensure is resolved in individual organisations and across society."

Rosney Snell, CEO, Nunga MiMinar Inc. and vice-chairperson of the Aboriginal Legal Rights Movement, South Australia

Mainstreaming flexible working would also benefit women from communities who may have caring responsibilities and less access to affordable and appropriate

childcare. Women and men with a disability would also benefit from increased availability of flexible working hours.¹⁸ Employers should also be more willing to recognise overseas qualifications and work experience.

"Bosnian women want to work, they know work will help integrate them into Australian life, help them improve their language skills. They would like to have more information and assistance regarding an appropriate recognition of their overseas qualification and more support regarding bridging gaps between their qualification and Australian employment requirements, to better their employment opportunities. It needs to be noted that Bosnian women also value their families, and some of them prefer flexible working so they can be workers and mothers."

Bekha Custovic, Bosnian Woman's Cultural Association

Recommendation

- **That the goals of the Act explicitly include their application to women of all backgrounds including women with disabilities, Indigenous women and women from culturally and linguistically diverse backgrounds.** [Rec 4]

5.2.2 An agency for all working women

AWC members also consider that maintaining EOWA as a statutory authority and as one focused on women at work, will best achieve change for all working women. It will enable a focus to be maintained on women's experience at work and the development of expertise to assist employers promote equality at work for women of diverse backgrounds.

¹⁸ The *It's About Time* report (see footnote 16) referred to the HREOC National Inquiry into Employment and Disability noting that it "recommended that efforts toward flexibility in workplaces to meet the needs of employees with disability be coordinated with efforts to create family-friendly workplaces. The report notes that the kinds of flexibilities that might be needed by employees with disability are not substantially different to the needs that other employees with caring responsibilities need." (p94)

Recommendation

- **That the agency responsible for administering the Act should remain an agency promoting women's equality at work and a statutory authority operating at arms length from government with appropriate independence to advocate on behalf of women at work. [Rec 5]**

5.2.3 Consultation

Fostering employer-employee consultation on EEO issues for women is one of the objects of the Act and should be retained. The AWC recognises the value of employee consultation in identifying gender equality issues at a particular workplace and recognises that many employers will be practised at engaging in this. Effective consultation frameworks also maximise employee involvement in creating business success e.g. through problem-solving.

"Involving employees with a business by way of good quality consultation is very useful for employees and companies."

Madhu Singhal, Hindu Women's Council of Australia

Burgess et al¹⁹ found in their study of two male dominated industrial manufacturing organisations that the one which conducted extensive consultations with its women employees also provided them with training, promotion and flexible working opportunities - and a positive working environment. Though far from having resolved the problems of equal pay and job segregation, it was further along this road than the other workplace investigated which had little commitment to implementing EEO and was a more difficult place for women to work.

It must also be acknowledged that discrimination and other issues relating to equality at work may be difficult for employees to raise personally even in a

¹⁹ Burgess, J., L. Henderson and G Strachan, 2005. Women Workers in Male Dominated Industrial Manufacturing Organisations: Contrasting Workplace Case Studies from Australia, *Management Review*, Vol.16, Iss.4, p.458.

consultation situation. Consultation through union and other employee representatives also needs to occur in addition to direct employee consultation.

Recommendations

- **That encouraging employer/employee consultation on gender equality issues at work continue to be a goal of the Act. [Rec 6]**
- **That consultation be defined in the Act and an obligation imposed on employers to undertake it in good faith including through union and other employee representatives. [Rec 7]**
- **That scrutiny of consultation arrangements, outcomes and how these have been acted on by employers should be part of a revised, uniform and mandatory reporting process. [Rec 8]**

5.3 The Act's coverage

5.3.1 Organisations with less than 100 employees

Nearly 1.3m of the over 4.9m women employees in Australia were covered by reports to EOWA as of July 2009.²⁰ The vast majority of Australian women employees work for employers who do not report to EOWA. Some work for employers who are not obliged to do so. An unknown number work for organisations of 100+ employees which do not comply with their reporting obligations.

Several AWC members felt that extending obligations under the Act to all employers would best reflect the ideal that all workplaces should promote equal opportunity and fairness.

²⁰ Review Issues Paper p.7, see at:
http://www.fahcsia.gov.au/sa/women/pubs/general/equal_opp_review/Pages/default.aspx

Some of those interviewed in preparing this submission run or have run very small organisations (including a medical consultant with one employee, a primary school principal with 12 staff, a member with experience of managing small retail businesses). They consider they are applying or have applied EEO principles and did not consider it impossible to do this in a small organisation. Another argument for the extension to small employers is that a culture conducive to gender equality will spread more widely within the community if more organisations are covered by the Act.

Others felt extending coverage was inadvisable or should only be done gradually and possibly just to employers of 50+ employees. Concern was expressed too about employers who should be reporting under the current Act but were not doing so.

"The greater the number of workplaces which have to meet good gender equality standards, the more the ideas behind the standards - equality for women - will spill over into the home."

Zubeda Raihman, Muslim Women's National Network Australia

The issue of the resources needed to effectively implement and police reporting obligations was acknowledged. Ensuring organisations of 100+ employees comply with the Act must be the first priority. Extending coverage to smaller employers should be actively considered, taking a gradualist and consultative approach to any extensions. Compliance obligations could be adjusted for smaller employers.

Recommendations

- **That priority be given to ensuring organisations of 100+ employees comply with their reporting obligations. [Rec 9]**

- **That consideration be given to gradually extending the Act's coverage to smaller employers with appropriate adjustments to compliance obligations.** [Rec 10]

5.3.2 *The Australian Public Service*

The AWC also supports extending the Act's coverage to the Australian Public Service (APS). This would hold the public service to the same standards and external scrutiny as private and not-for-profit employers. Good practice in the APS could also be more easily mainstreamed into other sectors.

5.3.3 *Other extensions of coverage*

Extending coverage to equity partners in professional firms and non-executive board members is advisable in view of the poor representation of women in these positions.²¹

Additionally, a mechanism needs to be found to bring professional training bodies under the auspices of the Act.²² Professional bodies setting training requirements should be required to work with employers to promote women's equality in their profession. One AWC member, the Australian Federation of Medical Women (AFM W) provides evidence of the need for this change in relation to the medical profession. AFMW points to the following as needing solutions:²³

- where a training programme prohibits part-time training during certain of the training years. This is because those working part-time due to family responsibilities may have to stop training until they can resume it full-time;

²¹ See EOWA (2009), *Pay, power and position: beyond the 2008 EOWA Australian census of women in leadership*.

²² Such bodies are already covered by the Sex Discrimination Act 1984 but it is hard for individuals to make complaints against their professional training bodies.

²³ Examples taken from *Training for life - Prepared by the Australian Federation of Medical Women* available on the AFMW website at: <http://www.afmw.org.au/images/stories/AFMW/trainingforlife.pdf>

- where a training program provides that training must be "recent" to count towards a qualification. This can disadvantage those taking time off for parental leave and/or training part-time;
- the cost of undertaking training part-time. This is an issue as not all training bodies make available the pro rata payment²⁴ of training fees for those in part-time training.

"The medical profession recommends earlier childbearing whilst many of their systems act to discourage it. Even if you manage to qualify as a medical consultant whilst starting a family (and the average age of reaching consultant grade is approaching 36) - qualifying through the part-time route is often seen as "less dedicated" and adversely affects job opportunities."

Desiree Yap, Australian Federation of Medical Women

Recommendation

- **That the coverage of the Act be expanded to include:**
 - **the Australian Public Service;**
 - **equity partners in professional firms and non-executive board members;**
 - **professional training bodies [Rec 11]**

5.4 Measuring progress, achieving change

5.4.1. Introduction

The AWC believes that achieving economic equality between men and women requires more of employer organisations (public, private and not-for-profit) than the community has expected to date. The respondents to the Zonta questionnaire as described above (and see Appendix 2) expressed this view

²⁴ That is adjusting a fee to be the same proportion of the full fee as the proportion of training hours is to the full training requirement e.g. 25% or 50% or 75%.

overwhelmingly. The December 2008 report by the Senate Inquiry into the Sex Discrimination Act 1984²⁵ made a similar point (see box below).

"The committee also considers ... 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." (paragraph 11.93)

The report by Senate Inquiry into the Sex Discrimination Act 1984²⁶

5.4.2 The limits of the business case as a driver of gender equality of work

Whilst the business case can and does operate to spur individual organisations to improve their EEO practices because of the increasingly well-documented benefits in relation to market competitiveness,²⁷ it seems to be insufficient to create systemic change amongst employers. The lack of progress identified in Appendix 3 reflects this.

One of the reasons for the failure of the business case to drive change in EEO practices is identified by UK academic Linda Dickens.²⁸ She notes, "it is often only in the longer run or at the level of the economy and society as a whole that the cost of inequality and wasted human resources may be manifested". This is well illustrated in Australia by the underutilisation of women in the workforce despite the Australian government's successful investment in education (see Appendix 3).

²⁵ See footnote 9.

²⁶ See footnote 9.

²⁷ See for example in relation to flexible working, Hegewisch, A. (2009), *Flexible working policies: a comparative review*, EHRC, London, pp43-44, at: http://www.equalityhumanrights.com/uploaded_files/research/16_flexibleworking.pdf

²⁸ Dickens, L. (2000), Beyond the business case: a three pronged approach to equality action, *Human Resource Management Journal*, Vol.9, No.1.

It may be that increased compliance requirements and better enforcement (as recommended below) could become a persuasive part of the business case: employers would have to factor in the financial risks of non-compliance.

5.4.3 *Research on the effectiveness of the Act*

The relatively limited academic literature on how the Act operates is invaluable in identifying problems with the existing legislation. More details of its findings are provided in Appendix 4. The main points are (and it is important to note that these relate to organisations which were judged to have complied with the Act):²⁹

- a review of EEO reports filed with EOWA in one year for 91 transport organisations (an industry where women are seriously underrepresented) and 106 finance and insurance organisations (an industry where the weekly full-time gender pay gap is nearly 37% in 2009³⁰) indicated that between 25%-50% made no comments/activities³¹ or no specific EEO ones³² to address recruitment, promotion, training and development, work organisation (e.g. flexible working) or conditions of service (e.g. pay equity);
- when organisations' reports were more substantial, they tended to concentrate on issues such as flexible working which the researchers commented provided "a cheap flexible labour force for roles denied access to career paths";

²⁹ Much of this summary also draws on the overview of reports provided by Professor Strachan in her powerpoint presentation to the roundtable on the EOWA review, Sydney, 4 August 2009 at: http://wwrg.econ.usyd.edu.au/Events/2009/eowa_roundtable/wwrg_strachan.pdf

³⁰ Australian Bureau of Statistics (ABS) (2009) *Average Weekly Earnings, Australia, May 2009*, at: [http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/376AFC773288BA43CA25761000197A9F/\\$File/63020_may%202009.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/376AFC773288BA43CA25761000197A9F/$File/63020_may%202009.pdf)

³¹ In the typology used here, this classification meant that no comments were made, or issues identified, or strategies outlined in the employment matters identified.

³² This classification indicated only slightly more activity than that in footnote 29, in that comments were made but they indicated that "discrimination play[ed] no role in workplace disparity between different employee groups" and that differences were due to individual choice. The remaining three classifications indicated varying degrees of positive activity in relation to women and the specified employment matters.

- there is little mention of EEO in recruiting and promotion;³³
- there is virtually no mention of pay equity;
- where obligations on employers are clear, as in the case of sexual harassment, most companies had policies though there is some issue about whether these are effective;
- reports indicated that workplace programs were not well planned, did not set targets and did not try and measure success.

These findings together with the overall lack of progress indicate that now is the time to require outcomes rather than policy development from employer organisations.

5.4.4 Data collection and analysis

Considerable material is submitted by many organisations to EOWA at present. However, apart from general guidelines, there is no statutory requirement about which data must be collected and analysed, nor requirements to set targets for change, nor for some of the key data and evaluations of progress to be made public.

The report into the mining industry, one of the most gender segregated of industries, jointly commissioned by the Australian Government Office for Women and the Minerals Council of Australia³⁴ sees employer data collection and

³³ An AWC member suggests that it should be the norm that human resource departments actively seek to recruit qualified women to positions where women are underrepresented and that interview panels as a matter of course should include a woman.

³⁴ OFW/MCA (2006) *Unearthing New Resources: Attracting and Retaining Women in the Australian Minerals Industry*, a report by the Australian Office for Women and the Mineral Council of Australia, at:
http://www.facsia.gov.au/sa/women/pubs/economic/new_resources/Pages/default.aspx

analysis as central to driving progress for women in that industry. Several overseas jurisdictions require this in their mandatory EEO programs.³⁵

"It's important that EEO plans by employers are improved and the independent assessment of their quality is more demanding. There needs to be uniformity in the way companies are measuring their EEO progress. Collection of data is such an integral step to serious commitment and capacity to promote both cultural change and regulatory adherence, I strongly believe that reporting standards must be uniform to become a tool for effective change."

Marcia Pinski, National Council of Jewish Women Australia

AWC members made the point that employers in all sectors are used to planning to set and meet fiscal and performance targets as part of their strategic planning process. They are also familiar with collecting data to see if targets are being met and to identify business achievements. Employers' expertise here should be of use in setting and achieving EEO targets.

"You get what you can measure! Business sets targets for everything else it does so why not for gender equality? If it doesn't achieve them, it can explain why not. If the reasons are justifiable, fine. If not, that's when enforcement cuts in."

Fiona Krautil, Girl Guides

Much useful (and clearly underused) material already exists to help employers do this on the EOWA website.³⁶ Many employers already collect comprehensive human resource data and can build on their good practice in doing this. Requiring a uniform set of data to be collected by organisations would create a level playing field between them.

³⁵ For example, the UK Race Relations Act (public sector only).

³⁶ For example, guidelines about reporting on employment matters and waiving guidelines.

The AWC considers that organisations need to collect, analyse and compare over time consistent, uniform and detailed human resource data. Targets need setting over the medium (say 3-5 years) and short (annual) term and progress needs regular evaluation. Organisations cannot understand whether they are fulfilling their obligations to promote gender equality without such information and in particular they cannot identify which strategies may or may not be working.

Having said that, the AWC believes that the data collection and target setting to be required of employers are areas in which detailed briefings should be prepared and consulted on by the Government with the community and key stakeholders as proposed above. This is important to enhance stakeholder and community understanding of women's disadvantage in the workplace. It would also demonstrate why data collection is important to measuring and overcoming it. The AWC recommends that the extensive experience of EOWA in analysing employer reports be drawn on in preparing such consultations about data collection and target setting.

It should also be mandatory for de-identified data including pay equity data obtained through pay audits to be available publicly as well as organisational evaluations so that employer progress or otherwise is open to community scrutiny (see in section 7).

"Reflecting on this review, I realise we as an organisation can look at whether the segregation which has occurred over the years resulting in men predominantly working in homelessness and drug and alcohol services and women in emergency relief, and youth and family services has resulted in a gender pay gap at any level. I don't think it has, but I can see the value of a pay audit to document what is happening. It would not be difficult for us to do."

Jennifer Begent, The Salvation Army - Tasmania Social and Community Services.

Recommendations

- **That the extensive experience of EOWA in analysing employer reports be drawn on to prepare consultation papers canvassing**
 - **which employee data should be uniformly collected by reporting employers and**
 - **how targets should be set and assessed.** [Rec 12]
- **That employers be required to collect, analyse and report on specified gender equality data including gender pay gaps, and set targets for change over 3-5 years, publish annual evaluations and provide non-discriminatory justifications for lack of progress should this occur.** [Rec 13]

There are a number of issues such data must measure. A brief (and non exhaustive) outline of several of particular concern to the AWC is given below.

5.4.5 Pay equity

Appendix 3 identifies some of the national statistics for the gender pay gap. Lack of pay equity was a concern during the AWC consultations and the Zonta questionnaire (see Appendix 2) raised the issue of pay inequity. A high number of respondents (75%) indicated that they had personally been discriminated against at work or had known a woman colleague who had been. Of 45 reasons identified relating to the respondents themselves, nearly one quarter related to receiving unequal pay.

EOWA³⁷ reports many employers believed the gender pay gap did not exist in their organisation as they felt the pay differences were justified by the fact that women in their organisations were concentrated in low-paying jobs. This is indicative of a lack of understanding amongst employers of pay equity: yet understanding and dealing with this issue is central to promoting equality at work.

³⁷ (2009) EOWA *Survey on Paid Maternity Leave, Sex-based Harassment Initiatives and the Gender Pay Gap*. EOWA, Sydney.

Recent research³⁸ using HILDA³⁹ data examined the gender pay gap among *full-time* (our emphasis) managers between 2001 and 2007. It concludes that women managers earn about 25% less than male managers. This is despite "the characteristics of male and female managers being remarkably similar". It concludes as much as 70% of the gap is due to discrimination.

The Zonta questionnaire also raised the issue of pay inequity associated with job segregation. Thirty-four respondents (over two thirds of those answering this question) indicated that they had noticed job segregation in their organisation. Over two thirds (24) of those noticing job segregation (34) indicated it was associated with unequal pay.

The excellent "Developing Pay Equity Strategies" on the EOWA website⁴⁰ provides tools to enable employers to develop gender equity in their pay structures and pay outcomes.

5.4.6 Flexible part-time working

Although women now make up nearly half the labour force at just over 45% in 2008, some 40% of them work part-time, a pattern driven by their caring responsibilities. Part-time working is linked to lower access to training and more limited opportunities for career development.

³⁸ Watson, I. (2009), *The gender wage gap within the managerial workforce: an investigation using Australian panel data*, 2009, HILDA Survey Research Conference, University of Melbourne, 17 July 2009.

³⁹ Household Income and Labour Dynamics in Australia which is a longitudinal study sponsored by FAHCSIA and undertaken by Melbourne University.

⁴⁰ See at:

http://www.eowa.gov.au/Pay_Equity/Pay_equity_site.asp

"It's important to create internal paths for career progression in businesses, instead of the situation of not providing training and then bringing in talent from outside. And that should include part-timers' access to career progression."

Leigh Ellwood-Brown, Conflict Resolving Women's Network Australia

Barns et al⁴¹ comment that these part-time jobs are not of the same quality in terms of status or pay as full-time employment. For example part-timers suffer an 8% per hour pay penalty compared to their full-time equivalent colleagues (p.33) - with one analysis indicating it is 25% amongst the higher paid (p.33). They also note that in recent years there has been a move amongst women to work proportionally more in part-time jobs (p.32).

One respondent to the ZONTA questionnaire referred to above and described in Appendix 2, commented on one problematic aspect of current approaches to flexible working. She noted in her answers that she knew of a woman who had "come back from maternity leave to same position part-time - but still ha[s] exactly same amount of work to do - means you basically[get] unequal pay for same job".

AWC members place considerable importance on increasing good quality part-time and flexible work, with training and promotion possibilities - and enabling men to work such patterns as well. And they draw the links between facilitating flexible working and the employment of women from culturally and linguistically diverse backgrounds and those with disability.

"Greater opportunities for flexible working should be available and employers should also be offering improved training and development opportunities to their employees particularly women."

Madhu Singhal, Hindu Women's Council of Australia

⁴¹ Barns, A., T. Jefferson and A. Preston (2009) *Women's employment in the context of the economic downturn*, prepared for the Australian Human Rights Commission.

Several aspects of flexible working need measuring by employers including:

- career progression and training of those working part-time and flexible hours,
- whether such hours are available at all levels in the organisation,
- whether men are increasingly working such patterns.

“An imaginative and proactive response is needed to the possibility of job sharing in teaching, including the school principal role - it would assist women's career development significantly. The key is properly preparing job sharers for their role, e.g. how to implement a consistent approach to daily decisions. For principals this would need to extend to key issues such as relationships with staff and professionally developing executive staff to manage finances and how to be rigorous about weekly handovers. There is a new Accredited Leadership qualification being developed by the Institute of Teachers which could be seen as ‘on-site’ training in a shared role if it was part of a practical plan to build up capacity in corporate knowledge and thus facilitate job-sharing. This would allow a younger group of women in teaching to be promoted.”

Sharyl Scott, Zonta International and school principal

5.4.7 Parenting and work

Becoming a parent is often the path of no return for women in terms of well paid high quality employment. Chalmers and Hill in a submission to the "It's About Time" Inquiry (p.77)⁴² referred to their research suggesting that mothers taking up part-time work after childbirth are likely to earn less when (or if) they return to work full-time. Additionally they should expect not to catch up on the earnings which would have accrued to them had they continued working full-time.

⁴² See footnote 16.

Whether or not women return to work after childbirth may be affected by less favourable treatment during pregnancy (see ABS 2005⁴³ indicating 22% of women suffered this) or due to denial of the right to return to their job after maternity leave by the employer⁴⁴ - as well as the lack of availability of part-time work.

The "It's About Time" Inquiry (pp86-87)⁴⁵ found that "reasons for men's low take up of family-friendly workplace arrangements include concerns about money, concerns about adverse effects on careers, fears about job security, negative attitudes of supervisors and an overall perceived lack of support".

One respondent to the ZONTA questionnaire referred to above and described in Appendix 2 commented in her answers about her workplace:

"behind closed doors they will decide not to engage new staff who if female are of "breeding age".

Increasing men's leave taking and flexible working would begin to shift employer views that women between 25 and 40 are an employment risk towards regarding men of that age as being equally "risky" to employ. It should enable more women to work more hours and for better quality part-time jobs to be created for both women and men to fill.

⁴³ ABS (2005) *Pregnancy and Employment Transitions, Australia*, cat. No. 4193.0 at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4913.0Main+Features1Nov%202005?OpenDocument>

⁴⁴ See for example, Charlesworth, S. and Macdonald, F. (2007) *Hard Labour? Pregnancy, Discrimination and Workplace Rights*, Office of the Workplace Rights Advocate, Melbourne. http://www.business.vic.gov.au/busvicwr/assets/main/lib60148/hard%20labour%20final_artfinal.pdf

⁴⁵ See footnote 16.

Women of childbearing age face discrimination particularly in relation to promotion. If men and women used parental leave equally, this would help as employers could not assume only women would take time off to look after the children.

Sharyl Scott, Zonta International

Several aspects of parental leave need measuring by employers including:

- whether there is leave dedicated to fathers/the secondary carer,
- availability and take up of such leaves by gender,
- return rates after taking leave differentiating between those who have returned to the same job and those who have not,
- how parents who have taken parental leave progress in their careers.⁴⁶

5.4.8 Sexual harassment

Sexual harassment remains prevalent in the workplace.⁴⁷ Most workplaces reporting to EOWA may now have policies in place but indications are that training managers and employees remains inadequate⁴⁸. This can be a particularly serious issue for women attempting to have jobs in non-traditional industries or occupations. Burgess et al⁴⁹ in their study of women workers in two male dominated industrial manufacturing organisations found that in one workplace women were not progressing well and were unhappy at work. Those of them working in non-traditional areas were met by hostility from their male

⁴⁶ Citi (a financial services employer) in its UK operation proactively manages maternity. Apart from monitoring rates of return from maternity leave, they have analysed retention of women returners over three years and found it is 74%. They will be following this up with a similar survey and also look at such women's career progression and grievances etc occurring in relation to maternity (EOR, August 2009).

⁴⁷ Australian Human Rights Commission (2008), *Sexual harassment: Serious business, Results of the 2008 Sexual Harassment National Telephone Survey*, Sydney, at: http://www.hreoc.gov.au/sexualharassment/serious_business/index.html

⁴⁸ (2009) EOWA *Survey on Paid Maternity Leave, Sex-based Harassment Initiatives and the Gender Pay Gap*. EOWA, Sydney.

⁴⁹ Burgess, John, Lindy Henderson and Glenda Strachan (2005). Women Workers in Male Dominated Industrial Manufacturing Organisations: Contrasting Workplace Case Studies from Australia, *Management Revue*, vol. 16, no. 4, pp. 458-474.

colleagues. The OFW/MCA report⁵⁰ noted that sexual harassment in the mining industry appeared less severe than it once was but continued to be a serious issue.

AWC member, the Australian Federation of Medical Women considers sexual harassment and discrimination to be a serious impediment to women reaching the higher echelons of the medical profession.

Sexual harassment remains a significant issue for medical women. The Federation continues to regularly encounter instances where doctors at all levels of their training have experienced sexual harassment and discrimination but dare not complain, much less bring cases, because of the implications for their career. Policies and training do not seem to be enough. What is needed are independent surveys within both training bodies and employment bodies as to the extent of the issue and whether it's been dealt with satisfactorily. There should be effective penalties where it hasn't.

Desiree Yap, Australian Federation of Medical Women

A recently publicised case, neurosurgeon Caroline Tan who obtained \$100,000 in damages for sexual harassment by a former senior colleague illustrates this. Clayton Utz, solicitors, summarised the judgment on their website. They noted that the judge found "it was more probable than not that the alleged incident took place" and that [the respondent] "was in a powerful position in which he had "great influence" over Dr Tan's future career and qualification." They commented that the judge found [he] had "deliberately and falsely denied the harassment."

They also said the judge "noted that Dr Tan's capacity to enjoy her profession would be "significantly tarnished"⁵¹

⁵⁰ OFW/MCA (2006) *Unearthing New Resources: Attracting and Retaining Women in the Australian Minerals Industry*, a report by the Australian Office for Women and the Mineral Council of Australia, at:
http://www.facsia.gov.au/sa/women/pubs/economic/new_resources/Pages/default.aspx

Policies, training and independent surveys of employees about the extent of sexual harassment and whether it's been dealt with satisfactorily are all needed in employing organisations.

6. Education and training: generating culture change at the workplace and in society

6.1 Managers

The importance of employer and management support for equality initiatives is critical. The commitment of the most senior managers is a must, as is that of line managers. Senior managers can set the rules driving action which fulfils an organisation's commitment to promote gender equality. Line managers are critical as it is usually they who make day-to-day decisions about whether to agree flexible working, how a performance review goes (is it presenteeism or results which count?), whether an increment or bonus is awarded, who obtains the chance to act up, or take a development role, or to go on a training course. It is also line managers who will welcome (or otherwise) women back to work from maternity leave.

Resources and training for line managers are critical in ensuring they promote organisations' gender equality at work policies. One of the barriers to accessing family-friendly arrangements that was reported to the "It's About Time" Inquiry⁵² was a lack of implementation by managers.

⁵¹ See at:

[http://www.claytonutz.com/publications/newsletters/discrimination_and_diversity_insights/20080916/significant_damages_payout_plus_costs_for_sexual_harassment_claim.page`](http://www.claytonutz.com/publications/newsletters/discrimination_and_diversity_insights/20080916/significant_damages_payout_plus_costs_for_sexual_harassment_claim.page)

⁵² See footnote 16.

In a series of organisational case studies conducted as part of the Parental Leave in Australia Survey, Baird⁵³ found that there was considerable variation about how return to work after parental leave was managed within the same organisation. Line managers' attitudes were crucial in determining whether or not return to work went well for an employee.

This finding is echoed in the study of the financial services group Citi's management of maternity.⁵⁴ Line managers were found to be concerned about how well equipped they were to manage pregnant women and those returning from maternity leave and were concerned about the impact on their team's performance. Citi implemented successful (and compulsory) training for line managers in managing maternity. This training deals with practical issues but also tackles myth busting and unconscious bias. Maternity return rates are monitored to ensure training is put into practice - and is effective. Between 2005-2008 maternity leave rates of return have increased from 82% to 97%.

Hegewisch⁵⁵ identifies resources and training as issues for line managers in her survey of their role in facilitating flexible working. She notes research by Kossek and Hammer⁵⁶ that organisations reward managers for achieving their targets without undue concern for problems down the track relating to "reduced performance or higher staff turnover" (p.49). She comments "tough performance targets (which generally do not include any targets in relation to flexible working), encourage line managers to be risk adverse" when it comes to permitting flexible working.⁵⁷

⁵³ Baird, M. (2009), *Parental Leave in Play: Where Manager and Employee Meet. A summary of findings from the organisational case studies*, at:

<http://www.polsis.uq.edu.au/parental-leave/level2summary.pdf>

⁵⁴ See footnote 46.

⁵⁵ See footnote 27.

⁵⁶ Kossek, E.E. and Hammer, L.B. (2008) 'Supervisor Work/life training gets results' *Harvard Business Review*; November, at:

<http://hbr.harvardbusiness.org/2008/11/supervisor-work-life-training-gets-results/ar/1>

⁵⁷ Hegewisch also highlights the particular value of research into a particular type of line manager training by Kossek and Hammer (see footnote 56).

The “Its About Time” Inquiry⁵⁸ noted that some submissions indicated that managers' performance reviews should evaluate how successfully they put family friendly practices into practice for their staff (p.88). Requirements to collect data, evaluate progress and achieve change recommended above will operate as a lever to increase effective training for and monitoring of managers.

6.2 Education and awareness raising

To assist employers EOWA should continue and expand its educational and advice giving roles, which will be more effective in a compliance oriented environment (see below). These functions will be particularly important in helping any smaller organisations which may be brought within the Act's ambit. One AWC member with considerable experience in this area commented that there is often not enough expertise in how to promote gender equality at work within many employer organisations. EOWA has a critical role in continuing to provide tools⁵⁹ for implementing this on its website and direct advice as suggested below.

Site visits on invitation by employers can be conducted by EOWA for a fee. Picking up on recommendations made in the 1998 review of the then Affirmative Action Act (the predecessor to the current Act), this expertise could be built on by EOWA by employing specialist industry advisers who are able to make regular site visits as a supplement to scrutiny of reports. They would have both an educative and advice role but also a compliance one (see below). In the educative role they could for example, conduct "friendly" audits of work practices to enable them to give hands-on advice to employers who ask for such assistance.⁶⁰

⁵⁸ See footnote 16.

⁵⁹ One enabling the assessment of line managers' performance in promoting gender equality could usefully be developed.

⁶⁰ Similar perhaps to visits now but tightening up on requirements in some areas e.g. employee input.

Those devising business and human resources courses in universities have a role in promoting the understanding of equality at work issues for students as managers of the future.

Recommendations

- **That EOWA continue and expand its educational and advice giving roles, which will be more effective in a compliance oriented environment. A particular focus should be on helping any smaller organisations which may be brought within the Act's ambit. [Rec 14]**
- **Specialist industry advisers should be employed by EOWA who are able to make regular site visits as a supplement to EOWA's scrutiny of reports. They would have educative, advice and compliance roles. [Rec 15]**

6.3 Advocacy and education role for the whole of government

The AWC notes the findings by EOWA⁶¹ of a lack of understanding in the community about what the gender pay gap is.

AWC members have provided examples of men reluctant to take paid paternity leave without strong encouragement by their employer and of the difficulties men face in obtaining part-time work in professional jobs, to an even greater degree than women.

The AWC envisages a role for major public education campaigns by government to explain gender inequity at the workplace including unequal pay, its link to unequal caring responsibilities⁶² and its implications for child poverty in sole parent families, and for poverty amongst women in old age.

⁶¹ See footnote 48.

⁶² Reducing hours worked by those who work as well as overall participation in the labour force.

Recommendation

- That government in conjunction with EOWA fund and conduct major public and public service education campaigns to explain gender inequity in the workplace including unequal pay, its link to unequal caring responsibilities and its implications for child poverty in sole parent families, and for poverty amongst women in old age. [Rec 16]

7. Making progress happen: compliance mechanisms

7.1 Current compliance mechanisms

Currently, compliance with the Act usually involves annual reporting under the seven general headings entitled "employment matters" described in the Act.⁶³

The employer must analyse current EEO issues and describe actions taken and/or proposed, to address those issues identified as priorities relating to the employment matters. In light of the analyses undertaken by French and Strachan (see Appendix 4), it appears that if an employer considers there are no issues then that is the end of the matter.

The Act also requires a report to set out a workplace profile but does not define what data must be presented or over what period of time. An evaluation of how effective any actions taken have been, must be lodged with EOWA but need not be made public. Pay equity data seems rarely to be made public.

Sanctions for non-compliance i.e. if no or an inadequate report is filed:

7.1.1 Naming in Parliament

- the employer may be named in a report by EOWA to the Minister for the Status of Women, which is tabled in Parliament and which may receive

⁶³ S.3(1) of the Act defines these as covering recruitment and selection, promotion transfer and termination, training and development, work organisation, conditions of service, arrangements for dealing with sexual harassment, and arrangements for dealing with pregnant or potentially pregnant employees and employees who are breastfeeding.

publicity, and listed on the EOWA website (12 of over 2500 reporting organisations were non-compliant in 2007/08);

7.1.2 Contract compliance (using the government's public procurement powers)

- since 1993, Commonwealth departments and agencies have been instructed not to enter into contracts for goods or services with organisations named in Parliament as non compliant;
- government business enterprises and statutory authorities with independent boards are encouraged to adopt a similar policy;
- contractors must only use subcontractors who comply with the Act in that they have not been named in Parliament;
- since 1993, organisations named as non compliant in Parliament are ineligible for grants under specified industry assistance programs;

Compliance is not difficult for organisations to achieve under the Act's existing requirements. The "naming" sanction is little used and its effect, if any, on named companies is unclear. It is also unclear whether the contract compliance and industry assistance sanctions are often or ever applied.

The Act is only one of a number of factors including the economic environment and changes in the way in which wages and conditions at work are regulated⁶⁴ to affect woman's overall lack of progress in the workplace over recent years (see Appendix 2). However, the ineffectiveness of its mechanisms for achieving change is likely to have contributed to this failure.

Burgess et al examined six diverse private sector organisations, three of which were noted by EOWA for their good EEO practices. They looked at how these employers implemented work and family balance practices and concluded "that formal mechanisms cannot achieve work and care reconciliation for women

⁶⁴ Including the move from awards to more individual and workplace bargaining.

workers if they are built upon very limited minimum requirements, are voluntary and are dependent upon the bargaining process at the workplace".⁶⁵

7.2 Changing behaviours: can compulsion improve the employment position of disadvantaged groups?

7.2.1 Some research findings

Research to understand how effectively policed requirements (imposed by statute or by some other form of organisational compulsion) can affect organisational change is complex to undertake. However, it does appear that enforcement procedures in relation to requirements to promote equality at work can be effective. What matters is that real change is required and compliance mechanisms are such that employers consider it worth achieving that change.

The Canadian scholar Carol Agocs⁶⁶ in a survey of the literature concludes that "formalised equity programs with mandatory goal-setting and vigorous and continued enforcement by government authorities make a significant difference in results" to employment outcomes for the groups designed to benefit from them.

Experimental German research by Petersen and Krings⁶⁷ on whether ethical codes of conduct were "Toothless Tigers" for dealing with employment discrimination concluded that they were not if linked to sanctions, in this case an awareness that breaches would be publicised and punished.⁶⁸

⁶⁵ Burgess J., L. Henderson and G Strachan (2007) Work and family balance through equal employment opportunity programs and agreement making in Australia, *Employee Relations*, (29/4) 2007, p415-430

⁶⁶ Agócs, C. (2002), ed., *Workplace Equality: International Perspectives on Legislation, Policy and Practice*, The Hague: Kluwer Law International.

⁶⁷ Petersen L-E and F Krings, 2008, Are Ethical Codes of Conduct Toothless Tigers for Dealing with Employment Discrimination?, *Journal of Business Ethics* (2009) 85:501-514.

⁶⁸ See Aequus Partners, 2009 for a succinct summary of this research, at: <http://www.aequus.com.au/>

McCrudden et al⁶⁹ examined the association between agreements made between private firms of 25 or more employees and the Fair Employment (now Equality) Commission in Northern Ireland between 1990-2000. These were made under legislation aimed at promoting the fair representation of Catholics and Protestants in employment and desegregating workplaces. Enforcement regulation included giving the Commission investigatory powers and the power to reach enforceable agreements with employers and making access to government grants and contracts dependent upon compliance. The authors conclude that the agreement making process was linked to change in the firms making them. The agreements "were likely to have been an integral part of the process in driving change in the Northern Ireland labour market in the 1990s."

7.2.2. Victoria

In 2004, the Victorian Bar Equal Opportunity Briefing Policy was launched. It urged reasonable efforts to identify women barristers, consider engaging them and monitor and report on the numbers and types of case they undertook, fees obtained etc. The Barristers Briefing Report 2006-2007 (2007) prepared by the Victorian Department of Justice about the gender distribution of briefs by government legal services provides data and analysis as recommended by this policy.

It demonstrates that fees invoiced by women in 2003/4 represented 21% of all barristers' fees and women received 42% of the briefs. In 2006/07 the respective proportions were 28% and 52%. Women comprise approximately 20% of Victorian barristers. The application of the Victorian Bar Policy by the Victorian Government to its procurement of legal services, appears to have benefited women. The monitoring and reporting requirements are transparent and create accountability. Now debate is occurring about the high proportion of the high-

⁶⁹ McCrudden, C. (2004), *Legal Regulation of Affirmative Action in Northern Ireland: An Empirical Assessment*, Oxford Journal of Legal Studies, Vol.24, No.3 (2004), pp. 363-415.

volume low paid Children's Court work undertaken by women and the implications of this for gender equality at the Bar.⁷⁰

7.3 Contract compliance and similar mechanisms using government purchasing/funding powers

If employers are asked to do more under the Act in order to achieve compliance, using public procurement powers could be an effective means of persuading them to comply without the need to take court action or impose fines. It also places an obligation on those in the public sector who commission goods and services or make grants to check that organisations have complied with the Act.

7.3.1. The Australian Government Fair Work Principles

In July 2009, the Australian Government published amended public procurement principles as an added method of enforcing compliance with the Fair Work Act 2009 (FWA) by suppliers (and their sub contractors) as employers. This is a good indication of the power which the Government believes it can wield to change workplace norms through the power of its purchasing dollar. These are more forceful provisions than those currently available under the Act. The AWC recommends that they are built on for use to drive change in workplaces to secure equality for women. Contract compliance should also be operated by government business enterprises and statutory authorities with independent boards. It should be extended to the recipients of any government funding.

The principles state⁷¹ that compliance with the FWA is a 'condition of participation' for Australian Government procurement. Suppliers will be required to provide:

- undertakings that they have not been subject to any adverse judgments for a breach of various industrial laws, etc during the past two years;

⁷⁰ See also Charlesworth at:

http://wwrg.econ.usyd.edu.au/Events/2009/eowa_roundtable/wwrg_charlesworthEOWWA09.pdf

⁷¹ Summarised from the government media release containing the new principles:

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

- information about how they promote fair, cooperative and productive workplace relations, e.g. information about provision of annual leave, their capacity to meet workers' entitlements and showing they comply with OHS laws.

Requirements additional to the above are placed on cleaning industry contractors when they are awarded contracts due to the industry's history of underpayment, exploitation and unsafe work practices. Government agencies must consider:

- that adequate staffing is available to achieve the required performance levels under the contract;
- information about how the supplier will provide their employees with the appropriate training, supervision, equipment and materials to do their job safely and efficiently; and
- information from the supplier which enables them to verify that contract requirements are being met.

The Procurement Coordinator will report on developments related to the workplace practices of suppliers each year and commissioning agencies will seek ongoing input from industry, union and other community stakeholders about the application and operation of these provisions.

7.3.2 *International models*

Experience of using procurement powers has been built up in other countries over the years. Northern Ireland, Canada and the US all implement contract compliance to some degree in relation to equality at work. They impose more detailed requirements including targets for change on the employers they cover. In Northern Ireland, significant change has occurred⁷² and employers report that strong legislation helped bring it about.⁷³ They could usefully be examined for

⁷² In relation to the employment of Catholics and the increase of employees working in integrated workplaces

⁷³ See Charlesworth at:

http://wwrg.econ.usyd.edu.au/Events/2009/eowa_roundtable/wwrg_charlesworthEOWWA09.pdf

lessons in how best to use the granting of government moneys and contracts to promote equality at work.

Recommendations

- **That the use of government procurement powers to obtain compliance with the Act's requirements be revised, building and extending on their use in the Fair Work Principles. [Rec 17]**
- **That the receipt of any government funding, including grants and monies made available under industry assistance schemes, should be subject to recipient organisations covered by the Act complying with its strengthened requirements. [Rec 18]**

7.4 Investigative powers and non-compliance penalties

The Fair Work Ombudsman (FWO) is the statutory body charged with ensuring Commonwealth industrial legislation is complied with. It has the investigation, audit and campaign powers available to do this. This is in addition to being able to enforce compliance in a variety of ways including through court proceedings. Its description of its litigation activities as "part of a broader compliance system which comprises a combination of positive motivators and deterrence aimed at bringing about compliance with Commonwealth workplace laws" is an elegant statement of a useful strategy which could be adopted by the Act.

Once non-compliance is uncovered, there should be a range of tools to promote compliance prior to the last resort of court proceedings. The expanded use of contract compliance described above is one. Others could include enabling EOWA to mandate a remedial plan for non-compliance through issuing compliance notices or seeking enforceable undertakings.

Triggering investigations or audits could be done by requiring EOWA to conduct an annual number of random audits of workplaces and/ or to undertake

investigations of organisations whose reports indicate unjustifiably poor outcomes. The use of site inspectors to provide specialist industry advice (see above) would also be a way of identifying organisations to be targeted for auditing where advice and encouragement have not produced progress for women at their workplaces.

"There is a role for EOWA to investigate companies if it believes that they are not complying with the legislation."

Leigh Ellwood-Brown, Conflict Resolving Women's Network Australia

It would be unfair and unrealistic to rely on investigations being triggered by individuals complaining to an enforcement body - other than anonymously or through a representative such as their trade union. The risk to job and career may often be too great for them to be able to do this.

As a last resort, powers to penalise really serious breaches of the Act by way of court proceedings may need to be provided for. This is particularly so as many organisations will not be affected by using procurement powers and government funding requirements to obtain compliance.

Recommendation

- **That a comprehensive and effective compliance strategy drawing on that devised by the Fair Work Ombudsman (FWO), with appropriate statutory powers be devised to ensure compliance with the revised obligations under the Act.⁷⁴ [Rec19]**

7.5 Publicity and public scrutiny

It should be mandatory for anonymised data including pay equity data and organisational evaluations to be available publicly so that employer progress or otherwise is open to community scrutiny. Employers would receive excellent

⁷⁴ It is not recommended that criminal proceedings be possible under the Act, only civil ones.

publicity from this where progress is occurring. They would be able to explain why it is not, if that is the case. If they provided no or inherently discriminatory reasons (e.g. women employees are concentrated in low-paying occupations⁷⁵ or part-time work is not allowed in managerial positions), they would be liable to a range of sanctions as described above.

Publicity about what employers are doing and achieving (or not as the case may be) serves two useful functions: encouraging good practice by providing models and providing a form of "soft" enforcement when poor outcomes have been identified. For these reasons the AWC urges wider publicity of the names of non-complying organisations (which, as now, should be rectified once organisations are compliant). The AWC also supports ending the waiving of reporting by best practice organisations as these are the ones whose examples can most usefully be followed by other employers.

Recommendations

- **That employers' anonymised EEO data, targets and evaluations of progress be easily available on their websites and on EOWA's.** [Rec 20]
- **That the names of non-complying organisations be publicised more widely.** [Rec 21]
- **That the waiving of reporting for best practice organisations be ended.** [Rec 22]

⁷⁵ The recent EOWA report on paid maternity leave, sexual harassment and the pay gap (see footnote 48), states that many employers gave this as a reason for the gender pay gap. This indicates that they had not informed themselves as to its causes nor how to remedy it. It is time for employers who, in the face of community discussion of this issue and the availability of free information and advice on how to remedy pay inequity (see e.g. the EOWA website), wilfully fail to understand the issues and act on this understanding to be subject to sanctions. The consequences for their women employees now and in their old age is too serious for inaction to be an option.

7.6 Incentives for small employers

Incentives for example by way of tax relief should be investigated to encourage small employers in particular to comply with any obligations imposed on them under an amended Act.

Where procurement powers are used effectively, they can also require the employers to whom they apply to require subcontractors to implement EEO principles. These organisations may be smaller employers.

Recommendation

- **That incentives for example by way of tax relief should be investigated to encourage small employers in particular to comply with any obligations imposed on them. [Rec 23]**

8. Resources and research

To achieve change of the magnitude necessary to progress gender equality at work significantly, the AWC believes more government resources will be needed. It will be particularly important to fund the monitoring, education, assistance and compliance functions essential to complement the strengthening of the requirements imposed on employers. The adequacy of the funding to implement any changes to the framework promoting equality at work will be a marker of how serious the government is about achieving change.

The AWC also believes that an ongoing research programme should be established to evaluate any changes to the gender equality at work framework which are implemented. This should include organisational research and work to develop a high-level set of national indicators to measure the progress of Australian women at work, already underway in some institutions in Australia.

Recommendations

- **That changes to the framework promoting equality at work for women be accompanied by sufficient government resources to ensure change occurs. [Rec 24]**
- **That an ongoing research programme be established to evaluate any changes to the gender equality at work framework which are implemented. [Rec 25]**
- **That the work being done in various institutions on the development of gender statistics relating to women and work be sponsored by the Australian Government to provide a high level set of indicators to measure the progress of Australian women at work. [Rec 26]**

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

16 October 2009

Appendices

*Appendix 1 A brief description of the Equal Opportunity for Women in the
Workplace Act and Agency*

*Appendix 2 Analysis of the questionnaires completed by members of ZONTA
International attending the conference for District 24 in Canberra on 19 and 20
September 2009*

Appendix 3 Some measures of women's position in the Australian labour market

*Appendix 4 Summary of some research findings relating to the operation of the
Equal Opportunity for Women in the Workplace Act*

APPENDIX 1

A brief description of the Equal Opportunity for Women in the Workplace Act and Agency

The Equal Opportunity for Women in the Workplace Act 1999

1 Purpose

- promote merit in employment
- promote equal employment opportunity and eliminate discrimination
- encourage employer/employee consultation on these issues

2 How does the Act set about achieving its aims?

The Act requires employers (private companies, NGOs, non-government schools, higher educational institutions, trade unions but not Commonwealth or State public services) to use their human resources function to drive change. It does this by requiring that the organisations it covers:

- **implement a program** to address issues for women in the workplace
- **report** to EOWA each year on the program.

The Act covers organisations of 100+ staff. Those organisations which do report (and those whose obligations had been waived, see foot of page 2) employ about 1.3m women. There were about 4.9m women employees in Australia in mid 2009.

A workplace program under the Act involves

- **consulting** with employees particularly with women about their concerns;
- preparing a **workplace profile** (the contents of this are not specified but usually include e.g. grades + occupations + hours analysed by gender);
- **analysing specific employment matters** which need addressing to achieve EEO i.e. *recruitment, conditions of service (pay equity is not specifically mentioned), pregnancy at work, work organisation (e.g. flexible and part-time work opportunities), sexual harassment, progression at work, training and development*;
- **stating actions** to be taken to tackle the priority issues identified;
- a **self-evaluation of the effectiveness** of the employer's actions on how it is progressing EEO.

The annual report

- the public report **must contain** the workplace profile, the analysis, actions taken and to be taken;
- the **evaluation** need not be in the public report but must be sent confidentially to the Agency;

- information relevant to assessing **pay equity** is often also sent confidentially to the Agency.

3 What happens if organisations don't comply with the Act?

Compliance

Compliance is not difficult for organisations to achieve under the Act's existing requirements. It simply involves up to date reporting under the seven employment matters described above. EOWA puts considerable resources into assisting companies to file up-to-date reports. But they have no power to assess progress or impose a penalty for unexplained and unjustifiable lack of progress.

Sanctions for non-compliance i.e. if no or an inadequate report is filed:

- the employer may be named in the EOWA Annual Report which is laid before Parliament, and listed on the EOWA website (12 of over 2500 reporting organisations were non-compliant in 2007/08);
- the employer cannot tender for government contracts or receive grants under certain industry assistance programs.

The Equal Opportunity for Women in the Workplace Agency (EOWA) – functions:

- to decide if employer EEO reports comply with the Act
- to educate and assist employers to promote EEO for women
- to make site visits if invited
- to manage the encouragement functions described below
- to maintain a website which will assist the above work.

The EOWA website illustrates the amount of educational and persuasive work that it undertakes. All reporting organisations are contacted in some way to assist them with their annual reporting.

Encouragement of compliance

- EOWA Employer of Choice for Women given annually to EEO leaders;
- Business Achievement Awards in EEO;
- Waiving reporting for 3 years: best practice organisations go through a more demanding assessment of their EEO practices and achievements to receive a three-year waiver.

APPENDIX 2

Analysis of the questionnaires completed by members of ZONTA International attending the conference for District 24 in Canberra on 19 and 20 September 2009

Founded in 1919, Zonta International is a global organization of executives and professionals working together to advance the status of women worldwide through service and advocacy. Zonta members volunteer their time, talents and money to local and international service projects, as well as to scholarship and award programs, aimed at furthering women's legal, economic, health and professional status.

One hundred women attended the conference. Principally they were:

- senior executives in the public service, not for profits and large corporates and
- self employed business owners/operators in small to medium sized businesses.

Fifty-one of 100 attendees completed the questionnaire (see below pp 6 and 7). This is not a representative survey of Australian women or women represented by the Australian Women's Coalition. Nevertheless, it is indicative of the views of today's professional working women. The survey was kept short and did not ask for demographic information from the respondents in order to increase the chances of it being completed by the maximum number of people.

Responses to the questions are given below under each question together with a short analysis.

Overview of responses

A surprisingly high number of respondents (75%) indicated that they had personally experienced discrimination at work or had known a woman colleague who had. Forty-five reasons were provided (in relation to discrimination against self), 10 of which were "other". Of the remaining 35, about one third (12) related to receiving unequal pay.

Pay equity - audits

Eleven responded in the affirmative when asked if their organisation had conducted a pay audit or review, and 18 negatively. There were 19 who did not know and three did not reply. This would indicate that conducting pay equity audits is not uncommon, a positive finding. Forty-two percent of organisations reporting to the Equal Opportunity for Women in the Workplace Agency (ie organisations with 100+ employees) say they conduct an annual gender pay equity analysis.⁷⁶ The level of response here is similar (38%) if only those giving a yes or no response are considered.

⁷⁶ EOWA (2009), *Pay, power and position: beyond the 2008 EOWA Australian census of women in leadership*.

The next questions are, of course, were those pay audits conducted in a non-discriminatory manner and what action was taken to remedy any gender pay gap identified? Unfortunately it was not possible to ask follow-up questions in a survey as short as this.

Audits may, of course, have been conducted in the organisations where respondents indicated that they did not know if they had been undertaken. Nearly 40% of respondents were in this category. This in itself is a concern as it indicates that gender pay equity is insufficiently on the agenda for discussion with employees.

Pay equity and job segregation

Responses to other questions indicated that pay equity is a widespread concern. Thirty-four respondents indicated that they had noticed that particular occupations (e.g. managerial positions) in their organisation are mostly done by men or mostly by women (nearly 75% of those answering this question (46)). Twelve said they had not and the remainder did not reply.

A follow-up question was asked as to whether, with regard to the jobs mostly done by men, did the respondent know if/suspect the pay is generally better than for jobs mostly done by women (ignoring whether they consider the jobs to be more highly skilled).

Thirty-one respondents indicated that with regard to the jobs in their organisation mostly done by men, that they either knew or suspected the pay to be generally better than for the jobs mostly done by women. Seven of these had not indicated that there was gender job segregation at their workplace. Possibly they work in organisations too small for them to consider this to be occurring.

Of the 34 who indicated they had noticed job segregation in answer to question 7, over two thirds (24) answered positively to this question, unsurprising given the research on the effect of job segregation on women's pay and the difficulties women face obtaining managerial and non-traditional jobs.

Together with the answer to question 2, which indicated that nearly a quarter of all respondents had experienced discrimination in the form of unequal pay, pay equity would appear to be a matter of serious concern to many of the respondents. One respondent noted on their questionnaire that she knew of a woman who had "come back from maternity leave to same position part-time - but still ha[s] exactly same amount of work to do - means you basically[get] unequal pay for same job".

Flexible working

Well over half of respondents providing a response (as opposed to those who did not know or did not reply to the question (nine)) stated that obtaining flexible working in their organisation was quite or very difficult (25). Seventeen indicated

it was very or fairly easy. There are indications that some of those not replying were self-employed.

Discrimination linked to maternity

Eight responded in the affirmative when asked whether they thought that the fact they may have children in the future or have children now has affected their employer's attitude to their career progression in a negative way. Nineteen responded in the negative.

The rest, nearly half of the respondents (24) indicated they could not say or provided no response which may indicate that the question should have been phrased differently. For example, one responding that they could not say, added "although behind closed doors they [employer] will decide not to engage new staff who if female are of "breeding age"".

Views about requiring employers to do more to promote EEO

The high level of awareness of discrimination may explain the fact that 48 of the 51 respondents said that they think that employers in the public, private and not-for-profit sectors should be expected to do more to promote women's opportunities at work including equal pay for the same job and equal pay for work of comparable value.

Responses to questions analysed

1. & 2. Have you ever experienced discrimination at work?

24 said they had experienced discrimination personally at work, some citing more than one reason:

- not being recruited into a job you applied for; (7)
- not receiving a promotion; (6)
- being turned down for an opportunity to act up in a more senior position, take on an extended role, etc; (7)
- unequal pay; (12)
- returning to work after maternity leave but not to the same or an equivalent job; (2)
- flexible working; (1)
- other. (10)

3. Have you ever known a woman colleague who has suffered discrimination?

Thirty-seven said that they had known a woman colleague who suffered discrimination at work. Fourteen respondents who had not experienced discrimination themselves, answered yes to this question.

Questions 1 and 3 indicate that overall nearly 75% of respondents (38) had had experience of workplace discrimination. This is high. Although the survey is in no way representative, it gives some idea of how much discrimination professional women may be exposed to at work.

4. Do you think the fact you may have children in the future or have dependent children now has affected your employer's attitude to your career progression in a negative way?

Eight responded positively to this question which asked whether they thought that the fact they may have children in the future or have dependent children now has affected their employer's attitude to their career progression negatively. Nineteen responded in the negative.

The rest, nearly half of the respondents (23) indicated they could not say or provided no response which may indicate that the question should have been phrased differently.

5. Obtaining flexible working your organisation, is:

- very easy (5)
- fairly easy (12)
- quite difficult (19)
- very difficult (6)
- don't know (together with those not replying) (9)

Well over half of respondents providing a response (as opposed to those who did not know or did not reply to the question) stated that obtaining flexible working in their organisation was quite or very difficult. There are indications that some those not replying were self-employed.

6. Has your organisation ever conducted an equal pay audit or review?

Eleven responded in the affirmative to this question and 18 negatively. There were 19 who did not know and three did not reply. This would indicate that conducting pay equity audits is not uncommon, a positive finding.

Forty-two percent of organisations reporting to the Equal Opportunity for Women in the Workplace Agency (ie organisations with 100+ employees) say they conduct an annual gender pay equity analysis.⁷⁷ The level of response here is similar (38%) if only those giving a yes or no response are considered.

⁷⁷ See footnote 1 above.

Audits may, of course, have been conducted in the organisations where respondents indicated that they did not know if they had been undertaken. Nearly 40% of respondents were in this category in itself a concern as it indicates that gender pay equity is insufficiently on the agenda for discussion with employees.

7. Have you noticed if particular occupations (e.g. managerial positions) in your organisation are mostly done by men or mostly by women?

34 respondents indicated they had noticed job segregation in their organisation (over two thirds of those (46) answering this question), 12 said they had not and the remainder did not reply.

8. If so, with regard to the jobs mostly done by men, do you know if/suspect the pay is generally better than those mostly done by women? (Ignore whether you consider the jobs to be more highly skilled)

31 respondents indicated that with regard to the jobs in their organisation mostly done by men, that they either knew or suspected the pay to be generally better than for the jobs mostly done by women (not taking into consideration whether they considered the jobs to be more highly skilled). Seven of these had not indicated that there was gender job segregation at their workplace. Possibly they worked in organisations too small for them to consider this to be occurring

Of the 34 who indicated they had noticed job segregation in answer to question 7, over two thirds (24) answered positively to this question, unsurprising given the research on the effect of job segregation on women's pay and the difficulties women face obtaining managerial and non-traditional jobs.

Together with the answer to question 2, where nearly half of respondents said that they had experienced discrimination in the form of unequal pay, pay equity would appear to be a matter of serious concern to many of the respondents.

9. Do you think that employers in the public, private and not-for-profit sector should be expected to do more to promote women's opportunities at work including equal pay for the same job and equal pay for work of comparable value?

Forty-eight of the 51 respondents said that they did think that employers in the public, private and not-for-profit sectors should be expected to do more to promote women's opportunities at work including equal pay for the same job and equal pay for work of comparable value. One thought not, one was unsure and one did not answer this question.

Review of Equal Opportunity for Women in the Workplace (EOWW) Act & Agency: Questionnaire for Zonta International District 24

The federal government is reviewing the EOWW Act and Agency. The Act requires employers with 100+ employees to prepare an equal opportunity for women plan and report on it to the Agency but there is no requirement to show actual progress has been made.

The purpose of this questionnaire is to obtain an indicative snapshot of members' views about how women are treated in the workplace.

Discrimination includes

Not succeeding in an **application for a job or promotion** because a man is preferred on the grounds of his gender or because of an assumption about gender roles (e.g. where a female applicant is asked if she is planning to have children).

Unequal pay. In 1984 the average full-time weekly gender earnings gap was 18.2%; in 2009 it is 17.4%. Unequal pay can be:

- being paid less than a man for the same job, including an inability to do overtime, receiving no or less performance pay/bonuses
- working in a female dominated occupation or grade which you think is undervalued compared with what you know of jobs in male dominated or mixed occupations or grades, in terms of skills needed to do it and demands placed on the job holder.

Being **refused or unable to ask to work part-time or flexibly** or as a job share in your current job (e.g. maybe flexible work can only be done in some jobs in the organisation).

Taking **maternity leave** and returning to the same employer but not receiving back your old job or one equivalent in pay and conditions.

Not receiving **training** to the same extent as male colleagues (ignoring whether women and men are in different types of jobs), or not receiving training beyond the job (i.e. career development) as opposed to training for the existing job.

Not receiving the same **formal or informal development opportunities** as male colleagues.

Questions

Please circle the relevant answer

Have you ever experienced discrimination at work? **Yes/No**

If yes, did it relate to:

- not being recruited into a job you applied for;
- not receiving a promotion;
- being turned down for an opportunity to act up in a more senior position, take on an extended role, etc;
- unequal pay;
- returning to work after maternity leave but not to the same or an equivalent job;
- flexible working;
- other.

Have you ever known a woman colleague who has suffered discrimination?

Yes/No

Of those **not** experienced discrimination themselves, knew as above

Do you think the fact you may have children in the future or have dependent children now has affected your employer's attitude to your career progression in a negative way? **Yes/No/Can't say**

Obtaining flexible working your organisation, is:

- very easy
- fairly easy
- quite difficult
- very difficult
- don't know

Has your organisation ever conducted an equal pay audit or review?

Yes/No/Don't know

Have you noticed if particular occupations (e.g. managerial positions) in your organisation are mostly done by men or mostly by women? **Yes/No**

If so, with regard to the jobs mostly done by men, do you know if/suspect the pay is generally better than those mostly done by women? (Ignore whether you consider the jobs to be more highly skilled) **Yes/No/Don't know**

Do you think that employers in the public, private and not-for-profit sector should be expected to do more to promote women's opportunities at work including equal pay for the same job and equal pay for work of comparable value?

Yes/No/Not sure

Prepared by the Women and Work Research Group, University of Sydney, September 2009

APPENDIX 3

Some measures of women's position in the Australian labour market

The facts and figures provided below demonstrate why EOWA and others consider women's progress at work has stalled. Far fewer women than men work at all. Even fewer work full-time. Part-time workers suffer from lack of career advancement. Women are not in the better paid occupations and industries in equal numbers with men. The work they do, even when of comparable worth to men's, is valued and paid less. These facts have detrimental impacts on women's lifetime earnings and income in old age. Together they indicate that more, rather than less, focus and action is needed to attend to the disadvantages and lack of equal opportunity for women compared with men. This is particularly true given how well young women are doing in education (the 2007 Apparent Retention Rate in Year 12 "was equal to 80.1% of women and 68.8% for men").⁷⁸

Major indicators of women's disadvantaged position in the workforce include:

- the gender pay gap⁷⁹ was 18.5% in May 1984; in May 2009 it was 17.4%;⁸⁰
- women are substantially underrepresented in the manual trades: only 2% those working in them are women;⁸¹
- the proportion of top (executive) managers in ASX200 companies who are women has declined from 12% in 2006 to 10.7% in 2008;⁸²

⁷⁸ From Barns, A., Jefferson, T and A. Preston (2009) *Women's employment in the context of the economic downturn*, prepared for the Australian Human Rights Commission, p.30.

⁷⁹ Here measured as average weekly ordinary full-time earnings (excludes overtime).

⁸⁰ EOWA Review Issues Paper, p4, available at:

http://www.fahcsia.gov.au/sa/women/pubs/general/equal_opp_review/Pages/default.aspx

⁸¹ Shewring, F. (2009) *The female 'tradie': challenging employment perceptions in non-traditional trades for women*. National Centre for Vocational Education Research (NCVER). Commonwealth of Australia.

⁸² EOWA (2008) *Australian Census of Women in Leadership, research conducted by Macquarie University*, p8. See at:

http://www.eowa.gov.au/Australian_Women_In_Leadership_Census.asp

- between 2001-2007, on average female managers earned 25% less than male managers (full-timers only compared): the research estimated 70% of the gap was due to discrimination;⁸³
- of all part-time workers, women constituted 70% across all age groups, but 80% of those aged 25-54 in 2007.⁸⁴

Pay Equity

The gender pay gap can be measured in a variety of ways. Three headline figures are:

- average full-time weekly ordinary time earnings⁸⁵ (excluding overtime):
 - 1984 18.2%
 - 1994 16.1%
 - 2004 15.2%
 - 2009 17.4% (May)
- average weekly earnings including part-time hours⁸⁶:
 - 2008 34.8% (Nov)
- average hourly earnings⁸⁷:
 - 2009 (May) 13.1%.
 - It trended down from 15.8% in 1984 reaching 9.6% in 2001, since when it has increased.

⁸³ Watson, I (2009) *The gender wage gap within the managerial workforce: an investigation using Australian panel data*, 2009, HILDA Survey Research Conference, University of Melbourne, 17 July 2009.

⁸⁴ Productivity Commission (2008) *Part-time employment, the Australian experience*, see at: <http://www.pc.gov.au/research/staffworkingpaper/part-time-employment>

⁸⁵ EOWA pay equity statistics for November of each month (May 2009 figure supplied by the Agency) at: http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/Pay%20Equity%20Resources/EOWA_Pay_Equity_Statistics_2008.pdf

⁸⁶ EOWA pay equity statistics (Nov 2008 figure supplied by the Agency) at: http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/Pay%20Equity%20Resources/EOWA_Pay_Equity_Statistics_2008.pdf

⁸⁷ Calculating the wage gap, EOWA, at: http://www.eowa.gov.au/Pay_Equity/Files/Calculating_GapM.pdf

Graduate earnings, gender pay gap⁸⁸: women's pay the first year after graduation as a percentage of men's:

- 2006: 95%
- 2007: 93%
- 2008: 96%

Superannuation

Women are two and half times more likely to live in poverty in their old age than men (2000 figures) — by 2019, on average, women will have half the amount of superannuation that men have.⁸⁹

Women in management

Women in senior management⁹⁰

2002: 8.4%

2006: 12%

2008: 10.7%

Women in management: overall⁹¹

2002: 25.1%

2008: 29.8%

⁸⁸ Gradstats, available at:

<http://www.graduatecareers.com.au/content/view/full/24>

⁸⁹ Queensland Government (2009), "Women and Superannuation", Focus on Women, Office for Women, Information Paper 3) available at <http://www.women.qld.gov.au/resources/focus-on-women/>

⁹⁰ EOWA website at:

http://www.eowa.gov.au/Australian_Women_In_Leadership_Census.asp

⁹¹ EOWA women in the workforce trend data

http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/Pay%20Equity%20Resources/women_in_management_09%203.pdf

Women at work

The proportion of the labour force who are women:⁹²

2002: 44.4%

2008: 45.6%

Hours worked

In September 2009, nearly 46% of employed women worked part-time, compared to 16.5% of employed men.⁹³

Of all part-time workers, women constituted 70% across all age groups, but 80% of those aged 25-54 in 2007.⁹⁴

Part-time working is linked to lower access to training and more limited opportunities for career development,⁹⁵ as well as to less access to paid leave entitlements due to its frequent association with casual status.

Gender segregation at work

Women in manual trades are estimated by Shewring⁹⁶ to amount to under 2% of the total manual trades workforce.

In the mining industry, women are about 18% of the workforce. A mere 3% of employees at mine sites and minerals processing operations are women. Indigenous women comprise just 12% of Indigenous employees.⁹⁷

⁹² Ibid.

⁹³ Australian Bureau of Statistics (ABS) (2009) *Labour Force, Australia, September 2009*, cat. no. 6202.0 at:

[http://www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0/BECB1D59142015E8CA25764800150D7E/\\$File/62020_sep%202009.pdf](http://www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0/BECB1D59142015E8CA25764800150D7E/$File/62020_sep%202009.pdf)

⁹⁴ Productivity Commission (2008), see footnote 9.

⁹⁵ ABS (2003) *Longer Working Hours, Australian Social Trends 2003*, cat no 4102.0, pp 119-123.

⁹⁶ See footnote 6.

⁹⁷ OFW/MCA (2006) *Unearthing New Resources: Attracting and Retaining Women in the Australian Minerals Industry*, a report by the Australian Office for Women and the Mineral Council of Australia, at:

http://www.facsia.gov.au/sa/women/pubs/economic/new_resources/Pages/default.aspx

Recent ABS *Labour Force* data also show that over the year to May 2009, the proportion of females working in some of the higher paying male dominated industries decreased while the proportion of females working in certain lower paying female dominated industries increased.⁹⁸

Sexual harassment at work

The Australian Human Rights Commission (AHRC) 2008 phone survey⁹⁹ found that **22% of women and 5% of men aged 18-64 have experienced sexual harassment in the workplace in their lifetime**. Twenty-two per cent who said they **had not** experienced 'sexual harassment' then went on to report having experienced behaviours that may in fact amount to sexual harassment.

Nearly half of those who have been sexually harassed in the last five years report that it has also happened to someone else in the same workplace.

Only 16% of those who have been sexually harassed in the last five years in the workplace formally reported it or made a complaint.

Pregnancy and maternity at work

Twenty-two per cent of women who worked in a job while pregnant said they experienced at least one difficulty, most commonly inappropriate or negative comments or missing out on training or promotion.¹⁰⁰

In the Australian Public Service Commission (APSC) submission to the 2008 Productivity Commission Inquiry into Paid Maternity, Paternity and Parental

⁹⁸ Calculating the wage gap, EOWA, at:

http://www.eowa.gov.au/Pay_Equity/Files/Calculating_GapM.pdf

⁹⁹ Australian Human Rights Commission (2008), *Sexual harassment: Serious business, Results of the 2008 Sexual Harassment National Telephone Survey*, Sydney, at:

http://www.hreoc.gov.au/sexualharassment/serious_business/index.html

¹⁰⁰ ABS (2005) *Pregnancy and Employment Transitions, Australia*, cat. No. 4193.0 at:

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4913.0Main+Features1Nov%202005?OpenDocument>

Leave, the APSC provided the results of a Survey of female public sector employees who had accessed paid time off work for birth of a child, and followed their subsequent career progression. The Survey revealed 65% of women who accessed paid maternity leave in 2000-01 failed to achieve promotion by June 2007. By contrast, only 42% of women who had not had children in the same period failed to achieve career progression.¹⁰¹

Recent research¹⁰² using HILDA data examined the gender pay gap among *full-time* (our emphasis) managers between 2001 and 2007. It concludes that women managers earn about 25% less than male managers. This is despite "the characteristics of male and female managers being remarkably similar". It concludes 70-90% of the gap cannot be explained by a range of demographic and labour market variables and as much a 70% of the gap is due to discrimination.

The paper illustrates the impact of parenting as follows (bearing in mind this is for full-time workers): a man with no children had, on the model used, a 15% probability of being a manager and with two young children this rose to 18%. For a woman the comparable figures were 11% falling to 4%. Similarly a male manager in his early 40s earned about 55% more than a man in his early 20s. A woman can expect to earn 30% more, and plateau then with earning little more in her late 50s than she did in her early 20s. A man in his late 50s can expect to be earning about 60% more than his early 20s.

¹⁰¹ From the submission to the House of Representatives Pay Equity Enquiry by the Australian Office for Women.

¹⁰² See footnote 8.

APPENDIX 4

Summary of some research findings relating to the operation of the Equal Opportunity for Women in the Workplace Act

The Equal Opportunity for Women in the Workplace Act (the Act) requires employers (private companies, NGOs, non-government schools, higher educational institutions, trade unions but not Commonwealth or State public services) with 100+ employees to use their human resources function to actively promote EEO women at work. It does this by requiring that the organisations it covers:

- **implement a program** to address issues for women in the workplace
- **report** to the Equal Opportunity for Women in the Workplace Agency (EOWA) each year on the program.

For more detail on the Act and EOWA, see Appendix 1.

Some academic research has been undertaken about how employers have responded to the legislation. The central question is whether the requirement to devise a program and lodge a report with EOWA has promoted women's progress in the workplaces covered. The findings are not encouraging.

A summary of findings from some of the academic research indicates:¹⁰³

- **compliance is too easy.** In a review of 91 **transport organisation** reports in one year, researchers found about half made no comments/activities¹⁰⁴ or no specific EEO ones¹⁰⁵ to address recruitment,

¹⁰³ Much of this summary also draws on the overview of reports provided by Professor Strachan in her powerpoint presentation to the roundtable on the EOWA review, Sydney, 4 August 2009 at: http://wwrg.econ.usyd.edu.au/Events/2009/eowa_roundtable/wwrg_strachan.pdf

¹⁰⁴ In the typology used here, this classification meant that no comments were made, or issues identified, or strategies outlined in the employment matters identified.

¹⁰⁵ This classification indicated only slightly more activity than that in footnote 1, in that comments were made but they indicated that "discrimination play[ed] no role in workplace disparity between different employee groups" and that differences were due to individual choice. The remaining

- in the **finance and insurance industry** where women comprised 52% of the workforce in 2006 and c.15%-17% of management/professional positions in recent years, an analysis of 106 organisations' reports in one year was undertaken. Between 27% and 39% made no comments/activities¹⁰⁷ on the five employment matters described in the paragraph above.¹⁰⁸ The gender pay gap in this industry was nearly 37% in 2009 (average adult weekly full-time ordinary time earnings (excluding overtime));¹⁰⁹
- most reports **concentrated** on working conditions such as **flexible working, carers leave** etc. In the review of 91 transport organisation reports in one year referred to above, the researchers studying them commented "encouraging greater flexibility of working conditions... ensures a cheap flexible labour force for roles denied access to career paths". This does not appear to assist "movement into management or leadership roles or into non-traditional roles such as operations";¹¹⁰

three classifications indicated varying degrees of positive activity in relation to women and the specified employment matters.

¹⁰⁶ French, Erica and Glenda Strachan, 2009. Evaluating Equal Employment Opportunity and its impact on the increased participation of men and women in the Transport Industry in Australia, *Transportation Research Part A: Policy and Practice*, vol.43, no.1, pp. 78-89.

¹⁰⁷ See footnote 29.

¹⁰⁸ French, Erica and Glenda Strachan (2007) 'Equal Employment Opportunity and Women in the Finance and Insurance Industry', *Asia Pacific Journal of Human Resources*, vol. 45, no. 3, pp. 314-332.

¹⁰⁹ Australian Bureau of Statistics (ABS) (2009) *Average Weekly Earnings, Australia, May 2009*, at:

[http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/376AFC773288BA43CA25761000197A9F/\\$File/63020_may%202009.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/376AFC773288BA43CA25761000197A9F/$File/63020_may%202009.pdf)

¹¹⁰ French, Erica and Glenda Strachan, 2009. Evaluating Equal Employment Opportunity and its impact on the increased participation of men and women in the Transport Industry in Australia, *Transportation Research Part A: Policy and Practice*, vol.43, no.1, pp. 78-89.

- there is **little mention of recruiting and promotion** in reports to EOWA: the statistics for women in managerial and non-traditional jobs suggest good practice has been forgotten;
- virtually **no mention of pay equity** in reports to EOWA. In the finance industry study mentioned above, about 20% of reports identified pay equity as an issue. But only 10% indicated taking any action. The remaining 80% did not address the issue at all or said all staff had equal access to additional entitlements;
- **where requirements placed on organisations were really clear** e.g. sexual harassment laws, most companies have policies. However, even then, EOWA's recent survey of all reports¹¹¹ notes that only just over half employers train managers and employees;
- programs **lacked direction**; issues that seem relevant are lumped together without a forward plan. A lack of understanding of how to progress EEO is evident;
- **the quality of reports is very variable** even though virtually all companies covered by the Act were deemed compliant;
- overall, there is a lack of **objective standards for measuring success** and identifying which strategies succeed.¹¹² The reporting form should require goals to be attached to the programs.¹¹³

¹¹¹ (2009) EOWA *Survey on Paid Maternity Leave, Sex-based Harassment Initiatives and the Gender Pay Gap*. EOWA, Sydney.

¹¹² Strachan, Glenda, John Burgess and Lindy Henderson (2007) 'Equal Employment Opportunity Legislation and Policies: the Australian Experience', *Equal Opportunities International*, vol. 26, no. 6, pp. 525-540.

¹¹³ Strachan, presentation on 4 Aug 2009, see footnote 28.

- The reporting **requirements as they currently exist are not a mechanism for tackling women-hostile workplaces.**
 - A study of women workers in two male dominated industry manufacturing organisations¹¹⁴ which had satisfactorily complied with Agency reporting requirements despite very different outcomes, illustrates this. Though not a best practice leader, one had created a woman friendly workplace. Sexual harassment was acknowledged and dealt with, return from maternity leave positively dealt with and women were assisted in their career development. The other had few women in non-traditional areas of work and when they did they were met with hostility. The women expressed considerable dissatisfaction and disenchantment to the researchers.
 - A subsequent study examined six diverse private sector organisations, three of which were noted by EOWA for their good EEO practices. The researchers looked at how these employers implemented work and family balance practices. They concluded "that formal mechanisms cannot achieve work and care reconciliation for women workers if they are built upon very limited minimum requirements, are voluntary and are dependent upon the bargaining process at the workplace".¹¹⁵

¹¹⁴ Burgess, John, Lindy Henderson and Glenda Strachan (2005). Women Workers in Male Dominated Industrial Manufacturing Organisations: Contrasting Workplace Case Studies from Australia, *Management Revue*, vol. 16, no. 4, pp. 458-474.

¹¹⁵ Burgess J., L. Henderson and G Strachan (2007). Work and family balance through equal employment opportunity programs and agreement making in Australia, *Employee Relations*, (29/4) 2007, pp415-430.

