

**REVIEW OF THE EQUAL OPPORTUNITY FOR
WOMEN IN THE WORKPLACE ACT**

Submission from Glenda Strachan, October 2009

I am a professor in the area of employment relations with a special interest in the issues of women and work. I have been researching the legislation and organisational policies and their impact on women since the inception of the legislation in the 1980s (see list of publications) and in this submission I reflect on insights from two decades of research on women's work and organisational policies.

Introduction

The *Equal Opportunity for Women in the Workplace Act 1999* (hereafter the Act) and its predecessor are unique. I know of no similar legislative regime. I believe that the principles of the Act are important to maintain for the major reason that they impel organisations to actually look at employment statistics and policies and consider issues that relate specifically to women's employment. It is very important that this is not a voluntary activity. Experience in the UK under a voluntary scheme through the employers' association shows that a minority of organisations participate in this and they opt in and out, thus many do not consistently report over the years. The Australian legislation requires organisations with more than 100 employees to submit a regular report and this results in regular reporting over time.

I support the maintenance of the Act and its current framework. I support its emphasis on women. National and organisational statistics and other research such as the report on women in science released on 20 October 2009 (Bell 2009) clearly show that women remain in a disadvantaged position in the workplace.

Having said this, I do not want to give the impression that the Act has not been a positive influence on organisational practice in regard to the employment and advancement of women. Issues of disadvantage of women in employment are universal (for example, Wirth 2001) and there is no one single way for positive changes to occur. Women's position in organisations has improved a great deal over the past two decades since the initial *Affirmative Action (Equal Opportunity for Women) Act* was introduced in 1986, and while it is difficult to separate specific reasons for these changes, I am convinced that the Acts have been major drivers for change.

Equal Opportunity and 'Managing Diversity'

Since the 1990s the discourse of 'managing diversity' has spread from the USA to many Australian organisations. Managing diversity essentially encompasses the idea that an organisation will produce policies and practices that promote the use of the talents of all staff (see Strachan, French and Burgess 2010 for further discussion of these issues). A commonly used description of managing diversity is that by Kandola and Fullerton (1994: 8):

the basic concept of managing diversity accepts that the workforce consists of a diverse population of people. The diversity consists of visible and non-visible differences which will include factors such as sex, age, background, race, disability, personality and workstyle. It is founded on the premise that harnessing these differences will create a productive environment in which everybody feels valued, where their talents are being fully utilized and in which organizational goals are met.

The discourse of managing diversity is based on the view that following specific practices will provide positive outcomes for business. It does not take account of the past, that is, it ignores historic and on-going systemic discrimination in employment.

Equal opportunity and affirmative action policies recognise historic and systemic discrimination (discrimination through organisational policies and actions) and seek to eliminate this, thus providing some way forward for groups identified as having suffered from discrimination and disadvantage. The reality for organisations in Australia is that they have to respond to the ‘equity’ framework which has produced legislation that mandates specific organisational practices, as well as the increasing influence of the ‘diversity’ framework.

I contend that the approach of the Act reflects and carries out what is regarded as ‘best practice’ in the literature on managing diversity, while also focusing on equity issues which recognise historic and continuing discrimination. Australia is a model in this, and should retain and extend this approach, and resource the Agency to promote and assist organisations in this. It promotes equity in employment (a goal to which Australia subscribes through its position as a signatory of a number of international treaties), and good business, that is one which is economically beneficial through increased profits, better service delivery and greater efficiencies. This Act supports the government commitment to equity for its citizens and to improved economic outcomes.

I address the terms of reference below and make specific suggestions for ways in which I think the outcomes can be improved.

1. Examine the role that the EOWW Act and Agency have in gathering and reporting on workplace data.

The role of the Act and Agency are necessary and critical to outcomes for women in the workplace. Australia has little minimum regulation around many conditions of work and has delivered many of these conditions via organisational bargaining and policies. The role of the Agency in promulgating the need for these, examples of good organisational policies and practice, and assistance to organisations, is critical to positive outcomes for women.

The importance of data from organisations collected under the Act is crucial in understanding what is happening to women in the workplace over time. To enhance this, reports should be on an annual basis and retain the necessity to provide employment statistics presented in a consistent format for each industry. Greater detail on occupation and level in organisation would assist national understanding of the position of women in organisations. Changes could be made in consultation with industry organisations and the Australian Bureau of Statistics to provide a template for each industry sector.

All reports should be made public. At present, reports for organisations which have been waived from annual reporting, are, under the Act, not made public. This does not make sense as it does not provide other organisations with examples of what is presumably ‘best practice’. From my reading of hundreds of reports over the years, I believe it is highly unlikely that any issues that need to remain commercially in confidence are contained in these reports – and anyway other organisations have to make them public.

There is concern that not all organisations which should be reporting are reporting, an issue which has been long-standing (see Strachan and Burgess 2000). The Agency should be resourced to contact these organisations and provide support to these organisations (which are likely to be smaller organisations of several hundred employees). This assistance could include initial training similar to that conducted by the Affirmative Action Agency in the late 1980s and early 1990s as well as some individual assistance.

The statistical data and policy information contained in the organisational reports submitted under the Act are important sources of national information. In particular, its importance lies in its ability to link employment data with the employing organisation as it enables us to pay 'attention to organizations as units where gender...is enacted' (Robinson et al 2005: 7). This organisational data is rare as it usually has to be collected through surveys and is therefore expensive to collect and is usually not collected on a longitudinal basis. The capacity to analyse data over a number of years means that we can see trends in employment. Data that allows tracking of changes across time is preferable to cross-sectional estimates and 'data on multiple organizations that allow comparisons over time, across space, and with other organizational characteristics would be particularly useful for examining questions of both causality and social change' (Robinson et al 2005: 12). The unique set of data for Australian organisations can be used to meet some of the criteria outlined by Robinson et al (2005).

2. Examine the contribution that the EOWW Act has made to increasing women's employment opportunities and advancing women's equality in the workplace.

The last two decades have seen more women in the labour force. The Act has provided a focus for organisations to consider issues to do with increasing the participation and advancement of women in organisations. This focus is clear in many organisations, especially larger ones which have chosen to lead the way in this area. Case study research conducted by Strachan, Burgess and Henderson (see publications list) shows the value that organisations put on engaging in these issues and the outputs they believe they attain. Many value the reporting process.

Analysis of the case studies on the Agency website shows clearly the motivation of those organisations which actively engage in the process. KPMG proclaims that

Diversity is a key area of focus for KPMG. The firm believes it is essential for business growth and innovation to encompass a broad and diverse mix of people from differing backgrounds, gender and cultures who have varying thinking styles and qualities (EOWA 2009).

The shortage of skilled labour and the desire to attract and retain labour, especially women's labour, propelled most organisation's development of an equity/diversity strategy. GM Holden expressed it as 'the very clear need to gain greater access to the talent pool..., as well as the importance of attracting and retaining more women, particularly into non-traditional roles such as engineering'. OneCare, a community services organisation of 506 employees, operated in the highly competitive nursing sector: 'Labour market forces in professional health dictate that we, as an organisation, need to seek market advantage to attract and retain staff, particularly Registered Nurses.' Yet they also had another perspective: 'Diversity is supported within our organisation and we value the contribution that gender, cultural and

religious diversity can make to our organisation and our customers'. Most of these organisations specifically linked equity/diversity strategy with overall business goals. Westpac explained that 'attracting, retaining and, importantly, advancing women helps us deliver against our strategic objectives for our employees, our customers, our shareholders and for the community' (EOWA 2009).

There are, however, organisations whose engagement with the process is minimal. However, research (by Strachan and Burgess) in the 1990s on the reports showed that organisations seemed to find the level of engagement with the reporting process with which they felt comfortable: for some it was the minimal compliance of just doing a report; some did a few things; some were very engaged with the process and produced comprehensive plans and comprehensive monitoring of the employment situation. There did not appear to be much movement from lower to higher performing.

3. Consider the effectiveness of the EOWW legislation and arrangements in delivering equal opportunity for women.

Research on 2004 reports in the finance and transport industries (by French and Strachan) showed a few things:

- Where there was clear legislation such as about sexual harassment, most companies complied and had policies.
- The majority of the reports concentrated on the issues around working conditions, especially 'flexible' conditions, carers' leave etc. This is important in securing and keeping women's attachment to the workforce and the organisation, but does not address career path issues.
- There was little mention of issues around recruiting and promotion, a big focus in the early years of the legislation. This is worrying. It could be that gender equity and gender sensitive procedures are so embedded in the organisation that they are no longer worthy of mention or it could be that good practice in this area is forgotten or being leached away.
- Not a lot of emphasis on issues pertinent to moving women into more senior position.

Interviews in 2003 and 2004 in best practice organisations showed a wide variety of good practice. In the large hospital and smelter, for example, the level of sophistication of understanding of the HR Manager was extremely high and no-one in the focus groups or interviews could suggest anything else that they would like to see done. However, in two smaller organisations (several hundred employees) without HR managers, this was not the case and practice was deficient.

Three critical conditions for programs within organisations are

- the importance of senior management commitment
- the allocation of responsibility to staff who have expertise and time
- Clear plans with targets that can be reviewed (key performance indicators).

4. Provide advice on practical ways in which the equal opportunity for women framework could be improved to deliver better outcomes for Australian women.

The Act does not contain clear directions on a number of issues. These include specific acknowledgement of support from senior management; assignment of

responsibility for programs to specific departments or staff; inclusion of clear goals within an organisational program against which progress can be measured. I think it is essential that programs/issues are handled in the same ways as other organisational aims and have goals and targets clearly stated, attaching timeframes and responsibility (key performance indicators). Analysis of reports shows this is lacking in most organisations. This means that it is difficult to tell if an organisation is achieving goals, or changing them. The reporting form should require goals to be attached to the programs.

The lack of direction in the form leads to a feeling that many organisations do not have a cohesive program but gather together a number of issues that they think may be relevant. Many of these are now around policies that can be loosely described as creating a family-friendly workplace – but do not tackle or consider other issues. The reporting form could be used to assist organisations in being more comprehensive in the way they view the issues – and prompt consideration of issues that are important but rarely commented on.

Casual and fixed term staff: Women form the majority of this group of employees, and in some industries such as retailing are a significant and necessary component of the workforce. It is unclear from reports to what extent they have access to policies and practices that might assist them in the workplace. Organisations should be asked specifically what policies they have in place for casual and fixed term staff (this could be required only in those industry sectors where large numbers of these staff are employed.)

Large organisations: reports from large organisations (for example, more than 2,000 employees) which all have human resource departments could be more detailed. Currently a number of them (for example, large retail organisations) do not convey much meaningful information as the information is very general at the level of strategic policies. Details of what occurs within sections of the company or geographical regions should be added to their reporting requirements. This would mean that organisations drill down into specific segments and demonstrate that they are concerned with practices and outcomes and allows comparison of different parts of the organisations.

Small organisations: organisations with fewer than 100 employees generally do not have human resource specialists and I do not suggest that they be included in the reporting regime. However, it would be beneficial for the Agency to be resourced to conduct outreach activities with this group of organisations and provide examples of best practice etc. Research on small accounting firms (Strachan and Barrett 2008) has shown that there is wide variety in policies and practices and that these firms are much less likely than larger firms to have ‘work and family’ policies in place. To prevent or reduce discrimination in access to certain policies and opportunities on the basis of size of firm that a woman works in, this group of organisations should be considered for specific assistance.

5. Consider opportunities to reduce the cost of existing regulation and/or ways to ensure that any new legislation is cost-effective and well-targeted.

The best practice organisations that we have interviewed believe that the reporting process is very beneficial as a focus for the organisation, some seeing it as the way to retain an on-going focus. After all, many organisational plans are rolling plans and are reviewed on an annual basis.

The arguments for equity and diversity are now firmly established as bringing business benefits (there is some controversy about some aspects of this argument but overall numerous business benefits are widely and reliably accepted). On this basis, having clearly delineated planning, implementation and review processes is cost effective and indeed beneficial for the business. If this is done, then doing a report on an annual basis is a quick and easy process for the organisation. This may be more difficult for the organisations that have several hundred employees and do not have a specialist HR Manager. The Agency could perhaps put additional support to assist this category of organisation. Once a program is in place then reporting is not time-consuming or costly.

6. Consider the EOWW Act and Agency within the framework of existing and proposed workplace-related and human rights legislation and policy.

This Act is critical in focusing on organisational policies and practices. Without it, there is only individual complaint-based mechanisms that address some (few) instances of employment discrimination after they have occurred. While essential, this legislation is ‘fighting the fire’, rather than preventing it occurring.

The international literature on managing diversity, including literature that talks about ‘best practice’ in this area, talks about individual organisational programs that meet organisational needs and national legislative/social goals. The legislation in Australia does just that – it is unique and arguably represents best practice in an international comparison. It needs to be strengthened. It is critical that the Australian legislation mandates companies to develop their own programs. Where similar initiatives are voluntary (eg Opportunity Now in the UK) there is a much lower response/compliance rate and companies can and do move in and out of the system, thus working against any long term developments in an organisation.

7. Have regard to the effects of the Act, or any proposed recommendations resulting from this review on the economy, the labour market, business competitiveness, social inclusion and the general well-being of the Australian community.

This Act is very important in promoting goals of equity/human rights/social justice/social inclusion in organisations and through them in the labour market. It is critical in the dispersion of this throughout organisational practice.

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