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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**EQUAL OPPORTUNITY FOR WOMEN IN THE WORKPLACE
AMENDMENT BILL 2012**

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the Minister for Families, Community
Services and Indigenous Affairs, Minister for Disability Reform,
the Hon Jenny Macklin MP)**

EQUAL OPPORTUNITY FOR WOMEN IN THE WORKPLACE AMENDMENT BILL 2012

OUTLINE

The Bill amends the *Equal Opportunity for Women in the Workplace Act 1999* to give effect to a 2010 election campaign commitment. The commitment is to support gender equality and improve workforce participation and workplace flexibility, through retaining and improving the *Equal Opportunity for Women in the Workplace Act 1999*.

Amending the name and objects of the Act

The Bill amends the name of the Act to the *Workplace Gender Equality Act 2012*, to emphasise the focus of the Act on gender equality, thereby improving outcomes for both women and men in the workplace. The name of the Equal Opportunity for Women in the Workplace Agency is also changed to the Workplace Gender Equality Agency, and the title of the Director of the Agency to the Director of Workplace Gender Equality, to reflect the new focus of the Act.

The principal objects of the Act are amended to reflect the new focus of the Act, to promote and improve gender equality in the workplace, with specific recognition of equal remuneration and family and caring responsibilities as issues central to the achievement of gender equality. The objects also make clear the underpinning nature of gender equality to improved competitiveness and productivity, the need, particularly, to focus on removing barriers to women's full and equal workforce participation.

Improving the coverage of the Act

The Bill improves the coverage of the Act to include men, as well as women. The amended Act is also intended to cover all employers and employees in the workplace. However, only relevant employers (including higher education institutions that are employers and non-public sector organisations with 100 or more employees) are subject to the reporting requirements in the Act.

Enhancing the Agency's advice and education functions

The Bill introduces new functions for the Agency, including to develop, in consultation with relevant employers and employee organisations, benchmarks in relation to gender equality indicators. Benchmarks are intended as a way for the Agency to collect, analyse and express the data collected from public reports in a useful and meaningful way for relevant employers to consider their workplace outcomes and practices in relation to their industry peers and compared to their own performance from year to year. The Agency will also offer targeted and additional advice and assistance to relevant employers if they fail to meet a minimum standard. The improved coverage of the Act will enable the Agency to extend its advice and education functions to all employers, not just those who are required to report.

Simplifying and streamlining reporting

The Bill introduces a new reporting framework in which relevant employers are required to report against gender equality indicators. The changes to the new reporting requirements will be phased to allow relevant employers time to transition to the new reporting framework.

For the reporting period 1 April 2012 to 31 March 2013, relevant employers will be required to prepare a public report which sets out the employer's workplace profile and to comply with limited parts of the new framework. Parts of the new framework that relevant employers will be required to comply with are the following: a relevant employer must make public reports accessible to employees and shareholders (section 16); a relevant employer must inform employee organisations of lodgement of the public report (section 16A); a relevant employer must inform employees and employee organisations of the opportunity to comment on the report (section 16B); the Agency may review compliance with the Act (section 19A); a relevant employer fails to comply with the Act if the employer gives false or misleading information (section 19B); and consequences of non-compliance with the Act (section 19D).

From the reporting period commencing on 1 April 2013, a relevant employer must prepare and lodge a public report containing information relating to the employer and to the gender equality indicators. The Minister must, by legislative instrument, specify matters in relation to each gender equality indicator. The public report must contain details of the matters specified in the instrument made by the Minister.

Before 1 April 2014, the Minister will, by legislative instrument, set minimum standards in relation to specified gender equality indicators, specified relevant employers and specified reporting periods. Before making these legislative instruments, the Minister must consult with the Agency and have regard to any recommendations of the Agency, and also consult with other relevant stakeholders as the Minister considers appropriate.

Strengthening the compliance framework

The Bill clarifies and improves transparency associated with compliance with the Act and the consequences of non-compliance. Reports will be required to be accessible by employees and shareholders, and employees and employee organisations will be provided with the opportunity to comment.

The Agency may check compliance by requiring a relevant employer to give the Agency information that relates to the employer's compliance with the Act or to the employer's performance against the minimum standards. Consequences for non-compliance with the Act, without reasonable excuse, include naming the employer in a report to the Minister or naming the employer by electronic or other means, such as in a newspaper.

Relevant employers failing to comply with the Act may not be eligible to compete for contracts under the Commonwealth procurement framework and may not be eligible for Commonwealth grants or other financial assistance.

Financial impact statement

The measure in this Bill is part of the 2011-12 Budget. The fiscal cost of the reforms totals \$11.2 million over four years, allocated and rounded for each year as follows:

Fiscal cost

2010-11	2011-12	2012-13	2013-14
\$3.3 m	\$3.1 m	\$2.3 m	\$2.4 m

Regulation impact statement

The regulation impact statement appears at the end of this explanatory memorandum.

Statement of compatibility with human rights

The statement of compatibility with human rights also appears at the end of this explanatory memorandum after the regulation impact statement.

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NOTES ON CLAUSES

Abbreviations used in this explanatory memorandum

This explanatory memorandum uses the following abbreviations:

- ‘the Act’ means the *Equal Opportunity for Women in the Workplace Act 1999* or, as re-named by this Bill, the *Workplace Gender Equality Act 2012*; and
- ‘the Agency’ means the Equal Opportunity for Women in the Workplace Agency or, as re-named by this Bill, the Workplace Gender Equality Agency.

Clause 1 sets out how the amending Act is to be cited, that is, as the *Equal Opportunity for Women in the Workplace Amendment Act 2012*.

Clause 2 provides a table that sets out the commencement dates of the various sections in, and the Schedule to, the new Act.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

Schedule 1 – Amendments

Summary

The Schedule gives effect to a 2010 election campaign commitment, that the Australian Government is committed to supporting gender equality, workforce participation and workplace flexibility by retaining and improving the Act. The amendments are aimed at making the Act and the Agency more effective and efficient. This involves modernising key elements as they apply to relevant employers to improve workforce participation, particularly in relation to women and to workers with family and caring responsibilities.

Background

Overview

Amending the name and objects of the Act

This Schedule amends the name of the Act to the *Workplace Gender Equality Act 2012*, to emphasise the focus of the Act on gender equality, thereby improving outcomes for both women and men in the workplace. The name of the Equal Opportunity for Women in the Workplace Agency is also changed to the Workplace Gender Equality Agency and the title of the Director of the Agency to the Director of Workplace Gender Equality to reflect the new focus of the Act.

The principal objects of the Act are amended to reflect the new focus of the Act, to promote and improve gender equality in the workplace, with specific recognition of equal remuneration and family and caring responsibilities as issues central to the achievement of gender equality. The objects also make clear the underpinning nature of gender equality to improved competitiveness and productivity, the need, particularly, to focus on removing barriers to women's full and equal workforce participation. The objects also acknowledge the historical disadvantage experienced by women in relation to employment matters.

Improving the coverage of the Act

The Schedule also improves the coverage of the Act to include men, as well as women. The amended Act is also intended to cover all employers and employees in the workplace. However, only relevant employers (including higher education institutions that are employers and non-public sector organisations with 100 or more employees) are subject to the reporting requirements in the Act.

Enhancing the Agency's advice and education functions

The Schedule introduces new functions for the Agency, including to develop, in consultation with relevant employers and employee organisations, benchmarks in relation to gender equality indicators. Benchmarks are intended as a way for the Agency to collect, analyse and express the data collected from public reports in a useful and meaningful way for relevant employers to consider their workplace outcomes and practices in relation to their industry peers and compared to their own performance from year to year. The Agency will also offer targeted and additional advice and assistance to relevant employers if they fail to meet a minimum standard. The improved coverage of the Act will enable the Agency to extend its advice and education functions to all employers, not just those who are required to report.

Simplifying and streamlining reporting

The Schedule introduces a new reporting framework in which relevant employers are required to report against gender equality indicators. The changes to the new reporting requirements will be phased to allow relevant employers time to transition to the new reporting framework.

For the reporting period 1 April 2012 to 31 March 2013, relevant employers will be required to prepare a public report which sets out the employer's workplace profile and to comply with limited parts of the new framework. Parts of the new framework that relevant employers will be required to comply with are the following: a relevant employer must make public reports accessible to employees and shareholders (section 16); a relevant employer must inform employee organisations of lodgement of the public report (section 16A); a relevant employer must inform employees and employee organisations of the opportunity to comment on the report (section 16B); the Agency may review compliance with the Act (section 19A); a relevant employer fails to comply with the Act if the employer gives false or misleading information (section 19B); and consequences of non-compliance with the Act (section 19D).

From the reporting period commencing on 1 April 2013, a relevant employer must prepare and lodge a public report containing information relating to the employer and to the gender equality indicators. The Minister must, by legislative instrument, specify matters in relation to each gender equality indicator. The public report must contain details of the matters specified in the instrument made by the Minister.

Before 1 April 2014, the Minister will, by legislative instrument, set minimum standards in relation to specified gender equality indicators, specified relevant employers and specified reporting periods. Before making these legislative instruments, the Minister must consult with the Agency and have regard to any recommendations of the Agency, and also consult with other relevant stakeholders as the Minister considers appropriate (as listed in subsection 31(3) of the Act).

Strengthening the compliance framework

The Schedule clarifies and improves transparency associated with compliance with the Act and the consequences of non-compliance. Reports will be required to be accessible by employees and shareholders, and employees and employee organisations will be provided with the opportunity to comment.

The Agency may check compliance by requiring a relevant employer to give the Agency information that is relevant to the employer's compliance with the Act. Consequences for non-compliance with the Act, without reasonable excuse, include naming the employer in a report to the Minister or naming the employer by electronic or other means, such as in a newspaper.

The Act – the current framework

The Act requires certain employers to promote equal opportunity for women in employment. The Act also establishes the Agency and provides for the appointment of a Director of Equal Opportunity for Women in the Workplace.

Principal objects of Act

Section 2A of the Act provides for the principal objects of the Act as follows:

- (a) to promote the principle that employment for women should be dealt with on the basis of merit; and
- (b) to promote, amongst employers, the elimination of discrimination against, and the provision of equal opportunity for, women in relation to employment matters; and
- (c) to foster workplace consultation between employers and employees on issues concerning equal opportunity for women in relation to employment.

Application of Act

The Act applies to a **relevant employer**, which section 3 defines as meaning:

- (a) a higher education institution that is an employer; or
- (b) a natural person, or a body or association (whether incorporated or not), being the employer of 100 or more employees in Australia;

but does not include the Commonwealth, a State, a Territory or an authority.

Equal opportunity for women in the workplace programs

Subsection 6(1) provides that an employer who is a relevant employer must develop and implement equal opportunity for women in the workplace programs.

Subsection 3(1) provides that an ***equal opportunity for women in the workplace program***, in relation to a relevant employer, means a program designed to ensure that:

- (a) appropriate action is taken to eliminate all forms of discrimination by the relevant employer against women in relation to employment matters; and
- (b) measures are taken by the relevant employer to contribute to the achievement of equal opportunity for women in relation to employment matters.

Reporting requirements

A relevant employer must have a workplace program for each ***reporting period*** (a 12-month period from 1 April to 31 March). Reports are due to the Agency by 31 May of each year (see section 13B).

Under subsection 13(1), a relevant employer must prepare, in respect of each reporting period, a public report in writing about the outcomes of the employer's workplace program. The public report must:

- (a) set out the workplace profile;
- (b) describe the employer's analysis of the issues in the employer's workplace relating to equal opportunity for women;
- (c) describe the actions taken by the employer during the reporting period to address the priority issues identified in the analysis; and
- (d) describe the actions that the employer plans to take in the next reporting period to address the issues relating to employment matters that the employer would need to address to achieve equal opportunity for women in the workplace.

Section 13C provides that reporting requirements may be waived by the Agency if the employer has complied for a period of no less than three consecutive years and can demonstrate to the Agency that all reasonably practical measures have been taken to address equal opportunity for women in the workplace.

Compliance with the Act

Subsection 19(1) provides that, where, without reasonable excuse, a relevant employer fails to lodge a public report or confidential report or fails to comply with a direction by the Agency to provide further information, the Agency may identify non-compliant employers (organisations) in its annual report to the Minister.

Amendments to the Act

Part 1 of the Schedule makes a number of amendments to the Act aimed at strengthening the Act and the Agency's focus on gender equality and on improving outcomes for working women and men. These amendments include:

- amending the name and objects of the Act;
- improving the coverage of the Act;
- supporting the Agency's role in providing advice and assistance to all employers (not just those who report);
- simplifying and streamlining reporting; and
- strengthening the Act's compliance framework.

Amending the name and objects of the Act

The Schedule changes the name of the Act to the *Workplace Gender Equality Act 2012* to emphasise the focus of the Act on gender equality in the workplace. The name of the Agency is changed to the Workplace Gender Equality Agency and the title of the Director of the Agency to the Director of Workplace Gender Equality to reflect the new focus of the Act.

The principal objects of the Act are amended by the Schedule. The principal objects of the Act will be:

- (a) to promote and improve gender equality (including equal remuneration between women and men) in employment and in the workplace; and
- (b) to support employers to remove barriers to the full and equal participation of women in the workforce, in recognition of the disadvantaged position of women in relation to employment matters; and
- (c) to promote, amongst employers, the elimination of discrimination on the basis of gender in relation to employment matters (including in relation to family and caring responsibilities); and
- (d) to foster workplace consultation between employers and employees on issues concerning gender equality in employment and in the workplace; and
- (e) to improve the productivity and competitiveness of Australian business through the advancement of gender equality in employment and in the workplace.

Improving the coverage of the Act

The coverage of the Act is expanded to include men, as well as women. The Act continues to apply to all employers and employees, although only relevant employers are subject to the reporting requirements. Smaller organisations with fewer than 100 employees are not required to report, but will be able to access the Agency for advice and assistance. Covered employees are those that are based in Australia.

Supporting the Agency's role in providing advice and assistance to all employers

The Schedule provides that one of the Agency's functions is to advise and assist employers in promoting and improving gender equality in the workplace. The Agency will support all employers (not just relevant employers that are subject to the reporting requirements under the Act) in improving gender equality in their workplace. The Agency must also offer to provide relevant employers with targeted advice and assistance in promoting and improving gender equality in relation to minimum standards, beyond the general level of assistance provided to all employers.

Simplifying and streamlining reporting

The Schedule introduces a new reporting framework and the concept of gender equality indicators in the public report. The new reporting framework is aimed at reducing the regulatory burden on business. Reporting will be evidence based and is intended to encourage measures that improve gender equality outcomes. This will provide employers with a standardised means of measuring their progress from year to year.

The concept of equal opportunity for women in the workplace and the requirement for relevant employers to develop and implement equal opportunity for women in the workplace programs will be repealed.

The changes to the new reporting requirements will be phased to allow relevant employers time to transition to the new reporting framework.

For the reporting period 1 April 2012 to 31 March 2013, relevant employers will be required to prepare a public report which sets out the employer's workplace profile and to comply with limited parts of the new framework. Parts of the new framework that relevant employers will be required to comply with are the following: a relevant employer must make public reports accessible to employees and shareholders (section 16); a relevant employer must inform employee organisations of lodgement of the public report (section 16A); a relevant employer must inform employees and employee organisations of the opportunity to comment on the report (section 16B); the Agency may review compliance with the Act (section 19A); a relevant employer fails to comply with the Act if the employer gives false or misleading information (section 19B); and consequences of non-compliance with the Act (section 19D).

From the reporting period commencing on 1 April 2013, a relevant employer must prepare and lodge a public report containing information relating to the employer and to the gender equality indicators. The Minister must by legislative instrument, specify matters in relation to each gender equality indicator. The public report must contain details of the matters specified in the instrument made by the Minister.

The gender equality indicators that a relevant employer must report on are:

- gender composition of the workforce;
- gender composition of governing bodies of relevant employers;
- equal remuneration between women and men;
- availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities;
- consultation with employees on issues concerning gender equality in the workplace; and
- any other matters specified in an instrument made by the Minister.

Before 1 April 2014, the Minister will, by legislative instrument, set minimum standards in relation to specified gender equality indicators, specified relevant employers and specified reporting periods.

Before making a legislative instrument under the Act, the Minister must consult the Agency and have regard to any recommendations of the Agency. The Minister must also consult persons representing industry or business, employee organisations, higher education institutions, and other experts or interested parties in relation to gender equality, if the Minister considers it appropriate.

Strengthening the Act's compliance framework

The Schedule strengthens and improves transparency in relation to the compliance framework within the Act and consequences for non-compliance.

It will be a requirement that public reports be signed by the chief executive officer (however described) of the relevant employer. A relevant employer must, as soon as reasonably practicable after lodging a public report, inform the employees of the employer and any shareholders or members of the employer that the report has been lodged and the way in which the report may be accessed. A relevant employer must also inform employee organisations of lodgement of the public report. A relevant employer must also inform employees and employee organisations of the opportunity to provide comments on the public report to the Agency and/or the relevant employer.

The capacity for the Agency to waive reporting requirements for a relevant employer will be repealed. The Agency will be able to check the compliance of a relevant employer and may, by written notice, require a relevant employer to give the Agency information that is relevant to the employer's compliance with the Act. This may include information in relation to the employer's performance against minimum standards. Consequences for non-compliance with the Act, without reasonable excuse, include naming the employer in a report to the Minister or naming the employer by electronic or other means.

The amendments made by the Schedule generally commence on the later of 1 April 2012 and the day this Act receives the Royal Assent. However, **items 75 to 79**, which make amendments consequential to the commencement of Part 2 of the *Tertiary Education Quality and Standards Agency Act 2011*, commence on the day the Act receives Royal Assent.

Explanation of the changes

Part 1 – Main Amendments

Amendments to the Equal Opportunity for Women in the Workplace Act 1999

Part I of the Act

Title

Item 1 amends the long title of the Act. This item omits the words 'equal opportunity for women in employment, to establish the Equal Opportunity for Women in the Workplace Agency and the office of the Director of Equal Opportunity for Women in the Workplace' and substitutes the words 'gender equality in the workplace, to establish the Workplace Gender Equality Agency and the office of the Director of Workplace Gender Equality'.

This change to the long title of the Act is intended to emphasise the new objects and focus of the Act on gender equality in the workplace.

Item 2 amends the short title of the Act. This item omits '*Equal Opportunity for Women in the Workplace Act 1999*' and substitutes '*Workplace Gender Equality Act 2012*'.

The note at the end of **item 2** explains that this item amends the short title of the Act. The note provides that, if another amendment of the Act is described by reference to the Act's previous short title, that other amendment has effect after the commencement of **item 2** as an amendment of the Act under its amended short title (see section 10 of the *Acts Interpretation Act 1901*).

Objects of Act

Item 3 repeals section 2A and substitutes new section 2A. New section 2A provides for the new principal objects of the Act. The new principal objects of the Act are:

- (a) to promote and improve gender equality (including equal remuneration between women and men) in employment and in the workplace; and
- (b) to support employers to remove barriers to the full and equal participation of women in the workforce, in recognition of the disadvantaged position of women in relation to employment matters; and
- (c) to promote, amongst employers, the elimination of discrimination on the basis of gender in relation to employment matters (including in relation to family and caring responsibilities); and
- (d) to foster workplace consultation between employers and employees on issues concerning gender equality in employment and in the workplace; and
- (e) to improve the productivity and competitiveness of Australian business through the advancement of gender equality in employment and in the workplace.

The principal objects of the Act reflect the change in focus of the Act – to promote and improve gender equality in the workplace. The principal objects of the Act also explicitly recognise equal remuneration and family and caring responsibilities as key components of gender equality. New paragraph (b) of the objects of the Act is aimed at improving the workforce participation of women and gender equality by addressing the barriers predominantly faced by women in the workplace, and the barriers to men with respect to better combining caring and paid work. New paragraph (e) is designed to reflect the aims of enhancing productivity and competitiveness by improved gender equality outcomes and practices.

Simplified outline of Act

Item 3 also adds new section 2B. New section 2B provides a simplified outline of the operation of the Act.

The first dot point explains that the Act requires various employers (**relevant employers**) to lodge reports each year containing information relating to various gender equality indicators (for example, equal remuneration between women and men). The provisions concerning reports relating to gender equality indicators are provided for in new section 13 (**item 44**).

The second dot point explains that the reports submitted by the relevant employers are available to the public, subject to some exceptions for information that is 'personal information', 'information relating to remuneration' and information of a kind specified by the Minister. These provisions are provided for in new sections 13C, 14 and 14A (**item 46**).

The third dot point explains that there is a Workplace Gender Equality Agency whose functions include: advising and assisting employers (not just relevant employers) in promoting and improving gender equality in the workplace and undertaking research and programs for the purpose of promoting and improving gender equality in the workplace. The provisions concerning the functions and powers of the Agency are provided for in section 10, which is amended by **items 35, 36, 37, 38, 39, 40 and 41**.

The fourth dot point explains that there is a Director of Workplace Gender Equality, who has management of the Workplace Gender Equality Agency. Part V of the Act sets out provisions concerning the Director of Workplace Gender Equality.

The fifth dot point explains that the Agency may review a relevant employer's compliance with the Act by seeking further information from the employer. These provisions are set out in new section 19A (**item 55**).

The sixth dot point explains that, if a relevant employer fails to comply with the Act, the Agency may name the employer in a report given to the Minister or by electronic or other means (for example, on the Agency's website or in a newspaper). These provisions are set out in section 19D, which concerns consequences of non-compliance with the Act (**item 55**).

Interpretation

Item 4 amends the definition of **Agency** in subsection 3(1). This item omits 'Equal Opportunity for Women in the Workplace Agency' and substitutes 'Workplace Gender Equality Agency' in the definition of Agency. **Item 4** is a consequential amendment to reflect the change in name of the Agency by **item 32**.

Item 5 repeals the definition of **club** in subsection 3(1). This term is unnecessary and is not used in the Act.

Item 6 repeals the definition of **confidential report** in subsection 3(1). This term will no longer be used in the Act.

Item 7 amends the definition of **Director** in subsection 3(1). This item omits 'Equal Opportunity for Women in the Workplace' and substitutes 'Workplace Gender Equality' in the definition of Director. This item is a consequential amendment to **item 34** to reflect the change to the title of the Director.

Item 8 inserts the new term **employee organisation** in subsection 3(1). Employee organisation has the same meaning as in the *Fair Work Act 2009*. Section 12 of the *Fair Work Act* defines employee organisation as ‘an organisation of employees’. An ‘organisation’ is defined in section 12 of the *Fair Work Act* as meaning an ‘organisation registered under the *Fair Work (Registered Organisations) Act 2009*’.

Item 9 amends the definition of **employment matters** in subsection 3(1). This item inserts ‘including flexible working arrangements’ in paragraph (d) of the definition of employment matters.

Item 10 amends the definition of employment matters in subsection 3(1). This item inserts ‘including equal remuneration between women and men’ in paragraph (e) of the definition of employment matters.

Item 11 amends the definition of employment matters in subsection 3(1). This item omits ‘women’ and substitutes ‘employees’ in paragraph (f) of the definition of employment matters. This amendment reflects the changes to the coverage of the Act to include men, as well as women.

Item 12 amends the definition of employment matters in subsection 3(1). This item inserts paragraph (h) to the definition of employment matters. New paragraph (h) provides that employment matters includes arrangements relating to employees with family or caring responsibilities.

Item 13 repeals the definition of **equal opportunity for women in the workplace program** in subsection 3(1). This phrase will no longer be used in the Act because the reporting will be against gender equality indicators.

Item 14 inserts the new term **gender equality indicators** in subsection 3(1). Gender equality indicators means the following:

- (a) gender composition of the workforce;
- (b) gender composition of governing bodies of relevant employers;
- (c) equal remuneration between women and men;
- (d) availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities;
- (e) consultation with employees on issues concerning gender equality in the workplace;
- (f) any other matters specified in an instrument under subsection (1A).

The concept of the gender equality indicators underpins the new reporting framework, as provided for in new section 13. In respect of each reporting period, a relevant employer will be required to submit a public report containing information relating to the employer and to the gender equality indicators. The Minister must by legislative instrument under subsection 13(3) specify matters in relation to each gender equality indicator. In setting matters under the gender equality indicators, the intention is to establish a long term data set to provide evidence-based insight at the workplace, occupational and industry level. This data set is expected to be valuable for employers and, at the aggregate level, to inform research and policy development for government and researchers.

The gender equality indicators listed in paragraphs (a), (b), (c), (d) and (e) of the definition have been developed to reflect the most pressing contemporary challenges and circumstances in relation to gender equality in Australian workplaces. Paragraph (f) of the definition of gender equality indicators provides the flexibility to address any other matters relevant to gender equality.

Paragraph (a) – gender composition of the workforce

This indicator will enable the collection of information about the gender composition of the workforce of relevant employers. It is intended to cover a wide range of characteristics of employment matters, for example, occupation, classification and employment status. This gender equality indicator builds upon the previous requirement that relevant employers provide a ‘workplace profile’ comprising numerical data concerning employment status and occupational characteristics, by gender.

It is anticipated that this indicator will seek information about the gender composition of workforces of relevant employers in a standardised format, to enable the aggregation of data across and within industries and sectors. This aggregated data will be made available to relevant employers to assist them in understanding the characteristics of their workforce, including in relation to occupational segregation, the position of women and men in management within their industry or sector, and patterns of potentially insecure employment.

Paragraph (b) – gender composition of governing bodies of relevant employers

This indicator will enable the collection of information about the gender composition of the governing bodies of relevant employers. The scope of the term ‘governing body’ in relation to a relevant employer is broad, and, having regard to the nature of the entity, means the board of directors, trustees, committee of management, council or other governing authority of the employer (see **item 15**).

This indicator also complements the recent measures implemented by the Australian Stock Exchange (ASX) Guidelines, requiring ASX listed companies to establish and report annually on measurable gender diversity objectives. The ASX Guidelines require ASX listed companies to provide information on the number of women on their boards, in senior management and across their organisation.

Paragraph (c) – equal remuneration between women and men

This indicator will enable the collection of aggregate information about remuneration between women and men performing the same or comparable tasks within and across occupations and industries. Equal remuneration between women and men is a key component of improving women's economic security and progressing gender equality. The confidentiality of any information relating to remuneration will be ensured, as provided for under section 14 (see **item 46**).

ILO Convention (No.100) concerning Equal Remuneration for Men and Women workers for Work of Equal Value may provide guidance around elements that may comprise remuneration.

Paragraph (d) – availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities

This indicator will enable the collection and use of information from relevant employers about the availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities. One aim of this indicator is to improve the capacity of women and men to combine paid work and family or caring responsibilities through such arrangements. The achievement of this goal is fundamental to gender equality and to maximising Australia's skilled workforce. This indicator also complements other legislative measures, such as those contained within the National Employment Standards under the *Fair Work Act 2009*, and the recent amendments to the *Sex Discrimination Act 1984* extending coverage to men in relation to caring responsibilities.

Paragraph (e) – consultation with employees on issues concerning gender equality in the workplace

This paragraph is intended to ensure that consultation occurs between employers and employees on issues concerning gender equality in the workplace.

Paragraph (f) – any other matters specified in an instrument under subsection (1A)

This paragraph is intended to give the Minister the flexibility by legislative instrument under subsection 3(1A) to specify matters for the purposes of the gender equality indicators (see **item 24**). This enables responsiveness to new and emerging issues, over time. Matters under paragraph (f) could include employment matters, for example training and development or sex-based harassment.

New subsection 3(1B) provides that the matters specified in an instrument under subsection 3(1A) may relate to employment matters. Subsection 3(1C) clarifies however that subsection (1B) is not limited by subsection (1A). Subsection 3(1D) provides that an instrument made under subsection (1A) has no effect in relation to a reporting period unless it is made before the first day of that period.

Item 15 inserts a new definition of ***governing body*** in subsection 3(1). The governing body of a relevant employer means the board of directors, trustees, committee of management, council or other governing authority of the employer. This new term is used in paragraph (b) of the definition of gender equality indicators in **item 14**.

Item 16 inserts a new definition of ***man*** in subsection 3(1). Man is defined to mean a member of the male sex irrespective of age.

Item 17 inserts a new definition of ***minimum standard*** in subsection 3(1). Minimum standard, in relation to a gender equality indicator, means the standard set by an instrument in force under section 19 (**item 55**).

Item 18 inserts a new definition of ***personal information*** in subsection 3(1). Personal information has the same meaning as in the *Privacy Act 1988*. Section 6 of that Act provides that 'personal information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

Item 19 inserts a note at the end of the definition of relevant employer in subsection 3(1). The note refers the reader to subsection 3(2A) (**item 25**) which also refers to the definition of relevant employer.

Item 20 inserts a new definition of ***reporting period*** in subsection 3(1). The term reporting period means a period referred to in subsection 13A(2). That is, the period of 12 months commencing on 1 April 2000 and, after that, each consecutive period of 12 months.

Item 21 repeals the definition of trade union in subsection 3(1). The definition of trade union is being replaced by an 'employee organisation' which is defined in the *Fair Work Act 2009* (**item 8**).

Item 22 repeals the definition of *workplace profile* in subsection 3(1). This term will no longer be used in the Act because reporting has been streamlined and simplified to reporting against gender equality indicators.

Item 23 repeals the definition of *workplace program* in subsection 3(1). This term will no longer be used in the Act because of the change to the reporting requirements.

Item 24 inserts new subsections 3(1A), 3(1B), 3(1C) and 3(1D) after subsection 3(1). This item is relevant to paragraph (f) of the definition of gender equality indicators (see **item 14**).

New subsection 3(1A) provides that the Minister may, by legislative instrument, specify matters for the purposes of paragraph (f) of the definition of gender equality indicators in subsection 3(1). This gives the Minister the flexibility to consider all issues relevant to gender equality and to add new matters. Although application of the legislative instrument will not apply until the new reporting framework commences on 1 April 2013, the Minister is able to exercise her or his powers to make a legislative instrument under subsection 3(1A) at commencement of the Act, that is, the later of 1 April 2012 and the day the Act receives Royal Assent. A legislative instrument made under this item will relate to the reporting period commencing on 1 April 2013 and later reporting periods.

The note under subsection 3(1A) refers the reader to section 33A (**item 71**) which provides that the Minister must consult the Agency before making legislative instruments and have regard to its recommendations. The Minister must also consult with relevant persons (including persons representing industry or business, employee organisations, higher education institutions and persons having special knowledge or interest in relation to gender equality in the workplace) as the Minister considers appropriate.

New subsection 3(1B) provides that the matters specified in an instrument made under subsection (1A) may relate to employment matters. Examples of employment matters could include such matters as: recruitment and selection; promotion, transfer and termination of employment; training and development; and sex-based harassment.

New subsection 3(1C) provides that subsection (1B) does not limit subsection (1A). This clarifies that subsection (1A) is not limited to the Minister specifying matters relating to employment matters.

New subsection 3(1D) provides that an instrument made under subsection (1A) has no effect in relation to a reporting period unless it is made before the first day of that period.

Item 25 inserts new subsection 3(2A). New subsection 3(2A) is identical to subsection 6(2), which is repealed along with Part II by **item 29**. Subsection 3(2A) provides that, if, at any time, an employer ceases to be a relevant employer because the number of employees of the employer falls below 100, this Act continues to apply to the employer as if the employer were a relevant employer unless and until the number of employees falls below 80.

Item 26 amends subsection 3(5). This item omits the references to 'trade union' in subsection 3(5) and substitutes the term 'employee organisation.'
Item 8 defines an employee organisation as having the same meaning as in the *Fair Work Act 2009*.

Application of Act

Item 27 repeals subsection 5(4) and substitutes new subsection 5(4). New subsection 5(4) provides that, by virtue of the subsection, the Act has the effect it would have to the extent that the Act relates to the collection of statistics.

New subsection 5(4) clarifies the scope of the Act in relation to section 51(xi) of the Constitution, which gives the Parliament legislative power to make laws with respect to 'census and statistics'. This legislative power is relevant to the functions of the Agency, which include undertaking research and developing resource materials relating to gender equality in the workplace, which involves the gathering of certain data and statistics relevant to the gender equality indicators including improvements made in workforce participation by women.

Item 28 repeals subsection 5(9) and substitutes new subsection 5(9). New subsection 5(9) provides that, by virtue of the subsection, the Act has the effect it would have to the extent that the Act is appropriate to give effect to, or carry out the purposes of:

- (a) the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) done at New York on 18 December 1979 ([1983] ATS 9); or
- (b) the ILO Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, done at Geneva on 29 June 1951 ([1975] ATS 45); or
- (c) the ILO Convention (No. 111) concerning Discrimination in respect of Employment and Occupation, done at Geneva on 25 June 1958 ([1974] ATS 12); or
- (d) the ILO Convention (No. 156) concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, done at Geneva on 23 June 1981 ([1991] ATS 7); or
- (e) the International Covenant on Economic, Social and Cultural Rights, done at New York on 16 December 1966 ([1976] ATS 5); or

- (f) the Convention on the Rights of the Child, done at New York on 20 November 1989 ([1991] ATS 4).

The purpose of new subsection 5(9) is to include a number of treaties other than the CEDAW, which impose obligations on Australia relevant to the purposes of the Act.

Note 1 to new subsection 5(9) provides information on where to access the text of an international agreement. In 2012, the text of an international agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Note 2 to new subsection 5(9) provides clarification for paragraphs 5(9)(b), (c) and (d) that 'ILO' refers to the International Labour Organization.

Part II of the Act

Item 29 repeals Part II of the Act. Part II of the Act contains provisions concerning 'equal opportunity for women in the workplace programs', which were the basis of the reporting requirements for relevant employers. These reporting requirements from the reporting period commencing on 1 April 2013 will be replaced by reporting against the gender equality indicators.

Part III of the Act

Workplace Gender Equality Agency

Item 30 repeals the heading to Part III and substitutes the new heading 'Part III – Workplace Gender Equality Agency'. The change in title to the heading of Part III is a consequential change to reflect the amendment made by **item 32**.

Item 31 repeals the heading to section 8A and substitutes the new heading '8A Workplace Gender Equality Agency'. This is a consequential change to reflect the amendment made by **item 32**.

Item 32 amends subsection 8A(1). This item omits 'Equal Opportunity for Women in the Workplace Agency' and substitutes this with 'Workplace Gender Equality Agency'. **Item 32** changes the name of the Agency to reflect the reforms to the role of the Agency and the changed nature of the reporting requirements.

Item 33 amends subsection 8A(2). This item omits 'Equal Opportunity for Women in the Workplace' and substitutes 'Workplace Gender Equality'. This is a consequential change to reflect the amendment made by **item 32**.

Director

Item 34 amends subsection 9(1). This item omits 'Equal Opportunity for Women in the Workplace' and substitutes this with 'Workplace Gender Equality'. **Item 34** changes the title of the Director of the Agency to reflect the change in name of the Director consistent with the change in name of the Agency made by **item 32**.

Functions and powers of Agency

Item 35 repeals paragraph 10(1)(a) and substitutes new paragraphs 10(1)(a) and 10(1)(aa).

New paragraph 10(1)(a) provides that it is a function of the Agency to advise and assist employers in promoting and improving gender equality in the workplace. Whilst reporting is only required of relevant employers, the assistance the Agency can provide is not restricted to relevant employers but is also available to all employers. This function also reflects the principal objects of the Act in new paragraph 2A(a).

New paragraph 10(1)(aa) provides that another function of the Agency is to develop benchmarks in relation to gender equality indicators. While consultation with relevant employers and employee organisations is specified, this is not intended to limit broader consultation. For example, it is expected that organisations and experts with a special interest in gender equality may be valuable in this process.

Benchmarks are intended as a way for the Agency to collect, analyse and express the data collected from reports in a useful and meaningful way for employers to consider their workplace outcomes and practices in relation to their industry peers and compared to their own performance from year to year.

Item 36 amends paragraph 10(1)(b) by adding 'and' at the end of the paragraph.

Item 37 repeals paragraphs 10(1)(c) and (d) and substitutes new paragraphs 10(1)(c) and (d).

New paragraph 10(1)(c) provides that it is a function of the Agency to review compliance with the Act by relevant employers, to review public reports lodged by relevant employers and to deal with those reports in accordance with the Act. New paragraph 10(1)(c) reflects the Agency's functions under the new reporting framework and the Agency's role to review compliance with the Act under new Part IVA (**item 55**).

New paragraph 10(1)(d) provides that another function of the Agency is to collect and analyse information provided by relevant employers under the Act to assist the Agency to advise the Minister in relation to legislative instruments made under this Act. This reflects the new requirements in paragraph 33A(1) (**item 71**) for the Minister to consult the Agency and have regard to any recommendations of the Agency, prior to making a legislative instrument under the Act.

Item 38 amends paragraph 10(1)(e). This item omits 'promoting equal opportunity for women in the workplace' and substitutes 'promoting and improving gender equality in the workplace'. This amendment is made to reflect the changed role and emphasis on the Agency to promote and improve gender equality, when undertaking research, educational programs and other programs. New paragraph 10(1)(e) reflects the change in the principal objects of the Act in paragraph 2A(a) (**item 3**) to gender equality in the workplace.

Item 39 repeals paragraph 10(1)(f) and substitutes new paragraphs 10(1)(ea) and 10(1)(f).

New paragraph 10(1)(ea) provides that it is a function of the Agency to work with employers to maximise the effectiveness of the administration of the Act, including by minimising the regulatory burden on employers.

New paragraph 10(1)(f) provides that another function of the Agency is to promote and contribute to understanding and acceptance, and public discussion, of gender equality in the workplace. New paragraph 10(1)(f) reflects the change in the principal objects of the Act in new paragraph 2A(a) (**item 3**) to 'gender equality in the workplace'.

Item 40 amends paragraph 10(1)(h). This item omits 'equal opportunity for women in the workplace' and substitutes 'gender equality in the workplace' to reflect the new focus and objects of the Act in new paragraph 2A(a) (**item 3**).

Item 41 inserts a note at the end of subsection 10(1). For the purposes of new paragraph 10(1)(d), the note refers the reader to new section 33A (**item 71**). New section 33A provides that the Minister must consult the Agency before making legislative instruments. The Minister must also consult with relevant persons mentioned in subsection 31(3) (including persons representing industry or business, employee organisations, higher education institutions and persons having special knowledge or interest in relation to gender equality in the workplace) as the Minister considers appropriate.

Item 42 amends section 12 and inserts new subsection 12(2A). New subsection 12(2A) provides that the Agency must submit to the Minister a report on the progress achieved in relation to the gender equality indicators every two years. The Agency must submit this report as soon as practicable after the end of the two year period ending on 31 May 2016 and each later two year period. This report from the Agency to the Minister will be tabled in Parliament.

Item 43 amends subsection 12(3). **Item 43** omits ‘subsection (1) or (2)’ and substitutes ‘this section’ in subsection 12(3). This is a consequential change to reflect the amendment made by **item 42**.

Part IV of the Act

Relevant employers to prepare reports relating to gender equality indicators

Item 44 repeals section 13 and substitutes new section 13 titled ‘Relevant employers to prepare reports relating to gender equality indicators’.

New subsection 13(1) provides that, in respect of each reporting period (the period of 12 months commencing on 1 April each year), a relevant employer must prepare a public report in writing containing information relating to the employer and to the gender equality indicators. A relevant employer may prepare and lodge this report online through the Agency’s website.

New subsections 13(2) and 13(3) provides for the matters that must be included in the public report.

New subsection 13(2) provides that the public report in respect of a reporting period must contain details of the matters specified in an instrument under subsection (3).

New subsection 13(3) provides that for the purposes of subsection (2), the Minister must, by legislative instrument, specify matters in relation to each gender equality indicator. The requirement for the Minister to specify matters in relation to each gender equality indicator is to ensure that relevant employers will have appropriate guidance about the information to be included in their report, and to ensure that the data and information collected by the Agency is relevant and meaningful.

Although application of the legislative instrument will not apply until the new reporting framework commencing on 1 April 2013, the Minister is able to exercise her or his powers to make a legislative instrument under subsection 13(3) at commencement of the Act, that is, the later of 1 April 2012 and the day the Act receives Royal Assent. A legislative instrument made under this item will relate to the reporting period commencing on 1 April 2013 and later reporting periods.

The note under subsection 13(3) refers the reader to new section 33A (**item 71**). New section 33A provides that the Minister must consult the Agency before making legislative instruments. The Minister must also consult with relevant persons mentioned in subsection 31(3) (including persons representing industry or business, employee organisations, higher education institutions and persons having special knowledge or interest in relation to gender equality in the workplace) as the Minister considers appropriate.

New subsection 13(4) provides that an instrument made under subsection (3) has no effect in relation to a reporting period unless it is made before the first day of that period. This is to ensure that relevant employers are aware of their reporting requirements prior to the reporting period commencing.

New subsection 13(5) provides that the public report must be signed by the chief executive officer (however described) of the relevant employer.

The chief executive officer (however described) is intended to refer to the highest ranking corporate officer (executive) or an administrator in charge of management of an organisation. An acting chief executive officer of the relevant employer will also be able to sign the public report. Examples of the chief executive officer could (depending upon the nature of the organisation) include the CEO, chief executive, general manager, managing director or vice chancellor.

Item 45 inserts a note at the end of subsection 13A(1). The note directs the reader to sections 137.1 and 137.2 of the *Criminal Code*, which create offences for providing false or misleading information or documents.

Item 46 repeals sections 13C and 14 and substitutes new sections 13C, 14 and 14A.

The repeal of old section 13C means that, on and from the commencement date of Part 1 of Schedule 1 (1 April 2012), the Agency may no longer waive reporting requirements under section 13C of the Act. Section 14 is repealed because the term confidential report in section 14 will no longer be used.

Personal information

New section 13C establishes processes that are applicable to personal information contained in the public report. **Item 18** inserts a definition of personal information in section 3(1), which provides that personal information has the same meaning as in the *Privacy Act 1988*. Section 6 of that Act provides that 'personal information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

New subsection 13C(1) provides that, at the time of lodging a public report under section 13A, a relevant employer must, in writing (either in the report or otherwise), inform the Agency of the information included in the report that is personal information. This places an obligation on relevant employers to identify any personal information in their public reports when lodging the report with the Agency.

New subsection 13C(2) provides that, subject to subsection (3), personal information must not be published by the Agency under section 15 and must not be used in a report of the Agency to the Minister under subsection 12(1) or (2). Additionally, the Agency has existing obligations under the *Privacy Act 1988*, including an obligation not to disclose personal information without consent.

New subsection 13C(3) provides that particular personal information may be published or used if the individual to whom the information relates consents in writing to the publication or use of the information.

It is assumed that relevant employers are much better placed to identify personal information than the Agency. Most relevant employers (if not all) will already be subject to the National Privacy Principles for the private sector under the *Privacy Act 1988*, which regulate how private sector organisations manage personal information.

Relevant employers not regulated by the *Privacy Act 1988* should still be expected to follow good practice by seeking the consent of the individuals whose information they intend to include in a public report to the Agency that may be released to the public.

Information relating to remuneration

New section 14 applies to information relating to remuneration that is in the public report.

New subsection 14(1) provides that, subject to this section, any information relating to remuneration that is included in a public report lodged by a relevant employer under section 13A, must not be published by the Agency under section 15 or used in a report of the Agency to the Minister under subsection 12(1) or (2).

New subsection 14(2) provides that remuneration information referred to in subsection (1) (except personal information) may be published or used if the relevant employer has, by written notice given to the Agency, agreed to that information being so made available, published or used.

The note under subsection 14(2) directs the reader to section 13C which deals with personal information.

New subsection 14(3) provides that information relating to remuneration that is included in a public report lodged by a relevant employer may be made available, published or used if the information is in an aggregated form that does not disclose, either directly or indirectly, information about a specific relevant employer or another specific person.

The aggregation of information relating to remuneration should ensure that there is no risk of an inadvertent breach of privacy or disclosure of commercial in confidence information. It will also assist the Agency in fulfilling its objectives in relation to gender equality. In this regard, a key role of the Agency is in relation to the collection and analysis of data, and to advise the Minister in relation to legislative instruments (see new paragraph 10(1)(d) at **item 37**). It will also assist the Agency to develop other resources benefiting business.

Information of a kind specified by the Minister

New subsection 14A(1) provides that subject to this section, information of a kind specified in an instrument under subsection (2) must not be published by the Agency under section 15 and must not be used in a report of the Agency under section 12.

New subsection 14A(2) provides that the Minister may, by legislative instrument, specify kinds of information for the purposes of subsection (1). The Minister's power to make legislative instruments for this purpose, does not limit the ability of the Agency to deal with information (such as commercial-in-confidence information) administratively or publish the information as permitted under the Act.

Example

If one of the matters for a gender equality indicator that relevant employers must report on relates to an issue that is likely to involve employers having to provide 'commercial-in-confidence' information in the public report, the Minister may determine by legislative instrument that this information be excluded from publication by the Agency.

The note under subsection 14A(2) refers the reader to section 33A. New section 33A provides that the Minister must consult the Agency before making legislative instruments. The Minister must also consult with relevant persons mentioned in subsection 31(3) (including persons representing industry or business, employee organisations, higher education institutions) as the Minister considers appropriate.

New subsection 14A(3) provides that information referred to in subsection (1) may be so published or used by the Agency if the information is an aggregated form that does not disclose, either directly or indirectly, information about a specific relevant employer or another specific person.

Agency's use of public report

Item 47 repeals the heading to section 15 and substitutes this with '15 Agency's use of public report'.

Item 48 amends section 15. This item omits ‘A’ and substitutes ‘(1) Subject to sections 13C, 14 and 14A, a’. This clarifies that the report (or part thereof) will only be published by the Agency or used in a report of the Agency subject to section 13C, which deals with personal information, section 14, which deals with information relating to remuneration, and section 14A, which deals with information of a kind specified by the Minister.

Item 49 repeals paragraph 15(a) and substitutes new paragraph 15(a). New paragraph 15(a) provides that a public report, or a part of a public report may be published by the Agency by electronic or other means. This means the Agency has the power to publish public reports on the Agency’s website, enabling the public to access public reports freely at any time.

Item 50 amends paragraph 15(b). This item omits ‘subsection 12(1) or (2) and substitutes ‘section 12’ in paragraph 15(b).

Item 51 amends section 15 by adding new subsection 15(2). New subsection 15(2) provides that, if a relevant employer lodges a public report under section 13A in respect of a reporting period and the report is lodged within the time allowed by section 13B (within two months after the end of the period to which the report relates) or section 17 (the Agency may grant an extension), then, during the period of 28 days beginning on the day the report is lodged, the Agency can not publish the report or use the report in a report of the Agency to the Minister. This will allow a period of 28 days for additional information to be provided by employers to the Agency, as a result of a request from the Agency under 19A (**item 55**) or comments received from an employee or employee organisation under 16B (**item 52**). The purpose of this is to ensure that any provision of the report to the public or inclusion of the report in a report of the Agency, is as accurate and complete as possible.

Relevant employers to make public reports accessible to employees and shareholders etc.

Item 52 repeals section 16 and substitutes new section 16. New section 16 requires all relevant employers to make their public reports accessible within their organisation.

New subsection 16(1) provides that a relevant employer must, as soon as reasonably practicable after lodging a public report under section 13A, inform the employees of the employer, and any shareholders or members of the employer, that the employer has lodged the report and of the way in which the report may be accessed (whether this be electronically or otherwise).

Example

In the case of employees, this could include notification and advice provided through the employer’s normal means of communication with staff, including, for example, staff newsletters, workplace meetings and any other existing consultative means, provided that the method used ensures that the information concerning the relevant employer’s public report is transmitted widely to all staff.

In the case of shareholders of a public company, it may be reasonable to expect a longer lag-time between lodgement and notification, based on the more limited opportunities to communicate with shareholders and members. Fulfilment of this provision in the next available Annual Report, and on an employer's website, should they have one, would be considered adequate in satisfying the requirements of this provision.

New subsection 16(2) provides that the relevant employer must, as soon as reasonably practicable after that lodgement, provide those employees and shareholders or members with access (whether electronic or otherwise) to the public report (except to the extent that it includes information to which subsection (3) applies, that is personal information, information relating to remuneration or information of a kind specified in an instrument by the Minister under section 14A).

Example

Employers could fulfil this requirement by ensuring employees are clearly provided with, for example, a link to a site where a copy of the report could be downloaded, or a hard copy of the report.

New subsection 16(3) provides that this subsection applies in relation to the following information contained in the report:

- (a) personal information; or
- (b) information relating to remuneration that the relevant employer considers should not be subject to the requirement in subsection (2);
- (c) information of a kind specified in an instrument under section 14A.

The relevant employer is still under an obligation to provide access to those parts of the report not subject to paragraphs 16(3)(a), (b) and (c).

New subsection 16(4) provides clarification that paragraph 16(3)(a) does not apply in relation to personal information if the individual to whom the information relates consents in writing to the information being subject to the requirement in subsection (2), that is, they agree to their personal information being included in the public report accessed by employees and shareholders.

Relevant employer to inform employee organisations of lodgement of public report

New section 16A provides that a relevant employer must, within 7 days after lodging a public report under section 13A, take all reasonable steps to inform each employee organisation, that has members who are employees of the employer, that the employer has lodged the report. It is not intended that this requires an intensive effort by relevant employers to identify all possible employee organisations, but is taken to include those that the employer could reasonably be expected to know about. **Item 8** defines an employee organisation.

Relevant employer to inform employees and employee organisations of the opportunity to comment

New section 16B provides that a relevant employer must, when informing employees under section 16 or an employee organisation under section 16A, advise the employees or employee organisation that comments on the report may be given to the employer and/or to the Agency.

There is no time restriction on when any comments can be provided. However, comments provided to the relevant employer and/or the Agency during the 28 days following lodgement, will allow for those comments to be taken into account by the employer in providing additional information to the Agency, and by the Agency in requesting additional information from the relevant employer, to assist in assessing compliance with the Act. New subsection 19D(5) (**item 55**) provides that the Agency must not give a notice to a relevant employer that they are intending to name the employer in a report to the Minister or name the employer by electronic or other means, within 28 days of lodgement of the report.

Item 53 amends subsection 17(1). This item omits 'or a confidential report' in subsection 17(1), as this term will no longer be used in the Act.

Item 54 repeals sections 18 and 19. These sections are replaced by new section 19A (**item 55**).

Part IVA of the Act

Item 55 inserts new Part IVA after Part IV. New Part IVA deals with reviewing compliance with the Act and consequences of non-compliance.

Simplified outline of Part IVA

Item 55 inserts new section 18, which is a simplified outline of Part IVA. Section 18 comprises a table summarising Part IVA as follows.

The first dot point in the table explains that the Minister will set minimum standards in relation to gender equality indicators, relevant employers and reporting periods. The relevant provision is new section 19.

The second dot point explains that the Agency may review a relevant employer's compliance with the Act by seeking further information from the employer and that this can be done on a random basis. The relevant provision is new section 19A.

The third dot point explains that, if a relevant employer fails to comply with the Act, the Agency may name the employer in a report given to the Minister or by electronic or other means, for example, on the Agency's website or in a newspaper. The relevant provisions are new subsections 19D(2) and (3).

The fourth dot point provides examples of how a relevant employer may fail to comply with the Act. An example of a failure to comply with the Act is if a relevant employer fails to lodge a public report on time or to give the Agency information under new section 19A.

The fifth dot point explains that, if the Agency proposes to name a relevant employer as being non-compliant with the Act, the Agency must give the employer notice in writing of the proposal and the reasons for the proposal. The relevant provision is new subsection 19D(4).

The sixth dot point explains that one of the consequences of a relevant employer failing to comply with the Act is that the employer may not be eligible to compete for contracts under the Commonwealth procurement framework and may not be eligible for Commonwealth grants or other financial assistance. The *Financial Management and Accountability Act 1997* (FMA Act) provides for the 'proper use' of Commonwealth resources. 'Proper use' includes 'not inconsistent with the policies of the Commonwealth' (subsection 44(3) of the FMA Act refers). Commonwealth policy in relation to funding and procurement may include requirements that agencies not engage or provide funding and financial assistance to organisations that are found non-compliant.

Minister will set minimum standards in relation to gender equality indicators

New subsection 19(1) provides that, before 1 April 2014, the Minister will, by legislative instrument, set minimum standards in relation to specified gender equality indicators, specified relevant employers and specified reporting periods.

Minimum standards represent the standard expected with respect to the achievement of a particular objective under a gender equality indicator, in terms of quantitative outcomes or evidence of actions taken aimed at improving quantitative outcomes over time.

The development of minimum standards will be evidence-based, drawing on a wide range of available evidence. One of the functions of the Agency is to collect and analyse information provided by relevant employers under the Act to assist the Agency to advise the Minister in relation to legislative instruments made under the Act (**item 37**). This will include the development of minimum standards in relation to gender equality indicators.

The standardised reporting, as provided for in section 13 will provide the Agency with the capacity to collect, analyse and aggregate data and information in relation to industry, occupation and other sectors. This data, and information relating to activities and practices, will contribute over time to the development and promulgation of minimum standards.

Although it is intended that minimum standards be industry-specific, it may be appropriate for one or more to apply across more than one industry. Minimum standards are intended as an evidence-based mechanism to identify, and to focus intensive assistance on, a small but targeted number of relevant employers most in need. Minimum standards will be developed in consultation with relevant stakeholders, which may include persons representing industry or business, employee organisations, higher education institutions and persons having special knowledge or interest in relation to gender equality in the workplace.

The setting of minimum standards in respect of a particular gender equality indicator is not essential for reporting under a particular gender equality indicator to begin. Given that the setting of minimum standards will be evidence-based, minimum standards may not be set until before 1 April 2014.

There are three notes to new subsection 19(1) which provide an important insight into the nature and scope of the legislative instrument making powers of the Minister.

The first note directs the reader to new section 33A (**item 71**), which provides that, before making a legislative instrument under the Act, the Minister must consult the Agency and have regard to any recommendations of the Agency. The Minister must also consult with relevant persons mentioned in subsection 31(3) that the Minister considers appropriate. This includes persons representing industry or business, employee organisations, higher education institutions and persons having special knowledge or interest in relation to gender equality in the workplace.

The second note directs the reader to subsection 13(3) of the *Legislative Instruments Act 2003*, which provides that:

‘If enabling legislation confers on a rule-maker the power to make a legislative instrument: (a) specifying, declaring or prescribing a matter or thing; or (b) doing anything in relation to a matter or thing; then, in exercising the power, the rule-maker may identify the matter or thing by referring to a class or classes of matters or things.’

Potentially, the Minister in exercising her or his powers under new subsection 19(1) may set minimum standards that apply to a particular class or classes of relevant employers, for example, a particular industry sector or type of entity.

The third note directs the reader to subsection 33(3A) of the *Acts Interpretation Act 1901*, which provides that:

‘Where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) with respect to particular matters (however the matters are described), the power shall be construed as including a power to make, grant or issue such an instrument with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.’

Potentially, an instrument made under new subsection 19(1) may make different provision with respect to different relevant employers and different reporting periods.

New subsection 19(2) provides that an instrument made under subsection (1) has no effect in relation to a reporting period unless it is made before the first day of that reporting period. The purpose of new subsection 19(2) is to allow enough time for relevant employers to be aware of their reporting requirements for any given reporting period.

Agency may review compliance with Act

New section 19A gives the Agency power to check a relevant employer’s compliance with the Act and to seek further information, either to assist in the routine assessment of compliance or randomly to assist in checking the quality of reporting.

New subsection 19A(1) provides that the Agency may, by written notice, require a relevant employer to give the Agency information:

- (a) that relates to the employer’s compliance with the Act or to the employers’ performance against minimum standards; and
- (b) that is specified in the notice.

New subsection 19A(2) provides that the notice given by the Agency to the relevant employer must specify the period within which, and the manner in which, the information must be given.

New subsection 19A(3) provides that a period specified in a notice under subsection 19(1) must be at least 14 days after the notice is given.

The note to section 19A directs the reader to sections 137.1 and 137.2 of the *Criminal Code Act 1995*, which create offences for providing false or misleading information or documents.

Relevant employer fails to comply with Act if employer gives false or misleading information

New section 19B sets out the consequences of non-compliance for the purposes of new section 19D.

New subsection 19B provides that, for the purposes of section 19D, a relevant employer is taken to fail to comply with the Act if:

- (a) the employer lodges a public report under section 13A and any information included in the report is false or misleading; or
- (b) the employer gives the Agency information for the purposes of reviewing compliance with the Act under section 19A and the information is false or misleading.

The note under section 19B provides clarification that, if the employer does not have a reasonable excuse for failing to comply with the Act, the Agency may name the employer in a report given to the Minister or by electronic or other means provided for in section 19D.

The issue whether a relevant employer had a reasonable excuse for failing to comply with the Act would depend on the circumstances of the case. However, the reasonable excuse must be one that an ordinary member of the community would accept as reasonable in the circumstances. The failure must not simply be a deliberate act of non-compliance. If the circumstance that prevented the relevant employer from meeting their requirement was unforeseeable or outside the organisation's control, this may constitute a reasonable excuse. For example, a natural disaster that has threatened the viability of an organisation could have been a factor in the organisation's failure to comply.

Relevant employer fails to comply with Act if employer fails to improve against minimum standard

New section 19C outlines the circumstances in which a relevant employer fails to comply with the Act if the employer fails to improve against a minimum standard.

New subsection 19C provides that a relevant employer fails to comply with the Act, if the following circumstances occur:

- a relevant employer lodges a public report under section 13A in respect of a reporting period (called the **base period**); and
- in a case where a minimum standard (called the **base standard**) has been set by the Minister and applies in relation to the employer and the base period and at the end of the base period, the employer fails to meet that standard; and
- the employer lodges a public report under section 13A in respect of the second reporting period (called the **comparison period**) after the base period; and

- at the end of the comparison period, the employer's performance against the base standard has failed to improve from the employer's performance against that standard at the end of the base period;
- then the failure by the relevant employer to improve from the base period to the comparison period, is taken to be a failure to comply with the Act for the purpose of section 19D.

The note under subsection 19C provides clarification of the consequences of non-compliance with the Act. The note provides that, if the employer does not have a reasonable excuse for failing to comply with the Act, the Agency may name the employer in a report given to the Minister or by electronic or other means. The note directs the reader to section 19D which deals with consequences of non-compliance with the Act.

Consequences of non-compliance with Act

New section 19D provides for the consequences for a relevant employer, if the employer fails to comply with the Act without reasonable excuse.

New subsection 19D(1) provides that this section applies if a relevant employer, without reasonable excuse, fails to comply with the Act.

The note under new subsection 19D(1) sets out four examples of a failure to comply with the Act as follows:

- a relevant employer fails to lodge a public report on time (sections 13A, 13B and 17);
- a relevant employer fails to inform employees, shareholders or members of the employer that a public report has been lodged (section 16A);
- a relevant employer fails to inform employees and employee organisations as required by sections 16A and 16B; and
- a relevant employer fails to give the Agency information under section 19A.

Examples of other ways that a relevant employer may fail to comply with the Act include the following:

- a relevant employer fails to have the public report signed by the CEO of the relevant employer (subsection 13(5));
- a relevant employer fails, as soon as reasonably practicable after lodging a public report, to provide employees and shareholders access to the public report (subsection 16(2));

- a relevant employer fails to substantiate claims made in a public report (section 19A); or
- a relevant employer gives false, misleading or inaccurate information in a public report (section 19B).

New subsection 19D(2) provides that the Agency may, in a report to the Minister under subsection 12(1) or (2), name the employer as having failed to comply with the Act and set out details of the non-compliance.

New subsection 19D(3) provides that the Agency may, by electronic or other means, name the employer as having failed to comply with the Act and set out details of the non-compliance.

The note to subsection 19D(3) provides examples of how the Agency may, by electronic or other means, name the employer as having failed to comply with the Act. For example, the Agency may do this on the Agency's website or in a newspaper.

New subsection 19D(4) provides that, if the Agency proposes to name an employer in a report to the Minister under subsection 12(1) or (2), or name the employer by electronic or other means under subsection 19D(3), the Agency must give the employer notice in writing of the proposal and the reasons for the proposal. The Agency must also invite the employer to make written representations to the Agency about the proposal within the period of 28 days beginning on the day the notice is given. The Agency must also have regard to any written representations made by the employer within that period.

New subsection 19D(5) provides that, if a relevant employer lodges a public report under section 13A in respect of a reporting period and the report is lodged within the time allowed by section 13B or section 17 (extension of time), then during the period of 28 days beginning on the day the report is lodged, the Agency must not give the employer a notice under subsection (4) in relation to the lodgement of that report. It is recognised that, during the 28 days after lodgement, the relevant employer may provide additional information to the Agency (of their own volition, in response to a request by the Agency under section 19A, or as a result of comments made by employees or employee organisations under section 16B). This will allow the Agency to take such information into account before taking any action on non-compliance.

Agency to offer relevant employer advice and assistance if employers fail to meet minimum standards

New section 19E places an obligation on the Agency to offer relevant employers advice and assistance if employers fail to meet minimum standards.

New section 19E provides that, if a relevant employer lodges a public report under section 13A in respect of a reporting period and in a case where a minimum standard applies in relation to the employer and that reporting period, and the Agency becomes aware that, at the end of that reporting period, the employer has failed to meet that standard, the Agency must offer to provide advice and assistance to the employer. This advice and assistance must be targeted particularly in relation to improving the employer's performance against that standard, and in addition to the usual level of assistance and advice provided by the Agency to employers.

Part V of the Act

Item 56 repeals the heading to Part V and substitutes a new heading 'Part V – Director of Workplace Gender Equality'.

Advisory committees

Item 57 amends subsection 31(3). This item omits 'workplace programs' and substitutes 'gender equality in the workplace'. The term workplace programs will no longer be used in the Act.

Item 58 amends paragraphs 31(3)(a). This item adds 'or' at the end of paragraphs 31(3)(a).

Item 59 amends paragraph 31(3)(b). This item omits 'trade unions' and substitutes 'employee organisations' or'.

Item 60 amends paragraph 31(3)(c). This item inserts 'or' at the end of paragraph 31(3)(c).

Item 61 repeals paragraph 31(3)(d). Paragraph 31(3)(d) makes reference to 'organisations who represent women'. This is being repealed as the Act now covers women and men, and the amendment to 31(3)(e) (**item 62**), enables a broad range of specialists and interest groups to be considered, including organisations who represent women.

Item 62 amends paragraph 31(3)(e). This item omits 'workplace programs' and substitutes 'gender equality in the workplace'. The term workplace programs will no longer be used in the Act.

Non-disclosure of confidential information

Item 63 amends paragraph 32(1)(a). This item omits 'information relating to a confidential report or'. The term confidential report will no longer be used in the Act.

Item 64 amends paragraph 32(1)(b). This item omits 'such report or'.

Item 65 amends paragraph 32(1)(c). This item omits 'a confidential report or'. The term confidential report will no longer be used in the Act.

Item 66 repeals subsection 32(1A) and substitutes new subsection 32(1A). New subsection 32(1A) provides that subsection (1) does not apply to a person's conduct if the person is:

- (a) performing a duty or function, or exercising a power, under or in connection with, the Act; or
- (b) performing a function, or exercising a power, under an arrangement in force under section 33.

The effect of the amendment to subsection 32(1A) is to allow use of confidential information in a report to the Minister under subsection 12(1) or (2). This extends the power of the Director of the Agency and members of staff to disclose confidential information when performing a duty, function or power under the Act. Currently, the power is limited to performing a duty under, or in connection with, the Act.

The note to new subsection 32(1A) provides clarification that a defendant bears an evidential burden in relation to the matters in subsection 32(1A), as provided for in subsection 13.3(3) of the Criminal Code.

Item 67 amends paragraph 32(2)(a). This item omits 'information relating to a confidential report or'. The term confidential report will no longer be used in the Act.

Item 68 amends paragraph 32(2)(b). This item omits 'a confidential report or'. The term confidential report will no longer be used in the Act.

Item 69 amends subsection 32(2). This item omits 'to the extent that the report or information was the subject of a consent under subsection 16(2) or'. This is a consequential amendment to reflect the changes made to section 16 by **item 52**.

Delegations

Item 70 repeals subsection 33(5), as this provision is no longer necessary. Under subsection 33(3), in relation to higher education institutions, the Minister has the power to make arrangements, with a Minister of a State, for the Agency and an officer of the State to exchange information relating to the development and implementation of workplace programs and to develop guidelines in relation to this. This power will no longer be necessary given the new reporting requirements that will apply and the repeal of workplace programs from the Act.

Minister to consult before making legislative instruments

Item 71 inserts new section 33A after section 33. New subsection 33A(1) provides that before making a legislative instrument under the Act, the Minister must consult the Agency and have regard to any recommendation of the Agency. This section applies to all instruments made by the Minister under this Act. That is, legislative instruments made under subsection 13(3), subsection 19(1) and subsection 14A(2).

New subsection 33A(2) provides that before the Minister makes a legislative instrument, the Minister must also consult with such persons mentioned in subsection 31(3) of the Act. This includes persons representing industry or business, employee organisations, higher education institution and persons having a special knowledge or interest in gender equality in the workplace, as the Minister considers appropriate.

The note under new section 33A refers the reader to the consultation requirements generally for legislative instruments under Part 3 of the *Legislative Instruments Act 2003*. Section 33A is not intended to limit Part 3 of the *Legislative Instruments Act*.

Transitional – change of name of Agency and Director

Item 72 provides for the transitional provisions concerning the change of name of the Agency and the Director.

For the purposes of section 25B of the *Acts Interpretation Act 1901*, the amendment made by **item 32** is taken to be an amendment altering the name of the Equal Opportunity for Women in the Workplace Agency. **Item 32** changes the name of the Agency from Equal Opportunity for Women in the Workplace Agency to the Workplace Gender Equality Agency. The purpose of this amendment is to clarify that the Agency continues in existence under the new name so that its identity is not affected.

For the purposes of section 25B of the *Acts Interpretation Act 1901*, the amendment made by **item 34** is taken to be an amendment altering the name of the office of the Director of Equal Opportunity for Women in the Workplace. **Item 34** changes the title of the Director of Equal Opportunity for Women in the Workplace to the Director of Workplace Gender Equality. The purpose of this amendment is to clarify that the office of Director continues in existence under the new name so that its identity is not affected.

Application, saving and transitional – reports and compliance

Item 73 provides for the application, saving and transitional provisions concerning reports and compliance.

The transition to the new reporting framework will be phased to allow relevant employers time to adjust to the new reporting framework. The transition to the new reporting framework will apply as follows:

- reporting period 1 April 2011 to 31 March 2012 – relevant employers lodge public reports under the requirements of the *Equal Opportunity for Women in the Workplace Act 1999*;
- reporting period 1 April 2012 to 31 March 2013 – relevant employers will be required to prepare a public report which sets out the employer’s workplace profile and to comply with limited parts of the new framework. Relevant employers will be required to comply with the following provisions: a relevant employer must make public reports accessible to employees and shareholders (section 16); a relevant employer must inform employee organisations of lodgement of the public report (section 16A); a relevant employers must inform employees and employee organisations of the opportunity to comment on the report (section 16B); the Agency may review compliance with the Act (section 19A); a relevant employer fails to comply with the Act if the employer gives false or misleading information (section 19B); and consequences of non-compliance with the Act (section 19D) (see **subitem 73(2)**).
- reporting period 1 April 2013 to 31 March 2014 – from 1 April 2013, the requirements of the *Workplace Gender Equality Act 2012* will be fully operational, except for the application of minimum standards (see below). Relevant employers will be required to report against matters in relation to gender equality indicators set by the Minister and will be subject to the compliance provisions under the new reporting framework;
- reporting period 1 April 2014 to 31 March 2015 – from this reporting period, in addition to reporting against gender equality indicators, relevant employers will also be required to comply with minimum standards set by the Minister.

Subitem 73(1) provides that subject to **subitem 73(2)**, the amendments made by Part 1, to the extent to which they relate to the preparation and lodgement of public reports by relevant employers and compliance with the *Workplace Gender Equality Act 2012* by relevant employers, apply in respect of the reporting period commencing on 1 April 2013 and all later reporting periods.

Subitem 73(2) provides that sections 16, 16A, 16B, 19A, 19B and 19D of the *Workplace Gender Equality Act 2012*, as inserted by the Act, also apply in relation to the reporting period commencing on 1 April 2012. This means that the following items apply from 1 April 2012:

- a relevant employer must make public reports accessible to employees and shareholders (section 16);
- a relevant employer must inform employee organisations of lodgement of the public report (section 16A);

- a relevant employer must inform employees and employee organisations of the opportunity to comment on the report (section 16B);
- the Agency may review compliance with the Act (section 19A);
- a relevant employer fails to comply with the Act if the employer gives false or misleading information (section 19B); and
- consequences of non-compliance with the Act (section 19D).

However, despite section 16 applying to the reporting period commencing on 1 April 2012, subsections 16(3) and (4) of the *Workplace Gender Equality Act 2012* do not apply in relation to that period. That is, when a relevant employer has made the public report accessible to employees and shareholders, subsections 16(3) and (4) do not apply. A relevant employer is not required to exclude from the report information that is personal information, information relating to remuneration and information of a kind specified in an instrument made by the Minister under section 14A.

Subitem 73(3) provides that subject to **subitems 73(4) and (5)**, despite the amendments and repeals made by this Part, the *Equal Opportunity for Women in the Workplace Act 1999*, as in force immediately before the commencement of **item 73**, to the extent to which it relates to the preparation and lodgement of reports by relevant employers and compliance with the Act by relevant employers continues to apply on and after that commencement in relation to the reporting period commencing on 1 April 2012 and all earlier reporting periods. For this purpose, a reference in a provision of the *Equal Opportunity for Women in the Workplace Act 1999* to the Agency is taken to be a reference to the Workplace Gender Equality Agency.

Subitem 73(4) provides that sections 13, 14 and 16 of the *Equal Opportunity for Women in the Workplace Act 1999*, as in force immediately before the commencement of **item 73**, do not apply in relation to the reporting period commencing on 1 April 2012. This means that the following sections of the *Equal Opportunity for Women in the Workplace Act 1999* do not apply for the reporting period 1 April 2012 to 31 March 2013:

- section 13 – a relevant employer must prepare in respect of each reporting period, a public report in writing about the outcomes of the employer’s workplace program;
- section 14 – a relevant employer may choose to lodge a confidential report of employer evaluations; and
- section 16 – the Agency may in writing request that information which the relevant employer has included in a confidential report be made available to the public or used in a report of the Agency.

Part IV of the *Equal Opportunity for Women in the Workplace Act 1999* is taken to require a relevant employer to prepare in respect of that reporting period, a public report in writing that sets out the employer's workplace profile. This means that for the reporting period 1 April 2012 to 31 March 2013, a relevant employer is required to prepare a public report which only sets out the employer's workplace profile.

Subitem 73(5) provides that sections 18 and 19 of the *Equal Opportunity for Women in the Workplace Act 1999*, as in force immediately before the commencement of **item 73**, do not apply in relation to the reporting period commencing on 1 April 2012.

Section 18 relates to the Agency requesting information by notice from the employer concerning aspects of the employer's workplace program; the preparation of the report or the report itself. Section 19 relates to the failure by a relevant employer to submit a report or provide further information to the Agency and the consequences for the employer, including being named in report of the Agency to the Minister.

Part 2 – Other amendments

Consequential amendment to the Equal Employment Opportunity (Commonwealth Authorities) Act 1987

Item 74 amends subsection 3(1). This item omits '*Equal Opportunity for Women in the Workplace Act 1999*' and substitutes '*Workplace Gender Equality Act 2012*'. This is a consequential amendment to reflect the change to the name of the Act made by **item 2**.

Consequential amendments to the Equal Opportunity for Women in the Workplace Act 1999

Items 75 to 79, which make amendments consequential to the commencement of Part 2 of the *Tertiary Education Quality and Standards Agency Act 2011*, commence on the day the Act receives Royal Assent.

Item 75 amends paragraph (a) of the definition of **authority** in subsection 3(1). This item omits 'higher education institution' and substitutes 'registered higher education provider'.

Item 76 repeals the definition of **higher education institution** in subsection 3(1). Due to the commencement of the *Tertiary Education Quality and Standards Agency Act 2011*, the definition of higher education institution needs to be changed. **Item 77** inserts a new definition of registered higher education provider to replace higher education institution.

Item 77 amends subsection 3(1) by adding a definition of **registered higher education provider**. A registered higher education provider means a person or body that is a registered higher education provider for the purposes of the *Tertiary Education Quality and Standards Agency Act 2011*.

The note under **item 77** provides clarification that the definition of registered higher education provider includes bodies taken to be registered higher education providers for the purposes of the *Tertiary Education Quality and Standards Agency Act 2011* by Schedule 3 to the *Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011*.

Item 78 amends paragraph (a) of the definition of relevant employer in subsection 3(1). This item omits 'higher education institution' and substitutes 'registered higher education provider'.

Item 79 amends paragraph 31(3)(c). This item omits 'higher education provider' and substitutes 'registered higher education providers'.

Reform of the
***Equal Opportunity for Women in the
Workplace Act 1999***

REGULATION IMPACT STATEMENT

BACKGROUND TO THE REFORMS

The *Equal Opportunity for Women in the Workplace Act 1999* (the EOWW Act) forms part of the suite of Commonwealth anti-discrimination and workplace relations legislation. Originally enacted in 1986, the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* was renamed the Equal Opportunity for Women in the Workplace Act, following an independent review in 1998-99.¹

In the decade since the last review, there have been a number of changes in Australia's society and economy, and in the Australian Government policy settings.

The twin goals of social inclusion and increased workforce participation have become key to the Australian Government's policy platform. For example, in response to the third Intergenerational Report *Australia to 2050: Future Challenges*, the Government noted that a sustained, strong and long-term national effort is needed to raise productivity and remove barriers to people participating in the workforce.

The *Fair Work Act 2009* has introduced significant reforms to the workplace relations system, including to institutional arrangements for oversight of workplace relations.

Additionally, in 2008-09, the Attorney-General appointed an independent committee to undertake national consultation on ways to protect and promote human rights; a Senate Committee considered the effectiveness of the *Sex Discrimination Act 1984*; and a House of Representatives Committee examined pay equity and women's workforce participation.

In this context, the Minister for the Status of Women, the Hon Tanya Plibersek MP, determined that a review of the EOWW Act was timely and necessary, to address contemporary challenges and ensure a coherent legislative workplace and human rights framework.

The Office for Women in the Department of Families, Housing, Community Services and Indigenous Affairs led the review focusing on the effectiveness and efficiency of the EOWW Act and the Equal Opportunity for Women in the Workplace Agency (EOWA), announced on 1 June 2009.

This statement examines proposals to reform the EOWW Act, drawing on the outcomes of the extensive community consultation and international and domestic research conducted as part of the review.

STRUCTURE OF STATEMENT

This statement is structured as follows to comply with best practice regulation guidelines as promulgated by the Office for Best Practice Regulation. This statement seeks to identify and examine:

- **The Problem:** *Section One: Is gender equality in Australian workplaces important? identifies the costs and benefits to Australian women and men, as well as the community, employers and the economy of pursuing, or failing to pursue, the goal of gender equality. It establishes gender equality as an appropriate social and economic goal for governments.*

Section Two: Is there gender equality in Australian workplaces? examines the extent to which the goal of gender equality has been met.

- **The Objective:** *Section Three: What are the barriers to achieving gender equality in Australian workplaces?* outlines the key barriers to gender equality in Australian workplaces, and key points where the Government can intervene to optimise choices for Australian women and men.
- **Options:** *Section Four: What are the current arrangements for achieving gender equality in Australian workplaces?* identifies the current arrangements, with a focus on the EOWW Act and its interaction with other legislation and institutional arrangements.

Section Five: The effectiveness and efficiency of the EOWW Act examines the efficacy of the EOWW Act in terms of its capacity to support progress towards gender equality.

Section Six: Options to improving gender equality in the workplace considers the range of regulatory approaches to improving gender equality, including no regulation through to prescriptive legislation, and puts forward the case for continuing a 'light touch' regulatory framework, as currently exists, but with improvements.

- **Impact analysis:** *Section Seven: Impact analysis of the current system and recommended reforms* builds on sections five and six to examine in further detail the costs and benefits for individuals, business and the community and the economy of the current and proposed approaches.
- **Consultation:** *Section Eight: Consultation* outlines the extensive consultation process undertaken as part of the review of the EOWW Act.
- **Implementation and Review:** *Section Nine* outlines the recommended approach to implementation and review of the proposed reforms.

Review of *the Equal Opportunity for Women in the Workplace Act 1999*

TERMS OF REFERENCE

The terms of reference for the Australian Government's review of the EOWW Act are to:

- examine the contribution that the EOWW Act has made to increasing women's employment opportunities and advancing women's equality in the workplace;
- examine the role that the EOWW Act and Agency have in gathering and reporting on workplace data;
- consider the effectiveness of the existing legislation and arrangements in delivering equal opportunity for women;
- provide advice on practical ways in which the equal opportunity for women framework could be improved to deliver better outcomes for Australian women;
- consider opportunities to reduce the cost of existing regulation and/or ways to ensure that any new legislation is cost-effective and well-targeted;
- consider the EOWW Act and Agency within the framework of existing and proposed human rights and workplace-related legislation, policy and administration, with a view to maximising complementarity and reducing overlap; and
- have regard to the effects of the Act, or any proposed recommendations resulting from this review, on social inclusion, the economy, the labour market, business competitiveness and the general wellbeing of the Australian community.

Reform of the *Equal Opportunity for Women in the Workplace Act 1999*

SECTION ONE: IS GENDER EQUALITY IN AUSTRALIAN WORKPLACES IMPORTANT?

Equal employment opportunity (EEO) and gender equality

In conducting the review of the EOWW Act it was an explicit term of reference that it be considered in the context of its effectiveness in delivering equal opportunity for women.

'Equality of opportunity' or EEO has long been entrenched within Australian legislation and human resource practice. The EOWW Act has, in both its incarnations, expressly referred to EEO in its title and objects. Historically this was seen as an important distinction between creating a 'level playing field' (EEO) versus a more interventionist approach to achieving prescribed outcomes, for example by the use of quotas. This was seen as enabling choice, without inappropriately intruding on an employer's right to choose and promote staff on the basis of merit alone.

EEO, in the Australian context, often referred to a discrete program that an employer may have in place to consider disadvantaged groups. EEO was a program or a process centred towards addressing disadvantage, rather than a significant cultural shift driven by a productivity or social imperative.

It became apparent throughout the review that contemporary human resource practice has largely moved on from this approach, driven by skills shortages, changing demographics, and more sophisticated approaches to people management. Gender equality is not taken to mean the same outcomes regardless of gender but the concept "that all human beings are free to develop their personal abilities and make choices without limitations set by strict gender roles; and that the different behaviours, aspirations and needs of women and men are considered, valued and favoured equally".²

In the context of gender equality in the workplace, it is about recognising that men and women have a right to benefit from the rewards that both care-giving and paid work deliver. It is about improving genuine choice that is not circumscribed by assumptions about gender, including the denial of choice to men to work flexibly or take time out to care for children.

Costs and benefits to the Australian community

The current picture of gender inequality in the workplace carries clear costs and benefits for Australian women and men, individual organisations and the economy. A more detailed summary is at Attachment A, but is summarised below.

Costs and benefits for Australian women and men

Overall, women's earnings, assets and economic and financial security are lower than men throughout their lives, and the implications of this inequity are clear. Single elderly female households have the highest incidence of poverty of all household types and are also at the greatest risk of persistent poverty.³

In 2004, two thirds of fathers surveyed in the Longitudinal Study of Australian Children (LSAC) reported having missed out on taking part in home or family activities because of their work responsibilities.⁴ Research has found that a new generation of fathers is seeking the opportunity to play a more active role in family and community life.⁵

Improving women's access to quality paid work and increasing their earning capacity is very likely to reduce pressure on men to be primary breadwinners.

Costs and benefits for business

Two of the primary concerns and most significant costs of business relate to attracting and retaining talent, and understanding and accessing consumers. Ensuring an equitable proportion of women within an organisation's workforce, and providing appropriate pay and conditions can help to manage these concerns.

Firstly, in Australia, as in most industrialised nations, the costs of staff turnover are one of the largest business costs of all types of organisations. Mercer estimates that staff turnover costs range from 50 per cent to 150 per cent of annual salary, depending on the role and level of seniority.⁶

Leadership is another area where replacement costs of personnel are high. Australian CEOs are performing better but departing sooner, making retention a challenging task for boards. Australian companies report a leakage of CEO talent overseas. Booz & Company's annual CEO Turnover Study shows that the CEO turnover rate in Australia jumped from 13.4 per cent in 2006 to 18 per cent in 2007. The rate was the highest on record since the study began in 2000 and outstrips the global average of 13.8 per cent.⁷ Meanwhile, women represent a vast untapped reserve of talent.

Secondly, research has shown that by improving gender equality in the paid workforce organisations and business may perform more effectively.

There is a growing body of evidence concerning the benefits of gender diversity to the productive capacity of organisations and, in turn, to the economy. A recent report from Catalyst, for example, found that in four out of five industries in the United States, the companies with the highest women's representation on their top management teams experienced a higher total return to shareholders than the companies with the lowest representation of women.⁸

Finally, in addition to the benefits equal opportunity policies offer to organisations in terms of attracting and retaining talent, women employees are also an important avenue to understanding and accessing products, consumers and service users, as women carry the majority of household responsibility for finances and purchasing.⁹

Costs and benefits for the economy

Australia's productivity performance has slowed in the recent past, averaging only 1.4 per cent in the past decade compared with 2.1 per cent in the 1990s. The third Intergenerational Report, Australia to 2050: Future Challenges (IGR) has assumed that the current 30-year historical average of 1.6 per cent will continue. The IGR identifies the ageing of our population as a central challenge for Australia. The ageing of the population will see the number of people aged 65 to 84 years more than double and the number of people 85 years and over more than quadruple in the next 40 years.¹⁰

Productivity is not only critical in generating national wealth, but it also reduces calls upon public resources, such as via the income support system.¹¹ In Australia, 57.4 per cent of all age pensioners and 71.8 per cent of single age pensioners are women.¹² This is a highly significant figure for the national economy given that, in the financial year 2009-10 the expenditure for delivering the Aged Pension to 2,125,340 customers was \$29.2 billion.¹³

Growth in productivity is the main source of improvements in living standards and real gross domestic product (GDP) growth. Faster labour productivity growth enables higher growth for real GDP, real GDP per person and real wages.¹⁴

The World Economic Forum has clearly identified the link between productivity and better use of women in the workplace:

*There is a strong correlation between the gender gap and national competitiveness...a nation's competitiveness depends significantly on whether and how it educates and utilizes its female talent.*¹⁵

Compelling new research by Goldman Sachs JB Were concurs. It found that closing the gap between male and female workforce participation rates would have important implications for the Australian economy, boosting the level of Australian GDP by an estimated 11 per cent.¹⁶

Recent research from NATSEM supports these findings.¹⁷ NATSEM estimated that a decrease in the gender wage gap of one percentage point from 17 per cent to 16 per cent would increase GDP per capita by approximately \$260. This equates to around \$5.497 billion (2007 dollars) or 0.5 per cent of total GDP, based on current population. NATSEM's results also indicate that eliminating the whole gender wage gap from 17 per cent to zero, could be worth around \$93 billion or 8.5 per cent of GDP.¹⁸

Benefits for Australia's international standing

The Australian Government is a signatory to binding international human rights and labour rights instruments which impose obligations on the Australian Government to achieve substantive gender equality in Australian workplaces.

The workplace-based gender inequality outlined in Section 2 could suggest a failure to meet these obligations. The importance of taking such obligations seriously is even more critical at a time when global cooperation on the economy and environment require mutual trust and confidence.

Conclusion

As has been widely accepted across the OECD, gender equality delivers benefits to individuals, business and the community. It is an appropriate social and economic goal for governments.

Reform of the *Equal Opportunity for Women in the Workplace Act 1999*

SECTION TWO: IS THERE GENDER EQUALITY IN AUSTRALIAN WORKPLACES?

While Australians enjoy world-leading levels of development as measured by their health, longevity, education, literacy and living standards,¹⁹ Australian women experience lower levels of economic security than men.²⁰

Paid work drives economic security. With work comes the opportunity to contribute to the family budget, build assets, establish financial independence and enjoy a secure retirement. Paid work is widely recognised as key to addressing disadvantage and to contributing to social inclusion.²¹

The labour force participation rate of women in Australia has increased significantly over the last 30 years. Between February 1978 and April 2010, the labour force participation rate of women increased from 43.5 per cent to 58.4 per cent.²² However, a number of problematic features of the work profile of women persist. A more detailed summary is at **Attachment B**.

Participation rates

Women's labour force participation rate is considerably lower than that of men, and those women who do work are far less likely than men to do so on a full-time basis.

– A snapshot

In April 2010, Australia's total female labour force participation rate was 58.4 per cent, compared with 72.2 per cent for men. Only 54.1 per cent of all women in employment were working full time compared with 83.5 per cent of all men.²³

In April 2010, women comprised just under 70 per cent of the part-time workforce.²⁴

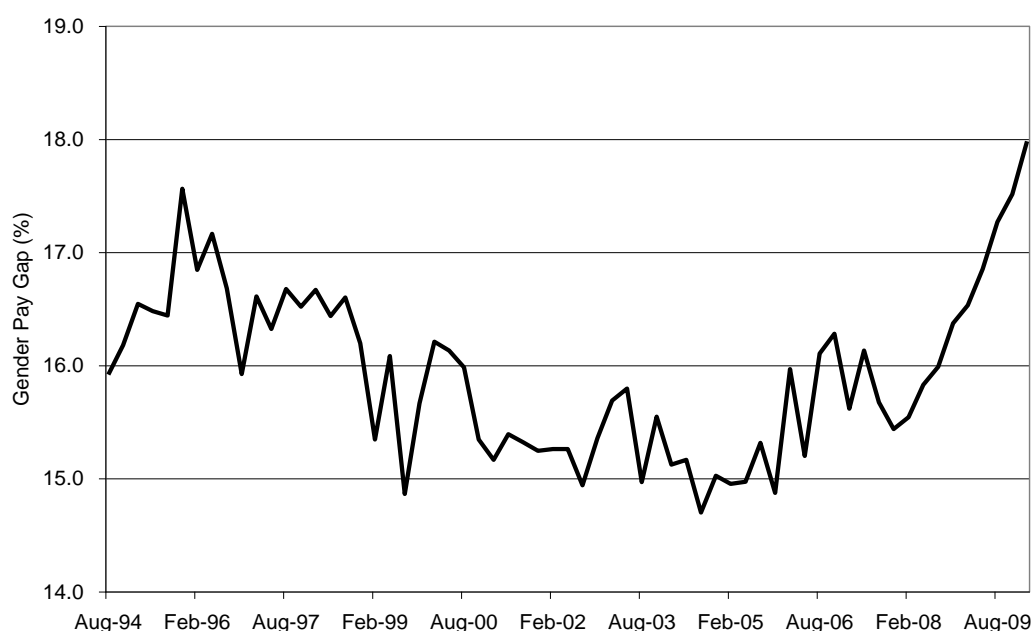
In 2007, Australia had the 4th lowest maternal employment rate with the youngest child aged between three and five, after Turkey, Mexico and Japan.²⁵

In 2006, at 72.9 per cent, Australian women of child bearing age (25-44) had the 8th lowest participation rate of women in OECD countries.²⁶

Earnings

When compared with similar OECD countries, Australia has the fifth largest gender pay gap.²⁷ In February 2010, the gender pay gap was 18.0 per cent, based on the average weekly ordinary time earnings of full-time adult employees. Chart 1 shows trends in the gender pay gap between August 1994 and February 2010.²⁸ While the gender pay gap narrowed slightly between August 1994 and August 2004 from 15.9 per cent to 14.7 per cent, it has since widened and is currently at its highest level in 15 years.

Chart 1: Gender pay gap based on the average weekly ordinary time earnings of adults, August 1994 to February 2010



Source: Australian Bureau of Statistics *Average Weekly Earnings*, Australia, February 2010 (Cat No 6302.0), seasonally adjusted data

A snapshot

In February 2010, the gender pay gap was 18.0 per cent²⁹

In 2009, new male graduates earned median starting salaries of \$50,000 compared with \$47,000 for women³⁰

The average superannuation balances for Australians aged 15 years and over with superannuation coverage were \$87,589 for men and \$52,272 for women.³¹

Leadership

Fewer women than men occupy leadership positions across virtually every sector of the paid workforce.

- A snapshot

Only 10.7 per cent of executive managers in the ASX200 are women.³²

Women chair two per cent of ASX200 companies (four boards) and hold 8.3 per cent of board directorships. There are more than 10 men to every one woman ASX200 board director and 49 male CEOs for every female CEO.³³

Women outnumber men in the Australian Public Service but comprise 45 per cent of executive level employees and 37 per cent of the Senior Executive Service.³⁴

Half of lecturing staff in Australian universities are women, but only 39 per cent of senior lecturers and only 24.5 per cent of academic staff above senior lecturer.³⁵

Work/family balance

Men's uptake of work arrangements to care for children is still low, but it is increasing. In 1999, only 18 per cent of fathers used flexible hours to balance work and family, and 73 per cent did not use family-friendly provisions. In 2007, 30 per cent of fathers used flexible hours to balance work and family and 59 per cent did not use any family-friendly provisions.³⁶

Research has found that masculine identity and the role of economic provider (breadwinner) are powerfully entwined and that despite the enthusiastic adoption of a child centred view of family life and a commitment to the ideal of shared parenting, most of male employees tend to give work priority over family.³⁷

Conclusion

Although some progress has been made, gender equality has not been achieved in Australian workplaces.

Reform of the *Equal Opportunity for Women in the Workplace Act 1999*

SECTION THREE: WHAT ARE THE BARRIERS TO ACHIEVING GENDER EQUALITY IN AUSTRALIAN WORKPLACES?

It is a key objective of the Government to raise productivity and remove barriers to people participating in the workforce³⁸ and to remove barriers to people making choices without limitations set by strict gender roles.³⁹

The review of the EOWW Act, and the consultation process supporting it, closely examined barriers to achieving gender equality for women and men. A more detailed summary is at **Attachment C**, but key findings are outlined below.

Several of the barriers intersect and overlap. For example, cultural attitudes drive community approaches to managing care responsibilities, undertaking recruitment and selection and offering workplace training opportunities. Similarly, women's caring responsibilities often lead them to education and work choices which do not require relocation or are in industries they perceive to be family friendly.

Socio-cultural barriers

Socio-cultural values and beliefs, including the range of community attitudes, assumptions and stereotypes which impact on women and men in the workplace, are at the heart of many of the barriers to realising equal employment opportunity.

A common refrain in relation to inequitable workplace outcomes is that they result from women's choices. However, discriminatory attitudes are transmitted to both women and men from infancy and span every facet of decision-making in their lives: personality and skills development, education, family, career and financial choices.^{40,41}

Findings from EOWA surveys suggest that most organisational cultures continue to reflect the assumption of a male norm and as female deviations from that norm.⁴²

Inequitable impact of caring

A major obstacle to equal employment opportunity is the capacity for women and men to manage their paid work, life and family responsibilities. The workforce participation of mothers in Australia is low by international standards. Of Australian mothers with their youngest child under two, 82 per cent worked part-time and nearly half (45 per cent) worked 15 hours or less per week.⁴³ The main barrier to full participation in paid work for women is difficulty balancing paid work and care responsibilities.⁴⁴

Experiences of sexual harassment

Sexual harassment continues to affect women across all sizes of employer, and the Australian Human Rights Commission describes the continuing presence of sexual harassment in the workplace as a key marker of gender inequality in the workplace and one reason women do not progress.⁴⁵

Bias in recruitment and selection

Approaches to recruitment and selection which inherently favour men are consistently identified as a barrier to achieving gender equality. The way merit itself is defined can be discriminatory, or a decision-maker can be biased towards gendered attributes.

Male dominated industries

Australian industry is highly segregated along gender lines, with women concentrated in industries such as child care, aged care, health and community services and men concentrated in engineering, banking, finance and manual trades.⁴⁶ Male dominated industries are those which experience higher rates of pay, better conditions and more secure work structures.

Poor data

A significant limitation in addressing inequities in employment is the failure to adequately capture the full picture of gender-based disadvantage in the workplace. This gap was highlighted by the full spectrum of participants in the consultation process to the review of the *Equal Opportunity for Women in the Workplace Act 1999*, with some groups focusing on the lack of utility of the current reporting format, and others focusing on data gaps at the broader level.

Conclusion

To achieve the Government's broad objectives with respect to workforce participation and gender equality, there are a number of barriers that still exist which need to be addressed.

Reform of the *Equal Opportunity for Women in the Workplace Act 1999*

SECTION FOUR: WHAT ARE THE CURRENT ARRANGEMENTS FOR ACHIEVING GENDER EQUALITY IN AUSTRALIAN WORKPLACES?

Relationship of the EOWW Act and EOWA to other legislation and agencies

The existing anti-discrimination legislation, in the context of gender, consists of the new *Fair Work Act 2009* which commenced on 1 July 2009 and the *Sex Discrimination Act 1984*. These laws and their associated agencies rely largely on an individual complaints-led model to advance gender equality in the workplace.

There has been a strong international⁴⁷ and domestic⁴⁸ shift moving away from sole reliance on an anti-discrimination framework, and moving towards the promotion of equality through reducing systemic discrimination, and developing strategies to promote attitudinal change. The [EOWW Act](#), having historically focused on cultural change and the removal of barriers to women's equal employment opportunity, is well positioned to continue its different, yet complementary role, to anti-discrimination and workplace relations legislation, and to take forward a gender equality in the workplace agenda.

A detailed summary of the relevant legislation and institutional arrangements, and their interactions, is at **Attachment D**.

Current features of the EOWW Act

Objects and coverage of the EOWW Act

The EOWW Act requires certain employers to promote equal opportunity for women in employment. The principal objects of the EOWW Act are to:

- promote the principle that employment for women should be dealt with on the basis of merit;
- promote the elimination of discrimination, both direct and indirect, and the provision of equal employment opportunity for women in relation to employment matters among employers; and
- foster workplace consultation between employers on issues concerning equal opportunity for women in relation to employment.⁴⁹

The EOWW Act applies to organisations with 100 or more employees, including from private sector organisations; not-for-profit/community organisations; non-government schools; trade unions; higher education institutions and group training organisations. These organisations are collectively known as 'reporting organisations'. The identification of reporting organisations is largely based on self-identification and disclosure by organisations.

Workplace programs, reporting and compliance

The EOWW Act requires that employers develop strategies to prevent discrimination and achieve equal employment opportunity for women. It requires reporting organisations to develop and implement an annual workplace program aimed at eliminating discrimination and contributing to equal opportunity for women in the

workplace. Relevant employers must prepare an annual public report about the outcomes of their workplace programs.

Reporting requirements may be waived by EOWA if the employer has complied for a period of no less than three consecutive years and can demonstrate to EOWA that all reasonably practical measures have been taken to address equal opportunity for women in their workplace.

The EOWW Act's enforcement provisions focus on the situation where a reporting organisation fails to lodge an annual report. In these circumstances, EOWA may identify non-compliant organisations in its annual report to the Minister. This annual report is tabled in Parliament.

A further compliance incentive is that the Australian Government Procurement Guidelines prevent government departments from buying goods and services from, or entering into contracts with, non-compliant organisations. Non-compliant organisations may also be ineligible for grants under specified industry assistance programs.

The role and activities of EOWA

Organisational structure, resourcing and staffing

EOWA is an Australian Government statutory authority. Following the change of government in 2007, EOWA joined the portfolio of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) from the former Employment and Workplace Relations portfolio. The Director of EOWA reports directly to the Minister for the Status of Women. In 2008-09, EOWA had a total actual expenditure of \$3.4 million.

Role and functions of EOWA

The primary role of EOWA is to administer the EOWW Act and to provide information, advice, education and communication to reporting organisations and members of the broader community to achieve equal opportunity for women in the workplace.⁵⁰

Key activities

EOWA advises and assists relevant employers in the development and implementation of their workplace programs and monitors the lodging of reports by relevant employers.

EOWA is also active in offering a range of education programs, events, awards and workplace tools to support and encourage Australian employers to improve equal opportunity outcomes for women in the workplace.

EOWA undertakes and/or commissions a range of research. Since 2002 the EOWA Australian Census of Women in Leadership has measured the status of women on boards and women executive managers in Australia's top 200 organisations listed on the Australian Stock Exchange. This research is internationally comparable. Other research includes further analysis of the Census data, such as *Pay, Power and Position: Beyond the 2008 EOWA Australian Census of Women in Leadership and (A)Gender in the Boardroom*.

EOWA also provides workplace tools to assist organisations to achieve the objectives of the EOWW Act including the Pay Equity Tool to help employers audit

and analyse the gender pay distribution throughout their workplace, and the *Bullying and Harassment Prevention Tool*.

Conclusion

There is no evidence that there is significant overlap or duplication in the roles of anti-discrimination legislation, workplace relations legislation and the EOWW Act, or in terms of the institutional arrangements that support them. Some of the tools and publications produced by the different agencies could be better co-ordinated, and would benefit from better liaison and communication across relevant agencies. The EOWW Act and Agency have a unique focus on improving human resource practice to promoting cultural and attitudinal change in large organisations. This role is valuable and operates in a complementary fashion to the other relevant laws and institutions.

Reform of the *Equal Opportunity for Women in the Workplace Act 1999*

SECTION FIVE: THE EFFECTIVENESS AND EFFICIENCY OF THE EOWW ACT

Overall effectiveness in delivering gender equality

Outlined below is an analysis of the components of the Act drawn from the consultation process conducted as part of the review and the evidence of the problem provided in Sections Two and Three. A more detailed analysis can be found at **Attachment E**.

Objects and coverage of the EOWW Act

Name and objects of the EOWW Act

The primary issue which emerges from research and consultation in relation to the name and objects of the legislation relates to its sole focus on women. This focus was retained during the 1998-99 review because women faced (and still face) considerable inequity in the workplace and it is this inequity which needs to be the focus of remedial efforts. However, across the breadth of this consultation process, participants recognised that the workplace situations of men and women are inextricably bound together and influence each other.

Coverage of the EOWW Act

During consultation, 37 per cent of all submissions suggested the current coverage of the legislation was inappropriate, with the majority seeking extended coverage. Only one submission (peak body) expressed the view that the coverage of the EOWW Act should be reduced.

A second 'coverage' issue emerging was that of employers with a large number of subsidiaries. Currently, such entities are able to provide a single report, which can mask discriminatory trends or other problems in particular corporate segments.

Extending the EOWW Act's coverage to government agencies, departments and statutory authorities was also raised in submissions, roundtables and interviews. Twenty-seven per cent of submissions expressed the view that the public sector should be covered. Round-tables situated the exclusion of the APS as particularly significant, especially given its size and scale as an employer of women.

While only nine per cent of public submissions raised the issue of extending the coverage of the Act to boards in order to address the inequities in membership, this was an issue that was raised repeatedly in individual interviews and by the Project Reference Group.

Submissions from the Australian Human Rights Commission and a number of individual women, advocated that leadership by government is required and this should involve increasing the representation of women on government boards.

Currently, several State and Territory Governments have in place targets for achieving 50 per cent representation on government boards (including Victoria, South Australia, ACT, and Queensland). Some also have targets in relation to the representation of women in senior leadership positions (South Australia and ACT).

Workplace programs

While the EOWW Act does not define equal opportunity itself, the Act defines an 'Equal Opportunity for Women in the Workplace' program as appropriate action to eliminate discrimination and contribute to the achievement of equal opportunity for women.⁵¹ In practice, the variation between organisations in how they interpret and apply the requirement to develop workplace programs has been great, and outcomes for women are variable and uncertain.⁵²

The pattern of preparing workplace programs and reporting on them suggests that employers have found it difficult to sustain analytical and evaluation activity over time. The result is that reporting can tend to become perfunctory or generalised, and innovation and specificity can be supplanted by retrofitting a largely notional equal opportunity program.⁵³

Reporting obligations

Following the 1998-99 review of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*, a new flexible reporting format was introduced to enable employers to tailor their reports to individual workplace requirements. The strong and compelling view expressed during consultation was that this approach has not supported outcomes-based reporting but instead generated uncertainty about standards required for both the programs themselves and reports.

Compliance and enforcement

Compliance reports, and the names of non-compliant organisations, are currently listed on EOWA's website. As of 17 October 2008, there were over 2,500 reporting organisations that complied with requirements of the EOWW Act and 12 organisations that were deemed to be non-compliant.⁵⁴

There is also a strong and consistent view across the community that penalties under the EOWW Act are weak.⁵⁵ Most stakeholders in consultation were generally dissatisfied with available penalties, sanctions and enforcement powers under the EOWW Act. Experts, unions, government and peak bodies were more likely to see penalties as insufficient. Only one per cent of submissions suggested enforcement was too strong (one peak body submission).

The role and activities of EOWA

Organisational structure, resourcing and staffing

In considering the appropriate structure of EOWA, there was a clear view from consultation that an agency with an important industry interface role needs to retain the authority conferred by strong government backing while ensuring some separation from the business of government. Consideration of appropriate placement of EOWA tends to result in discussion of three possibilities:

- placement alongside or within anti-discrimination agencies, effectively creating a gender equality jurisdiction;
- positioning with employment functions; and
- retaining independent statutory status but with enhanced role and status.

A large aspect of the role of EOWA is in changing workplace practices and culture.

Overall, participants in consultation favoured the third option outlined above, to retain EOWA's independent statutory positioning.

Provision of information, advice and education

This role was highly valued by those consulted, with 39 per cent of submissions positioning it as EOWA's most valuable and effective function. However, consultation participants were interested to see this function extended, with 32 per cent suggesting EOWA's current role in promoting understanding, acceptance and public discussion of equal employment opportunity was not adequate or appropriate.

Research and data

One of the key findings from the consultation was that the breadth of organisations which recommended that EOWA should collect data against key outcome metrics and use it to track improvement and disseminate this information publicly. The data should be disaggregated to a much greater level of detail than current data sets. EOWA submitted that, under a reformed regime, aggregated data from organisations' Gender Equality Self-Audits (an amended Public Report Form that requires employers to complete a self-audit against a specified set of gender equality standards and measures) should form a part of the Agency's annual report and be made available to the Sex Discrimination Commissioner and appropriate others, including bona fide researchers.

Other events, awards, tools

The key finding from consultation was that the activities of EOWA need to focus on its primary value add – influencing change in the behaviour of organisations.

Submissions from industry, government and the community sector preferred cultural change and education solutions above all others.

Reform of the *Equal Opportunity for Women in the Workplace Act 1999*

SECTION SIX: OPTIONS TO IMPROVING GENDER EQUALITY IN THE WORKPLACE

This section examines potential options to addressing the employment inequity identified in Section Three. The four potential approaches span the regulatory spectrum, from self regulation through to strict regulation. Each is reviewed for effectiveness and international application, and then applied to the EOWW Act context. A detailed summary of each can be found at **Attachment F**, which also provide international examples.

Four options for a reformed EOWW Act are distilled from this process, reflecting the breadth of views raised in consultation, and the potential impact of each is then tested against a range of economic, social and international markers.

Range of Regulation Approaches

Reducing regulation - no regulation or self-regulation

A 'no regulation' option would see the removal of government intervention and statutory controls, in favour of a return to individual freedom of contract and market-based governance.⁵⁶ The approach still allows for the development and implementation of behaviour change and educational campaigns by government.

Self-regulation, on the other hand, encourages "market steering", as opposed to command and control regulation or deregulation.⁵⁷ Self-regulation is generally characterised by industry formulating rules, standards and codes of conduct, and having sole responsibility for enforcement. Self-regulation mechanisms can include the establishment or use of industry councils to develop industry standards or codes of practice which are essentially voluntary, but are enforced by industry.

While the lowest intervention option would remove all regulation of workplace equity approaches, the 'no regulation' option is not pursued further as it is very likely to be unacceptable given the scope of the problem identified in Sections One and Two, Australia's international obligations and the approaches of like nations.

There is little evidence available to indicate the impact a voluntary regime would have on the risks identified from current workplace inequities, as other comparable (OECD) jurisdictions all have some form of regulated reporting and monitoring. Furthermore, a fully self-regulating regime would be unlikely to meet international expectations.

A self-regulating regime would offer even weaker incentives for compliance than the current regime, and may further erode reporting coverage. This would make a move to measuring outcomes and tracking progress on gender equality in the workplace more challenging.

This approach is not recommended. There is no evidence to suggest that this option would be more effective than the current regime to remedy the problem identified in Sections One and Two.

Light and responsive regulation

A light-handed or quasi-regulatory approach also involves the creation of rules that may not be legally binding, however it is backed by government initiatives that influence compliance but do not require it under law. Some examples of quasi-regulation include government-endorsed industry codes of practice or standards, government-issued guidance notes, industry–government agreements and national accreditation schemes.

There are a number of specific ways in which government may encourage compliance with quasi-regulatory rules. These include endorsing industry-based regulation, for example through codes of practice or behaviour; threatening binding regulation in the event of non-compliance with a voluntary scheme; and making compliance with codes or standards a precondition for involvement in government contracts or other government benefits.⁵⁸

Light-handed approaches can also involve incentives to encourage companies to pursue equal opportunity. This type of regulation takes many forms with the most common involving taxes, user charges or subsidies. Advantages include the creation of economic pressures to instigate behaviour change. This approach is often considered to be non-regulatory, however, it does require a different or more generic form of regulation that is usually applied through taxation law.

A middle ground option to achieve the correct regulatory balance between capacity building and sanctions is that of responsive regulation.

Responsive regulation seeks to replace either punitive or permissive regimes with a responsive and escalating pyramid of interventions, appropriate to the circumstances and responses of the person or entity being regulated. The bottom level of the pyramid would be made up of soft corrective tools, such as advice and warnings. These are used most frequently and are most effective if the agency is also able to deploy punitive sanctions such as, in the case of the existing EOWW Act regime, government contracting exclusions and public naming.

This approach is the preferred option. Detailed features and a detailed examination of the impact of the proposed reforms are provided at Section Seven.

Prescriptive regulation

The prescriptive approach to regulation is based on detailed controls on behaviour of organisations, and supported by civil or penal sanctions for non-compliance.

This approach is generally considered appropriate where: the rules address issues of high risk or significance (including public health and safety); government requires the certainty of higher levels of compliance; universal application is required; there is a history of systemic non-compliance with industry-led or softer regulatory approaches; and existing industry bodies do not have comprehensive coverage or are not committed to the need to change behaviour.

This approach could respond to the views expressed in the consultations that the EOWA agency lacks adequate powers to undertake its role effectively. It could extend on the current arrangements but with increased enforcement powers built in to the statutory regime. It could introduce mandatory quotas that require certain proportions of women to be represented at all levels within organisations.

The issue to be considered in projecting the likely impact of this approach is whether more stringent requirements, increased powers and heightened sanctions would be more effective in producing better outcomes than the current arrangements or the preferred model.

While increased penalties and the introduction of quotas may ensure faster progress, they may also generate a degree of opposition from business, employer and industry groups and concerns about the cultural impacts. Any movement to quotas, for example, may be more compelling, and more likely to generate acceptance and commitment, if it is initiated following a period of trying voluntary targets, and in response to a clear failure of those targets.

It is highly likely that the benefits of this approach would be most likely to be felt by women from disadvantaged groups, and those in employment arrangements which are not well served by existing anti-discrimination and employment machinery. Although this may produce a more immediately effective impact on women's workplace equality, it may also produce a negative cultural backlash which, at least in the short term, erodes cooperative community efforts.

The costs of this regime to non-compliant business would be greater than existing arrangements and the preferred model, although they would be comparable for compliant organisations. However, perhaps the greatest impact of this approach would be to the relationship between the Agency and reporting organisations, which would move from one of support and advice to a more adversarial model, less conducive to influence. This may affect the willingness of organisations to accept information and training from the Agency, and to utilise tools developed by the Agency. Such isolation would increase the costs to organisations of developing gender equality initiatives, as they would be doing so without free or inexpensive expert support and advice.

The introduction of quotas for women may also generate a business and community backlash in so much as this action may be perceived to constitute discrimination against men.

This approach is not the preferred approach at this time.

Conclusion

The preferred approach retains the existing level of regulation, but seeks to address current problems to shape a tight and responsive regime focused on addressing barriers and driving improved gender equality.

While a more prescriptive approach could offer gains in increased short term compliance, continuation of a light and responsive regulation, but with improvements, promises to most effectively address the concerns about the current regime raised in Section Three. It balances the potential for short term progress with maintaining the strong lines of communication and persuasion essential to sustain change.

Reform of the *Equal Opportunity for Women in the Workplace Act 1999*

SECTION SEVEN: KEY FEATURES AND IMPACT ANALYSIS OF THE RECOMMENDED REFORMS

Key features of the reforms and impacts

Amending the name and objects of the Act

A. Under the proposed reforms the name of the Act and Agency and the objects of the Act would be changed to reflect the goal of gender equality, in particular, to include men as well as women and recognise the caring roles of both women and men.

The cost of maintaining the name and objects of the Act to solely focus on women's equal opportunity in the workplace has been identified in the research and consultation process to the review. The consultation identified the requirement to enable both men and women to access flexible working conditions in understanding the interrelationship between men's participation in care-giving and women's uptake of paid work.

Renaming the legislation and amending the objects of the Act will not impact significantly, if at all, on the economy or business. It will however send a strong message to the community about the shifting socio-cultural attitudes about appropriate roles for women and men in paid and unpaid work. As identified in Section One there are clear benefits to increasing women's workforce participation and men's care giving opportunities for the individuals involved, for business and for and the economy and community at large.

Very modest costs will be incurred by Government in affecting changed signage and branding for the Agency.

Improving the coverage of the Act

- B. Coverage of the Act will be improved.
- It will be broadened to encompass women and men, particularly in relation to caring responsibilities.
 - It will be improved with a mechanism to enable the Agency to identify employers with 100 or more employees who should be reporting.
 - Employers will be required to report on the gender composition of their boards.
 - Smaller organisations (less than 100 employees) will be covered by the Act, but will not be required to report.

The existing coverage was identified by a majority of submissions to the consultation as not adequate. Many submissions believed that priority should be given to ensuring that those organisations that are already covered meet their legislated responsibilities to implement and report on equal opportunity measures and practices. Although many women and men are employed by smaller businesses with less than 100 employees it was identified in the consultation process that the resource implications on small business to have a legislated requirement to report would be considered too onerous.

Furthermore, EOWA has found that the additional funding required for the Agency to process the additional reports from businesses with less than 100 employees as excessive and not the most cost effective way to encourage equal opportunity in the workplace for these organisations. It has been estimated that it would cost an additional \$600,000 a year to extend the legislated requirement to report to businesses with 80 employees and over. It has been proposed that this funding would produce stronger equal opportunity in the workplace outcomes if allocated to education programs for smaller businesses and research within the Agency.

According to ABS advice to EOWA, up to one third of a possible 4500 organisations with 100 or more employees have not been identified by the Agency and, therefore, have escaped their legislated requirement to report. Due to limitations with the way that EOWA collects and categorises data it is difficult to estimate whether organisations that do not meet their legislated requirement to report are concentrated in particular industries.

EOWA collects industry data for the reporting organisations but does not collect the industry data of the subsidiaries that the reporting organisations are reporting on behalf of. Therefore, the only data available is the percentage of reports submitted by industry from approximately 2500 organisations that submit a report on behalf of 7000 organisations.

EOWA classifies industry using the 2006 Australian and New Zealand Standard Industrial Classification (ANZSIC) whereas the latest ABS data that counts business by industry and employment size uses the 1993 ANZSIC. Consequently, an analysis of the proportion of industry with over 100 employees to the proportion of reports submitted to EOWA is not directly comparable. For example, when comparing the available EOWA and ABS data it appears the biggest disparity between the proportion of an industry with over 100 employees and the proportion of reports submitted to EOWA in that year occurred in what was classified "Property and Business Services", using the 1993 classification, which is now classified "Rental, Hiring and Real Estate Services". According to the ABS data, "Property and Business Services" made up approximately 20 per cent of industries with employees over 100 employees but according to the EOWA data, the closest comparable classification, "Rental, Hiring and Real Estate Services", only submitted one per cent of the reports.

This analysis would indicate that real estate type organisations are not meeting their legislated requirement to report, however, the 2006 ANZSIC has new industry categories that may now capture the types of industry that may have previously been classified “Property and Business Services”, for example “ Administrative and Support Services”, “Professional, Scientific and Technical Services” and “Public Administration and Safety”. When the number of reports submitted from these industries is included with the “Rental, Hiring and Real Estate services” category the difference between proportion of industry with over 100 employees and the proportion of reports submitted significantly decreases. It is evident, however, that any estimates generated from this analysis should be viewed cautiously due to the aforementioned limitations of the data.

Of the organisations that submitted a survey response to the consultation, 11 percent strongly agreed and 37 per cent agreed that the benefits of complying with the EOWW Act outweigh the costs. Thirty one per cent neither agreed nor disagreed.

In the industry breakdown, only the classification “Electricity, Gas, Water and Waste” submitted that the costs outweighed the benefits. This industry is typically a male dominated industry and these industries are more likely to be resistant to gender equality initiatives.⁵⁹ It is worth noting, in terms of overall impact, that the “Electricity, Gas, Water and Waste” category makes up only one percent of the industries with over 100 employees.

It is proposed that coverage of the Act will be improved by amendment to taxation legislation to enable the Australian Taxation Office to provide the Agency with a list of all employers employing 100 or more people. This would ensure that there was an equal impact on all businesses employing 100 or more people and not just on those businesses who meet their legislated requirement to report. There will also be a mildly positive impact on business competitiveness by ensuring that all private sector organisations with 100 or more employees are required to report on the same terms. And it will have a positive impact on employees of those organisations who will now be required to report, and who now will be able to access the educative and assistance functions of the Agency.

The reforms will result in increased compliance costs for businesses who have not previously been compelled to report. They will need to consider allocation of the responsibility of undertaking the reporting and will incur an ongoing cost to comply with the Act’s annual reporting requirements. To fulfil the new reporting requirements it has been estimated that the cost to business will decrease on average from approximately \$1200 to \$450 per annum in resourcing costs – but this is still an increase of \$450 per annum for those organisations who did not previously incur any compliance costs. Estimates have been taken from the Business Cost Calculator report at **Attachment G**.

Small business will continue not to be required to report, but the general principles of the Act will expressly apply to all employers. This will provide the Agency with a mandate to consider small business in the development of strategies and resources and it will enable the Agency to extend its incentive activities, such as the Employer of Choice citation, to small business.

There will be an expectation that small businesses would take the time to familiarise themselves with the objects of the Act and this is expected to have a small positive impact on human resource practice within business. Small business will gain the capacity to report voluntarily and to engage with the renamed Agency’s education and incentive activities such as the Employer of Choice citation.

The extension of the Act to cover boards and women and men will have no impact on business beyond the broader impact of the proposed revised reporting requirements, but is likely to have a positive impact on the community, the economy and individuals by compelling employers to consider and report on these issues within their workplaces.

Focusing reporting on outcomes

- C. The reporting regime will be refocused on outcomes.
- Reports will be on outcomes against identified equality indicators, including workforce composition and pay, and the availability and utility of employment conditions and practices, including in relation to family-friendly and flexible work practices for women and men.
 - The requirement for organisations to develop prescriptive equal opportunity for women in the workplace programs will be removed, as will the capacity for waiving of reporting.
 - CEOs and employee representatives will be required to sign off on reports, and employers will be required to make their reports accessible to employees and shareholders.

Relevant organisations would be required to report in a common format against a number of equality indicators. This will deliver certainty to organisations in what they are required to report on, and will provide the Agency and the Government with a sound means of measuring progress over time and the impact of broader employment-based initiatives.

The Agency will be provided with the information technology capability to implement an on-line reporting system, underpinned by a data collection and management system that would enable industry-based benchmarks to be developed and promulgated. This will require a one-off funding injection by Government, but will deliver very useful information to employers which is likely to be used in a broader context other than just in relation to the compliance requirements of the Act.

There is a need to balance concerns about the frequency of reporting with ensuring momentum in driving forward improved outcomes. Reporting will continue to take place annually, and the provision relating to waiving will be removed from the Act.

The Director of the Agency would be provided with the discretion to introduce these equality indicators incrementally to enable organisations to develop the necessary data collection mechanisms.

While the new framework, if adopted, will carry a more prescribed reporting requirement than under the existing arrangements, the time costs for reporting organisations would be, at the very least, comparable to the existing regime.

There may be a slightly increased time burden in the initial stages of implementing the new requirements, as organisations learn the new system, however the implementation time-line outlined at Section Nine offers considerable lead time for organisations, and envisages intensive personal support during the change-over period.

Time use mapping suggests that after this initial investment the outcomes-based reporting regime proposed under the reforms would actually streamline organisational reporting requirements, particularly with the on line reporting option, and the capacity it offers for tracking year by year. For organisations already measuring employment outcomes and giving attention to equality at work reporting is expected to be simpler and quicker.

Strengthening compliance

- D. Compliance will be strengthened and made more transparent.
- The Agency will be provided with the authority to conduct organisational reviews.
 - Organisations will be deemed to have failed to comply with the Act if they: fail to lodge a report; fail, upon review, to substantiate claims made in their report; or if they are performing at a low level against an industry benchmark and fail to improve over a two year period without a justifiable reason.
 - Non-compliant organisations will continue to be named in Parliament and the legislation will expressly provide for the list to be circulated more widely.
 - The onus will be placed on organisations to produce certification that they are compliant with the Act when they apply for Australian Government grants, tenders, contracts or industry assistance.

Legislation would be amended to include provision for the Agency to conduct organisation reviews to verify information supplied on their report. Those organisations selected for review would be asked to produce documents and any other evidence to support their reports. If this evidence is not forthcoming, or if it fails to support claims in a report, the organisation may also be deemed non-compliant.

The time burden would be increased if an organisation becomes subject to an organisational review. It has been estimated that the cost to business would be approximately \$1,300. This estimate is modelled on organisations that have kept the appropriate records up-to-date and accessible. (see Business Cost Calculator at Attachment G).

Enhancing industry assistance

- E. The Agency will have an enhanced role in supporting and advising industry.
- It will develop industry-based benchmarks and industry-specific approaches.
 - It will provide advice, resources and referrals, including through mobile support teams.
 - It will develop, maintain and promote data collected via organisational reports.

The regime proposed under the reforms offers a gradually escalating suite of interventions, with great potential to improve outcomes and reduce the risks identified at Section Three, for example through:

- retaining a strong education, information and influence role,
- developing the technical support role, including advice and referrals,
- compelling not only reporting, but progress,
- retaining the link between reporting and interventions, to ensure responsiveness to organisational needs and the development of end-to-end relationships,

- building an effective research capacity, with which to prove the business case and tailor effective community and organisation, sector and industry specific interventions.

The responsiveness of the reforms better positions it than the existing arrangements to secure progress against the problem and risks identified at Section Three. Reporting about outcomes is linked to satisfactory measurement of the size of the problem, as well as the ability to demand changes to outcomes.

Overall impact

The overall impact of the recommended reforms is likely to be positive.

Impact on gender equality

It is projected that this option – with its combination of reporting, review, assistance and support – offers the greatest chance of improving workplace equality.

It has been widely acknowledged that both deterrence and accommodative approaches to regulatory enforcement offer advantages but also have limitations if regulators choose to adopt one exclusively over the other.

Punitive policies can foster resistance to regulation and may produce a culture that facilitates the sharing of knowledge about methods of legal resistance and counterattack.⁶⁰ In the context of gender equality, such an outcome is particularly concerning where affected women must continue to operate in the disaffected workplace.

Research suggests that responsive regulation reduces the need to resort to punishment and therefore represents a more efficient use of resources. Persuading people to comply engages them in the process and provide more information for regulators, all of which results in higher degrees of compliance. Both sides avoid expensive enforcement or litigation and more resources are able to be directed towards expanding regulatory coverage.⁶¹ The sheer size of the enforcement challenge in the gender equality context means that encouraging voluntary compliance is critical if overall practice is to change.

Regulation is more likely to be effective if it is responsive to diverse motivations to promote good behaviour and discourage undesirable behaviour. To this end, it has been determined that building the capacity of organisations can move them from minimal compliance. This involves identifying strengths or successes and developing mechanisms such as informal praise, prizes, grants, and other resources and assistance to promote the desired behaviour.⁶²

Impact on social inclusion and community wellbeing

The reforms offer increased incentives for real progress from organisations, and are therefore more likely to ameliorate women's overall labour market exclusion and disadvantage.

It is also more likely to enable effective interventions to be devised for women from differently disadvantaged social groups, as it enables a specific review focus on sectors or organisations where women with particular labour market disadvantage cluster, or on particular employment arrangements which are not adequately covered by other arms of government's protective machinery.

Retaining the monitoring role within a government agency would also enable a more effective joined-up response with other agencies of government. Data could be captured and tracked in ways most conducive to formulating nimble and effective interventions, including, for example, community or industry education campaigns.

Impact on the economy

Improving the workforce participation of women (and their financial outcomes from it) is the key to boosting Australia's GDP. Adequately capturing workplace failures to make progress enables more targeted interventions that are more likely to improve workplace outcomes and, in turn, women's participation.

Impact on business

Due to the true savings to fulfil reporting requirements, it has been estimated that the cost to business will decrease on average from approximately \$1200 to \$450 per annum in resourcing costs. Estimates have been taken from the Business Cost Calculator report at **Attachment G**.

Alternatively, organisations which report regularly and demonstrate progress against equal employment markers are likely to experience positive effects across the spectrum of their organisation, including to their bottom lines. The data about increased business competitiveness from investment in equality programs is convincing.

In summary, impacts under Option Two will increase with non-compliance. There may be a moderate business impact on non-compliant organisations, but it would be offset by increased efficiencies for compliant businesses. Impacts will be minimal for compliant organisations after the initial investment of setting up new systems.

Compliance with international obligations and standards

The reforms are more likely than the existing arrangements to meet the requirement for Australia to take active steps to achieve equality of employment opportunity.

Reform of the *Equal Opportunity for Women in the Workplace Act 1999*

SECTION EIGHT: CONSULTATION

The review of the EOWW Act was underpinned by an extensive consultation process, beginning with the release of an issues paper on 1 September 2009 and a call for public submissions. Further targeted consultation was undertaken in late 2009 with employers, employees, unions, women's advocacy groups and other key stakeholders.

The final consultation report is publicly available on the FaHCSIA website:
http://www.fahcsia.gov.au/sa/women/pubs/general/eowa_kpmg_rpt/Pages/default.aspx

The consultation report demonstrates the high level of interest in the community about gender equality in the workplace. One hundred and thirty six submissions were received from businesses, unions, employers, employees, women's groups and other interested parties.

Reporting organisations were invited to respond to a survey and seven hundred and forty-four (744) responses were received. A survey of employees attracted eight hundred and fifty-nine (859) responses.

Twenty-one (21) individual interviews with key stakeholders were conducted. Targeted roundtable consultations were held in Perth, Melbourne, Brisbane, Sydney and Adelaide from 12 October to 28 October 2009. Two hundred and thirty (230) invitations were issued for these roundtables.

Reform of the *Equal Opportunity for Women in the Workplace Act 1999*

SECTION NINE: IMPLEMENTATION AND REVIEW

Timing

The full implementation and first review of the proposed option could occur over the next five years. The following timeline indicates how the process could take place.

Development work – 2010/11

- Preparation and passage of legislation
- Development of information technology capacity to facilitate on-line reporting and collaborative tools
- Establishment of implementation advisory committees
- Preparation of reporting forms and records of compliance and non-compliance
- Information to and initial training for reporting organisations

Introductory implementation year – 2011/12

- Initial advice to organisations identified as those which do not report
- Initial reporting cycle using introductory version of the new report
- Settling final indicators with advisory committees

Partial implementation year – 2012/13

- Intensive training cycle in relation to indicators and benchmarks and how to demonstrate they have been met, and ongoing progress
- First reporting cycle using second iteration of the report form

Full implementation year – 2013/14

- First full reporting cycle
- Development of implementation plans and reviews for non-compliant organisations

Review – 2015/2016

As part of the Australian Government's best practice regulation requirements, the legislation will be reviewed every five years. The review process will examine:

- whether the problem was adequately identified and accurately estimated in the initial assessment;
- what impact government intervention has had on increasing gender equality (whether gender equality has been reduced, increased or otherwise changed);
- whether the selected government intervention is still appropriate; and
- whether or not (if at all) the intervention should remain to reach an acceptable level of reducing the problem and increasing gender equality.

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Reform of the
***Equal Opportunity for Women in the
Workplace Act 1999***

REGULATION IMPACT STATEMENT

ATTACHMENTS

F. SECTION ONE: IS GENDER EQUALITY IN AUSTRALIAN WORKPLACES IMPORTANT?

Costs and benefits to the Australian community

Costs and benefits for Australian women and men

In September 2009, The Sex Discrimination Commissioner released a major Issues Paper, '*Accumulating Poverty?: Women's experiences of inequality over the lifecycle.*' The Issues Paper highlights that:

[i]ncreasing women's labour market participation and increasing women's earnings across the lifecycle is critical to closing the gender gap in retirement savings. Measures to support women's labour market participation and address the gender pay gap must feature as a strategy to build women's financial security [across the lifecycle and] in retirement.⁶³

• **Costs and benefits for organisations**

In Australia, as in most industrialised nations, personnel are one of the largest business costs of all types of organisations. The costs of staff turnover include:

- opportunity costs while seeking replacement staff,
- losses incurred from other staff members covering vacated positions,
- possibility of resignations creating a chain reaction of resignations,
- opportunity costs of such subsequent resignations,
- costs involved with finding a selecting a suitable replacement, including
 - advertising costs,
 - recruitment agency fees,
 - HR Department costs,
 - HR Department opportunity cost,
 - initial placement fee for replacement,
 - costs incurred while replacement learns new role (including the results of low productivity and opportunity costs),
- training costs of replacement staff members.⁶⁴

These costs are even higher where personnel have special skills or are in management or leadership roles. Many organisations have recognised the need to retain effectively performing staff because of turnover costs. Mercer estimates that staff turnover costs range from 50 per cent to 150 per cent of annual salary, depending on the role and its level of seniority. Mercer forecast the costs of turnover as more than \$3 million annually for a company with 250 employees earning an average annual salary of \$49,000 each, based on a projected staff attrition rate of 25 per cent. Furthermore, if that same company had annual revenues of \$30 million and a profit margin of 12 per cent, staff attrition would represent 10 per cent of total revenues, and 85 per cent of profits.⁶⁵

ATTACHMENT A

Sydney-based pharmaceutical company AstraZeneca has recognised that most of its 650 employees have higher degrees and specialist qualifications. The majority are also women. The company estimated that it could cost up to \$60,000 to recruit one staff member. The return to work rate of women after maternity leave has jumped from 60 per cent to 92 per cent since the introduction of an on-site holiday program, estimated to cost \$30,000 annually, and other family-friendly practices. The organisation has estimated a saving of \$1.4 million annually.

Over half of graduates of Australian universities are women, but 51 percent of ASX200 companies have no women directors and 45.5 per cent of ASX200 companies have no women at all on their executive teams.⁶⁶ It is projected that on the current trajectory it will take over 150 years for women to hold a similar number of senior positions as men.⁶⁷

This is particularly concerning given the positive impacts of women's decision-making on corporate performance noted in the next section,.

Improving gender equality in the paid workforce assists organisations and business to perform more effectively. Research indicates that a lack of women in leadership positions results in greater scarcity in talent within organisations and reduced employee engagement.⁶⁸

The ILO posits that equal employment opportunity improves the capacity of organisations to attract a broader range of quality employees in a competitive job market, reduces staff turnover, absenteeism and lateness, enhances staff performance and motivation and improves productivity, competitive edge and innovation, all of which contribute to improved effectiveness.⁶⁹

In addition to the benefits equal opportunity policies offer to organisations in terms of attracting and retaining talent, women employees are also an important avenue to understanding and accessing products consumers and service users, as women carry the majority of household responsibility for finances and purchasing.⁷⁰

Daly recently reported his findings about 30 global companies that are well-positioned to benefit from relative gains in female disposable income. The companies within this Women 30 Index were drawn predominantly from sub-sectors that sell products primarily to women. The Women 30 Index has significantly outperformed global equities over the past 10 years, and demonstrates that having women on the team ensures responsiveness to the needs and preferences of women consumers.⁷¹

- ***Costs and Benefits for the economy***

High levels of national productivity require strong linkages between investments and outcomes. The resource offered by women's skills and investments is used inefficiently. For example, the gap between educational attainment and workforce participation is a critical point where significant social and individual investments are squandered. Even where women do enter the workforce, there is significant evidence that they work below their skill level.

A critical skills shortage has been identified as one of the barriers to achieving greater national productivity. The Australian Government has identified the risk of a skills shortage as the economy recovers from the Global Financial crisis.⁷² In such a context, talent must be used efficiently and investments such as education fully capitalised upon.

ATTACHMENT A

In a system in which retirement incomes are dependent on workforce participation, clearly removing barriers to participation faced systematically by half the population will make a significant contribution to ensuring a sustainable system for retirement incomes into the future.

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G. SECTION TWO: IS THERE GENDER EQUALITY IN AUSTRALIAN WORKPLACES?

Australian women and work

- ***Fewer women work***

Women's workforce participation dips markedly between 25 and 44. Australia has a lower participation rate for mothers with young children than the OECD countries of Canada, Sweden, the United Kingdom and the United States.

In 2009, the World Economic Forum Global Gender Gap Index ranked Australia number 50 among the developed countries in terms of its workforce participation rate for women. One year ago, in 2008, Australia ranked number 40 on this scale – a slide of ten places.⁷³

International research suggests that more women would like to be in paid work than are currently able to due to the constraints of having to care for children in the home.

For example, the OECD (2001) conducted research which revealed that, while 77 per cent of European couples believe that the ideal family arrangement is one in which both partners are either in full or part-time employment, only 53 per cent of couples manage to live in such an arrangement.⁷⁴

While women's part-time employment is a key strategy used by Australian families to balance work and family responsibilities, many of the women who are employed part-time are working quite short hours and many would prefer to work more.

– A snapshot

Detailed data from for women in 2008 show:

- 20% of those employed part-time prefer to work more hours;
- younger part-time employees are more likely than older part-time employees to prefer working long hours - longer working hours are preferred by:
 - 28% of those aged 15-24 years
 - 25% of those aged 25-34 years
 - 19% of those aged 35-44 years
 - 18% of those aged 45-54 years
 - 12% of those aged 55-64 years
 - 5% of those aged 65 years and over; and
- among those working short part-time hours (fewer than 16 hours per week), 24% would prefer to work more hours, while among those working 16-34 hours, 18% would prefer to work more hours⁷⁵

ATTACHMENT B

- **Women receive lower pay**

Recent unpublished research from the National Centre for Social and Economic Modelling (NATSEM) confirms that simply being a woman is the major contributing factor to the pay equity gap in Australia, accounting for 60 per cent of the difference between women's and men's earnings. Indeed, if the effects of being a woman were removed, the average wage of an Australian woman would increase by \$1.87 per hour, equating to an additional \$65 per week or \$3,394 annually, based on a 35 hour week.

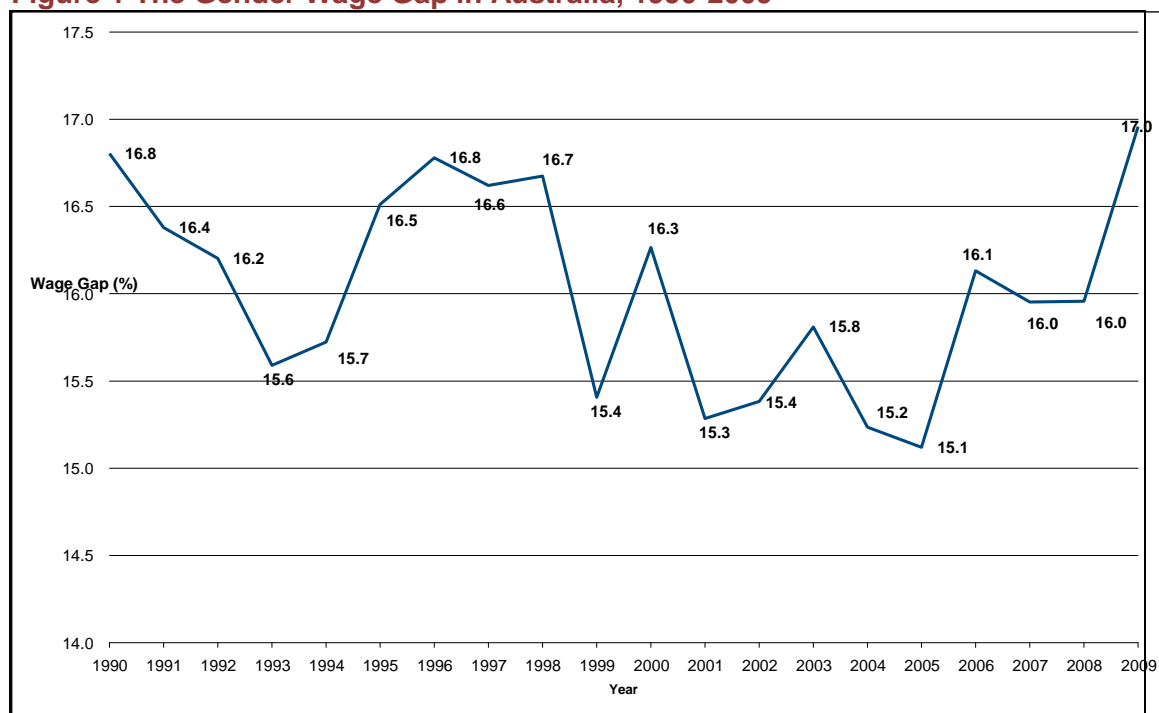
In considering Australian women in leadership, decomposition methods clearly demonstrate that between 70 and 90 per cent of the pay differential between men and women managers is not explained by a large range of demographic and labour market variables. As much as 70 per cent is 'simply due to women managers being female'.⁷⁶

Young women are up to five times more likely than men to have average weekly income of less than \$150 per week and twice as likely to have average weekly income less than \$600 per week. In the prime working age brackets of 35-64, the number of women earning above \$1,300 per week is less than half that of their male colleagues. Above \$2,000 a week, the proportion slips to less than 25 per cent.⁷⁷

These pay differences have a stark cumulative impact on women's long term economic security, with men holding approximately two third's of superannuation balances.⁷⁸ One tangible result of this disparity is that almost three quarters of those Australians receiving the single rate of the Age Pension are women.⁷⁹

Figure 1 shows the gender wage gap in Australia from 1990 – 2009. Note that the gap is at its largest, at over 17 per cent, over this duration.

Figure 1 The Gender Wage Gap in Australia, 1990-2009⁸⁰



ATTACHMENT B

– A snapshot

Including part-time and casual work, women earn two-thirds of men's income.⁸¹

The pay gap between key men and women managers in ASX2000 companies is 11.1 per cent higher than the national average, at 28.3 per cent.⁸²

A 25-year-old man is likely to earn a total of \$2.4 million over the next 40 years, more than one-and-a-half times the \$1.5 million prospective earnings of a woman.⁸³

In 2007, 75.7 per cent of all Australian men aged 15 and over had superannuation coverage, compared to 66.3 per cent of women aged 15 years and over.⁸⁴

The industries where women have been most disadvantaged rates of pay in descending order are:

- Finance and insurance (paid 27 per cent less than males)
- Health and community services (23 per cent)
- Mining (22 per cent)
- Property and business services (21 per cent)
- Personal and other services (18 per cent)
- Construction (17 per cent)
- Cultural and recreational services (13 per cent)
- Communication services (13 per cent).⁸⁵

• *One size does not fit all – different women experience different disadvantage*

In addition to the diverse picture presented by this data, workforce participation levels are lower for particular groups of women, including sole mothers, Indigenous women, women with disability and women from culturally and linguistically diverse backgrounds or rural and regional areas.

The Australian Human Rights Commission (AHRC) suggests that women from these groups face barriers to equal employment opportunity including the non-recognition of overseas qualifications, discrimination based on race and disability and limited employment opportunities in rural and remote communities.⁸⁶

AHRC also notes that older women face particular barriers to paid workforce participation across all elements of employment (recruitment, training, promotion, employment conditions and phased retirement) due to 'gendered ageism', which sees gender discrimination exacerbated by age discrimination.

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– A snapshot

Aboriginal and Torres Strait Islander people have a labour market participation rate of 56 per cent.

Sixty-five per cent of Indigenous men participate in the workforce, compared to 48 per cent of Indigenous women.⁸⁷

Women with disability are less likely to be in the paid workforce than men with disability.⁸⁸

In 2004, migrant men had a similar age standardised labour force participation rate (74 per cent) to Australian-born men (75 per cent).

Migrant women's age standardised labour force participation (52 per cent) was lower than Australian-born women (60 per cent), and much lower than migrant men.⁸⁹

• Educational gains do not translate into employment gains

Australian women perform strongly in educational participation and attainment. The World Economic Forum ranks Australia first among the developed countries on this measure.⁹⁰ Australia's young women not only demonstrate higher educational attainment than their mothers, but the number of young women completing Year 12 exceeds the number of young men. In higher education, women are just as likely as men to complete a post graduate qualification and more likely than men to achieve a bachelor degree or advanced diploma.⁹¹

It would be reasonable to assume these figures would translate into high workforce participation figures, as well as high levels of women entering skilled or professional employment post graduation. However, educational choices and outcomes impact on the overall picture of women's employment, such that some women, including Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse backgrounds, and women with disability, are not well represented in this success story, and face real barriers to accessing education.⁹²

– A snapshot

The percentage of Australian women aged 25-64 with tertiary education is above the OECD average,⁹³ and women account for over half of all students enrolled in higher education and students who complete a higher education award.⁹⁴

In 2009, new male graduates earned median starting salaries of \$50,000 compared to \$47,000 for women.⁹⁵

Women outnumber men by three to one in health and education courses and men outnumber women by five to one in engineering courses.⁹⁶

The average weekly earnings of a person working full-time in the health and community services industry is \$1,227.40 and the average weekly earnings of a person working full-time in electricity, gas and water supply industry is \$1,421.30.⁹⁷

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- **Women are under-represented in leadership roles**

Fewer women than men occupy leadership positions across virtually every sector of the paid workforce.

In the US, 85.2 per cent of leading companies have at least one woman in executive management positions. For Canada, the UK and South Africa the percentages are 65.6 per cent, 60 per cent and 59.3 per cent respectively.⁹⁸ In Australia, only 54.5 per cent of ASX200 companies have at least one woman in executive management.

Another visible marker of women's access to senior positions is board membership. Between 2006 and 2008 the total number of ASX200 board positions increased while the number of companies with more than 25 per cent women directors halved.⁹⁹

One troubling aspect of the exclusion of women's voices from leadership roles is that pathways into senior leadership can themselves exclude women. For example, the route into senior corporate positions is often via expertise in 'line management': responsibility for profit and loss and direct client service.

Female executive managers are far less likely than men to be classified as line managers (39.6 per cent of female executive managers versus 75.3 per cent of male executive managers). Most are classified 'support managers',¹⁰⁰ and this trend is increasing. In 2007, women held 7.5 per cent of line executive management positions. The next year this dropped to 5.9 per cent.¹⁰¹

⁷³ R Hausmann, L Tyson & S Zahidi, *The Global Gender Gap Report 2009* (2009), World Economic Forum, Geneva, p 63. At <http://www.weforum.org/pdf/gendergap/report2009.pdf>
<http://www.weforum.org/pdf/gendergap/report2009.pdf> (viewed on 28 January, 2010).

⁷⁴ K. Daly, *Gender Inequality, Growth and Global Ageing*, Goldman Sachs Global Economics Paper 154, 2006

⁷⁵ Australian Bureau of Statistics Monthly Labour Force data *ABS Monthly Labour Force spreadsheets, February 2008*.

⁷⁶ Equal Opportunity for Women in the Workplace Agency, *Pay, Power and Position: Beyond the 2008 EOWA Australian Census of Women in Leadership* (2009), p. 6. At

[www.eowa.gov.au/Australian Women In Leadership Census/2008 Australian Women In Leadership Census/Pay Power Position/Pay Power Position Beyond the Census.pdf](http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census/Pay_Power_Position/Pay_Power_Position_Beyond_the_Census.pdf) (viewed 28 January, 2010).

⁷⁷ Toohey, T., Colosimo, D., & Boak, A., (2009) *Australia's Hidden Resource: The Economic Case For Increasing Female Participation*, Goldman Sachs JB Were.

⁷⁸ R Clare, *Retirement Savings Update* (2008), Association of Superannuation funds of Australia Research and Resource Centre, p 3. At www.superannuation.asn.au/Reports/default.aspx (viewed 28 January, 2010).

⁷⁹ J Harmer, Department of Families, Housing, Community Services and Indigenous Affairs, *Pension Review Background Paper* (2008) p 6. At www.fahcsia.gov.au/sa/seniors/progserv/PensionReview/Documents/pension_review/pension_review_paper.pdf (viewed 28 January, 2010).

⁸⁰ Australian Bureau of Statistics, *Average Weekly Earnings, May 2009*, ABS cat no. 6302.0, seasonally adjusted data, Australian Government Publishing Service, Canberra, (2009) At <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6302.0>

Note: The gender wage gap is calculated for full time, ordinary time adult employees, using original data. The reference period for data used in this figure is February for each year.

⁸¹ Australian Bureau of Statistics, *Average Weekly Earnings, May 2009*, ABS cat no. 6302.0, Australian Government Publishing Service, Canberra (2009) At www.abs.gov.au/ausstats/abs@.nsf/mf/6302.0

⁸² Equal Opportunity for Women in the Workplace Agency, *Pay, Power and Position: Beyond the 2008 EOWA Australian Census of Women in Leadership* (2009), p. 6. At [www.eowa.gov.au/Australian Women In Leadership Census/2008 Australian Women In Leadership Census/Pay Power Position/Pay Power Position Beyond the Census.pdf](http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census/Pay_Power_Position/Pay_Power_Position_Beyond_the_Census.pdf) (viewed 26 October 2009)

⁸³ R Cassells, R Miranti, B Nepal & R Tanton, 'She works hard for the money: Australian women and the gender divide', *AMP.NATSEM Income and Wealth Report*, Issue 22, (2009), At <http://phx.corporate->

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ir.net/External.File?item=UGFyZW50SUQ9MjA5fENoaWxkSUQ9LTF8VHlwZT0z&t=1 (viewed 28 January 2010).

⁸⁴ Australian Bureau of Statistics, *Employment Arrangements, Retirement and Superannuation, Australia*, April to July 2007 (Re-issue), ABS cat no. 6361.0, Australian Government Publishing Service, Canberra (2009) At [http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6361.0Apr%20to%20Jul%202007%20\(Re-issue\)?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6361.0Apr%20to%20Jul%202007%20(Re-issue)?OpenDocument)

⁸⁵ Toohey, T., Colosimo, D., & Boak, A., (2009) *Australia's Hidden Resource: The Economic Case For Increasing Female Participation*, Goldman Sachs JB Were.

⁸⁶ Australian Human Rights Commission, *Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009) At http://www.hreoc.gov.au/legal/submissions/2009/20091030_EOWA.html (viewed 28 January, 2010)

⁸⁷ Australian Bureau of Statistics, *Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians, Estimates from the Labour Force Survey, 2007*, ABS cat no 6287.0, Australian Government Publishing Service, Canberra (2008)

⁸⁸ Human Rights and Equal Opportunity Commission, *Issues paper 1: Employment and Disability – the Statistics* (2005). At www.humanrights.gov.au/disability_rights/employment_inquiry/papers/issues1.htm (viewed 29 January, 2010).

⁸⁹ Australian Bureau of Statistics, *Australian Social Trends 2006*, ABS cat no 4102.0, Australian Government Publishing Service, Canberra, (2006).

⁹⁰ R Hausmann, L Tyson and S Zahidi, *The Global Gender Gap Report 2008* (2008) p 43. At <http://www.weforum.org/pdf/gendergap/report2008.pdf> .

⁹¹ Toohey, T., Colosimo, D., & Boak, A., (2009) *Australia's Hidden Resource: The Economic Case For Increasing Female Participation*, Goldman Sachs JB Were.

⁹² Australian Human Rights Commission, *Accumulating Poverty? Women's experiences of inequality over the lifecycle: An issues paper examining the gender gap in retirement savings* (2009) At www.humanrights.gov.au/sex_discrimination/publication/gender_gap/index.html (viewed on 28 January, 2010)

⁹³ Organisation for Economic Co-operation and Development (OECD, *Women and Men in OECD Countries, Education* - Chapter 2, p 12. At <http://www.oecd.org/dataoecd/45/34/37963497.pdf> (viewed 28 January, 2010)

⁹⁴ Australian Government Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Women in Australia 2009* (2009) Chapter 2, p3. At www.fahcsia.gov.au/sa/women/pubs/general/womeninaustralia/2009/Pages/chapter4.aspx (viewed on 28 January, 2010)

⁹⁵ Graduate Careers Australia, *GradStats*, Number 13, December 2009 (2009). At www.graduatecareers.com.au/content/view/full/24 (viewed 17 February, 2010).

⁹⁶ Australian Government Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Women in Australia 2009* (2009) Chapter 2, p3. At www.fahcsia.gov.au/sa/women/pubs/general/womeninaustralia/2009/Pages/chapter4.aspx (viewed on 28 January, 2010)

⁹⁷ Australian Bureau of Statistics, *Average Weekly Earnings, August 2009*, ABS cat no. 6302.0, Australian Government Publishing Service, Canberra (2009), At www.abs.gov.au/ausstats/abs@.nsf/mf/6302.0 .

⁹⁸ Equal Opportunity for Women in the Workplace Agency, *Pay, Power and Position: Beyond the 2008 EOWA Australian Census of Women in Leadership* (2009), p. 6. At www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census/Pay_Power_Position/Pay_Power_Position_Beyond_the_Census.pdf (viewed on 28 January, 2010).

⁹⁹ Ibid

¹⁰⁰ Ibid

¹⁰¹ Ibid

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H. SECTION THREE: WHAT ARE THE BARRIERS TO ACHIEVING GENDER EQUALITY IN AUSTRALIAN WORKPLACES?

- ***Socio-cultural barriers***

Beliefs and expectations about appropriate roles for women are implicit in women's decisions about education and training, preferred occupations and desirable industries. Views about appropriate child rearing and care impact the options of women with family responsibilities, the decisions women make in relation to those responsibilities and the way work obligations and opportunities are allocated within families. Attitudes about responsibilities for domestic chores affect the load carried by women outside paid work and restrict their capacity and energy for certain types of roles.

The attitudes and beliefs of men in the workplace also affect equal employment opportunity for women. Many people in our community believe that women are better at certain types of roles. When such attitudes are held by men in senior decision-making roles, they can lead to women's skills being pre-judged, underestimated and under-valued.¹⁰² They can limit access to training, promotion and development opportunities. Such missed opportunities further limit career prospects.

In certain, male-dominated industries, stereotypical attitudes and beliefs can permeate the culture, making them less attractive or openly hostile to women.

Another important area where attitudes and values intersect with women's options is in workplace assessments of merit or strength. Such assessments occur during recruitment and selection, but also in an ongoing way, for example during regular reviews of performance or when considering suitability for promotion.

Merit or strength can be defined in ways that implicitly place higher value on characteristics associated with men, such as assertiveness, competitiveness and command leadership styles. They can also be defined to value activities that may be harder for some women, such as working long hours or attending frequent networking events outside work hours. Cultural mores about working hours are a particular challenge for women. Australians work among the longest hours in the OECD,¹⁰³ and this culture of long working hours obscures consideration of work quality and productivity, and disadvantages women with caring responsibilities who carry extra care and domestic work burdens.

Socio-cultural beliefs even affect attitudes to equal employment opportunity legislation itself, undermining the credibility of senior women who may be seen as having been advantaged by the legislation.¹⁰⁴

While attitudes and beliefs are an area where causal links can be difficult to disentangle, over forty per cent of submissions to the EOWA review indicated that social-cultural barriers were a key barrier to equality for women in the workplace.

- ***Inequitable impact of caring***

Long and inflexible working hours may preclude many workers with family responsibilities from pursuing particular career paths or job opportunities. This is especially significant for women, who perform most unpaid work in households.¹⁰⁵ Pre-existing inequality in the division of unpaid work in homes widens once children enter a family as women undertake less paid work and more domestic chores.¹⁰⁶

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Socio-cultural attitudes intersect with decisions about care provision, and the responses of workplace to both these choices and the demands caring places on workers. Men are far less likely to access flexible work opportunities, and women continue to engage less in paid work. These choices may be influenced by individual or family preferences, but they can also be impacted by discrimination or stereotypes based on sex. For example, a recent study suggested that men's requests for flexible working hours are more likely to be denied than women's.¹⁰⁷

Another aspect of this barrier is the discrimination commonly experienced by women in relation to pregnancy. Almost one in every five pregnant working women experiences at least one difficulty in their workplace in relation to being pregnant.¹⁰⁸

The issue of pregnancy discrimination was raised by 11.5 per cent of submissions, and the submission of the Australian Human Rights Commission discussed this issue in some detail. It noted that this discrimination can take many forms: demotions, missing out on promotions, redundancies, denial of family friendly conditions and even bullying in some cases.¹⁰⁹

Workforce re-entry also proves difficult for many women. Women frequently report:

- being denied work at the same level,
- having little access to flexible work arrangements or control over hours,
- lack of family friendly workplace policies, and
- difficulty accessing appropriate and affordable child care.

Research conducted by the Australian Public Service Commission (APSC) for their submission to the Australian Government's to the House of Representatives Standing Committee on Employment and Workplace Relations on the Inquiry into Pay Equity and associated issues related to increasing Female Participation in the Workforce found that female public sector employees who had accessed paid time off work for birth of a child were less likely to achieve promotion.¹¹⁰

The survey revealed 65 per cent of women who accessed paid maternity leave in 2000-1 failed to achieve promotion by June 2007. By contrast, only 42 per cent of women who had not had children in the same period failed to achieve career progression.¹¹¹

A Queensland survey found that 26 per cent of women re-entering the workforce to assume the same job reported a decrease in their seniority or employment status. The survey also found that 40 per cent of women who rejoined the workforce in a different job reported a loss in status or seniority.¹¹²

While there has been much focus on flexible work arrangements, there is a risk that 'flexible' work becomes code for deregulated working hours and conditions, including longer working days, a longer working week, and increased numbers of part-time and casual (temporary) workers who have little access to full-time or permanent work, employment benefits or career path.¹¹³

It has been found that choice and power in the employment relationship are critical determinants of whether arrangements are beneficial to employees in managing work and family commitments.¹¹⁴

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Responding appropriately to the challenges of combining work and caring responsibilities, including exploring new approaches to flexible work, are important for two major reasons.

Firstly, decisions made at the time of having a child and re-entering the workforce are critical to women's long-term financial security, and to sustaining the ongoing gender pay gap.

When superannuation balances are broken down by age, the largest widening of the gender gap occurs between the 23-34 and 35-44 age brackets, coinciding with the time when women commonly have children.¹¹⁵ It is projected that women who have children will earn around half that of men with children.

Partnered men with children are expected to earn \$2.6 million over their lifetime, compared to \$1.3 million for partnered women with children. This compared to \$1.9 million for women without children.¹¹⁶

Secondly, the relationship between the gender pay gap and caring decisions is cyclical. In planning after having a family, pay disparity between men and women is a key factor influencing the higher earner to take on the majority of paid work while the lower earner, usually female, takes on unpaid caring work. The outcome is to reduce women's participation in the paid workforce and with it their future earning potential.

- A snapshot

The proportion of female full-time workers working 50 or more hours a week ('very long working hours') almost doubled from nine per cent in 1985 to 16 per cent in 2005.

Almost one third of men now work very long hours.¹¹⁷

In 2006, the total hours of paid and unpaid work for mothers whose youngest child was between 0-4 was 85.9 hours weekly, compared to 79.6 hours for fathers, 61.3 hours for men without children and 55.5 hours for women without children.¹¹⁸

71.3 per cent of people who provide the majority of the informal help needed by a person with a disability are women.¹¹⁹

In 2005 it was estimated that informal carers provided approximately 1.2 billion hours of care in Australia at an estimated replacement value of \$30.5 billion.¹²⁰

• Experiences of sexual harassment

While the number of people who formally reported or made a complaint after experiencing sexual harassment significantly decreased between 2003 and 2008,¹²¹ over one fifth of women have experienced sexual harassment in the workplace in their lifetime. In 2008, only 16 per cent of those who have been sexually harassed in the last five years in the workplace formally reported or made a complaint, compared to 32 per cent in 2003.

For those who did not make a complaint:

- 43 per cent did not think it was serious enough;
- 15 per cent were fearful of a negative impact on themselves;

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- 21 per cent had a lack of faith in the complaint process; and
- 29 per cent took care of the problem themselves.

– A snapshot

Nearly one in five complaints to AHRC under the SDA are of sexual harassment.¹²²

22 per cent of women and five per cent of men aged 18-64 have experienced sexual harassment in the workplace in their lifetime.¹²³

In 2008, a total of 22 per cent of respondents who made a formal complaint reported that the outcome of their complaint resulted in a negative impact on them.

The negative impacts include the person who experienced the harassment being transferred or changed shifts, resigning, being dismissed, demoted or disciplined or being laughed at and ostracised.¹²⁴

• Bias in recruitment and selection

Bias against women can be built into selection processes from the outset, including through wording of job advertisements, which may deter women by highlighting the need for skills assumed to be held primarily by men, or by highlighting conditions or requirements which implicitly exclude those with heavy domestic or care responsibilities. Similarly, selection criteria may not value women's skills, by being weighted in favour of attributes traditionally understood to be male strengths.

Strachan and French note that the proportion of women in management and non-traditional roles in the highly gender segregated transport and finance industries has remained static for the past two decades, despite increasing numbers of women in these industries and legislative requirements of antidiscrimination and equal employment opportunity. Few organisations in either industry are developing proactive strategies to recruit, promote, and retain women. In contrast, organisations were proactive in addressing work and life requirements ensuring equality in participation but not in access, or movement into management or leadership roles.¹²⁵

EOWA's own findings support this. It noted that employers have tended to prioritise measures to increase organisational flexibility, while there has been little or no progress in the more difficult areas of pay equity and the promotion and advancement of women, especially into positions of leadership.¹²⁶

Submissions to the EOWW review suggested that women are more likely than men to lack the confidence to apply for jobs, or to see failed applications as more significant setbacks than their male counterparts.

Concerns about inherent bias in recruitment and selection are significant given that reporting organisations framed the ability to recruit women as the second highest challenge to achieving equal employment opportunity. It was listed as the highest or second challenge for the following industries: agriculture, forestry and fisheries, mining, public administration, safety, and the transport, postal, warehousing, wholesale trade industries.

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While larger organisations were more likely to report this as an issue than smaller organisations, many of larger organisations are in male-dominated industries. This suggests the need for organisations to tackle the reasons women are deterred from or selected out of certain industries and organisations from the outset.

– A snapshot

A woman is approximately 50 per cent less likely to be employed as a manager, despite being equally likely to be in a full-time role in a professional capacity.¹²⁷

• Male dominated industries

Women are more likely to be clerical, sales and community and personal service workers, and under-represented in the manual trades (less than two per cent in Australia). Men are more likely to be technicians and trades workers, machinery operators, drivers and labourers.¹²⁸ Australian women are more likely to work under minimum conditions and be engaged in low paid, casual and part-time work.¹²⁹

The increase in women's workforce participation and education levels over the past 30 years has not reduced occupational and hierarchical segregation by gender in organisations and, given current patterns, even technological shifts are likely to retain patterns of gender segregation.¹³⁰ Indeed the mining boom saw a widening of segregation, especially in Western Australia.

The gender divide in education and training contributes to this segregation. However, public submissions also suggested that some industries have a culture which deters women, and that the type and location of work may also be unattractive.

The lack of women in senior roles and the negative attitudes of men in male-dominated industries were also seen as perpetuating the low numbers of women.

– A snapshot

Women workers are concentrated in the sectors of health care and social assistance and education and training (30 per cent of all female hours worked).¹³¹

When combined with the retail industry, 44 per cent per cent of total female hours worked are concentrated in just three industries.¹³²

There is not a single industry in Australia in which women are paid more than men.¹³³

• Lack of pay transparency

In recent years, Australian organisations have increasingly moved to opaque pay structures, so that it is difficult for workers to know and understand the basis of remuneration.

Remuneration, especially the use of bonuses, has been a significant lever enabling organisations to attach desirable pay conditions to long working hours, rather than quality or productivity, which has impacts for women who shoulder a greater slice of the burden of unpaid care and domestic labour.

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Without scrutiny, it is also impossible for women, or the organisations which represent them, to determine the basis for pay differentials in order to assess whether they are founded on discriminatory issues and if so, contest them.

During consultation for the EOWA Review, reporting organisations did not see pay transparency as a significant barrier to achieving equal employment opportunity, but employees, particularly in private sector organisations, cited it as the third most significant barrier.

- **Access to education and training**

In addition to gender disparities in pre-employment education and training, women frequently report less access to workplace education, training and development. In particular, women in part-time work report limited access to these opportunities.

Women also report feeling less comfortable accessing development opportunities, or in some cases being actively blocked from such opportunities.

This is sometimes connected to women's heavier family commitments, which reduce the capacity to network which is seen as lying at the heart of subjective decisions about employee potential and allocation of extra opportunities.

Few employers saw this as a challenge in promoting equal employment opportunity, whereas over two-thirds of employee participants considered equal access to training and development was an important factor supporting and contributing to equal employment opportunity in the workplace.

In 2005, the year of the last release of the ABS Education and Training Experience survey, men were more likely to obtain a pay rise or promotion due to work-related training completed (61 per cent of men compared to 39 per cent of women).¹³⁴

- **Poor data**

Overall, participants in consultation during the EOWA review highlighted an urgent need for outcomes-based, comparable data about organisations, able to be used to build the business case to drive equal employment opportunity across industry and the community and plan specific interventions to address sectoral inequities and tackle socio-cultural barriers.

Some commentators have suggested that, in the absence of good comparative data, there are no objective standards by which to measure the success of different programs, and it is unclear what constitutes a successful workplace program – a concern in an era emphasising quality assurance of products and services.¹³⁵

In addition to this broader data issue, submissions received during consultation drew attention to specific knowledge gaps, including:

- industry pay differentials between men and women,
- the extent and characteristics of the multiple and overlapping disadvantage experienced by some groups of women, and
- the nature and extent of structural barriers, such as lack of availability of child care/transport, and how this impacts work decisions.

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Consultation participants also highlighted areas where some data exists currently, but better data is essential to a more complete understanding of an issue. Training and development was one example, where it was suggested better data is required to demonstrate that provision of the same amount of training between men and women does not necessarily mean the provision of equitable leadership training.

The consultation participants also raised the issue of collecting better data about what really happens to women returning to work after maternity leave regarding their job and their pay level. Eight per cent of the submissions, two roundtables and two interviews expressed the view that many inequitable outcomes do not result from formal organisational decisions, but from informal discrimination or bullying, or even from women making tactical decisions to avoid such outcomes or to better manage the full spectrum of their responsibilities.

A strong view emerged from consultation that it is essential to make better use of data, to raise awareness and tailor responses to drive change, and that EOWA is ideally positioned to undertake this role. However, this suggestion was usually accompanied by an acknowledgement that undertaking such a role would require increased resources for the agency.

In comparable areas of social reform, such as Indigenous policy, disaggregated outcomes data has been used highly effectively to raise awareness of overarching and specific inequities, build the case for reform and tailor specific strategies, (for example, the Australian Government's "Closing the Gap" commitments).

- ***Lack of understanding about why equal employment opportunity matters***

The data issue is closely linked to the perceived need for better communication about why equal employment opportunity matters. There was a pervasive sense from consultation during the EOWA review that a broader understanding of the costs and benefits of equal employment opportunity has not been effectively achieved, and a concern that this failure stifles effective action on the part of business.

While the focus of discussion about equal employment opportunity frequently centres on how it benefits women's economic security, it is critical to demonstrate the benefits of equal employment opportunity to business, the community and the economy. Dr Sara Charlesworth's in depth case study of nine reporting organisations suggests that other motivations can be as effective as a narrow profit-driven business case in driving and sustaining change to employment practice.¹³⁶

The following section examines the implications of failing to adequately address the current inequities in employment for women, and outlines the issues which could be better promoted by an appropriately resourced EOWA.

¹⁰² Australian Human Rights Commission, *Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009) At http://www.hreoc.gov.au/legal/submissions/2009/20091030_EOWA.html (viewed 28 January, 2010)

¹⁰³ OECD Family Database, OECD - Social Policy Division - Directorate of Employment, Labour and Social, *Usual Working Hours by Gender* (2007). At http://www.oecd.org/document/4/0,3343,en_2649_34819_37836996_1_1_1_1,00.html (viewed 28 January, 2010)

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¹⁰⁴ Sydney Roundtable, Australian Government Office for Women on the Inquiry into the *Equal Opportunity for Women in the Workplace Act 1999* and Equal Opportunity for Women in the Workplace Agency (2009).

¹⁰⁵ R Cassells, R Miranti, B Nepal & R Tanton, 'She works hard for the money: Australian women and the gender divide', *AMP.NATSEM Income and Wealth Report*, Issue 22, (2009), p18?? . At <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjA5fENoaWxkSUQ9LTF8VHlwZT0z&t=1> (viewed 28 January, 2010)

¹⁰⁶ Human Rights and Equal Opportunity Commission, *Striking the Balance: Women men, work and family* (2005) p 35. At www.humanrights.gov.au/sex_discrimination/publication/strikingbalance/index.html (viewed 28 January, 2010)

¹⁰⁷ B Pocock, N Skinner, and R Ichii, *Work, Life and Workplace Flexibility*, Centre for Work and Life, University of South Australia (2009).

¹⁰⁸ R Cassells, R Miranti, B Nepal & R Tanton, R Cassells, R Miranti, B Nepal & R Tanton, 'She works hard for the money: Australian women and the gender divide', *AMP.NATSEM Income and Wealth Report*, Issue 22, (2009), p18 . At <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjA5fENoaWxkSUQ9LTF8VHlwZT0z&t=1> (viewed 28 January, 2010)

¹⁰⁹ Australian Human Rights Commission, *Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009) At http://www.hreoc.gov.au/legal/submissions/2009/20091030_EOWA.html (viewed 28 January, 2010)

¹¹⁰ Australian Public Service Commission, 2008, *Submission to the House of Representatives Standing Committee on Employment and Workplace Relations on the Inquiry into Pay Equity and associated issues related to increasing Female Participation in the Workforce (2008)*, At <http://www.aph.gov.au/house/committee/ewr/payequity/subs.html>, (viewed 28 January, 2010)

¹¹¹ Ibid

¹¹² D Houston & G Marks, "The Role of Planning and Workplace support in returning to work after Maternity Leave", *British Journal of Industrial Relations*, Vol 41:2 June 2003 0007-1080 pp.197-214

¹¹³ J Burgess, L Henderson, G Strachan, 'I just juggle': work and family balance in Australian organisations', *Hecate*, Vol: 33, Iss: 1, 2007, pp 94-111. At <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=26511703&site=ehost-live>

¹¹⁴ Burgess, John and Glenda Strachan 2005. 'Integrating Work and Family Responsibilities: Policies for Lifting women's labour activity rates,' *Just Policy*, no. 35, pp. 5-12.

¹¹⁵ R Clare, *Retirement Savings Update* (2008), Association of Superannuation funds of Australia Research and Resource Centre, At www.superannuation.asn.au/Reports/default.aspx (viewed 28 January, 2010)

¹¹⁶ R Cassells, R Miranti, B Nepal & R Tanton, 'She works hard for the money: Australian women and the gender divide', *AMP.NATSEM Income and Wealth Report*, Issue 22, (2009), p34 . At <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjA5fENoaWxkSUQ9LTF8VHlwZT0z&t=1> (viewed 28 January, 2010)

¹¹⁷ Australian Bureau of Statistics, *Australian Social Trends 2006*, ABS cat no 4102.0, Australian Government Publishing Service, Canberra, (2006). At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4102.02006?OpenDocument>

¹¹⁸ L Craig & K Mullan, "The impact of gender and parenthood on men's and women's total work in Australia 1992-2006", paper presented to the Australian Labour Market Research Workshop, 11-12 December, Wellington, New Zealand 2008, p 12.

¹¹⁹ Australian Bureau of Statistics, *Survey of Disability Ageing and Carers: Summary of Findings 2003*, ABS cat. no. 4430.0, Australian Government Publishing Service, Canberra (2004), . At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/4430.0>

¹²⁰ Access Economics, *The Economic Value of Informal Care*, (2005) <http://www.accesseconomics.com.au/publicationsreports/getreport.php?report=6&id=6> (viewed 28 January, 2010)

¹²¹ This includes complaints within workplaces and to external agencies such as the State and Territory equal opportunity commissions and the Australian Human Rights Commission.

¹²² Human Rights and Equal Opportunity Commission, *Annual Report 2007-08* (2008) At www.humanrights.gov.au/about/publications/annual_reports/index.html (viewed 28 January, 2010).

¹²³ Australian Human Rights Commission, *Sexual harassment: Serious business*

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Results of the 2008 Sexual Harassment National Telephone Survey (2008). At www.humanrights.gov.au/sexualharassment/serious_business/index.html (viewed 28 October 2009).

¹²⁴ Australian Human Rights Commission, *Current State of Gender Equality in Australian Workplaces* AHRC Resource Paper No 1, October 2009 at

http://www.hreoc.gov.au/word/sex_discrim/eowa/1_gender_equality.doc (viewed 17 February, 2010)

¹²⁵ G Strachan & E French, 'EEO: Is it Living Up to Its Promise of Achieving Gender Equity?' . Paper presented to 22nd Conference of the Association of Industrial Relations Academics of Australia and New Zealand Conference - Workers, Corporations and Community: Facing Choices for a Sustainable Future, Melbourne (2008). At <http://eprints.qut.edu.au/15229/1/15229.pdf> (viewed 28 January, 2010)

¹²⁶ Equal Opportunity for Women in the Workplace Agency, *Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009) At

http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/EOWA_Review_Submission.pdf (viewed 28 January, 2010)

¹²⁷ Toohey, T., Colosimo, D., & Boak, A., (2009) *Australia's Hidden Resource: The Economic Case For Increasing Female Participation*, Goldman Sachs JB Were.

¹²⁸ F Shewring, *The Female 'Tradie'; Challenging employment perceptions in non-traditional trades for women* (2009). At http://www.ncver.edu.au/research/proj/nr08605_4.pdf (viewed 28 January, 2010)

¹²⁹ For example approximately 45per cent of women in the workforce are employed part-time compared with approximately 16per cent of men: Australian Bureau of Statistics, *Labour force status by Sex – Table 03, Labour Force 2009*, ABS cat no 6202.0, Australian Government Publishing Service, Canberra, 2009. At

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¹³⁰ G Strachan & E French, 'Equal Opportunity: Disentangling Promise from Achievement'. Paper presented to 'Gender, Work and Organisation': 5th Biennial International Interdisciplinary Conference Keele University, United Kingdom (2007) At <http://eprints.qut.edu.au/9154/1/9154.pdf>

¹³¹ Australian Bureau of Statistics, *Average Weekly Earnings, August 2009*, ABS cat no. 6302.0, Australian Government Publishing Service, Canberra (2009),

¹³² Toohey, T., Colosimo, D., & Boak, A., (2009) *Australia's Hidden Resource: The Economic Case For Increasing Female Participation*, Goldman Sachs JB Were, p.6.

¹³³ Ibid

¹³⁴ Australian Bureau of Statistics, *Education and Training Experience*, ABS cat no 6278.0, Australian Government Publishing Service, Canberra, (2005), At

<http://www.abs.gov.au/ausstats/abs@.nsf/mf/6278.0>

¹³⁵ 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

¹³⁶ Charlesworth, S, Hall, P and Probert, B (2005) *Drivers and Contexts of Equal Employment Opportunity and Diversity Action in Australian Organisations*, RMIT Publishing, Informit E-library.

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I. SECTION FOUR: WHAT ARE THE CURRENT ARRANGEMENTS FOR ACHIEVING GENDER EQUALITY IN AUSTRALIAN WORKPLACES?

Relationship of the EOWW Act and EOWA to other legislation and agencies

The EOWW Act forms part of a suite of legislation that aims to promote and protect human rights and achieve equal opportunity for women in the workplace. The role and functions of EOWA complement those of the Australian Human Rights Commission, the Australian Government Office for Women, Fair Work Australia and the Fair Work Ombudsman.

- ***Australian Government Office for Women***

The Office for Women (FaHCSIA) plays a key role in the promotion of equal employment opportunity for women.

The Office for Women has led this review of the EOWW Act and EOWA. Its other key roles include:

- providing high level advice to the Minister for the Status of Women to improve outcomes for women in three priority areas:
 - reducing violence against women;
 - improving economic outcomes for women; and
 - ensuring women's equal place in society.

To address these priorities, the Office for Women undertakes a range of work, including:

- Whole of government leadership in policy development on gender equality;
- Initiatives that reduce violence against women and their children with a focus on primary prevention, research, improved expert services for victims and their families, and that lead to the development and implementation of a National Plan to Reduce Violence against Women and their Children through COAG;
- Initiatives to build women's capacity to take on leadership responsibilities, communicate and consult with a variety of women's groups and organisations, and undertake research into women's issues;and
- Administration of the Support for Victims of Trafficking Program.

- ***Australian Government Office of Work and Family***

The Australian Government has also created an Office of Work and Family within the Department of Prime Minister and Cabinet, to ensure that the formulation of policies aimed at striking the right balance between paid work and family life occurs at the highest level and is central to all policy decisions.

Given that women make up the majority of primary carers of children, paid work and family policy has a significant impact on equal employment opportunity for women.

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- ***Australian Government Paid Parental Leave Scheme***

The Australian Government will introduce a paid parental leave scheme from 1 January 2011. The scheme will be funded by the Australian Government and in most cases recipients will receive the payment through their employer.

Paid parental leave has the capacity to significantly benefit women in the workplace, as it will provide eligible primary carers of newborn or adopted children with up to 18 weeks of payments while they take time off work to care for their child.

The full minimum wage will also be available to eligible part-time employees, as well as eligible contractors, casual workers and self-employed workers.

- ***Australian Government programs to support work-family balance***

The Australian Government also funds a national awards and accreditation scheme to encourage businesses to help their staff better balance their work and family life. The 2009 National Work-Life Balance Awards and Accreditation Scheme will provide public recognition for organisations that are leaders in their industry, successfully integrating work-life balance practices whilst managing business demands.

Additionally, the Australian Government recently launched the Fresh Ideas for Work and Family Program, which provides grants of between \$5,000 and \$15,000 to assist businesses to implement practices designed to help employees balance work and family life and improve employee retention and productivity. The Australian Government has also committed \$12.8 billion over the next four years to help families with child care costs.

- ***Workplace Relations legislation***

The new *Fair Work Act 2009* commenced on 1 July 2009 and provides a range of support and protections for women in the workplace. The Fair Work Act expands protections against workplace discrimination which were available under the *Workplace Relations Act 1996*.

Protections against discrimination contained in the Workplace Relations Act applied only to existing employees and were limited to termination from employment for a prohibited reason (for example, on grounds such as sex, race or family responsibilities).

The Fair Work Act provides enhanced prohibitions against discrimination by providing that an employer must not take 'adverse action' against an employee or a prospective employee for a range of reasons including the person's sex, marital status, family or carer's responsibilities, or pregnancy. The Fair Work Act also includes caring responsibilities as a new ground for unlawful termination claims.

While the expanded anti-discrimination protections in the Fair Work Act are intended to provide comprehensive protection from discrimination in the workplace, they also preserve the operation of Commonwealth, State and Territory anti-discrimination laws.

The Fair Work Act contains expanded equal remuneration provisions, which enable Fair Work Australia to make orders to ensure that there will be equal remuneration for work of equal or comparable value.

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The inclusion of the words 'and comparable value' is significant as it removes one of the historical barriers to running federal equal remuneration cases, which was the requirement to demonstrate discrimination in setting wages. It also allows for comparisons to be carried out between different, but comparable work. Equal remuneration orders can be sought on the application of an affected employee, an employee organisation representing affected employees, or the Sex Discrimination Commissioner.¹³⁷

The Fair Work Act includes other measures relevant to women's pay. For example, the Fair Work Act allows for minimum wages to be varied on 'work value' grounds (the ability to make a work value claim was removed under the Work Choices amendments).

The Act also includes provisions that facilitate multi-employer bargaining for low paid employees who have not historically had the benefits of enterprise level collective bargaining (this is particularly important in some feminised industries where levels of enterprise bargaining is low).

In addition, the Fair Work Act introduces the National Employment Standards (NES) which will come into effect from 1 January 2010, setting a safety net of minimum conditions for employees in the federal workplace relations system.

The NES guarantee conditions that support women to balance work and family responsibilities. For example, it doubles the amount of unpaid parental leave available to parents, from 12 months shared between both parents to separate periods of 12 months for each parent.

In addition and subject to complying with certain conditions, employees will be able to request up to 12 months extra parental leave under the NES.

The NES will also afford a new right for parents to request flexible working arrangements where they have responsibility for a child under school age or a disabled child under 18.

The Fair Work Ombudsman is an independent statutory office created under the Fair Work Act to help employers and employees understand and comply with the new workplace relations system. The Fair Work Ombudsman provides information and advice, investigates alleged breaches of workplace relations legislation and enforces provisions of the Fair Work Act.

- ***Fair Work Australia***

Fair Work Australia has been established under the Fair Work Act and has been fully operational since 1 January 2010. Fair Work Australia is the national workplace relations tribunal and is an independent body.

Fair Work Australia's powers are broader than the powers of the Australian Industrial Relations Commission and include the power to:

- vary awards;
- make minimum wage orders;
- assess agreements using the better off overall test;
- approve agreements;

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- determine unfair dismissal claims;
 - make orders on such things as good faith bargaining and industrial action;
 - vary or modify the application of transferring employment instruments in a transfer of business;
 - assist employees and employers to resolve disputes at the workplace;
 - deal with matters arising under right of entry provisions;
 - deal with issues arising under general protections and unlawful termination provisions; and
 - deal with the extension of National Employment Standards entitlements.
- ***Fair Work Ombudsman***

The Fair Work Ombudsman is an independent statutory office created under the Fair Work Act to assist employers and employees understand and comply with the new workplace relations system. The Fair Work Ombudsman provides information and advice, investigates alleged breaches of workplace relations legislation and enforces provisions of the Fair Work Act.

The Fair Work Ombudsman appoints Fair Work Inspectors to assist employers, employees and organisations to comply with the new workplace relations laws and, where necessary, take steps to enforce the laws through the court system.

Fair Work Inspectors carry out targeted education campaigns; conduct compliance audits; investigate workplace complaints; investigate suspected contraventions of workplace laws; and may take steps to enforce workplace laws through the court system.

Inspectors are able to investigate and enforce breaches of contracts or the National Employment Standards on behalf of an employee, where they are investigating or enforcing the National Employment Standards, a modern award, enterprise agreement, workplace determination, or minimum wages order or equal remuneration order.

Importantly, Fair Work Inspectors also have new powers to investigate discrimination matters. Under the Fair Work Act, the Fair Work Inspectors have the power to investigate claims by employees or employee organisations of discrimination in an employer's workplace and may institute court proceedings.

- ***Sex Discrimination Act***

The key piece of federal anti-discrimination legislation protecting women in the workplace is the Sex Discrimination Act 1984. The Sex Discrimination Act makes it unlawful to discriminate on the basis of sex, marital status, pregnancy or potential pregnancy or family responsibilities in a range of areas of public life, including within employment, although discrimination based on family responsibilities is limited to instances of dismissal in the employment context.

Complaints of unlawful discrimination can be made to the Australian Human Rights Commission (AHRC). If a complaint cannot be conciliated, or is terminated by the AHRC, the complainant may apply to the Federal Court or the Federal Magistrates Court for a legally enforceable determination.

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The Senate Standing Committee on Legal and Constitutional Affairs recently reviewed the Sex Discrimination Act and its report, released in December 2008, makes many significant recommendations relating to changes to the Sex Discrimination Act, the *Australian Human Rights Commission Act 1986* and the EOWW Act.

These include the recommendation for the Australian Government to consider incorporating the obligations in the EOWW Act into the Sex Discrimination Act, and combining the functions of the AHRC and EOWA. This report is currently being considered by the Australian Government.

The National Human Rights Consultation is another significant initiative in the anti-discrimination and human rights arena. The Attorney-General established the consultation in December 2008 to seek the Australian community's views on how best to protect and promote human rights and freedoms enjoyed by all Australians.

An independent committee conducted 66 community roundtables in 52 locations across Australia and received around 35,000 submissions. The National Human Rights Consultation Committee handed its report to the Attorney-General, the Hon Robert McClelland MP, on 30 September 2009. The Australian Government will use the outcomes of the consultation to guide its decisions on how best to protect and promote human rights in Australia.

Each state and territory also has its own anti-discrimination legislation.

- ***Australian Human Rights Commission and the Sex Discrimination Commissioner***

The Sex Discrimination Commissioner is a statutory office created under the Sex Discrimination Act. The Commissioner is appointed by the Governor-General and, by convention, the appointment is made on the advice of the Federal Attorney General.

Under the Sex Discrimination Act, the majority of the functions and powers relevant to the Sex Discrimination Act are given to the Australian Human Rights Commission and the Sex Discrimination Commissioner is a member of the Commission. The Sex Discrimination Commissioner is currently also responsible for age discrimination.

The Sex Discrimination Act sets out a range of functions to be carried out by the Commission, including:

- granting temporary exemptions;
- promoting understanding and acceptance of, and compliance with, the SDA;
- conducting research and education, and other programs on behalf of the Commonwealth;
- examining laws or (where requested by the Minister) proposed laws and reporting to the Minister;
- reporting to the Minister on new laws or action that should be taken by the Commonwealth about unlawful discrimination or sexual harassment;
- preparing non-legally binding guidelines; and
- intervening in any court proceedings, with leave of the court.

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In addition to these functions under the Sex Discrimination Act, the Commission also has general duties, functions and powers under the Australian Human Rights Commission Act which may be used to promote human rights. Human rights are defined to include the right to non-discrimination and equality on the ground of sex.

Interaction between gender equality institutions

While strong informal relationships exist between the EOWA and the Sex Discrimination Commissioner/AHRC and Fair Work Australia/Ombudsman, there is currently no institutional relationship between the three.

The AHRC handles individual complaints, and the President of the AHRC has powers to refer matters to Fair Work Australia under the new Fair Work Act. The Sex Discrimination Commissioner (SDC) has standing to apply to Fair Work Australia for equal remuneration orders,¹³⁸ and is entitled to make submissions to Fair Work Australia for consideration within the review process.¹³⁹ However, the SDC has never made an application under this power.¹⁴⁰

The President of the AHRC also has the power to refer discriminatory industrial instruments to Fair Work Australia and discriminatory determinations to the Remuneration Tribunal or the Defence Force Remuneration Tribunal.¹⁴¹ The Commission may also intervene, with leave of the court involved, in any matter that involves issues of discrimination on the ground of sex, marital status, pregnancy or potential pregnancy or discrimination involving sexual harassment – this includes matters before Fair Work Australia.¹⁴²

The EOWW Act, the Sex Discrimination Act and the Fair Work Act together make-up the federal legislative framework in addition to State and territory anti-discrimination legislation. Under the federal legislative framework the statutory agencies form an integrated system. The Sex Discrimination Act and the Fair Work Act both provide for individual complaints to be handled by the Australian Human Rights Commission and the Fair Work Ombudsman.

While the Australian Human Rights Commission and the Fair Work Ombudsman each handle individual complaints, both agencies and EOWA are empowered to undertake systemic action to progress gender equality in the workplace. Each institution, for example, is tasked with an educative and research role relating to employment equity. The Australian Human Rights Commission, in considering this overlap concluded that:

*There is a lack of clarity about which statutory authority is responsible for which lead roles, particularly in taking systemic action to achieve gender equality in the workplace. For example, it is possible that any one of these authorities could be responsible for driving systemic action to close the gender pay gap in Australia. The same could be said for reporting on progress to achieve gender equality in the workplace.*¹⁴³

¹³⁷ Fair Work Act 2009 (Cth), s302.

¹³⁸ Fair Work Act 2009 (Cth), Part 2.7, s 302.

¹³⁹ Fair Work Act 2009 (Cth), s 161.

¹⁴⁰ See further Australian Human Rights Commission (AHRC), *Submission to the House of Representatives Standing Committee on Employment and Workplace Relations on the Inquiry into Pay Equity and associated issues related to increasing female participation in the workforce* (2008), p 19. At www.humanrights.gov.au/legal/submissions/2008/20080923_pay_equity.html#Heading368 (viewed on 28 January, 2010)

¹⁴¹ Australian Human Rights Commission Act 1986 (Cth) (AHRCA), ss 46PW, 46PX and 46PY.

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¹⁴² *Sex Discrimination Act 1984* (Cth), (SDA), s 48(gb).

¹⁴³ Australian Human Rights Commission, *Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009) At http://www.hreoc.gov.au/legal/submissions/2009/20091030_EOWA.html (viewed on 28 January, 2010).

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J. SECTION 5: THE EFFECTIVENESS AND EFFICIENCY OF THE EOWW ACT

Overall effectiveness in delivering equal employment opportunity

The EOWW Act's success can be measured by reference to three sources: subjective assessments of EOWA's efficacy (through organisational surveys), examination of changes to organisational practices, and consideration of changes to overall outcomes for women in the workplace.

EOWA measures its performance through a survey of reporting organisations, which seeks their views on the advice and information EOWA provides, its products and services, their relationship with EOWA, and the value they place on the legislation it administers. This survey was last conducted in 2006, and prior to that in 2003.

In 2006, this survey found that most reporting organisations thought EOWA was effective in providing advice and information to assist in the improvement of outcomes for working women. More than two in five organisations believed EOWA to be 'very effective' or 'extremely effective'. This represented an increase of 15 per cent from the 2003 survey.¹⁴⁴

Whether such satisfaction translates successfully into changes to organisational practice is a separate issue. The EOWA 2009 Annual Report reveals an increase in EOWA reporting organisations providing paid maternity leave from 48.9 per cent in 2007 to 53.4 per cent in 2009.¹⁴⁵

Almost all reporting organisations have formal procedures for dealing with sex-based harassment in the workplace, but only just over half provide training to staff (59.1 per cent) and even fewer provide training to managers (55.4 per cent).

The average gender pay gap in 2009 EOWA Employer of Choice for Women organisations was 10.9 per cent, 4.7 per cent lower than the national average¹⁴⁶. Less than half conduct an annual gender pay equity analysis although over a third believe a gender pay gap exists in their organisation.

Another indicator of organisational practice which could be expected to result in equal employment opportunity for women is organisations receiving a waiver of reporting requirements, or achieving a 'waived standard'. This means that they have done everything reasonably practicable to address issues for women in their workplace across all seven employment matters.

In the 2008-09 reporting year, out of a total of 2,574 reporting organisations, only 116 were waived.

Another potential measure of success for employer organisations is becoming an EOWA Employer of Choice for Women or becoming a finalist or winner in EOWA's annual Business Achievement Awards.

Employers seeking Employer of Choice for Women certification are required to exceed the standards outlined above for waiving, exhibit outcomes for women and demonstrate an organisational culture that is broadly and strategically supportive of equal opportunity. To receive certification as an EOWA Employer of Choice for Women, an organisation must meet six pre-requisites:

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- equal opportunity for women is a standing agenda item on a Committee chaired by the CEO or his/her direct report,
- female managers can work part-time,
- a minimum of six weeks' paid maternity leave is offered after 12 months of service,
- sex-based harassment training is conducted at induction for all staff (including management, contract staff and casual staff) and refresher education or updates are received by all staff (including management, contract staff and casual staff) at least every two years,
- the Pay Equity Gap between average male and female salaries at each level of the organisation is less than the national gender gap in ordinary time earnings identified by ABS research, and the organisation's overall pay gap must be less than the organisation's industry's average pay gap, based on current ABS statistics, and
- the percentage of female managers is equal to or greater than the ABS average across all industries or is greater than the industry sector average.

Six additional criteria need to be met by organisations applying for the Business Achievement Awards. They must:

- have policies in place (across employment matters) that support women across the organisation,
- have effective processes (across employment matters) that are transparent,
- have strategies in place that support a commitment to fully utilising and developing their people (including women),
- educate employees (including supervisors and managers) on their rights and obligations regarding sex-based harassment,
- have an inclusive organisational culture that is championed by the CEO, driven by senior executives and holds line managers accountable, and
- deliver improved outcomes for women and the business.

In 2009, only 111 organisations out of 126 applicants and a total of 2,574 reporting organisations received the EOWA Employer of Choice for Women certification. The Business Achievement Awards consisted of eight categories that could be won by either an organisation or an individual in a leadership position.

EOWA's submission to the consultation process interprets these results thus.

Relatively few organizations have reached the stage of 'turning the ship', where the implementation of policies and practices affects organisational culture and organisational culture affects the implementation of policies and practices until there is an overall change of direction.¹⁴⁷

All three progress indicators (waiver, Employer of Choice certification and Business Achievement awards) are contested measures of robust changes to organisational practice. Firstly, organisations must apply for waiver, and high performing organisations may elect to continue to report even if they meet the standards for waiver, out of recognition of the positive benefits of reporting to consolidating progress.

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Secondly, it was suggested during the consultation process that minimal activity on the part of organisations can secure these awards, and that requirements and criteria should be strengthened, to ensure they reflect genuine progress in outcomes for women in the workplace.

While assessments of EOWA's performance and progress in some organisations may be encouraging in relation to progressive changes to organisational practice in reporting organisations, Section Three highlighted overall results for Australian women in the workplace which paint a more pessimistic picture. These results suggest the EOWW Act and EOWA have failed to make substantial inroads into changing outcomes overall, particularly along the key axes of increasing workforce participation, closing the pay equity gap and achieving a more equitable distribution of women across male dominated industries and occupations and in leadership roles.

The House Standing Committee on Employment and Workplace Relations agreed. Its report on into pay equity and associated issues related to increasing female participation in the workforce, *Making it fair*, recommended a framework for systematically addressing pay equity including the abolition of the EOWW Act and incorporation of its current functions into a proposed Pay Equity Act.

Under the Committee's proposal, there would be no separate agency. Instead, a Pay Equity Unit within Fair Work Australia (FWA) would perform the current functions of the Equal Opportunity for Women in the Workplace Agency (EOWA) but with expanded functions including pay equity functions related to the *Fair Work Act 2009*.

The key relevant recommendation of the Committee was that the proposed Pay Equity Unit would:

- be the responsibility of a Deputy President of FWA,
- have an advisory board comprising government agencies, union, employer and employee representatives,
- require federal public sector organisations to report biennially on diversity plans and a gender equity duty to increase pay equity,
- require all organisations of 100 or more employees to report biennially on diversity plans to increase pay equity,
- establish mandatory reporting by small to medium sized firms on request from a Pay Equity Unit officer,
- expand the Employer of Choice awards to include small and medium size firms,
- be enabled to gather aggregate wages and salary and other relevant information from the Commissioner for Taxation (requiring an amendment to the *Taxation Administration Act 1953*).

While the Committee recommended that the proposed Pay Equity Unit replace EOWA, it only described pay monitoring and related functions for the replacement unit. EOWA's current remit includes but goes beyond pay matters to cover employment arrangements, conditions, recruitment, promotion and a host of other issues impacting women in the workplace. To collapse all of EOWA's functions into consideration of pay equity, without careful consideration, could forfeit the other critical reporting, support and educative functions of EOWA.

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One of the critical aspects of this review is to consider ways to better define the respective roles of EOWA, Fair Work Australia and the AHRC in working on the issue of employment equity. There is potential for considerable role confusion if the broad functions of EOWA were collapsed into a pay equity unit residing within Fair Work Australia.

EOWA's key role is one of education and system change. Its reporting functions, and even proposals to strengthen the utility of reporting by adding powers to undertake compliance audits, exist merely to support that educative and system change function. Unlike both Fair Work Australia and the AHRC, it has no individual complaints mechanism

The Fair Work Australia, on the other hand, has a strong complaints focus across the spectrum of employment areas and potential grounds for discrimination. It would be anomalous to mandate a broader role for Fair Work Australia in one particular area of its coverage only. The AHRC, on the other hand, has both dispute resolution and advocacy roles, however it has experienced some tension in managing this dual focus.

It is preferable to maintain and strengthen clear demarcation lines between EOWA, which gathers critical data and uses it to plan organisational, sector/industry and systemic interventions, and the two complaints handling bodies (Fair Work Australia and AHRC) which pursue individual complaints and broader determinations.

While the focus on pay equity is timely and critical, many of the recommendations of the Committee could be implemented by EOWA or its successor. Indeed, several of the key recommendations of the Inquiry are considered in this report, for example:

- the need for strengthened reporting and mandated progress on pay equity,
- the establishment of advisory boards to support the development of sector/industry based outcomes benchmarks,
- coverage of smaller organisations where problems have been identified, through reporting, the provision of tailored advice and assistance, and the expansion of the Employer of Choice awards to smaller organisations.

It is clear that the roles and operation of EOWA require reform to operate optimally and ensure a focus on improving outcomes. The following section considers existing research and the results of consultation to scrutinise each aspect of the EOWA Act, determine its contribution to equal employment opportunity, and identify any problems with its effectiveness.

Objects and coverage of the EOWA Act

- ***Name and objects of the EOWA Act***

Over a quarter of public submissions argued that the objects of the legislation should be amended to include consideration of the role of men as father and carers. These views appear rooted in the recognition that without shifts in men's choices and behaviour, particularly around family and domestic responsibilities, women's choices will remain limited. More than a third of submissions believed the EOWA Act needed a greater focus on enabling men and women to share paid work and caring responsibilities, while a fifth of submissions suggested employers should focus on encouraging men to take up flexible opportunities.

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This view also came through particularly strongly from respondents to the employee survey, with 89 per cent agreeing the focus should be on men and women being encouraged to share paid work and unpaid work more equally.

EOWA submitted that the objects and possibly name of the Act and Agency should acknowledge a focus on gender equality. In doing this, the Agency also recognised that barriers to equality are not the same for women and men; that the strategies for responding to them are not likely to be symmetrical; and that its own strategies must continue to focus on women while at the same time encouraging broader access to and use by men of measures to support caring responsibilities.¹⁴⁸

It should be noted at the outset that in considering the name and objects of legislation, employer groups placed on the record their views that regulation was not the most effective means of addressing the root causes of inequality.

– Key Issues

The title and objects of any reformed regime should focus on outcomes, and consider the role of interventions related to men in securing employment equity for women.

• Coverage of the EOWW Act

Discussion focused on the exclusion of equal opportunity groups other than women, businesses with less than 100 employees, Commonwealth public sector agencies, equity partners in professional firms and board members, with the organisational size threshold being the issue considered most comprehensively.

Of those public submissions that commented on coverage of the Act, 40 per cent felt coverage should be expanded, while only one per cent felt it should be decreased. A significant proportion (21 per cent) recommended extending coverage to smaller organisations.

Proponents suggested the significant numbers of women employed in smaller workplaces argued for extending coverage to those organisations.

While the size of the female workforce in smaller organisations is significant, mandatory reporting may not be the best mechanism to encourage equal opportunity practices. Alternate methods for providing support and encouragement to smaller organisations could be considered, for example allowing them to access information, tools and awards.

Despite the clear focus of consultation on increasing the coverage of the EOWW Act to more organisations, 18 percent of the public submissions felt that better identification of eligible organisations under the EOWW Act was required. The Roundtables were divided on the issue of extending coverage, with some participants suggesting it was critical to increase compliance from those already covered before extending coverage further

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Currently, organisations largely come to the attention of EOWA and become subject to its regime through self-reporting. A large number of organisations do not identify themselves to the Agency. The ABS has estimated that there are around 13,000 organisations in Australia employing 100 or more people.¹⁴⁹ Some 8500 are both covered by the Act and have made themselves known to EOWA. This suggests that that only 65 to 70 per cent of all relevant employers are meeting their legislated responsibilities under the EOWW Act, and that there are around another 4500 organisations which are not currently meeting their obligations.

EOWA's concerns about this situation led it to position better identification of covered organisations as one of its main priorities in the review. It suggested that the PAYG Payment Summary statement, through which employers notify the Australian Tax Office (ATO) of the number of payment summaries they have issued to their employees, could be used to identify eligible organisations and access addresses for employers.

However, section 16(2) of the *Income Tax Assessment Act 1936* (the Tax Act) prohibits sharing of this information, except via a number of limited and specific exemptions. EOWA submitted that the Government should amend the Tax Act to enable it to receive an annual list of organisations employing 100 or more people.

The issue of ensuring identification of all eligible organisations was important to other participants as well. Of all public submissions, 39 per cent supported creating links to data from other areas of government, for example Taxation, Australian Securities and Investment Commission (ASIC) or the ABS, in order to identify eligible organisations.

Employer organisations also expressed concern about the current 'hit and miss' approach to ensuring reporting by eligible organisations. Seventeen per cent drew attention to the perverse outcomes that result from self-identification. A self-identifying organisation may become subject to sanctions for failing to report, or inadequate reporting, whereas an organisation which has avoided self-identification faces no consequences at all.

Extending the EOWW Act's coverage to government agencies, departments and statutory authorities was also raised in submissions, roundtables and interviews. Twenty-seven per cent of submissions expressed the view that the public sector should be covered. Round-tables situated the exclusion of the APS as particularly significant, especially given its size and scale as an employer of women.

In 2009, the long-term trend of increasing female employment in the APS continued. The total number of women rose from 92,012 to 93,683, an increase of 1.8 per cent. Women now account for 57.5 per cent of ongoing employment and 57.8 per cent of total employment.¹⁵⁰

However, the size of the public sector workforce may itself be a compelling reason to defer its inclusion in the regime. Significant extra resources would be required to monitor and work with these organisations, as well as a specific skill set which has not been developed in EOWA to date. The role of EOWA has focused on the private sector and it has developed skills and relationships to facilitate this role.

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This private sector focus is appropriate given that a comparable scheme to the EOWW Act regulates federal public sector employment. Employees of government departments are covered by the *Public Service Act 1999*¹⁵¹ and employees of statutory authorities by the *Equal Employment Opportunity (Commonwealth Authorities) Act 1987*. Section 18, Promotion of employment equity, of the *Public Service Act 1999* sets down that “an Agency Head must establish a workplace diversity program to assist in giving effect to the Australian Public Service (APS) Values.”

The Australian Public Service Commission (APSC) under s.10 (b) (l) of the *Public Service Act 1999* administers the regulation of equal employment opportunity for Australian federal government bodies¹⁵². The APSC release an annual State of the Service Report reflecting the status of employment equity for women in the Australian Public Service¹⁵³.

A number of States also have their own equal employment opportunity legislation for public sector employment.¹⁵⁴

Public sector organisations also tend to perform better on indicators of employment equality, for example:

- Public sector earnings, for both women and men, are greater than private sector earnings.
- Women, in the APS, received 61 per cent of the promotional opportunities in 2008-09.¹⁵⁵
- 90 per cent of APS employees who nominated 'flexible working arrangements' as contributing to their job satisfaction were satisfied with the arrangements.¹⁵⁶

Given this public sector progress, it may be appropriate for EOWA to continue to focus on sectors and industries with lower performance. It would however also be appropriate for the APSC to work with EOWA to maximise complementarity of approaches and data collection.

Some interesting recommendations in the public submissions and consultations included:

- the one-off creation of a new position on all boards for the appointment of a woman¹⁵⁷,
- mandatory targets for government boards and voluntary targets for private sector boards, to be followed by mandatory quotas if substantial inroads into improving the gender mix of membership are not achieved within five years¹⁵⁸, and
- including EOWA reporting as part of the suite of corporate governance annual reporting matters within the ASX framework¹⁵⁹.

Since the consultation process has concluded, the ASX Corporate Governance Council proposed to expand their principles-based framework, the *Corporate Governance Principles and Recommendation*, to require publicly listed companies to establish and report, on an “if not, why not?” basis, against gender targets at all levels of their organisations.

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While the *Corporations and Marketing Committee Report 2009* noted that the public sector is doing much better than the private sector and is modelling best practice in increasing women's representation on boards, these achievements vary significantly across portfolios. Few departments have achieved a reasonable gender balance, in which men and women represent at least 40 per cent of sitting board members.

– Key Issues

Poor identification of organisations which are already eligible to report should be the focus of reform before formal coverage is extended to more organisations.

Consideration should be given to ensuring support and encouragement to smaller organisations through extending coverage under the EOWW Act but without a compulsory requirement to report.

Government consider setting an example by establishing a target of at least 40 per cent women and 40 per cent men in each portfolio's board appointments within three years.

Workplace programs

Section Three canvassed the growing body of evidence concerning the benefits of greater gender balance to the productive capacity of organisations. In a survey of organisations covered by the EOWW Act, 46 per cent of the responses found that preparation of workplace programs had a positive influence on their organisation's equal employment opportunities for women. Only 21 per cent either disagreed or strongly disagreed with a workplace program's benefits. Those with higher compliance were more likely to see the programs as beneficial. However, of great significance was that a large number of employees were not aware of developing or evaluating workplace programs.

Nevertheless, developing and implementing a workplace program can impose costs on employers. For example, additional costs may relate to dedicated human resources staff and implementation costs of new programs and activities.

Consultation yielded some support for the requirement to prepare workplace programs, but far less support for the utility of the programs that resulted. Public submissions were reasonably evenly divided between respondents who submitted that the process of preparing workplace programs, and their content, was useful and appropriate, and those who submitted that it was not.

By far the most consistent view was that the planning and reporting regime did not support development of evidence-based programs. This finding is discussed in more detail below.

Reporting obligations

Currently, the EOWW Act defines those 'employment matters' which reporting covers in neutral process terms. Section 8(3) of the Act says employers should prepare an analysis of "issues relating to employment matters that the employer would need to address to achieve equal opportunity for women." There was strong support for continued public reporting across submissions, but the vast majority of public submissions felt reporting needed to be simplified with a focus on outcomes.

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Many submissions suggested reporting should occur against a set of industry benchmarks or indicators of performance. Indeed, 21 per cent of public submissions favoured setting explicit targets (36 per cent of all submissions that supported a regulatory role for government were of this view). Targets were understood as voluntary goals for organisational performance in relation to measures of employment equality, which are reported against publicly.

While there was no consensus about the levels at which these targets should be set, most participants agreed targets should be supported by industry benchmarking, and the following principles were suggested by some respondents.

- The ACTU recommended clear, achievable minimum standards established via a tripartite group including industry, union and government equal employment opportunity representatives.
- The AHRC recommended targets of 40 per cent of women on government boards within three years, with other boards being required to set three to five year disclosable targets for improving gender diversity in their composition. After five years, mandatory gender quotas should be considered for ASX publicly listed companies.
- The Sydney roundtable discussion reached a consensus view that a target should be set of 40 per cent representation of women at all organisational levels over the next three to five years. If this could not be achieved, mandatory quotas should be set.
- EOWA recommended that organisations should be required to make and report actual progress over time against a specified number of concrete gender equality measures, in a clear and factual self-audit format. There should be a range of such measures including those that are industry specific, and those that relate to boards, middle, and senior management. These would be based on appropriate and realistic averages as well as what is considered best practice, and there would be scope to revise these industry standards over time to reflect improved industry conditions and changing community expectations regarding employment arrangements.

Employer groups expressed concern about targets, instead supporting alternate methods to seek out and utilise talent. One submission suggested establishing a register of appropriately qualified women for board membership would be a useful avenue to use the skills of small business women in particular.

Employer, industry and business groups were all also particularly concerned about the introduction of mandatory quotas, which they saw as running counter to the merit principle and being counter-productive for the women concerned. Only four per cent of employees felt quotas would have the greatest impact.

A recent report by Goldman Sachs JB Were recommended that the Government provide a timetable for increased female participation in Australia's top 200 boards and executive teams with a minimum quota of two women on each board and an audit on female representation at the executive level.¹⁶⁰

Goldman Sachs JB Were suggested that better decisions may be reached as a result and that the second round impacts on mentoring and visibility of women would encourage a lift in female participation and a more even distribution of women across the workforce.¹⁶¹

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Of the participants in the consultation, six per cent of submissions from academics, 33 per cent of submissions from the expert category, 17 percent of submissions from individuals and four per cent of industry submissions suggested that the key omission from existing reporting requirements was that of a concrete measurement of pay equity. While some measures of pay equity are currently included as part of applications for waiver or citations, this is not comprehensive or consistent.

The pay equity findings detailed in Section Three were frequently canvassed by submissions, and better reporting of this issue as a separate employment matter was seen as critical to addressing these inequities.

A small proportion (eight per cent) suggested that the ASX corporate governance statement in annual reports could be used to facilitate reporting by publicly listed companies, with action towards targets being explained using the same process used for other reporting matters, that is, on an 'if not, why not' basis.

The frequency and timing of reporting was another issue which attracted significant comment during consultation, although opinion was fairly even divided.

From the employer's perspective, the reporting cycle begins in 1 April and ends on 31 March in the reporting year. Reports cover the year prior to the reporting date and may be submitted any time within the two months prior to 31 May. This reporting cycle was determined following extensive consultation during the 1998-99 review.

This timetable enables a list of non-compliant organisations to be prepared and incorporated in the Agency's own annual report, which is tabled in the Parliament in October consistent with standing guidelines. This means that the Agency's staffing arrangements have been geared to an uneven workload, with consultants employed on a temporary basis for the period May to September each year.

Those consultation participants who supported reduced frequency of reporting cited the need to reduce the reporting burden, as well as to enable time for interventions to bear fruit, and to align with the biennial EOWA reporting process.

The Equal Opportunity Network of Australasia (EEONA) recommended allowing organisations to set three- five year goals, with regular progress reports to the Agency, in recognition that achieving gender equity is a long-term process.

Conversely, there was a concern expressed in a couple of submissions about the potential for momentum to be lost if reporting became less frequent.

A move to a voluntary reporting regime was proposed by only one peak body.

The most frequent suggestion in relation to these matters was to increase the specificity of reports, and enhance their usability, potentially via use of a self-audit format and/or an e-reporting tool. Although there is currently flexibility, more than three quarters of reporting organisations use a version of the public report form, a template offered by the Agency and available online. EOWA has also developed voluntary self-audit instruments, including a Workplace Analysis Toolkit, a Bullying and Harassment Tool and a Pay Equity Tool.

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Publication of reports is currently undertaken in a piecemeal manner. Results from surveys conducted during the EOWW Act Review found that forty per cent of reporting organisations noted that employees were not provided with a copy of the report, and only nine per cent of employees agreed that they were consulted on its development. Roundtable discussions yielded considerable support for the notion that consultation requirements should be formal and enforceable.

– Key Issues

Reporting needs to focus on a set of specific outcomes, with clear targets.

Pay equity should be included as a separate employment matter.

The timing of the reporting cycle is less critical than simplifying the reporting format, clustering outcomes logically, and offering a self-audit and e-report option.

Better and wider publication of reports is essential.

Compliance and enforcement

Under the existing regime, non-compliance is associated with the failure to provide information rather than any clear basic standard of equitable employment outcome. EOWA submitted to the review that some marginal employers regard the existing standard for non-compliance as contestable, and that sanctions for non-compliance offer only a weak incentive for some organisations to comply with the law.

Sixty-seven per cent of submissions addressed the issue of penalties, and only 13 per cent felt penalties were sufficient. Naming in Parliament alone appears to lack a deterrent effect and indeed, EOWA suggests that some organisations take a perverse pride in being named year after year.¹⁶²

There was also general agreement through consultation that existing compliance mechanisms are not strong enough. The potential for random compliance auditing was explored by several submissions, with 24 per cent suggesting a need for compliance auditing. The most common suggestion was that this role be undertaken by the Office of the Fair Work Ombudsman, which already has a related role.

The calls for greater compliance auditing were stronger than those for increased penalties (11 per cent of submissions) but only two per cent recommended all penalties be removed (2 peak body submissions). Stronger sanctions were opposed by employers and some industry groups, but were relatively popular among employee surveys.

Submissions also explored the role of procurement in effecting behaviour change. It was suggested that this lever could have greater impact and be extended to include restricted access to grants. Roundtable discussions suggested that procurement consequences were not significant in their current form, as many eligible organisations do not apply for tenders at all, and even for those which do, the current regime relies on them declaring any non-compliant status.

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Several submissions suggested that proof of compliance should rest with the applicant, but that this could be facilitated by EOWA having the capacity to issue certificates of compliance.

Certificates of compliance offer a simple avenue to prove compliance, enable publication and facilitate procurement sanctions. However, given misgivings about marginally compliant reports being rated compliant, some participants in consultation suggested that heightened selection criteria are required to ensure certificates of compliance reflect reasonable standards.

– Key issues

The current sanctions regime is weak and ineffective by itself in ensuring compliance with reporting requirements.

Compliance would be improved by the introduction of organisational reviews.

Organisational reports should meet strong minimum outcomes standards in order for organisations to be found compliant. If they do, organisations should be issued with a certificate of compliance.

The role and activities of EOWA

• Organisational structure, resourcing and staffing

Placing the functions of EOWA within the discrimination jurisdiction may make the role of the agency more difficult, given the focus of the anti-discrimination framework on complaints handling. While the Australian Human Rights Commission has an advocacy role that works effectively alongside its complaint handling role, a requirement for employers to provide detailed information about employment practices may create a perception of conflict of interest and lead to discomfort among employers and role confusion for the Australian Human Rights Commission.

Employers may be more inclined to take advice on good practice in employment conditions and pay equity from an organisation that is positioned within the employment jurisdiction but the same potential problems apply to Fair Work Australia and the Fair Work Ombudsman as apply to the Australian Human Rights Commission. EOWA benefits from its current statutory position outside the mainstream anti-discrimination and workplace relations machinery, given its reliance on building and maintaining good relations with reporting organisations. EOWA has operated on the expectation that employee pressure and compliance incentives will promote and sustain cultural change.

Another key issue in the EOWA establishment is resourcing. Participants in consultation generally saw the existing resources of EOWA as insufficient particularly to enable it to fulfil its data collection and analysis roles. Only eight per cent of the submissions believed that the data was adequate compared to 22 per cent which did not. 39 per cent of submissions considered EOWA's education and its awareness-raising role the most successful function of the Agency although it was noted that it is not sufficient. Conversely, 32 per cent of submissions found EOWA's role at promoting understanding, acceptance and public discussion of equal opportunity either inadequate or inappropriate.

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A related issue is whether there is sufficient clarity of roles and responsibilities between EOWA, the AHRC and the Fair Work Australia. Submissions were divided on this issue, but key government agencies (the Australian Human Rights Commission and the Fair Work Ombudsman (by interview)), cited some lack of clarity in roles and responsibilities, especially in addressing systemic discrimination and driving systemic reform.

- ***Reviewing workplace programs and reports***

The EOWW Act is silent on standards as to amount or quality of reporting information required, or the extent to which EOWA can require an employer to take action. Due to time and resource constraints, under the current approach not every report from the previous year is compared to the current year's report to determine if it is the same version.

One result is that, in the current program and reporting model, employers that report having identified 'no issues' frequently fail to provide a substantive report as to what this means and EOWA is obliged to either accept this or to initiate a further exchange with the employer.

While it is time consuming and resource intensive for the Agency to pursue follow up minimal responses, failure to do so can set a difficult precedent for requiring more comprehensive reporting in future years.

Thirty-seven per cent of public submissions did not consider EOWA's role adequate (only eight per cent believed it to be adequate).

Roundtables suggested that EOWA currently has insufficient resources and data collection powers to adequately fulfil all of its roles. In particular, concern was expressed that EOWA does not compare results from organisations year by year, which prevents tracking of progress and examination of changes in the types of programs being delivered.

Interviews with employers suggested that more support for reporting and program preparation would be helpful.

Provision of information, advice and education

Participants in consultation were particularly interested in:

- education and awareness-raising activities that were affordable, and on-site where possible, and
- enhanced opportunities for networking with other organisations.

Research and data

At the organisational level, EOWA encourages organisations to measure their success in a variety of ways, and provides tools to help them gather data, identify issues for women workers and determine their priority areas to take action and measure outcomes.

EOWA uses information it collects from reporting organisations to build a data set to measure progress in workplace programs over time. This data is also used to educate employers on best practice and is used to set and revise benchmarks for its EOWA Employer of Choice for Women citation.

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Only eight per cent of submissions believed the current data set was adequate.

Participants by submission and by interview, such as the Australian Education Union and Queensland Government, also suggested that there should be improved links to other data sources across government. In particular, data should be collected in the common areas of discrimination – workforce participation, superannuation and long term financial security, leadership, occupational segregation, and intersecting disadvantage (such as when women belong to another group experiencing employment disadvantage).

Other respondents also suggested EOWA develop a publicly available data set for all reporting organisations, similar to the Australian Workplace Industrial Relations Survey (AWIRS), to undertake detailed scrutiny of employment patterns and work/life balance issues.

Other events, awards, tools

The utility of incentives and awards did not come through strongly in the surveys, although roundtables suggested they were significant, and about a third of reporting organisations felt the Employer of Choice Awards were a good incentive to work towards.

When asked about roles for EOWA moving forward individual interviewees and submissions cited the development of tools and resources to support organisations with the equal employment challenge second most frequently cited. Recommended tools included gender equity balanced scorecards with KPIs for managers.

The individual interview consultation activity identified strong support for a strengthened educative role for EOWA as did the survey of reporting organisations. Many of the levers for change that were identified are aimed at tackling the attitudinal and cultural barriers to equality for women in workplaces.

This revised EOWA role proposed by a number of submissions was seen as focusing on behaviour change including:

- research leadership, especially building and articulating the business case for equal employment opportunity,
- conducting major business and community campaigns about the benefits of family friendly practices, or the gender pay gap,
- forging stronger links with industry, both the organisational arms and individual employees through tools such as employee blogs to share success stories,
- rebuilding the credibility of citations and awards through tightening criteria, or even setting out tiers of awards to recognise different levels of effort and outcome.

¹⁴⁴ ACA Research, *Equal Opportunity for Women in Workplace: Research into Service Delivery*. Unpublished report to EOWA (2006)

¹⁴⁵ Equal Opportunity for Women in the Workplace Agency. *Annual Report 2007-2008* (2008) At http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/Annual_Reports/EOWA_Annual_Report_07_08.asp (viewed January 28, 2010)

¹⁴⁶ 15.6 per cent was the industry average for full-time ordinary time earnings from Australian Bureau of Statistics *Average Weekly Earnings Cat No. 6302.0, table 10 and timeseries data, May 2008*.

¹⁴⁷ Equal Opportunity for Women in the Workplace Agency, *Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and*

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Equal Opportunity for Women in the Workplace Agency (2009) At http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/EOWA_Review_Submission.pdf (viewed 28 January, 2010)

¹⁴⁸ *Equal Opportunity for Women in the Workplace Agency, Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009) At http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/EOWA_Review_Submission.pdf (viewed January 28, 2010)

¹⁴⁹ Australian Bureau of Statistics, *Counts of Australian Businesses, including Entries and Exits, Jun 2003 to Jun 2007*, ABS cat no 8165.0, Australian Government Publishing Service, Canberra, (2007)

¹⁵⁰ Australian Public Service Commission, *Australian Public Service Statistical Bulletin-The State of the Service Report 2008-09*(2009), Canberra, At <http://www.apsc.gov.au/stateoftheservice/index.html> (viewed 10 Dec 2009)

¹⁵¹ *Public Service Act 1999*(Cth), s 10 and s 18

¹⁵² *Public Service Act 1999*;
[http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/1DD68BE56B217C28CA256F82001C0C9F/\\$file/PublicService1999WD02.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/1DD68BE56B217C28CA256F82001C0C9F/$file/PublicService1999WD02.pdf)

¹⁵³ Australian Public Service Commission, *State of the Service Report 2006-07*, <http://www.apsc.gov.au/stateoftheservice/0607/index.html>

¹⁵⁴ See *Equal Opportunity in Public Employment Act 1992* (Qld); *Anti-Discrimination Act 1977* (NSW) Part 9A; *Equal Opportunity Act 1984* (WA) Part IX; *Public Administration Act 2004* (Vic); *Public Sector Management Act 1994* (ACT) Part 3; *Public Sector Employment and Management Act* (NT).

¹⁵⁵ Australia Public Service Commission, 'Table 32 – Promotions by classification promoted from and to, and sex – 2008-09', *Australian Public Service Statistical Bulletin, The State of the Service 2008-09*, Canberra, 2009, At <http://www.apsc.gov.au/index.html> (viewed 14 December 2009).

¹⁵⁶ Ibid

¹⁵⁷ Australian Human Rights Commission, *Submission - Review of the Equal Opportunity for Women in the Workplace Act 1999*

¹⁵⁸ Anne Summers, *Submission - Review of the Equal Opportunity for Women in the Workplace Act 1999*

¹⁵⁹ Australian Human Rights Commission, *Submission - Review of the Equal Opportunity for Women in the Workplace Act 1999*

¹⁶⁰ Toohey, T., Colosimo, D., & Boak, A., (2009) *Australia's Hidden Resource: The Economic Case For Increasing Female Participation*, Goldman Sachs JB Were.

¹⁶¹ Ibid

¹⁶² *Equal Opportunity for Women in the Workplace Agency, Submission to the Australian Government Office for Women on the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009) At http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/EOWA_Review_Submission.pdf (viewed 28 January, 2010)

K. SECTION SIX: OPTIONS TO IMPROVING GENDER EQUALITY IN THE WORKPLACE

Reducing regulation - no regulation or self-regulation

- ***International examples***

No comparable jurisdictions have a completely deregulated or self-regulated model in place. The regulation of at least some aspects of equal opportunity, such as pay equity or anti-discrimination law, is present in all developed countries.

In OECD countries, equal opportunity laws and policies are unique in each jurisdiction as a result of the country's starting point, prior practice, cultural expectations, political and industrial systems and economic circumstances, however some form of government regulation of equal employment opportunity for women is universal.¹⁶³

The US, for example, exhibits elements of a self-regulatory approach in its San Francisco Gender Equality Principles Initiative, but has also implemented laws that provide an overarching gender equality framework.

In New Zealand, despite an extensive public sector reporting regime, private sector organisations are not required to establish equal employment opportunity programs. Although complaints can be made against employers, there is no systemic compulsory reporting or review process that tracks organisational progress towards equal employment opportunity for women.

As a result, there is little publicly available information on the status of equal employment opportunity in most workplaces and individual organisational policies.¹⁶⁴ Most employers in New Zealand are under no obligation to proactively consider the barriers that their employees and potential employees face in terms of equal employment opportunity.

There are indications that in the New Zealand private sector in particular, the “no-government approach” is only enabling slow progress with women's workforce participation and representation.¹⁶⁵ There has also been slow progress in closing the gender pay gap, with the female/male earnings ratio in the June 2008 Quarterly Employment Survey 87.4 per cent for average hourly earnings and 79.6 per cent for weekly earnings.

New Zealand's women workers are concentrated in the service industries, and their increasing participation in the workforce has coincided with growth in these industries over recent years. In 2001, 83 percent of women worked in service industries, compared with 60 percent of men.¹⁶⁶

The income of women is also unevenly distributed among the total population. Women are overrepresented in the lowest three income quintiles and under-represented in the top two.¹⁶⁷

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Option One – Self-regulation

The spectrum of self-regulatory approaches is great, but given the significance of this issue to the entire population, and to the economy, self-regulation of gender equality in the workplace would necessarily involve more than atomised organisational approaches. It would require some structured oversight of organisational action and results, including the establishment of, at the very least, industry or sector specific targets against each of the outcome areas.

Therefore, the approach to self-regulation which will be considered is one which:

- sees the development of a series of voluntary industry or sector-based codes to guide action and indicate appropriate outcomes benchmarks across the same range of employment matters to be considered under the other options, that is:
 - profile of workplace by occupation, classification, management responsibility,
 - pay equity, including such issues as over-award payments, overtime and benefits and pay level,
 - outcomes of recruitment and selection processes (including job design matters),
 - promotion, transfer and termination outcomes,
 - training and development outcomes,
 - career progression including availability of quality of part-time work, access to training and promotions,
 - profile of employees accessing flexible work arrangements (including type of arrangement),
 - number of complaints about sex based harassment of women, and outcomes of processes for managing those complaints,
 - arrangements for dealing with pregnant or potentially pregnant employees and those breastfeeding their children
- invites organisations of any size to participate via reporting against the outcome areas, and
- is overseen by existing or purpose-built industry/sector councils which:
 - collate data and report on trends and issues,
 - offer support to organisations requiring extra assistance, and
 - publicise results and plan systemic remedies to issues arising.

For publicly listed companies, the ASX corporate governance reporting framework could be used to fulfil this oversight function. It could also lend weight to review of targets through use of the “if not, why not” explanatory mechanism used for other aspects of corporate governance reporting.

However, only a small percentage of organisations would be covered by this mechanism. The remainder would rely on existing industry bodies to monitor reporting, track results and lead remedial action, or alternately develop new structures for this purpose.

The key difference between a self-regulation regime and the current regulatory regime would be that the content and format of the reporting regime would be decided by organisational representatives themselves; those representatives would review and monitor results and provide peer support; and penalties for failure to report or to achieve outcomes would be non-existent beyond the direct control of the government.

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Impact analysis

- ***Impact of this option on promoting gender equality***

Strachan notes that what an organisation does to promote gender equity is variously determined by its history and ethos, the tightness of its specific labour market and the minimum standards set by legislation. When employers and employees are faced with a range of options about the way working arrangements are decided and work itself is organised, even if it is underpinned by legislative minima, outcomes for employment equity are difficult to uncover and unlikely to be consistent among workers and across employers in similar industries.¹⁶⁸

As a general guide to whether self-regulation is appropriate, a 2000 Report prepared by the Department of Treasury, set up to inquire into and report on aspects of self-regulation in consumer markets, put forward that self-regulation be considered where:

- there is no strong public interest concern, in particular, no major public health and safety concern,
- the problem is a low risk event, of low impact/significance, in other words the consequences of self-regulation failing to resolve a specific problem are small, and
- the problem can be fixed by the market itself, in other words there is an incentive for individuals and groups to develop and comply with self-regulatory arrangements (for example, for industry survival, or to gain a market advantage).¹⁶⁹

Section Three clearly illustrated both the magnitude of the current problem of employment inequity and the potential implications for the Australian community and economy. The breadth of this issue, and the enormity of its potential costs, mitigate against the use of self regulation.

It is also dubious whether the market alone could correct the problem identified in Section Three. Gender bias in recruitment, selection and distribution of employment benefits is in itself a market failure. It interferes with the capacity of the market to select personnel based on merit, which stunts strong productivity outcomes. The bias itself needs to be eliminated before the market can function effectively.

It is useful to consider the differences which have resulted in employment outcomes for women between the public and private sectors in Australia, in order to observe the impact that mandatory equal employment provisions have been able to achieve. The APS has provided paid maternity leave since 1973 and has progressively introduced a range of flexible working conditions to help all employees balance paid work and life responsibilities.

While women's representation, promotion and pay still lag behind those of men in the public sector, the net result of these provisions has been better representation and outcomes of women in the APS than in the private sector which does not offer these provisions, for example.

- In 2008, women comprised 33 per cent of the total membership of Australian Government boards and bodies¹⁷⁰ compared to 8.3 per cent of board directorships in ASX 200 companies.¹⁷¹ Women in the APS also held 22 per cent of Chair or Deputy Chair positions.¹⁷²

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- Women's representation at all levels of the senior executive staff (SES) sat at 37 percent overall,¹⁷³ compared to the 10.7 per cent of women who held executive manager positions in the ASX200 companies.¹⁷⁴

These results suggest that mandating equal employment practice counteracts market failures and yields results in terms of more equitable workplaces.

Additionally, the nature of employment inequity, and the organisations it affects create particular challenges for self-regulation. The 2000 Treasury Report, cited above, defined the following success factors for self-regulatory industry schemes:

- presence of a viable industry association,
- adequate coverage of the industry by the industry association,
- cohesive industry with like minded/motivated participants committed to achieving the goals,
- voluntary participation - effective sanctions and incentives can be applied, with low scope for the benefits being shared with non-participants, and
- cost advantages from tailor-made solutions and less formal mechanisms such as access to quick complaints handling and redress mechanisms.¹⁷⁵

The size and breadth of this issue and its applicability to all workplaces makes its regulation a large and daunting undertaking for voluntary industry bodies, particularly as they may have little existing expertise to devise effective strategies.

The most likely result is that reporting and planning would be managed by existing industry bodies, for whom it may be one of many competing priorities, and which may not have strong links with other industry bodies undertaking similar functions with whom to identify common trends and share information and ideas.

Even if self-regulation were to be accompanied by ongoing advice, support and education from a government-funded body, the de-coupling of reporting and intervention would limit responsiveness to organisational issues and requirements.

Given these considerations, factors which may impede the effectiveness of a self-regulating regime include:

- increasing the burden on individual industry or sector councils,
- fractured responses from diverse industry bodies, in terms of outcomes measured, strategies implemented and results achieved, and
- difficulty drawing out comparable disaggregated data to guide national action on the issue.

Segal contends a key requirement for self-regulation to be effective is that it must have vigorous and active accountability mechanisms. She suggests that the old-style model for self-regulation of "set and forget" is not viable going forward. Without accountability, the risk is not just that self-regulation will be ineffective, but that it may be harmful as industry and regulators devote resources elsewhere on the assumption that self-regulation is working.¹⁷⁶ It is difficult to envisage an equal employment self-regulation regime, operating across the breadth of eligible organisations, which could carry sufficiently robust accountability for all.

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A strong critique of the current regime which emerged through consultation is that it has failed to achieve traction because it merely reports processes, rather than measuring and requiring change against outcomes. Participants overwhelmingly recommended a move to outcomes-based reporting that requires real change to be against outcomes as the most effective way to:

- accurately assess the current scale of the problem,
- measure whether strategies are having an impact in reducing it, and
- demand change.

A move to a voluntary regime would make rigorous outcomes-based reporting more difficult, as neither reporting nor progress could be compelled.

A very concerning potential outcome of such a regime is that those organisations where the women with the least market power are clustered tend to be those with the least organisational resources.

Such organisations may, therefore, be those least likely to report under a voluntary regime: a negative impact for those organisations and the women they employ.

Finally, it is significant that only one per cent of submissions during consultation suggested that enforcement was currently too strong, so it appears that interested parties do not believe that removing sanctions for non-reporting would lead to more effective employment equity outcomes.

- ***Impact on business***

The only way a voluntary regime would result in lower time costs to organisations would be if it covered substantially fewer areas, or if organisations chose to disregard the invitation to participate. However, reporting organisations themselves indicate that the programs which result from the EOWA regime yield benefits to business in other ways, including a significant impact on the bottom line. This assertion is supported by the research discussed at Section Three, which demonstrated the fiscal pay-off for organisations taking pursuit of equal employment opportunity seriously.

The development of voluntary codes, their monitoring, management and tracking would require considerable input from individual sectors and industries, and it may be difficult to ensure a consistent approach between these areas.

A self-regulation model may or may not include a government-funded support agency. However, even if it did, it is probable that the de-coupling of reporting and monitoring from intervention would constrain the effectiveness of that agency, and organisations would receive less timely advice. Given that the educative functions of EOWA were those most highly regarded during consultation, any approach which lessened their impact would be a negative impact from the point of view of business.

Only eight per cent of submissions suggested a non-regulatory approach, suggesting that it is not the mandatory nature of reporting which is seen as problematic, but the format of reporting. Some participants expressed concerns related to the time cost of reporting, the format of reports, the utility of content and the requirement to prepare paper reports.

Such concerns could be addressed without removing the legislative requirement for certain organisations to report, given the unknown impact this may have on reporting levels.

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- ***Compliance with international obligations and standards***

Australia's international obligations require it to take active steps to achieve equality of employment opportunity. These obligations tend to have been interpreted by like nations and international institutions as requiring some national gender equality mechanisms. National gender equality mechanisms can include mechanisms within government such as specific ministries and gender units as well as statutory bodies and commissions, and civil society mechanisms such as advisory and consultative bodies or non government organisations.

The CEDAW Committee and international policy making bodies including the United Nations Commission on the Status of Women have detailed the obligation to maintain effective and adequately resourced national gender mechanisms as a crucial part of fulfilling international human rights obligations to women.¹⁷⁷

Light and responsive regulation

Light-handed approaches can involve incentives to encourage companies to pursue equal opportunity. This type of regulation takes many forms with the most common involving taxes, user charges or subsidies. Advantages include the creation of economic pressures to instigate behaviour change. This approach is often considered to be non-regulatory, however, it does require a different or more generic form of regulation that is usually applied through taxation law.

A middle ground option to achieve the correct regulatory balance between capacity building and sanctions is that of responsive regulation.

Responsive regulation seeks to replace either punitive or permissive regimes with a responsive and escalating pyramid of interventions, appropriate to the circumstances and responses of the person or entity being regulated. The bottom level of the pyramid would be made up of soft corrective tools, such as advice and warnings. These are used most frequently and are most effective if the agency is also able to deploy punitive sanctions such as penalties, licensing suspensions, or government contracting exclusions.

- ***International examples***

Although the United States has a range of regulatory initiatives ranging from light-handed to prescriptive regulation, the United States Equal Employment Opportunity Commission is similar to Australia's EOWA, albeit with significantly more powerful remedies and enforcement actions.

The United States' recent economic participation and opportunity ranking in the 2009 Global Gender Gap Report indicates that there are still barriers to women's equal participation in the workforce. The United States' ranking has dropped over the past four years, from third in 2006, to 14th in 2007, to 12th in 2008, and to 17th in 2009.¹⁷⁸

Progress in closing the gender pay gap has slowed considerably since 1990, as whilst the gender earnings ratio for annual earnings increased by 11.4 percentage points from 1980 to 1990, it grew by only 5.5 percentage points over the next 18 years. There is still a significant and persistent gender wage gap in the United States hovering at 22.9 per cent in 2008.¹⁷⁹

Economic conditions also appear to have affected women's status in the workplace, with women's annual earnings falling two per cent from 2007 to 2008, compared with men's, which fell just one per cent.¹⁸⁰

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The United Kingdom's regulatory approach to equal employment opportunity also combines aspects of light-handed and prescriptive regulation. However, it recently revised its legislative regime, because it projected that without further action, its gender pay gap would not be closed until 2085.¹⁸¹

The United Kingdom is currently ranked 35th on the economic participation and opportunity ranking in the 2009 Global Gender Gap Report.¹⁸² On average, women earn 22.6 per cent less per hour than men¹⁸³, and only 12.2 per cent of directors on FTSE 100 boards are female. There has been a decline in the number of FTSE 100 companies with female executive directors from 16 to 15, and a decline in the number of FTSE 100 boards with multiple women directors, from 39 to 37 between 2008 and 2009. Additionally, there has been a decline in the overall number of companies with women on FTSE 100 boards, with one in four companies having exclusively male boards.¹⁸⁴

The United Kingdom's Equality Bill 2009 sets a framework for a light-handed approach to regulation, but includes provisions to enable regulations to be made if it is found that the light-handed approach is not being effectively utilised or complied with. This arrangement demonstrates a responsive approach to regulation as it enables employers to demonstrate their willingness to voluntarily comply whilst being clear about the possible consequences of non-compliance.¹⁸⁵

Australia's current EOWW Act provisions are similar to those under the United Kingdom's existing *Equality Act 2006*. The Equality Act requires that public sector bodies publish a gender equality scheme demonstrating how they will fulfil the Gender Equality Duty (similar to the requirement under the EOWW Act that reporting organisations develop a workplace program and report annually to EOWA). However, United Kingdom's model has a more developed and elaborate mechanism for ensuring compliance and accountability.

Prescriptive regulation

The prescriptive approach to regulation is based on detailed controls on behaviour of organisations, and supported by civil or penal sanctions for non-compliance.

This approach is generally considered appropriate where the rules address issues of high risk or significance (including public health and safety), government requires the certainty of higher levels of compliance, universal application is required, there is a history of systemic non-compliance with industry-led or softer regulatory approaches, and existing industry bodies do not have comprehensive coverage or are not committed to the need to change behaviour.

One critique of prescriptive or 'command and control' regulation is that there are limits to the effectiveness of legal regulation because of alternative and competing behavioural norms beyond the law, such as formal systems of self-regulation and informal social norms.¹⁸⁶ The more detailed and prescriptive the attempts at regulation are, the more difficult the compliance task is for organisations and the less successful they tend to be in achieving the desired goal.¹⁸⁷

- ***International examples***

The use of a more interventionist approach to equal employment opportunity regulation has seen some success in Norway, which has achieved positive outcomes for women across some indicators.

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The Norwegian approach to equal opportunity for women in the workplace is similar to the Australian approach, but with more demanding duties on employers. Relevant organisations have both positive duties and quotas imposed in order to support equal opportunity. The Equality and Anti-Discrimination Tribunal has powers to remedy a discrimination issue and to order coercive fines in certain circumstances.

In 2009, Norway had the third narrowest gender gap in the world according to the overall ranking in the World Economic Forum's *Global Gender Gap Report 2008* (falling from first place in 2008).

The introduction of quotas in Norway has had a significant impact on the number of women on both public and private boards, with an increase from 22 per cent in 2004 to 44.2 per cent in 2008. This followed from a phased approach to board membership, beginning with public sector entities and moving to private sector companies and which, between 2004 and 2008, required that at least 40 per cent of board seats of state-owned and public limited companies in the private sector have to be filled by women and at least 40 per cent have to be filled by men.

Although Norway's prescriptive approach to regulation was initially criticised, the Confederation of Norwegian Enterprise is no longer campaigning against the law, but instead wants to amend the penalty regime to focus on fines rather than dissolution of non-compliant boards.¹⁸⁸ It is apparent that Norway's strengthened enforcement and investigative powers are positively associated with its progress towards equal employment opportunity.

Option Three - Smarter regulation with increased enforcement powers

This option is founded upon the core elements identified in Option Two, but with increased enforcement powers built in to the statutory regime. This option responds to the views expressed in consultation that the agency lacks adequate powers to undertake its role effectively.

It relies on establishing a much closer relationship with the new workplace relations regime, especially the Office of the Fair Work Ombudsman. It assumes that compliance audits would be undertaken by officers of that organisation, and that the EOWW Act would be amended to enable this.

• Ability to institute enforcement action

As a response to concerns that the Agency has no power to compel organisations to undertake certain activities, this option would effect legislative change to confer appropriate powers on the Agency or the Fair Work Ombudsman (FWO) to enable workplace inspectors to visit non-compliant workplaces, issue compliance notices and enforce compliance using the sanctions inherent in the workplace relations regime.

The activities which would trigger such action would include:

- failing to submit an annual self-audit,
- failing to produce documents or cooperate with an audit,
- failing to meet industry standards,
- failing to take action to remedy lack of progress over time

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- ***Increased grounds for finding an organisation non-compliant***

In addition to the grounds cited above, this option would see organisations able to be issued with a certificate of non-compliance once the Agency or the FWO officers have established:

- failure to submit an annual self-audit,
- failure to produce documents or cooperate with an audit,
- failure to meet industry standards,
- failure to take action to remedy lack of progress over time
- wilfully misrepresenting their situation on their annual report to the Agency or in follow-up audits,
- failure to cooperate with audits, including through failure to answer questions and supply required documents, and
- failure to supply reports and compliance/non-compliance certificates to employees and unions, and publish to web site.

- ***Jurisdiction to award penalties***

Consultation identified the current sanctions regime as inadequate. Option Two seeks to address this by enabling more eligible organisations to be identified and followed up for reporting, and bringing other organisations into the reporting regime where there are concerns about their practice. It also details more grounds for finding organisations non-compliant, with the attendant sanctions of naming in Parliament and restricting access to grants and procurement processes.

Option Three would see EOWA also able to take action through relevant courts and tribunals to seek an award of penalties. It would be achieved by having the new Act declared a workplace law for the purposes of the Fair Work Act, which would enable access to the workplace relations sanctions regime.

There are various stages in a current FWO investigation and depending on what the inspector finds the investigation may not proceed to the latter stages. In the initial stage, assisted voluntary resolution (AVR), the inspector may not find that there has been a breach of Commonwealth workplace legislation and both parties will work to resolve the complaint. The second stage, full investigation and compliance, is entered into if the complaint cannot be resolved by an AVR. This stage often involves formal mediation. If the Inspector determines that there has been a contravention of Commonwealth workplace legislation, a compliance notice may be issued that identifies how the contravention can be fixed. If it is voluntarily fixed by the organisation, then the investigation ceases. Alternatively, if the contravention is not voluntarily fixed the investigation proceeds to the enforcement stage. This stage may involve litigation or other enforceable orders.

Option Four - Smarter regulation with quotas

This option builds on the regulatory option detailed in Option Two, but replaces industry benchmarks with mandatory quotas requiring certain proportions of women to be represented at all levels within organisations, within three and five year timeframes. It introduces quotas for women in defined levels and classifications in all eligible organisations.

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The setting of quotas was recommended by nine per cent of the submissions received. A roundtable in Sydney proposed that at least 40 per cent of female employees should be represented across all levels and classifications of organisations.

The quotas would be based on realistic goals established through a cooperative process between government, industry, unions, employer and employee groups. They would be tailored by industry or sector, and include progress targets to be reported against pending achievement of the mandatory quota.

In addition to other matters to be reported against on the self-report, organisations would be required to detail annual progress toward the quotas, and provide explanatory statements where they are not meeting progress targets. Organisations providing such statements would receive extra support from EOWA.

Organisations which do not meet quotas at the conclusion of the three year period would be assessed as non-compliant, and subject to the same sanctions highlighted under Option Two. However, a legislative power to extended quota time frames would be included. This power would only be exercised where compelling reasons are provided, along with detailed action plans. The circumstances constituting 'compelling reasons' and the format and criteria for the action plans will be closely prescribed by the legislation. No more than one extension will be permitted before an organisation is deemed non-compliant.

The legislation would also include a process for re-convening quota committees to review quotas under certain exceptional circumstances, for example, an industry-wide crisis. Again, the circumstances under which such a process would be permitted would be closely prescribed by legislation.

Impact analysis of Options Three and Four

- ***Impact on risk***

The issue to be considered in projecting the likely impact of both Option Three and Option Four is whether more stringent requirements, increased powers and heightened sanctions would be more effective in producing better outcomes than a strict requirement to report, coupled with broad sanctions.

It is probable that the capacity to drive compliance through compliance notices and application of workplace relations sanctions would improve rates of compliance. Facing such compulsion, organisations would report, and they would be required to demonstrate positive change. In particular, it is highly probable that both Options Three and Four are more likely to yield better results from organisations which would otherwise be more likely to be non-compliant.

However, in considering these potential benefits, it is also important to recognise that reporting is an important element of change but that a second limb, and the one most highly valued and recognised by those impacted by the system, is the educative and change function. This effectiveness of the latter role is heavily influenced by the relationship between organisations and the agency.

In lieu of specific and targeted sanctions, Option Two utilises a responsive approach to regulatory enforcement, and would rely on work with organisations to change practice, and the market power of tools such as corporate reputation indexes, to alter patterns of behaviour.

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While increased penalties and the introduction of quotas may ensure faster progress, they may also generate a degree of opposition from business, employer and industry groups and concerns about the cultural impacts. Any movement to quotas, for example, may be more compelling, and more likely to generate acceptance and commitment, if it is initiated following a period of trying voluntary targets, and in response to a clear failure of those targets.

- ***Impact on social inclusion and community wellbeing***

It is highly likely that the benefits of Options Three and Four would be most likely to be felt by women from disadvantaged groups, and those in employment arrangements which are not well served by existing anti-discrimination and employment machinery.

While Options Three and Four may produce a more immediately effective impact on women's workplace equality, they may also produce negative cultural backlash which, at least in the short term, erodes cooperative community efforts.

- ***Impact on economy, including labour market***

These Options are more likely to drive progress faster and therefore yield economic benefits more quickly.

- ***Impact on business***

The costs of this regime to non-compliant organisations would be greater than either Option One or Two, although they would be comparable for compliant organisations.

For organisations which have made great efforts to make progress against benchmarks and failed, a process to consider and manage that shortfall is included to ensure they are not disadvantaged.

However, perhaps the greatest impact of this option would be to the relationship between the Agency and reporting organisations, which would move under these options from one of support and advice to a more adversarial model, less conducive to influence. This may affect the willingness of organisations to accept information and training from the Agency, and to utilise tools developed by the Agency. Such isolation would increase the costs to organisations of developing equal employment programs, as they would be doing so without expert support and advice.

- ***Compliance with international obligations and standards***

While Australia is obliged to take action to eliminate discrimination between men and women in the workplace, one concern about the introduction of quotas is that such action may constitute discrimination against men.

However, international law contemplates and sanctions the use of temporary special measures to accelerate equality between men and women and does not define them as discrimination at international law. Article 4 of CEDAW provides:

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

*2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.*¹⁸⁹

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Australia's Sex Discrimination Act has a similar provision, using a similar definition.¹⁹⁰

*According to the CEDAW Committee, the purpose of art 4(1) is to accelerate the improvement of the position of women to achieve their de facto or substantive equality with men, and to effect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women.*¹⁹¹

The CEDAW Committee also provides a rejoinder to those who argue that quotas interfere with application of the merit principle:

*as temporary special measures aim at accelerating achievement of de facto or substantive equality, questions of qualification and merit, in particular in the area of employment in the public and private sectors, need to be reviewed carefully for gender bias as they are normatively and culturally determined.*¹⁹²

¹⁶³ Simon Deakin & Colm McLaughlin, (2007), *The Regulation of women's pay: From individual Rights to Reflexive Law?* Working Paper No 350, Centre for Business Research, University of Cambridge.

¹⁶⁴ New Zealand Human Rights Commission (2004) *Framework for the Future: Equal opportunities in New Zealand*.

¹⁶⁵ Prue Hyman (2008) "Pay Equity and Equal Employment Opportunity in New Zealand : Developments 2006/2008 and Evaluation" *New Zealand Journal of Employment Relations* 33(3) pp1-15

¹⁶⁶ Statistics New Zealand (2005) *Focusing on Women*

¹⁶⁷ Ibid

¹⁶⁸ 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.

¹⁶⁹ Department of Treasury, *Industry Self-Regulation in Consumer Markets, Report prepared by the Taskforce on Industry Self-regulation*, Canberra, August 2000.

¹⁷⁰ Australian Government Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Women in Australia, 2009*. At <http://www.fahcsia.gov.au/sa/women/pubs/general/womeninaustralia/2009/Pages/chapter4.aspx#2a> (viewed 28 January, 2010)

¹⁷¹ Equal Opportunity for Women in the Workplace Agency, *2008 EOWA Australian Census of Women in Leadership* (2008), At http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census.asp (28 January 2010)

¹⁷² Australian Government Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Women in Australia, 2009*. At <http://www.fahcsia.gov.au/sa/women/pubs/general/womeninaustralia/2009/Pages/chapter4.aspx#2a> (viewed 28 January, 2010)

¹⁷³ Australian Public Service Commission, *Australian Public Service Statistical Bulletin-The State of the Service Report 2008-09*(2009), Canberra, At <http://www.apsc.gov.au/stateoftheservice/index.html> (viewed 10 Dec 2009)

¹⁷⁴ Equal Opportunity for Women in the Workplace Agency, *2008 EOWA Australian Census of Women in Leadership* (2008). At http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census.asp (viewed 28 January, 2010).

¹⁷⁵ Department of Treasury, *Industry Self-Regulation in Consumer Markets, Report prepared by the Taskforce on Industry Self-regulation*, Canberra, August 2000.

¹⁷⁶ Institutional self- regulation: what should be the role of the regulator? *An address by Jillian Segal, Deputy Chair of the Australian Securities and Investments Commission, to the National Institute for Governance Twilight Seminar, Canberra 8 November 2001*.

¹⁷⁷ See CEDAW Committee, General Comment No. 6: Effective National Machinery and Publicity (1988). At www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom6; Beijing Declaration and Platform for Action (1995), Fourth World Conference on Women, 1995, A/Conf.117/20 and A/Conf.117/20/add.1.

¹⁷⁸ World Economic Forum, Global Gender Gap Index website at <http://www.weforum.org/en/Communities/Women%20Leaders%20and%20Gender%20Parity/GenderGapNetwork/index.htm> (viewed 16 February, 2010)

¹⁷⁹ Institute For Women's Policy Research, *The Gender Wage Gap: 2008* at <http://www.iwpr.org/index.cfm> (viewed 16 February, 2010)

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¹⁸⁰ Ibid

¹⁸¹ UK Government Equalities Office, *A Fairer Future: The Equality Bill and other action to make equality a reality* at http://www.equalities.gov.uk/equality_bill.aspx (viewed 16 February, 2010)

¹⁸² World Economic Forum, Global Gender Gap Index website at <http://www.weforum.org/en/Communities/Women%20Leaders%20and%20Gender%20Parity/GenderGapNetwork/index.htm> (viewed 17 February, 2010)

¹⁸³ UK Government Equalities Office, *A Fairer Future: The Equality Bill and other action to make equality a reality* at http://www.equalities.gov.uk/equality_bill.aspx (viewed 17 February, 2010)

¹⁸⁴ Dr. Ruth Sealy, Professor Susan Vinnicombe OBE and Elena Doldor, *Female FTSE Index and Report 2009*, at www.cranfieldknowledgeinterchange.com/kihtml/topic/.../0028/Report.pdf (viewed 17 February, 2010).

¹⁸⁵ UK Government Equalities Office, *A Fairer Future: The Equality Bill and other action to make equality a reality* at http://www.equalities.gov.uk/equality_bill.aspx (viewed 17 February, 2010)

¹⁸⁶ Simon Deakin & Colm McLaughlin, (2007), *The Regulation of women's pay: From individual Rights to Reflexive Law?* Working Paper No 350, Centre for Business Research, University of Cambridge.

¹⁸⁷ Ibid.

¹⁸⁸ New Zealand Human Rights Commission, *New Zealand Census of Women's Participation 2008*.

¹⁸⁹ Note that Article 5 of the *International Labour Organisation (ILO) Convention No 111* also provides that special measures to protect groups of workers for reasons such as sex shall not be considered discrimination.

¹⁹⁰ See s 7D(2) of the *Sex Discrimination Act 1984* (Cth) (SDA) which provides that a person does not discriminate against another person by taking special measures.

¹⁹¹ Report of the Committee on the Elimination of Discrimination against Women Committee (CEDAW Committee), UN GAOR 59th sess, Supp No 38, UN Doc A/59/30 (2004), [15].

¹⁹² CEDAW Committee, *General Recommendation No. 25 (2004)*, [27] in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc HRI/GEN/1/Rev.9 (Vol. II) (2008), CEDAW Committee, p 320.

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Business Cost Calculator report (variable ongoing cost)

Option 1		
Option name	Status quo	
Option description	Current reporting format without new data management system.	
Businesses affected	13,327	
Timeframe (years)	1	
	Cost per business	Total cost for all businesses
Start up cost	\$0.00	\$0.00
Average ongoing compliance cost per year	\$1,218.82	\$16,243,180.00
Option 2		
Option name	Reform	
Option description	New data management system	
Businesses affected	13,327	
Timeframe (years)	1	
	Cost per business	Total cost for all businesses
Start up cost	\$0.00	\$0.00
Average ongoing compliance cost per year	\$432.00	\$5,757,264.00
Option 3		
Option name	Organisational Reviews	
Option description	A small number of organisations will be randomly audited each year	
Businesses affected	200	
Timeframe (years)	1	
	Cost per business	Total cost for all businesses
Start up cost	\$0.00	\$0.00
Average ongoing compliance cost per year	\$1,296.00	\$259,200.00

Note: An assessment of compliance costs in itself do not provide an answer to the most effective and efficient regulatory proposal. Rather, it provides information that needs to be considered alongside other factors when deciding between policy options

STATEMENT OF COMPATIBILITY FOR A BILL THAT RAISES HUMAN RIGHTS ISSUES

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Equal Opportunity for Women in the Workplace Amendment Bill 2012

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Equal Opportunity for Women in the Workplace Amendment Bill 2012 amends the existing *Equal Opportunity for Women in the Workplace Act 1999* (EOWW Act). The Act will be renamed the *Workplace Gender Equality Act 2012*, and the Agency will become the Workplace Gender Equality Agency.

Through improved coverage and focus, the Bill encompasses both women and men. The Bill makes reporting obligations more transparent and simpler by removing the requirement for employers to develop workplace programs.

All relevant employers will be required, subject to Ministerial decision, to report against a standard set of gender equality indicators focusing on outcomes, including pay equity, gender workforce composition and flexible working arrangements, for women and men in the workplace. Contract compliance is now referenced in the Bill, providing formal recognition of enhanced gender equality as a 'procurement-connected policy'.

The Bill provides for increased support for employers, including more workshops, more on-line advice and better sharing of practical and effective changes by sector.

The purposes of the Bill are to support and improve women's workforce participation, and to increase equality (including equal remuneration between women and men) in employment and in the workplace.

Human rights implications

The Australian Government's international human rights and labour rights obligations relevant to the issue of gender equality in the workplace are set out in the following international instruments:

- The Convention on the Elimination of All forms of Discrimination against Women (CEDAW)
- The International Covenant on Civil and Political Rights (ICCPR)

- The International Covenant on Economic, Social and Cultural Rights (ICESCR)

In addition to the protections afforded by these instruments, worker's rights are further supported by International Labour Organisation Conventions 100, 111, 156 and 175.

The Bill promotes the following human rights:

Freedom from discrimination in employment

The elimination of discrimination in employment engages Article 11 of CEDAW. Article 11 expressly obliges Australia to *'take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular... the right to the same employment opportunities... the right to promotion...[and] equal remuneration.'*¹

As required under Article 5 of CEDAW², the Bill contributes to fulfilling Australia's obligations to advance freedom from discrimination in employment by recognising that both men and women need access to flexible working conditions. Through acknowledging the interrelationship between women's and men's care-giving and capacity to participate in the paid workforce, the Bill makes a significant contribution to eliminating stereotyped gender roles for women and men.

Further, the Bill will contribute to the elimination of prejudices and other discriminatory workplace practices by providing for relevant employers to report against a number of gender indicators. This will in turn allow for meaningful comparisons within industries and across sectors, advancing freedom from discrimination in employment for women and men.

Protection against discrimination on the ground of sex

Article 26 of the ICCPR contains a positive obligation on states parties to take steps to protect against discrimination on the ground of sex. By including consequences for non-compliance, the Bill encourages the removal of barriers to the full and equal participation of women and men in the workforce.

The right to fair wages and equal remuneration for work of equal value

Article 7 of the ICESCR recognises the right of everyone to fair wages and equal remuneration for work of equal value. The objects of the Bill expressly refer to pay equity and relevant employers are required to report against a number of indicators, including equal remuneration between women and men³. This will provide greater transparency, leading to clearer industry requirements on equal remuneration for work of equal value.

Conclusion

The Bill is compatible with human rights because it advances the protection of human rights.

**Minister for Families, Community Services and Indigenous Affairs,
Minister for Disability Reform, the Hon Jenny Macklin MP,**

¹ CEDAW, Article 11(1)(b), 11(1)(c) and 11(1)(d). Article 11(1)(c) provides 'the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining.' Article 11(1)(d) provides 'the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.'

² Article 5 of CEDAW obliges Australia to take all appropriate measures to modify social and cultural patterns of the conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for women and men.

³ In compliance with the *Privacy Act 1988*, personal information and salary data will be removed from the public reports.