



**Australian Government**

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**Equal Opportunity for  
Women in the Workplace Agency**

**Submission to**

**ASX Corporate Governance Council**

**Proposed Amendments to the ASX Corporate  
Governance Principles and Recommendations  
Exposure Draft April 22 2010**

**May 2010**

## Executive Summary

The Equal Opportunity for Women in the Workplace Agency is supportive of the proposed changes to the ASX Corporate Governance Principles and Recommendations. From our ongoing work covering over 9,500 Australian businesses and our EOWA Census of Women in Leadership we are acutely aware of the underrepresentation of women in senior roles in Australian Business.

EOWA is making this submission for the following reasons:

1. To outline the opportunity for the guidelines be aligned with the Equal Opportunity for Women in the Workplace Act (the EOWW Act) requirements and existing research so as to reduce the administrative burden on businesses and ensure consistency.
2. To provide information about the historical research that EOWA has conducted on Women in Leadership in the ASX200 companies.
3. To use the expertise EOWA has built up in this area to help strengthen the proposed changes.

Key recommendations:

- There should be gender diversity on nomination and remuneration committees
- Each company should also be required to publish their compliance status under the EOWW Act
- There should be disclosure on measurable targets in place of “objectives”
- That a gender breakdown of Key Management Personnel positions (as defined by Australian Accounting Standards Board standard AASB 124.9) is also disclosed along with senior executives and on boards.
- That companies undertake to remunerate equitably, as well as fairly and responsibly and have completed an analysis of remuneration by gender.

Recommendations are provided at Part 2.

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# PART ONE- INTRODUCTION AND BACKGROUND

## ABOUT EOWA

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The Equal Opportunity for Women in the Workplace Agency (EOWA) is a statutory authority of the Australian Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). The Director reports directly to the Minister for the Status of Women and embodies the powers and functions as described in the *Equal Opportunity for Women in the Workplace Act 1999* (the EOWW Act).

EOWA's primary role is to administer the EOWW Act by working with employers to improve equal employment opportunity (EEO) for women.

The principal objects of the EOWW Act (s. 2A) are:<sup>1</sup>

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

ASX listed entities may or may not be required to comply with the EOWW Act. Under section 3.1 of the EOWW Act, relevant employer means:<sup>2</sup>

- A natural person, or a body or association (whether incorporated or not), being the employer of 100 or more employees in Australia; or
- A higher education institution that is an employer;
- But does not include the Commonwealth, a State, a Territory or an authority.

To be compliant with the EOWW Act, relevant employers are required to develop a workplace program and report on that program to EOWA. Approximately 3,000 reports are received annually covering 9,500 organisations and over one million female employees.<sup>3</sup>

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<sup>1</sup> EOWW Act 1999;  
[http://www.eowa.gov.au/About\\_EOWA/Overview\\_of\\_the\\_Act/The\\_Act/EOWW\\_Act\\_1999.pdf](http://www.eowa.gov.au/About_EOWA/Overview_of_the_Act/The_Act/EOWW_Act_1999.pdf)

<sup>2</sup> EOWW Act 1999;  
[http://www.eowa.gov.au/About\\_EOWA/Overview\\_of\\_the\\_Act/The\\_Act/EOWW\\_Act\\_1999.pdf](http://www.eowa.gov.au/About_EOWA/Overview_of_the_Act/The_Act/EOWW_Act_1999.pdf)

<sup>3</sup> EOWA current reporting data (as at 27 May 2010).

Employers should report on their workplace analysis and identify issues across the seven employment matters:<sup>4</sup> EOWA collects, analyses, and benchmarks this information.

EOWA reporting clients are then assessed as compliant, non-compliant<sup>5</sup> or waived from reporting for a specified period of time under the EOWW Act. The Act (s. 19. 1b) requires EOWA to name non-compliant organisations in a list presented annually before parliament. There is also a contract compliance policy, which renders non-complaint organisations ineligible to tender for government contracts and industry assistance.

## **Existing Business Regulation & Data collection**

The existence of equal opportunity programs in Australian organisations (with 100 employees or more) is currently regulated through the EOWW Act. The Agency sees the proposed changes to the principles as an opportunity to ensure the information reported is aligned with the information already collected by EOWA. This will ensure that there is no duplication and no increase in burden on business.

## **EOWA Research on Women in Leadership in Australia**

The **EOWA Census of Women in Leadership**,<sup>6</sup> research produces authoritative and internationally comparable statistics on women in leadership in Australia.

The Census, which has been conducted since 2003, is a study of women board directors and executive managers in the top 200 companies on the Australian Stock Exchange (ASX). This research has been conducted by Macquarie University and sponsored by ANZ Banking Group. The most recent Census was conducted in 2008.

**EOWA is currently conducting the 2010 Census and will release the results in the second half of this year.**

Other EOWA studies include:

**Top Earners Report (2007)** – analysis of pay data collected as part of 2006 Census that explores how gender interacts with Top Earner status.<sup>7</sup>

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<sup>4</sup> EOWW Act 1999, Section 8 (3); <sup>4</sup> The 7 employment matters are Recruitment and Selection; Promotion, Transfer and Termination of Employment; Training and Development; Work Organisation; Conditions of Service; Arrangements for Dealing with Sex Based Harassment; and Arrangements for Dealing with Pregnant and Potentially Pregnant Employees and Employees who are Breastfeeding.  
[http://www.eowa.gov.au/About\\_EOWA/Overview\\_of\\_the\\_Act/The\\_Act/EOWW\\_Act\\_1999.pdf](http://www.eowa.gov.au/About_EOWA/Overview_of_the_Act/The_Act/EOWW_Act_1999.pdf)

<sup>5</sup> EOWW Act 1999, S 19; A non-compliant organisation is one which: fails to lodge a public or confidential report; or fails to provide further information as requested by EOWA in accordance with S. 18 of the Act concerning any aspect of: (a) the employer's workplace program; (b) the preparation of the report; (c) the report itself.

<sup>6</sup> 2006 EOWA Australian Census of Women in Leadership;  
[http://www.eowa.gov.au/Australian\\_Women\\_In\\_Leadership\\_Census/2006\\_Australian\\_Women\\_In\\_Leadership\\_Census/2006\\_EOWA\\_Census\\_Publication.pdf](http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2006_Australian_Women_In_Leadership_Census/2006_EOWA_Census_Publication.pdf)

<sup>7</sup> Gender Income Distribution of Top Earners in ASX200 Companies (2006);  
[http://www.eowa.gov.au/Australian\\_Women\\_In\\_Leadership\\_Census/2006\\_Australian\\_Women\\_In\\_Leadership\\_Census/Top\\_Earner\\_Report/FINAL\\_REPORT.pdf](http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2006_Australian_Women_In_Leadership_Census/Top_Earner_Report/FINAL_REPORT.pdf)

**Pay, Power and Position:** Beyond the 2008 EOWA Australian Census of Women in Leadership (2009) – analysis of remuneration data of “Key Management Personnel” as defined by the Australian Accounting Standards Board standard AASB 124.9.<sup>8</sup>

**Agender in the Boardroom,** a qualitative piece which further identified and investigated some of the present issues and contradictions occurring across workplace culture, and the recruitment, promotion, training and development issues that prevent more women from being appointed to board director roles.<sup>9</sup>

## **AREAS FOR COMMENT BY EOWA**

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In developing the Agency’s Proposed Amendments to the ASX Corporate Governance Council Corporate Governance Principles and Recommendations, EOWA has made suggestions to improve the stated objectives of the principles and recommendations relating to gender diversity specifically.

The EOWA 2008 Australian Census of Women in Leadership (October 2008) indicates a limited level of female participation or representation on the boards of larger Australian listed public companies; the percentage of women on boards of the ASX top 200 companies is currently 8.3 per cent, down from 8.7 per cent in 2006. The percentage of women directors in these top 200 companies has remained within the 8 per cent range since 2002.<sup>10</sup>

The *EOWA 2008 Australian Census of Women in Leadership* also measures the percentage of women in executive management positions in the ASX top 200 companies which is currently 10.7 per cent, a decline from 12 per cent in 2006 and 11.4 per cent in 2004. Of those women, only half are in line management positions, which are considered a valuable means to gain experience for board participation.<sup>11</sup> Furthermore, the proportion of ASX top 200 companies with no women in executive management positions went up from 39.5 per cent in 2006 to 45.5 per cent in 2008.<sup>12</sup>

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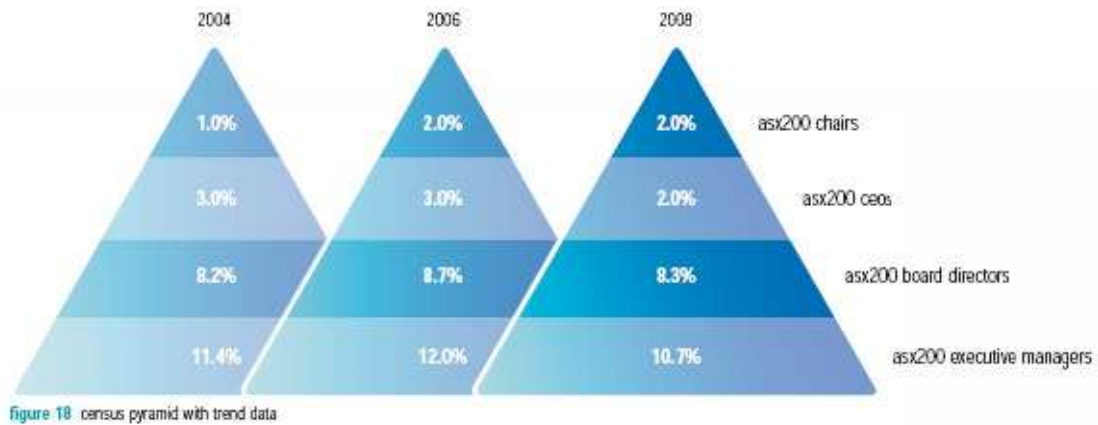
<sup>8</sup> EOWA (2009), *Pay, Power and Position: Beyond the 2008 EOWA Australian Census of Women in Leadership*, p. 23:  
[http://www.eowa.gov.au/Australian\\_Women\\_In\\_Leadership\\_Census/2008\\_Australian\\_Women\\_In\\_Leadership\\_Census/Pay\\_Power\\_Position/Pay\\_Power\\_Position\\_Report.asp](http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census/Pay_Power_Position/Pay_Power_Position_Report.asp)

<sup>9</sup> Egon Zhender/ EOWA (2008), *Agender in the Boardroom*, p.16:  
[http://www.eowa.gov.au/Australian\\_Women\\_In\\_Leadership\\_Census/2008\\_Australian\\_Women\\_In\\_Leadership\\_Census/Agender\\_in\\_the\\_boardroom/2008\\_EZ\\_Media\\_Kit.asp](http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census/Agender_in_the_boardroom/2008_EZ_Media_Kit.asp)

<sup>10</sup> 2008 EOWA Australian Census of Women in Leadership;  
[http://www.eowa.gov.au/Australian\\_Women\\_In\\_Leadership\\_Census/2008\\_Australian\\_Women\\_In\\_Leadership\\_Census.asp](http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census.asp)

<sup>11</sup> *ibid*

<sup>12</sup> *ibid*



These findings reveal that there have been no substantial changes in business that indicate that systemic improvement will take place over time. EOWA believes that the proposed changes to the ASX corporate governance guidelines are a step in the right direction to driving significant changes in these figures.

In 2010 EOWA will also be collecting information on the gender breakdown of Key Management Personnel as defined by the Australian Accounting Standards Board standard AASB 124.9. In order to maintain consistency with industry standards of reporting EOWA is recommending that the proposed changes include a requirement to collect this information.<sup>13</sup>

The EOWW Act and the Agency have recently undergone a review to examine the effectiveness and efficiency of the legislation with the aim of increasing the rate of change in Australian business in relation to gender diversity. The recommendations made by EOWA in this submission relating to compliance are subject to the outcomes of this review.

<sup>13</sup> EOWA (2009), Pay, Power and Position: Beyond the 2008 EOWA Australian Census of Women in Leadership, p. 23: [http://www.eowa.gov.au/Australian\\_Women\\_In\\_Leadership\\_Census/2008\\_Australian\\_Women\\_In\\_Leadership\\_Census/Pay\\_Power\\_Position/Pay\\_Power\\_Position\\_Report.asp](http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census/Pay_Power_Position/Pay_Power_Position_Report.asp)

## PART 2: Recommendations

### A. Diversity in candidate selection processes for board appointments

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#### EOWA Response

Agender in the Board Room (EOWA 2008) identified and investigated some of the issues relating to the recruitment and promotion that prevent more women from being appointed to board director roles. A number of Australian chairmen acknowledged that one of the barriers to women being appointed at board director level is the inability to appropriately identify experienced female directors due to the way the criteria for a new director is defined. They believed that existing board members need to change their approach to measuring women and all other potential candidates, to determine whether they will make a valuable contribution to the board.<sup>14</sup>

#### Suggested Amendments

ASX Council Recommendation 2.4,

#### EOWA Proposed Amendment (1)

In the Commentary, 'Composition of nomination committee' – last point on committee structure to be changed to "*has at least three members including one woman where possible (or is gender diverse).*"

### B. Diversity policy and proportion of women

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In order to create some consistency with existing legislation and draw attention to the existing equal opportunity requirements, EOWA believes it is important for ASX organisations to report their compliance with the EOWW Act where applicable.

EOWA has a wealth of resources and guidance on our website to help businesses implement successful gender diversity programs and as such, the governance principles could guide businesses to our site for further assistance.

With such minimal changes to the numbers of women in senior positions over the last 10 years, EOWA believes it is important for organisations to set and report on measurable numerical targets for gender diversity in the same way that organisations would set numerical targets for other areas of their business.

EOWA would also encourage ASX to require organisations to report on the gender breakdown of Key Management Personnel in addition to the other measures listed as this is a recognised definition that will create consistency in measurements across all organisations. This group of people are key decision makers and as such ensuring women are represented in these positions is an important measure of success for gender diversity programs.

#### Suggested Amendments

ASX Council Recommendation 3.2,

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<sup>14</sup> Egon Zehnder/ EOWA (2008), (A)gender in the Boardroom, pg 13

#### EOWA Proposed Amendment (2)

Add a third a sentence “Companies should establish a diversity policy and disclose the policy or a summary of that policy. The policy should include measurable objectives for achieving gender diversity. **Each company should also publish their compliance status under the EOWW Act.**

#### EOWA Proposed Amendment (3)

In the Commentary, paragraph 2 – change to “**EOWA offers information on its website about ways in which gender diversity can be measured.**”

#### ASX Council Recommendation 3.3

#### EOWA Proposed Amendment (4)

Change ‘Companies should disclose in each annual report the measurable **targets** for achieving gender diversity set by the board in accordance with the gender diversity policy.

#### ASX Council Recommendation 3.4

#### EOWA Proposed Amendment (5)

Change to ‘Companies should disclose in each annual report the proportion of women employees in the whole organisation, women in senior executive positions, **women in Key Management Personnel as defined by Australian Accounting Standards Board standard AASB 124.9 and women on the board.**’

#### EOWA Proposed Amendment (6)

EOWA recommends liaising with the Agency on the definitions of Senior Executive Manager to ensure consistency.

### **C. Executive Remuneration**

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#### **EOWA Response**

The gender pay gap for female executive managers is significant and in some positions (CEO and Finance) women earn less than half of their male equivalents. Even in positions where women are more likely to work, they earn significantly less than their male counterparts.<sup>15</sup>

Median remuneration of women in line positions is 89% that of men in line positions. For support positions, female remuneration is 63% of the male median.<sup>16</sup>

Remuneration generally increases as companies get larger (measured by market capitalisation) but it increases much faster for men than for women. Remuneration of women executives in the smallest companies is closer to parity with that of men.<sup>17</sup>

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<sup>15</sup> EOWA (2009), Pay, Power and Position: Beyond the EOWA 2008 Australian Census of Women in Leadership, p.10, available at [http://www.eowa.gov.au/Australian\\_Women\\_in\\_Leadership\\_Census\\_Tool.asp#pay](http://www.eowa.gov.au/Australian_Women_in_Leadership_Census_Tool.asp#pay)

<sup>16</sup> Ibid, p.15

<sup>17</sup> Ibid, p.16

## **Suggested Amendments**

ASX Council Principle 8

EOWA Proposed Amendment (8)

Change to: “Remunerate fairly, **equitably** and responsibly”

EOWA Proposed Amendment (9)

Change to ‘Companies should ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to performance is clear **and that a gender analysis of remuneration is undertaken.**’

ASX Council Recommendation 8.1

EOWA Proposed Amendment (10)

Add to Remuneration policy section “**Companies must report on whether their remuneration policy includes an undertaking to conduct a gender analysis of remuneration on an “if not, why not?” basis.**”

ASX Council Recommendation 8.2

EOWA Proposed Amendment (11)

The last point on committee structure to be changed to “**has at least three members including one woman where possible (or is gender diverse).**”