



## **Australian Government**

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

Submission to the  
Senate Standing Committee on Legal and Constitutional  
Affairs Inquiry into the effectiveness of the  
Commonwealth Sex Discrimination Act 1984 in  
eliminating discrimination and promoting gender equality

1 October 2008

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## **PART 1: ABOUT EOWA**

1. This part of the submission seeks to clarify to role of the Equal Opportunity for Women in the Workplace Agency (EOWA) within the framework of federal legislation addressing the elimination of sex based discrimination and equal opportunity for women.
2. EOWA's vision is to achieve equal opportunity for women in Australian workplaces. Its mission is to lead Australian employers to create workplaces where women's contribution is equally valued, recognised and rewarded by:
  - Providing education and leading edge solutions;
  - Building sustainable partnerships; and
  - Engaging community debate to increase the rate of change.
3. EOWA is a statutory authority of the Australian Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA).
4. The Directorship of EOWA is a statutory appointment made by the Governor-General of Australia. 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 Role under the Equal Opportunity for Women in the Workplace Act**

5. 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.
6. EOWA's primary role is to administer the EOWW Act by working with employers to improve equal employment opportunity (EEO) for women.
7. The functions of EOWA as stipulated in s.10 of the EOWW Act are:

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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)

- to advise and assist relevant employers in the development and implementation of workplace programs;
  - to issue guidelines to assist relevant employers to achieve the purposes of the EOWW Act;
  - to monitor the lodging of reports by relevant employers as required by the EOWW Act and to review those reports and deal with them in accordance with the EOWW Act;
  - to monitor and evaluate the effectiveness of workplace programs in achieving the purposes of the EOWW Act;
  - to undertake research, educational programs and other programs for the purpose of promoting equal opportunity for women in the workplace;
  - to promote understanding and acceptance, and public discussion, of equal opportunity for women in the workplace;
  - to review the effectiveness of the EOWW Act in achieving its purposes; and
  - to report to the Minister on such matters in relation to equal opportunity for women in the workplace as EOWA sees fit.
8. Under s. 3.1 of the EOWW Act, relevant employer means:
- A higher education institution that is an employer; or
  - 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.
9. Regulation of EEO for Australian federal government bodies is administered by the Australian Public Service Commission (APSC) under s.10 (b) (l) of the *Public Service Act 1999*.<sup>2</sup>
10. The APSC State of the Service Report is released annually reflecting the status of employment equity for women in the Australian Public Service.<sup>3</sup>

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<sup>2</sup> 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)

<sup>3</sup> Australian Public Service Commission, State of the Service Report 2006-07, <http://www.apsc.gov.au/stateoftheservice/0607/index.html>

11. The EOWW Act does not cover individual women, nor does EOWA have the capacity to address discrimination complaints.
12. When individual women contact EOWA in relation to matters directly outside of the scope of the EOWW Act, they are referred to the appropriate bodies including the Australian Human Rights Commission, the Office for Women, Women's Working Centres, and the Workplace Ombudsman.
13. The EOWW Act, formally the *Affirmative Action (Equal Opportunity for Women) Act 1986*,<sup>4</sup> was reviewed in 1993 and again in 1998. The objectives of the 1998 review were:
  - to assess whether the benefits to the community from the legislation/ regulation outweighed the costs;
  - to assess whether the objectives of the legislation/ regulation could be achieved more efficiently through other means;
  - to have regard to the effects on welfare and equity, economic and regional development, consumer interests, the competitiveness of business and efficient resource allocation; and
  - to ensure compliance costs and paperwork burden to small business be reduced where feasible.<sup>5</sup>
14. The review resulted in a name change to the EOWW Act and to EOWA signalling continued support for promoting EEO for women in Australian workplaces, operating in a facilitative capacity rather than adopting a punitive approach to compliance.
15. The review also resulted in a less prescriptive approach to reporting requirements, and the development of educative material and voluntary guidelines to assist organisations to meet those obligations.<sup>6</sup>
16. EOWA assists employers to achieve EEO through:
  - the compliance reporting process;

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<sup>4</sup> Affirmative Action (Equal Employment Opportunity for Women) Act 1986;  
[http://www.austlii.edu.au/au/legis/cth/num\\_act/aaefwa1986634/s8.html](http://www.austlii.edu.au/au/legis/cth/num_act/aaefwa1986634/s8.html)

<sup>5</sup> Affirmative Action Agency submission to the Regulatory review, Affirmative Action (Equal Employment Opportunity for Women) Act 1996;  
[http://www.eowa.gov.au/Information\\_Centres/Resource\\_Centre/EOWA\\_Publications/Submission\\_To\\_The\\_Review\\_Of\\_The\\_Affirmative\\_Action\\_Act\\_PDF.pdf](http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/Submission_To_The_Review_Of_The_Affirmative_Action_Act_PDF.pdf)

<sup>6</sup> Equal Opportunity for Women in the Workplace Amendment Act 1999;  
[http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/0/9447DF644918DB5ACA257432000EB870/\\$file/18399.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/0/9447DF644918DB5ACA257432000EB870/$file/18399.pdf)

- provision of educational services;
- communications and research; and
- building partnerships, and engaging business leaders in incentive-based initiatives.

### **Compliance reporting process**

17. Approximately 3,000 reports are received annually covering 8,200 organisations and over one million female employees.<sup>7</sup>

18. Public reports submitted to EOWA must include the following:

- a workplace profile;
- a description of the methods used to consult with staff, particularly women, and a list of the issues raised by staff in relation to the seven employment matters;
- a description of the employer's analysis of the issues in the employer's workplace relating to equal opportunity for women;
- a description of the actions taken by the employer during the reporting period to address the priority issues in the employer's workplace relating to employment matters that the employer would need to address to achieve equal opportunity for women in the employer's workplace;
- an evaluation of the effectiveness of actions taken; and
- a summary of actions to be carried out in the next reporting period.

19. Employers should report on their workplace analysis and identify issues across the seven employment matters:<sup>8</sup>

- Recruitment and selection;
- Promotion, transfer and termination;
- Training and development;
- Work organisation;
- Conditions of service;

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<sup>7</sup> EOWA Annual Report 2006-07, [http://www.eowa.gov.au/Information\\_Centres/Resource\\_Centre/EOWA\\_Publications/Annual\\_Reports/EOWA\\_Annual\\_Report\\_06\\_07/AR\\_06\\_07.pdf](http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/Annual_Reports/EOWA_Annual_Report_06_07/AR_06_07.pdf)

<sup>8</sup> EOWW Act 1999, s. 8 (3); [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)

- Arrangements for dealing with sex-based harassment; and
  - Arrangements for dealing with pregnancy, potential pregnancy and breastfeeding.
20. EOWA collects, analyses, and benchmarks this information and provides reporting organisations with feedback and advice to further enhance each organisation's equal opportunity programs for women.
  21. EOWA client consultants, skilled in managing client relationships and human resource issues, receive comprehensive training that equips them to provide tailored feedback relevant to employers' needs. Client consultants are allocated specified industries to assess in order to develop industry specific expertise.
  22. For every report assessed, client consultants telephone and email the organisation's EOWA Report Contact to provide personalised and detailed feedback on their workplace program.
  23. Should a report be initially assessed as non-compliant, client consultants work with that organisation to obtain the necessary additional information for the organisation to reach compliance status.
  24. This feedback conversation not only enhances the relationship between EOWA and reporting organisations but also provides an opportunity to discuss their individual program, ensuring that employers receive the maximum benefit of industry knowledge.
  25. EOWA client consultants also provide feedback on any areas relating to the seven employment matters where reporting organisations may be exposed to the risk of a discrimination complaint – non-transparent recruitment and promotion practices, lack of access to training in work hours for part-time staff, and lack of policy / training regarding sex-based harassment are some examples – and provide suggestions to addressing these issues.
  26. This feedback call is designed to assist clients to influence change within their organisation and to apply for Business Achievement Awards and the EOWA Employer of Choice for Women (EOCFW) citation. This feedback call is designed to assist clients to influence change within their organisation and to also to assess their readiness to apply for a waiver from annual program compliance reporting and Business Achievement Awards and the EOWA Employer of Choice for Women (EOCFW) citation.
  27. EOWA reporting clients are then assessed as compliant, non-compliant or waived from reporting for a specified period of time under the EOWW Act.

28. All CEOs from compliant organisations receive a tailored letter advising compliance with the EOWW Act and include feedback on their workplace program as outlined in their report.
29. Under s. 19 of the EOWW Act, a non-compliant organisation is one which:
  - fails to lodge a public report or confidential report;
  - or fails to provide further information as requested by EOWA in accordance with s.18 of the EOWW Act concerning any aspect of:
    - (a) the employer's workplace program; or
    - (b) the preparation of the report; or
    - (c) the report itself.
30. The EOWW 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.
31. Once a non-compliant organisation submits a compliant report their name is removed from the non-compliant list.

### **Educational services**

32. EOWA provides expertise to employers on EEO matters and provides workshops and tools to assist organisations to address these issues in their workplaces including online training and educational sessions.
33. Educational resources on equal employment opportunity for women and implementing a workplace program are not restricted to relevant employers and are made available to the public on the EOWA website as required under s. 10.1 (e) and (f) of the EOWW Act.
34. In addition, EOWA conducts workshops and other educational sessions to assist clients in developing EEO workplace programs and to educate employers on the business benefits of removing barriers to women's participation in the workforce.
35. In 2007-08, a total of 23 workshops were conducted across Australia, attracting over 200 attendees.

### **EOWA Pay Equity Tool**

36. EOWA launched the Pay Equity Tool in 2004. Available free on the EOWA website, the tool provides employers with a spreadsheet to undertake pay analysis.

37. Compatible with most payroll systems, the online tool was developed to help employers to audit and analyse the gender pay distribution throughout their workplace and to help ensure that all employees are treated equally and to thereby avoid legal action. Using the tool, employers are able to conduct a pay analysis and identify whether a pay equity disparity exists in their workplace, or even in one particular business unit.
38. The tool includes pay scenarios which help explain and direct employers to the causes of pay gaps, which have helped to educate employers about the nature of pay equity and the nature of workplace segregation. It has been promoted on State Government websites promoting issues of pay equity to business.
39. The EOWA pay equity tool has recently been enhanced by the Western Australia State Government and will be available soon via the EOWA website.<sup>9</sup>

### **EOWA Online Bullying and Harassment Prevention Tool**

40. In 2007 EOWA launched the Online Bullying and Harassment Prevention Tool, a multi-media training program delivered completely online, and designed to effectively provide staff with information on how to prevent bullying and harassment in their workplaces. Employers can purchase the tool for \$68 per person (excluding GST).
41. The training program is designed to be completed in one hour and modules include legislation, workplace behaviours, diversity, and organisational policies which can be customised specifically to the company using the tool.

### **Communications and research**

42. Education and assistance is also provided through publications and the EOWA website. Sponsorship and positive relationships with key stakeholders enable research to be undertaken and publication of other educative materials.

### Annual Survey

43. Each year EOWA conducts a short survey at the time of giving feedback on reports to monitor the issues women are facing in the workplace. Subjects have included access to flexible working arrangements, paid maternity leave, pay equity and women in management.
44. The survey also educates employers by providing options that may not have been previously thought of in addressing issues for women in their workplace.

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<sup>9</sup> Government of Western Australia, Department of Consumer and Employment Protection, *WA Pay Equity Audit Tool*, [http://www.docep.wa.gov.au/LabourRelations/PDF/Work%20Life%20Balance/PE\\_audit\\_tool.xls](http://www.docep.wa.gov.au/LabourRelations/PDF/Work%20Life%20Balance/PE_audit_tool.xls)

### Top Earner Report and EOWA Australian Census of Women in Leadership

45. Since 2002, EOWA has published the EOWA Australian Census of Women in Leadership,<sup>10</sup> a study of women board directors and executive managers in the top 200 companies on the Australian Stock Exchange (ASX).<sup>11</sup>
46. With research partner Macquarie University, using pay data collected as part of the 2006 Census, EOWA was able to examine the declared Top Earner of Specified Executives of the 180 companies which declared this information in their Annual Report. For the first time, it was possible to explore how gender interacts with Top Earner status.

### Media Campaigns

47. EOWA media campaigns position EOWA as a key voice for working women in Australia. This profile provides a platform that allows EOWA to work beside some of Australia's foremost business leaders.
48. In 2007-08, EOWA achieved at least 363 known media mentions (203 print articles and 160 radio, TV and online media).
49. These campaigns, such as the 2008 'Equal Pay Day' campaign,<sup>12</sup> generate nation-wide media interest across a range of outlets and promote community awareness and debate surrounding the barriers women encounter in the Australian workplace.

### **Building partnerships and engaging business leaders in incentive-based initiatives**

50. EOWA develops positive relationships with leading organisations and networks. Sponsorship by organisations such as ANZ, Macquarie University, and Alcoa Australia reflect the positive bridges being built between EOWA and business.
51. Revenue raised from sponsorship in 2008-09 equates to \$285,000 and this enables EOWA to produce additional educational resources and undertake research. Sponsorship revenue allows EOWA to showcase leading edge organisations.

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<sup>10</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>11</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)

<sup>12</sup> EOWA Media Release, 27/08/08, *Equal Pay Day: Women short changed at June 30*;  
[http://www.eowa.gov.au/Information\\_Centres/Media\\_Centre/Media\\_Releases/2008\\_Equal\\_Pay\\_Day/Media\\_Release.pdf](http://www.eowa.gov.au/Information_Centres/Media_Centre/Media_Releases/2008_Equal_Pay_Day/Media_Release.pdf)

### The EOWA Business Achievement Awards (BAAs)

52. EOWA's prestigious BAA event is a way of focusing attention on women in the workplace and recognising equal opportunity excellence. Nearly 500 business leaders attended the 2007 BAA event<sup>13</sup> to honour business leaders and organisations that have strategically driven the advancement of women in their workplace.

### EOWA Employer of Choice for Women Citation (EOCFW)

53. In March 2008, 99 organisations were granted the EOWA Employer of Choice for Women citation.<sup>14</sup>

54. The citation is awarded to a diverse cross-section of employers including large, small and non-traditional organisations including ANZ, American Express, Deloitte, World Vision, Uniting Care Health and the Royal Automobile Club of Victoria (RACV) Limited.

55. Organisations seeking the citation are required to submit an annual application and meet all six of the following criteria:

- 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 its people (including women);
- Educate its 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.

56. In October 2006 the EOCFW requirements were updated to reflect the progress organisations had made since the inception of the citation, and to reflect the changes that were considered to be leading practice in advancing women and removing barriers in the workplace. Organisations that no longer meet the criteria are removed from the list.

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<sup>13</sup> [http://www.eowa.gov.au/Business\\_Achievement\\_Awards/2008\\_Awards/2008\\_Awards.asp](http://www.eowa.gov.au/Business_Achievement_Awards/2008_Awards/2008_Awards.asp)

<sup>14</sup> 2008 Employer of Choice for Women List, available at [http://www.eowa.gov.au/EOWA\\_Employer\\_of\\_Choice\\_for\\_Women/Organisation\\_List\\_08.asp](http://www.eowa.gov.au/EOWA_Employer_of_Choice_for_Women/Organisation_List_08.asp)

57. From 2007, in addition to the six criteria, employers are required to meet six pre-requisites. There is no flexibility in terms of the pre-requisites and they will be regularly reviewed to reflect trends in industry and the labour market generally. The pre-requisites are:
- 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 available after 12 months' service;
  - sex based harassment education is conducted at induction for all staff, plus refresher training or update is received by all 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 identified by ABS research - additionally the organisation's overall pay gap must be less than the organisation's industry average pay based on current ABS statistics; and
  - at least 27 per cent of managers are women OR the organisation's percentage of females is greater than the industry-sector average. (This figure is based on the latest ABS data).

### **EOWA Staffing and Budget**

58. The annual appropriations for EOWA for 2008-09 are \$2.938m, plus additional revenue of \$0.466m, constituting a total operating budget of \$3.404m.<sup>15</sup>
59. EOWA's annual appropriations have increased by seven per cent in total over the last ten years, during which period, EOWA has maintained the same high level of service and delivery.
60. EOWA reporting organisations cover 23 per cent of all Australian employees, of which approximately one million or 47 per cent of these employees were women.
61. EOWA employs 19 full-time equivalent staff, with salaries representing 60 per cent of the annual cost base.

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<sup>15</sup> EOWA Annual Report 2006-07;  
[http://www.eowa.gov.au/Information\\_Centres/Resource\\_Centre/EOWA\\_Publications/Annual\\_Reports/EOWA\\_Annual\\_Report\\_06\\_07/AR\\_06\\_07.pdf](http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/Annual_Reports/EOWA_Annual_Report_06_07/AR_06_07.pdf)

## **Part 2: Issues Concerning EOWA in Submissions to the SD Act Inquiry**

62. Submissions to the Inquiry have suggested ways in which EOWA, the powers of the EOWA Director and/or the EOWW Act could be changed to give better protection against discrimination and in promoting gender equality. While the Terms of Reference to the Inquiry do not contemplate an investigation into the effectiveness of the EOWW Act, this part of the submission provides comment on these suggestions.

### **Powers to enable the Director of EOWA to refer matters to the Sex Discrimination Commissioner for possible inquiry into systemic discrimination**

63. It has been suggested that the Director of EOWA be given powers to refer matters to the Sex Discrimination Commissioner for possible inquiry into systemic discrimination.<sup>16</sup> While this suggestion may have some merit, a number of points are noted below.
64. The EOWW Act relates specifically to anti-discrimination and equal opportunity for women in the workplace and not for men.
65. While EOWA produces industry level analysis of data derived from reports submitted by employers (see for example Finance and Insurance Industry Vertical 2006<sup>17</sup>) the data is specifically focused on EEO issues and practical initiatives taken to counter these barriers and advance women's employment opportunities.
66. The approach underpinned by the EOWW Act is one of persuasion and education and not punitive action. Conferring such a power on the Director may cause significant negative response from reporting organisations and negatively impact on progress already achieved (refer to impact reported previously) whilst also confusing the two organisations' roles and responsibilities.
67. As the Australian Human Rights Commission submission to the inquiry notes, the SD Commissioner does not currently have the power to self-initiative action or investigations.<sup>18</sup> EOWA supports the Commission's recommendation that the SD Act be amended to include a broad formal inquiry function in relation to the elimination of discrimination and the promotion of gender equality but sees no need for the Director of

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<sup>16</sup>See for example, Submission No. 8: Women's Electoral Lobby; Submission No. 22 Professor Margaret Thornton, ANU College of Law, Australian National University; Submission No. 60 Collaborative submission from leading women's organisations and women's equality specialists.

<sup>17</sup> Available at [http://www.eowa.gov.au/Information\\_Centres/Resource\\_Centre/EOWA\\_Publications/Industry\\_Verticals.asp](http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/Industry_Verticals.asp)

<sup>18</sup> Formerly the Human Rights and Equal Opportunity Commission (HREOC).

EOWA to be given powers to refer matters to the Sex Discrimination Commissioner for possible inquiry into systemic discrimination.

### **Gender Equality Action Plans**

68. In its submission to the inquiry, the Australian Human Rights Commission suggests an option for strengthening the EOWW Act and/or the SD Act would be to implement the type of gender equality duty that exist in the UK for the public sector. It suggests that EOWA or the SD Commissioner be given the ability to receive voluntary gender equality action plans from bodies not currently covered by the EOWW Act.<sup>19</sup> It is further suggested that the receiving organisation be resourced to independently audit the implementation and effectiveness of Gender Equality Action Plans for compliance with the SD Act.
69. EOWA's experience in this area in the private sector is already considerable (see Part 1 – Compliance Reporting). It should also be noted that Australia has had legislation and structures in place to assess reports and workplace programs on women's equal opportunity in employment in the private sector (albeit restricted to larger businesses) since 1986.

### **Extend the coverage of the EOWW Act**

70. It has been suggested that the limited coverage of the EOWW Act to employers with more than 100 employees and the fact that relevant employers are not compelled by law to self-identify, limits the effectiveness of the EOWW Act.<sup>20</sup>
71. The 1998 Review of the then Affirmative Action Act did not recommend extending coverage to relevant employers with less than 100 employees on the grounds of increased resource burdens to small to medium sized business. However, recognising that there is evidence women tend to work in smaller businesses and that discrimination is an issue in small and medium sized businesses, the legislation was amended to enable EOWA to take into account small and medium sized businesses in its research and education functions.
72. In addition, the then Government did not agree to a recommendation of the 1998 Review that self-identification of relevant employers become an explicit requirement of the EOWW Act, preferring to adhere to a more voluntary based approach.

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<sup>19</sup> See Australian Human Rights Commission Submission No. 69, paras 730-750.

<sup>20</sup> See for example Submission No. 11 Business and professional Women of Australia; Submission No.15 National Federation of Australian Women; and Submission No. 55 Australian Council of trade Unions.

73. To do either of the above would have significant resource implications for EOWA.
74. In order to achieve wider coverage and impact within current limited resources, the following alternative approaches could be considered.

#### Biennial reporting

75. Biennial reporting was a recommendation of the 1998 Review and more recently the *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*.<sup>21</sup>
76. The EOWW Act would need to be amended to enable biennial reporting but it would mean that most employers covered by the EOWW Act would only be required to report every two years (for example half of relevant employers report in alternate years), after having been compliant with the EOWW Act for a period of time (say three consecutive years). This change would acknowledge the time required to develop, implement and evaluate EEO programs.

#### Relevant employers be required to achieve a certain standard in the requirement to consult with employees

77. In developing a workplace program, relevant employers are required to consult with employees or their nominated representatives, and particularly women employees. The EOWW Act is silent on how this should take place and employers have some discretion in how they do this.
78. One option to increase effectiveness of equal opportunity programs could be a requirement that employers undertake consultation with employees to ensure greater transparency in the reporting of programs. For example, by implementing a process where employees could provide feedback on their own organisation's report would provide an internal audit and confirmation of the report's contents.

#### Emphasis on training

79. EOWA is of the view that more could be achieved if greater emphasis was placed on eliminating discrimination in women's access to training and development and to encourage employers to adopt policies dealing with sex-based harassment, including

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<sup>21</sup> [http://www.eowa.gov.au/Reporting\\_And\\_Compliance/Rethinking\\_Regulation.pdf](http://www.eowa.gov.au/Reporting_And_Compliance/Rethinking_Regulation.pdf)

training staff on these issues. The Australian Human Rights Commission also regards training as a legitimate outcome in its complaint conciliation process.<sup>22</sup>

80. In the reporting process, EOWA encourages organisations to examine any possible discriminatory issues in the provision of training and development to staff. For example, that as part of a workplace analysis the proportion of the training budget allocated to particular occupational group may have the effect of disadvantaging women in the organisation. EOWA has adopted several approaches in this area.

#### *Compliance Reports*

81. If organisations do not indicate if they have a policy dealing with sex-based harassment or that they do regular training in this area, the Client Consultant who provides feedback on their program to them will advise them to do so, as a risk management strategy at the very least, and provide tools - either information on the EOWA online tool or a link to the Australian Human Rights Commission website whose "information for Employers" page provides information and sample policies.

#### *Applications for Waiver from Reporting*

82. To be waived an organisation needs to demonstrate that they have a policy in place, educate staff at induction in relation to their rights and responsibilities relating to sex-based harassment and have provided updated information / education to all staff including managers and casuals / contract staff in the last 2-3 years. EOWA also asks for information on outstanding cases or rulings from external courts and tribunals and if there is a case / ruling make a determination as to whether the organisation should be waived.

#### *EOCFW*

83. As for waiving but the refresher training has to have been done in the last 2 years.

### **Stronger Regulation and Procurement**

84. Submissions made to the Inquiry advocate a stronger regulatory and compliance regime around discrimination and equal opportunity.<sup>23</sup>
85. Currently, under s. 19 of the EOWW Act, sanctions for non-compliance include being named in a report that is tabled in parliament and being affected by the Commonwealth Government Contract Compliance Policy.

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<sup>22</sup> See for example, Australian Human Rights Commission submission No 69, paras 559-560.

<sup>23</sup> See for example Submission No. 55 ACTU; Submission No.60 Collaborative submission from leading women's organisations and women's equality specialists; and Submission No. 69 the Australian Human Rights Commission.

86. This means that Commonwealth departments and agencies will not enter contracts for the purchase of goods and services for non-compliant organisations and non-compliant organisations will not be eligible for grants under specified industry assistance programs.

### **Combining the functions of EOWA and the Sex Discrimination function of the Australian Human Rights Commission**

87. Combining the functions of EOWA and the Sex Discrimination function of the Australian Human Rights Commission would require specific consideration of both pieces of legislation. The SD Act is based essentially on an individualised complaint-based model concerned with equality of treatment. It requires people and organisations to desist from certain behaviours while the EOWA, through a variety of strategies, assists organisations to promote equal opportunity, specifically for women, in the business community.

88. As noted earlier in this submission, the approach underpinned by the EOWA Act is one of persuasion and education and not punitive action and this seems to be paying dividends. Feedback from major stakeholders reiterates the positive impact of EOWA's work over time as a means of changing attitudes and workplaces, and educating businesses around issues of EEO (see Attachment A).

89. In 2003 and again in 2006 EOWA commissioned an independent survey of clients. The results revealed that:

- 84% of respondents believe EOWA is effective in providing advice and information to assist improving outcomes for working women, compared to 63% in 2003;
- 42% believe the EOWA is “very effective” or “extremely effective” in providing advice and information to assist improving outcomes for working women, compared to 27% in 2003;
- 76% of businesses surveyed believe the EOWA legislation is important in keeping equal opportunities for women in the workplace issues on the business agenda in their organisation, an increase since 2003 when only 68% of organisations felt this way; and
- 74% of organisations believe the report is easy (moderately easy, very easy or extremely easy) to compile.

90. EOWA is concerned that in combining the functions of EOWA and the Sex Discrimination Unit in the Australian Human Rights Commission, the concept of equal

opportunity in employment would be lost or diluted amongst a myriad of other complex and legalistic discrimination issues.

### **Harmonisation of discrimination and equity laws**

91. The array of material available on EOWA's website to assist employers in developing and implementing EEO practices and procedures have been developed in a jurisdiction neutral way. Noting that state jurisdictions do not have similar legislation to the EOWW Act, EOWA supports the Australian Human Rights Commission's call for ongoing harmonisation of discrimination laws in Australia.

## ***Attachment A: Views of Reporting Businesses***

### **Letters to EOWA from CEOs of 2008 Employer of Choice for Women organisations**

**1)**

"We are proud to have our achievements acknowledged yet again in 2008, for creating an equal and inclusive environment for women here at Cisco.

The certificate is now on display in our Melbourne reception with the hope our industry partners and clients alike will observe it and reflect upon their own efforts in advancing women in the workplace.

I am personally dedicated to supporting Cisco's further development of the ideal EOWA Workplace and look forward to the day where awards such as these are no longer necessary."

**2)**

"The recognition we have received from EOWA over past years, which we promote to our staff, helps in identifying us as a desirable employer not only to potential employees, but to current staff and encourages us to redouble our efforts. It also helps us make clear to everyone that the University values and supports the principles of equal opportunity."

### **Submissions made to the 2008 House Standing Committee on Employment and Workplace Relations Inquiry into Pay Equity and Associated Issues Related to Increasing Female Participation in the Workforce<sup>24</sup>**

**1) Rio-Tinto (Submission #62), submitted 28/08/08:**

"The reporting requirements of the 'Equal Opportunity for Women in the Workplace Agency' (EOWA) along with the statistical activities undertaken by the 'Australian Bureau of Statistics' (ABS) provides a significant source of analytical and educational information. The objects and requirements of the *Equal Opportunity for Women in the Workplace Act 1999* mean that the EOWA is continually charged with the function of monitoring, researching and promoting pay equity matters in Australia. In this regard the EOWA already provides a range of public information in relation to pay equity issues and Rio Tinto continues to support the EOWA in their important work."

**2) Jones Lang La Salle (Submission #69), submitted 29/08/08:**

"The Equal Opportunity for Women in the Workplace Agency (EOWA) does an excellent job at holding organisations accountable for monitoring employment issues affecting women's participation in the workforce. We believe the role EOWA plays could be stronger with more specific criteria around pay equity upon which organisations are required to report. This would contribute to a more robust benchmarking base, and also demonstrate a translation of education into action."

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<sup>24</sup> <http://www.aph.gov.au/house/committee/ewr/payequity/>