

eowa

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

October 2009



Australian Government

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

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Executive Summary and Recommendations

The Agency

The Equal Opportunity for Women in the Workplace Agency (EOWA) is a statutory authority located within the portfolio of the Australian Commonwealth Department of Family, Housing, Community Services and Indigenous Affairs (FaHCSIA).

The Agency's role is to administer the Equal Opportunity for Women in the Workplace Act (EOWW Act) 1999 (Commonwealth) and, through education, assist organisations to provide equal opportunity for women. EOWA collects and analyses this information and provides reporting organisations with feedback and advice on how to further develop their equal opportunity programs for women. As of July 2009, the Agency undertook this work on behalf of 2,803 reporting organisations covering a total of approximately 8,500 parent organisations, their subsidiaries and standalone employers. The Agency thus received, entered and evaluated reports from organisations employing around 23 per cent of Australian employees.

Its resources support 13 ongoing staff and six non-ongoing staff. In addition to this, seven contractors are employed for 18 weeks; one receptor is contracted for five months and an additional three receptors are contracted for six weeks each year at the time when reports are due to be received.

The total appropriations for EOWA in 2008-09 were \$2,938,000. The Agency received additional external revenue from the sale of goods, rendering of services and business partnerships to the sum of \$682,000. These funds were used to finance research projects, produce publications and provide additional resources to assist to business address equal opportunity issues.

Rationale for the Review and EOWA's Recommendations

The Government's review of the EOWW Act and Agency takes place 10 years after the last review of the Act and 23 years after the passage of the *Affirmative Action Act* 1986. The review is necessary to ensure that both the EOWW Act and the Agency itself continue to respond to changing external circumstances and to our evolving understanding of how equal opportunity law interacts with workplace practices and organisational cultures.

The high level outcomes of the Act and its operation since 1986 are very positive.

- The introduction of pro-active legislation aimed at preventing discrimination and removing barriers to equal employment opportunity was groundbreaking at the time and remains in advance of most international developments.
- Client surveys show that employers are increasingly positive about the role of the legislation and the services provided by the Agency.

- There is data demonstrating a significant increase in equal employment policies and practices among relevant employers. This data is supported by case studies, attitudinal surveys and public commentary from employers.

However, the Agency is still reliant on organisations self-identifying before they become part of the reporting cycle and many organisations that should report currently do not. The Agency estimates that only around 65-70 per cent of all relevant employers are actually meeting their legislated responsibilities under the EOWW Act. This situation is wholly unacceptable and addressing it is one of the Agency's main priorities in this review.

In addition, the Agency's own experience with receiving reports and giving feedback indicates that the implementation of equal opportunity for women in the workplace is beginning to stall:

- The strategic approach to analysing, implementing and evaluating equal opportunity measures introduced following the 1998 review is not driving further progress in a significant number of workplaces. Nearly all employers comply with the legislation but more reports are indicative of marginal than of high level compliance (15.7 per cent and 11.1 per cent respectively), and most are only moderately compliant (73.2 per cent).
- The flexible reporting format—introduced following the 1998 review in order to enable employers to tailor their reports to individual workplace requirements—has not, as was intended, supported outcomes-based reporting. Instead, it has created uncertainty about the standards to be applied to equal opportunity programs and reports.
- Most organisational cultures continue to reflect the assumption of a male norm and as female deviations from that norm.
- 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.

Changes are required to the legislation to: ensure that all relevant employers meet their obligations under the Act; improve equal employment opportunity and pay equity outcomes in the workplace; increase the likelihood of cultural change in organisations; and support a more effective use of Agency resources. These changes involve moving to a broader gender equality focus for Agency activities and:

- substantially increasing the number of covered organisations actually reporting to the Agency ;
- replacing the current Public Report Form, which has proved difficult to evaluate and enforce, with a requirement to undertake a self-audit against a set of required

industry gender equality standards. There would be scope to provide for upward revision of these industry standards over time to reflect improved industry conditions and/or changing community expectations regarding employment arrangements. There would be a requirement to show progress in implementing further gender equality measures over time;

- making pay equity a separate employment matter; making the reporting of salaries and other pay data a mandatory part of the workplace profile (but confidential unless aggregated with other pay data); and introducing a requirement for a pay equity review and implementation program;
- introducing a requirement for organisations seeking to enter into a contract for Government procurement or industry assistance to provide a record of compliance with the Act issued by the Agency as part of their tender or application (a reverse onus approach), and to declare their willingness to be audited to confirm the content of their reports to the Agency;
- introducing a requirement to publish records of compliance with the amended EOWW Act together with a copy of the organisation's most recent report in all reporting workplaces; and
- once other changes have been bedded down, introducing the use of targeted workplace audits in organisations that are covered but currently do not submit a report and where the Agency has reason to believe there may be some misrepresentation on reports, and random audits elsewhere.

These changes—and particularly the strengthened emphasis on ensuring that organisations meet their legislated responsibility to report to the Agency—will entail changes to EOWA operating procedures as well as the current reporting form. For this reason the Agency is proposing a phased approach to implementation of its recommendations over a number of years with the introduction of workplace audits after other new arrangements are well established.

The proposals in this submission would not fundamentally change the focus of the Agency on receiving reports and providing support and feedback to reporting organisations. They would, however, extend the EOWW Act's reach to relevant organisations that are covered by the Act but are not currently reporting; support a more effective use of Agency resources; give the Agency better information on which to act; enable it to provide better information and support to reporting organisations; strengthen its bargaining position with respect to organisations that are inclined to disregard the legislation; and increase its capacity to contribute to the evidence base for Government decision-making and education activities.

These measures are also aimed at supporting cultural change by increasing the awareness and involvement of employees and relevant unions in the implementation of gender equality standards, and by increasing the seriousness with which these standards are taken at the

executive level of organisations. In addition the Agency wants to ensure that measures to support increased workplace flexibility do not close doors to women's organisational advancement at the same time that they open doors to managing work and family responsibilities. This, too, is a cultural change issue. Until more men access workplace flexibility arrangements, such arrangements are likely to be seen as 'solutions' to the 'problem' of women's employment, rather than as the means of supporting employees in managing the full range of their responsibilities.

Recognising that the workplace situation of women is bound to have implications for the workplace situation of men, and vice versa, the Agency is recommending that the Objects and possibly name of the Act and Agency acknowledge a focus on gender equality. In doing this, the Agency also recognises that the 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.

While the removal of systemic barriers to workplace equality is the longstanding focus of the work of the Agency, reconceptualising this role in terms of the intersection of gender equality is an important development and draws out the particular role of the Agency in addressing Australia's responsibilities under the Convention on the Elimination of All Forms of Discrimination (CEDAW). Article 5 of CEDAW calls upon signatories to the Convention to take all appropriate measures to 'modify the social and cultural patterns of 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 men and women'. The Agency's interest in gender equality is underpinned by its conviction that, understood as a driver of cultural change, the concept can increase the receptiveness of employers, employees and Australians generally to eliminating the stereotyping of women's and men's roles in the workplace.

The Agency also regards the concept of gender equality as necessarily embracing difference within gender, that is, recognising the scope for age, disability and ethnicity compounded with gender to create multiple barriers to advancement. Accordingly, it is recommending that the Objects of the EOWW Act be amended to recognise the importance of workplace policies and practices to address these intersections.

A full set of the Agency's recommendations follows. In making these recommendations the Agency has tried to strike a balance between serving the ends of the legislation and minimising its regulatory impact for reporting organisations. In some cases it has given its preferred approach to addressing a particular issue and then noted a less preferred approach. In doing this the Agency does not want to be understood to be endorsing the less preferred approach but rather to be arguing that some directed action is preferable to none.

Recommendations

Objects and Name of the Act

1. The Objects of the Act should be amended to recognise that the removal of sex-based barriers to equal opportunity affects both women and men, and that a concept of gender equality is necessary to foster the removal of gender stereotyped roles from Australian workplaces.
2. The Objects of the Act should also be amended to recognise the importance of workplace policies and practices to address the ways in which age, disability and ethnicity compounded with gender can create multiple barriers to women's advancement.
3. The EOWW Act and EOWA should be renamed the Workplace Equality Act and Agency, or the Women in the Workplace Act and Agency.

Section 1: Programs and Reporting

4. The current practice of providing feedback to each reporting organisation should be amended to enable the Agency to provide an in depth review and feedback to all marginally compliant organisations (in 2009, 15.7 per cent of all reporting organisations), and to a random selection of the remaining moderately compliant and highly compliant organisations (73.2 per cent and 11.1 per cent of all reports respectively).
5. Consultation arrangements for the design and implementation of gender equality measures should be consistent with those proposed for modern awards.
6. The reporting requirements of the Act should be amended to include a strengthened requirement for workplace consultation; to modify the workplace profile to use an ANZSIC/ANZSCO framework and to take in the additional data recommended in Section 4 on coverage and Section 5 on pay equity; and to make the use of the common industry profile mandatory for each organisation.
7. A changed Public Report Form should be mandated, requiring employers to complete a self-audit against a specified set of gender equality standards and measures on the basis of a yes/no/not reasonably practicable format. An initial set of gender equality standards set in discussion with industry advisory committees (see Section 9) should be made mandatory. There should be scope to provide for upward revision of equality standards over time to reflect improved industry conditions and/or changing community expectations regarding employment arrangements. There should be a requirement to show progress in implementing the further equality measures over time.
8. The proposed amendments to the Public Report Form should be accompanied by a facility for on-line reporting, and supported by a one-off injection of funds to provide the on-line facility and an underpinning data analysis facility, and to support updating the Agency's website.

9. Once it has completed reviewing an organisation's Gender Equality Self Audit, the Agency should issue a compliance record stating the organisation's compliance status and position against an industry gender equality benchmark, together with a copy of the self-audit.
10. Once an employer's Gender Equality Self-Audit has been submitted and the Agency has issued a record of compliance or non-compliance, copies of both the record of compliance and self-audit should be required to be made directly available to staff and relevant unions.
11. The mechanism for making Gender Equality Self-Audits directly available to employees should be modelled on the existing arrangements for providing employees with a prescribed 'notice of employee representational rights' under the Fair Work Act.
12. EOWA's on-line searchable database of annual reports should be retained.

Section 2: Compliance, Enforcement and Waiving

13. Routine compliance audits conducted by the OFWO involving organisations whose corporate structure employs 100 or more people should include, among other matters of interest to the OFWO, verification that compliance records and reports have been made directly available to employees and accessible to workplace unions. Where this is found not to have been done, it should be the subject of the usual compliance processes employed by the OFWO in its routine audits, including where necessary a compliance notice. Affected organisations should be able to contact the Agency for any support and assistance they might require in complying with the EOWW Act.
14. ***Organisations that refuse to submit an annual Equality Self-Audit:*** If, after receiving notice from the Agency that it will be non-compliant for failing to report within 28 days, an organisation does not report within the specified time period, it will be non-compliant with the Act. In addition, the Fair Work Act or the EOWW Act should be amended to confer appropriate powers on the Fair Work Ombudsman, enabling workplace inspectors to visit such organisations and issue compliance notices to enforce compliance. Affected organisations would be able to contact the Agency for any support and assistance they might require.
15. ***Organisations where there are reasonable grounds to suspect that there has been some misrepresentation:*** If such an organisation fails to respond to questions from the Agency or to substantiate its self-audit, the EOWW Act should be amended to enable the Agency, on its own discretion, to refer the relevant self-audit to the OFWO, which would use its powers to verify the accuracy of the self-audit. If an employer is found in the course of this audit to have made wilful misrepresentations, the Agency may determine that that employer is non-compliant with the Act.

16. The OFWO would have to be appropriately resourced to take on this additional workplace audit function.
17. **Organisations that submit Equality Self-Audits, but do not meet required industry standards:** These organisations should be given 28 days to comply with the Act, and should be able to contact the Agency for any support and assistance they may require. If after 28 days the organisation's self-audit still does not meet the required industry standard, the organisation should be made non-compliant with the Act.
18. Organisations that submit Equality Self-Audits and meet the required industry standards, but show no further progress over time: Where, following discussions with the Agency about its lack of progress, an employer does not take any action to progress gender equality within the timeframe specified by the Agency (likely to be 28 days), including demonstrating to the Agency's satisfaction that the practicability of introducing a particular measure has been exhaustively examined, that employer should be deemed non-compliant with the Act.
19. Over time, as the requirement to conduct pay equity reviews and develop pay equity implementation plans becomes part of the reporting requirement for many organisations, random audits should be introduced. Initially, these could be confined to those organisations that signalled their acceptance of the audit mechanism as part of the contract compliance mechanism, but eventually all reporting organisations should be able to be audited
20. Non-compliant organisations should receive compliance records that include the ground for non-compliance applying to the particular organisation and refer to the relevant section of the amended EOWW Act. These grounds are
 - Failure to register with the agency
 - Failure to provide an annual report within the specified timeframe
 - Failure to meet required industry standards
 - Failure to demonstrate progress in implementing further equality measures
 - Failure of specified organisations to undertake a pay equity review or develop a pay equity plan, or to take genuine action to implement such a plan (see section 5)
 - Failure to provide additional information sought (Sections 18 and 19 of the current EOWW Act)
 - Making wilful misrepresentations on the Gender Equality self-audit.
21. Non-compliant organisations should be required to make their record of non-compliance and any applicable self-audit directly available to employees and accessible by workplace unions so long as they continue to remain non-compliant.
22. Waiving should no longer occur, although the Director should retain the discretion not to name an organisation as non-compliant.

Section 3: Sanctions

23. The principal sanction for non compliance—naming in the Parliament—should be retained. It should be supplemented initially through inclusion of the record of compliance and any relevant self-audit in routine OFWO workplace inspections. Later, workplace audits could be used to ascertain and enforce compliance with the Act as a further deterrent. If the amended EOWW Act were made a workplace law for the purposes of the Fair Work Act, or if the proposed audit function were conferred on the OFWO as part of amendments to the EOWW Act, then the usual sanctions associated with OFWO compliance notices would come into play. If the amended EOWW Act were made a workplace law for the purposes of the Fair Work Act, then misrepresentations on annual self-audits would also be part of the workplace relations legislative sanctions regime.
24. Contract compliance restrictions for Government procurement and industry assistance should be amended to introduce a reverse onus approach, whereby organisations seeking to enter into a contract for Government procurement or industry assistance are required to provide, as part of their tender or application, the record of compliance with the EOWW Act issued by the Agency following its review of an organisation’s self-audit.
25. Organisations should be required as part of the tender/application process to declare their willingness to be audited to confirm the content of their reports to the Agency.
26. Governments of States not already supporting Commonwealth contract compliance for the EOWW Act should be encouraged to join those governments that have already joined themselves to the arrangements.

Section 4: Coverage

27. Rather than rationalising reporting units or extending coverage of the Act, the Agency believes 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. The Agency recommends that the Government amend the *Income Tax Assessment Act 1936* to enable it to receive an annual list of organisations whose corporate structure employs 100 or more people. Pending the introduction of such an amendment, the Agency would conduct a high profile campaign reminding all employers in this category of their responsibilities under the Act.
28. While there should be no mandated change to existing flexibility with respect to reporting units, the Agency should actively encourage employers with a large number of subsidiaries to report separately for functionally distinct operations employing more than 100 people. The process could be initiated by making this compulsory for organisations that put in an application for the EOWA Employer of Choice for Women citation.

29. While resource constraints also apply to any proposed extension of coverage to smaller employers, the Agency recommends that smaller businesses should be supported by its on-line facilities, and be able to join any Communities of Practice should they be established (see Section 7). Smaller businesses could also be encouraged or required to engage in gender equity initiatives through one or a combination of:
- reporting to the Agency, but in a shorter form confined to the workforce profile and associated pay equity diagnostic questions; and/or
 - dropping the size of reporting organisations from those with 100 or more employees to those with 80 or more employees.

The Agency could not pursue either of these proposals without additional resources.

30. Following consultation with the Public Service Commissioner, further consideration should be given to including Commonwealth agencies employing 100 or more staff among the organisations required to report under the EOWW Act.
31. Workplace profiles in the Public Report Form should be disaggregated to specify the numbers and average salaries of men and women who are Executive Managers, in line executive management position and in support executive management positions. This data would be of considerable use to the Agency in considering future EOWA Employer of Choice for Women (EOCFW) criteria.
32. The increase in report handling and feedback likely to be associated with new reporting organisations will require additional resources. The Agency would require additional funding of \$470,00 if it pursued the option of engaging all organisations over 100 employees since, based on information provided by the ABS, it would be looking at assessing an additional 1400 reports. If the EOWW Act were changed to incorporate organisations with over 80 employees, the Agency would require additional funds of \$560,000 to meet its legislative responsibilities.

Section 5: Pay Equity

33. Pay equity should be specified in the legislation as a separate employment matter.
34. The use of the EOWA Pay Equity Tool or equivalent should be a necessary part of organisations' Gender Equality Self-Audits.
- A pared-back and less preferred option is to add to the proposed EOWA reporting instrument a small set of questions found in the New Zealand reviews to be critical indicators of gender pay inequity. Data on average salary, performance pay and starting salary at each classification would be a mandatory part of the workplace profile. It would also be useful to have the average median duration of employment by classification by sex. The checklist would include a question on

whether the organisation has undertaken a formal pay equity audit; a question on whether the organisation has undertaken a formal job evaluation study and what type of evaluation was used; and a question on whether the organisation has a pay equity implementation plan in place.

35. Where the responses to the Pay Equity Tool or diagnostic questions indicate a problem (e.g. fall below a simple benchmark), more substantive equal pay reviews (including work value studies) and pay equity plans would need to be made part of an organisation's subsequent annual Gender Equality Self-Audit requirement.
36. Detailed pay equity reviews and any associated plans would not be required to be submitted to the Agency but should be available for an inspector from the OFWO, which would be enabled to conduct random audits of those organisations required to proceed with formal pay equity reviews and implementation plans, as well as audits of those organisations that declared their willingness to be audited to confirm the content of their reports to the Agency as part of the contract compliance process. Where these audits show a failure to undertake a pay equity review or to develop an implementation plan, or to take genuine action to implement such a plan, the organisation could be made non-compliant with the Act, and the OFWO would be able to issue a compliance notice.
37. Pay equity reviews and plans could be provided to Fair Work Australia or the Fair Work Division of the Federal Court by an employer as part of a defence in an equal pay case.
38. Aggregated data from organisations' Gender Equality Self-Audits should form a part of the Agency's annual report and be made available to the Equal Remuneration Commissioner (should the position be established), the Sex Discrimination Commissioner, and bona fide researchers.
39. The Agency recommends implementation of related structural changes in Section 8 on structural arrangements.
40. The Agency is aware that its proposals for integrating pay equity reporting with its annual reporting arrangements would have to be deferred to the later stages of implementation of its broader package of reforms. For what could be achieved in the interval, the Agency refers the Review to its recent recommendation to the Parliamentary Pay Equity Inquiry that EOWA be funded to run a three year targeted industry campaign conducting voluntary gender pay equity audits. The recommendation suggested that such a campaign might focus on specific industries each year, identifying a group of organisations that have a pay gap greater than the industry average (and any organisations wishing to participate) and assisting employers to develop pay equity plans to lower the gap.
41. The Agency also reiterates its recommendations to the Parliamentary Pay Equity Inquiry for a community education program addressing the nature of the gender pay gap and the means and value of addressing it:

- A nation-wide community education program on pay inequity should be developed and implemented to increase awareness of the gender pay gap, further heighten debate and promote positive change throughout Australian workplaces, across all states and industries. Men, women, employees and employers should have access to such a program.
- Targeted education of young people in schools about the gender pay gap should be considered.
- The community education program should include addressing the belief that women risk being further discriminated against in a workplace environment that seeks to ensure that women are paid equally to men for equivalent work. This belief should neither manifest in reality, nor be used as a reason for arguing against steps being taken to address gender pay inequity.

Section 6: Data collection and management

Data coverage

42. The coverage of the requirement to report to the Agency should be extended consistent with the recommendations in Section 4.

Data collection

43. The data reported to the Agency should be enhanced consistent with the recommendations of Section 1 on reporting, and Section 5 on pay equity.

Section 7: Education and Promotion

44. The Agency believes that its education function would be greatly enhanced by the capacity to support a Community of Practice (CoP) for human resource practitioners with a focus on identifying and implementing gender equality measures and practices. Its direct involvement in the CoP would be limited to the provision and maintenance of the necessary IT networking site, securing a threshold level of involvement from practitioners, and ensuring that the contents of the site continue to comply with the Australian Public Service Commission's Circular 2008/8: 'Interim protocols for on-line media participation'. The Agency regards the CoP as a resource for practitioners, and not a promotional tool. Once established, a working CoP would emphasise member autonomy, direct exchange, practitioner-orientation, and informality. It would cost free to members and accessible to all practitioners. Establishing a CoP would involve a one off cost.
45. On-line training should be made available to HR practitioners who are intending to make use of the Agency's on-line tools. While this assistance would not replace the Agency's

workshops, self-paced IT learning modules would support a more effective application of sexual harassment and pay equity tools and findings, particularly for practitioners in regional areas.

46. Medium and small businesses should be able to access any Community of Practice and on-line tools made available by the Agency, as well as benefiting from its broad-based employer campaigns.
47. Gender Equality Self-Audits and compliance records should be required to be made directly available to staff, consistent with the recommendation in Section 1.
48. The data set associated with the proposed new reporting arrangements should be made available to the Minister for the Status of Women, the Office for Women (OfW), the Sex Discrimination Commissioner (SDC), and Fair Work Australia (FWA) for presentations and publications on a broadened range of gender equality matters. It should also be a resource for the academic community.
49. Equal Pay Day should continue to be used as a means of encouraging community discussion of and involvement in gender equality issues. Agency data on flexible work provisions might be used to underpin a similar event reflecting men's access to particular flexible working arrangements.

Section 8: Structural arrangements

50. On balance, the Agency's structural position should depend on any new functions the Government may give to it following the present inquiries.
51. If any enhanced enforcement function is confined to OFWO verification of the distribution of EOWA compliance records and reports, the Agency would continue to benefit from its current status as a stand-alone statutory agency, while at the same time building stronger operational links with FWA and the OFWO in particular. For this reason it should be in the DEEWR portfolio.
52. If, however, the Agency were to get strengthened enforcement (i.e. audit) arrangements, including a role in mandated action on pay equity, then it would have to develop its own audit capacity or rely on the OFWO. In the latter case the privacy and other legal considerations involved would be most easily addressed by moving the Agency at that later stage into FWA. The model proposed by the Agency is the same as that currently in place for the OFWO, with day-to-day operations practically integrated with FWA, and separate governance arrangements.

Section 9: Advisory Committees

53. It is recommended that, as part of its conduct of the review, the Office for Women use the proposed consultative roundtables to establish the views of employers and employer organisations regarding the proposal the Agency be resourced to re-institute advisory committees, and to do so on an industry basis.

Background to the Operation of the Act

Economic benefits of equal opportunity for women

Since the close of the Second World War a solid body of evidence has been developed that demonstrates that closing the gender equality gap is good for the effective operation of the labour market and the development of the economy as a whole.¹ Most recently, this evidence has focussed on the scope for increased labour force participation by women to offset the economic impacts of the aging of the Australian population.

Over the next forty years the number of Australians aged 85 and over will go up by a factor of five—seven times for men, and four times for women. This very significant demographic shift will, as the 2002 Intergenerational Report (IGR) noted, have a dramatic impact on both the economy and the Commonwealth Budget. Government finances are likely to come under pressure as costs of pension and health care subsidies for the aged increase. At the same time, economic growth is likely to slow so long as, and to the extent that, overall workforce participation begins to slow as the workforce ages.

Over the past three decades there has been a rise in the overall workforce participation rate of Australian women. In fact, this has been one of Australia's most significant social trends. In 1986, 59 per cent of women aged 18-44 years were employed. By 2006, 70 per cent of women this age were employed. By contrast, employment of men aged 18-44 years remained at 84 per cent in each period.² When the employment framework is considered, women's increased workforce participation thus far has been built largely on a mix of measures to increase the flexibility of the labour market (such as the increased availability of part-time and casual employment) and equal opportunity measures (such as increased child care provisions, improved access to and increased return from maternity leave, and flexible start and finish times).³ Recent economic modelling has predicted that boosting women's participation even further could realise an increased national output of \$98.4 billion by around 2040.⁴ On the other hand if women's labour market participation were to level off at current rates, the Australian workforce would be smaller still than that predicted by the IGR,

¹See for example, the range of documents on gender equality and economic outcomes across both developed and developing countries at <http://www.oecd.org/document/59/0,3343,en_21571361_38039199_38172347_1_1_1_1,00.html>.

² ABS, Australian Social Trends, Cat. No. 4102.0 (2008), available at <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4102.0Chapter3202008>>.

³ On the supply side, the Productivity Commission has cited the impacts of cultural change; greater educational attainment; lower fertility rates; and increased productivity in domestic chores; on the demand side, it has also cited the switch to a services-based economy. See Chapter 5 of the Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, Report no. 47, 2009.

⁴ Access Economics, *Meeting Australia's ageing challenge: the Importance of Women's Workforce Participation*, A report for the House of Representatives Standing Committee on Family and Human Services Inquiry into Balancing Work and Family, November, 2006, ii.

⁵ and Australia could fall short of achieving even the modest long term economic outcomes identified in the report.

Benefits to employers of equal opportunity for women

The coverage of the EOWW Act is limited to employers whose corporate structure in total employs 100 or more employees; the number of organisations actually meeting their legislative responsibility to report to the Agency is a subset of this subset. Consequently the impact of the legislation on those organisations that do report cannot be derived from national data sets. In addition, the flexibility of the current reporting format means that the Agency is limited in collecting and collating comparable data from all organisations that meet their legislative obligation to report.

EOWA does, however, encourage organisations to gather their own cost-benefit data, and provides tools to help employers to establish these costs and benefits, including increased productivity; reduced absenteeism and turnover; improved rates of women in management and in non-traditional roles; increased access to quality part-time roles; and reduction or elimination of discrimination-related complaints. It also publishes individual organisations' cost benefit analyses and evaluations of the impact of equal employment opportunity measures on their business outcomes.⁶ In addition, EOWA has some survey data that provides an indication of the cost-benefits of particular measures. For example, over 98 per cent of surveyed organisations reporting to EOWA with part-time managers said their company had experienced benefits as a result of these arrangements, including increased productivity and efficiency (71 per cent), higher morale and job satisfaction (91 per cent), and good staff relations (92 per cent).⁷

There is a question as to whether the EOWW Act itself is important in keeping equal opportunity issues for women on the agenda in individual businesses—or whether the 'business case' effectively makes itself. When asked, organisations have tended to support the view that the legislation itself has an important role to play in keeping EO on organisational agendas. In 2003, 68 per cent of respondents to the Agency's client survey agreed that the legislation played such a role. By 2006, 76 per cent agreed, 29 per cent very strongly.⁸

⁵Loc. cit., ii-iii.

⁶ <http://www.eowa.gov.au/Case_Studies.asp>.

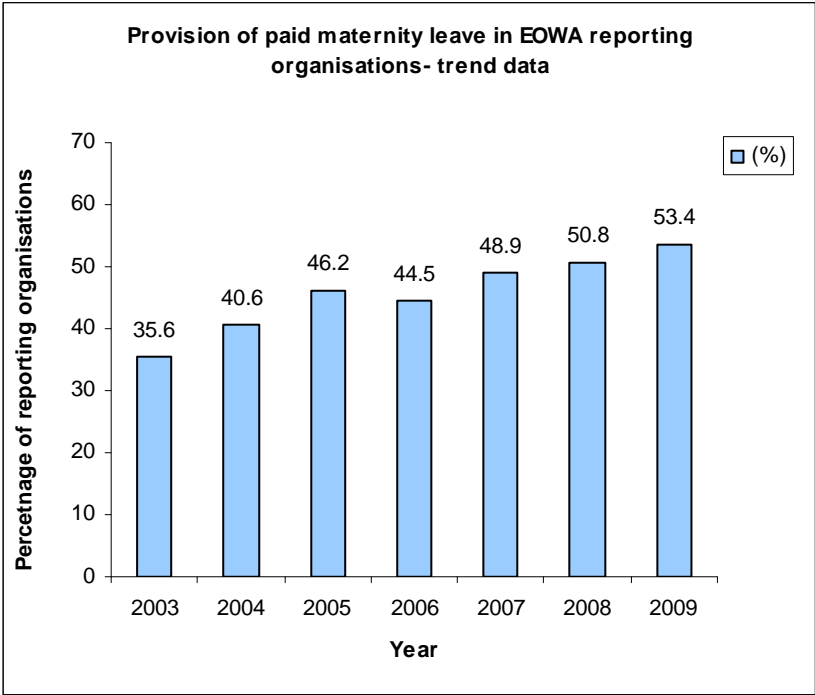
⁷ EOWA (2004), Work/Life Flexibility Survey 2003, available at; http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/EOWA_Surveys.asp

⁸ ACA research, *Equal Opportunity for Women in the Workplace: Research into Service Delivery*, [PowerPoint presentation], 2006. This is a significant increase on the response to a similar question asked during a survey taken as part of the 1998 review of the Act (33 per cent agreed).

Benefits to employees of equal opportunity for women

EOWA uses information it collects from reporting organisations to build a data set to measure progress in workplace programs over time. This data is gathered from the feedback calls made by Agency client consultants to reporting organisations. The responses address a limited number of data items each year, but these are by this time sufficient to enable the Agency to begin to benchmark some key equal opportunity developments. We know, for example, that the percentage of reporting organisations offering paid maternity leave has increased from 35.6 per cent in 2003 to 53.4 per cent in 2009 (see Figure 1).

Figure 1: Provision of paid maternity leave in surveyed EOWA reporting organisations



Source: *EOWA Survey Data 2003-2009*

We also know that some flexible working arrangements have increased between 2003 (when the Agency first surveyed reporting organisations on this topic) and 2007 (see Table 1). The increasing availability of these arrangements applies to all of the types of flexibility considered in the survey, although managerial employees remained much less likely than general staff to have access to both part-time work and job sharing, while the reverse applied to the ability to work from home.

Table 1: Comparison of flexible working arrangements in EOWA surveys, 2003 and 2007

	Managers 2003	Managers 2007	Non- managers 2003	Non- managers 2007
	(%)	(%)	(%)	(%)
Flexible hours	73	87	80	88
Work from home	55	75	45	59
Work compressed hours	13	27	25	40
Use family carers leave	84	97	89	94
Use child care	6	11	7	12
Work part-time	43	58	94	95
Job share	10	15	52	57

Source: EOWA Workplace Flexibility Survey 2003 and 2007

While it is not possible to draw a direct line between the overall increase in these provisions in reporting organisations and the operation of the EOWW Act, it is possible to provide some indication of the links between the Act and employer initiatives by reference to the Agency’s own effectiveness surveys, conducted in 2003 and again in 2006. When asked about the Agency’s role in providing advice and information to assist in the improvement of outcomes for working women, more than two in five organisations rated EOWA as ‘very effective’ or ‘extremely effective’. This represented an increase of 15 per cent from the 2003 survey.

Emerging Issues

Is there a role for government in continuing to regulate to achieve equal employment opportunity for women? Can regulation drive cultural change?

Despite some significant gains in the implementation of equal opportunity practices and policies—especially around work and family and workplace flexibility more generally—there are some areas where inequalities appear entrenched. These are the areas of pay equity and the promotion and advancement of women to senior levels, which some analysts have found to be negatively related to gains in workplace flexibility. That is, ‘equal employment opportunity now provides a means to maintain the current industry culture through the encouragement of flexible employment practices which allow women to move in and out of organisations as their family needs dictate but which may further limit their access into the management levels.’⁹ Such flexibility may even result in systemic discrimination through poor quality employment for women in lower classifications, and those who are part-time or casual.

There is considerable data to support the view that pay and leadership are areas where gender inequalities appear to be entrenched.

- The pay gap starts from the moment women leave university, with female graduates earning on average \$2,000 per annum less than male graduates.¹⁰
- Women earn 83 cents for every dollar men earn, and indeed the mining boom saw a widening gap, especially in WA.¹¹
- If current earning patterns continue, the average 25 year old male would earn \$2.4 million over the next 40 years while the average 25 year old female would earn \$1.5 million.¹²
- Disadvantage widens over a life time. In 2005-06, average retirement pay-outs were around \$136,000 for men and about half of that—\$63,000—for women.¹³ Women are

⁹ Erica French and Glenda Strachan, ‘Equal opportunity outcomes for women in the finance industry in Australia: Evaluating the insurance Industry’, *Asia Pacific Journal of Human Resources*, 2007, 45(3), 326. See also Glenda Strachan, John Burgess and Lindy Henderson, ‘Equal Employment Opportunity Legislation and Policies: the Australian Experience’, *Equal Opportunities International*, 2007, 26(6), 525–540. and Pocock on *part-time work*

¹⁰ GradStats, Number 13, December 2008, available at <<http://www.graduatecareers.com.au/content/view/full/24>>.

¹¹ The gender pay gap based on Average Weekly Ordinary Time Earnings (AWOTE) for full-time adults has increased by 1.0 percentage point from 16.4 per cent in May 2008 to 17.4 per cent in May 2009. See the ABS Average Weekly Earnings (Cat. No. 6302.0) for seasonally adjusted figures.

¹² AMP-NATSEM, ‘She works hard for the money: Income and Wealth Report’, Issue 22, p. 32, at <<http://www.amp.com.au/vgn-ext-templating/v/index.jsp?vgnextoid=bdb250665a6cc110VgnVCM1000002930410aRCRD>>.

¹³ Ross Clare, *Retirement Savings Update*, The Association of Superannuation Funds of Australia, Sydney, 2008, 3 available at <<http://www.superannuation.asn.au/Reports/default.aspx>>.

two and half times more likely to live in poverty in their old age than men—by 2019, on average, women will have half the amount of superannuation that men have.¹⁴

- Women who are full-time managers have been found to earn 25 per cent less than their male counterparts. Decomposition methods show that between 70 and 90 per cent of this earnings differential cannot be explained by a large range of demographic and labour market variables. In fact, as much as 70 per cent of the gap is ‘simply due to women managers being female’.¹⁵
- The proportion of women in line executive management positions in ASX200 companies has decreased from 7.4 per cent in 2006 to less than six per cent in 2008.¹⁶ These are the positions that produce the future CEOs and top executives.
- The number of female board directors in ASX 200 companies has decreased from 8.7 per cent to 8.3 per cent over the last two years.¹⁷

There is a growing view that the common factor behind these entrenched inequities is the failure to bring about cultural change in organisations, and that the need to access flexible working arrangements can be an inhibitor of such change. Senior women have argued that:

We have achieved the necessary legal frameworks, complaints systems and formal training programs that we saw as keys to change but need to acknowledge that these have been insufficient in changing for example assumptions, particularly in workplaces, about appropriate female behaviour, real acceptance of lives and responsibilities outside the workplace, or other aspects of gendered private/public differences.

We had been hoped that women's increasing participation in senior ranks would result in changing models of leadership, that institutions would become more responsive to work/life balance, and that organisational cultures would cease to valorise long hours and increased work intensity. In practice, relatively few women

¹⁴ Queensland Government, “Women and Superannuation”, Focus on Women, Office for Women, Information Paper 3, 2009, available at <<http://www.women.qld.gov.au/resources/focus-on-women/>>.

¹⁵ Ian Watson, ‘The gender wage gap within the managerial workforce: an investigation using Australian panel data’, 2009 HILDA Survey Research Conference at the University of Melbourne, 17 July 2009, 28, available at <http://www.ianwatson.com.au/pubs/IanWatson_HILDA_paper_5june09.pdf>.

¹⁶ EOWA (2008), *EOWA Australian Census of Women in Leadership 2008*, 12, available at <http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census/Media_Kit/EOWA_Census_2008_Publication.pdf>.

¹⁷ Ibid, 5.

made their way into senior leadership roles, and those few were constrained to adapt to existing organisational cultures rather than change them, as had been hoped.¹⁸

As the wider political changes of the 1980s and 1990s increased the focus on promoting the business case for equal employment opportunity, many genuine equal employment initiatives—especially those around work and family and flexibility—came increasingly to be framed by an emphasis on the bottom line that was not supportive of cultural change within organisations. If it was good for efficiency to make the best use of possible resources, then increased efficiency, and not a culture of equality, was the driver of scheme design. Little wonder, then, that client consultants at the Agency report a lack of understanding within reporting organisations of the analytical and strategic development of workplace equal opportunity plans (see Section 1 on reporting). Little wonder, too, that the emphasis in most organisations has been on flexibility and not on the culturally more difficult areas of occupational segregation, women's advancement and pay equity.

The EOWW Act was intended to encourage organisations to engage with cultural change through a format that called for a rolling forward process of workplace data collection, analysis, action, evaluation and the setting of priorities. However, in many cases reports only really capture individual initiatives, and many organisations continue to take such initiatives outside a broader strategic framework. The Act was also designed to encourage continuous improvement in organisational culture by enabling the Director of the Agency to waive the requirement for annual reporting for organisations that could demonstrate they had done all that was 'reasonably practicable' to implement equal opportunity for women in the workplace. In 2009, 116 organisations were waived out of a total of 2,574 reporting organisations.

Beyond the provisions of the EOWW Act itself, the Agency encourages organisations to embrace cultural change by offering them the option of applying for certification as an EOWA Employer of Choice for Women. Employers seeking this certification are required to exceed the standards to be met for waiving. They are required to exhibit outcomes for women and demonstrate an organisational culture that is broadly and strategically supportive of equal opportunity. While EOWA Employer of Choice for Women certification is a supplement to the existing regulatory framework, it offers a very useful indicator of where the Act could take companies that are committed to ongoing improvement. To receive certification as an EOWA Employer of Choice for Women, an organisation must meet six pre-requisites:

- 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;

¹⁸ Eva Cox (2002), 'Have separate rights based claims for equal opportunity reached their use by date?', prepared for the Equal Opportunity Practitioners in Higher Education Keynote Address, 2002.

- sex-based harassment training is conducted at induction for all staff members (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 citation. 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 2,574 reporting organisations received the EOWA Employer of Choice for Women certification. Relatively few organisations 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.

The Agency is recommending a number of changes to the regulatory framework for reporting and enforcement that are intended to take employers beyond simple compliance. These changes include results-oriented reporting; a formal expectation of progress over time; a 'reverse onus' requirement to demonstrate compliance with the legislation in order to access Government procurement contracts or industry assistance; and, over time, the introduction of targeted audits in relevant but non-reporting organisations and where the Agency has reason to believe there may be some misrepresentation on reports, and random audits for all reporting organisations. The Agency is also recommending a number of education and promotion measures to encourage and support the shift from basic

compliance to cultural change. These include an important new requirement for organisations to make their reports, together with the Agency's record of compliance, directly available to their staff and accessible to unions at the workplace. Hitherto, reports have been publicly accessible, but only on the agency's website and for those who know that reporting occurs and where to look for a copy. This recommendation proposes a simple mechanism for increasing the seriousness with which more marginal organisations take their reporting responsibility, and for engaging employees directly in issues of cultural change.

All of these measures not only take into account the need to move beyond basic compliance but also reflect a number of changes to the regulatory environment that affect equal employment opportunity.

New factors to be addressed

- *Regulatory change: employment law*

There have been a number of changes to the regulatory environment since the EOWW Act was last reviewed in 1998. Principal among these is the recent history of changes to other employment-related law.

Introduced in 2005, the Workplace Relations Amendment (Work Choices) Act encouraged flexibility in individual workplace arrangements, with few minima that could not be removed or modified by a workplace agreement and significant prohibitions and restrictions on the number and types of matters that could be specified in awards. This has been succeeded by the Fair Work Act, which took effect in July 2009,¹⁹ and establishes a set of entitlements underpinning employment relations.

Most of the entitlements established in the Fair Work Act, and the manner of their implementation, are critical to embedding equal opportunity at the workplace. These include matters established through the National Employment Standards (such as maximum weekly hours of work, the right to request a flexible working arrangement, parental leave and related entitlements, annual leave, personal/carer's leave and compassionate leave, community service leave, and public holidays) and an additional 10 minimum conditions of employment that may be incorporated in awards (namely, minimum wages, types of employment, arrangements for when work is performed, overtime and penalty rates, annualised wage or salary arrangements, allowances, leave-related matters, superannuation and procedures for consultation, representation and dispute settlement).

The number of these entitlements, the implementation options they open for employers, and their importance for the growth of gender equality, underpin the Agency's recommendations

¹⁹ The bulk of the new system came into force at this time. On January 1, 2010, the new National Employment Standards (NES) and modern awards will come into effect.

in Section 1 for a simplified Public Report Form based on a progressive approach to applying gender equality policies and entitlements.

The Fair Work Act has also put in place a number of machinery of government changes that are relevant to the Agency's recommendations. Fair Work Australia (FWA) has been made a single point of contact for matters arising in relation to the federal system. FWA oversees award setting and modernisation, including any award-based discrimination, and may have an expanded equal remuneration function. Discriminatory terms are unlawful and cannot be included in enterprise agreements or in individual flexibility arrangements made under an enterprise flexibility clause, and FWA cannot approve an enterprise agreement that includes such a clause. Fair Work Divisions are being created in the Federal Court and Federal Magistrates Court that will be able to address more complex discrimination cases referred to them by the Office of the Fair Work Ombudsman (OFWO).

The OFWO itself has a discrimination remit for its investigation, advising and promotion activities. Its inspectors are able to investigate and enforce breaches of 'safety net contractual entitlements' where they are investigating or seeking compliance with the National Employment Standards, a modern award, enterprise agreement, workplace determination, equal remuneration order or minimum wages order in relation to that employee. They have powers that include the power to inspect and copy documents and records on an employer's premises. While the OFWO has separate governance arrangements, its day-to-day operations are practically integrated with Fair Work Australia.

The Agency is recommending closer links with FWA and the OFWO in Section 8, if these are found to be necessary following the implementation of its proposed recommendations regarding the scope and operation of the Act.

- *Regulatory change: procurement*

In addition to making changes to employment law, the Government has also amended section 44 of the Financial Management and Accountability Act 1997 to define 'proper use' of Commonwealth resources to mean efficient, effective and ethical use that is not inconsistent with the policies of the Commonwealth. The Government has also circulated an Australian Government Procurement Statement²⁰ which advises that Commonwealth agencies will be responsible for ensuring that suppliers and their sub-contractors comply with a set of principles derived from the Fair Work Act. The intention is to 'support the creation of quality jobs and decent work by ensuring that procurement decisions are consistent with the...Act.'²¹ There is also a new emphasis on 'whole of life' procurement—meaning that agencies are to consider longer term detrimental social or environmental effects as imposing prohibitive costs on procurement. The introduction of such an emphasis signals an intention to support

²⁰http://www.financeminister.gov.au/media/2009/docs/Australian_Government_Procurement_Statement.pdf

²¹Loc.cit.

socially inclusive and ethical organisational cultures in order to build long term economic sustainability.

Contract compliance is already a settled feature of the sanctions arrangements applying to compliance with the EOWW Act. Nevertheless, the amended Finance regulation and the guidance that accompanies it signal an intention to use Government procurement to encourage organisational cultural change in employment policies and practices. In operational terms, the new procurement arrangements should give the contract compliance policy a clearer context and higher profile among agency procurement staff and the organisations with which they deal. Nevertheless, so far as its application to reporting organisations is concerned, the current contract compliance mechanism is dependent on the Agency's listing of non-compliant organisations in its annual report and on its website. This means that organisations that should be reporting but have not made themselves known to the Agency are not subject to the sanction of being unable to access Government contracts and industry assistance. The Agency is recommending (in Section 3) that all organisations seeking to access such contracts or assistance be required to submit as part of the tender/application process a record of compliance issued by the Agency as part of the reporting process each year..

- *Regulatory change: new commitments and ongoing reviews*

In addition to settled regulatory change, the Government also has a number of new commitments and ongoing reviews—in addition to the review of the EOWW Act—in place that are likely to result in both legislative and machinery of government change.

In 2008, the Productivity Commission was asked to examine paid maternity, paternity and parental leave and better ways to support families. Following the Commission's report, the Government has introduced a paid maternity, paternity and parental leave scheme available to parents for births and adoptions that occur on or after 1 January 2011.²² Parents will be able to lodge claims from 1 October 2010. As part of the scheme, employers are to act as 'paymasters' for most employees. Such a scheme design should assist in naturalising a culture of work/family support, as well as offering considerable practical assistance to working families and to employers who want to retain employees who are also new parents for the longer term.

The Sex Discrimination Act has also been reviewed to ensure that it is effectively addressing discrimination and harassment, and the Government is formulating its response to the recommendations of the Senate Committee that undertook the review. At the same time, a House of Representatives Inquiry is undertaking an investigation into pay equity and associated issues related to increasing female participation in the workforce. Both of these reviews are likely to have a direct impact on the activities or machinery of government with which the Agency interacts. The Pay Equity Inquiry is examining, inter alia, the scope for

²² <http://deewr.gov.au/Ministers/Gillard/Media/Releases/Pages/Article_090512_183005.aspx>

EOWA's reporting and data collection functions to contribute to narrowing gender wage differentials. Any recommendation it may make with regard to a specialist Equal Remuneration Commissioner in Fair Work Australia will also have implications for EOWA's data collection. A number of the matters raised in the Inquiry into the operation of the Sex Discrimination Act are also directly relevant to the functions and location of EOWA.

The Agency has made submissions to both Inquiries.²³ Its recommendations in Section 5 in relation to pay equity and in Section 8 in relation to structural arrangements develop these submissions in the light of the enhanced scope for change offered by this review. Depending on the timing of the Parliamentary report on pay equity and the Government's response to the Inquiry into the operation of the Sex Discrimination Act, the Agency may seek to make a supplementary submission to this review.

- *A Gender Equality focus*

The report of the Senate Standing Committee on Legal and Constitutional Affairs into the Effectiveness of the Sex Discrimination Act 1984 refers to eliminating sex-based discrimination on one hand, and on the other promoting gender equality through removing systemic barriers to equality for men and women. It is important to be clear that, while discrimination can be targeted at women, gender equality and the removal of systemic barriers is about equality of opportunity for both men and women.

Many workplace cultures and expectations are, for example, not supportive of family-friendly arrangements for fathers. The Longitudinal Study of Australian Children has recently found that nearly two thirds of fathers thought they had missed out on taking part in home or family activities because of work responsibilities.²⁴ Many in the current generation of fathers want the opportunity to play a more active role in family and community life,²⁵ but the numbers of men able to work part time to better share the care of young children is still small. The 2009 Australian Work and Life Index reports that over the past year (and notably prior to implementation of the new formal 'right to request' enacted through the Fair Work Act 2009 from 1 Jan 2010), just over one in five Australian employees had made a request for a change in work arrangements for a period of more than a month. The rate of requests was found to have been highly gendered: almost twice as many women as men made a request:

²³ <http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/EOWA_Inquiry_Submissions.asp>

²⁴ Michael Alexander and Jennifer Baxter, "Impacts of work on family life among partnered parents of young children, (based on the first wave 2000-2001 of the Longitudinal Study of Australian Children)", *Family Matters*, Australian Institute of Family Studies, Melbourne, Summer 2005 (72), 20, available at <<http://www.aifs.gov.au/institute/pubs/fm2005/fm72/ma.pdf>>.

²⁵ G Russell, L Barclay, G Edgecombe., J Donovan, G Habib, H Callaghan, and Q Pawson, *Fitting Father's Into Families: Men and the Fatherhood Role in Contemporary Australia*, a report for the Department of Family and Community Services, Canberra, 1999; Department of Families and Community Services, *A Report on the Qualitative Research into Parents, Children and Early Childhood Services*, FaCS, Canberra, September 2003; S Wilson (ed), *Australian social attitudes: The first report*, University of NSW Press, Sydney, 2005; B Pocock and J Clarke, *Can't Buy Me Love? Young Australians' views on parental work, time, guilt and their own consumption*, Discussion Paper No. 61, Australia Institute, Canberra, 2004.

29.1 compared to 16.3 per cent.²⁶ Nearly 73 per cent of women had their requests fully agreed to, compared to 62.3 per cent of men.²⁷

So long as sustained flexible working time arrangements are gendered in demand and accessibility, they are likely to be viewed as a response to the 'problems' arising from women's workforce participation. They are also likely to open a door to workplace flexibility while closing the door to organisational advancement. If a legislated right to request flexible working arrangements encourages more men to make such requests, and if the legislated requirement that employers treat such requests reasonably means that rates of agreement are high, the new provision may make a significant longer term contribution to both workplace cultural change gender equality.

The newly legislated 'right to request' is one sign of a growing recognition in Australia as well as overseas²⁸ that limiting women's employment opportunities also limits men's opportunities. Reducing the industrial and occupational segregation of women opens new industries and occupations to men. Making workplace flexibility the norm and not an exception increases fathers' opportunities to be hands-on carers and nurturers. Improving women's choices and earning capacity reduces pressures on men to be sole or principal breadwinners.²⁹ Clearly, the barriers to equality are not the same for women and men; the strategies for responding to them are not likely to be symmetrical; and the emphasis must continue to be on women while at the same time encouraging broader access to and use by men of measures to support caring responsibilities. Nevertheless, it is important to recognise that so long as gender stereotyping persists, the workplace situation of women is bound to have implications for the workplace situation of men, and vice versa.

The removal of systemic barriers to workplace equality is the longstanding focus of the work of the Agency. Reconceptualising this role in terms of the intersection of gender equality is an important development and draws out the particular role of the Agency in addressing Australia's responsibilities under the Convention on the Elimination of All Forms of Discrimination against Women. The Agency recognises that CEDAW, unlike the Sex

²⁶ Barbara Pocock, Natalie Skinner and Reina Ichii, *Work, Life and Workplace Flexibility: The Australian Work and Life Index 2009*, Centre for Work + Life, University of South Australia, 2009, 54, at <http://www.unisa.edu.au/hawkeinstitute/cwl/default.asp>.

²⁷Ibid., Section 8,

²⁸ The new right to request is similar in general terms to UK law, to provisions in the Netherlands, Germany and most recently New Zealand, although there are some important variations between countries. See Sarah Charlesworth and Iain Campbell, 'Right to request regulation: A panacea for work/family imbalance?' Non-refereed proceedings of the 21st Conference of AIRAANZ, Melbourne, 6-8 February 2008 at http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/S0SP6/upload_binary/s0sp63.pdf;fileType=application/pdf#search=%22HZ0%20media%20speech%22.

²⁹ See Ian Watson, John Buchanan, Iain Campbell and Chris Briggs, *Fragmented Futures: New Challenges in Working Life*, Federation Press, Sydney, 2003, 84-92, where it is argued that some 'family friendly' flexibility is gained alongside increasing hours for full-time workers so the practices can be pulling in opposite directions.

Discrimination Act, is an asymmetric Convention that targets women. However, CEDAW also recognises (Article 5) that the removal of all forms of discrimination entails changing ‘the social and cultural patterns of 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 men and women’.³⁰

The Agency’s interest in gender equality is underpinned by its conviction that, understood as a driver of cultural change, the concept can increase the receptiveness of employers, employees and Australians generally to the aim and approaches of equal employment opportunity. There is much to be done to break down gender stereotyping and the vertical and horizontal segregation of men and women at the workplace; much to be done to reduce pay inequity; and much to be done to take work and family ‘to the next step’, including rethinking job design and the full-time/part-time work distinction. Each of these involves cultural as well as systemic change. Accordingly, the Agency is recommending a change to the Objects of its Act to recognise the conceptual importance of gender equality in cultural change around equal employment opportunity.

There is also considerably more to be done in developing policies and practices that respond to the fact that age, disability and ethnicity compounded with gender can create multiple barriers to women’s advancement. The Agency believes that this need should also be recognised in the Objects of the Act.

The Agency has long been aware of the desirability of a change to the name of the Act and the Agency itself. Both names are regarded inside and outside the Agency as unwieldy. The Agency sees value in stressing the need for gender equality in the workplace in its name but also wants to be clear that its focus must continue to be on women while encouraging broader access to and use by men of measures to support caring responsibilities. It is recommending that Government consider either the Workplace Equality Act and Agency, or the Women in the Workplace Act and Agency.

The expression ‘equal opportunity for women’ is used in the remainder of this submission principally to refer to the operation and effect of existing arrangements.

Recommendations

- The Objects of the Act should be amended to recognise that the removal of sex-based barriers to equal opportunity affects both women and men, and that a concept of gender equality is necessary to foster the removal of gender stereotyped roles from Australian workplaces.

³⁰ See, for example, discussion by Sandra Fredman, ‘Beyond the Dichotomy of Formal and Substantive Equality: Towards a New Definition of Equal Rights’, in Ineke Boerefijn, Fons Coomans, Jenny Goldschmidt, Rikki Holmat, and Ria Rolleswinkel (eds) *Temporary Special Measures: Accelerating de facto Equality of Women under Article 4(1) UN Convention on the Elimination of all forms of Discrimination Against Women*, Oxford, Intersentia, 2003, 116-117.

- The Objects of the Act should also be amended to recognise the importance of workplace policies and practices to address the ways in which age, disability and ethnicity compounded with gender can create multiple barriers to women's advancement.
- The EOWW Act and EOWA should be renamed the Workplace Equality Act and Agency, or the Women in the Workplace Act and Agency.

Review of the Act

1. Programs and reporting

Background

Under Section 3(1) of the Act, 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.

Before establishing a program, employers are required to confer responsibility for the development and implementation of the program on a person with sufficient authority and status within the organisation to act properly, and to consult employees or their nominated representatives (section 8(1)(a) and (b)). In preparing the program itself, employers are required to compile a profile of the composition of their workforce, followed by an analysis of equal opportunity issues in the organisation in relation to a set of employment matters (section 8(2) and (3)). The employment matters specified in the Act at section 3(1) are:

- (a) the recruitment procedure, and selection criteria, for appointment or engagement of persons as employees;
- (b) the promotion, transfer and termination of employment of employees;
- (c) training and development for employees;
- (d) work organisation;
- (e) conditions of service of employees;
- (f) arrangements for dealing with sex-based harassment of women in the workplace;
- (g) arrangements for dealing with pregnant, or potentially pregnant employees and employees who are breastfeeding their children.

A program itself must provide for actions taken in relation to the issues identified in the employer's analysis, and an evaluation of the effectiveness of those actions in achieving equal opportunity for women in the employer's workplace. In later years, an employer's preparatory analysis could be assumed to draw on the previous year's evaluation of the effectiveness of the actions taken.

Overall, the design of the legislation was intended to support a set of actions taken as part of a strategic plan developed out of a strategic analysis. Over time, this would become a rolling analysis, with each year's evaluations feeding into the following year's analysis of issues to be

addressed. The reports that employers are required to submit to the Agency contain key elements of the overall strategic plan: program preparation (the profile and analysis); the program itself (the actions undertaken); a post-program evaluation of the effectiveness of those actions (which can be submitted confidentially); and the actions planned for the following year (section 13(2) and (3)).

EOWA collects and analyses this information and provides reporting organisations with feedback and advice on how to further develop their equal opportunity programs for women. As of July 2009, the Agency undertook this work on behalf of 2,803 reporting organisations covering a total of approximately 8,500 parent organisations, their subsidiaries and standalone employers. The Agency thus received, entered and evaluated reports from organisations employing around 23 per cent of Australian employees. Its resources support 13 ongoing staff and six non-ongoing staff. In addition to this, seven contractors are employed for 18 weeks; one receptor is contracted for five months and an additional three receptors are contracted for six weeks each year at the time when reports are due to be received.

Receptors receive reports and enter organisation-relevant data into the Agency's database. Reports are then referred to reporting assessors/client consultants. These client consultants—both ongoing and non-ongoing—have a background in managing client relationships and human resources; they also receive comprehensive Agency-based training that enables them to provide tailored feedback relevant to employers' needs. Client consultants are allocated specified industries to assess in order to develop industry specific expertise.

For each of the nearly 3000 reports assessed, client consultants telephone and email the relevant organisation's designated report contact to provide detailed feedback on their program as outlined in their report. Should a report be initially assessed as non-compliant, client consultants work with an organisation to obtain the necessary additional information for the organisation to reach compliant status. EOWA client consultants also provide feedback on any areas relating to the seven employment matters where reporting organisations can further develop equal opportunity initiatives including where they 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 or training regarding sex-based harassment are some examples—and provide suggestions for addressing these issues.

The feedback call is intended to assist human resource staff to influence change within their organisations. The Agency also uses it to assess an organisation's readiness to apply for a waiver from the annual program of compliance reporting, and its eligibility to apply for Business Achievement Awards and the EOWA Employer of Choice for Women citation.

Considerations

The analytic and strategic approach to equal opportunity implemented following the previous review was aimed at giving employers more flexibility and more scope for innovation in the way they addressed equal employment opportunity for women. It was accompanied by a reporting format aimed at giving employers more flexibility in the way they met their reporting requirement. Over time, the Agency has become concerned that the flexibility that was built into the 1999 Act has created uncertainty among employers about the standards to be applied both to their equal opportunity programs (i.e. their analysis, actions and evaluations) and to their reporting. This uncertainty has been reflected in employers' reports and has often meant that the Agency may not have a clear basis for evaluating many programs.

Like the Agency, most employers do not appear to have found the flexible reporting format useful. Under existing arrangements, they are able to devise any reporting format that addresses the employment matters identified in section 3(1) of the Act and suits their HR practices. In practice, it is estimated that more than three quarters of compliance reports are currently submitted using a version of the optional Public Report Form provided by the Agency.³¹ Even then, feedback from participants in EOWA workshops suggests that employers prefer the Waiving Application format³², which calls for specified information on each employment matter, to the compliance Public Report Form, which contains open text boxes to be filled in at the employer's discretion.³³

More fundamentally, the analytical and evaluation activities called for by the legislation demand a level of attention from employers that has proved hard to sustain over time, particularly in organisations with overstretched human resource staff. Analysis can become perfunctory (eg 'same issues identified as last year') and evaluation can default to routine formulas (eg 'no complaints received'). This means that in practice human resource staff are responding only to a requirement to report on any actions that have been taken with respect to each employment matter. In many cases the reporting of actions suggests that they are being retrofitted into a largely notional equal opportunity program. Strachan has argued, following an analysis of reports made to the Agency, that 'the lack of direction in the form

³¹The form is available at

<[http://www.eowa.gov.au/Reporting_And_Compliance/What do I Need to Include/Public Report Form.asp](http://www.eowa.gov.au/Reporting_And_Compliance/What_do_I_Need_to_Include/Public_Report_Form.asp)>.

³²http://www.eowa.gov.au/Waiving/Waiving_Application_Package/2009_Waiving_Application_Package_Word_%20Final_Word_Doc.doc.

³³ Information that is requested by EOWA for waiver applications is kept confidential including all information on turnover, sex-based harassment complaints and return to work rates from paid maternity leave.

leads to the conclusion that many organisations do not have a cohesive program but lump in a number of issues that they think may be relevant.’³⁴

In the current program and reporting model, employers that report having identified ‘no issues’ with respect to an employment matter may feel that they are not required to take any actions with respect to that matter. Because they do not provide a substantive report on why they have ‘no issues’ the Agency is obliged to either accept their decision to take no actions or to initiate a further exchange with the employer. It is time consuming and resource intensive for the Agency to pursue the latter option for each employment matter.

If, on the other hand, the Agency accepts a marginal report one year, it is badly placed to ask for a more substantive report the following year. Indeed, the Agency has found in the past that some employers have recycled reports from previous years. When this is discovered, the Agency staff work with the employer to obtain updated information relevant to the current reporting year. However, given resource constraints, not every report from the previous year can be compared to the current year’s report to determine if it is the same version.

There is a lack of guidance in the EOWW Act in terms of specifying a standard on the amount of information that should be provided in an employer’s analysis of their workplace in determining EO issues, or the extent to which the Agency can direct an employer to take action. Because the Agency prefers not to ‘name’ employers where some action has been implemented, EOWA staff work with ‘initially non-compliant’ employers seeking further information to achieve a compliance rating. This can lead to complacency and lack of effective action by employers.

Raising reporting standards is resource intensive for agency staff, particularly given the flexibility inherent in the reporting requirements and the lack of specificity and weakness of the compliance framework. More generally, the Agency is not resourced to clarify or substantiate claims made in each report or to undertake a comparative review of an organisation’s reports over time. These problems are likely to be exacerbated if the number of covered organisations actually reporting increases significantly, consistent with the recommendations in Section 4. Accordingly, the Agency is making recommendations to simplify reporting and the evaluation of reports. It is also recommending that the current practice of providing feedback to each reporting organisation be changed, to enable it to provide an in depth review and feedback to all marginally compliant organisations (in 2009, 15.7 per cent of all reporting organisations), and to a random selection of the remaining moderately compliant and highly compliant organisations (73.2 per cent and 11.1 per cent of all reports respectively).

In addition to enabling the Agency to deploy its feedback support in a more targeted and substantive fashion, this approach would also enable it to build a desktop audit expertise and

³⁴ Glenda Strachan, ‘EOWA Roundtable Are we getting there? Measuring Change at Work’, PowerPoint presentation, Roundtable Discussion on the Review of the Equal Opportunity for Women in the Workplace Act hosted by the Women and Work Research Group at the University of Sydney, 4 August 2009.

make more constructive use of its capacity to request additional information where such information is required to enable it to perform its function effectively. Such desktop audit expertise would also assist both the Agency and reporting organisations to make the transition to the workplace audits recommended for a later stage of compliance reforms proposed in Section 2. It would also enable the Agency to conduct feedback throughout the year—rather than during the weeks between reporting at the end of May and finalisation of the Agency’s annual report in September, as at present—while maintaining the current settled and predictable reporting cycle for employers. Finally, the Agency is proposing a number of on-line support facilities to support those organisations that are not selected for review and feedback in a particular year (see Section 7).

These changes to feedback processes would be supported by a simpler Public Report Form that would assist in the assessment of organisational reports. Two of the reporting requirements on the existing form are already simple, and reflect two steps that must be taken by employers before developing a workplace program. These are the requirement under section 8(1)(a) of the current Act to confer responsibility on a sufficiently senior individual, and the requirement under section 8(1)(b) for organisations to consult with employees (or their nominated representatives), particularly employees who are women, prior to developing a workplace equal opportunity program. The requirement on the Public Report Form corresponding to the latter provision in the Act asks employers to specify how they have consulted with staff, and offers such examples as ‘surveys, focus groups, EO committee etc’. Taking into account the importance of consultation processes to fostering cultural change, and bearing in mind the vagueness and generality of a significant number of organisational reports on their consultation processes, the Agency believes that existing consultation requirements should be strengthened consistent with consultation provisions in the Fair Work Act.

Under the Fair Work Act modern awards commence on 1 January 2010, and every such award will contain a standard consultation clause dealing with the requirements for employers to consult with employees and their representatives where the employer intends to implement significant changes at the workplace. Other consultation requirements apply when employees request flexible working arrangements, in the context of good faith bargaining, where employers intend to dismiss more than 15 employees at once, and in the health and safety context.³⁵ These provisions focus on the content rather than the means of consultation: employers must inform affected employees and their representatives, discuss the proposed changes with them and then give prompt consideration to matters raised by the employees and their representatives in relation to the changes. The Agency believes that the same process should be followed in the design and implementation of gender equality measures.

³⁵ See Fair Work Ombudsman, Best Practice Guide Consultation & cooperation in the workplace <http://www.fwo.gov.au/Best-Practice-Guides/Documents/02-Consultation-and-cooperation-in-the-workplace.pdf>

The third requirement associated with preparing a workplace program and reporting under the current Act (at section 8(2)) is the requirement to compile an organisational profile. The Agency is proposing to retain this reporting requirement with some modifications to the content of the organisational profile. Most of these modifications are canvassed in Section 5 on pay equity. The most significant remaining modification would be the use of ANZSCO classifications for collecting occupational data. At present the Agency uses ANZSIC industry classifications, but relies on classification groupings that have been developed in-house for each particular industry. This format is no more flexible for employers in an industry than ANZSCO, but is much less useful for aggregated data analysis than the formally recognised ANZSCO classifications. The Agency recognises that using one digit ANZSCO classifications would not yield industrially meaningful data or data that could be used as an indicator of possible pay equity issues. It believes, however, that there is scope to develop a classification framework that uses ANZSCO classifications that are meaningful for industry workplace profiles.

With these modifications, these three existing requirements (to confer responsibility, to consult, and to prepare an organisational profile) would remain and would be a mandatory part of reporting. However, instead of then asking for a flexible and discursive report on actions taken, the Agency could require organisations to undertake an annual self-audit of the type currently used in occupational health and safety jurisdictions and also by the Fair Work Ombudsman. The Agency has already developed voluntary instruments in a self-audit format: a Workplace Analysis Toolkit,³⁶ a Bullying and Harassment Tool,³⁷ a Pay Equity Tool,³⁸ and the Waiving Application referred to above. The proposed self-audit form (which would be called a Gender Equality Self-Audit) would require employers to provide information on the availability of a number of workplace policies and practices supporting equal opportunity in relation to the legislatively specified employment matters, along the lines of EOWA's current Workplace Analysis Toolkit (an extract is at Attachment 1). Employers would simply be required to indicate whether or not they had such arrangements or practices in place: responses would be one of: yes/ no/ not reasonably practicable. A drop down box would be provided for employers who nominate 'not reasonable practicable' to enable them to clarify why this was the case in the employer's particular circumstances.

In the Agency's view, those organisations that undertake a strategic approach to their equal opportunity actions would continue to do so, and those that do not would continue not doing so. However, all organisations would be required to make and report actual progress over time against a specified number of concrete gender equality measures. Rather than

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<http://www.eowa.gov.au/Developing_a_Workplace_Program/Six_Steps_to_a_Workplace_Program/Step_1/Workplace_Analysis_Toolkit.asp>

³⁷ The bullying and harassment tool is available from the Agency on a user pays basis.

³⁸ <http://www.eowa.gov.au/Pay_Equity/Pay_Equity_Audit_Tool/Tool.asp>

assuming that employers will begin with a gender equality strategy, this approach relies on the interaction of equality practice with organisational culture, with each progressively shaping the other, on the model of turning a ship.

The advantages of the Gender Equality Self-Audit are that:

- It would greatly simplify reporting for employers, clarifying what equal opportunity workplace arrangements fit under what employment matters, and replacing the requirement for a narrative with a simple tick-a-box format.
- It would greatly simplify the reporting process for the Agency. Data entry could be streamlined; and employers could be easily provided with a clear benchmark of their equal opportunity performance relative to other employers in the industry or generally.
- It would support a requirement for organisations to make and show progress over time. An initial set of gender equality standards set in discussion with industry advisory committees (see section 9) could be made mandatory. There would be scope to provide for upward revision of required equality standards over time to reflect improved industry conditions and/or changing community expectations regarding employment arrangements. There would be a requirement to show progress in implementing further equality measures over time.
- While it would not enable the Agency to take into account the strategic framework in which an initiative had been adopted, in many cases that information is not being provided at present. Instead, the Gender Equality Self-Audit would provide clear information on what arrangements and practices are actually in place to support gender equality, and what other arrangements and practices should be considered to achieve equal opportunity in individual workplaces.
- The Agency's data collection could be more substantive: it would not only be able to collate workplace profile data but also to provide collated data on a range of workplace flexibilities and gender equality practices in organisations covered by the Act; for example, reports could collect data on the implementation of the newly legislated 'right to request' in organisations covered by the Act. Confidential earnings data could be removed as at present.
- The dramatic improvement in the Agency's data collection would also improve its capacity to evaluate overall progress under the legislation and to provide an evidence base for relevant Government decision-making.
- The Agency could continue to collect valuable case study material through applications for the EOWA Employer of Choice for Women certification; in addition

the new Public Report Form could provide an optional text box for employers that wish to use it to highlight particular initiatives.

- If the proposed amendments to the Public Report Form were accompanied by a facility for on-line reporting, the Agency's data entry activities could be significantly reduced. This would release some resources to enable the Agency to address those employers who are covered by the Act but are unknown to the Agency and ignore their responsibilities under the legislation.
- As well as being very useful to employers, the benchmarking facility offered by the new data set would enable the Agency to target its feedback to those employers who were marginally compliant or making little or no progress over time. This capacity would be important if the number of covered organisations actually reporting were to be substantially increased.

The identification of a set of required gender equality standards would mean that demonstrated action would have to have been taken in order to achieve even minimal compliance. While the Agency is proposing to identify these required industry standards in consultation with industry advisory committees, the full set is likely to be common to all reporting organisations and to require a range of workplace policies (eg a sexual harassment policy) and practices (eg sexual harassment training). In addition to these required standards, organisations will be expected to make progress over time in implementing a number of gender equality measures including additional policies and practices, and specified terms and entitlements, eg access to certain flexible conditions, or top-ups to paid maternity leave. The Agency would be able to establish industry benchmarks around numbers of employers making certain entitlements available to their employees and the range of employees eligible to access these entitlements, including lower level and casual employees.

Once an employer's Gender Equality Self-Audit had been submitted and considered, the Agency would issue a compliance record that indicated whether or not the organisation was compliant with its obligations under the Act and set out the position of the organisation against an industry benchmark. Organisations would have to make these records of compliance, and the relevant Gender Equality Self-Audit, directly available to employees and accessible by workplace unions. This practice should ensure that the new simpler reporting process is more transparent than the previous process, in which reports could be prepared and submitted at head office level for a number of subsidiaries without employees becoming aware of either the reports themselves or their existence on the Agency's On-line Searchable Database of Reports. Under the proposed new arrangements employees could be made aware of the gender equality measures and other flexibility options in place in their organisation. The Gender Equality Self-Audit format would illustrate the benefits of these

measures for the workforce generally, particularly with respect to flexible working arrangements.

The mechanism for making Gender Equality Self-Audits directly available to employees could be modelled on the existing arrangements for providing employees with a prescribed 'notice of employee representational rights' under the Fair Work Act. Compliance with the requirement to make the compliance record and report directly available to employees and at the workplace could become part of the routine compliance audits conducted by the OFWO.³⁹ In this way unions would also have direct access to the report itself and would be advised of a range of gender equality measures that might form part of any future bargaining agenda.

The Agency would require a one-off injection of funds to provide an on-line reporting facility and to upgrade its database and website (costings for these will be provided in a supplementary submission).

Recommendations

- The current practice of providing feedback to each reporting organisation should be amended to enable the Agency to provide an in depth review and feedback to all marginally compliant organisations (in 2009, 15.7 per cent of all reporting organisations), and a random selection of the remaining moderately compliant and highly compliant organisations (on 2009, 73.2 per cent and 11.1 per cent of all reports respectively).
- Consultation arrangements for the design and implementation of gender equality measures should be consistent with those proposed for modern awards.
- The reporting requirements of the Act should be amended to include a strengthened requirement for workplace consultation; to modify the workplace profile to use an ANZSIC/ANZSCO framework and to take in additional data recommended in Section 4 on coverage and Section 5 on pay equity; and to make the use of the common industry profile mandatory for each organisation.
- A changed Public Report Form should be mandated, requiring employers to complete a self-audit against a specified set of gender equality standards and measures on the basis of a yes/no/not reasonably practicable format. An initial set of gender equality standards set in discussion with industry advisory committees (see Section 9) should be made

³⁹ The Fair Work Act imposes an obligation on an employer to take reasonable steps to provide employees with a prescribed 'notice of employee representational rights' as soon as practicable after bargaining commences. The regulations (Fair Work Regulations 2009, regulation 2.04) set out a number of non-exhaustive ways that the notice can be provided to employees. These include: emailing the notice (or an electronic link to the notice) to the employee's work email address and displaying the notice in a 'conspicuous location at the workplace that is known by and readily accessible to the employee'.

mandatory. There should be scope to provide for upward revision of equality standards over time to reflect improved industry conditions and/or changing community expectations regarding employment arrangements. There should be a requirement to show progress in implementing the further equality measures over time.

- The proposed amendments to the Public Report Form should be accompanied by a facility for on-line reporting, and supported by a one-off injection of funds to provide the on-line facility and an underpinning data analysis facility, and to support updating the Agency's website.
- Once it has completed reviewing an organisation's Gender Equality Self Audit, the Agency should issue a compliance record stating the organisation's compliance status and position against an industry gender equality benchmark.
- Once an employer's Gender Equality Self-Audit has been submitted and the Agency has issued a record of compliance or non-compliance, copies of both the record of compliance and the self-audit should be required to be made directly available to staff and relevant unions.
- The mechanism for making Gender Equality Self-Audits directly available to employees should be modelled on the existing arrangements for providing employees with a prescribed 'notice of employee representational rights' under the Fair Work Act.
- EOWA's on-line searchable database of annual reports should be retained.

2. Compliance, Enforcement and Waiving

Background

The EOWW Act requires the Agency to assess whether or not reports meet minimum compliance standards, and whether or not they are indicative of an organisation that is eligible to be waived from its reporting requirements.

Under section 19 of the 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 section 18 of the EOWW Act concerning any aspect of the employer's workplace program, the preparation of the report, or the report itself.

There are 12 non-compliant organisations in 2009. These are organisations that are both covered by the legislation and known to the Agency and are serial offenders for the most part.

Organisations seeking to have their reporting requirement waived for a period of up to three years need to have complied with the Act for a period of three consecutive reporting years prior to applying for waiving. They also need to demonstrate that they have analysed their workplace to identify the equal opportunity issues for women relating to each employment matter, and taken all reasonably practicable measures to address each matter. They are asked to provide in their workplace profile, the average salaries of men and women at all levels of the organisation, and an analysis to explain any identified gaps as well as actions planned to reduce them. One hundred and sixteen organisations were waived from reporting for one, two or three years in 2009.

Considerations

At present non-compliance is associated with the failure to provide information rather than any clear basic standard of equal opportunity provision. The Agency has found that some marginal employers regard the existing standard for non-compliance as contestable, and that the sanctions for non-compliance offer only a weak incentive for some organisations to comply with the law.

The Gender Equality Self-Audit provides a means of clarifying the standards required for compliance with the Act. Employers who have reported having no equal opportunity issues may do so because they indeed have none; because they do not recognise those equal opportunity issues that they do have; or because they have chosen to misrepresent actual workplace practice. The use of a clear and factual self-audit format should help employers to understand what gender equality measures are, and whether they have put into practice any of those that are specified on the form and whether they are also reasonably practicable.

The introduction of a simple self-audit mechanism would also simplify and clarify the standard set by a requirement to make progress over time in implementing gender equality measures. The Agency's early report rating system and subsequent research have shown that even from the beginning, a significant proportion of organisations have pursued compliance but not anything more:

The grading of reports in the 1990s showed that companies found the level of compliance with which they were most comfortable. Approximately one quarter of these organisations were satisfied to meet the letter of the law by supplying a minimal report but in reality did little or nothing to advance EEO.⁴⁰

Analysis of reports receiving performance ratings during the 1990s suggested that 'there has been no great move for organisations to gain a higher rating, and the proportion of firms located within the three levels of assessment remained relatively stable.'⁴¹ More recently, an analysis of reports in the finance sector has found that there, at least, 'a proportion of organisations respond with programs that address equity issues in a minimal fashion.'⁴² The Agency's own data for 2009 shows that 15.7 per cent of all reporting organisations were marginally compliant; 73.2 per cent were moderately compliant; and 11.1 per cent were highly compliant.

One model for responding to this situation is offered by the Canadian *Employment Equity Act 1995*. Under that legislation, relevant organisations must prepare an annual report on their employment equity data and activities, with compliance audited by the Canadian Human Rights Commission in a two-phase process. The preliminary assessment phase consists of evaluating the employer's compliance with the nine statutory requirements of the Act. The secondary assessment phase focuses on how effectively the employer has made reasonable progress towards implementing its Employment Equity Plan.

A two-stage compliance framework of this nature for a revised and renamed EOWW Act would support graduated progress in the implementation of gender equality measures where such measures are reasonably practicable. Following an initial Equality Self-Audit undertaken in the first year of the operation of the amended EOWW Act, the Agency could set required industry standards in consultation with Industry Advisory Committees. Thereafter, an organisation would be required to meet those required standards and also to demonstrate

⁴⁰ Glenda Strachan and Erica French, 'The Equal Opportunity for Women in the Workplace Agency: Equality for Women under an Individualised Employment System', in G Michelson, S Jamieson and J Burgess (eds.) *New Employment Actors: Developments from Australia*, Bern: Peter Lang, 2008, p. 11.

⁴¹ Glenda Strachan, John Burgess and Anne Sullivan, 'Affirmative Action or Managing Diversity—What is the future of Equal Opportunity Policies in Organisations?' <http://www98.griffith.edu.au/dspace/bitstream/10072/1895/1/23456_1.pdf>.

⁴² Glenda Strachan, John Burgess, Lindy Henderson, 'Equal employment opportunity legislation and policies: the Australian experience', *Equal Opportunities International*, 26(6), 2007, 525-540.

at least minimal progress in implementing further gender equality measures in the workplace. This could be done through the implementation of a single additional measure on the Self-Audit form, or through a genuine investigation of the practicability of such a measure even where that measure had subsequently been found to be impracticable.

If the Agency received a Gender Equality Self-Audit and determined that it did not meet the required industry standards it would, at present, raise the matter with the relevant employer. If the Agency received a Gender Equality Self-Audit and determined that while it met the required industry standards, it did not show further annual progress in implementing equality measures, it would also raise the matter with the relevant employer. In both cases the self-audit form should provide the basis for a conversation about measures that may be taken to bring the employer into compliance with the Act, including actions taken to investigate the practicability of introducing a particular measure. Where an employer did not take any action within the timeframe specified by the Agency, that employer would become non-compliant with the Act. The employer's Gender Equality Self-Audit would still be required to be made directly available to employees and would be required to be accompanied by the Agency's compliance record noting that the employer is not compliant with the legislation. In this way employees and their unions would receive information about the nature of gender equality measures that their employer was unwilling to consider.

While the Agency believes that the concept of a reasonably practicable measure is highly serviceable in assisting both it and employers to make judgements about what can or cannot be done in a given workplace, it is not convinced that it should pursue waiving against that or any other standard. The self-audit form is intended to keep the agenda and the requirement for *annual* progress before employers without making the reporting process itself labour intensive. Experience within several organisations suggests that the EEO agenda can disappear following the waiver of the need to prepare and present an annual report. The function of acting as an incentive to good practice—the rationale for the introduction of waiving—has shifted to EOWA Employer of Choice for Women certification. Waiving also presents a significant resource issue for the Agency and because it periodically removes the reports of highly compliant employers from the system would have the effect of lowering the overall industry benchmark.

Standards for the EOWA Employer of Choice for Women certification would be set and revised in consultation with Industry Advisory Committees (see Section 9).

While the Agency believes that waiving should be dispensed with, it believes that the Director should retain the discretion not to name an organisation as non-compliant.

- *Role of the OFWO*

EOWA is a small agency, with few resources, no enforcement mechanism and weak sanctions. The reporting mechanism being proposed is based on OH&S and OFWO self-audit models; but unlike these models the Agency does not have the resource of an inspectorate to enforce compliance. Instead it is dependent to a large extent on involving employees and unions in supporting their employers in the introduction of gender equality measures and verifying the accuracy of gender equality reports. In order for them to do this, they need access to appropriate information. The consultation requirement and the proposed requirement to publish compliance records and completed reports are intended to give them that information.

The Agency is proposing in the first instance to seek the support of external auditors only to ensure that employees and their representatives have access to compliance records and the employer's Gender Equality Self-Audit. Once the new reporting format, required industry standards and coverage arrangements have been bedded down, the number of reporting organisations should have increased substantially, and the Agency anticipates that there will be a need for increased involvement by the OFWO in auditing compliance with the Act.

Initially, the Agency is proposing only that the routine compliance audits conducted by the OFWO involving employers of 100 or more people include among other matters verification that compliance records and reports have been made directly available to employees and accessible to workplace unions. Where this has not been done, it could be the subject of the usual processes employed by the OFWO in its routine audits, including where necessary a compliance notice. Affected organisations would be able to contact the Agency for any support and assistance they might require in complying with the EOWW Act. Unless employers persist in a refusal to comply, there should be no resource implications for the OFWO as the Agency could provide OFWO inspectors with explanatory material concerning the EOWW reporting requirement. There should be no privacy issues, as there would be no need for inspectors to report back to the Agency.

The Agency anticipates that it should be approximately four years before the new Public Report Form, required industry standards and coverage arrangements are in place and familiar to employers (see Section 10 on the phased implementation process). Once this has been settled and the Agency is working with a significantly larger number of employers, its effectiveness would be increasingly dependent on audit support. We understand that it is likely to take an equivalent period of time for the OFWO to bed down its changed activities under the Fair Work Act, but anticipate that that process would have been largely completed before the Agency's own changed arrangements are in place and it requires additional audit support.

The Agency is proposing that organisations that will not meet the legislative requirement to return a Gender Equality Self-Audit would as a consequence become liable to an external audit by the OFWO. Workplace inspectors would be able to visit organisations that refuse to

report and issue compliance notices to enforce compliance. These organisations would be able to contact the Agency for any support and assistance they might require in meeting the terms of the compliance notice. So long as an organisation remained non-compliant with the Act, it would be required to make its record of non-compliance available in the same way that compliant organisations make them available. In this way employees and their unions would receive information about the employer's refusal to comply with the provisions of the legislation.

In the unlikely event that the Agency is contacted by an employee who disputes the veracity of a report that has been received and certified as compliant, the Agency could decide to contact the relevant employer to discuss the matter raised, while preserving the confidentiality of the complainant. The organisation may choose to substantiate the information it has provided. Where there has been a misunderstanding, it may choose to amend its report. If it fails to respond or to substantiate its' Gender Equality Self-Audit, the Agency may determine that there is a constructive role for the OFWO to conduct a workplace audit to verify its accuracy. If an employer is found in the course of this audit to have made wilful misrepresentations, the Agency may determine that it is non-compliant with the legislation.

The OFWO would have to be appropriately resourced to take on this additional workplace audit function.

Over time, as the requirement to conduct pay equity reviews and develop pay equity implementation plans becomes part of the reporting requirement for many organisations, random audits should be introduced. Initially, these could be confined to those organisations that signalled their acceptance of the audit mechanism as part of the contract compliance mechanism, but eventually all reporting organisations should be able to be audited.

The OFWO inspectors currently undertake workplace audits to ensure that employers comply with Commonwealth workplace laws,⁴³ and are able under section 682(1)(g) of the Fair Work Act to take on similar functions conferred by any other Act. Its role with respect to compliance with an amended EOWW Act could be managed either by making the amended Act a workplace law for the purposes of the Fair Work Act, or by conferring such a function on the OFWO as part of the amendments to the EOWW Act.

Recommendations

- Routine compliance audits conducted by the OFWO involving organisations whose corporate structure employs 100 or more people should include, among other matters of interest to the OFWO, verification that compliance records and reports have been made directly available to employees and accessible to workplace unions. Where this is found not to have been done, it should be the subject of the usual compliance processes employed by the OFWO in its routine audits, including where necessary a compliance

⁴³ See <<http://www.fwo.gov.au/Audits-and-campaigns/Pages/default.aspx>>.

notice. Affected organisations should be able to contact the Agency for any support and assistance they might require in complying with the EOWW Act.

- **Organisations that refuse to submit an annual Equality Self-Audit:** If, after receiving notice from the Agency that it will be non-compliant for failing to report within 28 days, an organisation does not report within the specified time period, it will be non-compliant with the Act. In addition, the Fair Work Act or the EOWW Act should be amended to confer appropriate powers on the Fair Work Ombudsman, enabling workplace inspectors to visit such organisations and issue compliance notices to enforce compliance. Affected organisations would be able to contact the Agency for any support and assistance they might require.
- The OFWO would have to be appropriately resourced to take on this additional workplace audit function.
- **Organisations that submit Equality Self-Audits, but do not meet required industry standards:** These organisations should be given 28 days to comply with the Act, and should be able to contact the Agency for any support and assistance they may require. If after 28 days the organisation's self-audit still does not meet the required industry standard, the organisation should be made non-compliant with the Act.
- **Organisations that submit Equality Self-Audits and meet the required industry standards, but show no further progress over time:** Where, following discussions with the Agency about its lack of progress, an employer does not take any action to progress gender equality within the timeframe specified by the Agency (likely to be 28 days), including demonstrating to the Agency's satisfaction that the practicability of introducing a particular measure has been exhaustively examined, that employer should be deemed non-compliant with the Act.
- Over time, as the requirement to conduct pay equity reviews and develop pay equity implementation plans becomes part of the reporting requirement for many organisations, random audits should be introduced. Initially, these could be confined to those organisations that signalled their acceptance of the audit mechanism as part of the contract compliance mechanism, but eventually all reporting organisations should be able to be audited.
- Non-compliant organisations should receive compliance records that include the ground for non-compliance applying to the particular organisation and refer to the relevant section of the amended EOWW Act. These grounds are
 - Failure to register with the agency
 - Failure to provide an annual report within the specified timeframe

- Failure to meet required industry standards
 - Failure to demonstrate progress in implementing further equality measures
 - Failure of specified organisations to undertake a pay equity review or develop a pay equity plan, or to take genuine action to implement such a plan (see section 5)
 - Failure to provide additional information sought (Sections 18 and 19 of the current EOWW Act)
 - Making wilful misrepresentations on the Equality self-audit.
- Non-compliant organisations should be required to make their record of non-compliance and any applicable self-audit directly available to employees and accessible by workplace unions so long as they continue to remain non-compliant.
 - Waiving should no longer occur, although the Director should retain the discretion not to name an organisation as non-compliant.

3. Sanctions

Background

Sanctions for non-compliance include naming in Parliament and non-eligibility for government contracts and certain industry assistance programs.

In January 1993, the Minister for Finance issued a direction giving effect to the purchasing elements of the contract compliance policy under Regulation 127A of the Finance Regulations notified in Finance Circular No 1. The direction specified that Commonwealth departments and agencies would not enter into contracts for the purchase of goods and services from organisations that were not compliant with the provisions of the EOWW Act. Contractors were required to appoint subcontractors who complied with their obligations under the EOWW Act. Since that time the website of the Department of Finance and Deregulation has continued to publish the procurement policy,⁴⁴ which applies to all agencies and is supported by corresponding policies in the Australian Capital Territory, South Australia and Victoria.

The Ministerial direction also specified that employers that had been named in Parliament for non-compliance with the EOWW Act would not be eligible for grants under certain industry assistance programs. The industry assistance element of the policy applies to discretionary grant and loan programs that operate through administrative guidelines rather than legislative criteria, and involve provision of financial assistance directly by the Commonwealth rather than through State Governments and community organisations. Applicants for grants under these programs are advised that they must comply with their obligations under the *Equal Opportunity for Women in the Workplace Act 1999* and are referred to the current list of non-compliant organisations on the EOWA website.

While EOWA does not retain records of any organisations that have been unable to tender for procurement contracts as a consequence of non-compliance with the Act, it has been directly contacted by a number of organisations seeking information and assistance in regard to compliance as part of an application for a procurement contract. These organisations are assisted to become compliant and then proceed with their tenders.

Considerations

The principal sanction for non compliance—naming in the Parliament—is not necessarily a deterrent to those organisations that refuse to comply with Australian equal opportunity law. Some take a perverse pride in being named on an ongoing basis. However, the proposal in Section 2 to use workplace audits to ascertain and enforce compliance with the Act is a further deterrent. If, following the inclusion of the record of compliance and any relevant self-audit in routine OFWO workplace inspections, the amended EOWW Act were made a workplace law for the purposes of the Fair Work Act, or if the proposed audit function were

⁴⁴ See <http://www.finance.gov.au/publications/fmg-series/docs/Complying_with_Leglt_n_20051005.pdf>.

conferred on the OFWO as part of amendments to the EOWW Act, then the usual sanctions associated with OFWO compliance notices would come into play through that mechanism. If the amended EOWW Act were made a workplace law for the purposes of the Fair Work Act, then misrepresentations on reports would also be part of the workplace relations legislative sanctions regime.⁴⁵

The contract compliance mechanism applying to named organisations also provides a compliance incentive for the subset of organisations that are both known to the Agency and interested in tendering for Commonwealth procurement contracts or applying for industry assistance. However, this incentive does not necessarily apply to the significant majority of covered organisations that have not made themselves known to the Agency and that are not therefore named in the Agency's annual report. While some of these organisations are alerted to their responsibilities under the EOWW Act by departmental procurement staff, in other cases procurement staff only check the list of organisations named in the Agency's annual report and listed on its website. In order for all relevant organisations to be covered by a contract compliance requirement, it would be necessary to introduce a reverse onus approach, whereby organisations seeking to enter into a contract for Government procurement or industry assistance are required to provide, as part of their tender or application, the record of compliance with the Act issued by the Agency following its review of the self-audit. Organisations could also be required as part of the tender/application process to declare their willingness to be audited to confirm the content of their reports to the Agency.⁴⁶

Recommendations

- The principal sanction for non compliance—naming in the Parliament—should be retained. It should be supplemented initially through inclusion of the record of compliance and any relevant self-audit in routine OFWO workplace inspections. Later workplace audits could be used to ascertain and enforce compliance with the Act as a further deterrent. If the amended EOWW Act were made a workplace law for the purposes of the Fair Work Act, or if the proposed audit function were conferred on the OFWO as part of amendments to the EOWW Act, then the usual sanctions associated with OFWO compliance notices would come into play. If the amended EOWW Act were made a

⁴⁵ To assist with compliance with the Fair Work Act, the Australian Government has developed a set of Fair Work Principles for Employees of the Commonwealth and employees of Commonwealth contractors. Commonwealth agencies will be responsible for ensuring that suppliers and their sub-contractors comply with the relevant provisions of the Act.

⁴⁶ Such an approach has been adopted, for example in the Victorian Government's Schools Contract Cleaning Program. The program establishes an accreditation process whereby contractors wishing to be considered for Victorian government schools cleaning contracts must apply to be members of a Panel of approved cleaning contractors. The Panel Agreement notes that the applicants may be subject to audits, for the purposes of checking the accuracy and completeness of the application and the applicant's ongoing compliance with the agreement and Key Assessment Criteria. See John Howe and Ingrid Landau, 'Using Public Procurement to Promote Better Labour Standards: A Case Study of the Victorian Government Schools Contract Cleaning Program', Centre for Employment and Labour Relations Law, University of Melbourne, at <http://www.google.com.au/search?hl=en&q=howe+vicorian+cleaners+case+study&btnG=Search&meta=cr%3DcountryAU>.

workplace law for the purposes of the Fair Work Act, then misrepresentations on annual self-audits would also be part of the workplace relations legislative sanctions regime.

- Contract compliance restrictions for Government procurement and industry assistance should be amended to introduce a reverse onus approach, whereby organisations seeking to enter into a contract for Government procurement or industry assistance are required to provide, as part of their tender or application, the record of compliance with the EOWW Act issued by the Agency following its review of the organisation's Gender Equality Self-Audit.
- Organisations should be required as part of the tender/application process to declare their willingness to be audited to confirm the content of their reports to the Agency.
- Governments of States not already supporting Commonwealth contract compliance for the EOWW Act should be encouraged to join those Governments that have already joined themselves to the arrangements.

4. Coverage and the Reporting Cycle

Background

- *Coverage*

The EOWW Act applies to all organisations where the total number of employees within a corporate structure equal or exceed 100 from the private and not-for-profit/community sectors, as well as non-government schools, trade unions, group training organisations and higher education institutions. Those organisations that are both covered by the Act and in contact with the Agency are collectively known as 'reporting organisations'. As of October 2009, there were 2,574 reporting organisations registered to report to EOWA in relation to a total of 8,500 relevant organisational entities including subsidiaries. The involvement of reporting organisations is largely based on self-identification and disclosure by employers.

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. This suggests that there are around 4500 organisations that are covered by the Act and have not made themselves known to the Agency, in addition to the 8500 who have. If these organisations are structured similarly to those already reporting to the Agency, and if their reports reflect the same division of reporting responsibilities between head offices and subsidiaries, the Agency could anticipate receiving an additional 1400 reports each year, or 4100 reports overall.

These figures are indicative only, for a number of reasons. The ABS uses PAYG data to verify employee numbers in its Business Register. In terms of larger companies and their subsidiaries, the ABS identifies a number of "Enterprise Groups" which it profiles each financial year as a Type of Activity Unit (TAU). A TAU can comprise one or more business entities, sub-entities or branches of a business entity within an enterprise group that can report production and employment data for similar economic entities. There is no direct or necessary correlation between these TAUs and an employer for the purposes of the Act. Moreover, the ABS data relies on 1993 ANZSIC industry classification codes, while the Agency uses the ANZSIC 2006 classification.

In addition to the large number of organisations that do not self-identify, there are also a number of others that are not part of the legislated coverage of the Act.

- Small businesses are not covered by the Act.
- Commonwealth public service agencies employing 100 or more staff are not covered by the Act. Instead, under section 18 of the Public Service Act 1999, agency heads are required to establish workplace diversity programs to help give effect to the APS Values. According to 2.13 of the Public Service Commissioner's Directions 1999, Agency Heads must put in place measures to eliminate employment-related disadvantage on the basis

of: being an Aboriginal or a Torres Strait Islander under the meaning of the Racial Discrimination Act 1975; gender; race or ethnicity; or physical or mental disability. Agency Heads must also evaluate and report on the effectiveness of workplace diversity programs each year (3.5) and review their workplace diversity program at least once every four years to ensure that it continues to give effect to the APS Values and achieves its outcomes (3.6).

As part of the agency survey conducted for the *2007-08 State of the Service Report*, agencies were asked whether they had a workplace diversity program in place. While more than three-quarters (77 per cent) of agencies said they had such a program in place, nearly one-fifth of agencies (19 per cent) said their program was still being developed and 4 per cent of agencies did not have one at all. Of those agencies that did have a program, 36 per cent said it was currently being reviewed and 34 per cent said it had been reviewed during the past two years. Ten per cent of agencies said their program had never been reviewed.⁴⁷ The State of the Service Report did not include gender equality data in its Diversity Chapter, stating that

The APS continues to make progress in addressing employment-related disadvantage for women which is reflected in their improved representation, especially at higher classifications. Specific trends in women's employment are highlighted in other chapters where they are significant.⁴⁸

- The issue of extending the EOWW Act to other equal employment opportunity groups such as those specified for Commonwealth agencies was considered during the 1998 legislative review of the then *Affirmative Action Act*. It was determined at that time that the focus of the legislation should remain on the full range of employment opportunities for women, who continue to face significant equity issues in terms of employment outcomes.
- The EOWW Act also does not include as 'employees' equity partners in professional firms or non-executive board members, meaning that employment outcomes for women in these positions is not necessarily captured in workplace programs or organisational reporting.
- *The reporting cycle*

The current reporting cycle (see Figure 2) was developed following the 1998 review and is dependent on the reporting, coverage and sanctions framework put in place following that review. As Figure 2 shows, the cycle is meant to complement organisational annual reporting timeframes to simplify their data collection, without interfering with their other

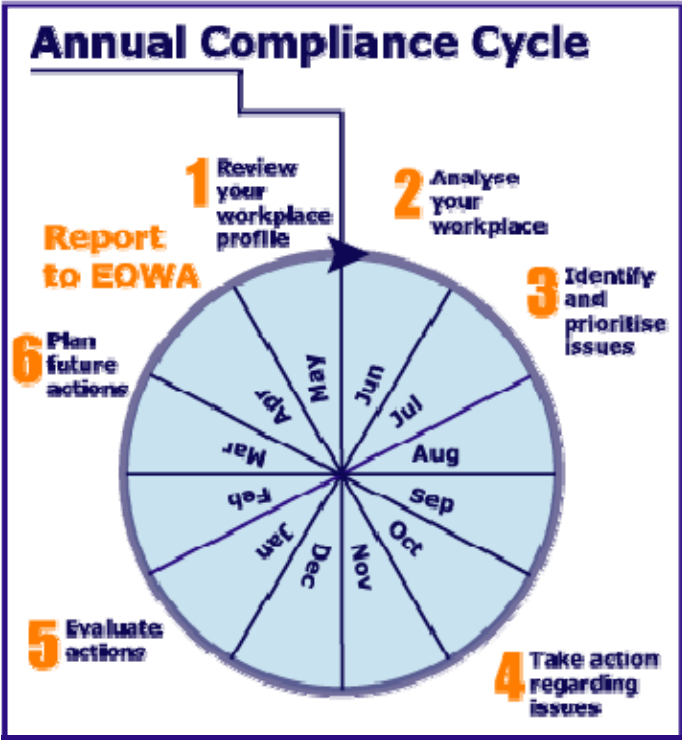
⁴⁷ Public Service Commissioner, *State of the Service Report 2007-08*, Canberra, 2008, p. 41, at <<http://www.apsc.gov.au/stateoftheservice/0708/report.pdf>>.

⁴⁸ *Ibid.*, 40.

annual reporting processes. From the employer’s perspective, the cycle begins in 1 April and ends on 31 March in the reporting year. Reports are retrospective, and cover the year prior to the reporting date. They may be submitted any time within the two months prior to 31 May, that is, between 1 April and 31 May annually. Reports are in a flexible, often discursive format. All assessments are followed by at least one feedback call, and often more.

From the Agency’s perspective, the reporting cycle has to accommodate the 31 May submission deadline, together with appropriate feedback to each reporting organisation, in time for a list of non-compliant organisations to be prepared and incorporated in the Agency’s own annual report, tabled in the Parliament in October consistent with standing guidelines. This means that Agency’s staffing arrangements have been geared to an uneven workload, with a number of client consultants employed on a temporary basis for the period May-September each year.

Figure 2



Considerations

The Agency’s views on coverage are strongly conditioned by resourcing issues. While it sees in principle that there are strong arguments for extending its coverage, there is no point in doing so if it cannot provide at least its current level of client service.

- *Non-respondent organisations covered by the Act*

The Agency's principal concern with respect to coverage is ensuring that employers meet their legislative requirements. ABS data, while only indicative, suggests that many do not. Dedicated projects to increase employer involvement have been pursued in the past but have had to be abandoned due to resourcing constraints. A more efficient mechanism for identifying employers with more than 100 employees would greatly facilitate this process.

The most efficient mechanism for identifying relevant employers that has been brought to the Agency's attention is the data collected by the Australian Taxation Office (ATO). The PAYG Payment Summary statement, through which employers notify the ATO of the number of payment summaries they have issued to their employees, makes it possible to list the number of employers with 100 or more employees (or any employment threshold) and to provide addresses for all the employers on that list. However, section 16(2) of the *Income Tax Assessment Act 1936* (the Act), prohibits tax officers from either directly or indirectly '... communicating to any person any information respecting the affairs of another person, where that information has been acquired in the course of employment as tax officers administering the income tax laws' (which are the laws under which information about the number of employees is collected). For these purposes, 'another person' includes an employer for the purposes of the EOWW Act.

There are various exceptions to the prohibition, but at present none which would enable the ATO to make the necessary information available to the Agency. On the whole, the exceptions are fairly specific. One of these enables the ATO to give certain information to the Australian Bureau of Statistics (ABS). This includes the names of the relevant entities and the numbers of men and women they employ. However, section 16(5) of the Act ensures that, once the ABS has this information, it is subject to the same restrictions as tax officers and cannot divulge it. There is a draft bill now available for comment that proposes some extensions to those agencies able to access the ATO information, but it refers to law enforcement agencies, the Australian Securities and Investments Commission, and threats to health or public safety.

It therefore appears that the Agency would either have to ask Government for the commitment of substantial resources on an ongoing basis to establish and maintain a list of organisations covered by the Act, or to seek an amendment to the *Income Tax Assessment Act 1936*, which would enable it to write to eligible employers about their reporting arrangements. While such an amendment would take time it would be time the Agency could use for a high profile campaign reminding all relevant employers of their responsibilities under the Act.

- *Organisational reporting units*

Employers with a large number of subsidiaries can report separately for functionally distinct operations employing 100 or more people. They are advised that they can choose who is going to report and whether they are going to report on behalf of other organisations in their corporate structure. The implementation and reporting of equal opportunity can vary

between such operations, and it can be difficult to establish from a single report covering a number of subsidiaries how extensive such measures are, how well adapted they are to particular workplaces, or even whether employees are aware of them. If, however, all 8,500 organisations now covered by the nearly 3000 reports reported separately, the reporting workload would more than triple.

It does not appear to the Agency that any formal amendment to its legislation specifying that functionally distinct organisational units employing 100 or more people should report separately is feasible. Its clear priority is to ensure that all reporting organisations covered by the Act that are currently not reporting meet their reporting obligations. However, there is scope to encourage employers with a large number of subsidiaries to choose to report separately for functionally distinct operations employing more than 100 people. The process could be initiated by making this compulsory for organisations that put in an application for the EOWA Employer of Choice for Women citation.

- *Smaller employers*

Similar constraints apply to any proposed extension of coverage to smaller employers. As indicated in Section 7, the Agency relies largely on education and promotion campaigns and on-line education facilities (including access to any Community of Practice that may be established) to address its responsibilities to smaller employers under subsections 10(1)(e) and (f) of the Act. Smaller business could also be encouraged or required to engage in gender equity initiatives through one or a combination of:

- reporting to the Agency, but in a shorter form confined to the workforce profile and associated pay equity diagnostic questions; and/or
- dropping the size of reporting organisations from those with 100 or more employees to those with 80 or more employees.

In the light of the current priority to ensure that all organisations covered by the Act meet their reporting obligations, the Agency could not pursue either of the above proposals without additional resources.

- *Commonwealth public service agencies*

There are a relatively small number of Commonwealth public service agencies (103; of which 76 employ more than 100 persons). Including these agencies among the organisations required to report under the Act should not be resource intensive. In addition, the current APS diversity focus on employment issues for Indigenous employees and people with disabilities indicates that the issue of gender equality might be better served by including Commonwealth agencies among the organisations required to report under the EOWW Act.

The Agency further notes that the Parliamentary Pay Equity Inquiry has received data from the Australian Public Service Commission which indicates that there is a tendency for those agencies with higher proportions of women to be lower down the salary range than those

agencies that employ fewer women. The Inquiry also received evidence that women who had taken maternity leave since the 2000-01 financial year had experienced comparatively lower rates of promotion than other female employees in their age cohort, and that similar data compiled for subsequent year cohorts tended to confirm the conclusion that the taking of maternity leave in the APS has a negative effect on career progression.⁴⁹ This data suggests that despite having a narrower formal gender wage differential than private sector employers, the Commonwealth has not achieved gender equality. The inclusion of APS agencies in the Act's coverage would mean that these agencies would be subject to the same pay equity analysis and reporting model proposed above for those organisations already covered by the Act. The Inquiry has signalled its interest in the leadership role that the Government as an employer has to play in promoting pay equity within the Commonwealth public service.⁵⁰

On the other hand, the annual reporting requirement proposed for the EOWW Act is different from the annual reports provided by agencies to the State of the Service Report, and coverage by the Act would therefore add to their current reporting requirements. In addition, non-public sector organisations tend to take the view that it is inappropriate to compare public and private sector initiatives.

Following consultation with the Public Service Commissioner, further consideration should be given to including Commonwealth agencies employing 100 or more staff among the organisations required to report under the EOWW Act.

- *Coverage of other EO Groups*

Any initiative to extend the coverage of the EOWW Act to take on other groups of employees such as those nominated in the Public Service Commissioner's Directions (Aboriginal or a Torres Strait Islander employees; employees from non-English-speaking backgrounds; or employees with a physical or mental disability) would be wholly inconsistent with the Agency's current staffing levels.

- *Equity partners in professional firms and non-executive board members*

While consideration should be given to extending the coverage of the Act to take in equity partners in professional firms, extending coverage to non-executive board members is not a priority for EOWA. The issue of women on boards it is already being addressed to some extent elsewhere. The Office for Women (OfW) continues to work with the States and

⁴⁹ Australian Public Service Commission, Supplementary Submission to House Standing Committee on Employment and Workplace Relations, Inquiry into pay equity and associated issues related to increasing female participation in the workforce, at <<http://www.aph.gov.au/house/committee/ewr/payequity/subs/sub102.1.pdf>>

⁵⁰ '[I]t seems to us that government has a leadership role to play in this area [pay equity] and there is not a clear responsibility, it seems to me, to deal with this issue within the Public Service.' House Standing Committee on Employment and Workplace Relations, Inquiry into pay equity and associated issues related to increasing female participation in the workforce, Hansard, 20 August 2009, p. 10 at <<http://www.aph.gov.au/hansard/reps/commtee/R12309.pdf>>.

Territories on the National Strategy for the Increased Participation of Women on Boards, which aims to support and encourage the appointment of women to private and public sector boards. The OfW also oversees AppointWomen—a free, confidential registration system that gives women an opportunity to be considered for appointment to a variety of Australian Government boards and decision-making bodies.

However, in the light of available data indicating that pay and leadership are areas where gender inequalities are entrenched, the Agency sees value in disaggregating the data it collects on senior managers to clarify the numbers and average salaries of men and women who are in line executive management positions and in support executive management positions. If these were made separate data items in the workplace profile, it would be possible to get a clearer understanding of differences in the numbers, average salaries, starting salaries and performance pay of men and women at these levels. This data would be of considerable use to both the Agency in considering future Employer of Choice criteria, and to the organisations themselves in formulating a gender equality response to questions of senior leadership and pay.

- *Resourcing*

The Agency's priority in terms of coverage is on substantially expanding the number of organisations already covered by the Act but that are not reporting.

This would require an increase in the number of client consultants required to provide an acceptable level of service to reporting organisations. The Agency is making a number of other proposals intended to keep the need for any additional resources to a minimum. These include:

- a new reporting format to simplify feedback and evaluation;
- the introduction of an on-line reporting to simplify data entry;
- changing current practice from providing feedback to each reporting organisation to providing in depth review and feedback to all marginally compliant organisations and a selection of the remaining moderately compliant and highly compliant organisations;
- the fixing of a 28 day period between initial contact with relevant agencies that refuse to submit a report and final determination of non-compliance; and
- the introduction of a new Community of Practice education mechanism to enable reporting organisations to increase their level of mutual support (see Section 7).

In addition, it is proposing that in-depth review and feedback on reports occur throughout the year rather than during the May-September period of the reporting cycle. The naming of non-compliant agencies could be linked to the Agency's on-line list of non-compliant organisations until a fixed point in time. In this way the Agency could continue processing

reports throughout the year up to the time of its annual report and in so doing deploy its own resources more effectively.

Even with the efficiencies offered by these proposals, the increase in report handling and feedback likely to be associated with the increase in reporting organisations will require more than the resources saved through these initiatives. The proposals relating to pay equity in Section 5 would also add to the report handling commitment. At present each full-time client consultant works with an average of 250-300 employers each year. Without access to data from the Tax Office, it is very difficult to predict in advance how many new reporting organisations would come on line, how the additional workload could be phased in and what the resourcing implications of these numbers would be. However, the Agency expects that additional resources would be required.

Recommendations

- Rather than rationalising reporting units or extending coverage of the Act, the Agency believes 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. The Agency recommends that the Government amend the *Income Tax Assessment Act 1936* to enable it to receive an annual list of organisations whose corporate structure employs 100 or more people. Pending the introduction of such an amendment, the Agency would conduct a high profile campaign reminding all employers in this category of their responsibilities under the Act.
- While there should be no mandated change to existing flexibility with respect to reporting units, the Agency should actively encourage employers with a large number of subsidiaries to report separately for functionally distinct operations employing more than 100 people. The process could be initiated by making this compulsory for organisations that put in an application for the EOWA Employer of Choice for Women citation.
- While resource constraints also apply to any proposed extension of coverage to smaller employers the Agency recommends that smaller businesses should be supported by its on-line facilities, and be able to join any Community of Practice should that be established (see Section 7). Smaller businesses could also be encouraged or required to engage in gender equity initiatives through one or a combination of:
 - reporting to the Agency, but in a shorter form confined to the workforce profile and associated pay equity diagnostic questions; and/or
 - dropping the size of reporting organisations from those with 100 or more employees to those with 80 or more employees.

The Agency could not pursue either of the above proposals without additional resources.

- Following consultation with the Public Service Commissioner, further consideration should be given to including Commonwealth agencies employing 100 or more staff among the organisations required to report under the EOWW Act.
- Workplace profiles in the Public Report Form should be disaggregated to specify the numbers and average salaries of men and women who are Executive Managers, in line executive management position and in support executive management positions. This data would be of considerable use to the Agency in considering future EOWA Employer of Choice for Women criteria.

The increase in report handling and feedback likely to be associated with new reporting organisations will require additional resources. The Agency would require additional funding of \$470,000 if it pursued the option of engaging all organisations over 100 employees since, based on information provided by the ABS, it would be looking at assessing an additional 1400 reports. If the EOWW Act were changed to incorporate organisations with over 80 employees, the Agency would require additional funds of \$560,000 to meet its legislative responsibilities.

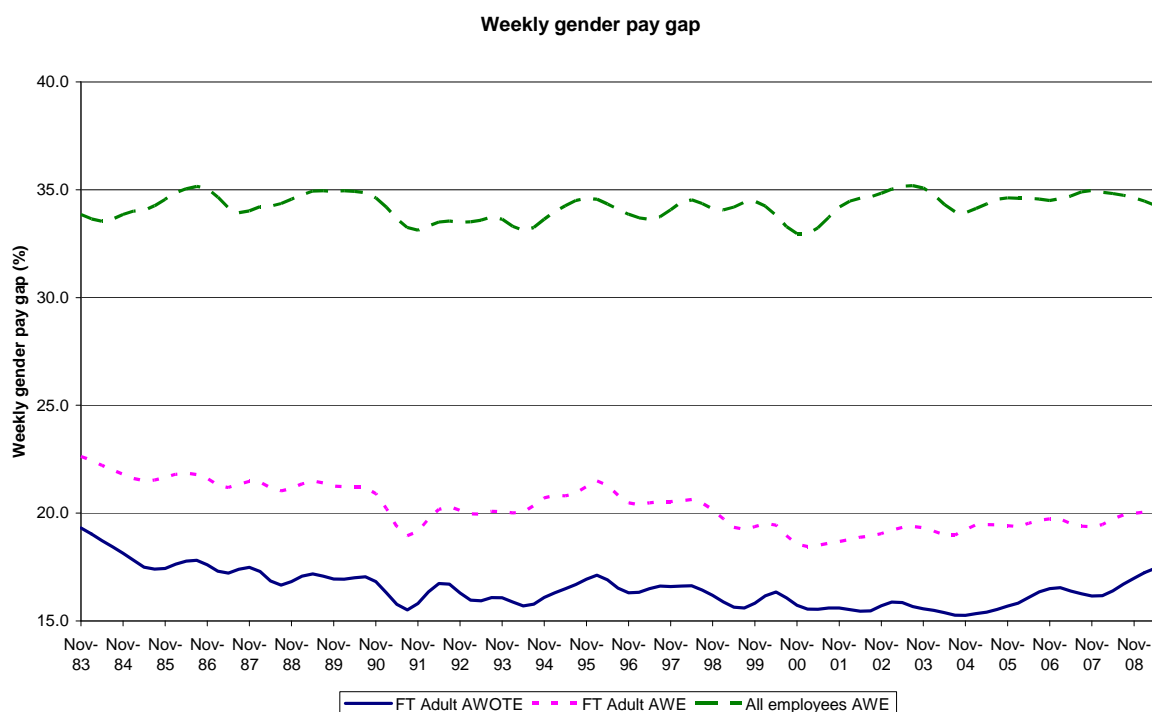
5. Pay equity

Background

Pay equity is an employment condition, and as such falls within the employment matters covered by the EOWW Act, although some confusion has been caused among reporting organisations by the fact that it is not separately named.

The gender wage differential as measured by a number of different ABS indicators (see Figure 3), is not narrowing, and remains positively correlated with employee numbers.

Figure 3



Source: ABS *Average Weekly Earnings* (Cat. No. 6302.0), trend data

The ABS survey on Employee Earnings and Hours provides data on the gender pay gap in average hourly ordinary time earnings by employer size. The latest survey results show that in August 2008, employers with 1000 or more employees had the highest gender pay gap (20.3 per cent). The gap trended down as business size trended down, with businesses with fewer than 20 employees showing the lowest gender pay differential (9.6 per cent). Because ABS data on businesses by size does not correspond to the threshold coverage for reporting organisations, and because only a subset of covered organisations actually reports, it is not possible to draw any conclusions from this data about the effectiveness of the legislation.

Indeed, there are a number of factors that might affect the correlation between business size and gender pay gap, including the intersection of industries and organisational size, tiers of management, and the predominance of women in casual employment receiving casual loadings in smaller businesses. In 1995, casual employees represented about 15 per cent of private nonfarm wage and salary earners in establishments employing more than 100 persons. In contrast, casual workers—many of them part time—accounted for around 40 per cent of employees in establishments employing less than 10 persons.⁵¹ Casual loadings would increase the relative earnings data for women without, in many industries, actually compensating for foregone benefits, or even making casual earnings comparable to those of permanent employees.⁵²

The workplace profile that is a required part of the current annual reporting pro forma includes a space for salary data, and organisations are strongly encouraged to fill it in. The pro forma is designed to enable both the employer that is reporting and the Agency to analyse differences in average salary between women and men, and to disaggregate that information by full-time/part-time status, ongoing/casual status, and by occupational groupings which are tailored to ANZSIC classifications. Occupational groupings themselves are abstracted from standard ANZSCO classifications and therefore vary for each industry. Even where employers do not provide salary data the pro forma enables the employer and the Agency to get an overview of any occupational segregation by gender. Following the Agency's receipt of their reports, organisations receive a feedback call during which they may be provided with advice and suggestions on addressing gender pay issues, including using EOWA's on-line resources.

For organisations seeking to be waived from reporting (for a period of up to three years) provision of average salary data is mandatory, as are analyses of any gender pay gaps identified in their organisation and an account of actions planned to reduce them.

Organisations applying for certification as an EOWA Employer of Choice for Women have, since 2008, been required to show that 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 (17.4 per cent in May 2009). Additionally, the organisation's overall pay gap must be less than the organisation's industry average pay gap based on current ABS statistics. Both calculations are based on ordinary time earnings. Because the EOWA Employer of Choice for Women is a highly regarded citation, the new prerequisite has been effective in encouraging reporting organisations across all industry sectors to focus on identifying and addressing any gender pay issues. The average gender pay gap in 2009

⁵¹ John Revesz and Ralph Lattimore, *Small Business Employment*, Staff Research Paper, Industry Commission August 1997, 57, at <<http://www.pc.gov.au/ic/research/information/smallbus/smallbus.pdf>>.

⁵² Ibid, 58. See also Meg Smith and Peter Ewer, *Choice and Coercion: Women's Experiences of Casual Work*, Sydney: Evatt Foundation, 1999, 35 and 41.

EOWA Employer of Choice for Women organisations was 10.9 per cent, 4.7 per cent lower than the national average which was 15.6% for the application year 2008-2009.

EOWA has undertaken other strategies to draw employers' attention to the issue of pay equity. On 27 August 2008, EOWA launched a new media campaign on 'Equal Pay Day', to generate community awareness and debate on the gender pay gap, and the barriers women face in the workplace generally. The date for Equal Pay Day was set based on the calculation that women working full-time ordinary hours would earn, on average, around 84 cents to a man's dollar, and would therefore have to work around an extra 58 days in a year to earn the same amount as a man. Accordingly, August 27th was set as the initial 2008 'Equal Pay Day', 58 days after the end of the financial year, the point at which women's salaries had caught up to those of men for that period. The inaugural Equal Pay Day was the focus of an ongoing campaign for EOWA to educate the community about the causes of and solutions to gender pay inequity. In 2009, the gender wage differential increased, and Equal Pay Day was held on 1 September.⁵³

A considerable amount of information on the gender pay gap has also been made available on the EOWA website, including a Pay Equity Tool, launched in 2004.⁵⁴ Using the Tool, employers are able to conduct a diagnostic pay analysis to identify whether a pay equity problem exists in their workplace, or even in one particular business unit. The National Australia Bank, in conjunction with the Finance Sector Union, recently used the tool as a guide to conduct a company-wide analysis. It has also been used and promoted by the Western Australian State Government, which has enhanced it and added a number of resources including guidance material on how to reduce the gender pay gap.⁵⁵ The enhanced resource has already been added to the WA Pay Equity website and is to be added to EOWA's website and made available to all businesses free of charge. According to a 2008-09 survey currently in train, of 1523 reporting organisations surveyed as at 11 August 2009, 66 reported having used a Pay Equity Tool such as the one on the EOWA website.

The Pay Equity Tool identifies two main sets of factors influencing the gender pay gap. One set of factors reflects the uneven distribution of men and women across the workforce, in which more men occupy better-paid jobs than women. This can be measured through a

⁵³ The gender pay gap based on Average Weekly Ordinary Time Earnings (AWOTE) for full-time adults increased by 1.0 percentage point from 16.4 per cent in May 2008 to 17.4 per cent in May 2009. Based on average weekly total earnings for full-time adults, the gender pay gap increased by 0.5 of a percentage point over the 12 months to May 2009 and now stands at 20.2 per cent.

⁵⁴ See <http://www.eowa.gov.au/Research_And_Resources.asp>. The EOWA Pay Equity Tool is available at: <http://www.eowa.gov.au/Developing_a_Workplace_Program/Six_Steps_to_a_Workplace_Program/Step_2/Pay_Equity_Tool.asp>.

⁵⁵ Available at: <http://www.docep.wa.gov.au/LabourRelations/Content/Work%20Life%20Balance/Pay%20Equity/About_the_Pay_Equity_Unit.html>

number of equal opportunity indicators that correspond broadly to the range of employment matters set out in section 3(1) of the EOWW Act.⁵⁶ They are:

- the segregation of labour into ‘men’s work’ and ‘women’s work’ across industries and within occupations;
- differential working times, as women have less access to paid overtime and are more likely to be in part-time or casual positions;
- less access to training and promotion for women workers;
- inflexible structures and workplace practices which restrict the employment prospects of workers with family responsibilities; and
- a greater likelihood that women will take time off work to attend to family responsibilities.

The second set of factors identified in the Pay Equity Tool as contributing to the earnings gap is more specific to the determination of work value, and includes:

- ongoing undervaluation of women’s work and skills, including gender-based expectations that make women’s ‘natural’ skills seem to be worth less;
- explicit and implicit views that men need and deserve to be paid more;
- different levels of discretionary payments made to those in male and female occupations (eg, over-award payments, bonus payments, commissions, allowances, etc);
- an over-influence of existing job hierarchies, and the failure to recognise that these may reflect social power or industrial muscle; and
- job descriptions that do not include the full range of actual skills employed.

The House of Representatives Standing Committee on Employment and Workplace Relations is due to report shortly on its Inquiry into Pay Equity and Associated Issues relating to Increasing Female Participation in the Workforce. While evidence given to the Pay Equity Inquiry revealed that there was not a consensus on recommendations to address pay inequity, a number of common issues featured prominently in key stakeholder submissions, namely, that:

⁵⁶ Employment matters are specified in Section 3(1) of the EOWW Act and are as follows: (a) the recruitment procedure, and selection criteria, for appointment or engagement of persons as employees;(b) the promotion, transfer and termination of employment of employees;(c) training and development for employees;(d) work organisation;(e) conditions of service of employees;(f) arrangements for dealing with sex-based harassment of women in the workplace;(g) arrangements for dealing with pregnant, or potentially pregnant employees and employees who are breastfeeding their children.

- there is a need for investment in data collection and analysis to better measure movements in pay equity in Australia;
- the government should undertake a national education campaign to address pay equity; and
- all organisations should be required to conduct annual pay equity reporting, particularly where pay inequity is suspected.

As data collection, education and reporting on equal opportunity factors affecting pay equity are already part of Agency functions, the Committee's recommendations are of particular relevance to the current review of the Agency's functions.

Considerations

- *Understanding pay equity*

There is much to be done to bring about an understanding of pay equity issues in organisations and in Australia more generally. According to an Auspoll study of 1,200 respondents partly sponsored by EOWA,⁵⁷ most Australians take a very restrictive view of what is meant by pay equity, with only 12 per cent thinking it means 'equal pay for men and women doing different but equivalent jobs'. Nearly two thirds of respondents (63 per cent) thought it meant 'equal pay for men and women doing the same job', while 26 per cent did not know what it meant, or gave alternative incorrect answers.

In its submission to the Parliamentary Pay Equity Inquiry the Agency made a number of recommendations relevant to a community education program addressing the nature of the gender pay gap and the means and value of addressing it. The Agency reiterates its support for such a campaign and for the following related recommendations:

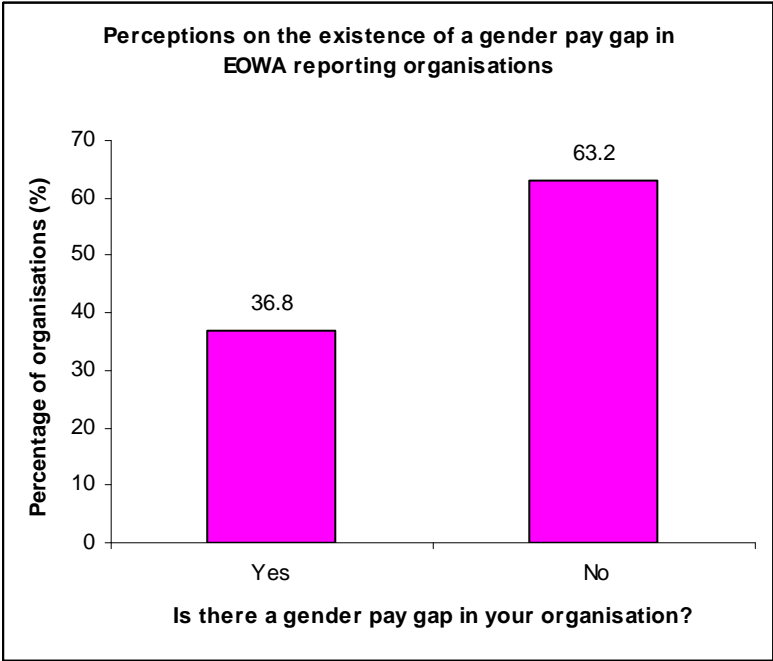
- A nation-wide community education program on pay inequity should be developed and implemented to increase awareness of the gender pay gap, further heighten debate and promote positive change throughout Australian workplaces, across all states and industries. Men, women, employees and employers should have access to such a program.
- Targeted education of young people in schools about the gender pay gap should be considered.
- The community education program should include addressing the belief that women risk being further discriminated against in a workplace environment that seeks to ensure that women are paid equally to men for equivalent work. This belief should neither manifest in reality, nor be used as a reason for arguing against steps being taken to address gender pay inequity.

⁵⁷ Available at <http://www.eowa.gov.au/Pay_Equity/General_Information_Stats.asp>.

A general community education program is not, however, all that is required. Human resource professionals responding to the same Auspoll survey cited above were not notably successful in defining pay equity correctly, though they were more conversant with the concept than the public more generally. However, only around two fifths of them (39 per cent) thought that pay equity meant 'equal pay for men and women doing different but equivalent jobs'. Over half (55 per cent) believed it meant 'equal pay for men and women doing the same job', with 6 per cent giving alternative incorrect answers.

The Agency sees a need for support for human resource practitioners, who may not fully understand, or may face a management that does not fully understand, what is meant by pay inequity. The recently published EOWA Survey on paid maternity leave, the gender pay gap and sex-based harassment initiatives found that over a third of all report contacts (36.8 per cent of over 2,300 reporting organisations) believed that a gender pay gap existed in their organisation (see Figure 4). It also found that less than half (41 per cent) of the less than half 42 per cent) of organisations that reported conducting a pay equity analysis, had such an awareness of a gender pay gap in their organisation. This lack of awareness may partly reflect

Figure 4



Source: EOWA Survey Data 2007-2008

an assumption that pay inequity is of its nature intentional and explicit rather than unintentional and embedded in organisational systems and processes. The issue of support for human resource staff is considered in the Section 7 of this submission.

- *Using the reporting framework*

Because analysis of the causes of pay inequality must draw on both equal opportunity and work valuation factors, and because reporting organisations are already providing the Agency with data relating to the first set of factors, there are clear efficiencies in using the Agency to implement any recommendations on reporting and/or auditing that may be made by the Parliamentary Inquiry into Pay Equity and accepted by the Government. In addition, the new reporting format that the Agency is proposing would make any data gathered in relation to both sets of pay equity factors more integrated and systematic.

EOWA already gathers some data that is used by organisations to determine whether or not they should proceed to a full pay equity audit. As indicated above, EOWA Employer of Choice for Women applicants need to establish that they meet a pay equity benchmark and employers applying to be waived from their reporting requirement are required to supply a profile of the average salaries of men and women at all levels of the organisation, an analysis of any identified gaps, and actions planned to reduce them. All employers are strongly encouraged to provide the same data in their annual compliance reports to the Agency and to consider the implications of that data for pay equity. In fact it appears that the data collected through the workplace profile section of organisations' reports constitutes the main source of pay equity auditing for those reporting organisations. According to a 2008-09 survey currently in train,⁵⁸ of 1523 reporting organisations surveyed as at 11 August 2009:

- 618 of 1445 or 42.8 per cent reported conducting an annual gender pay equity analysis;
- 441 of 618 or 71.4 per cent of report contacts who had conducted an gender pay equity analysis *stated that the pay details that were collated for the EO report provided to EOWA formed their analysis;*
- 66 of 618 or 10.7 per cent of report contacts used a Pay Equity Tool is used such as the one on the EOWA website;
- 91 of 618 or 14.7 per cent of report contacts said they engaged external consultants to conduct a specific gender pay gap analysis;
- 175 of 618 or 28.3 per cent of report contacts conducted other analysis such as benchmarking salaries or Mercer and Hays reviews;
- 298 of 618 or 48.2 per cent of report contacts said their analysis had resulted in an action plan to address the problems they had identified.

⁵⁸ This EOWA survey data is due to be published in early 2010 for the reporting year 2008-09.

The data collected through the current workplace profile does not constitute a full pay equity audit. Even if it were mandatory to provide average salaries for each occupational group, the resulting workplace profile would be little more than indicative, certainly not diagnostic. EOWA has already foreshadowed that it will be reviewing its compliance guidelines in consultation with stakeholders, with a view to, amongst other things, improving the provision of pay data collected from relevant employers.

A requirement for more comprehensive data could raise issues of data availability and might require some reporting organisations to upgrade their human resource data management systems. Systems changes should not be a major issue, however; most human resource/payroll systems should already be using IT systems that can run reports that break data down by gender into the necessary components, such as base salary, performance pay and over-awards. Experience in New Zealand suggests that the data requirement would not exceed the capacities of current systems but may well exceed current use of those capacities. Encouraging organisations to use the additional data collection and analysis capacities offered by their existing systems is itself a positive outcome if the purpose is to foster the analysis and tracking of gender wage differentials across a range of payment types over the longer term.

The collection of data relevant to pay equity also throws up the issue of confidentiality. At present data on average salaries provided for the workplace profile in the voluntary reporting form is quarantined from publication with the rest of the report. There is a question of how far such confidentiality should be extended to any report on work value matters. The recently formed Equal Pay Alliance of community, business and welfare peak bodies has urged the Government in an open letter to take measures to increase the meaningful reporting by employers of pay data.⁵⁹ Some employers, on the other hand, are concerned that where pay equity Self-Audits reveal issues that need to be addressed, the public airing of those issues may precipitate formal cases before a court or tribunal prior to their having any opportunity to take action to redress underlying issues. The Australian Chamber of Commerce and Industry has advised the House of Representatives Committee conducting the Pay Equity Inquiry that the vast majority of discrimination claims are resolved internally by organisations or through conciliation/mediation, and that only a small proportion proceed to determination by a court or tribunal.⁶⁰

The Agency's preferred approach to work value reporting would be to make the use of the Pay Equity Tool a necessary part of organisations' Gender Equality Self-Audits. At the same

⁵⁹ Available at;

<<http://www.actu.asn.au/Media/Mediareleases/Newallianceseeksactionongenderpaygapwomenworkersstillbeingshortchanged.aspx#>>.

⁶⁰ Australian Chamber of Commerce and Industry, Submission to House Standing Committee on Employment and Workplace Relations, Inquiry into pay equity and associated issues related to increasing female participation in the workforce, 21-22, at <<http://www.aph.gov.au/house/committee/ewr/payequity/subs/sub84.pdf>>.

time it recognises the desirability of keeping reporting process and overall regulatory impact as simple as is compatible with the aim of the legislation. For this reason it has considered a pared-back and less preferred option, which is to add to the proposed EOWA reporting instrument a small set of questions found in the New Zealand reviews to be critical indicators of gender pay inequity.

The diagnostic pay equity benchmark questions could be cast in a form that is broadly consistent with the proposed new reporting format, with data questions integrated into the workplace profile and other questions under the relevant employment matter. The questions could include the current data requests on occupational segregation and average earnings, together with:

- data on performance pay by gender;
- data on entry salary by gender;
- a question on whether the organisation has undertaken a formal pay equity audit;
- a question on whether the organisation has undertaken a formal job evaluation study and what type of evaluation was used;
- a question on whether the organisation has a pay equity implementation plan in place.

It would also be very desirable to have the average duration of employment by gender by classification, in order to have an indicator of the extent to which the gender wage differential might reflect movement through organisational classifications within the occupational group. If the Pay Equity Tool or enhanced workplace profile indicated a need for further analysis and action, the Agency should be able to make more substantive equal pay reviews (including work value studies) and pay equity plans a requirement of an organisation's subsequent annual Gender Equality Self-Audit.

In order to preserve confidentiality, detailed pay equity reviews and any associated plans need not be required to be submitted to the Agency but should be available for an inspector from the OFWO, on an analogy with current arrangements for time and wages records. The OFWO would also be enabled to conduct random audits of relevant organisations, including those required to proceed with formal pay equity reviews and implementation plans, and those organisations that have declared their willingness to be audited as part of the contract compliance process. Where these audits show a failure to undertake a pay equity review or to develop an implementation plan, or to take genuine action to implement such a plan, the organisation could be made non-compliant with the Act, and the OFWO would be able to issue a compliance notice.

Pay equity reviews and plans could be provided to Fair Work Australia or the Fair Work Division of the Federal Court by an employer as part of a defence in an equal pay case. Aggregated data from organisations' Equality Self-Audits should form a part of the Agency's

annual report and be made available to the Equal Remuneration Commissioner (should the position be established), the Sex Discrimination Commissioner, and bona fide researchers.

The Agency is aware that its proposals for integrating pay equity reporting with its annual reporting arrangements would have to be deferred to the later stages of implementation of its broader package of reforms. Reporting organisations, the OFWO and the Agency itself would require time to develop the necessary systems and to undertake consultations about reasonable processes and benchmarks.

In this context the Agency refers the Review Committee to its recent recommendation to the Parliamentary Pay Equity Inquiry that EOWA be funded to run a three year targeted industry campaign conducting voluntary gender pay equity audits. The recommendation suggested that such a campaign might focus on specific industries each year, identifying a group of organisations that have a pay gap greater than the industry average (and any organisations wishing to participate) and assisting employers to develop pay equity plans to lower the gap. In addition to its intrinsic usefulness, such a campaign would assist EOWA and reporting organisations to prepare effectively for a mandatory pay equity review and implementation program.

- *Medium and smaller businesses*

The ABS data showing a decline in the gender pay gap with a decline in business size may not be an accurate indicator of the state of pay equity in many medium or small businesses. In our view it is desirable that these businesses become involved in undertaking pay equity reviews and implementing pay equity plans. The Agency is not, however, resourced to manage this process, and is also aware that many smaller organisations have a limited capacity to undertake the analysis required.

Recommendations

- Pay equity should be specified in the legislation as a separate employment matter.
- The use of the Pay Equity Tool should be a necessary part of organisations' Gender Equality Self-Audits.
 - A pared-back and less preferred option is to add to the proposed EOWA reporting instrument a small set of questions found in the New Zealand reviews to be critical indicators of gender pay inequity. Data on average salary, performance pay and starting salary at each classification by sex would be a mandatory part of the workplace profile. It would also be useful to have the average median duration of employment by classification by sex. The checklist would include a question on whether the organisation has undertaken a formal pay equity audit; a question on whether the organisation has undertaken a formal job evaluation study and what type of evaluation was used; and a question on whether the organisation has a pay equity implementation plan in place.

- Where the responses to the Pay Equity Tool or diagnostic questions indicate a problem (e.g. fall below a simple benchmark), more substantive equal pay reviews (including work value studies) and pay equity plans would be made a requirement of an organisation's subsequent annual Gender Equality Self-Audit.
- Detailed pay equity reviews and any associated plans would not be required to be submitted to the Agency but should be available for an inspector from the OFWO, which would be enabled to conduct random audits of those organisations required to proceed with formal pay equity reviews and implementation plans, as well as audits of those organisations that declared their willingness to be audited to confirm the content of their reports to the Agency as part of the contract compliance process. Where these audits show a failure to undertake a pay equity review or to develop an implementation plan, or to take genuine action to implement such a plan, the organisation could be made non-compliant with the Act, and the OFWO would be able to issue a compliance notice.
- Pay equity reviews and plans could be provided to Fair Work Australia or the Fair Work Division of the Federal Court by an employer as part of a defence in an equal pay case.
- Aggregated data from organisations' Gender Equality Self-Audits should form a part of the Agency's annual report and be made available to the Equal Remuneration Commissioner (should the position be established), the Sex Discrimination Commissioner, and bona fide researchers.
- The Agency recommends implementation of related structural changes in Section 8 on structural arrangements.
- The Agency is aware that its proposals for integrating pay equity reporting with its annual reporting arrangements would have to be deferred to the later stages of implementation of its broader package of reforms. For what could be achieved in the interval, the Agency refers the Review to its recent recommendation to the Parliamentary Pay Equity Inquiry that EOWA be funded to run a three year targeted industry campaign conducting voluntary gender pay equity audits. The recommendation suggested that such a campaign might focus on specific industries each year, identifying a group of organisations that have a pay gap greater than the industry average (and any organisations wishing to participate) and assisting employers to develop pay equity plans to lower the gap.
- The Agency also reiterates its recommendations to the Parliamentary Pay Equity Inquiry for a community education program addressing the nature of the gender pay gap and the means and value of addressing it:
 - A nation-wide community education program on pay inequity should be developed and implemented to increase awareness of the gender pay gap, further heighten debate and promote positive change throughout Australian workplaces, across all

states and industries. Men, women, employees and employers should have access to such a program.

- Targeted education of young people in schools about the gender pay gap should be considered.
- The community education program should include addressing the belief that women risk being further discriminated against in a workplace environment that seeks to ensure that women are paid equally to men for equivalent work. This belief should neither manifest in reality, nor be used as a reason for arguing against steps being taken to address gender pay inequity.

6. Data Collection and Management

The reporting arrangements put in place by the EOWW Act enable the Agency to collect considerable information on workplaces' equal opportunity programs, issues and initiatives. Much of this information is, however, discursive, and as a consequence the Agency's on-line searchable database of annual EO reports can at best be used to compare initiatives by industry, employment matter, state and year. However, because organisations can choose what they want to report on under a given employment matter, comparison can be largely subjective and collated data is unavailable. A small data set can be derived from organisations' workplace profiles, though there is still some variation in how employers choose to report pay data.

Considerations

There are a number of limitations to the current data.

Data coverage issues

EOWA's data is not a census: there are considerable gaps in reporting organisations that feed into gaps in data provided. There are inconsistencies in reporting units; a number of employers who are covered by the Act do not report at all or do not report for a fixed period because they have been waived; and the threshold size for employers covered under the Act means that the majority of employers are not covered by the reporting requirement. These issues are considered in Section 4 on coverage.

Data collection issues

The principal data collection issue is the flexibility of the current reporting requirement and the voluntary nature of the current reporting form. The proposed new reporting format would help to address this issue and would also provide a much more data rich profile of gender equality policies and practices in reporting organisations. An on-line data entry capacity would eliminate the need for the Agency to transfer data from individual report forms into its database even as the amount of data received would increase substantially.

The Agency collects data from other sources in addition to organisations' reports. For example, the Agency's client consultants conduct a telephone survey with reporting organisations as part of the annual feedback process. This short survey varies by topic each year and as a consequence it has only been possible to measure change over time in a subset of the data items surveyed. Thus far, the following topics have been addressed:⁶¹

- 2009 Survey on Paid Maternity Leave, Sex-based Harassment Initiatives and the Gender Pay Gap (2009)
- 2008 Survey on Workplace Flexibility (2008)

⁶¹ Surveys are available at http://www.eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications/EOWA_Surveys.asp.

- 2005 EOWA Paid Paternity Leave Survey (2006)
- 2005 EOWA Paid Parental Leave Survey (2006)
- 2004 EOWA Employer Assistance with Child Care Survey (2006)
- 2004 EOWA Paid Maternity Leave Survey (2005)
- 2003 EOWA Work/Life Flexibility Survey: Access to Work/Life Flexibility Results (2004)
- 2003 Work/Life Flexibility Survey 2003: Paid Maternity Leave Survey Results (2004)

If the Agency's reporting recommendations were pursued, all the data items in these individual surveys would be covered on an annual basis and the one-off surveys could be abandoned. At the same time the data analysis and publication function could be expanded on the basis of the new data available.

In partnership with ANZ, the Agency also conducts a census of the women and men in corporate leadership positions, both board directors and executive managers of companies listed on the ASX200 Index of the Australian Stock Exchange. The research is undertaken by a team from the Department of Business at Macquarie University and is designed to facilitate comparisons with earlier and international studies. The methodology involves taking information from publicly available annual reports and corporate websites, and then contacting companies to validate the data. While the Agency is not itself proposing to collect any data on Board positions as part of organisational self-audits, it is proposing to continue with the census so long as funding is available.

Data sharing issues

EOWA is not the only organisation collecting data relevant to equal opportunity for women in the workplace, although it is the only such organisation with the function of receiving reports. The ABS collects considerable data on earnings, occupations and industries that is used by the Agency and other interested organisations; and the Australian Human Rights Commission reports annually on discrimination complaint data, including sexual harassment.

It should also be noted that FWA has a data collection and analysis function. When the Fair Work Bill was introduced into Parliament, it included a requirement that the General Manager of FWA review developments in Australia in making enterprise agreements. The Bill was subsequently amended in the Senate to include expanded research functions, and the Act now provides that (in addition to reviewing agreement making trends) the General Manager is to conduct research into:

- the extent to which individual flexibility arrangements under modern awards and enterprise agreements are being agreed to, and the content of those arrangements;

- the operation of the provisions of the National Employment Standards relating to requests for flexible working arrangements under subsection 65(1) and requests for extensions of unpaid parental leave under subsection 76(1); and
- the circumstances in which employees make such requests; the outcome of such requests; and the circumstances in which such requests are refused.

The legislation provides that this research be conducted every three years. Section 653(2) specifies that the General Manager must, in conducting the research, consider the effect that enterprise bargaining and the provisions listed above have had on women and part-time employees, among others. If the Agency's reporting proposals are accepted, and a substantive (and de-identified) database is developed as a consequence, it could be made available to the FWA as well as to the Office for Women (OfW) and the Sex Discrimination Commissioner to support their research and education functions, and to Government more generally to serve as a foundation for evidence-based policy development in the area of gender equality. It could also be made available to bona fide researchers in the field.

Resources

While the proposed new reporting framework would save some data transfer resources, these should be absorbed in responding to an enlarged number of employers who are both covered and meeting their reporting requirement, consistent with the recommendations in Section 6.

The Agency would require one-off resourcing to develop the proposed on-line facility and underpinning data analysis facility, and to support updating the Agency's website.

Recommended approach

Data coverage

- The coverage of the requirement to report to the Agency should be extended consistent with the recommendations in Section 4.

Data collection

- The data reported to the Agency should be enhanced consistent with the recommendations of Section 1 on reporting, and Section 5 on pay equity.

Resources

- The Agency should receive a one-off allocation of funds to support the acquisition of an on-line reporting function and database, an underpinning data analysis facility, and the updating of the Agency's website, consistent with the recommendation in Section 4.

7. Education and promotion

Background

Section 10 (e) and (f) of the Act specify that the Agency's functions are to include undertaking research, educational programs and other programs for the purpose of promoting equal opportunity for women in the workplace, and promoting understanding and acceptance, and public discussion, of equal opportunity for women in the workplace. That is, the Agency has education and promotion responsibilities with respect to all employers—and not just those employers who are covered by the reporting requirements of the Act—and also with respect to the broader community.

Employers

As indicated above, the Agency uses the feedback it delivers during the reporting process to educate employers about equal opportunity measures and practices. The principal value of the feedback mechanism is that it draws on individual reports and responds to the circumstances of individual workplaces.

The Agency also makes on-line self-education tools such as the bullying and harassment training (on a user pays basis) and the free pay equity self-audit instruments, referred to above, available to employers and encourages them to apply these to their own workplaces.⁶² In addition, the Agency conducts user pays workshops and other briefing sessions to educate employers on its own processes and the development of their workplace programs. In 2008-2009, 10 organisations purchased a total of 2,415 licenses for the bullying and harassment on-line program, and 208 clients attended 20 EOWA workshops. Public Workshop evaluation sheets measured 100% client satisfaction.

Other education strategies are more generalised. The Agency produces a range of survey and case study material, often drawing on revenue raised from sponsorship. These resources are not restricted to relevant employers and are published in hard copy and on the Agency's website.

EOWA also uses incentive-based approaches to involve employers in advancing equal opportunity. It offers Business Achievement Awards at an annual event that is used to focus attention on specific initiatives supporting women in the workplace. Nearly 400 business leaders—about 50 of whom were CEOs—attended the 2008 event. It also awards EOWA Employer of Choice for Women citations to employers in a cross-section of industry types and sizes. Those seeking the citation are required to submit an annual application to the Agency addressing a number of fixed industry benchmarks and a further set of specified criteria. In 2009, 111 organisations were granted citations.

⁶² The bullying and harassment training tool is available from the Agency on a user pays basis.

The broader community

A number of the Agency's publications also serve the purpose of encouraging broader community debate. In particular, surveys such as the EOWA Census of Women in Leadership are picked up by the media and become a focus of public debate. There were 220 media mentions of the 2008 Census. The same response on a smaller scale has been provoked by the one-off short surveys listed in Section 6 on data.

Campaigns such as the 2008 and 2009 'Equal Pay Days' initiated by EOWA generate nation-wide media interest across a range of media outlets, and promote community awareness and debate about the barriers women encounter in the Australian workplace. In 2008, EOWA achieved at least 363 known media mentions (203 print articles and 160 radio, TV and on-line media) and 45 of these related specifically to Equal Pay Day.

In 2009 EOWA received over 500 known mentions on various issues associated with equal opportunity for women in the workplace. Equal Pay Day was taken up by a considerable number of women's community organisations and there were approximately 126 media mentions of Equal Pay Day and associated activities in mainstream newspapers.

Considerations

- *Employers*

The existing suite of educational and promotional activities offered by the Agency tends to be resource-intensive. Incentives such as the Business Achievement Awards and the EOWA Employer of Choice for Women tend to focus on higher performing employers and as such there is a need for an education strategy emphasising accessibility and practicality in order to reach marginal and middle performers.

- Feedback calls made to reporting organisations that have not performed well in implementing equal opportunity for women suggest that many of these have not understood the operation of indirect and systemic discrimination. Because they do not perceive barriers of this nature they find it difficult to remove them. Individual feedback calls can assist with this process, but because of their resource implications these can only occur once a year. High profile media campaigns and awards call attention to equal opportunity issues but are not by their nature forensic.
- Self-audit and on-line tools offered by the Agency should support self-analysis, but the incentive to use them has to come from elsewhere.
- The Agency's workshops are well attended and receive positive feedback, but they are largely confined to providing general advice. In addition, they can only be offered on a user-pays basis in metropolitan areas and regional employers in particular do not make much use of them.

- Like the Agency, equal opportunity and diversity networks sponsor briefings, events, speakers and publications, as well as offering consultancy services directly or referring members to a list of public and private sector specialist consultants. The networks established through membership of these organisations are highly valued by many of the equal opportunity and diversity practitioners who join them. However, involvement is dependent on membership and membership is likely to be dependent on organisational sponsorship. Networks are obliged to recover the costs associated with events and speakers, and there are likely to be costs as well as time lags associated with their events and services. For human resource managers who are not equal opportunity specialists or who are employed in organisations that do not take an interest in the operation of indirect and systemic discrimination, these networks have a limited reach.

The Agency has taken an interest in the Communities of Practice (CoPs) that have been provided for local governments in the UK and Scotland.⁶³ A CoP is a network of individuals with common problems or interests who get together and explore ways of working to identify common solutions and to share good practice and ideas. UK local government agencies with a wide range of responsibilities are using CoPs to share information around a number of management strategies. These include undertaking gender-inclusive job evaluation schemes as part of a broader process also affecting the civil service, health and universities (around one fifth of UK women when the processes are complete). One of the larger UK local Government CoPs, the 'EqIA Support Network',⁶⁴ is focussed on equality activities that include (most importantly) direct exchange, but also RSS news feeds, events notices and reviews, a library and a blog facility. While some CoPs are publicly accessible, others, like the EqIA Support Network, require that proposed members have a demonstrable need to access the community of practice before they are issued with a logon. The aim is to provide a secure environment for knowledge development and sharing. The EqIA Support Network now has over 900 members.

The benefits of CoPs lie in providing a collaborative IT infrastructure that connects people to other people in a personal format and real time. Members can post questions about making equal opportunity work for employers and employees in their own organisations and receive practical operational suggestions from experienced practitioners on a day to day basis. CoPs are characterised by member autonomy, practitioner-orientation, informality, and the capacity to create connections among people across organisational and geographic boundaries. The peer-to-peer learning activities typical of CoPs offer a complementary alternative to more traditional course offerings and publications released by equal opportunity and diversity practitioners, including the Agency itself.

Establishing a CoP would involve a one off cost.

⁶³ The CoPs are hosted by the Improvement and Development Agency for local government and a partnership is in place with the Improvement Service for local government in Scotland.

⁶⁴ Accessible through < <http://www.communities.idea.gov.uk>>.

On-line assistance should also be made available to HR practitioners who are intending to make use of the Agency's on-line tools. While this assistance would not replace the Agency's workshops, self-paced IT learning modules would support a more effective application of bullying and harassment and pay equity tools and findings, particularly for practitioners in regional areas. Some of these would be freely available and others would be offered on a user pays model to defray costs.

The broader community

The success of the Agency's Equal Pay Day initiative lies in its concrete foundation: it is held on a day that is determined through a calculation of how many days after the end of the financial year women have to work, on average, in order to reach the same earnings as men. In 2009, it was associated with a calculator circulated by Get-Up which also enabled women to work out their own gender wage gap. Unlike surveys and publications, an event such as Equal Pay Day reaches directly into the experience of individual women; and since women's organisations have invited women to wear red for Equal Pay Day, the campaign also creates a space for direct involvement.

The Agency would like to see further pay equity campaigns targeting young people, individual industries and the community generally. These have been raised in Section 5 on pay equity.

The Agency's recommendation that Equality Self-Audits be required to be made directly available to staff is a further means of increasing community involvement in and understanding of the goals of gender equality in the workplace. In the 2008-09 reporting period, almost 2.6 million employees were covered by reports to EOWA. As increasing number of employers meet their legislated responsibilities under the Act, this number will continue to rise. The proposed self-audit format would mean that employees could be made aware of the gender equality measures and other flexibility options in place in their organisation, as well as those that are not yet in place, and why the latter may not be reasonable practicable. The self-audit format would illustrate the benefits of gender equality policies and practices for the workforce generally, particularly with respect to flexible working arrangements. The proposed compliance record would enable them to see the position of their organisation against the industry median. Over time, it may be possible for the Agency to establish a number of industry benchmarks for certain entitlements and practices that employers can use to demonstrate their good practice to current and prospective employees.

More generally, the new expanded data set to be underpinned by the proposed new reporting arrangements would provide an evidence base that could be drawn on by the Minister for the Status of Women, the Office for Women, the SDC, and FWA for presentations and publications on a broadened range of gender equality matters. It would also be a resource for the academic community, resurfacing as publications and commentary.

Recommendations

- The Agency believes that its educative function would be greatly enhanced by the capacity to support a CoP for human resource practitioners with a focus on identifying and implementing gender equality measures and practices. Its direct involvement in the CoP would be limited to the provision and maintenance of the necessary IT networking site, securing a threshold level of involvement from practitioners, and ensuring that the contents of the site continue to comply with the Australian Public Service Commission's Circular 2008/8: 'Interim protocols for on-line media participation'. The Agency regards the CoP as a resource for practitioners, and not a promotional tool. Once established, a working CoP would emphasise member autonomy, direct exchange, practitioner-orientation, and informality. It would be free to members and accessible to all practitioners. Establishing a CoP would involve a one off cost.
- On-line training should be made available to HR practitioners who are intending to make use of the Agency's on-line Tools. While this assistance would not replace the Agency's workshops, self-paced IT learning modules would support a more effective application of sexual harassment and pay equity tools and findings, particularly for practitioners in regional areas.
- Medium and small businesses should be able to access any Community of Practice and on-line tools made available by the Agency, as well as benefiting from its broad-based employer campaigns.
- Gender Equality Self-Audits and compliance records should be required to be made directly available to employees within that organisation, consistent with the recommendation in Section 1.
- The data set associated with the proposed new reporting arrangements should be made available to the Minister for the Status of Women, the OfW, the SDC, and FWA for presentations and publications on a broadened range of gender equality matters. It should also be a resource for the academic community.
- Equal Pay Day should continue to be used as a means of encouraging community discussion of and involvement in gender equality issues. Agency data on flexible work provisions might be used to underpin a similar event reflecting men's access to particular flexible working time arrangements.

8. Structural arrangements

Background

The principal anti-discrimination activities in the federal jurisdiction are undertaken by the Australian Human Rights Commission (AHRC). The Sex Discrimination Commissioner (SDC) is responsible for the conduct of these activities as they relate to women. The other main body dealing with discrimination in the federal jurisdiction is Fair Work Australia, which has responsibility for overseeing the operation of the anti-discrimination provisions of the Fair Work Act. The Department of Education, Employment and Workplace Relations is responsible for advising Government on the relevant legislative provisions, for preparing the Government's submissions to Fair Work Australia (FWA), and for some data analysis, but is not itself active in applying the law.⁶⁵ It does, however, manage the National Work Life Balance Awards and the Fresh Ideas for Work and Family grants for business.

Both the SDC and FWA are able to receive and respond to complaints of discrimination. The operation of FWA is confined to employment issues, however, and the activity of the OFWO appears to be confined to a subset of employment issues dealing with 'adverse actions'. Broadly speaking, systemic discrimination in awards, agreements and remuneration is the remit of FWA, which has the power to review modern awards and to remove discriminatory terms, but acts on referral from the AHRC. FWA can also make equal remuneration orders, but acts following an application by an employee, a union or the SDC (Subclause 302(3)). The Sex Discrimination Commissioner is at present largely limited to complaint handling in individual discrimination matters.⁶⁶

The underpinning logic of these arrangements appears to be that simpler instances of employment discrimination ('adverse action') involving individuals or groups, and systemic employment matters requiring tribunal action are handled in the employment jurisdiction, and other matters in the anti-discrimination jurisdiction. In both cases activity is mainly triggered by complaint or referral from a specified person or body. The OFWO is likely to hand over more complex discrimination matters to the anti-discrimination jurisdiction, and

⁶⁵ 'In terms of our portfolio, the education, employment and workplace relations portfolio, we provide advice to the Minister for Employment and Workplace Relations on pay equity; supporting parents and carers to participate in paid work, including through minimum employment entitlements; and discrimination against prospective and existing employees. We also look at national trends in the gender wage gap and women's labour force participation, including on ABS data releases. Agencies within our portfolio also have responsibilities in this area. Primarily they include Fair Work Australia and the Fair Work Ombudsman, which commenced on 1 July 2009.' House Standing Committee on Employment and Workplace Relations, Inquiry into pay equity and associated issues related to increasing female participation in the workforce, Hansard, 20 August 2009, 3 at <<http://www.aph.gov.au/hansard/rep/commtee/R12309.pdf>>.

⁶⁶ 'A recurring theme in the evidence was that the [Sex Discrimination] Act is ineffective in addressing systemic discrimination because it adopts an enforcement model based upon individual complaints and remedies.' Report of the Standing Committee on Legal and Constitutional Affairs Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality, December 2008, 6.2, at <http://www.aph.gov.au/Senate/committee/legcon_ctte/sex_discrim/report/index.htm>.

both the OFWO and the SDC refer matters that cannot be conciliated (or in the case of the OFWO, mediated) to the courts.

EOWA does not handle discrimination complaints; it encourages the removal of barriers to equal employment opportunity for women. Its remit is confined to employment matters, or to the interaction between work and family as that is affected by employment policies and practices. Like both the SDC and FWA, EOWA undertakes research and education activities linked to its functions.

Each of the agencies is in a separate portfolio. EOWA's relationship with the OFW in the FAHCSIA portfolio gives it close links to the mainstream of gender policy through OFW's policy coordination mechanisms.⁶⁷ EOWA also benefits from having the direct oversight of the Minister for the Status of Women. Overall, the relationship between EOWA and other institutions is reflected in Table 2:

Table 2: Relationship between EOWA and other institutions

<i>Sex Discrimination Commissioner</i>	<i>Fair Work Australia</i>	<i>EOWW Agency</i>
Attorney-General's Department	Education, Employment and Workplace Relations Department	Families, Housing, Community Services and Indigenous Affairs Dept
Discrimination complaints/inquiries	Discrimination in Employment	Equal Employment Opportunity reports
Direct and indirect discrimination	Discrimination in Awards/agreements (FWA)	Receive and review reports
	Equal remuneration (FWA)	
	Direct and systemic discrimination – 'adverse action' (OFWO)	
	Auditing non-compliant organisations (OFWO)	
Other activities	Other activities	Other activities

⁶⁷ 'We...work to facilitate a whole-of-government approach by bringing together representatives from the various federal agencies but also state and territory government agencies through a range of informal and formal consultative mechanisms. These include a pay equity working group that was established in 2008 by the Women's Advisers Meeting, which is the officials group which supports the Ministers' Conference on the Status of Women. We also have an economic security working group recently established by the Commonwealth Women's Interdepartmental Committee. 'House Standing Committee on Employment and Workplace Relations, Inquiry into pay equity and associated issues related to increasing female participation in the workforce, Hansard, 20 August 2009, 3-4, at <<http://www.aph.gov.au/hansard/reps/committee/R12309.pdf>>.

Research into discrimination issues	Research (operation of agreement-making under FW Act/flexibilities/right to request)	Research into equal opportunity issues
Data analysis	Data collection—discrimination and operation of the Act	Data collection—monitor progress in implementing equal opportunity
Systemic inquiries ⁶⁸		
Education (preventing discrimination and promoting gender equality)	Education (adverse action/pay equity)	Education (achieving equal opportunity)
Complex matters → Federal Court	Complex matters → Fair Work Division Federal Court	

Recommendations made to recent Parliamentary inquiries have raised the question of whether EOWA should be moved into the anti-discrimination jurisdiction (the AHRC) on one hand, or the employment jurisdiction (FWA) on the other.

The then Human Rights and Equal Opportunity Commission submitted to the Senate Constitutional and Legal Affairs Committee's Inquiry into the Sex Discrimination Act that the 'objects of the SDA should also be amended, including an object to achieve substantive gender equality.'⁶⁹ It also proposed that consideration be given to including a general positive duty to eliminate discrimination and promote gender equality in a second stage of reform. In response the Committee recommended that further consideration be given to whether the obligations under the EOWW Act should be incorporated within the SDA and the functions of EOWA and HREOC combined.⁷⁰ Conversely, some women's community organisations have argued that it might be preferable to strengthen structural relations between the Agency and FWA, particularly if this were done in the context of strengthening equal remuneration functions of FWA and introducing mandatory pay equity audits.⁷¹

⁶⁸ The inquiry function under s 11(1)(f) of the *Australian Human Right Commission Act 1986* is at present limited to Commonwealth laws or actions done by the Commonwealth or its Territories, and does not extend to employers.

⁶⁹ Human Rights & Equal Opportunity Commission, Submission to the Senate Legal And Constitutional Affairs Committee on the Inquiry Into The Effectiveness of the Sex Discrimination Act 1984 (Cth) in Eliminating Discrimination and Promoting Gender Equality, para 103 and Recommendation 2, at http://www.aph.gov.au/Senate/committee/legcon_ctte/sex_discrim/submissions/sub69.pdf.

⁷⁰ Report of the Standing Committee on Legal and Constitutional Affairs Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality, December 2008, 11.103, at http://www.aph.gov.au/Senate/committee/legcon_ctte/sex_discrim/report/index.htm.

⁷¹ National Pay Equity Coalition and Women's Electoral Lobby Australia, Submission to the House of Representatives Employment And Workplace Relations Committee Inquiry into Gender Pay Equity, recommendation 31, at <http://www.aph.gov.au/house/committee/ewr/payequity/subs/sub118.pdf>.

Considerations

- *Which portfolio?*

The Senate Constitutional and Legal Affairs Committee has raised the possibility that the obligations under the EOWW Act should be incorporated within the SDC and the functions of EOWA and the AHRC should be combined. This proposal is for more than operational integration: it would change the sex discrimination jurisdiction into a gender equity jurisdiction and create a single entity.

It is undoubtedly the case that if the SDA were to become a gender equality jurisdiction there might be a better fit between it and the work of the Agency. The then HREOC argued before the Committee that gender equality plans would allow organisations not covered by the EOWW Act to demonstrate their commitment to equality, and that the preparation of such a plan could be a settlement term where organisations were found to be in breach of the Act. In addition, it suggested that its own legislation or the EOWW Act could be amended to provide for the independent auditing of the implementation and effectiveness of gender equality action plans by HREOC or EOWA. HREOC noted that such a function would be similar to the role performed by the Commission for Equality and Human Rights in the United Kingdom and would require additional resources.

The Agency has reservations about its effectiveness in changing workplace practices and culture from within the discrimination jurisdiction. It has some concerns that the model proposed by the AHRC would make the gender equality functions of EOWA serve the sex discrimination functions of the AHRC. It is more concerned, however, that its relations with employers would be altered if it managed its full range of functions—reporting and feedback, education and promotion—from within a framework that employers have come to regard as largely legalistic. Another way of putting this is that employers are more likely to take advice on good practice in employment conditions and pay equity from an organisation that is within the employment jurisdiction.

For this reason EOWA also believes that it would be better positioned within the DEEWR portfolio than in the FAHCSIA portfolio. In taking this view the Agency recognises the value of its relationship with OfW and, through OfW, with other agencies that have a policy and operational interest in gender equality. However, in becoming part of a different portfolio it would not cease to be part of OfW's policy coordination mechanisms.

- *A separate statutory body?*

If the recommendations of the House of Representatives Standing Committee on Employment and Workplace Relations' Inquiry into Pay Equity and the Government's response to the Senate Constitutional and Legal Affairs Committee's Inquiry into the Effectiveness of the Sex Discrimination Act, and the review of the EOWW Act do not result in substantive changes to the EOWW Act and to EOWA, there is a strong argument for leaving the Agency as a stand-alone statutory authority.

In implementing its existing functions EOWA benefits from its current statutory position outside the mainstream anti-discrimination and employment machinery. Even if the OFWO were to add verification of the distribution of EOWA compliance records and reports to its routine compliance audits, there would be no requirement for information to pass between the Agency and the OFWO—which would simply continue to apply its own established compliance processes. If the Agency’s other recommendations are not pursued and both enforcement and sanctions remain, as they are, weak, the Agency will be obliged to rely, as at present, on building and maintaining good relations with reporting organisations, in the expectation that pressure from employees (and their unions) and other compliance incentives will sustain and even build cultural change. If that is the role that the Agency is to play, its effectiveness is unlikely to be enhanced by being embedded in a mainstream portfolio agency.

If, however, the Agency were to get strengthened compliance arrangements (ie access to workplace audits), as well as a role in mandated action on pay equity, then it would benefit significantly from a closer relationship with a more compliance-oriented—though user-friendly—employment body such as FWA. An association with such a highly respected and authoritative body would enhance the Agency’s standing in a manner commensurate with increased compliance responsibilities. Importantly, it would also enable the Agency to draw on auditing support from the OFWO, which has considerable experience in using both self-audits and workplace audits to enforce compliance with federal legislation. For its part, the Agency could contribute expertise on pay equity and workplace discrimination to the OFWO to support it in carrying out its new discrimination remit and offer cooperative assistance to any new Equal Remuneration Commissioner. The OFWO would require some additional resources in order to take on these additional audits. By the time the audit mechanism is required, the Agency would have a clearer view of the level of its requirement for audit support under its new arrangements.

It is important to note that while the day-to-day operations of the OFWO are practically integrated with FWA, it continues to have separate governance arrangements. This is a model that would balance the operational benefits of a link to FWA with the statutory independence of the (renamed) EOWA agency head and legislated functions.

Recommendations

On balance, the Agency’s structural position should depend on any new functions the Government may give to it following the present inquiries.

- If any enhanced enforcement function is confined to OFWO verification of the distribution of EOWA compliance records and reports, the Agency would continue to benefit from its current status as a stand-alone statutory agency, while at the same time building stronger operational links with FWA and the OFWO in particular. For this reason it should be in the DEEWR portfolio.

- If, however, the Agency were to get strengthened enforcement (i.e. audit) arrangements, including a role in mandated action on pay equity, then it would have to develop its own audit capacity or rely on the OFWO. In the latter case the privacy and other legal considerations involved would be most easily addressed by moving the Agency at that later stage into FWA. The model proposed by the Agency is the same as that currently in place for the OFWO, with day-to-day operations practically integrated with FWA, and separate governance arrangements.

9. Advisory Committees

Background

Following the review of the Act in 1998, the Government agreed with a recommendation from its Independent Committee of Review to strengthen the ownership of key stakeholders in the operation and outcomes of the Act by setting up an Advisory Committee. The Act was amended to provide at section 31(1) for the establishment of 'such advisory committees as the Minister considers necessary for the purpose of giving advice to the Minister and to the Agency on particular matters or classes of matters relating to workplace programs, functions of the Agency or the operation of this Act.'

Following the appointment of members, the Advisory Committee initially provided advice on the implementation of the Government's response to the Independent Committee's recommendations, and on materials being prepared to advise reporting organisations of their responsibilities under the Act. The Committee ceased to operate for resourcing reasons.

Considerations

Given the nature and extent of the Agency's recommendations for this review, there is a case to be made for drawing on the resources of an advisory committee throughout the implementation process. However there are a number of reasons why the implementation of the Agency's current recommendations would be better supported by industry-specific advisory committees than by a single umbrella committee such as the one used following the 1998 review. Industry Advisory Committees could partner with the Agency and provide authoritative advice on:

- self-audit questionnaires that are responsive to industry differences yet retain sufficient commonality to support broad data collection;
- the setting and revising of required industry standards for reporting organisations, and industry benchmarks to establish the need for organisational equal pay reviews and implementation plans;
- the setting and revising of standards for certification as an EOWA Employer of Choice for Women.

Industry advisory committees could also partner the Agency in developing and circulating advice to their members on both the proposed coverage campaign and changed reporting arrangements.

The re-institution of advisory committees would have cost implications. Before pursuing such a recommendation, the Agency would strongly recommend to the Office for Women that as part of its conduct of the review it use the proposed consultative roundtables to establish the views of employers and employer organisations regarding the proposal.

Recommendation

- It is recommended that, as part of its conduct of the review, the Office for Women use the proposed consultative roundtables to establish the views of employers and employer organisations regarding the proposal the Agency be resourced to re-institute advisory committees, and to do so on an industry basis.

10. Timing of new arrangements

Considerations

The recommendations in this submission would require some time to implement. Implementation would fall into two phases. The first could begin following the Government's response to the review and once the shape of any foreshadowed legislative change is known. This phase would take in changes to the reporting form, initiation of a coverage campaign, and making the necessary changes to the Agency's information technology to support on-line reporting and a community of practice. All of these activities require some involvement from Industry Advisory Committees, so these will also have to be established early in the implementation process.

This first phase of reform would be associated legislative change to the EOWW Act, and to the *Income Tax Assessment Act 1936*. The Agency is also proposing that at this stage the routine compliance audits conducted by the OFWO include among other matters verification that compliance records and reports have been made directly available to employees and accessible to workplace unions. It is unclear as to whether any legislation may be required for this to occur, as there would be no need for any information to flow between the Agency and the OFWO. However, the enforcement of the requirement to publish compliance records and reports is in our view critical to inducing cultural change in reporting organisations as well as increasing the numbers of covered organisations that actually report.

The second phase of reform is associated with the introduction of additional reporting requirements for organisations whose reports are indicative of a substantial gender pay gap. Again, indicators would be set following discussion with industry advisory committees. We are recommending that the OFWO undertake random audits to enforce this requirement, as there is no proposal that pay equity reviews and implementation plans will be passed to the Agency for its consideration (though it will continue to receive the usual salary data required for the workplace profile).

We are also proposing that in this second implementation phase the OFWO would begin to undertake targeted audits of organisations refusing to report or providing reports that it has reason to believe may contain some misrepresentation. This recommendation recognises the likelihood that by the fourth year of reform the Agency should be managing a significantly increased number of reports, and that as a consequence its effectiveness is likely to be increasingly dependent on audit support. At this stage legislative amendments would be required to establish the Agency as a body where the day-to-day operations are practically integrated with FWA, while it continues to have separate governance arrangements.

An indicative overview of the implementation of the Agency's proposals is set out in Table 3.

Table 3: Indicative implementation of Agency recommendations by reporting years

Action	Reporting year
Government response	Year 1
Preparation and passage of any legislation	Year 1/2
Establishment of Industry Advisory Committees (IACs)	Year 1
Preparation of reporting forms and records of compliance	Year 1
IT changes (on-line reporting; CoP)	Year 1/2
First reporting year with new form and records of compliance	Year 2
Access to lists of employers and beginning of coverage campaign	Year 2
Settling required industry standards with IACs	Year 2/3
Second reporting year	Year 3
Reporting against required industry standards; requirement for progress in implementation; revised records of compliance	Year 4
Discussions with IACs regarding equal pay reporting standards associated with a requirement to undertake reviews and implementation plans	Year 3/4
Preparation and passage of any legislation relating to Agency relations with FWA; implementation of requirement to undertake reviews and implementation plans for selected organisations	Year 4
Additional audit mechanism in place including any additional legislation	Year 5

Role of EOWA under the proposed changes

The proposals in this submission would not fundamentally change the operations of the Agency. They are intended to support a more effective use of its resources; give it better information on which to act; enable it to provide better information and support to reporting organisations; strengthen its bargaining position with respect to organisations that are inclined to disregard the legislation; and increase its capacity to contribute to the evidence base for Government decision-making and education activities.

The reporting requirement would not change, although the reporting format would become a self-audit. The Agency would receive completed Gender Equality Self-Audits by a specified date, and would continue to review those self-audits. This would involve the EOWA client consultants:

- being satisfied that the report was complete and met the required industry standards; that where an organisation reported that a measure was not reasonably applicable, they had good grounds for that conclusion; and that progress had been made in implementing gender equality measures.
- providing feedback and ongoing advice and support to reporting organisations where there may be concern that no self-audit is being prepared; that the required industry standards are not being met; that there may be some misrepresentation on a self-audit that has been published to employees; or that an organisation appears to have made no progress in implementing gender equality measures. Where there are no such concerns, they would provide an in depth review and feedback to all marginally compliant organisations and to a selection of the remaining moderately compliant and highly compliant organisations (in 2009, 73.2 per cent and 11.1 per cent of all reports respectively).
- evaluating the workplace profile and pay equity section of the self-audit against benchmark data drawn from organisations in the same industry to determine whether an organisation should be required to undertake a more comprehensive pay equity review; and providing advice and support where such a review is required; and
- issuing a compliance record including a ranking of the organisation's report against an industry benchmark and ensuring that all organisations, both those that are compliant and those that are non-compliant, are aware of the requirement that their Gender Equality Self-Audit form be made directly available to employees in a manner specified in the EOWW Act, and that it must include clear indication of whether or not the report is compliant with the legislation.

Where employers are not prepared to address compliance concerns, this would involve:

- referring non-reporting organisations to the OFWO, which will enter the workplace and take appropriate steps to ensure the organisation completes the self-audit form;
- referring self-audits to the OFWO where, following appropriate scrutiny, they appear likely to involve misrepresentation, so that the accuracy of the self-audit can be verified; and
- advising non-compliant organisations of their non-compliant status and ensuring that the list of such organisations is made available for naming and for contract compliance sanctions.

Where employers have made substantial progress in implementing gender equality in their organisations, client consultants would also be responsible for advising on their eligibility for certification as an EOWA Employer of Choice for Women, or their involvement in high profile events celebrating particular initiatives.

Agency staff who are not client consultants would also be involved in bedding down a number of initiatives set out in the recommendations. There should be:

- a long term project focussed on using data on organisational employee numbers gained from the ATO to identify, contact and induct eligible organisations into the reporting framework;
- a project to establish an on-line reporting mechanism and a database to draw down and analyse aggregated data entered during self-audits. Once the initial round of reporting is complete, priority should be given to using the data received from organisations to derive benchmarks for industry performance, including pay equity benchmarks, for client consultants to use in advising reporting organisations. There will also be a requirement to respond to data requests as more comprehensive data becomes available;
- a project to establish and maintain the new Community of Practice on gender equality—involving not only the design and implementation of the on-line site, but also the establishment of an advisory group of practitioners to assist with design and content issues and with the development of a communication strategy to include smaller businesses. Other on-line tools, such as the Workplace Analysis Toolkit, the bullying and harassment tool, and the pay equity tool, will also need to be kept up to date and accessible. Self-paced IT learning modules will need to be developed and made available to HR practitioners who are intending to make use of these tools;
- other research, education and promotion activities described in the course of the submission will continue. These include:

- user pays workshops and other briefing sessions to educate employers on the their responsibilities under the legislation and the processes put in place by the Agency;
- the biennial census of the women and men in corporate leadership positions, both board directors and executive managers in companies listed on the ASX200 Index of the Australian Stock Exchange;
- events such as Equal Pay Day and initiatives highlighting good practice initiatives;
- and new education materials and campaigns that may be associated with pay equity initiatives following on from current reviews and inquiries, including the review of the EOWW Act and Agency.

ATTACHMENT 1

Extracts from EOWA Workplace Analysis Toolkit

Review Employment Policies and Practices Level 1

Employment Matter 1 Recruitment, Selection, Appointment and Engagement

The equity of an organisation's recruitment and promotion policies impacts on the level of access women have to different occupations, areas and levels within that organisation.

Equitable policies and practices in recruitment and selection ensure that the best person for the job is chosen and that the organisation gains the person with the skills and abilities most appropriate to its needs.

Answer the following questions

Yes No Don't Know

Are your recruitment processes transparent and accessible to a diverse pool of candidates?			
Are these processes delivering you a diverse range of successful job candidates, including women?			
Does your organisation have formal written policies on how to advertise, review applications, short-list for interview, conduct interviews and select the most appropriate candidate?			
Does your organisation recruitment and selection processes meet anti discrimination legislation guidelines?			
Does your organisations interview questions meet anti discrimination legislation guidelines?			
Have staff involved in recruiting received training on how to recruit equitably and on merit?			
Are you advertising to attract applications from both men and women?			
Is every candidate assessed against the same criteria?			
Do all job descriptions reflect the real requirements of the job, rather than describing the person who filled the job previously?			
Does information received via employee consultation confirm the equity of your recruitment and selection process?			

If you answered No or Don't Know to any of these questions it may indicate issues for women

Review Employment Policies and Practices Level 1

Employment Matter 2 Promotion, Transfer and Termination of Employment

Developing and implementing formal policies on promotion and transfer opportunities ensures that all employees in the workplace have equal access to these opportunities.

Determining why employees leave an organisation is also an important part of monitoring the effectiveness of career development and promotion policies.

Answer the following questions Yes No Don't Know

Are employees aware of the policies on transfer and promotion?			
Are your employees being promoted and transferred according to your policy?			
Are transfers and promotions made on the basis of merit rather than seniority or convenience?			
Are women provided with the same promotion and transfer opportunities as men?			
Are women promoted in the same proportion as they are represented at lower levels?			
Are women promoted in the same proportion as men?			
Have you identified women who are (and are not) interested in promotion?			
Are women leaving the organisation at a greater rate than entering?			
Do women leave your organisation at the same rate as men?			
Does your organisation have a process for capturing information from staff who leave voluntarily? (eg exit interview)			
Have you planned to address the issues the exit interviews have raised?			
Does information received via employee consultation confirm the equity of your promotion, transfer and termination processes?			

If you answered No or Don't Know to any of these questions it may indicate issues for women.

Employment Matter 3

Training and Career Development

Training and Career Development is an important aspect of employment as it ensures employees are able to contribute to the organisation as productively as possible.

The provision of equitable training and development opportunities assists all employees to improve their skills and qualifications and gain access to different positions and promotional opportunities within the organisation.

Answer the following questions

Yes No Don't Know

Does your organisation do a Training Needs Analysis?			
Do all staff participate in a formal Induction program?			
Is there a formal Performance Management System in place?			
Does it apply to all staff?			
Does your organisation have written and formal policies relating to training and career development?			
Are all employees informed of your training and career development policies?			
Do all employees have equal access to training? (How Does your organisation know this?)			
Does your organisation use a variety of methods to notify employees of training that is available?			
Is training conducted within normal business hours?			
Have you identified women who are (and are not) interested in career opportunities?			
For those women who said they are not interested, have you fully investigated the reasons why?			
Do women have access to leadership, management, supervisory training in the same proportions as they are represented your workforce?			
Do women access training in a proportion that reflects the total number of women employed?			
Are women employed in a broad range of jobs and levels of responsibility and not clustered in a narrow range of jobs that have			

become known as “women’s” jobs?			
Does your organisation keep statistics on the career progression of staff who have worked periods of part time work?			
Is career progression for this group similar to staff who have always worked full time?			
Does information received via employee consultation confirm the equity of your training and career development process?			

If you answered No or Don’t Know to any of these questions it may indicate issues for women

Review Employment Policies and Practices Level 1

Employment Matter 4 Work Organisation

Work Organisation refers to the way you organise your workplace. This could include the ways in which you are dividing up men’s work and women’s work, job redesign, part time work, full time work, casual and contract work and any work/life balance/flexible work practices.

Answer the following questions

Yes No Don’t Know

Does your organisation have written policies relating to work organisation, flexible work practices (eg flex time, working from home) and work/life balance? Are all staff and managers aware of them?			
Do staff have a written contract of employment which states their working hours?			
Are part-time and casual/contract staff kept informed of company policies and procedures?			
Do any of your staff work from home?			
Does your organisation have job share arrangements?			
Do any of your staff work flexible hours?			
Are managers trained on how to implement and manage flexible working?			
Does your organisation keep statistics on the usage rate of these individual policies for men and for women?			

In recruitment advertising, Does your organisation state that your organisation offers flexible work arrangements?			
Are employment conditions for casual / contract staff consistent with relevant awards and agreements?			
Is the length of service of casual employees the same or similar to that of full time employees?			
Are long-term casuals and temporary staff members offered the opportunity to become full time staff?			
Are long-term casuals and temporary staff members offered the opportunity to become permanent staff?			
Do staff working part time or flexibly get promoted?			
Are part time and job sharing opportunities available?			
Are women returning from parental leave?			
Do they return part time?			
Are work loads for part time workers realistic?			
Does your organisation keep statistics on the career progression of staff who have worked periods of part time work?			
Is career progression for this group similar to staff who have always worked full time?			
Does information received via employee consultation confirm the equity of your work organisation processes?			

If you answered No or Don't Know to any of these questions, it may indicate issues for women

Review Employment Policies and Practices Level 1

Employment Matter 5 Conditions of Service

Conditions of Service refers to pay and other employee benefits including leave. Where organisations are committed to eliminating inequity of salary and benefits, they can reduce the risk of losing talented staff to other organisations and potentially a discrimination complaint.

Answer the following questions**Yes No Don't Know**

Are men and women paid equitably including bonuses and benefits? How Does your organisation know this?			
Is the access to paid overtime similar for men and women?			
Are there similar usage rates for men and women?			
Are bonuses allocated equitably on the basis of performance and requirements of the job?			
Does your organisation conduct a regular gender pay equity analysis?			
Do casual and temporary employees have comparable conditions of service to full time and permanent employees?			
Do staff know what benefits your organisation offers in addition to salary?			
Does your organisation offer an Employee Assistance Program?			
Are pregnant women and women on parental leave included in pay review processes?			
Does your organisation offer paid parental leave?			
Are employment conditions for casual/contract staff consistent with relevant awards and agreements?			
Does information received via employee consultation confirm the equity of your conditions of service?			

If you answered No or Don't Know to any of these questions it may indicate issues for women .

Review Employment Policies and Practices Level 1

Employment Matter 6 Arrangements for Dealing with Sex Based Harassment

Sex-based harassment can be non-sexual or sexually related behaviour that offends, humiliates or intimidates and is not wanted and not returned. Sexual harassment is illegal and is the most frequent form of employment related sex discrimination. The employer is ultimately responsible for ensuring a harassment free workplace. Examples of sex-based harassment can include:

- Sexist material that is displayed publicly, circulated, or put in someone’s workspace or belongings, or on a computer or fax machine
- Verbal abuse or comments aimed at a person or group because of their gender
- Sexually offensive gestures
- Ignoring, isolating or segregating a person or group because of their gender
- Referring to a person who is trans gender by their previous name or gender
- Staring, unwelcome wolf whistling or leering in a sexual manner
- Sexual or physical contact, such as slapping, kissing or touching
- Intrusive questions about sexual activity
- Sexual assault
- Repeated sexual invitations when the person has refused a similar invitation before

Answer the following questions

Yes No Don't Know

	Yes	No	Don't Know
Are there clear, written policies in place outlining what is or isn't acceptable behaviour?			
Is there an internet policy referring to the accessing or emailing of offensive material?			
Have your policies been signed by your CEO and received by everyone in your workplace?			
Are your policies on Sex Based Harassment accessible to non English-speaking staff and staff with low levels of literacy?			
Is the Sex Based Harassment policy read, discussed, understood and signed at the Induction of all staff members?			
Are all managers and staff trained in harassment prevention and grievance handling procedures regularly?			
Does your organisation have an easy to use and trusted complaints procedure?			
Has the complaints procedure been communicated to all staff?			
Does your organisation have men and women trained as contact officers?			
Do staff know who they are?			
Have you monitored your harassment prevention strategies? Are they working effectively?			
Do your managers demonstrate and encourage appropriate behaviour?			
Do your employees feel comfortable raising sexual harassment issues?			
Does information received via employee consultation confirm the equity of your arrangements for dealing with sex based harassment?			

If you answered NO or Don't Know to any of these questions it may indicate issues for women

Review Employment Policies and Practices Level 1

Employment Matter 7 Arrangements for Dealing with Employees who are Pregnant, Potentially Pregnant or Breastfeeding their children

Developing and implementing formal policies on pregnancy, potential pregnancy and breastfeeding ensures that all employees in the workplace have equal access to these arrangements.

Determining why employees leave an organisation is also an important part of monitoring the effectiveness of these policies.

Answer the following questions

Yes No Don't Know

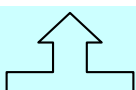
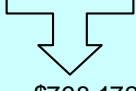

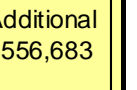
Does your organisation's anti discrimination policies include pregnancy discrimination?			
Do your organisation's certified agreements provide adequate protection for pregnant and potentially pregnant employees?			
Are employees aware of harassment and inappropriate behaviour in relation to pregnant women?			
Have all employees been advised of their rights and responsibilities in relation to pregnant and potentially pregnant women?			
Do women who are pregnant or potentially pregnant have equal opportunities for promotion, transfer and training?			
Does the workplace support pregnant employees working part time?			
Are your staff and managers aware that your casual employees who are pregnant or potentially pregnant, have the same rights under the Sex Discrimination Act as permanent employees?			
Are your recruitment and selection procedures free from discrimination in relation to pregnant or potentially pregnant applicants?			
Are pregnant employees provided with the opportunity for reasonable alternate equipment and work environments to protect their health and safety?			
Does your organisation comply with occupational health and safety standards relating to the creation of a safe working environment for pregnant or potentially pregnant employees?			

Are pregnant employees able to use their sick leave to attend medical appointments associated with their pregnancy?			
Does your workplace have a safe, clean and private room for women who are breastfeeding to express and safely store breast milk?			
Does information received via employee consultation confirm the equity of your arrangements for dealing with employees who are pregnant, potentially pregnant or breastfeeding?			

ATTACHMENT 2: SUMMARY OF COSTINGS FOR INCREASED COVERAGE

Workings based on compliance reporting happening throughout the year rather than the 4.5-month cycle, as is the case currently.

The number of organisations that have employees over 100 and over 80 are estimates provided by ABS.

		Current	Scenario 1	Scenario 2
Current	Based on a reporting cycle of 4.5 months of the year	\$472,489	 Additional \$470,218 	 Additional \$556,683 
Scenario 1 - Fulltime basis	Based on assessment of 4206 reports (13227 orgs), fulltime APS 5 checking and verification of the information. Level 6 taking on the desk based audit.			
Additional resource for transition			\$144,535	
Scenario 2 - Fulltime basis	Based on orgs over 80 reporting, assessment of approx 6210 reports (16783 orgs), same principle as above			\$984,637
Additional resource for transition				\$144,535

ATTACHMENT 3: ABBREVIATIONS

AHRC	Australian Human Rights Commission
CoP	Communities of Practice
DEEWR	Department of Employment, Education and Workplace Relations
EOCFW	Employer of Choice for Women
EOWA	Equal Opportunity for Women in the Workplace Agency
EOWW Act	Equal Opportunity for Women in the Workplace
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
FWA	Fair Work Australia
OFW	Office for Women
OFWO	Office of the Fair Work Ombudsman

