

## **MODEL SUBMISSION**

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**SUBMISSION TO**

**AUSTRALIAN GOVERNMENT REVIEW OF**

**EQUAL OPPORTUNITY FOR WOMEN IN THE**

**WORKPLACE ACT 1999 (Cth)**

**AND**

**EQUAL OPPORTUNITY FOR WOMEN IN THE**

**WORKPLACE AGENCY**

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NOTE: Submissions are due by COB on Friday 16 October but some organisations are being given extensions to COB Friday 30 October 2009. Any organisations or individuals experiencing difficulty in meeting this deadline are encouraged to contact the Office for Women on 02 6212 9059.

# 1 Achieving Gender Equality in Australian Workplaces: What Needs to Change?

This Submission sets out proposals for reform in order to progressively achieve gender equality in Australian workplaces.

This Submission is addressed to the Australian Government which is conducting a Review of the *Equal Opportunity for Women in the Workplace Act 1999* ('the Legislation'), and the EOWA Agency ('the Agency').

Despite the good intentions represented by the EOWW Act and the best efforts of the EOW Agency to implement that legislation, the outcomes described below suggest the need for major reform. As the primary tool for ensuring employers take genuine and verifiable steps to improve the representation of women at all levels of employment, the Legislation needs to spell out the steps clearly and to include sanctions if the legislated goals are not met. The Agency also needs to be empowered and resourced sufficiently to be able to administer the legislation, and must have the political clout to ensure compliance.

**[BACKGROUND NOTES for those making your own submission: For more information about the EOWA Review, go to [http://www.eowa.gov.au/About\\_EOWA/Review\\_2009/Review\\_Information.asp](http://www.eowa.gov.au/About_EOWA/Review_2009/Review_Information.asp).]**

## 1.1 Principles

In our view, the following Principles should guide reform of the Legislation and the Agency:

*The revised (and renamed) legislation:*

- should require all companies and other organisations (including higher education) with more than 100 employees to develop numerical targets for promoting women to all levels;
- should require all reporting organisations to report annually on progress in achieving these targets
- should require all reporting organisations to report on gender pay equity at all levels within their organisation
- all of these reports should be public

- these reports, and the progress towards achieving targets, should be independently verifiable
- incentives should be provided for achieving targets
- sanctions need to be attached to the legislation if targets not being achieved after a certain period of time

*The new Agency, (the Office of Women's Employment)*

- must be an independent statutory authority attached to a high-level economic department such as Prime Minister and Cabinet, Treasury or Employment and Workforce Relations
- must have research, advocacy and audit functions in addition to administering the legislation
- should be the Go To Government Place on all issues concerning all aspects of women's employment
- should work closely with the Sex Discrimination Commissioner and Fair Work Australia
- should not be in the business of giving out Awards to employers

**1.2 The need for reform**

Despite a quarter of a century since the adoption of the *Sex Discrimination Act 1984* (Cth) (SDA), and twenty three years since the *Affirmative Action (Equal Opportunity for Women) Act, 1986*, the precursor of the *Equal Opportunity for Women in the Workplace Act 1999* (EOWWA), women do not yet enjoy equality with men in Australian workplaces.

The SDA and EOWWA removed many 'formal' barriers to gender equality, for example, by making it unlawful for employers to refuse to employ women (or men) in a specific job.

However, whilst women make up 45% of the Australian workforce,<sup>1</sup> there remain many ways in which women do not enjoy full (or substantive) equality in paid work. The facts speak for themselves.

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<sup>1</sup> Australian Bureau of Statistics, *Labour Force, Australia*, August 2008, Catalogue No 6202.0, ABS, Canberra, 2008.

For example:

- **Workforce Participation**

- Australia is ranked 1<sup>st</sup> on women's educational attainment but only 40<sup>th</sup> for women's workforce participation<sup>2</sup>

- **Gender Pay Gap**

- Women are only paid 83% of the pay of men for work of comparable value (based on ordinary full-time earnings)<sup>3</sup>

- **Women in Leadership Roles**

- Women chair only 2% of ASX200 Companies

- Women hold only 8.3% of Board Directorships, 2% of CEO Roles, and 10.7% of Senior Executive Positions

- Women hold only 5.9% of senior line management roles in ASX200 Companies

- Fifty one percent of ASX200 Boards have no female directors<sup>4</sup>

- **Sexual harassment in the Workplace**

- 22% of women (compared to 5% of men) have experienced sexual harassment at work<sup>5</sup>

- **Pregnancy discrimination**

- Almost one in 5 pregnant women experience difficulty in their workplace linked to their pregnancy<sup>6</sup>

- **Balancing Paid Work and Family and Caring Responsibilities**

- Women continue to do the vast majority of unpaid work, even when they are also in paid work<sup>7</sup>

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<sup>2</sup> World Economic Forum, *Global Gender Gap Report*, (2008). 43.

<sup>3</sup> Australian Bureau of Statistics, *Average Weekly Earnings*, May 2009, Cat No 6302.0 (2009).

<sup>4</sup> Equal Opportunity for Women in the Workplace Agency, *Women in Leadership Census* (2008). Go to [www.eowa.gov.au/Australian\\_Women\\_In\\_Leadership\\_Census.asp](http://www.eowa.gov.au/Australian_Women_In_Leadership_Census.asp).

<sup>5</sup> Australian Human Rights Commission, *Sexual Harassment: Serious Business* (2008) at [http://www.hreoc.gov.au/sexualharassment/serious\\_business/index.html](http://www.hreoc.gov.au/sexualharassment/serious_business/index.html).

<sup>6</sup> Rebecca Cassells, Riyana Miranti, Binod Nepal and Robert Tanton, *She works hard for the money: Australian women and the gender divide*, AMP.NATSEM Income and Wealth Report issue 22 (2009) p 18. At <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjA5fENoaWxkSUQ9LTF8VHlwZT0z&t=1> (viewed 2 July 2009).

- Greater flexibility in paid work is identified by women and men as the No 1 change needed to better accommodate their family and caring responsibilities<sup>8</sup>

- **Retirement Savings**

- Women accumulate only half the retirement savings of men over their lifetime.<sup>9</sup>

**[BACKGROUND NOTES for those making your own submissions:** In 2008, Elizabeth Broderick, the Federal Sex Discrimination Commissioner with the Australian Human Rights Commission completed a national Listening Tour to identify the nature and extent of progress towards achieving gender equality in Australia. The key finding of the national Listening Tour was that our progress has seriously stalled.

For more information on the unfinished business of achieving gender equality in Australian workplaces, go to

- [Current State of Gender Equality in Australian Workplaces \(AHRC Resource Paper No 1\)](#)**
- [National Listening Tour Community Report](#)**

## **2 Why Does Achieving Gender Equality in Australian Workplaces Matter?**

Achieving gender equality in Australian workplaces is good for the economy, and good for business. Gender equality in paid work is also our human right.

### **2.1 The National Productivity Case**

There is an urgent case for achieving gender equality in Australian workplaces to increase Australia's national productivity. As noted by the

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<sup>7</sup> The birth of a child results in women working incredibly long hours in both paid and unpaid work. In 2006, the total hours of work for mothers whose youngest child was between 0-4 was 85.9 hours weekly, compared to 79.6 hours for fathers, 61.3 hours for men without children and 55.5 hours for women without children.<sup>7</sup>

<sup>8</sup> Newspoll, *Out of School Hours Care* (National Foundation of Australian Women, 2008). This was a population survey of parents and guardians of children aged between 5 and 15 years of age. Go to <http://nfaw.org/newspoll-survey-report/>.

<sup>9</sup> For more information about the gender gap in retirement savings, see Australian Human Rights Commission, *Accumulating Poverty? Women's experiences of inequality over the lifecycle* (2009) at [http://www.hreoc.gov.au/sex\\_discrimination/publication/gender\\_gap/index.html](http://www.hreoc.gov.au/sex_discrimination/publication/gender_gap/index.html).

World Economic Forum, 'there is a strong correlation between the gender gap and national competitiveness...a nation's competitiveness depends significantly on whether and how it educates and utilizes its female talent.'<sup>10</sup>

Australian women have a low labour market participation rate, particularly for mothers with young children, when compared with comparable OECD countries such as Canada, Sweden, the United Kingdom and the United States.<sup>11</sup>

Whilst Australia ranks equal 1<sup>st</sup> in the World Economic Forum Gender Gap Index of women's educational attainment, it lags at only 40<sup>th</sup> in women's workforce participation. In other words, the return on our investment in women's education is very low.

This situation is bad for national productivity, and bad for women. It represents a shocking waste of resources.

Australia has invested in women's strong skills development, yet many women are working at less than their skill level, or have retreated from paid work altogether. Ensuring that women are enjoying gender equality in paid work is important for Australia's national productivity in light of the ongoing skills shortages in many key industries, despite the global financial crisis.

Australia also faces significant challenges with an aging population in terms of its paid workforce ratio over the medium to longer term. By 2050, there will have a quadrupling of the proportion of people over 85 and a doubling of the proportion over 65.<sup>12</sup> Addressing the barriers to women's participation in paid work would significantly improve the paid workforce ratio over time, essential to expanding the nation's tax base.

When women cannot achieve a level of economic security through paid work, their ability to fund their own retirement is very low. Women currently hold only half the retirement savings of men, and make up 73% of single Age Pension recipients.<sup>13</sup> Improving women's ability to be involved in paid work will alleviate the pressures on our social security system.

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<sup>10</sup> World Economic Forum, Global Gender Gap Report (2008, Highlights, at <http://www.weforum.org/pdf/gendergap/highlights2008.pdf>.

<sup>11</sup> Organisation for Economic Co-operation and Development. (2007) *Babies and Bosses: Reconciling Work and Family Life (Vol.5): A Synthesis of Findings for OECD Countries*.

<sup>12</sup> The proportion of people 65 and over is likely to double between 2004 (13%) and 2051(27%). The proportion of people 85 and over is likely to quadruple between 2004 (1.5%) and 2051(7%). Source: Australian Bureau of Statistics, 2006, *Population Projections, Australia, 2004 to 2101*

<sup>13</sup> FAHCSIA, *Pension Review Background Paper* (2008) p 6. Available at [http://www.facs.gov.au/seniors/pension\\_review/pension\\_review\\_paper.pdf](http://www.facs.gov.au/seniors/pension_review/pension_review_paper.pdf) (viewed 9 February 2009); Robert Tanton, Yogi Vidyattama, Justine McNamara, Quoc Ngu Vu and Ann Harding, *Old Single and Poor: Using*

It is vital to national productivity that all people in Australia who want to be in paid work are able to do so to the maximum of their skills, abilities, and aspirations, regardless of gender.

## **2.2 The Business case**

Achieving gender equality in the paid workforce is also important for strong business performance. There are several ways in which greater gender diversity impacts positively on business outcomes.

### **2.2.1 Talent Management**

Talent is absolutely critical for all corporations. Along with investment and technology, people are the essential ingredient for increasing the nation's productivity. Recruitment and retention of talented women represents a major opportunity for businesses. At present, companies in the ASX200 are not accessing the full spectrum of available talent. Fifty one percent of ASX200 companies have no women directors and 45.5% of ASX200 companies have no women at all on their executive teams.<sup>14</sup> The pipeline of women to the next most senior level is also small. Chief Executive Women (CEW) has projected that on the current trajectory it will take over 150 years for women to hold a similar number of senior positions as men.<sup>15</sup>

### **2.2.2 Market Power Case**

Women exercise strong consumer power in Australia. It has been estimated that women handle about 75% of family finances and influence about 80% of buying decisions.<sup>16</sup>

It makes sound business sense to include women at all levels of decision-making in organisations to broadly represent, and provide unique insights into, this customer base.<sup>17</sup>

### **2.2.3 Improved Performance Case**

Research undertaken by McKinsey & Co. in the UK reveals companies with a higher proportion of women in their top management team have better

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*Microsimulation and Microdata to Analyse Poverty and the Impact of Policy Change Among Older Australians* (2008) p 15. Available at

[https://guard.canberra.edu.au/natsem/index.php?mode=download&file\\_id=880](https://guard.canberra.edu.au/natsem/index.php?mode=download&file_id=880) (viewed 9 February 2009).

<sup>14</sup> Equal Opportunity for Women in the Workplace Agency, *Women in Leadership Census* (2008). Go to [www.eowa.gov.au/Australian\\_Women\\_In\\_Leadership\\_Census.asp](http://www.eowa.gov.au/Australian_Women_In_Leadership_Census.asp).

<sup>15</sup> Chief Executive Women.

<sup>16</sup> McKinnon, Bill, *The Hard Sell*, *The Open Road*, May/June 2000, 11.

<sup>17</sup> Ref Susan Vinnicombe.

financial performance.<sup>18</sup> This is because organisations with better gender balance tend to have positive cultures that value and leverage the skills and contribution of all employees. In addition, having women employed and engaged helps overall employee engagement and productivity.

## 2.2.4 The Human Rights Case

Australia has ratified international agreements, such as the *Convention on the Elimination of All Forms of Discrimination Against Women*, which impose a clear obligation on the Australian government to achieve gender equality in the paid workforce.

[**BACKGROUND NOTES** for those making your own submissions. For more detail on Australia's international obligations, see [Australia's Obligations to Achieve Gender Equality in the Workplace: AHRC Resource 2](#)].

## 3 The Role of the EOWW Act and EOWA

The current EOWWA Legislation and the Agency was established in order to promote merit in employment and equal opportunity for women. Whilst the Agency has undertaken excellent work, progress in achieving gender equality for women in paid work has been marginal. Current statistics show that the Agency lacks the power to enforce the requirements of its Legislation. Stronger intervention is clearly needed.

This submission argues that, in order to apply the merit principle to women's recruitment, remuneration and promotion, affirmative action or 'special measures' such as targets and quotas are needed. Strategies such as targets and quotas are one way of bringing women's merit out into the open.

Some will argue that strategies such as quotas constitute favourable treatment for women and that this will undermine the principle of merit. The principle of merit aims to ensure that leadership selection processes are fair, impartial and transparent. It means the outcome is not based on where you went to university, or who you know, or which club you belong to. The merit principle is intended to eliminate favoritism, nepotism and bias. Unfortunately the merit principle continues to be used to defend just these practices.

Targets and quotas are not discrimination but 'special measures' and understood as an expression of equality rather than an exception to it. There is a difference between formal equality and substantive equality. We are

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<sup>18</sup> Georges Desvaux, Sandrine Devillard-Hoellinger, Mary c Meaney, *A Business Case for Women* (The McKinseys Quarterley, September 2008), 2.

interested in equal outcomes not just equal opportunities. Sometimes people need to be treated differently in order to get true equality.

The EOWW Act and its Agency also need to be understood as part of the national gender equality machinery, including gender equality laws and other regulations. The proposals in this Submission may therefore impact on the following laws, regulations and governing principles.

- The Equal Opportunity for Women in the Workplace Act 1999 and Agency
- The ASX Corporate Governance Principles
- The Public Service Act 1999
- The Equal Employment Opportunity (Commonwealth Authorities) Act 1987
- The Sex Discrimination Act 1984 (Cth)
- The Australian Government Procurement Guidelines
- Other Reforms (such as the proposed parental leave provisions, and recommendations by parliamentary committees on pay equity and reforms to the Sex Discrimination Act).

**[BACKGROUND NOTES for those making your own submissions:** For more information about comparative gender equality laws and institutional arrangements in the United Kingdom, Canada, New Zealand and Norway, go to [\[Comparative Gender Equality Laws in the UK, Canada, NZ and Norway \(AHRC Resource Paper No 4\)\]](#) .

## RECOMMENDATIONS

We recommend the following reforms in order to achieve gender equality in Australian workplaces:

### **Women's Workforce Participation and National Productivity**

Australia has poor female workforce participation rates by global standards. There is inadequate progress on addressing barriers to workforce participation, and a lack of measures in place to track adequate progress over time.

Strong measures need to be introduced to bring Australia into line with comparable economies by employing women at all levels and in all possible job descriptions.

**Recommendation 1:** The Office of Women's Employment should be required to set national indicators and benchmarks for increasing women's workforce participation. Reporting at business level to the Agency should be by reference to these national indicators and benchmarks. The Agency should be empowered to negotiate voluntary targets with industries or businesses against key indicators, such as gender pay gap as specific levels, percentage of workers on flexible work arrangements, and to monitor progress, as required.

### **Fair remuneration for all employees - gender pay equity across all job descriptions**

Women's attachment to the labour force can be weakened by a number of factors: lack of employment opportunities, lack of opportunities for promotion, lack of access to flexible work, lack of childcare or maternity leave and - perhaps the greatest disincentive of all - lack of equal remuneration. Currently, closing the gender pay gap (17%) has stalled.

**Recommendation 2:** The Agency should be given a primary role in addressing the gender pay gap in Australia. The Agency should have adequate powers and funding to develop and implement a national strategy for closing the gender pay, working closely with Fair Work Australia, the Sex Discrimination Commissioner, business, unions and other stakeholders. The National Gender Pay Gap Strategy should include clear national indicators, benchmarks, and monitoring mechanisms.

## Senior Executive Roles – Targets and Reporting

Representation of women in senior line management positions has dropped from 7.4% to 5.9%, between 2006 and 2008.

**Recommendation 3:** Publicly listed companies should be required to set a complementary 3 and 5 year target on improving the gender balance at senior executive level. Companies should report annually against the targets in their Annual Report to the ASX or, if they are not listed, to ASIC.

## Board Directorships – Targets and Reporting

Despite significant rhetoric and programs directed at women over the last decade, there has been virtually no progress in increasing women's representation at Board level. Current research shows that only 8.3% of Board Directorships on ASX 200 companies are held by women (down from 8.7% in 2006). In 2008, 51% of ASX200 companies had no female board directors. It is time for significant intervention to ensure that progress is made by both business and government.

There is significant evidence to demonstrate that substantial progress will only be made when clear time-bound targets or quotas are set and tracked regularly.

Strategies need to be undertaken to improve women's leadership in both government and business contexts.

### Government Boards – Time Bound Targets

- Government has a leadership role to play. Yet, at the present time, women make up only 30%<sup>19</sup> of representation on federal government boards.
- Victoria, the ACT and South Australia have set time-bound targets, to achieve 50% representation of women on government boards within a set period. They are measuring their progress and publicly reporting against outcomes. ACT has achieved 48% within four years.<sup>20</sup>

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<sup>19</sup> Check ref.

<sup>20</sup> Check ref.

**Recommendation 4:** That the Australian Government set a minimum target of 40% of each gender on all government boards to be achieved within three years.

### **Publicly Listed Company Boards – Time Bound Targets**

At the present time women comprise only 8.3% of directorships and 2% of Chair positions on ASX 200 company boards. This situation has worsened recently. It is clear that time alone will not solve this issue. Over the last decade since the EOWA legislation was introduced there has been minimal progress.

**Recommendation 5:** Publicly listed companies should be required to set a 3 and 5 year target for gender equality on company boards, to measure progress against these targets and to publicly report on progress. This public reporting should be included in their Corporate Governance Statement included in their Annual Report, lodged annually with the ASX, on an exception reporting basis.

### **Publicly Listed Companies – Compliance with Gender Equality Laws**

There is a widespread perception that a large proportion of the employers covered by EOWA (being employers of over 100 employees) fail to meet their obligations by filing an annual report.

**Recommendation 6:** ASX listed companies that are required to comply with the EOWA legislation should include in their Corporate Governance Statement in their ASX Annual Report that they have filed their EOWA Report. If not, companies should provide a clear explanation for why they failed to comply, on an exception reporting basis.

### **Mandatory Quotas for Boards after 5 years unless significant progress made**

The strategy to improve gender equality at senior levels of business has two phases. Phase 1 requires companies to set their own targets and report regularly on progress (see Recommendations 5 and 6, above).

Phase 2 is designed to commence after 5 years if companies are not at a minimum of 40% of both genders on publicly listed boards.

Phase 2 involves the government setting mandatory quotas for all government and publicly listed boards. Failure to meet these quotas will result in financial or other penalties.

**Recommendation 7:** The Australian Government commit to promoting an aspirational target of 40% gender balance on all boards, to be reviewed after five years. If this target is clearly not being met, the Australian government will legislate to require publicly listed companies to achieve a mandatory quota of 40% within a specified time frame, failing which penalties will be imposed.

## **Government Procurement Standards**

Currently, government procurement guidelines prevent government departments from buying goods and services from, or entering into contracts with, organizations identified as non-compliant in EOWA's annual report to the Minister which is tabled in Parliament. Further these organizations may also be ineligible for grants for specified industry assistance programs. However, these government procurement guidelines are not effectively monitored or enforced.

**Recommendation 8:** Certified compliance with the revised Equal Opportunity for Women in Employment Act is a 'condition of participation' for Australian Government procurement.

## **Mechanisms for increasing the numbers of women on ASX200 boards**

In order to meet voluntary targets and quotas, organisations will devise their own mechanisms to ensure the rapid recruitment and promotion of women to leadership positions to meet voluntary targets, but they might like to consider some of the following:

**Recommendation 9:** Companies should consider the following strategies to improve gender equality at senior levels:

- Create an additional board position reserved for women
- Create 'Trainee' Board positions, targeted towards women without current board experience
- Ensure all vacant board positions are fully advertised, with clear competencies set, and transparent selection processes used for appointments

- Ensure senior women are consulted during selection processes

## **Office of Women's Employment - Responsibilities and Functions**

The Equal Opportunity for Women in the Workplace Agency has performed well given the constraints of the legislation and the lack of resourcing provided by government, but it is time the Agency was reformed with significantly increased powers and renamed. The reformed Office of Women's Employment should combine the powers of a statutory office (i.e. it will have responsibility for administering the new legislation) with the research and advocacy functions of the old Women's Bureau (created in 1963 to monitor and advise on all aspects of women's employment and abolished by the previous Federal Government). To have the authority to carry out these tasks and to have credibility with the corporate world the Office of Women's Employment needs to be attached to a major economic department - Prime Minister and Cabinet, Treasury or Employment and Workforce Relations but it must be free from Ministerial direction and should report directly to Parliament.

**Recommendation 10:** *EOWA should be reformed and renamed as the Office of Women's Employment, as a statutory office reporting to Parliament.*

**Recommendation 11:** The Office of Women's Employment should be attached to a high-level economic department, either Prime Minister and Cabinet, Treasury or Employment and Workplace Relations

**Recommendation 12:** In addition to administering the new legislation, the Office of Women's Employment should be responsible for conducting high-level research on all aspects of women's employment, becoming a major resource centre

**Recommendation 13:** The Office of Women's Employment should be the Go To Government Place on all issues concerning women's employment. Its legislation should require it to work closely with the Sex Discrimination Commissioner and Fair Work Australia.

**Recommendation 14:** The limited resources of the Office of Women's Employment should not be spent on Employer Awards. Employers Awards should be promoted and supported but funded from within business itself.

## **Independent Monitoring of Gender Equality**

At the present time, there is no obligation on any agency to report independently to the Australian people about progress in achieving gender equality in Australia, including in paid work. This is a vital method by which to monitor what is working and what needs to change, on a non-party political basis. The Senate Committee, in its review of the SDA, recommended that the Sex Discrimination Commissioner be given this responsibility, with adequate funding attached.

**Recommendation 15:** The federal Sex Discrimination Commissioner should be mandated, and funded, to independently report to the Australian parliament and the public on Australia's progress in achieving gender equality, including gender equality in Australian workplaces and women's in leadership positions.

Alternatively, another fully independent statutory office, such as the Auditor-General or the Ombudsman, should be mandated, and funded, to independently report to the Australian parliament and the public upon progress in achieving gender equality in Australian workplaces.