



**Australian Government**

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**Department of Families, Housing,  
Community Services and Indigenous Affairs**

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**Office for Women**

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

## **Issues Paper**

**Improving the lives of Australians**

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# 1 The review of the *Equal Opportunity for Women in the Workplace Act 1999*

The Minister for the Status of Women, the Hon Tanya Plibersek MP, has determined that a review of the *Equal Opportunity for Women in the Workplace Act 1999* (the EOWW Act) is both timely and necessary.

The Office for Women in the Department of Families, Housing, Community Services and Indigenous Affairs is leading this review, and is seeking views from the community in examining and reviewing the effectiveness and efficiency of the EOWW Act and the Equal Opportunity for Women in the Workplace Agency (EOWA) in delivering equal employment opportunity to women in Australia.

The EOWW Act was last reviewed in 1999. Since that time, there have been a number of changes in key policy settings and the economic landscape which make it important to ensure that the EOWW Act and EOWA are continuing to make the best possible contribution to advancing equal opportunity for women in Australian workplaces.

Social inclusion and increased workforce participation underpin a large part of the Australian Government's policy platform. Policies and practices that recognise and advance the interests of Australian women are central to many of the key reforms under way in Australia today.

Workplace relations legislation has seen significant changes, and the *Fair Work Act 2009* has introduced further significant reforms, including to the institutional arrangements for oversight of workplace relations. The Attorney-General appointed an independent committee to undertake nation-wide consultations to consider ways to protect and promote human rights into the future. A Senate Committee has considered the effectiveness of the *Sex Discrimination Act 1984*, and a House of Representatives Committee is examining pay equity.

This review of the EOWW Act and EOWA will help ensure that this legislation fits into the developing legislative framework.

There is also a need to ensure that the Australian Government's equal employment opportunity policies remain appropriate for current economic and social conditions.

While Australia has enjoyed record economic growth over the last decade, which facilitated employment and women's participation in the workforce, economic conditions have changed rapidly over the last 12 months due to the global recession. This will have a likely impact on Australian workplaces and working women and men. During such times, it is important to ensure that equal employment opportunity policy is effective to enable businesses to perform efficiently, including by maintaining a focus on equal employment opportunity for women.

## 1.1 Terms of reference

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

- examine the contribution that the EOWW Act has made to increasing women's employment opportunities and advancing women's equality in the workplace;
- examine the role that the EOWW Act and Agency have in gathering and reporting on workplace data;
- consider the effectiveness of the existing legislation and arrangements in delivering equal opportunity for women;
- provide advice on practical ways in which the equal opportunity for women framework could be improved to deliver better outcomes for Australian women;

- consider opportunities to reduce the cost of existing regulation and/or ways to ensure that any new legislation is cost-effective and well-targeted;
- consider the EOWW Act and Agency within the framework of existing and proposed human rights and workplace-related legislation, policy and administration, with a view to maximising complementarity and reducing overlap; and
- have regard to the effects of the EOWW Act, or any proposed recommendations resulting from this review, on social inclusion, the economy, the labour market, business competitiveness and the general wellbeing of the Australian community.

## 1.2 Consultation process

The Office for Women will be undertaking an extensive consultation process with the community, business, trade union and higher education sectors, employees, expert academics and practitioners as well as with women's organisations across Australia. The process encompasses:

- a call for public submissions in response to this issues paper during September–October 2009;
- a survey of EOWW Act reporting organisations in September 2009; and
- targeted stakeholder consultation, including roundtables in selected capital cities and individual interviews with key stakeholders in September and October 2009.

The Office for Women has engaged the consultancy KPMG to provide assistance in undertaking the review. KPMG is managing the public consultation process, including receiving and analysing public submissions, developing and analysing the organisational survey, convening the roundtables and individual interviews with key stakeholders, and providing a report on the review's terms of reference and the consultation process.

## 1.3 Commenting on the issues paper

The Office for Women would appreciate your feedback on the issues and questions raised in this paper in order to inform the review. You can provide written input to express your views, sending your submission by:

- emailing [eowwreview@kpmg.com.au](mailto:eowwreview@kpmg.com.au); or
- writing to EOWW Act review, C/- Health and Human Services Practice, KPMG, 10 Shelley Street, Sydney NSW 2000.

This issues paper includes consultation questions that may assist you in preparing your submission. In this regard, the Australian Government is keen to receive factual and supporting information. Please do not feel obliged to answer all the questions, or be constrained by them. The consultation questions can be found throughout the paper and are also repeated in a summary form in Appendix A.

- The closing date for all submissions is 5pm, Friday 16 October 2009.
- Submissions sent by post must be post marked no later than Friday 16 October 2009.
- Submissions sent via email must be received no later than 5pm, Friday 16 October 2009.

We encourage you to make a submission.

## 1.4 Next steps

The next steps following the release of this issues paper will involve the Office for Women collating and analysing the responses. This will be followed by further targeted stakeholder consultations which will occur from September through to October 2009.

## 2 Current status of women in Australian workplaces

The labour force participation rate of women in Australia has increased significantly over the last 30 years. Between February 1978 and June 2009, the labour force participation rate of women increased from 43.5 per cent to 58.7 per cent<sup>1</sup>.

Australian women's increased workforce participation has been a major factor in leading to better economic security for women. Paid work gives women the opportunity to ensure their own financial security, contribute to the family budget and secure their economic future into retirement.

While paid work improves women's choices and independence, it is also fundamental to workplace productivity and economic growth. Paid work is also widely recognised as key to addressing disadvantage and to contributing to social inclusion.

### 2.1 Barriers to equal employment opportunity

Despite the significant increases in women's workforce participation, women continue to spend less time in the paid workforce than men, and to fare less well than men on a number of key indicators while at work. The nature of women's work is also quite different to men's.

While the labour force participation rate of women was 58.7 per cent in June 2009, for men it was considerably higher at 72.1 per cent<sup>2</sup>. Women are much less likely to work full-time than men (54.9 per cent compared to 84.1 per cent), and comprise over 70 per cent of the part-time workforce<sup>3</sup>.

Workforce participation rates for women by age show a marked dip between the ages of 25 and 44, which is not evident for men. Australia also has a lower participation rate for mothers with young children than the OECD countries of Canada, Sweden, the United Kingdom and the United States<sup>4</sup>.

These key indicators suggest that having children significantly impacts on Australian women's workforce participation, as well as their experiences while in paid work and their capacity to save for a financially secure retirement.

Sole mothers are less likely to be in paid work than partnered mothers. Sole mothers may also face additional barriers to workforce participation and job opportunities, given the greater responsibilities and reduced flexibility often associated with parenting alone.

Indigenous women, women with disabilities, regional and rural women, and women from culturally and linguistically diverse backgrounds may also face distinct obstacles and challenges in the labour market and in the workplace.

Despite gains in participation rates over time, women's earnings remain persistently lower than men's.

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1 ABS (2009) Labour Force Survey, Australia, June 2009, Cat No 6202, seasonally adjusted data.

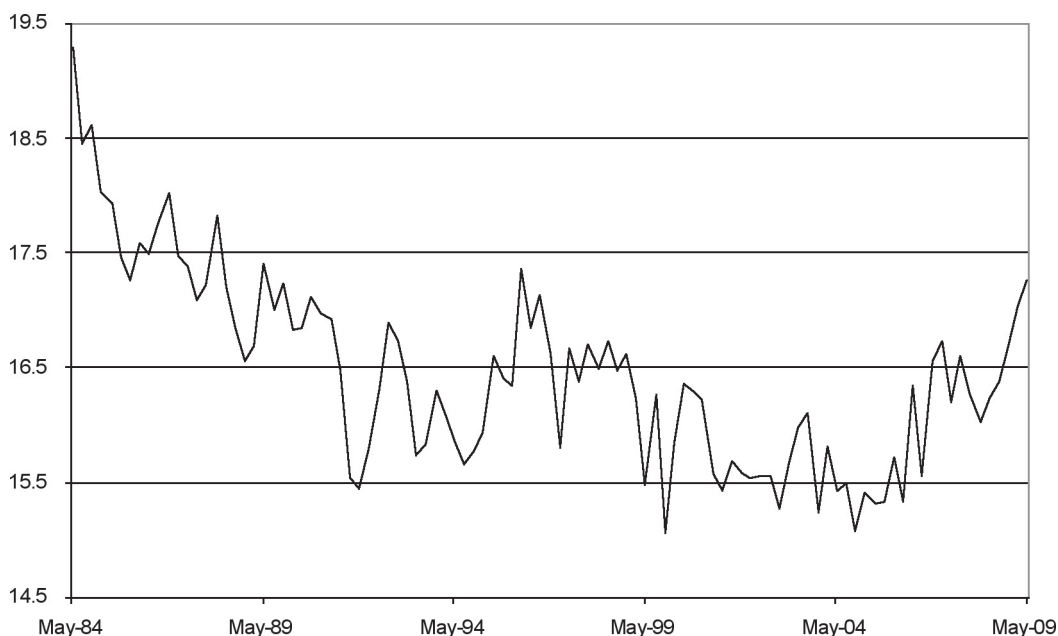
2 Ibid.

3 Ibid.

4 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.

Chart 1 shows trends in the gender pay gap based on the average weekly ordinary time earnings of full-time employees from May 1984 to May 2009. It is clear that the gender pay gap has improved only slightly over the last 25 years, narrowing just 1.1 percentage points from 18.5 per cent in May 1984 to 17.4 per cent in May 2009<sup>5</sup>.

**Chart 1: Gender pay gap based on the average weekly ordinary time earnings of full-time adults, May 1984 to May 2009**



Source: ABS Average Weekly Earnings, May 2009, Cat No 6302.0, seasonally adjusted data

Over a lifetime, pay inequity places women at a considerable disadvantage compared with men. According to the AMP/NATSEM Income and Wealth Report, a 25-year-old man is likely to earn a total of \$2.4 million over the next 40 years, more than one-and-a-half times the \$1.5 million prospective earnings of a woman<sup>6</sup>.

Women are less likely to be in leadership positions within organisations. Only 10.7 per cent of executive managers in the ASX200 are women. At the board director level there are more than 10 men to every one woman, and at Chief Executive Officer level there were 49 male CEOs for every female CEO in the ASX200<sup>7</sup>.

Occupational segregation between men and women continues to exist, and male dominated occupations tend to earn more than female dominated occupations. Women are more likely to be clerical, sales and community and personal service workers, while men are more likely to be technicians and trades workers, machinery operators and drivers and labourers. Women are still substantially under-represented in the manual trades in Australia, with the number of women in manual trades being less than 2 per cent<sup>8</sup>.

Australia does not perform strongly on some key international indicators for equal employment opportunity. When compared to other OECD countries with similar tertiary education levels, Australia has the fifth largest pay gap<sup>9</sup>. Australia's ranking in the Global Gender Gap Index of the World Economic Forum was 21st place in 2008. This incorporates measures of workforce participation, remuneration and opportunity. On these measures Australia is significantly behind New Zealand (which is in 5th place) and is also behind the United Kingdom (13th) and Ireland (8th)<sup>10</sup>.

<sup>5</sup> ABS (2009) Average Weekly Earnings, May 2009, Cat No 6302.0, seasonally adjusted data.

<sup>6</sup> Cassells, R. Miranti, R. Nepal, B. and Tanton, R. (2009). She works hard for the money: Australian women and the gender divide. AMP.NATSEM Income and Wealth Report, Issue 22.

<sup>7</sup> Equal Opportunity for Women in the Workplace Agency (2008), EOWA Australian Census of Women in Leadership.

<sup>8</sup> Shewring, F. (2009) The female 'tradie': challenging employment perceptions in non-traditional trades for women. National Centre for Vocational Education Research (NCVER). Commonwealth of Australia.

<sup>9</sup> Cassells, R. Miranti, R. Nepal, B. and Tanton, R. (2009). She works hard for the money: Australian women and the gender divide. AMP.NATSEM Income and Wealth Report, Issue 22.

<sup>10</sup> Hausmann, R., Tyson, L.D., Zaahidi, T. (2008) Global Gender Gap Report 2008, World Economic Forum, Geneva.

Achieving equal employment opportunity does not necessarily mean equal outcomes for men and women. It does however require the removal of obstacles and barriers to women's participation, including by removing discrimination, valuing women's work appropriately, and by enabling all workers to better manage their work and family responsibilities.

It is clear that a major obstacle to equal employment opportunity is the capacity for women and men to manage their work, life and family responsibilities. Long and inflexible working hours may preclude many workers with family responsibilities from pursuing particular career paths or job opportunities.

The proportion of female full-time workers working 50 or more hours a week ('very long working hours') almost doubled from 9 per cent in 1985 to 16 per cent in 2005. Almost one third of men now work very long hours<sup>11</sup>. Australian full-time workers work amongst the longest hours of OECD nations<sup>12</sup>.

Men are far less likely to access flexible work opportunities, and women continue to engage less in paid work. While families must be free to choose how they organise their lives, these choices should not be circumscribed by discrimination or stereotypes based on sex. A recent study suggested that men's requests for flexible working hours are more likely to be denied than women's<sup>13</sup>. It is necessary, for the wellbeing of the economy and community, that both women and men are able to enjoy the different benefits that both caring and paid work can deliver.

### Questions for consideration

- What factors and measures have contributed to improving employment opportunities and outcomes for women?
- What are the obstacles that may impede further progress towards equal employment opportunity within organisations and in Australia generally?
- Should there be a greater focus on enabling men and women to share paid work and caring responsibilities more equally? How can men be provided with better opportunities to participate in the care of their children and other dependents?
- What regulatory role should government play to achieve equal employment opportunity for women?

<sup>11</sup> ABS (2006) Australian Social Trends, Trends in Hours Worked, cat 4102.0

<sup>12</sup> OECD (2007) Usual Working Hours by Gender

<sup>13</sup> Pocock, B., Skinner, N and Ichii, R. (2009) Work, Life and Workplace Flexibility, Centre for Work + Life, University of South Australia.



## 3 Overview of the EOWW Act and EOWA

This section provides a brief overview of the EOWW Act and EOWA. In particular, it outlines the objects and key provisions of the EOWW Act; the current role and functions of EOWA; and the relationship of the EOWW Act to other Australian legislation.

The EOWW Act is an important component of Australia's workplace and human rights legislation. The EOWW Act came into effect on 1 January 2000, renaming and updating the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*, which underwent a review in 1998–99<sup>14</sup>.

### 3.1 Objects and coverage of the EOWW Act

#### 3.1.1 Objects of the EOWW Act

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

- promote the principle that employment for women should be dealt with on the basis of merit;
- promote the elimination of discrimination, both direct and indirect, and the provision of equal employment opportunity for women in relation to employment matters among employers; and
- foster workplace consultation between employers on issues concerning equal opportunity for women in relation to employment<sup>15</sup>.

#### Questions for consideration

- Are the objects of the EOWW Act appropriate and relevant for today's workplaces?
- Has the EOWW Act been effective in meeting its objects?
- Has the EOWW Act contributed to improving women's employment opportunities? If not, why not? If so, how?
- Should the role of men as fathers and carers be acknowledged in the EOWW Act?

#### 3.1.2 Coverage of the EOWW Act

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

As of July 2009, there are 2,890 reporting organisations that submit reports on behalf of a total of 9,333 organisations. The difference in these numbers is because employers can either report on their workplace program themselves or be reported on by another organisation in their corporate structure. In the 2007–08 reporting period, there were 1.2 million female employees covered by reports to EOWA. A further 80,000 women worked in 154 organisations that did not submit a report in that year as their reporting obligations had been waived. There were a total of 4,930,100 women employed in the Australian workforce in July 2009<sup>16</sup>.

<sup>14</sup> Department of Workplace Relations and Small Business, Affirmative Action Review Secretariat: Affirmative Action (Equal Employment Opportunity for Women) Act 1986. Issues Paper. March 1998.

<sup>15</sup> Equal Opportunity for Women in the Workplace Act 1999 (Cth), s2A and Equal Opportunity for Women in the Workplace Agency, Equal Opportunity for Women in the Workplace Act 1999: The Act at a Glance. Australian Government, Canberra

<sup>16</sup> ABS (2009) Labour Force, Australia, cat. 6202.0, Table 03, Labour force status by Sex.

The EOWW Act does not include as ‘employees’ equity partners in professional firms or non-executive board members, meaning that employment outcomes for women in these positions are not necessarily captured in workplace programs or organisational reporting.

The issue of extending the EOWW Act to other equal employment opportunity groups was considered during the 1998 legislative review<sup>17</sup>. It was determined at that time that the focus of this legislation should remain on the full range of employment opportunities for women, as they continue to face significant equity issues in terms of employment outcomes.

### Questions for consideration

- Is the current coverage of the EOWW Act appropriate? Should the current coverage of organisations or employees be expanded or decreased? Why?
- Is the self identification and disclosure of organisations appropriate? Is there another way that organisations should or could be identified?

## 3.2 Workplace programs, reporting and compliance

### 3.2.1 Preparation of workplace programs

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

Before developing a workplace program, an employer must:

- confer responsibility for the development and implementation of the program on a person having sufficient authority and status within the management of the organisation<sup>18</sup>; and
- consult with employees, particularly employees who are women<sup>19</sup>.

When preparing a workplace program, an employer is required to:

- prepare a workplace profile<sup>20</sup>; and
- prepare an analysis of issues relating to employment matters that need to be addressed in order to achieve equal opportunity for women in the workplace<sup>21</sup>;
  - The term “employment matters” is defined to include: recruitment procedure and selection criteria; promotion, transfer and termination; training and development; work organisation; conditions of service; arrangements for dealing with sex based harassment of women; and arrangements for dealing with pregnant or potentially pregnant employees and those breastfeeding their children.

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17 Australian Government (1998) Unfinished Business: Equity for Women in Australian Workplaces. Final Report of the Regulatory Review of the Affirmative Action (Equal Opportunity for Women) Act 1986.

18 Equal Opportunity for Women in the Workplace Act 1999 (Cth) s 8(i)(a).

19 Ibid s 8(i)(b).

20 Ibid s 8(2).

21 Ibid s 8(3).

A workplace program must provide for:

- actions to be taken in relation to priority issues identified in the analysis; and
- evaluation of the effectiveness or otherwise of actions taken.

Organisations can use a number of indicators to chart the effectiveness of their programs, for example: increased productivity, reduced absenteeism and turnover, improved rates of women in management and in non-traditional roles, and the reduction or elimination of discrimination-related complaints.

Developing and implementing a workplace program can impose costs on employers. For example, additional costs may relate to dedicated human resources staff and implementation costs of new programs and activities across the organisation.

Many of these practices also confer benefits in terms of enhanced productivity, reduced absenteeism and turnover, improved staff morale, and a positive corporate image.

There is a growing body of evidence concerning the benefits of gender diversity to the productive capacity of organisations and, in turn, to the economy. A recent report from Catalyst, for example, found that in four out of five industries in the United States, the companies with the highest women's representation on their top management teams experienced a higher total return to shareholders than the companies with the lowest representation of women<sup>22</sup>.

Other research indicates that a lack of women in leadership positions results in greater scarcity in talent within organisations and reduced employee engagement<sup>23</sup>.

### Questions for consideration

- How are organisations responding to barriers to women's employment? What programs and policies are the most effective levers for change in organisations (e.g. work processes, organisational culture, and/or workplace relations and human resources practice)?
- Are the EOWW Act's requirements regarding the content of workplace programs, including the specified 'employment matters', useful and appropriate? If not, how could they be improved?
- Is the process for developing workplace programs useful and appropriate? If not, why not?
- Has the development of workplace programs contributed to improved employment opportunities for women within EOWW Act reporting organisations? If so, can you provide examples from your experience?

### 3.2.2 Reporting obligations

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

This public report must contain the workplace profile; an analysis of the issues in their workplace relating to equal opportunity for women; the actions taken to address the priority issues identified in the analysis; and the actions that the employer plans to take in the next reporting period that are still necessary to achieve equal opportunity for women in their workplace.

Employers must also submit an evaluation of the effectiveness of the actions taken in the previous 12 months to achieve equal opportunity for women in their workplace. This evaluation may be submitted to EOWA as either part of the public report, or be submitted separately on a confidential basis.

<sup>22</sup> Catalyst (2004) *The Bottom Line: Connecting Corporate Performance and Gender Diversity*, New York, p.2.

<sup>23</sup> An overview of this research is provided in Chief Executive Women (2009) *The Business Case for Women as Leaders: One Woman is Not Enough*, pp.4-7. Available at <http://www.cew.org.au/pages/issues/documents/TheBusinessCaseforWomenasLeaders.pdf>, accessed 10 August 2009.

These reports are retrospective, and cover a 12-month period (1 April to 31 March). Reports are due to EOWA by 31 May of each year.

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

### Questions for consideration

- Are the EOWW Act's requirements regarding the content of reports clear and useful? If not, how could they be improved?
- Is the frequency of reporting optimal? Are the provisions for waiving reporting requirements effective? If not, what changes do you think are necessary?
- How resource intensive are the reporting requirements for organisations? Can you provide examples of the costs of reporting from your experience?
- How useful are the reporting requirements to organisations? That is, what benefits can be attributed to the reporting process for the organisation and for women workers?

### 3.2.3 Compliance and enforcement

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

Compliance reports and names of non-compliant organisations are also listed on EOWA's website. As of 17 October 2008, there were over 2,500 reporting organisations that complied with requirements of the EOWW Act and 12 organisations that were deemed to be non-compliant<sup>24</sup>.

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

EOWA does not have the power to conduct self-initiated action or investigations. In practice, EOWA relies significantly on cooperative relations with employers through education and promotion activities, implementation of performance incentives (award schemes), and a staged process of issuing reminders and offers of assistance to employers prior to sending letters signalling an intention to name a non-compliant organisation in Parliament.

### Questions for consideration

- Are the enforcement mechanisms currently in place sufficient to ensure that the objectives of the legislation are met? If so, how? If not, why not?
- Are there alternative enforcement mechanisms that would effectively and efficiently ensure compliance? Can you provide examples? What additional benefits would they bring?
- Has your organisation undertaken any analysis of the costs and benefits of compliance with the EOWW Act? What were the key findings?

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<sup>24</sup> Equal Opportunity for Women in the Workplace Agency. Annual Report 2007-2008. Commonwealth Government of Australia.

## 3.3 The role and activities of EOWA

### 3.3.1 Organisational structure, resourcing and staffing

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

EOWA employs 17 full-time equivalent staff, and recruits an additional 10 staff each year for between two and five months to receive and assess compliance reports.

### 3.3.2 Role and functions of EOWA

The primary role of EOWA is to administer the EOWW Act and to provide information, advice, education and communication to reporting organisations and members of the broader community to achieve equal opportunity for women in the workplace<sup>25</sup>. Broadly, EOWA is required to:

- advise and assist relevant employers in the development and implementation of workplace programs;
- issue guidelines to assist relevant employers achieve the purposes of the EOWW Act;
- monitor the lodging of reports by relevant employers as required by the EOWW Act and to review those reports and deal with them in accordance with the Act;
- monitor and evaluate the effectiveness of workplace programs in achieving the purposes of the EOWW Act;
- undertake research, educational programs and other programs for the purpose of promoting equal opportunity for women in the workplace;
- promote understanding and acceptance, and public discussion of equal opportunity for women in the workplace;
- review the effectiveness of the EOWW Act in achieving its purposes; and
- report to the Minister on such matters in relation to equal opportunity for women in the workplace<sup>26</sup>.

### 3.3.3 Key activities

#### *Reviewing workplace programs and reports*

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

EOWA collects, analyses, and benchmarks this information and provides reporting organisations with feedback and advice to further enhance each organisation's EEO programs for women. For every report assessed, an EOWA representative telephones and emails the organisation to provide personalised and detailed feedback on their workplace program.

Should a report be initially assessed as non-compliant, EOWA works with that organisation to attempt to obtain the necessary additional information for the organisation to comply with the EOWW Act<sup>27</sup>.

<sup>25</sup> Ibid, p.10.

<sup>26</sup> Australian Government *Equal Opportunity for Women in the Workplace Act 1999*. (Act 91, prepared 1 January 2004).

<sup>27</sup> Australian Government Equal Opportunity in the Workplace Agency (October 2008). Submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the effectiveness of the Commonwealth Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality.

EOWA also prepares an annual report to the Minister for the Status of Women on its operations, including details of any reporting organisations that have failed to meet the requirements of the EOWW Act. This annual report is tabled in the Australian Parliament.

### *Provision of information, advice and education*

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

EOWA also has a broader role to promote public discussion of equal opportunity for women in the workplace. The EOWA awards and research, for example, receive media attention and are of interest to an audience beyond those organisations covered by the EOWW Act.

Some examples of EOWA's education and awareness activities are as follows.

- *The Employer of Choice for Women Award*. This is a prestigious annual citation awarded to organisations that are recognising and advancing women in the workplace. This program commenced in 2001 with 55 organisations awarded the citation, and growing to 111 organisations in 2009. Receiving a citation is seen by many employers as providing significant positioning in a competitive market place.
- EOWA undertakes and/or commissions a range of research. Since 2002 the EOWA Australian Census of Women in Leadership has measured the status of women on boards and women executive managers in Australia's top 200 organisations listed on the Australian Stock Exchange. This research is internationally comparable. Other research includes further analysis of the Census data, such as *Pay, Power and Position: Beyond the 2008 EOWA Australian Census of Women in Leadership* and *(A)Gender in the Boardroom*. EOWA also publishes a regular e-newsletter which is distributed to over 7,000 subscribers, and provides a comprehensive website.
- *Public education programs*. EOWA offers workshops across all states and territories. In 2008–09, EOWA held 20 such workshops, including: “Developing an EOWA program and preparing a compliance report”, “Positioning your business for waiving”, and “EOWA Employer of Choice for Women and Business Achievement Awards”.

### *Other events, awards, tools and research*

- EOWA runs various events throughout the year. The flagship event is the annual EOWA Business Achievement Awards which recognise those organisations at the forefront of driving change for a more equitable workplace.
- EOWA also provides workplace tools to assist organisations to achieve the objectives of the EOWW Act including the *Pay Equity Tool* to help employers audit and analyse the gender pay distribution throughout their workplace, and the *Bullying and Harassment Prevention Tool*.
- EOWA networks with the broader community as a member of a number of external organisations, including equal employment opportunity practitioners' associations; guest speaking at numerous events; holding events targeting a wide span of audiences, including government departmental staff, parliamentarians, women's groups and academics; and supporting strategic projects and events such as the Macquarie Graduate School of Management's Women, Management and Employment Relations Conference.

#### **Questions for consideration**

- Are the role and functions of EOWA appropriate to achieving the objects of the EOWW Act? Which functions of EOWA are most valuable and effective? Why?
- Is the role of EOWA in monitoring and enforcing compliance of reporting organisations under the EOWW Act adequate and appropriate? If not, how should it be changed?
- Is the role of EOWA in promoting understanding and acceptance, and public discussion of equal opportunity for women in the workplace adequate and appropriate? If not, how should it be changed?

## 4 Relationship of the EOWW Act and EOWA to other legislation, policies and institutions

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

### *Office for Women*

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

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

- providing high level advice to the Minister for the Status of Women;
- undertaking specialist research to inform evidence-based policy development and Australia's reporting on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- providing the principal focus for consultation between women's organisations and the Australian Government;
- representing the Australian Government in national and international fora on women's issues, such as the United Nations; and
- providing support to victims of people trafficking.

### *Office of Work and Family*

The Australian Government has also created an Office of Work and Family within the Department of Prime Minister and Cabinet, to ensure that the formulation of policies aimed at striking the right balance between paid work and family life occurs at the highest level and is central to all policy decisions. Given that women make up the majority of primary carers of children, paid work and family policy has a significant impact on equal employment opportunity for women.

### *Workplace relations legislation*

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

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

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

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

The Fair Work Act contains expanded equal remuneration provisions, which enable Fair Work Australia to make orders to ensure that there will be equal remuneration for work of equal or comparable value. The inclusion of the words ‘and comparable value’ is significant as it removes one of the historical barriers to running federal equal remuneration cases, which was the requirement to demonstrate discrimination in setting wages. It also allows for comparisons to be carried out between different, but comparable work. Equal remuneration orders can be sought on the application of an affected employee, an employee organisation representing affected employees, or the Sex Discrimination Commissioner<sup>28</sup>.

The Fair Work Act includes other measures relevant to women’s pay. For example, the Fair Work Act allows for minimum wages to be varied on ‘work value’ grounds (the ability to make a work value claim was removed under the Work Choices amendments), and includes provisions that facilitate multi-employer bargaining for low paid employees who have not historically had the benefits of enterprise level collective bargaining (this is particularly important in some feminised industries where levels of enterprise bargaining is low).

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

The NES guarantee conditions that support women to balance work and family responsibilities. For example, it doubles the amount of unpaid parental leave available to parents, from 12 months shared between both parents to separate periods of 12 months for each parent. In addition and subject to complying with certain conditions, employees will be able to request up to 12 months extra parental leave under the NES. The NES will also afford a new right for parents to request flexible working arrangements where they have responsibility for a child under school age or a disabled child under 18.

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

### *Australian Government Paid Parental Leave Scheme*

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

Paid parental leave has the capacity to significantly benefit women in the workplace, as it will provide eligible primary carers of newborn or adopted children with up to 18 weeks of payments while they take time off work to care for their child. The full minimum wage will also be available to eligible part-time employees, as well as eligible contractors, casual workers and self-employed workers.

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

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

Additionally, the Australian Government recently launched the Fresh Ideas for Work and Family Program, which provides grants of between \$5,000 and \$15,000 to assist businesses to implement practices designed to help employees balance work and family life and improve employee retention and productivity.

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<sup>28</sup> Fair Work Act 2009 s 302.

### *Anti-discrimination law*

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

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

The Senate Standing Committee on Legal and Constitutional Affairs recently reviewed the Sex Discrimination Act and its report, released in December 2008, makes many significant recommendations relating to changes to the Sex Discrimination Act, the *Australian Human Rights Commission Act 1986* and the EOWW Act. These include the recommendation for the Australian Government to consider incorporating the obligations in the EOWW Act into the Sex Discrimination Act, and combining the functions of the AHRC and EOWA. This report is currently being considered by the Australian Government.

The National Human Rights Consultation is another significant initiative in the anti-discrimination and human rights arena. The Attorney-General established the consultation in December 2008 to seek the Australian community's views on how best to protect and promote human rights and freedoms enjoyed by all Australians. An independent committee conducted 66 community roundtables in 52 locations across Australia and received around 35,000 submissions. It is due to report to the Australian Government by 30 September 2009. The Australian Government will use the outcomes of the consultation to guide its decisions on how best to protect and promote human rights in Australia.

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

#### **Questions for consideration**

- Does the EOWW Act complement or overlap with other legislation? How could the relationship of the EOWW Act to other legislation be clarified or improved?
- Is there potential duplication between workplace reporting under the EOWW Act and any other obligations such as, for example, the enforcement obligations of the new Fair Work Ombudsman?
- Should EOWA remain as an independent statutory authority or should the role and functions of EOWA be combined with those of another entity that also holds responsibilities related to achieving equal employment opportunity for women? If you think the role and functions of EOWA should be combined, with which entity and why?



## 5 Measuring the success of the EOWW Act and EOWA

The approach in Australia to increasing women's participation and achieving equal employment opportunity is multi-faceted. For this reason, it is difficult to measure the success of the EOWW Act and EOWA in isolation.

At the population level, a number of data sets are collected that provide information on the status of women within Australian workplaces. The Australian Bureau of Statistic's Labour Force surveys, and Employee Earnings and Hours survey, are important in this regard.

At the organisational level, EOWA encourages organisations to measure their success in a variety of ways, and provides tools to help them gather data, identify issues for women workers and determine their priority areas to take action and measure outcomes.

Organisations use a number of indicators to chart the benefits of their programs, including increased productivity; reduced absenteeism and turnover, including the number of women who return to work after a period of maternity leave; improved rates of women in management and in non-traditional roles; increased access to quality part-time roles; and a decrease in, or absence of, discrimination-related complaints.

Organisations can also measure their equal employment opportunity successes by receiving a waiver of reporting requirements, which means they have achieved a 'waived standard'. This means that they have done everything reasonably practicable to address issues for women in their workplace across all seven employment matters. Other measures of success for employers are becoming an EOWA Employer of Choice for Women or becoming a finalist or winner in EOWA's annual Business Achievement Awards.

EOWA uses information it collects from reporting organisations to build a data set to measure progress in workplace programs over time. This data is also used to educate employers on best practice and is used to set and revise benchmarks for its EOWA Employer of Choice for Women citation.

EOWA measures its own performance through a survey of reporting organisations, which measures their views on the advice and information EOWA provides, its products and services, their relationship with EOWA, and the value they put on the legislation it administers.

This survey was last conducted in 2006, and prior to that in 2003. In 2006, this survey found that most reporting organisations thought EOWA effective in providing advice and information to assist in the improvement of outcomes for working women. More than two in five organisations believed EOWA to be 'very effective' or 'extremely effective'. This represented an increase of 15 per cent from the 2003 survey<sup>29</sup>.

### Questions for consideration

- Are the mechanisms for measuring the effectiveness of the legislation and EOWA adequate? If not, how should they be improved?
- Is the EOWA data set adequate to measure changes in women's participation and equality in employment? Could it be improved? If so, how?

29 ACA Research (2006). Equal Opportunity for Women in the Workplace: Research into Service Delivery. Unpublished report to EOWA.



# A Consultation questions

The questions below are presented as a guide; however respondents should feel free to make any relevant comments.

| No.   | Key Themes and Questions   |
|---|--|
| Theme 1: The value and impact of equal employment opportunity for women |  |
| 1.1   | What factors and measures have contributed to improving employment opportunities and outcomes for women?   |
| 1.2   | What are the obstacles that may impede further progress towards equal employment opportunity within organisations and in Australia generally?  |
| 1.3   | Should there be a greater focus on enabling men and women to share paid work and caring responsibilities more equally? How can men be provided with better opportunities to participate in the care of their children and other dependents?                          |
| 1.4   | What regulatory role should government play to achieve equal employment opportunity for women?   |
| Theme 2: Objects and coverage of the EOWW Act                           |  |
| 2.1   | Are the objects of the EOWW Act appropriate and relevant to today's workplaces?  |
| 2.2   | Has the EOWW Act been effective in meeting its objects?  |
| 2.3   | Has the EOWW Act contributed to improving women's employment opportunities? If not, why not? If so, how?   |
| 2.4   | Should the role of men as fathers and carers be acknowledged in the EOWW Act?  |
| 2.5   | Is the current coverage of the Act appropriate? Should the current coverage of organisations or employees be expanded or decreased? Why?   |
| 2.6   | Is the self identification and disclosure of organisations appropriate? Is there another way that organisations should or could be identified?   |
| Theme 3: Workplace programs, reporting and compliance                   |  |
| 3.1   | How are organisations responding to the barriers to women's employment? What programs and policies are the most effective levers for change in organisations (e.g. work processes, organisational culture, and/or workplace relations and human resources practice)? |
| 3.2   | Are the EOWW Act's requirements regarding the content of workplace programs, including the specified 'employment matters', useful and appropriate? If not, how could they be improved?   |
| 3.3   | Is the process for developing workplace programs useful and appropriate? If not, why not?  |
| 3.4   | Has the development of workplace programs contributed to improved employment opportunities for women within reporting organisations? If so, can you provide examples from your experience?   |
| 3.5   | Are the EOWW Act's requirements regarding the content of reports clear and useful? If not, how could they be improved?   |
| 3.6   | Is the frequency of reporting optimal? Are the provisions for waiving reporting requirements effective? If not, what changes do you think are necessary?   |
| 3.7   | How resource intensive are the reporting requirements for organisations? Can you provide examples of the costs of reporting from your experience?  |
| 3.8   | How useful are the reporting requirements to organisations? That is, what benefits can be attributed to the reporting process for the organisation and for women workers?  |

| No.   | Key Themes and Questions  |
|---|---|
| 3.9   | Are the enforcement mechanisms currently in place sufficient to ensure that the objectives of the legislation are met? If so, how? If not, why not?   |
| 3.10  | Are there alternative enforcement mechanisms that would effectively and efficiently ensure compliance? Can you provide examples? What additional benefits would they bring?   |
| 3.11  | Has your organisation undertaken any analysis of the costs and benefits of compliance with the EOWW Act? What were the key findings?  |
| Theme 4: Role and activities of EOWA                          |   |
| 4.1   | Are the role and functions of EOWA appropriate to achieving the objects of the Act? Which functions of EOWA are most valuable and effective? Why?   |
| 4.2   | Is the role of EOWA in monitoring and enforcing compliance of reporting organisations under the EOWW Act adequate and appropriate? If not, how should it be changed?  |
| 4.3   | Is the role of EOWA in promoting understanding and acceptance, and public discussion of equal opportunity for women in the workplace adequate and appropriate? If not, how should it be changed?  |
| Theme 5: Relationship with other legislation and institutions |   |
| 5.1   | Does the EOWW Act complement or overlap with other legislation? How could the relationship of the EOWW Act to other legislation be clarified or improved?   |
| 5.2   | Is there potential duplication between workplace reporting under the EOWW Act and any other obligations such as, for example, the enforcement obligations of the new Fair Work Ombudsman?   |
| 5.3   | Should EOWA remain as an independent statutory authority or should the role and functions of EOWA be combined with those of another entity that also holds responsibilities related to achieving equal employment opportunity for women? If you think the role and functions of EOWA should be combined, with which entity and why? |
| Theme 6: Measuring the success of the EOWW Act and EOWA       |   |
| 6.1   | Are the mechanisms for measuring the effectiveness of the legislation and EOWA adequate? If not, how should they be improved?   |
| 6.2   | Is the EOWA data set adequate to measure changes in women's participation and equality in employment? Could it be improved? If so, how?   |

## B Alternative approaches to regulating equal employment opportunity

This section provides a brief review and critical comparison of the EOWW Act and EOWA with alternative approaches in Australia and other relevant international jurisdictions.

### B.1 Australia

In Australia, EEO policies are mandatory across the federal and state public sectors. Thus, public organisations are required to have EEO plans and to monitor EEO progress. Many private sector organisations have also developed EEO policies, often due to the EOWW Act which requires organisations with more than 100 employees to develop a workplace program to remove barriers to women entering and advancing in their organisation.

In terms of legislation, the Australian Human Rights Commission has jurisdiction under the *Australian Human Rights Commission Act 1986*, as well as the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992*, and the *Age Discrimination Act 2004*.

EOWA administers the EOWW Act, and provides training and assistance to employers in establishing and developing workplace programs.

The Fair Work Ombudsman, an independent statutory office, was established under the *Fair Work Act 2009* to help employees understand and comply with the new workplace relations system. The Fair Work Ombudsman may investigate allegations of workplace discrimination on the grounds proscribed by the Fair Work Act, and can start legal proceedings against an employer for contravening the Fair Work Act.

Furthermore, all states have an independent statutory commission dedicated to promoting EEO principles for all groups in public employment and handling discrimination complaints, such as the New South Wales Anti-Discrimination Board, responsible for administering the *Anti-Discrimination Act 1977* (NSW).

### B.2 New Zealand

In New Zealand, while EEO is a legislative requirement of the core public service, part of the state sector and for local governments, there is no corresponding legislation mandating the practice of EEO in the private sector<sup>30</sup>. All employers are, however, required to meet their non-discriminatory, statutory obligations under the *Equal Pay Act 1972*, the *New Zealand Bill of Rights Act 1990*, and the *Employment Relations Act 2000*.

While there is no legislative equivalent to Australia's EOWW Act, the government has shown its support for EEO principles by funding the Equal Employment Opportunities Trust, which promotes the benefits of implementing EEO principles and EEO best practice in employment. The Human Rights Commission and the EEO Trust have also founded the National Equal Opportunities Network, which provides profiles of EEO groups, information about national and international EEO issues, advice for Crown entities on being a "good employer", and research and case studies<sup>31</sup>.

The Human Rights Commission's 2004 strategic report on EEO in New Zealand, *Framework for the Future: Equal Opportunities in New Zealand* sets out 14 recommendations for the improvement of EEO in New Zealand, with one being the introduction of legislation that places strong positive duties on all employers, starting with large

<sup>30</sup> New Zealand Human Rights Commission (2004) *Framework for the Future: Equal Opportunities in New Zealand*

<sup>31</sup> New Zealand National Equal Opportunities Network website. Available from <[www.neon.org.nz/](http://www.neon.org.nz/)>, accessed June 2009

organisations, to develop and implement EEO plans and regularly report on the outcomes. The report also recommended that any agency established to monitor EEO efforts have sufficient resources to closely analyse EEO practices and sanction and reward organisations' behaviour.

### B.3 European Union

The European Union (EU) supports the principles of EEO with Article 6(1) of the *Treaty on European Union* stating that "the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms...principles which are common to the Member States".

The *Treaty of Amsterdam 1999* confirmed that anti-discrimination is a basic founding principle of the EU, and gave the community new powers to combat discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation, as well as expanding the power to combat sex discrimination. Furthermore, the Treaty of Amsterdam recognises that equal treatment may not be sufficient to overcome manifest disadvantage, and that positive action may be necessary to ensure genuine equality of opportunity.

In 2000, Member States adopted two Directives – the Racial Equality Directive and the Employment Equality Directive. These Directives must be incorporated into national law by the Member States, with Article 13 of the Treaty of Amsterdam giving individuals and groups in the Member States the legal basis to take action. According to both Directives, the burden of proof must shift to the person accused of discrimination once the person bringing the complaint has established facts from which it can be presumed that there has been discrimination. It is then up to the person accused to prove that they did not act in a discriminatory way. Furthermore, the EU has directed that national governments designate or set up a body or bodies to specifically aid people suffering discrimination to pursue their complaints. The organisation and role of each body varies according to the country.

### B.4 United Kingdom

In the United Kingdom, the seven grounds that are protected by EEO policy and legislation are age, disability, gender, race, religion and belief, sexual orientation and gender reassignment. There are a number of pieces of legislation that protect these groups' right to equality, such as the *Equal Pay Act 1970*, the *Sex Discrimination Act 1975*, the *Race Relations Act 1976*, the *Human Rights Act 1998*, the *Race Relations (Amendment) Act 2000*, the *Civil Partnership Act 2004*, the *Disability Discrimination Act 1995*, the *Disability Discrimination Act 2005*, and the *Equality Act 2006*. There are also a number of regulations that have been developed to aid the implementation of the legislation<sup>32</sup>.

Under these laws, the onus is on the respondent, usually the employer, to prove that discrimination has not occurred. This means that positive action may be required to prevent litigation. These laws also provide for public sector equality duties, which require all public authorities to check how their policies affect people from different groups and communities in respect of disability, gender and race equality.

The Equality and Human Rights Commission undertakes equality impact assessments of these public authorities' policies, practices and functions, to consider any potential risk to different groups and to consider how the policy may help to further develop equality<sup>33</sup>.

In April 2009 the United Kingdom's *Equality Bill* was published, which aims to simplify Britain's anti-discrimination legislation by replacing the nine major pieces of legislation and around 100 other measures with a single Act. It is intended that the Bill will strengthen Britain's equality law by introducing a new public sector

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<sup>32</sup> United Kingdom's Equality and Human Rights Commission website. Available from <<http://www.equalityhumanrights.com/>>, accessed June 2009

<sup>33</sup> United Kingdom's Equality and Human Rights Commission website. Available from <<http://www.equalityhumanrights.com/>>, accessed June 2009.

duty to consider reducing socio-economic inequalities and putting an expanded equality duty on public bodies, which in addition to covering gender, will also explicitly apply to pregnancy and maternity. The Bill also includes a ban on secrecy clauses on public sector pay<sup>34</sup>. There are also requirements for public authorities to prepare and publish a gender equality scheme that must consider the need for objectives to address the causes of any gender pay gap, and be developed through consultation with employees and other key stakeholders. Authorities are required to assess and report on the implementation and impact of their current and proposed actions<sup>35</sup>.

The Bill also has provisions to use public procurement to improve equality; banning age discrimination outside the workplace; introducing a power to require gender pay reporting by private sector employers with 250 or more employees<sup>36</sup>; extending the scope to use positive action; strengthening the powers of employment tribunals; protecting carers from discrimination; offering new mothers stronger protection when breastfeeding; banning discrimination in private clubs; and strengthening protection from discrimination for disabled people. It is expected that the Bill will come into force in late 2010<sup>37</sup>.

## B.5 United States

EEO legislation in the United States reaches both the public and private sector. All federal contractors are required to have an EEO plan in place, which has meant that many private and not-for-profit organisations have implemented such a plan<sup>38</sup>. Voluntary affirmative action plans are permitted under Title VII of the *Civil Rights Act 1964*.

The US Federal Government requires departments and agencies to annually formulate affirmative action plans, relating to grounds including sex, for their employees and minority recruitment programs in specific federal job categories. Such programs are also found in the private sector, particularly in large corporations.

The Equal Employment Opportunity Commission (EEOC) has the main responsibility for enforcing the six federal laws prohibiting discrimination and providing oversight and coordination of all federal EEO regulations, practices and policies<sup>39</sup>.

The EEOC can consider individual complaints of discrimination, as well as initiate investigations of systemic discrimination, independent of these complaints.

It also has responsibility for the national, annual reporting system covering private and public employers, unions and apprenticeship committees. These organisations must file an annual EEO survey identifying the number of employees, union members, and apprentices by job category, race, sex and national origin. All employers with more than 100 employees or with federal contracts of \$50,000 or more must comply with this reporting requirement.

The Office of Federal Contract Compliance Programs is responsible for the enforcement of the mandatory affirmative action policy on the basis of gender and race covering those people employed by federal contractors or subcontractors<sup>40</sup>. The office conducts compliance reviews and investigations and responds to requests for technical assistance with EEO policy analysis.

34 United Kingdom Government Equalities Office (2009) *A Fairer Future: The Quality Bill and other action to make equality a reality*, pp.15-16. Available at [http://www.equalities.gov.uk/pdf/NEWGEO\\_FairerFuture\\_may09\\_acc.pdf](http://www.equalities.gov.uk/pdf/NEWGEO_FairerFuture_may09_acc.pdf).

35 Strachan, G (2009) *Are we getting there? Measuring change at Work*, Presentation to the Women and Work Research Group EOWA Roundtable, 4 August 2009, Sydney.

36 *Ibid.*

37 Government Equalities Office Press Release, Harman: Equality Bill will build a fairer and stronger Britain. Available from [http://www.equalities.gov.uk/media/press\\_releases/equality\\_bill.aspx](http://www.equalities.gov.uk/media/press_releases/equality_bill.aspx), accessed June 2009.

38 United States Equal Employment Opportunity Commission website. Available from <http://www.eeoc.gov/>, accessed June 2009.

39 United States Equal Employment Opportunity Commission website. Available from <http://www.eeoc.gov/>, accessed June 2009.

40 United States Office of Federal Contract Compliance Programs. Available from <http://www.dol.gov/esa/ofccp/>, accessed June 2009.

## B.6 Canada

In Canada, the *Employment Equity Act 1995* aims to bring about equal employment opportunity by identifying and eliminating barriers to employment against women, aboriginal peoples, persons with disabilities, and members of visible minorities. Under this Act, federally-regulated employers are required to develop an employment equity plan aimed at promoting a fully equitable workplace. These plans must be developed after consultation with employees, and must institute positive policies and practices and make reasonable accommodations so that the representation of people in designated groups in the employer's workforce reflects their representation in the Canadian workforce.

Under the legislation, the Canadian Human Rights Commission is responsible for ensuring compliance with the Act<sup>41</sup>. A relevant organisation must prepare an annual report on its employment equity data and activities, with compliance audited by the 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 progress assessment consists of determining the progress made by the employer in continuing to meet the audit requirements assessed in the preliminary phase, with a focus on determining how effectively the employer has made reasonable progress towards implementing its employment equity plan to reduce under-representation.

There are approximately 590 organisations in the federally-regulated private sector and in the federal public service presently covered by the Act<sup>42</sup>.

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<sup>41</sup> Canadian Human Rights Commission website. Available from <<http://www.chrc-ccdp.ca/default-en.asp>>, accessed June 2009.

<sup>42</sup> Ibid.

## C Acronyms

|          |   |
|----------|---|
| AHRC     | Australian Human Rights Commission (formerly known as the Human Rights and Equal Opportunity Commission or HREOC) |
| CEDAW    | Convention on the Elimination of all Forms of Discrimination Against Women  |
| CEO      | Chief Executive Officer   |
| EEO      | Equal Employment Opportunity  |
| EO       | Equal Opportunity   |
| EOCW     | Employer of Choice for Women (Award)  |
| EOWA     | Equal Opportunity for Women in the Workplace Agency   |
| EOWW Act | <i>Equal Opportunity for Women in the Workplace Act 1999</i>  |
| EU       | European Union  |
| FaHCSIA  | Department of Families, Housing Community Services & Indigenous Affairs   |
| NES      | National Employment Standards   |
| OECD     | Organisation for Economic Cooperation and Development   |

## D Glossary<sup>43 44</sup>

### **Employers covered by the EOWW Act**

Employers covered by the EOWW Act include private sector companies, community organisations, non-government schools, unions and group training companies with 100 or more employees. Higher education institutions, as defined by the EOWW Act, are also covered.

### **Employment matters**

The seven ‘employment matters’ listed in the EOWW Act are:

- the recruitment procedure, and selection criteria for appointment or engagement of persons as employees;
- the promotion, transfer and termination of employment of employees;
- training and development for employees;
- work organisation;
- conditions of service of employees;
- arrangements for dealing with sex-based harassment of women in the workplace; and
- arrangements for dealing with pregnant, or potentially pregnant employees and employees who are breastfeeding.

### **Equal employment opportunity**

Equal employment opportunity has been achieved when employees have fair and equal access to employment opportunities and benefits, and are not inhibited or prevented from taking up those opportunities and benefits by any barriers. It means that all employees have an equal chance to compete for employment opportunities on merit.

### **Equal employment opportunity for women in the workplace**

Equal employment opportunity for women in the workplace is implemented through programs designed to ensure that appropriate action is taken to eliminate all forms of discrimination against women in the workplace and that measures are also taken to ensure that women have equal opportunities for achievement in the workplace.

### **Workplace program**

A workplace program under the EOWW Act means a specific program designed to ensure that:

- appropriate action is taken to eliminate all forms of discrimination by the employer against women in relation to the seven ‘employment matters’; and
- measures are taken by the employer to contribute to the achievement of equal opportunity for women in relation to the seven ‘employment matters’.

Under the EOWW Act, employers are required to develop a workplace program by:

- preparing a workplace profile;

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<sup>43</sup> Australian Government Equal Opportunity for Women in the Workplace Agency’s Annual Report 2007/08. Commonwealth of Australia.

<sup>44</sup> Australian Government Equal Opportunity for Women in the Workplace Agency (2009). Pay, Power and Position: Beyond the EOWA 2008 Australian Census of Women in Leadership. Commonwealth of Australia.

- analysing the issues for women in the workplace, considering each of the seven employment matters to identify the priority issues;
- taking action to address the priority issues; and
- evaluating the effectiveness of the actions.

Employers covered by the EOWW Act are required to report annually on their workplace program to EOWA.

### **ASX200 Index**

Comprises the S&P/ASX100 plus an additional 100 stocks, with an emphasis on liquidity and investability. Representing the top two tiers of S&P/ASX300 stocks, the S&P/ASX200 Index provides investors and fund managers with an effective benchmark for Australian equity performance, yet with an emphasis on broader representation. There will always be a fixed number of companies, 200, in the Index. When an Index constituent is removed, it will be immediately replaced by a company in the S&P/ASX300, but which is not in the S&P/ASX200 Index. Refer to: <http://www.standardandpoors.com> and <http://www.asx.com.au>

### **Board directors**

Those holding a seat on a Company Board, including executive and non-executive members.

### **Executive managers**

The most senior person in the organisation (e.g. Chief Executive Officer, Managing Director) and those who report directly to that person, including those based outside Australia.

### **Top earners**

Each of the five named company executives who receive the highest remuneration for a particular year. *Corporations Act 2001*, Section 300A 1 c (iv).

