



30 March 2012

Committee Secretary
Senate Education, Employment and Workplace Relations Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam

Re: Equal Opportunity for Women in the Workplace Amendment Bill 2012

I write with regard to the Equal Opportunity for Women in the Workplace Amendment Bill 2012, which is currently before the Australian Parliament.

The Bill seeks to increase the reporting requirements of its predecessor. Employers with over 100 employees in Australia will be required to:

- produce public reports (on gender equality indicators) signed by the Chief Executive Officer;
- make these reports available to shareholders and employees;
- inform employee organisations (unions) of the report's publication; and
- advise employees and employee organisations (unions) that comments on the report may be directed to the employer and the agency.

The relevant 'gender equality indicators' include:

- gender composition of the workforce;
- gender composition of boards and councils;
- equal remuneration between women and men;
- availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities; and
- consultation with employees on issues concerning gender equality in the workplace.

Before 1 April 2014, the Minister will, by legislative instrument, also set minimum standards in relation to specified gender equality indicators, specified relevant employers and specified reporting.

Broader Context

The minerals industry is fully committed to diversity and the business value it represents.

Unsurprisingly, one of the major recommendations of the National Resource Sector Employment Taskforce Report, chaired by the Hon Gary Gray AO MP, is to increase participation of women in the sector as the need for skilled labour rises in line with major resources projects coming on stream. The minerals sector fully endorses this recommendation.

At the same time, the MCA supports a number of practical initiatives aimed at boosting female participation, including:

- the Australian Women in Resources Alliance (AWRA), an Australian Government-backed initiative implementing strategies to increase the proportion of women in the resources sector;
- the landmark joint MCA-Office of Women report 'Unearthing new resources – attracting and retaining women in the Australian minerals industry';
- the Thiess/MCA Women in Engineering Scholarship; and
- support for government efforts to increase the proportion of women with mathematics and science qualifications relevant for mining work.

However, business is concerned about some of the provisions of this Bill, particularly around increased red tape and regulatory burden, scope for union and government interference in business operations and uncertainty about the nature of the minimum standards.

Regulatory burden

While we support the aims of the Bill, we question the methodology, as it will add to red tape. We are concerned that the efforts of companies supporting and enhancing equity and diversity in their workplaces could now be directed to compliance. The focus should instead be on continuous improvement.

The Government has claimed that the Bill will not increase the regulatory burden and will, in fact, make compliance easier in terms of new initiatives such as online reporting. Businesses are also told that a key informational benefit will be the ability to compare and contrast gender equality indicators.

However, the Bill also includes additional regulatory compliance burdens for businesses of a certain size, for example the Minister's ability to set and enforce minimum standards via the Act and the strengthened compliance framework.

Scope for third-party interference

By requiring a level of consultation with employee organisations (unions) and encouraging them to comment officially on employer data, there is a possibility the data will be misused, raising the spectre of union and government interference in normal business hiring and board appointment decisions.

Reputational, financial and legal implications for industry

Relevant employers will be required to meet the minimum standards for the reporting period ending 31 March 2015. A relevant employer who fails to meet the minimum standards will be offered advice and assistance from the Agency to improve performance. A relevant employer failing to reach the minimum standards for two consecutive years will have failed to comply with the legislation.

Failure to comply without a reasonable excuse could see an employer named in a report to the Minister or in the media or even render them ineligible for Commonwealth Government contracts or grants.

Uncertainty around the minimum standards

MCA is concerned that the Bill grants any future Minister a head of power to set as-yet-unknown minimum standards. Although the long lead time in terms of these was something of a concession to industry, the full impact of the minimum standards and the Bill itself will not be known until they are published. Industry consultation in drafting them has been promised.

It is not entirely clear how the minimum standards set by the Minister will apply to each industry. There should perhaps be scope for the government to match the company reporting with other gender disaggregated data on matters such as numbers of female graduates of certain vocational and professional qualifications.

Quotas by default?

Two of the gender equality indicators are:

- gender composition of the workforce
- gender composition of governing bodies of relevant employers

The Minister will have the power to set 'minimum standards' in relation "to specified gender equality indicators, specified relevant employers and specified reporting", which has led employer groups to raise the prospect of de facto quotas with no relevance to industry conditions.

It is understood that it is not the policy of either major party to support employment or board quotas, and we have been informed that they are not on the agenda. From assurances we have received, it appears that the intention of the minimum standards will relate to the reporting aspects rather performance.

The Bill itself, however, does not make this clear and, as such, should be altered to this effect to provide industry with the level of comfort it needs.

I trust these concerns will be taken into account.

Yours sincerely

Chris Fraser
Director – Education and Training