



University of
South Australia

23 March 2012

Committee Secretary
Senate Education, Employment and Workplace Relations Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Email: eewr.sen@aph.gov.au

Dear Secretary,

We write to provide a submission on aspects of the *Equal Opportunity for Women in the Workplace Amendment Bill 2012*.

The Centre for Work + Life is a national research centre that investigates work and its intersection with household, family, community and social life in Australia. For the past six years we have conducted research into the working lives of men and women in Australia, and our staff include researchers with many decades of experience in analysing the Australian labour market and the situation with respect to gender inequities within it.

We appreciate the opportunity to comment on this important Bill, and recognise its significance in offering means and opportunity to improve the circumstances of women in achieving improved labour market outcomes.

We welcome the Bill's focus upon outcomes (rather than descriptive reports of inputs and activities) and upon the collection and analysis of comparative equal opportunity data (both over time within companies and between comparable companies). The increased functions and capacity of the Agency to support companies to make positive changes is also a very encouraging development that we welcome, along with the opportunities for shareholders, employees and employee organisations to be notified of reports and have opportunity for comment.

This is a complex Bill with many elements. However, we confine our suggestions to a narrow range of issues, which we view as important. Our recommendations for improvements below fall under six headings.

1. Title of the Bill

The title of the bill makes no reference to women. We believe it should. Gender equality can be accomplished by two means: improving the circumstances of women, or – much more negatively – by reducing the circumstances of men. For example, the gender pay gap in the US has narrowed in recent years not because of improvements in women's position but by declines in men's earnings. The former should of course be the explicit intent of the Bill, given that women experience inferior circumstances to men in almost every aspect of the labour

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market (and especially in pay, career prospects, security of employment, access to training, promotion and so on). While individual men may be disadvantaged from time to time – they are *not* structurally disadvantaged in employment as are women as a group. The law that the new Act is to replace is the *only* gender-specific regulation currently in place concerned with positive action for women to address systemic disadvantage. Thus it is important that the Bill makes explicit its intent to improve women’s labour market status clearly recognising women’s disadvantage as a group and also to make it clear that ‘gender’ equality will not be achieved through a deterioration in men’s circumstances. This should be explicit in the Act’s title. We recommend the title ‘Gender Equality and Equal Opportunity for Women Act 2012’. It maintains the shortness of the title, but is clearer about the means of achieving the object of the Act.

2. Title of Agency and Director

This amendment should also be reflected in the title of the agency and the Director of the Agency.

3. Objects

If the above principle is not reflected in the title then we recommend its explicit adoption in the objects of the Act in relation to removing barriers to equal participation and also remuneration and employment conditions and opportunities. This language more appropriately encompasses the nature of women’s disadvantages in employment, which extend well beyond employment participation alone, to remuneration and working conditions and opportunities: indeed, lower female participation rates often reflect poorer remuneration, conditions and unequal opportunities, making it vital to ensure that their removal be a clear object of the Act. Thus the second object should be amended to:

(b) To support employers to remove barriers to (*delete: the full and*) equal participation, (*add:)* *remuneration and employment conditions and opportunities* for women in the workforce, in recognition of the disadvantaged position of women in relation to employment matters, and

4. Gender Equality Indicators

These indicators are critical to the operation of the Act. From 1 April 2013, employers must report on five indicators and as we understand it, the Bill requires the Minister to set gender equality indicators on four items, with the option of adding more as appropriate. We support the requirement on the Minister to set indicators in relation to the gendered composition of the workforce, the gender composition of governing bodies of relevant employers, the availability and use of employment terms, conditions and practices, including but not confined to flexibility working conditions etc, and consultation with employees etc.

As currently phrased, these indicators are very imprecisely specified. We recognise that these are to be further specified by legislative instrument. However, this level of imprecision in the Bill leaves the way open to collection of aggregate data which is not helpful in assessing the state of gender equality in organisations or tracking it over time or between organisations. We recommend that there be some greater level of precision in the Bill, which can then be further elaborated by legislative instrument. We also recommend a wider ambit in relation to the fourth set of indicators relating to employment conditions, given how important a range of employment conditions are to gender equity outcomes.

For example, we recommend:

1. Gender composition of the workforce – *occupational classification by sex, part-time and full-time status and contract status (ongoing, fixed term or casual)* should be a minimum requirement.
2. Gender composition by *all levels* of governing bodies.
3. Equal remuneration between women and men. This phrase is not a data descriptor; it is a policy objective. In terms of an indicator we recommend: remuneration data by sex, by occupation/classification, by pay rates and total remuneration, as minimum requirements.
4. ‘Availability of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities.’ These should be available by sex as well as by contract status (ongoing/fixed-term/casual). Further, this item as currently specified refers to a very narrow range of employment conditions when a much broader range of issues affect equal opportunity and gender equality in organisations, including for example, training and development opportunities. We suggest that data on a broader set of relevant employment conditions, which shape gender equality and indicate its outcomes, should be included, particularly training and professional development (for example training spend), promotion rates etc.
5. Consultation with employees on issues concerning gender equality in the workplace – this should be specified by sex, to ensure that both women and men are consulted.

5. Benchmarks.

We support the development of evidence-based benchmarks by industry to assist employers to review their own progress against their history and in comparison with other employers. We recognise that these are to be specified by legislative instrument. We see the detail of their specification as critical to their utility and value.

6. Compliance

There is reference in a box on page 16 of the Bill to the fact that employers who fail to comply with the Act ‘may not be eligible to compete for contracts under the Commonwealth procurement framework and may not be eligible for Commonwealth grants or other financial assistance’. However, this does not appear to be given effect in the body of the Bill. To have effect, this would need to be made more explicit in the Bill.

However we note that the compliance regime proposed in the Bill remains essentially the same as the inadequate existing one. If the new laws are to achieve their aim, there needs to be an effective compliance regime; one that provides encouragement and support at one end and clear provisions for meaningful sanctions at the other end. We are disappointed that that a proactive compliance approach to encourage organisations to advance gender equality and also to penalise those organisations that fail to comply (either through a failure to submit annual reports or a failure to make meaningful progress against the gender equality indicators) has not been inserted into the current Bill.

Both encouragement to comply with the new laws and penalties for failing to do so could be given a significant boost by making it clear that employers *will not* be eligible to compete for federal government contracts or indeed *any other* government assistance, be it by way of industry subsidy or employer subsidy, unless they comply with the new laws. Federal government provision of industry assistance and, in some instances, specific employer assistance (such as the recent assistance announced for GM Holden) is considerable and needs to be strategically linked both to decent employment and to gender equality outcomes. Indeed, instituting requirements for receipt of government financial assistance is already used in the development context. Australia through AusAid requires gender equality plans and demonstrated gender equality outcomes from countries to which it provides aid. Thus the Bill should provide that Federal government contracts, industry and specific employer assistance should be subject to the provision of compliance certificates where the relevant organisation is covered by the new laws.

The Centre for Work + Life would welcome an opportunity to appear at an Inquiry hearing to further discuss our research findings.

Yours sincerely

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