

Master Builders Australia Ltd

**Submission to Senate Education, Employment and Workplace
Relations Committee**

on

**Equal Opportunity for Women in the Workplace Amendment Bill
2012**

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1 Introduction

- 1.1 This submission is made by Master Builders Australia Ltd (Master Builders).
- 1.2 Master Builders is Australia's peak building and construction industry association, federated on a national basis in 1890. Master Builders' members are the nine Master Builder State and Territory associations.
- 1.3 Over the past 120 years the association has grown to represent over 33,000 businesses nationwide. Master Builders is the only industry body that represents all three building and construction sectors: residential, commercial and engineering.
- 1.4 Building and construction is a key driver of the Australian economy and has been one of the fastest growing industry sectors. Over the last four years the construction industry moved from fourth to third largest employing industry in Australia. There are now over 1 million workers employed in the industry. The number of jobs is expected to increase by more than 190,000 over the next five years, to around 1.3 million employees.

2 Purpose of Submission

- 2.1 This submission provides comments on the Equal Opportunity for Women in the Workplace Amendment Bill 2012 (the Bill). Master Builders supports endeavours to improve gender equality and encourages measures which add to the participation of women in the building and construction industry. Master Builders has, however, concerns about an increased regulatory burden on business and in this submission the utility of the measures in the Bill to achieve worthwhile objectives are examined against the negative ramifications flowing from the increased regulatory burden the Bill would introduce.
- 2.2 In this submission, Master Builders makes comments on the new and enhanced reporting framework, new and wider compliance framework and education and advice functions of the proposed new Workplace Gender Equality Agency (WGEA).

3 Background

- 3.1 On Thursday 1 March 2012, the Senate referred the Bill to the Senate Education, Employment and Workplace Relations Committee for inquiry and report.
- 3.2 The Bill was introduced into the House of Representatives on Thursday 1 March 2012 by the Minister for Community Services, Minister for the Status of Women and Minister for Indigenous Employment and Economic Development, the Hon Julie Collins MP. The Bill is part of the Australian Government's efforts to improve gender equality in Australian workplaces.
- 3.3 The Government's objective in introducing the Bill is set out in the explanatory memorandum. As reflected in the explanatory memorandum, the Bill would amend the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)* (EOWW Act) to give effect to a 2010 election campaign commitment. The commitment is to support gender equality and improve workforce participation and workplace flexibility, through retaining and improving the EOWW Act.
- 3.4 The Bill would amend the name of the EOWW Act to the *Workplace Gender Equality Act 2012* (the Act) in order to emphasise the focus of the Act on gender equality and improving the outcomes for women and men in the workplace.
- 3.5 The principal objects of the EOWW Act are also amended to reflect the new focus of the legislation, to promote gender equality in the workplace. These amended objects are:
 - a) to promote and improve gender equality (including equal remuneration between women and men) in employment and in the workplace;
 - b) to support employers to remove barriers to the full and equal participation of women in the workforce, in recognition of the disadvantaged position of women in relation to employment matters;
 - c) to promote, among employers, the elimination of discrimination on the basis of gender in relation to employment matters (including in relation to family and gender responsibilities);
 - d) to foster workplace consultation between employers and employees on issues concerning gender equality in employment and the workplace; and

- e) to improve the productivity and competitiveness of Australian business through the advancement of gender equality in employment and in the workplace.
- 3.6 The Bill introduces two main mechanisms to achieve these amended objects. The first mechanism is a new reporting requirement framework in which relevant employers are required to report against gender equality indicators. The second mechanism is a new compliance framework, which expands the ways in which an employer can be found to be non-compliant with the Act and expands the consequences of non-compliance with the Act, including consequences which would have major effects for building and construction companies.
- 3.7 Master Builders is committed to improving diversity and equality in the building and construction industry. Master Builders works actively with members to support and assist women working in the building and construction industry, by encouraging training and education and in supporting peer and mentor networks. For example, in 1995 Master Builders assisted to form the National Association of Women in Construction (NAWIC). NAWIC's mission includes increasing the participation of women in the construction industry, as well as promoting women in the industry to government and the media. In addition, NAWIC provides support and networking opportunities and other services to its members.
- 3.8 Master Builders recognises that it is important for women to be trained, supported, mentored and recognised, which should lead to increased female participation in the industry. However, Master Builders also recognises that the building and construction industry continues to be a male-dominated industry, despite a small increase in female participation over the last four years.¹ This is not unique to Australia.²
- 3.9 Inaccurate and misleading stereotypes continue to prevail. Women are sometimes perceived as not suited to working on construction sites because they are less physically able to perform the work, requiring special and costly

¹ In 2008, the EOWA reported that 19.1% of employees in the construction industry were female. Based on information provided in an email dated 1 July 2008 from an officer of the Equal Opportunity for Women in the Workplace Agency (EOWA). This information draws on data with respect to business with over 100 employees, collated by their office in 2007. In 2012, the EOWA reported that 20.3% of employees in the construction industry are female. See http://www.eowa.gov.au/Information_Centres/Resource_Centre/Statistics/Labour_Force_Participation_Feb_2012.pdf, accessed 20/3/2012.

² *Final Report of the Royal Commission into the Building and Construction Industry*, Volume 9, February 2003, Chapter 19, p 191.

facilities and that they have difficulty fitting in with the culture of the industry.³ The Bill has the potential to represent an important step in improving equal opportunity and gender equality in employment and in the workplace. However, Master Builders is concerned that certain aspects of the proposed Bill may place undue regulatory burdens on employers and may cause unintended consequences. The new mechanisms set out in paragraph 3.6 of this submission cast a wide reporting and compliance net, with the potential consequence of increasing, rather than reducing, red tape and compliance costs. These issues are addressed in sections 6 and 7 of this submission.

- 3.10 Master Builders submits that the under-representation of women in the industry is in large part attributable to the lack of adequate education and assistance, not only to women, but to employers in the building and construction industry. Many choose to follow the prevailing stereotypes simply because they lack the required knowledge that these stereotypes are not accurate. Master Builders made a submission to the House of Representatives in 2008, outlining the importance of education in removing these stereotypes.⁴
- 3.11 The Bill proposes to expand the WGEA's statutory advice and education functions from those of the prior agency in order to improve workplace practices and outcomes in relation to gender equality. However, assistance and advice will only be provided to those employers who are found to be non-compliant with the legislative requirements by failing to meet the prescribed minimum requirements. In light of the serious consequences of non-compliance, Master Builders submits that the proposed advice and education functions of the WGEA are potentially inadequate. This issue is addressed further in section 8 of this submission.

4 Background data

- 4.1 In 2010-2011 female participation in the construction industry was 11.8%.⁵ In February 2012 the Equal Opportunity for Women in the Workplace Agency (EOWA) estimated that for the 2009-2010 period construction organisations

³ Ibid.

⁴ Submission to House of Representatives Employment and Workplace Relations Committee on Women's Equal Opportunities in the Workforce, August 2008.

⁵ http://www.eowa.gov.au/Information_Centres/Resource_Centre/Statistics/Labour_Force_Participation_Feb_2012.pdf, accessed on 22/3/2012.

comprised 3.7% of all organisations reporting to the EOWA.⁶ 20.3% of employees in those construction organisations were female.⁷

- 4.2 According to the EOWA statistics, 16.1% of all full time construction employees engaged by those required to report were female. By contrast, 67.3% of all part time construction employees of those companies were female. 38.3% of all casual construction employees in those companies were female.⁸ EOWA statistics show that men dominate trade and professional based roles, with women largely employed in administrative and support based roles.

5 Main issues

- 5.1 As outlined above, Master Builders is concerned with the following aspects of the Bill and their potential impact on the industry:
- a) New and enhanced reporting framework;
 - b) New and wider compliance framework; and
 - c) Potentially inadequate education and advice functions of the WGEA.
- 5.2 We now consider these issues and outline the possible negative impacts of the proposed changes on employers covered by the requirements of the new Act and recommend that the harsher consequences associated with non-compliance at the least be deferred until greater education on the issues has occurred.

6 Reporting framework

- 6.1 The Bill introduces a new reporting framework with which employers with 100 or more employees must comply. This new reporting framework also contains a new concept of gender equality indicators in the relevant public report.⁹ This is a significant change from the current reporting requirements, where employers are only required to submit a public report on the development and

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Proposed subsection 3(1) of the Act.

progress of their internal equal opportunity for women in the workplace programmes.¹⁰ The Bill would repeal these current mechanisms as well as the requirement to develop and implement workplace programmes.

6.2 Instead, the Bill sets out additional reporting requirements for employers who need to submit a public report which will come into effect for the reporting period 1 April 2012 to 31 March 2013. These additional requirements are: employers will be required to make public reports accessible to employees and shareholders; inform employee organisations (unions) that a public report has been lodged; and inform employees and unions of the opportunity to comment on the content of the public report.¹¹

6.3 In addition, the WGEA will have power to review compliance with the reporting requirements by requiring an employer to provide further information in relation to the report. The requested information will relate to the employer's compliance with the Act or to the employer's performance against the minimum standards.¹² The WGEA has the capacity to check the employer's compliance by seeking further information on a random basis.¹³

6.4 Master Builders is concerned that these new reporting requirements, although not intended to do so, will avert an employer's attention from internal workplace efforts aimed at achieving equity in the workplace, to efforts to ensure they are compliant with the procedural requirements. Therefore, form over substance may result.

6.5 Master Builders submits that employers who are required to report will experience an increase in the amount of information they will be required to collect and provide to the WGEA. For the reporting period commencing 1 April 2014, employers will be required to report against a set of minimum, government-set targets. Before 1 April 2014, the Minister will, by legislative instrument, specify minimum standards in relation to the specified gender equality indicators. These indicators are:

- a) gender composition of the workforce;

¹⁰ Section 13 of the *Equal Opportunity for Women in the Workplace Act 1999*.

¹¹ Proposed sections 16, 16A and 16B of the Act.

¹² Proposed section 19A of the Act.

¹³ Proposed section 18 of the Act.

- b) gender composition of governing bodies¹⁴;
- c) equal remuneration between women and men;
- d) availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family and caring responsibilities;
- e) consultation with employees on issues concerning gender equality in the workplace; and
- f) any other matters specified in an instrument by the Minister.

6.6 Master Builders submits that because the potential for non-compliance increases under the proposed framework (that is discussed further below), employers may give more focus to the procedural requirements rather than the merits of their own internal efforts. Employers will have an increased administrative and financial burden aimed at ensuring that all the necessary information is collected and compiled in the right way in order to avoid the risk of being found to be non-compliant. For example, if an employer is selected for a compliance review, the regulatory impact statement estimates the additional cost at \$1,300 per year.¹⁵ This estimate is reported to be modelled on organisations that have kept appropriate information up-to-date and readily accessible.¹⁶ However, this cost will be higher for those businesses that may not have sufficient resources or knowledge to keep records up-to-date or accessible. Accordingly, this estimate seems low and appears to adopt the cost for a “best case” employer. More work on costing needs to be done.

6.7 Unions will have an opportunity to have access to and comment on the public reports submitted by employers who employ union members.¹⁷ The onus is on the employer to identify all possible unions on-site. There is no time restriction on when these comments can be provided but if they are provided within 28 days following lodgement, the WGEA may use these comments to

¹⁴ Defined in proposed subsection 3(1) of the Act as the board of directors, trustees, committee of management, council or other governing authority of the employer.

¹⁵ Explanatory memorandum, p 44.

¹⁶ How that measurement is made is not transparent.

¹⁷ Proposed section 16B of the Act.

request more information from an employer in order to assess compliance. Unions will be able to exploit this to their advantage by insisting that an employer, in the union's view, is not complying with the minimum standards in relation to the gender equality indicators.

6.8 Historically because of the industry's industrial relations record, it is likely building and construction industry employers will be put into a position of defence, with unions assuming the position of attack. This has the potential to create an adversarial environment rather than ensuring constructive measures towards achieving gender equality in employment and in the workplace are put in place. Master Builders is not opposed to the overall objective that reporting is made more accessible and transparent, but submits that this objective must be achieved in a fair and reasonable way and any potential abuse of process must be minimised. For example, the time frame within which unions will be required to respond and comment on a public report needs to be specified and not be overly long or used as industrial leverage. Such a practical measure will achieve one of the stated objectives of the Bill, namely "to foster workplace consultation between employers and employees on issues concerning gender equality in employment and in the workplace".¹⁸

6.9 Although at present it is difficult to identify the net impact on the industry without knowing what the new minimum standards for compliance purposes will be, Master Builders submits that extra care needs to be taken to avoid the risk of employers being more concerned about red tape obligations than being focussed on efforts to improve gender equity in the workplace. In reviewing compliance, the WGEA should not apply these procedural reporting obligations in a draconian way or impose unnecessary compliance costs.

7 Compliance framework

7.1 The explanatory memorandum to the Bill states that the Bill purports to strengthen and improve transparency in relation to the compliance framework within the Act, as well as the consequences for non-compliance.¹⁹ This is a considerable expansion - under the current framework, a reporting employer

¹⁸ Proposed subsection 2A(d) of the Act.

¹⁹ Explanatory memorandum, p 2.

may be found to be non-compliant if they either do not lodge a public report or do not provide the relevant information requested.

- 7.2 The Bill introduces a new set of circumstances where an employer can be found to be non-compliant with the legislative requirements. These circumstances range from failing to have the public report signed by the CEO of the relevant employer to giving false, misleading or inaccurate information in a public report.²⁰
- 7.3 The consequences of non-compliance are made more severe. Whereas the current framework prescribes that the WGEA will name the non-complying organisation in its report to the Minister, the new framework permits the WGEA to name the non-complying employer in a report given to the Minister as well as by electronic or other means, for example, on the Agency's website or in the media.
- 7.4 In addition, and of concern for construction companies, organisations found to be non-compliant 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.
- 7.5 Governments remain one of the largest clients in the building and construction industry. Being found to be non-compliant with the Act poses a significant business risk because it may result in a company being locked out of tendering for a procurement contract or being locked out of financial assistance.
- 7.6 The National Code of Practice for the Construction Industry (the Code) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry (the Guidelines) oblige all parties wishing to do business with governments or to work on government construction projects (subject to certain thresholds) to comply with all aspects of the Code and applicable legislative and administrative requirements.²¹ One of the Code's aspects is evidence of best-practice performance in relation to equal employment opportunities.²² Clause 6.1 of the Guidelines (applicable

²⁰ Ibid, pp 13-15.

²¹ The Code is a set of principles and standards of behaviour and the Guidelines assist the implementation of the Code on the ground.

²² Copy of the Code can be found at http://www.deewr.gov.au/WorkplaceRelations/Policies/BuildingandConstruction/Documents/National_Code_of_Practice_ConstructionIndustry1997.pdf, accessed on 20/3/2012.

from May 2012) requires all parties to comply with provisions of applicable legislative requirements. The Act is an applicable legislative requirement because the Bill proposes that relevant employers who are found to be non-compliant may not be eligible to compete for a procurement contract or apply for Government funding.²³

7.7 By way of example, a contractor who is successful in securing a government tender will be prevented from entering into a subcontract with a subcontractor who is found to be non-compliant with the Act. This will have a negative effect on one of the objects of the Bill, namely to improve business competitiveness and productivity through the advancement of gender equality in employment and in the workplace.²⁴

7.8 In light of these potentially serious reputational and business risks, Master Builders submits that consequences of non-compliance should be in proportion to the severity of non-compliance. For example, organisations should only be publicly named as non-compliant if they deliberately produce false or misleading information. The concept of proportionality should be used in designing the legislation, particularly the consequences of its breach. We submit that, at the least, the additional consequences for businesses of breaching the legislation should be deferred until the completion of a comprehensive education campaign, as set out below.

8 Education and assistance

8.1 Proper education and assistance are essential in promoting and improving gender equality in employment and in the workplace. As discussed earlier in this submission, gender stereotypes that are prevalent in the building and construction industry stem from lack of appropriate education.

8.2 The WGEA will continue to provide a general level of education and assistance to employers. However, Master Builders submits that some employers will require targeted assistance and education, over and above the general level provided to all employers. The Bill only provides for targeted education and assistance in limited circumstances i.e. where an employer

Copy of the Guidelines can be found at
http://www.deewr.gov.au/WorkplaceRelations/Policies/BuildingandConstruction/Documents/WR_IMP_Guidelines_2012.pdf

²³ Proposed section 18 of the Act.

²⁴ Proposed subsection 2A(e) of the Act.

fails to meet a minimum standard at the end of a particular reporting period. In this situation, the WGEA will offer advice in relation to how this employer can improve performance against that minimum standard.

- 8.3 Master Builders submits that the WGEA and industry associations must work together in providing policy and technical advice to employers that will be bound by the reporting requirements. Provision should be made that if any employer is concerned that they will not meet the minimum standards or the reporting requirements, the WGEA, possibly in conjunction with an industry association, will provide tailored advice and education to that employer. Targeted education will be consistent with one of the objectives of the Bill, namely to promote, among employers, the elimination of gender discrimination in relation to employment matters.
- 8.4 Master Builders submits that the industry would benefit from a Government-funded education and assistance campaign to equip employers in meeting their reporting and compliance obligations. This campaign would be delivered through industry associations such as Master Builders, who are best placed to provide education and assistance and work in partnership with the Government and members. We submit that this education campaign be delivered by 1 April 2014 at the latest, as that is the date when the Act becomes fully operational with no exceptions.

9 Conclusion

- 9.1 Removing gender discrimination and increasing women's participation in the industry has the potential to improve workforce productivity and help close the gender gap in the workplace.
- 9.2 Master Builders is concerned that unintended negative impacts of the Bill will be imposed on employers who are required to comply with the new reporting obligations. In particular, Master Builders submits that the new reporting requirements and the newly increased risk of non-compliance will add to the administrative burden which may distract employers from focusing on improving gender equality in their workplace. Unions will be permitted to examine and comment on a public report submitted by an employer. Any comments submitted by the union to the WGEA may lead the WGEA to request further information from an employer in order to check compliance.

Unions are given new untested powers which have the capacity to be used as industrial leverage.

- 9.3 At present, there is a lack of comprehensive and effective education measures that show employers the importance of gender equality and equal participation for all women. The Bill only makes provisions for targeted assistance from WGEA in cases where an employer fails to meet the minimum standards at the end of a particular reporting period.
- 9.4 Master Builders submits that targeted education and assistance is required, especially for those employers who indicate that they do not know how to meet the gender equality indicators or are unsure what information they should compile and keep for compliance purposes. We recommend that the harsher consequences of not complying with the legislation be deferred until a wide ranging education campaign has been conducted.
- 9.5 Master Builders submits that the new regulatory measures, aimed at cutting red tape²⁵ should be carefully monitored and evaluated to make sure they do not achieve the opposite result – employers over-focusing on complying with the reporting obligations rather than developing and improving internal ways that support and enhance gender equity and diversity.

²⁵ Julie Collins MP Media Release, *New Bill To Improve Gender Equality In the Workplace*, 1 March 2012.