Senate Education, Employment, and Workplace Relations Committee

Inquiry into the

Equal Opportunity for Women in the Workplace Amendment Bill 2012

Submission of the Finance Sector Union of Australia

Introduction

The Finance Sector Union of Australia (FSU) works on behalf of over 40,000 members and 400,000 employees of banks, insurance and finance companies, credit unions and superannuation funds. Amongst our membership are employees working in all states and territories for the "big 4" Banks, Westpac, NAB, ANZ and the Commonwealth Bank of Australia (CBA).

The banks are large employers with sites in retail and business banking in large cities and towns and remote and isolated areas; large centralised sites (such as the ANZ and NAB sites at Docklands in Victoria where approximately 6,000 staff are located); call centres and back-office processing sites. These organisations have large Human Resources departments, as well as business units dedicated to industrial and employee relations, and diversity.

Smaller organisations, such as credit unions may not currently meet the threshold for reporting under the *Equal Opportunity for Women in the Workplace Act 1999.* However, employees in these workplaces may require targeted measures for improving equal opportunity/gender equality simply because of their size and their employer's limited resources to provide training, and to have comprehensive policies in place.

The majority of FSU members are women, most of whom are concentrated in retail banking occupations. This reflects the gender make-up of workers in the industry; at May 2010, just under 55% of employees in the finance sector were women.[1]

There are myriad issues relating to equal opportunity for women in the finance sector, including work/life balance, discrimination on the grounds of pregnancy and family responsibilities, work intensification and gender pay inequity. Indeed, the finance sector has a gender pay gap second only to that in mining and the highest of any female dominated industry. On average, women in the finance sector earn just 71% of male earnings – a gender pay gap of 29%.[2]

Closing the gender pay gap is one of the key priorities for the Union.

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[1] In turn, 71% of these women workers were in the ASCO classification 'Clerical and Administrative workers'. Source: Labour Force unpublished data, 2010.

[2] Source: *Employee Earnings and Hours Australia,* 6306.0, ABS, May 2010. This catalogue uses average hourly ordinary time earnings figures for full time adult non-managerial employees. This data is useful because it allows for the fact that men generally work more hours than women, it is not influenced by overtime earnings and it does not include managerial salaries that can distort average wages.

In 2006/07, FSU jointly conducted a pay equity audit with NAB. The audit highlighted the need for a cultural shift in banking. Though the major banks have a number of formal policies in place around promoting equal opportunities, (and indeed have won awards for these policies), the *application of these policies* is piecemeal and sporadic and may not filter down to the employees who most require attention.

This Submission seeks to draw the Committee's attention to what we see as a gap between policy and practice in the finance sector.

In the past, each of the four major banks has been waived from reporting to EOWA and each has received Employer of Choice citation at some stage. However, the Union is at a loss to know how the four major banks meet each of the current criteria for Employer of Choice, or a waiver from reporting on the EEO programs.

In our view, current impediments to putting EEO policy into practice include:

- Problems with pay data and job relativities, making it difficult to compare earnings across an organisation. This problem will only get worse as market and performance based pay take a stronger hold on the industry.
- Lack of awareness and training of managers in the application of equal opportunity policies, including flexible working arrangements, and a subsequent failure to promote these policies.
- Lack of up-take of flexible working options- due to lack of awareness amongst staff and an increase in workloads and working hours.
- Job segmentation – a predominance of women in low paid jobs.
- Poor and inflexible job design
- Lack of identified career paths.

The FSU outlined these issues during a Melbourne Roundtable as part of the EOWA Inquiry in 2009.

We believe it is time that the industry receives stronger and targeted criteria for reporting on progress in EEO programs. It is only via such programs that we can hope to narrow the finance sector pay gap.

Just as the Government has shown prescience in introducing a paid parental leave scheme, we believe it is time to strengthen and entrench EEO reporting to ensure a comprehensive means of securing future opportunities for women. There is no reason why this cannot occur in the private sector, amongst the most profitable employers in the country.

Summary of Submission

To summarise, the Finance Sector Union supports the main tenets of the Bill including:

- improved communication with stakeholders;
- an end to companies being waived from reporting and
- the adoption of gender equality indicators and minimum standards to measure progress within companies over time.

FSU supports the Submission of the Australian Council of Trade Unions on behalf of its affiliates, though we suggest some further amendments which we believe would bring more rapid change to our industry, particularly in addressing the gender pay gap.

FSU Recommendations:

1. **In recognition of a key change to this legislation – interaction with employee organisations – we recommend that the Committee amend object 2A (d) to read:**

   "to foster workplace consultation between employers, employees and employee organisations on issues....".

2. **The Bill does not provide detail on the form of reporting to be undertaken. FSU is concerned to see that:**

   - **The equal opportunity for women in the workplace programs are replaced by reporting which is based on rigorous data, but which allows employers, employees, employee organisations and the Agency to identify systemic attempts to improve gender equality and track progress over time.**
   - **Thorough consultation occurs between the Agency, industry and employee organisations to identify the best means of 'simplifying and streamlining reporting' and that 'evidence based reporting' involves the practical application of gender equality initiatives at the workplace.**
   - **The Agency is sufficiently funded and resourced to provide education and advice, thorough examination of public reports, follow-up and compliance.**

3. **FSU recommends that the Agency publish the overall gender pay gap found within each reporting agency so that the results are transparent, industry can move to address any pay gaps and the Agency, employers, employees and Unions can measure progress over time.**

4. **FSU recommends that Section 16 of the draft Bill be amended to ensure that employees and employers have 28 days to comment on a draft report before it is submitted, and that these comments are included in the regulatory forms required to be part of the public reporting process, and to be published**

5. **FSU recommends that where an employer has failed to comply with the Act in relation to any of the criteria set out at subsections 19B or 19C, and after inviting the employer to make written representations in respect to subsection 19D (4) (d), the employer be prevented from applying for government contracts, assistance or funding until such time as compliance is met.**

6. **FSU recommends that the current sn. 31 (3) (d) be retained. Organisations representing women have a large stake in ensuring that progress in gender equality continues from the 1999 Act. These organisations should be singled out as specialists in the advancement of women, with the historical activism and knowledge that can contribute into the future.**

Some Industry examples

In support of our submission that employers should consult with employee organisations in developing Gender Equality programs and compiling their reports, we offer the following examples.

The issues of workplace flexibility for workers with caring responsibilities, right to return from parental leave and discrimination are common themes in enquiries to the FSU Member Rights Centre (MRC) – a national advice line for members, and to state based union advocates who deal with member disputes.

It is our experience that where the Union is consulted, works jointly with employers, and is able to resolve disputes, we achieve greater inroads into gender equality.

1. For example, FSU completed a gender pay equity audit with NAB in 2006/07, and are currently working on a second gender pay equity project. In the five or so years between projects, employee awareness and take-up of flexible work options has increased substantially. Other tangible outcomes have been:

- a greater awareness amongst managers around negotiating start rates for men and women seeking the same job;
- a willingness to look at job design to accommodate caring responsibilities;
- projects to identify and eliminate career path barriers for women;
- setting targets for women in leadership roles;
- improved and targeted recruitment and training of women into 'non-traditional' and high paid sales roles; and
- improved metrics around pay and pay setting.

2. When Bank employees are involved in individual disputes around flexible work practices, parental leave or caring responsibilities, these are always more readily resolved when the Union becomes involved and, in some instances, when the Bank asks the Union for advice and attempts to resolve the matter jointly.

This indicates a level of maturity (and best practice) which we submit should be reflected in our key gender equality statute via mandated consultation between employers, employees and Unions.

A recent analysis of calls to the MRC from one major bank focused on right to request part-time work. In each case once the FSU became involved and spoke to Human Resources officers within the Bank, an arrangement was found which suited both the employee and their employer.

This suggests that even in large organisations, managers may not feel compelled to find solutions until pushed, and/or are ill-informed about their options.

Below are some of these examples from the one major bank:

1. *The FSU member was trying to return to work from parental leave on a part time basis. The member went on parental leave in January 2011. The member is a credit analyst and supports the relationship manager in their role.*

The member rang a key leader in the business in November 2011 and said she will be returning to work at end of February 2012, and that she wanted to return to work either part time, job share, a day working from home, or any option other than full time. The member noted that she would ideally like 3 days work per week but was prepared to work 4 days.

The key leader advised her over the phone that a return to work part time was not going to happen as the role was not a part time role. He gave her no other reason even though the role had been performed as a job share role and there is another person who is more than happy to job share with the FSU member.

2. *The FSU member was on parental leave and wanted to return to work in February 2012. The member's previous role was as a transition manager and prior to parental leave they had experienced work from home.*

   The member gave the Bank two options in her request. These were 3 days in the office and 2 at home, or 4 days in the office and 1 at home. The member's senior leader said no, that the business unit would not support this, and that the only part-time work available was 3 days per week, but the FSU member would have to be transferred to another department and different position.

3. *The member called to advise that she was on parental leave until April 2011, but she has advised the Bank that she wished to return to work part time and early, in February 2011. Her manager had told her that at that moment there was no position for her and she may be terminated.*

4. *The member verbally advised the employer in December 2010 of her intent to return to work part-time from the 28th of May 2011. The member forwarded this via written intent requesting to work one full day on a Wednesday only, due to child care needs.*

   The member had met with the Area and Branch Managers and was advised that she could not negotiate such an arrangement as it did not suit business needs. The member was told she was required on a Monday, Wednesday and Friday. The member was also told that if she declined this offer, she could have her pre-parental leave hours reinstated; these were Wednesday and Thursday 11.00am-4.30pm. The Bank stated that this was "all they were legally obliged to offer".

   The member advised that she had already made child care arrangements for the Wednesday and could not afford child care costs if she worked the other days. She also informed the bank that her mother had arranged with her own workplace to have the Wednesday off to look after her children.

   At this point the member was again advised that this arrangement would not work, and she would later receive a 'final offer'.

The above examples are from one large bank where policies and processes around right to request are in place. The question is, are managers and supervisors aware of these policies and processes and are they trained and encouraged to think clearly about making appropriate arrangements for return to work? In each case once *the Union* informed HR that these disputes were occurring, a solution was found.

The Bill

1. Title

We support amending the legislation and the Agency to be called the "Gender Equality" Act and Agency.

From our work in the finance sector it is clear that organisations have the sophistication to consider "gender equality" as a goal, rather than "equal opportunity for women". Though we are always mindful of the inordinate amount of work still to be done for women in the finance sector – not least of which is to close the large gender pay gap – we believe this terminology would be readily embraced in finance in 2012. Recent interviews with managers in a major bank and focus groups with FSU members support this.[3]

2. Objects of the Act

FSU supports the expanded objects which better reflect the reality and aspirations of our industry at this point in time.

Object 2A (a) of the current legislation regarding 'merit' is an objective which no longer requires a direct intention. Certainly in finance there would no longer be any overt arguments that "employment for women should (not) be dealt with on the basis of merit". As we know, *indirect* discrimination is a different matter and it is hoped that other amendments to the legislation – including the adoption of gender equality indicators and minimum standards – will address indirect discrimination.

Proposed object 2A (b) is fully supported. In our pay equity work with NAB the removal of barriers could be described as the one 'catch-all', systematic action that needs to occur to achieve equal participation of women in the workforce and an end to discrimination, including in pay. "Barriers" include long hours of work, lack of training, inflexibility in relation to family and caring responsibilities and job design.

The object of "equal remuneration" (2A (a)) must be included and the new proposed object (c) stands not only as an object in itself but to reinforce and assist with the achievement of equal remuneration. Equal pay for women cannot be achieved while there are barriers to balancing their work and caring responsibilities.

In recognition of a key change to this legislation – interaction with employee organisations – we recommend that the Committee amend object 2A (d) to read:

"to foster workplace consultation between employers, employees ***and employee organisations*** *on issues....".*

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[3] Some FSU members are surprised to hear there is a gender pay gap in the 21st century, noting 'isn't that illegal?". Further, male members of the Union often inquire as to whether they too can take primary carer's leave or work flexible hours. Focussing on 'gender inequality' in the key equal opportunity statute will be more inclusive for workers in our industry, many of whom do not at first respond to programs that just focus on women.

This object would then more closely resemble the intent of objects 3 (e) and (f) of the *Fair Work Act* in respect to representation and enterprise based resolution of employment matters. It is our strong submission that where unions work in conjunction with employers to resolve workplace issues there are better outcomes for all parties. This has been our particular experience when it comes to the *implementation* of gender equality legislation, policy and practice at the workplace. *(Refer above examples).*

3. Interpretation

FSU supports the inclusion of "employee organisation" in the legislation and giving the term the same meaning as that found in the *Fair Work Act.*

Each of the other amendments to subsection 3 (1) are supported.

FSU expressly supports the inclusion of a new **subsection 3 (1) (h)**; we believe this fits with the proposed objects of the Bill and is necessary to ensure protection for employees returning from a period of parental leave. Return to work in the same role or at the same level is crucial to achieving gender pay equity and must be included as an employment matter if we are to achieve gender equality at work.

The **gender equality indicators** are supported. We recommend that *'access to training and career development'* should be added to subsection 3 (1) as a gender equality indicator.

4. Workplace Gender Equality Agency

FSU supports the concept of setting **benchmarks** in relation to gender equality indicators. FSU has complained to successive governments that the major, resource rich banks have consistently won "Employee of Choice" citations and other awards based on their reporting on workplace programs under the current Act. By moving to a system of gender equality indicators and setting benchmarks, employers, employees and unions will be able to *measure progress* against indicators and benchmarks over time. It is long overdue that Australian industry be held to account for genuine continuous improvement in the area of gender equality.

Given the above, it is crucial that the amendments in subsections 10 (1)© and (d) be adopted; the Agency's role will go beyond 'monitoring' the lodging of reports and the effectiveness of programs to **"review(ing) compliance with"** and **"analys(ing) information".** These activities are essential in order to measure real progress.

5. Relevant employers to prepare reports relating to gender equality indicators

FSU fully supports the inclusion of subsection 13 (5), that reports must be **signed by the chief executive officer.** It is our experience that a commitment to gender equality must come from the highest point of leadership within an organisation, and that this is crucial in large organisations such as banks.

In FSU's pay equity partnership with NAB, 2 successive CEO's have led the organisation's commitment to the project. The current project (an in-depth audit of specific business units and a survey of workers who have taken primary carers' leave), has seen improved commitment from the CEO and his senior leaders who oversee the project from their Group Diversity Forum and insist that diversity indicators be built into each area of the business. A

CEOs signature on the public report will also prevent gender equality from being seen as a specialized or 'niche' area for HR practitioners, rather than an integral part of a business.

The Bill does not provide detail on the **form of reporting** to be undertaken. FSU is concerned to see that:

a. The equal opportunity for women in the workplace programs are replaced by reporting which is based on rigorous data, but which allows employers, employees, employee organisations and the Agency to identify systemic attempts to improve gender equality and track progress over time.
b. Thorough consultation occurs between the Agency, industry and employee organisations to identify the best means of 'simplifying and streamlining reporting' and that 'evidence based reporting' involves the practical application of gender equality initiatives at the workplace.
c. The Agency is sufficiently funded and resourced to provide education and advice, thorough examination of public reports, follow-up and compliance.

FSU supports repealing the right to waive reporting. In our view this right compromises the integrity of the current reporting regime and allows major employers to 'hide' from public scrutiny of their equal opportunity programs.

6. Information relating to remuneration

The Agency's ability to elicit accurate information on remuneration is crucial to FSU and our members. Though we of course understand the commercial sensitivities of employers in our industry releasing financial information, our members are frustrated by the leaders of major banks and insurance companies assuring the FSU 'we have audited or own pay outcomes and there is no pay gap'. Given the findings of the ABS that finance consistently has the largest or second largest gap of any industry, these protestations are clearly not true (catalogue 6306.0).

Employers must be required to examine all elements of remuneration. Our joint work with NAB has found that even when there is no direct or systemic discrimination in base pay and start rates, or performance pay outcomes, there is often a gap in the amount of incentives paid to women when compared with men; this needs to be highlighted and investigated.

For this reason, FSU recommends that all reporting organisations be required to use the updated EOWA pay equity tool and to report the outcomes of this analysis to the Agency and unions, on a confidential basis. Full transparency is needed to address the gender pay gap. The Agency may then publish the remuneration outcomes in aggregated form.

FSU recommends that the Agency publish the overall gender pay gap found within each reporting agency so that the results are transparent, industry can move to address any pay gaps and the Agency, employers, employees and Unions can measure progress over time.

7. Relevant employer to make public reports accessible to employees and shareholders etc.

The FSU commends attempts to ensure that employees and employee organisations have access to the public reports.

However, FSU believes that employees and their representatives must have the opportunity to be consulted over a draft report and to include comments in any final report submitted to the Agency. This is the only way that the Agency can reconcile the employer's view of their policies and procedures, with *what is actually occurring at the workplace.*

FSU recommends that Section 16 of the draft Bill be amended to ensure that employees and employers have 28 days to comment on a draft report before it is submitted, and that these comments are included in the regulatory forms required to be part of the public reporting process, and to be published.

8. Compliance

FSU commends the Bill for requiring that employers improve against minimum standards over time.

FSU also supports the criteria for non-compliance with the proposed legislation, including provision of false or misleading information and failure to notify employees or employee organisations. **However, in view of our recommendation at 5, (above), we ask that the Bill be amended to include "failure to consult with employees and employee representatives" and provide the 28 day period for comment to be appended to the public report.**

9. Consequences of non- compliance with the Act

FSU recommends that where an employer has failed to comply with the Act in relation to any of the criteria set out at subsections 19B or 19C, and after inviting the employer to make written representations in respect to subsection 19D (4) (d), the employer be prevented from applying for government contracts, assistance or funding until such time as compliance is met.

The FSU also supports the ACTU recommendation that sanctions be broad, varied and incremental.

10. Enhancing the Agency's advice and education functions

The Bill and the Explanatory Memorandum refer to consultation with employers and employee organisations to develop the benchmarks for the gender equality indicators, and to extend the Agency's role in providing advice and education. The Agency must be adequately resourced and funded to ensure that consultation is thorough, and that advice and education has real meaning, particularly for non-compliant or non-reporting organisations.

11. Advisory Committees

FSU recommends that the current sn. 31 (3) (d) be retained. Organisations representing women have a large stake in ensuring that progress in gender equality continues from the 1999 Act. These organisations should be singled out as specialists in the advancement of women, with the historical activism and knowledge that can contribute into the future.

FSU National Office
March 2012.