



Australian
Human Rights
Commission

Equal Opportunity for Women in the Workplace Amendment Bill 2012

**AUSTRALIAN HUMAN RIGHTS COMMISSION SUBMISSION TO THE SENATE
EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS COMMITTEE**

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1 Introduction

1. The Australian Human Rights Commission makes this submission to the Senate Education, Employment and Workplace Relations Committee in its Inquiry into the Equal Opportunity for Women in the Workplace Amendment Bill 2012.

2 Summary

2. The Commission welcomes the introduction of the Equal Opportunity for Women in the Workplace Amendment Bill that proposes amendments to the *Equal Opportunity for Women in the Workplace Act 1999* (the Act) and the Equal Opportunity for Women in the Workplace Agency (the Agency).
3. The Commission has been advocating for reforms to the Act and Agency that strengthen the capacity of the Act and Agency to promote gender equality in workplaces. See, for example, the Commission's submission to the *Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* in 2009.¹
4. The Commission welcomes the reforms proposed in the Bill as important measures to strengthen Australia's national laws and institutions that regulate gender equality in Australian workplaces.
5. The Commission notes that the proposed amendments also correspond positively with the recommendations of the *Review of the Equal Opportunity for Women in the Workplace Act 1999 - KPMG Consultation Report*.²
6. The Commission commends the consultation process undertaken with employer groups, employee groups, and other stakeholders, in the development of this Bill, and notes the Bill reflects an intention for such consultations to be a feature of the process for future reforms.
7. The Commission also welcomes the preparation of the Statement of Compatibility with Human Rights prepared for the Bill.

3 Recommendations

8. Recommendation: The Australian Human Rights Commission recommends that the Bill be adopted in full.

4 Provisions of the Equal Opportunity for Women in the Workplace Amendment Bill 2012

9. The Bill seeks to:
 - Amend the title of the Act to 'Workplace Gender Equality Act 2012' and rename the Agency the Workplace Gender Equality Agency' and the office, 'the office of the Director of Workplace Gender Equality'.³
 - Amend the objects to the Act:

- (a) to promote and improve gender equality (including equal remuneration between women and men) in employment and in the workplace; and
 - (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; and
 - (c) to promote, amongst employers, the elimination of discrimination on the basis of gender in relation to employment matters (including in relation to family and caring responsibilities); and
 - (d) to foster workplace consultation between employers and employees on issues concerning gender equality in employment and in 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.⁴
- Expand the coverage of the Act to include men and women.⁵
 - Empower the Agency to develop, in consultation with relevant employers and employee organisations, benchmarks in relation to gender equality indicators.⁶
 - Ensure employers prepare a public report in writing containing information relating to the employer and to the gender equality indicators. The public report must be signed by the Chief Executive Officer of the relevant employer.⁷
 - Empower the Agency, by electronic or other means, to name employers as having failed to comply with the Act and set out details of the non-compliance.⁸
 - Empower the Minister (by 1 April 2014), by legislative instrument, to set minimum standards in relation to specified gender equality indicators, specified relevant employers and specified reporting periods.⁹

5 Objects of the Act

10. The Commission welcomes the reforms proposed in the Bill as important measures to strengthen Australia's national laws and institutions that regulate gender equality in Australian workplaces.
11. The Commission has previously advocated strengthening the capacity of the Act and Agency to promote gender equality in workplaces.¹⁰
12. In 2009, the Commission called for several objectives to drive the reform of the EOWW Act and Agency and associated legislative and institutional arrangements. These were:
 - greater clarity and cohesion amongst national regulatory schemes;
 - promotion of gender equality rather than equal opportunity for women;

- improved transparency and accountability at the national level;
 - greater emphasis on outcomes rather than processes in mandatory Employer Reporting Obligations;
 - greater certainty for business and employers;
 - full coverage of employers;
 - targeted effort to close the gender pay gap; and
 - special measures to fast track achieving substantive equality in leadership.
13. The Commission welcomes the amendments to the objects of the Act which are focused on gender equality, ensuring pay equity for women and men and ensuring both men and women have access to employment mechanisms that support family and caring responsibilities.
14. The Commission welcomes the expansion of the Act to include men and women. This is consistent the Sex and Age Discrimination Legislation Amendment Act which, came into effect on 20 June 2011, and provides greater protections for men and women against discrimination and sexual harassment by:
- establishing breastfeeding as a separate ground of discrimination;
 - extending protections from discrimination on the grounds of family responsibilities to all areas of employment; and
 - ensuring the Act applies to men and women equally.

6 Reporting

15. In 2009 the Commission called for the current Employer Reporting Obligations to EOWA to be reformed so that reporting focuses on outcomes achieved by employers to progress substantive gender equality, rather than on the methods used.¹¹
16. The Commission recognises that regulatory burdens need to be tightly linked to the core objectives of the regulatory system. The key objective of the regulation in this area is to progressively achieve *substantive* equality within Australian businesses and other employer organisations, rather than focus on processes of attainment. Employer reporting obligations should be guided by the principle ‘better reporting, not more reporting.’
17. Whilst the gathering of information from employers about strategies used to achieve greater gender equality may be useful for sharing knowledge and innovative ideas, this should not be the focus of regulated reporting to the Agency. The Employer Reporting Obligations should be developed in order to track progress against key indicators of progress, including:
- workforce profiles;
 - decision-making and leadership;
 - pay rates and equity;
 - sexual harassment and discrimination; and

- flexible work arrangements.
18. Outcome-based reporting will generate greater knowledge about the extent to which change is actually being achieved within the workplace. It will provide a more accurate representation of the extent of real reform within workplace profiles, conditions and cultures.

6.1 *Simplifying and streamlining reporting*

19. The Commission welcomes the introduction of a new reporting framework in which relevant employers are required to report against gender equality indicators.
20. The simplified outline of the Act highlights that:
- the Act requires employers to lodge reports each year containing information relating to various gender equality indicators (for example, equal remuneration between women and men);
 - these reports will be available to the public, subject to some exceptions for information that is personal information, information relating to remuneration and information of a kind specified by the Minister;
 - the Agency may review a relevant employer's compliance with this Act by seeking further information from the employer; and
 - if a relevant employer fails to comply with this Act, the Agency may name the employer in a report given to the Minister or by electronic or other means (for example, on the Agency's website or in a newspaper).

6.2 *Enhancing the Agency's Advice and Education Functions*

21. The Bill introduces new functions for the Agency, including to develop, in consultation with relevant employers and employee organisations, benchmarks in relation to gender equality indicators. Benchmarks are intended as a way for the Agency to collect, analyse and express the data collected from public reports in a useful and meaningful way. Employers will be able to compare their workplace outcomes and practices in relation to their own performance and their industry peers each year.
22. The Agency will also offer targeted and additional advice and assistance to relevant employers if they fail to meet a minimum standard. The improved coverage of the Act will enable the Agency to extend its advice and education functions to all employers, not just those who are required to report.

6.3 *Strengthening the Compliance Framework*

23. The Bill clarifies and improves transparency associated with compliance with the Act and the consequences of non-compliance. Reports will be required

to be accessible by employees and shareholders, and employees and employee organisations will be provided with the opportunity to comment.

24. The Agency may check compliance by requiring a relevant employer to give the Agency information that relates to the employer's compliance with the Act or to the employer's performance against the minimum standards. Consequences for non-compliance with the Act, without reasonable excuse, include naming the employer in a report to the Minister or naming the employer by electronic or other means, such as in a newspaper.
25. Relevant 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.

7 Statement of Compatibility with Human Rights

26. The Statement of Compatibility with Human Rights clearly identifies the full range of international human rights standards and Conventions relevant to this Bill.
27. The Bill outlines important measures that will contribute to the realisation of the rights identified in the Statement of Compatibility, as well as to Australia's meeting its human rights obligations in relation to the Conventions identified.
28. The improved reporting mechanisms in the Bill, including the requirement to report against gender equality indicators, and in future the benchmarks and minimum standards, will provide an important means of monitoring the realisation of the human rights standards identified in the statement of compatibility.
29. The Commission notes that the standards relating to equal pay in the *Fair Work Act 2009* (Cth) are higher than the standards identified in the ILO instruments relating to equal pay. To the extent that the international Conventions outline a minimum level of obligations, and the national standards rise above them, it is important for the Bill to be consistent with the higher set of standards, in this instance, the *Fair Work Act*.

¹ Australian Human Rights Commission, *Submission to the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009). At http://humanrights.gov.au/legal/submissions/2009/20091030_EOWA.html (viewed 27 March 2012).

² Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Review of the Equal Opportunity for Women in the Workplace Act 1999 - KPMG Consultation Report* 92009). At http://www.fahcsia.gov.au/sa/women/pubs/general/eowa_kpmg_rpt/Pages/default.aspx (viewed 27 March 2012).

³ Equal Opportunity for Women in the Workplace Amendment Bill 2012 (Cth), cl 1.

⁴ Above cl 3.

⁵ Above cl 11.

⁶ Above cl 35.

⁷ Above cl 44.

⁸ Above cl 55.

⁹ Above cl 55.

¹⁰ Australian Human Rights Commission, *Submission to the Inquiry into the Equal Opportunity for Women in the Workplace Act 1999 and Equal Opportunity for Women in the Workplace Agency* (2009). At http://humanrights.gov.au/legal/submissions/2009/20091030_EOWA.html (viewed 27 March 2012).

¹¹ See Equal Opportunity from Women in the Workplace Agency, *Public Report form*. At www.eowa.gov.au/Reporting_And_Compliance/What_do_I_Need_to_Include/Public_Report_Form.aspx (viewed 27 March 2012).