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**Australian Council of Trade Unions (ACTU)  
Submission to the Senate Education, Employment  
and Workplace Relations Committee on the Equal  
Opportunity for Women in the Workplace  
Amendment Bill 2012**

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ACTU

Level 6, 365 Queen Street

Melbourne VIC 3000

[www.actu.org.au](http://www.actu.org.au)

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## 1. Introduction

The Australian Council of Trade Unions (ACTU) represents 47 unions and almost 2 million working Australians, about half of whom are women.

Equal opportunity in the workplace is an important issue for our members and we welcome the opportunity to make this submission to the Senate Committee on the *Equal Opportunity for Women in the Workplace Amendment Bill 2012*.

The amendment to the EOWW Act is much needed. Despite the introduction of the *Affirmative Action (Equal Opportunity for Women) Act 1986* almost a quarter of a century ago, women continue to be disadvantaged in the workplace:

- Despite making up half the workforce, women in full-time paid work still earn 17.8% less than men in full-time paid work;<sup>1</sup> amounting to over one million dollars less over a lifetime;<sup>2</sup>
- While women are now more likely to have a tertiary qualification than men, women graduates will earn \$2,000 less than male graduates and \$7,400 less by the fifth year after graduation;<sup>3</sup>
- Fewer than 3% of ASX 200 companies have a female chief executive officer, 8.4% of board directors are women and only 8% of executive managers of Australian companies are women;<sup>4</sup>
- Women retire with less than half the amount of savings in their superannuation accounts than men;<sup>5</sup> and
- Women are four times as likely to experience sexual harassment and discrimination in the workplace compared to men.<sup>6</sup>

In addition, since the introduction of Equal Opportunity legislation, women have increasingly entered the paid labour force; with both parents working now in the majority of modern families.<sup>7</sup> A recent ACTU Census, which surveyed over 40,000 workers, found balancing work and family responsibility was the second highest (first was wages) industrial issue facing both men and women employees.

Clearly, the current EOWW legislation has been inadequate to genuinely address old, persistent inequities and is in need of updating to effectively address new, emerging equal employment opportunity concerns.

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<sup>1</sup> ABS cat. no. 6320.0 AWOTE Feb 2011 (Released November 2011)

<sup>2</sup> Cassells, R., Miranti, R., Nepal, B. and Tanton, R., (2009), *She Works hard for the Money: Australian Women and the Gender Divide*, AMP/NATSEM Income and Wealth Report, Issue 22.

<sup>3</sup> Ibid

<sup>4</sup> Equal Opportunity for Women in the Workplace Agency, *2011 EOWA Australian Census on Women in Leadership* Report, January 2012.

<sup>5</sup> Clare, Ross., Retirement Savings Update, 2000, Association of Superannuation Funds of Australia (ASFA) Research and Resource Centre, February 2008, available at [www.superannuation.asn.au](http://www.superannuation.asn.au)

<sup>6</sup> Australian Human Rights Commission, *Gender Equality Statistics*, 2011

<sup>7</sup> ABS Social Trends 4102.0 December 2011, "Fifty Years of Labour Force: Now and Then." p.2

As a participant in the Implementation Advisory Group, the ACTU was particularly keen to ensure implementation of the legislative reform included:

- Meaningful, comparative data collection and reporting which is focussed on outcomes;
- Re-building employee, union and shareholder involvement in the reporting process;
- Greater accountability for the development and implementation of EEO action plans;
- Development of appropriate minimum EEO standards; and
- A more robust compliance framework.

**2. The ACTU is broadly supportive of the draft Bill, noting that the Workplace Gender Equality Act (WGEA) will:**

- (1) Require employers to provide quantitative information to the Agency on 5 key Gender Equality Indicators:
  - a. gender composition of the workforce;
  - b. gender composition of governing bodies of relevant employers;
  - c. total remuneration payments of women and men for the reporting period;
  - 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 or caring responsibilities;
  - e. consultation with employees on issues concerning gender equality in the workplace; and
  - f. any other matters (specified by the Minister).
- (2) Require employers to inform employees and shareholders as soon as practicable of the lodgement of their EEO reports and how the report may be accessed;
- (3) Require employers to, within 7 days after lodging a report, take all reasonable steps to inform each employee organisation that has members who are employees of the employer, that the employer has been lodged with the Agency and that the employee organisation has the right to comment on the content of the employer's report to the Agency;
- (4) Provide that unions may make comments on an employer's Report, which will be taken into account by the Agency when assessing the employer for compliance;
- (5) Require the Government (via consultation with key stakeholders including relevant unions) to establish appropriate industry benchmarks which employers must meet in order to be compliant; and
- (6) Require the Government to implement a procurement compliance regime which excludes non-compliant employers from accessing government funding or contracts.

**4. Specifically, we wish to make the following comments in relation to the EOW Amendment Bill (the Bill):**

**4.1 A stronger reporting regime is required, which enforces mandatory reporting for all employers obliged to report under the Act**

We note that almost two thirds of all employers legally obliged to lodge reports do not do so and re-iterate the importance of implementing a strategy to identify employers with more than 100 employees (for example by accessing data held by the tax office) and enforcement of the obligation to report.

As a minimum, all employers must at least meet these legislated reporting obligations.

In addition, reporting should be mandatory for all federal, state and territory employers. Society has legitimate expectations that equal employment opportunity measures will be advanced by government and its agencies. In addition to the procurement and assistance policy, state, territory and federal governments directly employ thousands of employees and should set an example by participating in the EEO reporting scheme and meeting best practice standards in its direct employment.

Also, employers not required to submit EEO reports should none the less be encouraged to do so as good management practice, and recognition of their commitment acknowledged by the Agency.

In time, consideration could be given to reporting requirements for all organisations, including those with less than 100 employees. A pared back reporting obligation for smaller businesses would minimise the reporting burden on with more limited resources.

**4.2 The Gender Equality Indicators must focus on accurate and meaningful data collection.**

Effective and meaningful collection of workplace data will be critical to the success of the new equal employment opportunity legislation.

The ACTU supports the introduction of a more structured reporting format which requires employers to:

- provide the relevant statistical data;
- identify inequity;
- set targets and action plans; and
- assess progress for each gender equality indicator.

We note that the Gender Equality Indicators are yet to be defined in detail through the process outlined in the Draft Bill, however we would have liked to see more detail in the headings, to ensure meaningful data will be collected.

In particular, we are concerned to ensure that the gender equality indicators require data to be collected on *outcomes*, so that reports reveal not just what is theoretically available to employees but also what the reality is for working women and men in that organisation.

We are pleased to note that the indicator in relation to employment conditions refers not just to availability but also to utilisation of the provisions. We would suggest that employee access to the provision should also be included. As a general principle, we strongly advocate that all gender equality indicators, where relevant, should require reporting on availability, access and utilisation of employees, for example, by requiring reporting organisations to identify the number of employees who have requested and been granted or refused access to the relevant provisions.

Also, as a general principle, all gender equality indicators should, where relevant, include a breakdown of the total remuneration by sex, classification, occupation, full time, part time, casual or contract employment as a minimum.

Specifically, in relation to the proposed Gender Equality Indicators, we make the following comments:

We are pleased to note that pay equity will be measured in terms of total remuneration rather than simply pay.

The ACTU recommends the inclusions of a greater set of indicators for the indicators relating to employment conditions, for example provision of family and domestic violence leave.

We are disappointed that sexual harassment, discrimination and equal access to training and career development opportunities are not reflected in the Gender Equality Indicator headings, as we regard these matters as critical to achieving gender equity in the workplace.

We would consider it useful to include a definition of 'consultation with employees' in indicator 3(1)(c) to avoid confusion and promote genuine consultation.

We also urge that the potential Gender Equality Indicators include streamlined reporting on organisational EEO targets and goals and any improvements made towards meeting those targets. This reporting will focus on organisational improvement and development of prevention strategies rather than merely reporting the same data each year.

More structured criteria on which employers must report will assist employers to effectively identify EEO issues and for the EOWW Agency to assess EEO reports in a consistent manner and produce meaningful EEO data.

The structured approach to the content of reports will also ensure a higher degree of consistency in reporting and analysis of employer practices and strategies across the board enabling benchmarking and policy recommendations.

#### **4.3 Practical education and support is required to assist employers to build their capacity to meet their reporting obligations to an appropriate standard.**

To ensure an adequate standard of reporting, employers, employees and unions must be provided with the tools to understand gender equity issues in the workplace. Experience of EEO reporting in Australia and internationally reveals a lack of awareness of what constitutes gender inequity in the workplace, including amongst human resources practitioners and union officials.

The reporting format should include prompts to guide reporters through the processes of data collection and identification of EEO issues, to equip and educate them with relevant knowledge they need to complete the report and to ensure quality responses and consistent data.

#### **4.4 Re-building meaningful employee and stakeholder engagement in the reporting process is critical to the success of the reformed legislation.**

The lack of scrutiny and input into the EEO reporting regime has effectively disengaged employees, stakeholders and the broader community from EEO issues and progress.

It has also undermined the credibility of EEO compliance and awards in circumstances where employees experiences do not align with the contents of employers reports or have a different knowledge or experience of how practices and policies unfold in reality 'on the shop floor'.

Whilst mandatory reporting will achieve identification of EEO issues and improved attention by employers of EEO issues in their workplace, the broader aim of the legislation must be to effect cultural change across *all levels* of the organisation.

We are pleased to note the draft Bill provides a pro-active role for employees and unions. Engaging employees and unions in the reporting process ensures penetration of the educative aspect of EEO across the workplace. It also helps build a sustainable EEO reporting capacity which is not dependent on a sole practitioner.

We would point out that in unions will take on a significant workload with respect to fulfilling their role as a 'check and balance' in the reporting process. In making comments on an employer's report, unions will need to consult with members in workplaces, verify and check information, and analyse potentially hundreds of employer's reports within a tight timeframe. This process is yet to be determined. It is imperative that unions are provided with copies of relevant employers reports in a timely fashion so that they are able to fulfil their obligations.

It is also imperative that unions be given sufficient time to complete their role within the timeframe available before assessment. We would advocate that consideration be given to extending the period of 28 days (within which unions must comment on reports in order for the comments to be taken into account by the Agency for assessment), should they require more time.

It is also imperative that unions have access to aggregated, non-identifying remuneration data in order to be able to genuinely contribute to the reporting process. Section 14 or 16 should not operate to exempt employers providing aggregated remuneration data unless the employer has the consent of the Agency not to publish the data on the grounds that the data would compromise employee confidentiality.

#### **4.6 Integration of EEO targets into corporate and management practice**

Anecdotal evidence indicates that little information about the employer's EEO reports or action plans is disseminated either to middle management or employees in general.

Case studies show that formal EEO procedures, anti-discrimination legislation and a commitment by management to EEO are not sufficient in themselves to realise the stated goals or to attract women workers into organisations.<sup>8</sup>

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<sup>8</sup> Wenzel Matiaske, Susanne Royer: *What makes a Job Good or Poor?* p. 436

We are cognizant of the importance of the Bill's requirement that a written copy of the EEO report, including an outline of the implementation process for the action plan, must be disseminated to all employees in a manner which is easily accessible.

We are also keen to ensure that the Gender Equality Indicator on employee consultation be given real effect by defining consultation in a manner which requires employers to offer a genuine opportunity to employees to feed into and review the organisation's EEO Report. This will facilitate cultural change across all levels of the organisation, particularly between line management and staff.

The Gender Equality Standards and ultimately the minimum standards should include a requirement to assess the effective implementation of EEO action plans in a workplace and for the integration of those plans into broader corporate and human resource management activities, including managerial accountability for implementation of policies and practices in key performance indicators. This would promote changes in an organisation at critical levels of workplace management.

A recent survey by the Australian Human Rights Commission found that thirty-seven per cent of sexual harassment claims occurred in organisations employing more than 100 employees, an indication that despite their statutory obligations these employers have '*poor prevention strategies for stopping its occurrence in the first place.*'<sup>9</sup>

#### **4.7 Improved public transparency of employer's EEO reports and integration with corporate reporting requirements**

A key to successful EEO programmes is how effectively they are linked into broader corporate objectives and practices. In order to achieve broader cultural change, the issue of EEO should include some degree of shareholder involvement in the process.

There is evidence of significant growth in the reporting of listed companies broad social impacts and responsibilities.<sup>10</sup> In the last five years, over 90% of the FTSE 100 companies have made some report of their corporate and social responsibilities (CSR). This reflects the assumption that a responsible company is one that reports its activities.

We are pleased to see the Draft Bill requires employers to provide a copy of their EEO report to shareholders as soon as is practicable.

We would like to see further integration of EEO compliance with company reporting on mainstream compliance reporting obligations such as current accounting standards and risk management reporting. Incorporation of compliance with the EEO obligations into an employer's mainstream corporate reporting mechanisms encourages stakeholders to routinely consider EEO as a driver of sound organisational management as well as to the commercial impacts of government procurement policies and similar 'soft regulation' business incentives.

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<sup>9</sup> Australian Human Rights Commission, *20 Years On: The Challenges Continue, Chapter 5: Sexual Harassment and Public Policy*, March 2004

<sup>10</sup> *Equal Opportunity for Women in the Workplace: A study of Corporate Disclosure*, ACCA Research Report No. 102, 2008 at <http://www.accaglobal.com/general/activities/research/reports>

In order for this transparency to be meaningful, employees, unions and shareholders should have access to as much aggregated data as possible, in particular that relating to remuneration. Sections 14 and 16 should provide that, rather than employers giving consent to the Agency to publish remuneration data, all aggregated remuneration data employers will be published unless employers have received consent from the Agency that remunerative data not be published on justifiable grounds of employee confidentiality.

#### **4.8 An enhanced system of review and analysis of reports, including effective monitoring and review of organisations' progress towards meeting EEO goals**

The ineffectiveness of the EOWW Act in addressing gender inequality has in large part been due to the lack of accountability of organisations as to the content of their reports and the progress made in achieving their targets. There needs to be a greater degree of accountability for the content of reports and monitoring of an organisation's progress towards meeting their targets.

In addition to quantitative data, attitudinal and longitudinal data extrapolated from the survey approach to investigating industrial relations provides an important insight for the government and other stakeholders in reviewing the impact of the EOWW Act on workplace practices and in making appropriate future directions for policy. Investment in such research is cost effective when viewed in terms of its critical role in effective policy making and targeting of resources.

ACTU reiterates the importance of the Agency being funded sufficiently to enable meaningful data collation and analysis and genuine follow up of employer's reports and to provide them with sufficient support to achieve their goals and targets.

#### **4.9 Development of achievable, industry specific minimum EEO standards**

The relative ineffectiveness of the EOWW legislation has also been, in part, due to the lack of regulation and enforcement of employer's requirement to meet standards aimed at preventing gender inequity in the workplace.

Under the current system, there are no objective standards by which the success of different programs are measured or guidance as to what a successful program might look like.<sup>11</sup>

A recent analysis of the reporting regime found that, *'in the absence of compulsory practices or specified endpoints, and with satisfactory work-family balance outcomes largely undefined and untested, organisations are left to make their own judgments about what is equitable for employees and profitable for business.'*<sup>12</sup>

Setting of minimum EEO standards clarifies expectations of employers both in reporting and in workplace practices. Clear, achievable minimum standards, linked to the gender equality indicators, should be developed to assist employers to achieve

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<sup>11</sup> For example, Gillian Whitehouse and Di Zeitlin's study found that the *'combination of relatively limited regulatory provisions with encouragement for 'exemplary performance' has resulted in a high level of variation in access to family friendly work practices among employees, both between those employed in different workplaces and within the same workplace.'* in Family Friendly Policies: Distribution and Implementation in Australian Workplaces, 1999, 10 Economic and Labour Relations Review, 221, 224

<sup>12</sup> Strachan, Glenda, Burgess, John and Henderson, Lindy, *Equal Employment Opportunity Legislation and Policies: The Australian Experience*, p. 11



acceptable EEO practices and to articulate to the community benchmarks of acceptable practices.

The ACTU is pleased to note that provision has been made to ensure the development of industry specific minimum standards which will be developed in consultation with employers, industry bodies, unions and experts. ACTU notes that the purpose of the minimum standards is to give clear guidance to employers as to what are acceptable policies, practices and procedures for their industry and that the Agency is committed to assisting those employers who may not meet the standard to work towards compliance. The ACTU supports the principle that the standards are to be used as a positive guide to improving policies, practices and procedures as opposed to a punitive compliance measure.

To achieve compliant status, an organisation should be able to demonstrate they meet the minimum standards. We are pleased to see although the focus is on supporting an organisation to attain compliance, employers can fail to comply if agency deems they have made insufficient effort and improvement against a standard. This measure ensures organisations need to do more than just report the same data each year, rather they must have some accountability for making progress towards meeting minimum standards.

The minimum standards should be regularly reviewed and updated to reflect improved EEO practices in industries over time.

#### **4.10. An enhanced compliance framework**

The ACTU has consistently advocated for the requirement for the legislation to have 'teeth' in order to be taken seriously.

Our view has been that the EEO regime needs to include some punitive sanctions in order to ensure compliance with basic EEO Act requirements and to indicate the seriousness in which the government holds EEO.

The 'light touch' regulation of the current EEOW legislation which aims to encourage and support employer organisations to address equal opportunity issues has been inadequate to genuinely address inequity in the workplace for women, a conclusion which is borne out by the statistics.

The emphasis of the EEOW Act and the EEOW Agency on encouraging best practice has capitalised on the importance to certain employers of distinguishing themselves as attractive employers for highly qualified and skilled women in a competitive labour market.

Whilst this focus is positive, it has limited capacity to make real cultural changes within organisations that most need to change - those employers who are less committed to addressing EEO, less motivated to attract and retain employees or who lack adequate knowledge or resources to address EEO.

The current equal employment opportunity framework has lacked effective regulation and compliance mechanisms to encourage employers to implement measures to prevent discrimination in the workplace.

We have advocated that a full 'pyramid' of compliance should be developed, including performance improvement notices, enforceable undertakings and punitive measures in cases of repeated and recalcitrant non-compliance.

We note that the draft Bill does not adopt these measures, but does require employers to be compliant in order to access government procurement, funding and grant opportunities. We note that the policy position originally put forward by the government, and which we supported, was that compliant employers would a 'certificate of compliance' which would be required to be presented as proof of compliance with respect to the Procurement Guidelines. We have expressed our concern that the draft Bill does not explicitly give effect to this policy position and remain of the view that the matter should be clearly outlined in the body of the WGEA.

As a minimum however, the ACTU strongly urges the government to make the necessary amendments to the relevant procurement guidelines to ensure mechanisms are developed in line with the policy to require certificates of compliance and to ensure the guidelines are properly implemented and enforced.

#### **4.11. Effective advocacy of equal employment opportunity should include an enhanced relationship between the EOWW Act, relevant industrial and anti-discrimination legislation**

The ACTU is cognisant of the consolidation of anti-discrimination legislation and the reviews of the Fair Work Act 2009 and urges the government to maximise the opportunity to achieve greater synergy between these pieces of the EEO legislative framework.

#### **4.12. Ongoing monitoring of the effectiveness of the overall EEO framework in improving EEO for women in the workplace.**

There is a paucity of understanding of equal employment opportunity both within organisations and the wider community. According to a recent Auspoll survey, nearly two thirds of Australians thought narrowly of pay equity as the same pay for the same job, a quarter did not know what it meant and only 12% were aware it applied to different jobs of equal or comparable value.<sup>13</sup>

Insufficient funding of the Agency has hampered its capacity to publish regular and comprehensive data on equal opportunity. To facilitate public education and awareness of EEO, the Agency should have an enhanced role in collating and publishing EEO data and reports, including summaries of key outcomes of the review of EEO reports.

In addition, the Agency should issue recommendations in relation to best practice standards across particular employment sectors, industries or employment practices. Such reports should be available to employees, unions, other stakeholders and to the public.

As an efficient and cost effective means of managing data gained from EEO reports, the Agency should routinely undertake further research into a particular industry, sector or occupation on the basis of broad indicators arising from the general EEO report analysis. This process would entail cooperation from relevant employers to provide additional data and information as required by the Agency.

Again, adequate funding to the Agency is critical to successfully undertaking this role.

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<sup>13</sup> Available at <http://www.eowa.gov.au/PayEquity/GeneralInformationStats.asp>

**5. AS stated earlier, the ACTU is broadly supportive of the draft Bill however we are concerned that the effectiveness of the WGEA is reliant on some key matters which are yet to be clarified, including:**

- (1) Identification and implementation of mechanisms to uncover the more than half of employers legally required to report but who do not are yet to be detailed;
- (2) The 5 Key Gender Equality Indicators are headings only at this stage, under which the detailed data required to be submitted by employers in their Reports is yet to be determined;
- (3) The mechanism by which unions will be able to access employers EEO Reports in a timely fashion so that unions may verify or comment on the content of the Report before being assessed by the Agency is yet to be determined; and
- (4) The drafting of the compliance requirements into the Commonwealth procurement framework are yet to be finalised.

In addition, the ACTU has concerns that the timelines for the implementation of the new reporting regime are too lengthy. We would prefer a shorter lead up time to the implementation of both the new reporting regime and the minimum standards, with a review period built in one year following full operation of the scheme.

**6. Conclusion**

Whilst our suggestions are not all reflected in the draft Bill, the new legislation is in our view a significant step in the right direction towards eliminating gender inequality in workplaces.

We regard this step as also an important development towards a stronger, more vibrant and robust Australian labour market and economy. Gender equity promotes greater labour force participation of women, enhancing the quality of the Australian labour market and assisting in sustaining the tax base of an ageing population.

Treasury modelling shows that improving the participation rates of Australian women and their position in the labour market would have a significant effect in lifting Australia's overall economic performance.<sup>14</sup> A modest 2.5% increase in labour participation rates would produce an additional 9% increase in economic output by 2022.<sup>15</sup>

Gender equity also has the capacity to flow on to other aspects of the labour market, lessening the requirement of male workers to work increased hours, increasing the opportunities available for males to parent and decreasing the requirement for direct government transfers to support families. Including a requirement to report on the availability and accessibility of provisions which assist employees to balance work and family in the legislation recognises this shift towards a greater sharing of child and caring responsibilities and paid work commitments in modern society.

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<sup>14</sup> In Australia, employee wages account for 66% of total GDP. Women constitute 45.3% of the workforce and overall earn 65.6% of men's earnings. ABS Average Weekly Earnings May 2008, 6302

<sup>15</sup> Gruen, D & Garbutt, M., "The Output Implications of Tighter Labour Force Participation", Treasury Working paper, 2003-02, October 2003.

Evidence suggests that high levels of representation of women in senior management benefits the productivity of organisations.<sup>16</sup> The EOWW Agency publishes case studies on its web site which highlight the benefits to employers of implementing effective EEO strategies. These include increased productivity and efficiency, reduced absenteeism and turnover, retention of skilled employees, higher morale and job satisfaction, improved employee relations, reduction or elimination of discrimination complaints and good public relations.

A recent study by the OECD found that relying on 'market forces', the 'effluxion of time' or improvements in women's 'human capital' are not enough to remedy discrimination in employment terms and conditions.<sup>17</sup> Action is required from government.

The EOW Amendment Bill Act moves Australia towards a regulative environment that is focused on delivering real gender equity outcomes through the setting of clear and achievable standards, effective monitoring of reports and enforcement of obligations as well as appropriate levels of support and assistance for reporting organisations.

We congratulate the government for taking a proactive role and amending the legislative and institutional EEO framework.

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<sup>16</sup> Catalyst (2004) *The Bottom Line: Connecting Performance and Gender Diversity*, New York, p.2.

<sup>17</sup> OECD Employment Outlook 2008, Chapter 3, 'The Price of Prejudice: Labour Market Discrimination on the Grounds of Gender and Ethnicity' OECD Employment Outlook 2008