



**Senate Committee on Education, Employment and Workplace Relations
Committee in consideration of the Equal Opportunity for Women in the
Workplace Amendment Bill 2012**

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Senate Committee on Education, Employment and Workplace Relations Committee consideration of the Equal Opportunity for Women in the Workplace Amendment Bill 2012

The signatories to this submission welcome the opportunity to make a submission on the Equal Opportunity for Women in the Workplace Amendment Bill 2012. All of us have had a long term interest in equal employment opportunities and the mechanisms to bring about gender equality in employment.

We have been active in the review process since it was announced in 2009. It is pleasing to see that the Amendment Bill supports the Australian Government commitment to gender equality, workforce participation and workplace flexibility; the cornerstones for an Australia that is seeking to reach its full potential.

We believe these amendments will assist both men and women in that it will enable men and women to share the family and care work while they compete fairly in the labour market. Overall this will lead to improved economic outcomes for Australia.

We support the enhanced functions of the Workplace Gender Equality Agency (WGEA) and understand that WGEA has increased resources and expertise to carry out their remit.

While being supportive of the Amendment Bill we have some comments on:

1. Reporting arrangements
2. Gender indicators
3. Development of benchmarks
4. Enactment and Review of the legislation

We hope our comments contribute to the Committee's deliberations. We are available to the Senate committee if required.

Yours sincerely

National Foundation for Australian Women
Women on Boards
YWCA Australia

1. Reporting arrangements

Reference: Section 73 Subsections (1) and (2) of the Amendment Bill and paragraph 1 of page 8 of EM:

“For the reporting period 1 April 2012 to 31 March 2013, relevant employers will be required to prepare a public report which sets out the employer’s workplace profile and to comply with limited parts of the new framework - (Sections 16, 16A, 16B, 19A, 19B and 19D of the *Workplace Gender 11 Equality Act 2012*)

“From the reporting period commencing on 1 April 2013, a relevant employer must prepare and lodge a public report containing information relating to the employer and to the gender equality indicators.

Comment

We welcome the simplified reporting arrangements and the development of benchmarks to assist employers to compare their performance against others.

The timetable appears sensible and achievable given that employers have been successfully reporting to the EOWA against a set of criteria for a number of years. With the changed legislation, reporting should take a similar and less onerous form.

In the first reporting period organisations will be asked to use a new reporting form, but would only be required to complete those indicators carried over from the current, widely used, voluntary reporting form.

Some organisations may see a benefit of moving immediately to the proposed interim reporting mechanism. The WGEA should encourage this.

Past experience suggests that the first reporting period will create a momentum for transition to further reporting as entities see the benefits of an outcome oriented reporting regime.

It is interesting to compare the impact of the ASX Corporate Governance Council reporting requirements which similarly have been modified over the years. While public companies may find the task challenging they mostly provide quality material in their Annual reports.

In particular the implementation of the revised Principle 3 of the ASX Corporate Governance Principles and Recommendations (ASX CGC) that relates to diversity is progressing smoothly. This is a very similarly staged process for reporting entities to that envisaged in the Amended Bill.

Additionally the emphasis on transparency will mean that reports will be accessible by employees and shareholders, and employees and employee organisations will be provided with the opportunity to comment. This should mean that employees are more involved in cultural change around gender equality.

2. Gender Indicators

Reference S 14 Subsection 3(1) of the amended Act and paragraph 2 of page 8 of Explanatory memorandum (EM)

The gender equality indicators that a relevant employer must report on are:

- gender composition of the workforce;
- gender composition of governing bodies of relevant employers;
- equal remuneration between women and men;
- 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;
- consultation with employees on issues concerning gender equality in the workplace; and
- any other matters specified in an instrument made by the Minister.

Comment

We strongly support “gender composition of the workforce” as the indicator to be first reported upon. It is quite clear from our experience that the exercise of reporting gender composition is the trigger for the realisation that there is a way to go in providing a gender equitable workplace.

For example some recent research (YWCA 2012) has highlighted that while the community sector is 85% women, women and men are not equal in terms of senior management. It is therefore vital to report across (gender) and within (level).

The existing EOWA Sample Public Report Form (http://www.eowa.gov.au/Reporting_And_Compliance/Examples/Sample_Public_Report_Form.doc) which provides for existing reporting requirements by gender, permanent and casual and level within the reporting entity is a good starting point.

It would seem easy to include the gender composition of governing bodies in the pro forma initially, particularly as many entities report this data currently. There may be other indicators that can also be included optionally in the first reporting period.

Choosing the components of the other gender indicators is an important issue but in our view there are many useful sources of information.

One reference point is the publication by the Economist Intelligence Unit “Women’s economic opportunity: A new pilot index and global ranking from the Economist Intelligence Unit 2010”

Another is the work of Sarah Charlesworth, John Buchanan and Fair Work Australia about practices underpinning gender equality would be useful.

Another is McKinsey’s “Women Matters 2012 – Making the Breakthrough” which identifies the following gender diversity indicators as enablers for gender diversity:

- Gender representation overall and at certain job levels
- Gender representation in promotion rounds
- Promotion rates by gender at different levels of seniority
- Attrition rate by gender

Yet other sources is data that has been collected by the EOW Agency over time in reports such as the employer profile section of the report, the Workplace Analysis Toolkit, and the sequence of surveys undertaken by the Agency.

For example, the Agency's client consultants conduct a telephone survey with reporting organisations as part of the annual feedback process. This short survey varies by topic each year and as a consequence it has only been possible to measure change over time in a subset of the data items surveyed.

Some of the topics that have been addressed include:

- 2009 Survey on Paid Maternity Leave, Sex-based Harassment Initiatives and the Gender Pay Gap (2009)
- 2008 Survey on Workplace Flexibility (2008)
- 2004 EOWA Employer Assistance with Child Care Survey (2006)
- 2003 EOWA Work/Life Flexibility Survey: Access to Work/Life Flexibility

There is potentially assistance at hand from interested parties. In order to get the best outcome it may be desirable for the Minister to establish an implementation advisory group which could assist the Agency in identification and consideration of other data sources.

3. Development of benchmarks by Workplace Gender Equality Agency (WGEA)

Reference Section 35 of the amendment Bill:

Section 10(1)(aa)

(a) to advise and assist employers in promoting and improving gender equality in the workplace; and

(aa) to develop, in consultation with relevant employers and employee organisations, benchmarks in relation to gender equality indicators; and

We welcome the intention to introduce standards and to link the failure to meet these to sanctions. The establishment of minimum standards and benchmarks in relation to gender equality indicators is a very worthwhile exercise.

This change will represent the first time the Equal Opportunity for Women in the Workplace Agency will be able to gather and analyse a rigorous and standardised data set. Importantly, it also means that at long last there can be some minimum performance standards in the area of gender equality.

Quality gendered information is becoming available from sources such as the ABS, the ASX reporting requirements, the Champions of Change Project (Sex Discrimination Commissioner, Elizabeth Broderick) and the Traffic Lights Project (Women on Boards). This data could usefully inform the minimum standard setting and benchmarking exercises.

4. Enactment and Review of Legislation

Reference: Section 33A of the amendment Bill and paragraph 3 of page 8 of Explanatory memorandum (EM)

33A Minister to consult before making legislative instruments

(1) Before making a legislative instrument under this Act, the Minister must consult the Agency and have regard to any recommendations of the Agency.

(2) The Minister must also consult such persons mentioned in subsection 31(3) as the Minister considers appropriate.

The making of the instrument process is multi staged. The process seems to be that Workplace Gender Equality Agency (WGEA) develops the gender indicators and subsequently the benchmarks and minimum standards in consultation with relevant organisations.

The Minister then enacts them, after further consultation.

It is important that the Minister takes account of the likely extensive WGEA consultation process when she enacts these legislative instruments. This is important because it should be timely and also because the Minister should exercise her discretion in this matter in light of the WGEA process.

We additionally consider it important that the Equal Opportunity for Women in the Workplace legislation is subject to regular and systematic evaluation and review. We suggest a period of five years.

But we consider that stability is desirable once the legislation is introduced to enable consolidation, and to that extent believe that the standards introduced by the Minister should not be varied before the first period of evaluation and review. Another option is that the Minister's instrument be added to as needed rather than replaced with each enactment.