

Submission

of the

Australian Council of Trade Unions (ACTU)

to the

**Review of the Equal Opportunity for
Women in the Workplace Act and Agency**

October 2009

CONTENTS

- 1. Introduction and summary of recommendations**
- 2. The role that the Equal Opportunity for Women in the Workplace Act (1999) and Agency have in gathering and reporting on workplace data.**
- 3. What has the Equal Opportunity for Women in the Workplace Act contributed to women's employment opportunities and advancing equality in the workplace?**
- 4. The effectiveness of the Equal Opportunity for Women in the Workplace legislation and arrangements in delivering equal opportunity for women.**
- 5. Practical ways the Equal Opportunity for Women in the Workplace framework could be improved to deliver better outcomes for women:**
 - 5.1 Data collection*
 - 5.2 Reporting*
 - 5.3 Minimum EEO standards*
 - 5.4 Effecting cultural change*
 - 5.5 The role of the EOWW Agency*
 - 5.6 Compliance framework*
 - 5.7 Role of governments*
 - 5.8 Monitoring the effectiveness of the EOWW framework*
- 6. Opportunities to reduce the cost of existing regulation and /or ways to ensure any new legislation is cost effective and well-targeted.**
- 7. The Equal Opportunity for Women in the Workplace Act as part of the framework of existing and proposed workplace-related and human rights legislation and policy.**
- 8. The effects of the Act, or any proposed recommendations resulting from this review on the economy, the labour market, business competitiveness, social inclusion and the general well-being of the Australian community.**

1. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

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 Review of the *Equal Opportunity for Women in the Workplace Act 1999* (EOWW Act) and the role of the Equal Opportunity for Women in the Workplace (EOWW) Agency.

The review of the effectiveness of the EOWW Act and Agency 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:

- Australia ranks a lowly 41 in the global index of women's workforce participation;¹
- Women in full-time paid work still earn 17% less than men;² amounting to over one million dollars less over a lifetime;³
- 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;⁴
- Fewer than 2% of ASX 200 companies have a female chief executive officer, only 1 in 12 board directors are women and only 55% of Australian companies have at least one woman in management compared to 85% in the US;⁵
- Women retire with less than half the amount of savings in their superannuation accounts than men;⁶ and
- Women are four times as likely to experience sexual harassment in the workplace compared to men.⁷

¹Australian Human Rights Commission, *Gender Equality Statistics*, 2009

² ABS cat. no. 6320.0 AWOTE May 2008

³ 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.

⁴ Ibid

⁵ Equal Opportunity for Women in the Workplace Agency, *2008 EOWA Australian Census on Women in Leadership* Report, October 2008.

⁶ 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

⁷Australian Human Rights Commission, *Gender Equality Statistics*, 2009

The ACTU outlined its views with respect to pay inequity in its submission to the recent Inquiry into Pay Equity and Female Workforce Participation in October 2008.⁸

In that submission we noted that, despite almost 40 years having passed since the Australian Industrial Relations Commission awarded equal pay for work of equal value, pay and workplace inequity has remained a stubborn feature of our labour market.

The current EOWW legislation has been inadequate to genuinely address this inequity, and in fact, the latest EOWW Agency census indicates that there has been a steady reversal of the initial gains made under the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*.

Over the past 2 years alone:

- The gender wage gap has widened from women earning 87 cents for each dollar earned by men in 2004 to 84 cents in 2007;⁹
- The number of women Executive managers has declined from 12% to 10.7%;¹⁰
- The number of companies with no women executive managers has risen from 39.5% to 45.5%;¹¹ and
- The encouraging increase of women in line management roles from 2003 to 2006 (4.7% compared to 7.4%) has reversed to pre- 2004 levels.¹²

⁸ Submission of the Australian Council of Trade Unions (ACTU) and Joint State Union peak Councils into the House of Representatives Standing Committee on Employment and Workplace Relations Inquiry into Pay Equity and Female Workforce Participation, 27 October 2008

⁹ ABS cat. no. 6320.0 AWOTE May 2008

¹⁰ *EOWA Census on Women in Leadership*, January 2008

¹¹ *EOWA Census on Women in Leadership*, January 2008

¹² *EOWA Census on Women in Leadership*, January 2008

Summary of Recommendations

This submission proposes a holistic, balanced approach which incorporates a matrix of strategies to genuinely address equal opportunity in the workplace, including:

1. A stronger reporting regime which enforces mandatory reporting by employers obliged to report under the Act;
2. Broadening the scope of the EOWW Act to include Federal and State public sector organisations and, over time, employers with less than 100 employees;
3. A requirement that organisations identify and develop targets and action plans as part of the reporting process;
4. Practical education and support for employers to build their capacity to meet their reporting obligations to an appropriate standard;
5. Greater streamlining of the reporting process including on-line and automated reporting, and provision of specific resources for employers to facilitate accurate and quality reporting;
6. Re-building employee and stakeholder engagement in the reporting process;
7. Improved public transparency of employer's EEO targets and progress, including integration with corporate reporting requirements;
8. An enhanced system of review and analysis of reports, including effective monitoring and review of organisations' progress towards meeting EEO goals;
9. Development of appropriate minimum EEO standards;
10. An enhanced compliance framework including penalties for breaches of the EOWW Act, published league tables of performance, corporate accountability and government incentives;
11. Effective advocacy of equal employment opportunity including an enhanced relationship between the EOWW Act, industrial and anti-discrimination legislation; and
12. Ongoing monitoring of the effectiveness of the overall EEO framework in improving EEO for women in the workplace.

2. THE ROLE THE EOWW ACT AND AGENCY HAVE IN GATHERING AND REPORTING ON WORKPLACE DATA

Effective and meaningful collection of workplace data is critical to the success of any equal employment opportunity scheme. The national reporting regime currently legislated by the EOWW Act is minimal and inadequate.

This is largely due to the:

- Lack of broader data collection in which employers and employees can contextualise their targets and achievements, and through which government is able to form appropriate policy and legislative response;
- Lack of enforcement of employers with more than 100 employees' obligation to report. The 2008 EWOWA report indicated a total of 2,513 organisations submitted a report, approximately 25% of employers with more than 100 employees legally obliged to report.¹³
- Exemption of employers with less than 100 employees leaves almost half of all employers outside the reporting regime;¹⁴
- The lack of structured criteria on which employers must report makes it difficult for employers to effectively identify EEO issues and for the EOWW Agency to assess EEO reports in a consistent manner and produce meaningful EEO data; and
- The lack of public access to EEO data, including information derived from employer's EEO reports, effectively disengages stakeholders and the broader community from EEO issues and progress.

3. THE CONTRIBUTION OF THE EOWW ACT TO WOMEN'S EMPLOYMENT OPPORTUNITIES AND ADVANCING EQUALITY IN THE WORKPLACE

The 'light touch' regulation of the current EOWW 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.

¹³ ABS Small Business in Australia cat. no. 1321.0, 2001: The total number of small business employers is 276,500 (employing 2,269,400 employees). The total no of all private sector businesses is 1,164,100 (employing 6,901,900 employees). This means there are approximately 887,600 private sector businesses who may be required to report but who currently do not.

¹⁴ ABS Small Business in Australia cat. no. 1321.0, 2001

It is clear from studies of the Australian labour market, as well as studies of comparable labour market experiences in the OECD, that individualised and voluntarist approaches alone are inadequate remedies for persistent and endemic gender discrimination at work.¹⁵

The emphasis of the EOWW Act and the EOWW 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.

An analysis of reports submitted in the 1990s showed that, even for those 25% of obligated employers who do lodge EEO reports, merely lodging a report is what most employers do in order to comply with the EOWW Act, with only a small number of employers producing workplace action plans.¹⁶ Another study of submitted EEO Reports found that 'companies found the level of compliance with which they were most comfortable. Approximately one quarter of these organisations were satisfied to meet the letter of the law by supplying a minimal report but in reality did little or nothing to advance EEO.'¹⁷

The lack of a mandatory requirement to report against clear criteria and meet minimum standards for those criteria has undermined the capacity of the EOWW Act to address EEO in the workplace.

4. THE EFFECTIVENESS OF THE EOWWA LEGISLATION AND ARRANGEMENTS IN DELIVERING EQUAL OPPORTUNITY FOR WOMEN

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.

The *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* was a result of splitting EEO law into two distinct forms of legislation- one which dealt

¹⁵ OECD Employment Outlook Chapter 3, 'The Price of Prejudice: Labour Market Discrimination on the Grounds of Gender and Ethnicity', OECD Employment Outlook, 2008

¹⁶ Sara Charlesworth, Centre for Applied Social Research, 'Getting the Framework Right: The Role of regulation in promoting EEO', power point presentation for the Equal Opportunity for Women in the Workplace Act and Agency Review: Roundtable Discussion, University of Sydney 4 August 2009.

¹⁷ Strachan, G., and French, E., 'The Equal Opportunity for Women in the Workplace Agency: Equality for Women Under an Individualised Employment System' in Michelson, G., Jamieson, S., and Burgess, J., (eds) *New Employment Actors: Developments from Australia*, Bern: Peter Lang 2008, p.11

with individual complaints (*Sex Discrimination Act*) and the other which addressed systemic discrimination in the workplace (*Affirmative Action (EEO) Act*).

This disengaging of sanctions (*Sex Discrimination Act*) from preventative measures (*Affirmative Action (EOWW) Act*) is a fundamental problem with the current EEO and anti-discrimination regime. In the 40 years since the enactment of the two Acts, this lack of co-ordination and linking of the two pieces of legislation has not been rectified. The (*Affirmative Action (EOWW) Act*) effectively has soft-touch functions to encourage and support employers to address EEO with no implementation or compliance mechanisms. The *Sex Discrimination Act* is limited to sanctions against employers liable for individual sex discrimination cases, with little or no preventative capacity.

In its submission to the review of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* in 1998, the ACTU made a number of proposals which were aimed at introducing a more effective and balanced regulation framework, including:

- A greater emphasis on assessing the quality of programmes in addition to ensuring minimum reporting requirements are met;
- Developing a more effective framework for consultation between employers, employees and their unions;
- Integration of EEO reports and action plans into broader corporate and industrial relations objectives and strategies;
- Developing and recommending appropriate minimum EEO standards; and
- Strengthening sanctions for non-compliance.¹⁸

However, in 1998, the Coalition government moved in the opposite direction, significantly winding back the obligations and accountability of employers under the Act by:

- Watering down the reporting requirements;
- Requiring employer's to report generally rather than on specific EEO indicators;
- Moving away from an emphasis on compliance to 'reasonably practicable',
- Explicitly limiting the achievement of EEO to the 'capacity to comply' of employers; and

¹⁸ ACTU Submission to the Review of *the Affirmative Action (Equal Employment Opportunity for Women) Act, 1998*, p.2.

- Removing the requirement for employee/stakeholder participation in the reporting process.

The specific removal of the reference to affirmative action from the new *Equal Opportunity for Women in the Workplace Act* (EOWW Act) symbolised the new aim of the legislation to further de-couple reporting from action.

As a result, 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.¹⁹

5. PRACTICAL WAYS THE EOWW ACT FRAMEWORK COULD BE IMPROVED TO DELIVER BETTER OUTCOMES FOR WOMEN

5.1 Data collection

Monitoring and reviewing of overall progress towards meeting EEO goals

Currently, access to macro data about comparative remuneration and employment outcomes for men and women is inadequate and inconsistent. This inadequacy impacts on the ability of the EOWW Agency and for that matter, women, unions, employers and government to understand the broader context of pay inequity.²⁰

Recommendation 1: Invest in increased and more regular data collection to enable researchers to accurately assess national movements in gender equity.

The promotion of individual contracts and the abolition of a decent safety net under *WorkChoices* hit hardest in the areas where women are most concentrated in work. The Rudd Labour Government has moved to redress some of these key areas through establishing a secure and relevant safety net in the form of the National Employment Standards and modern awards and in providing a fairer collective bargaining framework in the *Fair Work Act 2009*. It is important to recognise and monitor the effectiveness the critical role of these and other initiatives in closing the gender equity gap. For this reason, data collection and analysis of the content of workplace agreements which was discontinued under *WorkChoices* should be resumed.

¹⁹ See eg, Ayres, I. and Braithwaite, J., *Responsive regulation: Transcending the De-regulation Debate*, 1992

²⁰ The Australian Bureau of Statistics (ABS) regularly publishes earnings data. This data is reported as weekly earnings. Internationally data of this nature is more commonly reported as average or median hourly earnings. Unfortunately the ABS publication that does cover hourly earnings (Employee Earnings and Hours, 6306) is published only every two years. It would be desirable for both weekly and hourly earnings data to be published regularly. In addition the data should allow for as much disaggregation of industries and occupations as possible to allow for finer and timelier analyses of trends.

Recommendation 2: Make regular data collection relating to the contents of workplace agreements (such as the Workplace Agreements Database) publicly available.

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.

Recommendation 3: Re-institute survey based research such as the Australian Workplace Industrial Relations Survey (AWIRS).

Use of existing data

Investigation of existing data collection and reporting requirements to other government regulatory bodies which could be accessed by the relevant organisation may reveal a more efficient data collection method and minimise the burden on employers.

In addition, in its submission to the Inquiry into Pay Equity, the ACTU recommended EEO and pay equity data collection to be mainstreamed in other reporting or monitoring processes, including:

- Access to information relevant to gender equity by FWA when assessing workplace agreements;
- Provision of gender equity information when requested by a negotiating party in meeting the good faith bargaining principle; and
- Pay equity as a specific feature of the implementation of the better off overall test and certification stages of agreement making.

Recommendation 4: Enable the agency charged with monitoring EEO to access relevant data which may be provided by employers to other government regulatory bodies such as the Australian Taxation Office, ASIC, APRA, SafeWork Australia, WorkCover, Fair Work Australia, State Government departments and authorities.

5.2 Reporting

Employers reporting obligations

In order to improve the effectiveness of the Act in addressing equal employment opportunity for women across the Australian labour force, the effectiveness of the reporting regime must be improved. As a priority, the unsatisfactory reporting compliance rate of employers of more than 100 employees must be addressed.

Recommendation 5: Legislation should be amended to enable the EEOW Agency to access the Australian Tax Office database to assist in the identification of employers with more than 100 employees.

Recommendation 6: In the short term, the EOWW Agency should have access to relevant purchased private data bases of employers with more than 100 employees.

Recommendation 7: Corporations should not be able to submit one EEO report on behalf of all their operating companies when any one of their operating companies satisfies the definition of 'relevant employer' for the purposes of the Act.

Evidence suggests that best practice is limited to large organisations with HR managers who exhibited a high degree of EEO knowledge²¹, with smaller organisations without formal HR practitioners, less likely to be informed of equal employment opportunity issues.²² These are the very organisations that are likely to employ less than 100 employees and thereby be exempt from reporting. The reporting capacity of employers not currently obliged to report under the EOWW Act should be investigated. There is some evidence which points to inadequate employment record keeping of smaller employers as a potential barrier to an effective universal EEO reporting regime.²³

Nevertheless, the Fair Work Act prescribes the requirements of employers in keeping appropriate records of employment. Amongst other things, Regulations 3.31-3.44 require information in relation to:

- whether an employee is full time or part time;
- whether an employee is permanent, temporary or casual;
- the employee's rate of remuneration;
- the employee's gross and net amounts paid; and
- any details of additional payments such as incentive based payments, bonuses, allowances, loadings or penalty rates.

As a minimum, the Office of the Fair Work Ombudsman should ensure all employers at least meet these legislated record keeping obligations.

Incentives for employers not currently submitting EEO reports to develop the capacity to meet reporting requirements should include one-off financial assistance

²¹ Sara Charlesworth, Centre for Applied Social Research, 'Getting the Framework Right: The Role of regulation in promoting EEO', power point presentation for the Equal Opportunity for Women in the Workplace Act and Agency Review: Roundtable Discussion, University of Sydney 4 August 2009.

²² Ibid.

²³ Public Sector Pay and Employment Equity Reviews: Overview Report, New Zealand Department of Labour, 2009

to develop appropriate record keeping systems to facilitate lodgment of an EEO report.

Recommendation 8: Consideration should be given to extending the scope of the EOWW Act, over time, to businesses employing less than 100 employees.²⁴

Recommendation 9: Provide financial assistance to support employers to develop appropriate record keeping systems to facilitate EEO reporting requirements.

Consideration could be given to a pared back reporting requirement for employers of less than 100 employees to minimise the reporting burden on businesses with more limited resources.

Enforcement of the current procurement policy requiring organisations seeking government work or financial assistance to have compliance with the EEO Act would provide further incentives to employers with less than 100 employees to participate in the reporting process voluntarily.

Streamlined reporting

The data collection process should be streamlined to minimise the burden of data collection on employers and improve the overall capacity to collect consistent, meaningful data.

Automated reports should be able to be completed on-line against clear reporting criteria and seek numerical data as much as possible. This would make it easier for organisations to report and enable efficient, consistent and meaningful data collection by the EOWW Agency.

Recommendation 10: Provision of a simple, automated, streamlined EEO reporting format with prompts to provide guidance and consistency.

Recommendation 11: One-off funding to the EOWW Agency to facilitate an automated online EEO reporting format.

Support for reporting organisations

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. Analysis of submitted reports indicates that most of employer's human resources policies 'do not display an understanding of EEO or managing diversity issues.'²⁵ This is partly due to the

²⁴ United States EEO legislation requires all organisations employing more than 100 employees or with federal contract of \$50,000 or more must comply with EEO reporting requirements.

²⁵ French and Strachan, 2007

free form structure of current reporting which does not provide a benchmark for organisations to use as a guide as to whether a practice is inequitable or what standards they should aspire to achieve.

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.

Training and support materials should be provided to help build the long-term capacity of reporting organisations. Tool kits which provide practical information and assistance to employers across key EEO reporting criteria should be developed. Consideration should also be given to the provision of funding grants for organisations to develop better systems and skills to meet their reporting requirements.

The Overview Reports produced by the New Zealand Department of Labour, particularly emphasized the importance of training and resources designed to give practical, detailed assistance to employers in completing EEO reports. This was directly linked to the quality of the reporting and capacity for sustainable cultural change in the organisation.²⁶

Recommendation 12: Provision of practical tools and resources to assist employers to achieve a greater understanding of EEO issues and facilitate practical support for EEO reporting.

Recommendation 13: Provide comprehensive training for employers, employees and unions engaged in the reporting process.

Recommendation 14: Develop resource materials, including tool kits containing practical information on the key criteria of EEO reporting.

Recommendation 15: Provide ongoing assistance and guidance for employers during the reporting process.

Content of Reports

The EOWW Act replaced the requirement in the *Affirmative Action (EOWW) Act* to identify and develop action plans on eight key employment matters with ‘a general requirement that employers take all reasonably practical actions’ to address the matters.

The eight key EEO employment matters signified the key employment practices in which gender inequity may occur, including recruitment, selection, promotion,

²⁶ Public Sector Pay and Employment Equity Reviews: Overview Report, New Zealand Department of Labour, 2009

transfer and termination, training and staff development, terms and conditions of employment, work organisation and sex-based harassment.

Evidence suggests that *'the lack of direction in the form leads to the conclusion that many organisations do not have a cohesive program but lump in a number of issues that they think might be relevant.'*²⁷ The ACTU supports the re-introduction of a more structured reporting format which requires employers to provide the relevant statistical data, identify any inequity, set targets and action plans and assess progress for each key employment matter.

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 an enhanced policy making base.

Recommendation 16: As a mandatory compliance requirement, employers must report on the extent of gender inequity, relevant targets and actions plans and progression towards those targets for each of the following employment matters:

- *Pay equity (job description and remuneration);*
- *Recruitment, selection and promotion*
- *Transfer and termination;*
- *Training and career development;*
- *Terms and conditions of employment, including family friendly work arrangements; and*
- *Sex-based harassment and discrimination.*

Pay Equity

The above recommendation's inclusion of pay inequity as a mandatory reporting requirement, is a reflection of it's role as major indicator of unequal employment opportunity. The current system is deficient in its lack of a requirement to collect data on pay inequity. Without access to information regarding remuneration outcomes in their organisation, employers, employees and their unions cannot effectively pinpoint and address gender inequity.

²⁷ Strachan, Glenda., EOWA Round Table, "Are We Getting There? Measuring Change at Work"; Power Point Presentation to the Discussion of the Review of the EOWW Act and Agency, Women and Work Research Group, University of Sydney, 4 August 2009.

Pay equity data is a feature of EEO reporting regimes in a number of other countries.²⁸

In discussing the merits of mandatory pay equity reporting under the UK Equality Act, the Equal Opportunities Commission commented that “*only an equal pay review can ensure that an organisation is providing equal pay.*” That is, in reality, it is all but impossible for an employer to proactively address pay inequity without having accurate EEO data and without examining the reasons for differentials.²⁹

The EEO Act’s reporting obligations should extend to pay equity data; including a requirement that employers report on the extent of gender inequity, relevant targets and actions plans and progression towards those targets.

Recommendation 17: EEO reporting obligations should extend to pay equity data derived from a breakdown of employer’s records of wages and job descriptions of employees by gender.

Recommendation 18: Reporting organisations should be provided with assistance to include data on gender and remuneration in their EEO reports.

The Reporting Process

The EEO Act also removed the *Affirmative Action (EEOAA) Act’s* requirement to meet an eight step process of identifying and developing an action plan, which included:

1. Issuing a statement on affirmative action to employees;
2. Assigning responsibility for the program;
3. Consulting with trade unions whose members are affected by the program;
4. Consulting with employees, particularly women employees;
5. Establishing and analysing the employment profile;
6. Reviewing and analysing employment policies and practices;
7. Setting appropriate targets; and
8. Monitoring and evaluating the program.³⁰

The Senate Committee’s rationale for replacing the eight step process with a ‘general requirement that employers take all reasonably practical actions’ was based on a view that the eight step process constrained the capacity of employers to develop EEO policies best tailored to the needs of their organization and broader strategic goals. Referring to the key procedural steps outlined above, it is difficult

²⁸ UK Equality Bill introduces a requirement for all employers of over 250 employees to report on gender pay data- expected to come into force in 2010. United States EEO legislation requires all organisations employing more than 100 employees or with federal contract of \$50,000 or more must comply with EEO reporting requirements, which include job category by gender.

²⁹ M. Jaffe, B. McKenna & L. Venner, *Equal Pay, Privatisation and Procurement*, The Institute of Employment Rights, August 2008 p.37

³⁰ Affirmative Action (Equal Opportunity for Women) Act 1986 s.8 (1)

to see how that process could be construed as anything other than an appropriate framework for good human resource management.

Recommendation 19: As a mandatory compliance requirement, employers must demonstrate engagement of the key reporting processes required by the EEO Act report, including:

- *Assigning responsibility for the reporting process;*
- *Establishing an EEO committee including employees and relevant trade unions to work with the person/s assigned responsibility for developing the report and action plan;*
- *Ensuring relevant training and support is provided to the committee and the person/s assigned responsibility for developing the report and action plan;*
- *Disseminating the report and action plan to all employees; and*
- *Regular review and monitoring of the implementation of the action plan.*

5.3 Minimum EEO standards

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.³¹

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.’³²

Setting of minimum EEO standards clarifies expectations of employers both in reporting and in workplace practices. Clear, achievable minimum standards, linked to the key employment matters, should be developed to assist employers to achieve acceptable EEO practices and to articulate community benchmarks of acceptable practices.

³¹For 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

³² Strachan, Glenda, Burgess, John and Henderson, Lindy, *Equal Employment Opportunity Legislation and Policies: The Australian Experience*, p. 11

The minimum standards should reflect an appropriate benchmark of EEO practice generally, with tailored approaches designed to address the specific needs of an industry or sector. The development of the standards should be conducted through the establishment of industry tri-partite employer, union and government EEO bodies.

Minimum EEO standards give clear guidance to reporting organisations as to how to measure goals and objectives. To achieve compliant status, an organisation should be able to demonstrate they meet the minimum standards.

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

5.4 *Effecting cultural change*

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 within *all levels* of the organisation. In order to achieve organisational change, there must be more rigorous criteria to justify confidentiality of reports or parts of reports.

Recommendation 20: EEO Reports and the EOWW Agency's assessment of those reports must be made available to all employees and their unions.

Employee engagement

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.

An EEO committee should be established through the normal industrial relations channels including union representation. Consultation with the EEO committee must be built into the reporting process before reports are lodged to both engage employees and unions in the setting of appropriate targets and action plans and also to ensure verification of the contents of the report accurate prior to lodgment.

Union / employee representatives should be afforded full time off to attend duties relating to the development and implementation of the action plan and receive trade union training on EEO.

Recommendation 21: An EEO committee should be established which includes employee and union representatives and has a role of at least verifying the EEO report prior to its submission to the Agency and agreeing on a process for implementing the action plan.

Integration of EEO Reports with human resources 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.³³ 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.³⁴

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. A copy of the EEO report must be provided to all relevant unions.

Recommendation 22: As a mandatory compliance requirement, employers must demonstrate that written EEO reports and action plans have been made accessible to all employees and relevant unions.

The EOWW Act should provide a framework for 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. 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 percent 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.*'³⁵

Recommendation 23: As a mandatory compliance requirement, organisations must demonstrate effective integration of EEO policy and action plans with management practice and responsibility.

Encouraging stakeholder engagement

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 be brought to the attention of all the stakeholders of an organisation. There should be some degree of shareholder involvement in the process.

³³ At the time of writing, the results of the survey of employees regarding the effectiveness of the EOWW Act and Agency was not available but would further contribute to this discussion.

³⁴ Wenzel Matiaske, Susanne Royer: *What makes a Job Good or Poor?* p. 436

³⁵ Australian Human Rights Commission, *20 Years On: The Challenges Continue, Chapter 5: Sexual Harassment and Public Policy*, March 2004

There is evidence of significant growth in the reporting of listed companies broad social impacts and responsibilities.³⁶ 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.

Company reporting on compliance with the EOWW Act responds to the market decisions of consumers, employees, investors and business customers as well as to the commercial impacts of government procurement policies and similar ‘soft regulation’ business incentives. Incorporation of compliance with the EOWW Act into an employer’s mainstream corporate reporting mechanisms encourages stakeholders to routinely consider EEO as a driver of sound organisational management.

Recommendation 24: Employers should as a matter of course report on compliance with the EOWW Act in Annual Reports, Corporate Social Responsibility reports, reports to Annual General Meetings and where appropriate reports to the Australian Securities and Investment Commission and the Australian Stock Exchange.

Consistent reporting requirements and assessment of standards is critical to ensure comparable performance indicators.

Recommendation 25: Accounting standards should be amended to require auditors to certify compliance with the EOWW Act in routine company audits.

Recommendation 26: To promote corporate reporting on EEO, the EOWW Agency should routinely monitor, comment on and evaluate company reports to shareholders in relation to EEO.

5.5 The role of the EOWW Agency

Verifying EEO Reports

The ineffectiveness of the current EOWW Act and Agency in addressing gender inequality is in large part 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.

³⁶*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>

Insufficient funding of the EOWW Agency has also hampered its capacity to meaningfully assess reports and enforce reporting obligations.

Recommendation 27: Commit to proper funding and resourcing of the EOWW Agency.

A number of additional options exist which facilitate more accurate reporting and more effective assessment without requiring the EOWW Agency to verify each report, including:

Recommendation 28: Prior to lodgment of EEO Reports, sign off must be provided by the EEO committee and the CEO (or equivalent) of the organisation.

Recommendation 29: When lodging EEO reports employers must include a copy of the previous EEO report against which progress is assessed.

Recommendation 30: The EOWW Agency should undertake regular, comprehensive random auditing of employer's EEO reports to verify the quality and accuracy of the EEO reports. Such audits should aim to assist and further support employers to achieve a high quality standard of reporting.

Recommendation 31: If, in auditing an employer's report, the Agency determines further investigation is required, or suspects a breach of the Act, it may refer the investigation to the Office of the Fair Work Ombudsman or Sex discrimination Commissioner.

Recommendation 32: Knowingly or being reckless as to whether an EEO report was untruthful or inaccurate results in an organisation's compliance status being withdrawn subject to rectification and re-lodgment of the report.

Publication of EEO data and reports

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.³⁷

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

³⁷ Available at http://www.eowa.gov.au/Pay_Equity/General_Information_Stats.asp

In addition, the Agency or relevant body should issue recommendations in relation to both minimum EEO standards and 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.

Recommendation 33: Regular data and reports based on the EOWW Agency's research, including minimum and best practice standards across particular employment sectors, industries or workplace practices should be made available to the public to facilitate community education and awareness of EEO.

As an efficient and cost effective means of managing data gained from EEO reports, the EOWW Agency or relevant body 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.

For example, as at June 2009, the gender wage gap in the finance sector is 28%, 11% higher than the national average. The recent pay equity pilot project involving the National Australia Bank and the Finance Sector Union under the auspices of Industrial Relations Victoria, revealed the benefits of targeting priority industries, undertaking a comprehensive analysis of industry specific factors and setting appropriate industry- specific solutions. The experience of the Finance Sector Union in this project has been that this targeted approach needs to be long-term and focused on ongoing monitoring of the implementation of actions and progress towards the achievement of goals.

Recommendation 34: The EOWW Agency or relevant body should be empowered to require additional information from employers in order to routinely undertake further detailed research into a particular industry, sector or occupation.

There must be greater transparency as to the outcomes of the EOWW Agency's reviews of reports within reporting organisations. For the reporting process to assist in eliminating discriminatory work practices, the EOWW Agency's analyses of reports to the reporting organisation should be made available to employees and their union.

Recommendation 35: EOWW Agency reviews of an employer's EEO report should be available to employees and their unions to facilitate their involvement in future improvements to the reporting process and implementation of action plans.

5.6 Compliance framework

The current EOWW regime has not brought about substantive improvement in pay equity because in part, the sanctions for non-compliance is virtually non-existent.

The current sanctions of ineligibility for government contracts and the naming of non-compliant organisations to Parliament is deficient.

An ‘enforcement pyramid’ is necessary to ensure that other softer techniques are effective.³⁸ Analysis of the effectiveness of light-touch regulation reveals the importance of a multi-layered system of governance that includes legally enforceable standards and institutional structures to enforce sanctions for non-compliance.³⁹

Further, meaningful enforcement is ineffective where compliance is not linked to minimum standards with legislative force, and penalties for non-compliance. Even where legislative sanctions do exist, a failure by administrative agencies to enforce sanctions, and an over emphasis on educational strategies, has the potential to render the law ineffective.⁴⁰

The new regime must be a proactive framework which includes:

- Sanctions to encourage and enforce compliance with the minimum reporting requirements of the EOWW Act;
- Soft-touch regulation to discourage non-compliance; and
- Incentives for employers to meet minimum EEO standards and incentives to aspire to achieve more than the minimum requirements of the Act.

Sanctions

The EOWW regime needs to include some punitive sanctions in order to ensure compliance with basic EEOW Act requirements and to indicate the seriousness in which the government holds EEO. Breaches of the requirement to lodge a report, to address the key reporting criteria or to follow the process outlined in the EOWW Act should attract appropriate penalties which would be enforced through the Office of the Fair Work Ombudsman.

Such use of sanctions to enforce compliance with similar matters can be seen in the enforcement of codes of practices used widely in the Australian context, for example in the Occupational Health and Safety and Trade Practices regimes.

The NSW Occupational Health and Safety Code of Practice covers the practical steps to achieve the standards of health, safety and welfare required by the Occupational Health and Safety Act and the Regulations.⁴¹ In proceedings under

³⁸ See eg, Ayres, I and Braithwaite, J., *Responsive Regulation: Transcending the De-regulation Debate*, 1992

³⁹ Howe, John and Landau, Ingrid, ‘Light Touch’ Labour Regulation by State Governments in Australia, 31 Melbourne University Law Review, 367, 2007

⁴⁰ Michael Quinlan, ‘Contextual Factors Shaping the Purpose of Labour Law: A Comparative Historical Perspective’ in Christopher Arup et al (eds). *Labour Law and Market regulation: Essays on the Construction, Constitution and Regulation of Labour Markets and Work Relationships*, 2006

⁴¹ OH&S Consultation-Code of Practice 2001, WorkCover, NSW.

the Occupational Health and Safety Act or Regulations, failure to observe the relevant steps can be used as evidence that a person or company has contravened or failed to properly comply with the provisions of the Act or the Regulation.

An example of this approach at the Federal level is the provisions of s.51 of the *Trade Practices Act 1974 (Cth)*. This requires the Australian Competition and Consumer Commission (ACCC) to administer industry codes of conduct that have been prescribed by the Australian government. The Code outlines steps which foster competition and ‘fair conduct’ between the parties to a variety of commercial contracts. The Australian Competition and Consumer Commission (ACCC) is responsible for promoting compliance with the prescribed Code via education and information and where necessary, taking enforcement action.

In the UK, enforcement of codes of practice have also been used to good effect in the EEO context, such as the Equal Opportunities Commission’s *Code of Practice on Equal Pay* for employers which sets out the practical obligations of employers in respect of the laws of the European Union and the United Kingdom.⁴²

Recommendation 36: The EOWW Act should confer power on the Office of the Fair Work Ombudsman to enforce compliance with the EOWW Act, including issuing financial penalties for:

- *Breach of the EOWW Act’s requirement to lodge an EEO Report;*
- *Breach of the EOWW Act’s requirement of an EEO Report to address any of the EEO reporting criteria outlined in the Act; and*
- *Breach of the EOWW Act’s requirement for an employer to follow any of the stages of the EEO reporting process outlined in the Act.*

Recommendation 37: Employers should be afforded ample opportunity to remedy a breach of the EOWW Act, as in the current compliance notice process administered through the Office of the Fair Work Ombudsman.

Soft touch regulation

In addition to continuing the current sanction of naming non-complaint organisations in Parliament, there should be a practice of public reporting in the media of a ‘league table’ including best performing and non-compliant organisations as currently practiced in the superannuation regime.

Recommendation 38: In addition to the current sanction of naming non-compliant organisations in Parliament, publicly report a ‘league table’ including best performing and non-compliant organisations.

⁴² Equal Pay in the UK is mandated by European Council Directive 75/117/EEC and The Equal Pay Act 1970 (UK).

The current Australia Government Procurement Guidelines prevent government departments from buying goods and services from, or entering into contracts with non-compliant organisations. Non-compliance should also preclude organisations from accessing any form of government assistance including all financial assistance packages, funding and grants.

Recommendation 39: Extend the current sanction of non-compliant organisations ineligibility to tender for government contracts to all forms of government assistance, including grants and funding.

Recommendation 40: Employers should be required to produce evidence of compliance with the EOWW Act as a condition of applications for all forms of government contracts, assistance, grants and funding.

Appropriate measures should be taken to ensure the procurement sanction is used effectively across all levels and stages of government tenders and funding arrangements. A recent analysis of light touch regulation found that *'During our research we found a lack of disclosure regarding assessment of procurement tenders, the content of procurement contracts and industry subsidies.'*⁴³

Incentives

As is currently the practice, employers who meet a higher standard of EEO best practice should be able to continue to seek certification as 'employers of choice' for women. This incentive has proved an effective incentive for those organisations who wish to attract skilled and experienced women employees.

Recommendation 41: Employers may seek to become 'employers of choice' by meeting best practice standards over and above the minima.

5.7 Role of governments

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, the federal government directly employs thousands of employees and should set an example through meeting best practice standards in its direct employment. Although public organisations are required to have EEO policies, state and federal governments do not participate in the EEO reporting scheme mandated for other similar sized private sector employers.

⁴³ Howe, John and Landau, Ingrid, *'Light Touch' Labour Regulation by State Governments in Australia*, 31 Melbourne University Law Review, 2007, p. 397

Gender equality data is not included in the reporting mechanisms of the public sector, which instead reports broadly on diversity programmes. In the survey conducted for the 2007-08 State of the Service Report, only 77% of Agencies had a workforce diversity program in place, 20% said their program was still being developed and 5% did not have a program. Ten percent of the Agencies reported never having reviewed their programmes.⁴⁴

Recommendation 42: The scope of the EOWW Act should be extended to include Federal and State Governments, Local Governments and Authorities.

In addition, we strongly urge the Government to directly address gender inequity within its own sphere of influence in setting government policy, regulations and legislation.

Recommendation 43: Evaluation of all government regulation prior to its introduction to assess its impact on achieving pay equity. This assessment can be properly done across the EOWW Agency, the Office for Women and the Office for Work and Family within the Department of Prime Minister and Cabinet.

Quotas for women's representation on boards

The ACTU supports the introduction of quotas for the number of women on boards. Quotas are required because we do not currently have an equitable, merit based process of appointments to boards, or senior management feeder roles.

In past two years of the declining representation of women on boards in Australia, various public and private sector organisations including the Business Council of Australia and Women on Boards have all reached the consensus that some kind of targeted goals are needed to rectify the appallingly low rate of representation at this critical level. There is considerable evidence that women's presence on boards and similarly senior roles within an organisation assists in paving pathways for other women within the organisation.

In 2002 the Norwegian Government introduced legislation that required private and public organisations to appoint women to at least 40% of their board directorships. Companies were given 3 years to comply. By 2005 there had been virtually no progress, so the legislation was supplemented with tough sanctions. Companies that did not comply by January 2008 would be de-listed. As a result, the numbers of women on boards increased dramatically- to 41% in 2009. And anecdotally, shareholders and senior company executives are pleased with the effect.⁴⁵

Recommendation 44: Institute a quota system to improve the representation of women on boards.

⁴⁴ Public Service Commissioner, State of the Service Report 2007-08, Canberra, 2008, p.41.

⁴⁵ Anne Summers, Address to the Victorian Premier's Women's Summit, Melbourne, September 2009

5.8 *Monitoring the effectiveness of the EEO framework in improving EEO for women in the workplace*

A system is required to routinely analyse the effectiveness of the provisions of the EOWW Act and the equal remuneration scheme as a whole. Analysis should include measurement of the national prevalence of gender inequity, effectiveness of the EEO regime, and outcomes in terms of workplace and social cultural changes to address the key sources of gender inequity. The measurement should be against agreed national EEO indicators.

Programmes designed to measure the extent of gender inequity exist, for example, in the United Nations Economic Commission for Europe on Work and the Economy and the Gender and Work database at York University in Canada. In Australia the West Australian Office of Women's Policy keeps a modest score card against indicators such as representation of women in public life, labour force participation, health and well being of women and the number of women in senior positions and so on.

Recommendation 45: Progress towards equal employment opportunity should be monitored against national indicators by agencies on a regular basis and generate a review of the effectiveness of the EEO system.

6. **OPPORTUNITIES TO REDUCE COST OF EXISTING REGULATION AND /OR WAYS TO ENSURE ANY NEW LEGISLATION IS COST-EFFECTIVE AND WELL-TARGETED**

In making recommendations, this submission has been conscious at all times to minimise costs to the government and to employers. We believe that the recommendations made contribute to a more effective and well-targeted EEO framework with minimal additional cost. The features of the recommendations which aim to achieve this include:

- Enabling the EOWW Agency to access relevant existing data held by other organisations to minimise the reporting obligations of employers;
- Providing the EOWW Agency with access to ATO data identifying employers with more than 100 employees;
- Developing a simpler, more streamlined automated reporting format;
- Providing more structured reporting requirements to clarify employers understanding of their reporting obligations and to maximise consistent data collection;

- Developing minimum EEO standards as clear and achievable benchmarks for employers;
- Increasing the transparency of EEO reports to encourage employee participation and verification;
- Enforcing employer’s reporting requirements through mainstreaming reporting within organisations and to shareholders;
- Publishing EOWW Agency data based on the collation of EEO reports regularly and widely to promote community education and engagement;
- Publishing, in addition to general data, results of targeted employer, industry or sector research conducted by the EOWW Agency;
- Conducting systematic random audits of EEO reports;
- Ensuring employees and EEO committees are involved in the verification of EEO reports prior to submission;
- Introducing appropriate financial penalties for breaches of the Act to achieve greater compliance rates;
- Referring compliance matters to the Office of the Fair Work Ombudsman; and
- Increasing the role of state and federal governments as leaders in EEO standards.

7. THE EOWW ACT AS PART OF THE FRAMEWORK OF EXISTING AND PROPOSED WORKPLACE-RELATED AND HUMAN RIGHTS LEGISLATION AND POLICY

In the Pay Equity inquiry and in this submission, we have advocated the need for greater complementarities between the legal frameworks dealing with gender equity in employment.

A number of options exist with respect to promoting a stronger relationship between the EOWW Act and Agency with human rights legislation and industrial legislation, which we have canvassed in submissions to the Pay Equity Inquiry and the review of the Sex Discrimination Act.⁴⁶

To some extent the role of the EOWW Act and Agency depends on the outcomes of the Pay Equity Inquiry and the review of the Sex Discrimination Act. The ACTU

⁴⁶ ACTU and Joint State Trade Union Peak Councils Submission to the Inquiry into Pay Equity and Female Workforce Participation 2008; ACTU Submission to the Review of the Sex Discrimination Act 2008.

may wish to make a supplementary submission on the EEO legislative framework depending on the outcomes of these reviews. In principle:

Recommendation 46:

- *The EOWW Agency should continue to work with the government to advocate EEO to employers, employees and key stakeholders. The Agency should continue to oversee the overall administration of the reporting regime with enhanced provision of assessment, data collection and training and support for reporting organisations.*
- *The EOWW Agency must be properly resourced, independent and have sufficient standing that its programme will attract government and employers support. This could be achieved through one of two options:*
 - *Given the common interest in employment matters, consideration should be given to the location of the EOWW Agency within Fair Work Australia;*
 - *Alternatively, the Agency could be located within the Department of Employment, Education and Training, reporting to the relevant section of the Department of Prime Minister and Cabinet.*
- *The enforcement of rights and obligations under the EOWW Act must be enforced efficiently by a body equipped with the capacity to investigate and enforce compliance. This role could be performed by a specialist section of the Fair Work Ombudsman. The Fair Work Ombudsman currently enforces compliance with the Fair Work Act, including a specialist section to enforce the antidiscrimination provisions of the Act. Alternatively, the Sex Discrimination Commissioner could perform this role, were the government to adopt the broader enforcement powers advocated for under the review of the Sex Discrimination Act.*
- *High level information, education and promotion of EEO should be provided to the public, including production of reviews and reports, overseeing the development of frameworks and standards and monitoring of the overall progress towards EEO. This could be provided by the EOWW Agency or the Sex Discrimination Commissioner's Office.*
- *Advocacy within the anti-discrimination jurisdiction should continue to be provided through the Sex Discrimination Commissioner's Office. As outlined in our submission to the review of the Sex Discrimination Act, the powers of the Sex Discrimination Commissioner should be broadened to include the capacity to take representative action on behalf of an individual or group of complainants and provide general advocacy support to complainants during all stages of a proceeding.*

- *In our submission to the Pay Equity Inquiry, ACTU recommended the creation of a specialist Pay Equity Unit within FWA, with jurisdiction across both the public and private sectors with specific powers to:*
 - *Oversee compliance with requirements for mandatory annual pay equity reporting;*
 - *Institute an inquiry or review;*
 - *Issue equal remuneration orders and orders with respect to matters of discrimination; and*
 - *Ensure awards are consistent with pay equity principles through annual award reviews.*

Recommendation 47: adequate resources would need to be provided to cover any additional functions conferred on the Australian Human Rights Commission, Fair Work Australia or the Office of the Workplace Ombudsman.

The EOWW Act

The ACTU supports the focus of the Act to remain on women in employment, who continue to suffer systemic discrimination and disadvantage. The base of affirmative action and EEO legislation in Australia should continue to be in recognition of this discrimination.

However, encouraging workplace practices which support participation of all employees with caring responsibilities is an important tool in redistributing the caring role more evenly between women and men, an obvious contributor to increasing equal employment opportunities for women.

Equality of opportunity is an important benefit to all working families and the ACTU does not oppose a focus of the Act, reflected in its Objects, on enabling both men and women to better balance their work and family commitments without prejudice in employment.⁴⁷

⁴⁷ The Longitudinal Study of Australian Children recently reported that two thirds of fathers thought they had missed out in taking part in home or family activities because of work responsibilities: Michael Alexander and Jennifer Baxter, “Impacts of work on family life among partnered parents of young children”; Family Matters, Australian Institute of Family Studies, Melbourne, Summer 2005.

8. THE EFFECTS OF THE ACT, OR ANY PROPOSED RECOMMENDATIONS RESULTING FROM THIS REVIEW ON THE ECONOMY, THE LABOUR MARKET, BUSINESS COMPETITIVENESS, SOCIAL INCLUSION AND THE GENERAL WELL-BEING OF THE AUSTRALIAN COMMUNITY.

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.

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.⁴⁸ Treasury modeling shows that a modest 2.5% increase in labour participation rates would produce an additional 9% increase in economic output by 2022.⁴⁹

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.

Evidence suggests that high levels of representation of women in senior management benefits the productivity of organisations.⁵⁰ 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.⁵¹ Action is required from government.

It is clear that the non-interventionist approach taken over the past decade has not been sufficient to improve women's employment equity on any measurement index.

In order to effectively address gender inequity, the government must take a proactive role and amend the legislative and institutional framework.

⁴⁸ In Australia, employee wages account for 66% of total GDP. Women constitute 45.3% of the workforce⁴⁸ and overall earn 65.6% of men's earnings. ABS Average Weekly Earnings May 2008, 6302

⁴⁹ Gruen, D & Garbutt, M., "The Output Implications of Tighter Labour Force Participation", Treasury Working paper, 2003-02, October 2003.

⁵⁰ Catalyst (2004) The Bottom Line: Connecting Performance and Gender Diversity, New York, p.2.

⁵¹ OECD Employment Outlook 2008, Chapter 3, 'The Price of Prejudice: Labour Market Discrimination on the Grounds of Gender and Ethnicity' OECD Employment Outlook 2008

We propose that the EOWW Act and Agency be part of 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.

SUMMARY OF RECOMMENDATIONS

Recommendation 1:

Invest in increased and more regular data collection to enable researchers to accurately assess national movements in gender equity.

Recommendation 2:

Make regular data collection relating to the contents of workplace agreements (such as the Workplace Agreements Database) publicly available.

Recommendation 3:

Re-institute survey based research such as the Australian Workplace Industrial Relations Survey (AWIRS).

Recommendation 4:

Enable the agency charged with monitoring EEO to access relevant data which may be provided by employers to other government regulatory bodies such as the Australian Taxation Office, ASIC, APRA, SafeWork Australia, WorkCover, Fair Work Australia, State Government departments and authorities.

Recommendation 5:

Legislation should be amended to enable the EEO Agency to access the Australian Tax Office database to assist in the identification of employers with more than 100 employees.

Recommendation 6:

In the short term, the EEO Agency should have access to relevant purchased private data bases of employers with more than 100 employees.

Recommendation 7:

Corporations should not be able to submit one EEO report on behalf of all their operating companies when any one of their operating companies satisfies the definition of 'relevant employer' for the purposes of the Act.

Recommendation 8:

Consideration should be given to extending the scope of the EEO Act, over time, to businesses employing less than 100 employees.⁵²

Recommendation 9:

Provide financial assistance to support employers to develop appropriate record keeping systems to facilitate EEO reporting requirements.

⁵² United States EEO legislation requires all organisations employing more than 100 employees or with federal contract of \$50,000 or more must comply with EEO reporting requirements.

Recommendation 10:

Provision of a simple, automated, streamlined EEO reporting format with prompts to provide guidance and consistency.

Recommendation 11:

One-off funding to the EOWW Agency to facilitate an automated online EEO reporting format.

Recommendation 12:

Provision of practical tools and resources to assist employers to achieve a greater understanding of EEO issues and facilitate practical support for EEO reporting.

Recommendation 13:

Provide comprehensive training for employers, employees and unions engaged in the reporting process.

Recommendation 14:

Develop resource materials, including tool kits containing practical information on the key criteria of EEO reporting.

Recommendation 15:

Provide ongoing assistance and guidance for employers during the reporting process.

Recommendation 16:

As a mandatory compliance requirement, employers must report on the extent of gender inequity, relevant targets and actions plans and progression towards those targets for each of the following employment matters:

- *Pay equity (job description and remuneration);*
- *Recruitment, selection and promotion*
- *Transfer and termination;*
- *Training and career development;*
- *Terms and conditions of employment, including family friendly work arrangements; and*
- *Sex-based harassment and discrimination.*

Recommendation 17:

EEO reporting obligations should extend to pay equity data derived from a breakdown of employer's records of wages and job descriptions of employees by gender.

Recommendation 18:

Reporting organisations should be provided with assistance to include data on gender and remuneration in their EEO reports.

Recommendation 19:

As a mandatory compliance requirement, employers must demonstrate engagement of the key reporting processes required by the EEO Act report, including:

- *Assigning responsibility for the reporting process;*
- *Establishing an EEO committee including employees and relevant trade unions to work with the person/s assigned responsibility for developing the report and action plan;*
- *Ensuring relevant training and support is provided to the committee and the person/s assigned responsibility for developing the report and action plan;*
- *Disseminating the report and action plan to all employees; and*
- *Regular review and monitoring of the implementation of the action plan.*

Recommendation 20:

EEO Reports and the EOWW Agency's assessment of those reports must be made available to all employees and their unions.

Recommendation 21:

An EEO committee should be established which includes employee and union representatives and has a role of at least verifying the EEO report prior to its submission to the Agency and agreeing on a process for implementing the action plan.

Recommendation 22:

As a mandatory compliance requirement, employers must demonstrate that written EEO reports and action plans have been made accessible to all employees and relevant unions.

Recommendation 23:

As a mandatory compliance requirement, organisations must demonstrate effective integration of EEO policy and action plans with management practice and responsibility.

Recommendation 24:

Employers should as a matter of course report on compliance with the EOWW Act in Annual Reports, Corporate Social Responsibility reports, reports to Annual General Meetings and where appropriate reports to the Australian Securities and Investment Commission and the Australian Stock Exchange.

Recommendation 25:

Accounting standards should be amended to require auditors to certify compliance with the EOWW Act in routine company audits.

Recommendation 26:

To promote corporate reporting on EEO, the EOWW Agency should routinely monitor, comment on and evaluate company reports to shareholders in relation to EEO.

Recommendation 27:

Commit to proper funding and resourcing of the EOWW Agency.

Recommendation 28:

Prior to lodgment of EEO Reports, sign off must be provided by the EEO committee and the CEO (or equivalent) of the organisation.

Recommendation 29:

When lodging EEO reports employers must include a copy of the previous EEO report against which progress is assessed.

Recommendation 30:

The EOWW Agency should undertake regular, comprehensive random auditing of employer's EEO reports to verify the quality and accuracy of the EEO reports. Such audits should aim to assist and further support employers to achieve a high quality standard of reporting.

Recommendation 31:

If, in auditing an employer's report, the EOWW Agency determines further investigation is required, or suspects a breach of the Act, it may refer the investigation to the Office of the Fair Work Ombudsman.

Recommendation 32:

Knowingly or being reckless as to whether an EEO report was untruthful or inaccurate results in an organisation's compliance status being withdrawn subject to rectification and re-lodgment of the report.

Recommendation 33:

Regular data and reports based on the EOWW Agency's research, including minimum and best practice standards across particular employment sectors, industries or workplace practices should be made available to the public to facilitate community education and awareness of EEO.

Recommendation 34:

The EOWW Agency should be empowered to require additional information from employers in order to routinely undertake further detailed research into a particular industry, sector or occupation.

Recommendation 35:

EOWW Agency reviews of an employer's EEO report should be available to employees and their unions to facilitate their involvement in future improvements to the reporting process and implementation of action plans.

Recommendation 36:

The EOWW Act should confer power on the Office of the Fair Work Ombudsman to enforce compliance with the EOWW Act, including issuing financial penalties for:

- *Breach of the EOWW Act's requirement to lodge an EEO Report;*
- *Breach of the EOWW Act's requirement of an EEO Report to address any of the EEO reporting criteria outlined in the Act; and*
- *Breach of the EOWW Act's requirement for an employer to follow any of the stages of the EEO reporting process outlined in the Act.*

Recommendation 37:

Employers should be afforded ample opportunity to remedy a breach of the EOWW Act, as in the current compliance notice process administered through the Office of the Fair Work Ombudsman.

Recommendation 38:

In addition to the current sanction of naming non-compliant organisations in Parliament, publicly report a 'league table' including best performing and non-compliant organisations.

Recommendation 39:

Extend the current sanction of non-compliant organisations ineligibility to tender for government contracts to all forms of government assistance, including grants and funding.

Recommendation 40:

Employers should be required to produce evidence of compliance with the EOWW Act as a condition of applications for all forms of government contracts, assistance, grants and funding.

Recommendation 41:

Employers may seek to become 'employers of choice' by meeting best practice standards over and above the minima.

Recommendation 42:

The scope of the EOWW Act should be extended to include Federal and State Governments, Local Governments and Authorities.

Recommendation 43:

Evaluation of all government regulation prior to its introduction to assess its impact on achieving pay equity. This assessment can be properly done across the EOWW Agency, the Office for Women and the Office for Work and Family within the Department of Prime Minister and Cabinet.

Recommendation 44:

Institute a quota system to improve the representation of women on boards.

Recommendation 45:

Progress towards equal employment opportunity should be monitored against national indicators by agencies on a regular basis and generate a review of the effectiveness of the EEO system.

Recommendation 46:

- *The EOWW Agency should continue to work with the government to advocate EEO to employers, employees and key stakeholders. The Agency should continue to oversee the overall administration of the reporting regime with enhanced provision of assessment, data collection and training and support for reporting organisations.*
- *The EOWW Agency must be properly resourced, independent and have sufficient standing that its programme will attract government and employers support. This could be achieved through one of two options:*
 - *Given the common interest in employment matters, consideration should be given to the location of the EOWW Agency within Fair Work Australia;*
 - *Alternatively, the Agency could be located within the Department of Employment, Education and Training, reporting to the relevant section of the Department of Prime Minister and Cabinet.*
- *The enforcement of rights and obligations under the EOWW Act must be enforced efficiently by a body equipped with the capacity to investigate and enforce compliance. This role could be performed by a specialist section of the Fair Work Ombudsman. The Fair Work Ombudsman currently enforces compliance with the Fair Work Act, including a specialist section to enforce the antidiscrimination provisions of the Act. Alternatively, the Sex Discrimination Commissioner could perform this role, were the government to adopt the broader enforcement powers advocated for under the review of the Sex Discrimination Act.*

- *High level information, education and promotion of EEO should be provided to the public, including production of reviews and reports, overseeing the development of frameworks and standards and monitoring of the overall progress towards EEO. This could be provided by the EOWW Agency or the Sex Discrimination Commissioner's Office.*
- *Advocacy within the anti-discrimination jurisdiction should continue to be provided through the Sex Discrimination Commissioner's Office. As outlined in our submission to the review of the Sex Discrimination Act, the powers of the Sex Discrimination Commissioner should be broadened to include the capacity to take representative action on behalf of an individual or group of complainants and provide general advocacy support to complainants during all stages of a proceeding.*
- *In our submission to the Pay Equity Inquiry, ACTU recommended the creation of a specialist Pay Equity Unit within FWA, with jurisdiction across both the public and private sectors with specific powers to:*
 - *Oversee compliance with requirements for mandatory annual pay equity reporting;*
 - *Institute an inquiry or review;*
 - *Issue equal remuneration orders and orders with respect to matters of discrimination; and*
 - *Ensure awards are consistent with pay equity principles through annual award reviews.*

Recommendation 47:

Adequate resources would need to be provided to cover any additional functions conferred on the Australian Human Rights Commission, Fair Work Australia or the Office of the Workplace Ombudsman.