

29 October 2009



EOWW Act review
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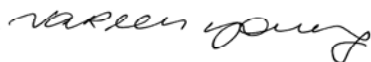
To whom it may concern,

I am delighted to enclose Diversity Council Australia's submission to Review of the Equal Opportunity for Women in the Workplace Act 1999. DCA is the independent, non-profit workplace diversity advisor to around 100 organisations – many of whom are among Australia's biggest employers.

Our submission has been prepared as a result of extensive consultation with our members, many of whom are leading the way in efforts to attract, retain and promote women. We have also drawn on the knowledge of an 'expert panel' appointed to contribute their views to this submission and the wide experience base of DCA staff and consultants.

DCA hopes that outcomes from this review will progress the agenda for working women in Australia. We look forward to a new future of opportunity and recognition for these women and for future generations.

Yours sincerely,



Nareen Young
Chief Executive Officer



DCA SUBMISSION

Review of the Equal Opportunity for Women in the Workplace Act 1999 and Agency

29 October 2009

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OVERARCHING DCA POSITION

Diversity Council Australia (DCA) is pleased to make this submission to the review of the Equal Opportunity for Women in the Workplace Act (1999) and Agency by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Office for Women.

This review marks a necessary and timely opportunity to consider Australian Government workplace policy as it pertains to women's employment market participation. Two decades have now passed since the Affirmative Action (Equal Opportunity for Women) Act (1986) was first implemented and subsequently reviewed to create the current legislative environment.

During this same period, women's employment market participation has changed significantly in both nature and volume. Australia's economy has also dramatically transformed in that time. Unfortunately, public policy and supporting regulation and oversight in this area has not kept up with these fundamental changes.

Australia's new employment relations system, facilitated through the new Fair Work Act (2009), seeks to change institutional frameworks to reflect contemporary expectations about employment participation. Government frameworks around women's employment market participation now require a similar transformational approach to appropriately reflect societal changes. We must ensure that Australia harnesses its full employment potential and establishes the right context in which we compete in the global economy.

This review has the capacity to achieve these goals.

DCA is appreciative of the invitation to make this submission, and believes that the review would be enhanced by broader public consultation. In recent days, the topic of the need for more diversity on Australian company boards has engaged the community, and there is growing interest in considering this matter as a mainstream economic opportunity. The time has come for the findings of this review to contribute to a fundamental reconsideration of how the participation of women in the Australian workforce can be recast as an essential part of our economic success.

DCA's members are representative of businesses and organisations that are committed to the emerging business principles of diversity management and practice. They are well equipped to reflect and comment on the role of legislation in this context.

Following considerable research, expert contributions and an extensive consultation process with its members, DCA makes this submission in the hope that it will assist in the creation of a future of opportunity for women in Australia and support a new era of growth, productivity and innovation.

Given the lack of progress in the outcomes for women's employment since the EOWW Act was introduced, DCA believes the only way forward is through the execution of a re-worked piece of legislation (the Act), being administered by a new and refashioned agency body. In order to create sorely needed real and lasting change, DCA is of the view that such a piece of legislation and administering body needs to operate in a way that has a significant capacity to influence what is happening in Australia's economic landscape.

As such, recommendations are to be made regarding:

- The intention, components and extent of the Act;
- The power, role and function of the administering body; and

-
- The location of the administering office.

Current status

There are presently 1.2 million women employed in Australia by organisations that currently report to Equal Opportunity for Women in the Workplace Agency (EOWA). This is a significant section of the Australian labour market.

Given the Australian workforce is currently made up of 5.9 million males (54%) and 4.9 million females (46%), this review presents significant opportunity to shape the future labour market in productivity terms by assisting organisations to make improvements in employment outcomes for women and thus the broader Australian community.

Further, as female labour force participation continues to rise (from 3.8 million in September 1999 to 4.2 million in April 2003 and 4.9 million in September 2009), the reality of women's critical mass in the workforce means that changes for the better for women translate into changes for the better for the entire labour market, Australian economy and community more generally¹.

Economic productivity

Current levels of inequity in the labour market have meant that the Australian economy is significantly underutilising this valuable resource. Implications for the nation's productivity and output are significant and will have a major impact on this country's future international competitiveness.

As gender pay equity becomes more topical, DCA has commissioned KPMG to commence cutting edge research in this area (unpublished as yet). In the first phase of the study into a larger pay equity project called 'Gender Pay Equity and Productivity in Australia: Finally, A Dollar Figure'², it is widely suggested that paid maternity leave and greater recognition of the value of female-dominated occupations and industries could go some way to addressing the pay equity gap.

Other research from the National Centre for Social and Economic Modeling (NATSEM) indicates that young women can expect to earn just shy of \$1 million less than men over their career lifetime with the gap worsening for tertiary educated women (gap is \$1.5 million)³. In their study, NATSEM has removed the incidence of children and hours of work, meaning the differences are purely based on gender and the perception of capability.

¹ ABS, September 2009. *ABS 6202.0 Labour Force Australia*

² KPMG (2009) 'Gender Pay Equity and Productivity in Australia: Finally A Dollar Figure', *Progress Update to Diversity Council Australia (unpublished)*.

³ AMP.NATSEM 'She works hard for the money: Australian women and the gender divide'. *Income and Wealth Report, Issue 22 - April 2009* <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjEwfENoaWxkSUQ9LTF8VHlwZT0z&t=1>

KEY RECOMMENDATIONS

To assist in progressing gender equality in Australian workplaces, DCA has developed this submission on the basis of consultation with our members, Australia's leaders in diversity practice, and industry and issues experts.

DCA makes the following recommendations with respect to the review of the Equal Opportunity for Women in the Workplace Act 1999 (Cth) ('the Act') and the Equal Opportunity for Women in the Workplace Agency ('EOWA').

Recommendation 1: Retain and adapt the Act and establish an independent statutory authority

DCA strongly recommends that the Act be maintained (with recommended changes), on the basis that gender equity in the labour and employment market is a long way from being achieved in Australia.

Despite slow progress, DCA believes the Act plays a critical role in raising awareness in the Australian business and broader community about the need for gender equity and how this can be achieved, and in encouraging businesses to take steps in this direction. As Strachan and French (2007⁴) point out, the general consensus amongst independent researchers is that, "Women have made some occupational gains since the introduction of the legislation but many women workers remain disadvantaged (Still, 1993; Konrad & Linnehan, 1995; Sheridan, 1995; Sheridan, 1998; French, 2001; Strachan & Burgess, 2001; French & Maconachie, 2004), a finding similar to other national studies."

DCA also recommends retaining an adapted and strengthened Act on the basis that it complements rather than duplicates existing gender equity-related legislation and thus ensures that Australian legislative frameworks address the dual notions of individual and systemic human rights approaches.

Anti-discrimination legislation encourages equity through promoting individual rights to non-discriminatory treatment at work and putting in place systems through which individuals can process claims of discrimination. DCA sees the role of the Australian Human Rights Commission (AHRC) as being complementary.

In contrast to AHRC, the Act encourages equity through requiring organisations to strategically analyse systemic and group disadvantage in their workplaces and formulate pro-active policies and practices to eliminate this and thus achieve equitable employment outcomes that are good for individuals and good for the broader community in every capacity⁵.

Similarly, DCA strongly recommends that a refashioned EOWA ('Office of Women's Employment') be established and strengthened to administer the Act, assist organisations comply with the Act and in so doing further progress gender equity in Australian workplaces.

⁴ Strachan, G. & French, E. 2007. Equal employment opportunity: Disentangling promise from achievement. In *Proceedings Gender, Work & Organisation, 5th Biennial International Interdisciplinary Conference*, Keele University, UK, p. 1.

⁵ Strachan, G., Burgess, J., & Henderson, L. 2007. Equal employment opportunity legislation and policies: The Australian experience, *Equal Opportunities International* 26(6): 525-540.

Australian research has highlighted the positive impact of the Act. French (2001)⁶, for instance, analysed EOWA reports from the 1990s demonstrated that affirmative action strategies including gender specific human resource initiatives seeking to address gender bias were a predictor of significant increases in women across of levels of management.

Further indirect evidence of the positive impact of the Act can be found in the increase in women's workforce participation, from 49% in 1984 to more than 58% in 2006⁷, and the reduction (albeit slight) in the gender pay gap from 18.2% in 1984 to 15.2% in 2004⁸.

Finally, EOWA benchmarking data also alerts us to the positive impact of the Act, this indicating that between 2003 and 2008 the percentage of organisations providing paid maternity leave has risen from to 35.6% to 50.8%⁹. Additionally, according to EOWA there is some evidence that the Employer of Choice for Women (EOCFW) Citation promotes positive behavioural change with the overall full-time weekly earnings gap in 2008 being 16% while that for the Award winners in 2009 was 10.9%.¹⁰

Recommendation 2: Establish an 'Office of Women's Employment' to administer the Act and a pay equity function

DCA recommends that an Office of Women's Employment (OWE) be established. This office should include the existing infrastructure and branding that EOWA has established (in recent years in particular) and it should also include a pay equity function.

Such an approach reflects that adopted in the UK – in 2004, the UK Government announced the establishment of the Women and Work Commission which was given the remit of considering how to close the gender pay and opportunities gap. Such an office would include an enhanced function to administer the revised version of the Act and would serve to educate, assist and support organisations to achieve genuine equal opportunity for women.

By having an additional non-legislative based pay equity function, it will be possible to educate the general community about pay equity, as well as educating, assisting and supporting the business community to progress pay equity.

Thus, DCA recommends that OWE plays a significant role in rectifying pay inequity in Australia in overseeing the connection and interaction of:

- Pay equity as it operates in areas where industrial instruments apply and will necessarily be within the ambit of Fair Work Australia. DCA recommends

⁶ French, E. 2001. Approaches to equity management and their relationship to women in management. *British Journal of Management*, 12(4): 267-284.

⁷ ABS, 2006. *ABS 1986-2006 censuses of population and housing*, Available at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Chapter7002008>

⁸ EOWA, 2005. *Pay equity statistics March 2005*, Sydney: EOWA.

⁹

http://www.eowa.gov.au/Information_Centres/Media_Centre/Media_Releases/2009_EOWA_Alcoa_Survey/2009_Alcoa_Survey_Final.pdf

¹⁰

http://www.eowa.gov.au/Information_Centres/Media_Centre/Media_Releases/2009_EOWA_Alcoa_Survey/2009_Alcoa_Survey_Final.pdf

OWE plays an overseeing role and ensures that the employment relations parties are attending to pay equity matters;

- Workplaces where dual/numerous wages systems operate, the areas of coverage of industrial instruments are attended to in terms of pay equity;
- Pay equity as it operates in areas that are 'above-award' and/or 'award-free' i.e. that pay equity tools and guidance are available and accessible to reporting organisations;
- The application of strict pay equity provisions in the employer of choice citation but with recognition of organisational efforts; and
- Education plans for business and the HR community to raise awareness and justify the need for action.

The inclusion of a pay equity function responds to feedback from DCA members that pay equity is a particular concern.

The need for immediate action in this area is highlighted by the recent DCA-EOWA Poll which found that over half (55%) of the business sector still believe pay equity means 'equal pay for men and women doing the same job', with 6% giving alternative incorrect answers. Additionally only 39% of the business community were aware of the actual size of the gender pay gap. DCA experience also indicates there is low awareness amongst the business community about what actually *causes* the disparity of pay equity.

Like the general community, many business practitioners tend to attribute the gap to women working part-time and not accessing over-time, not recognising that this leaves almost 50% of the gap unaccounted for and therefore unaddressed. This has ramifications for the extent to which organisations pro-actively address pay equity. The issue of female-dominated work and industries and the way in which pay is awarded according to work value has been left as a largely untapped issue.

Many organisations believe they already provide pay equity and so fail to take actions to address it. In the UK, researchers found the main reason organisations gave for not undertaking or intending to undertake gender pay equity was that they believed the objective of gender pay equity had already been met in their organisation¹¹.

Acting on this recommendation would enable the Australian Government to raise community awareness and understanding of pay equity (previously identified from DCA experience and the DCA-EOWA poll as a very serious concern). Such an office would ensure pay equity remained on the community and business agenda. Basing a pay equity function in the OWE would enable the government to leverage off the good work already being undertaken by the exiting EOWA (e.g. pay equity data analysis, information and tools).

¹¹ Brett, S. & Milsome, S., 2004. *Monitoring progress on equal pay reviews*. London: Equal Opportunity Commission Research.

Recommendation 3: Locate OWE within the Department of Prime Minister and Cabinet

DCA recommends that OWE resides in the Department of Prime Minister and Cabinet. OWE would report directly to Parliament, rather than to a ministerial office, the result being the capacity to 'mainstream' gender and equity and encourage these to be viewed as business productivity issues in the Australian community.

The location of OWE is cognisant of the importance to the nation of the issue of women's employment, in particular as it relates to Australia's utilisation of its resources, productivity and growth. Such a line of reporting would also ensure that gender and equity remains an important government agenda item to be considered as key issues in both the business and general community. Given the critical mass of women in the workforce, a continued underutilisation of such talent and skills is counterproductive to the future productivity of the Australian labour market.

Recommendation 4: Establish industry specific gender targets for women on boards, in executive, senior and middle management

DCA recommends that the newly established OWE provide reporting organisations with industry-based goals or targets for them to aim for when developing workplace programs to progress equity for women. DCA recommends gender 'targets' should be set for the following organisational levels:

- Boards
- Executive management
- Senior management
- Middle management (this would address 'career-pathing' concerns in industries where skills acquisition is the key to career and thus income progression e.g. manufacturing).

DCA recommends that OWE will need to provide appropriate industry definitions for management levels and suggests that reporting lines to the CEO could be one way that this is done. For example, executive managers report directly to the CEO (1st tier) while senior managers are two reporting levels from the CEO (2nd tier) and so on.

Also, such 'targets' are to be industry specific. OWE should utilise the industry categories as segmented by the Australian Bureau of Statistics and consult with industry leaders, bodies and representative bodies as to appropriate targets to aim for.

DCA notes that the use of a voluntary form in its current form could hamper OWE's capacity to generate these goals. Accordingly, it suggests that these goals be generated from a combination of Australian Bureau of Statistics labour force data as well as a selection of 'tick box' questions in the voluntary report form.

Organisations would refer to such targets when developing, implementing and evaluating their equal opportunity for women programs. These targets or goals would serve the purpose of educating organisations about what constitutes appropriate and realistic 'averages' as well as what is considered leading practice in their particular industry. Such goals would recognise that compliance in one industry may constitute leading edge practice in another and visa versa. Additionally, they would perhaps

highlight particular employment matters as being of pertinence to certain industries. Importantly, these goals would not be used to assess non-compliance at the first stages of implementation given the historically contentious nature of ‘targets’ in the Australian community – that is, failure to meet goals would not result in an organisation being deemed non-compliant with the Act.

Recommendation 5: Introduce biennial reporting with condensed progress reports in alternate reporting years

DCA recommends that reporting should occur biennially with condensed progress reports submitted in alternate reporting years. This is in recognition of the time taken to consult, analyse and prepare a report submission and that such resources could be better utilised in the actual development of workplace programs.

Progress reports could for instance entail reporting only on significant changes to the workplace, rather than repeating actions being taken every year to address employment matters. DCA members suggested that if this policy approach were taken, annual comprehensive reporting would be undertaken only by those organisations about which OWE had significant concerns. This would be at the discretion of OWE.

This approach to reporting would assist in keeping gender equity on the business agenda year to year (i.e. through having some sort of annual reporting), while also freeing up organisational time to focus on program development and implementation rather than reporting during alternate reporting years (i.e. in which only condensed progress reporting occurs). This form of reporting would also recognise the concept of initiative lead times (i.e. that the time between creating a new initiative and being able to evaluate its impact is often several years). DCA members indicated that it was their experience that current forms of annual reporting and assessment practices are insufficiently cognisant of this factor.

DCA members also suggested that the report form could be improved by having some quantitative questions with ‘yes/no/to be implemented next reporting year’ response options, as an effective way of reducing reporting time. It would serve the other purpose of assisting with generating benchmarking data to feed back to employers. For example, organisations could be asked about paid parental leave.

DCA notes that the (compulsory) reporting form prior to the 1999 Effectiveness Review was largely based on such quantitative closed questions and was criticised on this basis for being insufficiently flexible and responsive to organisations’ particular circumstances. Accordingly, DCA suggests that closed questions be limited to a selection of key questions against each of the employment matters that would generate useful benchmarking data for organisations.

Recommendation 6: Ensure reporting is responsive to organisational size and business units

DCA recommends that reporting requirements and expectations under the Act should be responsive to the size of the organisation and their associated resource capacity. More particularly, larger organisations with more resources should be expected to be able to take a greater number of actions – either through taking actions in more employment matters or taking more actions against a particular employment matter.

Conversely, fewer actions should be required for smaller organisations. DCA members provided the following example of a possible organisational size grouping:

- Small-sized organisations (500 employees or less);
- Medium-sized organisations (500-1000 employees); and
- Large employers (greater than 1000 employees).

DCA also recommends that particularly large employers with multiple disparate business areas be able to choose whether they report (and apply for the EOCFW Award) on the basis of the organisation as a whole or as particular business areas. This recommendation is made on the basis that DCA members indicated that current EOWA's industry classifications were too broad and did not recognise that large organisations often have entire business units operating as separate companies with associated different outcomes for women. They noted that averaging results across such business units can blur results and not give an accurate representation of the actual state-of-play for women in their industry. For example, a large bank can have a retail organisation, an investment bank and an IT company (to name a few) all operating under the banner of the one institution. DCA members were of the view that it would be considerably more meaningful and appropriate to break up these exceptionally large organisations into business areas for reporting.

Recommendation 7: Design the EOCFW Award application as substitute for compliance reports

DCA recommends that the EOCFW Citation application be designed such that organisations can use this for the dual purpose of applying for the Award and submitting their compliance report. If organisations' Award applications could be considered in lieu of their compliance report this would minimise the time and resources organisations spend on reporting, freeing these up for program development and implementation. DCA views this as possible because of the consistency between the assessment of workplace programs process and the process for awarding the EOCFW citation.

DCA members expressed their support for the citation and the fact that it assisted them in being able to implement actions in their workplaces in support of the legislation. They viewed the citation as something to strive for and maintain as a way of gaining a competitive advantage in the employment market and in recognition of their efforts.

Recommendation 8: Implement live reporting

DCA recommends that OWE be resourced to implement live reporting, in which organisations could update information directly into an on-line database proforma.

Associated with the concept of live reporting, DCA members also recommended that poor performance in a particular employment matter as demonstrated by discrimination and harassment cases being upheld by a tribunal or court would result in the organisation having their compliance or waiving status removed until they could demonstrate that they had taken all reasonable steps to address this breach of anti-discrimination legislation. This would be particularly pertinent to organisations that had been waived for up to three years.

Recommendation 9: Consider option of fines as additional non-compliance penalty, along with added profiling of non-compliant employers

DCA recommends that consideration be given to supplementing existing non-compliance penalties of ‘naming’ in parliament and government contract compliance with some form of financial penalty or fine.

DCA also recommends that OWE more proactively publicise those organisations that have been deemed non-compliant as a way of incentivising them to comply with the Act in subsequent reporting years.

Recommendation 10: Waive organisations for maximum of two years, with interim ‘Update’ report

DCA recommends that organisations be waived from reporting for a maximum of two years, rather than the current three year maximum. DCA members viewed a three year waiving period as too long in light of the lack of substantial progress in gender equity across the Australian business landscape in recent years (e.g. lack of improvement in women on boards and women in management, lack of reduction of pay equity gap). DCA also recommends that consideration be given to organisations being waived from reporting for two years being required to submit an ‘update’ report – that is, an interim condensed progress report – to keep organisations focused and on-track with their gender equity initiatives.

Recommendation 11: Regroup “employment matters” in current Act to minimise duplication

DCA members recommend that duplication across the “employment matters” classifications in the current Act be minimised by regrouping and renaming these. Currently, organisations find that they are duplicating when reporting. For example, they may have a return to work initiative that they report on under employment matters ‘work organisation’, ‘conditions of service’, and ‘pregnancy and potential pregnancy’. A more workable option could be regrouping employment matters to consist of:

- Entering and departing from work (i.e. recruitment and selection and termination);
- Progressing through work (i.e. career development, transfers and promotion). DCA recommends there be a continuous review of (broader community and) the organisational definitions of ‘merit’ for selection and promotion purposes;
- Taking leave (i.e. parental leave, family leave, sick leave);
- Returning to work (i.e. including work organisation, conditions of service, breastfeeding); and
- Organisational culture (i.e. cultural change initiatives that focus on creating gender-inclusive workplaces and preventing and eliminating sex-based harassment).

As currently labeled, “employment matters” often operate across separate work stages and functions and may be more suited to being grouped in this staged way.

Recommendation 12: Resource in-person OWE support for program design and implementation

DCA recommends that the administrative body (OWE) be provided with greater resources to enable existing educational services provided to organisations to be improved. Specifically, DCA recommends that OWE assign an individual to work in partnership with an organisation in the development of their workplace program. OWE could have a series of individuals with expertise in particular industries who take on a portfolio of organisations and in effect 'assist' them in developing workplace programs by providing them with intellectual resources, practical tools, research etc.

DCA members indicated that they were committed to progressing gender equity in their workplaces but that they required assistance that went beyond web-based educational materials such as guidelines. Instead, in-person consulting advice to business was required. A model such as that which DCA is suggesting would resolve this issue for organisations and deliver better outcomes for women.

Recommendation 13: Resource further educational tools

DCA recommends that OWE be provided with greater resources to enable a range of practical gender equity-related tools to be developed and made available to employers. Examples of specific tools that would be of great assistance included:

- International and Australian benchmarking information;
- Showcasing of leading edge initiatives and case studies as identified from reports and waiving applications;
- Facilities for collaborating and sharing information in relation to the employment matters;
- Learning and development sessions across the employment matters, including e-learning options (as opposed to the 'public calendar' approach);
- Tools to determine the quantitative benefits of the Act, in order to assist organisations formulate a convincing internal business case; and
- Tools for use in addressing the employment matters (e.g. guidance on designing jobs creatively and flexibly), similar to the well regarded pay equity analysis tool already on EOWA's website.

Recommendation 14: Ensure OWE reviews EOCFW Award pay equity criterion

DCA recommends that the administrative body (OWE) reviews the EOCFW Award criterion relating to pay equity on the basis that it is insufficiently cognisant of the significant adverse impact the systemic undervaluing of female-dominated work has on pay equity between men and women. DCA members attributed much of the lack of progress in pay equity to the segregation of women into 'traditional' roles and industries where the work is undervalued (EOWA research lends credence to this claim, demonstrating that almost half of the pay gap is unexplained (45.3%), while only 9.6% can be attributed to less access to over-time, over-award payments and other benefits and 45.1% to differences in workforce participation¹²). Work value assessments have tended to value features which are characteristic of work

performed predominantly by men, while skills more commonly associated with women are often viewed as 'natural attributes' or social skills rather than workplace skills. This has been the case historically and contemporarily, in wage and salary fixing and in setting, assessing and reviewing terms.

Recommendation 15: Ensure OWE takes a higher profile role in promoting gender equity

DCA recommends that the administrative body (OWE) be required to take a strong leadership role in the business and general community to promote and profile the importance of gender equity and equal employment opportunity for women. While DCA acknowledges that to some degree the existing EOWA is in 'caretaker' mode with an Acting Director, DCA members indicated they were disappointed with the level of public debate currently initiated and undertaken by them. Some members noted that they need external pressure to progress internal agendas and that EOWA's efforts in this regard appeared to have reduced in recent times.

Recommendation 16: Ensure OWE better promotes gender-based intersectionality

DCA recommends that OWE be more proactive in encouraging and incentivizing organisations to undertake gender equity actions that recognise 'double disadvantage', for example focusing efforts on women with disabilities, women from non-English speaking backgrounds or Indigenous women. This is particularly pertinent traditional given criticisms that the Act has benefitted mainly White, tertiary-educated Anglo-Celtic women¹³.

Recommendation 17: Government takes steps to promote flexibility, including in managerial roles

DCA recommends that the government take pro-active steps to promote the appropriateness of creative flexible work arrangements in all levels of organisations. As DCA members pointed out, currently there is a concerning lack of creativity around job design in Australian organisations, with most part-time work being made available in more junior roles. This has meant that women with family responsibilities are forced to return to or remain at lower levels where part-time work is deemed more acceptable. In turn, this has adversely affected women in management statistics, being a contributing factor to women's persistent and concerning under-representation in management in the business community.

DCA member views are backed up by Australian research indicating part-time jobs tend to be located in lower skilled occupations, are less likely to involve complex tasks, problem solving or planning responsibilities, and less likely to receive training from their employers¹⁴. Of particular relevance to this Review, Strachan and French

¹² EOWA, 2008. *Pay equity media kit, August 2008*.

¹³ Bacchi, C., 1996. *The politics of affirmative action: 'Women', equality and category politics*. London: Sage.
Burton, C., 1991. *The promise and the price: the struggle for equal opportunity in women's employment*. Sydney: Allen & Unwin.
Poiner, G. & Wills, S., 1991. *The gift horse: A critical look at equal employment opportunity in Australia*, Sydney: Allen & Unwin.

¹⁴ Productivity Commission (Abhayaratna, J., Andrews, L., Nuch, H. & Podbury, T.), 2008. *Part-time employment: The Australian experience*. Staff Working Paper June 2008. Melbourne: Productivity Commission.

(2007)¹⁵ recently analysed the impact of equal employment opportunity legislation and found that while organisations are particularly proactive in the work-life area (often over other employment matters such as recruitment and promotion), their actions only assist women in and out of the organisation for reproduction and caring roles – they do not extend to movement into management roles. They suggest that organisations' work-life activities are resulting in part-time roles being a form of cheap flexible non-career-oriented labour primarily filled by women. This is in large part a consequence of broad community attitudes towards part-time and casual work. Research indicates that working part-time is commonly viewed as being incompatible with being seen as a committed career-oriented worker¹⁶.

Recommendation 18: Take action to address paid parental leave

While not directly addressed by this Review, under the heading 'What regulatory role should government play to achieve equal employment opportunity for women?' DCA members indicated that the government should take action to properly address the issue of publicly funded paid parental leave as a matter of urgency as opposed to the longer term implementation currently operating. They noted that this would have the benefit of assisting with addressing pay equity between men and women through supporting the retention of women in the labour market.

Analysis of paid maternity leave provisions against workforce participation rates in OECD countries indicates paid parental leave has a positive impact on labour force participation¹⁷. These findings are borne out by high female workforce participation rates in countries which have led the way internationally with respect to paid maternity and parental leave provisions – in Sweden and Denmark female workforce participation rates have been over 80% since 1981¹⁸.

REVIEW METHODOLOGY

This DCA submission is based on the analysis and review of three sources of data as detailed below.

Consultation with members

DCA has undertaken an extensive consultation of its member organisations in order to make the best possible representation of their collective views.

The process involved an on-line questionnaire, completed on a voluntary basis by member organisations, with in-person and telephone follow up as necessary. Survey questions were based on the 'issues paper' as released by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Office for Women. Discussions and communication with members were entirely

¹⁵ Strachan. & French, *ibid*.

¹⁶ Hakim, C., 2000. *Work-lifestyle choices in the 21st century: Preference theory*. Oxford: Oxford University Press.
Probert, B. & Murphy, J., 2001. 'Majority opinion or divided selves: Researching work and family experiences' *People and Place*. Vol 9, No. 4.

¹⁷ Jaumotte, F., 2003. 'Labour force participation of women: Empirical evidence on the role of policy and other determinants in OECD countries,' *OECD Economic Studies*, No. 37 (2). Available at: <http://www.oecd.org/dataoecd/12/39/34562935.pdf>

¹⁸ Jaumotte. *ibid*

based on the review's 'terms of reference', also detailed by FaHCSIA and the Office for Women.

DCA currently has around 100 member organisations, many of whom are Australia's biggest as well as leading diversity employers. This membership base includes representation from all private sector industries, global and national companies, government departments and agencies, community organisations, schools and higher education institutions. A list of DCA's members can be found at the following website location:

<http://www.dca.org.au/Independence/AboutUs/Ourmembers.aspx>.

Expert contributors

DCA has sought the input of four expert contributors who have been at the forefront of the public debate on equal opportunity for women in Australian workplaces over the past decade.

Dr. Graeme Russell

Graeme Russell is a partner in Aequus Partners, a non-executive director of DCA, and was previously an Associate Professor in Psychology at Macquarie University. He is an internationally renowned researcher and industry consultant on diversity, flexibility, organisational change and work/life – especially from the perspective of fathers, industry-based work and life strategies (including the impact that work/life conflict has on work performance and personal wellbeing).

His expertise includes:

- Working with executive and senior managers to challenge and change mindsets and behaviours in relation to flexibility and diversity;
- Managing differently: effective strategies for leading and managing a diverse and flexible workforce;
- Designing and evaluating workplace flexibility and diversity strategies;
- Designing and delivering creative and experiential-based learning and development activities;
- Designing and conducting effective organisational change strategies
- Men and fatherhood; and
- Organisational survey design and analysis.

Graeme Russell has worked extensively in a range of organisations and in different countries (e.g. Australia, New Zealand, Singapore, China, United States, Japan, Korea, United Kingdom, The Netherlands). He is a regular presenter to global conferences on flexibility and work/life. Graeme has recently written a report on work and life in China for multinational enterprises.

Graeme is the author or co-author of four books and over 50 research papers on gender, diversity and work/life issues. He has consulted in a range of organisations in Australia and overseas, including ANZ, NAB, Westpac, AMP, Caltex, IAG, Alcoa, Ampol, Australia Post, Esso, Yellow Pages, Nestlé, Coles Myer and Shell International.

Dr. Anne Summers AO

Anne Summers is a writer, a journalist and author, and pre-eminent thought leader on gender equality in Australia. She was a leader of the generation and the movement that changed Australia for women. In 1975 her book *Damned Whores and God's Police* changed the way women were perceived in this country. This bestseller was updated in 1994 and, again, in 2002 and stayed continuously in print until 2008 – an incredible 33 years. She ran the federal Office of the Status of Women from 1983 to 1986 when Bob Hawke was Prime Minister and was an advisor on women's issue to Prime Minister Paul Keating prior to the 1993 federal election.

In 1988 Anne, with partner Sandra Yates, raised \$20 million on Wall Street enabling them to purchase "Ms" (America's landmark feminist magazine) and "Sassy" magazines. This was the second only women-led management buy-out in US corporate history.

Since returning to Australia after a successful publishing career in the US, Anne has addressed a variety of women's media and business audiences, and is regularly called upon by the media to comment on issues. She is an articulate speaker who brings a wealth of business experience to every presentation. Currently Anne organises and facilitates the annual Serious Women's Business conference, Australia's pre-eminent conference for women aspiring to leadership.

Her involvement in the women's movement has earned her community respect and she has been honoured with an Officer in the Order of Australia for her services to journalism and to women (1989) and Honorary Doctorates from both Flinders University (1994) and the University of New South Wales (2000).

Katy McDonald

Katy McDonald was most recently Programme Director People Transformation for Westpac. Katy graduated in Law (University of Sydney) and Arts (University of Melbourne) in 1989. Her role prior to this was Head of Employee Relations Policy and Diversity. She developed an interest in human rights law and employee relations while working in the Federal Court of Australia and for the President of the Human Rights and Equal Opportunity Commission.

Katy worked in private practice in a medium and then a large law firm in Sydney where she practised in commercial litigation and then employment law. She became the Director of Equal Opportunity at the University of Sydney in 1996.

Katy joined Westpac in 1999 where she spent five years heading up Employment Relations Legal and has recently left to practice at the intersection of equal opportunity and employment law, where she specializes, by working with organisations in education and policy programs that reflect emergent community trends.

Sam Mostyn

Sam Mostyn is a leading business and sustainability adviser and speaker. She has worked across the private, public and non-government sectors in a variety of industries including legal affairs, telecommunications, financial services, sport, science and the arts. Between 2002 and 2007, Sam held the position of Group

Executive, Culture & Reputation at Insurance Australia Group. Her portfolio responsibilities encompassed human resources and organisational development, corporate affairs, government affairs, internal communications and corporate sustainability & community development. With her colleagues and team, she helped shape IAG's corporate sustainability and climate change work with a particular emphasis on the impact of leadership, community relations, company culture, training and development. In recent years Sam has focused on corporate culture, the business response to the sustainability challenges of climate change and social inclusion, Indigenous reconciliation, diversity, and the development of innovative cross sector partnerships.

Since leaving IAG in late 2008, Sam has been advising leading organisations and their thought leaders about the integration of sustainability principles into strategy, business planning and organisational culture. Sam has previously served as a director of the Sydney Festival, the Centenary Institute, and served on the Academic Advisory Board of the Australian Institute of Management. She currently serves on the boards of Reconciliation Australia, the Australian Museum, the Sydney Theatre Company, Australian Volunteers International and the NSW Foundation for Public Education. She is a member of both the NSW and QLD Premiers' Climate Change Councils and chairs the Stakeholder Council of the CSIRO Climate Adaptation Flagship, and is a member of the Chief of Defence Force's Womens Reference Panel.

In 2005, Sam was appointed to the Commission of the Australian Football League, becoming the AFL's first female Commissioner. During 2008 she took up the position of Chair of AFL Sportsready, the industry's group training company, and was appointed by the Federal Minister for Sport to the Expert Panel on the Review of Sport in Australia.

Expert DCA contributors

DCA is the independent, not-for-profit diversity advisor to business in Australia and provides the full range of services to support and enhance members' internal diversity and inclusion capabilities and external profile.

As a recognized expert in the diversity area, DCA is able to draw upon its vast intellectual capital. Many of DCA's research and industry projects have assisted in formulating its position and contributed to providing DCA with expert insight into the impact of the EOWW Act as it truly operates in the Australian labour market. Some of these include:

- DCA's recent submissions on behalf of its members to the following Australian Government inquiries:
 - Inquiry into pay equity and associated issues related to increasing female participation in the workforce (DCA's CEO gave evidence at the House Standing Committee hearing on this);
 - Inquiry on Paid Maternity, Paternity and Parental Leave;
 - Review of the Sex Discrimination Act;

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- DCA's quarterly diversity and research journals on a range of topics including flexible working, women in non-traditional roles and diversity management;
 - DCA's Diversity Leadership Briefings for its members on the right to request part-time work and preparing for the Fair Work Act;
 - DCA has commissioned KPMG to commence cutting edge research into pay equity. Called 'Gender Pay Equity and Productivity in Australia: Finally a Dollar Figure'; and
 - DCA's development of the 'Flexibility First' workshop for managers to help employers prepare for their responsibilities under the Fair Work Act.

DCA can also draw upon the extensive experience of its CEO, Nareen Young. Nareen has had a notable career as a senior diversity practitioner and is acknowledged as one of Australia's leading strategic and practical diversity practitioners and thinkers.

Nareen was the Director of the NSW Working Women's Centre, funded by federal and NSW governments, from 1998 to 2005. In 2003 she was nominated for a Human Rights Award and Medal for her leadership at the NSW Working Women's Centre in "... developing and implementing innovative and sustained activities ..." so that the Centre was an accessible service and could play a significant role in employment matters in New South Wales". Prior to her appointment at the Centre, Nareen was a trade union official and during this time served in female affirmative action positions, in both cases elected by her peers, on the executive of Unions NSW and the Australian Council of Trade Unions, representing women's employment interests and matters.

In early 2009 Deputy Prime Minister Julia Gillard appointed Nareen, representing DCA, to Chair the Judging and Accreditation Panel for the revamped National Work and Family Awards. Nareen has presented and published widely.

DCA has also been able to draw on the expertise of both Jane O'Leary (Research Director) and Lisa Annese (Acting Research Director). Both Jane and Lisa have prior experience working as senior managers at EOWA. They were instrumental in implementing the EOWW Act (1999) in 2000 with reporting organisations and developing guidelines on how to both comply with the legislation and be waived from reporting. Jane and Lisa have both had experience in assessing applications for waiving, liaising with organisations during the compliance process and witnessing, first hand, the impact that the EOWW Act has had on such organisations.

Further, Lisa Annese was instrumental in developing the 'Employer of Choice' citation, the Business Achievement Awards and also, the first ever 'Women in Leadership Census'.

SUMMARY OF DCA MEMBER CONSULTATIONS

Theme 1: The value & impact of EEO for women

1.1 What factors and measures have contributed to improving employment opportunities and outcomes for women?

The old adage of 'what gets measured, gets done' has been echoed by DCA members. In identifying the key influences for determining improvements in outcomes for women, DCA members state that: the principles of equal employment opportunity and the legislative environment have 'raised the bar' for women by:

- Ensuring organisations have been forced to develop an action plan to address issues of women's employment;
- Influencing buy-in from CEOs and senior leadership teams;
- Assisting in the creation of training programs for managers to implement and support flexibility;
- Forcing organisations to measure key statistics, e.g. return to work from parental leave;
- Influencing creative policy making, such as carer's leave, part-time work, and mentoring programs;
- Creating awareness of key issues;
- Focusing employers on risk reduction strategies, particularly with regard to harassment and discrimination;
- Generating an understanding that discrimination and harassment will not be tolerated in the workplace and legal remedies are available to victims; and
- Publicising the business case for developing equal employment opportunities for women.

1.2 What are the obstacles that may impede further progress towards equal employment opportunity within organisations and in Australia generally?

DCA members were united in describing the difficulties and challenges associated with progressing gender equity in Australia. These have been grouped into four main categories, as follows.

1.2.1 Industry and employment segregation

DCA members noted that female-dominated industries (e.g. healthcare, administration and education), roles and job types (e.g. 'bank tellers' in financial institutions, human resources practitioners in large organisations, supporting roles and non-line positions) are less valued and accordingly less well remunerated. Businesses often value gender stereotypical jobs differently and this re-enforces gender bias. Strong links can be made between the under-valuing of women's occupations and the pay-equity gap between men and women.

1.2.2 Leadership issues

DCA members in particular noted that senior managers sometimes had difficulty grasping the 'business case' for equal employment opportunity. Without any buy-in from senior managers, a lack of support and awareness for women and the diversity agenda followed. Added to this, a lack of accountability for gender outcomes leads to a lack of progression on the issue and a view that diversity is a 'women's issue' as opposed to a productivity issue associated with underutilisation of human capital.

1.2.3 Job design

There was general consensus amongst DCA members about the lack of creativity around job design in Australian organisations. It was agreed that most part-time roles were career limiting due to employees working flexibly being viewed as less serious about their job and therefore their career. This has meant that women with family responsibilities are forced to remain at lower levels where part-time work is viewed as being acceptable.

1.2.4 Dependant care issues

DCA members agreed that a woman's ability to fully participate in the workplace was constrained by the following dependant care issues:

- prohibitive cost of childcare;
- women still doing the 'lion's share' of childcare and home duties (this is supported by research);
- lack of greater support networks through schools, cheaper care options and lack of work flexibility to accommodate school holidays;
- elder care appears to have a greater impact on women than men.

1.3 Should there be a greater focus on enabling men and women to share paid work and caring responsibilities more equally? How can men be provided with better opportunities to participate in the care of their children and other dependents?

DCA members were divided in their views on this issue. Whilst some indicated times have changed and with this, the role of men, others noted that the inclusion of men would dilute efforts directly aimed at improving outcomes for women.

1.4 What regulatory role should government play to achieve equal employment opportunity for women?

Feedback from DCA members regarding the role of government could be divided into three distinct categories, as follows.

1.4.1 Government policy

DCA members indicated that the government should take action to properly address the issue of publicly funded paid parental leave as a matter of urgency.

Other policy recommendations included the provision of grants or tax benefits to organisations that provide breastfeeding facilities or generous parental leave schemes and greater refunds/rebates to assist parents to offset the cost of childcare.

1.4.2 Awareness and education

DCA members indicated that government should have a strong role in leading the public debate on gender equity, thereby creating awareness of issues relating to equal opportunity in the workplace for women. A focus on education was also supported by employers. Specifically:

- As a tool to raise awareness of issues;
- To provide tools and resources on how to address issues for employers;
- As a provider of benchmarking data; and
- As a provider of 'best practice' case studies and examples.

1.4.3 Enforcer of minimum standards

DCA members indicated government had some role to play in ensuring Australian workplaces met minimum standards in relation to the provision of employment opportunities for women.

Theme 2: Objects and coverage of the EOWW Act

2.1 Are the objects of the EOWW Act appropriate and relevant to today's workplaces?

DCA members unanimously agreed that the objectives of the Act are still appropriate and relevant. However, given the elapsed time and change in social expectations some members indicated it was time to expand the concept of 'merit' with some minimum standards or targets set that were industry appropriate.

2.2 Has the EOWW Act been effective in meeting its objects?

2.2.1 Effectiveness of Act

DCA members commented that the Act has been successful in meeting some of its objectives, particularly as they relate to discrimination and harassment. This assertion was made on the basis that the Act had forced organisations to reassess their risk management strategies and their approach to appropriate workplace behaviour. Members indicated that the EOWW Act, together with other pieces of legislation, had created the need for organisations to be proactive about this issue. Through the Act, businesses had been forced to comply or seek to comply, drive change and shift gender-biased workplace norms.

In addition, DCA members noted that the EOWW Act had played a key role in increasing awareness of employment issues for women and that organisations could make a real difference to the utilisation of the workforce by addressing many of the issues highlighted in the employment matters. The specification of seven employment matters, in company with EOWA's guidelines, enabled organisations to clearly identify where equity issues for women could arise and what steps could be taken to address these.

Particular mention was made by several DCA members of the benefit of including 'breastfeeding' as an employment matter, noting that its inclusion in the Act enabled them to be more confident about discussing it in the work environment and taking steps to assist women when they return to the workplace from parental leave.

DCA members also commented on how the Act had created opportunities for women to be able to return to work and work in more flexible arrangements.

2.2.2 Ineffectiveness of Act

DCA members expressed disappointment that the Act had not been able to deliver improvements in the number and percentages of women progressing through organisations in management, senior management, CEO and board roles. It is a cause of grave concern for many organisations given their allocation of significant resources to the recruitment of females in entry level and junior positions and the subsequent failure of these women to be able to reach their potential in more senior positions in the organisation.

The other area of particular concern was pay equity. Despite the concept of merit being a fundamental principal underpinning the legislation, the pay gap between men and women continues to increase. DCA members attributed much of this to the segregation of women into 'traditional' roles and industries which are undervalued rather than to any form of direct compensation discrimination. This system of undervaluing of female-dominated work is a critical issue that has also failed to be addressed through the EOWA Employer of Choice citation's inclusion of a 'pay equity' factor.

2.3 Has the EOWW Act contributed to improving women's employment opportunities? If not, why not? If so, how?

Feedback to this question is covered in (2.2) above.

2.4 Should the role of men as fathers and carers be acknowledged in the EOWW Act?

DCA members suggested that the role of men as fathers and carers should be acknowledged in the Act but only as a means of freeing up the female talent pool so that they could contribute more fully in the workforce. It was widely agreed that no measurement mechanism was required for men.

2.5 Is the current coverage of the Act appropriate? Should the current coverage of organisations or employees be expanded or decreased? Why?

Three main comments were provided in relation to coverage:

- Several DCA members indicated that coverage of the Act was too broad and should be increased to organisations with 250 employees or more, however this was not unanimously agreed.
- Most DCA members noted that the mode of reporting should be different for smaller organisation (say 500 employees or less), medium-sized organisations (500-1000 employees) and very large employers where the Australian workforce can be upwards of 30,000 staff.
- The other area of contention related to industry classifications being too broad and not reflective of organisations that have entire business units operating as separate companies with associated different outcomes for women. To average results across such business units can blur results and not give a true picture of what is happening in specific industries. Banking serves as a useful example, where a retail organisation, an investment bank, an IT company (to

name a few) can all be found in the one institution. DCA members were of the view that it would be considerably more meaningful and appropriate to break up these exceptionally large organisations into business areas for reporting purposes.

2.6 Is the self-identification and disclosure of organisations appropriate? Is there another way that organisations should or could be identified?

Views were mixed in relation to disclosure, with some DCA members indicating that organisations should be identified only by industry sector and others strongly endorsing the 'naming' policy, particularly for non-compliant companies.

Theme 3: Workplace programs, reporting and compliance

3.1 How are organisations responding to the barriers to women's employment? What programs and policies are the most effective levers for change in organisations (e.g. work processes, organisational culture, and/or workplace relations and human resources practice)?

DCA member organisations respond to employment barriers in various ways, with most organisations utilising a multi-focus approach, depending on their particular industry, issue and level of commitment from the CEO and senior management team. Listed below are some examples of programs and policies that are being used:

- Developing and implementing policies which shape culture (e.g. flexible working arrangements, parental leave, breastfeeding policy, harassment/bullying and recruitment/promotion transparency);
- Implementing and managing initiatives and programs that support the policies;
- Cultural change through awareness, education and management training;
- Making managers accountable for their diversity outcomes using a scorecard approach; and
- The development of guidelines and incentives to reach certain standards.

DCA asked its members whether they supported a quota system as a way of effecting change. The majority of organisations did not support this approach, stating it would be viewed as being tokenistic and cause problems by creating the perception that merit was not a criterion for reward and promotion.

3.2 Are the EOWW Act's requirements regarding the content of workplace programs, including the specified 'employment matters', useful and appropriate? If not, how could they be improved?

Whilst the majority of members supported the concept of developing a 'workplace program' as a means of keeping issues on the company agenda, there were some suggestions for possible improvement:

- Rather than repeating the actions being taken every year to address employment matters, reporting should be restricted to describing significant changes to the workplace only;
- Format could be changed to enable more 'yes/no' responses as this would be an effective way of reducing reporting time; and

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- Some streamlining of employment matters would be helpful as there is a quantifiable amount of repetition in them.

With respect to streamlining, it was suggested that:

- 'Recruitment, selection, promotion, transfer and termination of employment' could be merged into one employment matter;
- 'Work organisation' and 'conditions of service' could be merged into one employment matter; and
- Arrangements for dealing with pregnant, potentially pregnant and employees who are breastfeeding could be amended to 'arrangements for dealing with pregnant employees and employees returning to work from parental leave'.

3.3 Is the process for developing workplace programs useful and appropriate? If not, why not?

Again, there was general consensus about the usefulness of developing workplace programs, primarily on the basis that the consultation and discussion process that occurs with program development generates managerial and employee engagement.

However, organisations would prefer a reporting approach that is more cognisant of an organisation's size (e.g. fewer actions should be required for smaller organisations).

3.4 Has the development of workplace programs contributed to improved employment opportunities for women within reporting organisations? If so, can you provide examples from your experience?

A number of DCA members noted that their organisation fully comprehended the diversity business case and were already committed to diversity initiatives and so would take action to address gender equity across the range of employment matters, regardless of the existence of an EOWW Act.

However, this was not the case for all DCA members, with several commenting that the legislation ensured issues for women received CEO and senior manager attention and actions taken within organisations were a direct result of leadership teams wanting to comply with the Act. In particular, DCA members indicated that the 'work organisation' employment matter had enhanced employment and career opportunities for women with caring responsibilities by assisting organisations to develop flexible working policies.

3.5 Are the EOWW Act's requirements regarding the content of reports clear and useful? If not, how could they be improved?

DCA members agreed that contents of reports required are clear in the main but concerns were raised that the process was unnecessarily long and at times, onerous. For example, reporting on the same measures where there is overlap in the employment matter has led to duplication in reporting (see 3.2 previously).

Additionally, DCA members noted that EOWA did not allow for the concept of initiative lead times (i.e. the time between creating a new initiative and being able to measure its success is often several years).in the reporting process.

3.6 Is the frequency of reporting optimal? Are the provisions for waiving reporting requirements effective? If not, what changes do you think are necessary?

A significant amount of feedback was provided on the issue of reporting frequency. Whilst most DCA members agreed that annual reporting was necessary, many felt that reporting requirements should change so that progress reports could be made every second or third year with full reports only occurring every few years. This would ensure that resources could be more effectively utilised.

Annual reporting was viewed as something that should only be required by exception, where EOWA has significant concerns about an organisation's progress.

By and large, the waiving process and requirements were seen as being effective in recognizing organisations that were taking all reasonable steps against the employment matters.

3.7 How resource-intensive are the reporting requirements for organisations? Can you provide examples of the costs of reporting from your experience?

While DCA members unanimously agreed that reporting is a resource intensive exercise, larger member organisations have no issue with expending this energy. Difficulties arise with smaller organisations and those where senior management commitment is jeopardised with extensive resource commitments.

As one DCA member noted, "Currently smaller organisations comprising only 100 people must complete the same reporting process as such larger organisations with possibly 40,000 employees. Given that the level of HR resourcing differs significantly between small and large organisations, so too does their capacity to prepare the required report. Consideration should be given to adopting a more limited form of reporting for smaller organisations with limited HR resources."

Estimates of time taken to report vary from four days to many months, in the latter case where the process of accurately reporting is the result of many months of consultation throughout the organisation, an extensive sign-off process, collation of data and submission preparation.

One large member estimated an average reporting time of two part-time employees working consistently for 20 hours per week each for a period of twenty weeks. Another member estimated costs in the vicinity of \$7,000.

A large portion of this time was spent consulting internally with staff to understand the impact of their gender equity initiatives on the business.

3.8 How useful are the reporting requirements to organisations? That is, what benefits can be attributed to the reporting process for the organisation and for women workers?

As stated in 3.2 above, reporting appears to still have a high degree of relevance as it forces organisations to 'take stock' of their performance, requiring them to devote adequate resources in order to implement initiatives, track and measure change.

3.9 Are the enforcement mechanisms currently in place sufficient to ensure that the objectives of the legislation are met? If so, how? If not, why not?

DCA members shared the view that the current naming of organisations in a report tabled in Parliament and exclusion from tendering for government contracts is a good start but relatively minor retribution for failing to comply with such an important piece of legislation. Greater penalties, including financial penalties were proposed in order to maximize organisational compliance.

3.10 Are there alternative enforcement mechanisms that would effectively and efficiently ensure compliance? Can you provide examples? What additional benefits would they bring?

No member comments.

3.11 Has your organisation undertaken any analysis of the costs and benefits of compliance with the EOWW Act? What were the key findings?

Whilst DCA members had not conducted a formal cost/benefit analysis, they consistently reported a range of benefits including:

- Raising awareness of what organisations can do to become employers of choice for women;
- Ensuring that statistics are collected and become the basis for discussion and action;
- Ensuring a continual review of the effectiveness of EOWW policies and action;
- Prompting further research of the way the organisations can support EEO for women; and
- Assisting in the attraction and retention of women.

Theme 4: Role and activities of EOWA

4.1 Are the role and functions of EOWA appropriate to achieving the objects of the Act? Which functions of EOWA are most valuable and effective? Why?

It was widely agreed that EOWA is not, with current resourcing levels, able to provide adequate assistance to organisations.

DCA member organisations requested a more practical approach from EOWA in terms of achieving the objects of the Act. Suggestions to improve the role and functions of EOWA include:

- Greater support in the form of guidance and advice;
- Learning and development sessions across the employment matters, including an e-learning options, as opposed to the 'public calendar' approach;
- Greater showcasing of best practice initiatives as identified from reports and waiving applications;
- Provision of tools to determine quantitative benefits of the Act, in order to assist organisations to formulate a convincing business case; and
- Development of practical and accessible tools for use in addressing the employment matters. Members note a useful pay equity analysis tool found on the website and recommend other tools in line with this approach.

4.2 Is the role of EOWA in monitoring and enforcing compliance of reporting organisations under the EOWW Act adequate and appropriate? If not, how should it be changed?

No member comments.

4.3 Is the role of EOWA in promoting understanding and acceptance, and public discussion of equal opportunity for women in the workplace adequate and appropriate? If not, how should it be changed?

EOWA is seen as having a much lower profile than what it should have. DCA members were disappointed with the level of public debate initiated and undertaken by EOWA. They felt this should be substantially increased. Although it was recognized that media and business community interest is sometimes lacking in this area, organisations expect that EOWA should work hard to raise interest in these areas in order to maintain focus on issues and progress opportunities for women. Some HR managers noted that they need external pressure to progress internal agendas and that EOWA's profile has taken a particular fall in recent times.

Some suggestions were made that EOWA should work more with partners such as DCA and AHRI to raise awareness and educate the HR community and the broader business community.

Theme 5: Relationship with other legislation and institutions

5.1 Does the EOWW Act complement or overlap with other legislation? How could the relationship of the EOWW Act to other legislation be clarified or improved?

DCA members felt that the majority of the EOWW Act complemented other legislation on the basis that it focused on promoting gender equity in organisations while other anti-discrimination legislation focused on assisting individuals who claimed to have been discriminated against or harassed. A key alignment was noted with the DDA, ADA and RDA functions of Australian Human Rights Commission, which aimed to address equity issues for all Australians rather than focusing on women only.

5.2 Is there potential duplication between workplace reporting under the EOWW Act and any other obligations such as, for example, the enforcement obligations of the new Fair Work Ombudsman?

DCA members suggested it was too early to assess the enforcement obligation under the Fair Work Ombudsman.

5.3 Should EOWA remain as an independent statutory authority or should the role and functions of EOWA be combined with those of another entity that also holds responsibilities related to achieving equal employment opportunity for women? If you think the role and functions of EOWA should be combined, with which entity and why?

There was broad consensus among members that EOWA should remain as an independent authority with changes as recommended in this submission. Concerns were raised that merging with another entity would dilute the focus on issues pertaining to women and as a result, less would be achieved over time.

It was suggested however, that the Act could also cover sub sections under the broader category of 'women' so that specific initiatives would be targeted towards them, e.g. women with disabilities, women from a non-English speaking background, Indigenous women etc.

Theme 6: Measuring the success of the EOWW Act and EOWA

6.1 Are the mechanisms for measuring the effectiveness of the legislation and EOWA adequate? If not, how should they be improved?

DCA members indicated that there appeared to be little to measure the effectiveness of the legislation and this was regarded as a significant oversight on the part of the government.

DCA members indicated that educational benchmarking data specifying industry-based minimum and leading edge targets or goals should be available across the employment matters to assist organisations measure their own progress. (DCA notes the former Affirmative Action Agency used to publish *Good Ideas* which provided industry-based benchmarking data of women in particular occupations and something similar may be useful).

Conversely, where criteria do exist, as in the case of the 'Employer of Choice for Women' citation's 'pay equity' measurement, these were considered very restrictive and not following international best practice in evaluation (see for example the partial progress or weightings approach used in the evaluation model by US leading practice organisation, Catalyst).

6.2 Is the EOWA data set adequate to measure changes in women's participation and equality in employment? Could it be improved? If so, how?

DCA members recognize that change takes time and that this needs to be considered in any reporting mechanism. A 12 month period is deemed as not long enough to demonstrate any significant change. Even though the Act has not seen the progress it would have liked to since its implementation in 1999, the culture change required for true gender progress is likely to be a much longer journey.

ABOUT DIVERSITY COUNCIL AUSTRALIA

DCA is the independent, not-for-profit diversity advisor to business in Australia. In partnership with our member organisations our mission is to:

1. Understand and achieve leadership in diversity thinking and practice in an Australian context
2. Realize business improvement through successful diversity programs
3. Implement effective compliance management in a changing legislative environment, and
4. Publicly demonstrate commitment to diversity.

Membership provides benefits

DCA members have access to a range of free or discounted services that support and enhance their internal diversity and inclusion capabilities and external profile. As a valued member, DCA offers:

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- Leading edge information – fortnightly email update, Australia’s only business diversity quarterly journal, quarterly research journal, members-only area of website
 - Events – diversity leadership briefings, teleconferences, CEO roundtables
 - Evidence-based industry research – groundbreaking projects such as *Working for the Future* and *Diversity in an Economic Downturn*
 - Signature advisory services – organisational development, diversity audits, high level strategies and ROI
 - Education – for boards, executives, executive management teams and on flexibility for managers and value-added compliance and awareness
 - Member representation – submissions to government inquiries e.g. EOWA review, paid maternity leave and pay equity inquiries
 - Speakers – for diversity councils or executive teams.

APPENDIX A: DCA SUBMISSION TO PAY EQUITY INQUIRY RECOMMENDATIONS

Overarching DCA position

DCA congratulates the Australian Government for taking this significant step in beginning to address gender wage and salary disparities on this national and whole-of-community basis. Such an inquiry is particularly pertinent given this year marks the 25th anniversary year of Australia's ratification of the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

Committed to closing the gap

DCA members are committed to closing the pay equity gap between men and women. Findings from the DCA-EOWA poll demonstrate that this commitment is overwhelmingly shared by business and the Australian community more generally.

Gender productivity gap

DCA advocates the Federal Government adopt a "gender productivity gap" positioning as undertaken in the United Kingdom¹⁹. Here, pay equity was considered as a "gender productivity gap", in recognition that women's position in employment has implications not just for their pay, but also for the UK's productivity and economic performance. Using the pay gap as a starting point, researchers commissioned by the UK government investigated what this gap meant for broader economic objectives relating to output and productivity levels. Productivity is important as it is a key factor in raising the rate of economic growth. The researchers found that labour market failures including "out-moded rigidities" due to occupational sex segregation and limited flexibility needed to enable women to combine caring and employment, were preventing the most effective deployment of labour. This was interfering with the best allocation of resources and thus lowering the productivity of the British economy.

DCA concurs with this view and suggests that such a conceptual framework should be applied in the Australian context and adapted to Australian exigencies.

Business leadership position

DCA members have adopted a leadership stance with respect to pay equity, in the absence of a federal government policy framework and the under-utilisation of state legislative/policy framework positions by the traditional industrial relations parties.

Leading DCA members realise the business benefits associated with addressing pay equity. As EOWA notes²⁰, organisations that ensure they remunerate staff equally signal their commitment to their employees and this commonly translates into increased job satisfaction, greater employee productivity and improved employee loyalty. Additionally, such organisations will be less likely to be exposed to costly,

¹⁹ Walby, S. & Olsen, W., 2002. *The impact of women's position in the labour market on pay and implications for UK productivity*. Report to Women and Equality Unit November 2002.

²⁰ EOWA web-site. Available at: http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/About_Equal_Opportunity/Why_EO_Makes_Business_Sense.asp

time-consuming and damaging discrimination complaints as a result of unequal remuneration.

Leading DCA members such as AMP Limited, the Cancer Council Queensland, Lend Lease, and the National Australia Bank (NAB) and have taken action to progress pay equity in their own organisations.

In the late 90's, AMP Limited developed an innovative campaign to lift the profile and recognition of personal assistants within AMP. Consultation around AMP indicated PAs were not getting the same opportunities as other employees, as their roles could be undervalued, invisible and often having less robust career support. AMP undertook a job evaluation process that involved describing and articulating the role of PAs with a focus on the business strategy. They discovered there were about 55 poorly defined job titles for similar roles within the organisation. With this in mind, it was not surprisingly that PA roles were not well understood and career paths well-defined. To address this, the number of PA job titles was refined to five, with two to three different job levels created within each title. One important part of the process was making sure the roles were well described and then determining that they were appropriately paid. This entailed external bench-marking to ensure the jobs were properly valued and remunerated. Comparisons were also made with other jobs with similar work value and skill requirements, such as IT or customer service roles. In addition to redefining PA roles, AMP also developed a program of work-based learning for PAs which gave them the opportunity to develop key skills, build business acumen and value their own contribution to the business. PAs could choose to work towards formal external qualifications with recognition of on-the-job learning and prior learning. Anecdotal evidence suggests this program has improved participants' performance, increased their confidence, given them a clearer connection with the business, and improved the promotion prospects for many PAs²¹.

Cancer Council Queensland has reduced its gender pay gap to 4.3% as a result of a number of strategic initiatives. This gender pay gap compares very favourably to the average community sector gap of 30%. Cancer Council Queensland provided greater transparency in remuneration practices through publishing pay scales and informing each staff member where they sat in relation to this and through developing and publishing clear descriptions and expectations for various job levels. Cancer Council Queensland also advised and counseled managers on how to make gender-neutral remuneration-related decisions in an effort to raise managerial skills in this area.

At Lend Lease, when an in-house networking group was formed, female employees discovered this provided a forum in which issues such as pay equity could be raised. The networking group called the Women in Property Advisory Committee (WIPAC), met monthly to network and provide mutual support for women. Activities of the group included documenting experiences and hosting events such as debates. One outcome of the meetings was a request for a salary parity review, which management willingly undertook. Initial analysis showed that it was difficult to compare like with like, as certain job categories were dominated by women and others by men. Engineers were selected as a relevant peer group with sufficient women represented to give

²¹ EOWA web-site. Available at:
http://www.eowa.gov.au/About_Equal_Opportunity/Key_Agenda_Items/Pay_Equity/Revaluing_Womens_Work.asp

statistically valid conclusions. A detailed analysis was undertaken, reviewing compensation, performance bonus rewards and career progression amongst engineers. It was felt that in a male-dominated organisation, this professional group was most likely to demonstrate whether there were any differences for women in terms of pay. The review found that women remained longer in each role than their male counterparts, and were remunerated at a lower level, for the same number of years in the industry. Women did get better pay increases than men in this professional group but men were consistently better rewarded through performance bonuses. As well as the above discrepancies, men were presented with challenges earlier in their career by getting higher-profile job placements on bigger, more complicated projects, which they were rapidly cycled through, exposing them to complex managerial and leadership tasks as well as to the more senior project staff in the company. It was concluded that the opportunity to succeed or excel was more available to men within the company than it was to women. As a result of this review, succession planning, talent management and project resource selection were identified as priorities. Significantly, identified pay discrepancies were addressed in some cases by a one-off salary adjustment. Going forward, processes for the comparison of salaries and bonuses have been improved across the whole company. Other initiatives have also been introduced, such as a gender inclusive language policy; development programs for women in the workplace, now in their third year; gender awareness programs for male managers, now in their second year; debates; and other initiatives. Line managers are not only encouraged but are required to ensure that they are well acquainted with the professional circumstances of their direct reports, including their experience, skills and aspirations, to ensure that they are fully informed when allocating people to projects. Accordingly, the activities of WIPAC have now been largely replaced by management practice, supported by human resource processes²².

In 2006, NAB in collaboration with the Finance Sector Union (FSU), conducted a pay equity audit using EOWA's Pay Equity Tool as part of the development process of an enterprise agreement that included a formal commitment to reducing the gender pay gap. In addition to this audit, NAB has also recently made some significant changes to its remuneration framework with transparent market pay information available to employees for jobs across the organisation.

Robust non-mandatory approach

DCA supports the federal government adopting a robust non-mandatory approach to progressing pay equity, emphasising greater education and information and better data analysis and monitoring. The recommendations below are premised on such an approach. They are based on DCA's extensive experience working closely with members and on the results of polling as indicated above.

²² EOWA web-site. Available at: http://www.eowa.gov.au/Developing_a_Workplace_Program/Six_Steps_to_a_Workplace_Program/Step_2/ Pay_Equity_Tool/case_study_2/introduction.htm

Recommendation 1: Establish Women and Work Office, including EOWA and a pay equity function

DCA recommends that a Women and Work Office be established, including the existing infrastructure and branding that EOWA has established (in recent years in particular) and including a pay equity function.

Such an approach reflects that adopted in the UK – in 2004, the UK Government announced the establishment of the Women and Work Commission which was given the remit of considering how to close the gender pay and opportunities gap.

Such an office would include EOWA's current function to administer the *Equal Opportunity for Women in the Workplace Act 1999* (Commonwealth) and educate, assist and support organisations to achieve equal opportunity for women. It would have additional non-legislative based pay equity function. This would entail educating the general community about pay equity, as well as educating, assisting and supporting the business community to progress pay equity.

Consideration should be given to such a pay equity function also being integrated into other appropriate government department and agencies to enable pay equity for other diversity groups in the community to be investigated (e.g. Aboriginal Australians, Torres Strait Island Australians, people with disabilities etc).

Acting on this recommendation would enable the Australian Government to raise community awareness and understanding of pay equity (previously identified from DCA experience and the DCA-EOWA poll as a serious concern). Such an office would ensure pay equity remained on the community and business agenda. Basing this office on EOWA would enable the government to leverage off the good work already being undertaken by EOWA (e.g. pay equity data analysis, information and tools).

Recommendation 2: Ensure Women and Work Office (including EOWA) sits under DEEWR, with joint reporting to DEEWR and the Minister for Women

DCA recommends that the Women and Work Office (including EOWA) reside in the Department of Education, Employment and Workplace Relations (DEEWR) portfolio to 'mainstream' gender diversity and equity and encourage it to be viewed as a business productivity issue in the business and Australian community.

DCA suggests that this office should jointly report to DEEWR and the Minister for the Status of Women to ensure the focus on gender diversity and equity stays strong and that gender diversity and equity are considered from both business community and general community perspectives.

Recommendation 3: Resource Women and Work Office (including EOWA) to raise community awareness

DCA recommends the proposed Women and Work Office be resourced to educate and support the general community in relation to pay equity. This would include raising awareness and understanding about pay equity including (but not limited to) what it means, what causes it, and how it can be addressed. The DCA-EOWA poll results indicate that raising general community awareness is key to addressing pay equity.

More specifically, DCA suggests that the proposed office conducts education campaigns that:

- Encourage the community to value ‘women’s work’ and ‘women’s working patterns’, and
- Raise awareness about the existence of pay equity, what constitutes pay equity (i.e. beyond equal pay for equal work to equal pay for work of equal value) and what actions people, organisations, and the government can take to close the gap (EOWA’s recent Gender Pay Equity day is an example of such a campaign).

Other education campaigns could aim to encourage women into non-traditional sectors and occupations, and target female students and career advisors to raise awareness about the significance of negotiating good starting out salaries and making career choices which pay well.

DCA also suggests information and guidance be provided for working women on negotiating, bargaining, and recognition of skills, and for unions on supporting pay equity in collective and multi-employer bargaining.

Recommendation 4: Resource Women and Work Office (including EOWA) to educate and support business

DCA recommends the proposed Women and Work Office be resourced to educate and support the business community in relation to pay equity. This would include raising awareness and understanding about pay equity including, what it means, what causes it, and how it can be addressed. The DCA-EOWA poll results indicate that raising business sector awareness is key to addressing pay equity.

More specifically, DCA suggests that the proposed office *establish a suite of tools* that could support gender pay equity at the workplace level including for instance pay equity auditing tools, job valuation processes, and action plans and remedies. Such tools could build on EOWA’s existing pay equity information and tool, HREOC’s Equal Pay Handbook, and Western Australia’s Pay Equity Office educational materials. Consideration should also be given to work undertaken in international arenas including Canada (specifically Ontario and Quebec), the UK and New Zealand.

DCA also recommends the proposed office develop and make available *best practice case studies*. It is DCA’s experience that good work is being undertaken by leading diversity employers but that resources need to be allocated to identify, capture and disseminate these examples of good practice.

DCA notes that it is important that tools developed by the proposed office ensure they educate employers about the importance of *providing access to development and promotion opportunities for women on flexible arrangements and maternity/parental leave*. This could be done for instance through integrating educational material into existing EOWA employment matters guidelines and tools and through guidelines which may be developed as part of the proposed ‘Right to Request’ in the National Employment Standards.

Recommendation 5: Resource Women and Work Office (including EOWA) to improve data analysis and monitoring

DCA recommends the proposed Women and Work Office be resourced to enable better pay equity-related data analysis and monitoring to be undertaken. In particular DCA members would welcome leading edge industry-specific benchmarking information on pay equity gaps and women in senior roles as this would provide a meaningful point of comparison and act as an incentive to their organisations to aspire to industry best practice.

Recommendation 6: Fund pay equity research

DCA recommends the government fund pay equity research to assist with data analysis and monitoring and educate business and community. Examples of research that could be undertaken include:

- Economic modeling to demonstrate productivity cost,
- Business and workplace solutions that work - building on the experiences of leading diversity employers,
- Gender-neutral remuneration and job evaluation/classification systems, and
- Leading edge industry-specific pay equity gap benchmarks.

Implementing this recommendation would provide the business community with much needed evidence-based business case material, best practice benchmarks, and guidance on addressing pay equity.

Recommendation 7: Consider employer tax incentives to improve women's workforce participation including in non-traditional areas

DCA recommends that, following the UK's 2001 Kingsmill Report into Women's Employment and Pay, consideration be given to providing employer training incentives to improve women's workforce participation. For instance, employer tax credits could be given for employers recruiting and training women in occupations in which women are significantly under-represented. Employer tax credits could also be provided to employers training groups of women who have been identified as being likely to receive training. Such groups were identified in the 2004 Review of the Gender Pay Gap in Western Australia as including female casual and part-time workers, carers of very young children, women in lower level jobs, and women in feminised industries²³.

Implementing this recommendation would address the gender productivity gap by providing women with greater opportunities to access the employment market, including occupations and industries in which they are under-represented.

Recommendation 8: Consider superannuation changes to reduce the gender gap

DCA recommends the government give consideration to implementing superannuation-related initiatives to reduce the gender pay gap. Currently, women's average superannuation payout is half that of men's²⁴, in part as a consequence of

²³ Todd, T. & Eveline, J., 2004. *Report on the review of the gender pay gap in Western Australia*.

²⁴ Australian Institute of Superannuation Trustees (2008). *Media release on paid maternity leave*. June 6 2008. Available at: http://www.aist.asn.au/Pages/Footer/SubPage_Media/AISTMedia/documents/06-06-08-MaternityPayments.pdf

having interrupted work patterns due to care-giving responsibilities. Initiatives could include continuing the government's co-contribution scheme for low-income earners, adding a super component to government-funded paid maternity leave, and removing the 15% contribution tax on super for women while they are out of workforce.

Recommendation 9: Introduce 14 weeks government funded paid parental leave

DCA recommends the government introduce 14 weeks government-funded paid maternity leave (see DCA Paid Maternity Leave Submission). Consideration should also be given to adding a superannuation component to this essential employment market-linked payment.

This would positively impact on the gender productivity gap through increasing women's participation in the labour market. Analysis of paid maternity leave provisions against workforce participation rates in OECD countries indicates paid parental leave has a positive impact on labour force participation²⁵. These findings are borne out by high female workforce participation rates in countries which have led the way internationally with respect to paid maternity and parental leave provisions - in Sweden and Denmark female workforce participation rates have been over 80% since 1981²⁶.

Recommendation 10: Implement recommendations from the Inquiry into Better Support for Carers to generate a more accessible labour market for care-givers

It is DCA's view that the general and business community would benefit from a more strategic whole of government approach to considering care-giving. This would entail adopting a lifecycle approach that includes childcare (beyond 0-5 age range), eldercare, and care of people with disabilities. In relation to this, DCA supports the federal government's recent Inquiry and looks forward to hearing about proposed options for generating a more accessible labour market for Australians with care-giving responsibilities. Fundamentally, DCA considers that such options should legitimise women's working patterns and enable them to access meaningful well-paid permanent part-time and flexible work arrangements.

²⁵ Jaumotte, *ibid*

²⁶ Jaumotte, *ibid*