



SUBMISSION ON BEHALF OF THE AUSTRALIAN FEDERATION OF
EMPLOYERS AND INDUSTRIES (AFEI)

REVIEW OF THE EQUAL OPPORTUNITY FOR WOMEN IN THE
WORKPLACE ACT 1999

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1. The Australian Federation of Employers and Industries (AFEI), formed in 1904, is one of the oldest and most respected independent business advisory organisations in Australia. AFEI has been a peak council for employers in NSW and has consistently represented employers in matters of industrial regulation since its inception.
2. With over 3,500 members and over 60 affiliated industry associations, our main role is to represent, advise, and assist employers in all areas of workplace and industrial relations and human resources. Our membership extends across employers of all sizes and a wide diversity of industries.
3. AFEI provides advice and information on employment law and workplace regulation, human resources management, occupational health and safety and workers compensation. We have been the lead employer party in running almost every major test case in the New South Wales jurisdiction.
4. AFEI is a key participant in developing employer policy at national and state (NSW) levels and is actively involved in all major workplace relations issues affecting Australian businesses.

5. The premise that differences in women and men's earnings in the workplace is attributable to discrimination by employers remains the cornerstone of regulation in this area, and the justification for further regulatory indicatives. The extent of inequality at work and the contribution to that inequality by employer discrimination is debatable. It is questionable whether further regulatory measures can alter the relative positions of women and men in the labour market given the extent of legislation already in place to eliminate alleged discrimination and protect and promote women at work.
6. The Review Paper uses earnings, occupational segregation, and international measures to assert the inequitable position of women.

Inequitable earnings

7. Highly aggregated measures of average weekly ordinary time earnings and earnings over a lifetime produce the largest raw gap in male and female earnings. Other than their value in media headlines, such measures are limited in their usefulness in understanding labour market equality of opportunity issues. An accurately informed understanding must underpin regulatory decision-making. In terms of aggregated data, hours worked or paid for basis ¹ is a better comparator as a measure of the "gap" but sheds no light on the reasons for that gap, be it discrimination on the part of employers or labour market and other characteristics of women workers.

¹ ABS Submission House Of Representatives Standing Committee On Employment And Workplace Relations Inquiry Into Pay Equity

8. The Review Paper refers to women's lower earnings over a lifetime. As the AMP/NATSEM Report itself makes clear, lower earnings are largely attributable to women's greater share of child raising, length of time out of the workforce or working fewer hours for family and care purposes.²
9. This accords with the most commonly identified reasons for lower earnings for women with children:
 - fewer years in employment
 - shorter hours due to part-time work
 - lost experience and missed promotion opportunities.
10. Increasing women's earnings overall to achieve parity with men's, for both leave takers and childless workers, could only be addressed by artificial changes in the labour force which seek to create identical profiles for men and women. This involves removing the impact of part time work (despite working part time being a clear preference for the great majority of part time women workers³), length of time out of the workforce, and altering the initial qualification, skill and eventual experience levels for women. It is these variables, and continuity of full time employment which have the most clearly demonstrable effects on women's earnings.

² AMP.NATSEM INCOME AND WEALTH REPORT ISSUE 22 - APRIL 2009

³

http://betaworks.abs.gov.au/betaworks/betaworks.nsf/projects/MeasuresOfAustralia'sProgress/individuals/work/diff_male_female.htm

11. These identified effects are compounded at lower skill levels, as lower skilled workers take longer periods out of the work force (voluntarily and involuntarily). If women are to be artificially compensated by employers for these factors contributing to their differing labour market characteristics compared with men, there will be certain and adverse effects on their employability. Similarly, if employers are to be “coaxed” into changing their employment profiles to remove male – female labour market characteristics (more men using flexible work provisions or spending more time out of the workforce, for example) considerable adverse labour market intervention will be required, with attendant costs. In addition, time spent in or out of the workplace stems from decisions which are ultimately made by the employee, no matter what range of options may be provided by the employer.
12. Those seeking to change corporate culture so that employers are forced to accept full commitment for the newly defined well being of their employees’ families see this equal sharing as crucial. It is argued that until men share parenting equally with women and this is recognised by the labour market, time off to care for families, particularly lengthy leave, will continue to disadvantage women by jeopardising their career prospects, reducing their income levels and reinforcing gender discrimination.
13. However results from social engineering have proved elusive, even in countries such as Sweden which has had a system of comprehensive work/family arrangements for over 25 years, and has made significant efforts to increase men’s use of parental leave, including moves to compel employers to “inspire and motivate” fathers to take leave. It appears easy to incentivize fathers to take

parental leave but long term behavioural change is harder, and cannot be all done at the workplace.⁴

14. Given that we have already faced skill shortages and looking to future skill levels that will be required, the most effective means of ensuring earnings parity is allowing employers to seek the best person for the job and for the government to focus on women having the skills needed to be in the labour market and to enter high income occupations. In the highly competitive labour markets which we have experienced before and expect employers to face in the coming decade, issues of discrimination are irrelevant.

Occupational Segregation

15. The Review Paper refers to the continued occupational segregation between men and women. Whilst moving women into male dominated, higher paying occupations such as mining and some trades areas may appear to be the solution, there remains doubt about the actual effect of removing gender bias in the overall occupation structure. Some researchers have noted that women in Australia are advantaged, rather than disadvantaged, by their occupational distribution.⁵

International Measures

16. Where Australia fits in the international perspective will always be a matter of what is being measured and what measurement is used. Alternative perspectives to those put in the paper may be found in OECD comparisons where Australia has been variously described as

⁴ Ekburg J et al 'Parental Leave An Evaluation of the Swedish Daddy Month Reform' IZA Discussion Paper 1617 May 2005; Duvander A et al Swedish parental leave and gender equality Institute for Future Studies 2005

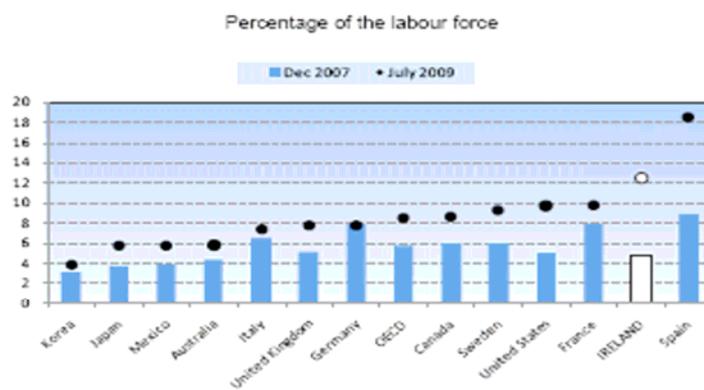
⁵ Cobb-Clark, D. and Barón, J.D., 'Occupational Segregation and the Gender Wage Gap in Private- and Public-Sector Employment: A Distributional Analysis' IZA Discussion Paper June 2008;

above the OECD average for key work and family outcomes ⁶; and for income inequality (ie the relative absence of inequality) ⁷.

17. Women's earnings remain below those of men in all countries and although employment rates for women in the Nordic countries have always been above average, with or without children, these countries have among the highest levels of occupational segregation, higher than Australia's. ⁸ Further pay differences in Sweden, for example remain significant, and are not narrowing. ⁹

18. The value of an index measuring changes in equality absent any measure of overall economic opportunity to obtain a job and remain employed is questionable. Australia's overall economic performance and employment levels in particular exceed those of New Zealand, the United Kingdom and Ireland. The economic advantage for women in the Australian labour market compared with labour markets in those countries ranked higher than Australia by the World Economic Forum is apparent from the following table: ¹⁰

Figure 1: Unemployment rates in December 2007 and July 2009 in selected countries



⁶ OECD 2007 Bosses and Babies Reconciling Work and Family Life

⁶ Society at a Glance 2009: OECD Social Indicators - OECD © 2009 - ISBN 9789264049383

⁸ OECD Employment Outlook July 2002 Women at Work: who are they and how are they faring?

⁹ http://www.oecd.org/document/62/0,3343,en_2649_34819_34916798_1_1_1_1,00.html

¹⁰ OECD Employment Outlook 2009 data country Ireland

<http://www.oecd.org/dataoecd/61/55/43707134.pdf>

19. Whilst New Zealand has a higher employment rate for women than Australia (69.0% compared with 66.7%), Australian employment overall grew by 2.1% and our GDP by 2.3% compared with a 1.6% decline in New Zealand's GDP and employment growth of 0.6% in 2007-2008.

Long and Inflexible working hours

20. The Review Paper notes that

“it is clear that a major obstacle to equal employment opportunity is the capacity for women and men to manage their work, life and family responsibilities. Long and inflexible working hours may preclude many workers with family responsibilities from pursuing particular career paths or job opportunities.”

21. Attacking and seeking to remove the scourge of a so called “long work hours culture” is ever present in the objectives of social reformers, along with the argument that inflexible work arrangements stifle work opportunities for men and women alike.
22. Whilst the distribution of hours worked have dispersed over the past two decades, most of the change is attributable to more people working shorter hours (through the growth in part time work). The share of people working long hours is also greater, but is both much less sizeable than the growth in the part time employment share and largely restricted to the period prior to 1994.¹¹ Since that time the share of long work hours has declined, to around 16% of the workforce. These longer hours are mostly worked by senior managers, professionals and the self employed, with the longest

¹¹ Wooden M and Drago R “The Changing Distribution of Working Hours In Australia” Melbourne Institute of Applied Economic and Social Research Working Paper No 97/07 July 2007

hours worked in agriculture and the mining industry- working hours are not evenly distributed across industries and sectors. More recently aggregate average hours have fallen from 34.7 hours in 2004 to 33.6 in 2009.¹²

23. Given the extent of past labour market reform, regulatory intervention and skill shortages, inflexibility at the workplace and in working hours is unlikely to be a key driver of demands on workers with family responsibilities. The employee right to request flexibility was enshrined in WorkChoices legislation, which was continued and expanded in the Fair Work Act, as well as in anti discrimination legislation. In addition, individual and enterprise arrangements routinely provide for flexible work arrangements. These are enforceable rights; any employee who believes they have been denied access to more flexible arrangements has recourse to both industrial and anti discrimination tribunals.

The Role of EOWW legislation and the Agency

24. We have consulted with members to ascertain their views on aspects of the legislation and the operation of the agency. Most were organisations of between 100 and 150 employees. All had reported to the Agency.
25. Some organisations, predominantly with a high visibility and well resourced, had all available “employers of choice” mechanisms in their employment policies. Regardless of the regulatory environment in terms of equal opportunity, they have in place (and will continue to use) the employment and workplace strategies needed for their organisations.

¹² Australian Bureau of Statistics • Australian Labour Market Statistics • 6105.0 • Oct 2009 Table 2.7

26. For others there was an attitude of resignation; one of “we are doing all we can and yet more is going to be foisted on us”. Those which faced the most difficulty in producing measurable change were organisations with a very high proportion of women workers, and those who had difficulty attracting women into their workforce. For the former, the following was a typical comment on the question of reporting requirements being beneficial for organisations:

No, they are cumbersome, difficult and frustrating. The education environment is predominantly female, at all levels, one of the biggest challenges is having enough male teachers in disciplines such as primary teaching.

27. For employers with low numbers of women working in their industry, there was a sense of “what more can we do?” They have recruitment strategies at school and tertiary level to attract women entrants, training programs and flexible work arrangements. Yet they struggle to find sufficient numbers of interested women workers. Reports filed with EOWW show similar outcomes. The companies are more than willing to be equal opportunity employers, but more women need to apply for these jobs and make long term careers to produce the results we might all reasonably seek.
28. Given the over three decades of legislative, cultural and organisational change which has permeated the way in which employers operate today, equality of opportunity is an assumed, not an imposed obligation. The cultures in which organisations operate now are removed from the legislative and reporting requirements of the EOWW regime. These are regarded as “window dressing” or anachronistic, a “tick box exercise” to complete whilst the real focus is finding the “best” person or, in a tight labour market, any person to do the job:

We recognise the value of potentially valuable workers. We seek our stars of the future and had robust internal practices which identify development opportunities.

29. In the past, organisations had benignly reported that filing reports was of benefit in identifying how and where inequality was arising. Such benign acceptance appears to be much less evident now and most employers we talked to saw reporting as an onerous and unhelpful procedure. The exemption, once deemed compliant, was welcomed.
30. There is a preference for the reporting requirements to be removed and replaced with a greater emphasis on assistance and useful information on arrangements which are effective for the organization and the employee. If retained, reporting should not be made more arduous, extended into areas such as wage auditing or widened in its coverage of employers.
31. Similarly, program requirements are viewed as “preaching to the converted” or of little practical help:

The programs become too onerous and while its on the radar for organisation such as ours eventually, you simply run out of program initiatives.

and

As the organisation is small/medium approx (150 staff), we have line managers and senior managers and no where else to go. So moving up the levels may be an impediment due to no other levels for them to advance. At the same time there are opportunities as they appear for lower levels of staff to move up the levels as appropriate.

32. In general, employers did not support the view that there should be an expanded or upgraded role for the Agency. Most considered that education and information should be the Agency’s priority.

Legislative Overlap and Potential New Obligations Arising from Current Reviews

33. It is very clear from our discussions with employers that they are acutely conscious of their increased and onerous regulatory obligations over the past decade. Employers have faced a range of escalating regulatory requirements in the area of discrimination and equal opportunity. These have been linked to occupational health and safety obligations; the requirement to provide for the welfare of employees and to ensure their safety at work. Employment obligations, such as the right to request flexibility at work, are now linked to the occupational health and safety obligation to provide a workplace which is safe and risk free.
34. Given the rise in workers compensation claims for anxiety disorder and similar conditions, employers are questioning their ability to provide workplaces which offer the “work life balance” which some employees desire, comply with discrimination legislation and have the requisite personnel to operate efficiently.
35. This is now a significant issue for employers given the recently amended Disability Discrimination Act and the introduction of adverse actions provisions in the Fair Work Act.
36. In this context employers are looking closely at the raft of regulation which covers a very basic requirement from their perspective – the best person for the job and having sufficient staff available to get the job done whilst remaining efficient and competitive. Many employers with “front line” staffing needs, such as childcare, community service, health care question their ability to provide additional workplace flexibility without incurring additional costs to cover the work of absent employees.

37. The combination of these regulatory requirements and the as yet unknown outcome of two parliamentary inquiries in the areas of sex discrimination and pay equity raise questions about the likely imposition of more stringent obligations on employers. Any review of the EEOW legislation which produces an even greater regulatory burden will be detrimental, particularly if the outcome when combined with other legislative requirements is complex and punitive. In this review regard should be had for the future competitiveness of Australian industry and the preservation of jobs.
38. AFEI is a member of the Australian Chamber of Commerce and Industry and gives broad support to its submissions made to this review of the Act.