



Australian
Human Rights
Commission

everyone, everywhere, everyday

Inquiry into the *Equal Opportunity for Women in the Workplace Act 1999* and Equal Opportunity for Women in the Workplace Agency

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Australian Human Rights Commission Submission
to the Australian Government Office for Women

30 October 2009

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1 Introduction

1. The Australian Human Rights Commission (the Commission)¹ welcomes the opportunity to make this Submission to the Australian Government Review of the *Equal Opportunity for Women in the Workplace Act 1999* (Cth) (the EOWW Act) and the Equal Opportunity for Women in the Workplace Agency (the EOWA).
2. The Commission is Australia's national human rights institution.
3. The Commission has previously made a range of submissions and published reports about improving gender equality outcomes in Australian workplaces. The Commission refers the EOWA Review to this previous body of work, including:
 - *It's About Time: Women, Men, Work and Family* (2007);²
 - *Listening Tour Community Report* (2008);³
 - *Submissions One and Two to the Productivity Commission Inquiry into Paid Leave for Parents* (2008);⁴
 - *Submission to the Inquiry into Better Support for Carers* (2008);⁵
 - *Submission to the Senate Committee Inquiry into the Effectiveness of the Sex Discrimination Act* (2008) (submission to the SDA Review);⁶
 - *Submission to the House of Representatives Inquiry into Pay Equity* (2008);⁷
 - *Submission to the Inquiry into Australia's Future Tax System (Retirement Income System)* (2009)⁸; and
 - *Accumulating Poverty? Women's experiences of inequality over the lifecycle* (2009)⁹
4. The Commission builds on this body of work in order to present this Submission to the EOWA Review. It also makes a range of new recommendations, particularly directed to reforms to the EOWW Act and Agency, as well as changes to the ASX corporate governance arrangements.

2 Executive Summary

5. The EOWA Review provides a unique opportunity to strengthen Australia's national laws and institutions that regulate gender equality in Australian workplaces.
6. Gender inequality continues to be a significant problem in Australia, and progress to address this inequality has stalled. For example;
 - Australia is ranked 1st on women's educational attainment but only 50th for women's workforce participation;
 - Women are only paid 83% of the pay of men for work of comparable value (based on ordinary full-time earnings);
 - Women hold only 8.3% of Board Directorships, 2% of CEO Roles, and 10.7% of Senior Executive Positions;
 - 22% of women (compared to 5% of men) have experienced sexual harassment at work;
 - Almost one in 5 pregnant women in paid employment experience difficulty in her workplace linked to her pregnancy;
 - Women continue to do the vast majority of unpaid work, even when they are also in paid work; and
 - Women on average accumulate only half the retirement savings of men over their lifetime.
7. The case for reform is clear.
8. There are several major benefits which would flow from achieving gender equality in the workplace. In particular, achieving gender equality will significantly improve:
 - women's economic security;
 - business and organisational performance; and
 - national productivity.
9. It would also ensure that Australia has met its international human rights and labour rights obligations.
10. Achieving gender equality in Australian workplaces should be a national priority.
11. The EOWW Act and Agency, the subjects of this Review, form one of the three major national statutory schemes that regulate gender equality in the workplace. The other national statutory schemes are:

- The *Sex Discrimination Act 1984* (Cth) (the SDA), administered by the Australian Human Rights Commission (the Commission), including the Sex Discrimination Commissioner (SDC); and
 - The *Fair Work Act 2009* (Cth) (FWA), administered by Fair Work Australia and the Fair Work Ombudsman (FWA/Ombudsman).
12. Another important regulatory element is the ASX Corporate Governance arrangements for publicly listed companies.
13. Whilst each of these national statutory schemes makes positive contributions to promoting gender equality in the workplace, the evidence is clear that the current system needs to be reformed.
14. There are several objectives that should drive the reform of the EOWW Act and Agency and associated legislative and institutional arrangements. These are:
- greater clarity and cohesion amongst national regulatory schemes;
 - promotion of gender equality rather than equal opportunity for women;
 - improved transparency and accountability at the national level;
 - greater emphasis on outcomes rather than processes in mandatory Employer Reporting Obligations;
 - greater certainty for business and employers;
 - full coverage of employers;
 - targeted effort to close the gender pay gap; and
 - special measures to fast track achieving substantive equality in leadership.
15. These objectives are discussed in order below.

Greater clarity and cohesion amongst national regulatory schemes

16. There is currently a lack of clarity about roles, responsibilities and priorities for the EOWW Act and Agency, the SDC/Commission and the FWA/Ombudsman. This leads to the national regulatory arrangements being less effective than they could be. The Commission proposes that the following lead roles and responsibilities for each of the three statutory schemes should underpin the reform process:
17. The EOWA, as a gender specific agency, should lead:
- coordination within the Australian Government on action to achieve gender equality in Australian workplaces in partnership with the Australian Government Office for Women (OFW);
 - collaboration with employers, including Australian business, Australian Government departments and statutory authorities, to promote strategies,

and positive action by employers to achieve gender equality in Australian workplaces, including through education.

18. The Commission, represented where appropriate by the SDC, as a statutory authority with gender-specific functions and with an established enforcement and monitoring role, should lead:
 - enforcement, particularly at a systemic level, to ensure compliance with gender equality workplace obligations;
 - education and advocacy about the gender equality rights of workers; and
 - independent monitoring and reporting to the Australian Parliament and the public on progress in achieving substantive gender equality, including in Australian workplaces.
19. The FWA/Ombudsman, as general industrial relations mechanisms, should collaborate with the:
 - EOWA in its lead roles; and
 - SDC/Commission in its lead rolesto positively contribute to systemic action required to achieve gender equality in Australian workplaces.
20. The EOWA, as the primary agency charged with the promotion of gender equality in the workplace as part of the Australian Government, should therefore be retained as a stand alone regulator with gender equality in the workplace as its sole priority. It should be linked to the participation and employment areas of government, and work closely with the SDC/Commission and FWA/Ombudsman to drive systemic change within Australian workplaces (see **Recommendations 1 and 2**).

Promotion of gender equality rather than equal opportunity for women

21. The core purpose of the EOWW Act and Agency should change from being the promotion of equal opportunity for women to promoting gender equality in the workplace. This change in purpose is to ensure that action by the EOWA is clearly directed towards promoting equal outcomes for women and men (substantive equality) rather than ensuring that women have the same formal opportunities (formal equality). It is well established that, in order for women's experience of paid work to be transformed, there may be a need for women to be treated differently to men. It is also well established that men may also need to have changed experiences of paid work in order to lead to more equal outcomes between women and men.
22. The EOWW Act should therefore be amended to change its name to the *Gender Equality in the Workplace Act*, the EOWA should be renamed the Gender Equality in the Workplace Agency, and the EOWW Act should include the achievement of gender equality as a key object (see **Recommendations 3 and 4**).

Improved transparency and accountability at the national level

23. There is also a need for greater transparency and accountability at the national level about what is working, and what needs to change, in order to make adequate progress in improving gender equality outcomes. At the present time, there is a body of excellent research and reporting that is undertaken on specific issues about gender equality, both inside and outside of the workplace. However, there is no national framework to enable Australia as a nation to track systemic changes which impact on overall gender equality outcomes.
24. In particular, there needs to be an agreed set of national gender equality benchmarks and indicators against which progress can be independently monitored. This national monitoring framework would enable time-bound targets to be set for commitments to improve gender equality outcomes, including in the workforce. The national monitoring framework would also inform the design of the mandatory employer reporting obligations to the EOWA, discussed further below.
25. The Commission repeats its earlier recommendations, particularly in its *Submission to the SDA Review (2008)* that the SDC be given the role of independent monitoring and analysis of progress towards achieving gender equality in Australia. The Commission should be given the resources to develop the National Gender Equality Benchmarks and Indicators, in collaboration with the EOWA, the OFW and other key agencies, including the Australian Bureau of Statistics (ABS). The Commission, as the fully independent statutory office at the national level with gender specific functions, is particularly well placed to oversee this development work (see **Recommendation 5**).

Greater emphasis on outcomes rather than processes in mandatory employer reporting obligations

26. The Commission considers that the regulation of employers should be done on the principle of better regulation, rather than more regulation.
27. It proposes that, under the EOWW Act, the design of the mandatory annual employer reporting obligations should have a stronger focus on tracking actual changes in gender equality within the workplace. This could include, for example, changes in the pay gap, flexible work arrangements, and gender diversity in leadership roles, rather than processes such as training and mentoring schemes.
28. The EOWA should be required to issue employers with an EOWA Certification that they have met their employer reporting obligations, and the Act should require that the employer publishes both their report and Certification to all staff to enhance accountability back into the workplace. The Certifications should also be published in the Annual Report, including ASX Annual Reports where applicable.

29. EOWA certification should be a pre-condition for organisations to enter government contracts, or provide the Australian government with goods and services.
30. The EOWA should have the lead role in designing resources for employers to improve gender equality outcomes, including through online services. Importantly, it should also have the power to go behind employer reports to verify the accuracy of reported outcomes.
31. Finally, in conjunction with the EOWA, employers, groups of employers or industries should have the option of developing voluntary Gender Equality Action Plans which set clear time-bound targets for improved gender equality and strategies for achieving those targets (see **Recommendations 6, 7, 8, 9, 10 and 11**).

Greater certainty for business and employers

32. In order to offer benefits to employer/employer groups for developing concrete Gender Equality Action Plans, the Commission also proposes that it be possible for these Plans to be submitted, at the option of the employer/employer groups, for legal recognition under the SDA as a 'special measure' or legal instrument. This recognition would provide greater certainty for the employer/employer groups, operating either as a defence against claims of discrimination under the SDA (and claims of adverse action under the FWA) or at least creating a presumption of compliance with employer obligations under the national gender equality regulatory schemes.
33. This reform would be a mid-way reform towards the development of standards under the SDA (and FWA) that apply more broadly, and the creation of more general positive duty obligations on employers under the SDA, both of which were proposed by the Commission as 'options for reform' as part of its *Submission to the SDA Review (2008)* (see **Recommendation 12**).

Full coverage of employers

34. Currently, government departments and statutory agencies with 100 employees or more are not part of the EOWA Act regulatory scheme. In addition, many employers that technically are covered do not currently report, as they are not easily identified. The Act should be amended to extend coverage to government departments and statutory agencies.
35. A mechanism should also be established to identify annually all employer organisations that have 100 employees or more and advise the EOWA of the names of these organisations (see **Recommendation 13 and 14**).

Targeted effort to close the gender pay gap

36. The gender pay gap remains a major problem in Australia, and current arrangements for addressing pay inequity are inadequate. Subject to the

outcomes of the House of Representatives Inquiry into Pay Equity, the Commission proposes that the EOWA and the Commission should be funded to enable the SDC to partner in the development of a National Pay Equity Strategy. This strategy should include the gender pay gap component of the national monitoring framework, implementation of the Pay Equity Tool, and making pay rates more transparent (see **Recommendations 15 and 16**).

Special measures to fast track achieving substantive equality in leadership

37. The Commission considers that, in light of Australia's poor record on improving women's leadership roles in Australian businesses, and at board level generally, there is a case now for putting in place special measures to fast track reform in this area.
38. The Commission considers that the Australian Government has a leadership role to play, and should therefore immediately adopt a mandatory national benchmark of 40% gender diversity on all government boards within three years.
39. For other boards, there should be a two stage reform process. Initially, it should be mandatory for all publicly listed companies to adopt three and five year disclosable targets for improving gender diversity on both their boards, and at senior executive level. The exact target set can be at the discretion of the employer during this first stage. These targets should be reported to the ASX through the annual reporting process. ASX companies should also be required to report on their compliance with employer reporting obligations under the EOWW Act, by way of exception reporting.
40. After five years, if there is a lack of substantial progress, the Australian Government should consider introducing mandatory gender quotas for boards, at least on ASX publicly listed companies, with penalties for failing to meet quotas within a specified period of time (see **Recommendations 17, 18, 19 and 20**).

Associated Reforms

41. The Commission also proposes reforms to the SDA and to the FWA regulatory schemes to foster greater links and cohesion amongst the three national statutory schemes that impact on gender equality in the workplace.
42. The SDA should be amended to implement the recommendations of the Senate Standing Committee Inquiry into the SDA. In addition, the SDC/Commission should be required to notify the FWA/Ombudsman and the EOWA Agency when it commences systemic action under the reformed SDA.
43. The FWA/Ombudsman should also be required to notify the SDC/Commission when it commences systemic action to promote gender equality in the workplace, particularly when it commences an investigation or proceedings for relevant adverse action claims (see **Recommendations 21, 22 and 23**).

44. A complete list of **Recommendations** is set out in Section 3 of this Submission. Section 4 presents two diagrams, being the proposed **National Gender Equality Monitoring Framework**, as well as the proposed **Employer Compliance Framework**.
45. Sections 5 to 7 are for **Information**, with summaries of the nature and extent of gender inequality in the workplace (Section 5), why achieving gender equality matters (Section 6) and the national legislative and institutional arrangements currently in place that regulate gender equality in the workplace (Section 7).
46. Section 8 sets out the detailed **Proposals for Reform**, and the 23 Recommendations.
47. The Submission also provides more detailed information in the appendices, including descriptions of Australia's relevant international human rights and labour rights obligations (Appendix 1), the national legislative and institutional arrangements (Appendix 2) and comparisons with other countries, particularly the United Kingdom, Canada, New Zealand and Norway (Appendix 3).

3 Table of Recommendations

Objective	Recommendations
Greater clarity and cohesion amongst national regulatory schemes	<p>Recommendation 1: Status of the EOWA</p> <p>The EOWA should be the principal point of contact of the Australian Government on issues concerning gender equality in the workplace. It should remain a stand alone statutory agency, and not be incorporated into a general industrial relations system.</p> <p>Recommendation 2: Statutory Links of the EOWA</p> <p>The EOWW Act should require the Agency to work closely with the SDC/Commission and the FWA/Ombudsman as separate statutory agencies regulating gender equality in Australian workplaces (see specific recommendations for links between the SDC/Commission and FWA/Ombudsman, below).¹⁰</p>
Promotion of gender equality rather than equal opportunity for women	<p>Recommendation 3: Name of the EOWW Act and Agency</p> <p>The EOWW Act should be renamed the <i>Gender Equality in the Workplace Act</i>, and the EOWA should be renamed the Gender Equality in the Workplace Agency, or similar.</p> <p>Recommendation 4: Objects of the EOWW Act</p> <p>The objects of the EOWW Act should include the promotion of substantive gender equality in the workplace, recognising that:</p> <ul style="list-style-type: none"> • barriers to women’s equal participation in paid work are directly impacted by men also having greater access to flexible work arrangements for family and caring responsibilities; and • achieving substantive gender equality will require both removal of barriers to equal opportunity and also special measures to achieve equal outcomes for both genders in the workplace.
Improved transparency and accountability at national level	<p>Recommendation 5: Independent Monitoring of National Gender Equality Benchmarks and Indicators</p> <p>The Commission, acting through the SDC, should be the lead agency to partner with the EOWA to develop National Gender Equality Benchmarks and Indicators for Australian workplaces against which progress in achieving gender equality will be independently monitored, working closely with the FWA/Ombudsman, OFW; ABS; and other relevant bodies.</p> <p>The EOWA and other relevant bodies, including the FWA/Ombudsman and the ABS should be required to provide the SDC/Commission with disaggregated data and analysis against National Gender Equality Benchmarks and Indicators to enable the tracking at national level of progress to achieve gender equality, including in Australian workplaces.</p>

Objective	Recommendations
	<p>The Commission, acting through the SDC, should independently report to the Australian Parliament and the public on progress to achieve gender equality, including in Australian workplaces, at a minimum every two (2) years.</p>
<p>Greater emphasis on outcomes rather than processes in Employer Reporting Obligations</p>	<p>Recommendation 6: Employer reporting obligations</p> <p>Employer reporting obligations should focus on the achievement of equal outcomes for women and men in the workplace, rather than the processes used to achieve gender equality outcomes (such as specific training programs or mentoring schemes).</p> <p>Recommendation 7: EOWA certification</p> <p>When employers meet their employer reporting obligations under the EOWW Act, the EOWA should issue a Certification. Employers should be required to publish:</p> <ul style="list-style-type: none"> • Reports and EOWA Certifications to all their employees, and • EOWA Certifications in their Annual Reports, including Annual Reports to the ASX where applicable. <p>Recommendation 8: EOWA certification a pre-condition of entering contracts with government</p> <p>EOWA Certification should be a pre-condition of providing goods and services or entering into contracts with Australian Government departments.</p> <p>Recommendation 9: EOWA Employer Capacity Building</p> <p>The Agency should play the lead role in supporting employers to achieve gender equality in the workplace, for example, through a Community of Practice, in partnership with representatives of relevant employers and employee representatives including unions.</p> <p>Recommendation 10: EOWA verification</p> <p>EOWA should be empowered to conduct a verification process to establish compliance by an employer, group of employers, or industry's compliance with its obligations under the EOWW Act, including with employer reporting obligations. EOWA should provide the SDC/Commission and the FWA/Ombudsman with the results of verification processes conducted under the EOWW Act, subject to any privacy considerations.</p> <p>Recommendation 11: Voluntary Gender Equality Action Plans</p> <p>Employers, groups of employers or industry groups may voluntarily adopt Gender Equality Action Plans under the Act, which set clear time-bound targets for achieving greater gender equality in their workplace.</p>
<p>Greater certainty for business and</p>	<p>Recommendation 12: Voluntary Gender Equality Action Plans may be legally recognized under the SDA</p> <p>The SDA should be amended to provide that voluntary Gender Equality Action Plans which are compliant with the SDA (for example,</p>

Objective	Recommendations
employers	<p>as a special measure) may be legally recognised under the SDA.</p> <p>Depending on the model chosen, compliance with voluntary Action Plans legally recognised under the SDA could:</p> <ul style="list-style-type: none"> • create a presumption of compliance with the SDA and FWA, a defence to a complaint under the SDA or FWA, or be admissible as evidence in relevant proceedings under the SDA, as appropriate; • non-compliance with Action Plans under the SDA would constitute a breach of the SDA (and potentially FWA); and • the SDC would have the discretion to commence an action in the Federal Court for breach of the SDA for non-compliance with an Action Plan.
Full coverage of employers	<p>Recommendation 13: Coverage to Government and Statutory Authorities</p> <p>The EOWW Act should be amended to cover Australian Government departments and statutory agencies with 100 employees or more</p> <p>Recommendation 14: Identifying all non-reporting employers</p> <p>A mechanism should be established to ensure that all covered employers are notified to the Agency, for example, through amending the <i>Income Tax Assessment Act 1936</i> (Cth) to enable the EOWA to receive an annual list of all organisations employing 100 people or more. Pending amendment, EOWA should conduct a high profile campaign to alert all covered employers of their legal obligations under the EOWW Act.</p>
Targeted effort to close the gender pay gap	<p>Recommendation 15: Pay Equity as an ‘employment matter’</p> <p>Pay equity should be specified in the EOWW Act as a separate ‘employment matter’.</p> <p>Recommendation 16: National Pay Equity Strategy</p> <p>EOWA should partner with the Commission, acting through the SDC, to jointly play the lead role in developing the National Pay Equity Strategy for closing the gender pay gap in Australia, including:</p> <ul style="list-style-type: none"> • partnering with the Commission as the lead agency to develop National Gender Equality Benchmarks and Indicators for Australia, including regarding pay equity (see further National Gender Equality Benchmarks and Indicators, above); • implementing the Pay Equity Tool with employers; and • developing policy for making pay rates transparent in the private sector.
Special measures to fast track achieving	<p>Recommendation 17: Targets on Australian Government boards</p> <p>The Australian Government should set a minimum target of 40% of each gender on all government boards to be achieved within three</p>

Objective	Recommendations
substantive equality in women's leadership	<p>(3) years. These targets should be publicly disclosed, time bound and regularly reported on in a transparent manner.</p> <p>Recommendation 18: ASX Voluntary targets on boards</p> <p>The ASX Corporate Governance Principles and Recommendations should be amended to provide that:</p> <ul style="list-style-type: none"> • ASX companies be required to set their own gender diversity targets, at both Board and Senior Executive Level, at three (3) and five (5) year time frames; • reporting on achievement of gender diversity targets be included in the Annual Report to the ASX, by exception reporting; and • ASX companies include in their Annual Report to the ASX a statement on compliance with their obligations under the EOWW Act (or its replacement), by exception reporting. <p>Recommendation 19: Other ASX strategies</p> <p>ASX companies should consider the following strategies to improve gender equality at senior levels:</p> <ul style="list-style-type: none"> • Create an additional board position reserved for women, as a one off fast tracking measure immediately; • Ensure all vacant board positions are fully advertised, with clear competencies set, and transparent selection processes used for appointments; and • Ensure senior women are consulted during selection processes. <p>Recommendation 20: Gender quotas after five years if lack of progress</p> <p>The strategy to improve gender equality at senior levels of business has two phases:</p> <ul style="list-style-type: none"> • Phase 1 requires companies to set their own targets and report regularly on progress; and • Phase 2 is designed to commence after 5 years if companies are not at a minimum of 40% of both genders on publicly listed boards. Phase 2 involves the government giving serious consideration to mandatory quotas for all government and publicly listed boards. Failure to meet these quotas would result in financial or other penalties. <p>The Australian Government should promote an target of 40% gender balance on all boards in Australia, to be reviewed after five years. If this target is clearly not being met, the Australian Government should seriously consider legislating to require publicly listed companies to achieve a mandatory gender diversity quota of 40% within a specified time frame, failing which penalties will be imposed.</p>
Associated reforms	<p>Recommendation 21: Implementing the recommendations of the SDA Review</p> <p>The Australian Government should implement the recommendations of the <i>2008 Report of Senate Standing Committee on Legal and</i></p>

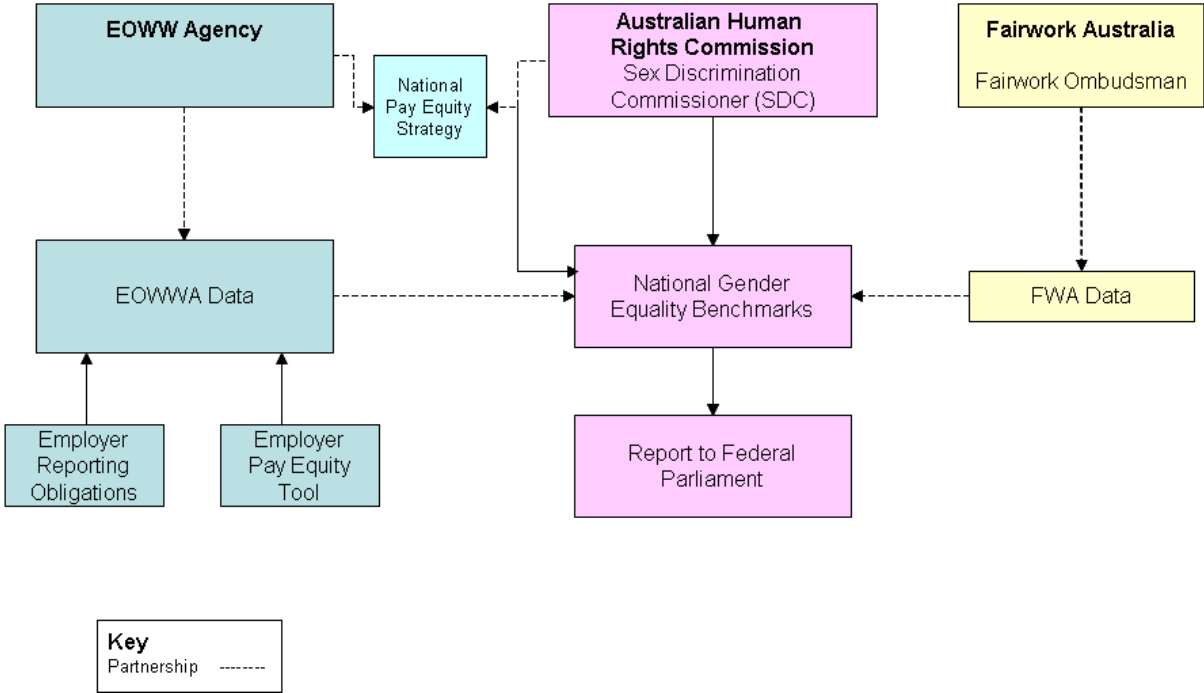
Objective	Recommendations
	<p data-bbox="450 277 1939 341"><i>Constitutional Affairs Inquiry into the Effectiveness of the Sex Discrimination Act 1984 (Cth).</i>¹¹ In particular, the SDA should be amended to:</p> <ul data-bbox="499 360 2029 1031" style="list-style-type: none"> • Ensure equal coverage for both women and men; • Extend protection from discrimination in employment on the grounds of family and caring responsibilities to cover responsibilities across the life-cycle, including creating a positive obligation on employers to reasonably accommodate the needs of pregnant workers or workers with family or carer responsibilities; • Place a positive obligation on employers to eliminate discrimination and promote gender equality; • Strengthen legal protection from sexual harassment in Australian workplaces; • Empower the Commission, where appropriate acting through the SDC, to: <ul style="list-style-type: none"> • undertake formal inquiries in relation to the elimination of discrimination and promotion of gender equality; • intervene, or appear as amicus curiae, as of right in relevant proceedings, including proceedings under the FWA; • commence proceedings for breaches of the SDA, without requiring an individual complaint; and • certify Special Measures, upon application by EOWA, or an employer. • Require the SDC/Commission to notify the EOWA and the FWA/Ombudsman where action above is taken in relation to gender equality in the workplace; and • Require the Commission, acting through the SDC, to independently monitor progress in achieving gender equality in Australia, and to report to Parliament at a minimum of every two (2) years, including regarding gender equality in Australian workplaces, against National Gender Equality Benchmarks and Indicators <p data-bbox="450 1046 1715 1078">Recommendation 22: Coordinating action between the FWA/Ombudsman and the SDC/Commission</p> <p data-bbox="450 1094 1485 1126">The FWA/Ombudsman should be required to notify the EOWA and SDC/Commission if:</p> <ul data-bbox="499 1142 1989 1358" style="list-style-type: none"> • it commences an application under s 682 of the FWA which relates to adverse action against an existing or prospective covered employee because of a relevant protected attribute, being sex, marital status, family or carer’s responsibilities and pregnancy; • a Fair Work Inspector issues a compliance notice where the Inspector reasonably believes that a person has contravened relevant provisions of the FWA¹² or a Fair Work Instrument, including amongst other things, relevant provisions of the National Employment Standards,¹³ or an equal remuneration order

Objective	Recommendations
	<p>Recommendation 23: Reporting of Data by the FWA/Ombudsman</p> <p>The FWA/Ombudsman should be required to report annually to the SDC/Commission disaggregated data and analysis required by the SDC/Commission to report on progress to achieve gender equality in Australian workplaces, in accordance with the National Gender Equality Benchmarks and Indicators.</p>

4 Diagrams of proposed national gender equality monitoring and employer compliance frameworks

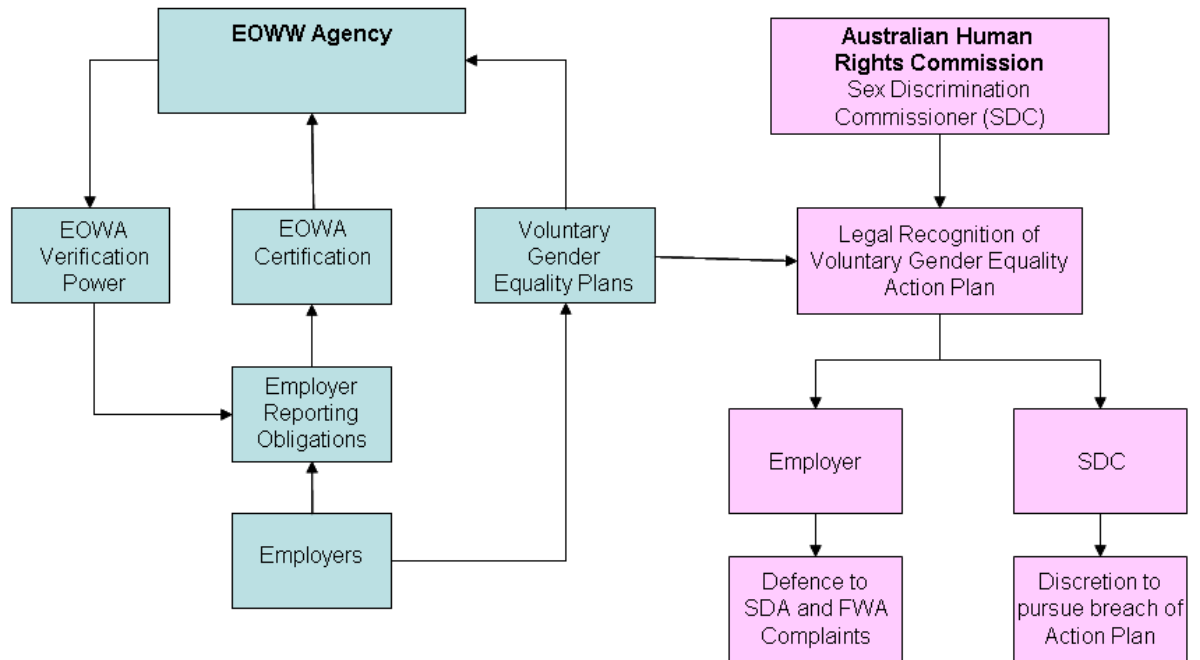
4.1 National gender equality monitoring framework

Monitoring Framework



4.2 Employer Compliance Framework

Compliance Framework



5 Identifying the problem: is there gender equality in Australian workplaces?

This section is for **Information**.

It explains that gender inequality in the workplace remains a major national problem.

The section provides an overview of the ways in which women experience gender inequality in paid work. For example:

- Australia is ranked 1st on women's educational attainment but only 50th for women's workforce participation;
- Women are only paid 83% of the pay of men for work of comparable value (based on ordinary full-time earnings);
- Women hold only 8.3% of Board Directorships, 2% of CEO Roles, 10.7% of Senior Executive Positions and 5.9% of Executive Line Management Positions;
- 22% of women (compared to 5% of men) have experienced sexual harassment at work;
- Almost one in 5 pregnant women experience difficulty in their workplace linked to their pregnancy;
- Women continue to do the vast majority of unpaid work, even when they are also in paid work; and
- Women accumulate only half the retirement savings of men over their lifetime.

5.1 Introduction: findings of the Listening Tour

48. In 2007, Elizabeth Broderick was appointed as the new federal SDC at the Commission. Commissioner Broderick embarked on a national Listening Tour over the first eight months of her term. The Listening Tour was designed to assess the current state of gender equality in Australia through hearing the direct experiences of men and women.
49. In July 2008, the SDC released the report setting out her findings from the Listening Tour, *What matters to Australian women and men: Gender equality in 2008*.¹⁴
50. The key finding of the Commissioner was that progress in achieving gender equality in Australia had stalled.¹⁵
51. In particular, the Listening Tour confirmed that women do not yet enjoy equality in the workplace. Women are still discriminated against in the

workplace both as individuals and as a group. Women's full and equal participation is impeded by a range of factors including:

- ongoing direct and indirect discrimination based on sex, pregnancy and family responsibilities;
- limited availability of quality part-time, particularly at senior levels;
- gendered assumptions about women's roles as carers; and
- a lack of family friendly work policies.

52. Many Listening Tour participants brought the SDC's attention to the gendered assumptions, attitudes, stereotypes and discrimination that contribute to women's inequality. One woman spoke of her battle to gain a promotion in a male-dominated industry:

I was overlooked for a position which I knew I had the skills and experience for. When I asked about it, management said, "That would never happen - she is a female". I asked Human Resources what avenues I had and they said, "If you want to keep working there you should keep your mouth shut".¹⁶

53. The findings of the Listening Tour about gender inequality in the workplace are consistent with discrimination complaints lodged under the SDA. In 2008/09 the vast majority of SDA complaints related to employment (91%).¹⁷ Twenty-two percent of complaints alleged pregnancy discrimination and 22% of complaints alleged sexual harassment.¹⁸

54. This section of the Submission sets out the extent to which women experience substantive inequality in Australian workforces, including in:

- workforce participation;
- pay equity and starting salaries;
- management and leadership positions;
- prevalence of sexual harassment;
- pregnancy discrimination; and
- the impact of unpaid work and family and carer responsibilities.

5.2 Women's workforce participation

55. Whilst women's participation in the paid workforce has risen dramatically in the last three decades,¹⁹ Australia lags behind many other developed countries in terms of women's workforce participation rates, ranked number 50 by the World Economic Forum.²⁰

56. As at August 2008, only 57.8% of all women aged 15 years and over were in the labour force, making up 45.3% of Australia's total labour force.²¹ This may be contrasted with Norway, for example, where 69.7% of women are in the labour force²² or New Zealand at 62.1%.²³ The participation rates of mothers with young children are particularly low when compared with comparable

OECD countries such as Canada, Sweden, the United Kingdom and the United States.²⁴

57. Marginalised groups commonly experience additional barriers to participation in the paid workforce. Women with disability,²⁵ Indigenous women²⁶ and women from culturally and linguistically diverse backgrounds have lower rates of paid workforce participation compared to the female average.²⁷ The additional barriers experienced by these groups include the non-recognition of overseas qualifications, discrimination based on race and disability and limited employment opportunities in rural and remote communities.

5.3 Pay equity and starting salaries

58. The gender pay gap in Australia persists and is evidence of ongoing discrimination against women in the workplace. The gap in ordinary full time earnings between women and men is 17.2% as at February 2009.²⁸ The gender pay gap is even greater when women's part-time and casual earnings are considered, with women earning around two thirds of the amount earned by men.²⁹ Further, women are more likely to be working under minimum employment conditions and be engaged in low paid, casual and part time work.³⁰ Australian women are overrepresented in low paid occupations and industries with high levels of part time work such as retail, hospitality and personal services.³¹
59. Graduate Careers Australia's annual *Australian Graduate Survey* details the average starting salaries of both male and female graduates. The data shows that the gender pay gap begins as soon as women enter the workforce. In 2008, new male graduates earned median starting salaries of \$47,000 compared to \$45,000 for women.³² Between 1999 and 2005 there was positive trend with women's salaries increasing from 92.3% to 97.5%. In 2006, women's salaries dropped to 95.2% and further still to 93.3% in 2007. There was a slight recovery in 2008 when women's salaries increased to 95.7% of their male counterparts.³³
60. The gender pay gap is particularly pronounced in ASX200 companies. Among the population of key management personnel for whom remuneration data was available, female median remuneration is shows a gender pay gap of 28.3% which is 11.1% higher than the national average gender pay gap.³⁴

5.4 Women in management and leadership positions

61. Despite women constituting 45% of the total workforce in Australia, women are underrepresented in leadership and management positions in virtually all sectors of the paid workforce, including the public service, academia, corporations and boards.
62. **[Public Service]** Women comprise 57.6% of Commonwealth Public Service employees. Women outnumber men at all junior classifications in the Commonwealth Public Service but are under-represented at higher classifications. The gap in women's participation increases with seniority with

women comprising 45% of Executive Level employees and only 37% of the Senior Executive Service.³⁵

63. **[Academia]** While women account for approximately 50% of lecturing staff in Australian universities, their numbers decrease significantly with seniority. Women account for 39% of senior lecturing staff and only 24.5% of academic staff above senior lecturer. At the University of Sydney, for example, only 14.5% the academic staff at professorial level and above are women.³⁶ The majority of women in the tertiary education sector can be found at the non academic classifications.³⁷
64. **[Corporate]** The representation of women in executive manager positions in ASX200 companies has decreased since the *2006 Australian Census of Women in Leadership* when 12% of Executive Managers were women and has further regressed below the standard set in 2004 when 11.4% of Executive Managers were women.³⁸ Women hold only 2% of Chief Executive Officer Positions and 10.7% of Executive Manager Positions.³⁹
65. There are also signs that this downward trend is likely to continue and possibly worsen in the coming years as the already low number of women in feeder positions to top leadership appointments decreases. Experience in line management positions is considered essential for progressing to top corporate positions. In 2008, women held 5.9% of the Line Executive Management positions. This was a decrease from 7.5% in 2006.⁴⁰ A female participant in the Listening Tour pointed out the disparity in what employers say and what they do in terms of promoting women's leadership:
- [Our CEO] has publicly said he would have 50 per cent women in his work force if he could. But then he also... set up an executive structure that is going to hinder his ability to get women into those senior positions by setting meeting times that women with caring responsibilities won't be able to attend.⁴¹
66. The majority of women who make it into executive management roles in ASX200 companies are still clustered in support roles where they are responsible for supporting main business functions (including Human Resources, Legal, Public Relations) rather than line management roles (which hold responsibility for profit and loss or direct client service).⁴²
67. Female executive managers are far less likely to be classified as line managers than male executive managers. Only 39.6% of female executive managers are considered line managers (the remaining 60.4% of female managers are considered support managers).⁴³ By comparison, the majority of male executive managers (75.3%) are line managers (with the remaining 24.7% of male managers classified as support managers).⁴⁴
68. **[Women on Boards]** EOWA's 2008 Census of Australian Women's Leadership in ASX200 companies revealed women chair only 2% of ASX200 companies (that is four boards) and hold only 8.3% of board directorships. While there has been an overall increase in the total number of board positions since 2006, the number of these seats held by women has not kept up at the same pace.⁴⁵ While two years ago 12% of ASX200 companies

boasted more than 25% of their board directors were women, in 2008 this number has halved to 6%.⁴⁶ This data represents a comprehensive decline since 2006.⁴⁷

69. This compares with 14.8% in the United States, 14.3% in South Africa, 11% in the UK, 10.2% in Canada and 8.7% in New Zealand.⁴⁸
70. While 54.5% of ASX200 companies have at least one woman in an executive management position, again this rate is lower than international comparators. In the US 85.2% of top companies have at least one woman in executive management positions as do 65.6% of Canadian companies, 60% in the UK and 59.3% in South Africa.⁴⁹ This is a dramatic change from the 2006 Census when Australia was outperformed only by the US.
71. The representation of women on Government appointed boards and committees is higher than that of the private sector but still not representative of women's interests or ability. The OFW reports that as at 30 June 2008, women comprise 33% of the total membership of Australian Government boards and bodies and 22% of Chair or Deputy Chair positions.⁵⁰ There is a higher representation of women on boards where the Australian Government has total control over the appointments.⁵¹ However, the percentage of women on Government appointed boards varies significantly across departments. In 2006, just over half of the members of Government boards and bodies in the Department of Families, Housing, Community Services and Indigenous Affairs were women. Government boards and bodies in the Departments of Immigration and Multicultural Affairs,⁵² Health and Ageing and Human Services also had high rates of women's participation (over 40%).⁵³ The Departments of Agriculture, Fisheries and Forestry; Defence and Finance and Administration had the lowest rate of women's representation on Government boards and bodies (less than 20%).⁵⁴

5.5 Prevalence of sexual harassment

72. The continuing presence of sexual harassment is a key marker of gender inequality in the workplace and one reason women do not progress. In 2008, the Commission conducted a national telephone survey to investigate the nature and extent of sexual harassment in Australian workplaces. The survey found that 22% of women and 5% of men aged 18-64 have experienced sexual harassment in the workplace in their lifetime.⁵⁵ While this was a slight decrease from the results of the same telephone survey in 2003, what was concerning was the lack of understanding about what sexual harassment is. Around one in five (22%) respondents who said they had not experienced 'sexual harassment'⁵⁶ then went on to report having experienced behaviours that may in fact amount to sexual harassment under the *Sex Discrimination Act 1984* (Cth).⁵⁷
73. Sexual harassment occurs across all sizes of employer. The 2008 Survey reported that for those who experienced sexual harassment in the last five years, there was an even spread of employer size: 39% large employers, 30% medium employers and 31% small employers.⁵⁸ The top three industries

identified by respondents who experienced sexual harassment in the last five years were: health and community services (14%), education (12%) and accommodation, cafes and restaurants (10%).

74. During the Listening Tour a female focus group participant shared with the SDC her comments on the constant self surveillance that women become accustomed to:

You wear a sack to not show yourself off, you talk to the safe people who you know [at work]. You are constantly thinking about your gender.⁵⁹

75. Over the course of the Listening Tour there was a feeling that sexual harassment was almost impossible to eradicate. On this point, one woman recounted her experience of hearing her colleague talk about a woman in a degrading manner:

I don't think there's any organisation that's ever going to be able to put their hand on their heart and say, "We are free of sexual harassment in the workplace". I was absolutely astounded a few weeks ago now. I was having a cup of coffee with a colleague and one of them had actually participated in a selection panel recently and I literally spat my coffee out because they were talking about one of the females that they had interviewed. This guy just turned around and said, "and she had the best set of tits".⁶⁰

76. A similar sentiment highlighting the pervasive and persistent nature of sexual harassment was expressed by a contributor to the blog:

I was recently sexually harassed by the boss at a work [Christmas] function and the company have since tried to sweep everything under the carpet. I have been left feeling very vulnerable and anxious. Whilst also feeling isolated by the management and workers.⁶¹

77. Nearly one in five complaints received by the Commission under the SDA relate to sexual harassment.⁶² The vast majority of these take place in the workplace. However, the Commission's survey found that overall, the number of people who have formally reported or made a complaint after experiencing sexual harassment significantly decreased between 2003 and 2008.⁶³ In 2008, only 16% of those who have been sexually harassed in the last five years in the workplace formally reported or made a complaint, compared to 32% in 2003. For those who did not make a complaint:

- 43% did not think it was serious enough;
- 15% were fearful of a negative impact on themselves;
- 21% had a lack of faith in the complaint process; and
- 29% took care of the problem themselves.

78. In 2008, a total of 22% of respondents who made a formal complaint reported that the outcome of their complaint resulted in a negative impact on them. The negative impacts include the person who experienced the harassment being transferred or changed shifts, resigning, being dismissed, demoted or disciplined or were laughed at and ostracised. During the Listening Tour, an employer confirmed that most women will attempt to deal with sexual

harassment informally or leave the workplace because of this fear of victimisation:

It absolutely still is an issue and people have a fear of making a complaint because it is a career killer. You try and deal with it informally or you just get out.⁶⁴

5.6 *Pregnancy discrimination in the workplace*

79. Pregnancy is a time when women are commonly vulnerable to discrimination and inequality in the paid workforce. This can take the form of demotions, missing out on promotions, redundancies, denial of family friendly conditions and even bullying in some cases.⁶⁵ Almost one in every five pregnant working women experiences at least one difficulty in their workplace in relation to being pregnant.⁶⁶ Over one in five of the complaints received by the Commission under the SDA were complaints of pregnancy discrimination.⁶⁷ As such, this point in the lifecycle has a significant impact on participation in the paid workforce and level of earnings. Accordingly, when superannuation balances are broken down by age, the largest widening of the gender gap occurs between the 23-34 and 35-44 age brackets, coinciding with the time when women commonly have children.⁶⁸

80. A Listening Tour participant described the experience of her daughter-in-law, which highlighted how discrimination following pregnancy can impact upon women's labour market participation:

I have a daughter-in-law who works for a call centre. She fell pregnant and had a baby. At this time her boss said that if she wanted to come back she could. After six months, he gave her a hard time and said she had to work full time if she wanted to work. He did this because he thought women should be in the home. She ended up leaving. She knew it was discrimination but he is the boss.⁶⁹

81. Women do not even have to be pregnant to experience this disadvantage. On the Listening Tour, one woman reported her experience of workplace discrimination on the grounds of potential pregnancy:

I've had a comment about me that I shouldn't be given a permanent job because I may have a baby soon. I'm not even pregnant.⁷⁰

82. The vulnerability of women's employment, including potential job losses, demotions and redundancies, arising at the time of pregnancy or returning to work following pregnancy, can have severe consequences to women's financial security and career progression.

83. During the Listening Tour, many women commented on the difficulty of re-entering the paid workforce after a break to care for children. Issues raised included the availability of work at the same level, control over the hours of work, lack of family friendly workplace policies and the need for skills development.

5.7 Impact of unpaid work and family and carer responsibilities

84. Perhaps the most fundamental barrier to women's full participation in paid work is the struggle to balance paid work with unpaid labour, including family and carer responsibilities.
85. Women continue to undertake the large majority of unpaid work in households, including caring for children and other domestic work.⁷¹ The birth of children is a key point in the lifecycle where gender inequality in the division of unpaid work commonly widens.⁷² 'Time use' studies show that the birth of a child commonly leads to mothers not only doing less paid work and more of the unpaid work of child care, but also the extra tidying, shopping, cleaning and laundry that the presence of children creates. The birth of a child results in women working incredibly long hours in both paid and unpaid work. In 2006, the total hours of work for mothers whose youngest child was between 0-4 was 85.9 hours weekly, compared to 79.6 hours for fathers, 61.3 hours for men without children and 55.5 hours for women without children.⁷³
86. The gap between women and men's earnings may also influence decisions about who undertakes paid and unpaid work in a household.⁷⁴ The gender pay gap may, in effect, force the higher earner to take on the majority of paid work while the lower earner, usually female, commonly takes on the majority of the unpaid caring work and in many cases reduces her participation in the paid workforce. During the Listening Tour one man recounted his own experience of this decision:

Doing the sums of child care can make it more economical for my wife to stay at home because she earns less than I do.⁷⁵

87. One service provider noted that closing the gender pay gap is critical for creating an environment where men can undertake greater caring responsibilities:

More and more blokes want to care for their children, but financially they are not making that decision because men are earning more. They are the breadwinners. If you do equalise women and men's pay it will create opportunities for men to do that.⁷⁶

5.8 Gendered ageism

88. Older women face particular barriers to paid workforce participation due to 'gendered ageism',⁷⁷ where gender discrimination is exacerbated by age discrimination.⁷⁸ Age discrimination creates barriers to paid workforce participation in re-entry to the paid workforce, recruitment, training, promotion, terms and conditions of employment, the balancing of unpaid work and phased retirement.
89. One way gendered ageism manifests is in the use of unlawful stereotypes and assumptions about older women workers. Such stereotypes include being perceived as 'loyal but lacking potential', 'low in energy' and 'unwilling to accept criticism'.⁷⁹ Employers may also assume that all older female workers

will have had significant breaks in their employment due to family responsibilities and will not possess the skills required for the position.⁸⁰

90. The consequences of discriminatory stereotyping for older women are far-reaching and serious. Research has shown that these stereotypes and assumptions can prevent older women from being selected for jobs or, when employed, from being considered for training and promotion opportunities.⁸¹ This has obvious consequences for older women in light of appointments to boards and access to leadership positions more generally, despite being highly qualified for such positions.
91. In the face of entrenched discrimination, older women themselves can start to believe and internalise these stereotypes and select out of work and promotion opportunities. This represents a serious leakage of talent and skills in terms of the potential leadership pool and for the Australian labour force as a whole.

5.9 Conclusion

92. It is clear that on a range of key indicators of gender inequality in Australian workplaces, including workforce participation rates, pay rates, representation in leadership positions, and experiences of sexual harassment and discrimination, women experience substantive inequality in comparison to their male counterparts.
93. As the next section explains, gender inequality in the Australian workforce matters to individuals and the entire community. It impacts harshly on individual women, has flow on effects to families, impacts negatively on businesses and national productivity. It also undermines our fulfillment of international human rights and labour rights.

6 The case for reform: why does achieving gender equality in Australian workplaces matter?

This section is for **Information**.

It sets out why achieving gender equality in the workplace matters, and the range of benefits that will be delivered.

It explains that achieving gender equality in Australian workplaces will:

- improve economic security for women;
- be better for business and other organisations;
- improve national productivity; and
- fulfill our international human rights and labour rights obligations.

6.1 *Introduction*

94. Achieving gender equality in Australian workplaces represents both a significant challenge and a significant opportunity. Australia faces a number of well documented economic and social challenges over the coming years. Chief amongst these challenges is realizing the full potential of our workforce in the context of an ageing population.
95. The three P's of economic growth – population, participation and productivity - are the levers that will assist us to meet these challenges and increase prosperity.
96. The under-employment of women is a setback to productivity and participation and detracts from economic performance. It also negatively impacts on women and men, and their children.
97. In summary:
- Greater gender equality in employment will improve women's economic security, and fulfill our international human rights and labour rights obligations;
 - Greater equality in women and men's workforce participation will have a major impact on national productivity;
 - Greater diversity including gender diversity at the senior leadership and board level will increase corporate performance;

- Businesses will be able to draw on a wider talent pool. With demographic change and an impending skills shortage, having access to the full talent pool including currently under-utilised talent pools is vital;
 - Greater gender balance at the most senior levels within companies will result in decisions that are more in touch with customer and client needs and more representative of the consumer base many companies rely upon.
98. Gender equality in Australian workplaces must be seen in a broader social context. The issue of the absence of women on corporate boards or at senior leadership level is not one which threatens basic human requirements like housing, food and safety. However, there is a strong connection between how women are treated in corporate and business life and how women are treated everywhere else across Australia. The statistics on women's leadership reflect our progress towards gender equality, as do statistics on violence against women, sexual harassment, pay equity and retirement savings. As Irene Lang, President of Catalyst recently said:
- 'Until women are equitably represented in leadership in the private, economic sector, they will be marginalised in every other arena.'⁸²
99. This section sets out in further detail the case for reform to achieve gender equality in the workforce. It highlights the benefits to women, and to fulfilling our international human rights and labour rights obligations.
100. Importantly, gender equality in the workforce will also have a major impact on national productivity, be better for business and employers.

6.2 Gender equality will improve women's economic security

101. The net result of gender inequality for a woman in her experience of paid work is a major gap in the overall economic security for women in comparison to men.
102. Overall, women earn an average of approximately 83 cents to the male dollar⁸³ and typically experience lower economic and financial security at all stages of the lifecycle.⁸⁴
103. A recent Australian study showed that, overall, a 25-year-old man is likely to earn a total of \$2.4 million in their lifetime, which is more than one-and-a-half times the \$1.5 million prospective earnings of a woman. Men who have a bachelor degree or higher and have children will earn around \$3.3 million over their working life which is nearly double the \$1.8 million that their female counterparts can expect to earn.⁸⁵
104. Women make up 73% of all the recipients of the single rate of the Age Pension⁸⁶ and single elderly female households not only experience the highest incidence of poverty compared to other household types⁸⁷, but are also at the greatest risk of persistent poverty.⁸⁸

105. The extent to which women do not enjoy economic security on an equal basis with men is most starkly demonstrated by the gender gap in retirement savings.
106. In September 2009, Commissioner Broderick released a major Issues Paper, 'Accumulating Poverty?: Women's experiences of inequality over the lifecycle.' The Issues Paper highlights that:
- Superannuation balances and payouts for women are approximately half of those of men. Future projections show that the gap will remain a problem for coming generations. The gap has serious implications for women, particularly the likelihood of sole reliance on the Age Pension and subsequently, an acute vulnerability to poverty in retirement.⁸⁹
107. The Issues Paper concludes that
- [i]ncreasing women's labour market participation and increasing women's earnings across the lifecycle is critical to closing the gender gap in retirement savings. Measures to support women's labour market participation and address the gender pay gap must feature as a strategy to build women's financial security [across the lifecycle and] in retirement.⁹⁰
108. A range of measures are needed to ensure that women enjoy an adequate standard of living, including social security benefits to provide an adequate safety net, and placing financial value on unpaid caring work.⁹¹
109. However, promoting gender equality in Australian workplaces has significant potential for ensuring that women enjoy economic security on an equal basis with men. Enabling all people, regardless of gender, to engage in paid work, with appropriate financial compensation, is a key area in need of law and policy reform.

6.3 Gender equality will improve business and organisational performance

110. Achieving gender equality in the paid workforce is also important for strong business performance. There are several ways in which greater gender diversity impacts positively on business outcomes. These include halting the leakage of female talent from workplaces, appealing to women as consumers and improving business performance.

Leakage of talent

111. Talent is absolutely critical for all corporations. An ability to draw on the widest possible talent pool delivers a competitive edge. Along with investment and technology, people are the essential ingredient for increasing an individual business' bottom line. Recruitment and retention of talented women represents a major opportunity for businesses. At present, companies in the ASX200 are not accessing the full spectrum of available talent. Fifty one percent of ASX200 companies have no women directors and 45.5% of ASX200 companies have no women at all on their executive teams.⁹² The pipeline of women to the next most senior level is also small. Chief Executive

Women (CEW) has projected that on the current trajectory it will take over 150 years for women to hold a similar number of senior positions as men.⁹³

112. With 55.9% of graduates from Australian Universities being female,⁹⁴ it makes no sense that only 5.9% of senior line management roles in ASX 200 companies are held by women⁹⁵ or that only 8.3% of Board positions are held by women.⁹⁶ It is clear that without significant intervention we will not stem this leakage of female talent.

Women's market power

113. In Australia, women exercise strong consumer power. Organisations with a balance of men and women at the senior levels tend to consider a wider range of options, resulting in decisions that are more in touch with customer needs. It has been estimated that women handle about 75% of family finances and influence about 80% of buying decisions.⁹⁷ Therefore products and services that appeal to women have a good chance of success.
114. It makes sound business sense to include women at all levels of decision-making in organisations to broadly represent, and provide unique insights into, this significant customer base.

Overall business performance

115. There have been a number of research studies looking at the impact of women's decision-making on corporate performance.
116. International research indicates companies with a higher proportion of women in their boards and top management team have better financial performance.⁹⁸ This and other corporate research suggest that organisations with better gender balance are able to avail themselves of a broader talent pool value and leverage the skills and contributions of all employees.⁹⁹ In addition, diversity in the workforce, including gender diversity, increases overall employee engagement and productivity.¹⁰⁰
117. Research undertaken by Catalyst in 2007 to investigate the return on equity in Fortune 500 Companies found that those companies with the most female board directors outperformed those with the least by 53%.¹⁰¹
118. Recent research undertaken by Chicago-based Hedge Fund Research found that hedge funds run by women have fallen only half as much in the financial crisis as those managed by men.¹⁰² This research showed the value of female-managed funds has dropped by 9.6% in the past year, compared with 19 per cent for the rest.
119. Women investment managers also performed better in general over the past decade, with an average annual return of just over 9%, while hedge funds overall delivered 5.82%.¹⁰³

120. In summary, current research indicates that companies with a critical mass of women at the top achieve significantly better results.

6.4 *Gender equality will improve national productivity*

121. There is an urgent case for achieving gender equality in Australian workplaces in order to increase Australia's national productivity. As noted by the World Economic Forum, 'there is a strong correlation between the gender gap and national competitiveness...a nation's competitiveness depends significantly on whether and how it educates and utilizes its female talent.'¹⁰⁴

122. Factors contributing to lower national productivity include:

- Australia ranks as equal first in the World Economic Forum Gender Gap Index of women's educational attainment, yet only 50th in women's workforce participation. In other words, the return on our investment in women's education is very low. No nation or government, industry or sector can afford this kind of loss. Without significant intervention – by government and by business – the number of women progressing in the workplace may shrink even further.
- Australia's investment in women's skills development, is forgone when many women are working below their skill level, or have retreated from paid work altogether. Ensuring that women are enjoying gender equality in paid work is important for Australia's national productivity in light of the ongoing skills shortages, despite the global financial crisis in many key industries.
- Australia faces significant challenges with its ageing population in terms of its paid workforce ratio over the medium to longer term. By 2050, there will be a quadrupling of the proportion of people over 85 and a doubling of the proportion of people over 65.¹⁰⁵ Addressing the barriers to women's participation in paid work would significantly improve the paid workforce ratio over time which is essential to expanding the nation's tax base.
- Women's reduced ability to achieve a level of economic security through paid work leads to a reduced ability to fund their own retirement. As noted above, women currently hold only half the retirement savings of men, and make up 73% of single Age Pension recipients.¹⁰⁶ Improving women's attachment to the labour market will alleviate pressures on our social security system.

123. It is vital to national productivity that all people in Australia who want to be in paid work are able to do so to the maximum of their skills, abilities, and aspirations, regardless of gender.

6.5 *Gender equality will fulfil Australia's international human rights and labour rights obligations*

124. Achieving gender equality in paid work is crucial to ensuring economic security for women on an equal basis with men. It is also an international human rights and labour rights obligation of the Australian Government.

125. The Australian Government's international human rights and labour rights obligations relevant to the issue of gender equality in the workforce are set out in the following international instruments:
- The Convention on the Elimination of All forms of Discrimination against Women (CEDAW)
 - The International Covenant on Civil and Political Rights (ICCPR)
 - The International Covenant on Economic, Social and Cultural Rights (ICESR)
 - International Labour Organisation Conventions 111, 100 and 156
 - Beijing Declaration and Platform for Action
126. These international agreements impose a clear obligation on the Australian government to achieve substantive gender equality in Australian workplaces.
127. For example, CEDAW places an obligation on the Australian Government to:
- take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular... the right to the same employment opportunities...the right to promotion...[and] equal remuneration.¹⁰⁷
128. Article 2 imposes an obligation on Australia to prevent discrimination against women in all sectors and CEDAW stipulates a range of appropriate measures must be taken, "including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."¹⁰⁸
129. Similarly, as a signatory to the ICESCR, the Australian Government has an obligation to:
- recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular... Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.¹⁰⁹
130. Australia is party to a number of international ILO Conventions which impose obligations to pursue gender equality in areas related to employment and occupation and eliminate discrimination in the workplace on the basis of sex and/or family responsibilities.
131. For further detail of Australia's international human and labour rights obligations, see Appendix 1.
132. The data available on gender equality in the workforce, set out in section 5 of this Submission suggests that Australia is not currently meeting its international human rights and labour rights obligations in this area.

Special measures to achieve gender equality

133. It is clear that Australia is obliged to take action to eliminate discrimination between men and women in the workplace. One of the arguments against taking action aimed at advancing opportunities for women in the workplace, such as quotas and targets, is that such action may constitute discrimination against men.
134. However, it is clear that taking temporary special measures aimed at accelerating the de facto equality between men and women is not discrimination at international law. Article 4 of CEDAW provides:
1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
 2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.¹¹⁰
135. A similar definition is used in the SDA.¹¹¹
136. In order to achieve genuine equality in practice, any definition of discrimination must allow for special measures. Special measures permit acts and practices that will ultimately further the goal of gender equality. Without them, a simple 'sameness of treatment' approach can prevail, that will give a surface appearance of equality, but has the potential to undermine equality of outcome.
137. According to the CEDAW Committee, the purpose of art 4(1) is to accelerate the improvement of the position of women to achieve their de facto or substantive equality with men, and to effect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women.¹¹²
138. The CEDAW Committee views special measures as being more than simply actions taken on a 'good faith' basis to achieve a particular purpose. The meaning of 'special' refers to the fact that the measures are designed to serve a specific goal.¹¹³ Therefore, the measures must be designed, applied and evaluated against the background of the specific nature of the problem that they are intended to address.¹¹⁴
139. The CEDAW Committee recommends States parties 'evaluate the potential impact of temporary special measures with regard to a particular goal within their national context. State parties should then adopt those temporary special measures which they consider to be appropriate in order to accelerate the achievement of de facto or substantive equality for women.'¹¹⁵

140. The adoption and implementation of temporary special measures may raise issues of the qualifications and merit of the group or individuals so targeted. On this issue the CEDAW Committee has commented that:

as temporary special measures aim at accelerating achievement of de facto or substantive equality, questions of qualification and merit, in particular in the area of employment in the public and private sectors, need to be reviewed carefully for gender bias as they are normatively and culturally determined.¹¹⁶

141. The duration of a temporary special measure should be determined by its functional result in response to a concrete problem and not by a predetermined passage of time. Temporary special measures must be discontinued when their desired results have been achieved and sustained for a period of time.¹¹⁷

142. Further, the CEDAW Committee recommends that States parties ensure that women in general, and affected groups of women in particular, have a role in the design, implementation and evaluation of special measures programs. In particular, collaboration and consultation with civil society and non-governmental organisations representing various groups of women is especially recommended.¹¹⁸

143. This submission includes recommendations for the adoption of special measures to fast track substantive equality outcomes for women in leadership roles. See section 8.9.

7 The current context: what are the national laws and institutional arrangements?

This section is for **Information**. It describes the three main national laws that regulate gender equality in the Australian workforce:

- *Equal Opportunity for Women in the Workplace Act 1999* (EOWW Act)
- *Sex Discrimination Act 1984* (SDA)
- *Fair Work Act 2009* (FWA)

The section also provides an overview of the three corresponding responsible authorities set up under each statutory scheme:

- The Equal Opportunity for Women in the Workplace Agency (EOWA)
- The SDC and the Australian Human Rights Commission (SDC/Commission)
- The Fair Work Ombudsman and Fair Work Australia (FWA/Ombudsman)

It explains that the EOWW Act and Agency are gender specific and have an emphasis on employer capacity building, monitoring and reporting.

The Commission has gender specific functions, has the statutory position of SDC, uses an equality/anti-discrimination framework and has an emphasis on complaint handling, policy development and advocacy, education and independent monitoring with some systemic powers.

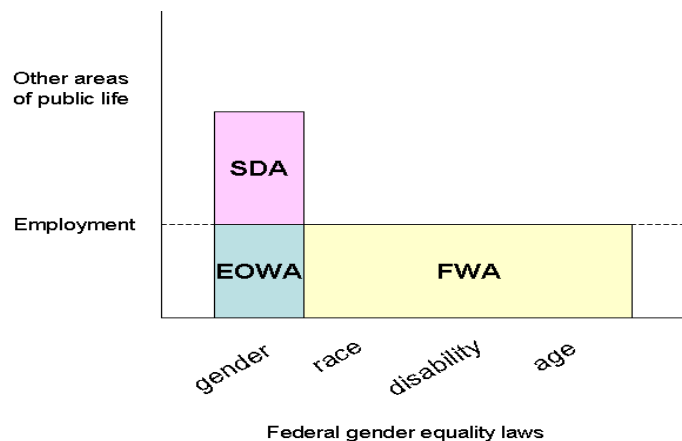
The FWA/Ombudsman is a generalist industrial relations system and has an emphasis on complaint handling with strong systemic enforcement powers.

7.1 Introduction

144. This section of the Submission provides an overview of the current regulatory environment that most directly impacts on gender equality in the workforce. It sets out the three major pieces of legislation, and their institutional arrangements, and provides a Table at section 7.4 which contains key features of each of the three statutory schemes. It concludes that there is currently a lack of clarity about roles and responsibilities amongst the three statutory schemes, particularly for action to drive systemic reform to achieve gender equality in Australian workplaces. The lead roles of each of the gender equality statutory scheme should be clarified, including the role of EOWA. In addition, the links between the statutory schemes should be strengthened and formalised.

7.2 National laws impacting on gender equality in the workforce

145. At the national level, there are three main laws that regulate gender equality in the workplace:
- *Equal Opportunity for Women in the Workplace Act 1999* (EOWW Act).
 - *Sex Discrimination Act 1984* (SDA); and
 - *Fair Work Act 2009* (FWA).
146. Each of the states and territories also has anti-discrimination legislation that includes gender as a protected attribute.¹¹⁹ The State and Territory anti-discrimination Acts also prohibit direct and indirect discrimination in the workplace and operate concurrently with both the SDA¹²⁰ and the FWA.¹²¹
147. It should be noted that a comparable scheme to the EOWW Act regulates Federal public sector employment. Employees of government departments are covered by the *Public Service Act 1999*¹²² and employees of statutory authorities are covered by the *Equal Employment Opportunity (Commonwealth Authorities) Act 1987*. Also, a number of states have their own equal employment opportunity legislation for public sector employment.¹²³
148. The above three national Acts vary in terms of how they regulate equality, the scope of the attributes and areas of public life they cover, as well as their enforcement mechanisms.
149. The diagram that follows represents the intersection of attributes and areas of each of the main national gender equality Acts.



150. The EOWW Act is uniquely targeted at tackling systemic sex discrimination in business and employer organisations. It aims to encourage employers to take action to achieve equal opportunity for women in the workplace. However, it has limited coverage¹²⁴ and weak enforcement powers.¹²⁵
151. The SDA generally prohibits direct and indirect discrimination on the ground of sex and related attributes across many prescribed areas of public life, one of which is employment. The SDA is primarily enforced through an individual

complaint process. However, it also gives the Commission some functions that can be used to challenge systemic discrimination.¹²⁶

152. The FWA regulates federal workplace relations generally including adverse action on the basis of many prohibited attributes, one of which is sex, and creates the strongest enforcement powers.

7.3 *Institutional arrangements under national laws impacting on gender equality in the workforce*

153. Each of the main national laws that impacts on gender equality in the workplace – the EOWW Act, SDA and FWA - establish responsible institutions that play an important role in achieving gender equality in Australia. In addition, the Australian Government Office for Work and Family, Office for Women and the Prime Minister’s Women’s Advisor all play a role.
154. In summary, the EOWA, the SDC/Commission and FWA/Ombudsman are all empowered to challenge systemic discrimination against women. However, only the EOWA has dedicated resources to spend on assisting employers to take positive action to achieve gender equality in the workplace. The SDC/Commission have an established role in monitoring and advocating for gender equality, including gender equality in employment, and both the SDC/Commission and the FWA/Ombudsman have individual complaint handling functions.
155. The SDC/Commission have some legislative functions that can be used to address systemic discrimination which relate to all manifestations of gender inequality across all areas of public life and not solely employment.
156. While the FWA/Ombudsman functions and powers are far reaching and focused on the area of employment, unlike the SDC/Commission, the FWA/Ombudsman are concerned with a broad range of industrial matters across a wide range of industries. The FWA/Ombudsman are not specialist gender or discrimination or conciliation institutions.
157. Further details of each of the national laws and institutional arrangements regulating gender equality in Australian workplaces is provided in Appendix 2.
158. A summary of the key features of each statutory scheme is set out below.

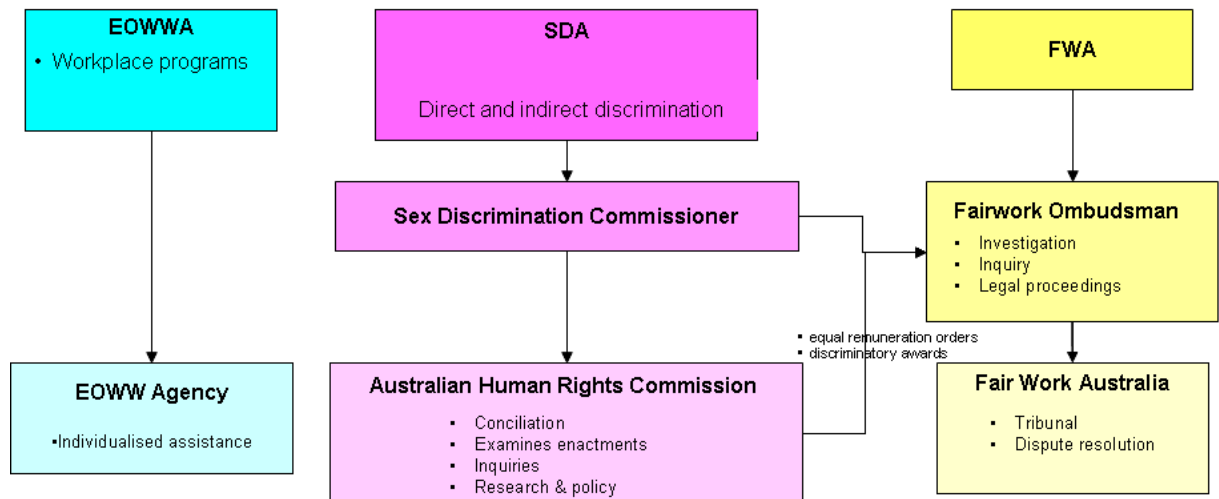
7.4 Table comparing Australia's gender equality laws & institutions

	SDA	EOWW Act	FWA
Attributes	<ul style="list-style-type: none"> Sex, marital status, pregnancy, potential pregnancy Family (not carer's) responsibilities for direct discrimination and dismissal only 	<ul style="list-style-type: none"> Relevant only to women 	<ul style="list-style-type: none"> Sex, marital status, family or carer's responsibilities, pregnancy; Race, colour, age, physical or mental disability, religion, political opinion, national extraction or social origin
Area	<ul style="list-style-type: none"> All areas of public life, including employment 	<ul style="list-style-type: none"> Employment only 	<ul style="list-style-type: none"> Employment only
Coverage	<ul style="list-style-type: none"> All employees but not State employees Includes Commonwealth employees 	<ul style="list-style-type: none"> All federal employers with 100 employees or more Not Commonwealth or State employees 	<ul style="list-style-type: none"> Federal employees and some State employees Includes Commonwealth employees
Operative provisions	<ul style="list-style-type: none"> Direct and indirect discrimination Functions to inquire and report on systemic discrimination. Limited ability to tackle systemic discrimination, particularly in relation to family responsibilities 	<ul style="list-style-type: none"> Systemic discrimination Requires employers to commit to take action to advance equal opportunity for women in their workplace Obligation to prepare, publish and review workplace programs 	<ul style="list-style-type: none"> Adverse action & unlawful termination National employment standards for parental leave and right to request flexible work arrangements Equal remuneration orders
Enforcement	<ul style="list-style-type: none"> SDA largely relies on individuals to make complaints to the Commission Commission seeks to resolve disputes but if it cannot, complainants can make applications at the Federal Court or 	<ul style="list-style-type: none"> Reports to Parliament when employer fails to report or provide Agency with information. Links with Government procurement and 	<ul style="list-style-type: none"> Individual complaint mechanism Ombudsman inquiry and investigation powers Compliance notices Inspector's enter and search powers Ombudsman may

	SDA	EOWW Act	FWA
	Federal Magistrates Court	funding incentives	institute proceedings or represent employees before Fair Work Australia or before the Federal Court or Federal Magistrates Court
Institutions and their functions	<ul style="list-style-type: none"> • The Australian Human Rights Commission, including the SDC • The Commission has a role in: <ul style="list-style-type: none"> - Dispute resolution & Policy - Inquiries & Consultation - Research & education 	<ul style="list-style-type: none"> • EOWA monitors compliance with reporting requirements • Offers personalised advice and feedback • Research and training • Reports to the Minister on compliance with the Act. 	<ul style="list-style-type: none"> • Fair Work Australia is the national workplace relations tribunal with particular enforcement, remedy and dispute resolution functions under the FWA. • Fair Work Ombudsman has the additional functions of promoting and monitoring compliance with the FWA, providing education, advice and assistance and referring matters to relevant authorities.

7.5 Relationship and interaction between gender equality institutions

159. The below diagram illustrates the relationships between the institutions established by the three main gender equality Acts, along with the Australian Human Rights Commission established under the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act).



160. There is no formal institutional relationship between the EOWA and either the SDC/Commission, FWA/Ombudsman. There is also no formal relationship between the SDC/Commission and the FWA/Ombudsman despite the overlap in their roles.
161. The one formal link between the main responsible institutions is between the SDC and the President of the Commission and Fair Work Australia, in relation to equal remuneration and discriminatory award matters.
162. Under the FWA, the SDC has standing to apply to Fair Work Australia for equal remuneration orders.¹²⁷ The SDC's equal remuneration power is similar to the power under Division 3 of the former *Workplace Relations Act 1996* (Cth) (and the equivalent provisions in the *Industrial Relations Act 1988*). However, the SDC has never made an application under this power, due primarily to limited resources and competing priorities.¹²⁸
163. The President of the Commission also has the power to refer discriminatory industrial instruments to Fair Work Australia and discriminatory determinations to the Remuneration Tribunal or the Defence Force Remuneration Tribunal.¹²⁹
164. The President has this role, as it is expected that discriminatory awards will come to the attention of the Commission through its individual complaints handling function. The power to refer the award to Fair Work Australia is an important means of effecting systemic change in the area of employment. The SDC is entitled to make submissions to Fair Work Australia for consideration within the review process.¹³⁰
165. In addition, as outlined above, the Commission may intervene, with leave of the court involved, in any matter that involves issues of discrimination on the ground of sex, marital status, pregnancy or potential pregnancy or discrimination involving sexual harassment – this includes matters before Fair Work Australia.¹³¹

166. The Commission has been involved in a number of proceedings before the former Australian Industrial Relations Commission (AIRC) that concerned sex discrimination issues including:
- In 1990, the Parental Leave Test Case, which established the standard clause for maternity, paternity and adoption leave in Awards;
 - In 1994 and 1995, the ACTU test cases that established personal/carer's leave entitlements;
 - In 1995, the AIRC central working party pilot award review process, which removed discriminatory provisions from federal awards and included model anti-discrimination clauses;
 - In 2000, the Australian Metal Workers' Union application to the AIRC seeking an increase in the casual loading for workers under the metals award;
 - In 2001, the ACTU test cases, which established unpaid parental leave entitlements for casual workers employed for more than 12 months with the same employer through the award system; and
 - In 2005, the ACTU family provisions test case.
167. While there are some formal links between Fair Work Australia and the Commission and the SDC, the links between each of the national statutory schemes regulating gender equality in the workplace, including the EOWA, should be strengthened and formalised. This would better ensure that each scheme plays its specialised role effectively and that efforts to achieve gender equality in Australia are mainstreamed but not diluted. The Submission makes recommendations to achieve this outcome.

8 Reform proposals: what needs to change?

This Section sets out the **Commission Proposals for Reform**. It contains 23 recommendations.

The reform of the EOWW Act and Agency, and associated reforms should deliver:

- Greater clarity and cohesion amongst national gender equality regulatory schemes;
- Promotion of gender equality rather than equal opportunity for women;
- Improved transparency and accountability at the national level;
- Greater emphasis on outcomes rather than processes from the Employer Reporting Obligations;
- Greater certainty for business and employers;
- Full coverage of employers;
- Targeted effort to close the gender pay gap; and
- Special measures to fast track achieving substantive gender equality in women's leadership.

The reform process should be underpinned by strengthening statutory functions as follows:

The EOWA, as a gender specific mechanism, should lead:

- coordination within the Australian Government on action to achieve gender equality in Australian workplaces in partnership with the Office for Women; and
- collaboration with employers, including Australian business, Australian Government departments and statutory authorities, to promote strategies, and positive action by employers to achieve gender equality in Australian workplaces, including through education.

The Commission, as a statutory authority with gender specific functions together with an established enforcement and monitoring role, should lead:

- enforcement, particularly at a systemic level, to ensure compliance with gender equality workplace obligations;
- education and advocacy about the gender equality rights of workers; and
- independent monitoring and reporting to the Australian Parliament and the public on Australia's progress in achieving substantive gender equality, including in workplaces.

The FWA/Ombudsman, as general industrial relations mechanisms, should collaborate with:

- EOWA in its lead roles;

- SDC/Commission in its lead roles; and
- to positively contribute to systemic action required to achieve gender equality in Australian workplaces.

8.1 Introduction

168. This Submission has highlighted that Australia has stalled in its progress on achieving gender equality in Australian workplaces. This is demonstrated most starkly by the poor record on women's leadership amongst Australian business, but is indicated across almost all other facets of women's experiences of paid work. It is reflected in Australia's fall from 40 to 50 in the global ranking of women's labour force participation in the past 12 months.¹³²
169. The current gender equality laws and institutional arrangements have contributed to greater attention being given to the problems associated with achieving gender equality. However there is far less progress in practical outcomes or substantive equality between women and men in their working lives.
170. The current arrangements are not adequate for the Australian context. The case for reform is clear.
171. There are several key objectives to be achieved from reform to the current gender equality laws and institutional arrangements in order to meet Australia's international human rights obligations, secure greater economic security for women, improve national productivity and achieve better business performance.
172. The key objectives of reform are:
- greater cohesion amongst national gender equality mechanisms;
 - promotion of gender equality rather than equal opportunity;
 - improved transparency and accountability about success, failures, and what needs to be done next;
 - greater emphasis on outcomes rather than processes from the regulatory and reporting systems;
 - greater certainty for business and employer organisations;
 - full coverage of employers;
 - targeted effort to close the gender pay gap; and
 - special measures to fast track achieving substantive gender equality.

173. This Submission makes recommendations for reform to meet each of these key objectives.

8.2 Greater clarity and cohesion amongst national gender equality regulatory schemes

174. Maintaining effective and adequately resourced national gender mechanisms is an important part of realising women's human rights and gender equality. The CEDAW Committee and international policy making bodies including the United Nations Commission on the Status of Women have detailed the obligation to maintain national gender mechanisms as a crucial part of fulfilling international human rights obligations to women.¹³³

175. National gender equality mechanisms can include mechanisms within government such as specific ministries and gender units as well as statutory bodies and commissions, and civil society mechanisms such as advisory and consultative bodies or non government organisations.

176. As set out above,¹³⁴ there are three national statutory schemes that are involved in the regulation of gender equality in Australian workplaces being:

- EOWW Act (and the EOWA);
- SDA (and the SDC/Commission) and
- FWA (and the FWA/Ombudsman).

177. Each of the national schemes that regulate gender equality in the workplace establishes statutory authorities, two of which have gender specific functions: the EOWA and the Commission. Also, the OFW is a gender specific part of the Australian Government's national machinery. Together, these entities are a part of Australia's national gender equality machinery.

178. The Commission is opposed to collapsing the EOWA Agency into a generalist workplace system. It considers that the EOWA Agency should remain a stand alone statutory body operating at the highest level of the Australian Government to focus specifically on promoting gender equality in the workplace. It should retain an exclusive focus on workplace activity in order to ensure close integration with the industrial relations systems, particularly through close links with FWA/Ombudsman and with the substantive equality/anti-discrimination system, being the SDC/Commission.

179. However, in order to strengthen its direct impact on workplace reform, the Agency should have formalised links to the participation and employment areas of government, so that EOWA responsibilities are clearly viewed as a central concern of both gender and employment government portfolios.

180. Whilst the Commission is opposed to the EOWA being collapsed into another part of the Australian government workplace system, the national gender machinery needs to be reformed to improve clarity about roles, responsibilities, and coordinating action.

181. At the present time, each of the three statutory authorities has as part of its mandate to undertake systemic action to progress gender equality in the workplace. As summarised in section 7 and explained in detail in Appendix 2, some statutory functions are common, for example, the statutory functions to undertake education and research. Other functions vary, including for example, with respect to individual complaint handling functions, investigation and audit functions, and powers to initiate or participate in court proceedings.
182. There is a lack of clarity about which statutory authority is responsible for which lead roles, particularly in taking systemic action to achieve gender equality in the workplace. For example, it is possible that any one of these authorities could be responsible for driving systemic action to close the gender pay gap in Australia. The same could be said for reporting on progress to achieve gender equality in the workplace. There are also no formal links or obligations to coordinate action in situations where coordination is required to ensure the system operates in a cohesive manner. The lack of clarity about roles, and obligations to coordinate action, means that the national gender machinery is not as effective as it could be.
183. The Commission considers that the authorities should broadly have the following central roles:
184. The EOWA, as a gender specific mechanism, should lead:
- coordination within the Australian Government on action to achieve gender equality in Australian workplaces in partnership with the Office for Women; and
 - collaboration with employers, including Australian business, Australian Government departments and statutory authorities, to promote strategies, and positive action by employers to achieve gender equality in Australian workplaces, including through education.
185. The Commission, as a statutory authority with gender specific functions and the statutory position of SDC together with an established enforcement and monitoring role, should lead:
- enforcement, particularly at a systemic level, to ensure compliance with gender equality workplace obligations;
 - education and advocacy about the gender equality rights of workers; and
 - independent monitoring and reporting to the Australian Parliament and the public on progress in achieving substantive gender equality, including in Australian workplaces.
186. The FWA/Ombudsman, as a general industrial relations mechanism, should collaborate with:
- EOWA in its lead roles; and
 - SDC/Commission in its lead roles,

to positively contribute to systemic action required to achieve gender equality in Australian workplaces.

Recommendation 1: Status of the EOWA

The EOWA should be the principal point of contact of the Australian Government on issues concerning gender equality in the workplace. It should remain a stand alone statutory agency, and not be incorporated into a general industrial relations system.

Recommendation 2: Statutory Links of the EOWA

The EOWW Act should require the Agency to work closely with the SDC/Commission and the FWA/Ombudsman as separate statutory agencies regulating gender equality in Australian workplaces (see specific recommendations for links between the SDC/Commission and FWA/Ombudsman, below).¹³⁵

8.3 *Promotion of gender equality rather than equal opportunity for women*

187. There is a growing consensus, both in Australia, and internationally, that, in order for women to have better access to paid work, a substantive equality framework is required rather than a focus on 'equal opportunity' or 'formal equality.'

'Formal equality [which primarily focuses on equal opportunity or equality of access] is developed on the assumption that inequality can be remedied by treating all people in an identical manner...

Critics of this formal model of equality argue that a focus on strict equal treatment ... fails to account for the myriad ways in which informal barriers operate to prevent, dissuade or undermine women's access to certain professions (and to a lesser extent, men's access to historically feminised professions). In these circumstances, treating unequally situated people equally will serve to further entrench more systemic aspects of discrimination.¹³⁶

188. Achieving substantive equality for women may require treating women and men differently, for example through special measures.¹³⁷ It may also require action to change the paid work and caring experiences of men.¹³⁸
189. At the present time, the name of the EOWA and objects of the EOWW Act are confined to eliminating discrimination against women and promoting equal opportunity for women in the workplace. The principal objects of the Act are:
- to promote the principle that employment for women should be dealt with on the basis of merit;
 - to promote, amongst employers, the elimination of discrimination against, and the provision of equal opportunity for, women in relation to employment matters; and
 - to foster workplace consultation between employers and employees on issues concerning equal opportunity for women in relation to employment.¹³⁹

190. In order for the EOWA to have the strong lead role required to progress gender equality in Australian workplaces, the EOWW Act and Agency need to use a substantive gender equality framework. This would include promoting special measures where required and also promoting different ways of men being involved in paid work.
191. In order to adopt this framework, the name of the EOWW Act and Agency should be changed, and the objects of the Act amended.
192. The Commission proposes that the name of the Act should be changed to the *Gender Equality in the Workplace Act*, and the statutory authority renamed the Gender Equality in the Workplace Agency, or similar.
193. In addition, the objects of the Act should be amended to include a strong key objective of promoting substantive gender equality in the workplace, rather than confining the objects to equal opportunity for women.

Recommendation 3: Name of the EOWW Act and Agency

The EOWW Act should be renamed the *Gender Equality in the Workplace Act*, and the EOWA should be renamed the Gender Equality in the Workplace Agency, or similar.

Recommendation 4: Objects of the EOWW Act

The objects of the EOWW Act should include the promotion of substantive gender equality in the workplace, recognising that:

- barriers to women's equal participation in paid work are directly impacted by men also having greater access to flexible work arrangements for family and caring responsibilities; and
- achieving substantive gender equality will require both removal of barriers to equal opportunity and also special measures to achieve equal outcomes for both genders in the workplace.

8.4 Improved transparency and accountability at the national level

194. As noted in the Commission's *Submission to the SDA Review* (2008),

In Australia, regular independent monitoring and reporting on progress in achieving gender equality does not occur. Data collection is conducted, although there are gaps. There are also many excellent examples of high quality research on specific issues (citations omitted).¹⁴⁰

195. The EOWA publishes several reports on key features of gender equality in the workplace.¹⁴¹ The SDC/Commission has published two major surveys on the nature and extent of sexual harassment in the workplace.¹⁴² It has also undertaken inquiries on specific gender equality workplace issues.¹⁴³ Under the FWA, the General Manager of Fair Work Australia must conduct research and publish a report every three years which includes, for example, the effect of the National Employment Standard on the right to request flexible work arrangements on women.¹⁴⁴

196. However, as noted in the Commission's *Submission to the SDA Review* (2008),

there is no institutional arrangement in place for an agency independent of government to report to Parliament and the Australian public, providing a considered evidence-based assessment of progress against an integrated set of national gender equality indicators and to benchmark progress against those indicators over time.

197. The Commission has previously recommended that it be given adequate resources to enable the SDC to develop a set of National Gender Equality Benchmarks and Indicators, including workplace benchmarks and indicators. These benchmarks and indicators would form the basis for the SDC to independently monitor Australia's progress towards achieving substantive gender equality.¹⁴⁵ This recommendation has received the general support of the Senate Standing Committee on Legal and Constitutional Affairs.¹⁴⁶

198. The SDC/Commission would work closely with the EOWA Agency in the development of the benchmarks and indicators associated with workplace reform including, for example, in the area of:

- workforce participation;
- decision-making and leadership;
- pay equity;
- sexual harassment and discrimination; and
- flexible work arrangements

199. The National Gender Equality Benchmarks and Indicators regarding the workplace would provide a national policy framework for the design of outcome-based reporting by employers as part of Employer Reporting Obligations to the EOWA Agency, as well as the research and reporting to be done by FWA every three years.

200. The SDC/Commission would work closely with other key bodies, such as the Australian Bureau of Statistics and other research bodies to develop other benchmarks and indicators relevant to gender equality in Australia including:

- unpaid work and family and carer responsibilities;
- sexual assault;
- family and domestic violence;
- adequate standard of living, including rates of poverty and homelessness;
- gender gap in retirement savings

201. Monitoring of the integrated set of National Gender Equality Benchmarks and Indicators would provide Australia with a comprehensive analysis of overall progress on gender equality. The integration of workplace analysis with analysis of issues outside the workplace would enable links to be made

between changes in paid work and associated experiences outside of the workplace.

202. The Commission, acting through the SDC, is best placed to undertake the independent monitoring role in light of the fully independent status of the Commission, both under its legislation, and as an accredited National Human Rights Institution under the United Nations Paris Principles.¹⁴⁷ Under the Paris Principles, the Commission can only be fully accredited as a national human rights institution if it is fully independent of the national government under legislation or by the constitution.
203. Whilst the EOWA Agency and the FWA/Ombudsman have a level of independence, both are subject to the general directions of the Australian Government. Only the SDC/Commission is fully independent.
204. Establishing this independent monitoring process as part of Australia's national gender machinery would foster full transparency and accountability for the meeting of obligations, including our international human rights and labour rights to progress gender equality.

Recommendation 5: Independent Monitoring of National Gender Equality Benchmarks and Indicators

The Commission, acting through the SDC, should be the lead agency to partner with the EOWA to develop National Gender Equality Benchmarks and Indicators for Australian workplaces against which progress in achieving gender equality will be independently monitored, working closely with the FWA/Ombudsman, OFW; ABS; and other relevant bodies.

The EOWA and other relevant bodies, including the FWA/Ombudsman and the ABS should be required to provide the SDC/Commission with disaggregated data and analysis against National Gender Equality Benchmarks and Indicators to enable the tracking at national level of progress to achieve gender equality, including in Australian workplaces.

The Commission, acting through the SDC, should independently report to the Australian Parliament and the public on progress to achieve gender equality, including in Australian workplaces, at a minimum every two (2) years.

8.5 Greater emphasis on outcomes rather than processes in Employer Reporting Obligations

205. The Commission considers that the current Employer Reporting Obligations to EOWA need to be reformed so that reporting focuses on outcomes being achieved by employers to progress substantive gender equality, rather than on the methods used.¹⁴⁸ The Commission recognises that regulatory burdens need to be tightly linked to the core objectives of the regulatory system. The key objective of the regulation in this area is to progressively achieve substantive equality within Australian businesses and other employer organisations, rather than what is being done to get there. Employer reporting obligations should be guided by the principle 'better reporting, not more reporting.'
206. Whilst the gathering of information from employers about strategies used to achieve greater gender equality may be useful for sharing knowledge and

innovative ideas, this should not be the focus of regulated reporting to the Agency. The Employer Reporting Obligations should be developed in order to track progress against key indicators of progress including:

- workforce profiles;
 - decision-making and leadership;
 - pay rates and equity;
 - sexual harassment and discrimination; and
 - flexible work arrangements
207. Outcome-based reporting will generate greater knowledge about the extent to which change is actually being achieved within the workplace. It will provide a more accurate representation of the extent of real reform within workplace profiles, conditions and cultures.
208. Employer Reporting Obligations under the Act should be designed to track changes within individual businesses and other employer organisations by reference to the higher level National Gender Equality Benchmarks and Indicators.¹⁴⁹
209. In order to promote transparency and accountability at the employer level under the EOWW Act, the Act should be amended to:
- require the EOWA to issue a certification to the employer that Employer Reporting Obligations have been met;
 - empower the EOWA to impose a fine on employers for persistent non-compliance with Employer Reporting Obligations; and
 - require the employer to publish:
 - the Report to EOWA and the Certification from EOWA to all employees; and
 - the Certification in the employer's annual report.
210. The meeting of the minimum Employer Reporting Obligations would be mandatory under the Act.
211. The EOWA should also have the power of verification, for example, through some form of audit process to actively verify employer compliance with their obligations under the Act.
212. Currently, Australian Government Procurement Guidelines prevent Government departments from buying goods and services from, or entering into contracts with, organisations that have not complied with EOWW Act reporting obligations.¹⁵⁰ However, the Commission believes that these guidelines could be more effectively monitored and enforced by making certified compliance with a revised EOWW Act a condition of commercial dealings with government.

213. The Agency should also play a lead role in developing resources for employers, for example, through a Community of Practice, to assist employers in improving their performance on achieving outcomes for gender equality.
214. In this Submission, the Commission proposes that the EOWA be strengthened with the lead role of collaborating with Australian employers in efforts to promote substantive gender equality in the workplace. Given this lead role, the Agency would also be well placed to join together with individual employers, groups of employers, or specific industries to work on the development of voluntary 'Gender Equality Action Plans'.
215. The Action Plan would include reporting about outcomes being achieved, and time-bound targets, together with strategies for achieving those targets. As detailed in the next part, employers would have the option of seeking to have their voluntary Action Plan legally recognised under the SDA as a 'special measure'.

Recommendation 6: Employer reporting obligations

Employer reporting obligations should focus on the achievement of equal outcomes for women and men in the workplace, rather than the processes used to achieve gender equality outcomes (such as specific training programs or mentoring schemes).

Recommendation 7: EOWA certification

When employers meet their employer reporting obligations under the EOWW Act, the EOWA should issue a Certification. Employers should be required to publish:

- Reports and EOWA Certifications to all their employees, and
- EOWA Certifications in their Annual Reports, including Annual Reports to the ASX where applicable.

Recommendation 8: EOWA certification a pre-condition of entering contracts with government

EOWA Certification should be a pre-condition of providing goods and services or entering into contracts with Australian Government departments.

Recommendation 9: EOWA Employer Capacity Building

The Agency should play the lead role in supporting employers to achieve gender equality in the workplace, for example, through a Community of Practice, in partnership with representatives of relevant employers and employee representatives including unions.

Recommendation 10: EOWA verification

EOWA should be empowered to conduct a verification process to establish compliance by an employer, group of employers, or industry's compliance with its obligations under the EOWW Act, including with employer reporting obligations. EOWA should provide the SDC/Commission and the FWA/Ombudsman with the results of verification processes conducted under the EOWW Act, subject to any privacy considerations.

Recommendation 11: Voluntary Gender Equality Action Plans

Employers, groups of employers or industry groups may voluntarily adopt Gender Equality Action Plans under the Act, which set clear time-bound targets for achieving greater gender equality in their workplace.

8.6 Greater certainty for business and employers

216. As Australian business groups identify, certainty for business offers benefits in terms of business performance and long term sustainability.¹⁵¹
217. At the present time, the regulatory system on gender equality in the workplace does not provide for some of the key elements required to achieve *substantive* gender equality, including
- a general positive duty to promote gender equality;
 - standards;
 - voluntary action plans; and
 - incentives for compliance nor enforcement mechanisms for non-compliance.¹⁵²
218. In the Commission's *Submission to the SDA Review* (2008), it presented a number of 'options for reform' about the above proposals for consideration in a Stage Two reform process.¹⁵³
219. At that time, the Commission proposed that consideration be given to:
- inserting a general positive duty to promote gender equality into the SDA;¹⁵⁴
 - developing 'standards' under the SDA which would apply to all employers, and which would provide certainty to employers about the nature and extent of their obligations under the SDA, and a measure of protection from litigation;¹⁵⁵ and
 - enabling employer organisations to develop voluntary Gender Equality Action Plans which could be lodged with either the Commission or EOWA. Voluntary Action Plans which included 'special measures' could be certified under the SDA to provide a measure of protection to the employer from litigation.¹⁵⁶
220. These recommendations received general support from the Senate Standing Committee on Legal and Constitutional Affairs.¹⁵⁷
221. The Australian Government has yet to respond to the SDA Review.
222. For the purposes of this Submission, the Commission proposes concrete recommendations for a mid-way approach towards implementing its Stage Two Options for Reform, as part of the SDA Review. In Recommendation 11 of this Submission, the Commission proposes that the EOWA Act be amended to enable employers, groups of employers or Industry groups to voluntarily develop Gender Equality Action Plans. The plans would set out clear targets for increasing gender equality in their workplace, and the strategies that will be used to achieve these targets.

223. The Commission proposes that consideration be given to amending the SDA to allow for legal recognition of Gender Equality Action Plans, at the option of employers. A number of models for recognition could be considered.
224. The first would be to allow formal recognition of a Plan as a 'special measure' to confirm that measures taken under it that seek to ensure gender equality are taken not to be discriminatory. Such certification could be undertaken by the Commission, consistent with its current role in granting exemptions under federal discrimination laws.
225. A second option would be to allow recognition of a Plan as a Gender Equality Standard, compliance with which would be a defence to a complaint of discrimination and a breach of which would be a contravention of the SDA. Such an approach would be similar to the operation of Disability Standards under the *Disability Discrimination Act 1992* (Cth).¹⁵⁸ Under this model, the Attorney-General would approve a Plan by legislative instrument to give effect to a Standard.
226. A third option would be to allow recognition of a Plan as a Gender Equality Code which would operate similarly to a Standard, by replacing the obligations under the SDA with the obligations contained in the Plan/Code. Approval of such codes could be undertaken by the SDC, if satisfied that the Plan/Code provides greater protection of gender equality than that otherwise provided for by the SDA. Such an approach would be similar to the operation of Privacy Codes under the *Privacy Act 1988* (Cth).¹⁵⁹
227. It would be entirely the option of the individual employer/s (an 'opt-in') as to whether their 'Gender Equality Action Plan' was to be recognised as a 'special measure', standard or code under the SDA.
228. Recognition of an Action Plan under the SDA would offer both benefits and risks to employers. The benefit would be that the Action Plan would protect the individual employer, group of employers or specific industries from litigation under the SDA in relation to matters dealt with under the Plan.
229. This would also protect the employer from an action under the FWA, given that action that is not unlawful under the SDA is excluded from the scope of adverse action under the FWA.¹⁶⁰
230. This proposal offers a flexible approach, short of the greater challenge of developing a 'one-size-fits-all' standard which applies to, and protects, all employers regardless of their context and diverse circumstances.
231. The potential risk to employers of having a voluntary Action Plan adopted as a standard under the SDA would be that non-compliance would open the employer up to a potential complaint, either by an individual employee or by the SDC.
232. Part of the regulatory reform enabling voluntary Action Plans to be adopted under the SDA is for the SDC to be given the power to bring a complaint for non-compliance without the need for an individual complainant. The

Commission previously recommended that the SDC be given this power in its *Submission to the SDA Review* (2008).¹⁶¹

Recommendation 12: Voluntary Gender Equality Action Plans may be legally recognized under the SDA

The SDA should be amended to provide that voluntary Gender Equality Action Plans which are compliant with the SDA (for example, as a special measure) may be legally recognised under the SDA.

Depending on the model chosen, compliance with voluntary Action Plans legally recognised under the SDA could:

- create a presumption of compliance with the SDA and FWA, a defence to a complaint under the SDA or FWA, or be admissible as evidence in relevant proceedings under the SDA, as appropriate;
- non-compliance with Action Plans under the SDA would constitute a breach of the SDA (and potentially FWA); and
- the SDC would have the discretion to commence an action in the Federal Court for breach of the SDA for non-compliance with an Action Plan.

8.7 Full coverage of employers

233. The EOWW Act should be amended to bring all relevant employers under the Act, including Australian Government departments and statutory agencies with 100 employees or more. This would enable the EOWA to integrate the data analysis of comparable employers and foster collaboration amongst employer groups generally.
234. Further it is understood that a substantial number of businesses and other employers already covered by the Act do not report, and yet are not easily identified. This needs to be urgently remedied.
235. There are a number of ways this could be achieved. For example, all relevant employers will be known to the Australian Tax Office (ATO) and will provide information to the ATO which would enable employers covered by the EOWW Act to be identified. The ATO could be required to make available a list of all relevant employers to the EOWA on an annual basis.

Recommendation 13: Coverage to Government and Statutory Authorities

The EOWW Act should be amended to cover Australian Government departments and statutory agencies with 100 employees or more

Recommendation 14: Identifying all non-reporting employers

A mechanism should be established to ensure that all covered employers are notified to the Agency, for example, through amending the *Income Tax Assessment Act 1936* (Cth) to enable the EOWA to receive an annual list of all organisations employing 100 people or more. Pending amendment, EOWA should conduct a high profile campaign to alert all covered employers of their legal obligations under the EOWW Act.

8.8 Targeted effort to close the gender pay gap: a National Pay Equity Strategy

236. Subject to the outcomes of the House of Representative's Inquiry into Pay Equity, the Commission considers that targeting the gender pay gap should be a major priority for the national gender machinery in Australia.
237. Closing the gender pay gap should be a specific employment matter covered under the EOWW Act.¹⁶²
238. The Australian Government should also provide the EOWA and the SDC/Commission with the mandate and resources to develop a National Pay Equity Strategy, which would include specific measures for:
- EOWA regarding government policy and employer strategies;
 - SDC/Commission regarding enforcement powers, and independent monitoring; and
 - FWA/Ombudsman to act in collaboration with EOWA and the SDC/Commission, with respect to the above measures.
239. Consideration should be given to adopting measures to promote greater transparency in relation to pay rates in the private sector. For example, in the United Kingdom, the Equality Bill 2009 contains a provision that will make contractual secrecy clauses that prevent employees discussing their pay with colleagues unenforceable.¹⁶³

Recommendation 15: Pay Equity as an 'employment matter'

Pay equity should be specified in the EOWW Act as a separate 'employment matter'.

Recommendation 16: National Pay Equity Strategy

EOWA should partner with the Commission, acting through the SDC, to jointly play the lead role in developing the National Pay Equity Strategy for closing the gender pay gap in Australia, including:

- partnering with the Commission as the lead agency to develop National Gender Equality Benchmarks and Indicators for Australia, including regarding pay equity (see further National Gender Equality Benchmarks and Indicators, above);
- implementing the Pay Equity Tool with employers; and
- developing policy for making pay rates transparent in the private sector.

8.9 Special measures to fast track achieving of substantive gender equality in leadership

240. As explained in section 5.4, EOWA's Census of Australian Women's Leadership in ASX200 companies revealed women hold only 8.3% of Board positions and chair only 2% of Boards. Women hold only 2% of Chief Executive Officer positions, 10.7% of executive management positions and 5.9% of line executive management positions. Over 50% of ASX200 companies have no women at all on their boards.

241. Australia is no longer making glacial progress on this issue but rather is going backwards.
242. The figures demonstrate the overwhelming need for significant action to improve women's representation in these positions. Some of these measures may require specific changes to current processes and practices. For example, the Productivity Commission has recently released a draft recommendation to end the 'no vacancy rule' on boards, which can be used to limit the appointment of directors from outside of the 'club'.¹⁶⁴
243. However, given the dismal representation of women at senior executive and board level in corporate Australia there is a strong case for special measures to fast track women's representation at senior levels in employer organisations and particularly publicly listed companies.
244. Australia is having a new debate about the need for reform including the need for targets and quotas to ensure greater gender diversity at senior levels. In the last month there has been considerable advocacy on this issue and many senior board directors have called for reform.
245. In regards to the SDC's suggestion of the implementation of gender quotas if no significant gains are made in women's representation in leadership positions within five years, Gordon Cairns, Non-executive director of Westpac and Origin Energy recently said:
- My suggested approach is do the work, find out what the road blocks are, remove the road blocks, make sure there is a good measurement system in place to ensure that progress is being made, and if that doesn't work we should legislate.¹⁶⁵
246. Jillian Segal, Company director at the National Australia Bank and the ASX supports the setting of voluntary targets as an initial approach to improve the representation of women in leadership positions. If there has been no significant change in the next five years, Segal suggests,
- At that time one needs to have a very serious examination as to why the publically disclosable targets that I am seeking at this point in time haven't worked...and if it's a question of male management just not hiring women then of course one needs to examine how government can make that happen and quotas is definitely one way.¹⁶⁶
247. High profile Australian company director, Margaret Jackson, had been opposed to the imposition of quotas, but has reviewed her position:
- I think I've probably come full circle and completely reversed what I originally thought... I now think I agree with SDC when she says let's set some objectives and if we don't get there, let's set quotas.¹⁶⁷
248. As noted in section 6.5, international human rights laws, including CEDAW, exclude special measures that treat women and men differently in order to accelerate substantive equality outcomes from the definition of discrimination. The SDA also permits special measures. CEDAW recognises that the goal or eradicating discrimination should not be reduced to sameness of treatment

and that substantive equality is not necessarily achieved by treating everyone equally.

249. In considering the meaning of 'measures', the CEDAW Committee has made it clear that 'special measures' encompass:

a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, **hiring and promotion; numerical goals connected with time frames; and quota systems** [emphasis added].¹⁶⁸

250. The choice of a particular measure depends on the specific goal it aims to achieve.¹⁶⁹

251. In the Australian context, Crennan J in *Jacomb v Australian Municipal Administrative Clerical and Services Union*¹⁷⁰ stated that the phrase 'special measures' in the SDA includes affirmative action measures which confer a benefit on a group for the purposes of achieving substantive equality. In that case, a quota for women in governance positions contained in union rules was upheld as a special measure.

252. The CEDAW Committee recommends that state parties make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women's integration into education, the economy, politics and employment.¹⁷¹

253. Commenting on Article 7 of CEDAW dealing with the participation by women in political and public life, the CEDAW Committee remarked that where countries have developed effective temporary strategies in an attempt to achieve equality of participation, a wide range of measures had been implemented including:

setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies.¹⁷²

254. The recommendation acknowledges explicitly that in order to secure equal participation by women in professional and public life, it may be necessary to set numerical goals.

255. In reviewing Australia's implementation of CEDAW in 2006, the CEDAW Committee expressed concerns about the lack of specific action designed to increase the representation of women in leadership positions. The CEDAW Committee observed:

While noting that the Sex Discrimination Act allows for the adoption of special measures to ensure equality of opportunity or in order to meet the special needs of women, the Committee is concerned that the State party does not support the adoption of **targets or quotas** to promote greater participation of women, particularly indigenous women and women belonging to ethnic minorities, in decision-making bodies [emphasis added].¹⁷³

256. The CEDAW Committee recommended Australia:

consider the adoption of **quotas and targets**, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation 25, to further increase the number of women in political and public life and to ensure that the representation of women in political and public bodies reflect the full diversity of the population, particularly indigenous women and women belonging to ethnic minorities.¹⁷⁴

257. Therefore temporary special measures, such as quotas and targets, aimed at accelerating de facto equality for Australian women in the workplace do not constitute discrimination against men.
258. Indeed, Australia is *obliged* to adopt and implement temporary special measures that are necessary and appropriate to accelerate the achievement of women's substantive equality in the workplace.¹⁷⁵
259. Publicly listed companies are a sector usually focused on achievable, time bound and measurable outcomes. In order to stimulate action on gender equality, it is recommended that a two stage process of special measures be adopted. This two stage process would be put in place for a specified period of time with the aim of intervening so as to increase substantially the number of women at senior levels in corporate Australia.
260. Stage One would require publicly listed companies to set their own three and five year targets to increase the representation of women on their boards and at senior executive level. These targets would be set by the businesses themselves as special measures and accordingly will vary depending on a range of factors including the industry, the pipeline of available women, the baseline level of women's existing representation and other factors.
261. Companies would monitor progress against these targets and report annually on progress in a transparent manner. For publicly listed companies, this reporting would be included in the ASX Annual Report.
262. The second phase of this process is designed to commence after five years and following a full evaluation as to why progress on gender equality at the senior level of business has not been achieved. Stage Two may require the government to establish mandatory quotas for all government and publicly listed boards. Failure to meet these quotas would result in financial or other penalties.
263. In relation to government boards, most states and territories have already set targets for women on government boards and women at executive level. In relation to government boards these targets have resulted in significant increases in women's representation. The Victorian Women's Policy Framework 2008-11 included a commitment to increasing the proportion of women on Victorian Government boards and committees to 40%.¹⁷⁶ This target has been achieved and was recently increased to 50%.¹⁷⁷
264. In 2007, the *South Australian Strategic Plan* included a target to increase and maintain the number of women on all State Government boards and committees to 50% by 2008 and to increase the number of women chairing state government boards and committees to 50% by 2010.¹⁷⁸ The targets in

the SA Strategic Plan are measurable and time bound. They are monitored and reported on regularly. In January 2004, previous to the target being set, 33.62% of the members of government boards and committees were women. By April 2009, this had increased to 44.78%.¹⁷⁹ In January 2004, 23.83% of SA government boards and committees were chaired by women. Again, in the four years since the baseline was set, women's representation had increased to 34.68%.¹⁸⁰

265. The Australian Capital Territory has experienced a similar level of improvement since the ACT Government set itself a target to achieve and maintain 50% representation of women on Government boards and committees in 2004.¹⁸¹ While the policy does not include an enforcement mechanism or minimum timing by which the target must be achieved, progress towards the target is monitored and reported. In December 2005, 46% of ACT Government board members were women and by March 2008, this had increased to 48%.¹⁸² In December 2005, 26% of Government board were chaired by women were women and again, by March 2008, this had increased to 34.7%.¹⁸³ In addition, the percentage of women on ACT Government remunerated boards increased slightly from 42% in 2002/03 to 45% in December 2005.¹⁸⁴
266. In recognition of the traditionally low levels of women on Queensland government boards, in 2006 the Queensland Government committed to ensuring that wherever possible, 50% of new appointees to government bodies are women.¹⁸⁵ The representation of women on Queensland Government Boards increased from 33.6% in 2006 to 36.5% in 2008.¹⁸⁶
267. Most other states and territories are following this trend to quantify and monitor the representation in leadership and management positions. The NSW Government has made a commitment to, 'ensure that progress towards gender parity is achieved on public sector boards concerned with economic and commercial matters and major public utilities as well as on those that are concerned with social and community life and smaller statutory boards.'¹⁸⁷ The Tasmanian Government has expressed a similar commitment.¹⁸⁸ Increasing the number of women in leadership positions, including in executive positions and on boards and committees is one of the Northern Territory Government's aims in the *Territory 2030 Draft Strategy*.¹⁸⁹
268. The South Australian and ACT governments have also set targets in relation to the representation of women in senior leadership roles. The 2007 *South Australian Strategic Plan* included a target to ensure women comprise half of public sector employees in the executive levels (including chief executives) by 2014. In 2003, 29.4% of public sector employees in the executive levels (including chief executives) in SA were women. By 30 June 2007, this had increased to 35.6%.¹⁹⁰ The *ACT Women's Plan 2004-2009* also aimed to increase the proportion of women in senior management and leadership positions.¹⁹¹ In 2003, 33.9% of executive positions in the ACT Public Service were held by women. By 30 June 2008, this had increased to 39%.¹⁹²

269. It is important that the Australian Government also models better gender diversity on boards by establishing a target of a minimum of 40% of each gender on all Australian Government boards. These targets should be publicly disclosed, time bound and regularly reported on in a transparent manner.

Recommendation 17: Targets on Australian Government boards

The Australian Government should set a minimum target of 40% of each gender on all government boards to be achieved within three (3) years. These targets should be publicly disclosed, time bound and regularly reported on in a transparent manner.

Recommendation 18: ASX Voluntary targets on boards

The ASX Corporate Governance Principles and Recommendations should be amended to provide that:

- ASX companies be required to set their own gender diversity targets, at both Board and Senior Executive Level, at three (3) and five (5) year time frames;
- reporting on achievement of gender diversity targets be included in the Annual Report to the ASX, by exception reporting; and
- ASX companies include in their Annual Report to the ASX a statement on compliance with their obligations under the EOWW Act (or its replacement), by exception reporting.

Recommendation 19: Other ASX strategies

ASX companies should consider the following strategies to improve gender equality at senior levels:

- Create an additional board position reserved for women, as a one off fast tracking measure immediately;
- Ensure all vacant board positions are fully advertised, with clear competencies set, and transparent selection processes used for appointments; and
- Ensure senior women are consulted during selection processes.

Recommendation 20: Gender quotas after five years if lack of progress

The strategy to improve gender equality at senior levels of business has two phases:

- Phase 1 requires companies to set their own targets and report regularly on progress; and
- Phase 2 is designed to commence after 5 years if companies are not at a minimum of 40% of both genders on publicly listed boards. Phase 2 involves the government giving serious consideration to mandatory quotas for all government and publicly listed boards. Failure to meet these quotas would result in financial or other penalties.

The Australian Government should promote an target of 40% gender balance on all boards in Australia, to be reviewed after five years. If this target is clearly not being met, the Australian Government should seriously consider legislating to require publicly listed companies to achieve a mandatory gender diversity quota of 40% within a specified time frame, failing which penalties will be imposed.

8.10 Associated reforms

Sex Discrimination Act 1984 (Cth)

270. In order to integrate the reforms to EOWA proposed in this Submission with the other key national gender equality law, the SDA, the Commission considers it important that the recommendations of the Senate Standing Committee on Legal and Constitutional Affairs' Inquiry into the Effectiveness of the SDA be implemented.¹⁹³ The Senate Committee recommendations are consistent with the objectives of the recommendations of this Submission, including:

- Improving clarity and cohesion of the national gender equality mechanisms, particularly by giving the Commission, acting through the SDC, a strong enforcement and independent monitoring role; and
- Promoting gender equality rather than equal opportunity for women, including giving both women and men equal coverage under the SDA, and providing comprehensive protection from discrimination on the grounds of family and carer responsibilities.

271. In addition, since the commencement of the operations of the FWA/Ombudsman, the Commission proposes further recommendations to foster clarity and cohesion between the three statutory agencies impacting on the regulation of gender equality in the workplace.

Recommendation 21: Implementing the recommendations of the SDA Review

The Australian Government should implement the recommendations of the *2008 Report of Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Effectiveness of the Sex Discrimination Act 1984 (Cth)*.¹⁹⁴ In particular, the SDA should be amended to:

- Ensure equal coverage for both women and men;
- Extend protection from discrimination in employment on the grounds of family and caring responsibilities to cover responsibilities across the life-cycle, including creating a positive obligation on employers to reasonably accommodate the needs of pregnant workers or workers with family or carer responsibilities;
- Place a positive obligation on employers to eliminate discrimination and promote gender equality;
- Strengthen legal protection from sexual harassment in Australian workplaces;
- Empower the Commission, where appropriate acting through the SDC, to:
 - undertake formal inquiries in relation to the elimination of discrimination and promotion of gender equality;
 - intervene, or appear as *amicus curiae*, as of right in relevant proceedings, including proceedings under the FWA;
 - commence proceedings for breaches of the SDA, without requiring an individual complaint; and
 - certify Special Measures, upon application by EOWA, or an employer.
- Require the SDC/Commission to notify the EOWA and the FWA/Ombudsman where action

above is taken in relation to gender equality in the workplace; and

- Require the Commission, acting through the SDC, to independently monitor progress in achieving gender equality in Australia, and to report to Parliament at a minimum of every two (2) years, including regarding gender equality in Australian workplaces, against National Gender Equality Benchmarks and Indicators

Fair Work Act 2009 (Cth)

272. Similarly, the Commission proposes some minor changes to the formal institutional arrangements of the FWA/Ombudsman to improve cohesion and collaboration between the SDC/Commission and FWA/Ombudsman in relation to complaints.

Recommendation 22: Coordinating action between the FWA/Ombudsman and the SDC/Commission

The FWA/Ombudsman should be required to notify the EOWA and SDC/Commission if:

- it commences an application under s 682 of the FWA which relates to adverse action against an existing or prospective covered employee because of a relevant protected attribute, being sex, marital status, family or carer's responsibilities and pregnancy;
- a Fair Work Inspector issues a compliance notice where the Inspector reasonably believes that a person has contravened relevant provisions of the FWA¹⁹⁵ or a Fair Work Instrument, including amongst other things, relevant provisions of the National Employment Standards,¹⁹⁶ or an equal remuneration order

Recommendation 23: Reporting of Data by the FWA/Ombudsman

The FWA/Ombudsman should be required to report annually to the SDC/Commission disaggregated data and analysis required by the SDC/Commission to report on progress to achieve gender equality in Australian workplaces, in accordance with the National Gender Equality Benchmarks and Indicators.

9 Appendices

9.1 *Appendix 1: Australia's International Human and Labour Rights Obligations: Detailed Descriptions*

Convention on the Elimination of All forms of Discrimination against Women

273. Australia has ratified CEDAW¹⁹⁷ and it is scheduled to the SDA.
274. Therefore, Australia is bound by the terms of CEDAW, subject to any express reservations made at the time of its ratification. CEDAW is a key international instrument which places an obligation on Australia to:
- take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular... the right to the same employment opportunities...the right to promotion...[and] equal remuneration.¹⁹⁸
275. This obligation applies to women in all sectors.¹⁹⁹
276. Further, Article 5 of CEDAW obliges Australia to take all appropriate measures to modify social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.
277. The Committee on the Elimination of All forms of Discrimination against Women (CEDAW Committee) is responsible for monitoring the implementation of CEDAW by those States which are party to it.
278. The CEDAW Committee has noted that stereotypical cultural attitudes can be 'reflected in the low proportion of women in top leadership positions in the public sector, including academia,²⁰⁰ lower pay and income, and a 'lack of equality of opportunity for women in the labour market.'²⁰¹
279. CEDAW requires Australia to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women by taking a range of appropriate measures, including legislation.²⁰²
280. Under Article 24, Australia undertakes to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in CEDAW.

International Covenant on Civil and Political Rights

281. Australia has been a party to the ICCPR²⁰³ since 1980. Article 26 of the ICCPR contains a positive obligation on States parties to take steps to protect against discrimination on the ground of sex.
282. The obligation of protection does not refer only to the rights set out in the ICCPR but rather to every form of discrimination.²⁰⁴
283. The positive duty was expressly and generally emphasized by the UN Human Rights Committee in its General Comment on the equal rights of men and women. The UN Human Rights Committee stated that:²⁰⁵
- The principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the ICCPR.
- ...
- Such action may involve granting for a time certain preferential treatment in specific matters... As long as such treatment is needed to correct discrimination in fact, it is a case of legitimate differentiation under the ICCPR.
284. According to Nowak, positive measures of protection are particularly necessary when certain groups of people traditionally have been seriously discriminated against in the practice of State parties or when they have been subjected to specific discrimination in the private sector.²⁰⁶
285. While State parties are free to choose in what way and to what degree they wish to counteract specific discrimination, Article 26 calls for 'effective protection' and consequently, the absence of adequate measures in the event of concrete discrimination may lead to a violation of this provision.²⁰⁷

International Covenant on Economic, Social and Cultural Rights

286. Australia has been party to the ICESCR²⁰⁸ since 1976. Under ICESCR, Australia has an obligation to:
- recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular... Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.²⁰⁹
287. Further, Article 2 of the ICESCR requires State parties to take concrete steps by all appropriate means, particularly legislation, to ensure the full realization of the rights guaranteed by the Covenant.²¹⁰
288. Importantly, under Article 3, Australia undertakes to ensure the equal right of men and women to all of the rights under the ICESCR.
289. The Committee on Economic, Social and Cultural Rights (CESCR Committee) is responsible for monitoring the implementation of ICESCR by those States

which are party to it. In reviewing Australia's implementation of ICESCR in 2006, the ICESCR Committee expressed the following concerns:

despite the State party's efforts to improve gender equality, a wage gap still persists between men and women in the workplace, particularly in managerial positions. It is also concerned at the low percentage of women in high-ranking positions in political and public life.²¹¹

290. The ICESCR Committee recommended Australia:

continue strengthening its effort to enhance equality between men and women in the work place, in particular those initiatives aimed at implementing the principle of equal pay for work of equal value.²¹²

International Labour Organisation Conventions

291. The International Labour Organisation (ILO) regards gender equality as both a basic human right and an intrinsic part of their global aim of Decent Work for All Women and Men.

292. The ILO *Discrimination (Employment and Occupation) Convention* (ILO 111) was ratified by Australia in 1973. As a signatory to this convention Australia has undertaken to:

pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.²¹³

293. ILO 111 defines discrimination to include:

Any distinction, exclusion or preference made on the basis of...sex...which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.²¹⁴

294. Australia also ratified the *ILO Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value* (ILO 100) in 1974. This convention obliges Australia to "ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value."²¹⁵

295. ILO 100 proposes the principle of equal remuneration may be applied through the adoption of appropriate national laws or regulations, legally established or recognised machinery for wage determination, collective agreements between employers and workers or a combination of these various means.²¹⁶

296. In 1990, Australia ratified the *ILO Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities*, 1981 (ILO 156). As a party to ILO 156, Australia is obliged to:

Make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.²¹⁷

297. ILO 156 applies equally to, “men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.”²¹⁸

Beijing Declaration and Platform for Action

298. The Fourth World Conference on Women was held in Beijing in 1995. The Beijing Declaration and Platform for Action was adopted by consensus.
299. As a participant in the Beijing Conference, Australia made a commitment to implement the Beijing Platform for Action. Women in power and decision-making’ is one of the Beijing Platform’s 12 critical areas of concern. The Platform states:

Without the active participation of women and the incorporation of women’s perspective at all levels of decision-making, the goals of equality, development and peace cannot be achieved.²¹⁹

300. The Platform requires the Australian government to:

Commit themselves to establishing the goal of gender balance in governmental bodies and committees, as well as in public administrative entities, and in the judiciary, including, inter alia, setting specific targets and implementing measures to substantially increase the number of women with a view to achieving equal representation of women and men, if necessary through positive action, in all governmental and public administration positions.²²⁰

301. The Government is also asked to, ‘encourage greater involvement of indigenous women in decision-making at all levels’.²²¹

302. The Platform recognises the importance of collecting and monitoring data and research. Governments are required to:

Monitor and evaluate progress in the representation of women through the regular collection, analysis and dissemination of quantitative and qualitative data on women and men at all levels in various decision-making positions in the public and private sectors, and disseminate data on the number of women and men employed at various levels in Governments on a yearly basis; ensure that women and men have equal access to the full range of public appointments and set up mechanisms within governmental structures for monitoring progress in this field.²²²

Support non-governmental organisations and research institutes that conduct studies on women’s participation in and impact on decision-making and the decision-making environment.²²³

and

Recognize that shared work and parental responsibilities between women and men promote women’s increased participation in public life, and take appropriate measures to achieve this, including measures to reconcile family and professional life.²²⁴

303. The Platform prescribes additional actions required from governments as well as national bodies, the private sector, trade unions, employers' organisations, research and academic institutions. These actions include:

- Take positive action to build a critical mass of women leaders, executives and managers in strategic decision-making positions;
- Create or strengthen, as appropriate, mechanisms to monitor women's access to senior levels of decision-making;
- Review the criteria for recruitment and appointment to advisory and decision-making bodies and promotion to senior positions to ensure that such criteria are relevant and do not discriminate against women;
- Encourage efforts by non-governmental organisations, trade unions and the private sector to achieve equality between women and men in their ranks, including equal participation in their decision-making bodies and in negotiations in all areas and at all levels;
- Develop communications strategies to promote public debate on the new roles of men and women in society, and in the family;
- Restructure recruitment and career-development programmes to ensure that all women, especially young women, have equal access to managerial, entrepreneurial, technical and leadership training, including on-the-job training;
- Develop career advancement programs for women of all ages that include career planning, tracking, mentoring, coaching, training and retraining.²²⁵

9.2 Appendix 2: Detail of the Key Features of Australia's National Laws and Institutional Arrangements which impact on Gender Equality in the Workforce

Equal Opportunity for Women in the Workplace Act 1999 and Agency

Protected attributes and areas

304. Uniquely, the EOWW Act deals only with discrimination against women in employment.²²⁶

Coverage

305. The EOWW Act applies to all higher education institutions and federal employers with 100 or more employees.²²⁷ It does not apply to the Commonwealth, a State, a Territory or an authority.²²⁸ The EOWW Act does not include as 'employees' equity partners in professional firms or non-executive board members.

306. The *Review of the Equal Opportunity for Women in the Workplace Act 1999: Issues Paper* indicates that as of July 2009, approximately 30% of all organisations in Australia were covered by the EOWW Act.²²⁹

Operative gender equality provisions

307. The EOWW Act does not prohibit direct and indirect discrimination. Instead, it tackles systemic discrimination by promoting employers to take action aimed at achieving equal opportunity for women in the workplace. Its objects are to:

- promote the principle that employment for women should be dealt with on the basis of merit;
- promote, amongst employers, the elimination of discrimination against, and the provision of equal opportunity for, women in relation to employment matters; and
- to foster workplace consultation between employers and employees on issues concerning equal opportunity for women in relation to employment.²³⁰

308. Its primary means of doing this is by requiring covered employers to develop a workplace program that is designed to ensure that:

- appropriate action is taken to eliminate all forms of discrimination against women in relation to employment matters; and
- measures are taken to contribute to the achievement of equal opportunity for women in relation to employment matters.²³¹

309. The EOWW Act defines 'employment matters' to include: recruitment procedures and selection criteria, promotion, transfer and termination, training and development, work organisation, conditions of service, arrangements for

dealing with sex based harassment of women and arrangements for dealing with pregnant or potentially pregnant employees and those breastfeeding their children.²³²

310. Under s.8 of the EOWW Act, covered employers must:
- confer responsibility for the development and implementation of the program on a person having sufficient authority and status within the management of the organisation;
 - consult with employees, particularly employees who are women; and
 - prepare a workplace profile and an analysis of issues relating to employment matters that need to be addressed in order to achieve equal opportunity for women in the workplace.
311. Workplace programs must provide for actions to be taken and an evaluation of the effectiveness or otherwise of actions taken.²³³

Enforcement mechanisms

312. Generally, the EOWW Act has the weakest enforcement mechanisms.
313. A covered employer is required to submit a public report on the outcomes of their workplace program to the Equal Opportunity for Women in the Workplace Agency (EOWA) every 12 months.²³⁴
314. The report must describe the actions taken and planned to be taken to achieve equal opportunity for women in the employer's workplace.²³⁵ An evaluation of the effectiveness must either appear in the public report or in a confidential report.²³⁶
315. The EOWA monitors the reports and can request further information from particular employers.²³⁷ The EOWA identifies those employers that fail to lodge an annual report or fail to provide further information when directed in an annual report to the Minister. The report is tabled in Parliament²³⁸ and made available on their website.
316. As noted above, the Australian Government Procurement Guidelines prevent Government departments from buying goods and services from, or entering into contracts with organisations identified in these reports.²³⁹ The *Review of the Equal Opportunity for Women in the Workplace Act 1999: Issues Paper* states further, that these organisations may also be ineligible for grants under specified industry assistance programs.²⁴⁰

Equal Opportunity for Women in the Workplace Agency

317. The EOWW Act is administered by the EOWA. The EOWA is a statutory authority located within the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs. The Director of the EOWA is appointed by the Governor General²⁴¹ and reports directly to the

Minister for the Status of Women. The EOWA is to perform its functions in accordance with 'general instructions given by the Minister in writing.'²⁴²

318. In addition to its role in enforcing the EOWWA by monitoring and reporting on compliance with employer's workplace program reporting requirements discussed above, the EOWA also:

- advises and assists employers develop and implement workplace programs;
- collects, analyses and benchmarks information and provides personalised feedback and advice to organisations;
- develops guidelines and tools;
- monitors and evaluates the effectiveness of workplace programs in achieving purposes of EOWW Act;
- undertakes research and educational programs to promote EEO for women in workplace;
- promotes understanding and acceptance and public discussion of equal opportunity for women in the workplace through Award programs such as the Employer of Choice for Women Award and the EOWA Business Achievement Awards;
- reviews the effectiveness of EOWW Act and reports to the Minister on matters in relation to EEO for women in the workplace; and
- provides training and assistance to employers in establishing and developing workplace programs.²⁴³

Sex Discrimination Act 1986 and Sex Discrimination Commissioner/Australian Human Rights Commission

Protected attributes and areas

319. The SDA covers discrimination on the ground of sex,²⁴⁴ marital status,²⁴⁵ pregnancy or potential pregnancy,²⁴⁶ as well as family responsibilities.²⁴⁷ 'Carer's responsibilities' is not covered by the SDA.

320. The SDA generally applies in all prescribed areas of public life, including goods and services,²⁴⁸ education,²⁴⁹ accommodation,²⁵⁰ land,²⁵¹ clubs²⁵² and the administration of Commonwealth laws and programs²⁵³ as well as employment²⁵⁴ and superannuation.²⁵⁵

321. However, under the SDA, discrimination on the ground of family responsibilities is unlawful only where the discrimination is 'direct' discrimination and only in dismissal from employment.²⁵⁶

322. The Commission's records show that employment complaints represent a significant number of all sex discrimination complaints lodged at the Commission.²⁵⁷

323. The SDA also prohibits sexual harassment in many areas of public life.²⁵⁸

Coverage

324. The SDA covers all existing and prospective female employees except for existing and prospective State employees.²⁵⁹
325. Unlike the EOWW Act, the SDA covers all Commonwealth female employees and, unlike the FWA, the SDA has a limited application to male employees.²⁶⁰

Operative gender equality provisions

326. The SDA prohibits:
- treating a person less favourably than a person of the opposite sex in the same or similar circumstances by reason of the person's sex (direct discrimination);²⁶¹ and
 - imposing an unreasonable condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons of the same sex (indirect discrimination).²⁶²
327. The SDA expressly prohibits both direct and indirect discrimination in all prescribed areas of public life, including in relation to employment:
- in the arrangements made for the purpose of determining who should be offered employment;
 - in determining who should be offered employment;
 - in the terms and conditions on which employment is offered or afforded;
 - by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;
 - by dismissing the employee; or
 - subjecting the employee to any other detriment.²⁶³
328. Sex discrimination is not unlawful in employment where a person's sex is a genuine occupational qualification.²⁶⁴
329. At the present time, the SDA makes no provision for a general positive duty on employers or other bodies to prevent discrimination or promote gender equality. The SDA therefore has only a limited role to play in challenging systemic discrimination by working to overcome barriers that disadvantage women in the workplace.
330. In particular, the SDA has proved inadequate to promote flexible work arrangements for both women and men in the workplace. This is primarily because the prohibition against indirect discrimination does not extend to the ground of family responsibilities and the SDA's limited application to men.²⁶⁵
331. The Australian Human Rights Commission and the SDC have some functions that seek to address systemic discrimination against women, which will be discussed below.²⁶⁶

Enforcement mechanisms

332. The SDA largely relies on individuals lodging complaints of direct and indirect discrimination but is supported by the SDC's functions as *amicus curiae* in discrimination proceedings²⁶⁷ and the Australian Human Rights Commission's inquiry and research functions.²⁶⁸
333. Complainants must lodge a complaint with the Commission before seeking redress from the Federal Court or Federal Magistrates Court.²⁶⁹ The President inquires into and attempts to conciliate the complaints the Commission receives. If the complaint cannot be conciliated, it is terminated and a complainant may then lodge an application at the Federal Court or the Federal Magistrates Court.²⁷⁰
334. The SDC may appear as *amicus curiae* in the Federal Court and Federal Magistrates Court, with leave of the court concerned.²⁷¹

Sex Discrimination Commissioner and the Australian Human Rights Commission

335. The office of the SDC is created by s.96 of the SDA. The Commissioner is appointed by the Governor-General²⁷² and, by convention, the appointment is made on the advice of the Federal Attorney General.²⁷³ The gender of the person is not specified.
336. The SDC is currently also responsible for age discrimination. The President is solely responsible for the handling of complaints under the SDA.²⁷⁴
337. Under the SDA, the majority of the functions and powers relevant to the SDA (and CEDAW) are not given to the SDC but to the 'Commission'.²⁷⁵ The SDC is a member of the Commission, together with the President and Human Rights Commissioner, the Race Discrimination Commissioner, the Aboriginal and Torres Strait Islander Commissioner and the Disability Discrimination Commissioner.²⁷⁶
338. The SDA sets out a range of functions to be carried out by the Commission, including:
- Granting temporary exemptions;²⁷⁷
 - Promoting understanding and acceptance of, and compliance with, the SDA;²⁷⁸
 - Conducting research and education, and other programs on behalf of the Commonwealth;²⁷⁹
 - Examining laws or (where requested by the Minister) proposed laws and reporting to the Minister;²⁸⁰
 - Reporting to the Minister on new laws or action that should be taken by the Commonwealth about unlawful discrimination or sexual harassment;²⁸¹
 - Preparing non-legally binding guidelines;²⁸² and

- Intervening in any court proceedings, with leave of the court.²⁸³
339. In addition to these functions under the SDA, the Commission also has general duties, functions and powers under the Australian Human Rights Commission Act which may be used to promote 'human rights'. 'Human rights' are defined to include 'the rights and freedoms recognized in the ICCPR' including the right to non-discrimination and equality on the ground of sex.²⁸⁴
340. The Commission also has the following human rights functions:
- To examine laws which may be inconsistent with human rights and report to the Minister;²⁸⁵
 - To report to the Minister about action that needs to be taken by Australia in order to comply with human rights;²⁸⁶ and
 - To inquire into any act or practice that may be inconsistent with or contrary to any human right, and, where appropriate, to attempt conciliation to effect a settlement, and in the absence of a settlement, to report to the Minister (although this function does not apply to an intelligence agency, such as ASIO).²⁸⁷
341. The Commission has the following powers in relation to the exercise of its functions:
- To do all things necessary or convenient to be done for or in connection with its functions;²⁸⁸
 - To report to the Minister at its discretion on 'any matter arising in the course of the performance of its functions' and an obligation to report to the Minister if requested by the Minister to do so;²⁸⁹
 - To work with and consult appropriate persons, governmental organisations and non-governmental organisations;²⁹⁰ and
 - In relation to its formal human rights inquiry function, to require a person to give information or produce documents and to examine witnesses. Failure to comply constitutes an offence.²⁹¹
342. These functions are to be used across the full range of gender equality issues for women in Australia.
343. However, as previously noted in the Commission's *Submission to the SDA Review*, the Commissioner and the Commissioner are significantly constrained in the exercise of their powers and functions due to limited resources and competing priorities.²⁹²

Fair Work Act 2009 and Fair Work Australia and Ombudsman

Protected attributes and areas

344. The FWA covers a person's sex, marital status, family or carer's responsibilities and pregnancy, as well as race, colour, age, physical or mental disability, religion, political opinion, national extraction or social origin.²⁹³
345. Unlike the SDA, the FWA includes the ground 'carer's responsibilities' and the 'family or carer's responsibilities' ground is not limited to termination.²⁹⁴

Coverage

346. The protections against workplace discrimination in the FWA apply to all existing and prospective employees²⁹⁵ of constitutionally covered entities²⁹⁶ as well as some State employees and prospective State employees.²⁹⁷
347. Unlike the EOWW Act, the FWA applies to Commonwealth employees. Unlike the SDA, the FWA has equal coverage of men and women.
348. It is estimated that the FWA will cover approximately 85% of Australian employees.²⁹⁸

Operative gender equality provisions

Unlawful discrimination

349. The FWA discrimination provision prohibits a covered employer taking 'adverse action' against an existing or prospective covered employee because of a protected attribute.²⁹⁹
350. Adverse action includes:³⁰⁰
- Refusing to employ a prospective employee;
 - Dismissing an employee;
 - Injuring an employee in their employment;
 - Altering the position of an employee to the employee's prejudice; and
 - Discriminating between an employee and other employees of the employer.
351. As the FWA is remedial legislation, it is likely that 'adverse action' will be interpreted broadly to cover a wide range of actions touching upon terms and conditions of employment, operation of workplace policies, training opportunities, access to promotions, other benefits associated with employment or any form of detriment.
352. There is an overlap between the concept of 'adverse action' and the 'discrimination in work' provisions in the SDA³⁰¹ and 'employment matters' in the EOWW Act³⁰² outlined above.

353. 'Adverse action' is not defined with reference to concepts of direct or indirect discrimination and is therefore potentially broader in scope than the SDA.
354. It is not yet clear to what extent it will extend to cover claims of indirect or systemic discrimination. However, it seems possible that courts would be open to treating an allegation of systemic bias or adverse outcome discrimination because of a prohibited attribute as coming within the scope of 'adverse action'.
355. The Government's new national anti-discrimination information gateway states that:
- The discriminatory adverse action provisions of the Fair Work Act 2009 are extremely broad in scope, not differentiating between direct or indirect, inadvertent or deliberate discrimination.
- The Fair Work Ombudsman has a particular interest in investigating and addressing indirect and systemic workplace discrimination and discriminatory policies and practices.³⁰³
356. The FWA also makes it unlawful for a person to take adverse action because another person has, or exercises a workplace right.³⁰⁴ A workplace right includes an entitlement under an industrial law, such as parental leave.³⁰⁵
357. 'Adverse action' will not be unlawful if the action taken is not unlawful under any of the federal or state anti-discrimination laws in force.³⁰⁶ This means that the exemptions under the SDA will apply equally to adverse action claims under the FWA.
358. Unlike the SDA, the onus of proof is reversed so that once a complainant has shown some evidence that the respondent took 'adverse action' for a prohibited reason, the respondent has to establish that the conduct was not carried out unlawfully.³⁰⁷
359. FWA also provides unlawful termination protections for *all* employees in Australia. The FWA makes it unlawful to terminate an employee's employment for sex, marital status, family or carer's responsibilities, pregnancy or absence from work during maternity leave or other parental leave reasons.³⁰⁸

Positive rights (flexible work arrangements)

360. The FWA provides for ten national employment standards that will act as a minimum safety net for all employees under the federal system from 1 January 2010.³⁰⁹
361. The standards that will help both male and female workers better accommodate their family responsibilities are:
- a right to request flexible working arrangements for the care of a child who is under school age or a child under 18 with a disability;³¹⁰
 - a right to 12 months unpaid parental leave for each parent;³¹¹

- request for extra parental leave up to 12 months;³¹²
 - a right to paid and unpaid personal/carer's leave and compassionate leave;³¹³ and
 - an obligation on employers to take an employee's family responsibilities into account when requiring them to work overtime.³¹⁴
362. Many of the entitlements are framed as positive, enforceable rights. This is in contrast to the SDA, which is framed in terms of prohibitions on unlawful behaviour.³¹⁵
363. However, the right to request flexible work arrangements and the right to unpaid parental leave is limited – it applies only to children under school age, it does not apply to workers unless they have at least 12 months continuous service³¹⁶ and also, in the case of casual workers, a reasonable expectation of continuing employment.³¹⁷
364. Employees will not be able to challenge an employer's decision to refuse:
- a request for flexible work arrangements on reasonable grounds;³¹⁸ and
 - a request for extended parental leave on reasonable business grounds.³¹⁹

Equal remuneration

365. The FWA provides Fair Work Australia with the power to make an order it considers appropriate to ensure that there will be equal remuneration for men and women workers for work of equal or comparable value in relation to employees to whom the order will apply.³²⁰
366. Importantly, it is no longer necessary for an applicant to demonstrate that there has been some discrimination involved in the setting of remuneration. Instead, Fair Work Australia need only be satisfied that there is not equal remuneration for work of equal or comparable value.³²¹
367. Further, the FWA prohibits discriminatory terms in modern awards³²² and Fair Work Australia may vary modern award minimum wages on 'work value' grounds.³²³

Enforcement mechanisms

368. The FWA is enforced through both individual complaints as well as the broad powers of the Fair Work Ombudsman to investigate breaches and institute legal proceedings. It has the strongest enforcement mechanisms of the three federal Acts.
369. Fair Work Australia provides conciliation services which are compulsory for dismissal claims³²⁴ and voluntary for all other kinds of discrimination claims.³²⁵
370. The Fair Work Ombudsman may appoint Fair Work Inspectors.³²⁶ Unlike the Australian Human Rights Commission, the Fair Work Ombudsman can use

workplace inspectors and the powers conferred on inspectors to access premises and obtain relevant documents.³²⁷

371. Under the FWA, Fair Work Inspectors may enter business premises without force and:
- inspect any work, process or object;
 - interview any person;
 - require a person to tell the inspector who has custody or access to a record or document;
 - require a person to produce a record or document;
 - inspect and make copies of records or documents that is kept on the premises or accessible from any computer on the premises; or
 - take any samples of any goods or substances.³²⁸
372. Fair Work Inspectors may also issue compliance notices if an inspector reasonably believes that a person has contravened the FWA or a Fair Work Instrument, including amongst other things, the provisions of the National Employment Standards or an equal remuneration order.³²⁹

A compliance notice may require the person to take action to remedy the direct effects of the contravention and/or produce reasonable evidence of the person's compliance with the notice.³³⁰

The Fair Work Ombudsman may also commence proceedings or represent employees in court or in applications before Fair Work Australia.³³¹

Fair Work Australia and Fair Work Ombudsman

373. Fair Work Australia replaces the former Australian Industrial Relations Commission. It is the national workplace relations tribunal with specific dispute resolution functions under the FWA.
374. Fair Work Australia has functions under the FWA in relation to:
- the national minimum standards;³³²
 - modern awards;³³³
 - workplace determinations;³³⁴
 - minimum wages;³³⁵
 - equal remuneration;³³⁶
 - granting remedies for unfair dismissal;³³⁷
 - regulating the taking of industrial action;³³⁸
 - resolving a range of collective and individual workplace disputes through conciliation, mediation and in some cases arbitration.³³⁹

375. Fair Work Australia also has the function of providing assistance and advice about its functions and activities.³⁴⁰
376. Fair Work Australia has the following powers to inform itself in relation to any matter before it:
- requiring a person to attend before it;
 - inviting oral or written submissions;
 - requiring a person to provide copies of documents or records, or to provide any other information to FWA;
 - taking evidence under oath or affirmation in accordance with the regulations (if any);
 - requiring an FWA Member, a Full Bench or the Minimum Wage Panel to prepare a report;
 - conducting inquiries;
 - undertaking or commissioning research;
 - conducting a conference; or
 - holding a hearing.³⁴¹
377. The FWA also creates the office of the Fair Work Ombudsman which is an independent statutory office.³⁴² The FWO is appointed by the Governor General and must prepare an annual report for presentation to federal parliament. The FWO has extensive systemic powers of enforcement, including to:
- monitor compliance with the FWA and Fair Work Instruments;
 - inquire into and investigate practices contrary to the FWA;
 - commence proceedings in court or make applications to Fair Work Australia;
 - promote compliance with the FWA;
 - provide education, assistance and advice to employees, employers, outworkers, outworkers entities and organisation;
 - monitor compliance with the FWA and fair work instruments; and
 - referring matters to relevant authorities.³⁴³
378. The FWA does not confer any specific functions on the Fair Work Ombudsman to investigate or conciliate discrimination claims.

Australian Government Office of Work and Family

379. The Office of Work and Family resides in the Department of Prime Minister and Cabinet. The role of the Office of Work and Family is to ensure that the formulation of policies in balancing work and family life takes place at the highest level and is central to Government policy decisions.

380. The Office of Work and Family provides support for government policies on child care and early childhood education and produces an annual State of the Family Report.³⁴⁴

Australian Government Office for Women

381. The Office for Women is a gender specific office of the Australian Government which is located within FAHCSIA. Its role is to influence policy and decision-making to ensure women's interests are considered, to act as the central source of advice for Government agencies on policies and programs for Australian women.³⁴⁵
382. The Office for Women also provides high level advice to the Minister for the Status of Women and administers programs relating to women, represents the Australian Government in national and international forums on women's issues and provides support for trafficking victims.

9.3 Appendix 3: Comparative Gender Equality Laws and Institutional Arrangements in the UK, Canada, New Zealand and Norway

United Kingdom

383. There are three key pieces of national legislation relevant to sex discrimination and gender equality in the United Kingdom: the *Equal Pay Act 1970*; *Sex Discrimination Act 1975* and *Equality Act 2006*. The Government Equalities Office has responsibility for the equalities policy and legislation.³⁴⁶ The *Human Rights Act 1998* (HRA) also makes provision for non-discrimination and equality, including in respect of gender.
384. In April 2009 the Equality Bill 2009 was introduced in the House of Commons.³⁴⁷ The United Kingdom Government hopes the Bill will receive Royal Assent in spring 2010 with the majority of its provisions taking effect in October 2010.³⁴⁸ The Bill, if passed, will consolidate all United Kingdom discrimination legislation, increase protection for women and extend enforcement mechanisms for sex discrimination and equality.³⁴⁹

The National Human Rights Institution

385. The Commission for Equality and Human Rights ('EHRC') was established by the *Equality Act 2006* (UK) and commenced operation on 1 October 2007.
386. The EHRC continues the work of the three previous equality commissions in the United Kingdom (the Equal Opportunities Commission, the Commission for Racial Equality, and the Disability Rights Commission). It has also taken on responsibility for promoting human rights and equality, and combating unlawful discrimination in three new strands: age, sexual orientation and religion or belief. The EHRC also encourages compliance with the HRA.
387. The EHRC has jurisdiction over England, Wales and some human rights issues in Scotland and liaises with the Equality Commission for Northern Ireland which has the equivalent equality jurisdiction for that region.³⁵⁰
388. The EHRC describes itself as 'the independent advocate for equality and human rights in Britain'.³⁵¹ It aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights.³⁵² The EHRC enforces equality legislation on age, disability, gender, gender assignment, race, religion or belief, sexual orientation and encourages compliance with the Human Rights Act. It also gives advice and guidance to businesses, the voluntary and public sectors and to individuals.³⁵³
389. The EHRC is a non-departmental public body which is accountable for its public funds, but independent of government.³⁵⁴ It has a range of powers to

support its promotional work, as well as specific powers relating to the enforcement of discrimination (but not human rights) legislation.³⁵⁵

Anti-discrimination Framework

390. The EHRC may investigate whether an unlawful act of discrimination or harassment has occurred.³⁵⁶ It need only suspect that an unlawful act of discrimination or harassment has taken place in order to commence the investigation.³⁵⁷ The EHRC has the power to compel evidence for investigations.³⁵⁸
391. Following an investigation, if the EHRC concludes that unlawful discrimination or harassment has taken place, it may issue an 'unlawful act notice'.³⁵⁹ This notice can require the recipient to prepare an action plan setting out the steps they will take to stop or rectify the discrimination and may include recommended action.³⁶⁰ If the person does not comply with the action plan, the EHRC may then apply to the courts to enforce it.³⁶¹
392. Alternatively, where a person is willing to work with the EHRC to achieve improvement, they can enter into a binding agreement with it.³⁶² An agreement may be made before, during or after an investigation if the EHRC thinks unlawful discrimination or harassment has occurred.³⁶³ In exchange for the EHRC's agreement not to investigate the matter further, the agreement may include a commitment to take, or refrain from taking, a specified action such as best practice audits.³⁶⁴ If the EHRC thinks the person may not comply or has not complied with any part of the agreement, it can apply to the courts to enforce the agreement.³⁶⁵
393. The EHRC also has the power to investigate whether or not an unlawful act notice or binding agreement is being complied with and it can compel evidence to this investigation.³⁶⁶

Positive Duties

394. The Gender Equality Duty ('GED') came into force in the United Kingdom in April 2007.³⁶⁷ It places a legal obligation on all public authorities to identify and eliminate discrimination and harassment, and to proactively promote equality of opportunity.
395. All prescribed public authorities are required to prepare and publish a gender equality scheme showing how it intends to fulfil its GED.³⁶⁸ Prescribed public authorities are required to implement their gender equality schemes within 3 years unless it would be unreasonable or impracticable for it to perform the requirement.³⁶⁹
396. Prescribed public authorities are also required to review their gender equality scheme and publish a revised gender equality scheme every 3 years.³⁷⁰ Further, prescribed public authorities must publish an annual report summarising the actions taken toward the achievement of its GED.³⁷¹

397. The EHRC enforces the GED by issuing notices to comply if it thinks a public authority is failing to comply with the GED.³⁷² The EHRC may apply to the County Court for an order requiring compliance if the public authority fails to comply with the EHRC's notice.³⁷³

Legal proceedings

398. In addition to the EHRC powers to investigate and enforce anti-discrimination laws, individuals also have the power to institute legal proceedings for breaches of anti-discrimination laws. Claims of unlawful discrimination in employment may be lodged with an employment tribunal³⁷⁴ and proceedings for unlawful discrimination in education and training, housing, public administration and the provision of goods, facilities and services, may be instituted in court.³⁷⁵
399. Only the EHRC can institute legal proceedings against a person for discriminatory advertisements and for pressuring or instructing another to undertake unlawful discrimination.³⁷⁶

Conciliation

400. While conciliation is not a compulsory step in resolving complaints of unlawful discrimination, the EHRC is empowered to arrange conciliation services in disputes related to discrimination in education and training, housing, public administration and the provision of goods, facilities and services.³⁷⁷ Conciliation is delivered by an independent provider to ensure that information about the case does not become available to EHRC, which could potentially be involved in supporting a case where conciliation broke down or in formal enforcement proceedings against a discriminator.³⁷⁸
401. The Advisory, Conciliation and Arbitration Service (an independent body that is accountable for its public funds) provides free conciliation for discrimination in employment matters.³⁷⁹

Injunctions

402. If the EHRC thinks that a person is likely to commit an act of unlawful discrimination, it may apply to the court for an injunction to prevent them.³⁸⁰

Third Party Interventions

403. The EHRC is able to seek leave to intervene in court cases which may have an equality or human rights dimension to provide the court with expert knowledge.³⁸¹

Supporting complainants

404. The EHRC has the power to provide any form of assistance to individuals bringing legal proceedings under anti-discrimination legislation (but not the *Human Rights Act 1998* (UK)).³⁸² There are no statutory criteria limiting the EHRC's support for individual complainants. This support may include financial assistance or legal advice or representation.³⁸³

Pay Equity Framework

405. The *Equal Pay Act 1970* (UK) makes it unlawful for employers to discriminate between male and female employees in terms of pay and conditions where they are doing the same or similar work, work rated as equivalent, or work of equal value.³⁸⁴ This legislation covers not just wages and salaries, but bonuses, overtime, holiday pay, sick pay, performance related pay, travel concessions and occupational pensions.³⁸⁵
406. Complaints of unequal pay may be brought before an employment tribunal.³⁸⁶
407. The National minimum wage, overseen by the Low Pay Commission, has had a significant effect on the gender pay gap among the low paid in the UK.³⁸⁷

Additional Commission Powers

Independent Monitoring

408. The EHRC is charged with defining (in consultation with interested parties) and monitoring progress on equality and human rights in the United Kingdom.³⁸⁸ Every three years it must publish a report which is laid before Parliament outlining the extent of progress towards equality.³⁸⁹

Codes of Practice

409. The EHRC may issue statutory codes of practice in relation to any aspect of pay equity, unlawful sex discrimination and the GED.³⁹⁰ Codes of practice explain the requirements of the law and are designed to assist business and the public sector to understand their legal responsibilities and recommend good practice.
410. The EHRC can prepare new codes either on its own initiative or at the request of the relevant Secretary of State.³⁹¹ It must consult with interested parties before it issues a code and must publish proposals for a code so that members of the public can provide input on those proposals.³⁹² The code must be approved in draft by the Secretary of State and laid before the Parliament.³⁹³ If neither House of Parliament passes a resolution disapproving the draft code within 40 days, the code comes into force.³⁹⁴
411. Failure to comply with a code of practice does not itself give rise to criminal or civil proceedings, but may be admissible in such proceedings.³⁹⁵ Courts and tribunals are required to take relevant codes of practice into account when determining if unlawful discrimination has occurred.³⁹⁶

Assessments, Inquiries and Investigations

412. The EHRC may make an assessment as to the extent to which or the manner in which a public authority has complied with duties to eliminate discrimination.³⁹⁷ The EHRC is also able to conduct inquiries into any matter relating to its duties.³⁹⁸ Inquiries may be thematic or in relation to one or more named parties.

413. The EHRC may investigate whether or not a person has committed an unlawful act, complied with a requirement imposed by an unlawful act notice or complied with an agreement to an undertaking.³⁹⁹
414. The EHRC may initiate inquiries, assessments and investigations independently or at the request of the Secretary of State.⁴⁰⁰ The EHRC is required to publish terms of reference before launching an inquiry, assessment or investigation⁴⁰¹ and is required to publish reports at the end of the inquiry, assessment or investigation process, which may include recommendations for change.⁴⁰² The EHRC may compel evidence relevant to an inquiry, assessment or investigation.⁴⁰³

Third Party Interventions

415. The EHRC is able to seek leave to intervene in court cases which may have an equality or human rights dimension to provide the court with expert knowledge.⁴⁰⁴

Equality Bill 2009

416. In April 2009 the Equality Bill 2009 was introduced in the House of Commons. The Equality Bill 2009 will consolidate all United Kingdom discrimination legislation replacing the nine major pieces of discrimination legislation with one Act.
417. The Equality Bill, if passed, will impose a Public Sector Equality Duty on certain public authorities.⁴⁰⁵ The existing framework for equality places three separate duties on public authorities: a Race Equality Duty⁴⁰⁶, a Disability Equality Duty⁴⁰⁷ and a Gender Equality Duty.⁴⁰⁸ The Equality Bill 2009 will place just one equality duty on public authorities that covers the nine protected attributes of sex, maternity and pregnancy, marriage and civil partnership, disability, race, age, gender reassignment, sexual orientation, religion or belief.⁴⁰⁹
418. The Equalities Office is currently running a consultation on making the Equality Bill work, including the introduction of a specific duty, which will be contained in secondary legislation, requiring all public bodies with 150 or more employees to report annually on their gender pay gap, their ethnic minority employment rate and their disability employment rate.⁴¹⁰
419. The Equality Bill 2009, if passed, will also provide a Minister of the Crown with the power to make regulations requiring private sector employers with at least 250 employees to publish information about the differences in pay between their male and female employees.⁴¹¹ The regulations may specify the form and timing of the publication, which will be no more frequently than annually. Further the regulations may specify penalties for non-compliance, including civil enforcement procedures or liability for criminal offences punishable by fines of up to £5,000. The Government has however stated that its aim is for employers to regularly publish information on a voluntary basis. The Government does not intend to make regulations under this power before April 2013 in order to allow voluntary gender pay reporting arrangements time to

work.⁴¹² The power would only be used if sufficient progress on reporting had not been made by that time.⁴¹³

420. The EHRC is currently running a consultation on private sector gender pay reporting in order to determine the least burdensome way for employers to report on gender pay inequality.⁴¹⁴
421. The Equality Bill 2009 also contains a provision that will make contractual secrecy clauses that prevent employees discussing their pay with colleagues unenforceable.⁴¹⁵ Further, being involved in a relevant pay discussion will be a protected act for the purposes of the relevant victimisation provisions.⁴¹⁶ If passed, the Equality Bill 2009 will also extend the use of positive action in the workplace.⁴¹⁷
422. The Equality Bill 2009, if passed, will also extend the recommendation powers of Employment Tribunals so that recommendations can be made for the benefit not only of the individual claimant but also others who may be affected by the act of discrimination.⁴¹⁸ The EHRC will be notified of any recommendations made by the Employment Tribunal and will be able to monitor its implementation using its existing powers.⁴¹⁹

New Zealand

423. There are five pieces of national legislation relevant to gender equality and sex discrimination in New Zealand: the New Zealand Bill of Rights Act 1990 (NZ), the Human Rights Act 1993 (NZ), the Equal Pay Act 1972 (NZ) and the Employment Relations Act 2000 (NZ) and the State Sector Act 1988 (NZ), which contains the 'good employer' responsibilities relating to the public sector.⁴²⁰
424. The national human rights institution has a role in the country's anti-discrimination framework, pay equity framework and a role in monitoring progress towards equality, preparing guidelines and voluntary codes of practice, and conducting inquiries. There is also a Ministry of Women's Affairs, whose mission is to be a source of advice on ways to improve the lives of women.⁴²¹

National Human Rights Institution

425. New Zealand's Human Rights Commission ('NZHRC') was established by the *Human Rights Commission Act 1977* (NZ). It is independent of government but accountable for its public funds.
426. The NZHRC's primary functions are:
- to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society; and
 - to encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society.⁴²²

427. The *Human Rights Amendment Act 2001* (NZ) established the position of the Equal Employment Opportunities Commissioner within the NZHRC. The role of the Equal Employment Opportunities Commissioner includes monitoring and analysing progress in improving equal employment opportunities, and leading discussions about equal employment opportunities (including pay equity).⁴²³

Anti-discrimination Framework

428. A person has a right to be free from discrimination under the *New Zealand Bill of Rights Act 1990* (NZ)⁴²⁴ and the *Human Rights Act 1993* (NZ).⁴²⁵
429. The NZHRC seeks to provide a mediated settlement for complaints of unlawful discrimination. If a settlement cannot be reached, the complainant or the NZHRC may institute legal proceedings in the Human Rights Review Tribunal.⁴²⁶
430. The Office of Human Rights Proceedings is an independent part of the Human Rights Commission. In certain circumstances, it provides free legal representation before the Human Rights Review Tribunal for people who have complained of unlawful discrimination.⁴²⁷
431. Where an individual alleges unlawful discrimination in employment, as an alternative⁴²⁸ to lodging a complaint with the NZHRC, they may pursue the matter as a 'personal grievance' under the *Employment Relations Act 2000* (NZ).⁴²⁹ That is, the individual must first send a written complaint to their employer then, if unsatisfied with the response, they may lodge their complaint with the Employment Relations Authority and undergo mediation. If still unresolved, the complaint is then investigated by the Authority.

Pay Equity Framework

432. The *Equal Pay Act 1972* (NZ) provides that employers must afford employees the same terms and conditions of employment including pay and fringe benefits, as are made available to people of the same or substantially similar qualifications employed in the same or substantially similar circumstances on work of that description regardless of sex.⁴³⁰
433. Complaints of unequal employment conditions or pay may be lodged with the Employment Relations Authority for resolution.⁴³¹ Alternatively, the complaint can be brought to the NZHRC as an allegation of unlawful discrimination in employment under the *Human Rights Act 1993*. The complainant may only undertake one of these two options.
434. The *Employment Equity Act* (NZ) passed in 1990 was promptly repealed by the incoming National Government later in the same year and has not been replaced.

Additional Commission Powers

Independent Monitoring

435. One of the New Zealand Human Rights Commission's (NZHRC) functions is to develop and use benchmarks to evaluate the role regulation plays in facilitating and promoting best practice in equal employment opportunities. Every two years the NZHRC publishes a census on the representation and status of women in leadership and decision-making roles in the public sector, corporate, legal, academia, politics and other fields.⁴³²

Guidelines and Voluntary Codes of Practice

436. The NZHRC may prepare and publish guidelines and voluntary codes of practice to explain legal rights and responsibilities under the *Human Rights Act 1993* (NZ) and to promote best practice in equal employment opportunities.⁴³³

Inquiries

437. The NZHRC may inquire into any matter including any law, practice or procedure (governmental or non-governmental) where it thinks human rights might be, or have been, infringed.⁴³⁴ The NZHRC may apply to the court to compel evidence relevant to the inquiry.⁴³⁵ If such an inquiry discloses or may have disclosed a breach of human rights, the NZHRC is empowered to bring civil proceedings before the Human Rights Review Tribunal.⁴³⁶

Third Party Interventions

438. The NZHRC has the power to apply to a court or tribunal to be appointed as intervenor or as counsel assisting the court or tribunal, or to take part in proceedings before the court or tribunal.⁴³⁷ The NZHRC may exercise this power if it thinks taking part in those proceedings will facilitate its role in advocating for human rights and the promotion and protection, respect for, and observance of, human rights.⁴³⁸

Canada

439. There are two key pieces of national legislation relevant to sex discrimination and gender equality in Canada: the Canadian Human Rights Act, RS 1985, c H-6 and the Employment Equity Act, 1995, c 44. The national human rights institution has a role in the country's anti-discrimination framework, pay equity framework, proactive duties framework and a role in preparing guidelines.

The National Human Rights Institution

440. The Canadian Human Rights Commission ('CHRC') was established by the *Canadian Human Rights Act 1985*.⁴³⁹
441. The CHRC investigates and attempts to settle complaints of discriminatory practices in employment and in the provision of services. It is also responsible

for ensuring that employers provide equal opportunities for employment to women, Aboriginal people, people with disabilities, and members of visible minorities. Further, the CHRC is mandated to develop and conduct information programs and discrimination prevention programs.⁴⁴⁰

Anti-discrimination Framework

442. The CHRC receives and seeks to provide a mediated settlement for complaints of alleged discriminatory practices⁴⁴¹ by federally regulated organisations (including government agencies, unions, banks and airlines).⁴⁴² Complaints against other organisations must be dealt with by provincial and territory human rights commissions. If the CHRC has reasonable grounds for believing a discriminatory practice has occurred, it may initiate a complaint itself.⁴⁴³
443. The CHRC may apply for a warrant to search premises for evidence relevant to an investigation of a complaint.⁴⁴⁴
444. A complaint can only be settled if the CHRC approves the terms of the settlement.⁴⁴⁵ If the CHRC is unable to mediate a settlement and it considers that further inquiry is warranted, it may refer the complaint to the Human Rights Tribunal for hearing.⁴⁴⁶ The Tribunal is independent of the CHRC. Any interested party can intervene in a Tribunal inquiry.⁴⁴⁷
445. If the complaint is found to be substantiated, the Tribunal can make an order that a person take measures to redress the discrimination or prevent its continuation.⁴⁴⁸ For example, the order may require a person to compensate the victim or to adopt a special program, plan or arrangement to improve opportunities to a particular group of people such as people with disability or women.⁴⁴⁹ The Tribunal's order may also require the payment of additional compensation if the act is found to have been made wilfully or recklessly.⁴⁵⁰ The Tribunal's order can be made an order of the Federal Court and enforced as such.⁴⁵¹ The Tribunal's final report on a complaint (which may include recommendations) is submitted to the Minister of Justice.⁴⁵²

Pay equity framework

446. The Canadian *Human Rights Act* provides for equal pay between male and female employees in the same establishment performing work of equal value.⁴⁵³ This protection extends to commissions, vacation pay, bonuses and any other advantage received directly or indirectly from an employer.⁴⁵⁴ The Equal Wages Guidelines 1986 set out the criterion to be applied to determine whether work is 'of equal value'.⁴⁵⁵
447. Complaints of unequal pay by federally regulated organisations may be made to the CHRC.⁴⁵⁶ The CHRC and the Human Rights Tribunal deal with these complaints in the same way as complaints of discriminatory practices.

Positive Duties

448. The *Employment Equity Act 1995* requires employers in the public sector and federally regulated private sector⁴⁵⁷ to proactively implement employment equity by:
- identifying and eliminating employment systems, policies and practices which act as barriers to women, Aboriginal people, people with disability and members of visible minorities, and
 - instituting positive policies and practices and make reasonable accommodations to ensure women, Aboriginal people, people with disability and members of visible minorities are represented to the same degree in their workforce, as they are represented in the wider, national workforce.⁴⁵⁸
449. Specifically, employers are required to:
- analyse the degree of representation of women, Aboriginal people, people with disability and visible minorities in their workforce⁴⁵⁹
 - analyse and review their employment systems, policies and practices⁴⁶⁰
 - prepare, implement, monitor and periodically review and revise an employment equity plan to progress towards greater equity in the workforce⁴⁶¹
 - provide information to their employees explaining the purpose of employment equity and the measures the employer is taking to progress towards employment equity, and⁴⁶²
 - establish and maintain records regarding employment equity.⁴⁶³
450. Every year employers must report on their progress in achieving a truly representative workforce.⁴⁶⁴ Reports are consolidated and tabled in Parliament.⁴⁶⁵
451. The CHRC is responsible for monitoring, enforcing and reporting on the performance of employers' obligations under the *Employment Equity Act*. The Commission conducts employment equity audits to assess whether employers are meeting their positive duties.⁴⁶⁶ If an employer cannot demonstrate compliance with their legislation obligations, the CHRC attempts to negotiate a written undertaking that they will remedy the situation.⁴⁶⁷ If this approach fails, the CHRC may issue a Direction.⁴⁶⁸ If an employer fails to comply with a Direction, the CHRC may refer the matter to the *Employment Equity Review Tribunal* for determination.⁴⁶⁹

Guidelines

452. The CHRC has the power to issue guidelines "on application" or by its own initiative.⁴⁷⁰ Guidelines are published in the *Canada Gazette* and binding.⁴⁷¹

Norway

453. There are several key pieces of national legislation relevant to sex discrimination and gender equality in Norway, for instance: the *Gender Equality Act 1978*, the *Public Limited Companies Act 1997* and the *Local Government Act 1992*. The national equality and anti-discrimination institution has a role in the country's anti-discrimination framework, pay equity framework, proactive duties framework and quota framework.
454. A proposal for a compiled and more comprehensive anti-discrimination Act has been made in 2009 by a commission appointed by the Norwegian Government.⁴⁷² The proposed Act shall include gender, ethnicity, disability, sexual orientation, age and other grounds of discrimination, and replace existing discrimination laws such as the *Gender Equality Act 1978*.
455. In 2008, Norway had the narrowest gender gap in the world, according to the overall ranking in the World Economic Forum's *Global Gender Gap Report 2008*.⁴⁷³

The National Equality and Anti-Discrimination Institutions

456. The *Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal Act 2005* established the Equality and Anti-discrimination Ombud ("Ombud") and the Equality and Anti-Discrimination Tribunal ("Tribunal") on 1st January 2006. These institutions replace the Gender Equality Ombudsman and the Gender Equality Tribunal established in 1979. Both the Ombud and the Tribunal are independent of government but accountable for their public funds.
457. The Ombud has the power to investigate and give an opinion as to whether a matter is in contravention of the Act 1978, as well as other discrimination acts such as the *Anti-Discrimination and Accessibility Act 2008*, the *Anti-Discrimination Act 2005* and chapter 13 in the *Working Environment Act 2005* (discrimination on grounds of disability, ethnicity, religion and belief, sexual orientation, age and political views).⁴⁷⁴ The Ombud shall seek to secure the parties' voluntary compliance with this opinion.⁴⁷⁵ If a voluntary arrangement cannot be reached the Ombud or one of the parties may bring the case before the Tribunal which can make an administratively binding decision. Such decisions can however be overruled by a court.⁴⁷⁶ If the parties do not voluntarily comply with the opinion of the Ombud and waiting for an administrative decision by the Tribunal will cause inconvenience or have a harmful effect, the Ombud may make the administrative decision.⁴⁷⁷ The Ombud's administrative decision may be appealed to the Tribunal.⁴⁷⁸
458. The Tribunal may order an act to be stopped or remedied and may set a time limit for compliance with the order.⁴⁷⁹ If the time limit is exceeded the Tribunal may impose a fine which begins to run when the time limit for complying with the order is exceeded and shall normally run until the order has been complied with.⁴⁸⁰ A decision of the Tribunal may be overruled by a court of law.⁴⁸¹

Anti-discrimination Framework

459. Direct or indirect differential treatment of women and men is not permitted.⁴⁸² Affirmative action in favour of one of the sexes to promote the Acts legislative purpose is permitted.⁴⁸³
460. The Ombud receives, investigates and provides statements for complaints of alleged discrimination. If the complaint is found to be substantiated the Ombud can make a statement that a person take measures to redress the discrimination or prevent its continuation and may order compensation.⁴⁸⁴

Pay Equity Framework

461. The *Gender Equality Act 1979* provides for equal pay between male and female employees for the same work or work of equal value regardless of whether such work is connected with different trades or professions or whether the pay is regulated by different collective wage agreements.⁴⁸⁵
462. Complaints regarding gender equality may be made to the Ombud.⁴⁸⁶ A decision of the Ombud may be appealed to the Equality and Anti-Discrimination Tribunal.⁴⁸⁷

Positive Duties

463. The *Gender Equality Act 1979* places a duty on public authorities to make active, targeted and systematic efforts to promote gender equality in all sectors of society and a duty on employers to make active, targeted and systematic efforts to promote gender equality within their enterprise.⁴⁸⁸ The Ombud does not enforce this duty.
464. Enterprises that are subject to a statutory duty to prepare an annual report are required to give an account of the actual state of affairs as regards gender equality in the enterprise, measures implemented and measures that are planned to be implemented in order to promote gender equality.⁴⁸⁹ Public authorities and public enterprises that are not obliged to prepare an annual report shall give a corresponding account in their annual budget.⁴⁹⁰

Quotas

465. The *Gender Equality Act 1979* requires at least a 40% representation of each sex in all public committees.⁴⁹¹
466. Further, *Act 19 2003* amending the *Public Limited Companies Act 1997* requires 40% representation of each sex on the board of all state⁴⁹² and private⁴⁹³ public limited companies. The law entered into force on 1 January 2004 for state-owned companies and 1 January 2006 for public limited companies. All companies were given a two year period of transition to comply with the law from these dates. Contravention of the *Public Limited Companies Act 1997* is punishable by fines or under aggravating circumstances with imprisonment of up to one year.⁴⁹⁴ Complicity is punishable in the same way.⁴⁹⁵

467. All new public limited companies must comply with these rules or the Register of Business Enterprises will refuse to register a company board.⁴⁹⁶ A company which does not have a board that fulfils the statutory requirements may be dissolved by order of the court.⁴⁹⁷ The King (the Ministry) can however decide that a forced dissolution shall not be executed because of 'substantial public interests'.⁴⁹⁸ In such cases, the company will have to pay a compulsory fine until the conditions are in accordance with the law.⁴⁹⁹
468. The *Local Government Act 1992* requires gender balance in popularly elected bodies - both sexes shall be represented by 40 %.⁵⁰⁰ A rule requiring administrative boards in Municipal private limited companies that are 2/3 owned by the Municipality to have both sexes represented by 40% has just been adopted in the *Local Government Act 1992* but has not yet entered into force.
469. In the yearly state budget every ministry has to report gender budgeting.⁵⁰¹ This implies that the ministries have to show what consequences proposals and decisions have for women and men. This gender budgeting will often show that equal political measures can give unequal results for men and women, and therefore have unintended discriminatory results.⁵⁰²

¹ The Australian Human Rights Commission was until recently known as the Human Rights and Equal Opportunity Commission. In this submission, all references to documents produced prior to this change retain the name they were originally published under.

² Human Rights and Equal Opportunity Commission, *It's About Time: Women, Men, Work and Family* (2007). At www.humanrights.gov.au/sex_discrimination/its_about_time/index.html (viewed 31 August 2009).

³ Human Rights and Equal Opportunity Commission, *What matters to Australian women and men: Gender equality in 2008: the Listening Tour Community Report* (2008). At www.humanrights.gov.au/sex_discrimination/listeningtour/index.html (viewed 28 October 2009).

⁴ Human Rights and Equal Opportunity Commission, *Submission to to the Productivity Commission on the Inquiry into Paid Maternity, Paternity and Parental Leave* (June 2008). At www.humanrights.gov.au/legal/submissions/2008/20080602_productivity.html (viewed 28 October 2009); Human Rights and Equal Opportunity Commission, *Submission to to the Productivity Commission on the Inquiry into Paid Maternity, Paternity and Parental Leave* (November 2008). At www.humanrights.gov.au/legal/submissions/2008/20081124_maternity.doc (viewed 28 October 2009).

⁵ Human Rights and Equal Opportunity Commission, *Submission to the House of Representatives Standing Committee on Family, Community, Housing and Youth Inquiry into Better Support for Carers* (2008). At www.humanrights.gov.au/legal/submissions/2008/20080715_carers.html (viewed 28 October 2009).

⁶ Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Effectiveness of the Sex Discrimination Act 1984 (Cth) in Eliminating Discrimination and Promoting Gender Equality* (2008). At www.humanrights.gov.au/legal/submissions/2008/20080901_SDA.html (viewed 28 October 2009).

⁷ Australian Human Rights Commission, *Submission to the House of Representatives Standing Committee on Employment and Workplace Relations on the Inquiry into Pay Equity and associated issues related to increasing female participation in the workforce* (2008). At www.hreoc.gov.au/legal/submissions/2008/20080923_pay_equity.html#Heading368 (viewed 26 October 2009).

⁸ Australian Human Rights Commission, *Submission to the Review Panel on Australia's future tax system* (2009). At www.humanrights.gov.au/legal/submissions/2009/20090227_tax.doc (viewed 28 October 2009).

⁹ Australian Human Rights Commission, *Accumulating Poverty: Women's experiences of inequality over the lifecycle* (2009). At www.humanrights.gov.au/sex_discrimination/publication/gender_gap/index.html (viewed 28 October 2009).

¹⁰ It is also necessary for the Equal Opportunity for Women in the Workplace Agency to work closely with other key government departments, including the Australian Government Office for Women and Office for Work and Family. However, these links are internal to the Australian Government, and would not be suitable for legislative formalisation.

¹¹ Senate Standing Committee on Legal and Constitutional Affairs, *Effectiveness of the Sex Discrimination Act 1984 in Eliminating Discrimination and Promoting Gender Equality* (2008). At www.aph.gov.au/Senate/committee/legcon_ctte/sex_discrim/report/report.pdf (viewed 26 October 2009).

¹² Relevant provisions would be defined to include adverse action on 'gender equality employment matters', being sex, marital status, family or carer's responsibilities and pregnancy.

¹³ Relevant provisions of the National Employment Standards (NES) would be defined to include the NES on unpaid parental leave, and rights in relation to family and carers leave and responsibilities.

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- ¹⁴ Human Rights and Equal Opportunity Commission, note 3.
- ¹⁵ Human Rights and Equal Opportunity Commission, note 3, p 3.
- ¹⁶ Anonymous, *comment*, Women's focus group 7, Human Rights and Equal Opportunity Commission Sex Discrimination Commissioner's Listening Tour (2008).
- ¹⁷ Australian Human Rights Commission, *Annual General Report 2008-09* (2009), p 74. At www.hreoc.gov.au/about/publications/annual_reports/index.html (viewed 29 October 2009).
- ¹⁸ Australian Human Rights Commission, note 17, p 73.
- ¹⁹ Australian Bureau of Statistics, *6202.0 - Labour Force, Australia, Table 03. Labour force status by Sex, July 2009* (2009). At www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6202.0Jul%202009?OpenDocument (viewed 24 August 2009).
- ²⁰ World Economic Forum, *Global Gender Gap Report 2009* (2009), p 63. At www.weforum.org/pdf/gendergap/report2009.pdf (viewed 28 October 2009).
- ²¹ Australian Bureau of Statistics (ABS), note 19.
- ²² Statistics Norway, *Labour Force Survey, Q3, 2009: Lower labour force participation*, www.ssb.no/aku_en/ (viewed 29 October 2009).
- ²³ Statistics New Zealand, *Household Labour Force Survey: June 2009 quarter*, www.stats.govt.nz/browse_for_stats/work_income_and_spending/Employment/HouseholdLabourForceSurvey_HOTJun09qtr/Commentary.aspx (viewed 29 October).
- ²⁴ Organisation for Economic Co-operation and Development, *Babies and Bosses: Reconciling Work and Family Life: A Synthesis of Findings for OECD Countries* (2007) Volume 5.
- ²⁵ Women with disability are less likely to be in the paid workforce than men with disability: Human Rights and Equal Opportunity Commission, *Issues paper 1: Employment and Disability – the Statistics* (2005). At www.humanrights.gov.au/disability_rights/employment_inquiry/papers/issues1.htm (viewed 15 September 2008).
- ²⁶ Aboriginal and Torres Strait Islander people have a labour market participation rate of 56%. The labour market participation rate for Indigenous men is 65%, while for Indigenous women it is 48%: Australian Bureau of Statistics, *Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians, Estimates from the Labour Force Survey, 2007, Cat No 6287.0* (2008).
- ²⁷ In 2004, migrant men had a similar age standardised labour force participation rate (74%) to Australian-born men (75%). Migrant women's age standardised labour force participation (52%) was lower than Australian-born women (60%), and much lower than migrant men: Australian Bureau of Statistics, *Australian Social Trends, 2006, Cat No 4102.0*, (2006).
- ²⁸ Australian Bureau of Statistics, *Average Weekly Earnings, May 2009, Cat No 6302.0* (2009). At www.abs.gov.au/ausstats/abs@.nsf/mf/6302.0 (viewed 31 August 2009).
- ²⁹ Australian Bureau of Statistics, note 28.
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¹⁰⁸ CEDAW, Article 2(f)

¹⁰⁹ *International Covenant on Economic, Social and Cultural Rights*, ICESCR, Art 7(c).

¹¹⁰ Note that Article 5 of the *International Labour Organisation (ILO) Convention No 111* also provides that special measures to protect groups of workers for reasons such as sex shall not be considered discrimination.

¹¹¹ See s 7D(2) of the *Sex Discrimination Act 1984* (Cth) (SDA) which provides that a person does not discriminate against another person by taking special measures.

¹¹² Report of the Committee on the Elimination of Discrimination against Women Committee (CEDAW Committee), UN GAOR 59th sess, Supp No 38, UN Doc A/59/30 (2004), [15].

¹¹³ Report of the CEDAW Committee, note 112, [15], [21].

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¹¹⁵ CEDAW Committee, General Recommendation No. 25 (2004), [27] in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc HRI/GEN/1/Rev.9 (Vol. II) (2008), p 320.

¹¹⁶ CEDAW Committee, note 115, [23], p 320.

¹¹⁷ Report of the CEDAW Committee, note 112, [15], [20].

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¹¹⁹ See *Anti-Discrimination Act 1977* (NSW), s 24 includes breastfeeding and pregnancy, also a person's responsibilities as a carer is covered under s 49T and marital status under s 39; *Equal Opportunity Act 1995* (Vic), s 6; *Discrimination Act 1991* (ACT), s 7(1); *Anti-Discrimination Act 1991* (Qld), s 7; *Equal Opportunity Act 1984* (SA), Part 3 but note that carers or family responsibilities are not covered; *Anti-Discrimination Act 1998* (Tas), s 16; *Anti-Discrimination Act* (NT), s 19 includes family responsibilities but not carers responsibilities; *Equal Opportunity Act 1984* (WA), s 8 (sex), s 10

(pregnancy), s 9 (marital status), s 35A (carers and family responsibilities) but note that breastfeeding is not explicitly included as a separate ground.

¹²⁰ SDA, s 11.

¹²¹ *Fair Work Act 2009* (FWA), s 27(1).

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¹²⁴ See Appendix 2: Detail of the Key Features of Australia's National Laws which impact on Gender Equality in the Workforce at Section 8.3(a)(ii).

¹²⁵ See Appendix 2: Detail of the Key Features of Australia's National Laws which impact on Gender Equality in the Workforce at Section 8.3(a)(iv).

¹²⁶ Human Rights and Equal Opportunity Commission, note 6, p 211-5 and Appendix 2 at 8.3(b).

¹²⁷ FWA, Part 2.7, s 302.

¹²⁸ See further Australian Human Rights Commission, note 7, p 19.

¹²⁹ *Australian Human Rights Commission Act 1986* (AHRCA), ss 46PW, 46PX and 46PY.

¹³⁰ FWA, s 161.

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¹³⁴ See Section 6 of this Submission..

¹³⁵ It is also necessary for the Equal Opportunity for Women in the Workplace Agency to work closely with other key government departments, including the Australian Government Office for Women and Office for Work and Family. However, these links are internal to the Australian Government, and would not be suitable for legislative formalisation.

¹³⁶ K Guest, 'The Elusive Promise of Equality: Analysing the Limits of the Sex Discrimination Act 1984' (1999), *Research Paper 19 1998-99, Parliamentary Library*. At www.aph.gov.au/library/pubs/rp/1998-99/99rp16.htm#9 (viewed 25 October 2009). See further M Thornton, *The liberal promise: anti-discrimination legislation in Australia* (1990); C Burton, *The Promise and the price: the struggle for equal opportunity in women's employment* (1991); R Graycar & J Morgan, 'Thinking about Equality,' (2004), 27(3) *University of New South Wales Law Journal*, p 833-839. At www.austlii.edu.au/cgi-bin/sinodisp/au/journals/UNSWLJ/2004/44.html?query=%2220%20Australian%20Feminist%20Law%20Journal%2023%22 (viewed 26 October 2009); S Maddison, & E Partridge, *How Well Does Australian Democracy Serve Australian Women* (2007), Audit Report No 8, 2007, Democratic Audit of Australia. At http://democratic.audit.anu.edu.au/papers/focussed_audits/200703_madpartozdocwom.pdf (viewed 26 October 2009); G Strachan, J Burgess & L Henderson, 'Equal Employment Opportunity Legislation and Policies: the Australian Experience' (2007) 26(6) *Equal Opportunities International*, pp 525-540.

¹³⁷ For further detail about special measures, see Section 5.5.

¹³⁸ Human Rights and Equal Opportunity Commission, note 2. NB p 92.

¹³⁹ *Equal Opportunity for Women in the Workplace Act 1999* (EOWW Act), s 2A.

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¹⁴⁴ FWA, s 653.

¹⁴⁵ Human Rights and Equal Opportunity Commission, note 6, Recommendation 51, pp 236-40. See also Australian Human Rights Commission, note 7, Recommendation 11, p 7.

¹⁴⁶ The Senate Committee proposed that the reporting be done every four years, in order to link with the Australian Government's cycle of reporting to the CEDAW Committee: Senate Standing Committee on Legal and Constitutional Affairs, note 11, p 161.

¹⁴⁷ The Australian Human Rights Commission is Australia's national human rights institution and operates in accordance with the Principles Relating to the Status and Functions of National Institutions for the Promotion and Protection of Human Rights (Paris Principles). The Paris Principles require a national human rights institution to be independent and autonomous from Government. (*Principles relating to the Status of National Institutions* (The Paris Principles) endorsed by the Commission on Human Rights in March 1992 (resolution 1992/54) and by the General Assembly in its resolution A/RES/48/134 of 20 December 1993. At www2.ohchr.org/english/law/parisprinciples.htm (viewed 26 October 2009).

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¹⁴⁹ See Recommendation 5 in this Submission.

¹⁵⁰ Officials must not enter into any contract with an organisation which has been named in Parliament as non-compliant with their reporting obligations under the EOWW Act. Australian Government Department of Finance and Administration, *Guidance on Complying with Legislation and Government Policy in Procurement* (2005), p 12. At www.finance.gov.au/publications/fmg-series/10-complying-with-legislation.html (viewed 28 October 2009).

¹⁵¹ See Business Council of Australia, *Business Regulation*, www.bca.com.au/Content/100834.aspx (viewed 28 October 2009).

¹⁵² Human Rights and Equal Opportunity Commission, note 6. See also Collaborative Submission from leading women's organisations and women's equality specialists, *Inquiry into the effectiveness of the Sex Discrimination Act* (2008); Women's Electoral Lobby Australia, *Submission to the Legal and Constitutional Affairs Committee Inquiry into the Effectiveness of the Sex Discrimination Act 1984 (Cth) in Eliminating Discrimination and Promoting Gender Equality* (2008); National Foundation of Australian Women, *Submission to the Inquiry into the effectiveness of the Commonwealth Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (2008). All at www.aph.gov.au/SEnate/committee/legcon_ctte/sex_discrim/submissions/sublist.htm (viewed 28 October 2009).

¹⁵³ Human Rights and Equal Opportunity Commission, note 6, p 11.

¹⁵⁴ Human Rights and Equal Opportunity Commission, note 6, Option for for Reform A, p 82.

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- ¹⁵⁶ Human Rights and Equal Opportunity Commission, note 6, Option for Reform J, p 248
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- ¹⁵⁸ See *Disability Discrimination Act 1992* (Cth), Division 2A Disability standards.
- ¹⁵⁹ See *Privacy Act 1988* (Cth), Part IIIAA Privacy codes.
- ¹⁶⁰ FWA, s 351(2).
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- ¹⁸⁹ Northern Territory Government, *Territory 2030 Draft Strategy* (2009), p 31. At www.territory2030.nt.gov.au/pdf/draftTerritory2030Strategy.pdf (viewed 29 October 2009).
- ¹⁹⁰ Government of South Australia, *South Australia's Strategic Plan Progress Report 2008*. At <http://saplan.org.au/content/view/151/182/> (viewed 28 October 2009).
- ¹⁹¹ ACT Office for Women, note 182, p 5.
- ¹⁹² ACT Office for Women, note 182, p 3.
- ¹⁹³ Senate Standing Committee on Legal and Constitutional Affairs, note 11, pp 145-165.
- ¹⁹⁴ Senate Standing Committee on Legal and Constitutional Affairs, *Effectiveness of the Sex Discrimination Act 1984 in Eliminating Discrimination and Promoting Gender Equality* (2008). At www.aph.gov.au/Senate/committee/legcon_ctte/sex_discrim/report/report.pdf (viewed 26 October 2009).
- ¹⁹⁵ Relevant provisions would be defined to include adverse action on 'gender equality employment matters', being sex, marital status, family or carer's responsibilities and pregnancy.
- ¹⁹⁶ Relevant provisions of the National Employment Standards (NES) would be defined to include the NES on unpaid parental leave, and rights in relation to family and carers leave and responsibilities.
- ¹⁹⁷ CEDAW opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).
- ¹⁹⁸ CEDAW, Article 11(1)(b), 11(1)(c) and 11(1)(d). Article 11(1)(c) provides 'the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining.' Article 11(1)(d) provides 'the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.'
- ¹⁹⁹ Under Article 2(e) of CEDAW, Australia undertakes to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise.
- ²⁰⁰ U.N. GAOR, 58th Sess., Supp. No. 38, U.N. Doc. A/58/38 (Mar. 13, 2003), 411, providing a record of the 28th CEDAW Committee report that discussed the fifth and sixth periodic reports of Norway.
- ²⁰¹ U.N. GAOR, 55th Sess., Supp. No. 38, U.N. Doc A/55/38 (Feb. 4, 2000), 408, providing a record of the 446th and 447th CEDAW Committee meeting that discusses the third periodic report of Luxembourg.
- ²⁰² CEDAW, Article 2(f).

²⁰³ *International Covenant on Civil and Political Rights* (ICCPR), opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976 except Article 41 which came into force on 28 March 1979).

²⁰⁴ M, Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (2nd ed, 2005), p 630-631.

²⁰⁵ UN Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 146 (2003).

²⁰⁶ M, Nowak, note 204, p 630-631.

²⁰⁷ M, Nowak, note 204, p 631.

²⁰⁸ ICESCR opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

²⁰⁹ ICESCR, Art 7(c).

²¹⁰ Article 2(1) of the ICESCR provides that each state party 'undertakes to take steps, individually through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant, by all appropriate means, including particularly the adoption of legislative measures'.

²¹¹ Committee on Economic, Social and Cultural Rights, Concluding Observations on Australia, Forty-second session, 4 - 22 May 2009, 12 June, E/C.12/AUS/CO/4, [17].

²¹² Committee on Economic, Social and Cultural Rights, above, [17].

²¹³ *ILO Discrimination (Employment and Occupation) Convention*, 1958 (ILO 111), Article 2.

²¹⁴ *ILO Discrimination (Employment and Occupation) Convention*, 1958 (ILO 111), Article 1(a).

²¹⁵ *ILO Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value* (ILO 100), Article 2.

²¹⁶ *ILO Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value* (ILO 100), Article 2(a)(b)(c) and (d).

²¹⁷ *ILO Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities*, 1981, (ILO 156), Article 3.

²¹⁸ *ILO Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities*, 1981, (ILO 156), Article 1.

²¹⁹ Beijing Declaration and Platform for Action (1995), A/Conf.117/20 and A/Conf.117/20/add.1. [181]. At www.un.org/womenwatch/daw/beijing/platform/index.html (viewed 28 October 2009).

²²⁰ Beijing Declaration and Platform for Action (1995), A/Conf.117/20 and A/Conf.117/20/add.1, [190(a)].

²²¹ Beijing Declaration and Platform for Action (1995), A/Conf.117/20 and A/Conf.117/20/add.1, [190(g)].

²²² Beijing Declaration and Platform for Action (1995), A/Conf.117/20 and A/Conf.117/20/add.1, [190(e)].

²²³ Beijing Declaration and Platform for Action (1995), A/Conf.117/20 and A/Conf.117/20/add.1, [190(f)].

²²⁴ Beijing Declaration and Platform for Action (1995), A/Conf.117/20 and A/Conf.117/20/add.1, [190(i)].

²²⁵ Beijing Declaration and Platform for Action (1995), A/Conf.117/20 and A/Conf.117/20/add.1, [192].

²²⁶ EOWW Act, s 2A

²²⁷ EOWW Act, s 3 and 6. Section 5 of the EOWW Act sets out its limited application based on the Constitutional heads of power.

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- ²²⁸ EOWW Act, s 3. 'Authority' is defined as a body or the holder of an office, established for a public purpose by or under a law of the Commonwealth or of a State or Territory, other than a higher education institution, as well as an incorporated company or public purpose body over which the Commonwealth, a State, a Territory is in a position to exercise control.
- ²²⁹ Office for Women, *Review of the Equal Opportunity for Women in the Workplace Act 1999: Issues Paper* (2009), p 7.
- ²³⁰ EOWW Act, s 2A.
- ²³¹ EOWW Act, s 3. See 'Equal Opportunity for Women in the Workplace Program.'
- ²³² EOWW Act, s 3.
- ²³³ EOWW Act, s 8(4).
- ²³⁴ EOWW Act, ss 13, 13A, and 13B. Although, these requirements may be waived under s 13C of the EOWW Act.
- ²³⁵ EOWW Act, s 13(2).
- ²³⁶ EOWW Act, ss 13(3) and 14.
- ²³⁷ EOWW Act, ss 10 and 18.
- ²³⁸ EOWW Act, ss 19 and 12.
- ²³⁹ Officials must not enter into any contract with an organisation which has been named in Parliament as non-compliant with their reporting obligations under the EOWW Act: Australian Government Department of Finance and Administration, *Guidance on Complying with Legislation and Government Policy in Procurement* (2005), p 12. At www.finance.gov.au/publications/fmg-series/10-complying-with-legislation.html (viewed 28 October 2009)
- ²⁴⁰ Office for Women, note 229, p 10.
- ²⁴¹ EOWW Act, s 20(1).
- ²⁴² EOWW Act, s 11(1). Where the Minister gives a written direction, the Minister is required to table a copy of the direction before each House of the Australian Parliament within 15 sitting days (EOWW Act, s 11(2)).
- ²⁴³ Office for Women, note 229, p 11.
- ²⁴⁴ SDA, s 5.
- ²⁴⁵ SDA, s 6.
- ²⁴⁶ SDA, s 7.
- ²⁴⁷ SDA, s 7A.
- ²⁴⁸ SDA, s 22.
- ²⁴⁹ SDA, s 21.
- ²⁵⁰ SDA, s 23.
- ²⁵¹ SDA, s 24.
- ²⁵² SDA, s 25.
- ²⁵³ SDA, s 26.
- ²⁵⁴ SDA, s14. See also ss 15 -20 for workplace discrimination.
- ²⁵⁵ SDA, s 14.
- ²⁵⁶ SDA, s 14 (3A).
- ²⁵⁷ Australian Human Rights Commission, note 17, p 73.
- ²⁵⁸ SDA, s 28.
- ²⁵⁹ See SDA, s 13(1).
- ²⁶⁰ SDA, s 9.
- ²⁶¹ SDA, s 5(1).
- ²⁶² SDA, ss 5(2), 7B and 7D.
- ²⁶³ SDA, s 14(1) and (2).

²⁶⁴ SDA, s 30. The SDA contains various other permanent in Division 4 of Part II and the Australian Human Rights Commission is empowered under s 44 of the SDA to grant temporary exemptions.

²⁶⁵ See further: S Redmond, 'Positive Rights for Workers with Family Responsibilities' (2009) 47 *NSW Law Society Journal*, p 44.

²⁶⁶ Part III Division I of the SDA empowers the Australian Human Rights Commission with specific functions that aim to tackle systemic discrimination. Part V of the SDA establishes the Sex Discrimination Commissioner.

²⁶⁷ See s 46PV of the AHRC Act.

²⁶⁸ See s 48 of the SDA and s 11 of the AHRC Act.

²⁶⁹ AHRC Act, s 46PO.

²⁷⁰ AHRC Act, s 46PO.

²⁷¹ AHRC Act, s 46PV.

²⁷² SDA, s 96.

²⁷³ SDA, s 97. Note the appointment is to be for a specified period, not exceeding 7 years, and the Commissioner is eligible for re-appointment at the end of her or his term.

²⁷⁴ SDA ss 8(6) and 11(1)(aa) of the AHRC Act.

²⁷⁵ For a more detailed description of the powers of the SDC and the Commission, see Human Rights and Equal Opportunity Commission, note 6, p 211-6.

²⁷⁶ AHRC Act, s 8.

²⁷⁷ SDA, s 44.

²⁷⁸ SDA, s 48(1)(d).

²⁷⁹ SDA, s 48(1)(e).

²⁸⁰ SDA, s 48(1)(f).

²⁸¹ SDA, s 48(1)(g).

²⁸² SDA, s 48(1)(ga).

²⁸³ SDA, s 48(1)(gb).

²⁸⁴ ICCPR, Articles 26 and 2.

²⁸⁵ AHRC Act, s 11(1)(e).

²⁸⁶ AHRC Act, s 11(1)(k).

²⁸⁷ AHRC Act, s 11(1)(f).

²⁸⁸ AHRC Act, s 13(1).

²⁸⁹ AHRC Act, s 13(2).

²⁹⁰ AHRC Act, s 15.

²⁹¹ AHRC Act, ss 21-30.

²⁹² Human Rights and Equal Opportunity Commission, note 6, p 216-9.

²⁹³ FWA, s 351.

²⁹⁴ FWA, s 351.

²⁹⁵ Section 335 of the FWA provides that in Part 3.1, employee and employer have their ordinary meaning. Section 15 excludes a person on a vocational placement from the definition of an employee.

²⁹⁶ Constitutionally covered entities include: a constitutional corporation, the Commonwealth, a Commonwealth authority, a body corporate incorporated in a Territory and an organisation (FWA s338(2)).

²⁹⁷ Part 3.1 may in some circumstances also apply to prospective or existing State employees because ss 338 and 339 of the FWA provide that Part 3.1 applies to 'action' that is taken by a constitutionally-covered entity, action that affects the activities, functions, relationships or business of a constitutionally-covered entity, action that consists of advising, encouraging or inciting a constitutionally covered entity, action taken in a Territory or a Commonwealth place; and action taken

by a 'trade and commerce employer' or employee of such an employer that affects, is capable of affecting or is taken with intent to affect an employee.

²⁹⁸ Explanatory Memorandum, Fair Work Bill 2008 (Cth), r 7, p V.

²⁹⁹ FWA, s 351.

³⁰⁰ FWA, s 342. Adverse action taken by a prospective employer against a prospective employee is defined in s 342(1).

³⁰¹ SDA, s 14(2).

³⁰² EOWW Act, s 3.

³⁰³ Attorney-General's Department, *National anti-discrimination information gateway: Australia's new workplace relations system*, www.antidiscrimination.gov.au/www/nadig/nadig.nsf/Page/Employment (viewed 15 September 2009).

³⁰⁴ FWA, s 340.

³⁰⁵ FWA, s 341. Note that as of 1 January 2010, s 6 of the FWA will provide 10 National Employment Standards to most Australian employees, including parental leave.

³⁰⁶ FWA, s 351(2)(a). See also s 342(3) which provides that 'adverse action' does not include action authorised by or under the FWA or any other law of the Commonwealth or a law of a State or Territory prescribed by the regulations.

³⁰⁷ See s 361 of the FWA.

³⁰⁸ FWA, s 772(1).

³⁰⁹ See Part 2-2 of the FWA.

³¹⁰ FWA, s 65.

³¹¹ The parental leave provisions apply to all Australian employees and include birth-related leave and adoption-related leave: FWA, s 70.

³¹² FWA, s 76.

³¹³ See FWA, ss 96, 97, 102, 104. A worker can use carer's leave to provide care or support to a member of the worker's household or immediate family who requires care or support because of illness, injury or an unexpected emergency.

³¹⁴ FWA, s 62(3)(b).

³¹⁵ See S Redmond, note 265.

³¹⁶ FWA, ss 65(2)(a), 67(1).

³¹⁷ FWA, ss 12, 65(2)(1), 67(1).

³¹⁸ FWA, s 65(5).

³¹⁹ FWA, s 76(4).

³²⁰ FWA, s 302. An employee, an employee organisation or the Sex Discrimination Commissioner may apply to Fair Work Australia for an equal remuneration order.

³²¹ To seek an equal remuneration order see FWA 302(s)

³²² FWA, ss 150, 153.

³²³ FWA, s 135(1).

³²⁴ In relation to 'adverse action' dismissals, Fair Work Australia has powers to direct a person to attend a conference (FWA s592) or make a recommendation or express an opinion (s 595). If the conference does not resolve the dispute, the complainant may issue proceedings at the Federal Magistrates Court or the Federal Court (FWA s371). In relation to unlawful terminations, a complainant may issue proceedings at the Federal Magistrates Court or the Federal Court to deal with the Fair Work Australia conference does not resolve the dispute (FWA s 779). Note that in either case, complainants can apply directly to the courts where their application includes an application for an interim injunction (FWA ss 371(1), s 779(1)).

³²⁵ FWA, s 372, 374(1) and s 539.

³²⁶ FWA, s 700.

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- ³²⁷ FWA, s 709.
- ³²⁸ See FWA, ss 707, 708, 713, 713A, 714.
- ³²⁹ FWA, s 716.
- ³³⁰ FWA, s 716.
- ³³¹ FWA, s 682.
- ³³² FWA, Part 2-2 and Part 6-3.
- ³³³ FWA, Part 2-3.
- ³³⁴ FWA, Part 2-5.
- ³³⁵ FWA, Part 2-6.
- ³³⁶ FWA, Part 2-7.
- ³³⁷ FWA, Part 3-2.
- ³³⁸ FWA, Part 3-3.
- ³³⁹ FWA, Part 3-1,3-2 and 6-4.
- ³⁴⁰ FWA, s 576.
- ³⁴¹ FWA, s 590.
- ³⁴² FWA, s 681.
- ³⁴³ FWA, s 682.
- ³⁴⁴ See: Department of Families, Housing, Community Services and Indigenous Affairs, *Office of Work and Family*, www.fahcsia.gov.au/sa/women/progserv/economic/Pages/office_work_family.aspx, (viewed 28 September 2009).
- ³⁴⁵ See: Department of Families, Housing, Community Services and Indigenous Affairs, *Office for Women*, www.fahcsia.gov.au/sa/women/overview/ofw/Pages/default.aspx, (viewed 28 September 2009).
- ³⁴⁶ Government Equalities Office, *About Geo*, www.equalities.gov.uk/about_geo.aspx, (viewed 17 September 2009).
- ³⁴⁷ G Scoular, *Equality Bill 2009 – Legal Q & A*, 2009. At www.personneltoday.com/articles/2009/05/05/50545/equality-bill-2009-legal-ga.html (viewed 28 October 2009).
- ³⁴⁸ G Scoular, above.
- ³⁴⁹ G Scoular, above.
- ³⁵⁰ Commission of Equality and Human Rights, *Our history: the DRC, CRE & EOC*. At <http://edit.equalityhumanrights.com/en/aboutus/history/pages/oldsitelinks.aspx> (viewed 28 October 2009).
- ³⁵¹ Commission for Equality and Human Rights, *Vision, Mission and Priorities*, <http://edit.equalityhumanrights.com/en/aboutus/mission/pages/visionmissionandpriorities.aspx>, (viewed 17 September 2009).
- ³⁵² Commission for Equality and Human Rights, above.
- ³⁵³ Commission for Equality and Human Rights, above.
- ³⁵⁴ Commission for Equality and Human Rights, *About us*. At <http://edit.equalityhumanrights.com/en/aboutus/pages/aboutus.aspx> (viewed 28 October 2009).
- ³⁵⁵ Commission for Equality and Human Rights, above.
- ³⁵⁶ *Equality Act 2006* (UK), s 20(1)(a).
- ³⁵⁷ *Equality Act 2006* (UK), s 20(2).
- ³⁵⁸ Schedule 2 to the *Equality Act 2006* (UK), cl 12.
- ³⁵⁹ *Equality Act 2006* (UK), s 21(1).
- ³⁶⁰ *Equality Act 2006* (UK), s 21(4).
- ³⁶¹ *Equality Act 2006* (UK), s 22(6)(c).
- ³⁶² *Equality Act 2006* (UK), s 23.

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- ³⁶³ *Equality Act 2006* (UK), s 23(2).
- ³⁶⁴ *Equality Act 2006* (UK), s 23(1)(a).
- ³⁶⁵ *Equality Act 2006* (UK), subs 24(2) and (3).
- ³⁶⁶ *Equality Act 2006* (UK), s 20(1) and Schedule 2, para 9.
- ³⁶⁷ The *Equality Act 2006* (UK) inserted sections 76A and 76B into the *Sex Discrimination Act 1975* (UK).
- ³⁶⁸ *The Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006* (UK), Article 2.
- ³⁶⁹ *The Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006* (UK), Article 3.
- ³⁷⁰ *The Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006* (UK), Article 4.
- ³⁷¹ *The Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006* (UK), Article 6.
- ³⁷² *Sex Discrimination Act 1975* (UK), s 76D.
- ³⁷³ *Sex Discrimination Act 1975* (UK), s 76D(6).
- ³⁷⁴ *Sex Discrimination Act 1975* (UK) s 63.
- ³⁷⁵ *Sex Discrimination Act 1975* (UK) s 66.
- ³⁷⁶ *Equality Act 2006* (UK) s 25.
- ³⁷⁷ *Equality Act 2006* (UK) s 27.
- ³⁷⁸ Equality and Human Rights Commission, *What We Do*, <http://edit.equalityhumanrights.com/en/aboutus/whatwedo/pages/whatwedo.aspx>, (viewed 17 September 2009).
- ³⁷⁹ See Advisory, Conciliation and Arbitration Service, *Conciliation*, www.acas.org.uk/index.aspx?articleid=2010 (viewed 21 September 2009).
- ³⁸⁰ *Equality Act 2006* (UK), s 24(1).
- ³⁸¹ *Equality Act 2006* (UK), s 30 (1).
- ³⁸² *Equality Act 2006* (UK), ss 28(1) and 29.
- ³⁸³ *Equality Act 2006* (UK), s 28 (4).
- ³⁸⁴ *Equal Pay Act 1970* (UK), subs 1(2)(a),(b)and (c).
- ³⁸⁵ *Equal Pay Act 1970* (UK), s1. See also *Barber v Guardian Royal Exchange Assurance Group* (C-262/88) [1991] 1 QB 344; Equality and Human Rights Commission, *Pay Benefits And Workplace Conditions*. At www.equalityhumanrights.com/advice-and-guidance/information-for-employers/areas-of-responsibility/pay-benefits-and-workplace-conditions/ (viewed 28 October 2009).
- ³⁸⁶ *Equal Pay Act 1970* (UK) s 2(1).
- ³⁸⁷ Low Pay Commission, *National Minimum Wage: Low Pay Commission Report 2008*, 2008, Chapter 3, para 3.2-3.4). At www.lowpay.gov.uk/lowpay/report/pdf/2008_Min_Wage.pdf (viewed 28 October 2009).
- ³⁸⁸ *Equality Act 2006* (UK), sub 12 (1),(2) and (3).
- ³⁸⁹ *Equality Act 2006* (UK), sub 12 (4) and (5).
- ³⁹⁰ *Equality Act 2006* (UK), s 14 (1).
- ³⁹¹ *Equality Act 2006* (UK), sub 14 (1) and (5).
- ³⁹² *Equality Act 2006* (UK), s 14 (6).
- ³⁹³ *Equality Act 2006* (UK), s 14 (7).
- ³⁹⁴ *Equality Act 2006* (UK), s 14 (8).
- ³⁹⁵ *Equality Act 2006* (UK), s 15 (4)(a).
- ³⁹⁶ *Equality Act 2006* (UK), s 15(4) (b).
- ³⁹⁷ *Equality Act 2006* (UK), s 31.
- ³⁹⁸ *Equality Act 2006* (UK), s 16 (1).
- ³⁹⁹ *Equality Act 2006* (UK), s 20.
- ⁴⁰⁰ Schedule 2 to the *Equality Act 2006* (UK).
- ⁴⁰¹ Schedule 2 to the *Equality Act 2006* (UK) cl 2-4.

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- ⁴⁰² Schedule 2 to the *Equality Act 2006* (UK) cl 15 and 16.
- ⁴⁰³ Schedule 2 to the *Equality Act 2006* (UK) cl 9 and 10.
- ⁴⁰⁴ *Equality Act 2006* (UK), s 30 (1).
- ⁴⁰⁵ *Equality Bill 2009* (UK), cl 145.
- ⁴⁰⁶ *Race Relations Act 1967* (UK), s 71.
- ⁴⁰⁷ *Disability Discrimination Act 1995* (UK), s 49A(1).
- ⁴⁰⁸ *Equality Act 2006* (UK) s 23(2).
- ⁴⁰⁹ Section 4 of the *Equality Bill 2009* (UK) lists the protected characteristics as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- ⁴¹⁰ Equalities Office, *Equality Bill: Making it work, Policy proposals for specific duties, A consultation* (June 2009). At www.equalities.gov.uk/pdf/Specific%20Duties%20Consultation%20DocumentWEB.pdf, (viewed 30 September 2009).
- ⁴¹¹ *Equality Bill 2009* (UK), cl 75.
- ⁴¹² Equality and Human Rights Commission, *Proposals for promoting greater transparency in the private sector: A consultation on improving gender equality in the workplace* (2009), p 29. At www.equalityhumanrights.com/uploaded_files/consultations/gender_pay_consultation.pdf, (viewed 30 September 2009).
- ⁴¹³ Equality and Human Rights Commission, above.
- ⁴¹⁴ Equality and Human Rights Commission, note 412.
- ⁴¹⁵ *Equality Bill 2009 (UK)*, cl 74.
- ⁴¹⁶ *Equality Bill 2009 (UK)*, cl 74.
- ⁴¹⁷ *Equality Bill 2009 (UK)*, cl 154-155.
- ⁴¹⁸ *Equality Bill 2009 (UK)*, cl 118.
- ⁴¹⁹ *Equality Bill 2009 (UK)*, cl 110.
- ⁴²⁰ The 'good employer' is also referred to in the *Crown Entities Act 2004* (NZ) and the *Local Government Act 2002* (NZ).
- ⁴²¹ Ministry of Women's Affairs, *Home*, www.mwa.govt.nz/, (viewed 17 September 2009).
- ⁴²² *Human Rights Act 1993* (NZ), s 5 (1).
- ⁴²³ *Human Rights Act 1993* (NZ), s 17.
- ⁴²⁴ *New Zealand Bill of Rights Act 1990* (NZ), s 19.
- ⁴²⁵ *Human Rights Act 1993* (NZ) part 1a and part 2.
- ⁴²⁶ The Human Rights Review Tribunal is a judicial authority independent of the NZHRC which was established by the *Human Rights Commission Act 1977* (NZ).
- ⁴²⁷ Section 92 of the *Human Rights Act 1993* (NZ) sets out the matters which the Director of the Office for Human Rights Proceedings must consider in determining whether to provide legal representation to a particular complainant.
- ⁴²⁸ Section 112 of the *Employment Relations Act 2000* (NZ) and section 79A of the *Human Rights Act 1993* (NZ) provide that a person must choose to either lodge a complaint with the NZHRC or pursue the matter as a personal grievance.
- ⁴²⁹ *Employment Relations Act 2000* (NZ), ss 102, 103.
- ⁴³⁰ *Equal Pay Act 1972* (NZ), s 2A(1).
- ⁴³¹ *Equal Pay Act 1972* (NZ), s 2A(2)
- ⁴³² *Human Rights Act 1993* (NZ), s 17(c). NZ Census Results available at www.hrc.co.nz/home/hrc/eo/eeopublications/eeopublications.php (viewed 28 October 2009).
- ⁴³³ *Human Rights Act 1993* (NZ), ss 5(2)(e) and 17(d).
- ⁴³⁴ *Human Rights Act 1993* (NZ), s 5(2)(h).

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- ⁴³⁵ *Human Rights Act 1993* (NZ), s 126A and 127.
- ⁴³⁶ *Human Rights Act 1993* (NZ), s 92E.
- ⁴³⁷ *Human Rights Act 1993* (NZ), s 5 (2) (j).
- ⁴³⁸ *Human Rights Act 1993* (NZ), s 5 (2) (j).
- ⁴³⁹ *Canadian Human Rights Act*, RS 1985, c H-6, s 26.
- ⁴⁴⁰ See Canadian Human Rights Commission website, *About Us*. At www.chrc-ccdp.ca/about/default-en.asp (viewed 28 October 2009).
- ⁴⁴¹ 'Discriminatory practices' are set out in *Canadian Human Rights Act*, RS 1985, c H-6, ss 5-14.1. (which should be read in conjunction with *Canadian Human Rights Act*, RS 1985, c H-6, s 3 (1)).
- ⁴⁴² A more detailed list of federally regulated organisations is available from the Canadian Human Rights Commission. See Canadian Human Rights Commission, *Overview: Resolving Disputes*, www.chrc-ccdp.ca/discrimination/federally_regulated-en.asp (viewed 21 September 2009).
- ⁴⁴³ *Canadian Human Rights Act*, RS 1985, c H-6, s 40 (3).
- ⁴⁴⁴ *Canadian Human Rights Act*, RS 1985, c H-6, s 43 (2.1).
- ⁴⁴⁵ *Canadian Human Rights Act*, RS 1985, c H-6, s 48 (1).
- ⁴⁴⁶ *Canadian Human Rights Act*, RS 1985, c H-6, s 49 (1).
- ⁴⁴⁷ *Canadian Human Rights Act*, RS 1985, c H-6, s 48.3 (10).
- ⁴⁴⁸ *Canadian Human Rights Act*, RS 1985, c H-6, s 53 (2).
- ⁴⁴⁹ *Canadian Human Rights Act*, RS 1985, c H-6, s 53 (2).
- ⁴⁵⁰ *Canadian Human Rights Act*, RS 1985, c H-6, s 53 (3).
- ⁴⁵¹ *Canadian Human Rights Act*, RS 1985, c H-6, s 57.
- ⁴⁵² *Canadian Human Rights Act*, RS 1985, c H-6, s 48.3 (12).
- ⁴⁵³ *Canadian Human Rights Act*, RS 1985, c H-6, s 11 (1).
- ⁴⁵⁴ *Canadian Human Rights Act*, RS 1985, c H-6, s 11 (7).
- ⁴⁵⁵ For Equal Pay Guidelines see Canadian Human Rights Commission, *Resources*, www.chrc-ccdp.ca/publications/tfa_appendix4-en.asp (viewed 28 October 2009).
- ⁴⁵⁶ *Canadian Human Rights Act*, RS 1985, c H-6, ss 11 (1), 39 and 40 (1).
- ⁴⁵⁷ *Employment Equity Act 1995* (Canada), c 44, s 4 (1).
- ⁴⁵⁸ *Employment Equity Act 1995* (Canada), c 44, s 5.
- ⁴⁵⁹ *Employment Equity Act 1995* (Canada), c 44, s 9 (1) (a).
- ⁴⁶⁰ *Employment Equity Act 1995* (Canada), c 44, s 9 (1) (b).
- ⁴⁶¹ *Employment Equity Act 1995* (Canada), c 44, ss 12, 13.
- ⁴⁶² *Employment Equity Act 1995* (Canada), c 44, s 14.
- ⁴⁶³ *Employment Equity Act 1995* (Canada), c 44, s 17.
- ⁴⁶⁴ See *Employment Equity Act 1995* (Canada), c 44, ss 18 (1), 21(1). In practice, private sector employers report to the Department of Human Resources and Social Development Canada and public sector employers report to the Public Service Human Resources Management Agency of Canada.
- ⁴⁶⁵ *Employment Equity Act 1995* (Canada), c 44, ss 20, 21(5).
- ⁴⁶⁶ *Employment Equity Act 1995* (Canada), c 44, s 23 (1).
- ⁴⁶⁷ *Employment Equity Act 1995* (Canada), c 44, s 25 (1).
- ⁴⁶⁸ *Employment Equity Act 1995* (Canada), c 44, s 25 (2), (3).
- ⁴⁶⁹ *Employment Equity Act 1995* (Canada), c 44, s 27 (2).
- ⁴⁷⁰ *Canadian Human Rights Act*, RS 1985, c H-6, s 27 (2).
- ⁴⁷¹ *Canadian Human Rights Act*, RS 1985, c H-6, s 27 (3), (4).
- ⁴⁷² An English summary of the commissions report (Official Norwegian Report (NOU) 2009: 14 "Et helhellig diskrimineringsvern") can be downloaded from www.regjeringen.no/nb/dep/bld/, (viewed 6 October 2009).

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- ⁴⁷³ World Economic Forum, *The Global Gender Gap Report* (2008). At www.weforum.org/pdf/gendergap/report2008.pdf (viewed 21 September 2009). NB In the most recent Report released 27 October 2009, Norway slipped to third position behind Iceland and Finland. See World Economic Forum, note 20.
- ⁴⁷⁴ See Arbeidslivets lover, *Act Relating to Working Environment, Working Hours and Employment protection, ETC (Working Environment Act) 2007* (Norway). At www.arbeidstilsynet.no/binfil/download.php?tid=42156 (viewed 28 October 2009)
- ⁴⁷⁵ *Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal Act 2005* (Norway), s 3.
- ⁴⁷⁶ *Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal Act 2005* (Norway), s 3.
- ⁴⁷⁷ *Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal Act 2005* (Norway), s 4.
- ⁴⁷⁸ *Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal Act 2005* (Norway), s 4.
- ⁴⁷⁹ *Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal Act 2005*, s 7.
- ⁴⁸⁰ *Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal Act 2005* (Norway), s 8.
- ⁴⁸¹ *Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal Act 2005* (Norway), s 12
- ⁴⁸² *Gender Equality Act 1979* (Norway), s 3.
- ⁴⁸³ *Gender Equality Act 1979* (Norway), s 3a.
- ⁴⁸⁴ *Gender Equality Act 1979* (Norway), s 17.
- ⁴⁸⁵ *Gender Equality Act 1979* (Norway), s 5.
- ⁴⁸⁶ *Gender Equality Act 1979* (Norway), s 9.
- ⁴⁸⁷ *Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal Act 2005* (Norway), s 7.
- ⁴⁸⁸ *Gender Equality Act 1979* (Norway), s 1a.
- ⁴⁸⁹ *Gender Equality Act 1979* (Norway), s 1a.
- ⁴⁹⁰ *Gender Equality Act 1979* (Norway), s 1a.
- ⁴⁹¹ *Gender Equality Act 1979* (Norway), s 21.
- ⁴⁹² *Public Limited Companies Act 1997* (Norway), s 20-6.
- ⁴⁹³ *Public Limited Companies Act 1997* (Norway), s 6-11a.
- ⁴⁹⁴ *Public Limited Companies Act 1997* (Norway), s 19-1.
- ⁴⁹⁵ *Public Limited Companies Act 1997* (Norway), s 19-1.
- ⁴⁹⁶ *The Business Enterprise Registration Act 1985* (Norway), s 5-2.
- ⁴⁹⁷ *Public Limited Companies Act 1997* (Norway), s 16-15.
- ⁴⁹⁸ *Public Limited Companies Act 1997* (Norway), s16-17.
- ⁴⁹⁹ *Public Limited Companies Act 1997* (Norway), s16-17.
- ⁵⁰⁰ *Local Government Act 1992* (Norway), s 16.
- ⁵⁰¹ Norwegian Ministry of Children and Equality, *Guide to gender equality assessment and discussion in ministry budget propositions* (2007), p 3. At www.regjeringen.no/upload/BLD/Veiledning%20og%20brosjyrer/2007/Guide_likestillingsvurdering_eng_link.pdf (viewed 29 October 2009).
- ⁵⁰² Norwegian Ministry of Children and Equality, above.