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Equal Opportunity for Women in the Workplace Amendment Bill 2012
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Law and Bills Digest Section

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Equal Opportunity for Women in the Workplace Amendment Bill 2012

Date introduced: 1 March 2012

House: House of Representatives

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Commencement: Sections 1 to 3, and items 75 to 79 of Schedule 1, commence on Royal Assent. Items 1 to 74 of Schedule 1 commence on 1 April 2012, or on Royal Assent, whichever occurs later.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The purpose of the Equal Opportunity for Women in the Workplace Amendment Bill 2012 (the Bill) is to amend the Equal Opportunity for Women in the Workplace Act 1999 (the Act) to promote gender equality in the workplace, improve workforce participation and recognise the importance of equal remuneration and the ability for employees to balance work with family and caring responsibilities in achieving these goals.¹

In particular, the Bill amends the Act to:

- change the name of the Act to the Workplace Gender Equality Act 2012, and amend the principal objects of the Act
- modify the coverage of the Act to include all employers and employees in the workplace, regardless of gender
- introduce a new reporting framework in which relevant employers are required to report against gender equality indicators
- provide for the Equal Opportunity for Women in the Workforce Agency, which will be re-titled the Workplace Gender Equality Agency (the Agency), to have new advisory and educational functions and

• attempt to provide further transparency in regards to compliance with the Act and the consequences of non-compliance.²

Background

The *Equal Opportunity for Women in the Workplace Act 1999* (the EOWW Act) came into effect on 1 January 2000, renaming and updating the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*.³ The EOWW Act, along with the *Fair Work Act 2009* and the *Sex Discrimination Act 1984*, ‘forms part of a suite of Commonwealth legislation that aims to promote and protect human rights and achieve equal opportunity for women in the workplace’.⁴ Following the change in government in 2007, responsibility for the EOWW Act was moved from the former Employment and Workplace Relations portfolio to the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA).⁵

The purpose of introducing the EOWW Act was:

> To change references to ‘affirmative action’ in the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* to references to ‘equal opportunity for women in the workplace’ and to give employers greater latitude when devising their ‘workplace programs’ under the legislation, including changing the reporting period for employers from one year to two years.⁶

A detailed history of the EOWW Act is set out in the relevant Bills Digest, as well as being covered by the report into the current Bill compiled by the Senate Education, Employment and Workplace Relations Legislation Committee (the Committee Report).⁷

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

On 1 June 2009, the Government announced a review of both the EOWW Act and the Equal Opportunity for Women in the Workplace Agency. The then Minister for the Status of Women, Tanya Plibersek, determined that the review was ‘both timely and necessary’, and that the ‘EOWW legislation needs to keep pace with the economic, social and legislative changes that have occurred since the last inquiry in 1998’.

A number of terms of reference for the review were announced, including:

- examine the effectiveness and efficiency of the Equal Opportunity for Women in the Workforce Agency and the legislation in promoting equal opportunity for women in the workplace
- provide advice on practical ways in which the equal opportunity for women framework could be improved to deliver better outcomes for Australian women and
- consider opportunities to reduce the cost of existing regulation and/or ways to ensure that any new legislation is cost-effective and well targeted.

The Review was conducted by the Office for Women in the Department of Families, Housing, Community Services and Indigenous Affairs (the Office) and a project reference group was established to provide guidance and advice to the Office regarding the Review. The Office engaged KPMG to undertake a consultation process, which generated a large response from stakeholders and interested parties.

On 11 February 2010, the Review of the Equal Opportunity for Women in the Workplace Act 1999 Consultation Report (the Consultation Report) was publically released. While investigating whether there is gender equality in Australian workplaces, the Consultation Report commented on a number of factors:

8. T Plibersek (Minister for Housing and Minister for the Status of Women), Government announces review of equal opportunity for women in the workplace agency, media release, 1 June 2009, viewed 29 May 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FWVQT6%22
10. T Plibersek, Government announces review of equal opportunity for women in the workplace agency, op. cit.
14. KPMG received a total of 136 submissions from various governments, organisations and individuals. In addition, five roundtables were held in Sydney, Melbourne, Brisbane, Perth and Adelaide and individual interviews were conducted with 21 key stakeholders. Survey responses were received from 774 reporting organisations and 859 employees, Consultation report, op. cit., pp. 1-3.
15. Ibid.
- participation in education and training—women continue to be over-represented in areas of study linked to lower earning industries, while men continue to be over-represented in areas of study linked to higher earning industries
- labour force participation—despite the significant increases in women’s workforce participation, women continue to spend less time in the paid workforce than men, and to fare less well than men on a number of key indicators while at work
- women’s position in the labour market—female dominated industries have been historically undervalued, and women are less likely to be in leadership positions within organisations
- women’s earnings—despite gains in participation rates over time, women’s earnings remain persistently lower than men’s
- impact of family responsibility on employment outcomes and
- workplace discrimination and harassment.\(^\text{16}\)

The Consultation Report identified a number of barriers to achieving gender equality for women and men, which included:

- socio-cultural barriers
- inequitable impact of caring
- experiences of sexual harassment
- bias in recruitment and selection
- male dominated industries and
- poor data.\(^\text{17}\)

The Consultation Report also raised a number of issues in relation to the effectiveness of the EOWW Act, including:

- that the names and objects of the EOWW Act are only focused on women
- the current coverage of the Act was seen as inappropriate, with the majority of stakeholders advocating for extended coverage.\(^\text{18}\) Other coverage issues were also raised, such as whether the EOWW Act should be extended to cover government agencies or boards, and how employers with a large number of subsidiaries should report\(^\text{19}\)
- the variation between organisations in how they interpret and apply the requirement to develop workplace programs\(^\text{20}\)
- that a range of issues had arisen as a result of the flexible reporting format, which allows employers to style their reports to individual workplace requirements and

\(^\text{16}\). Ibid., pp. 5-11.
\(^\text{17}\). Ibid., pp. 27-46.
\(^\text{18}\). Ibid., p. 47.
\(^\text{19}\). Ibid., p. 81.
\(^\text{20}\). Under the EOWW Act, an employer covered by the Act must design a ‘equal opportunity for women in the workplace program’, also referred to as a ‘workplace program’, to ensure that appropriate action is taken to eliminate discrimination against women by the employer and that measures are taken by the employer to contribute to the achievement of equal opportunity for women in employment matters. See sections 3, 6 and 8 of the EOWW Act.

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that most stakeholders were generally dissatisfied with the adequacy of the available penalties and sanctions, though industry and employer representatives did not support any strengthening of the existing provisions.\textsuperscript{21}

In responding to the issues raised in the Consultation Paper, the Government announced a suite of reforms to the EOWW Act on 1 March 2012.\textsuperscript{22}

**Basis of policy commitment**

The Government has stated that the Bill will give effect to its 2010 election commitment to support gender equality and improve workforce participation and workplace flexibility.\textsuperscript{23} In her second reading speech, the Minister for the Status of Women stated that the Bill ‘is an important component of the Government’s workforce participation and human rights agenda’ and fulfils the Government’s promise to improve the Equal Opportunity for Women in the Workplace Agency and the Equal Opportunity for Women in the Workplace Act.\textsuperscript{24}

**Regulation Impact Statement**

The Regulation Impact Statement (RIS) for the Bill was prepared by the Office for Women in FaCHSIA and has been assessed as adequate by the Office of Best Practice Regulation.\textsuperscript{25} The RIS is included in the Explanatory Memorandum and ‘identifies the costs and benefits presented by the Bill to employees, employers, the community and the economy’.\textsuperscript{26}

In particular, the RIS draws attention to various statistics that highlight the benefits to be gained by improving gender equality in the workplace.\textsuperscript{27} In particular, research conducted by Goldman Sachs JBWere, a global investment banking and securities firm, has found that closing the gender pay gap

\textsuperscript{21} Consultation report, op. cit., pp. 47-55.

\textsuperscript{22} J Collins (Minister for Community Services, Minister for Indigenous Employment and Economic Development and Minister for the Status of Women), *New Bill to improve gender equality in the workplace*, media release, 1 March 2012, viewed 25 May 2012, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1467459%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1467459%22)


\textsuperscript{26} Senate Education, Employment and Workplace Relations Legislation Committee Report, op. cit., p. 7.

\textsuperscript{27} Regulatory Impact Statement contained in the Explanatory Memorandum, Equal Opportunity for Women in the Workplace Amendment Bill 2012, op. cit., pp. 5-7 of the RIS.

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would improve Australia’s gross domestic product by 11 per cent.\textsuperscript{28} There will, however, be costs imposed on relevant businesses under the Act. While the cost to business will decrease on average from approximately $1200 under the EOWW Act to $400 under the arrangements proposed by the Bill\textsuperscript{29}, businesses who find themselves subject to an organisational review will have to pay an additional $1 300.\textsuperscript{30}

In recognising a need to promote gender equality in the workplace, the RIS examined what level of regulation would be most appropriate to achieve this aim.\textsuperscript{31} While the option of ‘light and responsive regulation’ was ultimately the preferred approach, a detailed analysis of the other approaches was also provided.\textsuperscript{32}

**Committee consideration**

**Senate Selection of Bills Committee**

On 1 March 2012, the Senate Selection of Bills Committee referred the Bill to the Senate Education, Employment and Workplace Relations Legislation Committee (the Committee) for inquiry and report by 8 May 2012.\textsuperscript{33}

**Senate Standing Committee for the Scrutiny of Bills**

In its consideration of the Bill, the Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee) commented on the power of the Minister to specify minimum standards for ‘gender equality indicators’, specified relevant employers and specified reporting periods in delegated legislation.\textsuperscript{34} Despite stating its preference ‘that the use of delegated legislation is fully explained’, the Scrutiny of Bills Committee concluded that this matter was better left to the consideration of the Senate as a whole.\textsuperscript{35} However, it did note that it appeared to be the intention of the Government ‘that the Minister will consult with other relevant persons, such as industry and employee organisations’ in determining the minimum standards.\textsuperscript{36}

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28. The RIS also mentions a 2007 analysis by Catalyst, which found that Fortune 500 US companies who ranked in the top quartile for female representation on boards attained a 66 per cent better return on capital investment than companies that ranked in the bottom quartile: Ibid., pp. 6-7.
29. Ibid., p. 28.
31. Ibid., pp. 19-21.
32. Ibid., pp. 75-87.
34. See clause 19 of the Bill. The meaning and function of ‘gender equality indicators’ is discussed below.
36. Ibid. In arriving at this conclusion the Scrutiny of Bills Committee looked at the effect of proposed section 31(3).

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Senate Standing Committee on Education, Employment and Workplace Relations

After a period in which submissions were called for and a public enquiry was held, the Committee tabled its report on the 10 May 2012. The Committee’s sole recommendation was that the Bill be passed.

In its report the Committee addressed some of the criticisms raised in the submissions it received.

In noting concerns raised about the setting of minimum standards in delegated legislation for gender equality indicators, specified relevant employers and specified reporting periods in delegated legislation, the Committee stated:

...the Bill specifies that minimum standards are to be set by the Minister by legislative instrument with regard to recommendations from the Agency, and after consultation with the Agency and key stakeholders.

And:

The Committee is therefore satisfied that appropriate measures have been taken to ensure that a consultative process is applied in setting minimum standards.

In its report, the Committee took the view that the Bill’s focus on the private sector is appropriate. The Committee noted that ‘public sector employment is already regulated by schemes comparable to the EOWW Act, and that gender inequality is not as pronounced in the public sector as it is in the private’.

Policy position of the Coalition

A dissenting report to the Committee’s report (the dissenting report) was prepared by the Coalition Senators who sit on the Committee. The dissenting report raises a number of concerns with the Bill in its current form and recommends that the Bill not be passed.

The dissenting report expresses dissatisfaction with the power given to the Minister to determine gender equality indicators under delegated legislation:

39. Ibid., p. 22.
40. Ibid.
41. Ibid., pp. 31-45.
42. Ibid., p. 44.

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The almost unlimited discretion, which is proposed to be conferred on the Minister, creates considerable uncertainty in determining and understanding these undefined matters. The Bill does not clearly articulate the extent or composition of the [gender equality indicators], and the Bill does not set minimum standards, yet it locks employers into reporting on their performance in relation to these yet to be defined matters.\(^{44}\)

A recurring theme in the dissenting report is the concern that the Minister will only consult with employee groups when making such determinations:\(^{45}\)

> given the relationship that the current Labor Government has with the Union movement, this consultation process should not be restricted to union organisations. It is critical that the Minister consult with a cross section of employers to ensure that their views are heard and properly considered by the Minister before minimum standards are set.\(^{46}\)

The dissenting report joins employer and industry groups in criticising the fact that the Act only applies to the private sector:

> Coalition Senators regards this inequity as being grossly discriminatory against employers who are required to generate funds required to finance these additional costs and who, unlike government agencies and other publicly funded bodies, cannot rely on the public purse to cover unbudgeted expenditure.\(^{47}\)

While there is no discussion of this issue in the dissenting report, in her second reading speech the Member for Farrer, Sussan Ley, commented on additional consequences set out in the Bill:

> As for consequences, there are also possible consequences in relation to Commonwealth procurement, grants and financial assistance. So, following consequences, there are also threats.\(^{48}\)

Other concerns that were raised in the dissenting report include the expense involved in changing the name of the Act, the Agency and the Director, the additional regulatory burden imposed on businesses, and the imposition of further ‘red tape’.\(^{49}\)

In her second reading speech, the Member for Farrer proposed a number of amendments to the Bill.\(^{50}\)

\(^{44}\) Ibid., p. 34.

\(^{45}\) Ibid., p. 47.

\(^{46}\) Senate Education, Employment and Workplace Relations Legislation Committee Report, op. cit., p. 35.


\(^{49}\) Senate Education, Employment and Workplace Relations Legislation Committee Report, op. cit., pp. 31-45.


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These amendments would:

- remove the proposed requirement for the Minister to set minimum standards in relation to gender equality indicators, specified relevant employers and specified reporting periods by 1 April 2014, by removing **proposed section 19** of the Act\(^5\)
- prevent the publishing of personal information, even where an employee consents
- retain the current power of the Agency to waive public reporting requirements for relevant employers
- introduce a requirement for the Agency to make publically available the names of employers who regularly submit compliant reports and
- require the Minister to repeal a legislative instrument whenever a new instrument is made under the Act.

The Member for Farrer also moved that the Minister’s proposal that the Bill be read a second time be altered to provide that:

> whilst not declining to give the bill a second reading, the House notes that if the Government was genuinely committed to achieving equality for working women, it would adopt the Coalition’s better, fairer Paid Parental Leave scheme.\(^5\)

The proposed amendments have yet to be debated in the House of Representatives.\(^5\)

**Position of major interest groups**

As noted by the Committee in its report, support for the Bill has been very strong, especially amongst employee advocates and equal rights organisations.\(^5\)

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\(^5\) There appears to be an inconsistency between **items 6 and 7** of the proposed amendments to the Bill. The amendment proposed at **item 6** indicates that the Minister’s power under the Bill to set minimum standards for specified relevant employers and specified reporting periods is not intended to be affected by the proposed amendments. However, the removal of **proposed section 19** of the Act by **item 7** of the proposed amendments would appear to remove the Minister’s power to specify minimum standards not only for GEIs, but also for specified relevant employers and specified reporting periods.


\(^5\) A list of these amendments is set out on the Bill’s homepage: [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4765%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4765%22)


In commenting on the current state of gender equality in the workplace, the Australian Council of Trade Unions (ACTU) expressed a strong view on why the Act should be updated:

The amendment to the EOWW Act is much needed. Australia is not performing well on many equity measures. Despite the introduction of the affirmative action Act 26 years ago women continue to be disadvantaged in the workplace. For example, despite making up half the workforce, women in full-time paid work still earn 17.8 per cent less than men in full-time paid work amounting to over $1 million less over a lifetime. Women are now more likely to have a tertiary qualification than men but women graduates will earn $2,000 less than male graduates and $7,400 less by the fifth year after graduation. Fewer than three per cent of ASX 200 companies have a female chief executive officer, 8.4 per cent of board directors are women and only eight per cent of executive managers of Australian companies are women. Women retire with less than half the amount of savings in their superannuation accounts than men, and women are four times as likely to experience sexual harassment and discrimination in the workplace compared to men...Clearly, the current EOWW legislation has been inadequate to successfully address old, persistent inequities and is in need of updating to effectively address current equal employment opportunity concerns.\(^55\)

The ACTU also stated that voluntary compliance has been shown not to work, with over two-thirds of employers legally obliged to lodge reports not doing so.\(^56\)

In its submission to the Committee, the Women’s Electoral Lobby commented on the lack of indicators on which to measure gender equality in the workplace:

[I]n order to understand what is happening in terms of gender equality in the workplace, you need to look at the numbers and in the absence of numbers you might think things are fine. Many organisations, for example, believed they did not have a pay equity issue until they looked at the data. It is easy—and I think people are broadly well-intentioned, even if they have made no effort in regard to general equality—to assume that things are going well. It is very difficult to make any kind of analysis unless you have actually dug in and had a look at where people sit and what they are being paid.\(^57\)

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\(^56\) Ibid., p. 4.


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However, the Bill has not been met with support from all stakeholders, and has in fact been opposed by the majority of employer and industry groups.

The Australian Industry Group (AIG), Australian Chamber of Commerce and Industry (ACCI) and the Australian Federation of Employers and Industry (AFEI) have all expressed concerns with the Bill.

In its submission, the ACCI questioned why businesses should be penalised for failing to comply with Government-set minimum standards which do not even apply to the Government itself.58 The Business Council of Australia submitted that ‘the cost of including the public sector was given in the RIS as a reason for not requiring it to be subject to the new legislation’.59

The AFEI has also expressed its concern in regards to the role of the Minister:

The proposed legislation gives the Minister discretionary powers without legislative constraint on the exercise of these powers. There is no mechanism for appeals or review of the Minister’s decisions and no legislated criteria the Minister has to consider before making a decision which affects industry.60

In its submission the AIG alluded to the consequences of failing to comply with the Act:

If an employer is locked out of Government contracts because the employer has been named in an Agency report, millions of dollars of work could be lost, with a consequent devastating effect on the business and its employees.61

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Financial implications

The measures in this Bill were part of the 2011–12 Budget. The fiscal cost of the reforms totals $11.2 million over four years.  

Main issues

Role of the Minister

The main concern that has been raised with the Bill is in regards to the new reporting framework, which requires employers to report against a number of gender equality indicators (GEIs).  

While a number of GEIs have been developed and defined under the Act, the Minister is also given the power to specify matters.  

The Minister will also be responsible for setting minimum standards in relation to specific GEIs.

While the Minister must consult with the Workplace Gender Equality Agency (the Agency) before setting minimum standards, there is no requirement for the Minister to consult with other stakeholders.

Coverage of the Act

Debate has also arisen as to whether the Act should cover both the private and public sector. Currently the Act only applies to the private sector, and does not apply to government agencies or boards.

Key provisions

The main amendments to the Act are set out in Part 1 of the Bill.

Item 2 of the Bill amends existing section 1 to change the name of the Equal Opportunity for Women in the Workplace Act 1999 to the Workplace Gender Equality Act 2012. Under items 4 and 7, the Equal Opportunity for Women in the Workplace Agency would also be renamed the Workplace Gender Equality Agency, and the Director of Equal Opportunity for Women in the Workplace would become the Director of Workplace Gender Equality. Item 3 repeals and replaces section 2A of the Act to modify the objects of the Act, and inserts section 2B, which provides for a simplified outline of the Act.

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62. Explanatory Memorandum, op. cit., p. 3.
63. Proposed subsection 3(1).
64. Proposed subsection 3(1A).
65. Proposed section 19.
66. Proposed section 31(3).
67. Ibid., pp. 19-20.
68. According to the Explanatory Memorandum, the new principal objects of the Act reflect the change in focus of the Act to promote and improve gender equality in the workplace: Explanatory Memorandum, op. cit., p. 10.

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Gender Equality Indicators (GEIs)

**Item 14** of the Bill inserts a definition of GEIs into subsection 3(1) of the Act. Under this definition, GEIs are:

- the gender composition of the workforce
- the gender composition of governing bodies of relevant employers
- equal remuneration between women and men
- availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities
- consultation with employees on issues concerning gender equality in the workplace and
- any other matters specified by the Minister.69

Under **proposed subsection 3(1A)** of the Act, inserted by item 24 of the Bill, the Minister may, by legislative instrument, specify matters for the purposes GEIs. The Minister is not limited in regard to what matters may be specified in the instrument and the instrument has no effect in relation to a reporting period unless it is made before the first day of that period.

Current subsection 5(9) of the Act provides that the Act gives effect to the Convention on the Elimination of all Forms of Discrimination Against Women. **Item 28** of the Bill repeals and replaces subsection 5(9) to include reference to a number of additional treaties that impose obligations on Australia in regards to the Act’s new objectives.70

**Item 29** of the Bill repeals existing Part II of the Act. Currently this Part sets out the provisions that require employers to implement workplace programs.71 There will no longer be a requirement for employers to develop workplace programs. Under the amended Act, relevant employers will be required to report against the GEIs. The definition of ‘relevant employer’ at subsection 3(1) of the Act will be maintained. Under this definition, a relevant employer is a higher education institution or an employer with 100 or more employees in Australia, but does not include a government body. However, **proposed subsection 3(2A)** will provide that if a relevant employer ceases to be a relevant employer because the number of employees falls below 100, the Act will continue to apply to that

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69. **Proposed subsections 3(1) and 3(1A)** of the Act.
71. These programs are explained at footnote 20.

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employer as if it was a relevant employer, until the number of people employed by that employer falls to under 80.\footnote{\ref{32}}

**Workplace Gender Equality Agency**

Current Part III of the Act establishes the Equal Opportunity for Women in the Workplace Agency and sets out its functions and powers. \textbf{Items 30 to 43} of the Bill re-name the Agency as the Workplace Gender Equality Agency and amend the Act to reflect its new functions. In particular, under \textbf{proposed paragraph 10(1)(a)} of the Act, inserted by item 35 of the Bill, the Agency’s advice and assistance will be available to all employers, not just those ‘relevant employers’ that are required to report. \textbf{Proposed paragraph 10(1)(aa)} provides that it is a function of the Agency to develop, in consultation with relevant employers and employee organisations, benchmarks in relation to GEIs. \textbf{Item 42} of the Bill inserts \textbf{proposed subsection 12(2A)}, which in addition to the Agency’s current reporting obligations, requires the Agency to submit to the Minister a report on the progress achieved in relation to the GEIs for the two-year period in which it applies.

**Reports by Relevant Employers**

Part IV of the Act deals with the reporting conditions for relevant employers. \textbf{Item 44} of the Bill repeals and replaces section 13 of the Act, to introduce a new reporting framework where relevant employers are required to report against GEIs, rather than, as currently, reporting on workplace programs.

Currently, under section 14 of the Act, an employer can choose to lodge a confidential report which evaluates the actions taken by the employer to achieve equal opportunity for women in the workplace. Under current section 16 of the Act, the Agency can request that information that a relevant employer had included in a confidential report be made available to the public or for use, either in whole or in part, in a report of the Agency. Section 15 of the Act allows a member of the public to request to view a public report.

Under the new provisions, confidential reports no longer exist. \textbf{Item 46} of the Bill repeals and replaces sections 13C, 14 and 14A of the Act to set out what information must not be published in a public report. \textbf{Proposed sections 13C} and \textbf{14} prevent the publishing of personal information and information relating to remuneration in a public report, except where the individual to whom it relates has provided written consent to its publication or use.\footnote{There is no requirement under the Act to obtain the employer’s consent.} \textbf{Proposed section 14A} gives the Minister the discretion to decide when information should not be published in a public report. However, under \textbf{proposed subsection 14A(3)} the information specified by the Minister may still be published if it does not disclose, either directly or indirectly, information about a specific relevant employer or another specific person.

\footnote{Proposed subsection 3(2A).}
\footnote{There is no requirement under the Act to obtain the employer’s consent.}

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Items 47 to 51 of the Bill amend section 15 of the Act. In particular, item 49 of the Bill repeals and replaces paragraph 15(a) to give the Agency the additional power to publish a public report by electronic or other means. Proposed subsection 15(2) requires the Agency to wait 28 days from the date the public report is lodged before publishing or using the report.

Item 52 of the Bill repeals and replaces section 16 with proposed sections 16, 16A and 16B. Proposed section 16 requires employers to make public reports accessible to employees and shareholders. Employers are required to notify employees and shareholders when the report has been lodged, as well as ensure that they are provided access. Proposed section 16A requires employers to inform employee organisations, within seven days, of the lodgement of a public report. Under proposed section 16B, the employer is obliged to inform employees and employee organisations that they are able to comment on the report.

Compliance with the Act

Item 55 of the Bill inserts new Part IVA, which outlines how compliance with the Act is to be monitored and the consequences of non-compliance. Proposed section 18 inserts into the Act a simplified outline of Part IVA. Under the proposed outline, relevant employers failing to comply with this Act may not be eligible to compete for contracts under the Commonwealth procurement framework and may not be eligible for Commonwealth grants or other financial assistance. These consequences already apply under the EOWW Act.

Minimum Standards in relation to gender equality indicators

Proposed section 19 of the Act, inserted by item 55 of the Bill, places an obligation on the Minister to set minimum standards in respect of GEIs, specified relevant employers and specified reporting periods. The Minister must set these standards before 1 April 2014. Under proposed section 19A, the Agency will have the power to issue a notice requiring an employer to provide information regarding the employer’s compliance with the Act. The notice must specify the form in which the information is to be provided, as well as setting a deadline within which the employer must respond.

Proposed sections 19B and 19C set out the circumstances where an employer may be found to have failed to comply with the Act. Under proposed section 19B, an employer is considered to have failed
to comply with the Act where they have provided false or misleading information.79 Proposed section 19C states that where an employer fails to improve against the minimum standard, they will be deemed as having not complied with the Act.80 In the event that an employer has been found to have failed to comply with the Act and the employer does not have a reasonable excuse for the failure, the Agency may name the employer in a report given to the Minister, or by other means, such as in a newspaper or on the Agency’s website.81

Under proposed section 19E, the Agency is required to offer advice and assistance to relevant employers who fail to meet minimum standards.

Director of Workplace Gender Equality

Part V of the Act deals with the Director of Workplace Gender Equality,82 while Part VI contains miscellaneous provisions.

Item 71 of the Bill inserts proposed section 33A into the Bill, which requires the Minister to consult with the Agency before making a legislative instrument under the Act. The Minister also has the discretion to consult with various persons as set out under proposed section 31(3).83

Part 2 of Schedule 1 of the Bill sets out various consequential amendments to both the Equal Opportunity for Women in the Workplace Act 1999 and the Equal Employment Opportunity (Commonwealth Authorities) Act 1987.84

Concluding comments

In its report, the Committee quotes a recent statement made by FaHCSIA:

Gender equality is about enabling women and men to reach their potential to contribute to, and benefit from, full economic, social, cultural and political participation.85

The recent introduction of Australian Stock Exchange requirements requiring boards to set measurable gender equity targets and report on progress under their diversity policies has led to improvement in gender diversity: 13.5 per cent women on ASX 200 boards as compared to the 8.4

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79. This can be either through lodging a report that contains false or misleading information or by directly providing false or misleading information to the Agency: proposed paragraphs 19B(a) and 19B(b).
80. In determining whether there has been a failure to improve against the minimum standard, the Agency will compare the reports for two consecutive periods: proposed section 19C.
81. Proposed subsection 19D(1). The Agency is required to give prior notice to an employer before naming them in a report, or by electronic or other means: proposed subsection 19D(4).
82. Item 56 of the Bill repeals and replaces the heading of Part V to reflect the Director’s change in title.
83. Items 58-62 amend subsection 31(3) of the Act to update the list of persons whom the Minister may decide to consult. These include persons representing industry or business or employee organisations or higher education institutions or having special knowledge or interest in relation to gender equality in the workplace, the functions of the Agency or the operation of the Act.
84. These are set out under Items 74-79.

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per cent that was reported less than two years ago.\textsuperscript{86} This information would suggest that the similar reporting framework proposed by the Bill, with the introduction of GEIs, will help in promoting gender equality in the workplace.

In their dissenting report, the Coalition Senators noted that the amendments proposed in the Bill go significantly further than the gender equality rules which apply to ASX listed companies.\textsuperscript{87} While the Bill proposes similar reporting requirements to those stated under ASX corporate governance principles, ASX listed companies are not subject to compliance checks, or consequences in the event of non-compliance. Employee groups, such as the Australian Council of Trade Unions, maintain that non-compliance provisions are the only way in which to ensure that employers report.

In its submission to the Committee, the Australian Chamber of Commerce and Industry (ACCI) noted that:

\begin{quote}
The Committee is unable to assess the possible impact of the measures in terms of actual new cost impost imposed on reporting firms, or unintended consequences, until the indicators are defined.\textsuperscript{88}
\end{quote}

This can also be said to apply to the definition of minimum standards. It would seem that the legislation will need to be reviewed at a later stage to determine its impact on employers, and its success in promoting gender equality in the workplace.

\begin{itemize}
\item \textsuperscript{86} Explanatory Memorandum, op. cit., p. 14.
\item \textsuperscript{87} Senate Education, Employment and Workplace Relations Legislation Committee Report, op. cit., p.37.
\end{itemize}

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Equal Opportunity for Women in the Workplace Amendment Bill 2012

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