

Equal Opportunity for Women in the Workplace Amendment Bill 2012

CCIQ Submission to the Senate Education,
Employment and Workplace Relations Committees

30 March 2012

1.0 INTRODUCTION

- 1.1 The Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to provide feedback to the Senate Education, Employment and Workplace Relations Committees on the *Equal Opportunity for Women in the Workplace Amendment Bill 2012* (EOWW Amendment Bill).
- 1.2 CCIQ supports the principle of equal opportunities for both men and women in the workplace. CCIQ is supportive of reviewing the legislation to ensure it remains up-to-date and relevant to modern workplaces. However, CCIQ is not supportive of strengthening the current legislation to place increased burden on employers that will only deliver a backward step towards the desired outcome of improved gender equality and workforce participation.
- 1.3 CCIQ is concerned about some aspects of the EOWW Amendment Bill and believes attention is required to ensure the legislation does not negatively impact on workplaces and increase the business operating and compliance costs of employers. It is essential that amendments to the *Equal Opportunity for Women in the Workplace Act* (EOWWA), particularly the new reporting requirements, reduce the regulatory burden on business and improve the productivity and competitiveness of business whilst at the same time advancing gender equality. CCIQ is strongly supportive of enhancing proactive measures to address gender equality concerns, rather than strengthening prescriptive legislation that only focuses employers' attention on ensuring compliance, rather than improved gender equality and workforce participation outcomes.
- 1.4 CCIQ as a member of the Australian Chamber of Commerce and Industry (ACCI) provides support for the position and recommendations made by this organisation to the Inquiry. CCIQ's submission is intended to complement ACCI's submission and provide the Queensland business community context. It is essential that the views of employer representatives are taken into consideration during consideration and debate of the EOWW Amendment Bill.

2.0 CCIQ FEEDBACK ON PROPOSED AMENDMENTS TO THE EOWWA

- 2.1 CCIQ provides the below feedback in relation to the EOWW Amendment Bill. CCIQ supports the principle of equal opportunities for both men and women in the workplace, however is concerned about increasing the regulatory burdens on businesses that may instead deliver unintended consequences that have negative implications for the objectives sought by both Government and industry.

Amending the name of the Act

- 2.2 The EOWW Amendment Bill amends the name of the *Equal Opportunity for Women in the Workplace Act 1999* to the *Workplace Gender Equality Act 2012*. The name of the Equal Opportunity for Women in the Workplace Agency will also be changed to the Workplace Gender Equality Agency, in addition to the title of the Director of the Agency to the Director of Workplace Gender Equality. The Australian Government believes the changed titles will reflect the new focus of the Act. CCIQ provides in principle support for amending the name of the Act, agency and title of the Director.

Objects of the Act

- 2.3 CCIQ is not supportive of the proposed amendment that removes the current object of the Act that promotes the attainment of equal opportunities being based on merit. It is essential that this object is maintained due to the importance of all employment opportunities being based on merit, not on the basis of a person's gender.

- 2.4 Additional feedback in relation to the proposed amendments to the objects of the Act include:
- CCIQ is not supportive of duplicating coverage of issues in numerous legislations. Subsequently, CCIQ is not supportive of incorporating equal remuneration into the EOWW Act due to the associated coverage under the *Fair Work Act 2009*. All references to equal remuneration should be removed;
 - CCIQ is not supportive of incorporating the words “in recognition of the disadvantaged position of women in relation to employment matters” into the principle objects of the Act. CCIQ does not believe that all women are disadvantaged in the workplace and therefore this statement is seen as an exaggeration that does not accurately reflect modern Australian society and therefore should not be enshrined in legislation.
- 2.5 Subsequently, CCIQ is supportive of the principle objects of the Act reading as follows:
- To promote the principle that employment for women should be dealt with on the basis of merit;
 - To promote and improve gender equality (including ~~equal remuneration between women and men~~) in employment and in the workplace;
 - To support employers to remove barriers to the full and equal participation of women in the workforce, ~~in recognition of the disadvantaged position of women in relation to employment matters~~;
 - To promote, amongst employers, the elimination of discrimination on the basis of gender in relation to employment matters (including in relation to family and caring responsibilities);
 - To foster workplace consultation between employers and employees on issues concerning gender equality in employment and in the workplace;
 - To improve the productivity and competitiveness of Australian business through the advancement of gender equality in employment and in the workplace.

Recommendations:

- ***The object of the Act must maintain the requirement that attainment of equal opportunities for both genders be based on merit.***
- ***The objects of the Act should be amended as outlined above.***

Coverage of the Act

- 2.6 The coverage of the Act has been expanded to include men and women. CCIQ provides in-principle support for extending the coverage of the Act to include a focus on gender equality in all workplaces based on merit.
- 2.7 Currently only private employers and employees are covered by the Act’s reporting requirements. CCIQ strongly believes that the scope of the legislation must be broadened to include the public sector in order to provide a more even playing field across the economy. It is important that all government agencies are competitively neutral and at the same time are held accountable for delivering improved gender equality outcomes, especially considering the public sector (local, state and federal governments) employ such a large proportion (around 16%) of the workforce.¹
- 2.8 CCIQ recognises that the private sector is covered by the *Public Services Act 1999* and the *Equal Employment Opportunity (Commonwealth Authorities) Act 1987* and that a number of States also have their own equal employment opportunity legislation for the public sector (ie *Equal Opportunity in Public Employment Act 1992* and the *Public Services Act 2008* in Queensland).² However, CCIQ believes that government agencies should be subject to the same reporting requirements as the private sector to meet national competition principles and highlight the regulatory burden placed on employers by the Act and allow the private sector to view the public reports provided by Government.

Recommendation: The coverage of the Act should be broadened to incorporate the public sector, particularly in relation to reporting requirements.

Enhancing the Agency's advice and education functions

2.9 CCIQ is supportive of enhancing the Workplace Gender Equality Agency's advice and educative functions that allow employers to be more proactive in achieving improved gender equality outcomes. It is important that employers feel comfortable to seek feedback and advice on improving gender equality and workforce participation outcomes, or advice on meeting the reporting requirements and minimum standards, without the fear of prosecution.

Reporting requirements

2.10 Currently under the EOWW Act, relevant employers are required to report on their workplace program for each reporting period (1 April to 31 March) with a public report that sets out the workplace profile, issues relating to equal opportunity for women in the workplace, actions taken to address these issues and proposed actions for the coming reporting period.³

2.11 The EOWW Amendment Bill proposes the broadening of the reporting requirements to require employers with 100 employees or more (or for businesses who have previously reported – 80 employees or more) to lodge reports each year (commencing from the reporting period beginning 1 April 2013) containing information relating to various gender equality indicators. These indicators have been identified as:

- Gender composition of the workforce;
- 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;
- Any other matters specified in an instrument under subsection (1A).

2.12 Other proposed changes in relation to reporting requirements include:

- Employers will be required to report against minimum standards set by the Minister;
- The ability of the agency to waive public reporting requirements will be removed;
- The reporting employer must at the time of lodging the report, include in writing any information that is personal and not to be published unless consent is provided by the organisation;
- The reporting employer is required to make the report accessible to employees and shareholders (excluding personal information);
- The reporting employer must within 7 days of lodging the report, inform each employee organisation that has members within the business, that the report has been lodged;
- The reporting employer must inform employees and employee organisations that comments on the report may be given to the employer or the Agency;
- The Agency may review an employer's compliance with the Act by seeking further information from the employer, which can be done on a random basis.

2.13 CCIQ is opposed to the onerous nature of these requirements. These provisions are directly at odds with the regulatory simplification process undertaken nationally. The Explanatory Memorandum on the EOWW Amendment Bill states that the new reporting requirement is aimed at reducing the regulatory burden on business.⁴ However, CCIQ believes that the proposed amendments will greatly increase the reporting requirements of businesses. Furthermore, CCIQ is concerned that increased reporting requirements will only serve to focus employers' attention on meeting compliance requirements, rather than implementing initiatives that will have a positive impact on improved gender equality and workforce participation outcomes. CCIQ would rather attention be placed on promoting voluntary, proactive measures that focus on the initial concerns surrounding gender equality and address them

outside the scope of legislation. CCIQ is not supportive of any changes that enhance the regulatory burdens placed on businesses that do not result in tangible outcomes for employers and the economy. Instead support is provided for focusing on proactive initiatives as outlined in the section 3.0.

2.14 Other concerns CCIQ would like to raise in relation to the proposed changes to reporting requirements include:

- Businesses will face increased information collecting requirements throughout the reporting period to allow them to report against the gender equality indicators and minimum standards;
- The inclusion of wage level information for individual businesses could be unfairly used by unions to submit industry wide wage rise/equal remuneration applications;
- Industry has limited input into the gender equality indicators and minimum standards that are being set by Government and the Minister. It is essential that industry has input considering the negative implications that implementing these set standards could have on their business;
- The Minister is not required to set the minimum standards until the 1 April 2014 which is at the end of the first reporting period. It is essential that businesses are well aware of what they will be required to report on prior to the commencement of the reporting period to ensure they are taking the appropriate actions to ensure compliance;
- The Agency's ability to seek further information from employers on a random basis may create further time and compliance burdens for businesses. A reasonable amount of time must be provided to allow employers to respond;
- It should not be the employer's responsibility to identify all unions that have members within their business in order to notify them of the report's lodgement. Section 16 should also be applicable to unions (employee organisations) where the report must only be made accessible to them. Unions should take responsibility for locating the report at the end of the reporting period if they wish to do so;
- A timeframe is required in which comments can be submitted in relation to an employer's report;
- There are no identifiable benefits for employers who meet their requirements under the Act. For example, workplaces that demonstrate improved gender equality outcomes or enhanced participation of women in their workforces are still required to report regularly.

Recommendation: The concerns of employers regarding enhanced reporting requirements must be addressed prior to the passing of the amendment bill.

Penalties

2.15 It is proposed that employers who fail to comply with the Act may be named by the Agency in a report given to the Minister or by electronic or other means (for example, on the Agency's website or in a newspaper). Furthermore, employers who are found to not be complying with the Act may be ineligible to compete for contracts under the Commonwealth procurement framework and may not be eligible for Commonwealth grants or other financial assistance. CCIQ is fundamentally opposed to any procurement framework being used to secure secondary agendas.

2.16 These penalties could have significant negative implications for businesses. It is essential that employers faced with this situation are contacted prior to this occurring to allow them to rectify the situation. In many circumstances, employers may be unaware that they have even contravened the Act. Given the enhanced advisory and educative functions being provided to the Agency, CCIQ believes it is essential that contact occurs in the first instance, with employers provided sufficient time to respond, prior to disciplinary action being taken.

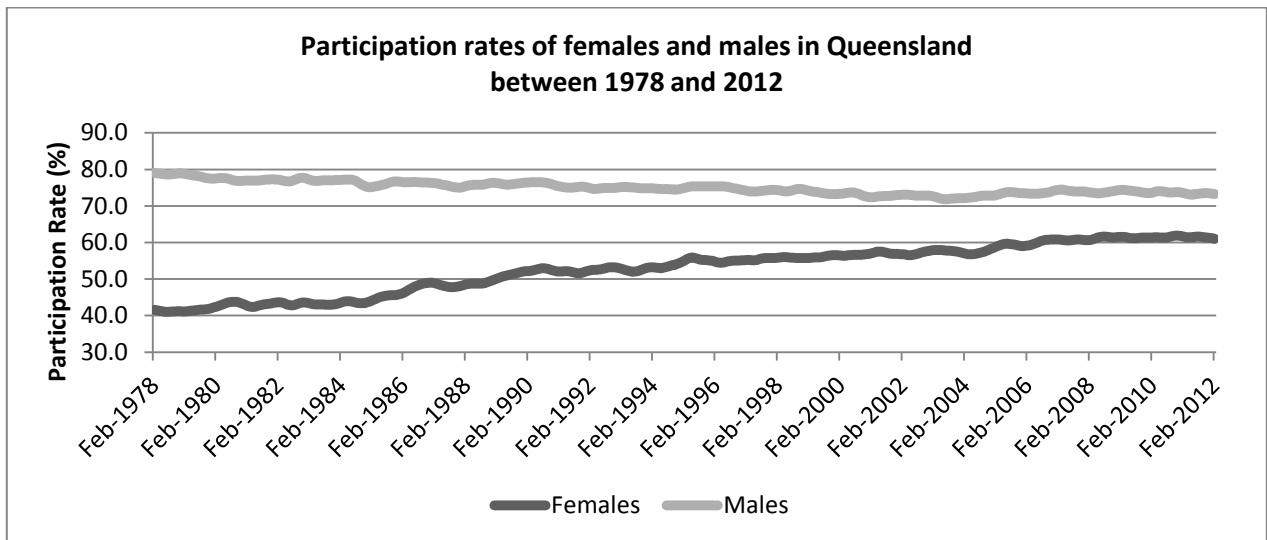
Recommendation: Before any employer is subject to disciplinary action, an information and awareness raising campaign must be implemented to ensure all employers are aware of their obligations and what is required to ensure compliance.

3.0 PROACTIVELY ADDRESSING BARRIERS TO WORKFORCE PARTICIPATION AND GENDER EQUALITY

3.1 CCIQ is strongly supportive of taking proactive measures to increase workforce participation and improve gender equality outcomes outside the scope of legislation. CCIQ strongly believes that this will be more effective in the long run by allowing employers to implement initiatives that best suit the needs of their organisations and workforce. Furthermore, CCIQ believes the resources spent by Government in ensuring compliance with the enhanced reporting requirements would be better spent on initiatives that proactively deliver improved gender equality and workforce participation outcomes.

Recognising the positive steps achieved towards enhancing workforce participation of women

3.2 Recent statistics show that the workforce participation of women has actually increased substantially. Between February 1978 and February 2012, the labour force participation of women has increased from 41.6% to 61.1% (an increase of 19.5%). The disparity between the workforce participation rates between males and females has also decreased substantially from 37.5% in 1978 to 12.2% in 2012.



Source: ABS Catalogue 6202.0 – Labour Force, Australia, Feb 2012

3.3 Since the Act was last reviewed and amended in 1999, there have been substantial increases in the participation rates of females (on average improving more than 5.3%) in every state throughout Australia. Queensland currently has the highest participation rate amongst females and the second highest participation rate for males in Australia. In Australia, male workforce participation rates have remained fairly stable at 72% while female participation rates have increased by 5.1%.

	Females			Males		
	Feb 1999	Feb 2012	% change	Feb 1999	Feb 2012	% change
QLD	55.8%	61.1%	+5.3%	74.1%	73.3%	-0.8%
NSW	52.2%	56.7%	+4.5%	71.4%	70.2%	-1.2%
VIC	53.0%	58.0%	+5.0%	72.6%	71.9%	-0.7%
SA	51.1%	57.2%	+6.1%	70.0%	69.4%	-0.6%
WA	56.5%	60.9%	+4.4%	75.6%	76.2%	+0.6%
TAS	49.4%	55.9%	+6.5%	67.9%	66.5%	-1.4%
AUS	53.6%	58.7%	+5.1%	72.6%	71.9%	-0.7%

Source: ABS Catalogue 6202.0 – Labour Force, Australia, Feb 2012

3.4 CCIQ believes it is essential that these outcomes are recognised by Government and for additional non-legislated strategies to be put in place to further increase the current trend.

Implementing proactive strategies and initiatives

- 3.5 There are several barriers affecting the workforce participation of women that require addressing and that do not fall within the scope of legislation. CCIQ believes these factors require urgent attention well before the Act is strengthened. It is also important to note that many of these factors are outside the ability of employers to address individually and require whole of community and government support.
- 3.6 CCIQ is supportive of focusing attention on:
- Increasing the accessibility and affordability of child care facilities. Recent reforms by the Federal Government are expected to cost parents an extra \$1,220 in 2012 which can have significant implications for family budgets and the ability of both parents to return to the workforce.⁵ The availability of child care spaces, especially for younger children is also becoming a significant national issue;⁶
 - Meeting the challenges for industries that generally struggle to attract female workers for both historical and cultural aspects (ie construction and agricultural industries). It is clear that strengthening the legislation and reporting requirements will not have an impact on these outcomes. Broader community attention is required to address these issues and related skill shortage challenges;
 - Increased support for businesses to implement flexible workplace arrangements through amending the Fair Work Act;
 - Acknowledging the initiatives already undertaken by businesses to attract more women to their workforces. Support is provided for developing case studies and promoting the best practice methods already being implemented by businesses;
 - Funding programs that support industry driven initiatives;
 - Mentoring and women in leadership programs to increase the participation of women in leadership roles, including at senior management and Board Director levels;
 - Increased information and awareness raising activities. Support is provided for the Agency to work with industry associations to better assist employers to meet their obligations under the Act. It is important that these activities are proactive, not occur after employers are found to be non-compliant.

4.0 CONCLUSION

- 4.1 CCIQ believes the proposed amendments will increase the regulatory burdens placed on businesses including significantly increased reporting requirements. CCIQ stresses the importance of focusing on proactive activities rather than increasing the regulatory burden placed on businesses for minimal return. Increased regulatory requirements only focuses employers' time and energy on meeting their compliance obligations, subsequently decreasing the amount of time that businesses have to put towards implementing initiatives that improve gender equality and workforce participation outcomes in their business. CCIQ believes that better outcomes will be achieved by reducing the mandatory burden placed on businesses and encouraging their proactive participation in industry led initiatives.

5.0 REFERENCES

¹Information derived from ABS catalogues 6248.0.55.002 and 6202.0

² House of Representatives (2012) *Equal Opportunity for Women in the Workplace Amendment Bill 2012: Explanatory Memorandum*. P.66. Available: http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4765_ems_21d75f48-2ce0-4719-aa15-c92c4b78dae5/upload_pdf/365767.pdf;fileType=application%2Fpdf

³ *Equal Opportunity for Women in the Workplace Act 1999: Part iv, section 13 (2)*. Available: <http://www.comlaw.gov.au/Details/C2009C00329/Download>

⁴ House of Representatives (2012) *Equal Opportunity for Women in the Workplace Amendment Bill 2012: Explanatory Memorandum*. P.7. Available: http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4765_ems_21d75f48-2ce0-4719-aa15-c92c4b78dae5/upload_pdf/365767.pdf;fileType=application%2Fpdf

⁵ The Australian (13/03/2012) *Childcare Alliance warns of coming cost blowout*. Available: <http://www.theaustralian.com.au/national-affairs/childcare-alliance-warns-of-coming-cost-blowout/story-fn59niix-1226297565508>

⁶ Brisbane Times (23/03/2012) *Kindy's haves and have nots*. Available: <http://www.brisbanetimes.com.au/queensland/kindys-haves-and-have-nots-20120322-1vmqa.html>