

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



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EOWWA Act Review
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Introduction

Women's Health Victoria is a statewide women's health promotion, information and advocacy service. We are a non government organisation with most of our funding coming from various parts of the Victorian Department of Human Services. We work with health professionals and policy makers to influence and inform health policy and service delivery for women.

Our work at Women's Health Victoria is underpinned by a social model of health. We are committed to reducing inequities in health which arise from the social, economic and environmental determinants of health. These determinants are experienced differently by women and men. By incorporating a gendered approach to health promotion work that focuses on women, interventions to reduce inequality and improve health outcomes will be more effective and equitable.

Women's Health Victoria's vision is for a society that takes a proactive approach to health and wellbeing, is empowering and respectful of women and girls and takes into account the diversity of their life circumstances.

Women's Health Victoria's ways of working are guided by four principles:

- We work from a feminist framework that incorporates a rights based approach.
- We acknowledge the critical importance of an understanding of all of the determinants of health and of illness to achieving better health outcomes.
- We understand that the complexities involved in achieving better health outcomes for women require well-considered, forward thinking, multi-faceted and sustainable solutions.
- We commit to 'doing our work well'; we understand that trust and credibility result from transparent and accountable behaviours.

General comments

Women's Health Victoria believes that the work of the Equal Opportunity for Women in the Workplace Agency (EOWA), and the *Equal Opportunity for Women in the Workplace Act* (EOWW Act) is of ongoing importance. As noted in the Review's Issues Paper, barriers to equal employment opportunity for women remain in place.

In August 2007, women represented 45% of all employed people in Australia¹. Of the 10,469,900 people employed in Australia, women are far more likely to be working part-time than men, with almost 45% of women working part-time compared with just 15% of men². In 2007, twenty-five percent of employed women did not receive paid leave entitlements compared with 16% of employed men¹. Women and men still do not receive equal pay and women are disadvantaged in a number of ways by this gap³. Women's work is undervalued and is often part-time or casual³. Although paid maternity leave has now been enshrined in law, overcoming indirect discrimination on the basis of pregnancy status may be more difficult to overcome.

The effects of these inequities are far-reaching. For example, women's retirement savings are impacted upon because women generally do not have enough time or money in the paid workforce⁴. In fact, single older women experience the highest levels of poverty compared to all other household types and are at the greatest risk of persistent poverty⁵. This broader context highlights the ongoing need for a body such as EOWA to continue to interrogate and champion equal opportunity in employment for women. Some comments on the consultation themes and questions now follow.

Theme 1: The value and impact of equal opportunity for women

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

The introduction of a paid parental leave scheme is welcomed, however its effects are yet to be felt. Greater flexibility for women in the workplace has occurred over time but is not entrenched in all sectors. More gains also need to be made to encourage and support women in leadership roles. These brief examples demonstrate how the issues described in the General Comments section are yet to be comprehensively addressed. To do so would require structural and cultural change in which the value of women's paid and unpaid work is reassessed. The work of the EOWA is important in progressing this change.

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

Obstacles that may impede further progress towards equal employment opportunity for women are varied and wide-reaching. They include structural discrimination. Women's working lives are often characterised by gender inequity which undervalues their role in both paid and unpaid work. Throughout their lives, not only are women more likely to earn less than men and in part-time or casual work, they also move in and out of the workforce in response to caring responsibilities as they have children or care for their own ageing parents⁵. These obstacles are also evident in parental leave allowances, a lack of flexibility towards men taking on caring responsibilities, the gender pay gap and a superannuation system in which women receive almost half of that of men⁶. In this way, women 'accumulate poverty' over the lifecycle⁶. Although these issues are covered by a diverse range of policies and legislation, the EOWA has an important role in bringing these together and highlighting the links and effects on women.

Many women work in part-time, low paid work because the hours can accommodate childcare responsibilities and other issues for women. The EOWA could have some role in working to promoting positive, high quality part-time work opportunities for women.

Transparency in pay is an important issue that would raise awareness about the gender pay gap that exists in most sectors in Australia. This is relevant for organisations that do, and organisations that do not, self-report under the EOWW Act. The differences in pay between women and men need to be highlighted and challenged within organisations. To do so would encourage employers and employees to rectify this imbalance. The EOWA can provide support to achieve this.

1.3 Should there be a greater focus on enabling men and women to share paid work and caring responsibilities more equally?

Women's Health Victoria believes that there is a need to facilitate a culture in which men are encouraged to take on caring responsibilities in order to bring about substantive equality. Legislative regimes must allow this to happen. Sweden is one example where a substantial paternity leave regime is enshrined in legislation (in 1974). Its purpose was to achieve greater gender equality⁷. A scheme that allows for greater flexibility for fathers in Australia would be beneficial to parents and children. Legislating for changes to the law would not fall within the remit of the EOWA or EOWW Act, however an ancillary role in which supporting fathers achieve greater flexibility is framed in terms of equal employment opportunity is critical.

Theme 2: Objects and coverage of the EOWW Act

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

The objectives of the EOWW Act continues to be of relevance today, particularly in regards to the elimination of discrimination against women. These objectives are broad enough to incorporate both ongoing and emerging issues for women in the workplace. These include sexual harassment, workplace bullying, violence against women in the workplace, adequate childcare facilities, discrimination on the grounds of marital status or sexuality (eg: by religious bodies and others), discrimination on the grounds of parental leave and discrimination regarding breastfeeding. Reference to direct and indirect discrimination is important and should remain.

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

The traditional role of women as the primary caregiver for both children and elderly parents will continue to be perpetuated if responsibility is not shared by men. These roles are changing, with more men willing to share care for family members. Workplace flexibility is necessary to enable this to happen and men face discrimination in this respect. Strategies that allow men to take on caregiving roles acknowledge and address women's multiple roles in the workplace, community and home. It is important that this is recognised in some way in the EOWW Act – for example, in the preamble or in the functions of the EOWA. In doing so, however, specific focus on equal employment opportunity for women must not be lost. Women face structural disadvantage in the workplace in a way that men do not. It is therefore vital that specific legislation and organisations (ie, the EOWW Act and EOWA) continue to focus on the issues faced by women in the workplace.

Theme 3: Workplace programs, reporting and compliance

One way of ensuring that workplaces take on a gender sensitive approach to employment could be through the use of a gender analysis framework. A gender analysis framework is a tool that encourages the development of policy to take account of and be responsive to gender. It is predicated upon the following:

- All policies have an impact on women and men;
- Policies and programs affect women and men differently;
- Diversity exists between individual women and men and within groups of women and men

The framework can help identify, understand and address workforce and equity issues for women (and for men). The framework consists of three elements:

- Gendered data: gender disaggregated statistics can be used pro-actively in planning and are critical in gauging the extent to which women and men benefit or are affected by policy;
- Gender impact assessment: monitor new and existing policies for gender impact and use knowledge to adapt existing or proposed policies to promote gender equity in both planning and implementation; and,
- Gender awareness raising: take opportunities to build capacity and understanding of how policies and programs can cause or lead to discriminatory effects.

Such an approach could be championed by the EOWA and is essential for monitoring employment changes that impact on pay equity, to educate employers, employees and trade unions about gender differences and to evaluate workplace relations legislation in terms of their impact on women.

The Victorian Department of Human Services has an excellent tool that complements this framework: *Gender and diversity lens for health and human services: Victorian Women's Health and Wellbeing Strategy Stage Two 2006-2010*⁸. This resource could readily be applied across other sectors. Using a gendered analysis framework and the Gender and Diversity Lens resource would assist in the identification, evaluation and modification of policy and practice that foster and perpetuate gender inequality in the workforce, including the gender pay gap, and conditions that adversely affect women's workforce participation opportunities.

Another example which attempts to respond to barriers in women's employment is the Gender Equality Scheme implemented by the UK National Health Service in 2007. This provides an excellent example of how a gender equity approach can address health inequities on a systemic level. In 2006 in the UK, a Gender Equality Duty on all public authorities to promote gender equality and eliminate sex discrimination was established by amendments to the Sex Discrimination Act 1975. Public authorities in the UK must now have regard to gender equality in the areas of policy design and development, delivery of services and employment. This has required the garnering of gendered data in order to obtain an accurate picture of the way policies affect women. Penalties exist for non-compliance in the form of compliance notices issued by the Commission for Equality and Human Rights, which are enforceable by the courts.

Creating a Gender Equality Scheme: a practical guide for the NHS is a useful reference point and example of how the scheme can work within health services⁹. The Scheme addresses how policies impact on gender equality and considers the gender pay gap, recruitment and employment, as well as the services provided to members of the public.

A gendered approach to policy development has also been adopted by Health Canada. This uses gender-based analysis as a framework for the design and analysis of policies and programs within that government department. More information is available at <http://www.hc-sc.gc.ca/hl-vs/women-femmes/gender-sexe/policy-politique-eng.php>. Using a tool such as this on a federal level in Australia would provide a formal mechanism to acknowledge the significance of gender as a determinant of health and help to create more successful policy outcomes for women.

Theme 4: Role and activities of EOWA

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

This role goes to the heart of the cultural change necessary to facilitate equal employment opportunity and is the key role of the EOWA. It also allows for greater flexibility for the EOWA in responding to emerging issues as it is not prescriptive and can therefore be more responsive. One example of this is the issue of discrimination stemming from the paid parental leave scheme. The introduction of paid maternity leave is welcome but the issue of discrimination on this basis will be ongoing. The EOWA has a role to play in monitoring and addressing this form of discrimination. Paid maternity leave has the potential to improve employment opportunities and outcomes for women but without addressing discrimination, or awareness raising on the issue, it will not be a legislative change that many women experience. Enforcement and training around paid maternity leave is required. This would work towards changing the work culture to value women's reproductive role.

Theme 5: Relationship with other legislation and institutions

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

The EOWW Act complements other legislation. Its specific focus on the intersection between women and the workplace is an important one that goes beyond non-gender specific workplace legislation or the Sex Discrimination Act. It is, however, important that the EOWW Act sits within a broader policy context that addresses issues that affect equal employment opportunity for women, such as affordable childcare options or strategies to support men in sharing the caring role. A review of the EOWW Act could facilitate an active dialogue between different government bodies. This would ensure a holistic approach to women's participation in the workplace.

One example of this is superannuation. Ensuring that women receive adequate superannuation that reflects their paid and unpaid roles should form part of a system in which these roles are respected and valued. Changes to superannuation policy need to consider the ways in which women's participation in the workforce is often in a part-time or casual form, which limits their superannuation payments. Consideration also

needs to be given to the fact that the nation's primary carers are women; women who for childcare or other family care reasons cannot participate in the paid workforce to the degree of others, and who are severely financially disadvantaged because of this, both in the short-term and longer-term. The EOWA could have a role in advocating for a system in which the impact on women of these wider issues is addressed.

5.3 Should EOWA remain as an independent statutory authority or should the role and functions of EOWA be combined with those of another entity?

The existence of a statutory body that has the designated role of preventing discrimination against women in the workplace and enhancing equal opportunity for women is a vital and ongoing necessity. Women's Health Victoria would like to see this organisation continue its role and functions. The EOWA has a unique role in interrogating the intersection between women and the workplace and challenging a culture change to ensure equal employment opportunity for women.

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