

Toothless tiger no more:

Gender equality in the workplace set to improve



David Thompson, Partner, Hunt & Hunt Lawyers, Melbourne
Sarah Sealy, Senior Associate, Hunt & Hunt Lawyers, Hobart
Stephanie Manning, Lawyer, Hunt & Hunt Lawyers,

Equal Opportunity for Women in the Workplace Amendment Bill 2012

The *Equal Opportunity for Women in the Workplace Amendment Bill 2012* (“**Bill**”) proposes a number of changes to the *Equal Opportunity for Women in the Workplace Act 1999* (Cth) (“**Act**”).

This comes after a comprehensive review of the current regime which highlighted a number of shortcomings. Essentially, the regime was considered to be a ‘toothless tiger’ which relied too heavily on the co-operation of employers. The Bill seeks to change this position.

Another key proposed change is a shift in focus to gender equality for both men and women. The Bill also aims to simplify and streamline reporting requirements for employers under the Act.

Shift in focus

The Bill will amend the Act’s principal objects to reflect the new focus of the Equal Opportunity for Women in the Workplace Agency (“**Agency**”). These amendments include:

- promoting and improving gender equality (including equal remuneration between men and women);
- supporting employers to remove barriers to the full and equal participation of women in the workforce;
- promoting the elimination of gender-based discrimination amongst employers (including in relation to family and caring responsibilities);
- fostering workplace consultation on gender equality; and
- improving the productivity and competitiveness of Australian business.

New name for new focus

The Act will be renamed the **Workplace Gender Equality Act 2012**, the ‘Equal Opportunity for Women in the Workplace Agency’ will be rebranded as the ‘Workplace Gender Equality Agency’ and the title of the Director of the Agency will be changed to the ‘Director of Workplace Gender Equality’ (“**Agency Director**”).

What are the new reporting requirements?

Some of the more significant practical changes are those made to the reporting requirements. The Bill aims to make reporting by employers simpler and more transparent.

The requirement for organisations to develop workplace programs

has been removed.

Instead, under the Bill, relevant employers will be required to prepare annual public reports against a set of gender equality indicators. These gender equality indicators include:

- gender composition in the workforce and governing bodies;
- equal remuneration between women and men;
- availability and uptake of flexible working arrangements for employees (including those designed to support employees with family or caring responsibilities); and
- consultation with employees on gender equality issues.

This annual report will need to be signed by the CEO and is to be lodged with the Agency without exception. The Agency Director no longer has the power to waive reporting requirements.

Once lodged, the employer is required to inform employees and other relevant employee organisations (i.e. unions) that a report has been lodged and that it is open for comment.

Employees and shareholders must also receive a copy of the report.

Can some information be kept private?

Some information will be kept private and not published, including personal information and information relating to remuneration. This information will be removed from the report by the Agency before publication, unless otherwise agreed.

How can reports be lodged?

The Bill now also allows organisations to complete and

submit reports online using a secure web-portal. This will save time and money for a lot of employers.

Who will have to report?

The Bill does not alter the current requirement for all non-public sector employers with 100 or more employees to report.

Although smaller employers do not need to report, it is now an explicit function of the Agency to provide education and advice to all employers – large and small.

Development of benchmarks

The Agency will use the information provided in annual reports to develop benchmarks for employers to assess how they compare to others in their industries and where they need to focus their efforts to be more competitive.

Development of minimum standards

The Minister will also be required to create minimum standards in relation to the gender equality indicators from consultation with the Agency, industry and experts by 1 April 2014. Employers will then be required to meet the minimum standards for the reporting period ending 31 March 2015.

These minimum standards are intended to be industry-specific and represent the standard expected.

An employer who fails to meet the minimum standards will be offered advice and assistance from the Agency to improve performance. An employer who fails to reach the minimum standards for two consecutive years is deemed to fail to comply with the Act and may face the consequences of noncompliance.

Consequences of non-compliance

The consequences of non-compliance have been strengthened under the Bill.

The consequences for failing to comply, without reasonable excuse, includes the ability of the Agency to 'name and shame' the employer in a report to the Minister or in the media (e.g. by newspaper or on the Agency's website).

Failing to comply may also see employers ineligible for Commonwealth contracts, grants or other financial assistance.

Sanctions are also imposed for providing false or misleading information and the Agency has the ability to compel an employer to provide relevant information in order to check the accuracy of reports.

The Agency is also given greater powers of investigation to identify employers who have failed to report. The Regulatory Impact Statement accompanying the Bill foreshadows that the Government will introduce legislation allowing the Australian Taxation Office (ATO) to provide the Agency with a list of all businesses employing 100 or more people to enable the Agency to audit compliance.

Current status of the Bill

The Bill passed the House of Representative in June and is presently before the Senate for consideration.

When will the changes take effect if passed?

If passed, the operation of the Bill will be phased in. A modified regime will apply retrospectively for the reporting period 1 April 2012 to 31 March 2013. The Bill is expected to apply in full for the reporting period commencing 1 April 2013. ●