

**ANNUAL REVIEW OF REGULATORY BURDENS ON BUSINESS
MANUFACTURING AND DISTRIBUTIVE TRADES**

**RESPONSE TO PRODUCTIVITY COMMISSION'S DRAFT RESEARCH
REPORT**

Submitted by

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Introduction

This submission concerns the Productivity Commission's Draft Research Report: *Review of Regulatory Burdens on Business - Manufacturing and Distributive Trades*.

In particular, it refers to the Commission's draft response 8.1 (p.166):

The Australian Government should amend the Equal Opportunity for Women in the Workplace Act 1999 to enable biennial reporting by business.

This draft response is in effect a recommendation to **reduce** reporting to the Equal Opportunity for Women in the Workplace Agency (EOWA) by private sector companies (with 100 employees or more) from once a year to once every two years as required by the *Equal Opportunity for Women in the Workplace Act 1999*.

With respect, I disagree with this draft response/ recommendation.

It is particularly disturbing to read in this Draft Productivity Commission Report that the recommendation to reduce reporting about equal opportunity for women in the workplace comes under the subheading of '*Unnecessary burden, which can be removed without delay*' (PC 2008, xxvi).

Section 1 of this submission provides a brief description of the Equal Opportunity for Women in the Workplace Agency (EOWA), the *Equal Opportunity for Women in the Workplace Act 1999* and definitions of 'regulatory burdens' and 'distributive trades'.

Section 2 describes some of the equal opportunity² matters upon which large private sector businesses may report to the EOWA. Section 3 outlines my arguments for retaining annual reporting to the EOWA. A list of United Nations (UN) and International Labour Organization (ILO) Conventions and Australian legislation relevant to equal opportunity for women in the workplace is provided in Appendix 1.

² 'Equal Opportunity (EO) in a workplace context means that all employees have equal access to the opportunities that are available at work. This means all employees are treated with fairness and respect in that they are not subject to discrimination or harassment in the workplace.
see <http://www.eowa.gov.au/about_Equal_Opportunity.asp>

1. The Equal Opportunity for Women in the Workplace Agency (EOWA), the Equal Opportunity for Women in the Workplace Act 1999 and definitions of ‘regulatory burdens’ and ‘distributive trades’.

1.1 *Equal Opportunity for Women in the Workplace Agency (EOWA)*

The source of the following information about the Equal Opportunity for Women in the Workplace Agency (EOWA) is the Agency’s website:³

‘EOWA is a statutory authority located within the portfolio of the Australian Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA).

EOWA’s role is to administer the [Equal Opportunity for Women in the Workplace Act 1999 \(Commonwealth\)](#) and through education, assist organisations to achieve equal opportunity for women.

EOWA works with employers to improve equal opportunity outcomes for women in the workplace by:

- Delivering practical solutions;
- Building strategic partnerships; and
- Leading public debate to increase the rate of change.

At 8 November 2007, there were 2,469 private sector organisations with 100 employees or more that had complied with the Act (EOWA 2007, 14).

1.2 *Equal Opportunity for Women in the Workplace Act 1999*

The source of the following information about the *Equal Opportunity for Women in the Workplace Act 1999* - hereinafter known as ‘the Act’ - is the website of the Equal Opportunity for Women in the Workplace Agency (EOWA)⁴.

‘The Equal Opportunity for Women in the Workplace Act 1999 aims to:

- Promote merit in employment;
- Promote equal employment opportunity and eliminate discrimination; and
- Encourage consultation between employers and employees on these issues.

The Equal Opportunity for Women in the Workplace Act 1999 (Cth) came into effect on 1 January 2000, renaming and updating the Affirmative Action (Equal Employment Opportunity for Women) Act 1986.

³ See <http://www.eowa.gov.au/About_EOWA.asp>

⁴ See <http://www.eowa.gov.au/About_EOWA/Overview_of_the_Act.asp>

The Act requires:

- Private sector companies
- Community organisations
- Non-government schools
- Unions
- Group training companies, and
- Higher education institutions

with 100 or more people to establish a workplace program to remove the barriers to women entering and advancing in their organisation.'

The Act currently allows organisations that have effective compliance programs in place to request a waiver of annual reporting after three years.

1.3 'Regulatory Burdens'

The definition of regulatory burden appears, in the context of this draft response (PC 2008, xix) to be:

' the time and financial costs directly involved in complying with regulations, such as form filling, mandatory returns and so on'.

To facilitate reporting as required by the Act, the EOWA provides templates for reporting, advice on interpretation of the Act, how to comply with the Act, best practice examples, workshops, advice by telephone, advice in person, suggestions for methods of collecting data, an email newsletter, extensive website information and the annual publication *Leading Edge Initiatives*. During the 2006-07 reporting year, 'every reporting organisation was provided with personalised and industry-specific assistance on their workplace program' (EOWA 2007, 21).

It is difficult to see how, after the initial establishment of a reporting template, an update would be time-consuming to the point of being a 'burden' and/or exclusive of the overall strategic planning and human resource policies of an organisation.

1.4 'Distributive Trades'

This particular Annual Review by the Productivity Commission (PC 2008) into 'Regulatory Burdens on Business' relates to 'Manufacturing and Distributive Trades'.

It is anticipated that a further review in regard to manufacturing and distributive trades will not occur for another five years⁵ (PC 2008, iv).

⁵ The PC's review of regulatory burdens on the primary sector took place in 2007; manufacturing and distributive trades in 2008; social and economic infrastructure services are planned for 2009; business and consumer services in 2010 and a review of economy-wide regulation in 2011.

‘Distributive trades’ refers to wholesale and retail businesses i.e. ‘wholesale and retail trades divisions of the *Australian and New Zealand Standard Industrial Classification*’ (ANZSIC) (PC 2008, 151). These businesses include retail fashion, finance, community service and health, information technology and telecommunications, transport and property⁶.

2. Types of matters that may be reported by large private sector businesses to EOWA once a year.

The following is a selection of questions and issues suggested by the EOWA⁷ that may assist businesses develop an effective workplace program and reporting process in order to comply with the Act. These selected items need to be considered against all information available in ‘Compliance Guidelines’ on the EOWA website:

‘How many men and women work here?’

What type of jobs do men and women do?

...

How are men and women employed, for example, full-time, part-time, casual work, permanent, regular, ongoing, temporary, and contractors?

How many women are in management roles compared with men?

How many women are doing traditional male work (for example, apprentices, trades)?

What average salaries are your female employees earning compared with your male employees across all levels of your organisation?

...

Recruitment and Selection

- Promotion, Transfer and Termination
- Training and Development
- Work Organisation
- Conditions of Service
- Arrangements for Dealing with Sex-based Harassment
- Arrangements for Dealing with Pregnancy, Potential Pregnancy and Breastfeeding

...

What is working well for women here?

What needs to be improved so that more women can fulfil their potential?

What is, and what is not, working well for women in this workplace?

Why? What are the reasons for women doing well, or the reasons they are not doing as well as men?

⁶ See <http://www.eowa.gov.au/Reporting_And_Compliance.asp>

⁷ See EOWA website: <http://www.eowa.gov.au/Reporting_And_Compliance.asp>

How can things be improved so more women can fulfil their potential?

Talking to a wide range of people will help you to identify the issues for women in your organisation, and also to identify ways of addressing these issues. The legislation requires you to consult with employees (or their nominated representatives) and, particularly, female employees.

However, it may be also useful to talk with:

- A cross-section of female employees who work in different roles, of different ages, with different experiences, and from diverse backgrounds.
- Any employee representatives/committees/steering groups.
- The senior manager with overall responsibility for the EEO workplace program.
- Managers who can tell you what the business issues are so that you can align any EEO issues with organisational issues (for example, downsizing may mean that recruitment action will be a low priority).
- A cross-section of men who work for your organisation to discuss any of the seven Employment Matters.

...

[Y]our priority issues might be any number of the following, or they might be quite specific to your organisation or industry. It's up to you to tell us.

Sample issues are:

- Poor rate of return from maternity leave.
- Lack of women recruits.
- Significant occupational segregation.
- Poor representation of women in management.
- Women with children, or pregnant women, leaving your organisation.
- Few women employed in permanent, regular, ongoing employment.
- Sex-based harassment in the workplace.
- Fewer training resources devoted to women relative to men.
- Lack of awareness among staff of equal opportunity policies.
- Little access to regular part-time or home based work.

Your priority issues can relate to any of the employment matters. They can also relate to broader issues for your organisation such as cultural change, leadership, occupational health and safety, workplace consultation, human

resource management or employee relations as long as they are aimed at improving equal opportunity for women.’

These reporting requirements provide, for a private sector business with 100 employees or more, a gendered data base on numbers of male and female employees, full-time and part-time employment, forms of employment, training of women relative to men, entry of women into traditional male occupations, education about equal opportunity policies, pay-gap and pay equity issues, promotion and employment benefits, policies regarding sex-based harassment, work/family balance, maternity leave and the recruitment of women.

3. Reasons why annual reporting by business to the *Equal Opportunity for Women in the Workplace Act 1999* needs to be retained.

Arguments why the retention of annual reporting is preferable to a reduction of reporting to once every two years are set out below:

3.1 The Productivity Commission’s draft recommendation of a reduction in annual reporting by private sector businesses (with 100 employees or more) to biennial reporting to the Equal Opportunity for Women in the Workplace Agency is incompatible with the aims of the *Equal Opportunity in the Workplace Act 1999*. One important goal of the Act is to ‘foster workplace consultation between employers and employees on issues concerning equal opportunity for women in relation to employment.’ Annual reporting maintains the momentum for that consultation to take place in a workplace.

3.2 The option for businesses to have their reporting deadline⁸ waived on the basis of good compliance already exists (the Act, section 13C).

3.3 The Equal Opportunity for Women in the Workplace Agency (EOWA) provides excellent website and telephone advice, reporting forms, workshops, site visits and an annual publication with best practice examples⁹. After employers establish a template in the first year of reporting, it should be a simple matter to update figures and report new initiatives. It is difficult to see how the reporting of measures relating to equal opportunity for women in the workplace would be a separate ‘burden’ on business, rather than part of the general human resource policy framework and overall strategic planning of the organisation.

3.4 The goal of reducing regulatory burdens on business needs to be considered against the backdrop of Commonwealth legislation (such as the *Sex Discrimination Act 1984*) that are complementary to the *Equal Opportunity for Women in the Workplace Act 1999*. See Appendix 1 for a list of relevant Commonwealth legislation.

⁸ An organization can also arrange for an extension of a reporting deadline.

⁹ In 2006-7, the annual publication *Leading Edge Initiatives* showcased ‘programs addressing flexibility and parental leave, awareness campaigns on bullying and harassment and pay benchmarking processes to improve staff retention’ (EOWA 2007, 8).

3.5 The goal of reducing regulatory burdens upon business needs also to be considered against the background of Australia's international responsibilities regarding UN and ILO Conventions that are relevant to women's employment – such as the UN *Declaration on the Elimination of All Forms of Discrimination against Women* (CEDAW) 1967. See Appendix 1 for a list of international conventions that are relevant to equal opportunity for Australian women in the workplace.

3.6 Private sector businesses with 100 employees or more are in a position to make the largest impact upon issues such as pay equity, promotion and work/family balance that are critical to equal opportunity of women in the workplace.

3.7 Women are, by a slight margin, more than half of Australia's adult population. One needs to ask whether the small specific costs (if any) of reporting annually rather than biennially to the EOWA, compared with the total gross operating costs of a business with 100 employees or more, should take priority over the broad economic and social policy interests of women.

3.8 Elizabeth Broderick, HREOC's¹⁰ Sex Discrimination Commissioner, found during her recent 'Listening Tour'¹¹ of Australia, that 'Women spoke about the barriers to their career progression and workforce participation, providing their personal stories to explain the under-representation of women in senior leadership positions.' Annual reporting encourages management of large private sector businesses to deal with these issues in an on-going manner.

3.9 Women are subject to more transitions in the labour market than men. Annual reporting is therefore more desirable than less frequent reporting in order to capture the effects of policies by large businesses in regard to equal opportunity for women in the workplace.

3.10 Women currently participate more in part-time and casual employment than men. In these situations women are at a disadvantage in regard to pay, promotion and employment benefits (PC 2008, 153-172). Annual reporting will encourage large businesses in the private sector to develop policies that will redress these problems.

3.11 With an increase of women's participation in the labour market during the past thirty years, the need for recognition of work/family balance in the workplace has become an important strategic goal for businesses in order to retain staff, particularly in a situation of national skill shortages. The reporting forms of the EOWA encourage large private sector businesses to report on matters such as a poor rate of return from maternity leave; women with children or pregnant women leaving the organisation; few women employed in permanent, regular, ongoing employment; little access to regular part-time or home based work and maternity leave provisions. This collection of data may prompt an improvement in policies that will enhance the retention of women in regard to work/family balance.

¹⁰ Human Rights and Equal Opportunity Commission.

¹¹ November 2007 to April 2008.

3.12 In view of concerns about Australia's fiscal sustainability in the future due to an ageing population¹² the Council of Australian Governments (COAG) has, in the Human Capital Stream of the National Reform Agenda, the goal of lifting labour participation rates. One of the target populations is 'women aged 25 to 44 years' (PC 2007, 7-8). Annual reporting, with support from the EOWA, will encourage large private sector businesses to develop policies that will enhance the employment, retention and promotion of women.

Recommendation:

That the Equal Opportunity for Women in the Workplace Act 1999 not be amended to enable biennial reporting by business and that current annual reporting requirements be retained.

Appendix 1

International Conventions Relevant to Equal Opportunity for Women in the Workplace

United Nations (UN)

1) Universal Declaration of Human Rights (UNDHR) 1948

Nearly all international human rights instruments adopted by the United Nations bodies since 1948 elaborate principles set out in the Universal Declaration of Human Rights. The drafters of the Universal Declaration of Human Rights considered women as part of humanity and granted them all rights as were granted to men.

2) International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966

The Economic Covenant recognizes positive rights, such as the rights to food, shelter, health care, and education. The Economic Covenant is linked to distributive justice for the most vulnerable, who are everywhere disproportionately female. The Economic Covenant emphasizes the importance of non-discrimination on the basis of sex by reiterating it in two articles (Articles 2 and 3), and it supports the concept of affirmative action.

3) Declaration on the Elimination of All Forms of Discrimination against Women (CEDAW) 1967

In 1967, the United Nations promulgated the Declaration on the Elimination of all Forms of Discrimination Against Women (CEDAW). This Declaration

¹² The problem is caused by the intersection of a reduced labour supply (due to fewer people of 'working age') combined with the increasing costs of age pensions and age support costs, together with (in general, apart from the ageing population) rising costs of health care.

recognized the particular nature of discrimination against women as worthy of a separate legal response.

International Labour Organization (ILO) Conventions

1) *ILO, C100 Equal Remuneration Convention, 1951 (C100)*

<http://www.ilo.org/ilolex/english/subjlst.htm>

2) *ILO, C111 Discrimination (Employment and Occupation) Convention, 1958 (C111)*

<http://www.ilo.org/ilolex/english/subjlst.htm>

3) *ILO, C156 Workers with Family Responsibilities Convention, 1981 (C156)*

<http://www.ilo.org/ilolex/english/subjlst.htm>

4) *Maternity Protection Convention 2000 (C183)*

<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C183>

Commonwealth legislation relating to equal employment opportunity for Australian women.

The following list refers to Commonwealth legislation. It excludes state legislation, such as the *Equal Opportunity Act 1995* (Vic) and the *Anti-Discrimination Act 1991* (Qld).

1) *Sex Discrimination Act 1984 (SDA)*

[http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/3A1AE1C157596F93CA2571410005BFEF/\\$file/SexDiscrimination84_WD02.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/3A1AE1C157596F93CA2571410005BFEF/$file/SexDiscrimination84_WD02.pdf)

2) *Human Rights and Equal Opportunity Commission Act 1986*

<http://www.hreoc.gov.au/about/legislation/index.html#hreoca>

3) *Workplace Relations Act 1996 (Commonwealth)*

<http://www.comlaw.gov.au/comlaw/Legislation/ActCompilation1.nsf/0/1C4B712C6F31D4CECA257142000CBDA0?OpenDocument>

5) *Equal Opportunity for Women in the Workplace Act (EOWWA) 1999*

http://www.eowa.gov.au/About_EOWA/Overview_of_the_Act.asp

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