



EQUAL OPPORTUNITY FOR WOMEN IN THE WORKPLACE

Julia Swift

Diversity in the workplace continues to gain importance for employers in Australia. With the Federal Government projecting Australia to return to virtually full employment, employers being considered to be an 'employer of choice' will again become a real priority.

This importance is reflected in proposed ASX reporting requirements for listed companies. For more information on this, please refer to ["Board Diversity – If Not, Why Not?"](#) by Catherine Evans.

However, although they may not be aware, many employers (and not only listed companies) already have existing legal obligations towards achieving equal opportunity for women in the workplace under the *Equal Opportunity for Women in the Workplace Act 1999* ("Act").

Who does the Act apply to?

The Act applies to:

- All employers who employ 100 or more employees in Australia (employees of subsidiaries are included in this calculation). This includes all companies, whether publicly listed or not and applies to entities other than companies, such as unincorporated associations; and
- A university or higher education institution regardless of the number of employees.

Once the Act applies to an employer, it will continue to apply even if the number of employees falls below 100 unless the number of employees falls below 80.

What are the employer's obligations under the Act?

Development of a workplace program

The employer must undertake the following steps:

1. designate a person to have responsibility for the development and implementation of the workplace program (including continuous review);
2. consult with employees;
3. prepare a workplace profile of factual information as to the composition of the employer's workforce;
4. prepare an analysis of the issues relating to employment matters that the employer would need to address to achieve equal opportunity for women in the employer's workplace; and

5. develop and implement a workplace program which provides for:
 - a. actions to be taken in relation to priority issues identified in the analysis;
 - b. evaluation of the effectiveness of the actions in achieving equal opportunity for women in the employer's workplace.

Reporting

In addition to the above, the employer must prepare a public report in writing which sets out:

- the workplace profile;
- the employer's analysis of the issues in the workplace relating to equal opportunity for women;
- the actions taken by the employer to address priority issues identified in the analysis;
- the actions the employer plans to take in the next year;
- an evaluation of the effectiveness of the actions in achieving equal opportunity for women in the employer's workplace (however, this may be addressed in a separate confidential report).

The public report must be prepared on an annual basis in respect of the period commencing on 1 April of the relevant year. The public report must be lodged with the Equal Opportunity for Women in the Workplace Agency ("**Agency**") within 2 months after the end of the period to which the report relates (i.e. this year, the report for the period 1 April 2009 to 31 March 2010 is due 31 May 2010).

However, if the employer has only employed 100 employees for a period of less than 6 months of the relevant reporting period, it is not required to provide a public report.

The employer's obligations under the Act are simply to prepare a workplace program and lodge a public report. This means that the evaluation of the effectiveness of the workplace program is a subjective assessment made by the employer which is not subject to close scrutiny.

What are the consequences for failing to comply with the Act?

If an employer fails to lodge a public report, the Agency may name the employer in its annual report to parliament. Non-compliant organisations are also named on the Agency's website at www.eowa.gov.au.

Additionally, a non-compliant organisation may not be able to tender for commonwealth government work and may not be eligible to receive government grants due to the Commonwealth Government Contract Compliance Policy.

What organisations should do to ensure compliance with the Act

All employer organisations should determine whether or not they are required to comply with the Act. If they are required to comply, they must:

- develop a workplace program in consultation with employees and appoint a responsible person, if those steps have not yet been taken;
- commence and continue the review process set out above; and
- lodge a public report with the Agency by 31 May 2010.

Please contact Julia Swift if you want any further information or assistance.

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