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Workplace Gender Equality Act 2012 (Cth) Sets More Stringent Reporting Standards

By Maurice Baroni, Matthew Parker and Thomas Platt

Following the Federal Government's introduction of the *Equal Opportunity for Women in the Workplace Amendment Bill 2012* in March last year, employers have been preparing for the introduction of a more stringent reporting regime when it comes to gender equality in the workplace.

The Bill has since passed both houses of Parliament and, following its Royal Assent in December 2012, has come into force as the *Workplace Gender Equality Act 2012 (Cth)* (WGE Act).

The WGE Act creates new reporting standards for private sector employers with over 100 employees and also streamlines the reporting obligations from the previous regime. On a practical level, the WGE Act has replaced the *Equal Opportunity in the Workplace Act 1999 (Cth)* (EOW Act) while also establishing a new Workplace Gender Equality Agency (WGEA) whose role is to ensure that employers regulated by the new legislation comply with their obligations under the WGE Act.

Previously, under the EOW Act regime, private sector employers of over 100 employees were only required to report generally on the progress of their gender equity programs. The WGE Act has introduced two primary changes that greatly affect the way employers will be required to report on gender equality from now on.

Firstly, the WGE Act introduces notification and access requirements for annual reports which employers are required to submit between 1 April and 31 May each year. These changes require employers to notify employees, shareholders and any relevant unions that a public version of the report has been lodged. Employers are also required to actively inform employees and unions that they are able to comment on the report.

Secondly, the WGE Act has amended employers' reporting obligations. Annual reports must now address specific "Gender Equality Indicators" (GEIs) with six GEIs being identified in the legislation. Annual reports will be required to address:

- 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 working arrangements supporting employees with family or caring responsibilities
- consultation with employees on issues concerning gender equality in the workplace
- any other matters specified by the Minister for the Status of Women.

These indicators will eventually be established with "minimum standards" to be determined by the Minister in consultation with the WGEA. These "minimum standards" may relate to quantitative

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outcomes or evidence of actions, depending on the specified employer or the reporting period. However, employers will not be required to meet these standards until 2014 – 2015.

Once these new standards are implemented, consequences for failing to meet their requirements will be largely similar to the penalties imposed by the previous EOW Act. The WGEA may report the names of noncompliant employers to the Minister and they may also be precluded from tendering for state or Commonwealth procurement contracts or from receiving government financial assistance. In addition, where employers have failed to meet a minimum standard, the WGEA is now required to offer advice and assistance on the necessary actions which an employer must undertake in order to then become compliant with the WGE Act.

Significantly, the WGE Act will not affect the operation of other legislation. Employers may still be subject to financial penalties under the *Fair Work Act 2009* or be ordered to pay damages under the *Sex Discrimination Act 1984* if they unlawfully discriminate against employees on the basis of gender.

While the objectives of the WGE Act remain focused on the promotion of employment on the basis of merit rather than gender, the new legislation also represents a renewed pursuit by the Federal Government to enforce gender equality in the workplace. This is largely in response to recent findings relating to gender equality. For example, the number of women holding directorships in the ASX 200 has only risen from 8.2% to 9.2% since 2002. The WGE Act, therefore, represents a shift towards outcomes oriented reporting and aims to generate more effective change.

Consequences For Employers

The new reporting requirements for employers will be rolled out in stages over the next three years.

As it stands, 2012 – 2013 (ending 31 March 2013) will remain a transitional period with employers required to lodge a report in the same format as under the previous EOW Act regime. However, affected employers must also comply with the new notification requirements by ensuring that employees, shareholders and relevant unions are informed of the release of their report.

For the 2013 – 2014 period, on top of the new notification and access requirements, reports will also be required to be made in relation to the standardised GEIs. Finally, in 2014 – 2015, employers will be required to comply with the minimum standards for each GEI as determined by the Minister.

Looking forward, private sector employers with over 100 employees should review their business' internal practices in relation to gender equality to ensure that they address the new GEIs. Employers will also need to begin collecting data relating to these GEIs to ensure that reports published from 2013 – 2014 comply with the new WGE Act requirements.

This Legal Insight was prepared with the assistance of trainee lawyer, Matthew Parker and summer clerk, Thomas Platt.

Authors:

Maurice Baroni

maurice.baroni@klgates.com

+61.2. 9513 2395

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