



**Submission to**  
**Striking the Balance: Women, men, work and family**  
**Discussion Paper**

The New South Wales Equal Employment Opportunity Practitioners' Association (**NEEOPA**) welcomes the launch by federal Sex Discrimination Commissioner Pru Goward of the *Striking the Balance: Women, men, work and family* Discussion Paper, and appreciates the opportunity to respond to the important questions raised.

NEEOPA is a not-for-profit organisation, which was established in 1985 to help organizations implement quality equal employment opportunity programmes. Membership is open to all sectors of the community and our current membership includes small, medium and large corporations and government instrumentalities.

NEEOPA's members share workplace experiences and ideas to gain a deeper insight into the principles of equality of employment opportunity and workplace equity and diversity, and this base of shared knowledge enables NEEOPA's members to address questions raised in the *Striking the Balance* Discussion Paper.

The responses to the questions set out below are drawn from a roundtable discussion convened by NEEOPA on 8 August 2005, with the honourable Bronwyn Bishop MP, Julie Owens MP and Ilana Atlas, Group Executive for People and Performance, Westpac, attending as key note speakers. During the roundtable discussion, NEEOPA members specifically responded to questions 23-30 and 38-39 raised in the *Striking the Balance* Discussion Paper. Rather than providing answers to all of the questions posed in the Discussion Paper, these questions were selected for response by NEEOPA on the basis that they were most relevant to the NEEOPA members' particular areas of expertise.

NEEOPA's responses to the specific questions in HREOC's paper are followed by a short summary of additional information about best practice work/life strategies, results from the 2005 Australasian Diversity and Equality Survey and the Taskforce on Care Costs.



NEEOPA would be pleased to provide further information in relation to any of its responses to the questions below, which can be obtained through Juliet Bourke, President, on (02) 9810 7176 or Penny Thew, Co-Treasurer, on (02) 9221 8644.

**Question 23. Can anti-discrimination systems assist men and women better balance their paid work and family responsibilities?**

Whilst the focus of anti-discrimination law is remedial (in that it facilitates the resolution of complaints by conciliation or judgment), it also provides a critical platform for HR and legal practitioners to educate employers on appropriate workplace standards to ensure equity.

Anti-discrimination legislation thereby provides an opportunity and a strategic tool for legal practitioners and other advisers to educate employers, and thus stimulates the introduction of workplace policies and practices to prevent discrimination from arising. The stronger the legislation, the more powerful the impetus to introduce congruent workplace policies and practices.

**Question 24. Why do men with family responsibilities not make more use of the family responsibilities provision of the Sex Discrimination Act?**

There are three plausible reasons why men do not make more use of the *Sex Discrimination Act 1984* (Cth) (the **Sex Discrimination Act**): (i) awareness; (ii) legislative coverage; and (iii) language.

In relation to awareness, we suggest that there is a lack of public awareness about the ability of men to utilise the family responsibilities provisions under the Sex Discrimination Act. In other words, at present men may be under-educated about their rights under the Sex Discrimination Act in relation to family responsibilities. Considerable levels of publicity surrounded the 2001 legislative amendments to the *Anti-Discrimination Act 1977* (NSW) (the **Anti-Discrimination Act**), which introduced the carers responsibilities provisions and this may explain in part the fact that that more complaints have been raised by men under those provisions than under the Sex Discrimination Act.

In relation to the scope of the legislation, as noted in the Discussion Paper, the family responsibilities provisions of the Sex Discrimination Act do not cover indirect



discrimination. While men can access the family responsibilities discrimination provisions under section 14(3A) of the Sex Discrimination Act,<sup>1</sup> access by men and women to section 14(3A) is limited to complainants alleging direct family responsibilities discrimination where the discrimination results in termination of employment. The lack of protection for indirect discrimination under the family responsibilities provisions in the Sex Discrimination Act is remedied to some extent by the indirect sex discrimination provisions – but that remedy is only applicable to women. This significantly limits the capacity of both men and women to utilise section 14(3A) of the Sex Discrimination Act, and to name family responsibilities for what it is – ie discrimination on the basis of caring responsibilities, not sex discrimination.

Mens' ability to utilise the provision is further limited by the fact that a man is unlikely to be able to successfully claim indirect family responsibilities discrimination, given men are unable to argue that as a sex they are more likely to take on carers' obligations and that less favourable treatment because of family responsibilities is therefore attributable to their sex.

In relation to language, the answer to men's failure to make more use of the family responsibilities provision of the Sex Discrimination Act may lie in the use of the word "Sex" in the title of the Sex Discrimination Act. Mens' access to protection from family responsibilities discrimination via the Sex Discrimination Act may be inhibiting in terms of the perception that the Sex Discrimination Act is an Act available to women only and an Act that only relates to sex. This may be another reason why the more neutral sounding carers responsibilities provisions under the Anti-Discrimination Act have been taken up by men. One strategy to overcome this perception is to introduce legislation specifically for carers, rather than as a ground under the Sex Discrimination Act.

**Question 25. Should the Sex Discrimination Act be amended to give greater assistance to men and women to address any workplace advantage they may face on the basis of their family responsibilities?**

At present best practice in relation to protecting employees from discrimination on the basis of carers responsibilities is embodied in the Anti-Discrimination Act 1977 (NSW). We suggest that as a starting point the Sex Discrimination Act should be amended to

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<sup>1</sup> This provision is constitutionally underpinned by ILO Convention 156 and therefore not limited in its application to women only.



resemble the carers responsibilities provisions in the Anti-Discrimination Act (eg to provide protection for indirect discrimination). To improve on the Anti-Discrimination Act model we suggest that the limitation in section 49V(4) to engagement (49V(1)(b)) and termination (49V(2)(c)) should be broadened to include all aspects of the employment relationship (ie 49V(1) and (2) in total).

An alternative may be to amend the Sex Discrimination Act to include a positive obligation on employers to accommodate an employee's request for family friendly workplace practices:

- where the employee can demonstrate how such a request can reasonably be accommodated by the employer's business (taking into account how the employee foreshadows that his or her duties can be adequately performed and by whom). An obligation on the employer to provide the employee with information reasonably necessary to demonstrate how the request could be accommodated may also need to be included; and
- unless the employer can demonstrate that accommodating such a request imposes an unjustifiable hardship.

Such a provision would impose obligations on both parties in providing flexible workplace practices.

The *Equal Opportunity for Women in the Workplace Agency Act 1999* (**EOWWA Act**) has been used to good effect to encourage large organisations to design, implement and monitor the workplace programmes to create gender equity. We suggest that, given the central importance of balancing work and family, a similar model of external reporting should be introduced to create carer equity. Any such reporting mechanism should not be limited to apply only to employers with 100 or more employees (as occurs under the EOWWA Act), but should apply to all employers. This will create focus and stimulate workplace action to identify and redress barriers for workers with caring responsibilities.

Further we suggest that the EOWWA Act could be extended to cover ALL employees needing time to care for dependents similar to the new section inserted in the *Crown Entities Act* in New Zealand (see s 118 (1) (c) and s 151). The new provisions of the Crown Entities Act (NZ) requires employers to report on all aspects of equal employment opportunity issues, rather than only equality of opportunity for women.



Such an amendment to the EOWWA Act would incorporate equality of opportunity issues that relate to women and men, plus aged workers, workers with carers' responsibilities, workers with disabilities and indigenous and NESB people, among other groups. This will create focus and stimulate workplace action to identify and redress barriers for all workers with caring responsibilities.

**Question 26. Can an individual complaints mechanism adequately deal with discrimination on the basis of family responsibilities? If not, what other changes may be necessary?**

While an individual complaints based mechanism (such as the Sex Discrimination Act in its current form) is critical to providing complainants with an avenue of redress, and also in facilitating an understanding of the impact of sex discrimination in terms of the numbers of individuals effected, individual complaints based mechanisms are generally inadequate for the purpose of eliminating systemic discrimination.

Elimination of discrimination, including family responsibilities discrimination, requires both community and workplace change and attitudinal shifts. Such wide-reaching cultural change is promoted by a combination of the provision of a rights-based individual complaints mechanism plus broad social policy and the provision of systemic legal rights (eg through industrial instruments and imposing overarching legislative obligations on employers to accommodate/report on certain worker requirements).

In addition to the implementation of broad-based social policy, practical support for individual complainants and representative complaints could also be enhanced. An example of such support could be making the federal jurisdiction cost free.

**Question 27. Are amendments to the workplace relations system needed to give greater assistance to men and women to address any workplace disadvantage they may face on the basis of their family responsibilities? If so, what particular amendments are necessary? If not, why not?**

There are currently too many variations between States and Territories in relation to workplace relations laws. There needs to be a consistent approach across the country for employers to apply and follow to ensure equity.



There should be a minimum standard set in relation to family responsibilities but this should not be over-prescriptive, for example the Australian Industrial Relations Commission's recent decision in regard to employees having the 'right to request' part time work and two years parental leave and the employer having the 'right to refuse' on economic grounds is a minimum standard that could be adopted in the Government's proposed new IR changes without being too prescriptive. We also suggest any legislative provision to provide rights for employees consistent with the AIRC family provisions test case should also provide a mechanism to resolve disputes about an employer's refusal to allow part-time work or unpaid parental leave.

Care needs to be exercised that employees have limited opportunity to trade-off good flexibility in working hours for other conditions. There needs to be a mechanism to protect flexibility that assists the balance between work and family for both men and women. This is particularly the case in industries where employees may be heavily encouraged to expand their hours of ordinary work to accommodate global trading hours.

Under the proposed new system, all industrial agreements, including Australian Workplace Agreements and collective certified agreements, will no longer have to pass a global test against relevant award minimum entitlements prior to approval or certification. The proposals involve such agreements simply passing a comparison test against four statutory minimum conditions (namely, annual leave, personal/carers' leave, parental leave and maximum ordinary hours of work) plus the minimum award classification wages that will be set by the new Australian Fair Pay Commission.

While it is clear that the statutory minima against which industrial agreements will be assessed will include personal/carers' leave, the content of these statutory minima are as yet unknown. Australian Council of Trade Unions research (the results of which is contradicted by the Office of the Employment Advocate) indicates that currently Australian Workplace Agreements do little to ensure workplace flexibility even under the current system which requires that they pass a global no disadvantage test. Adequate legislative provision is required against which to assess all industrial agreements prior to certification/approval to ensure workplace flexibility is achievable.

The Australian Industrial Relations Commission since 1979 has considered a number of test cases in relation to work and family matters. The most recent is about part time work, carers' leave and parental leave. There needs to continue to be some mechanism (if



the Fair Pay Commission is to be established) to ensure these test cases can be run as a way of ensuring precedent-setting principles. It is not at this stage clear whether the Australian Fair Pay Commission, or the Australian Industrial Relations Commission in whatever form it is permitted to continue, will be empowered to hear and determine test cases.

Maternity leave should not be removed from the allowable award matters as this would undermine the chance for employees to negotiate improved entitlements through collective bargaining or individual bargaining and it places greater pressure on company policy and managerial discretion. This leads to uneven and inequitable results.

The government's proposals to change the way the minimum wage is to be set and the likelihood that adjustments may not be as frequent or as reasonable as current arrangements, will make the relative costs of child care even more problematic for parents. It will also be likely to increase the wage gap between women and men (given 60% of those who depend on the minimum wage are women).

**Question 28. Do men make adequate use of the workplace relations system to assist them to balance their paid work with their family responsibilities?**

The fact that very few men take parental leave is partly due to a community and workplace culture that does not encourage or reward men for utilising legislation and workplace policy provisions that assist with the accommodation of family responsibilities. In addition at a practical level men are less likely to take parental leave when it is unpaid.

Countries such as Sweden address the cultural and practical issues by making paid parental leave dependent on the male spouse utilising a proportion of parental leave to engage in caring responsibilities. We suggest that Australia should introduce paid parental leave (rather than just paid maternity leave), eligibility for which should be dependent upon the male spouse accessing a proportion of the leave to take up their caring responsibilities. This would send a clear statement to men and women that child-care is a shared responsibility, and encourage men's early involvement in parenting. It would also reflect men's desire to be more involved in caring.



**Question 29. Do informal workplace policies work well to assist employees to balance their paid work and family responsibilities? Do they assist some employees more than others, and if so, is this appropriate?**

Informal workplace policies can have either a positive or negative impact on workers, depending on the structure and culture of the particular workplace in which they are used. Informal workplace policies have the potential to create disharmony within a work group when mechanisms are not in place to provide a basic framework as to how individuals access and utilise flexible work practices.

Inconsistency of application and resentment are cited as being problematic for both employees and managers in this respect. Formal policies, on the other hand, provide the necessary boundaries for workers and management to operate within.

However, informal policies may be a tool for change if positioned within the broader context of a formal policy. Generational shift within today's workforce are instrumental in forcing change with younger workers using the status quo as a platform to initiate change.

**Question 30. Have EEO policies and business case arguments produced a greater acceptance of the need for workplaces to be family-friendly?**

The drivers for acceptance of family-friendly workplaces are varied and not solely the responsibility of EEO policies and business case arguments.

One such driver is society. The demands on society and the communities from which employees are sourced have a significant impact on the need for employers to firstly create a flexible workplace and secondly to accept the provision of flexible options as the norm. The increasing skill shortages faced by employers may play a part in encouraging this acceptance as a primary business response.

EEO policies developed by organisations that are not regularly updated and are some years old may face difficulty in gaining acceptance. This is especially the case where the particular policy has not evolved sufficiently to incorporate the changing needs of business and workers. Alternatively, government imposed compliance requirements such as those issued by the Equal Opportunity for Women in the Workplace Agency prove effective in encouraging organisations to go beyond what is required for reporting





purposes to ensure that policies and procedures are as good if not better than benchmark employers.

**Question 38. How important are workplace cultures, as opposed to workplace structures, as a deterrent to men’s more active engagement with their family responsibilities and more equitable sharing between men and women of unpaid work in the home?**

Workplace cultures impact on men in particular in regard to the take-up of flexible work arrangements, the encouragement of discussion of work/life matters and the positive reinforcement of partner and fathering roles. These factors, if put into in practice, can lead to mens’ more active engagement in their family responsibilities.

The culture of organisations is in fact geared away from supporting family responsibilities by the:

- perception that increased workloads and hours result in greater career success and progression;
- lack of training and knowledge of managers of structures and initiatives already in place regarding flexibility;
- rewards based on presence at the office;
- focus on “flexibility versus work”, rather than compatibility between the two (in other words, that there can be accommodation and balance); and
- importance of being available after hours and at other times to develop political nous and networking.

Although there has been legislation in place for two decades we suggest that there has been a very limited shift in the culture or application in the workplace of work/life balance.

**Question 39. How can workplace cultures be encouraged to change to promote a better balance between paid work and family responsibilities?**

Individual organisations that have shifted to a more accommodating work/life balance culture, have done so because their leaders have demonstrated commitment and decreed



changes. The leadership and role modelling is very important in sending a positive message throughout the organisation at all levels and requires courage.

Looking at the issue from a wider view, it is suggested that the Australian culture needs to change to influence work culture. The national culture in Australia is very success orientated; achievements and materialism are high ideals.

A national culture that values the next generation by role models, flexibility and more time for families may send a message that the family and sharing within a family environment are important in the context of society and the workplace.

### **Additional response regarding “best practice” work and family strategies, the 2005 Australasian Diversity and Equality Survey and the Taskforce on Care Costs**

This section provides additional commentary on best practice work and family strategies based on our membership consultation, as well as the 2005 Australasian Diversity and Equality Survey and the Taskforce on Care Costs research.

NEEOPA suggests that there does not appear to be clear-cut formula for developing a best practice “work and family” program, given that organisations are unique in terms of culture, size, core competency/business and demographic.

It is important to understand the following in order to construct a program that is relevant and meaningful to the organisation:

- key issues and barriers within the organisation, via staff surveys and interviews;
- external social issues eg growth in singles [traditional ‘household’ is diminishing and recognising it’s not just a ‘woman’s issue’];
- initiatives implemented by other organisations [especially competitors].

The essential ingredients in best practice programmes include:

- leadership commitment, support and trust;
- communication and transparency of the program to ensure all employees feel included;
- role models and communication of successful initiatives;



- ‘flexibility’ within policies;
- management training – thinking in new ways career design/job design;
- measuring awareness, use and outcomes eg measuring a manager’s flexibility in the performance appraisal/360 feedback.

Strategies to address barriers include:

- measuring performance before and after the implemented change;
- a policy that allows the manager and their staff the opportunity to discuss issues; and
- the ability for the manager to discontinue offering the flexibility if outcomes are not achieved or employees misuse the policy.

The 2005 Australasian Diversity and Equality Survey<sup>2</sup> (conducted by the EEO Network of Australia which includes NEEOPA) provides insights into where best practice EEO/diversity organisations are on the journey to diversity and equality, how the current status compares with the position in 2003, and opportunities for improvement. There are two key findings from the 2005 ADES research that are pertinent to HREOC’s inquiry and the focus on organisational and cultural change.

Firstly the ADES found that “best practice organisations have made a clear case for diversity driving employment and reputation outcomes, but not central bottom-line business benefits”. As the graph below demonstrates, best practice organisations focus heavily on recruitment (97%), stature/reputation (100%), retention (100%) and to be an employer of choice (99%) as the drivers on their EEO/diversity strategy, and place much less weight on customer service (66%), creativity and innovation (61%), gaining a competitive advantage (59%) and marketing/sales results (36%). The report argues that:

*Whilst this focus has positive outcomes in terms of the recruitment, retention and maximisation of diverse employees, neglecting to focus on bottom-line business outcomes (eg marketing and sales results) can be problematic. In order for diversity and equality to be accepted as a mainstream business objective, clear business outcomes (in addition to employment outcomes) must be targeted. The current focus on employment and reputation outcomes in isolation keeps diversity and equality an HR issue and not a core business activity.*

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<sup>2</sup> Visit [www.neeopa.org](http://www.neeopa.org) for a full copy of the report.



Secondly the ADES found that “to move diversity front and centre, organisations need to improve managerial accountabilities, and measure bottom-line business outcomes”. The ADES based this finding on data which demonstrated that whilst 72% of best practice organisations have a means of holding managers accountable for diversity and equality outcomes, only 25% link a manager’s promotion or progress, and only 31% link a manager’s pay (including bonuses), to her/his performance in implementing the Diversity/Equal Employment Opportunity strategy. The report argues:

*Whilst it is positive that more managers are being held accountable for diversity and equality outcomes in 2003 than 2005, the data suggest that only a minority use pay and promotion as levers of engagement. Further, very few organisations use sophisticated measure of accountability – particularly in relation to bottom line business benefits (eg the outcome of sales provision or customer satisfaction). These omissions reinforce that diversity and equality is an HR issue, rather than core business. To improve diversity outcomes, diversity and equality must be measured in terms of bottom-line business benefits, and managers held more accountable.*

Leveraging the results of the 2005 ADES, NEEOPA argues that developing a more comprehensive business case, and introducing more exacting measures of managerial performance has the capacity to alter EEO/diversity outcomes, including the integration of work and family.

Finally we ask that the Inquiry take into account the findings by the Taskforce on Care Costs on the inter-relationship between the cost of care and workforce participation and the disproportionate impact that this has on women. In February 2005 the TOCC



released a policy paper entitled *Creating Choice: Employment and the Cost of Caring*<sup>3</sup>. TOCC found that:

- 1 in 4 workers with caring responsibilities is likely to leave the workforce because the cost of care is too high;
- 1 in 4 workers with caring responsibilities has already reduced their hours of work because the cost of care is too high; and
- 35% of workers with caring responsibilities would increase their hours of work if care was more affordable.

TOCC recommended to Government that to increase choice for workers with caring responsibilities (in a way that is equitable and sustainable) the Government should:

1. immediately draft legislation (for consultation) to implement its promised 30% rebate for child-care costs.
2. extend the proposed child-care rebate to cover elder and disability care costs.
3. extend the 30% rebate to a more meaningful level, ie closer to a dollar for dollar rebate, and remove the proposed \$4000 cap.
4. introduce reforms to assist with the cost of care in combination with a strategy to improve the accessibility and quality of care.
5. by 30 June 2006, release a public report identifying the steps it has taken to implement the Taskforce's recommendations.

The Government has not formally responded to TOCC's findings and recommendations. We suggest that TOCC's findings and recommendations are important to the HREOC Inquiry because cultural and legislative change to assist workers to balance their work and family responsibilities will have a reduced impact if social policy changes (ie financial support) are incongruent.

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<sup>3</sup> Visit [www.neeopa.org](http://www.neeopa.org) for a full copy of the report.