

EXPLANATORY STATEMENT

Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)

Summary

The *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* (**the Instrument**) is made by the Minister for Community Services, the Minister for Indigenous Employment and Economic Development and the Minister for the Status of Women. The purpose of the Instrument is to provide a reporting framework in relation to gender equality indicators for relevant employers.

Background

The Instrument is made under subsections 13(3) and 3(1A) of the *Workplace Gender Equality Act 2012* (**the Act**). Subsection 13(3) provides that the Minister must, by legislative instrument, specify matters in relation to each gender equality indicator. Subsection 3(1A) provides that the Minister may, by legislative instrument, specify matters for the purposes of subparagraph (f) of the definition of gender equality indicators in subsection 3(1) of the Act. Subparagraph (f) of the definition of gender equality indicators in subsection 3(1) of the Act states that gender equality indicators means any other matter that is specified in an instrument under subsection 3(1A) of the Act.

A relevant employer must prepare a written public report containing information relating to the employer and to the gender equality indicators for each reporting period.

In specifying matters under the gender equality indicators, the intention is to establish a long term data set to provide evidence-based insight at the workplace and industry level. Reporting is intended to provide employers with the information to better understand the gender equality characteristics of their workplaces, and is intended to encourage measures that improve gender equality outcomes. Information obtained from reporting in relation to each gender equality indicator is expected to be valuable for employers and, at the aggregate level, to inform policy development and provide an improved understanding of the experiences of women and men in Australian workplaces.

The gender equality indicators, listed in paragraphs (a), (b), (c), (d) and (e) of the definition of gender equality indicators in subsection 3(1) of the Act, were developed to reflect the most pressing contemporary challenges and circumstances in relation to gender equality in Australian workplaces.

Paragraph (f) of the definition of ‘gender equality indicators’ in subsection 3(1) of the Act enables the Minister to, by legislative instrument, specify any other matters to be identified as a gender equality indicator.

Paragraph (a) – gender composition of the workplace

This indicator enables the collection of information about the gender composition of the workforce of relevant employers.

Paragraph (b) - gender composition of governing bodies of relevant employers

This indicator enables the collection of information about the gender composition of the governing bodies of relevant employers.

Paragraph (c) – equal remuneration between women and men

This indicator enables the collection of aggregate information about remuneration outcomes for women and men.

Paragraph (d) – availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities

This indicator enables the collection of information about the availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities.

Paragraph (e) - consultation with employees on issues concerning gender equality in the workplace

This indicator enables the collection of information about consultation which occurs between employers and employees on issues concerning gender equality in the workplace.

Paragraph (f) – Any other matters specified in an instrument

As identified in subsection 3(1A) of the Act, the Minister may, by legislative instrument, specify any other matters to be identified as a gender equality indicator.

The Instrument is a legislative instrument for the purposes of the *Legislative Instrument Act 2003*.

Explanation of Provisions

Part 1 – Preliminary

Name of Instrument

Section 1 of the Instrument states the name of the Instrument, which is the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No.1)*.

Commencement

Section 2 of the Instrument specifies that sections 1 to 5 of Part 1 of the Instrument, as well as Schedule 1 of the Instrument commences on 1 April 2013. Schedule 2 of the Instrument commences on 1 April 2014.

Authority

Section 3 of the Instrument specifies the authority for the Instrument which is subsections 13(3) and 3(1A) of the Act.

Schedules

Section 4 of the Instrument states that the gender equality indicators and matters specified in relation to each indicator are set out in Schedule 1. Schedule 2 sets out amendments to Schedule 1 which apply from 1 April 2014.

Definitions

Section 5 of the Instrument defines the terms used in the Instrument.

Explanation of the clauses in Schedule 1

Schedule 1 – matters in relation to each gender equality indicator

Schedule 1 of the Instrument contains matters in relation to 6 gender equality indicators that each relevant employer is required to report on.

In many cases, it is intended that relevant employers provide a ‘yes’ or ‘no’ response to each matter listed under each gender equality indicator. However, the Instrument specifies more information and data in relation to certain matters in order to increase the value and effectiveness of the information.

Gender Equality Indicator 1: Gender composition in the workforce

Clause 1 relates to gender equality indicator 1 and has 4 corresponding matters. It requires each relevant employer to report on the gender composition of its workplace.

Each relevant employer must report on the workplace profile of its organisation. This information will improve capacity to compare data over time and across sectors and industries. A relevant employer must provide data, by gender, on the employment status of part-time, full-time, permanent, casual, and contract employees. Data, by gender, must also be provided on the occupational categories of manager and non-manager in the workplace. Managers include the Chief Executive Officer or equivalent; key management personnel; and other managers. The distance of managers in relation to the position level from the Chief Executive Officer or equivalent must also be reported on. Non-managers are classified against ten occupational categories: professionals; technicians and trades employees; community and personal service employees; clerical and administrative employees; sales employees; machinery operators and drivers; labourers; graduates; apprentices; and other employees.

A relevant employer must also report on whether its organisation has strategies or policies in place that support gender equality including, for example: gender-based employee networks; targeted gender-based programs relating to recruitment, retention or development; key performance indicators for managers relating to gender equality; or special measures to support women or men working in non-traditional occupation or industry.

Gender Equality Indicator 2: Gender composition of governing bodies of relevant employers

Clause 2 relates to gender equality indicator 2 and has 4 corresponding matters. It requires each relevant employer to report on the gender composition of its governing bodies.

Each relevant employer has to report on whether it has a governing body, and if so, the relevant employer must provide information about the gender profile of the governing body.

A relevant employer must also provide information as to whether it has any targets in place in relation to the gender composition of its governing bodies and whether there is a formal, merit based plan or strategy for selecting members.

Gender Equality Indicator 3: Equal remuneration between women and men

Clause 3 includes gender equality indicator 3 and has 5 corresponding matters. It requires each relevant employer to report on equal remuneration between women and men.

A relevant employer must report on the following disaggregated remuneration data by gender and by workplace profile categories: annualised average full-time equivalent base salary; and annualised average full-time equivalent total remuneration. Total remuneration includes: base pay; discretionary pay; bonus payments; performance pay; overtime; and other allowances. Employers may choose to use data based on the financial year that concludes during the reporting period.

A relevant employer must provide information as to whether it has remuneration policy or strategy in place, and if so, whether this policy or strategy includes any gender pay equity objectives. A relevant employer must also indicate whether an analysis of any gender remuneration gap has been undertaken, when the analysis was undertaken and the actions taken as a result of any such analysis which may include for example: identification of the cause of the gaps; a review of remuneration decision-making processes; a gender-based job evaluation process; or no action.

Gender Equality Indicator 4: Availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities

Clause 4 includes gender equality indicator 4 and has 13 corresponding matters. It requires each relevant employer to report on the availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities.

A relevant employer must report on whether employer-funded paid parental leave is available for primary and secondary carers, in addition to any government funded paid parental leave. It must also provide information about the number of employees, by gender and manager / non-manager, who have utilised parental leave arrangements.

The proportion of the workforce who has access to employer funded paid parental leave for primary and secondary carers must also be reported on. This recognises that some employers have multiple wage-setting devices, such as awards, workplace and individual agreements. Measurement to the nearest 10th percentile of the number of employees covered by the arrangement that provides the employer-funded paid parental leave is required. For example, if a workplace agreement is the sole mechanism for the provision for employer-funded paid parental leave, information on the percentage of employees covered by the agreement is required.

Information about the method and quantum of the provision for primary carers, as well as information about the quantum of the provision for secondary carers, must be provided. The method of payment may include: paying the salary gap between any government funded paid parental leave and full-time salary; paying the employee's full salary; or making a lump sum payment. The quantum of payment refers to the number of weeks leave provided by the relevant employer.

Data, by gender and manager / non-manager, on the availability of employment terms, conditions and practices including: flexible hours of work; compressed working weeks; time-in-lieu; telecommuting; part-time work; job sharing; carer's leave; purchased leave; unpaid leave; or other relevant employment terms, conditions and practices must also be provided.

Each relevant employer must provide information about whether it has policies or strategies in place regarding: flexible working arrangements; support of employees with family and caring responsibilities; and support of employees who have or are experiencing family or domestic violence. Information about organisational measures used to support employees who have or are experiencing

family or domestic violence such as: additional leave; access to employee assistance programs; or access to flexible working arrangements is also required.

Information about the existence of any non-leave based measures such as: employee subsidised child care; breastfeeding facilities; or referral services for respite care to support employees with family and caring responsibilities must be provided.

Gender Equality Indicator 5: consultation with employees on issues concerning gender equality in the workplace

Clause 5 includes gender equality indicator 5 and has 3 corresponding matters. It requires each relevant employer to report on any consultation with employees on issues concerning gender equality in the workplace.

A relevant employer must report on whether consultation with employees on matters relating to gender equality has been undertaken and the mode of that consultation. Modes of consultation may include: survey; focus groups; consultative committee or group; performance discussions; or exit interviews.

A relevant employer must also provide information about the employee groups that it consulted with such as: all staff; human resource managers; employee representatives; diversity committee; women only; or men only.

Gender Equality Indicator 6: Sex-based harassment and discrimination

Clause 6 includes gender equality indicator 6 and has 4 corresponding matters. It requires each relevant employer to report on sex-based harassment and discrimination in the workplace.

This indicator is a further indicator which is made under paragraph (f) of the definition of gender equality indicators in subsection 3(1) of the Act. It was identified throughout the consultation process as an important consideration in improving workplace participation.

A relevant employer must report on whether it has a sex-based harassment and discrimination prevention strategy or policy in place and if so, whether it includes a grievance process.

A relevant employer must also provide information about whether it conducts training for managers on sex-based harassment and discrimination, and if so, the frequency with which training is offered to managers such as, for example: annually; every 1 to 2 years; or varies across business units.

Explanation of the clauses in Schedule 2

Schedule 2 – Amendments of Schedule 1 commencing on 1 April 2014

Schedule 2 of the Instrument contains amendments to the matters of 3 gender equality indicators.

In addition to the reporting requirements outlined in Schedule 1 of the Instrument, from 1 April 2014 onwards, each relevant employer must also report on additional matters.

Clause 1: Amendments to Gender Equality Indicator 1

Clause 1 adds a further 5 corresponding matters to gender equality indicator 1, building on the reporting requirements for gender equality indicator 1 as set out in Schedule 1. The additional matters specified in Clause 1 seek information on recruitment, promotion and retention data.

A relevant employer must provide information about the composition of applications for recruitment exercises, interviewees and successful applicants appointed to positions by gender and by manager / non-manager.

A relevant employer must also provide information about the number and proportion of employees awarded promotions by gender, employment status, and by manager / non-manager. The number and proportion of employees who have resigned by gender, employment status and by manager / non-manager must also be reported on.

Clause 2: Amendments to Gender Equality Indicator 3

Clause 2 adds a further corresponding matter to gender equality indicator 3, building on the reporting requirements for gender equality indicator 3 as set out in Schedule 1. The additional matter specified in Clause 2 seeks information on remuneration.

A relevant employer must provide disaggregated data by gender on annualised average full-time equivalent components of total remuneration. Total remuneration includes: base pay; discretionary pay; bonus payments; performance pay; overtime and other allowances. A relevant employer may choose to use data based on the financial year that concludes during the reporting period.

Clause 3: Amendments to Gender Equality Indicator 4

Clause 3 adds a further 2 corresponding matters to gender equality indicator 4, building on the reporting requirements for gender equality indicator 4 as set out in Schedule 1. The additional matters specified in Clause 3 seek information on parental leave.

A relevant employer must provide information about the number of employees returning to work from parental leave by gender and by manager / non-manager. Data on the number of requests and approvals for extended parental leave by gender and by manager / non-manager must also be reported on.

Consultation

Section 33A of the Act requires the Minister to consult with the Workplace Gender Equality Agency (**the Agency**) before making any legislative instruments and have regard to any recommendations of the Agency. The Minister must also consult such persons mentioned in subsection 31(3) of the Act as the Minister considers appropriate. This includes persons representing industry or business, employee organisations or higher education institutions and persons having special knowledge or interest in relation to gender equality in the workplace, the function of the Agency or the operation of the Act. This is also reflective of requirements regarding consultation in Part 3 of the *Legislative Instruments Act 2003*.

In accordance with this consultation requirement, the Department of Families, Housing, Community Services and Indigenous Affairs (**FaHCSIA**) conducted a wide-ranging consultation to seek views to inform the reporting matters for each gender equality indicator under the Act, which need to be implemented prior to the commencement of the 2013 reporting cycle. The consultation process comprised a two-staged approach including a public call for comment and more targeted consultations.

In December 2012, an invitation to provide comments on reporting matters was promulgated widely, including by individual letter from the Minister to key stakeholders, and an issues paper made

publicly available on the FaHCSIA website. This process was formally announced on 9 January 2013 by the Acting Minister for the Status of Women, the Hon Jenny Macklin MP, and received over 60 submissions from various stakeholders including industry, business, employee organisations, higher education institutions, and other stakeholders with a special knowledge or interest in gender equality in the workplace.

On 23 January 2013, the Minister for the Status of Women, the Hon Julie Collins MP, announced that Ms Carol Schwartz AM would facilitate targeted consultations with peak bodies and stakeholders throughout February 2013.

The Instrument was strongly informed by the views presented throughout the consultation process and, although a wide range of views were put forward by a diverse group of stakeholders, the Instrument represents a balanced outcome in terms achieving a set of meaningful, useful and practical reporting matters.

The Agency provided formal recommendations to the Minister, and these were given a high level of regard.

The Attorney-General's Department, Department of the Prime Minister and Cabinet and the Department of Education, Employment and Workplace Relations have also been consulted in the development of the Instrument.

Regulatory Impact Analysis

This Instrument is implementing the recommendations contained in the earlier Regulation Impact Statement prepared for the reform of the *Equal Opportunity for Women in the Workplace Act 1999*. Accordingly, no further analysis in the form of a Regulatory Impact Statement is required (Office of Best Practice Regulation reference ID 14750).

STATEMENT OF COMPATIBILITY FOR A LEGISLATIVE INSTRUMENT THAT RAISES HUMAN RIGHTS ISSUES

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument under the *Workplace Gender Equality Act 2012*

The purpose of the *Workplace Gender Equality Act 2012* (the Act) is to support and improve women's workforce participation, and to increase equality (including equal remuneration between women and men) in employment and in the workplace.

To this end, the Act introduced gender equality indicators which relevant employers must report against. These indicators are:

- (a) gender composition of the workforce;
- (b) gender composition of governing bodies of relevant employers;
- (c) equal remuneration between women and men;
- (d) availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities;
- (e) consultation with employees on issues concerning gender equality in the workplace;
- (f) any other matters specified in an instrument under subsection 3(1A) of the Act.

Subsection 13(3) of the Act provides that the Minister must, by legislative instrument, specify reporting matters in relation to each gender equality indicator as outlined in (a) to (e) above. Additionally, subsection 3(1A) of the Act provides that the Minister may, by legislative instrument, specify matters for the purposes of paragraph (f) of the definition of gender equality indicators in subsection 3(1) of the Act. Paragraph (f) of subsection 3(1) of the Act states that gender equality indicators means any other matter that is specified in an instrument under subsection 3(1A) of the Act. The Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (the Instrument) is made under these subsections.

For each reporting period, commencing on 1 April 2013, a relevant employer must prepare a written public report containing information relating to the employer and to the matters specified for each of the gender equality indicators in the Instrument.

Human rights implications

The Australian Government's international human rights and labour rights obligations relevant to the issue of gender equality in the workplace are set out in the following international instruments:

- The Convention on the Elimination of All forms of Discrimination against Women (CEDAW)
- The International Covenant on Civil and Political Rights (ICCPR)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)

In addition to the protections afforded by these instruments, employees' rights are further supported by the following International Labour Organisation Conventions:

- Equal Remuneration Convention, 1951 (No. 100);
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- Workers with Family Responsibilities Convention, 1981 (No. 156); and
- Part-Time Work Convention, 1994 (No. 175)

The implementation of the Instrument under the Act promotes the following human rights:

Freedom from discrimination in employment

The elimination of discrimination in employment engages Article 11 of CEDAW. Article 11 expressly obliges Australia to '*take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular... the right to the same employment opportunities... the right to promotion...[and] equal remuneration.*¹

The Instrument will contribute to the elimination of discriminatory workplace practices by setting out reporting matters under specified gender equality indicators, which relevant employers must report against. This will enable employers to consider their workplace practices and outcomes in relation to gender equality, and to effect improvements over time. In turn, this will advance freedom from discrimination in employment for women and men.

Protection against discrimination on the ground of sex

Article 26 of the ICCPR contains a positive obligation on States Parties to take steps to protect against discrimination on the ground of sex. The Instrument will enable compliance with the Act to be transparently assessed. In this way, the Instrument supports the removal of barriers to the full and equal participation of women and men in the workforce.

The right to fair wages and equal remuneration for work of equal value

Article 7 of the ICESCR recognises the right of everyone to fair wages and equal remuneration for work of equal value. The Instrument will facilitate greater transparency regarding equal remuneration for work of equal value, and will lead to an improved understanding on matters relating to equal remuneration for work of equal value.

Conclusion

The Legislative Instrument is compatible with human rights because it advances the protection of human rights.

The Hon Julie Collins MP, Minister for Community Services, Minister for Indigenous Employment and Economic Development and Minister for the Status of Women

¹ CEDAW, Article 11(1)(b), 11(1)(c) and 11(1)(d). Article 11(1)(c) provides 'the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining.' Article 11(1)(d) provides 'the right to

equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.'