

## EXPLANATORY STATEMENT

### ***Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Amendment Instrument 2014 (No.1)***

#### **Summary**

The purpose of this *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Amendment Instrument 2014 (No.1)* (the Instrument) is to amend the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No.1)* (the GEI Instrument) to delay the commencement of Schedule 2, which contains amendments to the reporting matters specified in Schedule 1, by one year.

#### **Background**

The Instrument is made under subsection 13(3) 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.

Under the Act, relevant employers must lodge a report containing information relating to the employer and to the gender equality indicators for each annual reporting period. A report lodged under the Act must contain details of the matters specified in the GEI Instrument. Reporting is intended to provide employers with the information to better understand the gender equality characteristics of their workplaces and to assist the Workplace Gender Equality Agency (the Agency) to promote and improve gender equality outcomes. Reporting is also used to assist the Agency in identifying compliance with the requirements under the Act, including the applicable minimum standards.

The GEI Instrument currently provides that the reporting matters specified in Schedule 1 of that instrument will be amended with effect from 1 April 2014 (see Schedule 2). The effect of Schedule 2 of the GEI Instrument is to expand the number of matters that relevant employers must include in their annual reports under the Act. The Instrument amends the GEI Instrument to delay the commencement of the amendments effected by Schedule 2 by one year to allow further consultation to occur in response to the disparity of concerns expressed by stakeholders about the regulatory impact of the reporting requirements set out in the GEI Instrument.

#### **Explanation of Provisions**

##### *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) Amendment Instrument 2014 (No.1)*.

##### *Commencement*

Section 2 of the Instrument specifies that the Instrument commences on the day after it is registered.

##### *Authority*

Section 3 of the Instrument specifies the authority for the Instrument, which is subsection 13(3) of the Act.

##### *Schedule(s)*

Section 4 of the Instrument provides that each instrument that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule has effect according to its terms.

### *Schedule 1 – Amendments*

**Item 1** amends the table in clause 2 (Commencement) of the GEI Instrument to reflect the new commencement date of Schedule 2 (from 1 April 2014 to 1 April 2015).

**Item 2** amends clause 4 (Schedules) of the GEI Instrument to delay the commencement date of Schedule 2 by one year (from 1 April 2014 to 1 April 2015).

**Item 3** amends the heading of Schedule 2 to reflect the new commencement date of 1 April 2015 that is given effect by Item 2.

### **Consultation**

The Act sets out under Section 33A that the Minister must consult with the Agency before making any legislative instruments under the Act 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 providers and persons having special knowledge or interest in relation to gender equality in the workplace, the functions of the Agency or the operation of the Act. This also reflects consultation requirements in Part 3 of the *Legislative Instruments Act 2003*.

Consultations were held with a number of stakeholders, including the Agency and industry groups, in the initial stages of consideration of the reporting requirements. In February 2014, consultation was undertaken in writing with a broad range of stakeholders on proposed changes to reporting requirements as part of an Exposure Draft process. Key stakeholders representing industry, employee organisations, higher education providers as well as other experts were provided with drafts of an instrument that proposed to amend both Schedule 1 and Schedule 2 of the GEI Instrument.

The feedback received through the consultation process presented a disparity of views regarding whether the amendments that were proposed would sufficiently reduce the regulatory impact of the reporting regime while continuing to ensure that reporting provide a useful dataset that achieves the gender equality objectives of the Act. It was determined that further consultation was required.

### **Regulatory Impact Analysis**

The Office of Best Practice Regulation determined that the Instrument will have a minor regulatory impact on business, community organisations or individuals and therefore a Regulation Impact Statement is not required (Office of Best Practice Regulation reference ID 16810).

Further, the Office of Best Practice Regulation determined that a Regulation Impact Statement for the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* was not required when introduced in 2013 (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) Amendment Instrument 2014 (No.1)***

The *Workplace Gender Equality (Matters in Relation to Gender Equality Indicators) Amendment Instrument 2014 (No.1)* (the 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 Instrument under the *Workplace Gender Equality Act 2012***

The purpose of the *Workplace Gender Equality Act 2012* (the Act) is to promote and improve productivity and workforce participation through the promotion of gender equality in the workplace. To this end, the Act requires relevant employers (employers with 100 or more employees) to report annually on gender equality indicators. Data obtained through reporting is used by the Workplace Gender Equality Agency (the Agency) to promote and improve gender equality outcomes and develop industry specific benchmarks. Reporting also provides relevant employers with information to better understand the gender equality characteristics of their workplaces and promotes cultural change to improve equality.

The matters that relevant employers must include in their annual reports are specified by Schedule 1 of the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* (the Gender Equality Indicators Instrument). In its current form, Schedule 2 (together with section 4) of the Gender Equality Indicators Instrument amends Schedule 1, with effect from 1 April 2014, to increase the number of reporting matters that must be included in annual reports under the Act.

Consultation was undertaken with the Agency, industry groups, women's alliances, unions, academics and stakeholders with a special interest in gender equality in response to feedback from industry representatives that engagement by businesses with the reporting process could be improved if reporting requirements that are perceived as being too onerous, invasive or of little relevance were removed. Industry representatives expressed particular concern regarding the increased reporting requirements to be effected by Schedule 2 from 1 April 2014.

The feedback received through the consultation process presented a disparity of views regarding whether the scope of amendments would sufficiently reduce the regulatory impact of the reporting regime while continuing to ensure that reporting provides a useful dataset that achieves the gender equality objectives of the Act. It was determined that further consultation was required.

Noting the requirement under the Act that any amendments to the reporting matters specified by the Gender Equality Indicators Instrument must be effected prior to 1 April 2014 in order to have effect for the 2014-2015 reporting period, the Instrument amends the GEI Instrument to delay the

commencement of the expanded reporting regime (Schedule 2) by one year to allow for further consultation to occur.

### **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 contributes to the elimination of discriminatory workplace practices by increasing the engagement of business with the gender equality reporting process. By delaying the expanded reporting regime by one year, the Instrument will enable business to better prepare for the additional reporting requirements (if they are to come into effect) or otherwise provide sufficient time for well-supported changes to be made to the reporting regime. The further consultation process will aim to strike a balance between increasing industry engagement through the reduction of regulatory burden while ensuring that reporting continues to provide a dataset that promotes and achieves the gender equality objectives of the Act.

#### 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 promotes the elimination of discrimination on the basis of gender in the workplace by improving the engagement of businesses with the gender equality reporting framework.

#### 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 promotes equal remuneration between women and men in the workplace by improving the engagement of business with the gender equality reporting framework.

### **Conclusion**

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

### **Minister for Employment, the Hon Eric Abetz**

[1] 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.’