

EXPLANATORY STATEMENT

Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Amendment Instrument 2015 (No. 1)

Summary

The purpose of the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Amendment Instrument 2015 (No. 1)* (the Amending Instrument) is to amend the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* (the Principal Instrument), to streamline the reporting matters required to be addressed in a public report from the 2015–16 reporting period (commencing on 1 April 2015). Specifically, the Amending Instrument will:

- amend the definition of **employment status** to exclude people employed under a contract for services (i.e. independent contractors) for the purposes of the Principal Instrument and otherwise provide greater clarity;
- streamline the additional reporting requirements for Gender Equality Indicator (GEI) 1 (gender composition of the workforce), by removing requirements to report on:
 - recruitment applications and interviews;
- streamline reporting requirements for GEI 3 (equal remuneration between women and men), by:
 - removing requirements to report on the remuneration of the following managers: the Chief Executive Officer (CEO) or equivalent; key management personnel with a reporting distance above the CEO or equivalent; and casual managers;
 - removing requirements to report on disaggregated data by gender and workplace profile on annualised average full-time equivalent components of total remuneration;
 - amending the requirement to annualise components of remuneration paid on a non-pro-rata or fixed amount basis; and
- streamline additional reporting requirements for GEI 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), by:
 - creating a more targeted reporting matter to focus on the retention and turnover of employees who have taken parental leave; and
 - removing the requirement to report on requests and approvals for extended parental leave; and
- make other amendments to improve the readability and operation of the Principal Instrument.

The Amending Instrument is intended to ensure that relevant employers report on the most useful information to support businesses to address gender inequality and represents the best value for effort.

Background

The Principal 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 GEI that relevant employers must report on in their public report.

Under the Act, relevant employers must lodge a report containing information relating to the employer and to the GEIs for each annual reporting period. A report lodged under the Act must contain details of the matters specified in the Principal 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 (as prescribed by the Minister under section 19 of the Act).

Schedule 1 to the Principal Instrument (in its current form) sets out the existing reporting requirements. The effect of Schedule 2 to the Principal Instrument (in its current form) is, by amending Schedule 1, to expand the number of matters that relevant employers must include in their annual reports under the Act by 1 April 2015. The Amending Instrument amends the Principal Instrument to streamline some of the existing and additional reporting requirements that were scheduled to commence on 1 April 2015, and otherwise improve the operation of the Principal Instrument. These amendments reflect the extensive consultation the Department of Employment (the Department) has undertaken with the Agency and other stakeholders (see the consultation commentary below).

The Principal Instrument currently provides that the reporting matters specified in Schedule 1 will be amended by the matters specified in Schedule 2 with effect from 1 April 2015. This ensures that the changes in reporting requirements under the Principal Instrument only apply from the 2015–16 reporting period. The reporting requirements applicable for the 2014–15 reporting period (i.e. from 1 April 2014 to 31 March 2015) are not altered by the Amending Instrument. This provides certainty and fairness for relevant employers for the respective reporting periods. The amendments are also consistent with subsection 13(4) of the Act, which provides that an instrument (i.e. the Principal Instrument as amended by the Amending Instrument) has no effect in relation to a reporting period unless it is made before the first day of that period (i.e. before 1 April 2015).

Explanation of Provisions

Section 1 - Name of instrument

Section 1 of the Amending Instrument provides that the name of the instrument is the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Amendment Instrument 2015 (No. 1)*.

Section 2 – Commencement information

Section 2 of the Amending Instrument provides for the commencement of various provisions. Sections 1 to 4 and items 4 to 5 of Schedule 1 commence the day after the Amending Instrument is registered. Items 1 to 3 of Schedule 1 commence on 1 April 2015. For clarity, the substantive amendments to the Principal Instrument all take effect on 1 April 2015. This commencement date aligns with the start of the 2015–16 reporting period.

Section 3 - Authority

Section 3 of the Amending Instrument specifies the authority for the instrument, which is subsection 13(3) of the Act. The Minister may amend the Principal Instrument in reliance on subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4 - Schedule(s)

Section 4 of the Amending Instrument has the effect that Schedule 1 to the Amending Instrument amends the Principal Instrument.

Schedule 1 – Amendments to the Principal Instrument

Item 1 amends the definition of *employment status* in section 5 of the Principal Instrument to take effect from 1 April 2015. The existing definition refers to ‘*employment on a part-time, full-time, permanent, casual or contract basis*’. The reference to ‘contract’ in this definition has been a source of confusion for industry as it is unclear as to whether it refers to an employment relationship of a fixed-term/non-ongoing basis (i.e. contract of service), or employment of an independent contractor (i.e. contract for services), or both. Given the limited control that a relevant employer has over independent contractors, it is not considered necessary or appropriate for such employers to report on independent contractors, when reporting on employment status.

Firstly, the descriptor of ‘permanent’ employment is expanded to include the expression ‘ongoing’ (paragraph (c)). This change recognises that some employment relationships may be considered to be ‘ongoing’ rather than permanent and includes this category for clarity.

Secondly, the descriptor of ‘contract’ employment is expanded to clarify that it refers to a ‘fixed-term’ or ‘non-ongoing’ employment basis (paragraph (e)).

Finally, the new definition of *employment status* will expressly exclude independent contractors (that is, people employed on a contract for services basis).

Items 2 and 3 repeal and replace, from 1 April 2015, the definitions of *manager* and *non-manager*, respectively, in section 5 of the Principal Instrument. The definitions will be wholly provided in section 5 to improve readability. It will not be necessary for a reader to cross-refer to clauses 1.1.2 or 1.1.3 of Schedule 1 to the Principal Instrument (as the case may be) when considering the use of these expressions throughout the Principal Instrument.

For clarity, the amendments in **items 2 and 3** are minor technical amendments to improve the readability and operation of the Principal Instrument. There are no substantive changes to the definitions of *manager* or *non-manager*.

Item 4 repeals and substitutes Schedule 2 to the Principal Instrument.

Schedule 2 to the Principal Instrument amends, from 1 April 2015, the matters specified for three GEIs in Schedule 1 to the Principal Instrument.

Clause 1 of Schedule 2: GEI 1 – gender composition of the workforce

Manager/non-manager

New Schedule 2 removes the breakdown of ‘manager and non-manager’ categories, to reflect the changes to the definitions made by items 2 and 3 (above). These minor technical amendments do not alter the substantive effect of clause 1 of Schedule 2 to the Principal Instrument.

Recruitment: applications and interviews

Clause 1 of Schedule 2 to the Principal Instrument currently amends clause 1 of Schedule 1 to the Principal Instrument from 1 April 2015 by inserting clauses 1.3 and 1.4 which require relevant employers to report on the composition of recruitment applications and interviews by gender and by manager/non-manager status. Clause 1 of new Schedule 2 removes these additional reporting matters.

The amendment is a result of feedback from employers and employer representatives who indicated that the number of applications and interviews can be considerable, particularly for larger employers and may not provide useful data, especially if gender cannot be determined (for instance, in written

applications). Reporting on these matters would be an excessive burden and regulation, without providing corresponding benefits for employers. This argument is generally accepted by stakeholders.

Clause 2 of Schedule 2: GEI 3 – equal remuneration between women and men

Clause 2 of Schedule 2 to the Principal Instrument currently amends clause 3 of Schedule 1 to the Principal Instrument from 1 April 2015, and provides that relevant employers must report on the remuneration of all its employees.

Remuneration of managers

Clause 2 of new Schedule 2 is different from clause 2 of current Schedule 2 in that it removes the requirement for relevant employers to report on the remuneration of the following managers:

- key management personnel with a reporting distance above the CEO or equivalent;
- the CEO or equivalent; or
- a casual manager.

The requirement to report on the remuneration of the CEO or equivalent has been removed due to concerns raised by employers. Listed entities are already required to provide remuneration information of the CEO and certain key management personnel under section 300A of the *Corporations Act 2001*. Reporting on the remuneration of key management personnel with a reporting distance above the CEO or equivalent has been removed as a consequential change from removing the CEO reporting requirements on remuneration. Remuneration data on casual managers is being streamlined due to the small number of managers employed on this basis.

Disaggregated remuneration data

Currently clauses 3.1.1 and 3.1.2 of Schedule 1 to the Principal Instrument provide that relevant employers must report on disaggregated remuneration data including annualised average full-time equivalent base salary and annualised average full-time equivalent total remuneration. While clause 2 of Schedule 2 currently repeals and substitutes clause 3 of Schedule 1 to the Principal Instrument, it does not amend the requirements of clauses 3.1.1 and 3.1.2.

Clause 2 of new Schedule 2 amends the requirement to provide annualised average full-time equivalent total remuneration for some components of remuneration. Components paid on a non-pro-rata or fixed amount basis must be reported on a fixed total remuneration basis from 1 April 2015. This change is a result of feedback from the Agency that annualising components paid on a non-pro-rata or fixed amount basis distorts the remuneration data. Clause 2 of new Schedule 2 will still require employers to report on, but not annualise, remuneration that is paid on a non-pro-rata basis (such as shares, allowances and overtime). This change will aim to provide more reliable data.

Currently, clause 2 of Schedule 2 to the Principal Instrument amends clause 3 of Schedule 1 to the Principal Instrument from 1 April 2015 by inserting clause 3.6 which require relevant employers to report on disaggregated data by gender on annualised average full-time equivalent components of total remuneration. Employers have again provided feedback that it is considered an excessive burden to identify and report on separate individual components of total remuneration and given the data is difficult to provide, it is likely to be unreliable. Clause 2 to new Schedule 2 removes this requirement.

For clarity, clause 2 of new Schedule 2 makes no further changes (other than those described above) to the matters specified in clause 2 of Schedule 2 of the Principal Instrument.

Clause 3 of Schedule 2: GEI 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

Return to work from parental leave

Clause 3 of Schedule 2 to the Principal Instrument currently amends clause 4 of Schedule 1 to the Principal Instrument from 1 April 2015 by inserting a new requirement (amending clause 4.8) which provides that relevant employers will have to report on disaggregated data by gender and manager/non-manager status on return to work from parental leave.

Clause 3 of new Schedule 2 is different from the current clause 3 of Schedule 2 to the Principal Instrument in that it instead requires reporting on the proportion of employees who took a period of parental leave that cease employment during, or at the end of that period of parental leave (including where the parental leave is taken continuously with any other leave type), by gender and manager/non-manager. Other leave types can include those taken in addition to paid parental leave, in a continuous cycle. For example, a person may utilise paid parental leave, annual leave and unpaid leave during a single block of 'parental leave'.

This amendment is a result of feedback from stakeholders which revealed that while this reporting on return to work from parental leave is regarded as important, the reporting formulation could be improved. The amendment aims to provide a more accurate picture of the return to work rates over time in an organisation.

Requests and approvals for extended parental leave

Clause 3 of Schedule 2 to the Principal Instrument currently amends clause 4 of Schedule 1 to the Principal Instrument from 1 April 2015 by inserting a new requirement (amending clause 4.9) which would require relevant employers to report on the number of requests and approvals for extended parental leave by gender and by manager/non-manager status. Clause 3 of new Schedule 2 does not include this requirement. This change follows the general agreement between stakeholders that this information is complicated and difficult for employers to obtain, responses may not be comparable, and therefore reporting on this measure would be of limited use.

Family and caring responsibilities

Clause 3 of Schedule 2 to the Principal Instrument currently amends clause 4 of Schedule 1 to the Principal Instrument from 1 April 2015 and provides that relevant employers will have to report on policies and strategies and non-leave based measures to support employees with family *and* caring responsibilities (amending clauses 4.12 and 4.13 of Schedule 2). Consistent with the policy objectives of the Act, this reporting matter is designed to support persons with family *or* caring responsibilities.

Clause 3 of new Schedule 2 clarifies this objective and will require relevant employers to report on policies and strategies and non-leave based measures to support employees with family *or* caring responsibilities. For example, a person may have caring responsibilities for a person that is not a family member. Of course, it is recognised that in many cases a person's family and caring responsibilities may overlap. This is a minor amendment to reflect the policy objectives of the Act.

For clarity, clause 3 of new Schedule 2 is otherwise no different to the matters specified in clause 3 of Schedule 2 of the Principal Instrument.

Item 5 repeals Schedule 2 to the Principal Instrument immediately after it commences on 1 April 2015. The note to item 5 clarifies that the item repeals Schedule 2 as amended by the Amending Instrument.

The reason for this is because Schedule 2 (as amended) will amend Schedule 1 to the Principal Instrument on the first moment of 1 April 2015 (i.e. immediately after the expiration of 31 March 2015). Schedule 2 will no longer serve any useful purpose in the Principal Instrument from that point, so will therefore be removed to improve the readability of the Principal Instrument.

Consultation

Section 33A of the Act provides 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, and is complementary to, the consultation requirements in Part 3 of the *Legislative Instruments Act 2003*.

Accordingly, on 25 March 2014, Senator the Hon. Eric Abetz, Minister for Employment and Senator the Hon. Michaelia Cash, Minister Assisting the Prime Minister for Women, announced a public consultation process on reporting requirements under the Act.

Since May 2014, the Department led the public consultation process, in collaboration with the Office for Women within the Department of the Prime Minister and Cabinet. The purpose of the consultation was to identify opportunities to streamline reporting requirements to ensure gender reporting drives results in the workplace and represents value for effort.

To ensure the consultation met the requirements of the Act and that all stakeholders were provided with the opportunity to engage in the process, the Department wrote to all stakeholders (including relevant employers, academics, industry peak bodies, women's groups and other relevant peak bodies) with information on the consultation process, how they could be involved and the information being sought.

A web page was created that provided an opportunity for stakeholders and interested parties to provide feedback to the consultation process. Stakeholders were invited to provide feedback or make a formal submission. The Department also created a short survey designed for relevant employers who had valuable feedback but may have been deterred in providing it through a written submission.

Forty-two submissions were received, of which 28 are publically available on the Department's website (including three anonymous submissions). Five hundred and twenty-three valid survey responses were received, and the Department met with 18 relevant employers to seek their views on the reporting regime and options for improvement. The Agency also attended many of these meetings.

Throughout the consultation process the Department liaised with the Agency to consider the feedback the Agency was receiving from employers about reporting, the integrity of the data received and the implications for implementation of the policy options being considered.

In addition, the Department consulted research and data experts within government, including the Australian Bureau of Statistics and the Australian Taxation Office to explore opportunities for utilising gender related data already collected by government agencies and possible options for streamlining the data collection.

The Department engaged and met with a broad range of stakeholders on possible options for improving the reporting requirements as set out in the Principal Instrument and based on the analysis of the feedback received through the consultation. The feedback provided throughout the consultation formed the evidence base for the decision making process in regards to the changes set out in the Amending Instrument.

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 2015 (No. 1)

The *Workplace Gender Equality (Matters in Relation to Gender Equality Indicators) Amendment Instrument 2015 (No. 1)* (the Amending 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 Amending 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 (being higher education providers or a natural person, body or association that is the employer of 100 or more employees) to report annually on gender equality indicators (GEIs). 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 to the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* (the Principal Instrument). In its current form, Schedule 2 (together with section 4) of the Principal Instrument amends Schedule 1 from 1 April 2015, to increase the number of reporting matters that must be included in public reports under the Act.

Section 33A of the Act provides 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.

The Department of Employment (the Department) has undertaken a public consultation process, in consultation with the Office for Women within the Department of the Prime Minister and Cabinet. The consultation process aimed to determine whether there were opportunities to streamline and improve the reporting requirements, and to ensure the requirements provided appropriate and valuable information while not being unduly burdensome. Striking a balance between reporting that is effective in achieving outcomes in terms of women's workforce participation and overall economic productivity compared to reporting that meets statutory compliance but does not usefully assist in promoting gender equality is essential.

To ensure the consultation met the requirements of the Act and that all stakeholders were provided with the opportunity to engage with the process, the Department invited relevant employers, academics, industry peak bodies, women's groups and other relevant peak bodies to provide feedback or make a formal submission. The Department also created a short survey designed for relevant employers who had valuable feedback but may have been deterred in providing it through a written submission.

Forty-two submissions were received, of which 28 are publically available on the Department's website (including three anonymous submissions). Five hundred and twenty-three valid survey responses were received, and the Department met with 18 relevant employers to seek their views on the current reporting regime and options for improvement. The Agency also attended many of these meetings.

Throughout the consultation process the Department liaised with the Agency to consider the feedback the Agency was receiving from employers about reporting, the integrity of the data received and the implications for implementation of the policy options being considered. The Amending Instrument is based on the learnings from the consultation process. It is clear from the consultation that reporting for the 2013–14 reporting period was difficult for many relevant employers. This is supported by the experience of the Agency, which reports that between 14 February and 20 October 2014, more than 20,000 cases were logged through the Agency helpline (noting that cases represent one or more calls to or from the Agency). Almost all of these cases related to online reporting, with the largest majority (8309, or 41 per cent), specifically relating to reporting issues¹.

It is important to note that most reporting organisations who participated in the consultation process advised that they support the objective of gender equality reporting when it is not onerous and they can clearly see the benefits for their organisation. Women's advocacy groups, academics and social commentators have stated that they consider that the current reporting requirements should be retained because the process of reporting by business is a key factor in driving change at the workplace level. They also support reporting due to the focus it gives to gender equality and the gender pay gap more generally.

The Amending Instrument seeks to reach a balance between ensuring the data collected is reliable and effective in driving gender equality change in the workplace, while being manageable for employers to report.

In summary, the Amending Instrument amends the Principal Instrument so that from the 2015–16 reporting period (i.e. from 1 April 2015 to 31 March 2016) it will:

- amend the definition of *employment status* to exclude independent contractors (i.e. those employed on a contract for services basis) for the purposes of the Principal Instrument;
 - this is based on consultation feedback which highlighted that the original definition did not clarify whether independent contractors should be included. As independent contractors are not employees (as commonly understood), there should not be a requirement to report on this category of employment status.
- streamline additional reporting requirements for GEI 1 (gender composition of the workforce), by removing requirements to report on:
 - recruitment applications and interviews;
 - feedback from employers and employer representatives indicated that the number of applications and interviews could be considerable, particularly for larger employers, and may not provide useful data, especially if gender cannot be determined, for instance, in written applications.
- streamline reporting requirements for GEI 3 (equal remuneration between women and men), by removing requirements to report on:

¹H Conway, Education and Employment Legislative Committee, Senate Estimates Hansard, Thursday, 23 October 2014.

- remuneration of the following managers: the Chief Executive Officer (CEO) or equivalent; key management personnel with a reporting distance above the CEO or equivalent; and casual managers;
 - the requirement to report on the remuneration of the CEO or equivalent and certain key management personnel has been removed due to concerns raised by employers. For listed entities, there is already a requirement to disclose the remuneration of the CEO and certain key management personnel under the *Corporations Act 2001*. There is agreement with all stakeholders on this change; and
 - remuneration data on casual managers is being streamlined due to the small number of managers employed on this basis.
- annualised average full-time equivalent remuneration for components of remuneration that are paid on a non-pro-rata or fixed-amount basis;
 - feedback from the Agency is that annualising components paid on a non-pro-rata or fixed amount basis may distort the remuneration data. This amendment would have the effect of still requiring employers to report on, but not annualise, remuneration that is paid on a non-pro-rata basis (such as shares, allowances and overtime) and thus provide more reliable data.
- additional disaggregated data by gender on annualised average full-time equivalent components of total remuneration.
 - feedback from employers and industry is that it is considered an excessive burden to identify and report on separate individual components of total remuneration and given the data is difficult to provide, it is likely to be unreliable.
- streamline additional reporting requirements for GEI 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), by:
 - improving the reporting matter regarding persons returning to the workforce from parental leave;
 - feedback from stakeholders is that the intention of this measure is important, but the formulation could be improved. This amendment therefore replaces this reporting matter with a requirement to report on the proportion of employees who took a period of parental leave that cease employment during, or at the end of that period of parental leave (including where the parental leave is taken continuously with any other leave type), by gender and manager/non-manager. Using this formulation provides a more accurate picture of the return to work rates over time in an organisation.
 - removing the requirement to report on requests and approvals for extended parental leave;
 - stakeholders generally agree that this information is complicated and difficult for employers to gather, responses may not be comparable and reporting on this measure would be of limited utility.
- make other amendments to improve the readability and operation of the Principal Instrument – without streamlining reporting matters. For example, some definitional changes that will be made to the Principal Instrument are simply to ensure that definitions are fully contained without a need to cross-refer to other clauses.

The Amending Instrument

As noted above, the Amending Instrument will streamline some existing reporting requirements for relevant employers, as well as some additional reporting requirements that were to commence on 1 April 2015. For the sake of clarity, the streamlining of these requirements is not a limitation on the human rights that are promoted by the Principal Instrument. The Principal Instrument (as would be amended by the Amending Instrument) will still ensure that targeted, reliable and useful data will be available to relevant employers and the Agency. In contrast, measures (whether in full or in part) that represent an unnecessary burden without a corresponding benefit; are unreliable; or do not present a meaningful picture of the workforce profile, are to be streamlined as considered appropriate and as based on the findings from the consultation process.

The Principal Instrument (as would be amended by the Amending Instrument) will provide additional reporting requirements designed to promote the human rights referred to below from 1 April 2015, compared with the existing requirements applicable before 1 April 2015. In other words reports provided by relevant employers for the 2015–16 reporting period (commencing 1 April 2015) will contain more useful information than those provided for the 2014–15 reporting period (for the period 1 April 2014 to 31 March 2015).

Even where some reporting matters that were to commence on 1 April 2015 are to be removed or streamlined, the reporting framework will not prevent relevant employers providing additional information. For example, for a number of reporting matters and GEIs, there are “free text” options to report on additional reporting matters.

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) ; and
- 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 Principal Instrument as would be amended by the Amending Instrument 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.*²

The Principal Instrument, as would be amended by the Amending Instrument, contributes to the elimination of discriminatory workplace practices by improving the focus on core reporting matters for the GEIs on areas of key priority for gender equality. This includes the requirement for relevant employers to report on the remuneration of managers and non-managers, as well as policies or strategies on equal remuneration between women and men, including any gender pay equity objectives.

The Principal Instrument, as would be amended by the Amending Instrument, will enable relevant employers to consider their workplace practices and outcomes in relation to gender equality in a more targeted and considered manner, and to more easily effect improvements over time. In turn, this will advance freedom from discrimination in employment for women and men.

Therefore, the Act and the Principal Instrument (as would be amended) will continue to promote the principle that employment for women should be dealt with on the basis of merit and promote the elimination of discrimination against, and the provision of equal opportunity for, women in relation to employment matters.

Right to equality and non-discrimination on the ground of sex

Equality affirms that all human beings are born free and individuals have the same rights and deserve the same level of respect. Non-discrimination is an integral part of the principle of equality. Articles 4 and 26 of the ICCPR contain a positive obligation on State Parties to take steps to protect against discrimination on the ground of sex. The right to equality and non-discrimination on the ground of sex is also affirmed in Article 2(2) of the ICESCR in relation to the provision of rights under that Covenant and Articles 2, 3 and 4 of CEDAW.

The Principal Instrument (as it would be amended by the Amending Instrument) promotes the right to equality and the elimination of discrimination on the basis of gender in the workplace, by improving the focus of reporting matters for the GEIs on areas of key priority for gender equality. The Principal Instrument (as it would be amended) also promotes the full and equal participation of women in the workforce by enabling compliance with the minimum standards set under the Act by the *Workplace Gender Equality (Minimum Standards) Instrument 2014* and, particularly the objective of sex-based harassment and discrimination prevention in the employer's workplace.

As noted above, a primary objective of the framework of the Act and the Principal Instrument (as it would be amended) includes promoting equal employment opportunities for women. To the extent that the Principal Instrument (as it would be amended) provides for measures intended to assist or recognise the disadvantage that women face in the workplace, these are permitted 'special measures' consistent with the right to equality and non-discrimination.

² 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.'

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 Principal Instrument (as it would be amended by the Amending Instrument) promotes equal remuneration between women and men in the workplace by requiring employers to report on the remuneration of managers and non-managers, as well as policies or strategies on equal remuneration between women and men, including any gender pay equity objectives. The Principal Instrument (as it would be amended) will enable employers to consider their workplace practices and outcomes in relation to gender equality in a more targeted and considered manner, and to more easily effect improvements over time.

Conclusion

The Amending Instrument (which amends the Principal Instrument) is compatible with human rights because it promotes the protection of human rights.