

## EXPLANATORY STATEMENT

### *Workplace Gender Equality (Minimum Standards) Instrument 2014*

#### Summary

The *Workplace Gender Equality (Minimum Standards) Instrument 2014* (**the Instrument**) is made by the Minister for Employment under section 19(1) of the *Workplace Gender Equality Act 2012* (**the Act**). The purpose of the Instrument is to set the minimum standards that apply to specified relevant employers (those with 500 or more employees) in respect of the gender equality indicators.

The minimum standards represent the minimum an employer must do to demonstrate a commitment to gender equality in their workplace. In order to meet the minimum standards a relevant employer with over 500 employees must have in place one or more of the policies or strategies specified below:

- a policy or strategy that supports the gender equality indicator “gender composition of the workforce” and that aims to achieve the objective of supporting gender equality in the employer’s workplace;
- a policy or strategy that supports the gender equality indicator “equal remuneration between women and men” and that aims to achieve the objective of equal remuneration between women and men employees of the employer;
- a policy or strategy that supports the gender equality indicator “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” and that aims to achieve the objective of flexible working arrangements for employees of the employer with caring responsibilities;
- a policy or strategy that supports the gender equality indicator “sex-based harassment and discrimination” and that aims to achieve the objective of sex-based harassment and discrimination prevention in the employer’s workplace.

#### Background

The Instrument is made under subsection 19(1) of the Act. Subsection 19(1) provides that before 1 April 2014, the Minister will, by legislative instrument, set minimum standards in relation to specified gender quality indicators, specified relevant employers and specified reporting periods.

Under the Act, relevant employers (non-public sector employers with 100 or more employees and registered higher education providers) must lodge an annual report containing information relating to the employer and the gender equality indicators. Information contained in the report will be analysed by the Workplace Gender Equality Agency (**the Agency**) to determine whether an employer has met the minimum standards. The Agency may also require a relevant employer to give the Agency specified information that relates to the employer’s compliance with the minimum standards.

If an employer fails to meet an applicable minimum standard at the end of a reporting period (the base period), the Agency must offer to provide the employer with advice and assistance in relation to improving the employer’s performance against that minimum standard. If the employer fails to improve against the minimum standard by the end of the second reporting period after the base period (after two years), the employer will be considered to have failed to comply with the Act.

If an employer fails to comply with the Act without reasonable excuse, the Agency may name the employer in a report or by electronic or other means as having failed to comply with the Act and set out details of the non-compliance. The Agency must give the employer notice in writing of a proposal to name the employer and have regard to any written representations made to the Agency by the employer within 28 days of the notice.

## **Explanation of Provisions**

### *Name of Instrument*

Section 1 of the Instrument states the name of the Instrument, which is the *Workplace Gender Equality (Minimum Standards) Instrument 2014*.

### *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 19(1) of the Act.

### *Definitions*

Section 4 of the Instrument defines the terms used in the Instrument.

### *Minimum Standards*

Section 5 of the Instrument sets minimum standards for subsection 19(1) of the Act.

Subsection 5(1) of the Instrument provides that the minimum standards apply to an “Employer” for the reporting period commencing 1 April 2015 and each subsequent reporting period. “Employer” is defined by section 4 of the Instrument to mean a relevant employer that is the employer of 500 or more employees in Australia.

For the reporting period commencing 1 April 2014, subsection 5(2) of the Instrument provides that the minimum standards will apply to an Employer from 1 October 2014 to the end of that period (31 March 2015).

Subsection 5(3) of the Instrument describes the minimum standards. Paragraph 5(2)(a) of the minimum standards requires Employers to have in place policies or strategies to support one or more of the specified gender equality indicators. Paragraph 5(2)(b) sets out the requirement that the policies or strategies must aim to achieve the particular objective described in column 2 of the table for each specified gender equality indicator.

Relevant employers are required to provide information on the existence of policies or strategies relating to the objectives described in column 2 of the table in their reports to the Agency. The Agency will be able to identify whether an Employer has met the minimum standards in a reporting period by reviewing the Employer’s report to the Agency for that period.

The table at subsection 5(2) of the Instrument specifies the gender equality indicators and particular objectives that are the subject of the minimum standards.

Item 1 of the table sets out that an Employer may meet the minimum standards relating to this item by putting in place a policy or strategy to support the gender equality indicator: *gender composition of the workforce*. Such a policy or strategy must aim to achieve the objective of supporting gender equality in the Employer's workplace.

Item 2 of the table sets out that an Employer may meet the minimum standards relating to this item by putting in place a policy or strategy to support the gender equality indicator: *equal remuneration between women and men*. Such a policy or strategy must aim to achieve the objective of equal remuneration between male and female employees of the Employer that are performing the same or comparable tasks.

Item 3 of the table sets out that an Employer may meet the minimum standards relating to this item by putting in place a policy or strategy to support the gender equality indicator: *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*. Such a policy or strategy must aim to achieve the objective of flexible working arrangements for employees of the Employer with caring responsibilities.

Item 4 of the table sets out that an Employer may meet the minimum standards relating to this item by putting in place a policy or strategy to support the gender equality indicator: *sex-based harassment and discrimination*. Such a policy or strategy must aim to achieve the objective of sex-based harassment and discrimination prevention in the Employer's workplace.

## **Consultation**

The Act sets out under Section 33A that the Minister is required to consult with the Agency before making a legislative instrument 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 the consultation requirements set out in Part 3 of the *Legislative Instruments Act 2003*.

Consultation was undertaken with a number of stakeholders, including the Agency and industry groups, in the initial stages of developing the minimum standards. In February 2014, consultation was undertaken in writing with a broad range of stakeholders on the proposed minimum standards as part of an exposure draft process. Key stakeholders representing industry, employee organisations, higher education providers as well as other experts were provided with the exposure draft of the Instrument.

The feedback provided through the consultation process formed part of the decision making process by the Minister in regards to the minimum standards.

## **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 16305).



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 (Minimum Standards) Instrument 2014***

The *Workplace Gender Equality (Minimum Standards) Instrument 2014* (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 Instrument sets, for the first time, the minimum standards with which specified relevant employers must comply under the *Workplace Gender Equality Act 2012* (the Act).

The purpose of the Act is to promote and improve workforce participation through the promotion of gender equality in the work place, with specific recognition of equal remuneration and family and caring responsibilities as issues central to the achievement of gender equality.

To this end, the Act requires that minimum standards are set in relation to specified gender equality indicators, specified relevant employers and specified reporting periods. In setting the minimum standards, the Instrument promotes and improves gender equality by supporting employers in identifying and removing barriers to the full and equal participation of women in their workplace.

The Act identifies five gender equality indicators, and a further gender equality indicator is specified by the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* (the Gender Equality Indicators Instrument). The gender equality 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) sex-based harassment and discrimination.

The minimum standards represent the minimum an employer must do to demonstrate a commitment to gender equality in their workplace. The minimum standards apply to relevant employers (that is, employers to whom the Act applies) that have 500 or more employees. In order to meet the minimum standards employers must have in place one or more policies or strategies to support the specific objective of the gender equality indicators as specified below:

- a policy or strategy that supports the gender equality indicator “gender composition of the workforce” and that aims to achieve the objective of supporting gender equality in the employer’s workplace;

- a policy or strategy that supports the gender equality indicator “equal remuneration between women and men” and that aims to achieve the objective of equal remuneration between women and men employees of the employer;
- a policy or strategy that supports the gender equality indicator “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” and that aims to achieve the objective of flexible working arrangements for employees of the employer with caring responsibilities;
- a policy or strategy that supports the gender equality indicator “sex-based harassment and discrimination” and that aims to achieve the objective of sex-based harassment and discrimination prevention in the employer’s workplace.

If an employer fails to meet an applicable minimum standard at the end of a reporting period (the base period), the Workplace Gender Equality Agency (the Agency) must offer to provide the employer with advice and assistance in relation to improving the employer’s performance against that minimum standard. If the employer fails to improve against the minimum standard by the end of the second reporting period after the base period, the employer will be taken to have failed to comply with the Act.

If an employer fails to comply with the Act without reasonable excuse, the Agency may name the employer in a report or by electronic or other means as having failed to comply with the Act and set out details of the non-compliance.

### **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)
- 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.*’<sup>[1]</sup>

The Instrument contributes to the elimination of discriminatory workplace practices by creating the minimum standards relating to gender equality that specified relevant employers must comply with under the Act. This will require specified relevant employers to have in place one or more policies or strategies that support gender equality in the workplace. 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 promotes the elimination of discrimination on the basis of gender in the workplace by placing a positive obligation on specified relevant employers to meet the minimum gender equality standards specified by the Instrument, in accordance with the Act. 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 promotes equal remuneration between women and men by creating minimum standards that relate to the gender equality indicator: equal remuneration between women and men.

#### **Conclusion**

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

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