

Senate Education and Employment Legislation Committee
SEX DISCRIMINATION AND FAIR WORK (RESPECT AT WORK) AMENDMENT
BILL 2021

Attorney-General's Department

Hearing date: 20 July 2021

Hansard page: 47

Question type: Spoken

Louise Pratt **asked the following question:**

Mr Jones: I can take you through the confidentiality deed if you'd like.

Senator PRATT: If you're able to table that, that would be terrific.

Mr Jones: I don't have a copy of the confidentiality deed on me. We can take that on notice though.

Senator PRATT: Does that mean you will table it?

Mr Jones: Yes.

The response to the Senator's question is as follows:

An example of the deed of confidentiality in the form provided to stakeholders for consultations on the Bill is attached. Similar deeds have been used in consultations on other Fair Work legislation.

DEED OF CONFIDENTIALITY

THIS DEED is made on theday of 2021

Between

THE COMMONWEALTH OF AUSTRALIA as represented by the Attorney-General's Department
("the Commonwealth")

and

[Print name]

of [Print address] ("the Recipient")

representing the following organisation

..... ("the Organisation")

RECITALS

- A. The Recipient will be provided with information in relation to the Commonwealth's proposed Draft Legislation ("the Information Process").
- B. The Recipient will access Confidential Information during their involvement in the Information Process. The purpose of the Information Process is to enable the Recipient on behalf of the Organisation to provide feedback to the Commonwealth on the Draft Legislation.
- C. The Commonwealth requires the Recipient to preserve and maintain the confidentiality of information to which the Recipient will have access to by virtue of their involvement in the Information Process.

1. INTERPRETATION

In this Deed:

"Confidential Information" means Draft Legislation, information about development and content of the Draft Legislation and other information provided by the Commonwealth or by any other participant in the Information Process, (however stored) and any other information that:

- (a) is designated by the Commonwealth as confidential;
- (b) by its nature is confidential;
- (c) the Recipient knows or ought to know is confidential;
- (d) otherwise relates to the Information Process; or
- (e) is Personal Information.

“Draft Legislation” means all information contained within the exposure drafts of the Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021 and the Fair Work Amendment (Respect at Work) Regulations 2021, written information about this draft legislation and regulation (including but not limited to underlying policy) or any other proposed associated legislation, including subordinate legislation.

“Personal Information” has the same meaning as it has in section 6 of the *Privacy Act 1988*.

2. UNDERTAKINGS

The Recipient makes the following undertakings on behalf of the Recipient and the Organisation, being a duly authorised representative of the Organisation, knowing the Commonwealth relies on those undertakings. The Recipient undertakes in respect of the Confidential Information:

- (a) to deal with all written material provided to the Recipient by the Commonwealth as directed;
- (b) to at all times treat as confidential and not disclose to any person not involved in the Information Process any Confidential Information, other than as necessary to brief the executive officers of the Organisation of the outcomes of the Information Process;
- (c) to at all times keep all Confidential Information securely stored and under effective control of the Recipient in accordance with any directions by the Commonwealth;
- (d) to use Confidential Information solely for the purpose of the Information Process;
- (e) to notify the Commonwealth immediately if the Recipient has been asked to disclose Confidential Information, or has been, or is likely to be, required by law to disclose the Confidential Information e.g. under subpoena or summons, or in giving evidence to any Court, tribunal or other body;
- (f) to not copy, make any note or record of part of the Confidential Information or cause to permit another person to do any of the forgoing other than for the purpose of the Information Process;
- (g) to not modify, create or recreate by any means in whole or in part any aspect or version of the Confidential Information or cause to permit another person to do any of the forgoing other than for the purpose of the Information Process; and
- (h) to immediately notify the Commonwealth of any suspected or actual use, copying or disclosure of the Confidential Information by any person for purposes other than for the purpose of the Information Process.

3. ACKNOWLEDGMENT OF DUTY

The Recipient acknowledges that:

- (a) any and all Confidential Information and materials to which he or she will have access will be disclosed to him or her solely for the purpose of the Information Process and for no other purpose;
- (b) the obligation to keep the Confidential Information secret continues after the end of the completion of the Information Process;
- (c) he or she may additionally owe duties of confidentiality to third parties that have provided information to the Commonwealth on a confidential basis;
- (d) this Deed does not provide for any change in the ownership of the Confidential Information;
- (e) a breach of this Deed by the Recipient or the Organisation may constitute a breach of the *Crimes Act 1914* (including but not limited to sections 70 and 79), which carries a penalty of up to two years imprisonment; and

(f) the obligations created by this Deed are in addition to any other obligation or duty which may arise under statute or otherwise; especially as may arise under the *Crimes Act 1914*.

4. RESTRICTIONS IMPOSED

The restrictions imposed by this Deed will not apply:

- (a) to the extent to which disclosure is required by law or court order;
- (b) to the extent to which it is necessary to enable the Recipient to fulfil the purpose of the Information Process; or
- (c) to that which is in or comes into the public domain otherwise than by disclosure in breach of this Deed.

5. INDEMNITY

The Recipient agrees to indemnify and hold harmless the Commonwealth against all costs (including legal costs and expenses on a solicitor / client basis), liability, losses and claims reasonably incurred by the Commonwealth as a result of a breach of this Deed.

6. CONTINUED EFFECTIVENESS OF THIS DEED

Each of the obligations of this Deed shall remain an independent and on-going obligation and will continue as such after execution of this Deed.

7. COSTS

Each party must pay its own costs in relation to finalising and executing this deed and in relation to effecting any other document or thing required to give effect to this deed.

8. APPLICABLE LAW

This Deed shall be construed in accordance with the laws of the Australian Capital Territory.

9. EXECUTION BY COUNTERPARTS

This Deed may be executed in any number of counterparts and all those counterparts shall be taken together to constitute one and the same instrument

EXECUTED BY THE PARTIES AS A DEED

SIGNED SEALED AND DELIVERED for and on)
behalf of the **Commonwealth of Australia** in)
the presence of:)
)
)

.....
(Signature of Witness)

.....
(Signature of Commonwealth representative)

.....
(Name of Witness)

.....
(Name of Commonwealth representative)

Date:.....

SIGNED, SEALED AND DELIVERED

On the day of 2021
(Signature)

by
(Print the Recipient's full name)

in the presence of:

.....

.....

.....

(Witness name, address and signature)

Senate Education and Employment Legislation Committee
SEX DISCRIMINATION AND FAIR WORK (RESPECT AT WORK) AMENDMENT
BILL 2021

Attorney-General's Department

Hearing date: 20 July 2021

Hansard page: 50

Question type: Spoken

Deborah O'Neill asked the following question:

Senator O'NEILL: In April, so she hadn't been in the role that long. That's a very significant report—over 900 pages. You've talked about how complex it was. It sat there, nothing was done on it, and all of a sudden we've had this flurry of activity. I don't like to be cynical, but this smacks of a government trying to quickly get on with the legislation—I think you said 'quickly get the legislation out'—to look like it's doing something when the work of government has not been sufficiently undertaken in the period from March 2020. A whole year has elapsed with no care for creating legislation or putting it out to consideration. I want to go back to the confidentiality deed which was imposed on the Law Council of Australia. Why was that done, and what version of the legislation did they get? How many versions were there?

Mr Jones: I can talk to why there was a confidentiality deed. This is standard practice for any amendments to the Fair Work Act where we have an exposure draft of legislation that is confidentially viewed by members of the committee of industrial relations or under the Intergovernmental Agreement for a National Workplace Relations System, and it has been the case for quite a long time

Senator O'NEILL: How long?

Mr Jones: My recollection was that 2007, the development of the Fair Work Act, might have been the first time, but there may have been times before that. That's just my experience and my recollection.

Senator O'NEILL: Thank you. If you can take that on notice, I would be very interested.

The response to the Senator's question is as follows:

It has been longstanding practice for amendments to Fair Work legislation to be subject to confidential consultation processes on exposure drafts with the Committee on Industrial Relations and state and territory officials. In the time available we have been unable to ascertain if confidentiality deeds were used before the Fair Work legislation.

The consultations are undertaken on a confidential basis because the legislation generally does not have final approval for introduction to the Parliament at that point and is subject to change.

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BILL 2021

Attorney-General's Department

Hearing date: 20 July 2021

Question date: 23 July 2021

Question type: Written

Louise Pratt **asked the following question:**

Notwithstanding the provisions of the current bill, can you confirm which other recommendations of the Respect@Work report have been implemented by primary or delegated legislation?

The response to the Senator's question is as follows:

In addition to the recommendations that would be implemented by the Bill, recommendation 31 has been implemented through an amendment to the *Fair Work Regulations 2009* to clarify that sexual harassment can amount to serious misconduct warranting immediate dismissal from the workplace. This amendment commenced on 10 July 2021.

Furthermore, on 20 May 2021, Work Health and Safety Ministers finalised the response to the Review of the Model Work Health Safety Laws. This included agreement to progress recommendation 2 of the Model Law Review, to amend the model WHS Regulations to deal with psychological health. This is consistent with the Government's support for recommendation 35 of the Respect@Work Report. This work is being progressed by Safe Work Australia.

