

Master Builders Australia

**Supplementary Submission to Senate Education, Employment and
Workplace Relations Committee**

on

Equal Opportunity for Women in the Workplace Amendment Bill 2012

30 April 2012



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1 Introduction

Master Builders Australia is the nation's peak building and construction industry association which was federated on a national basis in 1890. Master Builders Australia's members are the Master Builder State and Territory Associations. Over 122 years the movement has grown to 33,000 businesses nationwide, including the top 100 construction companies. Master Builders is the only industry association that represents all three sectors, residential, commercial and engineering construction.

2 Purpose of Submission

- 2.1 Master Builders thanks the Committee for being given the opportunity to provide oral evidence on 18 April 2012, which supplemented Master Builders' written submission dated 23 March 2012. We have examined the proof of the Hansard in respect of this matter and this submission emanates from some of the issues that were raised during the course of providing evidence.
- 2.2 Specifically, Senator Cash asked Master Builders to take on notice the question relating to the definition of 'remuneration' in the Equal Opportunity for Women in the Workplace Amendment Bill 2012 (the Bill).¹ This submission responds to the Senator's questions on that topic.
- 2.3 We have no corrections to make to the Hansard that has been made available in proof form to Master Builders.

3 Background

- 3.1 The Bill proposes to amend the existing section 3(1) of the *Equal Opportunity for Women in the Workplace Act 1999* (Cth) (the Act) by expanding the definition of "employment matters" as currently set out in the Act. The Bill proposes to expand subsection 3(1)(e) of the Act by inserting "including equal remuneration between women and men" after the word "employees" (emphasis added). However, the Bill does not define what "remuneration" is, an issue which will be discussed in parts 4 and 5 of this submission.

¹ Proof Committee Hansard, Senate Education, Employment and Workplace Relations Legislation Committee, Equal Opportunity for Women in the Workplace Amendment Bill 2012, 18 April 2012, p 35.

- 3.2 Reporting employers would be required to include “aggregate information about remuneration between women and men performing the same or comparable tasks within and across occupations and industries” in a public report that they submit to the new Workplace Gender Equality Agency (WGEA).²
- 3.3 Pursuant to the proposed section 14 of the Act,³ the WGEA must not publish any information under section 15 relating to remuneration submitted by an employer in its public report or use such information in a report by the WGEA under section 12.⁴ However, the proposed subsection 14(3) makes an exception where remuneration information can be so published if the information is in aggregate form and does not identify, either directly or indirectly, a specific employer or another specific person.

4 Definition of “remuneration”

- 4.1 Although the Bill sets out a new requirement for employers to report on equal remuneration between women and men in their workplace, it does not contain a specific definition of what “equal remuneration” or “remuneration” is for the purpose of the new reporting requirements.
- 4.2 The explanatory memorandum to the Bill attempts to provide some assistance as to what “remuneration” may mean in the context of the Bill by stating that the “ILO Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value may provide guidance around elements that may comprise remuneration.”⁵
- 4.3 The ILO Convention referred to above is the 1951 Equal Remuneration Convention (No. 100) (the Convention).⁶ Article 1 of the Convention contains a definition of what “remuneration” is for the purposes of the Convention and is as follows:

For the purpose of this Convention-

² Explanatory memorandum, p 7.

³ Item 46 of the Bill.

⁴ Section 15 allows part or whole of the public report submitted by an employer to be made available to a member of the public on application. Section 12 requires the Agency to submit reports to the Minister on the Agency’s operations or on any matter related to the exercise of the Agency’s power or the performance of its functions.

⁵ Explanatory memorandum, above n 1.

⁶ Copy of the Convention can be found at [http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl fs 84_en.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_84_en.pdf)

- (a) *the term remuneration includes the ordinary, basic or minimum wage or salary and additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment.*
- (b) *the term equal remuneration for men and women workers for work of equal value refers to the rates of remuneration established without discrimination based on sex.*

- 4.4 It is evident from the above definition that the Convention wording is very general, without going so far as to list what elements may form part of remuneration. Master Builders acknowledges that while this generality may have been necessary for the purpose of the Convention, it renders the definition insufficiently clear for the purposes of the Act. Given the importance of the definition of remuneration to the framework of the proposed legislative changes,⁷ Master Builders submits that a sufficiently detailed definition of “remuneration” needs to be explicitly included in the Act.
- 4.5 In this regard, Master Builders notes that if employers do not have a clear and easy to understand definition of what elements are to be included in remuneration, they may inadvertently include or exclude certain elements in their reports. If there is no precise guidance of what does and does not constitute “remuneration”, there is a risk that information about pay rates or salary packages will be released to the public. Although proposed section 14(3) stipulates a legislative safeguard that remuneration information must not be disclosed if it directly or indirectly identifies a specific employer or person, Master Builders submits that a better safeguard is provided by a clear and precise definition of “remuneration”. Employers will have a degree of certainty when they report on equal remuneration, one which extends to the fact that information which could comprise part of a remuneration package would not be mistakenly released to the public.
- 4.6 A specific definition of “remuneration” will also help the WGEA to achieve its function under the proposed section 10(1)(d) of the Act, namely to collect and analyse information provided by relevant employers under the Act. Employers and the WGEA will know exactly what remuneration information should be collected and reported, thus achieving consistency and uniformity.

⁷ Proposed section 2A of the Act states that one of the principal objects of the Act is to “promote and improve gender equality (including equal remuneration between women and men) in employment and in the workplace.”

- 4.7 Master Builders supports, with one amendment, the AiG’s proposed definition of “remuneration”, which is set out at page 6 of the AiG’s written submission. The proposed definition is as follows:

Remuneration includes:

- *Salary and wages;*
- *Incentive-based payments and bonuses;*
- *Allowances;*
- *Penalty rates;*
- *Leave payments;*
- *Benefits, including company cars, telecommunications, company loans, etc;*
- *Superannuation;*
- *Provision of company products and services to the employee;*
- *Payments and benefits associated with salary sacrifice arrangements; and*
- *Any other payment or benefit paid directly or indirectly, whether in cash or in kind, by the employer to the employee and arising out of the employee’s employment.*

- 4.8 The definition above should also include reference to termination of employment payments, including in lieu of notice and unused leave entitlement payments.

5 Definition of “equal remuneration”

- 5.1 Master Builders further submits that the Act needs to include a definition of what “equal remuneration” means. The proposed subsection 3(1)(e) only references equal remuneration between women and men, without providing direction as to whether this covers employees only, or extends to other people in the workplace such as independent contractors. A number of statutes define “workers” to include independent contractors.⁸ It should be beyond doubt that this is not intended in the Act. Master Builders understands that the proposed

⁸ For example, see section 7 of the new harmonised *Work Health and Safety Act 2011* (Cth).

gender equality indicators will only cover employees,⁹ hence a definition of “equal remuneration” is necessary to make that point clear.

- 5.2 A definition which will provide sufficient guidance to employers bound by the new reporting requirements that equal remuneration between men and women pertains only to remuneration between men and women in equal or comparable jobs or occupations must be adopted. This clarity is currently missing from the wording of the Bill, which only makes reference to equal remuneration between men and women.
- 5.3 Government should not proceed with the Bill until more appropriate definitions are agreed with all stakeholders.

6 Conclusion

- 6.1 Master Builders again thanks the Committee for the opportunity to provide written and oral evidence to the Committee. We would be happy to expand any of the additional arguments set out in this supplementary submission.
- 6.2 The Bill should not proceed until the issue of the definition of remuneration and of equal remuneration is settled.

⁹ Proposed section 3(1) of the Act.