



Australian Government

Department of Education, Employment and Workplace Relations

Ms Sharryn Jackson MP
Chair
Standing Committee on Employment and Workplace Relations
Parliament of Australia
House of Representatives
PO Box 6021
CANBERRA ACT 2600

Dear Ms Jackson

Updated information on the provisions of the *Fair Work Act 2009*

The purpose of this letter is to provide the House of Representatives Standing Committee on Employment and Workplace Relations (the House Committee) with an update on the progress of, and subsequent amendments to, the *Fair Work Act 2009* (FW Act) which are relevant to its Inquiry into pay equity and associated issues related to increasing female participation in the workplace (the Inquiry).

The Department of Education, Employment and Workplace Relations (the Department) made a submission in September 2008 to the House Committee. This was followed by a supplementary submission provided on 8 January 2009, providing an overview of the Fair Work Bill 2008 (the Bill) and detailed advice on those provisions relevant to gender pay equity and women's workforce participation.

Since then, the legislation has been amended in response to the report by the Senate Standing Committee on Education, Employment and Workplace Relations (delivered on 27 February 2009) and was also subject to further changes during its passage through Parliament.

On 20 March 2009, the Senate passed the Bill (with amendments). Royal Assent was received on 7 April 2009. The FW Act will commence on 1 July 2009 and will be fully operational by 1 January 2010.

This letter provides updated information to the House Committee on subsequent amendments made to the Bill which have direct relevance to supporting women's workforce participation and pay equity. The key amendments of relevance to the House Committee's Inquiry relate to:

- the legislated right to request flexible working arrangements;



- the requirement of the General Manager of Fair Work Australia to conduct research into the utilisation of the statutory right to request flexible working arrangements, extension of an additional 12 months unpaid parental leave and individual flexibility agreements;
- equal remuneration (technical amendments only); and
- anti-discrimination protections (technical amendments only).

Right to request flexible working arrangements

As detailed in paragraphs 4.6 - 4.10 of the supplementary submission, the National Employment Standards provide a statutory right to request flexible working arrangements. Under the Bill, the right was only applicable to employees who are the parent of, or have the responsibility for, a child under school age. Employers were only able to refuse the request on reasonable business grounds.

The Bill was subsequently amended in the Senate to:

- extend the right to request flexible working arrangements to an employee who is a parent of, or has responsibility for, the care of a child who is under 18 and has a disability; and
- allow parties to agree in an industrial instrument to empower Fair Work Australia (FWA) to hear and settle disputes arising from an employer's refusal of a request for a flexible work arrangement.

Research function of FWA

When the Bill was introduced into Parliament, it included a requirement that the General Manager of FWA review developments in Australia in making enterprise agreements every three years. The Bill was subsequently amended in the Senate to provide expanded research functions.

The legislation now provides that (in addition to reviewing agreement making trends) the General Manager is to:

- conduct research into the extent to which individual flexibility arrangements under modern awards and enterprise agreements are being agreed to, and the content of those arrangements;
- conduct research into the operation of the provisions of the National Employment Standards relating to:
 - requests for flexible working arrangements under subsection 65(1); and
 - requests for extensions of unpaid parental leave under subsection 76(1); and
- conduct research into:
 - the circumstances in which employees make such requests;
 - the outcome of such requests; and
 - the circumstances in which such requests are refused.

The legislation provides that this research be conducted every three years.

While the research is not specifically required to be gender-specific, it will act as a useful source of information on how the provisions in the FW Act which facilitate flexible work and the combining of employment with parental responsibilities are being utilised and implemented in practice.

For further information on individual flexibility agreements and parental leave, please refer to paragraphs 4.12 – 4.21 of the supplementary submission.

Equal remuneration

With regard to equal remuneration orders, the Government amended Section 306 of the Bill to make it clear that a term of a modern award, an enterprise agreement or a FWA order has no effect in relation to an employee if it is less beneficial (as opposed to 'inconsistent with') than a term of an equal remuneration order that applies to the employee. This is a technical amendment only which clarifies the intended relationship between modern awards, enterprise agreements and FWA orders.

For detailed information relating to equal remuneration provisions in the FW Act, please see paragraphs 3.4 – 3.30 of the supplementary submission.

Anti-discrimination

Clause 351 of the FW Act contains enhanced protections against discrimination (see paragraphs 3.3 – 3.58 of the supplementary submission). The Government made a technical amendment to this provision to ensure that the exemption in clause 351(2)(a) will operate as intended. As a result, the anti-discrimination protections in subsection 351(1) of the FW Act will not apply if action is 'not unlawful' (as opposed to 'authorised') under a Commonwealth, State or Territory anti-discrimination law. The amendments ensure the exemption operates as intended.

I trust this information is of assistance to the House Committee.

Yours sincerely



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