

EXPLANATORY MEMORANDUM

Industrial Relations (Equal Remuneration) Amendment Bill 2018

Overview of the Bill

The purpose of the Bill is to allow for the Western Australian Industrial Relations Commission (**Commission**) to hear pay equity cases and to make enforceable equal remuneration orders so that employees are able to receive equal remuneration for work of equal or comparable value.

To this end, the Bill:

- Proposes the inclusion of provisions in the *Industrial Relations Act 1979 (WA)* (**Act**) that will allow Western Australian employees covered by the state industrial relations system to make claims to the Commission for equal remuneration orders as follows:
 - Creates equal remuneration orders that the Commission may issue upon a claim for equal remuneration for work of equal or comparable value.
 - Imposes a threshold requirement that the Commission be satisfied that there is not already equal remuneration before making an equal remuneration order.
 - Allows equal remuneration orders to be undertaken either immediately or progressively as provided in the order.
 - Prevents an equal remuneration order from permitting a reduction in an employee's rate of remuneration.
 - Prevents the power of the Commission to issue an equal remuneration order from being delegated to a Registrar.
- Defines and uses the term 'remuneration' so as to provide the Commission with the capacity to ensure there is equity in all conditions of employment.
- Allows for a claim for equal remuneration to be referred to the Commission by
 - an employer with a sufficient interest;
 - a relevant organisation or association;
 - the Minister;
 - an employee; or
 - the Commissioner for Equal Opportunity.

The Bill does not allow the Commission to determine equal remuneration claims in all circumstances. If proceedings for an alternative remedy have been commenced under the Act or another law of the State or the Commonwealth to ensure equal remuneration or prevent unequal remuneration the Commission cannot determine that claim. Similarly, a person making an equal remuneration claim cannot commence alternative proceedings. This will guard against duplication of proceedings and double recovery by claimants.

Clause Notes

Clause 1

This clause contains the title of the Bill.

Clause 2

This clause sets out the commencement provisions.

Proposed sections 1 and 2 of the proposed Act will come into operation on the day on which the Act receives the Royal Assent.

The rest of the proposed Act will come into operation on a day that will be fixed by Proclamation. Different days may be fixed for different provisions.

Clause 3

This clause provides the object of the Bill.

Clause 4

This clause amends the principal objects of the *Industrial Relations Act 1979 (WA)*.

Sub clause (a) amends section 6(ac) of the Act to include work by men and women employees of equal or comparable value. This broadens the scope of this section and brings the objects of the Act into line with the criteria used by the Commission to determine minimum wages under section 50A(3)(a)(vii) of the Act and Principle 10 of the State Wage Fixing Principles.

Clause 5

Sub clause (1) defines certain terms used in the Bill to ensure the provisions of the Act are applied as intended.

Equal remuneration for work of equal or comparable value is defined in the proposed section 23C(1) as equal remuneration for men and women employees for work of equal or comparable value.

Equal remuneration order is defined in the proposed section 23C(2) as an order to ensure that there will be equal remuneration for employees for work of an equal or comparable value. This terminology is again consistent with the Commission criteria to determine minimum wages under section 50A(3)(a)(vii) of the Act and Principle 10 of the State Wage Fixing Principles.

Remuneration has been defined broadly to provide the Commission with the capacity to ensure there is equity across the total remuneration package of an employee, including conditions of employment.

Sub clause (2) broadens the definition of ***industrial matter*** in section 7 to include matters relating to equal remuneration for men and women employees for work of equal or comparable value.

Clause 6

This clause limits the amended jurisdiction of the Commission to hear claims for equal remuneration for work of equal or comparable value to orders authorised under section 23C.

Clause 7

This clause creates an order that can be made by the Commission on claims for equal remuneration for work of equal or comparable value.

The Commission may only make an equal remuneration order if it is satisfied that there is not equal remuneration for work of equal or comparable value.

An equal remuneration order:

- may provide for increases in rates of remuneration as the Commission considers appropriate to ensure that there will be equal remuneration;
- may be implemented immediately or progressively; but
- must not provide a reduction in an employee's rate of remuneration.

Sub clauses (7) and (8) prevent employers from reducing an employee's remuneration because a claim for an equal remuneration has been made.

Clause 8

Employers with a sufficient interest in the matter, relevant organisations or associations, the Minister and employees are already empowered to refer industrial matters to the Commission under the Act. This clause allows these persons to make claims for equal remuneration for work of equal or comparable value.

This clause also expands the persons by whom claims for equal remuneration for work of equal or comparable value can be made. Sub clause (d) allows the Commissioner for Equal Opportunity appointed under section 75 of the *Equal Opportunity Act 1984* to make claims on a behalf of an employee for equal remuneration for work of equal or comparable value.

Clause 9

This clause inserts section 29AB. This section limits the circumstances in which claims for equal remuneration for work of equal or comparable value can be made.

The Commission cannot determine a claim for equal remuneration for work of equal or comparable value if proceedings for an alternative remedy to ensure equal remuneration for work of equal or comparable value or against unequal remuneration have been commenced under the Act or another law of the State or Commonwealth. Conversely, where a person makes a claim to the Commission for an equal remuneration order that person cannot commence proceedings for an alternative remedy.

However, employees will still be able to make concurrent claims for compensation for past actions. Under proposed subsection (5) any remedy that consists solely of compensation for past actions and exists under any State or Commonwealth law relating to employment discrimination is not an 'alternative remedy' for the purposes of section 29AB.

In addition, where proceedings for an alternative remedy

- have been discontinued by the party who commenced them; or
- have failed for want of jurisdiction;

neither the Commission nor the person making a claim for equal remuneration will be precluded from accessing the provisions of the Bill.

Clause 10

This clause prevents the power of the Commission to make an equal remuneration order from being delegated to a Registrar.