

13 March 2015

Workplace Relations Inquiry
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Chair,

Workplace Relations Inquiry

The Australian Human Rights Commission (the Commission) welcomes the Productivity Commission's inquiry into the Workplace Relations Framework.

The Commission is Australia's national human rights institution. The Commission conducts a range of advocacy activities that relate to improving the protection and promotion of human rights in Australia's workplace relations framework, including submissions to government, research reports, and education programs.

The Commission's submission is limited to identifying previous submissions and research most relevant to the current inquiry. While the information provided is not restricted to matters identified in the Productivity Commission's Issues Papers, it is most relevant to the matters raised in Issue Paper 2: Safety Nets and Issue Paper 4: Employee Protections.

The Commission welcomes the opportunity to make contributions to the Inquiry as it progresses.

Previous submissions

The Commission has previously provided comments on Australia's workplace relations framework through submissions to Parliament and government relating to the *Fair Work Act 2009* (Cth). These submissions are attached.

- [Submission to the House Standing Committee on Education and Employment Inquiry into the Fair Work Amendment Bill 2013 and the Senate Standing Committee on Education, Employment and Workplace Relations](#) (18 April 2013)
- [Submission to the Department of Education, Employment and Workplace Relations in its Post Implementation Review of the Fair Work Act 2009](#) (12 March 2012)

- [Submission to the Senate Education, Employment and Workplace Relations Committee Inquiry into the Fair Work Bill 2008](#) (23 January 2009)

In addition to drawing the Productivity Commission's attention to the recommendations in the above submissions, the Commission further notes the following submissions covering issues of bullying, harassment and discrimination:

- [Supplementary Submission to the Attorney-General's Department on the Consolidation of Commonwealth Discrimination law - Domestic and family violence](#) (23 January 2012)
- [Submission to the Attorney-General's Department on the Consolidation of Commonwealth Discrimination law](#) (6 December 2011)

Commission research and reports

The Commission has made a number of recommendations aimed at improving the workplace relations framework in recent research and reports.

(i) Supporting Working Parents: Pregnancy and Return to Work National Review Report

The Commission's 2014 report *Supporting Working Parents: Pregnancy and Return to Work National Review Report* made recommendations that identify key strategies and actions for:

- addressing the high prevalence of discrimination;
- strengthening the adequacy of existing laws, policies, procedures and practices;
- promoting leading approaches; and
- identifying focus areas for further monitoring, evaluation and research.

In particular recommendation 3 of the Report recommended that government address gaps in the protection of rights within the current legislative and policy framework by: strengthening the 'right to request' provisions under s 65 of the *Fair Work Act 2009* (Cth) (FWA) by:

- removing the qualification requirements in section 65(2)(a) of the FWA (ie the requirements for 12 months continuous service)
- introducing a positive duty on employers to reasonably accommodate a request for flexible working arrangements
- establishing a procedural appeals process through the Fair Work Commission for decisions related to the right to request flexible working arrangements to ensure processes set out in the FWA have been complied with.
- clarifying the provisions under the National Employment Standards of FWA to:
 - allow employees to use existing personal/carer leave entitlements under s97 of the FWA to attend prenatal appointments (including IVF)
 - allow employee breaks from work for the purposes of breastfeeding or expressing.

The report is available at: <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/supporting-working-parents-pregnancy-and-return-work-national>.

(ii) Investing in Care: Recognising and valuing those who care

The Commission's 2014 report *Investing in Care* identified and examined 11 reform options for recognising and valuing unpaid caring work. The Commission identified the following changes to employment laws and regulations as possible options for reform.

Option for reform 3: Fair Work Act 2009

Amend the Fair Work Act 2009 (Cth) to:

- a. Extend the right to request flexible work arrangements to include parents of children of all ages and to encompass all forms of family and carer responsibilities such as disability and elder care;
- b. Remove the qualification requirements that restrict the categories of employees who can make a request for flexible working arrangements;
- c. Place a duty on employers to reasonably accommodate a request for flexible working arrangements;
- d. Establish a procedural appeals process through Fair Work Australia for right to request flexible work decisions.

Option for reform 4: Carer's leave

Amend the National Employment Standards to:

- a. Provide for additional carer's leave, separate from personal leave, specifically for carer responsibilities only;
- b. Extend eligibility of access to carer's leave to cover all employees;
- c. Provide for job-protected unpaid leave for palliative care;
- d. Extend the definition of caring responsibilities in carer's leave to include kinship relationships.

The report is available at: <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/investing-care-recognising-and-valuing-those-who-care>.

The Commission further notes the 2013 report of the Australian Law Reform Commission's review into Commonwealth legal barriers to older persons participating in the workforce or other productive work: *Access All Ages – Older Workers and Commonwealth laws*. Age Discrimination Commissioner the Hon Susan Ryan AO acted as a Part-time Commissioner on this Inquiry. Chapter 4 of the report includes comment and recommendations related to the employment relations framework.

The report is available at: <http://www.alrc.gov.au/publications/access-all-ages-report120>.

The Commission has also produced a range of resource materials, toolkits and guides for employers on how to flexibly manage and engage with their employees, particularly in relation to pregnancy, parental leave return to work after parental leave and supporting employees' unpaid caring responsibilities for children, family

members or friends with disability, chronic illness or frailty due to older age. These resources include:

- *Good Practice, Good Business*
(<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets>)
- *Supporting carers in the workplace: A toolkit*
(https://www.humanrights.gov.au/sites/default/files/UnpaidCaringToolkit_2013.pdf)
- *Women in male-dominated industries: A toolkit of strategies*
(<https://www.humanrights.gov.au/our-work/sex-discrimination/projects/women-male-dominated-industries-toolkit-strategies>)
- *Report on the Review into the Treatment of Women at the Australian Defence Force, Phase Two of the Review into the treatment of women in the Australian Defence Force* (Chapter 6)
(<https://defencereview.humanrights.gov.au/report-review-treatment-women-australian-defence-force>).

We look forward to engaging with the Inquiry team as the review unfolds. Please do not hesitate to contact the Commission for further information.

Yours sincerely,

Elizabeth Broderick
Sex Discrimination Commissioner