



GOVERNMENT OF
WESTERN AUSTRALIA



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Enquiries: Diana MacTiernan

Confidential

Mr Mark Ritter SC
Ministerial Review of the State Industrial Relations System

By email only: irreviewsecretariat@dmirs.wa.gov.au

Dear Mr Ritter

Thank you for your invitation to comment on the review of the State Industrial Relations system.

Since the enactment of the *Equal Opportunity Act 1984* (the EOA) more than thirty years ago, complaints in respect of the area of work have consistently been the highest in number by a significant amount. Most of these complaints relate to direct employment, although there is a variety of other arrangements such as those relating to contractors, commission agents and partnerships. Applicants for positions are a subset of complaints related to employment. The Equal Opportunity Commission receives many complaints and enquiries regarding unlawful discrimination that include an industrial relations element, and which are beyond our remit.

Equal Remuneration

As the Acting Commissioner for Equal Opportunity I fully support my predecessors in strong advocacy of the need to redress the gap in remuneration between male and female employees in Western Australia. Consistent with this, I fully endorse a strengthening to the existing object of the IR Act: *to promote equal remuneration for men and women for work of equal value.*

The capacity for a body such as the Western Australian Industrial Relations Commission to interrogate the inequities that underpin the gap, and to provide realistic remedies to address these, would not only be beneficial to those currently under-remunerated but also strengthen the capacity of organisations to retain the services of valued female employees.

Other Matters

More broadly, looking beyond Term of Reference number three regarding equal remuneration, there are workplace situations where there is a nexus of industrial and discrimination issues and where the State industrial relations system may be able to provide timely remedy given its capacity to conduct expeditious conciliation.

The following suggestions are, I believe, consistent with the first object of the *Industrial Relations Act 1979*: *to promote goodwill in industry and in enterprises within industry.*

Family responsibilities is frequently cited as the ground of discrimination in complaints that are framed around the issue of workplace flexibility, which is not covered under the EOA. The Commission accepts such matters as a complaint and attempts to conciliate. However, it is considered that the timeframe for undertaking a preliminary investigation prior to arranging a conference, as provided for under the EOA, presents a challenge to conciliation efforts.

Timely resolution of issues may be enhanced by a process that provides employees the ability to file for a conciliation conference where they consider their employer has failed to give reasonable consideration to their family responsibility needs. Such a process may require the current definition of industrial matters to be broadened to contemplate family responsibilities, as well as amendment to section 29 of the *Industrial Relations Act 1979* to allow individuals to file an application. In addition, it may be necessary to introduce a provision that allows for a conciliation conference only to attempt to resolve the matter.

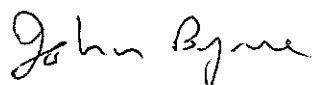
Bullying is not a ground under the EOA, but enquires relating to bullying ranked as the fifth most common category received by our enquiry services in the 2016-17 financial year, with 92.2% of these enquiries related to the workplace. This has been a consistent trend over the past ten years.

The EOA does not have formal recognition of bullying in the workplace; however, if people believe their adverse treatment is due to one of the grounds of the Act (e.g. sexual orientation, impairment), then they may file a complaint of discrimination. As mentioned above, our process of preliminary investigation generally does not provide for the type of intervention that may be useful before matters escalate.

I suggest a system similar to the bullying provisions under the *Fair Work Act 2009* and recourse to the Fair Work Commission would assist those Western Australian employees who currently do not have access to this remedy.

I have no objection to this submission being published on the internet, and would be pleased to discuss any of the above matters in greater details.

Yours sincerely



John Byrne
Acting Commissioner for Equal Opportunity