



NOVEMBER 2021

SUBMISSION TO THE REVIEW OF THE *WORKPLACE GENDER EQUALITY ACT 2012*

The Australian Centre for Leadership for Women (ACLW) Pty Ltd was established in August 2000. It is a purpose-driven organisation with a social conscience aimed at achieving gender equality in Australia.

Enabling women to lead, and their leadership valued and advanced by organisations and society, ACLW's mission is to:

TRANSFORM: To identify and address factors constraining women's leadership and equality in organisations and society

EMPOWER: To empower women to navigate through barriers and to enable organisations and institutions to eliminate systemic barriers impacting on women's access and opportunity for leadership

RECOGNISE: To recognise the contributions of women and enable their valuing and advancing by rewarding initiatives by women, men and organisations that sustainably enable women's advancement and equality

ACLW has since its commencement conducted leadership conferences, national Awards and leadership development programs for women and organisations in Australia. It particularly focuses on the leadership development of women and organisations involved with marginalised communities facing intersectional disadvantage, believing that when people of all genders have equal rights, access and opportunities, gender equality will be achieved.

ACLW's virtual presence is at www.aclw.org and <http://www.facebook.com/AustralianCentreforLeadershipforWomen>

ACLW is a Member of the Equality Rights Alliance.

The Director of ACLW is Dr Diann Rodgers-Healey.

The Australian Centre for Leadership for Women (ACLW) commends the Australian Government for instigating the first Review of the *Workplace Gender Equality Act 2012*¹ (the WGE Act) which in 2012 replaced the *Equal Opportunity for Women in the Workplace Act 1999*.

THE WORKPLACE GENDER EQUALITY ACT 2012

The WGE Act and The Workplace Gender Equality Agency (WGEA), established under the Act, are undoubtedly the engine room for addressing workplace gender equality in Australia. The WGE Act is the hallmark legislation that denotes that in Australian workplaces people are to be given equal opportunities and equal pay. It places a statutory duty on employers of 100 or more employees to lodge reports each year containing information relating to how they are achieving the six gender equality indicators, which relate to key areas of workplace gender equality.

The Principal objects of the WGE Act emphasise purposes aligned to promoting and supporting the achievement of gender equality in the workplace. The Act outlines the functions of the Workplace Gender Equality Agency to include advising and assisting employers in promoting and improving gender equality in the workplace and undertaking research and programs for the purpose of promoting and improving gender equality in the workplace².

WGEA has been exemplary in what it has achieved as per the Principal objects of *The Workplace Gender Equality Act 2012*, since the Agency's establishment in 2012. This has included promoting gender equality in the workplace by advising and assisting employers on how to achieve gender equality, reviewing public reports lodged by relevant employers; providing to organisations an Executive Summary Report and Industry Benchmark Report in relation to gender equality indicators. However, despite the Act and the Agency and the achievements enabled by both, gender inequality in Australian workplaces persists.

CURRENT STATUS OF GENDER EQUALITY IN AUSTRALIA

This submission is made with an acute awareness and disappointment of the slow progress of gender inequality in Australia and its international decline in gender equality rankings:

According to WGEA's national pay gap statistics for 2021, the national gender pay gap is 14.2%. On average, women working full-time earned \$1,575.50 while men working full-time earned \$1837.00³. Full-time average weekly earnings difference between women and men is \$261.50⁴. There is still a

¹ Australian Government Federal Register of Legislation. *Workplace Gender Equality Act 2012* No 91. 1986. Accessible at: <https://www.legislation.gov.au/Details/C2016C00895>

² Ibid

³ Workplace Gender Equality Agency. 2021. *Australia's Pay Gap Statistics*. 27 August 2021. Accessible at: <https://www.wgea.gov.au/publications/australias-gender-pay-gap-statistics>

⁴ Workplace Gender Equality Agency. 2021. *Equal Pay Day*. Accessible at: <https://www.wgea.gov.au/the-gender-pay-gap/equal-pay-day>

gap in workforce participation for people with young children. 64% of women with children 5 years old or younger participate, compared with 95% of men. Women are still retiring with significant less superannuation than men⁵.

Australia is declining in international gender equality rankings. In the inaugural Global Gender Gap Index in 2006⁶, Australia ranked #15 out of 115 countries. However, in 2021⁷ it is #50 out of 156 countries. In 2020 it was #44 and in 2019 Australia was #39⁸. Except for educational attainment for women, where Australia has maintained its number 1 ranking, in women's economic participation, in 2006, it was #15, and in 2021 it is #70.

EFFECTIVENESS OF THE WGEA AGENCY IS LIMITED BY THE WGE ACT 2012

WGEA effectively is not allowed to drive change in gender equality in Australia as the WGE Act does not allow this. The WGE Act is limited to being advisory and supportive to workplaces. The WGE Act limits WGEA to promoting, advising and reporting on gender equality in the workplace, as per the *Functions and powers* of the Agency stipulated in the WGE Act⁹. WGEA's limitations in ensuring that gender equality in Australian workplaces is achieved in all of the gender equality indicators it tracks, are due to the limited powers given to it, as governed by the WGE Act, this predominantly being data collection and reporting.

The WGE Act leaves the responsibility to drive change in gender equality in the hands of organisations. How employers interpret and enact what changes are needed to advance gender equality in their organisation is left to their judgement of what to do and when to do it.

In terms of information relating to remuneration, the WGE Act condones the continuation of a critical barrier against gender equality as it states that "any information relating to remuneration...lodged by a relevant employer... must not be published...must not be used in a report..."¹⁰ As such, WGEA continues to maintain pay secrecy.

Without a stronger approach in dealing with relevant employers on a yearly basis that moves beyond promoting, supporting and advising, collating and analysing data and reporting on *what the outcomes are*, to an approach that focuses on *what the outcomes should be against all of the GEIs to accelerate gender equality in workplaces*, the progress of gender equality in Australia will continue to be slow. The responsibility for changing this will continue to be in the hands of employers despite eight years

⁵ <https://www.wgea.gov.au/newsroom/gender-equality-in-australia-a-guide-to-gender-equality-in-2020>

⁶ World Economic Forum. 2006. *Global Gender Gap Report 2006*. P103. Accessible at: <https://www.weforum.org/reports/global-gender-gap-report-2006>

⁷ World Economic Forum. 2021. *Global Gender Gap Report 2021*. P103. Accessible at: <https://www.weforum.org/reports/ab6795a1-960c-42b2-b3d5-587eccda6023>

⁸ World Economic Forum. 2020. *Global Gender Gap Report 2020*. P103. Accessible at: <https://www.weforum.org/reports/gender-gap-2020-report-100-years-pay-equality>

⁹ Australian Government Federal Register of Legislation. *Workplace Gender Equality Act 2012* No 91. 1986. p.10. Accessible at <https://www.legislation.gov.au/Details/C2016C00895>

¹⁰ Australian Government Federal Register of Legislation. *Workplace Gender Equality Act 2012* No 91. 1986. p.15. Accessible at <https://www.legislation.gov.au/Details/C2016C00895>

of data collected by WGEA¹¹ that shows that predominantly employers are not interested in changing the gender equality status quo substantively.

ACLU strongly supports the submission and all of the recommendations made by the Workplace Gender Equality Agency (WGEA) to this Review¹² and commends WGEA for reviewing its direction, achievements and the progress of gender equality in Australia based on its own datasets and findings, and for articulating what it could and needs to do to drive change in gender equality in organisations in Australia.

ACLU strongly supports what WGEA has proposed in its submission to this Review as being critical amendments to the Act, specifically:

“• Mandating employer action and progress on gender equality through minimum standards which require employers to implement and report on measurable improvements in gender equality;

- Increasing transparency by publishing individual organisations gender pay gap data in order to make clear the current state of gender equality within organisations; and*
- Enhancing and expanding the GEs to recognise issues that consistently block progress towards workplace gender equality and expanding the data collection to enable understanding of how gender intersects with other aspects of diversity¹³.”*

In this submission to this Review, ACLU gives additional justification to recommend further strengthening of WGEA’s existing practices and the powers that WGEA could apply to drive change through a stronger approach in relation to certain areas. The WGE Act would need to be amended to give WGEA the powers it needs to drive stronger measures for change as outlined in this submission.

ENABLING THE WORKPLACE GENDER EQUALITY AGENCY (WGEA) TO DRIVE CHANGE

A. MINIMUM STANDARDS MUST REQUIRE EMPLOYER ACTION

WGEA has in its role as a regulator of the WGE Act acquired a comprehensive and longitudinal dataset on workplace gender equality from the eight years of reporting data from employers. This accounts for approximately 40% of employees in Australia. The dataset each year and over time gives a detailed snapshot of gender equality in Australian organisations and industry sectors.

While this dataset is invaluable, the insights gained from this data relating to where improvements still need to be made have not been used by WGEA to drive change in organisations. Aware of their status, through WGEA’s Executive Summary and Industry Benchmark reports, it is still left to

¹¹ Workplace Gender Equality Agency. *Submission to the Review of the Workplace Gender Equality Act 2012*. November 2021. P6. Accessible at: chrome-extension://efaidnbnmnibpcjpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.pmc.gov.au%2Fsites%2Fdefault%2Ffiles%2Fsubmissions%2Fwgea-submission-13-workplace-gender-equality-agency_0.pdf&clen=712564&chunk=true

¹² Ibid

¹³ Ibid

organisations and the industry sector to address the gaps. These gaps are also publicly and clearly profiled by specific industry segments on WGEA's online Data Explorer facility¹⁴. Clearly stakeholder awareness is not driving the changes required and neither is general public awareness, despite how dire the situation has become. For example, WGEA identified a decrease in employer action on pay equity and found that over 45% of employers who conducted a pay gap analysis took no action as a result of the analysis. Former Director of WGEA, Libby Lyons has stated, "If the pace of change across all industries continues on the current trajectory, it will be more than a quarter of a century until the full-time, total remuneration gender pay gap closes¹⁵."

WGEA must have the power and function to drive change for gender equality and ensure that employers are accountable for following through on what needs doing. The minimum standards must require employer action and progress on gender equality. Minimum action needs to be more than just having a policy or strategy in place in one of the areas being reported on. For example, according to WGEA's Data Explorer in 2020, in the female dominated Health Care and Social Assistance industry (79.6% women 20.4% men), the full-time gender pay gap is 15.7%. This is despite 51.7% of employers in this industry having a formal policy or formal strategy on remuneration generally. In 2020, only 26.6% of employers in this industry conducted a remuneration gap analysis and only 37.1% of employers took action as a result of conducting a remuneration gap analysis.

What is measured is not being managed by employers, and what insights are being made available to employers by WGEA, are being sidelined by most employers, when it comes to gender equality.

B. EMPLOYER ACTION PLANS MUST AIM TO ACHIEVE TARGETS SET BY WGEA BASED ON EMPLOYER GEIS PERFORMANCE

The annual reporting from non-public sector organisations with 100 or more employees, while forming the basis of the Executive Summary and Industry Benchmark Reports, gives WGEA access to profiles of each reporting organisation, that is comparable over time.

Although, all public data collected by WGEA in relation to individual organisations and their performance against the GEIs over time, is available through its excellent online Data Explorer for stakeholders to view, this provision leaves the onus on stakeholders, employers and/or employees to assess their organisation's performance and progress against the GEIs and drive change. As employers are less likely to do this¹⁶, and the Act does not require WGEA to regulate this form of compliance, the valuable datasets are not being used to drive change. It is being used for research and employer case studies by gender equality researchers and WGEA to showcase best practice initiatives that have led to improved gender equality outcomes, but this soft approach to driving

¹⁴ Workplace Gender Equality Agency. 2021. *WGEA Data Explorer*. Accessible at: <https://data.wgea.gov.au/overview>

¹⁵ Cassells R & Duncan A. 2021. *Gender Equity Insights 2021: Making it a priority*, BCEC|WGEA Gender Equity Series, Issue #6, March 2021.

¹⁶ Workplace Gender Equality Agency. *Submission to the Review of the Workplace Gender Equality Act 2012*. November 2021.P.8. Accessible at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.pmc.gov.au%2Fsites%2Fdefault%2Ffiles%2Fsubmissions%2Fwgea-submission-13-workplace-gender-equality-agency_0.pdf&clen=712564&chunk=true

change has not had the impact needed to make workplaces more gender equitable. A “level of apathy and complacency “ has set in “among some of Australia’s biggest workplaces¹⁷.”

Moving forward, if we are to believe that organisations will set targets based on what they know about their own status and their sector, we will be ignoring what the data from WGEA is clearly showing since the WGE Act commenced a decade ago.

WGEA needs to specify change related to each of the GEIs that needs to be actioned and reported on by each employer for the following year. This will put WGEA in the driving seat for ensuring that organisations are moving forward in substantive ways outlined by them.

WGEA needs to have the power to utilise its extensive, comparative and legitimate dataset of each organisation against the industry’s benchmarking to stipulate for each organisation what target the organisation needs to attain for the next reporting year in relation to each of the GEIs.

Employers can in response to WGEA’s specific GEI targets create action plans, either in consultation with WGEA or by themselves. The action plans need to have progressive timelines and milestones to show how organisations will achieve WGEA’s specific targets in relation to each GEI, by the next reporting year.

The minimum standards for all GEIs must require employer action plans for achieving targets in each of the GEIs.

WGEA’s assessment of the annual reporting for each of the GEIs could apply a similar version of the five-point scale¹⁸ of the Affirmative Action Agency, in relation to each of the WGEA’s GEIs. Below is an adapted version that could be used by WGEA:

Level	Standard Achieved for GEI
5	Outstanding level of progress in developing and implementing a Workplace Gender Equality Action Program
4	High level of progress in developing and implementing a Workplace Gender Equality Action Program
3	Medium level of progress in developing and implementing a Workplace Gender Equality Action Program
2	Minimum level of progress in developing and implementing a Workplace Gender Equality Action Program
1	Below the minimum requirements stipulated by WGEA

¹⁷ Cassells R and Duncan A. 2021. *Gender Equity Insights 2021: Making it a priority*, BCEC|WGEA Gender Equity Series, Issue #6, March 2021.

¹⁸ Strachan, G & Burgess, J. 2000. ‘W(h)ither Affirmative Action Legislation in Australia?’. *Journal of interdisciplinary gender studies*, vol. 5, no. 2, pp. 46–63.

A scale such as the Affirmative Action Agency's provides more detail¹⁹ to the organisation and stakeholders to assess its status and incentivises progress to the higher level. It is simple to follow for all stakeholders which increases its potential to be utilised to drive change.

The organisation could be provided with a Report Card annually by WGEA. The Report Card could include for each GEI the ranking the organisation attained on the scale and the total score could be used for the overall ranking for the organisation. For example, the score would be 30 for an outstanding organisation for attaining 5 for all of the 6 GEIs, whereas a non-compliant organisation would have a score of 6 out of 30 if it was on the lowest scale for each of the 6 GEIs. Report Cards for each organisation could be made public as well as the Industry Benchmarking Reports that WGEA already provides.

WGEA could utilise their assessment of organisational achievement against each GEI target for driving further targeted change specific to the industry sector and organisation. It also provides more scope for WGEA to explore and understand the effectiveness of specific elements in the action plans that are leading to success in industry specific contexts.

WGEA currently publishes a WGEA Gender Equality Scorecard annually. However, this Score Card is based on overall annual key findings for GEIs and for the industry sector. The Agency's 2019-2020 scorecard, for example, was based on the dataset that covered over 40% of employees in Australia and comprised: "Women (50.5%), Men (49.5%) Full-time employees (53.9%) Part-time permanent employees (21.4%) Casual employees (24.7%)²⁰."

The WGEA Gender Equality Scorecard is not in relation to an individual organisation's achievements. A Report Card for each organisation will be more effective in driving change as it will make public its individual performance against targets specified by WGEA for all of the GEIs, and how it ranks against organisations in its own sector.

If the organisations underperform in achieving these targets, then WGEA needs to ask employers why this has not been done. WGEA can ask for actions plans when organisations have not met a specific target stated by WGEA.

Failure to meet the specified target could mean that the organisation has to work closely with WGEA to develop or amend the action plan so that it can achieve the specified target for the next reporting year. Costs for this intensive consultation can be set by WGEA on a case-by-case basis and met by the organisation.

The minimum standards for all GEIs must require employer action plans for achieving targets in each of the GEIs.

¹⁹ Sheridan, A. 1998. Patterns in the policies: affirmative action in Australia. *Women in Management Review*, Vol. 13 No. 7, pp. 243-252.

²⁰ Workplace Gender Equality Agency. 2020. *Australia's gender equality scorecard. 2020 Key findings Snapshot*. Accessible at: <https://www.wgea.gov.au/publications/australias-gender-equality-scorecard>

C. WGEA MUST PUBLISH GENDER PAY GAPS OF INDIVIDUAL ORGANISATIONS

As WGEA states in its guide to employers²¹, “by publishing aggregated remuneration and gender pay gap data, we can develop resources on pay equity to benefit you and other employers.” While this benefits employers, it does not benefit individuals as pay equity data of an individual organisation is kept confidential by WGEA.

With most of the reported data being made public, keeping confidential organisation pay gap data means that employers are being allowed to perpetuate pay gap secrecy for their own advantage. This dilutes the critical need for transparency and accountability in organisations to address gender pay gaps. Not making public organisation-level pay gap data means that women continue to be at a disadvantage to negotiate their pay and conditions²² in the organisation, as they do not have access to remuneration information from the organisation and also from WGEA. The absence of such significant data in the dataset also disables comparable and longitudinal assessments of the gender pay gap on an organisation and industry level.

Although the gender pay gap has steadily declined since the reporting commenced in 2014^{23,24}, Australia’s current full-time gender pay gap is 20.1%, and as the Covid crisis has shown, it risks taking a reverse direction²⁵.

Across six countries, namely France, Sweden, South Africa, United Kingdom and Spain, Australia has ranked equal last on a gender pay gap scorecard. It is also not clear whether gender pay gap reporting in Australia includes intersectional considerations, such as race, class, and education level or if it is only based on gender? ²⁶. Intersectional gendered wage data is crucial to understanding and eliminating intersectional causes of income inequality and its impact on financial security and well-being.

The gender pay gap in Australia also does not capture the overrepresentation of women in part-time work. Women constitute 38.0% of all full-time employees and 67.6% of all part-time employees. In 2020, when this was considered, and the incomes of all workers was compared by using the average adult weekly (total cash) earnings (AWE), the gender pay gap increased to 31.5%²⁷. ACLW fully

²¹ Workplace Gender Equality Agency. 2019. *Reference guide 2019 Guide to reporting under the Workplace Gender Equality Act 2012*. Version 2.0 13 March 2019.

²² Women’s Agenda. News and Views. *Pay secrecy feeds gaps: Transparency can change that*. Accessible at: <https://womensagenda.com.au/latest/pay-secrecy-feeds-pay-gaps-transparency-can-change-that/>

²³ WGEA Data Explorer: *Gender pay gaps – Base Salary 2014-2020; Total Remuneration 2015-2020*. Accessible at: https://data.wgea.gov.au/industries/1#pay_equity_content

²⁴ Glennie M, von Reibnitz A, William J, Curtis S, Bordia S, 2021. *Gender pay gap reporting in Australia – time for an upgrade*. The Australian National University: Canberra.

²⁵ Financy. 2021. *Financy Women’s Index*. Accessible at: <https://financy.com.au/financy-womens-index-report/>

²⁶ Cowper-Coles, M., Glennie, M., Borges, A.M. & Schmid, C. 2021. *Bridging the gap? An analysis of gender reporting in six countries*. Global Institute for Women’s Leadership. King’s College. London

²⁷ Dawson, E., Kovac, T., Lewis, A. March 2020. *Measure for Measure: Gender Equality in Australia*. Per Capita. Accessible at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fpercapita.org.au%2Fwp-content%2Fuploads%2F2020%2F03%2FMFM_report_FINAL.pdf&clen=5560022&chunk=true

endorses WGEA's Recommendation in this Review²⁸ that employers no longer provide full-time equivalent annual earnings for part-time and casual employees, but report on the actual earnings of part-time and casual employees as well as the number of hours employees are engaged.

With the pay gap being relentlessly high in Europe for decades, and currently at 14.1%, The European Union (EU) in March 2021 proposed²⁹ making pay transparency a binding measure for its member states to tackle "the persisting inadequate enforcement of the fundamental right to equal pay and ensuring that this right is upheld across the EU³⁰." The proposed directive pursues "establishing pay transparency within organisations; facilitating the application of the key concepts relating to equal pay, including 'pay' and 'work of equal value'; and strengthening enforcement mechanisms³¹."

The WGE Act must allow pay transparency by WGEA, as not doing so continues the systemic undervaluation of women's work, and the elimination of the gender pay gap, due to pay discrimination against women.

To enable an organisation's internal and external stakeholders to hold employers accountable for the gender pay gap and take action to eliminate it, WGEA must publish gender pay gaps of individual organisations.

D. WGEA MUST AUDIT INDIVIDUAL ORGANISATIONS

In relation to the data that employers provide in their report, it is also not clear whether compliance through the evidence provided is validated by the experiences of women in organisations.

With the volume of reports that WGEA receives that undergo an extensive process of data collation, review, and checks with employers, there is pressure on resources to do anything else.

Crucial to knowing what organisations are doing, is knowing how they are doing it. For example, is the policy included in the annual report to WGEA being enacted in the organisation in a fair and unbiased way?

Intensive on-the-ground research of individual organisations is not undertaken either for verification of data or to explore and understand experiences of women on the ground in workplaces.

Currently WGEA reviews compliance by asking for more information and issuing compliance letters to confirm that an organisation meets its compliance based on the report submitted. There are consequences for non-compliance that includes being ineligible for Commonwealth contracts and grants and being named in a letter to the Minister. These are still pursuant to the information provided in the reports or if the report is not submitted. There is no system in place to check if what

²⁸ Workplace Gender Equality Agency. *Submission to the Review of the Workplace Gender Equality Act 2012*. November 2021.P.8. Accessible at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.pmc.gov.au%2Fsites%2Fdefault%2Ffiles%2Fsubmissions%2Fwgea-submission-13-workplace-gender-equality-agency_0.pdf&clen=712564&chunk=true

²⁹ European Commission. March 2021. *Proposal of The European Parliament and of the Council to strengthen the principle of equal pay for equal work*. Accessible at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0093>

³⁰ Ibid

³¹ Ibid

is submitted is accurate, beyond asking the employer. There is also no system in place to ascertain if the organisation's annual report reflects the experiences of women, particularly women who are marginalised in workplaces or women who are not in fulltime roles.

In the spirit to identify how and why workplace gender equality policies are failing to deliver, it is important to ascertain if the policies are simply a façade or whether they structurally enable reform for *all* employees without inherent bias. What might the gap be between policy and execution, or the gap between what is reported on and what is actually in place to address challenges for people of all gender identities in the workplace? Is what in place, addressing gender equality challenges, fairly, comprehensively and consistently?

If WGEA had the power to choose to visit and audit any workplace that was a reporting organisation, for example, through interviews with people of all gender identities in different roles in the organisation to ascertain their experiences of workplace policies and practices, the data would contribute to a more accurate profile of the organisation, the sector, and lead to more effective strategising by WGEA and the organisation to strengthen its gender equality performance.

This action moves beyond judging written reports to independently seeing and understanding the situation as is, and getting a broader perspective of how different challenges compound access and opportunity for people of all gender identities or how different strategies compound success on multiple fronts.

It enables WGEA to lead thinking that is more relational, contextualised and intersectional.

E. IMPROVING COMPLIANCE TERMS FOR ORGANISATIONS

Compliance currently relates to reporting obligations only. The overall approach targeting organisations that report they had not taken action or had taken some action, is one of follow-up and providing assistance and resources to the organisation to take action³².

In terms of non-compliance, the publication of non-complying organisations and deeming them ineligible for government grants or contracts has ensured a high level of compliance (98% in 2019-2020³³) but non-compliance rates have risen³⁴ since reporting under WGEA began (WGEA 2014; 2021b). A 2021 audit of government tender records by national news outlets found that 31 non-compliant organisations were awarded federal government contracts³⁵. High-level federal government support is needed consistently and diligently to ensure that non-compliant organisations are sanctioned against.

³² WGEA Client Portal. 2021. *Can our compliance status be revoked?* 16 July 2021. Accessible at: <https://client-portal.wgea.gov.au/s/article/Can-our-compliance-status-be-revoked>

³³ Workplace Gender Equality Agency. 2020. *Australia's gender equality scorecard Key results from the Workplace Gender Equality Agency's 2019-20 reporting data November 2020*. Accessible at: https://www.wgea.gov.au/sites/default/files/documents/2019-20%20Gender%20Equality%20Scorecard_FINAL.pdf

³⁴ Workplace Gender Equality Agency. 2021. *Non-compliant organisations list*. Accessible at: <https://www.wgea.gov.au/what-we-do/compliance-reporting/non-compliant-list>

³⁵ Sydney Morning Herald. 2021. *Flouting discrimination rules no barrier to winning government contracts*. David Crowe, 21 May 2021. Accessible at: <https://www.smh.com.au/politics/federal/gender-reporting-federal-funds-to-companies-flouting-rules-20210321-p57cpm.html>

ACLW supports WGEA’s recommendation to review “the Workplace Gender Equality Procurement Principles, including considering extending the coverage to all Commonwealth entities and companies, with the procurement threshold of \$80,000 (other than for procurements of construction services), and to apply the Principles within the Commonwealth Grants Rules and Guidelines³⁶ The Global Gender Gap Report published by the World Economic Forum states that gender equality is not only a fundamental human right, but is linked to a country’s overall economic performance³⁷. There is ample evidence to show how Australia’s economic activity has risen with the rise in female employment³⁸ since 1974 by 22%, and that if the labour force participation gap between men and women was halved, Australia’s annual GDP would increase by \$60 billion in just 20 years³⁹. Companies that are gender and ethnically diverse outperform their peers. Companies in the top quartile of ethnic and cultural diversity were 36% more likely to outperform on profitability.⁴⁰ As such, there are significantly valid reasons to ensure that compliance means taking action to achieve substantive outcomes in workplaces.

As stated in the Gender Equity Insights Report 2021, “We have the business case and we know a lot more about what works when it comes to progressing gender equity within some of Australia’s biggest workplaces. *But how do we make it stick and get all organisations on board, consistently?*”⁴¹”

A stronger approach to compliance is, therefore, necessary to make all organisations get on board, consistently. In respect to the recommendations made in this submission, compliance could be extended to include failure to meet the target specified by WGEA for each GEI. Using the five-point scale discussed in this submission on page 7, WGEA should have the power to set a financial penalty for organisations that do not meet a target and achieve a score of 1 or 2 on the scale; 2 being ‘Minimum level of progress in developing and implementing a Workplace Gender Equality action program and 1 being, ‘Below the minimum requirements stipulated by WGEA.’

F. INCLUDING INTERSECTIONALITY IN THE REPORTING

Intersectional disadvantage is absent from WGEA’s reporting and dataset. This needs to be addressed as the intersectionality of gender with other aspects of an individual’s identity compounds

³⁶ Workplace Gender Equality Agency. *Submission to the Review of the Workplace Gender Equality Act 2012*. November 2021.P.5 & 32. Accessible at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.pmc.gov.au%2Fsites%2Fdefault%2Ffiles%2Fsubmissions%2Fwgea-submission-13-workplace-gender-equality-agency_0.pdf&clen=712564&chunk=true

³⁷ World Economic Forum. 2015. *Global Gender Gap Report*. Accessible at: <http://www3.weforum.org/maintenance/public.htm>

³⁸ Goldman and Sachs & JBWere. 2009. *Australia’s hidden resource: the economic case for increasing Female Participation*.

³⁹ KPMG. 2018. *Ending Workforce Discrimination Against Women*. Accessible at: <https://assets.kpmg.com/content/dam/kpmg/au/pdf/2018/ending-workforce-discrimination-against-women-april-2018.pdf>

⁴⁰ McKinsey. 2020. *Diversity Wins: How Inclusion Matters*. May 19, 2020. Accessible at: <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters>

⁴¹ Cassells R & Duncan A. 2021. *Gender Equity Insights 2021: Making it a priority*, BCEC|WGEA Gender Equity Series, Issue #6, March 2021

the disadvantage and inequality that the individual faces, including impacting their financial security, work, leadership and safety.

As for public sector equality reporting, organisations should in their annual reporting for WGEA, record Indigenous status, disability, and language background; sexual orientation, religion and the binary measure of gender. These are important for understanding factors contributing to insecure and high-quality employment⁴², and eliminating intersecting forms of bias, discrimination, and disadvantage at work, to achieve gender equality for being experienced by women and marginalised groups.

G. COVERAGE OF THE WORKPLACE GENDER EQUALITY ACT

ACLW supports WGEA's recommendation in its submission to this Review that Federal, State, Territory and Local Government public sector agencies with 20 or more employees are required to report to it, and with the introduction of Single Touch Payroll (STP) data, there be consideration for expanding the definition of 'relevant employer' to include non-public sector employers with 50 or more employees, for the reasons WGEA outlines⁴³.

H. GENDER DATA

Accurate gender data is critical for building an effective and equitable response to achieving gender equality in workplaces. The definition of 'gender' by the Agency and organisations must not be narrowly equated to 'man' or 'woman.'

If for example, the process of assessing an organisation's policies is undertaken in reference to the implications for women and men, people who don't conform to the gender binary are excluded in these considerations and lead to inequality against them being perpetuated on various fronts.

As the WGEA recommends in its submission⁴⁴, definitions related to gender in the WGE Act should reflect best practice, and employers should be required to provide data on the relative position of women, men, and non-binary people in their workplaces.

I. ANNUAL REPORTING CYCLE

Given the slow progress of gender equality in Australia, it is important that the annual reporting cycle continue to maintain momentum for change driven by action plans to achieve targets that need to be set by WGEA and monitored. Reducing reporting obligations for employers weakens the scope and usefulness of the data and the dataset and sets back WGEA in its ability to drive informed and timely incremental targets that organisations need to achieve progressively.

⁴² Federation of Ethnic Communities' Councils of Australia (FECCA). 2017. *Submission to Independent Inquiry into Insecure Work*. Accessible at: https://fecca.org.au/wp-content/uploads/2017/07/Independent-Inquiry-into-Insecure-Work-submissionv_02.pdf.

⁴³ Workplace Gender Equality Agency. *Submission to the Review of the Workplace Gender Equality Act 2012*. November 2021. P.5 & 32. Accessible at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.pmc.gov.au%2Fsites%2Fdefault%2Ffiles%2Fsubmissions%2Fwgea-submission-13-workplace-gender-equality-agency_0.pdf&clen=712564&chunk=true

⁴⁴ Ibid

WGEA's recommendation for this Review in suggesting using Single Touch Payroll (STP) data to enhance gender equality statistics and reduce employer reporting burden, is an excellent way forward.

J. IMPLEMENTING THE RECOMMENDATIONS OF THE RESPECT@WORK NATIONAL INQUIRY

Sexual harassment undermines equality at work⁴⁵. It particularly affects women as the evidence⁴⁶; ⁴⁷shows. Its negative impacts are far reaching including on pay, career progression, working conditions, superannuation, safety, health and well-being. Traditional gender roles and stereotypes governed by gendered power relations underlie sexual harassment, creating toxic workplaces that lead to abusive work relationships.

As *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces Report*⁴⁸ outlines,

- Aboriginal and Torres Strait Islander women are substantially more likely to have experienced sexual harassment in the workplace (55% compared with 39% of all women).
- Women living with a disability are more likely to experience sexual harassment in the workplace (52% compared with 39% of all women).
- Young women (aged 18-24) are more than twice as likely than the general population to experience sexual harassment.
- People of diverse sexual orientation are more likely to have experienced workplace sexual harassment compared to heterosexual people (52% compared with 31%)

ACLW also strongly supports the recommendation by WGEA in its submission⁴⁹ to this review that sex-based harassment and discrimination is specified as GEI 6; that additional data is collected with respect to this GEI as specified by the Respect@Work Council and that an additional GEI (GEI 7) be added to account for other matters specified by the Minister.

⁴⁵ Australian Human Rights Commission. 2020. *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*. Accessible at: <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>.

⁴⁶ McDonald, P & Charlesworth, S. 2019. *Academic Evidence on the Causes, Manifestations and Responses to Workplace Sexual Harassment: Initial Submission to the Australian Human Rights Commission's National Inquiry into Sexual Harassment in Australian Workplaces*. Accessible at: <https://humanrights.gov.au/sites/default/files/Submission%20170%20-%20Prof%20P%20McDonald%20and%20Prof%20S%20Charlesworth.pdf>

⁴⁷ Australian Human Rights Commission. 2018. *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces*. Accessible at: <https://humanrights.gov.au/our-work/sex-discrimination/publications/everyones-business-fourth-national-survey-sexual>

⁴⁸ Ibid

⁴⁹ Workplace Gender Equality Agency. *Submission to the Review of the Workplace Gender Equality Act 2012*. November 2021.P.5 & 32. Accessible at: chrome-extension://efaidnbmnnnibpajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.pmc.gov.au%2Fsites%2Fdefault%2Ffiles%2Fsubmissions%2Fwgea-submission-13-workplace-gender-equality-agency_0.pdf&cflen=712564&chunk=true

For GEI 6 and 7, WGEA needs to have the power to stipulate for each organisation what targeted change it needs to attain for the next reporting year.

In line with Recommendation 43 in the report *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*⁵⁰, the WGE Act 2012 must be amended to require the whole public sector as well as state, territory and local governments to report to the Workplace Gender Equality Agency on all its gender equality indicators, including GEI 6 and 7.

CONCLUSION

To address equal opportunity for women in Australia, over decades, substantive attempts have been made through legislation including the Affirmative Action Act 1986, *Equal Opportunity for Women in the Workplace Act 1999* (EOWW Act) and the *Workplace Gender Equality Act 2012*.

Despite this, gender equality in Australia still remains slow and persistent. What is clearly evident is that as legislation allows employers to choose how they address equality for women in workplaces, the responsibility and accountability to achieve real change in gender equality has left employers playing the key role in driving change⁵¹, and as WGEA's extensive datasets have shown, action has been minimal.

Legislation has overall legitimised slow action, requiring simply the reporting by organisations of policies to show compliance. Public access to WGEA's dataset has implied stakeholder accountability, but as is evident, public knowledge has not led to influencing organisational changes for gender equality, nor has awareness by organisational stakeholders.

Gaps between what is being reported and the experiences of women relating to gender equality policies in the workplace, or the lack thereof, continues to remain in the shadows. Experiences of individuals who are outside socially acceptable gender norms or from marginalised groups are also in the shadows.

It is unfathomable why the WGE Act ensured organisational confidentiality when it comes to pay data. As efforts to have pay secrecy would reflect an employer wanting to conceal wage discrimination, instead of the WGE Act driving equity and transparency in wages, it legalised pay secrecy in Australia. The WGE Act has allowed for women to be at a disadvantage when negotiating their pay and conditions⁵² with employers. WGEA in upholding the WGE Act, has had its hands tied in dismantling this significant barrier against women. This barrier is central to gender inequality, one that controls and perpetuates the systemic undervaluation of women's work, and the right of women to equal pay for work of equal value. The WGE Act can no longer go against this fundamental principle of equality.

⁵⁰ Australian Government. 2021. *A Roadmap for Respect: Preventing and Addressing Sexual Harassment in Australian Workplaces*. Accessible at: <https://www.ag.gov.au/sites/default/files/2021-04/roadmap-respect-preventing-addressing-sexual-harassment-australian-workplaces.pdf>.

⁵¹ Andrea North-Samardzic. 2009. Looking Back to Move Forward: The (D)evolution of Australia's EEO Regulatory Framework. *The economic and labour relations review : ELRR*, vol. 20, no. 1, pp. 59–76.

⁵² Women's Agenda. *News and Views. Pay secrecy feeds gaps: Transparency can change that*. Accessible at: <https://womensagenda.com.au/latest/pay-secrecy-feeds-pay-gaps-transparency-can-change-that/>

Although using a soft-touch approach in promoting and assisting workplaces to improve gender equality in Australia, WGEA has influenced organisations to advance their strategies utilising the Agency's assistance and benchmarking, overall, this is more the exception rather than the norm.

The façade of action by organisations, with the support of soft-touch legislation, and a statutory Agency being required to facilitate such limiting legislation, needs to stop. The impacts of gender inequality in work are considerably greater than what is measured on multiple individual and national fronts. Workplace gender equality is encountered intersectionally, over one's lifetime⁵³, affecting whole families and communities, for generations.

The WGE Act must be amended to enable WGEA to drive necessary change by setting targets against each GEI. In its present state, both the Act and Agency have reached their optimal power to softly steer change. A stronger approach is needed to stipulate, review and demand the achievement of yearly targets for all of the GEIs to accelerate the achievement of workplace gender equality in Australia.

WGEA needs to be funded and well-resourced to drive change. Its vision and mission needs to shift from promoting and assisting *to* stipulating organisational targets against industry benchmarks, issuing and publishing Report Cards on individual organisation performance, and making public all the data the organisations provides in its reporting, including pay data.

Compliance needs to be outcomes focused and validated by auditing, following annual reporting. Measures for poor and non-compliance needs to include financial penalties by WGEA to signify the seriousness of inaction and catalyse momentum for change.

The WGE Act needs to be amended to enable WGEA's functions and powers to drive change as recommended in this submission. The recommendations made by WGEA for this Review⁵⁴ have the full support of ACLW.

The recommendations offered by ACLW in this submission, however, focus on a stronger approach for WGEA to set targets to drive and monitor gender equality change and hold organisations accountable for not doing so.

RECOMMENDATIONS

In summary, ACLW recommends that:

1. WGEA needs to have the power to set for each organisation annually a target that it must achieve for each GEI.

⁵³ CEDA. 2016. *Gender inequality is a systemic problem*. Speech by Kate Jenkins. Accessible at: <https://www.ceda.com.au/NewsAndResources/News/Leadership-Diversity-Inclusion/Gender-inequality-is-systemic-problem>

⁵⁴ Workplace Gender Equality Agency. *Submission to the Review of the Workplace Gender Equality Act 2012*. November 2021.P.5 & 32. Accessible at: chrome-extension://efaidnbnmnnibpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.pmc.gov.au%2Fsites%2Fdefault%2Ffiles%2Fsubmissions%2Fwgea-submission-13-workplace-gender-equality-agency_0.pdf&clen=712564&chunk=true

2. The target for each GEI for the organisation must be based on how the organisation is performing against industry benchmarks for each of the GEIs.
3. If the entire industry benchmark is low for any GEI, WGEA sets where the benchmark for the GEI should be and uses this in its formulation of the target.
4. To annually achieve the target set by WGEA for each of the GEIs, the mandatory action plans by organisations need to have progressive timelines and milestones for the reporting year.
5. WGEA applies a five-point scale in assessing the organisation's annual reporting for each of the GEIs.
6. The organisation is given a public Report Card by WGEA which includes, for each GEI, its rank on the five-point scale, and its overall rank, out of all the reporting organisations in its industry sector.
7. Failure to meet the target for any GEI will require the organisation to work closely with WGEA to develop or amend its action plan for the next reporting year. Costs for this consultation will be set by WGEA on a case-by-case basis and met by the organisation.
8. The minimum standards for all organisations must require employer action plans for achieving targets set by WGEA for each of the GEIs.
9. Compliance could be extended to include failure to meet the target specified by WGEA for each GEI. WGEA should have the power to set a financial penalty for organisations that achieve a score of 1 or 2 on the five-point assessment scale.
10. WGEA must publish gender pay gaps of individual organisations. Organisations must create action plans to show how they will address closing the gender pay gap.
11. Employers should no longer provide full-time equivalent annual earnings for part-time and casual employees, but report on the actual earnings of part-time and casual employees as well as the number of hours employees are engaged.
12. WGEA must have the power to audit organisations to get a more comprehensive workplace view of how the organisation's gender equality strategies are being experienced by women and marginalised groups.
13. In line with the current sanctions for non-compliant organisations, high-level federal government support is needed consistently and diligently to ensure that non-compliant organisations are sanctioned against.
14. Reporting obligations for organisations must require reporting for each GEI using an intersectional lens to disaggregate data. The lens should include ethnicity, Indigenous status, disability, sexual orientation, religion and the binary measure of gender.
15. The WGE Act 2012 must be amended to require Federal, State, Territory and Local Government public sector agencies with 20 or more employees to report to WGEA on its gender equality indicators. With the introduction of Single Touch Payroll (STP) data, there should be consideration for expanding the definition of 'relevant employer' to include non-public sector employers with 50 or more employees.

16. Definitions related to gender in the WGE Act should reflect best practice, and employers should be required to provide data on the relative position of women, men, and non-binary people in their workplaces.
17. Sex-based harassment and discrimination must be specified as GEI 6. Additional data must be collected with respect to this GEI as specified by the Respect@Work Council and an additional GEI (GEI 7) must be added to account for other matters specified by the Minister.
18. The WGE Act 2012 must be amended to require the whole public sector as well as state, territory and local governments to report to the Workplace Gender Equality Agency on all its gender equality indicators, including GEI 6 and 7.
19. For GEI 6 and 7, WGEA needs to have the power to stipulate for each organisation what targeted change it needs to attain for the next reporting year.
20. The WGE Act needs to be amended to enable WGEA's functions and powers to drive change as recommended in this submission.
21. The recommendations made by WGEA for this Review have the full support of ACLW.