# Review of the Workplace Gender Equality Act 2012

## Consultation paper,October 2021

The Australian Government announced in the *Women’s Budget Statement 2021-22* a targeted review (the Review) of the *Workplace Gender Equality Act 2012* (the Workplace Gender Equality Act).

### Terms of reference

The Review is considering if the Workplace Gender Equality Agency (WGEA) has appropriate powers, tools and levers to achieve the objectives of the Workplace Gender Equality Act, including to promote and improve gender equality in Australian workplaces, support employers to remove barriers to the full and equal participation of women in the workplace and to eliminate discrimination on the basis of gender in relation to employment matters. The Review is also looking at any changes needed for WGEA to implement the recommendations of the Respect@Work national inquiry and options to reduce the regulatory burden on employers while continuing to enable WGEA to promote and improve gender equality. The Terms of Reference are at Attachment A.

### Consultation process

We welcome submissions on this targeted Review of the Workplace Gender Equality Act by **5 pm AEDT Wednesday 24 November 2021**.

After reading this consultation paper, and the Privacy Collection Notice at the end of the questions in this paper, you can send your written submissions using the online form at <https://www.pmc.gov.au/workplace-gender-equality-review-consultation> or by post.

Alternatively, hard copy submissions can be posted to:

WGEA Review Team – Consultation
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

The Department will consider hardcopy submissions received by post. However, we will not publish these submissions on the website.

The consultation questions in this paper are a guide. Please answer as many or as few as you wish. We welcome other comments you may have on the Act. The WGEA Review Team will also arrange targeted virtual consultation meetings with key stakeholders in October and November 2021.

A report from the WGEA Review is scheduled to be provided to the Minister for Women and the Minister for Women’s Economic Security before the end of 2021.

### Brief snapshot of gender equality in Australian workplaces

Advances continue to be made on gender equality in Australian workplaces. However, there is more to do. The national gender pay gap is 14.2 per cent. There continues to be a substantial workforce participation gap between women and men. More women work part-time (45 per cent) than men (19 per cent). Only a small proportion of men work flexibly or take parental leave. Women make up 33.6 per cent of ASX200 boards. Women are under-represented in senior profit and loss roles in businesses. There remains a gender pay gap in favour of men across all industries, including female-dominated industries.

### Brief overview of WGEA’s role

Established by the Workplace Gender Equality Act, WGEA is charged with promoting and improving gender equality in Australian workplaces. WGEA runs a compliance reporting program, in which non-public sector employers with 100 or more employees report to WGEA against six gender equality indicators (GEIs) on an annual basis. WGEA works with employers to help them comply with their reporting requirements under the Workplace Gender Equality Act. This reporting framework aims to highlight measures that employers can focus on to improve gender equality outcomes. WGEA provides advice, practical tools and education to employers to help them improve their gender performance including through the assessment and measurement of gender equality data. The Data Explorer, published on the website, releases all workplace gender equality data collected (excluding remuneration) and enables the public to access and analyse overall, industry and individual company performance.

WGEA also works with employers, business, industry and professional associations, academics and researchers, equal opportunity networks and women’s groups promoting and contributing to understanding, acceptance and public discussion of gender equality in the Australian workplace. WGEA undertakes research and analysis on a range of issues relevant to workplace gender equality, often in partnership with other organisations. WGEA also releases information on the gender pay gap, which is calculated from their data. Unlike the national gender pay gap, WGEA’s total remuneration gender pay gap looks at full-time total earnings and is currently at 20.1 per cent. They also promote best practice through Employer of Choice for Gender Equality citations and Pay Equity Ambassadors, as well as provides information on key topics such as parental leave and flexible work.

The Director of WGEA is also a core member of the newly established Respect@Work Council. The Respect@Work Council brings together leaders from key government regulators and policy makers responsible for sexual harassment policies and complaints to improve coordination, consistency and clarity across existing legal and regulatory framework. More information is available at: <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/respect-at-work/council>.

### Key resources on WGEA

For ease of reference, key information about WGEA is available as follows:

* The *Workplace Gender Equality Act 2012* is at: <https://www.legislation.gov.au/Details/C2016C00895>
* The [*Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)*](https://www.legislation.gov.au/Details/F2015C00279/Html/Text) is at: <https://www.legislation.gov.au/Details/F2015C00279>
* The *Workplace Gender Equality (Minimum Standards) Instrument 2014* is at: <https://www.legislation.gov.au/Details/F2014L00365>
* The WGEA website is at: <https://www.wgea.gov.au/>

## WGEA Review consultation questions – at a glance

1. Are the functions and powers of WGEA appropriate for promoting and improving gender equality in the workplace? How effective is WGEA in achieving its functions to promote and improve gender equality in the workplace including by enabling relevant employers to report on the gender equality indicators, developing benchmarks and reports, undertaking research, education and leading practice programs and contributing to the public discussion on gender equality?
2. What is your experience of what works to improve gender equality in your workplace? How do you currently engage with WGEA and use the reporting process and their resources to improve gender equality? What changes, if any, would you like to see in the areas of future focus for WGEA to further promote and improve gender equality over the next ten years?
3. Should the coverage of the Workplace Gender Equality Act be further changed? Specifically, should the definition of ‘relevant employer’ be expanded? If so, would additional considerations need to be factored in for new reporting employers?
4. Are the gender equality indicators (GEIs) in the Workplace Gender Equality Act, and the data collected with respect to the GEIs, appropriate to promote and improve gender equality? How could they be improved?
5. In addition to gender, should WGEA collect other data on diversity and inclusion criteria on a mandatory basis, to enable a more nuanced analysis of men and women’s experiences in the workplace? If yes, please specify criteria (eg cultural and linguistic diversity, disability, age, location of primary workplace). If not, why not?
6. How could data be better collected and/or used by WGEA to promote and improve gender equality? Should there be some form of pay transparency – should remuneration data in some form be public?
7. Are there changes that could be made to the Workplace Gender Equality Act that would help reduce the regulatory burden on relevant employers while continuing to enable WGEA to promote and improve gender equality? Should other data sources, such as Single Touch Payroll data, be used by WGEA instead of employers providing the same data to two Government agencies?
8. Could the minimum standards be expanded to improve the way they drive practical gender equality outcomes in workplaces? What would employers need to do to implement these changes in their workplace? Should Minimum Standards apply to all reporting employers, not just those with 500 or more employees?
9. Are the compliance mechanisms in the Workplace Gender Equality Act, and consequences for non-compliance, effective to promote and improve gender equality? If not, how could they be improved?
10. Are there any other matters you want to comment on in relation to the Workplace Gender Equality Act and improving and promoting gender equality in the workplace in Australia?

## WGEA Review consultation questions – background

### How effective is WGEA in promoting and improving gender equality?

The functions and powers of WGEA as set out in the Workplace Gender Equality Act include (section 10 of the Act):

* Advising and assisting employers in promoting and improving gender equality in the workplace.
* Developing, in consultation with relevant employers and employee organisations, benchmarks in relation to gender equality indicators.
* Issuing guidelines to assist relevant employers to achieve the purposes of the Workplace Gender Equality Act.
* Reviewing compliance with the Workplace Gender Equality Act by relevant employers, reviewing public reports lodged by relevant employers, and dealing with those reports.
* Collecting and analysing information provided by relevant employers under the Workplace Gender Equality Act to assist WGEA to advise the Minister.
* Undertaking research, educational programs and other programs for the purpose of promoting and improving gender equality in the workplace.
* Working with employers to maximise the effectiveness of the administration of the Workplace Gender Equality Act, including by minimising the regulatory burden on employers.
* Promoting and contributing to understanding and acceptance, and public discussion, of gender equality in the workplace.
* Reviewing the effectiveness of the Workplace Gender Equality Act in achieving its purposes.
* Reporting to the Minister on such matters in relation to gender equality in the workplace as WGEA thinks fit.

Consultation question

1. Are the functions and powers of WGEA appropriate for promoting and improving gender equality in the workplace? How effective is WGEA in achieving its functions to promote and improve gender equality in the workplace including by enabling relevant employers to report on the gender equality indicators, developing benchmarks and reports, undertaking research, education and leading practice programs and contributing to the public discussion on gender equality?

### What works to improve gender equality in workplaces and what should be the areas of future focus for WGEA?

To help inform the Review’s consideration of whether amendments are needed to the Workplace Gender Equality Act, we are interested in your practical experience of what actions have worked in your workplace to promote and improve gender equality. We are also interested to hear your views on what should be the areas of future focus for WGEA to improve gender equality in Australian workplaces.

Consultation question

2. What is your experience of what works to improve gender equality in your workplace? How do you currently engage with WGEA and use the reporting process and their resources to improve gender equality? What changes, if any, would you like to see in the areas of future focus for WGEA to further promote and improve gender equality over the next ten years?

### Scope of the Workplace Gender Equality Act – which employers should be covered?

Currently the Workplace Gender Equality Act covers around 40 per cent of employees in Australia. The Workplace Gender Equality Act requires ‘relevant employers’ report to WGEA. ‘Relevant employer’ is defined in section 3 of the Act as meaning:

* a natural person, or a body or association (whether incorporated or not), being the employer of 100 or more employees in Australia
* a registered higher education provider that is an employer.

The Workplace Gender Equality Act does not currently cover Commonwealth, State, or Territory public sectors.

However, in the Australian Government’s response to recommendation 43(a) of the *Respect@Work* report, *Roadmap to Respect*, the Australian Government announced it would amend the Workplace Gender Equality Act to ‘require public sector organisations to report to WGEA on gender equality initiatives,’ with the Australian Public Service starting reporting from 2022-23. The *Women’s Budget Statement 2021-22* noted that ‘pending legislative amendment of the WGE Act, WGEA will adapt its reporting and data management system for the public sector and work with the Australian Public Service Commission and relevant APS agencies to create a more comprehensive, representative and accurate data set of the Australian workforce. These changes will assist public and private sector organisations to benchmark performance against each other in order to better understand their progress against key metrics of gender equality, including to address workplace sexual harassment.’

If public sector reporting was expanded to include state and territory public sectors, subject to their agreement, that would further increase WGEA’s data to cover around 60 per cent of Australian employees.

Consultation question

3. Should the coverage of the Workplace Gender Equality Act be further changed? Specifically, should the definition of ‘relevant employer’ be expanded? If so, would additional considerations need to be factored in for new reporting employers?

### Should the gender equality indicators (GEIs) in the Workplace Gender Equality Act be changed?

The Workplace Gender Equality Act provides that relevant employers must prepare a public report to WGEA containing information about the employer and the following GEIs (section 13 of the Act):

* GEI 1 – gender composition of the workforce
* GEI 2 – gender composition of governing bodies of relevant employers
* GEI 3 – equal remuneration between women and men (Note: the CEO is excluded from reporting remuneration)
* GEI 4 – availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities
* GEI 5 – consultation with employees on issues concerning gender equality in the workplace
* GEI 6 – sex-based harassment and discrimination.

Further detail about the GEIs is provided in the *Workplace Gender Equality (Matters in relations to the Gender Equality Indicators) Instrument 2013 (No. 1),* which are at <https://www.legislation.gov.au/Details/F2015C00279>

Consultation question

4. Are the gender equality indicators (GEIs) in the Workplace Gender Equality Act, and the data collected with respect to the GEIs, appropriate to promote and improve gender equality? How could they be improved?

### Should WGEA collect other diversity data in addition to gender?

Currently WGEA collects gender data on employees from employers. There have been calls for this to broaden to include other measures of diversity to enable a more nuanced analysis of men and women’s experiences in the workplace.

While reporting on gender data is a mandatory requirement, for 2020-21 reporting WGEA collected data on location and age of employees on a voluntary basis.

Consultation question

5. In addition to gender, should WGEA collect other data on diversity and inclusion criteria on a mandatory basis, to enable a more nuanced analysis of men and women’s experiences in the workplace? If yes, please specify criteria (eg cultural and linguistic diversity, disability, age, location of primary workplace). If not, why not?

### How could WGEA better collect and use data on gender equality?

WGEA collects and analyses large amounts of data on gender equality in Australian workplaces. Having access to reliable, high-quality data is important for making better decisions and policies. It also helps improve accountability and track performance over time in meeting policy objectives. The Australian Government recognises the importance of data and has committed to releasing Australia’s first Data Strategy by the end of the year. The Strategy will set out the Government’s vision for Australia becoming a modern data-driven society by 2030. The Australian Government is working to ensure data is available to those who need it, through measures including the Government’s Public Data Policy Statement which commits to optimise the use and reuse of public data.

Under the Workplace Gender Equality Act, salary and remuneration data is confidential and is not included in public data or reports (section 14 of the Act).

Consultation question

6. How could data be better collected and/or used by WGEA to promote and improve gender equality? Should there be some form of pay transparency – should remuneration data in some form be public?

### How could the Workplace Gender Equality Act change to reduce the regulatory burden on employers?

One function of WGEA is to ‘work with employers to maximise the effectiveness of the administration of the Act, including by minimising the regulatory burden on employers’ (section 10(1)(ea) of the Act).

The Government’s Deregulation Agenda is ensuring regulation across Government remains fit for purpose, maintains critical safeguards and is implemented well. By reducing unnecessary regulatory burden, it becomes easier for business to invest, create jobs and grow the economy. One of the focus areas for the Government is on streamlining Commonwealth interactions with business, to reduce business compliance burden, including implementing a ‘tell us once’ policy where possible and appropriate. In line with the Government’s Deregulation Agenda, we welcome your comments on how the regulatory burden on employers can be reduced while still achieving the Government’s aims of improving gender equality in Australian workplaces.

For example, since the review that led to the Workplace Gender Equality Act there is now a major new source of data – Single Touch Payroll (STP) data. There is overlap between STP data and some payroll-based data that WGEA collects on gender equality indicators. There may be opportunities to use STP data both to enhance gender equality data and reduce the reporting burden on employers, which could be reflected in changes to the Act.

Consultation question

7. Are there changes that could be made to the Workplace Gender Equality Act that would help reduce the regulatory burden on relevant employers while continuing to enable WGEA to promote and improve gender equality? Should other data sources, such as Single Touch Payroll data, be used by WGEA instead of employers providing the same data to two Government agencies?

### How could the minimum standards be reformed to fast-track practical changes for gender equality?

Under the Workplace Gender Equality Act, the Minister sets the minimum standards in relation to gender equality indicators (section 19 of the Act).

The *Workplace Gender Equality (Minimum Standards) Instrument 2014* (Minimum Standards Legislative Instrument) sets out the minimum standards which apply to relevant employers with 500 or more employees. The Minimum Standards Legislative Instrument is at:<https://www.legislation.gov.au/Details/F2014L00365>

Relevant employers with 500 or more employees must have policies or strategies in place to support **one or more** of the following indicators(section 5(3) of the Minimum Standards Legislative Instrument):

* gender composition of the workforce
* equal remuneration between women and men
* flexible working arrangements, and
* sex-based harassment and discrimination.

Currently 100 per cent of relevant employers with 500 or more employees comply with the minimum standards, with almost every company having a policy or strategy in place on sex-based harassment and discrimination.

Although the minimum standards only apply to employers with 500 or more employees, 99.2 per cent of employers with 100‑499 employees currently comply with the minimum standards.

Consultation question

8. Could the minimum standards be expanded to improve the way they drive practical gender equality outcomes in workplaces? What would employers need to do to implement these changes in their workplace? Should Minimum Standards apply to all reporting employers, not just those with 500 or more employees?

### What is the best way to promote compliance?

WGEA works closely with relevant employers to assist them in complying with the gender equality reporting obligations to WGEA.

In instances where employers do not comply, WGEA can publicly name employers as non-compliant (section 19D of the Act).

Non-compliant employers ‘may not be eligible to compete for contracts under the Commonwealth procurement framework and may not be eligible for Commonwealth grants or other financial assistance’ (section 18 of the Act).

The Workplace Gender Equality Procurement Principles describe the Australian Government procurement policy associated with the Workplace Gender Equality Act (<https://www.wgea.gov.au/what-we-do/compliance-reporting/wgea-procurement-principles>).

Consultation question

9. Are the compliance mechanisms in the Workplace Gender Equality Act, and consequences for non-compliance, effective to promote and improve gender equality? If not, how could they be improved?

### Would you like to comment on any other issue?

Consultation question

10. Are there any other matters you want to comment on in relation to the Workplace Gender Equality Act and improving and promoting gender equality in the workplace in Australia?

## Privacy collection notice

Providing personal information in your submission is voluntary. We may publish your submission (including your name), **unless you request for your submission to remain anonymous or confidential**, or if we consider (for any reason) that it should not be made public. We may redact parts of published submissions as appropriate. Submissions may be redacted to remove defamatory or sensitive material. Submissions containing offensive language or inappropriate content will not be responded to and may be destroyed.

The Department reserves the right not to publish all or part of a submission. Contact us for more information at **wgeareview@pmc.gov.au**.

Information you provide in your submission, including personal information, may be disclosed to the Australian Government, State and Territory governments and their departments and agencies; and third parties who provide services to the Department, for the purposes of informing and supporting the work of the WGEA Review Team. This information may also be used to communicate with you about your submission and the consultation process.

The privacy and security of your personal information is important to us, and is protected by law. We will only disclose your personal information for a different purpose with your consent, or where we are authorised or permitted to do so by law. The Department’s [**Privacy Policy**](https://www.pmc.gov.au/pmc/who-we-are/accountability-and-reporting/privacy-policy)explains how we handle and protect the information provided by you. Our Privacy Policy also explains how you can request access to, or correct, the personal information we hold about you, and who to contact if you have a privacy enquiry or complaint. If you require a copy of our Privacy Policy contact the Privacy Officer at **privacy@pmc.gov.au**.

Refer to our [**Privacy Policy**](https://www.pmc.gov.au/pmc/who-we-are/accountability-and-reporting/privacy-policy) and consultation privacy notice on our submission webpage to find out more.

### Attachment A

## Terms of Reference – Review of the Workplace Gender Equality Workplace Gender Equality Act 2012

### Context

The Government announced in the Women’s Budget Statement 2021-22 a targeted review (the Review) of the *Workplace Gender Equality Act 2012* (the Workplace Gender Equality Act). This followed the Workplace Gender Equality Agency’s 2019-20 Progress Report, which recommended a review of the WGE Act to drive further progress on gender equality in Australia.

The Workplace Gender Equality Act replaced the *Equal Opportunity for Women in the Workplace Act 1999* and has not been reviewed since its introduction in 2012.

The Review will consider if the Workplace Gender Equality Agency (WGEA) – a statutory agency created by the Workplace Gender Equality Act – has appropriate powers, tools and levers to achieve the objectives of the Workplace Gender Equality Act, including to promote and improve gender equality in Australian workplaces, support employers to remove barriers to the full and equal participation of women in the workplace and to eliminate discrimination on the basis of gender in relation to employment matters.

In the Women’s Budget Statement 2021-22, the Government also committed to amending the Workplace Gender Equality Act to require Australian Public Service organisations to report to WGEA on gender equality initiatives. This amendment will create a more comprehensive, representative and accurate data set of the Australian workforce.

### Scope

The targeted Review will examine the application of the Workplace Gender Equality Act and assess the effectiveness of WGEA’s existing practices in the promotion and improvement of gender equality in employment and in workplaces. The Review will also identify areas of future focus for WGEA to further promote gender equality over the next ten years, including reducing gender pay gaps, and if needed, recommend options for reform of the Workplace Gender Equality Act and its related instruments.

The Review will consider:

* coverage of the Workplace Gender Equality Act, including size and types of organisations required to report;
* reporting requirements and data collected under the six gender equality indicators, set out in the Workplace Gender Equality (Matters in relation to Gender Equality) Instrument;
* benchmarks, public reporting, data quality and analysis, and sharing of data, with consideration given to the sharing of data between WGEA and other agencies such as the Australian Bureau of Statistics and the Australian Taxation Office;
* reviewing compliance, minimum standards and actions relating to non-compliance with the Workplace Gender Equality Act; and
* other actions which can contribute to improvements in gender equality in the workplace.

The Review will take into account:

* WGEA input on the effectiveness of the Workplace Gender Equality Act in achieving its purposes, including the WGEA Progress Report 2019-20 and its outlined opportunities for improvement, and input from a broad range of stakeholders;
* The Government’s deregulation agenda, including whether there are opportunities to reduce the reporting burden on business through streamlining reporting tools or better sharing of data (such as from Single Touch Payroll) between Commonwealth agencies;
* Any changes needed for WGEA to implement the recommendations of the Respect@Work national inquiry and the Government’s response; and
* Australian and international evidence and approaches.

### Stakeholder Consultation

The review will be informed by consultation with targeted representatives from the business and not-for-profit sectors, employee organisations, higher education providers, relevant government agencies, including the Department of the Prime Minister and Cabinet (PM&C), Treasury, Department of Finance, the Australian Bureau of Statistics, the Australian Taxation Office, the Australian Public Service Commission and the Human Rights Commission, the women’s sector, users of the WGEA data and other interested parties.

### Governance and Deliverables

The Review will commence in September 2021. It will be led by a WGEA Review Team in PM&C, in consultation with WGEA, and with guidance from external Expert Advisers. The project sponsor is the Deputy Secretary Social Policy in PM&C. A report will be provided before the end of 2021 to the Minister for Women as the Minister with portfolio responsibility for WGEA and to the Minister for Women’s Economic Security.