



SUBMISSION TO THE REVIEW OF THE WORKPLACE GENDER EQUALITY ACT 2012

Introduction

1. The Women Barristers Association (**WBA**) is an independent association of lawyers at the Victorian Bar. Its membership comprises both women and men, however its objective is to represent women barristers. The WBA aims to:
 - (a) provide a professional and social network for women barristers;
 - (b) promote awareness, discussion and resolution of issues which particularly affect women;
 - (c) identify, highlight and eradicate discrimination against women in law and the legal system; and
 - (d) advance equality for women across the legal profession generally.
2. The WBA is a constituent body of Australian Women Lawyers Ltd (**AWL**), the national independent peak body for women lawyers. The AWL objectives are to:
 - (a) achieve justice and equality for all women;
 - (b) further understanding and support for the legal rights of all women;

(c) identify, highlight and eradicate discrimination against women inherent in the legal system and in the community generally; and to

(d) advance equality for women in the legal profession.

3. AWL endorses this submission, prepared by members of the WBA.
4. The WBA welcomes the opportunity to provide a submission to the Review of the *Workplace Gender Equality Act 2012 (Cth) (the Act)*.
5. While some of the issues facing female barristers, being self-employed, can be different to those in a traditional workplace, many of the concerns are the same. The WBA wishes to provide the following short responses to the relevant consultation questions.

COMMENTS IN RESPONSE TO THE REVIEW OF THE *WORKPLACE GENDER EQUALITY ACT*

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?

6. Given the nature of WBA, it does not have direct contact or engagement with the WGEA, and so does not comment upon its effectiveness, however as addressed below, WBA considers that the functions and powers of WGEA should be extended to include the public sector and organisations of fewer than 100 employees.

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?

7. The key initiative in the workplace that WBA is engaged with is the Law Council of Australia's Gender Equitable Briefing Policy (GEBP), initiated in 2016. Signatories to the GEBP (mainly briefing entities such as law firms) commit to briefing women as counsel in at least 30% of matters by number and value. Barristers may also sign the GEBP and commit to recommending at least one woman barrister each time they are asked to provide a recommendation. All signatories to the GEBP have annual reporting obligations. WBA considers that the reporting aspect is particularly important to provide transparency, and encourage meaningful conversation, and where necessary, review, as to meeting the GEBP commitments.
8. In terms of future focus, WBA believes that consideration should be given to expanding WGEA's reach from the immediate workplace to also considering what can be done to promote gender equality in relation to engaging external contractors who provide services (or possibly just professional services) to a workplace. For example, agencies (public and private sector) could be asked to meet targets and provide data in relation to gender equality for contractors engaged by them. This is already the case in Victoria (and possibly other states and territories) in relation to "panel firms" that provide legal services to the Victorian Government, and are required to report on, and

meet, certain gender equitable briefing targets. Again, WBA would support a reporting requirement, in order to encourage transparency and debate.

The proposed expansion is important to cultural change as it extends the WGEA's reach to organisations and individuals who are not presently covered.

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?

9. WBA agrees that the WGEA's remit should expand to include the public sector, as government agencies should be the leaders of change, and generally have resources to manage reporting obligations.
10. While it is necessary to bear in mind that there is a certain inconvenience in reporting, requiring only employers of over 100 people to report risks skewing the data and does not accurately reflect what is occurring in workplaces more generally. There is, currently, no or limited insight into what is happening at smaller companies and, consequently, lesser opportunity for cultural change (brought by the awareness of the Act and its reporting obligations) to be effected at those companies. This issue is made apparent with the voluntary Equitable Briefing Policy. The data shows that smaller companies are underrepresented both in adopting the policy, and possibly, complying with the perceived reporting obligations.
 - (a) WBA considers that template and/or simplified reporting options should be made available to maximise ease of compliance with reporting obligations for these smaller organisations. The GEBP is a good example of this as individual

barristers are required to keep statistics and report on compliance each year.

Examples of record keeping tools and practices ought to be publicised, where possible, to encourage compliance.

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?

11. As noted above, a further indicator could be gender equality in terms of engagement of contractors and professional service providers so that gender equality targets also apply in that sphere.

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?

12. WBA's primary concern is in relation to collection of data and achievement of equality in terms of gender. However, to the extent that data can be collected in relation to age, race, ethnicity and disability, WBA supports and agrees that it would be useful to incorporate this into reporting mechanisms, particularly in terms of addressing the particular role that intersectionality plays in disadvantage.

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?

13. Publication of data increases transparency in all areas and supports general equality.

WBA recommends that anonymised remuneration data be made public. For example, unless disclosure of data in and of itself would identify a particular employer, reporting of individual organisation remuneration broken down by gender would increase transparency (privacy would be addressed by removing the name of the organisation).

- (a) The GEBP is a good example of this, as briefing entities have targets in terms of briefing women barristers both by number of briefs and value. The reporting of the value of briefs to male and female barristers is therefore vital in terms of monitoring compliance with the targets.

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?

14. WBA does not express a view on this question.

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?

15. WBA considers that there is scope to extend the Minimum Standards to smaller organisations and particularly to those with 100 or more employees who are already complying with the standards to a significant extent.
16. WBA also considers that the Minimum standards should be expanded to include, as far as practicable, targets for achieving gender equality that are substantive and quantifiable. For example, Question 1 currently asks if an organisation has a formal policy or strategy on remuneration and if it includes pay equity goals. However, it does not ask any question or impose any standard in relation to pay equity or require demonstration of improvement over time. WBA considers that the setting of more concrete targets for improving gender equality would go a significant way towards improving organisational performance.
17. Similarly in terms of formal policy and strategy to support employees with family and caring responsibilities, the question asks whether the organisation has a policy or strategy in place but does not require information or set targets in terms of what those policies should contain, how effective they are, and how often they are adopted in practice based upon the number of requests made for flexible working arrangements.
18. WBA considers that the sex-based harassment and discrimination policy be treated as a stand-alone requirement applicable to all organisations regardless of size, as this assists employers in complying with their legal duties to provide safe workplaces.

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?

19. WBA believes that the Commonwealth should apply the suggested requirement that non-compliant employers not be eligible to compete for contracts under the Commonwealth procurement framework. This is a mechanism already in place in Victoria (and possibly other states and territories) in relation to eligibility of law firms to compete for Government work. This is a key incentive to organisations to comply with WGEA requirements.

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?

CONCLUSION

20. Insofar as WBA can further assist in any of these issues, please contact Astrid Haban-Beer, WBA Policy officer and Director of AWL.¹ We gratefully acknowledge the drafting of this submission by WBA members and equality and diversity advocates at the Victorian Bar - Kylie Weston-Scheuber, Sophie Kearney and Astrid Haban-Beer.

¹ [REDACTED]



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Australian Women Lawyers Ltd represents the following constituent bodies:

