

## Safe and Equal | Feedback on the Review of the *Workplace Gender Equality Act 2012*

### About Safe and Equal (formerly Domestic Violence Victoria and the Domestic Violence Resource Centre Victoria)

Domestic Violence Victoria (DV Vic) is the peak body for specialist family violence response services in Victoria. As such, DV Vic is recognised as the state-wide voice of Specialist Family Violence Services (SFVSs) responding to victims-survivors. DV Vic is an independent, non-government organisation that leads, organises, advocates for, and acts on behalf of its members utilising an intersectional feminist approach. DV Vic's work is focused on advocating for, supporting, and building the capacity of specialist family violence practice and service delivery for victim-survivors; system reform; and research, policy development and law reform.

The Domestic Violence Resource Centre Victoria (DVRCV) is a state-wide organisation working across prevention and response and is a SFV registered training organisation. DVRCV provides workforce development and capability building across family violence response and prevention workforces.

In 2021, DV Vic and DVRCV merged to form a new entity, *Safe and Equal*. Bringing together the expertise, influence and reach of both organisations, the new entity holds a central position in the Victorian family violence system and its strategic governance, providing family violence subject matter expertise to the SFVSs sector, government, and other partners and stakeholders. The newly merged entity also presents opportunities to develop and resource new functions for the peak body that will support its position and leadership into the future. Under a new name and united vision, we are working towards a world beyond family and gender-based violence, where women, children and all marginalized communities are safe, thriving, and respected.

## Introduction

Safe and Equal welcomes the Commonwealth Government's review of the Workplace Gender Equality Act 2012 and appreciates the opportunity to contribute towards strengthening this important piece of legislation. The establishment of the Workplace Gender Equality Act nine years ago was a strong step towards progressing gender equality within Australia. The Act, a revised version of the Equality Opportunity for Women in the Workplace Act 1999, reflected the ongoing social progress and a need to ameliorate the gap between men and women's workforce participation in Australia.

The Act introduced a variety of new mechanisms aimed at fast-tracking progress towards gender equality. These included the development of gender equality indicators and relevant industry-based benchmarks, reporting frameworks for employers, transparency of compliance and consequences for non-compliance, as well as the establishment of the Workplace Gender Equality Agency to oversee the implementation of the Act and provide advice to employers.

In the period since the Act was established, there has been significant economic, social, political, and legislative progress. Understandings of the multitude of complexities and nuances around gender equality has evolved and continues to do so. These factors include the changing landscape of the Australian workforce, emerging research around gender equality, the importance of intersectionality, the establishment of related legislation, and the

gendered impacts of the COVID-19 pandemic. The combination of these factors means that there is significant scope for the Act to be updated to better reflect and respond to the needs of Australian workplaces and a modern workforce.

In responding to the invitation to contribute to the review of the Act, this submission will focus on four broad recommendations for consideration. The objective of this submission is to provide advice on broad principles that we believe will have the most significant impact towards improving this legislation and ensuring it reflects the needs of a modern Australia.

## How the Act contributes to preventing gender-based violence

Workplaces are a key setting within which to progress gender equality and address the drivers of gender-based violence.

Progressing and achieving gender equality is critical to reducing and ultimately ending family and gender-based violence. International evidence shows there is a strong correlation in many communities between higher gender inequality (public and/or private) and higher levels of gender-based violence, with gender inequality exacerbating the impact and prevalence of the gendered drivers of violence.<sup>1</sup> As has been well-documented within Change the Story – Australia’s national primary prevention framework - there are four key gendered drivers of violence against women. These are factors that most consistently predict or ‘drive’ violence against women and explain its gendered patterns:<sup>2</sup>

1. Condoning of violence against women
2. Men’s control of decision-making and limits to women’s independence in public and private life
3. Rigid gender stereotyping and dominant forms of masculinity
4. Male peer relations and cultures of masculinity that emphasise aggression, dominance and control

Primary prevention requires a multi-pronged approach to address the gendered drivers and other factors that can increase the likelihood or severity of violence; focusing on individual drivers in isolation will have a limited impact towards preventing violence before it occurs. **Progressing gender equality provides the external, enabling environment to generate the support for primary prevention actions to work, and ensure these actions are sustainable and effective.**

The Workplace Gender Equality Act 2012 provides a vital mechanism for progressing gender equality in workplaces and contributing to long-term primary prevention efforts. Amending the legislation to reflect the communities’ nuanced understanding of gender equality will ensure it better achieves its objectives and contributes towards ending gender-based violence.

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<sup>1</sup> Our Watch (2021) *Prevention Handbook: The link between gender inequality and violence against women*, <https://handbook.ourwatch.org.au/resource-topic/key-concepts-in-prevention-of-violence-against-women/the-link-between-gender-inequality-and-violence-against-women/>

<sup>2</sup> Our Watch (2021) *Change the Story: A shared framework for the primary prevention of violence against women in Australia (second edition)*

## Recommendations for consideration:

### 1. Expand the current definition of gender within the Act to reflect the diversity of gender

Safe and Equal encourages the Commonwealth Government to amend the Workplace Gender Equality Act 2012 to ensure the legislation reflects the scale and complexities of gender identities and move beyond a narrow definition of gender as a binary. Neither sex nor gender exist in binary categories, and the evidence base indicates that the impacts of gender inequality can be compounded for those who do not fall within a binary framing.<sup>3 4</sup> While binary cis-normative language may seem simpler from a reporting purpose, it does not adequately reflect or capture the experiences of people who are transgender, gender-diverse, or gender non-binary, for example. Aspiring for holistic gender diversity and equality across all Australian workplaces that reflects current best-practice and evidence-based understandings of gender, requires embedding a gender-transformative approach. This includes actively challenging and transforming the attitudes, norms, structures, and practises that contribute to and perpetuate rigid narrow conceptions of gender. It is critical that the Act adopts a more inclusive approach to gender in order to challenge gender binaries and rigid gender stereotypes, build the evidence base, and contribute towards embedding sustainable gender equality across all Australian workplaces for *all* employees.

Expanding the definition of gender is relevant to consultation questions 4, 5 and 6. From a practical standpoint, expanding the definition of gender means amending the definition within the body of the legislation, and including a larger selection for 'gender identity' within the workplace gender equality indicators as per the reporting requirements.

**RECOMMENDATION 1:** *The Commonwealth Government amends the definition of 'gender' included within the Workplace Gender Equality Act 2012, to remove the binary framing and include additional gender classifications within the gender equality indicators to ensure the experiences and perspectives of gender diverse employees are captured within reporting data.*

### 2. Amend the Act to embed an intersectional understanding of gender equality

Safe and Equal encourages the Commonwealth Government to amend the Workplace Gender Equality Act 2012 to ensure the legislation applies an intersectional lens<sup>5</sup> to gender equality. Applying an intersectional lens means looking beyond a binary understanding of gender and examining the ways in which structural inequalities, including other forms of oppression, discrimination, and marginalisation influence and compound people's experiences of gender inequality. At present, the Act does not consider ways in which gender inequality is exacerbated by other systemic and structural inequalities that further marginalise individuals and particular groups, across our communities. The lack of an intersectional lens means that the data captured through the workplace gender equality indicators does not accurately reflect the diversity of Australian workplaces, nor does it capture the differences in

<sup>3</sup> Victorian Government (2016) *Safe and Strong: A Victorian Gender Equality Strategy*

<sup>4</sup> Rainbow Health (2020) *Pride in Prevention: A guide to primary prevention of family violence experienced by LGBTIQ communities*

<sup>5</sup> Crenshaw, K. (1991) *Mapping the margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, Stanford Law Review, 43(6)

experiences or perceptions of gender inequality by diverse employees. This means that policies, programs, or interventions implemented in response to WGEA data are unlikely to be sufficiently targeted or result in meaningful, long-term sustainable change.

Amending the Act to apply an intersectional lens is relevant to consultation questions 4, 5 and 6. From a practical standpoint, embedding an intersectional lens requires expanding the range of data collected from workplaces as per the reporting requirements.

**RECOMMENDATION 2:** *The Commonwealth Government amends the Workplace Gender Equality Act 2012 to embed an intersectional lens, acknowledging that individuals' experiences of gender inequality are compounded by overlapping forms of discrimination and marginalisation. Include additional reporting categories such as age, languages spoken, ethnicity or cultural background, disability, religion, and identification as Aboriginal or Torres Strait Islander for example, to ensure the experiences and perspectives of diverse employees are captured within reporting data, and that interventions implemented in response to this data are sufficiently targeted and appropriate.*

### 3. Amend the Act to consider how gender inequality impacts Aboriginal and Torres Strait Islander people:

Safe and Equal encourages the Commonwealth Government to amend the Workplace Gender Equality Act 2012 to ensure the legislation explicitly consider how gender inequality impacts individuals who identify as Aboriginal and Torres Strait Islander. In the absence of more detailed intersectional data on diverse characteristics, it is critical that at a minimum, this piece of national legislation considers individuals' experiences and perceptions of gender inequality, as it intersects with their identity as Aboriginal and Torres Strait Islander people. This is particularly critical for Aboriginal and Torres Strait Islander women, who may experience the intersection of racism and sexism, and the contemporary impact of imposed colonial patriarchy.<sup>6,7</sup> By not working with Aboriginal and Torres Strait Islander people to capture and respond to data on Aboriginality, the Act risks compounding and perpetuating the ongoing impacts of colonisation, intergenerational trauma, systemic oppression, disempowerment and racism.<sup>8,9</sup> Amending the Act to consider Aboriginality will better ensure the design and implementation of mechanisms that seek to redress the impacts of colonial patriarchy and encourage workplaces to make the necessary efforts to ensure they are healing and not exacerbating the trauma experienced by First Nations people.

Amending the Act to consider the impact of Aboriginality as it relates to gender inequality is relevant to questions 4, 5 and 6. From a practical standpoint, this involves including consideration of Aboriginal and Torres Strait Islander people within the Objects of the Act and include classifications on First Nations identity within the reporting requirements.

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<sup>6</sup> Moreton-Robinson, A. (2020) *Talkin' Up to the White Woman: Indigenous Women and Feminism*, St Lucia Queensland: University of Queensland Press

<sup>7</sup> Smith, L.T. (2021) *Decolonizing Methodologies: Research and Indigenous Peoples*, London: Zed Books

<sup>8</sup> Murray, S. and Powell, A. (2011) *Domestic Violence: Australian public policy*, North Melbourne: Australian Scholarly Publishing

<sup>9</sup> Nancarrow, H. (2006) In search of justice for domestic and family violence: Indigenous and non-Indigenous women's perspectives, *Theoretical Criminology*, London: Sage Publications

**RECOMMENDATION 3:** *The Commonwealth Government works with Aboriginal and Torres Strait Islander people to amend the Workplace Gender Equality Act 2012 to ensure the Act considers how gender inequality impacts upon individuals who identify as Aboriginal and Torres Strait Islander. This includes incorporating additional categories within the required reporting data.*

#### 4. Amend the Gender Equality Indicators within the Act to capture more detailed data

Safe and Equal encourages the Commonwealth Government to consider updating the gender equality indicators articulated within the Workplace Gender Equality Act 2012 to capture more detailed data and enable a more nuanced understanding of the workplace experiences of men, women, and non-binary people. There is scope to strengthen the current gender equality indicators articulated within the Act to capture more data on diversity attributes, as well as more detailed data on the gender composition and gender pay equity at different levels. This includes, for example, requiring that relevant organisations provide gender remuneration and compositional data at all hierarchical levels, across different specialty departments and by comparable positions/roles. Safe and Equal also suggests including additional indicators aimed at tracking recruitment and promotion practices, as well as tracking the number of, and responses to, workplace sexual harassment incidences – particularly if the Act is to be updated to better support the recommendations included within the *Respect@Work: Sexual Harassment National Inquiry Report 2020*.

Restricting the gender equality indicators to simple binary gender comparisons risks masking deeper, structural inequalities within organisations and industries, which will in turn have a limited impact on achieving meaningful and sustainable gender equality. Collecting additional layers and levels of gender and diversity data means that both organisations and the WGEA can analyse the data in a multitude of different ways, to better assess the status of gender equality and implement appropriately targeted initiatives in response.

Amending the gender equality indicators articulated within the Act to include additional diversity data and more detailed compositional and pay data is relevant to questions 4, 5 and 6 as per the consultation terms of reference. From a practical standpoint, this involves expanding on the gender equality indicators, amending the reporting data collection and analysis mechanisms and providing support to relevant organisations on how and where to capture and store this data ongoing.

**RECOMMENDATION 4:** *The Commonwealth Government updates the gender equality indicators articulated within the Workplace Gender Equality Act 2012 to capture more detailed data and enable a more nuanced understanding of the workplace experiences of men, women and non-binary individuals. This includes collecting more data on diversity attributes, as well as more detailed data on the gender composition and gender pay equity at all hierarchical levels, across different departments, and by comparable position/roles. Include additional indicators aimed at tracking recruitment and promotion practices, and tracking number of, and responses to, incidences of workplace sexual harassment.*

## Conclusion

Safe and Equal appreciates the opportunity to provide feedback on the review of the *Workplace Gender Equality Act 2012*. Preventing and ending gendered violence and family violence is predicated on achieving and sustaining intersectional gender equality across all key settings where people live, work, learn and play. We recognise that this critical piece of legislation has been instrumental in progressing gender equality in workplaces across Australia, fundamentally improving the experiences of many women at work whilst also challenging and changing the attitudes necessary for preventing and ending gendered violence and family violence.

We have outlined a number of important, but what we believe are highly impactful changes that will modernise this piece of legislation and ensure it better reflects the significant economic, social, political, and legislative progress since this Act was established. As outlined in the introduction, understandings of the multitude of complexities and nuances around gender equality has evolved and continues to do so. These factors include the changing landscape of the Australian workforce, emerging research around gender equality, the importance of intersectionality, the establishment of related legislation, and the gendered impacts of the COVID-19 pandemic. The combination of these factors means that there is significant scope for the Act to be updated to better reflect and respond to the needs of Australian workplaces and a modern workforce.

Safe and Strong commend the Commonwealth Government on committing to reviewing and refreshing this piece of legislation. We look forward to engaging further with this process and learning the outcomes of the review.

## Consultation questions (for reference)

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 (e.g. 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?