



Workplace Gender Equality Act Review Team – Consultation
Department of Prime Minister and Cabinet
PO Box 6500
CANBERRA ATC 2600

Online submission

Dear Workplace Gender Equality Act Review Team

Thank you for the opportunity to comment on the Review of the Workplace Gender Equality Act (WGEA) 2012 Consultation Paper, released on 20 October 2021. This letter outlines a submission from Minderoo Foundation in response to a selection of the 10 questions posed within the paper.

Overarching remarks

Minderoo Foundation commends the Commonwealth’s acknowledgment that “there is more to do” to advance gender equality in Australian workplaces, and vehemently supports the need to remove employment barriers to support full and equal female participation, and to eliminate gender discrimination. As the world emerges from the impacts of the COVID-19 pandemic, the role of WGEA has never been more critical.

Minderoo Foundation’s response to the Review is both supported by research and drafted with a particular focus on Indigenous women. It is imperative to consider how WGEA pertains to all Australians, including diverse Australians, and across all sectors. Minderoo Foundation recommends that:

1. WGEA reporting requirements are updated to ensure that the data collected represents the experience of all Australian men and women, including diverse men and women. Key gaps in coverage need to be filled, such as public-sector organisations being added to the list of “relevant employers”, in section 3(1) of the *Workplace Gender Equality Act 2012*.
2. WGEA expand the data it collects on gender equality in organisations that fall outside the reporting framework, through random sample surveys, such as for small businesses. This would build a more representative picture of gender equality in Australian workplaces without the requirement of further mandated reporting. The administrative load of a sample of organisations being asked periodically to take part in a survey would be small, compared to widescale reporting.
3. WGEA collect data on intersecting forms of discrimination, on a mandatory basis from employers. It is critical that WGEA has access to data that can be disaggregated not only by gender but also regarding other key diversity and inclusion criteria, such as whether or not employees identify as Indigenous, having a disability, LGBTIQ+ or are culturally and linguistically diverse. The need to fill this gap is urgent. Currently there is no legal requirement to report or disclose this information. To publish such information would uncover the most vulnerable groups in society that should be prioritised in terms of policy actions and responses.



4. The WGEA Act be amended to require employees to take corrective action to address gender pay gaps, supported by mechanisms that will ensure accountability for outcomes.
5. WGEA data, including on the gender pay gap should be released at the organisational level, rather than simply aggregated at industry level.

These measures will help improve accountability and transparency, empowering WGEA to better support gender equality in a world where there is a widening pay gap following the severity of the COVID-19 pandemic.

Minderoo Foundation recognises advancing gender equality is a long road, however we will proudly, actively and relentlessly respond to gender inequality in its own right whilst pursuing ongoing future dialogues with community, policy makers and Governments on this incredibly important topic.

About Minderoo Foundation

Minderoo Foundation is a modern philanthropic organisation taking on tough, persistent issues. It is purpose led, seeks to arrest unfairness and create opportunities to better the world and works with global partners, guided by our values and our dedicated staff, to drive real and lasting change. Co-Chair of the Minderoo Foundation, Dr Nicola Forrest AO, is convening the Women for Progress 2022 coalition, to *highlight the role of women and girls in the rebuild post COVID-19 as a critical Federal election issue.*

Minderoo Foundation has 11 initiatives, including *Generation One* which seeks to create employment parity, with and for Indigenous Australians in one generation. Over the past decade Generation One has worked with partners to help secure employment outcomes for approximately 20,000 Indigenous Australians through demand-led training, employer advocacy, and Indigenous business support.

If you have any queries on the contents of this submission, or would like to discuss our response further, please contact Fiona David, Chair of Research, on [REDACTED]

Yours sincerely,



Felicity Gooding
Deputy Chief Executive Officer
Minderoo Foundation



Background

WGEA is charged by law with promoting and improving gender equality in Australian workplaces. As noted in the Consultation Paper, while progress has been made on gender equality in Australian workplaces, there is still much more work to be done. This was true prior to the COVID-19 pandemic but it is even more the case today. Where data exist, the pandemic has “exposed and accelerated many gendered labour market inequalities in Australia and around the world” including participation, earnings, unpaid care work and experience of gendered violence¹. However, where data do not exist or are not captured, the potentially devastating impacts of the pandemic on some women, including Indigenous women, remains unknown and unnoticed.

Existing data from the Australian Bureau of Statistics (ABS) helps illuminate the complexities of the gender pay gap, workforce participation, rates of part-time work and gender parity in leadership roles. We have summarised key data sets and data gaps below, using mainly ABS data from 2010-2020, except where otherwise indicated.

Participation gaps in the labour force:

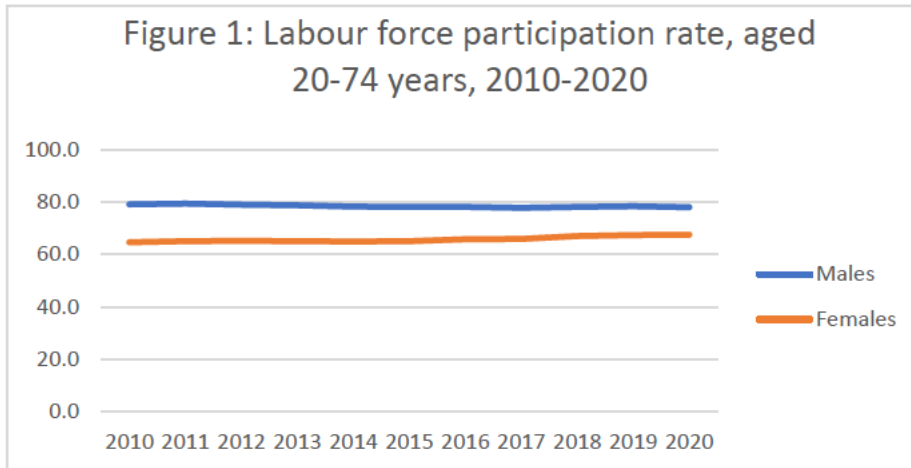
As at October 2021, the participation rate in the workforce was 69.5% for working age Australian men and 60.0% for working age Australian women². By contrast, the latest available data on Indigenous participation (2016) shows that the participation rate for Indigenous men and women was 60.4% and 53.9%, respectively. These workforce participation gaps represent enormous untapped economic potential for the Australian economy. In 2018, KPMG modelling estimated that halving the gap between men’s and women’s workforce participation in Australia would produce an additional \$60 billion in GDP by 2038, and cumulative living standards would increase by \$140 billion.”³

The gap between participation rates for men and women in the labour force has remained reasonably consistent across the last decade (refer Figure 1). Prior to the pandemic, the gap was steadily shrinking for the overall Australian population, and at a faster rate for Indigenous Australians, both due to the slight increase of women’s participation and decrease of men’s participation. However, it is possible that the gap will now increase, given the impacts of factors such as unemployment in service sectors, lockdowns and home schooling. The COVID-19 pandemic has had labour force impacts that are still being fully realised, and some impacts that will remain unknown, especially on minority populations, due to a lack of accurate, representative and timely data.

¹ Foley, M & Cooper, R 2021, ‘Workplace gender equality in the post-pandemic era: Where to next?’, *Journal of Industrial Relations*, vol. 63, no. 4, pp.463-476. Available from: <https://journals.sagepub.com/doi/pdf/10.1177/00221856211035173>. [24 November 2021].

² Australian Bureau of Statistics 2021, *Labour Force Australia*. Available from: <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>. [24 November 2021].

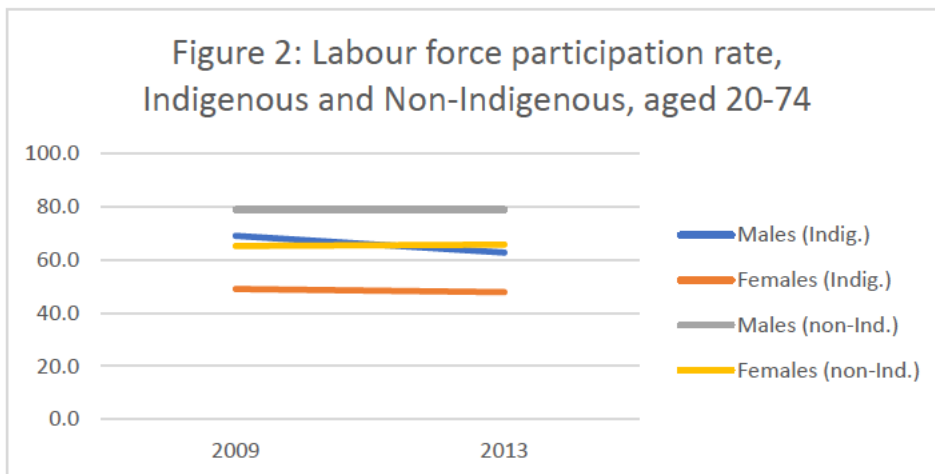
³ KPMG, *Ending Workforce Participation against Women*, 2018. Available from: <https://home.kpmg/au/en/home/insights/2018/04/ending-workforce-discrimination-against-women.html>. [24 November 2021].



Source: Australian Bureau of Statistics (December 2020), Gender Indicators, Australia, <https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/2020>, accessed November 2021.

At present, there is very limited data available in ABS data sets (Census data only), and none in WGEA data sets, on the labour force participation rates of Indigenous and non-Indigenous Australians, let alone by gender categories. This data gap creates a blind spot on the impacts on Indigenous women in the workforce, and means that policy and other decisions risk leaving Indigenous women behind. Recent research of over 1000 Indigenous employees, *Gari Yala*, found that “Indigenous women, often feel unsafe in the workplace; often bear the extra responsibility for making their workplaces culturally sensitive and engaged; and are less likely than Indigenous men to receive support from their workplaces if they encounter racism”⁴.

The available data show clear discrepancies in labour force participation rates for Indigenous and non-Indigenous women and men (Figure 2), suggesting how critical it is that this data be collected in future.

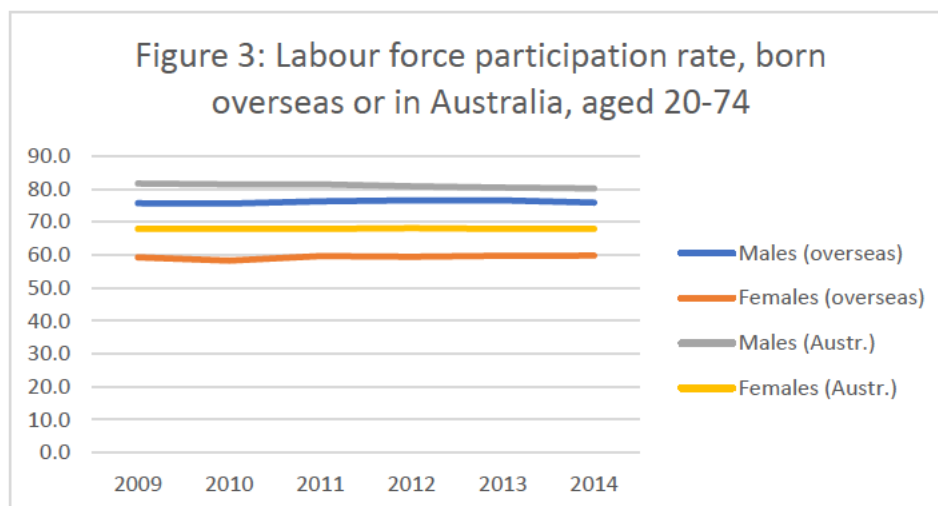


⁴ Evans, O 2021, *Gari Yala (Speak the Truth): gendered insights*, WGEA Commissioned Research Report in partnership with the Jumbunna Institute of Education and Research and Diversity Council Australia, Sydney, Australia. Available from: https://www.dca.org.au/sites/default/files/gari_yala_genderedinsights2021.pdf. [24 November 2021].



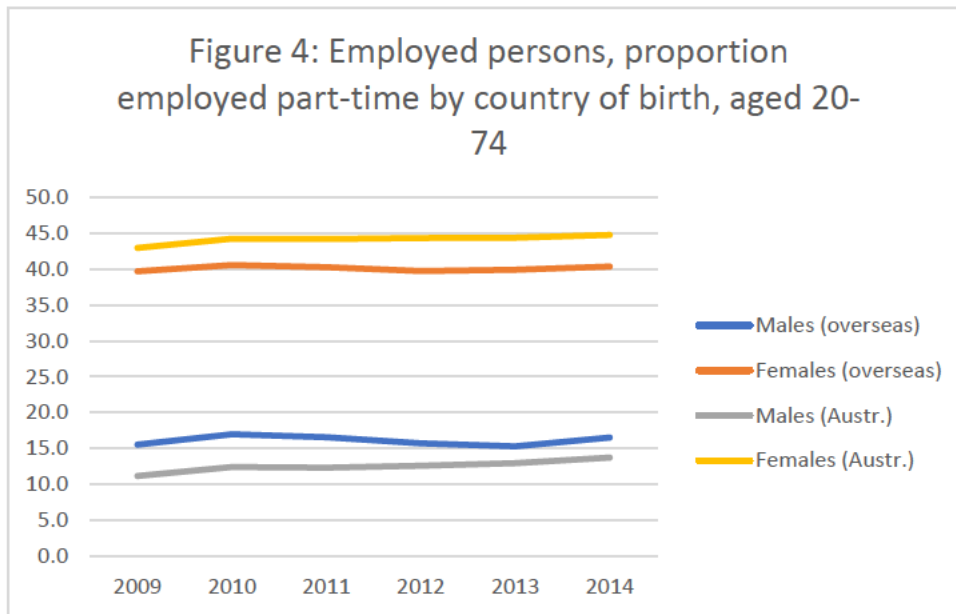
Source: ABS Aboriginal and Torres Strait Islanders Health Survey, cat. no. 4727.0 and Australian Bureau of Statistics, National Aboriginal and Torres Strait Islander Social Survey, cat.no. 4714.0.

ABS also confirms the significance of understanding the impact of other factors, such as country of birth, to understanding the complexities of gender inequality. Limited statistics are available (again, until 2014) also based on person's country of birth (Australia or elsewhere). They show that labour force participation of foreigners is generally lower than that of persons born in Australia but that the gender gap among them is also substantial and slightly even bigger than what is the case with those born in Australia (Figure 3).



Source: Australian Bureau of Statistics, Labour Force Survey, cat. No. 6202.0, available from <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release#data-downloads>

Equally, women who are not born in Australia work at high levels in part-time roles, compared to Australian born women (Figure 4). These data clearly illustrate how important it is to have intersectoral data that uncover the effects of multiple discriminations and point out to the most vulnerable groups in the society that should be priorities in terms of the policy actions.

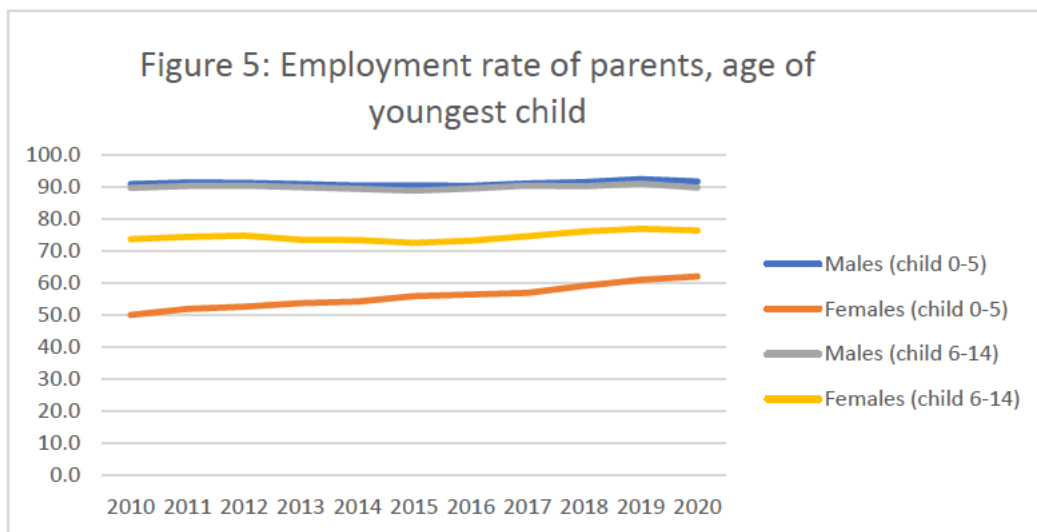


Source: ABS statistics, Gender Indicators, Australia, Sep 2018, available from: <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4125.0Sep%202018?OpenDocument>

Impacts of care responsibilities on workforce participation:

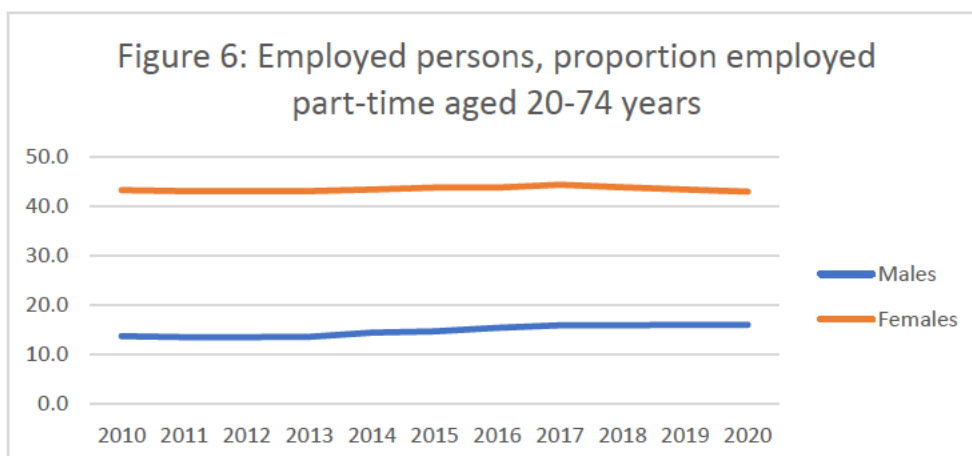
Despite workforce reforms, the bulk of responsibility for caring for children still falls on women, and this impacts on workforce participation rates, high rates of part-time work and lifetime earnings for women and men.

ABS statistics for the past decade show the impact that parental status has on employment rates. As women most often take the responsibility for upbringing of new children, this often results in them withdrawing from the labour market, or shifting to part-time work. Some women return after their children enter school age but never to the same rate that men do. One encouraging statistic seen here is a relatively strong and consistent upward trend for employment rate of mothers of young children over the last decade, that increased from as low as 50% in 2010 to slightly above 60% in 2020 (refer Figure 5).



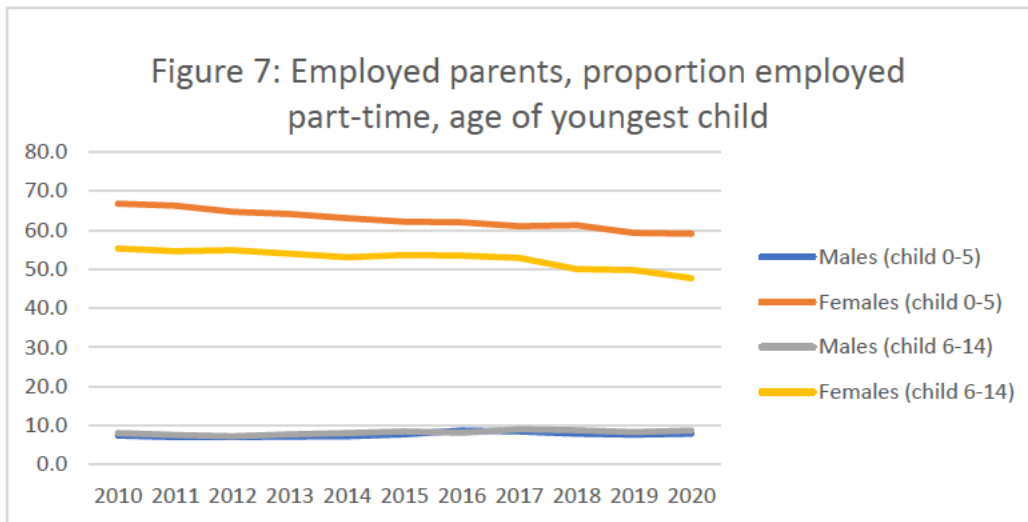
Source: Australian Bureau of Statistics (December 2020), Gender Indicators, Australia, <https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/2020>, accessed November 2021.

For those aged 20-74 years, employed women are almost three times more likely than men to be working part-time in 2019–20 (refer Figure 6)⁵. The gap is even wider for men and women, depending on the age of the youngest child in the family (Figure 7). According to ABS statistics from the decade 2010-2020, while the gap has slightly decreased over the last decade, progress has been very slow.



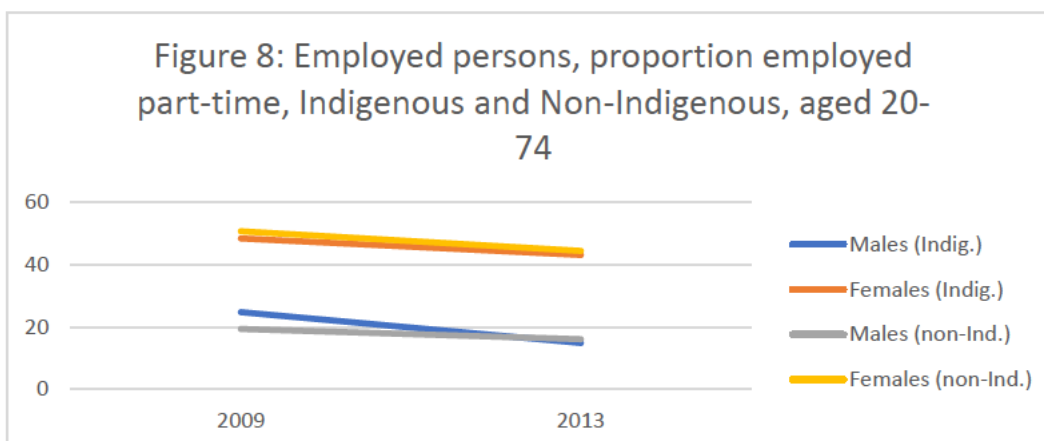
Source: Australian Bureau of Statistics (December 2020), Gender Indicators, Australia, <https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/2020>, accessed November 2021.

⁵ Australian Bureau of Statistics 2020, Gender Indicators Australia. Available from: <https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/latest-release#economic-security> . [24 November 2021].



Source: Australian Bureau of Statistics (December 2020), Gender Indicators, Australia, <https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/2020>, accessed November 2021.

As noted above, WGEA reporting does not collect data on whether employees identify as Aboriginal and/or Torres Strait Islander. Available ABS data suggests that Indigenous women, similar to non-Indigenous women, are much more likely to work in part-time jobs, when employed, compared to men (refer Figure 8). The *Gari Yala* research also revealed that “Indigenous women with caring responsibilities are more likely to feel unsafe in the workplace; more likely to carry extra expectations to make their workplace culturally sensitive and engaged, and; less supported when they encounter racism and unfair treatment.”⁶ This highlights the importance of this intersectoral data being collected by WGEA.



Source: ABS, Gender Indicators, Australia, Sep 2018, available from: <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4125.0Sep%202018?OpenDocument>

⁶ Evans, O 2021, *Gari Yala (Speak the Truth): gendered insights*, WGEA Commissioned Research Report in partnership with the Jumbunna Institute of Education and Research and Diversity Council Australia, Sydney, Australia. Available from: https://www.dca.org.au/sites/default/files/gari_yala_genderedinsights2021.pdf. [24 November 2021].



Gender Pay Gap(s)

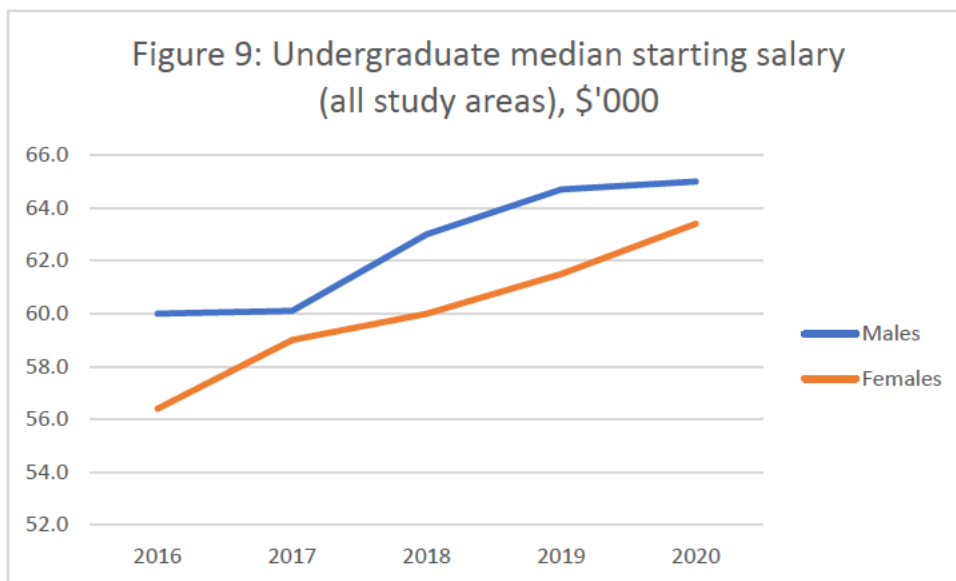
Prior to the pandemic, the average weekly earnings of women were 86% of that of men⁷. During the pandemic, this gender-pay gap widened for some groups, particularly for young women.⁸ No data are available to indicate whether the gender pay gap has widened over the course of the pandemic for Indigenous women and men, as these data are simply not collected. What we do know is that Indigenous women are not compensated for unpaid work, including additional cultural work in the workplace. “Indigenous women are more likely to bear higher cultural load, that is, the additional load that Aboriginal and Torres Strait Islander people take on at work” (e.g. organising Indigenous events or advising on Indigenous issues, initiatives and content)⁹. Similar to unpaid work in the home, organisations need to ensure dedicated roles are created, rather than the burden of this work being placed on Indigenous women, where this is not part of their role. Within the Minderoo Foundation, we have experienced this and taken steps to correct this through creating a dedicated role.

Analysis of the available data shows that the gender pay gap plays out differently for different age cohorts and educational backgrounds. For example, Figure 9 indicates the difference between median starting salaries for men and women with an undergraduate qualification, in the decade 2010-2020. This suggests the importance of WGEA having the ability and resources to identify different points in the employment lifecycle where they might intervene, through advocacy or education or systemic change.

⁷ Australian Bureau of Statistics 2020, Gender Indicators Australia. Available from: <https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/latest-release#economic-security> . [24 November 2021].

⁸ Australians Investing in Women, and Equity Economics, *Changing the Trajectory: Investing in Women for a Fairer Future*, 2021, available at: https://www.aiiw.org.au/wp-content/uploads/2021/11/AIIW-EE_Changing-the-Trajectory-Investing-in-Women-for-a-Fairer-Future-202111-spread.pdf

⁹ Evans, O 2021, *Gari Yala (Speak the Truth): gendered insights*, WGEA Commissioned Research Report in partnership with the Jumbunna Institute of Education and Research and Diversity Council Australia, Sydney, Australia. Available from: https://www.dca.org.au/sites/default/files/gari_yala_genderedinsights2021.pdf. [24 November 2021].



Source: Australian Bureau of Statistics (December 2020), Gender Indicators, Australia, <https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/2020>, accessed November 2021.

Leadership

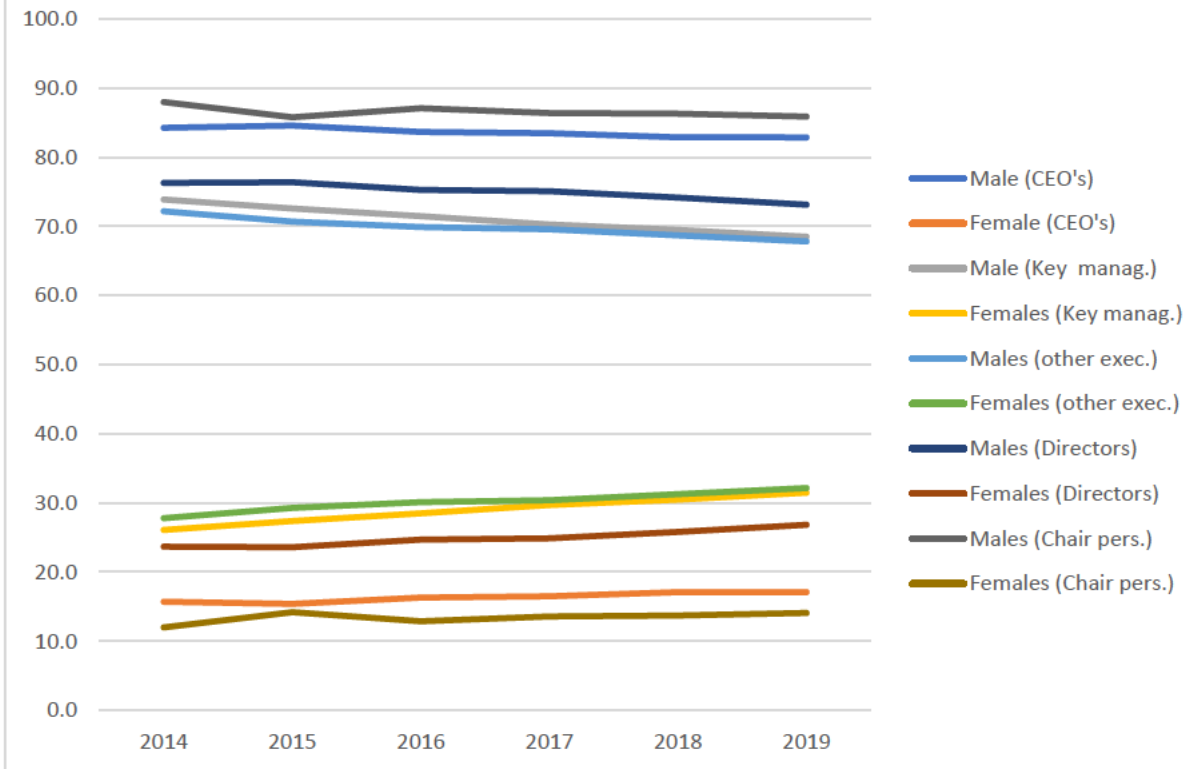
Figure 10 below presents the trend data on the proportion of male and female economic leaders, based on the WGEA data collected since the introduction of the Act. This confirms that WGEA still has a critical role to play, alongside other arms of government, the public and private sectors, and the community in tackling gender equality.

While WGEA does not collect Indigenous identified data, or data on other diversity and inclusion criteria, other sources confirm that the experiences of 'all women' mask the extremities faced by Indigenous and other diverse women. Indigenous women are underrepresented in managerial and executive positions in the workforce, for example, there are no Indigenous female Directors of ASX200 companies, and only one Indigenous man. In addition, Indigenous women in leadership roles experienced the highest cultural load¹⁰.

¹⁰ Evans, O 2021, *Gari Yala (Speak the Truth): gendered insights*, WGEA Commissioned Research Report in partnership with the Jumbunna Institute of Education and Research and Diversity Council Australia, Sydney, Australia. Available from: https://www.dca.org.au/sites/default/files/gari_yala_genderedinsights2021.pdf. [24 November 2021].



Figure 10: Leaders in non-public sector employers, by gender and position, 2014-2019



Source: Workplace Gender Equality Agency, Australia's Gender Equality Scorecard, November 2019

Addressing Gender Inequality at Work

Gender equality gaps such as these exist because of complex and intersecting factors that impact the life experiences of Australian women from early childhood through to older age. Employment plays a critical role in addressing equality through female participation, earnings, economic security and leadership. However, the ability of women to participate in the workforce must be considered alongside closely related issues, such as cultural factors, unpaid care work, the cost of childcare, health, and family violence. These factors result in many women being unable to fully participate in employment and leadership, which is a significant barrier to Australia's economic recovery and growth. When these issues are explored through an intersectionality lens, it becomes clear that Indigenous women are impacted more¹¹.

To be successful in its mission to improve gender equality in Australian workplaces, Minderoo Foundation believes that WGEA needs to approach these issues through a lens that enables it to understand:

¹¹ Dawson, E, Kovac, T & Lewis, A 2020. *Measure for Measure: Gender Equality in Australia*, Per Capita. Available from: https://percapita.org.au/wp-content/uploads/2020/03/MFM_report_FINAL.pdf. [24 November 2021].



1. all the social and economic factors that impact across women’s lives, including caring responsibilities and costs, and the impact of violence; and
2. how different forms of discrimination intersect, with the result that the impacts on Indigenous women are materially different to the experiences of non-Indigenous women.

Part of the solution lies in data. Without data on intersecting discrimination, WGEA is currently blind to these realities, and the impacts of gender discrimination on diverse women. It is particularly concerning that unlike binary gender reporting, there is no consistency or expectations in reporting Indigenous participation within organisations, and no legal requirements to report or disclose this information, privately or publicly. A key step would be for WGEA to require data to be provided on Indigenous workforce participation, and helping to build a standard employer approach to this issue, including national guidelines and reporting standards. This would also go some way to closing the absolute data gap on Indigenous employment, whereby Indigenous employment data are only collected every five years through the Census.

The Minderoo Foundation’s Generation One initiative, and members of its [Indigenous Employment Network](#) are eager to play a key role in developing this approach. Generation One, in collaboration with 40 organisations are voluntarily reporting on Indigenous employment in 2021, to produce Australia’s first Indigenous Employment Index in early 2022. The quantitative and qualitative research is designed around three areas:

1. **Intent:** the commitments, strategies and policies held by large employers in Australia
2. **Implementation:** the practices, communication and culture used to achieve the intent
3. **Impact:** how the intent influences employees’ perception and experience

The objective of the Index is to:

- Establish an initial **benchmark** for Indigenous employment within large employers based on key dimensions of large organisations’ practices and protocols
- Identify the **intent and implementation** of measures that lead to the **positive experiences** of Indigenous employment, or the converse
- **Showcase** success stories relating to Indigenous employment and use research insights to privilege the Indigenous voice to contribute to evidence informed decision-making

While data collection is important, it is not enough. To be successful, Minderoo Foundation is of the view that WGEA needs to be able to access measures that strengthen the accountability of all key stakeholders including employers, governments and Australian leaders across a range of sectors. Specifically, organisations that report poor gender equality results or progress over time be required to make and report on progress towards gender equality over time.

While we understand that simply publishing WGEA data at the organisation level does not always result in a clear picture, in principle, we are very supportive of greater transparency around gender pay gap where the data reflects “like for like” comparisons and insights.



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?

As noted in the Respect @ Work report, “in the six years since WGEA reporting obligations were introduced, there have been measurable and significant increases in a number of the key metrics that WGEA measures in relation to employer action on gender equality”.¹² While this is encouraging, given the persistent nature of gender inequality in Australia, it is vital that WGEA statistics represent the wider workforce, and also provide insight into the complexity of gender inequality.

As will be detailed further in our submission, due to the specifics of coverage of the WGEA Act, the gender equality indicators it collects are likely to be drawn from around 35% of the Australian workforce. As such, the data do not represent the entire working population, and they certainly do not shine a light on how gender inequality operates differently for different and diverse groups of women.

The Act does not require reporting of key indicators of intersectional disadvantage, meaning that the data presents a picture that does not reflect the very real differences in experiences that exist, for example, between Indigenous and non-Indigenous women in the workforce.

While a lot of data is being collected, the data are not sufficiently representative to provide a clear picture of the state of gender equality in workplaces across Australia, due to exclusions and cut off points. This negatively impacts on the ability of the Agency to provide relevant and timely benchmarks and reports, and to contribute to informed discussion in Australia that promotes gender equality across all Australian workplaces.

To enable WGEA to be more effective in achieving its functions, we are of the view that the WGEA Act needs to be amended to introduce a requirement for employees to take corrective action to address gender pay gaps, supported by mechanisms that will ensure accountability for outcomes. Furthermore, we are of the view that WGEA data, including on the gender pay gap should be released at the organisational level, rather than simply aggregated at industry level.

¹² Australian Human Rights Commission, Respect @ Work, 2020, page 740.



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?

Minderoo Foundation has recently undertaken the WGEA reporting process for the first time. While we are still working through the results, we have found the process to be incredibly valuable but also resource intensive.

Gender inequality, like any inequality in general, is always further exaggerated through intersectional amplification of various discriminatory practices. In this sense, it is vital that WGEA collect information on these other aspects that would offer key insights on the severity of these intersectional inequalities that include gender-based discrimination. We recommend that WGEA should request information relating to Indigenous employees, but also on other well-established categories that impact on discrimination, such as women with disability, LGBTIQ+ and culturally and linguistically diverse women.

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?

The definition of a “relevant employer” should be broadened, to cover a larger and more representative cross-section of the Australian workforce. This needs to provide more representative proportion of the Australian workforce, including those employed in the public sector. Additional measures could be piloted through research undertaken by WGEA itself, to capture representative data that include smaller employers.

How many Australian employees are currently included/excluded?

As specified in the Workplace Gender Equality Act, the Workplace Gender Equality Agency collects data from all non-public sector employers with 100 or more employees. It is difficult using existing data sources to precisely identify what proportion of the Australian labour force is covered or excluded by the Act, as ABS categories cut across the WGEA reporting categories. In relation to 2019-20 data, WGEA reported that the Act covers around *forty percent* of the Australian labour force.¹³ According to our estimates based on ABS data, WGEA currently covers around 35% of the Australian workforce.¹⁴

¹³ WGEA Data Quality Report, 2019-2020. Available from: <https://www.wgea.gov.au/about/governance/data-quality/2019-20-wgea-data-quality-report>

¹⁴ Our estimate of 35% is indicative, based on the following data and assumptions. At the end of 2019, out of the 11.3 million employees in the Australian non-public businesses, there were.:

- 2,895 million people working in micro-businesses, i.e., those employing 0-4 employees;
- 1,776 million people working in small businesses (5-20 employees);
- 2,755 million people working in medium businesses (21-199 employees);
- 3,874 million people working in large businesses (200 or more employees);

An additional 1.897 million employees were working in the public sector (end of 2019). The group of ‘medium’ businesses includes both those smaller and those larger than 100 employees. This includes around 21% of all employees. If we assume

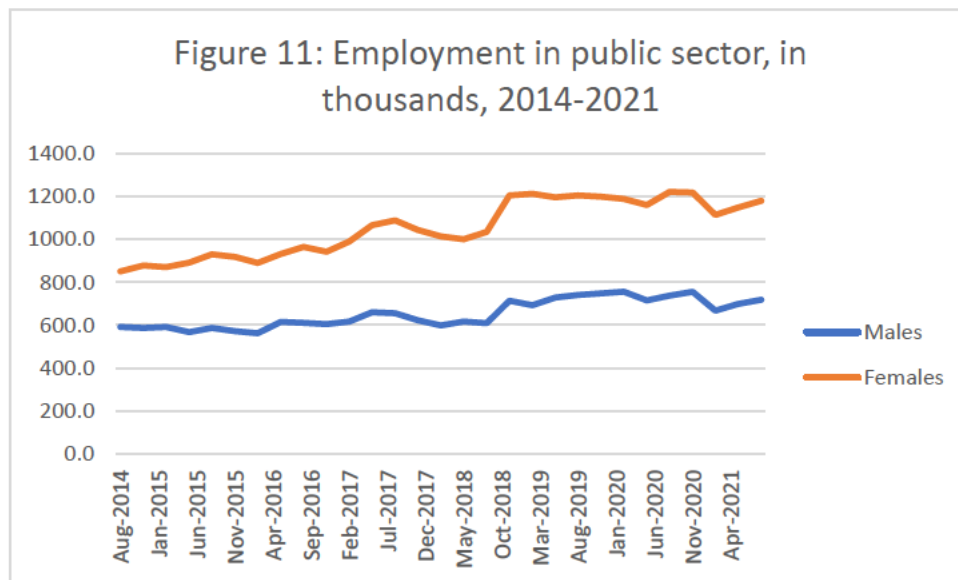


This means that approximately 4.7 million workers are covered by the WGEA Reporting framework whereas a further 8.4 million workers are not covered by the WGEA reporting framework.

Are those included representative of the Australian work force?

The fact that the WGEA reporting only covers slightly more than one-third of the Australian workforce is problematic in itself. However, if one wants to ensure that the WGEA findings are nationally representative for all Australian employees and employers, then even more problematic is the potential risk that the excluded two-thirds of workers are fundamentally different in relevant aspects to those who are covered by reporting.

At present, the Act excludes the public sector from reporting entities, limiting the statistics' capacity to reflect the situation for working women in the public sector in Australia. As confirmed by ABS statistics, many more women than men work in the public sector, and this gap is increasing over time (see Figure 11).



Source: ABS Statistics, Labour Force, Australia, Oct 2021, available from: <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>

that 2/3 of employees from this category (i.e., around 1.8 million out of the 2,755) belong to the organisations having 20-99 employees, and that 1/3 of employees (i.e., around 0.9 million of them) belong to the organisations with 100-199 employees, the result is:

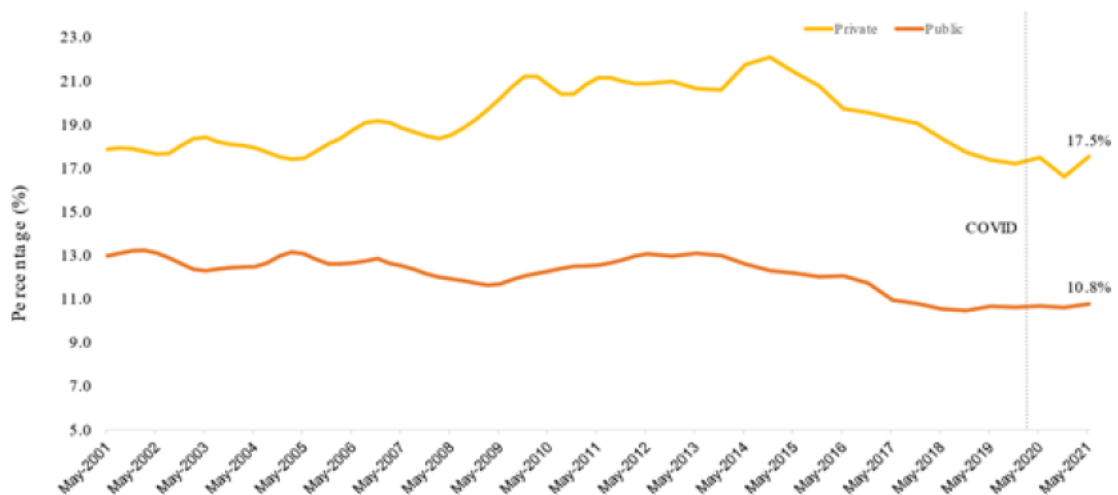
- Total number of employees working in organisations that have WGEA reporting obligations is approximately 4.7 million people (3,874 + ~0.9 from the medium group)
- Total number of employees not covered in reporting criteria of the WGE Act is somewhere around 8.4 million.

Thus, it is estimated that the proportion of the labour force that is covered by this Act is around 35% or around one third of the total workforce in Australia.



On top of having a disproportionately larger proportion of working women, public sector employers also have a different gender pay gap compared to private employers. In particular, the difference in average weekly earnings between women and men was 17.5% in private and 10.8% in public organisations in May 2021, indicating that the gender pay gap is much smaller in the public sector (see Figure 12). Moreover, the different situation across public and private organisations in terms of the gender pay gap has only further amplified during the last ten years, compared to the situation from the beginning of the 21st century. Clearly, not including public sector employers leads to a biased representation of the national gender pay statistics that may overestimate the size of the gender pay gap.

Figure 12: Gender pay gaps over time in the private and public sectors, May 2001 to May 2021

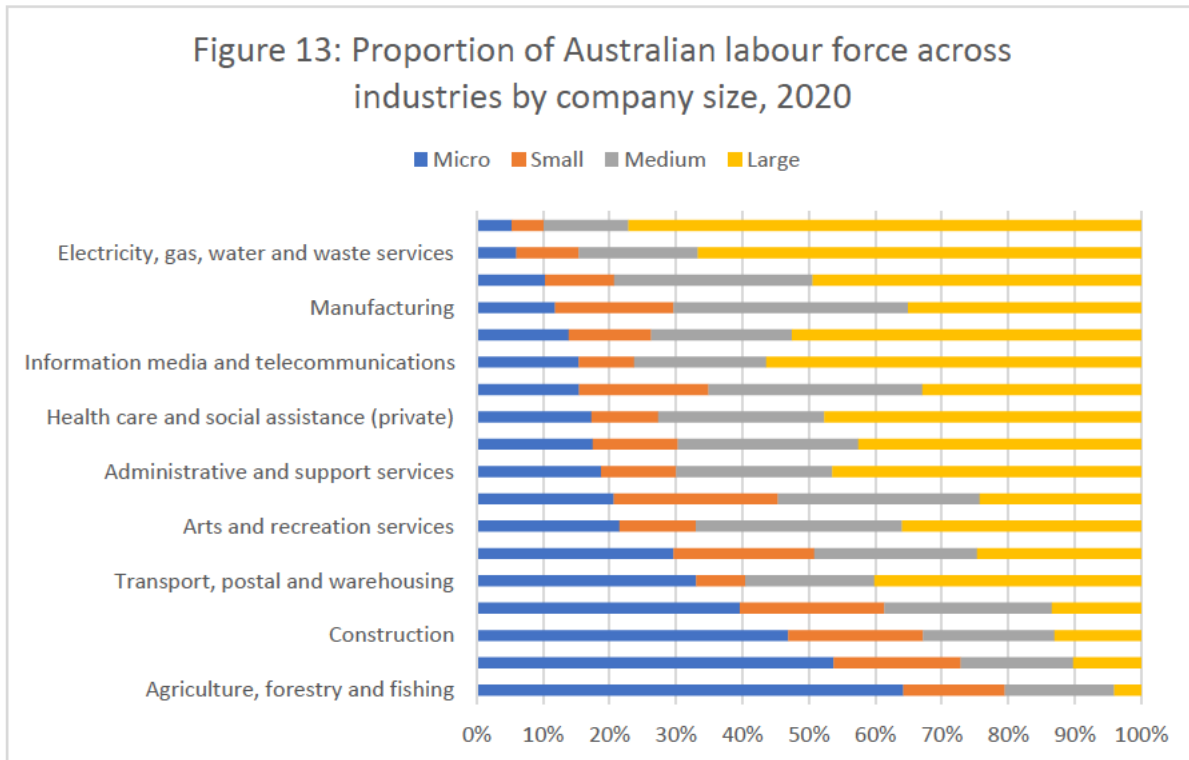


Source: ABS (2021), Average Weekly Earnings, May 2021, viewed 19 August 2021, available from: <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/average-weekly-earnings-australia/may-2021>

Apart from public sector employers, the Act also establishes no reporting requirements for private sector employers with less than 100 employees. Such arbitrary criteria represent another potential source of coverage bias, since the workforce and gender pay gaps might differ between smaller and larger private organisations with reporting obligations. Indeed, workforce sizes vary tremendously across different industries. Some sectors, such as mining and communal utility services, have mostly



larger workforces, while others, such as agriculture or real estate, have mostly smaller workforces (Figure 13).

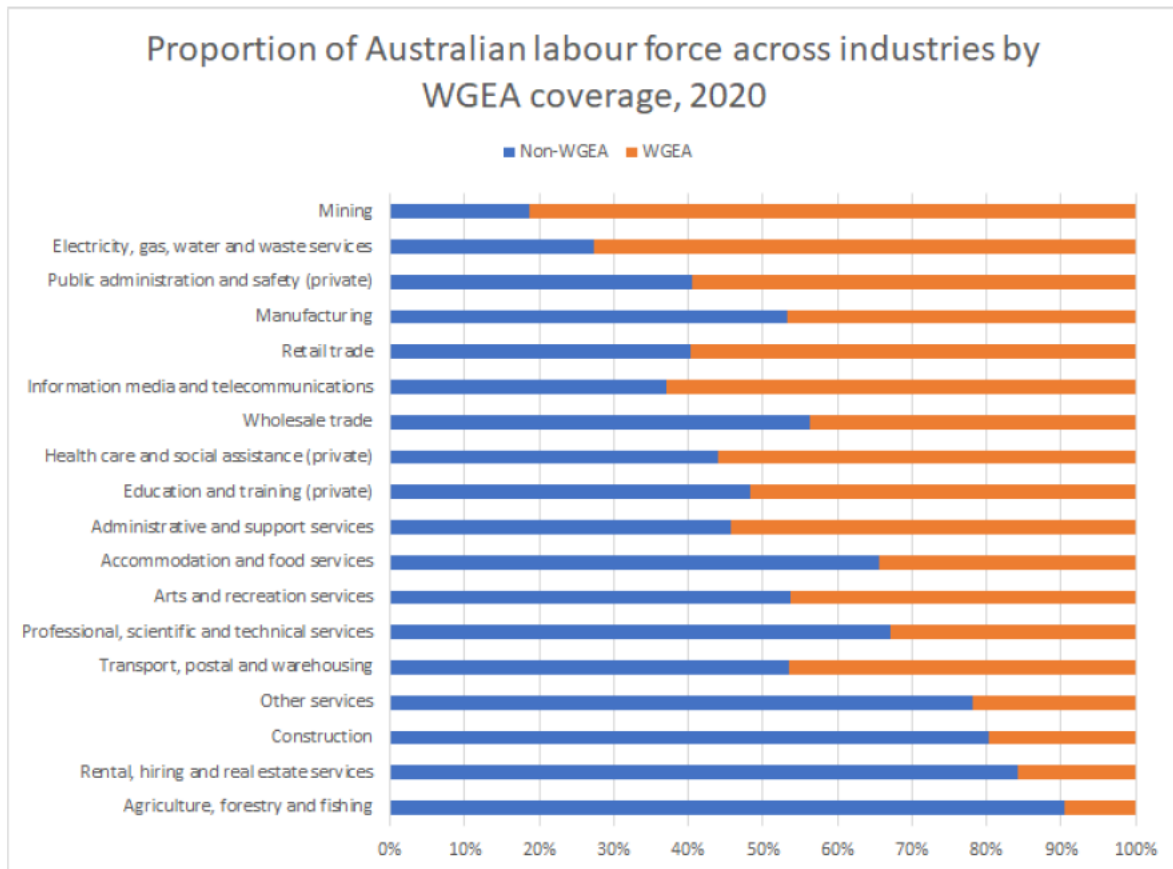


Source: ABS Statistics, Labour Force, Australia, Oct 2021, available from: <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>

This means that based on the Act’s reporting criteria, the resulting proportion of reporting employers is very skewed across industries. In particular, some industries have most of their organisations included in the WGEA reports, while others have even less than 10% of their organisations reporting to WGEA (Figure 14).



Figure 14: Proportion of Australian labour force across industries by WGEA coverage, 2020.



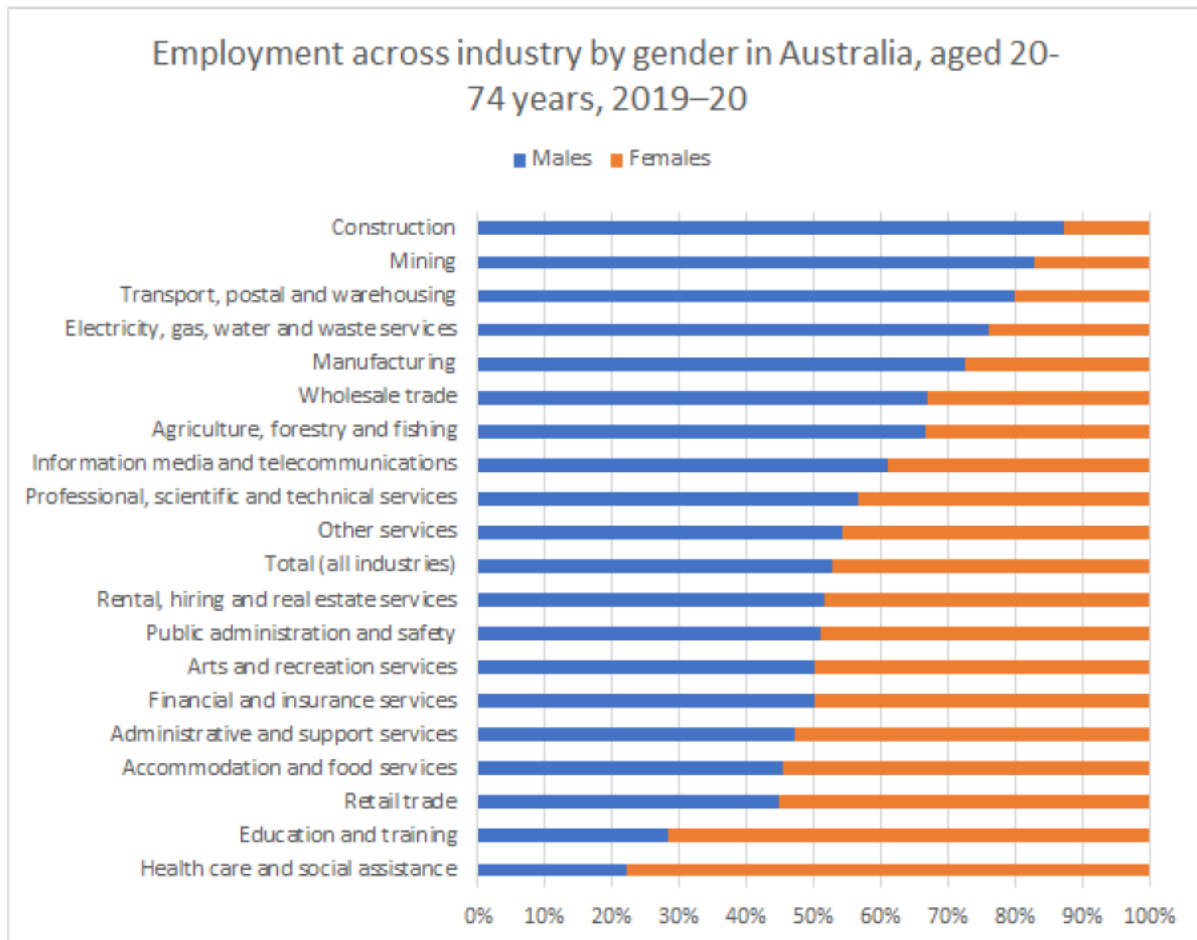
Source: ABS Statistics, Labour Force, Australia, Oct 2021, available from: <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>

Note: Since Australia classifies organisations into a 50-199 employee category (medium) and, as such, do not have WGEA corresponding organisation size categories, we have assumed based on UK data that two-third of the organisations within this category have 50-99 employees, while one-third have 100-199 employees.

These differences in the WGEA coverage rates across industries will not be critical if their proportion of working women and gender pay gaps are similar. But that is far from the case. As demonstrated in Figure 15 below, some industries employ largely women, while others are male-dominated. This means that the resulting proportion of working women in reporting organisations will not represent the national proportion.



Figure 15: Employment across industry by gender in Australia, aged 20-74 years, 2019-20.

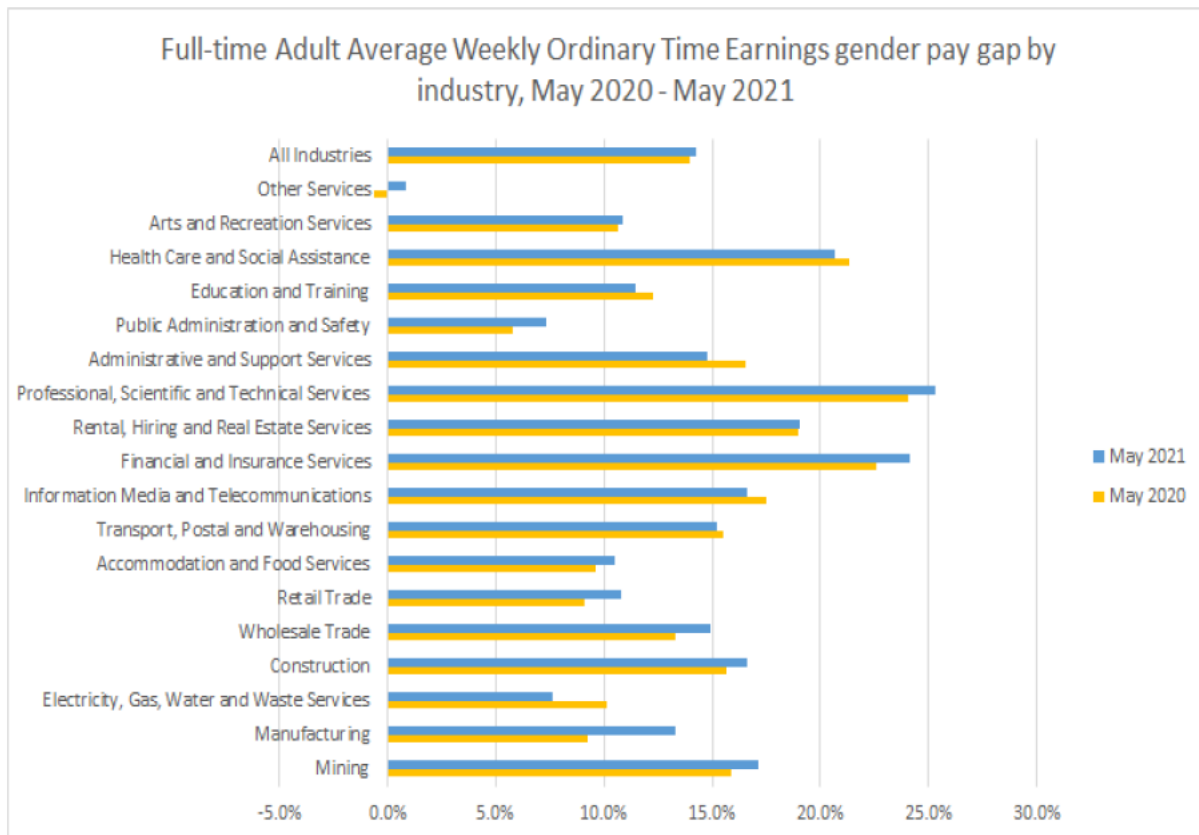


Source: ABS Statistics, Labour Force, Australia, Oct 2021, available from: <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>

Even more importantly, any differences in the gender pay gap across these industries would introduce substantial coverage bias. In fact, data from the ABS show that the gender pay gap in terms of average weekly earnings differs starkly across industries. Some industries have virtually eliminated any gap, while in others, women receive almost 25% less than their male colleagues (Figure 16). It is not immediately clear in which direction the bias goes when these differences in the gender pay gap across industries are considered and related to the differences in coverage rates across industries. But what is clear is that having proportional coverage across industrial sectors would be a key prerequisite of calculating nationally representative gender pay gap statistics.



Figure 16: Full-time Adult Average Weekly Ordinary Time Earnings gender pay gap by industry, May 2020 – May 2021.



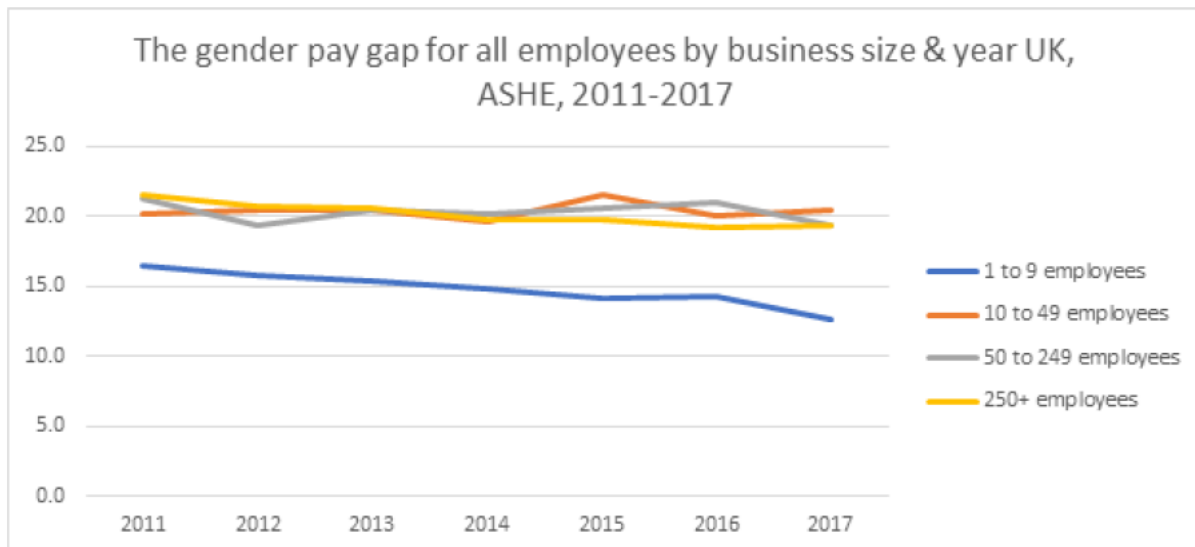
Source: ABS (2021), Average Weekly Earnings, May 2021, available from: <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/average-weekly-earnings-australia/may-2021>

Even when we disregard industry differences in the coverage rates and gender pay gap, the issue of potential variation in the gender pay gap across organisations of different sizes remains. Organisation and workforce size is a proxy for a whole range of organisational differences, including the number of hierarchical levels, employee engagement and involvement in decision making, employee autonomy, remuneration, hiring and retention practices, learning opportunities and more (e.g., Eurofound, 2015). Such organisational differences are the reason why one could expect that gender-related policies, including the gender pay gap, could also vary between smaller and larger organisations, even when they belong to the same sector and industry. Indeed, empirical research, including studies conducted in countries that are institutionally and economically similar to Australia, has found that organisation size is related to the gender pay gap.

For example, the UK’s annual survey of employers has found that larger organisations tend to have a larger gender pay gap than smaller organisations (Figure 17). If such patterns also occur in Australia, then WGEA statistics could be overestimating the gender pay gap. Unfortunately, we could not find comparable data to see the situation in Australia in this regard. Still, the mere fact that such stark differences exist in other countries illustrates the potential for significant coverage bias because of differing organisation sizes that are included and excluded from WEGA reporting requirements.



Figure 17: The gender pay gap for all employees by business size and year UK Annual Survey for Hours and Earnings, 2011-2017.



Source: Annual Survey for Hours and Earnings, UK, Office for National Statistics, 2011-2017

Notes: *Figures are calculated using hourly pay (excluding overtime). Employees are those on adult rates of pay and their pay is unaffected by absence. Full-time employees are defined as employees working more than 30 paid hours per week (or 25 or more for teaching professions). The gender pay gap is defined as the difference between men's and women's hourly pay (excluding overtime) as a percentage of men's earnings.*

These findings illustrate that sector, industry and organisation sizes all affect and reduce the representativeness of the WGEA sample of workplaces, and may negatively affect WGEA's ability to promote and improve gender equality across all workplaces.

In order to increase representativeness of the WGEA-based statistics and thus to better reflect the state of gender equality at work nationally, while still taking into account the need to reduce administrative burden to organisations, we recommend:

- For reporting entities, wherever possible, consideration should be given to how to draw on data already collected through other government reporting (e.g. ATO and single touch payroll).
- For non-reporting entities (i.e. organisations under 100 employees and the public sector), alternative approaches to data collection could be developed. For example, non-reporting organisations could be sampled through a random process and approached through a separate survey. This would allow collection of comparable (and even much richer) set of information to those collected through WGEA scheme, thus allowing for construction of nationally representative statistics on gender pay equality.



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?

Data collected by WGEA needs to be capable of informing a deeper understanding of the intersectional nature of discrimination, and also be clearly mapped back to an evidence-based conceptual framework of what drives cultural change on gender equality. It is not clear how the current indicators are organised or conceptualised.

Key drivers of change include changes to processes, practices and behaviours ('lead indicators') but these need to be considered alongside metrics and targets ('lag indicators'). Taken together, data on both lead and lag indicators can help point to the impacts of changes made.

There is an opportunity to evolve the current WGEA reporting approach to take organisations on a journey where they can better assess their own organisation's intent, implementation, and impact on gender equality, rather than undertaking an onerous, compliance driven exercise. This could involve creating an employment gender equality framework, incorporating the indicators into this framework, structuring the employer's submission based on the framework, highlighting where indicators are lead or lag and identifying more alignment between indicators and impact, such as between gender participation and pay equity. For example, the GEIs could be grouped around categories such as:

- (1) commitment, governance and reporting;
- (2) leadership and workplace culture;
- (3) the employee lifecycle including attraction, recruitment, engagement, retention and development;
- (4) accountability and reporting.

WGEA provides a range of effective resources to support organisations in developing a gender equality approach. With the type of approach described above, resources could be developed that focus on driving cultural change rather than compliance.

In analysing the results, it would also be useful to consider the existing gender balance of an industry and the amount of possible investment, based on financial reporting, that is available to address and implement gender equity practices. The recent Gender Insights report, based on WGEA data highlighted that *"the mining sector was most improved for following the best gender equity practices with an increase of 8.4 points over the last five years"*, where *"organisations in the education and training, health care and social assistance sectors ranked lowest on average in terms of their approach to gender equity in the workplace, and showed least improvement over the last five years."*¹⁵. Taking into account the starting points of these diverse industries, as well as their relative financial positions and stability is important in understanding results and progress.

¹⁵ Cassells, R & Duncan A 2021, *Gender Equity Insights 2021: Making it a Priority*, Bankwest Curtin Economic Centre. Available from: <https://bcec.edu.au/publications/gender-equity-insights-2021-making-it-a-priority/>. [24 November 2021].



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 (e.g. cultural and linguistic diversity, disability, age, location of primary workplace). If not, why not?

All women are not the same, and gender equality plays out very differently for different women. There is an urgent need for WGEA to collect data on diversity and inclusion criteria, including but not limited to categories for Indigenous and non-Indigenous Australians, women with disability, LGBTIQ+ and culturally and linguistically diverse women, or risk ignoring the impacts on diverse women, for whom standard or mainstream gender equality efforts are less effective and will not result in gender equality. Concealing the experiences of diverse groups of women and focusing exclusively on top-line gender data suggests that all women are the same, and it prevents the identification of practical actions and targeted responses for specific cohorts.

At present, the number of Indigenous Australians in work is unknown, let alone Indigenous women and their pay gap. This means in times of crisis, including the COVID-19 pandemic, there is currently no way to assess the impact on Indigenous Australians. A recent Deloitte Access Economics report found that “the lack of representative, meaningful and timely data on Indigenous Australians’ employment status and experience is a material barrier,” and “the true impacts of the pandemic on Indigenous employment are still not known.”¹⁶ This “not only obscures the understanding of specific impacts of the pandemic on Indigenous communities, it risks undermining general policy considerations about Indigenous employment and rendering Closing the Gap initiatives or any specific intervention unmeasurable.” It is here that WGEA can make an immediate and meaningful contribution.

As noted above, there are currently no requirements on organisations and no consistent approach to collect, report or publicly disclose Indigenous employment or participation results. While some organisations voluntarily disclose this data in Corporate Responsibility and Annual Reports, they are the exception rather than the rule.

There is a general lack of accountability and transparency on the side of Australian organisations in creating culturally safe and inclusive workplaces for Indigenous Australians. But the issue is deeper than public reporting requirements; there are many organisations that do not collect this data in the first instance. In Generation One’s experience, many organisations do not know if they have Indigenous employees within their workforces, or do not understand the importance and relevance of this data, or are hesitant to collect this data.

For the organisations who do collect Indigenous workforce data, there is little consistency in reporting Indigenous participation. Important first steps include requiring reporting, and developing a common employer approach including national guidelines. Generation One’s experience is that industry is willing to engage in Indigenous employment reporting, with the appropriate guidance and support.

The Minderoo Foundation’s Generation One, with the [Indigenous Employment Network](#), is eager to play a key role in developing this approach, in collaboration with government.

¹⁶ <https://cdn.minderoo.org/content/uploads/2021/03/19112119/The-impacts-of-COVID-19-on-the-Indigenous-Workforce.pdf>



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?

As a general principle, transparency drives accountability and outcomes. WGEA data, including on the gender pay gap should be released at the organisational level, rather than simply being aggregated up to industry level. However, this push for transparency should not come at the expense of individual employee privacy or possible identification through data.

To be useful, transparency must relate to the most relevant data, that can be readily understood and consistently interpreted. As WGEA has noted *“the issues around pay and gender are complex and often confused. The confusion stems from the relation between the different concepts of the gender pay gap and equal pay.”*¹⁷ Due to this complexity, if pay transparency was introduced, it would be critical that there is clarity about what will be shared and not shared, how it will be shared and how it will be described. Outlining all the factors that impact pay equity would be critical.

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?

Changes that reduce the administrative burden on employers, while ensuring the most relevant data is being collected to enable tracking of change over time, would be very welcome. For example, consideration should be given to the possibilities of accessing data from Single Touch Payroll (STP) which aims to reduce employers' reporting burdens to government agencies. The ATO receives information including salaries and wages, Pay As You Go withholding and super liability, using the STP software.¹⁸

In large organisations with complex structures, interpretation of this type of data when a gender pay lens is applied, needs to be carefully considered. For example in Australia, many women work in gender-segregated industries and occupations, where the pay is much lower than industries and occupations that are male dominated. As a result, a good place to start is transparency of “like for like” gender pay reporting. Some organisations already report their “like for like” gender pay gap in their annual reports.

In addition, alternative measurement approaches could be considered, to ensure the data held by WGEA is more representative and relevant, and therefore more actionable. For example, non-reporting entities (e.g. organisations under 100 employees) could be sampled through a random process and approached through a separate survey. This would allow collection of a comparable (and even much richer) set of information to those collected through WGEA scheme, thus allowing for construction of nationally representative statistics on gender pay equality.

¹⁷ Workplace Gender Equality Agency 2021, Pay and Gender. Available from: <https://www.wgea.gov.au/pay-and-gender> [24 November 2021].

¹⁸ Australian Taxation Office 2021, Single Touch Payroll. Available from: <https://www.ato.gov.au/business/single-touch-payroll/> [24 November 2021].



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?

There is an urgent need to strengthen the minimum standards to drive practical gender equality outcomes. Under the Act, a minimum performance standard is set by the Minister. At present, the standard requires organisations to have a formal policy or strategy supporting gender equality *in at least one indicator domain* such as recruitment, promotion, performance management or overall gender equality. Only employers with more than 500 employees are required to meet the minimum standard to comply with the Act. If an employer has 100-500 staff, they must report but there is no obligation to meet the minimum standard. This requirement should be strengthened but also customized for firms of different sizes and maybe even different industries.

Achieving full gender equality requires every workplace to play a role, not just those with more than 500 employees. And while expectations and minimum standards must be appropriate to the size, available resources and capacity of all organisations, it should not be implied that smaller organisations, or those not captured by WGEA reporting criteria (which represent up to two thirds of Australian workplaces) have lower expectations for achieving gender equality.

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?

Recent research has highlighted that Australia's reporting regime compares poorly to other countries, where employers are obliged to address gender pay gaps.¹⁹ Research by the Global Institute for Women's Leadership notes that of the six countries examined, the strongest requirements were in Spain and France, where organisations must create action plans to address gender pay gaps and evidence as to their implementation or outcome. Given the persisting nature of the gender pay gap in Australia, Minderoo Foundation is of the view that the WGEA Act needs to be amended, to require employees to take corrective action to address gender pay gaps, supported by mechanisms that will ensure accountability for outcomes.

There are also additional measures that the private sector could be encouraged to do. For example, at present, non-compliant employers can be named in Parliament and on the WGEA website and may not be eligible for certain government supports or contracts. In providing services, especially to government departments, larger organisations are regularly asked to provide their current WGEA compliance letter. Employers must also post their WGEA report/s on their website and share with key stakeholders including relevant trade unions. Simply asking the question about WGEA compliance is an important focus on cultural change that should be continued. Equally, the private sector and civil society organisations could help to extend the reach of WGEA compliance, by requiring potential

¹⁹ Glennie, M, von Reibnitz, A, William, J, Curtis, S & Bordia, S, 2021. Gender Pay Gap Reporting in Australia: Time for an Upgrade, Global Institute for Women's Leadership, Australian National University & Kings College.



suppliers to disclose whether or not they are up to date with WGEA reporting, as part of their own procurement policies.

Finally, WGEA data would be far more transparent and impactful if the remuneration of reporting entities was released at the organisational level, rather than aggregated up to industry level.