



**Submission of the
Australian Discrimination Law Experts Group**

to the

**Review of the
Workplace Gender Equality Act 2012**

24 November 2021

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1. Australian Discrimination Law Experts Group (ADLEG)

This submission is made on behalf of the undersigned members of the Australian Discrimination Law Experts Group (ADLEG), a group of legal academics with significant experience and expertise in discrimination and equality law and policy. More information about the members and links to relevant publications can be found here: <https://www.adleg.org.au/home>.

This submission focuses on key questions raised in the consultation paper released in October 2021 by the Department of the Prime Minister and Cabinet, regarding the targeted Review of the Workplace Gender Equality Act 2012.

ADLEG is happy to answer any questions about the submission or other related issues, or to provide further information on any of the areas covered, including by providing oral submissions. Please let us know if ADLEG can be of further assistance in this inquiry, by contacting Alysia Blackham [REDACTED]

This submission may be published.

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2. Summary

This submission is made in response to the Review of the Workplace Gender Equality Act 2012. ADLEG submits that the *Workplace Gender Equality Act 2012* (Cth) (WGEA 2012) and Workplace Gender Equality Agency (WGEA) are important measures for advancing gender equality. However, at present, these measures are under-utilised and under-developed, in comparison to other jurisdictions. ADLEG submits it is important to implement these measures in the most effective and efficient ways, to benefit all Australian employers, workers and workplaces. ADLEG also submits that it is critical to recognise the impact of intersectionality (that is, the way different forms of inequality interact and compound) in exacerbating gender inequality in WGEA 2012's drafting and implementation. This is particularly relevant in the drafting of the Gender Equality Indicators.

As set out in further detail below, our recommendations are as follows:

- That voluntary reporting to WGEA be allowed for all employers who are not 'relevant employers'.
- That the scope of WGEA 2012 be extended to
 - the Australian Public Sector; and
 - all 'relevant employers' with 50 employees or more.
- That relevant employers be required to consult and engage with employees, employee organisations and shareholders in the process of gathering, evaluating, and responding to organisational data.
- That relevant employers be required to identify changes in the data reported from year to year, and provide comments and evaluation of any such changes together with actions identified as desirable to progress towards workplace gender equality. Reports should also comment on any actions identified as desirable in previous reports.
- That the Gender Equality Indicators require reporting on:
 - intersectional gender inequality, especially relating to Aboriginality, age, disability, ethnicity and race, religion and sexual orientation.
 - workers who are not employees, including contractors (and 'gig' workers), outworkers, those on vocational placements, as students gaining work experience, interns and volunteers, and those employed by labour hire contractors. This could be achieved by using the definition of 'worker' used in the Model Work Health and Safety Act (and recently adopted in the Sex Discrimination Act 1984 (Cth) harassment protections) for reporting purposes under WGEA 2012.
 - sexual harassment policies and processes, as well as the number and result of harassment and discrimination claims.
- That benchmarking reports are required to be distributed to employees and employee organisations.
- That the WGEA Data Explorer:
 - allow comparison between two or more organisations; and

- include detailed information about organisational gender pay gaps and pay differentials by level and other characteristics.
- That WGEA be given powers to issue notices of compliance, and to commence proceedings for a failure to comply.
- That all reporting organisations, including those voluntarily reporting, be entitled to feedback and services from WGEA, including Competitor Analysis Benchmark Reports (if these can be compiled).
- That there be increased transparency around the application of the Workplace Gender Procurement Principles.
- That government considers the use of financial incentives to promote gender equality, for example, in the form of taxation off-sets, with the aim of increasing the profile of women in management, the availability of gender-neutral parental leave policies and flexible working arrangements.

3. Response to consultation questions

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?

There are five mechanisms for the WGEA 2012 scheme to advance gender equality at work:

1. Public reports from employers that inform their employees, potential employees, shareholders and other entities within their industry about their position and progress on workplace gender equality. The information currently provided in public reports on the WGEA web site and as published by employers is minimal, for example referring only to the existence of a policy, not to its contents, whether it is implemented or whether any progress has been made against it. Further, the disclosure of information alone is not enough to effect change; there must be an action cycle of engagement, across all stakeholders.¹
2. Feedback from WGEA to reporting employers about the results of analysis of their performance, in particular about their position relative to the benchmark for their industry as established through collation and analysis of reports to the WGEA. This form of peer-benchmarking is critical for encouraging organisational problem-solving to address gender inequality.² The WGEA Data Explorer enables employees, employee organisations, shareholders and members of the public to see how organisations compare to others in their industry; however, they cannot compare two or more organisations directly, and organisations are not yet required to distribute their benchmarking report to employees and employee organisations. The WGEA Data Explorer offers no detail on organisational gender pay gaps or pay differentials by level (or other characteristics). This is far more limited than what is publicly accessible in the UK, for example.
3. The ability of the Minister to encourage entities to comply with minimum standards and to raise those minimum standards for compliance over time.
4. Research, education and persuasion activities, conducted by WGEA.
5. Escalation in cases of non-compliance, including by ‘naming and shaming’ non-compliant entities, and exclusion from tendering for government contracts or receiving

¹ Alysia Blackham, ‘Positive Equality Duties: The Future of Equality and Transparency?’ (2021) 37(2) *Law in Context* 98. Belinda Smith and Monica Hayes ‘Using data to drive gender equality in employment: More power to the people?’ (2015) 28(3) *Australian Journal of Labour Law* 191–213.

² Alysia Blackham, *Extending Working Life for Older Workers: Age Discrimination Law, Policy and Practice* (2016, Hart) ch 2.

government grants. However, there is no power for WGEA to issue notices requiring compliance, or to commence proceedings for a failure to comply. This has limited WGEA's ability to escalate in cases of non-compliance with the WGEA 2012 regime, and reflects a limited operationalising of the enforcement pyramid.³

ADLEG recommends, then, that:

- **Benchmarking reports be required to be distributed to employees and employee organisations.**
 - **The WGEA Data Explorer allow comparison between two or more organisations.**
 - **The WGEA Data Explorer include detailed information about organisational gender pay gaps and pay differentials by level and other characteristics.**
 - **WGEA be given powers to issue notices of compliance, and to commence proceedings for a failure to comply.**
- 2. 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?**

Promoting equality for all workers, not only employees

Consideration should be given to the ways in which the WGEA 2012 regime could be adapted to promote gender equality in work generally, not only for employees. One of the key findings of the Australian Human Rights Commission (AHRC)'s *Respect@Work Report* was that gender inequality in work drives sexual harassment in work. Gender inequality is not limited to employees in the workplace and sexual harassment is certainly not limited to employees either. To address sexual harassment in work, WGEA should seek to correctly and fully identify and address gender inequality in work, not only employment. This is critical to implementing the recommendations of the *Respect@Work Report*.

The WGEA 2012 currently requires 'relevant employers' to report on Gender Equality Indicators in respect of their employees. However, this would not cover the working conditions of the many Australians who are engaged in various other capacities, including those working as contractors (including 'gig' workers), outworkers, on vocational placements, as students gaining work experience, interns and volunteers. It also might not capture those employed by labour hire contractors. The AHRC identified in its *Respect@Work Report* that a definition of worker that was partial, covering only some types of workers, operated to deny protections against sexual harassment.⁴ Similarly, limiting the WGEA 2012 only to employees renders the

³ Alysia Blackham, *Reforming Age Discrimination Law: Beyond Individual Enforcement* (2022, Oxford Monographs on Labour Law, Oxford University Press) ch 1, 3, 8.

⁴ Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020), 463–68. See also Belinda Smith, Melanie Schleiger and Liam Elphick, *Preventing Sexual Harassment in Work: Exploring the Promise of Work Health and Safety Laws* (2019) 32 *Australian Journal of Labour Law* 219, 238.

data set incomplete, and prevents the development of a complete picture of gender inequality in work in Australia. Limiting obligations on relevant employers to only report on employees also privileges employees over other workers, and obscures the difficulties faced by non-standard workers.⁵

ADLEG recommends that consideration be given to using the definition of ‘worker’ used in the Model Work Health and Safety Act (and recently adopted in the *Sex Discrimination Act 1984* (Cth) (see sections 28AB and 28B) harassment protections) for reporting purposes under WGEA 2012.

Intersectionality

It is critical to recognise the impact of intersectionality (that is, the way different forms of inequality interact and compound) in exacerbating gender inequality in WGEA 2012’s drafting and implementation. Many people experience discrimination on the basis of multiple grounds or characteristics;⁶ seeking to address gender inequality without considering the way this interacts and intersects with other forms of disadvantage is problematic and unlikely to be successful. ADLEG suggests below that collecting and analysing intersectional workforce data would be an appropriate step towards bringing to light the impact of such multiple or combined discrimination.

Voluntary Reporting

ADLEG recommends that voluntary reporting should be permitted for private sector organisations (that do not meet the definition of ‘relevant employer’ in section 3 of the WGEA 2012), as it has been permitted for public sector organisations.

WGEA noted the benefits for public sector reporting as:

The Voluntary Reporting Program will enable the public sector organisations to better understand and track their progress against key metrics of workplace gender equality over time and benchmark their performance against other organisations in their industry. The process can also help agencies identify gender equality challenges and put action plans in place.

⁵ Alysia Blackham, ‘Working at the Edges of Legal Protection: Equality Law and Youth Work Experience from a Comparative Perspective’ in Andrew Stewart, Rosemary Owens, Niall O’Higgins and Anne Hewitt (eds) *Internships, employability and the search for decent work experience* (2021, ILO) 302; Alysia Blackham, “‘We are all Entrepreneurs Now’: Options and New Approaches for Adapting Equality Law for the “Gig Economy”” (2018) 34(4) *International Journal of Comparative Labour Law and Industrial Relations* 413.

⁶ Alysia Blackham and Jeromey Temple, ‘Intersectional Discrimination in Australia: An Empirical Critique of the Legal Framework’ (2020) 43(3) *UNSW Law Journal* 773.

It will also contribute to the Agency’s world-leading dataset, helping us build a clearer picture of the state of gender equality across Australian workplaces, beyond the private sector. <https://www.wgea.gov.au/what-we-do/reporting>

Similar benefits would accrue to private sector employers. Allowing additional organisations to voluntarily submit reports about their gender equality indicators would serve to allow individual organisations to publicly commit to achieving gender equality in the workplace. This could also provide the trigger for the more general adoption of gender neutral employment practices in sectors or industries, where the principles enshrined in the WGEA 2012 are voluntarily adopted by significant industry players, or a number of smaller organisations, even when that is not required by the legislation as drafted. This could increase the potential of the WGEA to drive positive change.

ADLEG recommends that all reporting organisations, including those voluntarily reporting, be entitled to feedback and services from WGEA, including Competitor Analysis Benchmark Reports (if these can be compiled).

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?

ADLEG submits that the coverage of the WGEA 2012 should be extended.

Australian Public Sector

ADLEG understands from *A Roadmap for Respect: Preventing and Addressing Sexual Harassment in Australian Workplaces* that the federal government has agreed to include the Australian public sector as a ‘relevant employer’ from 2022–23, which ADLEG welcomes.

Mid-size businesses (50–100 employees)

A ‘relevant employer’ is otherwise an employer with more than 100 employees, a minimum number that has prevailed since passage of the *Affirmative Action (Equal Employment Opportunity for Women in the Workplace) Act 1986* (AAA).

ADLEG submits that the definition of a ‘relevant employer’ should be expanded to include all employers with 50 employees or more.

While ADLEG is conscious of the need to protect very small businesses from burdensome regulation, the inclusion of mid-sized enterprises with 50–100 employees is eminently reasonable. These businesses include manufacturing and trading enterprises, as well as professional enterprises, such as law and accountancy firms, where employees play a significant role in maximising profits.

Reducing the number of employees in the definition of a ‘relevant employer’ would bring Australia into line with overseas developments. In the US, for example, 50 is the ‘magic

number that triggers more burdens'.⁷ This is the case in respect of affirmative action plans, reporting and state laws. Additional legislative requirements, such as those applying under the *Family and Medical Leave Act 1993* (US) and the *Affordable Care Act 2010* (US (Obamacare)) also apply only to workplaces with more than 50 employees. Some European countries, such as France and Serbia, require workplaces with more than 50 employees to develop positive action initiatives. In Scotland, gender pay gap information must be published by public authorities with 20 or more employees,⁸ and the Victorian *Gender Equality Act 2020* (Vic) applies to defined entities in the public sector with more than 50 employees.

All workers, not only employees

Consideration should be given to ways to obtain data on gender inequality in respect of all workers, not only employees (see points made above, under question 2).

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?

Building on the gender equality indicators developed under the *Gender Equality Act 2020* (Vic) and associated materials, ADLEG proposes that the Gender Equality Indicators could be improved in the following ways. These recommendations focus on integrating into the Gender Equality Indicators reporting on: intersectionality; non-employees; the utilisation of policies; and the prevalence of harassment complaints.

Gender Equality Indicator 1 — gender composition of the workforce

- Clarifying that ‘employment status’ includes, but is not limited to, full-time, part-time, casual, ongoing/permanent and fixed term/contract work.
- Adding new requirements to report on:
 - Gender composition at each job classification by employment basis, and by Aboriginality, age, disability, ethnicity and race, religion and sexual orientation.
 - Gender composition for non-employees, ie:
 - Contractors and subcontractors;
 - Outworkers;
 - Those on vocational placements;
 - Students gaining work experience;
 - Those employed via labour hire or third parties; and
 - Volunteers.

⁷ IntegrityDataHRP: [50 employees: the “magic” number that triggers more burden for employers - Integrity Data \(integrity-data.com\)](https://integrity-data.com).

⁸ *Equality Act 2010* (Specific Duties) (Scotland) Regulations 2012 (Scot) SI 2012/162 reg 7.

- The composition of applicants appointed to positions by employment status, gender and by manager/non-manager.
- Number of people who participated in career development training opportunities, by gender and classification
- Gender composition of people who exited the workforce, by Aboriginality, age, disability, ethnicity and race, religion and sexual orientation
- Gender composition recruitment and promotion data by Aboriginality, age, disability, ethnicity and race, religion and sexual orientation

Gender Equality Indicator 2 — gender composition of governing bodies of relevant employers

- Adding new requirements to report on:
 - Gender composition of the governing body by Aboriginality, age, disability, ethnicity and race, religion and sexual orientation

Gender Equality Indicator 3 — equal remuneration between women and men

- Adding new requirements to report on:
 - Annualised median (as well as mean) full-time equivalent base salary and total remuneration
 - The mean and median annualised full-time equivalent salary gap between genders (for both annualised base salary and total remuneration) by classification and employment basis across the whole defined entity, and by Aboriginality, age, disability, ethnicity and race, religion and sexual orientation

Gender Equality Indicator 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

- Adding new requirements to report on:
 - Number of senior leaders working with flexible work arrangements, by gender and type of flexible work arrangement
 - Number of people accessing family violence leave (if available), by gender
 - Disaggregated data by gender and manager/non-manager on the availability and utilisation of employment terms, conditions and practices.
 - An expanded time period for reporting on cessation of employment beyond parental leave to include pregnancy and within 12 months of returning to work. Data to be disaggregated by cessation type, ie, resignation, dismissal, redundancy/restructure, termination or non-renewal of contract.⁹
 - Whether employment terms, conditions and practices relating to flexible working arrangements for employees and working arrangements supporting

⁹ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review* (2014).

employees with family or caring responsibilities are made accessible to all workers and job applicants (for example, on a central website).

Gender Equality Indicator 5—consultation with employees on issues concerning gender equality in the workplace

- ADLEG recommends that relevant employers be required to consult and engage with employees, unions and shareholders in the process of gathering, evaluating, and responding to organisational data and report on this.

Gender Equality Indicator 6 — sex-based harassment and discrimination

- Reporting in respect of this indicator is limited to ‘sex-based harassment’ and discrimination, and should be explicitly extended to cover sexual harassment.
- Reporting is currently limited to merely the existence of a strategy or policy, and should require details of these to be provided.
- Similarly, in respect of reporting on relevant workplace training, limited information is sought - merely whether the training is provided to managers and the frequency. More details should be required about the nature of the workplace training for managers and staff on harassment and discrimination (ie, length of training, level of individual involvement, assessment of learning)
- In respect of grievance procedures, currently no information is sought about their use. In response to the *Respect@Work Report*, in respect of harassment and discrimination, employers should be required to report on:
 - The number of harassment and discrimination complaints, by gender and classification of complainant or type of complainant if not a member of the workforce
 - The number of harassment and discrimination complaints, by gender and Aboriginality, age, disability, ethnicity and race, religion and sexual orientation
 - The classification and gender of respondents to harassment and discrimination complaints
 - The outcomes of any harassment and discrimination complaints, including any settlement and/or non-disclosure agreements

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?

ADLEG recommends that WGEA 2012 should require relevant employers to seek and then report on intersectional data on diversity and inclusion. This should include Aboriginality, age, disability, ethnicity and race, religion, sexual orientation and location of primary workplace.

This is consistent with the AHRC's recommendations in the *Willing to Work* report.

The experience women have of workplace barriers to equal employment opportunity is not restricted to gendered barriers, but can and does include other barriers such as disability barriers, racial and cultural barriers, and more. The current focus on gendered barriers overlooks these compounding factors and means that the approach to employment equity is hamstrung and is likely to be limited in benefiting primarily women who do not face other forms of discrimination.

Intersectionality needs to be meaningfully integrated into the WGEA 2012 regime. A risk that plays out in workplaces is that employers focus on gender and family responsibilities barriers, to the exclusion of other barriers. Even these dimensions of gender and family responsibilities affect women (and men) in different ways in their work. The experiences of workplace barriers to employment opportunity for women with disability and Aboriginal or Torres Strait Islander women, for example, are not the same as those for Anglo-European women without disability. In *Wiyi Yani U Thangani*, intersectional discrimination is identified as 'a major driver of the issues and harms that Aboriginal and Torres Strait Islander women and girls experience'.¹⁰

Data disaggregated by 'location of primary workplace' is of particular importance for Aboriginal and Torres Strait Islander women living and working in remote and very remote communities. In *Wiyi Yani U Thangani*, it was noted that 'Aboriginal and Torres Strait Islander people who experience additional aspects of discrimination can be especially vulnerable to a lack of support in remote and very remote communities'. This was identified as 'a particular issue for Aboriginal and Torres Strait Islander people with disability, those experiencing mental health distress, and people who identify as LGBTQIA+SB (Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, Intersex, Asexual, Sistergirl and Brotherboy)'.¹¹ In relation to employment, it was reported in *Wiyi Yani U Thangani* that;

Wherever we went, and particularly in rural, remote and very remote communities, women and girls told us that they and their families feel at a significant disadvantage in the job market generally. This is particularly difficult when the jobs we miss out on are roles within our own communities, therefore undermining not only our financial security but our rights to self-determination and development. Women and girls believe that this comes down to indirect and direct discriminatory practices.¹²

Collecting and disseminating gender equality data disaggregated by 'location of primary workplace' would enable more targeted measures to be developed by policy makers for those women living and working in rural and remote communities, and would shed greater light on

¹⁰ Australian Human Rights Commission, *Wiyi Yani U Thangani: Women's Voices* (2020) at 72–78.

¹¹ Ibid 282.

¹² Ibid 516.

the intersection between gender equality at work and accessibility of services (such as childcare, legal services, family violence services or disability support services).

Ideally, Australia would follow the example of Canada and adopt a general employment equity statute that required employers to identify and address barriers to equal employment opportunity more broadly, including barriers that arise because of the intersection of two or more characteristics. It appears from the terms of reference of this inquiry, that consideration of such a statute is beyond scope. The inclusion of a mandatory requirement for collection and reporting on data on diversity and inclusion practices and outcomes beyond gender and family responsibilities would, however, begin to pave the way for further developments in future and will provide positive opportunities to better understand the interactions of multiple characteristics.

As such, ADLEG supports WGEA's powers and processes being extended in this way. At a minimum, the additional collection should include data identifying practices and outcomes that are relevant to:

- Aboriginal and Torres Strait Islander peoples,
- people with disability,
- ethnicity and race,
- age,
- religion,
- location of primary workplace, and
- sexual orientation.

ADLEG has provided detailed examples of how this might occur in relation to Question 4.

In respect of people with disability, such data should be sufficiently detailed to identify impacts and outcomes for different types of disability, for example, people with mobility impairments, people with sensory impairments, people with other physical impairments, people with cognitive impairments, people with psycho-social disabilities, people with long-term disease or illnesses, etc. In order to understand the impact of multiple characteristics, it will be necessary to collect data that compares the outcomes, etc, for people with single characteristics, none of the identified characteristics, and multiple characteristics.

Requiring that data provided by relevant employers be disaggregated by Aboriginality, age, disability, ethnicity and race, religion, sexual orientation and location of primary workplace will ensure a richer data set from which to understand, develop and implement appropriate measures to address intersectional inequality and discrimination. This data set could also be used to provide more accurate statistical information to the Committee on the Elimination of all forms of Discrimination against Women as part of Australia's regular national reporting requirements under the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW).

ADLEG acknowledges that employers cannot require employees to provide data on these attributes, but nevertheless think it is important to collect and use what data is available. Employers should be required to ask questions of their employees in relation to these attributes, and collect what data is volunteered by employees in response.

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?

Better use and collection of data:

It is not enough to simply collect data on gender equality; data must be used to create a targeted transparency action cycle, to create market-based, organisational and political pressure for change.¹³ To achieve this requires:

- *Quality information*, which is detailed, accurate and comparable across organisations to enable bench-marking. Quality information considers factors that are critical to advancing gender equality, like intersectional experiences.
- *Accessible information*, made available to information users via centralised aggregation, analysis and reporting of data across organisations and industries.
- *Consultation and engagement* with information users in the process of gathering, evaluating, and responding to organisational data.
- *Accessible, efficient and effective procedures* in place to monitor, scrutinise and enforce reporting requirements in the event of non-compliance.
- Reflection on changes revealed by the data reported and *evaluation* by reporting organisations of their own progress towards workplace gender equality.
- Policies that are *sustainable*, and grow in use and scope over time.¹⁴ ADLEG has therefore recommended the expansion of the Gender Equality Indicators, and the scope of relevant employers.

At present, the WGEA Data Explorer does not allow information users (that is, shareholders, employees, employee organisations, and the general public) to compare between two or more organisations (as opposed to comparing a single organisation to industry benchmarks); and does not offer information about organisational pay gaps or pay differentials by level. While benchmark reports are sent to organisations themselves, organisations are not required to pass these reports on to information users. This likely prevents users from using this information to

¹³ Alysia Blackham, 'Positive Equality Duties: The Future of Equality and Transparency?' (2021) 37(2) *Law in Context* 98, 102.

¹⁴ *Ibid.*

make informed choices and advocate for change. This can be compared with gender pay gap reporting in the UK, where all organisations are directly comparable.

ADLEG recommends that organisational benchmarking reports be required to be distributed to employees and employee organisations.

ADLEG recommends that the WGEA Data Explorer allow comparison between two or more organisations.

Consultation and engagement is also limited at present. While organisational reports must be shared with employees and employee organisations, and such groups given an opportunity to ‘comment’, and the Gender Equality Indicators raise the idea of consultation, there is no obligation to consult on the data reported to WGEA, or in the process of deciding how organisations respond to the data reported.

ADLEG recommends that relevant employers be required to consult and engage with employees, unions and shareholders in the process of gathering, evaluating, and responding to organisational data.

At present there is no requirement for organisations themselves to review their previously reported performance and evaluate their own progress towards gender equality in terms of the differences reported from year to year. ADLEG believes that it should be a reporting requirement that organisations identify changes from the previous year’s report and provide comments on whether these represent progress towards equality or areas in which action is needed. Subsequent reports should include comment on and evaluation of any such actions taken. Identifying and commenting on the differences in data from the previous report is a minimal requirement for organisations, so would not be an increase in the burden of compliance; no extra data collection would be required.

ADLEG recommends that relevant employers be required to identify changes in the data reported from year to year, and to provide comments and evaluation of any such changes together with actions identified as desirable to progress towards workplace gender equality. Reports should also comment on any actions identified as desirable in previous reports.

Pay transparency

Pay transparency in isolation is not sufficient to ameliorate pay inequity. However, it can contribute to employees making informed decisions to leave and look for ‘greener (pay) pastures’ elsewhere, entering into individual negotiations with their employer, and affect the collective bargaining context. Cumulatively, these effects may hasten the achievement of equitable pay.

Pay transparency has therefore been raised as having the potential to close the gender pay gap in a number of contexts. If pay data was public, individual employees would be able to identify pay inequity and use this to choose alternative employers, or to negotiate higher salaries.

There are successful examples of jurisdictions where pay transparency has been implemented, and appears to be having a positive effect on gender pay equity. For example, individual salary and taxation data has been publicly available in Norway since 2001, and in 2021 the World Economic Forum ranked Norway third out of 144 countries in terms of wage equality for similar work.¹⁵ In contrast Australia ranked 50th.

ADLEG recommends that pay secrecy be prohibited, to allow all workers to disclose and compare their pay.

Eliminating pay secrecy would contribute to Australia's efforts to 'strengthen women's economic security and prosperity',¹⁶ address industrial and occupational segregation and advance pay equity, as recommended to Australia by the Committee on the Elimination of Discrimination against Women.¹⁷

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?

A number of our recommendations are designed to improve the operation of the legislation and its effectiveness without increasing the burden on relevant employers. For example, allowing all employers to report voluntarily does not impose any additional burdens. Further, allowing WGEA to disclose more reported data or disclose reported data in more useful ways should not impose any additional burden on relevant employers. Such changes should, however, enable stakeholders (employees, employee organisations, shareholders, customers and suppliers) to more readily understand the performance of relevant employers in respect of the Gender Equality Indicators.

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?**

The current minimum standards are so minimal that they should be applied to all relevant employers, not merely those with 500 or more employees. Being required to have a policy or strategy in respect of at least one Gender Equality Indicator is not onerous, so expanding this requirement to all relevant employers would not impose any serious burden.

¹⁵ [Global Gender Gap Report 2021](https://www3.weforum.org/docs/WEF_GGGR_2021.pdf) [3] https://www3.weforum.org/docs/WEF_GGGR_2021.pdf

¹⁶ <https://www.pmc.gov.au/office-women>

¹⁷ See recommendation 44(a) of the Committee on the Elimination of Discrimination against Women's *Concluding Observations on the Eighth Periodic report of Australia* (25 July 2018).

If the minimum standards were to be used to drive change, they should require concerted action on the part of relevant employers. As under the *Gender Equality Act 2020* (Vic), this could include, for example:

- being required to show progress towards gender equality;
- being required to conduct a workplace gender audit, develop evidence-based gender equality action plans, and show progress against the plan;
- public reporting on the effect of the organisation’s strategy for promoting gender equality.

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?

While the WGEA site explains that WGEA certifies compliance with the WGEA 2012 and relevant employers who wish to engage in federal government contracting need to demonstrate their compliance with these certificates, there is little publicly available evidence of whether these certificates are being required and whether contracting is prohibited without such evidence of compliance. Such checks and processes should be monitored and made transparent, so that the government is held to account for its Workplace Gender Procurement Principles.

WGEA has few powers to escalate enforcement in cases of non-compliance, beyond ‘naming and shaming’ non-compliant entities. There is no power for WGEA to issue notices requiring compliance, or to commence legal proceedings for a failure to comply. This has limited WGEA’s ability to escalate in cases of non-compliance with the WGEA 2012 regime, and reflects a limited operationalising of the enforcement pyramid.¹⁸

ADLEG recommends, then, that:

- **WGEA be given powers to issue notices of compliance, and to commence proceedings for a failure to comply.**
- **There be increased transparency around the application of the Workplace Gender Procurement Principles.**

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 2012 adopts a somewhat timid approach towards advancing gender equality. The tendency has been to rely on voluntary action by individual employers, albeit encouraged by education, the setting of standards and reporting. Progress has been slow.

¹⁸ Alysia Blackham, *Reforming Age Discrimination Law: Beyond Individual Enforcement* (2022, Oxford Monographs on Labour Law, Oxford University Press) ch 1, 3, 8.

ADLEG submits that more proactive measures on the part of WGEA and in the WGEA 2012 are required in order to make a discernible difference to gender inequality in Australia.

Rather than relying on the traditional mechanisms that are imposed in accordance with the conventional regulatory model, ADLEG suggests that a system of economic incentives be included. While Workplace Gendered Procurement Principles already apply, there is little public evidence that these are used.

ADLEG suggests incentives in the form of taxation set-offs associated with the aim of increasing the profile of women in management, the availability of gender-neutral parental leave policies and gender-neutral flexible working arrangements.

An economic initiative of this kind would not only be cost-effective for the government, it could also be financially advantageous for employers without adding to their regulatory burdens. A study by the Grattan Institute in 2020, for example, established that increasing the hours of paid work by women with young children would increase the GDP by approximately \$11 billion.