



**Equality Rights Alliance**  
Women's Voices for Gender Equality

# **Submission of the Equality Rights Alliance to the Review of the *Workplace Gender Equality Act 2012***

**24 November 2021**

# Equality Rights Alliance

The Equality Rights Alliance is Australia's largest network advocating for women's equality, women's leadership, and recognition of women's diversity. We bring together 64 organisations with an interest in advancing women's equality.

We are one of the six National Women's Alliances funded by the Commonwealth Office for Women.

ERA is auspiced by YWCA Australia and our members are non-government organisations and social enterprises with a focus on the impact of policy or service delivery on women. We have a small secretariat of three part-time staff, operating out of Canberra, who work with members to implement ERA's priority projects and assist member organisations to collaborate, network and share resources.

ERA believes the advancement of women and the achievement of equality are matters of fundamental human rights and advocates for gender equality, women's leadership and government policy responses that support women's diversity.

## ***This submission is endorsed in whole or part by the following members:***

- 2020Women
- Aboriginal Legal Rights Movement
- Alevi Federation of Australia
- Australasian Council of Women and Policing
- Australian Baha'i Community – Office of Equality
- Australian Centre for Leadership for Women
- Australian Graduate Women
- Australian Federation of Medical Women
- Australian Motherhood Initiative for Research and Community Involvement
- Australian National Committee for UN Women
- Australian Women's Health Network
- CARE Australia
- Children by Choice
- COTA Australia
- FECCA Women's Committee
- Feminist Legal Clinic
- Fitted for Work
- Gender Equity Community of Practice
- Girl Guides Australia
- Good Shepherd Australia New Zealand
- Homebirth Australia
- Human Rights Law Centre
- Immigrant Women's Speakout Association NSW
- International Women's Development Agency
- JERA International
- Jessie Street National Women's Library
- Justice Connect
- Maternity Choices Australia
- Marie Stopes Australia
- Migrant Women's Lobby Group of South Australia
- Multicultural Women's Advocacy ACT
- National Association of Services Against Sexual Violence

- National Council of Churches of Australia Gender Commission
- National Council of Jewish Women of Australia
- National Council of Single Mothers and Their Children
- National Foundation for Australian Women
- NSW Council of Social Services
- National Older Women's Network
- National Union of Students (Women's Department)
- Project Respect
- Public Health Association of Australia (Women's Special Interest Group)
- Reproductive Choice Australia
- Safe Motherhood For All Inc
- Sexual Health and Family Planning Australia
- Soroptimist International
- Sisters Inside
- Union of Australian Women
- United Nations Association of Australia Status of Women Network
- Victorian Immigrant and Refugee Women's Coalition
- VIEW Clubs of Australia
- Women in Adult and Vocational Education
- Women in Engineering Australia
- Women on Boards
- Women with Disabilities Australia
- Women's Equity Think Tank
- Women's Electoral Lobby
- Women's Environment Network Australia
- Women's Housing Ltd
- Women's Information Referral Exchange
- Women's International League for Peace and Freedom
- Women's Legal Services Australia
- Women's Property Initiatives
- Women Sport Australia
- Working Against Sexual Harassment
- YWCA Australia
- Zonta International Districts 22, 23 and 24

# Executive Summary

Gender equality is a critical driver of women's workplace participation and consequently vital to Australia's economic growth. The work of WGEA is essential to the achievement of gender equality and the realisation of the human rights of women in the workplace. To avoid the mistakes of the past and speed progress towards gender equality, the Act and Workplace Gender Equality (Minimum Standards) Instrument 2014 should be amended to conceptually and practically move the Workplace Gender Equality Agency (WGEA) from a reporting agency to an office of compliance and enforcement to achieve change. WGEA should be given the regulatory tools to close a well-documented 'action gap'.

## Recommendations

### *Increased compliance mechanisms*

1. That the focus of WGEA's current compliance provisions in the Act be broadened from the current focus on reporting, to include measures relating to actual performance and compliance. Employers with 100 employees or more should report to WGEA, meeting at least 3 minimum standards.
2. That minimum standards should apply to more employers (not only employers with 500 or more employees) and include industry minimum outcome standards to set a floor to employer performance. That WGEA be empowered to require employers act on standards within a set time frame, with organisations issued with improvement notices and required to show improvements made over two reporting periods. That WGEA be adequately resourced to perform this role.
3. That the language in the *Gender Equality Procurement Principles* should be changed to say that non-complying organisations are ineligible for grants and contracts rather than that they *may* not be eligible. That WGEA or another federal government entity be given the remit and resources to monitor and enforce bans.

### *Improved transparency in pay gap reporting*

4. That WGEA provide greater public disclosure about individual employer performance on the pay gap with gender remuneration data by percentage be included on a public portal (currently Data Explorer).

### *The scope of who reports should be broadened; federal public sector reporting should become mandatory*

5. That the scope of who reports to WGEA is expanded from the current definition of relevant employer as 100 or more employees to include more employers over time. Immediately, organisations with fewer than 100 employees be given the option to report against WGEA's gender equality indicators (GEI) and minimum standards.
6. That State, Territory and Local Government organisations should be encouraged to report to WGEA (in keeping with Respect@Work recommendation 43). The Commonwealth and Commonwealth agencies with more than 50 employees be required to report to WGEA.

### *New data set on sexual harassment (in support of WGEA's recommendations numbers 20 & 21)*

7. That harassment and discrimination on the basis of gender, as well as other attributes protected under anti-discrimination legislation in the workplace, be brought into greater prominence by being the subject of a new, standalone GEI.

*Add and improve data sets (in support of WGEA's recommendations 7, 15 and 17):*

8. That relevant employers should be required to submit data on the primary work location of employees, both regional location and whether work is primarily conducted from the workplace or from home.
9. That relevant employers should report on actual earnings and the actual number of paid hours by part time workers and casual employees, rather than submitting data on full time equivalent annual earnings for part time and casual employees to better capture the pay and conditions of part time and casual workers.
10. That relevant employers should report whether they pay superannuation when an employee is on paid, unpaid, employer-funded and/or government funded parental leave.
11. That relevant employers should be required to report on the utilisation of formal flexible arrangements, including flexibility and workplace accommodations provided to people with disability, as well as for the purpose of familial and caring responsibilities, with data disaggregated by gender and management/non-management status.

*Alignment of data sets and recognition of non-binary people and intersectionality (reflecting WGEA's recommendation 5 and recommendation 7 by ERA member, Women's Electoral Lobby Australia in its own submission):*

12. That the Commonwealth Office for Women work with WGEA and the Australian Bureau of Statistics on a review of:
  - existing data sets and reporting obligations and indicators to align definitions of common terms and identify any duplication of data collection from companies / employers; and
  - the extent to which existing datasets collected by other Commonwealth Agencies could be used to reduce reporting burdens on employers under the Act, including to what extent the existing datasets would need to be modified to allow for gender disaggregation and,
  - the most feasible way to improve the granularity of datasets by incorporating intersectional elements such as disability, age, location, ethnic background etc. and how best to include data about non-binary employees.

# Discussion

ERA welcomes the opportunity to provide input into the review of the [Workplace Gender Equality Act 2012](#) (Cth) (the Act), the legislation that governs the work of the Workplace Gender Equality Agency (WGEA) and commends the Minister for Women on her decision to review the Act at this critical juncture for women's economic security.

## WGEA's work is vital to women's economic security

ERA values the work of WGEA in producing a groundbreaking dataset that contributes to local and international dialogue on workplace gender equality. Today WGEA collects raw data from more than 12,000 relevant employers, identified as non-public sector employers or reporting organisations with 100 or more employees. Relevant employers report annually against six gender equality indicators (GEIs),<sup>1</sup> and companies with 500 or more employees are subject to minimum standards. WGEA's work now covers more than 4 million employees, representing more than 40% of the Australian labour force. This is important because data not only exposes gender inequality and injustice but can motivate change and drive accountability. Without the core work of WGEA the case for change is significantly harder to make and the benefits of change are harder to see.

## Gender equality equals better business, but it's uneven and slow

When employers provide flexibility for workers and spend money as an investment on paid parental leave, for example, then productivity and job satisfaction improve. Staff are more likely to be loyal. Companies save money in the long run.<sup>2</sup>

Progress on gender equality in Australia has been modest and uneven at best. Despite early progress, improving women's access to leadership positions in the private sector has stalled and Australia's efforts to reduce the gender pay gap have flatlined.<sup>3</sup> Some small gains have been made in the representation of women across all manager categories while gender segregation across occupations remains entrenched.<sup>4</sup> WGEA's own analysis shows only one in every two relevant employers offer paid parental leave other than the government's paid parental leave. Employers report performing equal pay reviews, but it appears that often little has been done by employers to act on the outcomes of those reviews. Relevant employers under

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<sup>1</sup> The Gender Equality Indicators as established by the Act are: GEI 1. Gender composition of the workforce, GEI 2. Gender composition of governing bodies of relevant employers, GEI 3. Equal remuneration between women and men (remuneration of managers, including distance from the CEO or equivalent, and non-managers), GEI 4. Availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities, GEI 5. Consultation with employees on issues concerning gender equality in the workplace, and GEI 6. Any other matters specified by the Minister – including sex-based harassment and discrimination.

<sup>2</sup> "A Study of the Relative Stock Market Performance of Companies Recognized for Supporting Gender Equality Policies and Practices" Badea, Leonardo et al. *Sustainability* (Basel, Switzerland), 2020-05-01, Vol.12 (9), p.3558.

Lyons, Libby interview, "["Spend more to make more": Equality Agency boss says companies must pick up their game on gender and parental leave.](#)", ABC "PM", April 15, 2021.

<sup>3</sup> Chief Executive Women [Senior Executive Census 2021](#), 8

<sup>4</sup> Workplace Gender Equality Agency, *Progress Report* (2019-20), 16.

the Act have policies and strategies in place, but we cannot measure whether they have taken action to implement them across workplaces. At the same time, the scale of the challenge of making progress on gender equality has become harder in the age of COVID-19.

The slow pace is at odds with a recognition both by the Australian community and all sides of politics that gender equality is a necessary pursuit, both for the individual lives of women and for the prosperity and security of our communities and economy.<sup>5</sup> This review comes at an important time in Australian public and business life when all players are expected to demonstrate greater commitment to improving women's participation and safety.

## **WGEA needs to be more action-orientated**

ERA wants to see changes that strengthen WGEA's capacity to achieve substantive change.

WGEA is not currently able to drive transformative change because the Act suffers from weak enforcement mechanisms. The regulatory approach of the Act is focused on information and education, on the assumption that social change will occur naturally as information becomes more available. While this light touch approach has worked well to move sympathetic organisations to make change, it is less effective at creating change among disengaged or indifferent organisations and does not scaffold WGEA to move relevant employers from reporting data to taking real action that improves gender equality. This is well understood in and outside WGEA as the "action gap" - the gap between policy and implementation.<sup>6</sup>

WGEA's own submission to the review advocates amendments that "support an action orientated" approach. Closing the gap between what's reported and what's done is a persistent challenge and will require moving WGEA from having a soft information regulation approach to one that combines reporting obligations with regulatory teeth. As WGEA itself urges, the agency should be underpinned by an Act that "empowers" it "to work with employers to drive change in their workplace".<sup>7</sup> The question is how. This submission suggests a pathway forward.

WGEA is not equipped under the Act to deal adequately with employers that don't act to close the gender equity gap. Non-compliance under the Act is construed as poor or absent reporting. The understanding of what constitutes non-compliance does not, in practice, include failing to action policies and strategies to improve workplace gender equality. This is a major deficiency. It's time WGEA stepped up from being a reporting agency, harvesting and checking data and providing advice to employers, into a truly transformative agency that drives change using rewards and penalties as a tool.

In terms of the transparency of data collected, ERA believes there is room to improve the visibility of data provided by individual employers without compromising privacy. In the current structure, actors wanting to effect change have limited opportunity to leverage the data to create momentum for structural and cultural change within and outside organisations.

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<sup>5</sup> See for example <https://www.vic.gov.au/gender-equality-what-it-and-why-do-we-need-it>

<sup>6</sup> For research into the action gap, see for example: Glennie M, von Reibnitz A, William J, Curtis S, Bordia S, 2021. *Gender pay gap reporting in Australia – time for an upgrade*. The Australian National University: Canberra p26. And for a workplace-specific example, see Manyweathers, Jennifer, Jessie Lymn, Geraldine Rurenga, Katie Murrell-Orgill, Shara Cameron, and Cate Thomas. 2020 *The Lived Experience of Gender and Gender Equity Policies at a Regional Australian University* Social Sciences 9, no. 7: 115. <https://doi.org/10.3390/socsci9070115>

<sup>7</sup> WGEA, Submission to the Review of *the Workplace Gender Equality Act 2012* (2021), 2.

## **‘Regulatory expectations in the public interest’ are not necessarily the same as ‘undue burden’**

ERA notes that the review wishes to reduce the ‘regulatory burden’ on employers while continuing to enable WGEA to promote and improve gender equality. ERA feels strongly that it is necessary to differentiate between the phrase ‘regulatory burden’ and the reality of an undue burden. Using the phrase regulatory burden to discuss difficulties in compliance can create an impression that all reporting on gender equality constitutes an undue burden. Some employers will regard any reporting obligation, not matter how light, as an undue burden. It is important to emphasise the benefits which accrue to employers from participating in WGEA’s reporting process and to emphasise that there is a standard of reporting which is not an undue burden when the benefits to employers and employees are considered.

WGEA’s efforts to streamline reporting obligations and work to harmonize information with federal departments will go some way to making reporting easier for employers. Where possible WGEA aims to use Single Touch Payroll data to enhance gender equality statistics and reduce employer burden.<sup>8</sup> Harmonizing reporting requirements across Government and ensuring that gender disaggregation of data is standard wherever possible will increase the ability of WGEA to avoid doubling up on data collection. Working to standardise the definitions of key terms and standards will also be useful for streamlining reporting by employers across a range of government entities. Coordination between State and Federal reporting agencies would also be of assistance. ERA notes that it’s critical that harmonization work should include alignment with international reporting requirements such as the Sustainable Development Goal indicators and with the work done using the ABS and HILDA data sets.

ERA is pleased to see continuous improvement at WGEA to simplify data collected from relevant employers, but we stress that gender equality can only be achieved with smarter reporting *and* increased monitoring and compliance. It is up to governments to manage expectations around this so-called ‘regulatory burden’ and not shy away from its role to impose regulations that lift standards, remembering that when gender equality improves, everyone benefits.

## **Shifting the understanding of ‘compliance’**

***The focus of WGEA’s current compliance provisions should be broadened from a focus purely on reporting to include measures relating to actual performance, including compliance with at least three minimum standards.***

Compliance under the Act, in practice, is focused on reporting.<sup>9</sup> WGEA *may* name a non-compliant employer in a report to the Minister or by electronic or other means. Non-compliant employers *may* not be eligible to tender for contracts under the Commonwealth and some state procurement frameworks. In the absence of a hard penalty, employers have generally been indifferent to being named. The percentage of

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<sup>8</sup> Ibid, 5.

<sup>9</sup> See <https://www.wgea.gov.au/sites/default/files/documents/2018-03-13-WGEA-Reference-Guide-2019.pdf> . There are 6 grounds of non-compliance. An organisation will comply with the Act if they: submit an annual report with the required data on time have their CEO sign the public report comply with notification and access requirements meet the minimum standards or, if they haven’t, improve against them within two reporting periods, give WGEA information to review their compliance if it requests such information. to not include anything false or misleading in their annual report or in any extra compliance information requested by the Agency.



reporting organisations who are non-compliant has not been driven down with time.<sup>10</sup> A 2021 audit of government tender records by national news outlets found that 31 non-compliant organisations were awarded federal government contracts.<sup>11</sup> WGEA does not monitor procurement decisions or the enforcement of procurement policies, as those powers are currently outside its remit under the Act. ***The Act should be amended to outright ban non-reporting employers from government procurement opportunities and WGEA or another federal government entity or agency should be given the remit and resources to monitor and enforce those bans.***

Compliance as it currently works is consistent with the conception of WGEA as an agency that would work constructively and collaboratively with employers to slowly evolve change. After 8 years of working with WGEA, those employers who are likely to achieve change through evolution are well on the road to progress, while those employers who are resistant to the cooperative approach remain safe from ramifications. It is time to take the next step and build an environment in which failure to make progress has ramifications. This should be stepped up slowly but steadily and the primary focus should still be on reward and benefits over punishments. Soft regulation has not generated a significant shift in gender equality outcomes.<sup>12</sup> Without clear ramifications for failure to progress – the absence of firm targets and external benchmarks and monitoring – the Act will remain limited in its scope and impact. The shift ERA wishes to see can happen with mere amendments to the Minimum Standards Instrument under the discretion of the Minister and not a change to the Act itself.

## The Action Gap

WGEA currently checks data provided by relevant employers and provides comparable industry assessments which it returns to employers as a summary with advice about how to improve. There are no binding recommendations attached, which goes some way to explain why there is a yawning “action gap”.

Under the Act, the Minister has the power to set minimum standards of performance for a relevant employer through the [Workplace Gender Equality \(Minimum Standards\) Instrument 2014](#).<sup>13</sup> Too few employers are subject to any minimum standards and even then, the bar is so low that the minimum standards have no effect in lifting standards. ERA’s member organisation, the National Foundation for Australian Women (NFAW) encapsulates this problem in its own separate submission to the review, describing the current minimum standards as “functionally meaningless”.<sup>14</sup>

It is possible for minimum performance standards to be set against a number or all of the gender equality indicators set out in the Act, rather than a minimum of one. It is possible for standards to be extended from inaction to action, and to outcomes achieved. It is also possible for coverage to be limited, as at present, to

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<sup>10</sup> WGEA correspondence, November 2021. And, Workplace Gender Equality Agency, 2021. *Non-compliant organisations list*. <https://www.wgea.gov.au/what-we-do/compliance-reporting/non-compliant-list>

<sup>11</sup> David Crowe, [“Flouting discrimination rules no barrier to winning government contracts”](#). May 21, 2021.

<sup>12</sup> Workplace Gender Equality Agency, *Progress Report (2019-20)*.

<sup>13</sup> According to the Explanatory Memorandum for the Instrument, ‘the minimum standards represent the minimum an employer must do to demonstrate a commitment to gender equality in their workplace.’ Under s.19C of the Act, a relevant employer fails to comply if that employer fails to meet that standard *and* fails to improve on their substandard performance over a period of two years. Section 19E of the Act places an obligation on WGEA to offer relevant employers advice and assistance if they fail to meet minimum standards.

<sup>14</sup> National Foundation for Australian Women, *Review of the Workplace Gender Equality Act 2012*, Submission, 30

a subset of relevant employers, or phased in to cover smaller relevant employers over time, or simply made to apply to all.

ERA notes that WGEA itself feels the need for more regulatory powers to get the job done. In WGEA's most recent Progress Report (2019-20), WGEA recommends that:

*The Workplace Gender Equality (Minimum Standards) Instrument 2014 should require employers to have policies and/or strategies in place to support three or more of the gender equality indicators and require employers to take action against the gender equality indicators.*

**ERA recommends that minimum standards (plural) should apply and apply to more employers.**

ERA's recommendation is also in the spirit of WGEA's submission to the review. WGEA's calls for *new functions to drive change by working with employers to achieve their targets for gender equality to meet the minimum standards of the Act.* (WGEA Recommendation 1).

***Employers should be obliged to show they are acting on three or more of the gender equality indicators and minimum outcome standards. WGEA should have the power to require employers to act within a set time frame. If an organisation does not show an improvement against expectations, penalties should apply. The Act should provide for external monitoring of progress by WGEA, rather than internal evaluations by employers. WGEA should be adequately resourced to perform this role.***

Australia must learn from the past. The Affirmative Action (Equal Opportunity for Women) Act 1986 (Cth) (AA Act) required relevant employers review employment policies to identify discrimination but also set quantifiable goals and monitored progress, reporting to the Affirmative Action Agency. The AA Act, like the Act under current review, did not require employers to take specific actions to encourage gender equality. Change was negligible. It was a similar story with the Equal Opportunity for Women in the Workplace Act 1999 Act and Equal Opportunity for Women Agency that followed.

## **Data transparency and accessibility**

***The Act should provide for greater public disclosure about individual employer performance regarding the pay gap.***

WGEA currently collects information on workforce management (employee movements, including resignations and leave), workforce profiles (participation, salaries, and remuneration) and data on an organisation's policies, strategies, and actions on gender equality. It sends an employer a confidential Competitor Analysis Benchmark Report detailing the organisation's gender equality performance relative to other organisations in its sector. It is meant to highlight areas for improvement and help track progress over time. It is also intended to help employers set achievable targets and goals to improve gender equality. Reports are public barring remuneration data via [Data Explorer](#). ***Employees should be able to view gender remuneration data by percentage.*** By increasing transparency, employees and stakeholders - all actors across the economy - would have more power to affect change from within and externally.<sup>15</sup> A separate submission to this review by ERA member, the Australian Centre for Leadership for Women

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<sup>15</sup> See WGEA's recommendation (no. 23) regarding public datasets.

A system is in place in the United Kingdom under the UK Government Equality Office - set up by the Equality Act 2010. A [central portal](#) is accessible to any member of the public to search and compare gender pay gap data by relevant UK employer name or type.

(ACLW) argues for greater data transparency.<sup>16</sup> Chief Executive Women (CEW) also favours greater pay gap reporting.<sup>17</sup>

## Increasing the range of employers covered by the Act

***The Act should increase the scope of employers under the Act to include employers with less than 100 employees, eventually moving to include all employers across public and private sectors with minimum of 25 employees.***

ERA is pleased to see that the reporting system adopted this year allows for voluntary reporting from the public sector. ERA wants to see more participation across the economy. ***ERA recommends the reporting system be expanded to allow organisations with fewer than 100 employees to report to WGEA on a voluntary basis.*** ERA would like to see that over time all employers – including Federal, State and Local government public sectors and non-public sector employers - with at least 25 employees or more be obliged to submit a report that contributes to datasets on gender equality in Australian workplaces.

Expanding the pool of entities covered by the Act will further normalise gender equity reporting and invite all businesses to exhibit progress and best practice. Voluntarily broadening the pool of reporting entities is good for building support for change across a range of issues. For example, under the Commonwealth Modern Slavery Act (2018), Australian companies with a turnover of at least \$100 million must provide an annual modern slavery statement. However other entities based or operating in Australia may report voluntarily on their efforts to stamp out modern slavery.<sup>18</sup> With more players contributing to the picture of modern slavery in supply chains, the public, business, government, and civic society actors are also better able to identify laggards and leaders, which in turn identifies allies for change and targets for further education and pressure.

There is support across the women's sector for the mandatory reporting by Commonwealth agencies.<sup>19</sup> WGEA's submission recommends expanding the scope of entities under the Act.<sup>20</sup> The National Foundation for Australian Women has a nuanced position on same.<sup>21</sup>

ERA's recommendations are aligned with global best practice and employer thresholds across Europe where gender equality reporting models have proliferated. In Iceland, for example, companies with as few as 25 employees are mandated to report to the government on pay standards. Iceland's employers must also prove

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<sup>16</sup> ACLW says WGEA "continues to maintain pay secrecy". ACLW *Submission to the Review of Workplace Gender Equality Act 2012*, 4.

<sup>17</sup> Chief Executive Women (CEW), Submission to WGEA review, November 2021.

<sup>18</sup> [Modern Slavery Bill \(2018\) – Parliament of Australia](#).

<sup>19</sup> National Foundation for Australian Women, Submission to Review of the *Workplace Gender Equality Act 2012* (2021). See recommendations 8.

<sup>20</sup> WGEA, Submission to the Review of the *Workplace Gender Equality Act 2012* (2021). See recommendations 2 and 3.

<sup>21</sup> See NFAW recommendations 18 and 21. If the Single Touch Payroll system can be utilised in reporting, and it if results in likely significant alleviation of the reporting burden, reporting, it says, should be extended to all sized businesses. If the efficiencies of STP fail to materialise and the reporting burden remains too burdensome for smaller business, the Agency should be funded to draw from other sources (such as ABS, HILDA and administrative data sets) to ensure that it can provide accurate and meaningful insights into the state of the entire workforce for women to fulfil its full range of functions.

that they are paying women equally by implementing the Equal Pay Standard to acquire equal pay certification.

## Strengthening the dataset

***ERA recommends the adoption of those amendments identified in the Workplace Gender Equality Agency Progress Report 2019-20 and in the WGEA submission to the Review (WGEA recommendations 7,15 and 17) that aim to grow and improve data sets, as follows:***

- ***Relevant employers should be required to submit data on the primary work location of employees, both regional location and whether work is primarily conducted from the workplace or from home.***
- ***Relevant employers should report on actual earnings and the number of hours of engagement (paid for) of part time workers (and casual employees), rather than submitting data on full time equivalent annual earnings for part time and casual employees to better capture the pay and conditions of part time and casual workers.***
- ***Relevant employers should report whether they pay superannuation when an employee is on paid, unpaid, employer-funded and/or government funded parental leave.***
- ***Relevant employers should be required to report on the utilisation of formal flexible arrangements, including flexibility and workplace accommodations provided to people with disability, as well as for the purpose of familial and caring responsibilities, with data disaggregated by gender and management/non-management status.***

We are encouraged by the steps taken to establish the gender equality reporting platform under the Victorian Gender Equality Act 2020 (covering the public sector, universities, and local councils and with obligations framed in terms of “positive duties”).<sup>22</sup> We are also looking forward to the nationally consistent framework for measuring progress on women’s economic security, which is currently in development through the National Cabinet. However, the development of multiple portals, indicators and reporting regimes creates a risk that data collection will be duplicated and that datasets might become incompatible as different definitions and indicators are adopted in different jurisdictions and for different purposes. We also note that Australia is subject to a range of international commitments relating to gender equality in the workplace, with various indicators and definitions under each agreement.<sup>23</sup>

## Alignment of data sets and recognition of non-binary people and intersectionality

***We recommend the Commonwealth Office for Women work with WGEA and the Australian Bureau of Statistics on a review of:***

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<sup>22</sup> Entities publicly report on their progress against key gender equality indicators such as equal pay, sexual harassment, workplace composition and career progression practices.

<sup>23</sup> See for example the indicators to the Sustainable Development Goals and the La Serena Roadmap for the Inclusion of Women and Inclusive Growth (2019-2040).

- *existing data sets and reporting obligations and indicators to align definitions of common terms and identify any duplication of data collection from companies / employers; and*
- *the extent to which existing datasets collected by other Commonwealth Agencies could be used to reduce reporting burdens on employers under the Act, including to what extent the existing datasets would need to be modified to allow for gender disaggregation and*
- *the most feasible way to improve the granularity of datasets by incorporating intersectional elements such as disability, age, location, ethnic background etc. and how to best record data about non-binary employees.*

## Sexual harassment and assault in the workplace

WGEA's data collection process does not establish with clarity a picture of sexual harassment complaints across workplaces and how those complaints are being actioned including provision and frequency of workplace training on sex-based harassment and discrimination. Sexual harassment in the workplace is notoriously under-reported. Asking employers to report on complaints received and how their workplaces have dealt with them support recommendations made by the Respect@Work National Inquiry in regards to collecting, monitoring and reporting on the prevalence and evidence of workplace sexual harassment.<sup>24</sup> Currently WGEA's gender equality indicator No. 6 involves 'matters specified by the Minister including sex-based harassment and discrimination' **Harassment, sexual harassment and discrimination on the basis of gender, as well as other attributes protected under anti-discrimination legislation in the workplace, should be brought into greater prominence by being the subject of a new, standalone GEI.**<sup>25</sup> However, care should be taken to ensure that data on complaints lodged in the workplace is not taken to be indicative of prevalence, given the known issues relating to underreporting.

## Conclusion

There is significant scope for building on the excellent work of WGEA over the past 8 years. WGEA's initial approach of education and support has been effective in building change in receptive organisations but leaves us now with the problem of addressing resistant organisations and a potential gap between intentions and practical implementation in even the most supportive workplaces. The time has come to expand WGEA's remit, in terms of the scope of the definition of 'relevant employers', in the nature of the data collected and the transparency and accessibility of that data and in the role of WGEA itself as an enforcing body.

WGEA is not currently able to drive transformative change because the Act suffers from weak standards and enforcement mechanisms. The bar is too low for compliance with no consequence for employers who do not act. Our recommendations outline how it can secure regulatory teeth.

ERA supports this review as an important step towards ensuring that WGEA's work remains relevant as workforces grapple with the complexities of practically implementing gender equality in the workplace. We are grateful for the opportunity to provide this submission and look forward to the outcomes of the review.

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<sup>24</sup> [Respect@Work: Sexual Harassment National Inquiry Report \(2020\) | Australian Human Rights Commission](#). See Recommendations Section 3.

<sup>25</sup> See WGEA, Submission to the Review of the *Workplace Gender Equality Act 2012* (2021), 3.