

## Women Lawyers Association of New South Wales

### Submission to review of Workplace Gender Equality Agency Act - 2021

#### About us

The Women Lawyers Association of New South Wales (**WLANSW**) is the peak professional body representing women lawyers in New South Wales. Our commitment is to promote and protect the interests of women in the legal profession. WLANSW has been improving the status and working conditions of women lawyers since 1952. In March 2022 we will be celebrating our 70<sup>th</sup> anniversary. Our patron is the Honourable Virginia Bell AC.

WLANSW has female, male and corporate members throughout New South Wales. Our members include solicitors, barristers, judicial officers, academics, government and corporate counsel, non-practising lawyers and law students.

WLANSW provides a network for social interaction and continuing education and reform within the legal profession and broader community. We conduct research into work practices affecting women in the legal profession, including the annual published report on employment trends in the legal profession titled: *Law Firm Comparison Project*. The most recent Project report was released on 6 November 2021 and can be found on the WLANSW website at:

<https://womenlawyersnsw.org.au/resources/lawfirm-comparison-project/>.

The Project relies heavily on the information and data provided to the Workplace Gender Equality Agency (**WGEA**) in the form of employers' public reports, as well as the aggregated data published by the WGEA. We are grateful for the continued assistance that the WGEA has provided to the authors of the Project report.

WLANSW has had the benefit of a broader working relationship with the WGEA which has included collaboration and information sharing for a number of other projects. We value that relationship and the opportunity to provide this submission.

#### Introduction

WLANSW thanks the Australian Government and WGEA Review Team for the opportunity to provide a submission to the targeted Review of the *Workplace Gender Equality Act 2012*.

This submission does not necessarily reflect the view or views of all members of WLANSW.

WLANSW is not an employer. Accordingly, this submission focuses on policy and the objects, activities and purposes of the WGEA to the extent that they affect the working conditions of employed women lawyers, and their progression to the senior ranks of their chosen sector of the legal profession.

#### Responses to consultation questions

For ease of reference we have repeated the consultation questions below, and included our responses at the end of each 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?

***The functions and powers of the WGEA are appropriate. With appropriate and adequate resourcing, the WGEA should be able to fulfil its functions.***

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?

***As mentioned earlier in this submission, WLANSW as the peak professional organisation for women in the legal profession in NSW actively engages with the WGEA on a number of projects. From time to time we have provided input into the kinds of questions asked by the WGEA each year in order to obtain data that will be useful to us. In October 2018 we provided a submission to the WGEA on data collection for partnerships and other employee-owned organisations. A copy of that submission is Appendix A to this submission. We rely on that submission.***

***In February 2019 WLANSW made a submission to the Australian Human Rights Commission's Respect at Work Inquiry. In that submission (which is available on our website: <https://womenlawyersnsw.org.au/resources/submissions/>) we recommended that criteria 6.3 for the WGEA Employer of Choice for Gender Equality citation be expanded to require de-identified reporting of the incidence of sexual harassment complaints and the outcomes of investigations undertaken in response to such complaints.***

***We repeat that recommendation for the purpose of this submission because it will contribute to the cultural change necessary to eliminate all forms of sexual harassment in the workplace. We submit that an obligation to report to the WGEA would drive a more proactive culture of prevention, and also recognise those who are Employers of Choice. Including this criteria in reporting would also give the WGEA an understanding of any particular industry patterns emerging.***

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?

***WLANSW supports the Government's move to amend the WGEA Act to remove the exclusion of Commonwealth, State and Territory public sector organisations from the definition of reporting employer.***

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?

***See our answer to Consultation Question 2, and the submission at Appendix A.***

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?

***WLANSW does not support the mandatory collection from relevant employers of data on diversity and inclusion for criteria other than on the basis of gender. Whilst the other criteria suggested in the question are important to address in order to achieve diversity and inclusion in the workplace, and to ensuring that all employees are treated fairly and thrive, these criteria are for other agencies to investigate and report on. The fundamental purpose of the WGEA is gender-based. To add other layers at the WGEA level of involvement could obscure, dilute or divert the WGEA's investigations into workplace gender equality. The better approach is for the WGEA's data to be provided, with appropriate privacy safeguards, to a co-ordinating agency which would collect and interpret information from other agencies such as the National Indigenous Australians Agency.***

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?

***See our answer to Consultation Question 2.***

***WLANSW supports the provision of remuneration data to the public in aggregate, de-identified form. This will allow the WGEA, employers and employees to get a sense of trends overall and, in particular, in discrete sectors and industries, and to better understand and address the ongoing gender pay gap and gender pay discrimination.***

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?

***WLANSW does not support mechanisms that reduce the obligations on reporting employers. WLANSW is concerned that watering down these obligations could result in reductions in the scope and quality of the data that reporting employers are required to provide to the WGEA.***

***WLANSW would not support the sharing of sensitive, confidential or private information between the WGEA and other agencies.***

8. Could the minimum standards be expanded to improve the way they drive practical gender equality outcomes in workplaces? What would employers need to do to implement these changes in their workplace? Should Minimum Standards apply to all reporting employers, not just those with 500 or more employees?

***WLANSW submits that the minimum standards will be more effective at achieving positive change for women in the workplace if they are applied to all reporting employers.***

WLANSW would be very happy to discuss this submission with the WGEA. Please contact our President Renée Bianchi or Treasurer Louise Mallon

**Contact details**

Women Lawyers Association of NSW, [REDACTED]

Kind regards

[REDACTED]

Renée Bianchi  
President  
Women Lawyers Association of New South Wales

24 November 2021

Women Lawyers Association of New South  
Wales

Submission to the WGEA on data collection for  
partnerships and other employee owned  
organisations

29 October 2018



# How to explore partnership and leadership structures of law firms and other employee-owned organisations – lessons learned from the 2018 Law Firm Comparison Project

## History

Women Lawyers Association of New South Wales (**WLANSW**) has been conducting a comparison of legal firms using publicly available data since 2012. This year's analysis<sup>1</sup> and has been greatly enhanced by the selection of the project by the University of Sydney Policy Lab as one of its inaugural policy research projects. This meant that WLANSW member, Susan Price, was able to conduct this work while a Policy Lab Fellow in 2018.

The commencement of the *Workplace Gender Equality Act 2012* (the *Act*) saw private sector organisations with more than 100 employees begin to report in some detail on their workplace profile, and over time provide more information to the Workplace Gender Equality Agency (*WGEA or the Agency*). This added greatly to the information that WLANSW was able to review and include in its review.

Using one law firm to illustrate, and drawing on the experience of compiling our latest Comparison Report, I will track the reporting requirements to highlight the additional useful information that has been available to the public, with a focus on partnership composition of law firms, and also highlight the additional information the WGEA could collect to aid transparency of law firm ownership structures and assist in meeting the Act's objectives to:

- promote and improve gender equality (including equal remuneration between women and men) in employment and in the workplace
- support employers to remove barriers to the full and equal participation of women in the workforce, in recognition of the disadvantaged position of women in relation to employment matters
- promote, amongst employers, the elimination of discrimination on the basis of gender in relation to employment matters (including in relation to family and caring responsibilities)
- foster workplace consultation between employers and employees on issues concerning gender equality in employment and in the workplace
- improve the productivity and competitiveness of Australian business through the advancement of gender equality in employment and in the workplace.

This could also extend to collecting information on the ownership and leadership structures of other employee owned non-corporate employers to identify where the power and influence lies in those organisations.

---

<sup>1</sup> Available online at <https://womenlawyersnsw.org.au/workplace-practices/>

## 2012-13

In this first year of reporting, organisations completed a Workplace Profile. It could be completed from a WGEA supplied spreadsheet available through the Agency's website, or from the organisation's own table or spreadsheet.

The law firm I am using to illustrate the changes in reporting over time, Allens<sup>2</sup>, responded in the following format<sup>3</sup>.

Requirement 1: Workplace profile							
Enter data on the composition of your workforce as instructed below :							
1. If needed, additional rows can be added to the workplace profile to reflect accurately the additional/different roles within your organisation.							
2. Your workplace profile data should be from no earlier than October 2011 (ie six months prior to the beginning of the 2012-2013 reporting period)							
3. Please insert your workplace profile below from:							
i) our industry-relevant <a href="#">Microsoft Excel spreadsheet which you can obtain from our website</a> , or							
ii) from your own table or spreadsheet (refer table below as a guide).							
Occupational Category	Full Time		Part time		Total	Percentage Male/Female	
	F	M	F	M		F	M
Chief Executive Officer	0	1	0	0	1	0	100.00
Chief Operating Officer	0	1	0	0	1	0	100.00
Partnership	22	147	11	8	188	17.50	82.50
The Board	4	8	0	0	12	33.30	66.66
Leadership Team	3	8	1	0	12	33.33	66.66

While this gave a gendered breakdown of the partnership, and identified full-time and part-time partners, it did not show the breakdown of equity and non-equity/salaried partners.

## 2013 – 14

For reporting in this period, the Workplace Profile had been standardised by the Agency, and an additional Reporting Questionnaire developed. The standardised profile does not suit a partnership structure as it reflects a much more conventional corporate hierarchical structure referenced to levels from the CEO, with categories of:

- CEO/Head of Business in Australia
- Key management personnel
- Other executives/managers
- Senior Managers

<sup>2</sup> Allens is a leading international law firm that has been chosen as it has equity and non-equity partners. Together with Linklaters, it's global network spans 40 offices across 28 countries. It was named Australian Law Firm of the Year (Chambers Asia Pacific, 2017). More information about the firm can be found at [www.allens.com](http://www.allens.com)

<sup>3</sup> Taken from the public report for Allens for 2012-13 accessed on 25 July 2018 at <https://www.wgea.gov.au/report/public-reports>

- Other managers

Non-management staff (which includes a category of professionals) are also captured.

The structure does not reflect the ways in which law firms, indeed many professional services firms, are categorised, with professional staff also filling the management roles of Practice Group leaders, and sometimes heading up functions such as HR/Business Development.

The conventional law firm organisational structure for partnerships, and incorporated legal practices, while still hierarchical, is more likely to look like this :

- Managing Partner/Chair of partners – or Managing Director
- Governing Board, or subset of partners that govern
- Partners or Principals (sometimes broken into different categories – equity and salaried, with partial equity also possible depending on the partnership/incorporated practice’s rules)
- Special Counsel
- Senior Associates
- Associates
- Senior Solicitors
- Solicitors

Questions were asked about the gender composition of organisations’ governing bodies, and the gender split of the board identified.

An additional question was posed for partnerships (question 2.4) asking for the number of EQUITY PARTNERS. The Allens example<sup>4</sup> is as follows:

2.4 If your organisation, or any organisation you are reporting on, is a partnership please enter the total number of male and female EQUITY PARTNERS in the following table (if your managing partner is also an equity partner enter those details separately in the relevant row below). If you have a separate governing body/board of directors, please enter its composition in 2.1

	F	M
Managing partner	0	1
Other equity partners	28	123

As could be seen, women comprise the minority share of the equity partners, in this case 18.5%.

This additional information was welcome, but did not capture the total number of partners both salaried and equity; the gendered division between equity and non-equity partners; and the extent to which they were full-time or part-time across all categories.

Although located in the section on gender composition of governing bodies, it is often the case that the partnership is not of itself automatically a governing body, but may have a subset that is – in this case the Allens governing body was shown as this in response to Question 1.

---

<sup>4</sup>Taken from the 2013-14 Public report for Allens accessed on 25 July 2018 at [https://www.wgea.gov.au/sites/default/files/public\\_reports/tempPublicReport\\_hdylsainx4.pdf](https://www.wgea.gov.au/sites/default/files/public_reports/tempPublicReport_hdylsainx4.pdf)



## Gender equality indicator 2: Gender composition of governing bodies

2 Does your organisation, or any organisation you are reporting on, have a governing body/board? (If you answered no, you will only be required to answer question 2.4, if applicable)

- Yes  
 No

2.1 Please complete the table below. List the names of organisations on whose governing bodies/boards you are reporting. For each organisation, also indicate the gender composition of that governing body/board; and where in place, include what gender composition target has been set and the year the target is to be reached. **IMPORTANT NOTE:** where an organisation name has been entered in the table, you must enter the gender composition numbers of that governing body/board. If no target has been set for that particular governing body/board, please enter the number 0 in the '% Target' column and leave the 'Year to be reached' column blank. Otherwise, please enter a number from 0-100 in the '% Target' column and a future date in the format of YYYY in the 'Year to be reached' column.

	Organisation name	Chairperson		Board members		% Target	Year to be reached
		F	M	F	M		
1	Allens	0	1	4	7	40	2017
2							

## 2014-15

In the 2014 – 15 reporting questionnaire, question 2.4 was amended. It still asked for the gender composition of EQUITY PARTNERS, but also asked which ones were KMP (Key Management Personnel). Again, total partner numbers and a breakdown across salaried/equity partners was not asked.

The Allens' response<sup>5</sup> was this

2.4 Partnership structures only: (do NOT answer this question if your organisation is an incorporated entity (i.e. Pty Ltd, Ltd or Inc)). For partnerships, please enter the total number of female and male equity partners (excluding the managing partner) in the following table. Details of your managing partner should be included separately in the CEO row of your workplace profile. If you have a separate governing body/board of directors, please enter its composition in question 2.1.

	Full-time females	Part-time females	Full-time males	Part-time males
Equity partners who ARE key management personnel (KMPs) (excluding your managing partner)	7	1	18	0
Equity partners who are NOT key management personnel (KMPs)	18	6	88	5

<sup>5</sup> Taken from the public report for Allens for 2014-15 Accessed on 25 July 2018 at [https://www.wgea.gov.au/sites/default/files/public\\_reports/tempPublicReport\\_soeux8ohnv.pdf](https://www.wgea.gov.au/sites/default/files/public_reports/tempPublicReport_soeux8ohnv.pdf)

## 2015 – 2016

In this reporting questionnaire the question was again amended and partnerships were asked to map equity partners only against the WGEA standardised manager definitions. In a law firm context this is not a particularly useful categorisation.

The opportunity to capture total partner numbers, and the gender split between equity and non-equity, and full-time and part-time, was not taken.

The commentary also noted that “*Non-equity (salaried) partners need to be included in your workplace profile.*” With respect to the WGEA, this represents a misunderstanding as to the true legal nature of a salaried partner. They are not engaged on an employment contract and are not employees, but typically are members of the partnership with more limited remuneration rights than other partners to fully participate in any profit share, and are being paid a fixed draw or “salary”. Omitting them from the partnership analysis obscures the full partnership composition, and also gives a skewed picture of the workplace profile, as not all partners will be shown in the workplace profile. We suggest it also may create confusion in those who are completing the report, with uncertainty over how to categorise the non-equity partners, which in turn undermines the ability to compare across firms within the sector.

The Allens’ response<sup>6</sup> was this:

- 2.4 Partnership structures only: (only answer this question if your organisation operates under a partnership structure, ie is NOT an incorporated entity (ie Pty Ltd, Ltd or Inc), or an unincorporated entity).**
- Please enter the total number of female and male equity partners (excluding the managing partner) in the following table against the relevant WGEA standardised manager definitions. Non-equity (salaried) partners need to be included in your workplace profile.**
- Details of your managing partner should be included separately in the CEO row of your workplace profile.**
- NB: Please ensure that the composition of your governing body/board (which may include all or some of your equity partners below) is also entered in question 2.1.**

	Full-time females	Part-time females	Full-time males	Part-time males
Equity partners who ARE key management personnel (KMPs) (excluding your managing partner)	4	1	5	0
Equity partners who are “Other executives/General managers”	3	0	8	0
Equity partners who are “Senior managers”	16	7	82	4
Equity partners who are “Other managers”	0	0	0	0

A much better approach would be to have all partners included in the workplace profile and ask for details of the entire partnership in question 2.4, broken down into full equity, partial equity, and salaried or fixed draw categories, and then also analysed across significant roles within the organisation.

---

<sup>6</sup> Taken from the public report for Allens for 2015-16 accessed on 25 July 2018 at [https://www.wgea.gov.au/sites/default/files/public\\_reports/tempPublicReport\\_26ls36crlh.pdf](https://www.wgea.gov.au/sites/default/files/public_reports/tempPublicReport_26ls36crlh.pdf)

## 2016-17

In this reporting questionnaire, Question 2.4 had been amended again. This time it asked for the number of Equity and Non-equity partners to be mapped against the Manager and non-manager categories.

While for the first time we do have total partner numbers from the response, and a breakdown of full-time and part-time partners, unfortunately the question does not require the initial identification of the split between equity and non-equity partners, so it is no longer possible to identify the number of equity partners and the gender split in that group. As there can be a significant disparity between the gender composition of equity partner and non-equity partner groups, this information is important to know as it highlights how a firm is progressing towards gender equality at the most senior and powerful ownership levels of its structure.

The question and response<sup>7</sup> looks like this:

**2.4 Enter the number of EQUITY and NON-EQUITY partners (excluding the managing partner) against the WGEA standardised manager and non-manager categories below.**

	Based on WGEA-defined manager categories EQUITY and NON-EQUITY PARTNERS ONLY			
	Full-time EQUITY and NON-EQUITY partners		Part-time EQUITY and NON-EQUITY partners	
	Females	Males	Females	Males
Key management personnel (KMPs) (excluding managing partner)	2	4	2	0
Other executives/general managers	4	8	0	0
Senior managers	16	79	6	1
Other managers	0	0	0	0
Non-managers	0	0	0	0

Guidance is given to organisations to complete the report<sup>8</sup>, and the guidance on this issue is in the following terms:

<sup>7</sup> Taken from the public report for Allens for 2016-17 accessed on 25 July 2018 at [https://www.wgea.gov.au/sites/default/files/public\\_reports/tempPublicReport\\_lfavnkwf9x.pdf](https://www.wgea.gov.au/sites/default/files/public_reports/tempPublicReport_lfavnkwf9x.pdf)

<sup>8</sup> WGEA Reporting Reference Guide accessed on 25 July 2018 at <https://www.wgea.gov.au/sites/default/files/2018-reporting-reference-guide.pdf>

---

**2.4 Enter the number of EQUITY and NON-EQUITY partners (excluding managing partner) against the WGEA standardised manager and non-manager categories below.**

This question requires data to be entered into a table.

No cell should be left blank. Where a cell does not require data, enter '0' (zero).

---

For partnerships, you are required to provide the total number of female and male equity and non-equity partners, by manager and non-manager categories. Non-equity partners may also be referred to as fixed profit share or fixed-draw partners.

Only those engaged under partnership terms and conditions **should be included** in this table.

Where a person holds the title of Partner but is engaged on an employment contract they **should NOT be included** in this table. They should be reported on in the workplace profile,

The managing partner is NOT to be included in this table. The managing partner should be reported on separately in the CEO row of the workplace profile.

**Important note:** The composition of your governing body also needs to be entered in question 2. This may include all or some of the equity partners and non-equity partners entered into 2.4.

This guidance repeats the incorrect classification of non-equity partners as employees, as outlined above in relation to the 2015-16 reporting.

In our 2018 Law firm comparison project, which analysed the 2016 – 17 WGEA data, we made the following observations and recommendations<sup>9</sup>:

“Law firms have traditionally only been permitted to operate as partnerships, but with an easing of professional restrictions on structure, increasingly are moving to incorporate for a variety of reasons, including the ability to limit personal liability. In 2017 64.7% of reporting organisations to the WGEA in the Legal Services category, or 44 of the 68 employers, were still partnerships.

Partnerships are incredibly opaque, with little visibility even to those who work in them often, of how the partnership is structured and what the process and rules are for obtaining a partnership interest. WLANSW has previously made representations to the WGEA to drive better data collection on partnership structures in order to aid transparency. While some questions have been asked in previous Reporting Questionnaires, there is still room for improvement.

...

**WLANSW recommends the WGEA:**

- **Collect information on the gender split within a partnership group, and in the categories of equity and non-equity, and full equity and partial equity, in addition to the full-time/part-time categories already sought**
- **Collect information on the gender split of the ownership of incorporated employee owned entities”**

---

<sup>9</sup> Which can be accessed at <https://womenlawyersnsw.org.au/workplace-practices/>

## Ideal questions

Law firms have traditionally only been permitted to operate as partnerships, but with an easing of professional restrictions on structure, increasingly are moving to incorporate for a variety of reasons, including the ability to limit personal liability. In 2017 64.7% of reporting organisations to the WGEA in the Legal Services category, or 44 of the 68 employers, were still partnerships.

It is important to capture data on partnerships, but also other incorporated employee owned businesses.

The question of ownership could be asked as part of **Gender equality indicator 1: Gender composition of workforce**.

WLANSW submits that the better questions to be posed by the WGEA **for partnerships** would be along these lines:

### 1. Partnership composition

	<i>Full-time M</i>	<i>Full-time F</i>	<i>Part-time M</i>	<i>Part-time F</i>
<i>Equity partner – full equity</i>				
<i>Equity partner - partial equity</i>				
<i>Non-equity/salaried/fixed draw partners</i>				

This would disclose the composition of the entire partnership and the separately identify the categories of equity and non-equity; male and female; and full-time and part-time partners.

The request for a partial equity partner breakdown is also important as there are many variations of partnership arrangements, and it is possible to have part-equity holdings, either through the use of points system, notional shares or other capital holdings, or other ways of allocating partnership rights. Power increases with equity held, up to having a full equity position. In some firms it is managed though a “lock-step” arrangements where once in, a participant advances over a set period of years, with additional equity allocated in equal tranches, in other firms it is much more discretionary.

Traditionally law firms have not disclosed details about the partnership terms or arrangements, even to those already working in the firm, and it is common for it not to be known within a firm if a particular partner is an equity or salaried partner, or how much equity a partner may hold. Additional transparency would be useful.

Rather than have these questions sit in the section of governing body composition, these questions really go to ownership and structure of employee owned organisations.

Further not only would these questions apply to partnerships, but to any employee owned organisation.





Client Lead Partner (top 10 clients)								
--	--	--	--	--	--	--	--	--

\*FT = Full-time, PT = Part-time, E = Equity, S = Salaried/fixed draw

WLANSW would be very happy to discuss any of these suggestions with the Agency.

Please contact Acting President Larissa Andelman, or sub-committee member Susan Price.

## CONTACT DETAILS

---

Larissa Andelman, Acting President WLANSW, [REDACTED]

Susan Price, Sub-committee member WLANSW, [REDACTED].

Women Lawyers Association NSW

PO Box R1120, Royal Exchange, NSW 1225

[REDACTED]

[REDACTED]