



AUSTRALIAN INSTITUTE of
SUPERANNUATION TRUSTEES

24 November 2021

WGEA Review – Consultations
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

Web: <https://www.pmc.gov.au/office-women/workplace-gender-equality/consultation-review-workplace-gender-equality-act-2012-how-make-submission>

Dear Sir/Madam,

Review of the Workplace Gender Equality Act 2012

In brief:

AIST strongly supports the objectives and solid data-driven insights of WGEA to date and would like to see WGEA's role and powers expanded to drive greater outcomes in gender equality.

About AIST

Australian Institute of Superannuation Trustees (“AIST”) is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public sector superannuation funds. As the principal advocate and peak representative body for the \$1.5 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST advocates for financial wellbeing in retirement for all Australians regardless of gender, culture, education, or socio-economic background. Through leadership and excellence, AIST supports profit-to-member funds to achieve member-first outcomes and fairness across the retirement system.

General comments

The *Workplace Gender Equality Act 2012* and the Workplace Gender Equality Agency (“WGEA”) have been in operation for a number of years, and as data collection systems have matured, there is now ample opportunity to expand upon the already solid foundations of work to drive progress in gender equality. While WGEA’s focus is primarily on equality while in the workforce, AIST and its members are particularly concerned about the impacts on women’s retirement savings of inequitable pay and barriers to full and equal workforce participation.

The Retirement Income Review found an average gender super gap of 22% between men and women at retirement age¹. The gap is greater for those with lower balances and reduces for those with higher balances. The gap is a result of a number of lifetime factors that compound economic disadvantage for women. These include limited work force participation, inequitable pay, relationship breakdown, family violence and overrepresentation in low-paid and insecure employment. The higher life expectancy of women means their superannuation balances at retirement need to stretch further, and it is anticipated that more women will be entering retirement without the additional financial security of a spouse in the future. In addition, single older women are the fastest growing cohort of homeless in Australia², with many of these women having worked and received superannuation throughout their working lives.

For these reasons, AIST would like to see the data-collection and reporting powers of WGEA expanded to capture more data relevant to women's economic security which will assist in driving meaningful change in organisations through greater transparency.

Recommendations

- Include superannuation as a separate field in remuneration reporting
- Include superannuation in parental leave reporting
- Include Actual earnings and hours as well as annualised amounts for part-time and casual employees
- Make age-based data collection mandatory
- Publish more data at the company level, not just an aggregate sector level
- Strengthen the minimum standards to include more employers and greater compliance

Include superannuation as a separate field in remuneration reporting

WGEA's remuneration reporting consists of Base salary and Total remuneration, the latter of which incorporates superannuation along with a range of other allowances, bonuses and benefits. This in effect assumes that all employers pay superannuation at the rate of the mandated superannuation guarantee ("SG") level, currently 10% of ordinary time earnings. In reality, some employers pay more or less than this amount.

For example, they may:

- Pay super at a higher rate as standard practice for all employees
- Pay super at a higher rate to female employees or have other policies or measures for addressing the gender retirement gap
- Offer additional super or co-contribution incentive schemes that employees can opt-in to
- Pay superannuation on paid or unpaid parental leave

¹ Retirement Income Review Final Report p. 43

² <https://humanrights.gov.au/our-work/age-discrimination/projects/risk-homelessness-older-women>

By contrast, they may:

- Not be obliged to pay SG on any overtime pay earned by the employee
- Not be obliged to pay SG at all due to the employee's earnings falling under the \$450 SG threshold. Around 63 per cent of people earning below the threshold are women³.
- Neglect to meet their SG obligations entirely. About \$2.3 billion in unpaid super entitlements were owing to employees in 2016-17⁴. Lower-income workers in accommodation and food services, and construction are particularly affected.

Collecting and reporting on superannuation within remuneration will give a clearer picture of employee entitlements.

Include superannuation in parental leave reporting

Best practice approaches to parental leave are increasingly being adopted by various sectors and companies to retain and attract skilled staff. There is an increasing push to legislate superannuation as an element of parental leave, and many employers of choice are already opting to do so, whether on employer-paid leave, the government Parental Leave Scheme, or even on unpaid parental leave.

As such, this data should be collected and included in the reporting of support for carers and parents.

Include Actual earnings and hours as well as annualised amounts for part-time and casual employees

Gender pay gap comparisons are currently based on annualised amounts. While annualised values provide a good basis for comparison between full-time employees on similar conditions, casual and part-time employment cannot be compared without considering actual hours worked. The annualisation methodology also obfuscates the impact of overtime on actual earnings.

Women comprise just under 70% of the part-time workforce, with more (54.6%) employed part time than full time (45.38%)⁵. Women are six times more likely to reduce their work hours due to parenting duties compared to men⁶.

Actual earnings would provide better transparency of the impact of broken working patterns and true remuneration for effort.

³ Retirement Income Review, p43. While the Federal government has committed to removing the threshold to extend SG to all eligible employees from 1 July 2022, this is yet to be legislated.

⁴ Retirement Income Review, p297

⁵ ABS (2019). *6306.0 - Employee Earnings and Hours, Australia, May 2018*. Canberra: Australian Bureau of Statistics.

⁶ Rest Super (2017), 'Making a break' A snapshot. Available from <https://tinyurl.com/t8l4kxs>

Make age-based data collection mandatory

The new WGEA Portal has introduced voluntary age, gender X and postcode fields in the Workplace Profile. These should be made mandatory. Age is of particular importance, as age-related life events such as pregnancy, caring responsibilities and early retirement are significant drivers of workplace gender inequality.

Collection of this data will allow a more granular analysis of age-based pay discrimination, flexible working arrangements, the impact of career breaks on equitable remuneration, changes in employment status and retention of older staff.

Publish more data at the company level, not just an aggregate sector level

Currently the consequences for not complying with WGEA reporting and minimum standards obligations are being named in the Non-compliant Organisation list and being excluded from Commonwealth tender processes. This light-touch enforcement provides little disincentive for organisations who do not derive income from federal government contracts and are determined not to comply. Deterrence relying on perceived reputational damage is insufficient to change the behaviour of recalcitrant companies.

Individual company profiles can be compared on most metrics except for their internal gender pay gap. Gender gaps can be compared only at the aggregate sector level. This allows organisations who comply with the minimum standards at the most basic of levels to make minimal effort to improve.

Publishing pay gap data for individual companies may have a positive reinforcing effect on actual outcomes by creating a peer-pressure-style environment in much the same way as the name-and-shame register is designed to do. Greater data transparency will also allow organisations to use the data to more accurately benchmark against their peers and align with their business objectives. In addition, such transparency will allow individuals considering possible employment at companies to consider this data in their decision making.

Strengthen the minimum standards to include more employers and greater compliance

The minimum standards are only mandatory for employers with 500 or more employees. Despite this, the consultation paper states that 99.2% of employers with 100-499 employees currently comply, indicating that compliance is not onerous. These standards should be extended to all reporting employers.

In addition, employers are only required to have policies or strategies in place to support one or more of the minimum standards. This requirement could be extended. At minimum, the standard regarding sex-based harassment and discrimination should be made compulsory. This would give effect to several recommendations of the Respect@Work report. While the government has declined to amend the Sex Discrimination Act to introduce a positive duty on employers to take steps to prevent sexual harassment, discrimination and victimisation, making such an amendment to the Workplace Gender Equality Act would place such a duty on organisations reporting to WGEA.

For further information regarding our submission, please contact Kate Brown at

[REDACTED]

Yours sincerely,

[REDACTED]

Eva Scheerlinck
Chief Executive Officer