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

By email: wgeareview@pmc.gov.au

Dear Review Team,

Review of the Workplace Gender Equality Act 2012

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to make a submission to the review of the *Workplace Gender Equality Act 2012* (the Act). This submission does not address all of the questions raised in the consultation paper. Instead, it provides an overview of our workplace gender equality activities and, where this experience may assist the Department's review of the Act, we have provided observations and recommendations.

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading, and product safety for the benefit of consumers, businesses, and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading, and product safety provisions of the Competition and Consumer Act 2010, regulate national infrastructure and undertake market studies.

While the matters the subject of the review do not relate directly to the ACCC's statutory roles and functions, they are directly related to our role as an employer and our interest in providing a workplace that supports and advocates for gender equality.

Earlier this week the ACCC published its latest [Diversity and Inclusion Strategy](#)¹. The strategy covers all matters relating to inclusion and is broader than gender equality but sets clear objectives in this area. The strategy follows and builds on a number of activities within the agency including:

- clear targets for gender representation at senior levels;
- introduction of measures to mitigate bias in selection processes;
- measurement and action to address gender pay gap;

¹ <https://www.accc.gov.au/system/files/ACCC-AER%20Diversity%20and%20inclusion%20strategy%202021-25.pdf>

- assessment of gender pay equality;
- an active and effective employee gender network driving various initiatives; and
- measurement and steps to support equality in procurement of external legal services.

This investment has improved our understanding of the factors that contribute to gender inequality and remove or mitigate them. As noted further in our submission, arising from our work on measuring and addressing gender pay gap, the agency committed to taking opportunities to contribute to relevant policy considerations and this review provides an appropriate forum to begin to deliver on that commitment.

Extending the gender equality reporting requirements to public sector employers

The ACCC has measured its pay gap since 2018. Over this time the ACCC's average pay gap has reduced from 9.3% to 5.4%. This reduction was achieved by:

- Reporting on our gender pay gap, sharing the results widely with our people, discussing the implications and our aspirations.
- Normalising flexible work. All ACCC roles are advertised as full-time, part-time or job share; can be performed from any ACCC location; can be performed through a combination of work in the office and remotely; and work may be performed outside traditional office hours to support people complete their non-work commitments. The ACCC has actively supported and promoted job share arrangements with several success stories championed within and outside the agency.
- Earlier and continuing commitments to a target for female representation in SES positions.

The ACCC's narrowing the pay gap strategy seeks to reduce the pay gap to less than 5% for 2 years by 2025, and less than 3% for 2 years by 2030.

Our experience has shown that when the need to address the pay gap is embraced as a priority by senior organisational executives, meaningful progress can be made.

The ACCC has and continues to take measures to improve gender equality in relation to legal services. The ACCC actively monitors the proportion and value of legal briefs to female counsel and reports on it to the ACCC's internal Legal Committee bi-annually. These details are also reported to the Attorney General's Department on an annual basis. Over the past 10 years we have adopted an equitable briefing practice where ACCC employees, in-house lawyers and panel firms are encouraged to select female barristers with relevant seniority, expertise and experience in the relevant practice areas where possible. Additionally, when selecting counsel, we seek to have at least one female barrister briefed on a matter, where possible. The ACCC is also actively reviewing the daily rates paid to female counsel, and making a conscious effort to adjust those rates where they do not match the rates paid to male counsel of similar seniority and experience.

These efforts have resulted in a significant increase in the ACCC's use of female counsel over time. In FY11, only 13% of all briefs were to female counsel (9% based on value); in FY21, this had increased to 48% (41% based on value).

The ACCC supports extending the reporting obligation to Australian Public Service employers with 100 or more employees and encouraging or requiring Australian Public Service employers to publish the pay gap annually. This would:

- Ensure senior management are considering pay gap issues in an enduring way

- Allow job seekers that place a high value on gender equality matters to consider pay gap as part of their employer selection process
- Provide WGEA and the Australian Government with more complete information about Australia's pay gap
- Allow APS agencies to learn from each other about what strategies work and which do not.

The ACCC expects that an appropriately-crafted obligation for APS employers to reduce their gender pay-gap and an obligation to publish the details of their pay gap on their websites each year, would be likely to result in a reduction of the pay gap across the APS. It would also provide a consistent expectation across APS and non-APS employers.

Minimum standards

The ACCC has taken steps to address the under-representation of women in senior leadership positions. In 2016 the ACCC set a target for women to account for at least 40% of our SES cohort. This was articulated as having at least 40% women, 40% men with flexibility over the remaining 20%.

Female representation in SES positions at the ACCC has increased from 27% in 2016 to 50% on 30 June 2021. Setting a target and consciously introducing initiatives to increase female representation in senior leadership roles was critical in making change. The ACCC encourages the review to consider options for minimum representation for women in senior leadership roles across all relevant employers in the Australian economy.

It is important to note that the ACCC's work in this area is incomplete. We continue to have a disproportionate representation of men in the more senior SES roles and are continuing our efforts to address this imbalance. With increased representation at SES levels this is expected to flow into more senior roles but the agency is also taking proactive steps to identify opportunities and address barriers that might exist.

The ACCC has a Flexible Work Arrangements Policy and has adopted a default acceptance of "if not, why not" policy to flexibility. This policy has supported womens' increased representation in SES roles and at the EL2 classification. We would support this approach to flexibility being applied more broadly to workplaces.

Providing the WGEA with greater scope and resourcing to consider and drive change to remove structural barriers to equality would have far reaching benefits to Australians and the Australian economy. For example, the ACCC's current employment framework (including the ACCC Enterprise Agreement and the *Maternity Leave (Commonwealth employees) Act 1973*) does not provide gender neutral parental leave.

To promote gender equality and continue to reduce the gender pay gap, the ACCC aspires to increase the accessibility of parental leave through future iterations of the ACCC Enterprise Agreement but it has been and will continue to be limited by broader policy settings. Significant opportunity remains in modernising the *Maternity Leave (Commonwealth employees) Act 1973* to facilitate contemporary equal parenting through gender neutral parental leave. Modernising the act will affect almost 250,000 people employed by the Commonwealth Government² and send a positive signal about the importance of equality to the broader Australian community.

² <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/employment-and-earnings-public-sector-australia/latest-release#:~:text=247%2C600%20employees%20in%20Commonwealth%20government,1%2C662%2C400%20in%20state%20government%3B%20and>

In determining its action plan to address gender pay gap, the ACCC committed to taking opportunities to promote these changes and takes the opportunity of this review to emphasise these matters.

Our assessment of pay equality within the agency also identifies that time out of the workforce or take up of part time work is a relevant factor. Addressing the parental leave matters identified above will assist address this but so would greater access to childcare.

The ACCC notes studies and literature that identifies that nationally accessible childcare for children under 5 years of age would also facilitate parents that care for children to return to work³. Research shows that it would also improve development outcomes for children and support growth in Australia's future economy. These are examples of structural barriers to equality that the ACCC encourages the review to consider the WGEA's role in identifying and driving change to address.

The ACCC notes that the current pay gap reporting requirements⁴ only apply to relevant employers with 500 or more employees and only require those employers to have policies and strategies in place to support one or more of the following:

- Gender composition of the workforce
- Equal remuneration between women and men
- Flexible work arrangements
- Sex-based harassment and discrimination.

The ACCC encourages the review to assess the merits of applying the minimum standards to all relevant employers of 100 or more employees and to require them to have policies and strategies in place to support all four criteria set out in section 5(3) of the minimum standards.

Collecting diversity data in addition to gender

In addition to collecting data on employee gender, the ACCC also collects employee data about:

- Age
- Disability
- Cultural and Linguistic background
- First Nations people identification

In our experience, collecting this data has allowed us to apply the WGEA pay gap reporting methodology across different demographic groups. This has allowed the ACCC to have some measure of and address inequality across other demographic groups.

However, this work is hampered by lack of clear data and the understandable challenges of articulation and collection.

We encourage the review to consider whether WGEA should be empowered to collect a similarly diverse range of data or influence other mechanisms, such as whole of APS surveys or expectations to lift the quality and consistency of data in this area. This would

³ <https://thrivebyfive.org.au/>

⁴ Workplace Gender Equality (Minimum Standards) Instrument 2014, section 5(3).

allow WGEA to better identify intersectionality issues and address multifactorial inclusion barriers.

Compliance tools available to WGEA

Currently the Act provides WGEA with a limited set of compliance tools:

- It is empowered, following consultation with the relevant employer, to publish the name of an employer that fails to comply with the Act and the details of that non-compliance⁵
- Relevant employers failing to comply with the Act may not be eligible to compete for contracts under the Commonwealth procurement framework and may not be eligible for Commonwealth grants or other financial assistance.

The ACCC notes that WGEA can, by written notice, seek information from employers. However, where an employer fails to provide the information or provides misleading or incomplete information, WGEA cannot seek a penalty order from a Court or an order for specific performance. Its only recourse is the above adverse publicity.

In other contexts, the ACCC advocates against reliance on expectations not backed by a capacity or capability to enforce. We think this principle is relevant here too.

The ACCC encourages the review to consider whether WGEA should be empowered to compel provision of the information underwritten by appropriate remedies such as penalty or other requirements such as mandatory training. The ACCC also encourages the review to consider what mechanisms WGEA may be provided to address instances where employers have a pay gap more than the Australian average.

If the ACCC can provide any further information regarding the submission, please contact Gina Dolan our General Manager of People & Culture on 0 [REDACTED]

Yours sincerely

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Scott Gregson
Chief Operating Officer

⁵ Sections 18 and 19D of the Act.