

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

Via: www.pmc.gov.au/workplace-gender-equality-review-consultation

I am writing on behalf of the University of Technology Sydney (UTS) to offer our feedback on the Review of the *Workplace Gender Equality Act 2012* (the WGE Act).

At UTS, social justice is at the heart of our mission and role in the community – we are committed to driving positive social change in the world beyond our campus. As a university, UTS has social justice and inclusion at its heart and a commitment to gender equality is central to our [UTS 2027 Strategy](#)

UTS has participated in reporting to the Workplace Gender Equality Agency (WGEA) since the introduction of the WGE Act and prior to that, under the *Equal Opportunity for Women in the Workplace Act 1999*. We have been recognised through the Employer of Choice citation for 19 years.

We would like to offer the following in relation to the operation of the WGE Act with reference to the questions posed in the Consultation Paper and with a specific focus on the following areas:

1. Impact of the Act on gender equality
2. Coverage of the Act
3. Relevance of existing reporting requirements
4. Reduction of regulatory burden and alignment of gender equality reporting
5. Enforcement and compliance
6. Other matters

Please feel free to contact me should you require any further information or clarification about the above feedback.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'L. Hitchens', followed by a horizontal line.

Professor Lesley Hitchens

Acting Provost and Senior Vice-President.

1. Impact of the WGE Act on gender equality

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 aims of WGEA in assisting employers to promote and improve gender equality in the workplace are important and increasingly so in an international environment in which the impacts of the pandemic have been felt disproportionately by women in the paid workforce.

Australia was pioneering in instituting systems for gender equality reporting, however recent comparisons with other wealthy nations suggest that our regulatory framework to address gender inequalities requires significant review. In the last seven years Australia has fallen from 12th to 70th on women's economic participation in the World Economic Forum's 2021 global gender gap index¹, despite ranking equal first in women's educational attainment. This has reduced our overall ranking to 50th, down from 15 in 2006.

The gender pay gap amongst full-time employees remains at 14.2%, a level marginally better than 20 years ago and the gap amongst all employees is over 30%, only a marginal improvement in over forty years². The ramifications of this continue to be felt by women across their lives in terms of socio-economic vulnerability, lifetime economic security, and wellbeing.

The lack of impact assessment in relation to progress on gender equality in Australia is a major weakness in the current WGE Act – both at a national level and for individual reporting organisations - and arguably, the current system of reporting has been ineffective in its aims to drive improvements in gender equity nationally.

Recent research undertaken at the Australian National University³ argues that Australia's legislation is unique in its emphasis on quantitative reporting of workplace gender and that as a result, Australia has developed a world-leading workplace gender equality dataset. However, while the importance of such data should not be minimised (as research institutions are well aware), if data collection and translation is not ultimately translated into meaningful progress in reducing gender inequity, then it represents misplaced effort. In addition, cost benefit analysis must be undertaken into the benefits of developing a highly detailed dataset, but one with significant limitations in its scope and substantial regulatory burden for business, versus potentially higher impact activities.

The WGE Act should be fundamentally re-oriented toward a system that allows disparate industries and organisations to understand their individual gender equity needs, but more critically, undertake and assess the impact of targeted gender equality initiatives.

¹ World Economic Forum (2021). *Global Gender Gap Report 2021 Insight Report March 2021*

Accessed at: https://www3.weforum.org/docs/WEF_GGGR_2021.pdf

² Charlesworth, S. & Smith, M. (2018). 'Gender pay equity', pp. 85-102. In Stewart, A., Stanford, J., & Hardy, T. (Eds.) *The wages crisis in Australia: what it is and what to do about it*. University of Adelaide Press, Adelaide.

³ 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.

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?

Improving gender equality fundamentally involves changing workplace organisational cultures and addressing sector and organisation specific gender inequities.

Strategies and initiatives aimed at improving gender inequity in workplaces are most successful when they are tailored to specific employment environments and targeted to the issues facing individual organisations.

Under the current WGE Act, employers are required to disclose the presence of gender policies, but there is no requirement either to disclose the policies themselves or report on their quality, implementation, uptake, effectiveness and ultimately impact on gender inequality. Such an emphasis on quantitative over qualitative reporting does little to achieve change.

To take one important example, as Glennie et al (2021) note, "... after nearly four decades of gender equality reporting in Australia many organisations have gender equality policies in place, but evidence suggests that many policies are ineffective. For example, in the 2020 WGEA dataset, 98.5% of organisations reported having a sexual harassment policy, yet regular surveys by the Human Rights Commissioner continue to find experiences of widespread workplace sexual harassment".

Recent research⁴ examining the scholarly literature on gender inequality over the last two decades indicates that such an emphasis on identifying gender inequalities, rather than offering solutions to those inequalities, is common. This analysis considered more than 15,000 peer reviewed articles, finding that while the literature had thoroughly examined the biases (unconscious and conscious), barriers, stereotypes, and discriminatory behaviours that women experience at work, very few had discussed, demonstrated or evaluated effective solutions.

With this in mind, UTS would strongly urge the Government to draw on recent developments in the higher education sector aimed at tackling issues related to the representation of women in non-traditional areas (specifically academic STEM roles).

The [SAGE Athena SWAN program](#) Bronze Award process, requires institutions to show that they:

- understand the current state of gender equity, diversity and inclusion in their organisation
- understand the structural, systemic and cultural barriers that impede attraction, retention and progression, and which thus contribute to inequity and a lack of diversity and inclusion
- have created, and will implement, an Action Plan to remove or reduce five Key Barriers.

Along with a now significant number of other higher education and research institutions, UTS was awarded the Athena SWAN Bronze Award in 2018.

In the five years following their Bronze Award, institutions are required to implement their Bronze Action Plan to remove or reduce their five Key Barriers to attraction, retention or progression. In a

⁴ Belingheri P, Chiarello F, Fronzetti Colladon A, Rovelli P (2021). *Twenty years of gender equality research: A scoping review based on a new semantic indicator*. PLoS ONE 16(9): e0256474. <https://doi.org/10.1371/journal.pone.0256474>

critical next step, organisations are required to then submit a Progress and Impact Report documenting:

- their progress in implementing actions
- the outcomes and impact of those actions
- their learnings from any areas in which the desired progress, outcomes and impact has not been achieved
- further actions they will take to achieve or sustain the desired progress, outcomes and impact

The emphasis that such a model places on actions that are tailored to the needs of specific organisations, that represent an ongoing program of work, and require evaluation processes to monitor impact, offers significant potential for better achieving progress on gender equality in the workplace than that offered by the WGE Act currently.

2. Coverage of the WGE Act

Should the coverage of the WGE 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?

WGEA's work is currently legislatively focused on medium to large employers of greater than 100 employees. It is important to recognise that this fails to accurately represent the experience of an enormous number of women in the Australian workforce. The 100+ employee threshold is notably higher than reporting regimes in many comparator countries⁵, resulting in far fewer women being captured in Australia's reporting legislation. In 2019/20 WGEA reported that its dataset covered 40.3% of the estimated overall Australian workforce⁶. Currently a large proportion of female employees are excluded under the existing thresholds, with particularly critical consequences for the most vulnerable women who are over-represented in casual and part-time employment in smaller businesses⁷.

It should also be emphasised that these women are more likely to experience disadvantage and vulnerabilities by virtue of their intersecting experience as women from non-English speaking backgrounds, older and young women, students, Indigenous women and women with disability. Due to current data collection protocols, the experience of these women is not captured or prioritised in terms of enhancing gender equity.

In terms of ensuring that meaningful data is available to enhance gender equity across the Australian workforce, UTS would support a re-prioritisation of existing WGEA resources to enhance comprehensive data collection about women's workforce experience through the Australian Bureau of Statistics. This would create more meaningful and comprehensive baseline data and enable

⁵ 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.

⁶ Workplace Gender Equality Agency (2020a). Data quality report. Accessed at: www.wgea.gov.au/about/governance/data-quality/2019-20-wgea-dataquality-report

⁷ 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.

organisations to focus their efforts on benchmarking within specific industries and implementing and evaluating impactful gender equality initiatives within their organisations.

3. Relevance of existing reporting requirements

Are the gender equality indicators (GEIs) in the WGE Act, and the data collected with respect to the GEIs, appropriate to promote and improve gender equality? How could they be improved?

Broadly speaking, the GEIs as currently set out in the WGE Act address the key equity issues facing women in the Australian workforce. However, a fundamental concern for UTS, along with many other universities, is that in relation to GEI 1 – gender composition of the workforce - WGEA's workforce profile categories, based on Australian and New Zealand Standard Classification of Occupations (ANZSCO) are essentially unhelpful in monitoring and addressing gender inequity within the higher education sector because they fail to provide sufficient nuance to address the gender inequity issues we face.

While this issue has been raised with WGEA over a number of years, universities are still currently attempting to align their academic classification levels with the categories used by the Agency. When analysed against the WGEA categories, the academic classifications of Levels A to E, that are common to the modern award applying to academic staff and all university enterprise agreements, produce artificial results and reports that provide no helpful information for universities to work with for internal analysis, strategy development, or gender equality plans.

One area where enhanced WGEA data collection could add organisational value, is in better capturing organisational responses to workplace sexual harassment, as part of GEI 6: sex-based harassment and discrimination.

As the landmark [Respect@Work](#) report found, workplace sexual harassment is a pressing problem across industries and occupations that overwhelmingly impacts women in the workplace, yet it remains underreported. Data from the Australian Human Rights Commission's 2018 fourth national survey on sexual harassment in Australian workplaces broke respondent data down by industry for the first time. It found that a very high 39% of respondents from the education and training sector self-reported experiencing workplace sexual harassment in the preceding five-year period. Public data on organisational responses is under-developed and there is space for WGEA to take a leading role in enhancing and publishing compliance data to support organisational best practice.

Through participation in the SAGE Athena SWAN program, universities have recently renewed their focus on workplace sexual harassment data and process transparency. Over the past eighteen months SAGE Ltd, in concert with the Sex Discrimination Commissioner and in consultation with the sector, has developed new compliance questions for organisations seeking an Athena SWAN Award. Organisations will now be required to produce new, de-identified data on cases of bullying, harassment, sexual harassment, and discrimination, including:

- number of cases
- themes (e.g., inappropriate jokes/comments/contact; ableist, racist, homophobic or transphobic language; repeated propositions; deliberate exclusion; etc.)
- time to resolve issues

- support provided for parties involved
- outcomes (e.g., termination, financial settlement, warning, other consequences)
- decision-making framework that guided the Institution's response
- preventative action taken by the Institution as a result

This explicit reporting requirement represents an enhanced approach to monitoring the impact of our internal processes around workplace sexual harassment and will create a best practice policy data set. The new requirement to capture preventative action taken by the institution as a result of the data create impetus for organisations to reflect on and enhance practice.

UTS strongly supports the enhanced reporting regime outlined in the Athena SWAN framework and recommends that it should be considered by WGEA. This will remove burdensome regulatory duplication in higher education and ensure that best practice is standardized across sectors in Australia.

Should there be some form of pay transparency – should remuneration data in some form be public?

WGEA categories for pay gap analysis as required by reporting for GEI 3 – equal remuneration between women and men - are also ineffective in the higher education sector. As a consequence, many universities, including our own, are undertaking alternative gender pay gap monitoring and reporting processes within our organisations, resulting in duplication of effort.

Within the sector, senior executive and CEO level remuneration data is already broadly publicly available via annual reporting documents, with the salaries of other staff transparently established under the relevant EBAs. Few opportunities are available within the sector for non-executive level staff to access additional remuneration such as bonuses, performance payments, additional superannuation, discretionary payments, overtime or other allowances

The current WGEA requirements fail to provide for useful benchmarking either within the sector or across industries. Providing for sector-based comparisons would be much more meaningful to allow universities to benchmark against each other and potentially against universities internationally in comparable jurisdictions (such as the UK and North America).

4. Reducing regulatory burden and alignment of gender equality reporting

Are there changes that could be made to the WGE 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?

Universities across Australia are currently faced with a large number of reporting requirements in relation to gender equality. These include sector specific programs such as the SAGE Athena SWAN program, State requirements such as the *Victorian Gender Equality Act 2020*, other national reporting requirements such as to the Department of Education, Skills and Employment, and monitoring and evaluating actions taken as part of international activities such as the United Nations Sustainable Development Goals.

UTS strongly supports decreasing regulatory burden through both using existing available data and aligning gender equality reporting across various requirements.

Using Single Touch Payroll (STP) data already provided to the Commonwealth would be an important step in reducing the requirements to provide largely duplicated data and allow organisations to focus on implementing and evaluation actions to progress gender equality.

The model recently introduced in Victoria via the [Gender Equality Act 2020](#) also offers an alternative in which reporting organisations are required to undertake an initial workplace gender audit to establish baseline organisational data on gender equality and are then required:

- Identify any critical gaps, areas for improvement and challenges to address via a [Gender Equality Action Plan and](#)
- Monitor and assess progress made in relation to workplace gender equality including whether strategies and measures are effective.

Instituting a system where such initial workforce data has already been provided to the Commonwealth would allow organisations to focus more effectively on developing actions and assessing progress and efficacy over time as envisaged in the Victorian Act.

An alternative option could be to require organisations to report on their gender equality data and initiatives by selecting one of a number of approved reporting regimes. This would offer organisations the opportunity to select the reporting regime which best reflects the needs of their industry, avoid costly and resource intensive duplication and focus their attention on outcomes and impact.

How could data be better collected and/or used by WGEA to promote and improve gender equality?

On-line reporting is helpful in reducing regulatory burden but is only ultimately impactful in industries where there is alignment between the WGEA required reporting categories and the relevant cohorts in different industry sectors.

Changes made to reporting processes via the WGEA Portal such as the payroll aligned data template (that match with the ATO's STP categories) and base unit-level data file templates, aim to reduce the burden on reporting organisations, do provide for simpler and more accurate reporting than former requirements. (While UTS has not yet moved to the STP aligned template as we have been implementing a new payroll system during the most recent reporting year, we are hopeful that this may address some inefficiencies).

However, providing sufficient resourcing to WGEA to enable support for organisations to report in an efficient and not overly resource-intensive fashion must be a priority for the Government.

While some efficiencies have been made through online reporting, the process remains procedurally difficult to understand unless reporting staff have been involved in previous iterations and/or can avail themselves of support from within their own organisation from others who are familiar with the system. While the development of significant education material such as the reporting video explainer series has been useful to some extent, it arguably suggests the reporting regime is inherently overly complex.

As with many other sectors, higher education has experienced significant job losses over the last two years, impacting on our corporate knowledge of the specifics of the WGEA systems and tools. UTS staff report that explanations of the process and materials are unclear, the online tool is difficult to use, it is unclear in what order data needs to be collated and entered, and there is no clarity when the process has been completed to the point of being able to submit to the CEO. In addition, the process is not one that can be easily shared among a team – issues with addressing data anomalies and ensuring integrity between our organisation’s data collection processes and WGEA categories had to be solved by staff in different areas of the organisation by sharing screenshots of the problems. This year with new staff members overseeing the WGEA reporting and the system itself changing, we were particularly reliant on support from the Agency which was simply unavailable. As one example, we frequently found the chat support functionality offline and logged a support call in May which was finally responded to in August.

The use of data that is already collected by other Commonwealth agencies would be strongly welcomed as a way of reducing unnecessary duplication. UTS supports the view that having access to reliable, high-quality data is important for making better decisions and policies, and believes that the release Australia’s first Data Strategy later this year has the potential to make major progress in relation to optimising the use and reuse of public data.

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?

The issue of intersectional gender inequity is one which has been identified in through a number of other reporting processes (for example in the Victorian Act and the Athena SWAN program), but for many organisations providing such data is difficult.

There is no doubt that considering the impact of intersectional gender inequality is critical in improving the position of Australian women more broadly. Indigenous women, women from culturally and linguistically diverse backgrounds, women with disability and older women have been identified in a range of research to date as experiencing significant barriers.

As the recent *Gari Yala: Gendered Insights Report*⁸ (a collaboration between the UTS Jumbunna Institute for Indigenous Education and Research, the Diversity Council of Australia and WGEA) found, Aboriginal and Torres Strait Islander women experience lower rates of workforce participation, experience high rates of both gender and race discrimination and feel less able to access support.

Similarly, recent research currently undertaken by Murdoch University and Women of Colour Australia⁹ on the intersection between women’s experience at work and their cultural background and ethnicity suggests significant levels of discrimination and workplace challenges related to cultural identity for women in the workplace.

⁸ Evans, O (2021). *Gari Yala (Speak the Truth): gendered insights*, WGEA Commissioned Research Report in partnership with the Jumbunna Institute of Education and Research and Diversity Council Australia, Sydney, Australia.

⁹ Women of Colour Australia and Archer, C (2021). *Women of Colour in the Workplace Survey Results 2021* Accessed at: <https://womenofcolour.org.au/wp-content/uploads/2021/10/WOMEN-OF-COLOUR-AUSTRALIA-WORKPLACE-SURVEY-REPORT-2020-2021.pdf>

As previously suggested, WGEA's focus on quantitative data collection to date, has arguably proved ineffective in improving gender equality in Australia and requiring further data collection without an emphasis on evaluation and impact is likely to exacerbate regulatory burden on organisations.

The approach taken under both the Victorian Act and the Athena SWAN program has been to initially focus on whether such data is available at an organisational level, and if it is not, to explore ways in which this data might be captured. Importantly however, both frameworks have emphasised the need to undertake gender equality actions that take into account intersectional experience, even in the absence of comprehensive data. Adopting this approach would be valuable at a national level.

5. Enforcement and compliance

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?

UTS is of the view that the current minimum performance standards determined under the Act by the relevant Minister (to have a formal policy or strategy supporting gender equality in at least one indicator domain such as recruitment, promotion, performance management or overall gender equality for employers with over 500 employees) have been largely ineffective.

It should also be noted that no minimum standards apply for workplaces with less than 500 employees under the Act.

Strengthening minimum standards to improve gender equality within workplaces may be better placed under industrial and/or work health and safety legislation if improvements are to be made at a national level.

In particular, there is a clear need to respond to recommendation 42 of *Respect@Work*, UTS would welcome an enhanced focus from WGEA on supporting organisations to address workplace sexual harassment through enhanced basic compliance reporting requirements.

Current WGEA reporting captures three important aspects of employer workplace sexual harassment regulation and compliance:

- The presence or absence of a formal policy or strategy to prevent workplace sexual harassment and discrimination
- The presence or absence of a grievance policy to address instances of workplace sexual harassment and discrimination
- The provision, or absence of provision, of training for all managers and employees on workplace sexual harassment and discrimination.

However, the impact of these policy frameworks and training regimes remains unknown.

UTS supports enhancing the compliance regime to capture three additional categories of data at baseline, for all employers captured by the WGEA Act. New baseline data should include:

- Number of cases annually
- Outcomes (e.g. termination, financial settlement, warning, other consequences)

- existence and frequency of reporting workplace sexual harassment to senior management and governing bodies.

Currently data collection on sexual harassment reporting is generally limited to organisations participating in the WGEA Employer of Choice accreditation. However, in the wake of the *Respect@Work* report, WGEA could look to collecting very basic data on the prevalence and frequency of reporting on sexual harassment and capture and promote best practice responses to prevent and address workplace sexual harassment.

Ensuring that all organisations are required at baseline to report on the frequency of reporting on workplace sexual harassment matters to their governance body, and providing organisations with templates to make these reports, would have a role in standardizing baseline reporting across industries and bringing transparency to organisational reporting.

Additionally, we support expanding existing reporting on the provision, or absence of provision of training on workplace sexual harassment and discrimination, to include members of the governing board of organisations (including in our sector University Council members). As the Sex Discrimination Commissioner has noted, organisations have an existing positive duty under workplace health and safety legislation to prevent psychosocial hazards, including workplace sexual harassment. With a renewed focus on workplace sexual harassment as a workplace health and safety issue as a result of the *Respect@Work* report, organisations are increasingly coming to understand that boards and board members have a personal role in ensuring effective prevention of workplace harassment and bullying. Capturing baseline data on whether this training is provided to board members (alongside current requirements to capture data on training provided to employees and managers) will ultimately strengthen the capacity of senior leaders to understand and prevent sexual harassment in their organisations.

Safe Work Australia recently released [national policy guidance material on preventing workplace sexual harassment](#). Ensuring widespread compliance with this guidance and capturing data on basic actions in response to this positive duty across the workforce would be a valuable activity for WGEA to undertake.

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 non-compliant employers may be named in Parliament and on the WGEA website and may not be eligible for government contracts and grants, the impact of having a policy or strategy in place as a minimum standard is not assessed.

Even these existing compliance mechanisms are not entirely effective with ‘a 2021 audit of government tender records by national news outlets found that 31 non-compliant organisations were awarded Federal government contracts, suggesting that government sanctions through withholding eligibility were not being imposed.’¹⁰

¹⁰ 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.

Re-orienting the focus of WGEA to ensure a focus on ensuring gender equality across the Australian workforce, and on reporting processes that prioritise action, monitoring progress and evaluating impact, would be a significant step forward in modernising the Act.

6. Other Matters

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?

UTS has held the Employer of Choice for Gender Equality Citation (in its current and former iterations) for 19 years but along with many other universities has chosen not to re-apply for the citation in 2021. This was not a decision that was taken lightly and reflects frustrations felt by organisations about the continual shifts in citation criteria.

UTS, along with many of our fellow universities are committed to leading the world in innovative gender equality research and practice, and yet prescriptive criteria for the EoCGE have made it increasingly difficult to be recognised for our work. In one key example, the recent decision to require organisations to remove any qualifying periods for paid parental leave put universities in a very difficult position. Not only were these requirements introduced in such a way that they did not fit in with enterprise bargaining cycles, but they entirely failed to recognise the impact of COVID-19 on the sector and our staff. Introducing a new and likely costly entitlement for permanent staff in a sector where significant numbers of employees – particularly those on casual contracts – have lost employment is not only difficult to justify but potentially increases gender inequity in the workplace.

UTS recommends that the current EoCGE citation process be reconsidered. Providing organisations an opportunity to showcase leading practice initiatives in addressing gender equality should not be prescriptive but support and amplify innovation.

