

23 November 2021

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

Dear Reviewers

Review of Workplace Gender Equality Act 2012

The Australian Greens welcome the opportunity to provide feedback on this review.

Closing the gender pay gap is critical to tackling inequality. Over the past decade, the Workplace Gender Equality Agency (**WGEA**) has done important work to increase awareness, provide rigorous analysis of gender pay disparity in Australian workplaces, and to identify ways to close the gap.

However, as the gender pay gap grows in the wake of the pandemic and Australia's ranking in the World Economic Forum Global Gender Gap Report plummets to 50th, it is timely to consider WGEA's role and whether the agency has adequate powers to achieve its objectives.

The attached submission sets out the Australian Greens calls to:

- Extend WGEA's coverage to public and private sector organisations with 50+ workers
- Measure implementation and impact of company policies, not just whether policies exist
- Improve pay transparency by publishing employer level pay data and removing employee pay gag clauses
- Require employers to take action to close the gender pay gap within their workplace and ensure that employers not working to reduce their pay gap are ineligible for government grants and contracts
- Require employers to report on the number of sexual harassment complaints made, the number of complaints resolved, disciplinary actions taken, and whether the employer uses non-disclosure agreements
- Collect intersectional data to identify hurdles for particular groups of women and target approaches to addressing specific pay gaps

These measures are consistent with the Respect@Work report and recommendations from the Global Institute for Women's Leadership for best practice Gender Pay Gap reporting.

Yours sincerely,



Senator Larissa Waters
Australian Greens Spokesperson on Women

Following the introduction of reporting under the Workplace Gender Equality Act 2012, the trend of an increasing gender pay gap was reversed, and the gap has continued to decline. However, the gender pay gap for full-time workers is now at a similar level to where it was in the early 2000s, and the gap for all workers has changed little in forty years.¹

RECOMMENDATIONS

- Require all public and private sector organisations with more than 50 employees to report to WGEA against the Gender Equality Indicators
- Require all companies subject to WGEA reporting obligations to meet the Minimum Standards
- Require employers to develop action plans to reduce the gender pay gap in consultation with staff, to implement the action plans, and to report on progress
- Where action plans fail to reduce the gap, require employers to consult with staff and detail proposals to improve progress

If the gender pay gap persists across two reporting periods, require employers to meet with WGEA to develop more effective approaches

- Increase WGEA and Fair Work Commission resources available to assist small and medium sized businesses to develop policies, strategies and action plans
- Require employers to report on the number of sexual harassment complaints made and resolved, the average time taken to resolve complaints, disciplinary actions taken in response to complaints, and use of non-disclosure agreements
- Allow WGEA to publish employer-level gender pay gap data
- Require companies to publish WGEA reporting data in their annual report
- Prevent employers using gag clauses to stop employees talking about their pay
- Allow WGEA to issue and publish “show cause” notices against employers who have:
 - failed to comply with reporting requirements
 - failed to reduce their gender pay gap over two reporting periods
 - failed to implement actions plans following consultation with WGEA
- Audit implementation of the Workplace Gender Equality Procurement Principles to ensure non-compliant employers are not considered for government grants, tenders or contracts
- Regularly audit compliance for WGEA Employers of Choice

¹ M Cowper-Coles et al, October 2021, *Bridging the gap? An analysis of gender pay gap reporting in six countries* (Global Institute for Women's Leadership and Fawcett Society), p 50

COVERAGE OF THE WORKPLACE GENDER EQUALITY ACT

This problem is too important for gender pay gap reporting regimes to only target large employers²

The Australian Greens have long called for gender equality reporting requirements to be extended to the public sector. We welcome the government's recent announcement of its intention to do that and look forward to seeing legislative changes to give effect to that commitment.

The current threshold for reporting under the Workplace Gender Equality Act (**WGE Act**) is 100 employees. This means pay disparities in many small and medium sized businesses – a sector employing a significant number of people in Australia – go undetected. According to research by the Global Institute for Women's Leadership (**GIWL**), the median reporting threshold amongst countries with gender pay gap reporting is 50 (France, Belgium, Spain and South Africa), with some jurisdictions requiring companies with as few as 10 employees (Sweden) to comply with reporting obligations.³

We recommend that all public and private sector organisations with more than 50 employees be required to report to WGEA against the Gender Equality Indicators.

GENDER EQUALITY INDICATORS & REPORTING OBLIGATIONS

Based on the insights of stakeholders interviewed for this research... the key weaknesses [of the Australian system] are the lack of mandated positive action and non-disclosure of organisation-level gender pay gaps.⁴

Pay transparency

Currently the public WGEA reports aggregate gender pay gaps to the industry-level. Data on the remuneration gaps are not released, making it difficult to assess progress or apply pressure to encourage poor performing employers to close the gap within their workplace. Large employers are required to provide their WGEA report to employees, but not the underlying data.

Secrecy about salaries, bonuses and promotions disproportionately disadvantage women in the workforce.

Consistent with calls from outgoing WGEA Chair, Libby Lyons, the Australian Greens support greater pay transparency, removing pay gag clauses, and making employer level pay data publicly available.⁵

Minimum Standards

Currently, only organisations employing more than 500 people must satisfy the Minimum Standards in the *Workplace Gender Equality (Minimum Standards) Instrument 2014*. The Minimum Standards require that companies have in place policies or strategies to achieve at least one of the following objectives:

² As above, p 9

³ For a full comparison, see Global Institute for Women's Leadership and Fawcett Society, 2020. Gender Pay Gap Reporting: a comparative analysis, <https://www.kcl.ac.uk/giwl/research/gender-pay-gap-reporting-comparative-analysis>

⁴ M Cowper-Coles et al, October 2021, *Bridging the gap? An analysis of gender pay gap reporting in six countries* (Global Institute for Women's Leadership and Fawcett Society), p50

⁵ Workplace Gender Equality Agency. 2021. "My two cents: Libby Lyons". <https://www.wgea.gov.au/newsroom/my-two-cents-libby-lyons>

- Supporting gender equality
- Equal remuneration between women and men
- Flexible working arrangements for employees with caring responsibilities⁶
- Sex-based harassment and discrimination prevention

Working to achieve *each* of these objectives should be minimum standards for all employers, noting that the complexity of policies and strategies needed to achieve them will differ for small and medium workplaces. This is consistent with calls for a positive duty on employers to provide safe and respectful workplaces.

The Australian Greens believe that the threshold for Relevant Employer should be removed and all companies with WGEA reporting obligations required to meet the Minimum Standards. WGEA and the Fair Work Commission can assist compliance through providing template policies and other resources.

Impact of gender equality policies

The efficacy of gender pay gap reporting is diminished if there are no clear, measurable, and enforceable action plans to close the gap. Equally, just having a policy in place to close the gap is meaningless unless that policy is well understood, trusted and implemented within a workplace.

Staff input is essential to maximise support and effectiveness of strategies within a particular workplace. The WGE Act aims to “foster workplace consultation between employers and employees” but should go further and require employers to co-design action plans and reporting frameworks with their employees.

The Gender Equality Indicators should require employers to take action to reduce the gender pay gap (rather than just reporting *if* they take action). Where actions have been taken that have not reduced the gap, employers should be required to review their plans in consultation with staff and WGEA.

Intersectional data

For many women in the workforce, gender discrimination is often compounded by other forms of discrimination. As GIWL identify, providing more intersectional data will “allow employers to identify blockages to particular groups of women ascending the career ladder and target more specific approaches to address these gaps.”

Consistent with the approach adopted in the *Gender Equality Act 2020* (Vic), WGEA should require reporting on (self-identified) ethnicity, Indigenous status, disability, and sexual orientation of employees.

SEXUAL HARASSMENT

Gender Equality Indicator 6 currently requires employers to report on the existence of sex-based harassment and discrimination prevention strategies, grievance policies, and workplace training. It does not require employers to report on the incidence of sex-based

⁶ The gendered impact of lack of flexibility for employees with caring responsibilities is clear, and we support WGEA data collection. However, employees may also seek flexible working arrangements to assist them to manage their physical or mental health, to reduce transport, to accommodate study or other reasons. The Australian Greens believe that reasonable requests for flexible working arrangements should be considered, irrespective of whether employees have caring responsibilities.

harassment and discrimination in their workplaces or the effectiveness of any prevention strategies.

Recommendations 42 and 46 of the Respect@Work report call for the development of “good practice indicators and methods for measuring and monitoring sexual harassment prevalence, prevention and response”, and consideration of how to report those through the WGEA framework. We welcome the government’s commitment to act on those recommendations, and advice from Ms Wooldridge at the most recent estimates that this work was underway.⁷

The Australian Greens recommend that employers be required to report on the following additional sex-based harassment and discrimination indicators:

- The number of complaints made within the reporting period
- The number of complaints withdrawn within the reporting period
- The number of complaints resolved within the reporting period
- The average time for resolution of complaints
- Disciplinary actions taken within the reporting period
- Any changes to sexual harassment and discrimination policies during the reporting period, and whether staff were consulted on changes
- Whether the employer has entered into a non-disclosure agreement with an employee (or former employee) during the reporting period

Requiring transparency about these matters will not only encourage employers to improve performance, it will also provide insight to current and prospective employees about workplace culture.

ENCOURAGING ACTION, CALLING OUT INACTION

Most stakeholders interviewed as part of the GIWL research said that, despite the accessibility of evidence on gender inequality through WGEA reporting, evidence of the problem has not been enough to substantially change attitudes or practices.

The Workplace Gender Equality Procurement Principles are designed to exclude non-compliant employers from being eligible to receive government grants, tenders or contracts. However, many non-compliant employers have continued to receive government funding and contracts in recent years.⁸ More must be done to mandate minimum standards, to provide positive incentives for employers to improve performance beyond minimum standards, and to take action against employers who fail to meet minimum standards.

Measures to encourage and enforce compliance include:

- requiring employers to include WGEA data in their Annual Report
- requiring non-compliant employers to show cause why they haven’t met minimum standards
- ensuring non-compliant companies do not receive government grants and contracts
- stricter auditing of compliance by employers awarded “WGEA Employer of Choice”

⁷ Senate Supplementary Estimates, 21 October 2021

⁸ David Crowe. 21 May 2021. ‘Flouting discrimination rules no barrier to winning government contracts’, *Sydney Morning Herald*.