

24 November 2021

Our ref: KB:GA

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

Dear Review Team

Review of the *Workplace Gender Equality Act 2012*

Thank you for the opportunity to provide a submission to the Review of the *Workplace Gender Equality Act 2012 (Act)*.

The Queensland Law Society (QLS), as a WGEA Employer of Choice for Gender Equality and the peak professional membership body for Queensland's solicitors (QLS represents over 13,000 solicitors across the state), considers this legislation is of critical importance to profession and the community at large.

We provide the following responses to the consultation questions from the paper:

- 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 listed in section 10 of the Act appear to be adequate. However, this legislation was passed almost a decade ago and, as the consultation paper notes:

"The national gender pay gap is 14.2 per cent. There continues to be a substantial workforce participation gap between women and men. More women work part-time (45 per cent) than men (19 per cent). Only a small proportion of men work flexibly or take parental leave. Women make up 33.6 per cent of ASX200 boards. Women are under-represented in senior profit and loss roles in businesses. There remains a gender pay gap in favour of men across all industries, including female-dominated industries."

The paper also provides:

“Unlike the national gender pay gap, WGEA’s total remuneration gender pay gap looks at full-time total earnings and is currently at 20.1 per cent.”

While the data shows some improvement in respect of some of the targets set by the Act and the Workplace Gender Equality Agency (**WGEA** or **Agency**), the 2019-20 Progress Report refers to a number of factors affecting more significant progress. For example, the Report identifies an ‘action gap’ between policies and strategies to promote gender equality adopted by most workplaces, and the actual, effective implementation of these policies and strategies.

There appears to be a disconnect between the reporting obligations, as well as an employer’s own policies and procedures, and the lived experience of men and women in Australia’s workplaces. This needs to be recognised and addressed. For example, an employer’s flexible working policy that has limited take-up or that is predominantly accessed by women rather than men cannot be seen as effective merely because it exists. Reporting obligations often result in “tick box” compliance – that is, compliance, for compliance’s sake, rather than compliance with a view to achieving a target.

WGEA has identified a number of areas where change is required to better achieve targets. These should be considered, consulted on and then implemented as a matter of priority.

- 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?**

QLS is a WGEA Employer of Choice for Gender Equity Citation holder. We have invested significant time and energies over two years into meeting the criteria, but have observed that relatively few other organisations in Australia attain the citation, including few in the legal sector.¹ Anecdotally, we are advised the process is overly arduous and becomes more difficult every year.

We recommend that consideration be given to whether the citation is so difficult to attain that it turns employers away from attempting to attain it. We would like to see more organisations striving for improvements incrementally and having these incremental improvements recognised in addition to the Employer of Choice Citation.

- 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?**

The consultation paper notes that 40% of Australian employers are currently covered by the Act and that if all Commonwealth, State and Territory public sector organisations were also included, coverage would increase to 60%. This would provide a more comprehensive dataset

¹ <https://www.wgea.gov.au/what-we-do/employer-of-choice-for-gender-equality/current-eocge-citation-holders>

for review and action by WGEA and the Government. Accordingly, we agree with the recommendations in the Respect@Work Report for the reporting obligations to be expanded to Commonwealth public sector organisations. We note the Government has committed to making this change. We additionally support expansion to state and territory public sector organisations.

In our view, there is merit in expanding the roles that a 'relevant employer' needs to report on. There is also merit in expanding the definition of 'relevant employer'.

However, both of these measures would require consultation with affected employers. In addition, any expansion of the definition or the roles that a current 'relevant employer' needs to report on should be cognisant of the statistical relevance of any information obtained and hence its overall utility, versus the additional reporting burden.

For example, we note 2019-20 Progress Report recommends that a 'relevant employer' should report on the roles of partners in professional services firms. In the context of law firms, a firm might have 150 employees, making it a 'relevant employer', with 10 partners. Data about those 10 people may not provide a sound statistical base upon which to make any assumptions about the partnership or the specific roles. However, if those 10 partners' remuneration, leave and other factors were compared against a similar number of partners across, say, 100 firms, then that may provide some value.

Before any additional requirement is introduced, there should be an assessment by WGEA of the number of people and data likely to be provided and whether this will give information that is of value to the Agency in carrying out its functions under the Act.

As stated, we believe these issues require examination in the Review and that further consultation with employers who are to have their reporting obligations altered should occur before any amending legislation is introduced into Parliament.

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?

The GEIs are listed in section 3 of the Act and further outlined in the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)*.

In respect of the first indicator, the instrument advises that managers and non-managers are to be reported on, while the second indicator relates to the make-up of governing bodies. There is no further breakdown of the roles in this context. Capturing data at this high level, in our view, does not provide the information necessary to assess gender inequality with respect to progression within an organisation. It is not always the case that a more senior person will have a formal managerial role. In the private legal practice, there is progression from solicitor to associate to special counsel and/or partner and while these higher roles will likely involve some supervision responsibilities, they may not have formal managerial obligations. However, the gender make-up is still an important indicator.

We recommend that consideration be given to reporting on a more detailed breakdown of roles. We accept that it may be difficult to create a hierarchical structure to measure against that applies to a wide range of employers/workplaces. However, the review should consider the gap in data as a result of capturing only managerial and non-managerial roles.

We are aware that WGEA can partner with industries to obtain information on the specific roles within that industry and these collaborations should continue. In addition there is merit in investigating how different roles within an organisation can be captured and how these can be aggregated across industry. This may be by way of mandatory and voluntary reporting.

GEI 4, concerning paid parental leave and flexible work arrangements, is of particular importance to the assessment of how men and women conduct their work and progress in a workplace. However, while paragraphs 4.3 to 4.8 of the instrument require an employer to report on the utilisation of paid parental leave, the paragraphs relating to flexible work arrangements only require reporting on the availability or existence of these arrangements and policies. While it may be an additional burden on an employer to report on the take up of these arrangements, we consider it is critical to assessing:

- a. the effectiveness of these policies and arrangements;
- b. whether there are any barriers to their use; and
- c. whether accessing these arrangements leads to better equality in the workplace.

We also consider this information is readily available to the employer.

This issue is referred to in the Progress Report. From page 30 of the report, there are a number of suggestions for additional data that could be collected which we see as integral to assessing gender equality in the workplace. At page 33, the report states that relevant employer should be required to report on the utilisation of formal flexible working arrangements by gender make-up and management/non-management status. This section of the report refers to research indicating that the culture of the workplace contributes to barriers to employees accessing these arrangements even where they are available.

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?**

We agree that data such as employees' cultural and linguistic diversity, disability, age, location of primary workplace is important in examining the diversity and inclusion impacts on gender equality in the workplace.

This data would assist employers and WGEA to develop targeted assistance which could include better cultural competency training for employers, including their managers, as well as better and/or guided training for employees who may experience additional challenges in the workplace.

Again, the usefulness of this data should be weighed against any additional burden on employers and particularly, any employee's right to privacy noting that some of this information may not otherwise be provided to an employer.

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?**

The benefit to WGEA's functions and the overall objects of the Act from public data on remuneration needs to be balanced against the interests of the employer and the employee in keeping this information confidential. Publishing remuneration data would give a clearer indication of the differences in pay between genders and in positions where there are differences in the gender make-up. It may also be another way for the Agency and employees to hold employers to account if there is a pay disparity. However, there are other factors which contribute to pay which both an employee and employer may not wish to have in the public domain, such as viability of the employer/workplace. It may be more palatable if the data can be broken down into roles, seniority and industry.

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?

These changes should be investigated. However, the Act should not be overly prescriptive in respect of the ways in which an employer can comply with its reporting obligations. Different employers will have different payroll programs and human resources databases/platforms. Further, as indicated in the consultation paper, systems have changed since the legislation first came into force.

It would be useful, however, for employers not to have to provide the same information to different Government 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?

We note the 2019-20 Progress Report recommended that the Minimum Standards should require employers to have policies and/or strategies in place to support three or more gender equality indicators (we note the current requirement is for a policy in respect of one or more GEI) and require employers to take action against gender equality indicators. We agree with this recommendation as a way to assist in closing the 'action gap' identified by the Report.

The Report states that most of the employers required to report under the Minimum Standards (99.6%) have a policy on sex-based harassment and discrimination and notes that this is likely due to other obligations under WHS laws and the *Sex Discrimination Act 1984*. This means that employers do not necessarily need to have a policy to deal with the other GEIs. The Report notes, "(t)his renders the minimum standards of little value in driving improvement in gender equity outcomes."

We also agree with a number of other recommendations of the Report summarised on page 6 and further detailed in the 'Recommendation' section commencing at page 28. Some of these recommendations relate to reporting on promotions to partner in professional services firms and reporting on the number of full-equity, part-equity and non-equity partners by gender and employment status. We consider this would be of value, particularly in the legal profession but would require consultation with affected employers.

9. 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?

A consideration of these issues was a further recommendation from the 2019-20 Progress Report. We note that currently non-complying organisations are publically named and there is an effect on procurement and government tenders. We have no objection to the Procurement Principles and Commonwealth Grant Rules being reviewed.

However, we consider that the Agency should, where possible, work with organisations to identify, at an early stage, any areas where there is likely to be non-compliance and assist these organisations to comply. This approach would better achieve the objects of the Act.

10. 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?

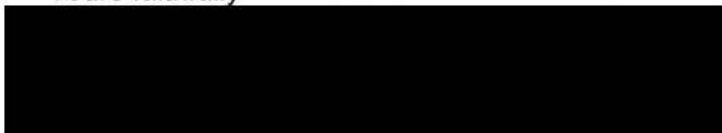
The matters considered in the Respect@Work Report also have a direct impact on gender equality in the workplace and we call on the Government as well as other bodies and industries to actively work to implement these recommendations.

In addition, we note that women remain the primary carers for family including for children and older persons. Flexibility in the workplace, as we have stated, is critical to achieving equality in the workplace.

The data gathered under the Act and instruments must capture the roles where part time and flexible work is offered, accessed and the overall impact of on remuneration and future remuneration and advancement offered by these roles.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Elizabeth Shearer
President