Gender Equity Victoria

Submission to the *Review of Workplace Gender Equality Act 2012* (Cth)

GENVIC GENDER EQUITY VICTORIA

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Acknowledgement of Country

Gender Equity Victoria acknowledges the traditional custodians of the land and the waterways across our State and the Nation, and we pay our respect Elders past and present.

We recognise the suffering and injustice that Aboriginal and Torres Strait Islander people have experienced due to colonisation and generations of discrimination and marginalisation. We express shame and horror at the actions and atrocities that have been perpetrated against Aboriginal and Torres Strait Islander people.

We also bear witness to the gendered dimensions of dispossession – acts of sexual violence, familial displacement and the stealing of children and land – which were designed to undermine First Nations relationships and values of care and the nurturing of each other and country.

We particularly acknowledge that the removal of children has and continues to devastate individuals, families and entire communities and that the gendered intention of those policies has been to assimilate Aboriginal and Torres Strait Islander children and separate them from their mothers. We recognise this as a policy of genocide.

We recognise Aboriginal and Torres Strait Islander people as sovereign people who have never ceded their land sovereignty.

We acknowledge Aboriginal and Torres Strait Islander people's human right to self-determination.

We commit to working in solidarity and partnership with Aboriginal and Torres Strait Islander people – to truth-telling, treaty and justice – and to bringing the Uluru Statement of the Heart to the heart of all that we do.

About Gender Equity Victoria (GEN VIC)

Gender Equity Victoria (GEN VIC) is the independent peak body for organisations, practitioners and individuals promoting gender equity in Victoria. Our Vision is for a gender-equal where all people are free from the harm of gender inequity. We have over 50 organisational members committed to feminist principles that strive for change and thousands more individual members and supporters.

GEN VIC is led by a strong Board of Governance and two Special Advisors for women and politics, who lead work to address abuse against women in politics and enhance our democracy by making it gender-equal.

We recognise that gender inequity harms everyone – men, women, children, non-binary and gender diverse people - but special measures are required to address the problem for all people who identify as women in our community.

Gender inequity doesn't affect everyone in the same way. To think so is privileged and dangerous. Culture, language, race, ability, gender identity, sexuality, regionality and social status change the nature, intensity and prevalence of gender inequity. A truly gender equitable transformation of our society must be intersectional and see the whole person.

Ending the Harm of Gender Inequity

Gender inequity is the primary cause and critical driver of gendered violence, especially violence against women. Poor attitudes and behaviours towards women, such as sexist jokes, language and the objectification of women, and the application of rigid gender roles and stereotypes at home, in the workplace and community, create the foundation for threats, abuse, harassment and violence.

Gender inequity leads to poor health consequences for all Victorians, especially women and gender diverse people, who face sex and gender discrimination at work, at home and in the community. Health consequences include both physical and mental health impacts of inequity.

Gender inequity also leads to persistent gender pay and superannuation gap and a higher risk of poverty for women across the life-course, who face economic barriers due to unequal, gendered beliefs and attitudes towards paid and unpaid work the sharing of parental responsibilities.

Gender inequity drains the wealth and productivity of women and, in turn, the wealth and productivity of the State of Victoria.

Our role is to champion, coordinate, educate and advise on strategies to end the harm of gender inequity. To do that, we have unique ways of working:

- We challenge harmful attitudes, structures and unequal power
- We connect, coordinate, and amplify voices from different sectors
- We provide leadership innovation with new skills, experience and networks
- We collaborate at local, regional, state, national and global levels
- We educate, train and support individual change agents
- We share evidence and best practice informed by our members
- We communicate the cause of gender equity with accessible infographics and data.
- We mobilise resources through membership, training, consultancy, communities of practice and entrepreneurialism.

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Our Members

Australian Muslim Women's Centre for Human Rights

Australian Women's Archives Project
The Australian Women's Register

Victorian Medical Women's Society Inc.

Recommendations

Recommendation 1: GEN VIC recommends that WGEA power under section 10 of the WGE Act include enforcing sanctions to relevant employers for non-compliance with WGE Act.

Recommendation 2: GEN VIC recommends that the WGE Act contains provisions that ban non-reporting employers from government procurement opportunities. The language in the Gender Equality Procurement Principles should be changed to say that non-complying organisations are ineligible for grants and contracts rather than that they 'may not be eligible'.

Recommendation 3: GEN VIC recommends that the WGE Act contain provisions mirroring the Victorian *Gender Equality Act 2020* (Vic) that require the 'relevant employer' to have gender equality action plans to ensure accountability in achieving gender-equal workplaces.

Recommendation 4: GEN VIC recommends that WGEA be adequately resourced to undertake its functions under s 10(1)(e) of the WGE Act to achieve workplace gender equality through education and training programs for the relevant employers.

Recommendation 5: GEN VIC recommends that the definition of 'relevant employer' under section 3 of the WGE Act be expanded to include Australian public sectors.

Recommendation 6: GEN VIC recommends that the amendment to include the Australian public sector as the 'relevant employer' under the WGE Act should take into account the regulatory framework and compliance requirements under *Gender Equality Act 2020* (Vic) applicable for the Victorian public sectors.

Recommendation 7: GEN VIC recommends that Gender Equality (GEI) indicators to be changed as the following:

- Include gender equality principles explicitly underpinning the WGE Act and GEI, such as the right to equality set out in CEDAW and acknowledging compounding gender inequalities by other forms of disadvantage or discrimination;
- The GEI 4 should be expanded to include reporting on uptake of flexible work arrangements (disaggregated by gender);
- Formulate new GEI that better capture progress in cultural change;
- Set gender equality targets (tailored for various workplaces) for the relevant employers to meet.

Recommendation 8: GEN VIC recommends that WGEA should collect other diversity data on a mandatory basis in addition to gender, including Aboriginal and Torres Strait Islander identity,

Age, Cultural and linguistic diversity, Disability, Non-binary and gender diverse identity, location of the primary workplace (rural, regional, metropolitan).

Recommendation 9: GEN VIC recommends that the WGE Act requires WGEA to collect and publish salary and remuneration data by maintaining individuals' privacy.

Methodology

GEN VIC relies on its membership to identify critical issues for making this submission to the review of the *Workplace Gender Equality Act 2012* (Cth) ('WGE Act). We prioritise our members' voices in developing our policy and advocacy given their expertise and experience in gender equity issues in Victoria, and many of them have been working for over four decades in this space. Centring and amplifying our members' voices is essential to our core work and ensuring the Government receives the best advice.

We collected members views and positions through a member-based survey. In addition to that, we conducted a consultation meeting with members further to discuss the key issues, positions and recommendations to inform GEN VIC's submission. As a peak body for gender equity in Victoria, we're continuously advocating for gender-equal economics, safety and respect, gender-equal decision-making, and gender-equal health.

GEN VIC also endorses Equality Rights Alliance's submission to the review of the *Workplace Gender Equality Act 2012* (Cth).

Executive Summary

Gender Equity Victoria ('GEN VIC') welcomes the opportunity to make a submission to the review of the *Workplace Gender Equality Act* 2012 (Cth) ('the WGE Act'). The WGE Act establishes the Workplace Gender Equality Agency ('WGEA), which is empowered to promote and improve gender equality in the workplace. The implementation of the WGE Act has made improvements in Australian workplaces, addressing gender inequality, particularly inequities in remuneration and salary, known as the gender pay gap. In addition, WGEA has been playing a significant role in collecting datasets on workplace gender equality and publishing the outcomes of workplace surveys as a mechanism to encourage progress and monitor improvements to gender equality in Australian workplaces.

Currently, Australia's full-time gender pay gap is at 14.2 per cent meaning that women earn on average $261.50 per week less than men.[1] In addition to that, there is a gap in workforce participation between women and men, with women making up 45 per cent of the part-time workforce compared to men at 19 per cent for men. The COVID19 pandemic has exacerbated the gender pay gap and underemployment of women. At the global level, Australia's failure to support women's economic development has been well documented by the World Economic Forum through its Global Gender Gap Index, with Australia falling from 15th to 50th on the Index since its inception in 2006. What is less well known is the subindex where Australia performs the worst – 70th in the world - Economic participation and opportunity. Furthermore, while we educate men and women in gender-equal numbers through primary, secondary and tertiary education (We're First in the world), we let women down when they transition to work.

While the WGE Act was a great step in the direction of addressing the national gender pay gap in Australian workplaces the WGE Act is failing to live up to its potential to address workplace gender inequality and enact widespread change to the employment practices that entrench inequalities and, to some extent, discrimination against various intersecting groups. It is critical that the review of the WGE Act be thorough and in-depth. We are concerned if the direction of this review is just focussed on minimising the reporting "burden", rather than focussing on ways to strengthen accountability and compliance. Gender inequality should be achieved meaningfully instead of a 'ticking boxes' exercise for some employers to be excused from consequences of non-compliance to the WGE Act.

[1] Workplace Gender Equality Agency, '*Australia's Gender Pay Gap Statistics*', dated 27 August 2021, available online at https://www.wgea.gov.au/publications/australias-gender-pay-gap-statistics.

The review of the WGE Act is timely to address Australia's further slide in the economic indicators on the WEF Global Gender Gap Index and to respond to the disproportionate effects of the COVID-19 pandemic on gender inequality. In addition to that, the review is critical to ensure that Australia's regulatory framework to achieve workplace gender equality reflects best practice and adequately responds to the changing landscape of gender equality, including recommendations made by the Australian Human Rights Commission in the Respect@Work report. It is also crucial that relevant state legislation, including the Victorian *Gender Equality Act 2020* (Vic), be recognised as a significant piece of legislation from which the WGE Act can learn and adapt.

GEN VIC calls for the WGE Act to be strengthened to enable Australian workplaces to achieve gender equality meaningfully in every aspect of their work. Reflecting on our experience and our members' collective insights in assisting with the implementation of Victoria's *Gender Equality Act 2020* (Vic) (*'Gender Equality Act*'), we call for the inclusion of other indicators of gender equality in the workplace to be collected and analysed by WGEA. We also call for the expansion of the remit of the WGE Act to include all Commonwealth Public Sector entities.

Since the enactment of the *Gender Equality Act*, GEN VIC has played a significant role in supporting its implementation via its Action for Gender Equality Partnership (AGEP), a collaboration by gender equity organisations across Victoria to support transformation via Workplace Gender Audits, the development of Gender Equality Action Plans and Gender Impact Assessments. We believe that it is critical to review the WGE Act by acknowledging and recognising that the *Gender Equality Act* can provide guidance on strengthening WGEA's breadth of influence and powers.

Key Issues and Positions

I. Functions and Powers of WGEA

Consultation question

1. Are the functions and powers of WGEA appropriate for promoting and improving gender equality in the workplace?

> Recommendation 1: GEN VIC recommends that WGEA power under section 10 of the WGE Act to include enforcing sanctions to relevant employers for non-compliance with WGE Act.
>
> Recommendation 2: GEN VIC recommends that the WGE Act contains provisions that ban non-reporting employers from government procurement opportunities. The language in the Gender Equality Procurement Principles should be changed to say that non-complying organisations are ineligible for grants and contracts rather than that they 'may not be eligible'.

GEN VIC assesses that the functions and powers of WGEA vested under s 10 of the WGE Act[2] are not sufficient to achieve the objectives of the Act.[3] Accordingly, as a Commonwealth regulator and influencer of gender equality in workplaces, WGEA should be appropriately vested with powers to enforce mandatory sanctions for non-compliance with the WGE Act beyond making non-compliant employers ineligible to tender for contracts under the Commonwealth and state procurement frameworks. This ensures that the relevant employers are compliant with the WGE Act, holding them accountable for achieving gender-equal workplaces.

The compliance mechanisms under the WGE Act are inadequate to make progress needed in closing the gender pay gap, increasing meaningful equal workforce participation, addressing workplace segregation on gender and other forms of compounding inequalities experienced by Aboriginal and Torres Strait Islander women, women with disabilities, women with gender-diverse identities as well as migrant and refugee women. The Act currently includes two compliance mechanisms: non-compliant organisations may be publicly named and made ineligible for grants and contracts.[4]

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[2] Section 10 *Workplace Gender Equality Act 2012* (Cth).

[3] Ibid section 2A.

[4] See, WGEA, 'Workplace Gender Equality Procurement Principles' available at https://www.wgea.gov.au/what-we-do/compliance-reporting/wgea-procurement-principles

Neither public shaming nor the threat of contract ineligibility is working to change behaviour. In part, this is because the procurement penalty is not being enforced. Recent reports have found that 31 WGE Act non-compliant organisations were still awarded government contracts.[5] Moreover, research has suggested that monitoring and data collection is not enough to achieve widespread change.[6]

Progress towards gender-equal workplaces in Australia is being frustrated by a lack of power to direct corrective action. While encouraging transparency and accountability through regular monitoring and reporting are powerful gender transformational tools, often they are not strong enough alone to change organisational behaviour.[7] A regime without mandatory corrective action will fail to achieve its objectives.[8] It's time for an upgrade. Therefore, we recommend a more robust compliance mechanism by imposing mandatory sanctions (such as fines and other administrative sanctions) for failing to comply with the WGE Act are needed to ensure compliance with the WGE Act and achieve more vigorous and more sustained outcomes.

An example of legislative power used to ensure compliance is best seen under the Victorian *Gender Equality Act*, where the Victorian Commission for Gender Equality in the Public Sector ('Gender Equality Commission') is empowered with various enforcements options such as the following:

- working directly with an organisation to achieve an informal resolution;[9]
- issuing a compliance notice;[10]
- recommending that the Minister takes action against the organisation;[11]
- naming the organisation and their failure to comply on the Commission's website;[12]

[5] David Cowe' Flouting discrimination rules no barrier to winning government contracts', 22 March 2021, The Sydney Morning Heralds, available online at https://www.smh.com.au/politics/federal/gender-reporting-federal-funds-to-companies-flouting-rules-20210321-p57cpm.html

[6] Dr Anna von Reibnitz, Dr Jananie William, Dr Miriam Glennie, Dr Sally Curtis, and Associate Professor Sarbari Bordia, 'Australia has ranked last in an international gender pay gap study — here are 3 ways to do better' 2020, The Conversation available online at https://theconversation.com/australia-has-ranked-last-in-an-international-gender-pay-gap-study-here-are-3-ways-to-do-better-168848.

[7] Ibid

[8] 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.

[9] Section 22(3) *Gender Equality Act 2020* (Vic).

[10] Ibid section 22(1).

[11] Ibid section 26(b).

[12] Ibid section 26(c)

- As a last resort, making an application to the Victorian Civil and Administrative Tribunal (VCAT) for an order directing the organisation to comply.[13]

II. Improve gender equality in workplaces and future focus area of WGEA

Consultation question

2. What works to improve gender equality in workplaces, and what should be the future focus areas for WGEA?

> Recommendation 3: GEN VIC recommends that the WGE Act contain provisions mirroring Victorian *Gender Equality Act 2020* (Vic) that require the 'relevant employer' to have gender equality action plans to ensure accountability in achieving gender equal workplace.
>
> Recommendation 4: GEN VIC recommends that WGEA shall be adequately resourced to undertake its functions under s 10(1)(e) of the WGE Act in achieving workplace gender equality through education and training programs for the relevant employers.

Australian workplace gender equality progress is still behind in comparison to other countries. The World Economic Forum's 2021 Global Gender Gap Index placed Australia at 50, six places lower than 2020 and down from 24 in 2014.[14] Furthermore, as noted by WGEA, the Australian gender pay gap is predicted to not close completely for another 26 years, while women continue to significantly underrepresented in leadership positions (Board members and Chairs) across the Australian Stock Exchange.[15]

In addition to that, we know that the gender pay gap is higher in some industries, such as at 25.3 per cent in professional, scientific and technical services; at 24.1 per cent in financial and insurance services; and at 20.7 per cent in Health Care and Social Assistance.[16] Consequently, addressing gender inequality in the form of unequal salary and remuneration requires sustained and comprehensive interventions. Hence, it is critical to review the WGE Act to respond to the systemic issues of gender inequality adequately.

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[13] Ibid section 26(d)

[14] World Economic Forum, '*Global Gender Gap Report*', (World Economic Forum, 2021) available online at https://www.weforum.org/reports/ab6795a1-960c-42b2-b3d5-587eccda6023

[15] Cassells R & Duncan A (2021), Gender Equity Insights 2021: Making it a priority, BCEC|WGEA Gender Equity Series, Issue #6, March 2021.

[16] ABS (2021), Average Weekly Earnings, May 2020, viewed 19 August 2021,Table 5 and Table 8 https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/average-weekly-earnings-australia/latest-release#data-download

The Victorian Government has been consistent in its policy and strategy to address gender inequality in workplaces. Based on its gender equality strategy, Safe and Strong, Victoria enacted the *Gender Equality Act* 2020 (Vic) to improve workplace gender equality in the Victorian public sector, universities and local councils ('defined entities'). The *Gender Equality Act* requires the defined entities to have Gender Equality Action Plans embedded in their organisations that includes a baseline workplace gender audit with seven key indicators and regular progress reporting, monitoring and updating of the baseline and strategies and measures to close gender gaps.[17]

The breadth of the indicators being considered in Victoria includes:

- Gender composition of the workplace
- Gender composition of the governing boards/bodies
- Gender pay equity
- Sexual Harassment
- Gender Workforce Segregation
- Leave and Flexibility
- Recruitment and Promotion

Victorian public sector entities must be accountable to the Commission for Gender Equality in the Public Sector (CGEPS) for all seven indicators, not just their performance on pay equity. Strategies and measures to improve all indicators must be provided to the CGEPS.

In addition to that, the defined entities are required to measure and report the progress of their achievement in ensuring gender-equal workplaces to the Victorian Gender Equality Commission. This requirement under Gender Equality Act is essential so that the defined entities can be accountable to achieve the workplace gender equality act and address barriers for equal participation between men and women in workplaces. Moreover, mandating the Workplace Gender Equality strategy enables robust audit, planning, and the implementation of a suite of mutually reinforcing strategies - across leadership, policies, systems, and workplace culture. As a result, the workplaces could achieve transformative change, a prerequisite for creating gender-equal workplaces.

Based on our members' collective views, we believe that achieving gender equality in workplaces requires structural changes (for example, having policies and procedures to support gender equality) and cultural change (shifting gendered norms, attitudes, behaviours, and practices). There is strong anecdotal evidence that while there is a high level of compliance with the

[17] Above n 9 Section 10.

minimum standards set out by the WGEA, sexism and gender-based discrimination remain rife in many of the workplaces which are technically compliant with the WGE Act. For example, while WGEA data shows that 82.4% of 'advertising services' report to WGEA, a recent survey of nearly 600 advertising professionals undertaken by Women's Health Victoria as part of its shEqual project found that only 39% of respondents agreed that the Australian advertising industry prioritises gender equality as a workplace issue, with as many (38%) disagreeing.

Under s 10(1)(e) of the WGE Act, WGEA is vested with the function 'to undertake research, educational programs and other programs to promote and improve gender equality in the workplace. Our members believe that education is the starting point in creating cultural change necessary to achieve gender equality in workplaces. Our collective experience informed us that gender equality requires a transformational shift, which takes longitudinal commitment and investment. However, workplaces cannot work towards this change without educating employees on what needs to change. Certainly, WGEA has functions in this space. Hence, we believe it is essential for the review to ensure that WGEA in the next coming years is empowered and provided with adequate resources to exercise its function under s 10(1)(e) of the WGE Act effectively, particularly to create transformational cultural changes in workplaces through educational programs.

It is critical, however, that the education programs employ the pedagogy of discomfort that challenges beliefs and assumptions and requires individuals to reflect on their practice and how they interact and connect with the world. Organisational and personal growth must be facilitated, highlighting what needs to change and why it needs to change within each individual entity - so that a gender lens can be applied to practice, to review policies and address gender inequality in systems and workplace structures intergenerationally. The experience of our member, Women's Health Victoria, informed us that the challenges of existing modes of thinking, learning through problem-solving, and the use of stories of lived experience were all crucial approaches to enabling competency in gender equity work.[18] Training to apply a gender lens and participate in gender equity work is a base requirement for workplaces working towards gender equality.

Further, our experience in the Action for Gender Equality Partnership, demonstrates the importance of education and training delivered by gender experts within private, public sector and community sector organisations. During June-July 2021, GEN VIC and 13 place based and intersectional partners trained 300 defined entities in Gender Equality Action Planning on behalf

[18] Allie Clemans, Pearl Subban, Joanne Gleeson and Lyn Komarzynski, 'Supporting Gender Equity Education' (Women's Health Victoria: 2019), available online at https://womenshealthvic.com.au/resources/WHV_Publications/Training_2019.09.27_Supporting-gender-equity-education-a-research-report-to-inform-gender-equity-units-of-competency_(Fulltext-PDF).pdf

of the Commission for Gender Equality in the Public Sector. The training and development required a full day intensive, as well as supporting infrastructure of communities of practice to enable staff responsible for transformation and change to benefit from learning with their peers. GEN VIC has also been engaged in four Community of Practice pilots. WGEA should be resourced to work collaboratively with the national gender equality sector to deliver training and development across the national public sector.

Australia should aspire to having a world class, national gender equality sector, that enables organisations to develop strategies and measures to improve and sustain gender equality.

These are the kinds of initiatives required to lift Australia's global gender equality performance. WGEA should be resourced to lead that work in partnership with gender equity experts across the country.

III. Expand the Scope of WGE Act to include Australian Public Sectors

Consultation question

3. Shall the scope of the *Workplace Gender Equality Act* be expanded? If so, would additional considerations need to be factored in for new reporting employers?

> Recommendation 5: GEN VIC recommends that the definition of 'relevant employer' under section 3 of WGE Act be expanded to include Australian public sectors.
>
> Recommendation 6: GEN VIC recommends that the amendment to include Australian public sector as the 'relevant employer' under the WGE Act should take into account the regulatory framework and compliance requirements under *Gender Equality Act 2020* (Vic) applicable for the Victorian public sectors.

GEN VIC supports recommendation 43 outlined in the Respect@Work report by the Australian Human Rights Commission that the WGE Act be expanded to include Australian public services, including Commonwealth, State, Territory and local governments. As noted in the consultation paper, broadening the scope of the Act to cover public sector employees would increase the coverage of the Act from 40 per cent to 60 per cent of employees. This would mean that Australian public sectors are held accountable to achieve gender-equal workplaces which currently are not required to report to WGEA. Given that Australian public sectors are the primary service provider and play a critical role in modelling change towards gender-equal workplaces, their inclusion as 'relevant employers' under section 3 of the WGE Act would create significant progress for all Australian workplaces to be gender-equal.

However, it should be noted that Victoria has enacted *Gender Equality Act* requiring Victorian public sectors to advance gender equality and report their progress to the Victorian Gender Equality Commission. Hence, for harmonious implementation of legislation, the amendment of the WGE Act to include Australian public sectors should take into account the regulatory framework established by the Victorian *Gender Equality Act*. The amendment of the WGE Act concerning this should aim to minimise the increased regulatory burden for Victorian public sectors to comply with two different legislations and mechanisms to achieve gender-equal workplaces. Therefore, we recommend that the amended WGE Act mirror the Victorian Gender Equality Act compliance model to be applied to Australian public sectors. Under the Victorian Gender Equality Act, the public services entities have the duty to promote gender equality,[19] conduct gender impact assessments,[20] prepare gender equality action plans,[21] make progress

[19] *Gender Equality Act 2020* (Vic), above n 9 section 7.

[20] Ibid section 9.

[21] Ibid section 10.

against gender equality indicators,[22] and prepare and submit a progress report.[23] Given that the Victorian *Gender Equality Act* was enacted last year, the provisions contained in the Act reflect the current best practices in promoting and advancing gender-equal workplaces.

IV. Revise the Gender Equality Indicators

Consultation question

4. Should the gender equality indicators (GEIs) in the *Workplace Gender Equality Act* be changed?

Recommendation 7: GEN VIC recommends that Gender Equality (GEI) indicators to be changed as the following:

- Include gender equality principles explicitly underpinning the WGE Act and GEI such as right to equality set out in CEDAW and acknowledging compounding gender inequalities by other forms of disadvantage or discrimination;
- The GEI 4 should be expanded to include reporting on uptake of flexible work arrangements (disaggregated by gender);
- Formulate new GEI that better capture progress in cultural change;
- Set gender equality targets (tailored for various workplaces) for the relevant employers to meet.

Currently, the WGE Act provides that 'relevant employers' must prepare a public report to WGEA containing information about the employer and the following GEIs[24]:

- GEI 1 – gender composition of the workforce
- GEI 2 – gender composition of governing bodies of relevant employers
- GEI 3 – equal remuneration between women and men (Note: the CEO is excluded from reporting remuneration)
- GEI 4 – availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and working arrangements supporting employees with family or caring responsibilities
- GEI 5 – consultation with employees on issues concerning gender equality in the workplace
- GEI 6 – sex-based harassment and discrimination.

[22] Ibid section 16.

[23] Ibid section 19.

[24] *Workplace Gender Equality Act 2012* (Cth), above n 2 Section 13.

We think that the WGE Acyt should explicitly set out gender equality principles underpinning the provisions in the WGE Act and Gender Equality Indicators. For example, the following principles could be included:

- reflecting the commitment to promote further the right to equality set out in the Charter and Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and
- acknowledging that gender inequality may be compounded by other forms of disadvantage or discrimination that a person may experience based on Aboriginality, age, disability, ethnicity, gender identity, race, religion, sexual orientation and other attributes.

The GEI 4 should be expanded to include reporting on uptake of flexible work arrangements (disaggregated by gender), not just availability of these arrangements, recognising low uptake rates of flexible work among men despite broad availability across organisations required to report to WGEA. Currently, the WGEA is limited to promoting gender equality within the workplace itself. We also think that education and training to be added as separate Gender Equality Indicators. While training is a requirement for sex-based harassment and discrimination, organisations currently do not report against employee training as a step towards gender equality in the workplace. Education is crucial for enabling transformational change required and should be an indicator that requires reporting and substantiation. Without education, existing norms, practices and structures will not be challenged by new thinking but rather by a compliance-driven approach to meeting regulatory requirements. Our Watch highlights the vital role of education in their Workplace Equality and Respect ('WER') Standards and Change the Story workplace programs, making it a condition of the WER standards. Change the Story cites the value of direct participation programs in the workplace and the success of enabling the change when delivered as part of an organisational development program.[25] There is a clear case for the importance of education as a tool for supporting the realisation of gender equality in the workplace. As such, it should be an indicator by which organisations' commitment and work towards change can be measured.

Given that gender equality stubbornly persists across workplaces required to report to WGEA (as demonstrated by WGEA data) despite meeting the minimum standards, it is apparent that the minimum standards are far too 'minimum'. In addition, as noted above, indicators that better

[25] Our Watch, *Change the Story: A shared framework for the primary prevention of violence against women in Australia*, available at https://media-cdn.ourwatch.org.au/wp-content/uploads/sites/2/2021/11/23131846/Change-the-story-Our-Watch-AA.pdf

capture progress in cultural change should be added (such as indicators on education and uptake of flexible work arrangements).

We also recommend that rather than (or in addition to) setting 'minimum standards' and publishing 'benchmarks', WGEA set gender equality targets (potentially tailored to the industry) for organisations to meet. For example, the sectors with the highest percentage of the gender pay gap, including professional, scientific and technical services, financial and insurance services, and Health Care and Social Assistance,[26] would need to meet more demanding targets to correct the gender inequalities in the industry faster. The targets could also be tailored according to the category of employers such as public and private; small-scale, medium-scale and large-scale industries; and composition of workforces.

V. Collect Intersectional data to address gender inequality in workplaces

Consultation question

5. Should WGEA collect other diversity data in addition to gender?

> Recommendation 8:
> GEN VIC recommends that WGEA should collect other diversity data on mandatory basis in addition to gender including Aboriginal and Torres Strait Islander identity, Age, Cultural and linguistic diversity, Disability, Non-binary and gender diverse identity, Location of primary workplace (rural, regional, metropolitan).

The feedback from our members strongly suggests that WGEA should collect other diversity data in addition to gender. Critically, the WGE Act should include an acknowledgement that gendered inequities are related to inequalities based on other forms of difference. For example, gender inequality may be compounded by other forms of disadvantage or discrimination that a person may experience based on Aboriginality, age, disability, ethnicity, gender identity, race, religion, sexual orientation and other attributes. Understanding the intersections between and across all forms of discrimination is a prerequisite to achieving gender equality for all women.[27] For this reason, GEN VIC strongly recommends that the legislation adopts an explicitly intersectional approach and that intersectionality forms part of the actions that follow the principles of the amended WGE Act.

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[26] ABS (2021), Average Weekly Earnings, May 2020, viewed 19 August 2021,Table 5 and Table 8 https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/average-weekly-earnings-australia/latest-release#data-download

[27] Chen, J. (2017). Intersectionality Matters: A guide to engaging immigrant and refugee communities in Australia. (pp. 1–34). Melbourne, Vic.: Multicultural Centre for Women's Health. Retrieved from http://mcwh.com.au/downloads/Intersectionality-Matters-Guide-2017.pdf

We recommend that WGEA collect intersectional and diversity data on a mandatory basis. From access to employment to family violence and sexual harassment, there is considerable evidence for women from disadvantaged communities, including Aboriginal and Torres Strait Islander women, women with disabilities, women from migrant and refugee backgrounds, women and gender diverse people from LGBTIQ communities, experience compounding gender inequalities. Research further suggests that the absence of intersectional data collected by WGEA means that it is difficult to understand how gender intersects with other factors to contribute to specific types of discrimination and contrasts with most public sector equality reporting frameworks that capture Indigenous status, disability and language background.[28]

For the above reasons, we believe that collecting intersectional and diversity data is critical to have an accurate picture of the Australian workforce that determine the appropriate responses to address gender inequality in workplaces experienced by various groups. In addition, intersectional and diversity data will make visible underrepresentation and discrimination faced by certain groups and sub-groups of employees, enabling tailored strategies to be developed and implemented to improve employment conditions and equality for these groups. Moreover, it will allow us to recognise and remedy the systems and structures that uphold inequality and disadvantage in the workplace.

VI. Adopt pay transparency for improving the gender pay gap

Consultation question

6. How could WGEA better collect and use data on gender equality? For example, should there be some form of pay transparency – should remuneration data in some form be public?

> Recommendation 9:
> GEN VIC recommends that the WGE Act should require WGEA to collect and publish salary and remuneration data by maintaining individuals' privacy.

Under section 14 of the WGE Act,[29] salary and remuneration data are confidential and are not included in public data or reports. GEN VIC recommends that salary and remuneration data be

[28] 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.

[29] *Workplace Gender Equality Act 2012* (Cth), above n 2 section 14.

reported and made available to the public given that it could contribute to closing the gender pay gap.

Research suggests that pay transparency represents an information shock that alters the bargaining power of male and female employees vis-a-vis the firm in opposite ways.[30] It was concluded that pay transparency leads to two main implications. First, pay transparency leads to 'pay compression' from above, as exemplified in California, leading to a 7 per cent reduction in managers' compensation. In addition, it resulted in freezing wage increases of better-paid employees.[31] The second implication, and most importantly, pay transparency, makes the glass ceiling visible. In other words, pay transparency seems to be more effective than other policies in cracking the glass ceiling. Ultimately, this may be true only in the short run, when transparency raises strong attention from the media, the stock market, and the public audience.[32]

We suggest that the reported data on remuneration will need to contain the breakdown of the remuneration components such as benefits and perks to reflect the pay gap accurately. By disclosing salary and remuneration data to public, we believe this is the proper form of accountability that will inform the public to advance the movement for equality for women further.

[30] Emma Duchini, Stefania Simion, Arthur Turrell, 'Pay Transparency and Cracks in the Glass Ceiling' 2020, Issue 482 of Working papers, Centre for Competitive Advantage in the Global Economy, University of Warwick, available online at https://conference.iza.org/conference_files/transatlantic_2020/simion_s25958.pdf.

[31] Ibid 26.

[32] Ibid 27.

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