



Closing the Gender Pay Gap Bill 2023

ACTU Submission to the Senate Finance and Public Administration Committees on the Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill 2023

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Introduction

About the ACTU

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. It has played the leading role in advocating for, and winning the improvement of working conditions, including on almost every Commonwealth legislative measure concerning employment conditions and trade union regulation. The ACTU has also appeared regularly before the Fair Work Commission and its statutory predecessors, in numerous high-profile test cases, as well as annual national minimum and award wage reviews.

For decades, unions have been instrumental in working to improve gender equality at work and reduce the gender pay gap through collective bargaining, advocating for legislative reform, and running award test cases for equal remuneration and improved conditions such as carers and parental leave. Unions continue to play a pivotal role in improving gender equality in Australian workplaces. For example, the introduction of paid family and domestic violence leave (**paid FDV leave**) in the National Employment Standards (**NES**) has come after over a decade of campaigning from the union movement. Since 2010, unions have won paid FDV leave in industrial instruments covering over 6,000 workplaces and 1.2 million workers. Unions also took this campaign beyond the workplace, winning cases in the Fair Work Commission, achieving the inclusion of paid FDV leave in state instruments and legislation, and finally, winning the support of the new Government to include this right in the NES.

The ACTU is Australia's sole peak body of trade unions, consisting of affiliated unions and State and regional trades and labour councils. There are currently 42 ACTU affiliates who together have over 1.7 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

The ACTU welcomes the opportunity to make a submission on the *Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill 2023 (the Bill)* to the Senate Finance and Public Administration Committees. The ACTU is in support of the Bill and commends the reforms it makes to the *Workplace Gender Equality Act 2012 (Cth) (WGE Act)*. The Bill implements important election commitments made by the Australian Labor Party in 2022 to close the gender pay gap at work, including by boosting pay gap transparency and encouraging action to close gender pay gaps within organisations. The Bill also implements the Government's commitment to implement the recommendations of the 2021 Review of the WGE Act. This submission makes a number of recommendations to strengthen the Bill and achieve the objects of the WGE Act.

Background

In October 2021, stakeholders were invited to make a submission to a targeted review of the WGE Act (**the Review**) to consider whether the Workplace Gender Equality Agency (**WGEA**) had appropriate powers to promote and improve gender equality in Australian workplaces, support employers to remove barriers to the full and equal participation of women in the workplace, and to eliminate discrimination on the basis of gender in relation to employment matters. The ACTU made a submission to the Review and the WGEA Review Report was publicly released in March 2022. The Review concluded that the gender pay gap in Australia was not closing at a fast enough rate and made ten recommendations to accelerate progress on workplace gender inequality and reduce the reporting burden on businesses.

Prior to the Review, the WGE Act had not been reviewed since its introduction in 2012. The ACTU raised significant concerns in its submission to the Review that the timeframes for the Review were far too short to enable adequate consideration and consultation on the nature and scope of the entrenched problem of gender inequality, or the role that WGEA should play in addressing it.¹ In particular, the ACTU raised concerns about:

- WGEA not having sufficient time to consult with stakeholders to develop a set of outcomes-based minimum standards to guarantee genuine and effective employer action towards gender equality²
- The lack of focus in the current framework on concrete action and progress, as well as the lack of focus on consultation with workers and unions, being core weaknesses in the system, and the then government's consultation process allowing no time for these matters to be properly considered.³

The ACTU called on the then Government to allow proper time for a genuine review to take place, including for WGEA to develop a set of outcomes-based minimum standards for consultation.⁴ The ACTU also made a series of recommendations to strengthen the capacity of WGEA to meaningfully improve gender equality, to enhance accountability and compliance powers under the WGE Act, and to make various other substantial reforms required to address gender inequality.⁵ The ACTU commends the new Government on implementing many of these reforms

¹ ACTU submission to Review at pages 2-3.

² WGEA submission to Review at page 32, ACTU submission to Review at page 3

³ ACTU submission to Review at page 3.

⁴ ACTU submission to Review at page 3.

⁵ ACTU submission to Review at pages 3-8.

to address gender inequality and close the gender pay gap through its legislative reform agenda. However, more needs to be done – Australia’s national gender pay gap is 13.3%.⁶ and when discretionary payments and working arrangements are factored in, it is as high as 22.8% as of November 2022.⁷

Current legislative framework

The WGE Act established WGEA to oversee a reporting regime under which non-public sector employers with 100 or more employees must report annually against six gender equality indicators (**GEIs**). The Workplace Gender Equality (Minimum Standards) Instrument 2014 requires employers with 500 or more employees to have a written formal policy and/or strategy in place to support one of four of the six GEIs (namely gender composition of workforce; equal remuneration between women and men; flexible work; and sex-based harassment).

WGEA also conducts research and education, produces a range of fact sheets on gender equality and the gender pay gap, and runs the ‘Employer of Choice for Gender Equality’ award and a ‘Pay Equity Ambassadors’ network of CEOs, which is currently under review.

Accountability and compliance mechanisms are limited. WGEA can publicly name employers as non-compliant (s 19D); and non-compliant employers may not be eligible for Commonwealth contracts, grants or other financial assistance (s 18). While an organisation must notify employees and unions that their report has been lodged, there is no obligation to consult with workers or unions on gender equality matters, or advise unions how to access the public report or provide them with a copy.

Substantial reforms are required to ensure that WGEA can make a meaningful difference to the entrenched gender inequality and discrimination in Australian workplaces. The Bill introduces some of these required reforms, but not all of them. The ACTU makes the following recommendations that will strengthen the Bill, achieve the objects of the WGE Act, and make a meaningful contribution to achieving gender equality.

⁶ ABS Average Weekly Earnings, Gender Pay Gap Measures (23 February 2023) [Gender indicators, Current | Australian Bureau of Statistics \(abs.gov.au\)](#)

⁷ WGEA (2022), ‘Australia’s Gender Equality Scorecard Key results from the Workplace Gender Equality Agency’s Employer Census 2021-22’, Workplace Gender Equality Agency, accessed: <https://www.wgea.gov.au/sites/default/files/documents/WGEA-Gender-Equality-Scorecard-2022.pdf>.

Summary of ACTU Recommendations

Recommendation 1: Require employers to report indicative job titles and/or organisational segment that apply to each of the pay quartiles.

Recommendation 2: Require employers to report both base salary and total remuneration packages (including cash and non-salary benefits) of all employees and positions, including CEOs and partners.

Recommendation 3: Develop a set of outcomes-based gender equality standards in the Legislative Instruments which set clear and objective numerical minimum benchmarks against which to measure progress towards gender equality year on year.

Recommendation 4: Consistent with Recommendation 3.2a of the Review, the 2013 Legislative Instrument should be amended to require relevant employers to report the date employers share with their employees, shareholders, and/or members the gender equality reports that the employers provided to WGEA.

Recommendation 5: Require employers to provide workers and their unions with a copy of their reports to WGEA, as well as notification of lodgement.

Recommendation 6: Require reporting on a set date every year to improve compliance and comparability of data.

Recommendation 7: Hostile workplace environments should be added as a gender equality indicator to both the WGE Act and the 2013 Legislative Instrument.

Recommendation 8: Existing Gender Equality Indicator 6 should be broadened out to include other work and safety related barriers to women's workforce participation, in addition to sexual harassment, harassment on the ground of sex, discrimination, and hostile workplace environments.

Recommendation 9: Extend reporting obligations on all gender equality indicators and compliance with the gender equality standards to all employers regardless of size, including Labour Hire companies, companies that win government tenders, subcontractors, and all State, Territory and Local Government public sector agencies. Reporting obligations could be tapered for smaller organisations with fewer resources.

Recommendation 10: Make changes to data collection that allow for accurate measurement of the impact of insecure work on the gender pay gap and gender inequity, including requiring

employers to report on the actual earnings and hours of part-time and casual employees, rather than full-time equivalent annual earnings (see also WGEA Recommendation 15).

Recommendation 11: Require employers to provide additional data on:

- a) Access to employer-funded paid parental leave for primary carers and secondary carers and the eligibility period for access, disaggregated by gender, employment status, and manager/non-manager category (see also WGEA Recommendation 16).
- b) What superannuation benefits are paid, including whether superannuation is paid on parental leave (see also WGEA Recommendation 17).
- c) Terminations and redundancies by gender, employment status and manager/non-manager category (see also WGEA Recommendations 9 and 10).
- d) Gender and intersecting forms of diversity, namely: primary work location, Aboriginal and/or Torres Strait Islander background, cultural background, disability, and LGBTIQ+ status, but only where this is provided on a completely voluntary basis by employees (see also WGEA Recommendation 22).

Recommendation 12:

- a) Require employers to consult with workers (and specifically women workers) and their unions on measures to improve gender equality; and to report on the action taken as a result of such consultation (see also WGEA Recommendation 19).
- b) Apply penalties to organisations who fail to comply with their obligations under the Act, including failure to report adequately and/or on time and meet new outcomes-based gender equality standards.
- c) Empower an appropriately qualified body or bodies to conduct detailed remuneration and gender equality audits where needed to monitor actual year on year progress towards gender equality.
- d) Conduct a thorough review of the Workplace Gender Equality Procurement Principles to ensure they are effective in driving improvements in gender equality (see also WGEA Recommendation 30).
- e) Fund WGEA adequately to carry out all of its functions.

Division 1 – Publishing gender pay gap information

The Review noted that many stakeholders called for WGEA to publish the gender pay gaps of organisations, as the current approach of publishing aggregate industry gender pay gaps was not doing enough to close the gender pay gap fast enough. Many stakeholders said increased transparency of an organisation's gender pay gap would promote accountability and accelerate

progress towards closing its gender pay gap.⁸ WGEA itself also recommended this change.⁹ Therefore, the Review recommended that to accelerate the closing of Australia's gender pay gap, the WGE Act be amended to enable WGEA to publish gender pay gap information at an employer level as an overall figure and by quartile to encourage change within organisations (Recommendation 2.1).¹⁰

Division 1 of Schedule 1 of the Bill implements Recommendation 2.1 by adding a new section 15A to the WGE Act and making amendments to various other sections to make them consistent with s15A. s15A would impose a positive obligation on WGEA to publish aggregate information for each relevant employer for each reporting period for the purpose of showing the employer's performance and progress in achieving gender equality in relation to remuneration for their workforce.¹¹ The ACTU strongly supports this change - it will hold organisations accountable for closing their gender pay gaps and allow workers to scrutinise the record of different employers.

Appendix B of the Impact Analysis contained in the Explanatory Memorandum states that the following information will be published by WGEA:

- mean gender pay gap, expressed as a percentage and the average dollar difference between women's and men's earnings at an organisation.
- median gender pay gap expressed as a percentage and the average dollar difference between women's and men's earnings at an organisation.
- employer level gender pay gaps and workforce composition by quartiles. Data will be provided on the full-time equivalent gender pay gap for the organisation's highest paid quarter, upper middle quarter, lower middle quarter, and lowest paid quarter, along with the gender composition of each pay quartile. The gender composition will state the proportion of women and men in each quartile. The average remuneration of women and men in each quartile will also be published.

⁸ Commonwealth of Australia, Department of the Prime Minister and Cabinet, WGEA Review Report. Review of the Workplace Gender Equality Act 2012, December 2021, page 33.

⁹ WGEA submission to Review, Recommendation 23.

¹⁰ Commonwealth of Australia, Department of the Prime Minister and Cabinet, WGEA Review Report. Review of the Workplace Gender Equality Act 2012, December 2021, page 33, 36.

¹¹ Explanatory Memorandum, page 10.

- CEO, or the equivalent, remuneration in gender pay gap calculations, both at aggregate and employer levels.¹²

Publication of pay quartiles and reporting of job titles

The ACTU welcomes publishing workforce composition across pay quartiles as this will: contribute to accelerate the narrowing of the gender pay gap; track women and men's representation at, and progression through, different levels of the organisation; show the spread of female and male earners across an organisation; and reveal if one gender is over or under-represented in a particular quartile. This will help employers assess what is happening and take targeted action.¹³

Employers should also be required to identify the categories of employees by job title and/or organisational segment when they are reporting pay data. This will enhance understanding of the nature of the gender pay gaps within each section of the organisation.

Recommendation 1: Require employers to report on the indicative job titles and/or organisational segment that apply to each of the pay quartiles.

Reporting of remuneration to include both base salary and total remuneration packages of all employees

Our affiliates advise that reporting on salaries is not always completed properly by employers. For example, in the non-government education sector some larger employers do not report data about senior roles in circumstances where a single employee holds more than one role (for example where the principal is both an employee and a member of the Board of Management) and compliance officers and Human Resources staff are often not reported on.

Therefore, Recommendation 9(d) of the ACTU's submission to the Review (and Recommendations 13 and 14 of WGEA's submission to the Review) recommended that the WGE Act should require employers to report both base salary and total remuneration packages (including cash and non-salary benefits) of all employees and positions, including CEOs and partners.

¹² Appendix B of Impact Analysis contained in the Explanatory Memorandum, page 79.

¹³ Commonwealth of Australia, Department of the Prime Minister and Cabinet, WGEA Review Report. Review of the Workplace Gender Equality Act 2012, December 2021, page 8.

We note that Appendix B of the Impact Analysis contained in the Explanatory Memorandum states that both the base salary and full-time equivalent annual remuneration gender pay gaps will be calculated. This means that part-time and casual salaries are converted to full-time equivalent earnings. The total remuneration full-time equivalent pay gap calculations will include superannuation, bonuses and other additional payments.¹⁴ However, it is not clear whether all cash and non-salary benefits will be included in this calculation.

Recommendation 2: Require employers to report both base salary and total remuneration packages (including cash and non-salary benefits) of all employees and positions, including CEOs and partners.

Division 2 – Gender Equality Standards

The Review noted that a number of stakeholders said that the current ‘minimum standards’ in the WGE Act are out of step with community expectations about what needs to be done to drive gender equality in workplaces. The minimum standards only require employers with 500 or more employees to have a policy and/or strategy in place to support one or more of 4 GEIs. They set the bar far too low: they cover too few of the GEIs and they require only formal policies, rather than real action or progress towards gender equality. They therefore do little to improve gender equality, as all employers need to do to comply with the WGE Act is report data, rather than take action and show progress on gender equality. The collection of data by itself is of limited value – it must be used to set a baseline and drive action and progress towards gender equality above the baseline.

WGEA data shows that many employers easily meet the minimum standards; most likely because the vast majority have at least a formal policy or strategy in place for the prevention of sex-based harassment and discrimination. Our affiliates report that some large employers do not meet even this very low bar; reporting year on year that policies or strategies are ‘under development’ or ‘under review’ with no progress actually made.

Therefore many stakeholders, including the ACTU, proposed that the minimum standards be substantially strengthened as a mechanism to drive progress towards achieving gender

¹⁴ Appendix B of Impact Analysis contained in the Explanatory Memorandum, page 79.

equality.¹⁵ Recommendation 3.1 of the Review put forward several proposals to bridge this gap and require more action from employers with new gender equality standards.¹⁶ The ACTU strongly supports a move towards outcomes-based gender equality standards through the setting of clear and objective benchmarks to drive progress on all GEIs.

Division 2 of Schedule 1 of the Bill implements Recommendation 3.1 (c) by amending various provisions of the WGE Act to rename current ‘minimum standards’ as ‘gender equality standards’, to reflect the increased ambitions of these measures to progress rapid action towards gender equality. Other elements of Recommendation 3.1 will be implemented through changes to the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) (**2013 Legislative Instrument**) and the Workplace Gender Equality (Minimum Standards) Instrument 2014 (**2014 Legislative Instrument**) (together, **the Legislative Instruments**).¹⁷ The ACTU strongly supports this change.

Consistent with Recommendation 9(b) of the ACTU’s submission to the Review, a set of outcomes based gender equality standards should be developed in the Legislative Instruments which set clear and objective numerical minimum benchmarks against which to measure progress towards gender equality year on year, and which can be adjusted upwards once met.

Recommendation 3: Develop a set of outcomes-based gender equality standards in the Legislative Instruments which set clear and objective numerical minimum benchmarks against which to measure progress towards gender equality year on year.

Division 3 – Giving Reports to Governing Bodies

Improving accountability of employers

The Review recommended that in order to improve the accountability of employers to take action, and as a complement to improving the minimum standards, the WGE Act should be amended in two ways. First, to embed accountability into the reporting process, and foster transparency within organisations, it was recommended that employers be required to report the date their

¹⁵ Commonwealth of Australia, Department of the Prime Minister and Cabinet, WGEA Review Report. Review of the Workplace Gender Equality Act 2012, December 2021, pages 8, 37.

¹⁶ Commonwealth of Australia, Department of the Prime Minister and Cabinet, WGEA Review Report. Review of the Workplace Gender Equality Act 2012, December 2021, page 8.

¹⁷ Explanatory Memorandum, page 5.

gender equality reports to WGEA are shared with employees, shareholders, and/or members (Recommendation 3.2.a). Second, given the important strategic role boards play, it was recommended that both the Executive Summary report and Industry Benchmark report that WGEA provides to employers should be provided on an annual basis to the employer's Board or Governing Body (Recommendation 3.2.b).¹⁸

Division 3 of Schedule 1 of the Bill implements Recommendation 3.2b of the Review by requiring relevant employers to provide certain WGEA reports – an executive summary report and an industry benchmark report – to the relevant employer's governing body, and provides that failure to do so, without reasonable excuse, will be taken as noncompliance with the WGE Act.¹⁹ The ACTU strongly supports this change.

Recommendation 4: Consistent with Recommendation 3.2a of the Review, the 2013 Legislative Instrument should be amended to require relevant employers to report the date employers share with their employees, shareholders, and/or members the gender equality reports that the employers provided to WGEA.

Require employers to provide workers and unions with a copy of WGEA reports; reporting should occur on a set date

Some of our affiliates advise that they use WGEA reports to engage with employers about gender equality issues. However, they report that limitations with the current framework hamper their efforts to drive real change, including that there is no requirement for employers to advise unions and workers on how to access the public report or provide them with a copy.

In its submission to the Review, the ACTU recommended that employers should be required to provide workers and their unions with a copy of their reports to WGEA, as well as notification of lodgement (Recommendation 10(d)), and that reporting should occur on a set date every year to improve compliance and comparability of data (Recommendation 10(e). This was also recommended by WGEA in its submission to the Review – Recommendation 24).

¹⁸ Commonwealth of Australia, Department of the Prime Minister and Cabinet, WGEA Review Report. Review of the Workplace Gender Equality Act 2012, December 2021, page 39.

¹⁹ Explanatory Memorandum, pages 12-13.

Recommendation 5: Require employers to provide workers and their unions with a copy of their reports to WGEA, as well as notification of lodgement.

Recommendation 6: Require reporting on a set date every year to improve compliance and comparability of data.

Division 4 – Gender Equality Indicators

Hostile workplace environments

In recognition that sex-based harassment and discrimination is a core gender equality standard, the Review recommended that legislative change be made to bring the WGE Act and 2013 Legislative Instrument into alignment and make sex-based harassment and discrimination a gender equality indicator under the WGE Act (Recommendation 5.1).²⁰

Division 4 of Schedule 1 of the Bill implements Recommendation 5.1 by making the WGE Act consistent with the 2013 Legislative Instrument and the *Sex Discrimination Act 1984* (Cth) (**SD Act**) by including ‘sexual harassment’, ‘harassment on the ground of sex’, or ‘discrimination’ as gender equality indicators in the WGE Act.²¹ The ACTU strongly supports this change.

However, whilst the Explanatory Memorandum states that these changes also align the WGE Act and the 2013 Legislative Instrument with other recent legislative reform such as the *Anti-Discrimination and Human Rights Legislation (Respect@Work) Act 2022* (Cth),²² there is one key reform that has been left out – workplace environments that are hostile on the grounds of sex are now unlawful,²³ and under the new positive duty, employers are required to take all reasonable and proportionate steps to eliminate hostile workplace environments.²⁴

Recommendation 7: Hostile workplace environments should be added as a gender equality indicator to both the WGE Act and the 2013 Legislative Instrument.

²⁰ Commonwealth of Australia, Department of the Prime Minister and Cabinet, WGEA Review Report. Review of the Workplace Gender Equality Act 2012, December 2021, pages 42-44.

²¹ Explanatory Memorandum at pages 15-16.

²² Explanatory Memorandum at page 6.

²³ S28M *Sex Discrimination Act 1984* (Cth)

²⁴ S47C *Sex Discrimination Act 1984* (Cth)

Address work health and safety barriers to women's participation

The ACTU's submission to the Review highlighted that in addition to gendered violence, there are other work health and safety related barriers to women's workforce participation that continue to exacerbate the gender pay gap and gender inequality.²⁵

These barriers include the lack of sanitary, safe, suitable and accessible amenities, including toilets, for women workers;²⁶ the lack of measures to provide uniforms and /or personal protective equipment (PPE) that is suitable and appropriate for women workers; and the lack of measures to consult with women workers on health and safety matters, including gender representation on consultative committees.

The ACTU submission to the Review therefore called for a new standalone Gender Equality Indicator addressing work health and safety related barriers to women's participation, including:

- a) Measuring and monitoring prevalence, prevention and responses to sexual harassment.
- b) Measuring and monitoring the availability of sanitary, safe, suitable and accessible amenities, including toilets, for women workers.
- c) Where uniforms and/or personal protective equipment (PPE) are necessary, measures to provide uniforms and PPE suitable and appropriate for women workers.
- d) Measures to consult with women workers on health and safety matters, including gender representation on consultative committees.

Recommendation 8: Existing Gender Equality Indicator 6 should be broadened out to include other work and safety related barriers to women's workforce participation, in addition to sexual harassment, harassment on the ground of sex, discrimination, and hostile workplace environments.

²⁵ ACTU submission to Review, page 15.

²⁶ A recent report from the Electrical Trades Union (ETU) draws attention to the longstanding and systemic problem of sub-standard or non-existent toilet facilities for women on worksites in traditionally male-dominated sectors around the country. The ETU report notes "...in historically male-dominated occupations women's amenities are frequently treated as an inconvenience, an afterthought or not provided at all." Substandard or non-existent amenities expose women to a range of safety hazards, including greater risks of harassment and violence at work. See ETU, Nowhere to Go: Barriers to participation resulting from inadequate workplace amenities for women in male dominated occupational industries, August 2021.

Division 5 – CEO of WGEA

The Review recommended that in order to avoid confusion with company director roles in a business setting, the WGE Act should be amended to change the title of the ‘Director of WGEA’ to Chief Executive Officer (CEO) (Recommendation 9.2).²⁷

Division 5 of Schedule 1 of the Bill implements Recommendation 9.2 by renaming the ‘Director’ of the Agency as the ‘CEO’ of the Agency. These amendments do not change the office of the CEO, which is for all purposes a continuation, under the same terms and conditions, of the office of the Director.²⁸ The ACTU is supportive of this change.

Division 6 – Technical Amendment

Division 6 of Schedule 1 of the Bill makes a technical amendment to the WGE Act so that ‘reporting period’ means the relevant period for both private companies or entities and Commonwealth companies or entities, correcting an earlier error which defined ‘reporting period’ only by reference to the relevant period for private companies or entities. The ACTU is supportive of this change.

However, consistent with Recommendation 5 above, reporting periods for private sector companies/entities and Commonwealth companies/entities should be aligned, so that reporting for all employers is required on a set date every year to improve compliance and comparability of data. We note this was also recommended by WGEA in its submission to the Review (Recommendation 24).

Other Required Reforms

In its submission to the Review, the ACTU outlined that our affiliates reported that a number of limitations with the WGEA framework hamper its effectiveness as a driver of real change in workplaces. In particular, reporting requirements and minimum standards do not apply to enough employers and workplaces; the minimum standards are not focused on actual action or real progress towards gender equitable outcomes; there is no transparency in relation to pay

²⁷ Commonwealth of Australia, Department of the Prime Minister and Cabinet, WGEA Review Report. Review of the Workplace Gender Equality Act 2012, December 2021, pages 55-56.

²⁸ Explanatory Memorandum at page 15.

data; methods for measuring the impact of insecure work on the gender pay gap are inadequate, and compliance and accountability mechanisms are weak and ineffective, including that consultation with workers and their unions about gender equality issues is not mandated under the framework. The ACTU submission to the Review therefore made a series of recommendations to address these shortcomings and strengthen WGEA's capacity to meaningfully improve gender equality at work in Australia, including by taking an action-oriented approach.

The ACTU is very pleased to see that many of these issues have been addressed by the Bill. However there are other recommendations (made by both the ACTU and WGEA in their submissions to the Review) that have not been addressed. The regulatory framework needs further strengthening.

Expand WGE Act to cover all employers

Currently 'relevant employer' means a registered higher education provider or an employer of 100 or more employees in Australia, including Commonwealth companies or entities. State and Territory governments, bodies and authorities are excluded.²⁹

This definition is too narrow and excludes a significant portion of the workforce. For example, in the non-government education sector, over 75% of employees are female. Most of these employees are part-time or casual. The Independent Education Union (representing workers in non-government schools) reports that it uses WGEA reports in consultation with all employers with over 100 employees. However, the smaller size of many schools and early childhood education and care centres precludes them from being required to report. This means that the data collected is not representative of the sector and does not allow proper assessment of the gender pay gap in education. It also means that employees and their unions are denied an opportunity to engage with smaller employers about gender equality issues.

Another common issue is that companies and entities which receive government funding often subcontract out work to smaller entities which have less than 100 employees. For example, in construction, a head contractor or consortium that wins a large contract will often only directly employ a handful of construction workers, with the majority of the work being carried out by different subcontractors, very few of which will meet the 100 employee threshold. This allows

²⁹ S3 *Workplace Gender Equality Act 2012* (Cth).

current trends that see the majority of women construction workers engaged in lower paying classifications to continue without transparency. Therefore companies and entities that receive government contracts and subcontractors should also have reporting obligations to WGEA.

The experience reported by our affiliates in relation to sexual harassment in the mining industry is that large public companies face the most scrutiny on gender equity and already have significant motivation to work to improve outcomes for women employees. However, smaller companies often need regulatory oversight to incentivise them to act. Our affiliates in this sector advise that they would welcome the extension of obligations under the Act to smaller businesses.

While we are strongly of the view that all businesses regardless of size must be covered by these laws (no business should be exempt from taking action to reach minimum standards on gender equity), reporting obligations could be tapered for smaller organisations with fewer resources, with different requirements considered for business with fewer than 15 employees. For example, reporting requirements could be tailored so that small businesses only need to report the number of women working for them, with additional information about salary and conditions provided the larger the business is.

Coverage of reporting obligations must be extended to ensure all employers are covered, including:

- a) Requiring State and Territory public sector organisations to report to WGEA – see Recommendation 43(a) from Respect@Work.
- b) All businesses, regardless of size, should be required to report to WGEA, with reporting obligations tapered to reduce the regulatory burden for small employers.
- c) Labour hire employers, companies that win government tenders and subcontractors should all be required to report to WGEA.

Recommendation 9: Extend reporting obligations on all gender equality indicators and compliance with the gender equality standards to all employers regardless of size, including Labour Hire companies, companies that win government tenders, subcontractors, and all State, Territory and Local Government public sector agencies. Reporting obligations could be tapered for smaller organisations with fewer resources.

Expand reporting requirements to include new data

There are gaps in the dataset that WGEA currently collects, resulting in the true state of gender equality in the economy not being reflected, and therefore hampering the ability to employers take appropriate and targeted action.³⁰

Access to adequate periods of parental leave for both parents is key to closing the gender pay gap, as is the payment of superannuation, including on periods of parental leave. In many sectors, a major barrier to change is the lack of transparency around the real drivers of the gender pay gap including the extent and nature of insecure work. Despite the significance of these factors, WGEA does not currently collect data on them.

The data set currently collected by WGEA also does not include key diversity and inclusion criteria. If WGEA expanded its data set, it would be possible to better understand the differential impact of gender inequality on different groups, including those that experience multiple and compounding forms of discrimination, such as Aboriginal and Torres Strait Islander women.

Therefore, the ACTU's submission to the Review recommended amendments to reporting requirements to require employers to provide additional data on access to employer funded parental leave, superannuation paid to workers (including on parental leave), the actual earnings and hours of part time and casual employees (rather than full-time equivalent annual earnings), and data on intersecting forms of diversity (provided on a voluntary basis by employees).

Recommendation 10: Make changes to data collection that allow for accurate measurement of the impact of insecure work on the gender pay gap and gender inequity, including requiring employers to report on the actual earnings and hours of part-time and casual employees, rather than full-time equivalent annual earnings (see also WGEA Recommendation 15).

Recommendation 11: Require employers to provide additional data on:

- a) Access to employer-funded paid parental leave for primary carers and secondary carers and the eligibility period for access, disaggregated by gender, employment status, and manager/non-manager category (see also WGEA Recommendation 16).

³⁰ Impact analysis page 60.

- b) What superannuation benefits are paid, including whether superannuation is paid on parental leave (see also WGEA Recommendation 17).
- c) Terminations and redundancies by gender, employment status and manager/non-manager category (see also WGEA Recommendations 9 and 10).
- d) Gender and intersecting forms of diversity, namely: primary work location, Aboriginal and/or Torres Strait Islander background, cultural background, disability, and LGBTIQ+ status, but only where this is provided on a completely voluntary basis by employees (see also WGEA Recommendation 22).

Compliance and accountability mechanisms

Compliance and accountability mechanisms in the WGE Act are weak, limited, and inadequate to drive improvements in gender equity. Affiliates report that some employers often do not report as they should – reports are either late or incomplete – with no penalties or consequences for this. Affiliates also report some ‘gaming’ of the system, for example employers who carefully time their reporting to ensure they don’t have to count their casual employees. Our affiliates also advise that reports are often not provided to unions despite repeated requests. WGEA often does not publish reports until months after they are provided, meaning that the window to use the reports to drive change in workplaces often passes.

The Independent Education Union reports that employers sometimes assert that they have complied with the minimum standards as they have policies or strategies ‘under development’ or ‘under review’ year on year, with no mechanism to monitor or test the veracity of these claims.

GEI 5 relates to reporting on consultation with employees on issues concerning gender equality in the workplace. It is not included in the minimum standards and should be. It is of significant concern to the ACTU that WGEA data shows very little progress in this area - only about 50% of employers report that they consult with their employees on gender equity issues.³¹ This is a core problem which must be addressed.

Workers and their unions are in a unique position to know what measures would practically assist in tackling gender inequality at work. Workplace cultures will not become more equitable unless workers and their unions are genuinely and regularly consulted on - and involved in - the

³¹ WGEA Submission to Review at p 22.

identification and implementation of measures to improve gender equality. Therefore, the establishment of a culture of genuine consultation with, and participation of, workers (and specifically women workers) and unions in addressing gender inequity at work is a critical piece of the puzzle.

Therefore, the ACTU recommends that the following improvements would strengthen the compliance framework (in combination with a new set of outcomes-based minimum standards) and make it more effective in driving change.

Recommendation 12:

- a) Require employers to consult with workers (and specifically women workers) and their unions on measures to improve gender equality; and to report on the action taken as a result of such consultation (see also WGEA Recommendation 19).
- b) Apply penalties to organisations who fail to comply with their obligations under the Act, including failure to report adequately and/or on time and meet new outcomes-based gender equality standards.
- c) Empower an appropriately qualified body or bodies to conduct detailed remuneration and gender equality audits where needed to monitor actual year on year progress towards gender equality.
- d) Conduct a thorough review of the Workplace Gender Equality Procurement Principles to ensure they are effective in driving improvements in gender equity (see also WGEA Recommendation 30).
- e) Fund WGEA adequately to carry out all of its functions.

Conclusion

The Bill is a significant and crucial step to strengthen the role WGEA and the WGE Act play in improving gender equality in the workplace. The ACTU wholeheartedly supports and welcomes the reforms contained in the Bill. The ACTU also makes a number of recommendations, consistent with its submission to the Review, that are necessary to further strengthen the framework to ensure that WGEA and the WGE Act can truly be drivers of gender equality in the workplace. These recommendations include that the legislative framework should apply to all employers, strengthening the gender equality standards to include objective outcomes-based benchmarks against which progress can be measured year on year, mandating consultation with workers and unions on gender equality issues, expanding the dataset that employers are required to report, and strengthening compliance and accountability mechanisms.

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