



Australian Gender
Equality Council

working for balance

Committee Secretary
Senate Finance and Public Administration Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Friday 3rd February 2023

Attention: Mr Patrick Hodder, Committee Secretary.

Thank you for the opportunity to make a submission in regard to the Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill 2023.

The Australian Gender Equality Council (AGEC) is a non-government, not for profit organisation - a peak body across a wide range of industry and community sectors - advocating for gender equality with a collective membership of more than 500,000.

Please find attached the Australian Gender Equality Council's submission.

Yours sincerely.

Coral Ross AM

Chair
Australian Gender Equality Council



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2023 Submission

WORKPLACE GENDER EQUALITY AMENDMENT (CLOSING THE GENDER PAY GAP) BILL 2023

Submitted by:

Australian Gender Equality Council

MARCH 2023

About Us

About the Australian Gender Equality Council

The Australian Gender Equality Council (AGEC) is an independent, national, not-for-profit gender equality peak body and think tank that was formed to respond to the unacceptably slow pace of change towards gender equality in Australia.

AGEC's vision is simple – to achieve a gender equal Australia. It aims to drive a cultural shift in Australia so that all genders have the same rights and opportunities across all sectors of the community.

Closely aligned to academic and research organisations that specialise in Gender Equality research, AGEC currently represents 24 member organisations whose members combine to more than 500,000 women across a wide range of industry and community groups.

We operate on an entirely voluntary basis and rely on grassroots and in-kind funding.

Member organisations of the Australian Gender Equality Council

- Australasian Women in Emergencies Network (AWEN)
- Australian Federation of Business & Professional Women (AFBPW)
- Australian Local Government Women's Association (ALGWA)
- Australian Women Lawyers (AWL)
- Australian Women in Resources Alliance (AWRA)
- Economic Security for Women (eS4W)
- Elevate Her (Lean in)
- Engineers Australia
- Financial Services Institute of Australasia (FINSIA)
- National Association of Women in Construction (NAWIC)
- Women in Super (WIS)
- National Association of Women in Operations (NAWO)
- National Rural Women's Coalition (NRWC)
- Older Women's Network (OWN)
- Tradeswomen Australia (TWA)
- Transport Women Australia (TWA)
- Women and Leadership Australia (WLA)
- Women for Election Australia (WFEA)
- Women in Automotive (WinA)
- Women in Aviation Australian Chapter (WAI)
- Women in Banking and Finance (WIBF)
- Women in Digital (WID)
- Women in Gaming & Hospitality (WGA)
- Women in Technology (WIT)

For more information about AGEC see our website www.agec.org.au

Executive Summary

AGEC's view on the Gender Pay Gap

Gender must not be a factor in levels of economic security during a person's working life or retirement.

In December 2022 the Workplace Gender Equality Agency¹ reported that the Full Remuneration Gender Pay gap was 22.8% and that for the first time since it began reporting, progress on reducing the pay gap had stopped. Women earned \$26,600 less per year than men.

Women are more likely to be employed part-time and more likely to be in casual work. In 2021-22, about 59% of women were employed part-time or casually as against 33% of men. Only two out of five full-time employees in Australia were women. The proportions of women and men working full-time, part-time and casually have generally remained static since reporting to WGEA began.

Women's participation in the workforce has a strong sector bias towards caring industries such as childcare, aged care, health and education, with low representation in traditionally male-dominated industries such as mining, energy and construction.

This skewed workforce representation is a major contributor to the gender pay gap, poor economic outcomes for women and entrenched views about the role of women in society more broadly. COVID demonstrated that this skewed representation, also disproportionality disadvantaged women who are strongly represented in the hospitality, childcare and health sectors². Targeted incentives in the male-dominated construction sector, worked against women as a primary driver of the now-increasing gender pay gap.

Conversely increased investment in industries dominated by women, including childcare, aged care and health (including significant increases in real wages for these sectors), would support women's economic wellbeing and likely increase the attraction of men to those sectors, helping to bring gender balance to these industry segments. With the opportunity for the government to invest further in childcare, through the introduction of universal free childcare, such measures would have a significant impact on economic activity and bring us closer to gender balance across industry.

Women's economic security is one of the primary impacts of gender inequality and is intrinsically tied to so many of the dimensions of gender equality in AGEC's Gender Equality Manifesto (see Figure 1).

Research shows the gender pay gap results from several factors -

- Gendered Industry Segmentation - the low wage rates in female-dominated industries (primarily caring industries, such as childcare, aged care, disability care and healthcare) in contrast to male-dominated industries (such as mining, construction and trades)
- Level within Leadership Hierarchy - the low levels of women's representation in executive leadership roles which attract higher rates of pay

¹ WGEA 2022

² Fitzsimmons, T.W., Yates, M. S., & Callan, V (2022). *Experiences of COVID-19: The pandemic and work/life outcomes for Australian men and women.* Brisbane, Qld: University of Queensland.

- Position within Salary Bands - Differential positioning of women and men within seniority bands due to women's service being interrupted more often than men's, resulting in men reaching the top of salary bands more quickly than equivalent women
- Discrimination or bias in the evaluation of women's performance and capability or the value of their roles, including like-for-like role pay differentials

Although the Gender Pay Gap is publicly reported on a sector basis, individual employers are not required to report their gender pay gap by the WGEA. Mandatory public reporting by individual companies, akin to those introduced in the UK and Europe, will further incentivise employers to address the gender pay gap within their organisation, addressing some of the drivers of the pay gap.

To improve women's economic security, closing the gender pay gap must be considered an economic necessity and prioritised by Government. To do so requires a suite of actions which will influence the various drivers of the gender pay gap as outlined above.

Only a multi-faceted approach will provide the impetus necessary to effect real and lasting change in women's economic security.

Recommendations

WORKPLACE GENDER EQUALITY AMENDMENT (CLOSING THE GENDER PAY GAP) BILL 2023

Reinforcing the recommendations made in the AGEC submission to the Review of the Workplace Gender Equality (WGE) Act.

The Australian Gender Equality Council (AGEC) is pleased to see that provisions included in the Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill 2023 (the Bill) are among the recommendations in the submissions made by AGEC and other women's organisations to the [2021 Review of the Workplace Gender Equality Act 2012](#) (the Review).

AGEC's position and recommendations were clearly outlined in its submission to the Review of the WGE Act and we wish to take the opportunity to reinforce the recommendations that have not been reflected in either the Review or the Bill.

AGEC fully supports pay gap transparency and strongly recommends that the WGE Act be amended to require the gender pay gap to be reported publicly by employers in line with reporting obligations in other countries. For example, in the UK, France and Germany employers must publicly report their gender pay gap data, and in various European countries, formal board reports are required to demonstrate measures taken to address the gender pay gap. In addition, countries such as France require employers to take "corrective measures" including implementing a financial "catch-up" to level the gender pay gap. Public reporting of standardised measures at a whole of organisation level (rather than individual job levels) ensures an appropriate balance between principles of transparency and commercial confidence?.

AGEC therefore recommends that the Act be amended to not only require WGEA to publicly report pay gap percentage data, but also to require, as per Recommendation 3.2(b) of the Review, companies to report this to their Governing Bodies. We would further expand this requirement to require reporting in a company's Annual Report.

Small and medium-sized enterprises (SMEs) employ a significant proportion of the Australian workforce. Consideration should be given to introducing a less onerous and well supported reporting regime for employers with 50-99 employees. There could be citation options for SMEs who wish to demonstrate their leadership in gender equality, as well as an opt-in incentive-based model for SME's that included consulting support (through funded partnerships with organisations such as those who are members of AGEC).

The impact of small and medium sized employers on the gender pay gap should not be underestimated and AGEC recommends the Act be amended to expand the definition of 'relevant employer' to include a less onerous and well supported reporting regime for employers with 50-99 employees.

AGEC is pleased to see minimum standards retained and strengthened and does not believe employers should be able to set their own minimum standards.

AGEC recommends that all employers with over 500 employees be required to have strategies in place to address all minimum standards - overall gender composition, flexible work, gender equitable care for children and elders, and prevention of sexual harassment and discrimination on an “if not, why not” basis, similar to the ASX Corporate Governance Principles.

AGEC recommends that the instrument require ALL employers with over 100 employees to, at a minimum, have strategies in place for Equal Remuneration and Prevention of gender-based harassment and discrimination, and for there to be transparent listing of companies who fail to address them.

AGEC recommends employers with more than 100 employees should be encouraged to have strategies in place for at least two out of the three remaining minimum standards. Failure to do so should not attract penalties for non-compliance, but rather questioning and support to close the gaps.

AGEC would like to eliminate the confusion in regard to the data relating to total remuneration and base pay gap.

AGECs recommends the ABS stops reporting on the gender pay gap differently to the Workplace Gender Equality Agency (WGEA), as the methodology creates confusion and enables ‘gender pay gap sceptics’ to continue to stall progressive problem solving.

AGEC recommends changing the reporting requirements to hourly rates, rather than weekly rates, in order to capture part-time and casual employees.

The WGEA reporting obligations have been in operation for over five years, and followed similar requirements under the former EOWA Act. To the extent that the current approach to penalties was adopted to allow a “settling in” period, AGEC believes that it is now time for these obligations to have the same standing, and be respected as minimum public reporting obligations, and attract similar penalties.

Many of the organisations currently listed as non-compliant have persistently refused to acknowledge their obligations under the Act. Public disclosure of their non-compliance has not resulted in any change to their approach. Only with an appropriate penalty regime, and responsibilities at the Director level, will these organisations change their position and become compliant. We believe that employers who are non-compliant with the Workplace Gender Equality Act should not be eligible for government contracts and therefore the Commonwealth Procurement Act should be aligned with the WGE Act. We also believe that WGEA should have the power to undertake spot audits and issue improvement notices for employers whose gender equality performance is inadequate. A system similar to that used by the ACNC, that black marks non-compliant organisations could be considered.

Listed public company Boards should be notified in writing of their compliance status and cited in the Annual Reports.

Additionally, in relation to Employer of Choice for Gender Equality (EOCGE) organisations we recommend that WGEA agree to a set of metrics (from a range of possible metrics) to which the citation holder agrees to hold themselves accountable. The citation holder would have a period of

time (three-five years) to meet the metric set or lose its EOCGE status. A similar time-bound approach could be applied to gaps that are identified in the mandatory reporting process. For example, if a pay audit is completed and nothing is done for three years - then serious questions are asked.

AGEC recommends increased powers under the Act for instigating consequences for non-compliance. Non-compliance with the Act should have the same status of reporting obligations as for ACNC or Australian Securities and Investment Commission (ASIC) reporting obligations and attract penalties like those for non-compliance with ACNC or ASIC reporting obligations.

AGEC's endorsement of the NFAW analysis and recommendations

AGEC notes the submission of the National Foundation for Australian Women (NFAW) and the in-depth study they have undertaken of the Review Recommendations and the extent to which the Bill undertakes to implement against them.

AGEC fully supports the analysis and recommendations made by the NFAW, in particular:

Recommendation 1: including minimum standards in targets

The Bill should be amended to include minimum outcomes for all employers as well as DIY targets for individual employers in the higher outcome deciles or quintiles. We recommend that:

- instead of renaming minimum standards 'gender equality standards' the Bill use the term 'gender equality measures' to include both the proposed 'gender equality targets' and 'gender equality minimum standards';
- the current Minimum Standards Instrument enable the minister to set minimum workplace outcomes against each of the GEIs as well as template targets to be adapted by better performing individual employers;
- where an employer's GEIs fall below the industry minimum standard set by the minister, its initial target should be to meet that standard. WGEA should support these employers as a matter of priority; and
- the setting of minimum standards by the Minister be undertaken following consultation with WGEA and the SDC, as well as employer and other relevant stakeholders.

Recommendation 2: minimum consultation requirements

We recommend that relevant employers ensure all their employees receive information regarding the existence and content of policies being reported to the WGE Agency against Gender Equality Indicators 4.10-4.14, namely:

- 4.10 The existence of a flexible working arrangements policy or strategy.
- 4.11 The existence of policies or strategies to support employees with family or caring responsibilities.
- 4.12 The existence of any non-leave based measures to support employees with family or caring responsibilities.
- 4.13 The existence of a policy or strategy to support employees who have or are

experiencing family or domestic violence.

- 4.14 Measures, if any, to support employees who have or are experiencing family or domestic violence.

We further recommend that the Bill be amended to include the provision set out in Review Recommendation 3.2.a, which would require relevant employers to report the date they share with their employees, shareholders, and/or members the gender equality reports that the employers provided to WGEA.

In Summary

Whilst AGEC supports and welcomes most of the provisions in the Bill, there is concern that the provision fails to fully implement Recommendation 3 of the Review and the related measures to operationalise the provision outlined in the Impact Statement attached to the Explanatory Memorandum.

We have also taken this opportunity to emphasise the additional AGEC recommendations made in our initial Review submission, that would, in our view, significantly strengthen the impact of the WGEA in closing a very persistent gender pay gap.

In addition, AGEC strongly supports the analysis and recommendations of the NFAW.

Figure 1. Manifesto of the Australian Gender Equality Council

The graphic is a purple rectangular poster with a white and green ribbon-like graphic in the top-left corner. The title 'Manifesto of the Australian Gender Equality Council' is written in large white serif font at the top. Below the title, there are ten white icons, each followed by a bolded title and a short paragraph of text. The icons represent: a padlock with a dollar sign, a heart with a pulse line, a group of people, a graduation cap, a document with a checklist, a handshake, a building, a heart with a pulse line, a graduation cap, a document with a checklist, a handshake, and a tennis racket.

Manifesto of the Australian Gender Equality Council

- Economic Security**
Gender must not be a factor in levels of economic security during working life or in retirement.
- Health & Wellbeing**
All genders must have equal and unimpeded access and agency in relation to their health and wellbeing, including proportionate distribution of funding, research and services
- Workforce Representation**
Participation, representation and leadership in the Australian economy must reflect the gender composition of society.
- Education**
All genders must have equal access to all levels of education to ensure equitable outcomes.
- Workplace Flexibility**
All workplaces must provide and support flexible work arrangements, which are accessed equally, regardless of gender.
- Media**
Media voice and content, including sport, news media, the arts, entertainment and community, must reflect the gender composition of society.
- Family & Caring Responsibilities**
Families must be supported to share caring responsibilities equitably
- Infrastructure**
Infrastructure for work and community facilities must reflect the needs of all genders for equal participation and safe access.
- Safety & Respect**
All people must be respected and be safe from all forms of bias, bullying, harassment and violence.
- Societal Norms**
No systems, structures, community or institution, secular or religious, can be permitted or enabled to differentially value or deny opportunities on the basis of gender.
- Government & Democracy**
All levels of government and cabinet must reflect the gender mix of the communities they represent.
- Sport**
There must be equal access, participation and remuneration in professional and recreational sport, regardless of gender.