



3 March 2023

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

Re: Inquiry into the Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill 2023

I am pleased to provide the Workplace Gender Equality Agency's (WGEA / the Agency) submission to the Inquiry into Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill 2023.

WGEA is an Australian Government statutory agency, charged with promoting and improving gender equality in Australian workplaces and administering the *Workplace Gender Equality Act 2012* (Act).

We collect data from all non-public sector and Commonwealth public sector employers with over 100 employees against six key gender equality indicators. We use this data to work collaboratively with employers and the public to improve the state of gender equality in workplaces.

Nine years of reporting by relevant non-public sector employers has established a world-leading and comprehensive dataset on the state of workplace gender equality in Australia. WGEA's data shows that employers have made progress against most gender equality indicators since reporting began, but that progress is beginning to stall. This is evidenced by the gender pay gap remaining the same for the last two reporting years.

The gender pay gap is a key indicator of how we value women's and men's contributions to the workforce. The gender pay gap has persistently favoured men since reporting to WGEA began, leaving women in a less economically secure position.

The Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill 2023 can create momentum to reinvigorate Australian employers' progress on workplace gender equality by implementing many of the recommendations from the review of the Act that took place in 2021.

The Bill enables the publication of employer gender pay gaps. This reform enhances the transparency of WGEA's dataset, and evidence shows that it can encourage action on gender equality in the workforce. We recognise this is a new approach to employer gender pay gaps. Therefore, our submission focuses on this reform with respect to our dataset and plans for implementation as well as the emerging evidence base.

The Bill includes reforms to increase employer accountability for and progress on workplace gender equality. These are naming gender equality standards, measures to enhance understanding and commitment by organisational leadership, and recognising sexual harassment, harassment on the ground of sex or discrimination as a key issue for workplace gender equality.

We welcome the reforms in this Bill. They Agency has deeply engaged in processes relating to the development of the Bill. This includes making a submission to the review of the Act, through which we articulated 31 recommendations to enhance the WGEA dataset and accelerate change. Many of these recommendations aligned with those emerging from the Review. We have also provided support, as appropriate, to the Office for Women in the Department of Prime Minister and Cabinet, as they have driven the process for legislative change.

We look forward to engaging and supporting employers on the successful implementation of the reforms. Thank you for the opportunity to comment on this important Bill.

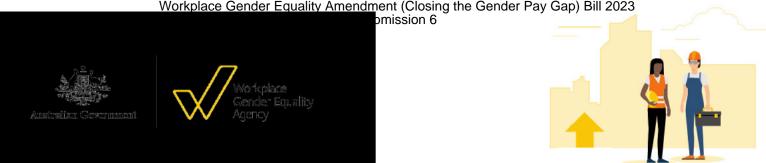
Regards

Mary Wooldridge









March 2023

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

As the Australian Government statutory agency responsible for promoting and improving gender equality in Australian workplaces and administering the *Workplace Gender Equality Act 2012* (the Act), the Workplace Gender Equality Agency (WGEA, the Agency) is pleased to present a submission to the Senate Finance and Public Administration Committee on the Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill 2023.

For over ten years, the Act has informed Australia's approach to addressing workplace gender equality. The Act sets out a standardised reporting framework whereby relevant employers with 100 or more employees report annually against six gender equality indicators (GEIs). This has established a world-leading, comprehensive, and longitudinal dataset on workplace gender equality. This dataset provides for increased understanding and awareness of the state of workplace gender equality in Australia and identifies where action is required.

The reforms in the Closing the Gender Pay Gap Bill build on the Act by enhancing employer accountability for progressing gender equality in their workplaces. It does so by implementing recommendations from the Review of the Act, including:

- Recommendation 2 Publish organisation gender pay gaps to accelerate action to close them
- Recommendation 3.1.c Rename the minimum standards to be 'gender equality standards'
- Recommendation 3.2.b Require relevant employers to provide the Executive Summary report and Industry Benchmark report from WGEA to employers to their Board/Governing Body

i In 2021, the Australian Government initiated a targeted review of the Act, with the aims to enhance the legislation, ensure that it remained relevant and fit for future reporting, and reduce the regulatory burden on relevant employers. The Review included stakeholder consultation. In March 2022, the Government released the Review report which included ten recommendations. These have since been accepted by the Government.







¹ The GEIs are: 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; GEI 4 – availability and utility of employment terms, conditions and practices relating to flex ble working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities; GEI 5 – consultation with employees on issues concerning gender equality in the workplace; and GEI 6 – any other matters specified by the Minister – sex-based harassment and discrimination.

- Recommendation 5.1 Include 'sex-based harassment and discrimination' as a gender equality indicator
- Recommendation 9.2 To avoid confusion with company director roles, change the title of the 'Director of WGEA' to Chief Executive Officer (CEO).

The Agency acknowledges that the publication of employer gender pay gaps presents a shift in WGEA's use and output of this data. Therefore, this submission focuses on the publishing of employer gender pay gaps, with reference to WGEA's dataset, the relevant research, and plans for implementation. The submission first provides additional context related to the Closing the Gender Pay Gap Bill and the state of workplace gender equality in Australia, and also briefly discusses amendments in the Bill related to recommendations 3.1.c, 3.2.b and 5.1 and how their implementation can increase employer accountability for gender equality.

The Agency is excited to work with employers and other stakeholders to implement the Closing the Gender Pay Gap Bill and to enhance employer understanding and action on workplace gender equality.

Key points

- WGEA is supportive of the reforms in the Closing the Gender Pay Gap Bill. The reforms contribute to
 a more comprehensive and transparent dataset on workplace gender equality, enhance employer
 accountability for gender equality in their workplaces, and are foundational to broader reforms
 placing renewed emphasis on workplace gender equality in Australia.
- WGEA has been engaged in the Bill's development, where appropriate or when requested, and looks forward to engaging with and supporting employers in the implementation of the reforms when passed.
- Relevant employers have made progress against most GEIs since reporting to WGEA first began, but progress has begun to stall in recent years and the gender pay gap has remained unchanged in the last two reporting periods.
- The reform in the Bill to publish employer gender pay gaps presents an opportunity for employers to take action on their gender pay gaps. The evidence base on the publication of employer gender pay gaps continues to emerge and indicates employer, employee, and public engagement.
- Other reforms in the Bill articulate issues important to progressing gender equality in Australian workplaces, including setting standards for gender equality, leadership commitment, and addressing sexual harassment, harassment on the ground of sex or discrimination.

The Closing the Gender Pay Gap Bill contributes to broader reforms on workplace gender equality in Australia

WGEA has been integrally involved and engaged in processes leading up to the introduction of the Closing the Gender Pay Gap Bill. In 2021, WGEA made a written submission to the Review of the Act, articulating 31 recommendations to enhance employer reporting and the dataset. Many of these recommendations align with those emerging from the Review. Throughout 2022 and 2023, WGEA provided support, as appropriate and when requested, to the Office for Women in the Department of Prime Minister and Cabinet which has driven the process for legislative change.

WGEA is supportive of the Closing the Gender Pay Gap Bill. The Bill is a significant piece set within broader reforms that place renewed emphasis on workplace gender equality in Australia. This includes the remade Legislative Instruments, the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2023 and Workplace Gender Equality (Gender Equality Standards) Instrument 2023, which implement other recommendations from the Review. Together the Bill and accompanying Legislative Instruments fulfil almost all of the recommendations requiring legislative amendment in the Review, and WGEA will continue to work with the Government to address the outstanding recommendations.

This also includes recommendations emerging from the National Inquiry into Sexual Harassment in Australian Workplaces and its culminating report A Roadmap for Respect: Preventing and Addressing Sexual Harassment in Australian Workplaces (Respect@Work Report). Through the development of good practice indicators and their inclusion in the remade Legislative Instrument, employer reporting on sexual harassment prevalence, prevention, and response in the workplace is set to expand. The Respect@Work







Report also recommended mandatory reporting to WGEA by Commonwealth public sector employers. In November 2022, the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022* was passed, which amended the Act to require all Commonwealth public sector employers with 100 or more employees to commence mandatory reporting to WGEA in 2023.

The Closing the Gender Pay Gap Bill is foundational to these reforms, which will contribute to a more comprehensive dataset and deeper insights on Australia's progress in workplace gender equality outcomes.

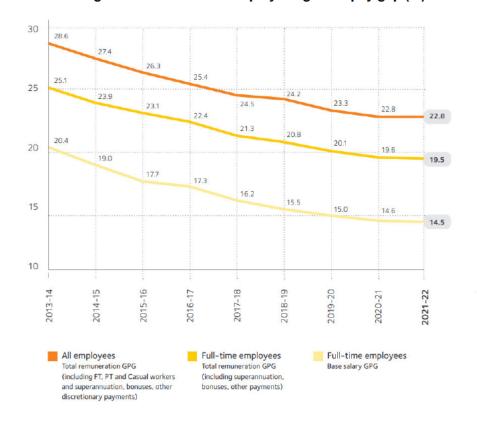
The state of workplace gender equality in Australia and the gender pay gap

The Agency engages relevant employers to progress gender equality in their workplaces and report data to WGEA on an annual basis against the six GEIs. The Agency's comprehensive dataset now comprises nine years of employer reporting data, which shows a clear picture of the state of workplace gender equality in Australia and also where employers still need to improve.

Overall, employers have made progress against most GEIs since reporting to WGEA first began. The data shows gains in women's representation in the workforce and policies and/or strategies related to gender equality, with significant increases in the proportion of employers offering flexible working arrangements, support for employees who are carers or parents, and support for employees experiencing family or domestic violence. The proportion of organisations that conducted a gender pay gap analysis has also increased, while the gender pay gap has generally decreased incrementally each year since reporting to WGEA began.

At the same time, recent reporting periods indicate that employer progress has begun to stall and that employers are not necessarily taking action to address their gender pay gaps. The gender pay gap has remained unchanged in the last two reporting periods, at 22.8% in both 2020-21 and 2021-22.iii This is significant because the gender pay gap indicates how women and men are valued in the workforce.

Change in full-time and all employees gender pay gap (%)



iii This is the total remuneration gender pay gap for all employees in the dataset. It includes salary, superannuation, bonuses and other discretionary payments for full-time, part-time and casual workers.







The gender pay gap is different to equal pay. Equal pay is where women and men are paid the same for performing the same role or different work of equal or comparable value. In Australia, this is a legal requirement.

The gender pay gap is an internationally established measure, which calculates the difference between the average earnings of women and men, expressed as a percentage of men's earnings.

Male Average Earnings – Female Average Earnings

GPG = 100% * Male Average Earnings

The gender pay gap is the result of the social and economic factors that combine to reduce women's earning capacity over their lifetime. These factors include gender discrimination and bias, gender segregation by occupation and industry, women taking on the majority of unpaid care and domestic work, women's underrepresentation in leadership and full-time employment, and lack of workplace flexibility.¹

The Agency's dataset shows a persistent gender pay gap in favour of men across all industries and occupations and the dataset as a whole. The publication of employer gender pay gaps presents an opportunity to generate new momentum and action among employers in addressing the gender pay gap.

Enhancing employer transparency on gender equality through the publication of gender pay gap data

The Agency is responsible for calculating gender pay gaps in Australia. Through annual reporting, relevant employers submit employee remuneration data to WGEA. WGEA uses this data to calculate gender pay gaps, including aggregate gender pay gaps by industry, occupation, and across the whole dataset as well as the gender pay gap for each employer. Currently, WGEA publicly publishes aggregate gender pay gaps, meaning by industry and occupation and across the whole dataset. The Act prohibits WGEA from publishing employer gender pay gaps. Employers receive their individual gender pay gap figures in a confidential report. All other employer data reported to WGEA, except remuneration data, is made public.

The absence of employer gender pay gaps – "arguably the most important variable" – in the Agency's public dataset makes the dataset less useful for improving gender equality outcomes.² The passage of the Closing the Gender Pay Gap Bill will remove the confidentiality of employer gender pay gaps, enabling WGEA to publish this data.

The research on publishing gender pay gaps shows employer-level impacts and engagement

The publication of employer gender pay gaps is important to promoting and improving gender equality outcomes in Australian workplaces. Given the publication of gender pay gaps is a relatively new area for policymaking and related research, the evidence base for assessing trends and impacts is still emerging. However, research on the United Kingdom's (UK) gender pay gap reporting regulations indicates organisational impacts following the passage of legislation on the publication of employer gender pay gaps.

While gender equality reporting schemes vary across country contexts,³ the UK gender pay gap reporting regulations came into force in 2017, requiring organisations with 250 employees or more to calculate and report their gender pay gaps. The employer gender pay gap data is published and made transparent to the public.⁴

The public reporting of gender pay gap data elicited both employer, employee, and public reaction. Research commissioned by the UK Government Equalities Office finds that some employers have prioritised the gender pay gap, iv and over three-quarters of organisations (76%) have tried to identify the causes of their gender pay gaps. The majority of employers also reported greater engagement on the issue within their organisations, including increased awareness by the board (70%), board discussions about the gender pay

^{iv} 23% of organisations reported the gender pay gap as a high priority, 38% reported it as a medium priority and 35% a low or non-priority.







gap (63%), and board action on the gender pay gap (47%). Board engagement was more likely among larger employers.⁶

Other research also suggests that the size of the organisation or of the organisation's gender pay gap can influence employer action to address gender pay gaps following their publication. For instance, research on UK reporting employers finds a greater narrowing in gender pay gaps by companies with larger gender pay gaps, as well as those companies with a gender pay gap above the average of their industry peers. Other research indicates that, between the first and second year of reporting in the UK, smaller firms (between 250-499 employees) with few female staff had made modest improvements in their gender pay gaps at 0.41 percentage points.

Preliminary studies have identified other effects on the gender pay gap following their publication. These include changes in workplace gender composition due to women progressing to higher wage brackets ¹⁰ and pay compression from the top, impacting men's wages. ¹¹ One analysis finds that women's wages increased while men's wages increased at a slower rate in order to narrow the gender pay gap. ¹² A separate study attributes the decrease in men's wages to fewer promotions together with nominal pay decreases in highly paid jobs. ¹³

Companies were also more likely to include wage information in online job advertisements following the requirement to publicly report gender pay gaps. ¹⁴ This action may contribute to higher levels of gender equality within an organisation and help to address the "gender ask gap," ¹⁵ which describes persistent gender inequality in workplace negotiation and contributes to the gender pay gap in turn. ¹⁶

The majority of UK organisations (81%) also reported "little or no staff reaction" to the gender pay gap results among employees. An additional 16% of organisations said there was some but not widespread reaction among staff, and 2% reported "widespread reaction," such as concerns and questions being raised by employees. Among those organisations with high gender pay gaps of over 20%, 3% of those organisations reported widespread reaction from their employees. To Other research on the UK's gender pay gap reporting does not find any ill effects of publication on employee productivity or retention. Survey evidence finds that women prefer to work at organisations with smaller pay gaps, while the publication of employer gender pay gaps can act as an "information shock" that attracts public attention and highlights potential reputational risk for employers.

Publishing employer gender pay gap data can enhance understanding of the causes and consequences of the gender pay gap. At minimum, it can increase awareness and initiate conversations among employers, employees, and the public about the gender pay gap and gender equality in the workplace. It can also motivate action to address and close the gender pay gap.

WGEA will support employers in the publication of their gender pay gaps

With the passage of the Closing the Gender Pay Gap Bill, WGEA will publish employer gender pay gaps in addition to aggregate gender pay gaps on an annual basis. WGEA will publish private sector employers' gender pay gaps for the first time in early 2024, covering data from the 2022-2023 reporting period. WGEA will publish Commonwealth public sector employers' gender pay gaps for the first time in late 2024 or early 2025, covering data from the 2023 reporting period. VII

WGEA will publish the employer gender pay gaps of reporting employers and submission groups with 100 or more employees. Individual employees' pay information will continue to be confidential, in line with WGEA's obligations under the *Privacy Act 1988*.

The remade Legislative Instrument on the gender equality indicators will also enable WGEA to collect remuneration data for CEOs or the equivalent. Therefore, CEO remuneration will be included in the employer gender pay gap calculations once reporting against the remade Legislative Instrument commences. WGEA anticipates that CEO remuneration will be included in employer gender pay gap calculations that are published in 2025.







The remaining 1% of organisations reported that they did not know the reaction among employees.

vi The reporting period for private sector employers is 1 April to 31 March.

vii The reporting period for public sector employers is 1 January to 31 December.

The published employer gender pay gap data will include:

- The employer's mean gender pay gap, expressed as a percentage and the average dollar difference between women and men.
- The employer's median gender pay gap, expressed as a percentage and the average dollar difference between women and men.
- A quartile analysis of the employer's gender pay gap and workforce composition.

Employers will have the opportunity to provide a supporting narrative which outlines the actions they are taking to address their gender pay gaps. These data outputs generally align with those in the UK. The data will be available on WGEA's website.

The publication of gender pay gaps presents an opportunity for workplaces in Australia. At the same time, WGEA appreciates and is aware that this shift in the use of gender pay gap data may present a challenge for some employers. WGEA is ready to assist employers. The Agency has established a small Capacity Building Team to work directly with employers, both collectively and, as feasible, individually to support their efforts to close the gender pay gap. The Agency will also set the publication of gender pay gap data within an educational and capacity building framework aimed at increasing employer and employee understanding of the gender pay gap and ways to address it. Relatedly, WGEA will communicate with employers prior to making gender pay gaps public, and enhance its public communications on the gender pay gap to increase awareness and understanding across Australia.

Enhancing employer accountability for gender equality

The Closing the Gender Pay Gap Bill also sets out other measures that will enhance employer accountability for and focus on workplace gender equality.

Rename the minimum standards to 'gender equality standards'

The Bill amends the Act to rename the 'minimum standards' as 'gender equality standards.' While other amendments to the standards will come through the remade Legislative Instrument, the change in name makes clear and provides a renewed focus on the importance of the standards to enhance gender equality in organisations. This is important given that currently most employers, to which the minimum standards are applicable, ix have met them.

Require relevant employers to provide the Executive Summary report and Industry Benchmark report to the Governing Body

Leadership commitment and ownership is integral and important to the success of a workplace gender equality strategy.²¹ This is well established and is a consistent feature of best practice in workplace gender equality.²²

The requirement to provide the Executive Summary report and Industry Benchmark report that an employer receives from WGEA to their governing body better ensures that an employer's leadership is informed about their progress against the gender equality indicators and how they are performing relative to their industry peers. Evidence from the UK gender pay gap reporting demonstrates how an increase in information contributed to greater engagement on gender equality among boards.²³ Leadership commitment is an important step in creating change in an organisation.

Include 'sex-based harassment and discrimination' as a gender equality indicator

Currently under the Act, GEI 6 is "any other matters specified in an instrument under subsection (1A)" which has been specified in the relevant Legislative Instrument as sex-based harassment and discrimination. The passage of the Bill will make sexual harassment, harassment on the ground of sex or discrimination a GEI in the Act. This amendment articulates that sexual harassment, harassment on the ground of sex or







vii This means providing data on the gender pay gap for the employer's highest paid quarter, upper middle quarter, lower middle quarter, and lowest paid quarter, along with the gender composition of each pay quarter (by percentage). The Agency would account for issues of privacy, particularly for smaller-sized companies, prior to the publication of data by quartiles.

ix The minimum standards apply to relevant employers with 500 or more employees.

discrimination are workplace gender equality issues that must be addressed to enable employees' full participation in the workforce.²⁴

In addition, the change in language from "sex-based harassment and discrimination" to "sexual harassment, harassment on the ground of sex or discrimination" aligns the Act with best practice guidance emerging from the Respect@Work Report. The remade Legislative Instrument will also enhance reporting requirements against GEI 6.

Conclusion

The Closing the Gender Pay Gap Bill is important to enhance understanding and action on issues of workplace gender equality in Australia. The Bill, and other related reforms on workplace gender equality in Australia, come at a time when employer progress on the gender pay gap has begun to stall. Building on the strong foundation of the *Workplace Gender Equality Act 2012*, the Bill aims to increase the value and utility of WGEA's dataset through increased transparency of employer gender pay gaps and employer accountability on workplace gender equality. The Agency welcomes the reforms in the Bill and looks forward to engaging and supporting employers in their successful implementation.

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¹ See KPMG, with Diversity Council Australia and WGEA (2022), She's Price(d)less: The economics of the gender pay gap, viewed 21 February 2022, available:

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² 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.

³ See, for instance, Cowper-Coles, M, Glennie, M, Borges, AM, Schmid, C (2021), Bridging the gap? An analysis of gender pay gap reporting in six countries, Global Institute for Women's Leaderships at King's College London, The Fawcett Society, The Thomson Reuters Foundation, Bowmans; The Fawcett Society, Global Institute for Women's Leadership - King's College London, & Thomson Reuters Foundation (2020), Gender pay gap reporting: A comparative analysis, viewed 22 February 2023, available: https://www.kcl.ac.uk/giwl/assets/gender-pay-gap-reporting-a-comparative-analysis.pdf.

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