



Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Act 2023

No. 18, 2023

An Act to amend the *Workplace Gender Equality Act 2012*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Act 2023

No. 18, 2023

An Act to amend the *Workplace Gender Equality Act 2012*, and for related purposes

[Assented to 11 April 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Act 2023*.

No. 18, 2023 *Workplace Gender Equality Amendment (Closing the Gender Pay Gap)* 1
Act 2023

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	12 April 2023

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments

Division 1—Publishing gender pay gap information

Workplace Gender Equality Act 2012

1 Section 2B (at the end of the paragraph beginning “Those reports are available to the public”)

Add “Information contained in those reports may also be used in publishing information for the purposes of showing a relevant employer’s performance and progress in achieving gender equality in relation to remuneration for the employer’s workforce.”.

2 At the end of subsection 13C(2)

Add:

Note: However, such information may be used for the purposes of publishing information under subsection 15A(1) (see subsection 15A(3)). The publishing of information under subsection 15A(1) is subject to certain protections (see subsection 15A(4)).

3 At the end of subsection 14(1)

Add:

Note: However, such information may be used for the purposes of publishing information under subsection 15A(1) (see subsection 15A(3)). The publishing of information under subsection 15A(1) is subject to certain protections (see subsection 15A(4)).

4 At the end of subsection 14A(1)

Add:

Note: However, such information may be used for the purposes of publishing information under subsection 15A(1) (see subsection 15A(3)). The publishing of information under subsection 15A(1) is subject to certain protections (see subsection 15A(4)).

5 After section 15

Insert:

15A Agency must publish information for relevant employers— achieving gender equality in relation to remuneration

- (1) The Agency must 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 the employer's workforce.
- (2) The information may be published by electronic or other means.
- (3) The Agency may use information in a public report for the purposes of subsection (1).
- (4) However, the Agency must not publish information under subsection (1) that discloses, either directly or indirectly:
 - (a) personal information; or
 - (b) other information about the remuneration paid to a specific individual.

Division 2—Gender equality standards

Workplace Gender Equality Act 2012

6 Subsection 3(1)

Insert:

gender equality standard: see subsection 19(1A).

7 Subsection 3(1) (definition of *minimum standard*)

Repeal the definition.

8 Section 18 (paragraph beginning “The Minister will set minimum standards”)

Omit “will set minimum standards”, substitute “must set gender equality standards”.

9 Section 19 (heading)

Omit “**will set minimum standards**”, substitute “**to set gender equality standards**”.

10 Subsection 19(1)

Repeal the subsection, substitute:

- (1) The Minister must, by legislative instrument, set standards in relation to specified gender equality indicators, specified relevant employers and specified reporting periods.

Note 1: The Minister must consult the Agency before making legislative instruments under this Act (see section 33A).

Note 2: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

Note 3: An instrument under subsection (1) may make different provision with respect to different relevant employers and different reporting periods (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

- (1A) A standard set by an instrument in force under subsection (1) is to be known as a **gender equality standard**.

11 Paragraph 19A(1)(a)

Omit “minimum standards”, substitute “gender equality standards”.

12 Section 19C (heading)

Omit “**minimum standard**”, substitute “**gender equality standard**”.

13 Paragraph 19C(b)

Omit “minimum standard”, substitute “gender equality standard”.

14 Section 19E (heading)

Omit “**minimum standards**”, substitute “**gender equality standards**”.

15 Paragraph 19E(b)

Omit “minimum standard”, substitute “gender equality standard”.

Division 3—Giving reports to governing bodies

Workplace Gender Equality Act 2012

16 Subsection 3(1)

Insert:

CEO, when used in relation to a relevant employer, means the Chief Executive Officer (however described) of the relevant employer.

executive summary report, for a relevant employer for a reporting period, means a report that:

- (a) is given by the Agency to the relevant employer; and
- (b) contains a summary of the information contained in a public report prepared by the relevant employer in respect of the reporting period.

industry benchmark report, for a relevant employer for a reporting period, means a report that:

- (a) is given by the Agency to the relevant employer; and
- (b) compares the information contained in a public report prepared by the relevant employer in respect of the reporting period with the information contained in public reports prepared by similar relevant employers in respect of the reporting period.

17 Paragraph 13(5)(b)

Omit “chief executive officer (however described)”, substitute “CEO”.

18 After section 16B

Insert:

16C Certain reports to be given to relevant employer's governing body

Executive summary reports

- (1) The CEO of a relevant employer must, after receiving from the Agency an executive summary report for the employer for a reporting period, cause a copy of the report to be given to each member of the employer's governing body (if any).

Industry benchmark reports

- (2) The CEO of a relevant employer must, as soon as reasonably practicable after receiving from the Agency an industry benchmark report for the employer for a reporting period, cause a copy of the report to be given to each member of the employer's governing body (if any).

Giving reports together

- (3) If, as at the time a relevant employer receives an industry benchmark report for the employer for a reporting period from the Agency:
 - (a) the employer has received from the Agency an executive summary report for the employer for the period; but
 - (b) copies of the executive summary report have not been given to members of the employer's governing body as mentioned in subsection (1);then the CEO of the employer must cause the copies of the executive summary report to be given to the members of the governing body together with the copies of the industry benchmark report.

19 After section 19C

Insert:

19CA Relevant employer fails to comply with Act if certain reports are not given to governing body

For the purposes of section 19D, a relevant employer is taken to fail to comply with this Act without reasonable excuse if the CEO

of the relevant employer fails, without reasonable excuse, to comply with subsection 16C(1), (2) or (3) (certain reports to be given to relevant employer's governing body).

Note: The Agency may name the employer in a report given to the Minister or by electronic or other means: see section 19D.

Division 4—Gender equality indicators

Workplace Gender Equality Act 2012

20 Subsection 3(1) (paragraph (f) of the definition of employment matters)

Omit “sex-based harassment of employees in the workplace”, substitute “sexual harassment, or harassment on the ground of sex, of employees in the workplace, or discrimination against employees in the workplace”.

21 Subsection 3(1) (after paragraph (e) of the definition of gender equality indicators)

Insert:

(ea) sexual harassment, harassment on the ground of sex or discrimination;

22 Subsection 3(1)

Insert:

harass on the ground of sex has the same meaning as in the *Sex Discrimination Act 1984*.

Note: Other parts of speech and grammatical forms of “harass on the ground of sex” (for example, “harassment on the ground of sex”) have a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

sexually harass has the same meaning as in the *Sex Discrimination Act 1984*.

Note: Other parts of speech and grammatical forms of “sexually harass” (for example, “sexual harassment”) have a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

Division 5—CEO of the Workplace Gender Equality Agency

Workplace Gender Equality Act 2012

23 Title

Omit “, to establish the Workplace Gender Equality Agency and the office of the Director of Workplace Gender Equality”, substitute “and to establish the Workplace Gender Equality Agency”.

24 Section 2B (paragraph beginning “There is a Director”)

Repeal the paragraph, substitute:

- | |
|---|
| <ul style="list-style-type: none">• The CEO has the management of the Agency. |
|---|

25 Subsection 3(1)

Insert:

CEO, except when used in relation to a relevant employer, means the Chief Executive Officer of the Workplace Gender Equality Agency.

26 Subsection 3(1) (definition of *Director*)

Repeal the definition.

27 Subsection 8A(2)

Omit “Director of Workplace Gender Equality”, substitute “CEO”.

28 Paragraph 8A(3)(b)

Omit “Director of Workplace Gender Equality”, substitute “CEO”.

29 Section 9

Repeal the section.

30 Part V (heading)

Omit “Director of Workplace Gender Equality”, substitute “CEO”.

31 Before section 20

Insert:

20AA CEO

- (1) There is to be a Chief Executive Officer of the Workplace Gender Equality Agency.
- (2) The Chief Executive Officer has the management of the Agency.
- (3) The office of Chief Executive Officer of the Workplace Gender Equality Agency is, for all purposes, a continuation under that name of the office of Director of Workplace Gender Equality established under section 9 of this Act as in force immediately before the commencement of this section.

Note: See also section 25B of the *Acts Interpretation Act 1901*.

32 Amendments of listed provisions—CEO

Omit “Director” (wherever occurring) and substitute “CEO” in the following provisions:

- (a) subsection 12(1);
- (b) sections 20 and 21 (including the headings);
- (c) subsection 22(1);
- (d) sections 23, 24 and 25;
- (e) subsections 26(1) and (2);
- (f) subsection 27(1);
- (g) subsections 28(1), (2) and (3);
- (h) paragraph 28(4)(a);
- (i) subsections 28(5), (6) and (7);
- (j) subsection 29(2);
- (k) subsections 32(1) and (2);
- (l) subsection 33(1).

Division 6—Technical amendment

Workplace Gender Equality Act 2012

33 Subsection 3(1) (definition of *reporting period*)

Repeal the definition, substitute:

reporting period means:

- (a) for a relevant employer that is not a Commonwealth company or a Commonwealth entity—a period referred to in subsection 13A(2); or
- (b) for a relevant employer that is a Commonwealth company or Commonwealth entity—a period referred to in subsection 13A(2A).

Part 2—Application and transitional provisions

34 Gender pay gap information

Section 15A of the *Workplace Gender Equality Act 2012*, as inserted by this Schedule, applies in relation to reporting periods that start on or after:

- (a) for a relevant employer that is not a Commonwealth company or a Commonwealth entity—1 April 2022; or
- (b) for a relevant employer that is a Commonwealth company or Commonwealth entity—1 January 2023.

35 Minimum standards

- (1) An instrument made under subsection 19(1) of the *Workplace Gender Equality Act 2012* that was in force immediately before the commencement of this item continues in force (and may be dealt with) as if it had been made under subsection 19(1) of that Act as amended by this Schedule.
- (2) Subitem (1) does not affect when the instrument referred to in that subitem was made for the purposes of subsection 19(2) of that Act.

36 Director of Workplace Gender Equality

- (1) To avoid doubt, a person who was, immediately before the commencement of this item, holding office as the Director of Workplace Gender Equality continues to hold office, on and after that commencement, as the Chief Executive Officer of the Workplace Gender Equality Agency.
- (2) The person does so:
 - (a) on the terms and conditions that were applicable to the person immediately before that commencement; and
 - (b) for the balance of the person's term of appointment that remained immediately before that commencement.
- (3) Anything done by, or in relation to, the Director of Workplace Gender Equality before the commencement of this item has effect at and after that commencement as if it had been done by, or in relation to, the CEO.

37 Non-disclosure of confidential information

Section 32 of the *Workplace Gender Equality Act 2012*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a person who was at any time the Director of Workplace Gender Equality, despite the amendments of that section by this Schedule.

*[Minister's second reading speech made in—
Senate on 8 February 2023
House of Representatives on 28 March 2023]*

(1/23)
