

# **WORKPLACE GENDER EQUALITY (MATTERS IN RELATION TO GENDER EQUALITY INDICATORS) INSTRUMENT 2023 AND WORKPLACE GENDER EQUALITY (GENDER EQUALITY STANDARDS) INSTRUMENT 2023**

## **EXPLANATORY STATEMENT**

Issued by authority of the Minister for Women

under sections 13 and 19 of the *Workplace Gender Equality Act 2012*

### **PURPOSE AND OPERATION OF THE INSTRUMENTS**

The purpose of the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2023* (GEI Instrument) is to remake the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No.1)* (2013 Instrument) and give effect to recommendations from the review of the *Workplace Gender Equality Act 2012* (Review), published by the Department of the Prime Minister and Cabinet (PM&C) on 4 March 2022. Specifically, the GEI Instrument will implement recommendations 3.2 (a), 4.1 (b) (c), and 7.1 of the Review. The particular amendments are set out at **Attachment A**.

The purpose of the *Workplace Gender Equality (Gender Equality Standards) Instrument 2023* (GES Instrument) is to remake the *Workplace Gender Equality (Minimum Standards) Instrument 2014* (2014 Instrument) to implement recommendation 3.1(b) of the Review. The particular amendments are set out at **Attachment B**.

### **BACKGROUND**

#### **2013 Instrument**

Under section 13(1) of the *Workplace Gender Equality Act 2012* (Act), a relevant employer must prepare a public report in writing containing information relating to the employer and to the gender equality indicators as defined in the Act. Section 13(3) provides that the Minister must, by legislative instrument, specify matters in relation to each gender equality indicator (GEI). The 2013 Instrument has been made under section 13(3) of the Act. A public report lodged under the Act must contain details of the matters specified in the 2013 Instrument.

Recommendation 3.2(a), of the Review recommends amending the 2013 Instrument 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 the Workplace Gender Equality

Agency (Agency). This amendment seeks to embed accountability into the reporting process, and foster transparency of gender equality challenges and progress within organisations.

Under Schedule 1, section 3.1, relevant employers are currently required to calculate a full-time equivalent salary for casual and part-time employees. This is burdensome and can produce inaccurate data. Recommendation 4.1(b) of the Review recommends amending the 2013 Instrument to replace ‘annualised full-time equivalent figures’ and instead enable employers to report on actual earnings of part-time and casual employees, as well as the number of hours employees are engaged.

Under Schedule 1, sections 4.6 and 4.7, employers are required to report on the proportion of the workforce who have access to employer-funded paid parental leave for primary and secondary carers, and the proportion of employees who took a period of parental leave who ceased employment during, or at the end of, that period. The Review found this is difficult for employers to calculate and, as such, the data is of varying degrees of quality and often inconsistent. Recommendation 4.1(c) recommended amending the wording from ‘proportion of workforce’ to ‘number of employees’ to reduce this burden.

The Act provides that all relevant employers must prepare a public report to the Agency containing information about the employer against six GEIs. The GEIs make up the Agency’s dataset. The Agency uses this dataset for analysis to support employers to drive gender equality in their workplaces. The specific information that employers are required to report on is included in the 2013 Instrument. Covering key information on gender equality in the workplace, the six gender equality indicators are as follows:

- a) GEI 1 – gender composition of the workforce
- b) GEI 2 – gender composition of governing bodies
- c) GEI 3 – equal remuneration between women and men
- d) GEI 4 – availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities
- e) GEI 5 – consultation with employees on issues concerning gender equality in the workplace
- f) GEI 6 – sex-based harassment and discrimination.

The Review found that many stakeholders support the existing GEIs, but recommended a number of improvements to fine-tune them. Employers already voluntarily report on items beyond the current GEIs that produce a more detailed, nuanced picture of gender equality in the workplace. This includes employee age, primary workplace location and whether superannuation is paid on parental leave. Collecting this additional data provides valuable insights for employers and policy makers. As a

result, Recommendation 7.1 of the Review proposed to amend the 2013 Instrument to include mandatory reporting on:

- a) employee age (year of birth),
- b) employee's primary workplace location,
- c) whether superannuation is paid by an employer when an employee is on paid, unpaid employer-funded and/or government-funded parental leave, noting many employers report voluntarily, and
- d) remuneration data for Chief Executive Officers (CEOs) or the equivalent. Individual remuneration would not be made public but would be aggregated to calculate gender pay gaps and other relevant information.

## **2014 Instrument**

Section 19(1) of the Act provides that the Minister will, by legislative instrument, set minimum standards in relation to specified gender equality indicators, specified relevant employers and specified reporting periods. A public report lodged under the Act must contain details of the matters specified in the 2014 Instrument.

The 2014 Instrument sets out the minimum standards which apply to relevant employers with 500 or more employees. Under section 5(3) of the 2014 Instrument, relevant employers with 500 or more employees must have policies or strategies in place to support one or more of the following indicators:

- a) gender composition of the workforce,
- b) equal remuneration between women and men,
- c) flexible working arrangements; and
- d) sex-based harassment and discrimination.

A consistent theme throughout the consultation process for the Review was that employers should take action to improve gender equality in their workplaces, in order to comply with the Agency's reporting requirements. Stakeholders recommended strengthening of the current minimum standards as a mechanism to drive change toward gender equality in the workplace. Stakeholders noted the current legislative framework only requires employers to report to the Agency to comply under the Act – without any need for employers to take action and show they are making measurable progress on gender equality in their workplace. The review highlighted a clear concern that progress is not happening fast enough and the current bar for compliance and the minimum standards is too low.

To accelerate gender equality in workplaces, Recommendation 3.1(b) recommended that the existing minimum standards be strengthened to require relevant employers with 500 or more employees to

have a policy or strategy against all six gender equality indicators, not just one of four as is currently the case.

## **CONSULTATION**

Under section 33A of the Act, the Minister is required to consult with the Agency before making a legislative instrument under the Act and have regard to any recommendations of the Agency. The Minister must also consult such persons mentioned in subsection 31(3) of the Act as the Minister considers appropriate. This includes persons representing industry or business, employee organisations or higher education providers and persons having special knowledge or interest in relation to gender equality in the workplace, the functions of the Agency or the operation of the Act. This also reflects the consultation requirements set out in Part 3 of the *Legislative Instruments Act 2003*.

The former Australian Government announced the Review in the Women's Budget Statement 2021–22. On Wednesday 20 October 2021, the former Minister published a media release to announce the Review consultation was public on the PM&C website. On 20 October 2021, the Review Consultation Paper was published on the PM&C website and circulated on social media. The Review team also notified key stakeholders to inform them of the consultation.

Consultation was undertaken with a number of stakeholders, including the Agency and industry groups. Consultations were held via virtual roundtables with stakeholders from a variety of organisations and targeted representatives from the business and not-for-profit sectors, employee organisations, higher education providers, the women's sector, users of the Agency data and other interested parties.

Australian Government officials were convened for a virtual roundtable, as were State and Territory Government officials. Relevant Australian Government departments and agencies engaged included PM&C, Treasury, Department of Finance, the Australian Bureau of Statistics, the Australian Taxation Office, and the Australian Public Service Commission, among others.

Government and private sector data experts were convened for a virtual data roundtable. Stakeholders were invited to respond to the consultation paper which was released on 20 October 2021. The consultation paper invited written responses for 10 questions. Submissions were due on 24 November 2021 and 155 submissions were received. Submissions to the Review were published on the PM&C website.

Consultation on the implementation of the Review was carried out by the Office for Women (OFW) in PM&C over August and September of 2022. The consultation process was executed in two parts: a survey to relevant employers and targeted roundtables.

## *Survey*

An Expression of Interest was circulated to over 10,000 relevant employer reporting contacts by the Agency on behalf of the OFW and 420 responses were received by OFW and a link to an online survey was circulated to these interested parties.

The online survey was completed by a total of 344 respondents. The survey was open for completion from 22 August 2022 to 16 September 2022. The survey was split into three sections where the Review specifically called for further consultation with relevant employers:

- Section 1 – Recommendation 2: Publish organisational gender pay gaps
- Section 2 – Recommendation 3: Strengthen minimum standards
- Section 3 – Recommendation 7: including a range of issues including ANZSCO categories, reporting at a group structure level and timing of reporting.

## *Targeted Roundtables*

Targeted roundtables were conducted with key stakeholders on recommendations of particular importance/sensitive recommendations. On 20 September 2022, a roundtable was held with peak business bodies, including the Australian Industry Group and Business Council of Australia, to explore areas of the Review that were of interest or concern. There was general support for the setting and measuring of targets under Recommendation 3.

## **IMPACT ANALYSIS**

The Impact Analysis (IA) for amendments to the *Workplace Gender Equality Act 2012* and subordinate instruments considers the regulatory impact of Recommendations 2, 3, 4, and 7 on individuals, businesses and government.



**Australian Government**

**Department of the Prime Minister and Cabinet**

## Changes to the *Workplace Gender Equality Act 2012*



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## 1. Executive Summary

This Impact Analysis (IA) explores the impacts of proposed policies to address workplace gender inequality on stakeholders. The IA sets out positive and negative impacts in relation to three policy options to determine which option is preferred. Each of the options proposes a different approach to implementing select recommendations of the Review of the *Workplace Gender Equality Act 2012* (the Review).<sup>1</sup>

The Review was released in March 2022 by the former Government and concluded that the gender pay gap in Australia was not closing at a fast enough rate. Work to progress women's economic equality in Australia has been fragmented, leading to the current gender pay gap, as calculated by data from the Workplace Gender Equality Agency (WGEA), of 22.8 per cent, the same as it was in 2021.<sup>2</sup> From the early stages of their career until they retire, women in Australia experience gender inequality in the workplace, despite record high women's workforce participation. The gender pay gap demonstrates that gender inequality remains a persistent issue in Australian society with complex drivers.

The Review considered if the WGEA had the appropriate powers, tools and levers to achieve the objectives of the *Workplace Gender Equality Act 2012* (the WGE Act). WGEA is a statutory agency charged with promoting and improving gender equality in Australian workplaces. Each year WGEA facilitates the public reporting of businesses with 100 or more employees against six Gender Equality Indicators (GEIs). Further information on WGEA and the Review is at Appendix A. The Review made ten recommendations to accelerate the rate of change on workplace gender inequality and reduce the reporting burden on businesses. In August 2022, the Government agreed in-principle to implement all ten of the Review recommendations, subject to further consultation on the design and implementation of the legislative changes

In accordance with the Office of Impact Analysis' Guide to Regulation Impact Assessment (the Guide), this IA considers the findings and recommendations of the Review in order to determine the policy option which best addresses the defined problem.

This IA defines the problem as gender inequality in the workplace, encompassing three elements identified from the Review:

1. Gaps exist in the current dataset;
2. Certain elements of reporting are burdensome on businesses; and
3. Current regulation is not ambitious enough to drive change in gender inequality.

Three policy options are proposed under the IA in order to address the problem.

### **Option 1: Maintaining the status quo**

This option would not implement any recommendations of the Review, maintaining the status quo. This would result in the WGEA framework and reporting system continuing as currently designed and the three elements of the problem remaining unaddressed.

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<sup>1</sup> Department of Prime Minister and Cabinet 'WGEA Review Report' (2022), <https://www.pmc.gov.au/resource-centre/office-women/wgea-review-report;>

<sup>2</sup> WGEA, Australia's Gender Equality Scorecard 'Key results from the WGEA Employer Census 2021-22' December 2022 [WGEA-Gender-Equality-Scorecard-2022.pdf](https://www.wgea.gov.au/~/media/00000000000000000000000000000000/WGEA-Gender-Equality-Scorecard-2022.pdf)

**Option 2:** Improve reporting for businesses (Implement Recommendation 4)

This option would only implement recommendation 4 of the Review (reduce the regulatory burden on employers). This option would address element 2 of the problem through three different changes to reporting. This option streamlines reporting by reducing regulatory burden and would allow employers more time to focus on organisational change, however it does not address elements 1 and 3 of the problem.

**Option 3:** Improve reporting for businesses and drive cultural change to close the gender pay gap through better transparency, accountability and information (Implement Recommendations 2, 3, 4, and 7).

This option would implement Recommendations 2, 3, 4 and 7 of the Review and address all three elements of the problem. Recommendations 2 (publishing of gender pay gaps at the organisation level) and 3 (strengthening of minimum standards, including the addition of the new minimum standard requiring employers to achieve and report to WGEA against three genuine, measurable targets) are headline recommendations of the Review. These recommendations would address element 2 of the problem. Recommendation 7 (refine the GEIs) contains a number of changes to reporting that would broaden the dataset, addressing element 1 of the problem.

This IA has been developed alongside a process of consultation to support policy development. As is outlined in Chapter 10, broad initial consultation took place in order for the Review recommendations to be developed. Further targeted consultation took place in August and September 2022 through a survey to reporting employers and three targeted roundtables. This second round of consultation was held to determine impacts of the policy options on businesses, ensure the views of industry were considered when designing implementation, and to minimise risks.

After considering the views of stakeholders in consultation and assessing the overall net benefit of impacts on individuals, medium businesses, large businesses, community organisations and government, Option 3 was determined to be the preferred option. The drivers of gender inequality in Australian workplaces are complex and diverse. Policy interventions in this area require careful consideration, consultation with a variety of stakeholders and must adequately address the range of factors that contribute to the current unequal state of the workforce in Australia. Through implementing Recommendations 2, 3, 4 and 7 of the Review, Option 3 offers a multifaceted approach to accelerating the rate of change to address gender inequality in Australia and narrowing the gender pay gap.

This IA was subject to an early assessment and was assessed as sufficient to inform early decisions and was used to inform the final policy authority decision.

## 2. Introduction

### 2.1 Key concepts

This IA assesses the estimated costs and benefits of the three policy options.

Consistent with Australian Government guidance<sup>3</sup>, this IA has been developed alongside the consultation process for implementing the Review and the policy development process.

The below table sets out the seven IA questions and the corresponding chapters of this document:

IA Question	Relevant Document Chapter
Question 1: What is the policy problem you are trying to solve?	3. What is the problem?
Question 2: Why is government action needed?	4. Why government action is needed
Question 3: What policy options are you considering?	5. Policy options
Question 4: What is the likely net benefit of each option?	6. Approach taken to determine the likely net benefit of each option
	7. Likely net benefit of Option 1
	8. Likely net benefit of Option 2
	9. Likely net benefit of Option 3
Question 5: Who did you consult and how did you incorporate their feedback?	10. Consultation
Question 6: What is the best option from those you have considered?	11. Preferred Option
Question 7: How will you implement and evaluate your chosen option?	12. Implementation and evaluation of Option 3

Four main groups of stakeholders<sup>4</sup> will be considered by this IA:

1. Individuals;
2. Medium business (and community organisations);
3. Large businesses (and community organisations); and
4. Government.

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<sup>3</sup> The Office of Impact Analysis 'Australian Government Guide to Regulatory Impact Statements' (2020) <https://oia.pmc.gov.au/resources/guidance-impact-analysis/australian-government-guide-regulatory-impact-analysis>

<sup>4</sup> A small business (defined by the Australian Bureau of Statistics (ABS) as a business with less than 20 people) does not have to report to WGEA. This IA will not consider the impacts of policy options on small businesses as they are not required to report under the WGE Act. Small businesses are excluded from the stakeholder list as WGEA reporting requirements only apply to non-public sector businesses with 100 or more employees. Small business (or community organisations) with less than 100 employees, are specifically carved out from the WGEA reporting system. Small businesses are not in scope for reporting under the WGE Act as the regulatory cost for small business was considered too high. However, small businesses (and community organisations) will continue to benefit from macro-economic trends and benefits.

Medium sized businesses/community organisations are businesses with between 100 and 499 employees. Large businesses/community organisations are those with 500 or more employees. For the purposes of this IA, reference to workplaces will include both community organisation workplaces as well as businesses. These stakeholder groups will be considered in further detail in Chapters 6 - 9 to determine the likely net benefit from each of the three policy options.

## 2.2 What does the Australian workforce look like?

The Australian labour force is made up of 13.6 million people, equivalent to 64.2 per cent of the population aged 15 years and over.<sup>5</sup> In September 2022, the workforce participation rate was 62.3 per cent for women and 71.0 per cent for men.<sup>6</sup>

In February 2022, there were 791,000 women and 648,000 men who did not have a job and wanted to work.<sup>7</sup> The most common reasons women reported they were not actively looking for work were childcare (24.5 per cent) and study (16.4 per cent).<sup>8</sup> The most common reason for men was studying (24.2 per cent).<sup>9</sup>

WGEA collects information from relevant employers (non-public-sector employers including higher education institutions, trade unions and not-for-profit organisations) with 100 or more employees.<sup>10</sup> Approximately three quarters of Australian jobs are in the private sector, and around 70 per cent of private sector workers are employed by workplaces with fewer than 200 employees, with 40 per cent working in businesses with fewer than 20 employees.<sup>11</sup> The WGEA dataset covers approximately 40 per cent of employed persons.<sup>12</sup>

Australian businesses can be divided into three categories of business: small (less than 20 employees), medium (20 – 199 employees) and large. The current composition of employment across businesses is as follows:<sup>13</sup>

- Small businesses – 28.3 per cent
- Medium businesses - 22.1 per cent
- Large businesses - 41.7 per cent

Some jobs records had missing or unknown business size information and therefore these percentages do not add to 100.

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<sup>5</sup> ABS 'Labour Force, Australia' (September 2022) <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>

<sup>6</sup> ABS 'Labour Force, Australia' (September 2022) <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>

<sup>7</sup> ABS, 'Participation, Job Search and Mobility, Australia' (2022) <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/latest-release>

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> WGEA and the APSC have conducted a pilot with Commonwealth and state public sector organisations to inform the implementation of this recommendation across the Commonwealth public service. Voluntary public sector reporting for the Commonwealth public sector will be open from the 15th of July to 30th of September 2022. WGEA will be working with States and Territories to run a limited pilot program later in the year.

<sup>11</sup> ABS 'Jobs in Australia 2014-15 to 2018-19' (2021) <https://www.abs.gov.au/statistics/labour/jobs/jobs-australia/latest-release>

<sup>12</sup> Note this is expected to increase in 2023 when mandatory public sector reporting begins; <https://www.wgea.gov.au/about/governance/data-quality/2019-20-wgea-data-quality-report>

<sup>13</sup> ABS 'Jobs in Australia 2014-15 to 2018-19' (2021) <https://www.abs.gov.au/statistics/labour/jobs/jobs-australia/latest-release>

The breakdown of female employment by business size is shown in the table below:<sup>14</sup>

**Table 1: Breakdown of Female Employment by Business Size**

Number of Jobs ('000)					
Employment size	2014-15	2015-16	2016-17	2017-18	2018-19
Fewer than 5 employees	1,030.8	1,029.9	1,117.3	1,322.3	1,191.1
5–19 employees	1,259.4	1,244.2	1,319.0	1,297.4	1,331.3
20–199 employees	1,886.5	1,841.0	1,926.1	1,878.3	2,042.9
200 or more employees	3,819.1	3,936.9	4,132.4	4,142.1	4,464.6

In Australia, occupations and industries are highly gender segregated.<sup>15</sup> Occupational and industrial segregation refers to the unequal distribution of women and men in certain jobs or industries and is a key driver of the gender pay gap. An example of industrial segregation is the high proportion of women in Health Care (around 76 per cent) and Education and Training (around 72 per cent), relative to the low proportion of women in Construction (around 13 per cent) and Mining (around 19 per cent). This is different to occupational segregation, which involves the under-representation of women in high paying roles, such as management and chief executives, and over-representation in low paying roles, such as administration or care work.

A number of interactions result in complexities when looking at gender segregation in industries and the gender pay gap. Average remuneration in female-dominated organisations is lower than in male-dominated organisations.<sup>16</sup> However, female managers working in male-dominated organisations are more likely to earn salaries closer to their male colleagues.<sup>17</sup> Performance pay and other additional remuneration plays a greater role in male-dominated industries, leading to higher gender pay gaps for total remuneration.<sup>18</sup>

On an occupational level, male-dominated workplaces have smaller proportions of part-time employees, and full-time employees often work longer hours - attributes that may deter people with family and caring responsibilities.<sup>19</sup> The three industries with the highest gender pay gaps are:

1. Professional, Scientific and Technical Services;
2. Financial and Insurance Services; and
3. Health Care and Social Assistance.

Access to gender pay gap analysis can be found on WGEA's data explorer (accessible [here](#)) and is searchable by industry.

Women's capacity for paid work is constrained by their disproportionate share of unpaid work.<sup>20</sup> In 2020-21, women spent on average around 30 hours a week on unpaid care and housework, nine hours a week more than men.<sup>21</sup>

<sup>14</sup>ABS 'Jobs in Australia 2014-15 to 2018-19' (2021) <https://www.abs.gov.au/statistics/labour/jobs/jobs-australia/latest-release>

<sup>15</sup> For more information, see WGEA 'Gender Segregation in Australia's workforce' (2019) [https://www.wgea.gov.au/sites/default/files/documents/18\\_04\\_Industrial\\_segregation.pdf](https://www.wgea.gov.au/sites/default/files/documents/18_04_Industrial_segregation.pdf).

<sup>16</sup> Ibid.

<sup>17</sup> WGEA 'Gender Equality Workplace Statistics' (2022) <https://www.wgea.gov.au/publications/gender-equality-workplace-statistics-at-a-glance-2022>.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.



Women are more likely than men to have attained a Bachelor degree, or higher education qualification.<sup>22</sup> However, despite making up almost 50 per cent of the labour force, women only comprise 19.4 per cent of Chief Executive Officers (CEOs) and 33 per cent of board members.<sup>23</sup> For the first time in the WGEA dataset, as of 11 February 2022, women comprised more than 41 per cent of all managers (up from 36 per cent in 2013).<sup>24</sup> As at August 2022, 35.1 per cent of ASX200 Board positions were held by women, while 34.3 per cent of ASX300 Board positions were held by women.<sup>25</sup>

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<sup>20</sup> Ibid.

<sup>21</sup> ABS, 'How Australians Use Their Time, 2020-21' (2022) <https://www.abs.gov.au/statistics/people/people-and-communities/how-australians-use-their-time/latest-release>

<sup>22</sup> ABS 'Gender Indicators, Australia' (2021) <https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/latest-release>

<sup>23</sup> WGEA 'Women in Leadership' (2022) <https://www.wgea.gov.au/women-in-leadership>.

<sup>24</sup> WGEA 'Australia's Gender Equality Scorecard' (2022) [https://www.wgea.gov.au/sites/default/files/documents/2020-21\\_WGEA\\_SCORECARD.pdf](https://www.wgea.gov.au/sites/default/files/documents/2020-21_WGEA_SCORECARD.pdf).

<sup>25</sup> Australian Institute of Company Directors 'Gender Diversity Progress Report' (2022) <https://www.aicd.com.au/board-of-directors/diversity/women/ipos-an-opportunity-for-greater-gender-diversity.html>

### 3. What is the problem?

Workplace gender equality has not yet been achieved in Australia. Currently, Australia's gender pay gap is 22.8 per cent.<sup>26</sup> Estimates indicate, at the current rate of progress, it would take approximately 26 years to close the full-time gender pay gap.<sup>27</sup>

As of May 2022, women's average weekly ordinary full-time earnings across all industries and occupations was \$1,609.00 compared to men's average weekly ordinary full-time earnings of \$1,872.90. This means that on average, women earned \$263.90 less per week than men.<sup>28</sup> Research by KPMG (in partnership with the Diversity Council of Australia (DCA) and WGEA) found that the gender pay gap is equivalent to \$966 million per week, or around \$52 billion per year.<sup>29</sup>

The gender pay gap starts when women first enter the workforce and increases as women progress in their careers. The gender pay gap is 6 per cent at the start of a woman's career but progressively increases up to 18 per cent at top management levels.<sup>30</sup> At the age of 28 years, the income of women levels out to around \$1,000 to \$1,250 a week (on average), while male earnings steadily increase to over \$2,000 a week before age 40.<sup>31</sup>

A combination of factors affect women's lifetime economic security and make it more likely that over a lifetime, women will earn less than men, be less likely to advance their careers as far as men, and accumulate less superannuation and savings than men.<sup>32</sup> These factors combine to result in women being more likely to live in poverty in retirement.<sup>33</sup> Single women, in particular, are over-represented in the population below the poverty line and more likely to be financially vulnerable than the general population.<sup>34</sup>

This unequal playing field doesn't just impact a woman's financial security, but also has flow on effects to social and family life. The recent covid-19 pandemic in particular demonstrated how easy it is for progress in gender equality to slide backwards, with the gender pay gap slightly increasing and women's workforce participation rate declining. The below graphic from WGEA demonstrates the slight increase in the gender pay gap as a result of the COVID-19 pandemic.<sup>35</sup>

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<sup>26</sup> WGEA, Australia's Gender Equality Scorecard 'Key results from the WGEA Employer Census 2021-22' December 2022 WGEA-Gender-Equality-Scorecard-2022.pdf

<sup>27</sup> Cassells R & Duncan A (2021), Gender Equity Insights 2021: Making it a priority, BCEC|WGEA Gender Equity Series, Issue #6, March 2021

<sup>28</sup> WGEA, Gender Pay Gap Data, <https://www.wgea.gov.au/pay-and-gender/gender-pay-gap-data#:~:text=As%20of%20May%202022%2C%20women's,earned%20%24263.90%20less%20than%20men.>

<sup>29</sup> KPMG 'She's Price(d)less: The Economics of the Gender Pay Gap' (2022) <https://www.dca.org.au/research/project/shes-pricedless-2022-update-report>.

<sup>30</sup> She's Price(d)less, [https://www.dca.org.au/sites/default/files/report\\_shes\\_pricedless\\_2022.pdf](https://www.dca.org.au/sites/default/files/report_shes_pricedless_2022.pdf)

<sup>31</sup> HILDA 'Household, Income and Labour Dynamics in Australia Survey' (2019) Statistical Report, [https://melbourneinstitute.unimelb.edu.au/\\_data/assets/pdf\\_file/0011/3127664/HILDA-Statistical-Report-2019.pdf](https://melbourneinstitute.unimelb.edu.au/_data/assets/pdf_file/0011/3127664/HILDA-Statistical-Report-2019.pdf)

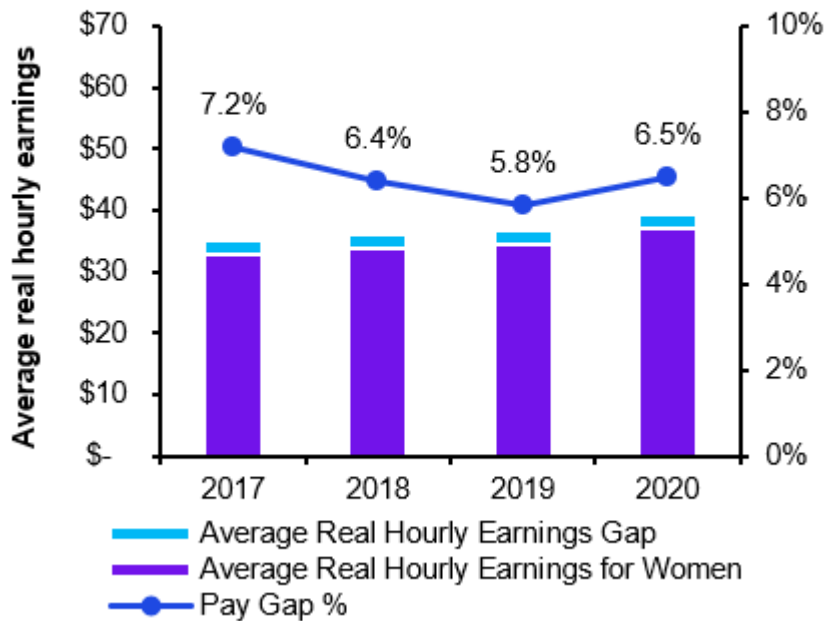
<sup>32</sup> She's Price(d)less, [https://www.dca.org.au/sites/default/files/report\\_shes\\_pricedless\\_2022.pdf](https://www.dca.org.au/sites/default/files/report_shes_pricedless_2022.pdf)

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> WGEA 'Fourth edition of the She's Price(d)less report released', 13 July 2022, <https://www.wgea.gov.au/publications/fourth-edition-of-the-shes-pricedless-report-released>

# COVID-19



**Figure 1: Australian Average Real Hourly Earnings**

The lifetime earnings gap between men and women has flow on impacts for older women, contributing to the increased likelihood of older women living in poverty, being reliant on the social safety net, retiring with less superannuation than men, and more likely to retire with no superannuation<sup>36</sup>.

A number of drivers contribute to the gender pay gap in Australia. Three key drivers of the gender pay gap are:<sup>37</sup>

1. Gender segregation in job type;
2. Gender discrimination; and
3. Care, family responsibilities and workforce participation.

These drivers cover a number of labour force challenges, social and cultural complexities and family dynamics. Addressing the problem of gender inequality in the workplace is a complex undertaking that requires a multi-faceted solution.

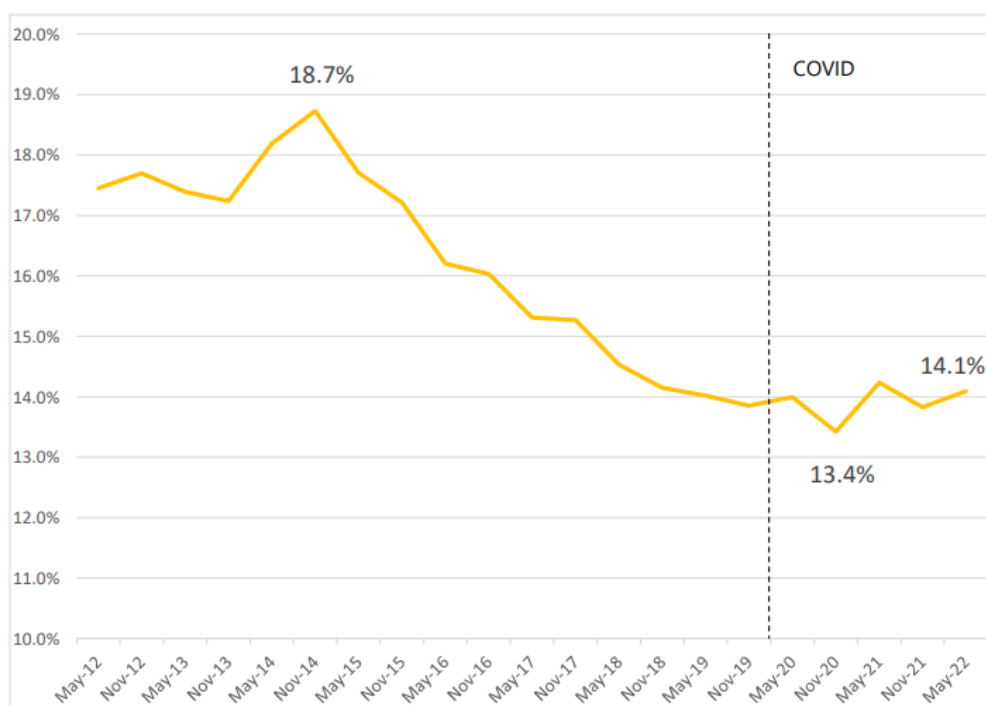
Accelerating progress on gender equality has many benefits for Australian workplaces. Businesses currently miss out on productivity enhancements, access to the best candidates and increased profits due to current levels of gender inequality. This foregone income and productivity also has negative ramifications for the economy and government.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

### 3.1 Current Government approach to addressing workplace gender inequality

WGEA has contributed to reducing the gender pay gap in Australia in the last decade through its work as an educator, influencer and regulator. Australia's national gender pay gap has been slowly reducing since the establishment of WGEA in 2012 (with the gender pay gap hovering between 13 per cent and 19 per cent, as seen in the graph below).<sup>38</sup>



**Figure 2: The Australian Gender Pay Gap Over Time, May 2012 – May 2022 (seasonally adjusted)**

While there are a number of factors contributing to this decline, the WGEA dataset is world-leading and gives a high-level picture of the progress being made on gender equality in workplaces over the years. In a survey conducted by DCA, almost two thirds (65 per cent) of respondents agreed or strongly agreed that reporting to WGEA helped them to understand gender equality in their workforce.<sup>39</sup>

WGEA's central role in working to achieve gender equality is complemented by other Government initiatives aimed at ensuring women's economic equality and broader wellbeing. Many of these initiatives are overseen by the Office for Women (OFW) and other departments.

The Government will introduce a National Strategy to Achieve Gender Equality to guide whole of government actions to achieve gender equality and help achieve our goal of being one of the best countries in the world for equality between women and men. The National Strategy will be developed by the OFW, led by the Government and will provide the roadmap for whole-of-community action. It will also act as an authorising framework for changes to policy and budgeting systems required to drive gender equality across Australia. The National Strategy will focus on

<sup>38</sup> WGEA 'Australia's Gender Pay Gap Statistics' (2022 [GPG Factsheet Final August 2022 \(wgea.gov.au\)](https://www.wgea.gov.au/gpg-factsheet-final-august-2022))

<sup>39</sup> DCA 'DCA Submission to the Review of the Workplace Gender Equality Act' (2012) [https://www.dca.org.au/sites/default/files/dca\\_submission\\_review\\_of\\_the\\_workplace\\_gender\\_equality\\_act\\_0.pdf](https://www.dca.org.au/sites/default/files/dca_submission_review_of_the_workplace_gender_equality_act_0.pdf).

women’s economic equality and independence; leadership, representation and rights; balancing family and care responsibilities; and health and wellbeing.

In the October 2022-23 Budget, the Government committed to initiatives to support women’s economic equality, including:<sup>40</sup>

- \$4.7 billion over four years in early childhood education and care;
- \$531.6 million to expand the Paid Parental Leave scheme.

These initiatives will help to close the gender pay gap and support workplace gender equality more broadly (for example, Treasury has estimated the Government’s plan for Cheaper Child Care will increase the hours worked by women with young children by 1.4 million hours per week in 2023-24<sup>41</sup>). However, more needs to be done to achieve equality.

### 3.2 Elements of the Problem

The gender pay gap not only has implications for the lives of women across Australia, but also impacts on firms and on the Australian economy more broadly. Individual women are impacted throughout their working lives by the gender pay gap and gender inequality. WGEA and ABS data show a gender pay gap favouring full-time working men over full-time working women in all industries across Australia.<sup>42</sup>

Closing the gender pay gap provides opportunities for firms to attract and retain productive employees, save on recruitment costs due to higher retention, enable a more flexible and efficient workforce and realise benefits associated with good corporate citizenship. Across the economy closing the gender pay gap can deliver higher participation rates and increased employment, improved productivity, and reduce the number of people dependent on welfare payments. While the current regulatory framework, which centres on the WGE Act and WGEA, has resulted in a narrowing of the gender pay gap, more targeted interventions are needed to accelerate progress on gender equality in Australia.

The WGEA Review found that the current system and legislation should be streamlined and updated to address three aspects of the problem of workplace gender inequality:<sup>43</sup>

- Gaps exist in the current dataset;
- Certain elements of reporting are burdensome on businesses; and
- Current regulation is not ambitious enough to drive change in gender inequality.



<sup>40</sup> Australian Government ‘Budget 2022-23: Women’s Budget Statement’ (2022) [https://budget.gov.au/2022-23/content/womens-statement/download/womens\\_budget\\_statement\\_2022-23.pdf](https://budget.gov.au/2022-23/content/womens-statement/download/womens_budget_statement_2022-23.pdf)

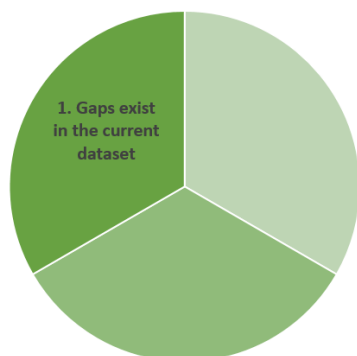
<sup>41</sup> Minister for Education ‘Family Assistance Legislation Amendment (Cheaper Child Care) Bill 2022 Second Reading Speech’ (2022) <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F6128%2F0008%22>

<sup>42</sup> WGEA ‘Gender Equality Workplace Statistics’ (2022) <https://www.wgea.gov.au/publications/gender-equality-workplace-statistics-at-a-glance-2022>; and ABS ‘Labour and Employment Statistics’ (2022) <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/jan-2022>.

<sup>43</sup> Department of the Prime Minister and Cabinet ‘WGEA Review Report: Review of the Workplace Gender Equality Act 2012’ (2021) [https://www.pmc.gov.au/sites/default/files/publications/wgea-review-report\\_1.pdf](https://www.pmc.gov.au/sites/default/files/publications/wgea-review-report_1.pdf)

### 3.3 Gaps exist in the current dataset

Existing gaps in the WGEA dataset mean that the true state of gender inequality across Australian workplaces is not being measured.



The below key data points recognised as having a significant impact on the gender pay gap are currently not being collected by WGEA:

1. age of employees;
2. location of primary workplace;
3. superannuation data;
4. CEO remuneration; and
5. manager data for entities in corporate structures.

Obtaining this data will allow WGEA (and government more broadly) to drive targeted action for the benefit of Australian individuals, community organisations and businesses.

Key stakeholders from both the women's sector and the business sector expressed support for collecting additional data within the Gender Equality Indicators (GEIs) to produce a more detailed picture of gender equality in the workplace, including employee age and location and whether superannuation is paid on parental leave. DCA's submission to the Review stated that while the WGE Act 'has been a critical tool in Australia's approach to addressing workplace gender equality... there are opportunities to strengthen it through the collection of more nuanced and intersectional data'.<sup>44</sup> Further additional GEIs were proposed by certain stakeholders in Review submissions, however due to the already high voluntary employer reporting of employee age, location and superannuation paid on parental leave, it was recommended that only these matters be added to the GEIs in order to minimise regulatory burden on employers. Adding in these extra data points will address a key theme of stakeholder feedback: the desire for more intersectional data.

#### Age of employees

KPMG research has identified age as one of the drivers of the gender pay gap; 'the gender pay gap is at its widest for the 45 to 54 years age group'.<sup>45</sup> Women from this age group are more likely than men to have spent time out of the labour force to care for children.<sup>46</sup> As a result of the extra time women spend on unpaid care work (compared to men), they have fewer promotion opportunities and are less likely than men to hold highly compensated jobs.<sup>47</sup> WGEA have already been able to draw insightful analysis from voluntary data collected on age (see [here](#)). With complete data on age, WGEA will be able to increase the accuracy of reports on the interactions between age and the gender pay gap, thereby informing policy for particularly disadvantaged women.<sup>48</sup>

#### Location of employee's primary workplace

<sup>44</sup> DCA 'Submission on the Workplace Gender Equality Act' 2012 (2021)

<https://www.dca.org.au/submissions/dca-submission-workplace-gender-equality-act-wgea-2012>

<sup>45</sup> KPMG 'She's Price(d)less: The Economics of the Gender Pay Gap' (2022)

<https://www.dca.org.au/research/project/shes-pricedless-2022-update-report>.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

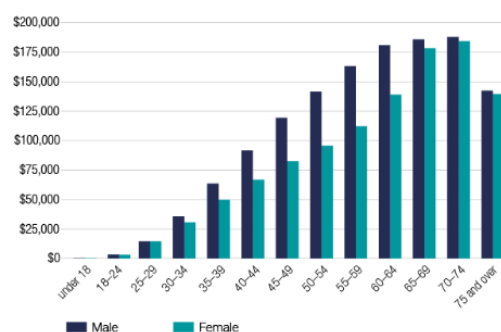
<sup>48</sup> WGEA 'Australia's Gender Pay Gap Statistics' (2022) <https://www.wgea.gov.au/publications/australias-gender-pay-gap-statistics>.

Location has a significant impact on women’s and men’s interaction with the workforce. In 2017, a report released by the Australian Human Rights Commission found that women in rural and regional workplaces were more likely to experience workplace harassment and discrimination, more barriers, and hardship.<sup>49</sup> A recent WGEA and Bank West Curtin Economics Centre based on voluntary data collected found that women face a significant remoteness penalty of around \$17,800.<sup>50</sup> However, currently WGEA is not able to calculate a comprehensive regional gender pay gap as this data is not collected mandatorily. For the 2020-2021 WGEA dataset, 70 per cent of employees provided location data voluntarily and it revealed that location was very important understanding gender pay gaps in different states and territories and industries. Collecting data on an employee’s primary workplace location will enable a deeper understanding of gender equality outcomes for urban, regional and rural employers and enable WGEA to drive further targeted approaches to support employers in addressing elements of the gender pay gap related to location.

### Superannuation data

Narrowing the superannuation gap is important outcome of closing gender pay gap. The Australian Tax Office (ATO), reports a consistently higher superannuation balance for men across ages and states and territories for the 2019-20 financial year (see Charts 12 and 13). Currently WGEA does not collect data on whether employers are paying superannuation while women are on parental leave. This is important as women are more likely to take more extended periods of parental leave than men which contributes to the gender pay gap.

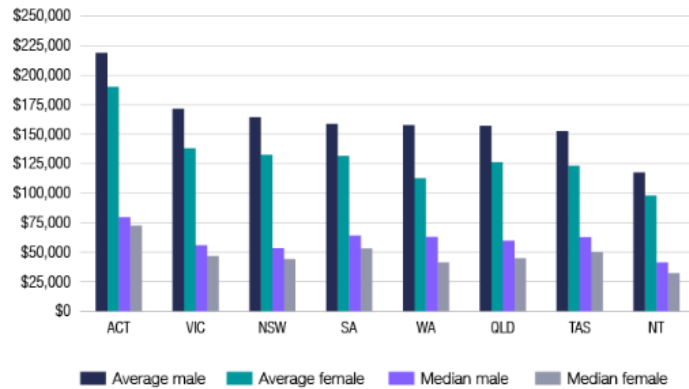
Chart 12: Individuals – median super balance, by age and sex, 2019–20 financial year



<sup>49</sup> Australian Human Rights Commission ‘A conversation in Gender Equality’ (2017) <https://humanrights.gov.au/our-work/sex-discrimination/publications/conversation-gender-equality-2017>

<sup>50</sup> Bankwest Curtin Economics Centre, ‘Gender Equity Insights 2021: Making it a Priority’, (March 2021) [https://bcec.edu.au/assets/2021/03/BCEC-WGEA-Gender-Equity-Insights-2021\\_WEB.pdf](https://bcec.edu.au/assets/2021/03/BCEC-WGEA-Gender-Equity-Insights-2021_WEB.pdf)

Research by Australian Super demonstrates that collecting superannuation data is an important indicator of gender equality and therefore, equality of superannuation will be reflective of a smaller gender pay gap.<sup>51</sup> Research by one super fund found that male members between the ages of 19-29 years have an average balance of \$10,166 while women average \$8,408.<sup>52</sup> The ATO reported that for the financial year 2019-20, the median super balances for women at pre-retirement (45-59 years old) were 32 per cent (\$133,776) lower than those for men at retirement (60–64 years old) and 23.2 per cent (\$41,872) lower than those for men when disaggregated by State and Territory as seen in the chart to the right.<sup>53</sup>



**Figure 3: Super Balance, by State/Territory and Sex, 2019-20 Financial Year**

### CEO remuneration

Currently, under the WGEA Act, it is not mandatory for employers to report CEO remuneration to WGEA.<sup>54</sup> This gap in the WGEA dataset means statistics on remuneration between women and men are incomplete. The gender pay gap is higher for executive level women than for the ‘average working woman’.<sup>55</sup> Research conducted by the Bankwest Curtin Economics Centre and WGEA found that men are paid more than women at every level of management. The highest paid 10 per cent of men take home a total salary of at least \$598,745, compared to \$436,369 for the highest paid 10 per cent of women, a difference of \$162,000.<sup>56</sup> Whereas the national gender pay gap will take approximately 26 years to close at the current rate, current growth will see female CEOs wait until 2100 to close the gender pay gap (80 years from the time of this report).<sup>57</sup>

Each of these data points have important interactions with, and impacts on, the gender pay gap. WGEA is not able to form a complete picture of workforce gender inequality in Australia without these data points being answered mandatorily. This is impacting opportunities to hold organisations accountable for pay disparity and affect change.

### Entity-level Data for Corporate Structures

<sup>51</sup> Australian Super, ‘The gender super gap: How gender inequality affects superannuation’ (2022) <https://www.australiansuper.com/superannuation/superannuation-articles/2020/02/gender-equality-and-your-super#:~:text=Closing%20the%20gender%20super%20gap&text=Rose%20Kerlin%2C%20AustralianSuper%20Group%20Executive,achieve%20a%20more%20comfortable%20retirement.>

<sup>52</sup> Ibid.

<sup>53</sup> Australian Taxation Office, [Individual statistics](#), ATO website, n.d., accessed 16 October 2022.

<sup>54</sup> It should be noted that previously CEO remuneration was reported to WGEA and some employers do still provide CEO remuneration to WGEA voluntarily.

<sup>55</sup> Bankwest Curtin Economics Centre and WGEA ‘Gender Equity Insights 2019: Breaking the Glass Ceiling’ (2019) <https://bcec.edu.au/publications/gender-equity-insights-2019-breaking-through-the-glass-ceiling/>

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

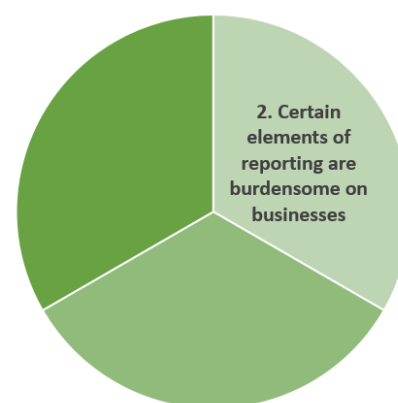


Employers report to WGEA in different ways. About 55 per cent are standalone organisations and 45 per cent are corporate groups. Corporate groups can report in different ways - together as one employer or on their single different entities/employers within the corporate group. About 90 per cent of all corporate groups report as one employer.

The current approach displays all data as corporate groups and not individual entities results inconsistencies with how data is being reported for group entities, and distorts the integrity of certain data points. In particular, manager data is not consistently reported on for employers that report as a group structure for their subsidiaries. Separating out manager data on an entity-level basis will enhance the quality of the data and enable WGEA to further drive change.

### 3.4 Certain elements of reporting are burdensome on businesses

As part of the WGEA Review, stakeholders identified burdensome reporting processes. Employers indicated that they are sometimes required to extract data from multiple payroll and human resources systems, and conduct time-consuming manual work to collate, interpret and validate data from different systems. This reporting burden creates limited space for future, more impactful changes.



After consulting with stakeholders on which particular aspects of reporting were most cumbersome, the WGEA Review identified three significant pain points for reporting employers.

#### 1. 'Reporting level to the CEO'

Currently relevant employers must report on managerial distance from the CEO or equivalent. The method of describing employee positions and distance from the CEO does not align with many existing workplace reporting structures. The majority of relevant employers spend considerable time interpreting and applying this requirement. The stakeholders that reported investing significant resources (including time and additional staff costs) into this one question includes Australia's largest technology companies and payroll software companies who specialise in efficient data collection.

#### 2. 'Annualised full-time equivalent'

Employers are currently required to calculate a full-time equivalent salary for casual and part-time employees. This is burdensome for employers and can produce inaccurate data. If the data provided were actual earnings, WGEA could perform the proportion calculation itself, enabling greater quality of data.

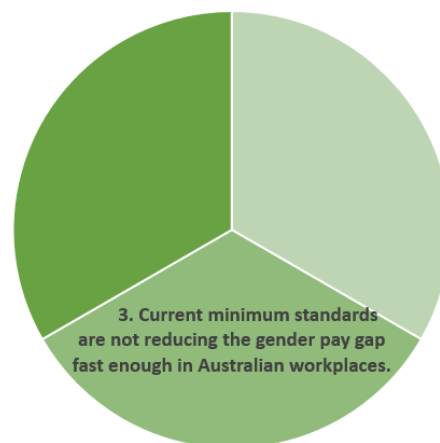
#### 3. Parental leave questions as a 'proportion'

Employers currently report on the proportion of the workforce who have access to employer-funded paid parental leave for primary and secondary carers, and the proportion of employees who took a period of parental leave who ceased employment during, or at the end of, that period. This is difficult for employers to calculate, and as such the data is of varying degrees of quality and often inconsistent.

Addressing these significant pain points in the reporting process will reduce the regulatory burden on employers and enhance the data WGEA receives. By simplifying some questions and conducting calculations internally, the quality and accuracy of WGEA's dataset will improve. In turn, this will enhance the data-backed insights WGEA provides to employers to help them drive change on gender equality in their workplaces.

### 3.5 Current regulation is not ambitious enough to drive change in gender inequality

Australian employers are highly compliant with the WGE Act; in the 2019-20 reporting period, 97.5 per cent of relevant employers complied with the WGE Act.<sup>58</sup> However, as set out above, research has found that at the current rate, the full-time total remuneration gender pay gap will close in approximately 26 years.<sup>59</sup> Unless targeted action is taken by employers to continuously analyse their gender pay gaps, the gap may take even longer to close.<sup>60</sup>



Two key pieces are missing in current regulation:

1. publishing organisational gender pay gaps; and
2. requiring employers to take action in order to bridge the ‘action gap’.

#### **Lack of transparency as to organisational pay gaps**

Employers report remuneration data to WGEA, but individual employee remuneration data is not currently published by WGEA. Instead, WGEA uses remuneration data to publish gender pay gaps by *industry* – e.g. for the mining, health care and social assistance, financial and insurance services, and construction industries. The WGE Act, as currently drafted, provides that WGEA is not able to include remuneration data in public data or reports (section 14). This means WGEA cannot currently publish an employer’s gender pay gap at an *organisational* level.

The current approach of publishing aggregate industry gender pay gaps is not creating the transparency, accountability and insights necessary to close the gender pay gap fast enough. As noted, WGEA data (2020-21)<sup>61</sup> shows all industries in Australia have a gender pay gap in favour of men. A number of stakeholders called for increased transparency of an organisation’s gender pay gap to promote accountability and accelerate progress towards reducing the gender pay gap.<sup>62</sup>

Without organisational gender pay gaps – “arguably the most important variable”<sup>63</sup> – in WGEA’s public dataset, the dataset is less useful for improving gender equality outcomes. Transparency is extremely valuable and can nudge a business or organisation towards addressing gender dynamics in

<sup>58</sup> Department of Prime Minister and Cabinet ‘WGEA Review Report’ (2022)

<https://www.pmc.gov.au/resource-centre/office-women/wgea-review-report>

<sup>59</sup> WGEA ‘Submission to the Review of the *Workplace Gender Equality Act 2012*’ (2021)

[https://www.pmc.gov.au/sites/default/files/submissions/wgea-submission-13-workplace-gender-equality-agency\\_0.pdf](https://www.pmc.gov.au/sites/default/files/submissions/wgea-submission-13-workplace-gender-equality-agency_0.pdf).

<sup>60</sup> Curtin University Media Release, ‘Over a quarter of a century until gender pay gap likely to close’ (26 March 2021) <https://news.curtin.edu.au/media-releases/over-a-quarter-of-a-century-until-gender-pay-gap-likely-to-close/>.

<sup>61</sup> WGEA, ‘Australia’s gender equality scorecard: Key results from the Workplace Gender Equality Agency’s 2020-21 employer census, (February 2022) [https://www.wgea.gov.au/sites/default/files/documents/2020-21\\_WGEA\\_SCORECARD.pdf](https://www.wgea.gov.au/sites/default/files/documents/2020-21_WGEA_SCORECARD.pdf)

<sup>62</sup> Bankwest Curtin Economics Centre ‘Submission to the Review of the Workplace Gender Equality Act 2012’ (2021); DCA ‘Review of the Workplace Gender equality Act (2021)”; Future Super Group ‘Submission to the Review of the Workplace Gender Equality Act 2012 (2021).

<sup>63</sup> WGEA ‘Submission to the Review of the *Workplace Gender Equality Act 2012*’ (2021)

[https://www.pmc.gov.au/sites/default/files/submissions/wgea-submission-13-workplace-gender-equality-agency\\_0.pdf](https://www.pmc.gov.au/sites/default/files/submissions/wgea-submission-13-workplace-gender-equality-agency_0.pdf).

the workplace it might not have considered before. Transparency can also generate accountability by empowering individuals to act, but also driving employees to accomplish change within their workplace. The recent viral phenomenon of the gender pay gap bot in the UK, demonstrates the power of transparent pay gap reporting; where the publication of the organisational gender pay gap can lead to educational opportunities for current and future employees.<sup>64</sup>

Positive research is also starting to emerge to support organisational pay transparency, though a few newly-established programs are producing mixed results in the first few years. An analysis of data relating to 100,000 academics in the United States over two decades, found that increased transparency around pay can also result in a 20 per cent reduction in pay difference between men and women.<sup>65</sup> In Denmark, a study found that ‘the gender pay gap decline[d] by approximately two percentage points, or a 13 per cent reduction relative to the pre-legislation mean’ following the introduction of wage transparency legislation.<sup>66</sup>

### **Minimum standards need to be strengthened**

Under the current legislation, relevant employers with 500 or more employees must have policies or strategies in place to support *one or more* of the following indicators:<sup>67</sup>

- gender composition of the workforce;
- equal remuneration between women and men;
- flexible working arrangements, and
- sex-based harassment and discrimination.

This is not ambitious enough to drive change in Australian workplaces and does not require employers to demonstrate what progress they have made. Stakeholders across industries and peak industry bodies, proposed substantial strengthening of the minimum standards as a mechanism for accelerating the rate of change towards gender equality. Recent comparative research on gender pay gap reporting recommended that action plans are essential for change, finding that ‘employers should be mandated to create time-bound targets to redress pay gaps, setting out clear and measurable goals.’<sup>68</sup>

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<sup>64</sup> James Purtil ‘Gender Pay Gap Bot calls out brands tweeting about International Women’s Day while paying women less than men (ABC, 2022) <https://www.abc.net.au/news/science/2022-03-11/gender-pay-gap-bot-international-womens-day-twitter/100898172>

<sup>65</sup> Tomasz Oblo ‘Study finds “trade-off” between pay transparency and performance’ (Personnel Today, 2022) <https://www.personneltoday.com/hr/study-finds-trade-off-between-pay-transparency-and-performance/>

<sup>66</sup> Morten Bennedsen et al ‘Do Firms Respond to Gender Pay Gap Transparency?’ (Working Paper No. 25435 2022)

<sup>67</sup> *Workplace Gender Equality (Minimum Standards) Instrument 2014.*

<sup>68</sup> Global Institute for Women’s Leadership ‘Bridging the Gap: An Analysis of Gender Pay Gap Reporting in Six Countries’ (2021) <https://www.kcl.ac.uk/giwl/assets/bridging-the-gap-full-report.pdf>

## 4. Why government action is needed

There are many reasons for the Government to address workplace gender inequality in Australia.

**Table 2: Identified Problems and Objectives for Government Action**

Identified Element	Problem	Objectives for Government Action	Measurement of success and progress against the objective
Gaps exist in the current data set		To facilitate and coordinate access to information and produce research benefiting Australian workplaces and the broader community by: <ul style="list-style-type: none"> <li>a) capturing data across the GEIs; and</li> <li>b) meeting the Australian community's expectations by providing transparent information to the public.</li> </ul>	Expansion of the WGEA data set and presentation of this data in a way that is clear and concise.
Certain elements of reporting are burdensome on businesses		To ensure that businesses can focus on creating change by streamlining business reporting costs; and  To maximise the effectiveness of the administration of the WGE Act.	The WGEA reporting process is easier for employers and stakeholders report that the process is less burdensome.
Current regulation is not ambitious enough to drive change in gender inequality		To be at the forefront of gender equality action to ensure genuine change by strengthening existing minimum standards to bridge the 'action gap' of Australian employers.  Responsibility for achieving gender equity rests with all Australian businesses and community organisations to enable workers to have equitable and safe workplaces, and Government action can catalyse positive incentives and behavioural change in businesses and communities to address underlying gender issues in Australian workplaces.	A reduction in the gender pay gap at an organisational level, at an industry level and/or overall such that the gender pay gap closes at a faster rate.  Additionally, employers make progress towards gender equality within their organisation whether that be big or small.

In addition to the above objectives, the Government has a broader leadership role in driving gender equality.

## 4.1 Gender equality is an issue of national importance

Gender equality is a national priority for the Australian Government. Australian individuals, community organisations and businesses have a reasonable expectation that the Australian Government will play a role in improving gender equality in Australian workplaces. It is because of the importance of the issue of workplace gender equality to Australians that the WGE Act was established to promote and improve gender equality in Australian workplaces. WGEA's vision is for women and men to be equally represented, valued and rewarded in the workplace.

WGEA's statutory function to promote and improve gender equality in Australian workplaces is also vital to the economy. As set out in Chapter 3, the barriers women face are a national issue and gender inequality is costing not only individuals and families, but also the economy as a whole. Removing disincentives for women to enter the paid workforce will increase the productive capacity of the Australian economy by about \$25 billion per year.<sup>69</sup> Gender discrimination results in \$348 million per week in lost national earnings and gender segregation in job type results in \$232 million per week in lost national earnings.<sup>70</sup> Care, family responsibility and workforce participation results in \$319 million per week in lost national earnings (this includes part-time work, unpaid work, years not working due to interruptions).<sup>71</sup>

Persistence of the gender pay gap may have far reaching negative implications for the Australian economy through restricting competitiveness and opportunities for growth.<sup>72</sup> Labour market inflexibility prevents the most efficient allocation of resources across the economy - negatively impacting Australia's ability to respond quickly to emerging opportunities, changing circumstances, and limiting prospective economic growth.<sup>73</sup> Closing the workforce participation gap could lift Australia's GDP by 8.7 per cent, or \$353 billion, by 2050 (research as of 2021).<sup>74</sup> The gender pay gap can be interpreted as a potential source of productivity gain, given the many factors underlying the gap are driven by labour market rigidities which, if removed, will benefit the Australian economy through increasing overall economic output.

## 4.2 WGEA is well-placed to intervene

The Australian Government, has the capacity to intervene successfully in improving the status of women in Australian workplaces through WGEA, which has made significant progress since its inception, exemplified by over 97% of businesses complying with reporting obligations under the WGE Act.<sup>75</sup>

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<sup>69</sup> John Daley 'Game-changers: Economic reform priorities for Australia' (The Grattan Institute, 2012) [Game-changers: Economic reform priorities for Australia - Grattan Institute](#)

<sup>70</sup> WGEA 'She's Price(d)less: The economics of the gender pay gap' (2019) <https://www.wgea.gov.au/publications/shes-pricedless-the-economics-of-the-gender-pay-gap>.

<sup>71</sup> Ibid.

<sup>72</sup> KPMG and DCA 'Understanding the Economic Implications of the Gender Pay Gap in Australia' (2009) [https://www.dca.org.au/sites/default/files/gender\\_pay\\_equity\\_gap\\_report\\_kpmg\\_final.pdf](https://www.dca.org.au/sites/default/files/gender_pay_equity_gap_report_kpmg_final.pdf)

<sup>73</sup> Ibid.

<sup>74</sup> Equity Economics, Making Australia the Best Place in the World to be a Parent (2021) <https://www.equityeconomics.com.au/report-archive/how-australias-parenting-policies-are-failing-women-and-our-economy>

<sup>75</sup> Department of Prime Minister and Cabinet 'WGEA Review Report' (2022) <https://www.pmc.gov.au/resource-centre/office-women/wgea-review-report>

In 2014, WGEA:<sup>76</sup>

- a) introduced a new online reporting system and implemented full reporting under the WGE Act whereby non-public sector employers with 100 or more employees report in a standardised format against six GEIs;
- b) released its first comprehensive dataset on workplace gender equality, covering over one-third of (four million) Australian employees and provided a benchmark for measuring future progress. This world-leading dataset provided Australia with the most comprehensive picture of workplace gender equality ever seen; and
- c) released the first customised, confidential benchmark reports to reporting organisations – the first data of its kind in Australia. The reports allow employers to assess their gender performance against their peers, identify areas for improvement, and track the effectiveness of their gender equality strategies over time.

In 2018, WGEA developed and implemented a replacement, fit-for-purpose online reporting system.<sup>77</sup> The new online system has the capacity and flexibility for voluntary reporting and allows for a significant increase in the dataset.

By 2020, informed by five years of data collection, WGEA developed a detailed picture of the state of gender equality in workplaces across Australia.<sup>78</sup> WGEA data shows there has been a strong increase in employer action on gender equality.<sup>79</sup> As employers have taken action, gender equality outcomes have improved and the gender pay gap has narrowed. WGEA's success demonstrates its capacity to successfully drive policy interventions in the future.

### 4.3 WGEA performs functions that the private sector cannot perform

WGEA plays a number of key roles that are not otherwise carried out by the private sector. These functions include:

- advising and assisting employers in promoting and improving gender equality in the workplace;
- developing, in consultation with relevant employers and employee organisations, benchmarks in relation to GEIs;
- issuing guidelines to assist relevant employers to achieve the purposes of the WGE Act;
- reviewing compliance with the WGE Act by relevant employers, review public reports lodged by relevant employers and deal with those reports in accordance with the WGE Act;
- collecting and analysing information provided by relevant employers under the WGE Act to assist the WGEA to advise the Minister for Women in relation to legislative instruments made under the WGE Act;
- undertaking research, educational programs and other programs for the purpose of promoting and improving gender equality in the workplace;
- working with employers to maximise the effectiveness of the administration of the WGE Act, including by minimising the regulatory burden on employers;
- promoting and contributing to understanding and acceptance, and public discussion, of gender equality in the workplace;

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<sup>76</sup> WGEA 'Our Story' <https://www.wgea.gov.au/about/our-story>

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> WGEA 'Australia's Gender Pay Gap Statistics' (2022) <https://www.wgea.gov.au/publications/australias-gender-pay-gap-statistics>.

- reviewing the effectiveness of the WGE Act in achieving its purposes; and
- reporting to the Minister for Women on such matters in relation to gender equality in the workplace as WGEA thinks fit.

WGEA proactively drives positive gender equality through its functions under the WGE Act, which includes working closely with businesses and community organisations to achieve change. This partnership is crucial to change in Australia, with Government-led regulation complemented by buy-in from motivated employers who see the value in creating change in their organisations and industries. This cooperation is what Recommendation 3 of the Review seeks to encourage.

#### 4.4 There are no alternatives to Government action that can deliver change on the same scale

Any alternatives to Government-led policy intervention to drive change would be employer or industry-led. Some Australian businesses are driving change (for example, PricewaterhouseCoopers) have proactively published their own gender pay gap information.<sup>80</sup> Several consulting firms have pledged to make similar disclosures in 2022.<sup>81</sup> In the banking sector, Westpac Banking Cooperation and the Commonwealth Bank of Australia have removed the pay secrecy clauses in contracts.<sup>82</sup>

Despite strong efforts to tackle gender equality taking place across many businesses and industries, however, these alternative interventions will likely not have the same scale of impact without WGEA. Without WGEA's core data collection, research and regulation functions, there is a real danger that progress towards gender equality in Australian workplaces will slide backwards. This is evidenced by the extensive list of employers who fail to comply with WGEA's mandatory reporting every year. That is, they fail to submit an annual gender equality report to WGEA and/or meet minimum standards.<sup>83</sup>

#### 4.5 The market cannot solve the problem of workplace gender inequality without Government intervention

The continuing gender pay gap is evidence that employment markets are not operating efficiently to ensure that women and men's labour is valued equally. A failure to remove gender bias from pay decisions results in a less than optimal number of women in those roles – thus requiring government action. Further, a potential source of market failure in labour markets is also a lack of information and transparency in relation to pay and conditions which creates information asymmetries.

Government intervention through reformed WGEA legislation will address the economic and social inequalities that women and businesses have continued to face for generations while bringing with it the broader economic benefits previously discussed.

Over many decades the market has demonstrated an inability to shift behaviour on pay/total remuneration equality. This can partly be attributed to information asymmetries in pay data. Markets' and employers' failure to address gender pay gaps demonstrates that they have not

<sup>80</sup> PwC, 'Women of PwC' <https://www.pwc.co.uk/who-we-are/our-purpose/empowered-people-communities/inclusion/diversity-pay-report.html>

<sup>81</sup> Edmund Tadros 'Experts call on more firms to copy PwC's pay transparency' (Australian Financial Review, 2022) <https://www.afr.com/companies/professional-services/experts-call-on-more-firms-to-copy-pwc-s-pay-transparency-20220418-p5ae96>.

<sup>82</sup> Ibid.

<sup>83</sup> WGEA, Non-compliant organisations list as at 30 January 2023, [Non-compliant organisations list | WGEA](#)

recognised the full social benefit of closing the gender pay gap – that is, market failure and deadweight loss (i.e. a welfare loss to society).

While some leading employers demonstrate their ability to optimally operate without government intervention, for example, through publication of their own gender pay gap and equality strategies, this is not the case for the majority of businesses. Current publications of gender pay gaps at an aggregate level (i.e. at a national and industry level) allow individual employers that are failing to address gender pay gaps a ‘free-ride’. Without additional government intervention, gender pay gaps are likely to persist. Since the introduction of WGEA, there has been a consistent downward trend in the gender pay gap.

#### 4.6 Constraints and barriers to government intervention

Any potential government intervention must be undertaken with an awareness of limitations and barriers. Successful regulatory intervention is dependent on clear and strategic communication of the Government’s commitment towards accelerating gender equality to employers and businesses. If this is not effective, it may lead any Australian Government regulation in this area to be misconstrued or viewed with hesitation. It is for this reason that broad consultation was carried out to inform the Review, and was carried out again to inform implementation and consideration of policy options under this IA.

##### **Clear messaging and employer readiness**

The importance of clear messaging is evidenced by experience in the United Kingdom (UK). A survey conducted before changes to UK pay transparency laws came into place indicated that UK employers felt unprepared for the legislative changes; 82 per cent were not reviewing their gender equality and equal pay policies in light of the new legislation, while 58 per cent did not have complete salary information across roles and gender.<sup>84</sup> This potential barrier will be mitigated in Australia as WGEA has already established communication with over 10,000 relevant employer contacts and will ensure that a communications campaign (along with educational resources) prepares employers for eventual mandatory changes.<sup>85</sup> Further, reporting changes made to the associated instruments of the WGE Act are required to be made before the relevant reporting period. This requirement allows employers one year’s notice before having to report on any new requirements and also allows them sufficient time to prepare for new changes.

In the 2022-23 Budget, WGEA was allocated funding for additional staff. Certain ongoing staff will be hired specifically to support implementation of the Review and provide support to employers, particularly under Recommendation 3.<sup>86</sup> Finally, Recommendation 10 stipulates that the Review recommendations are reviewed in five years’ time.<sup>87</sup> If barriers and constraints are not overcome as is predicted below, this will offer an opportunity to make changes.

##### **Organisational Gender Pay Gap**

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<sup>84</sup> Alexandra Topping ‘Gender pay gap law could have significant impact, says experts’ (Guardian Article, 2017) <https://www.theguardian.com/society/2017/apr/06/gender-pay-gap-law-could-have-significant-impact-say-experts>

<sup>85</sup> Department of Prime Minister and Cabinet ‘WGEA Review Report’ (2022) <https://www.pmc.gov.au/resource-centre/office-women/wgea-review-report>

<sup>86</sup> Australian Government ‘Budget 2022-23: Women’s Budget Statement’ (2022) [https://budget.gov.au/2022-23/content/womens-statement/download/womens\\_budget\\_statement\\_2022-23.pdf](https://budget.gov.au/2022-23/content/womens-statement/download/womens_budget_statement_2022-23.pdf)

<sup>87</sup> Department of Prime Minister and Cabinet ‘WGEA Review Report’ (2022) <https://www.pmc.gov.au/resource-centre/office-women/wgea-review-report>



Initial consultation undertaken by WGEA indicates that some business groups and some employers are concerned about possible negative impacts of reporting the gender pay gap at an organisation level. This includes concerns about the possibility of dampening productivity due to low morale, slowing men's wage growth to raise women's wages comparatively, and challenges for global organisations to reconcile international reporting obligations. Some stakeholders also noted remuneration is highly sensitive data that should not be made public. To mitigate these concerns, no individual remuneration is published, including the remuneration of CEOs. The Review also recommended that the size of the reporting organisations remain static (i.e. it was not lowered to include smaller organisations) to prevent any potential privacy issues that may arise from small organisations reporting their remuneration data.<sup>88</sup>

Data from the UK and Europe has shown that gender pay gap transparency can lead to a reduction in the gender pay gap.<sup>89</sup> The impacts of pay transparency laws, however, are not immune to changes in the global economy, the consequences from the COVID-19 pandemic, and the limited reporting enforcement mechanisms.<sup>90</sup> In order to mitigate this risk, recommendations made by the Review focus on publishing the gender pay gap at an organisational level *in addition* to requirements for larger organisations to draft actions plans and policies. As set out above, the combination of these two policy interventions offers a greater chance of success in accelerating the rate of change than transparency laws on their own.

### **Inaccurate reporting**

After pay gap reporting was introduced in the UK, it was estimated that between nine to seventeen per cent of gender pay gap data was wrong in the first year.<sup>91</sup> This suggested many organisations struggled with the reporting. However, it is important to stress that in the UK employers are required to calculate their own gender pay gaps whereas in Australia these will be calculated by WGEA. Nevertheless, Australia has mitigated this barrier to success in a number of ways. Firstly, in order to implement the publishing of organisational pay gaps, organisations are not required to report any extra data. The necessary data is already provided to WGEA and WGEA conducts the gap calculation. Secondly, through Recommendation 4, changes were suggested in order to simplify reporting for relevant employers. These simplifications will mean increased accuracy of WGEA's dataset and also allow employers more time to focus on organisational change.

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<sup>88</sup> Ibid.

<sup>89</sup> KPMG, 'Gender pay gap reporting: its impact and possible future', 21 February 2022, [Gender pay gap reporting - KPMG United Kingdom](#).

<sup>90</sup> European Commission, Directorate-General for Justice and Consumers, Veldman, A., Pay transparency in the EU : a legal analysis of the situation in the EU Member States, Iceland, Liechtenstein and Norway, Publications Office, 2017, <https://data.europa.eu/doi/10.2838/148250>; Martha Ceballos, Annick Masselot and Richard Watt 'Pay Transparency across Countries and Legal Systems' (2022) <https://www.cesifo.org/DocDL/CESifo-Forum-2022-2-ceballos-et-al-gender-employment-and-pay-gap-march.pdf>; Michael Baker et al 'Can Transparency Laws Fix the Gender Wage Gap' (Harvard Business Review, 2020) <https://hbr.org/2020/02/can-transparency-laws-fix-the-gender-wage-gap>; KPMG, 'Gender pay gap reporting: its impact and possible future', 21 February 2022, [Gender pay gap reporting - KPMG United Kingdom](#).

<sup>91</sup> Nigel Marriott, 'The three most common mistakes made in gender pay gap reports' (Personnel Today 2018) <https://www.personneltoday.com/hr/gender-pay-gap-reporting-errors/>.

## 5. Policy Options

Three options will be considered in this IA in response to the identified problems:

1. Option 1: Maintain the status quo;
2. Option 2: Improve reporting for businesses (Implement Recommendation 4); or
3. Option 3: Improve reporting for businesses and drive cultural change to close the gender pay gap through improved transparency, accountability and information (Implement Recommendations 2, 3, 4, and 7).

Elements of the Problem			
	1. Gaps exist in the current dataset	2. Certain elements of reporting are burdensome on business	3. Current regulation is not ambitious enough to drive change in achieving gender equality
<b>Option 1</b>	Not addressed	Not addressed	Not addressed
<b>Option 2</b>		Addressed by reducing the reporting burden on business (Rec 4) through simplification of WGEA reporting requirements.	
<b>Option 3</b>	Addressed through expanded mandatory reporting (Rec 7) to WGEA to enable better understanding of intersectionality.	Addressed by reducing the reporting burden on business (Rec 4) through simplification of WGEA reporting requirements.	Addressed through publication of the organisational gender pay gap (Rec 2) by WGEA, and new gender equality standards (Rec 3) that will set more ambitious goals for employers to achieve

Option 2 – the implementation of Recommendation 4 - was chosen as it reduces the regulatory impact. Option 3 – the implementation each of the four recommendations that have a regulatory impact - was chosen as it covers the broad scope of Review implementation, balancing increased regulatory burden against increased social and economic benefits. As noted above, some recommendations of the Review have been excluded from the options as the Office of Impact Analysis assessed those recommendations as having no more than minor regulatory impacts, and therefore detailed impact analysis was not required.

The recommended reforms outlined in the Review are based on likely benefits and ease of implementation, then augmented following more detailed consultation on the options through this IA process. By confining the next set of reforms to those recommended by the Review, and heavily consulted on with stakeholders, there is the maximum chance of success. This is not the end of the reform pathway, just the next most effective and actionable set of changes as agreed with stakeholders. There are opportunities for future reforms that require more consideration, such as the inclusion of partnership data, more diversity data and the inclusion of non-binary data in the WGEA dataset (Recs 6, 7.2 and 7.3). These recommendations have been excluded for the current implementation to allow for further consultation and research to take place. These are discussed at a high level under the consultation section. –

Each option is set out in further detail below.

## 5.1 Option 1: Retain the status quo

Under Option 1 no changes to the current regulatory framework, as set out in the WGE Act, would occur.

### 5.1.1 What elements of the problem does Option 1 address?

Under the status quo, the current reporting system will remain. This will mean that the issues and concerns raised by WGEA review stakeholders will not be addressed. If this option were selected, the following elements of the problem will continue to persist:

1. Gaps exist in the current dataset;
2. Certain elements of reporting are burdensome on businesses; and
3. Current regulation is not ambitious enough to drive change in gender inequality

Under the status quo, stakeholders would continue to benefit from the current WGEA-system, however the rate of change on gender quality would continue to progress only at the current rate.

Option 1				
<b>Element of the problem</b>	1. Gaps exist in the current dataset	2. Certain elements of reporting are burdensome on business	3. Current regulation is not ambitious enough to drive change in achieving gender equality	
<b>How problem addressed</b>	n/a – problem not addressed	n/a – problem not addressed	n/a – problem not addressed	

### 5.1.2 What would Option 1 look like for impacted stakeholders?

Under the status quo, relevant employers with 100 or more employees would continue to report to WGEA each year. This annual reporting would continue to consist of a Questionnaire, Workforce Management Statistics and the Workplace Profile in its current form.

Currently, the WGEA Portal opens on 1 April each year for reporting. Organisations then have two months to submit their reports, with reports due on 31 May. Reports cover the preceding 12-month reporting period. The reporting period is the same each year, from 1 April (the previous year) to 31 March (of the current year). The Questionnaire and Workforce Management Statistics reflect the entire reporting period. The Workplace Profile is completed by selecting a snapshot date within the reporting period. Once submitted, organisations have a further 28 days to edit their report, to allow corrections or changes to be made.

Under Option 1, the *Workplace Gender Equality (Minimum Standards) Instrument 2014 (Minimum Standards Legislative Instrument)* would continue to set out the minimum standards which apply to relevant employers with 500 or more employees. Relevant employers with 500 or more employees must have policies or strategies in place to support one or more of the following indicators:

1. gender composition of the workforce;
2. equal remuneration between women and men;
3. flexible working arrangements, and
4. sex-based harassment and discrimination.

## 5.2 Option 2: Improve WGEA reporting processes for businesses

Option 2 implements Recommendation 4 of the Review, and would address the second element of the problem by reducing the regulatory burden on employers through the following changes to the WGE Act and associated instruments:

1. employers would no longer need to report on managerial distance from the CEO or equivalent;
2. the term ‘annualised full-time equivalent figures’ would be removed to enable employers to report on actual earnings of part-time and casual employees as well as the number of hours employees are engaged; and
3. the term ‘proportion of workforce’ would be replaced with ‘number of employees’ who have access to paid parental leave and the number of employees who ceased employment during or after that leave.

### 5.2.1 What elements of the problem does Option 2 address?

Option 2			
<b>Element of the problem</b>	1. Gaps exist in the current dataset	<b>2. Certain elements of reporting are burdensome on business</b>	3. Current regulation is not ambitious enough to drive change in achieving gender equality
<b>How problem addressed</b>	n/a – problem not addressed	<b>Through implementing Recommendation 4</b>	n/a – problem not addressed

The Review consultation revealed that employers found that the aspects of the WGEA questionnaires and Workplace Profile that take the most time are:

- manual calculations of reporting levels to the CEO;
- annualising full-time equivalent salaries for part-time and casual employees; and
- calculating ‘proportions’ of their workforce.

An important function of WGEA is to ‘work with employers to maximise the effectiveness of the administration of the WGE Act, including by minimising the regulatory burden on employers’ (section 10(1)(ea) of the WGE Act).<sup>92</sup> Consultation under the Review found that several questions accounted for major ‘pain points’ for employers. Streamlining data collection will help improve the quality and accuracy of the data WGEA collects. In turn, this will enhance the data-backed insights WGEA provides to employers to help them drive change on gender equality in their workplaces.

<sup>92</sup> *Workplace Gender Equality Act 2012* (Cth)

Option 2 directly addresses these concerns by implementing Recommendation 4 of the WGEA Review. Recommendation 4 recommends that the Government:

*Amend the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) to:*

- a) *Remove the ‘reporting levels to the CEO’ question.*
- b) *Replace ‘annualised full-time equivalent figures’ to enable relevant employers to report on actual earnings of part-time and casual employees as well as the number of hours employees are engaged. This is instead of employers providing annualised full-time equivalent figures for part-time and casual employees as currently required.*
- c) *Replace the parental leave questions that currently ask employers to report on the ‘proportion’ of their workforce. Instead enable relevant employers to report by gender, employment status and manager/non-manager category:*
  - i. *The number of employees with access to employer-funded paid parental leave for primary carers and for secondary carers and the eligibility period for access;*

#### **Recommendation 4.1.a**

Removing the ‘reporting levels to the CEO’ question removes a major source of reporting burden for employers. Employers were highly critical of this question saying it required substantial interpreting and manual checking for accuracy. WGEA confirmed that the question effectively duplicates the ‘manager questions’ asked by WGEA. WGEA advised that removing the ‘reporting levels to CEO’ question will not diminish the gender data collected by WGEA as they obtain similar information through the ‘manager questions’ employers report on.

#### **Recommendation 4.1.b and 4.1.c**

Altering the reporting obligations to require employers to report on casual and part-time actual hours, rather than on annualised full-time equivalent figures will also relieve a source reporting burden for employers. This calculation is often complicated for employers to conduct. By having employers report actual hours, WGEA can perform the calculations in-house thereby increasing the accuracy of the derived data. Option 2 will also replace the ‘proportion’ of the workforce questions in relation to parental leave with a simpler requirement to report on ‘numbers’ of the workforce with access to parental leave. This change will also mean employers are able to report a simpler figure, allowing WGEA to calculate the proportion themselves, thereby increasing the accuracy of the dataset in relation to parental leave statistics.

### **5.2.2 What does Option 2 look like for impacted stakeholders?**

Recommendation 4 requires changes be made to the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)*. Section 13(4) of the WGE Act contains information on relevant notice periods.<sup>93</sup> A legislative change to an associated instrument of the WGE Act is required to be made before the start of the reporting period, effectively providing the employer with one year’s notice before reporting is due. This will allow employers time to adapt and update HR systems and internal processes.

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<sup>93</sup> *Workplace Gender Equality Act 2012 (Cth)*.

Current anticipated scheduling would aim for instrument changes to be made in early 2023. This would mean mandatory changes to reporting would come into effect in 2024, covering data from the 2023-2024 reporting period.

Option 2 would not require any extra work from employers and would, in fact, reduce their workload. No internal changes would be required for organisations to report data via (b) ‘annualised full-time’ and (c) ‘proportions’; businesses would be able provide the data that they already collect, and in a simpler form.

### 5.3 Option 3: Improve WGEA reporting processes for businesses and taking further action to drive accelerated change in Australian workplaces

Option 3 builds on the changes introduced in Option 2, but is much more ambitious in its scope. Option 3 implements Recommendations 2, 3, 4 and 7 of the Review. As Recommendation 4 is set out above, this section of the IA will focus on Recommendations 2, 3 and 7.<sup>94</sup>

Option 3 would allow WGEA to play a more active role in helping businesses and community organisations to create change within their own workplaces. This option would see WGEA transformed as more than an agency for data collection and analysis (through which incremental improvements have been observed), but as a genuine driver of change to advance gender equality.

The current approach of publishing the gender pay gap across the whole of the dataset as well as aggregate industry gender pay gaps as is not creating the transparency, accountability and insights necessary to closing the gender pay gap fast enough. Gender inequality is an entrenched, systemic and ‘multifaceted phenomenon’<sup>95</sup> that requires a multi-faceted solution. Option 3 looks at this challenge to Australian society, and sets out a multi-faceted policy option to address different drivers of Australian’s gender pay gap and the current regulatory system under the WGE Act. Option 3 addresses all aspects of the problem as set out in Chapter 3.

#### 5.3.1 What elements of the problem does Option 3 address?

Option 3 addresses all three elements of the problem:

Option 3			
<b>Element of the problem</b>	1. Gaps exist in the current dataset	2. Certain elements of reporting are burdensome on business	3. Current regulation is not ambitious enough to drive change in achieving gender equality
<b>How option addresses</b>	<b>Recommendation 7</b>	<b>Recommendation 4</b>	<b>Recommendation 2 Recommendation 3</b>

<sup>94</sup> This approach is in line with what recommendations of the Review required an IA, and has been agreed with OIA.

<sup>95</sup> Carol T Kulik ‘Gender (in)equality in Australia: Good Intentions and unintended consequences’ *Asia Pacific Journal of Human Resources* (2022).

### 5.3.2 How does Option 3 address element 1 ‘Gaps exist in the current dataset’ of the problem?

Implementing Recommendation 7 under Option 3 would address the gaps that exist in the current WGEA dataset. The WGEA dataset is lacking intersectional data so the interactions between gender and other factors, such as age and primary workplace location, to contribute to the gender pay gap and workplace inequality is not understood. Some entities volunteer additional information, however, it is expected that mandatory reporting would significantly improve the dataset. Recommendation 7 is split into three subsections, all of which are aimed at allowing WGEA access to a more complete picture of gender inequality in Australian workplaces, and to allow WGEA to use this dataset for analysis to support Australian employers to advance gender equality in their workplaces.

#### Recommendation 7.1

- The data collected against the GEIs makes up WGEA’s dataset. Recommendation 7.1 will make mandatory a number of currently voluntary GEI questions:

*7.1 Amend the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) to include mandatory reporting of:*

- *employee age (year of birth), noting many employers report voluntarily*
- *employee’s primary workplace location, noting many employers report voluntarily*
- *whether superannuation is paid by an employer when an employee is on paid, unpaid employer-funded and/or government-funded parental leave, noting many employers report voluntarily, and*
- *remuneration data for CEOs or the equivalent (individual remuneration would not be public but would be aggregated to calculate gender pay gaps and used for other remuneration analysis and insights).*

- By making these four questions mandatory, WGEA will be able to fill key gaps in its dataset. During consultation for the WGEA Review, stakeholders expressed support for the existing GEIs, as well as support for the addition of further data collected under the GEIs. However, in order to balance increased regulatory impact concerns against a desire for increased data, four targeted questions were recommended by the Review.

Employees’ age, primary workplace location, superannuation data and CEO remuneration data are all data points that have key interactions and impacts on Australia’s gender pay gap. Option 3 would allow WGEA to mandatorily collect age and location data in order to drive targeted actions in relation to specific cohorts of women. Given the significance of employers paying superannuation on parental leave as a way to accelerate gender equality, Option 3 includes a mandatory question for employers to report on whether superannuation is paid by an employer when an employee is on parental leave of any kind. Finally, the low numbers of women in CEO roles compared to men, means that exclusion of CEO remuneration is resulting in a distorted pay gap. Option 3 would address this gap in the dataset by requiring employers to report on CEO remuneration data, and would also allow CEO pay to be included in organisational pay gap calculations.

#### Recommendation 7.3(c)

Option 3 would address gaps in the dataset relating to corporate group structures.

*7.3 Identify the best approach to improve other aspects of gender equality indicator report to:*

*c. make it mandatory for individual entities within corporate structures to report.*

WGEA currently receives data from corporate groups as a whole, rather than as individual entities. About 90 per cent of all corporate groups report as one employer, meaning WGEA is unable to track certain aspects of gender equality at the entity level. Many of these subsidiaries are significant businesses in their own right.

The subsidiaries of corporate groups have varied gender pay gaps, however this data is not able to be legally obtained within the current statutory structure. Implementing Recommendation 7.3(c) would improve the quality of the WGEA dataset by allowing WGEA to guide employers to report on data (foremost aligning managers as they relate to the entity not the corporate group) from individual entities *within* corporate structures, not just as a corporate group.

### 5.3.3 How does Option 3 address element 2 ‘Certain elements of reporting are burdensome on businesses’, of the problem?

Option 3 would address element 2 of the problem by implementing Recommendation 4 of the Review. This would be done in the same manner as set out in Option 2. Reducing the reporting burden for employers will free them up to take action on the identified gaps and opportunities and help them accelerate progress on gender equality in their workplaces. Option 3 takes into account competing stakeholder priorities, including both the need to accelerate progress on gender equality in Australian workplaces and the need to be mindful of the regulatory impact on employers.

Impacted stakeholders would be affected in the same manner as outlined in Option 2 above.

### 5.3.4 How does Option 3 address element 3 ‘Current regulation is not ambitious enough to drive change in achieving gender equality’?

Option 3 would advance gender equality by implementing Recommendation 2 and Recommendation 3 of the WGEA Review. Recommendation 2 is a transparency measure and Recommendation 3 addresses the ‘action gap’ of larger employers by increasing requirements on large companies to develop policies and strategies that address inequality. These two recommendations build on the crucial other two pillars of Option 3 (to reduce regulatory burden and address gaps in the WGEA data set) to round out Option 3 as a multifaceted approach to driving change.

Recommendation 2 recommends that the Government:

*2.1 Amend the Workplace Gender Equality Act 2012 to allow WGEA to publish gender pay gap information at an employer level as an overall figure and by quartile to encourage change within organisations. Individual employee pay information is not to be published. Conduct further stakeholder consultation to identify the best way to implement this recommendation and conduct a regulatory impact assessment ahead of implementation.*

Further consultation sought employer views on the gender pay gap metric that they would find most useful – median, mean or both.

WGEA will publish employer-level gender pay gaps and workforce composition data by quartiles and as an overall figure. This means providing data 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. This will be available publicly on WGEA's website and provided to each organisation.

Pay transparency is an emerging tool used by governments to drive change to advance gender equality. Though the evidence base is still nascent, initial studies of targeted populations (as outlined in Chapter 3) demonstrate promising results.<sup>96</sup> The Organisation for Economic Co-operation and Development (OECD) have stated 'although the evidence base is still being built, pay transparency policies hold significant appeal. Pay transparency measures represent a relatively simple, intuitive tool both to identify and to take action against the gender wage gap in the workplace – particularly in mid-sized and larger organisations with dedicated human resources management that can calculate gender gaps. Crucially, pay transparency policies give workers, employers and the public an important tool to combat gender inequality: they offer an acknowledgement of the existence and the size of gender pay gaps.'<sup>97</sup>

To further reinforce the action taken by employers as a result of increased transparency under Recommendation 2, Option 3 would also drive change by bridging the 'action gap' through strengthened gender equality standards. This would be implemented through Recommendation 3 of

*3.1 Bridge the 'action gap' to strengthen existing minimum standards by amending the Workplace Gender Equality (Minimum Standards) Instrument 2014 to:*

- *Add a new minimum standard to require relevant employers with 500 or more employees to commit to, achieve and report to WGEA on measurable genuine targets to improve gender equality in their workplace against **three** of the six gender equality indicators.*
- *Strengthen the existing minimum standards to require relevant employers with 500 or more employees to have policies or strategies that cover **all six** gender equality indicators (not just one policy or strategy for one gender equality indicator in the current minimum standards).*
- *Rename the minimum standards to be 'gender quality standards' to reflect the increased ambition of this option.*

the WGEA Review which recommends that Government:

Recommendation 3 proposes substantial strengthening of the minimum standards as a mechanism to drive change towards gender equality.

Recommendation 3.1.a is a central recommendation of the Review. The overall pace of change for gender equality in Australian workplaces has been slow. Genuine and measurable gender equality targets that would be developed under Option 3, drive action towards a tangible goal and assist employers in prioritising gender equality, accelerating the pace of change, and advancing gender equality in workplaces. Through the process of publicly setting and reporting on targets, employers will have the opportunity to identify and articulate where their organisations can improve. Option 3 would see employers setting targets against data reported to WGEA on the GEIs to improve

<sup>96</sup> OECD Employment, Labour and Social Affairs Policy Briefs, 'Can pay transparency tools close the gender wage gap? (2021) [Pay-Transparency-2021-Policy-Brief.pdf \(oecd.org\)](#)

<sup>97</sup> Ibid.

measurement towards an employer's gender equality goals. Implementation of this recommendation will allow employers to work in collaboration with WGEA to set the targets that work best for their organisation.

Employers will be able to choose targets from a menu of targets provided by WGEA and may also be able to set their own targets in collaboration with WGEA. This approach allows employers to choose targets that will be most effective for them. All targets developed by WGEA will have a timeframe of either one, two or three years. Employers would be able to demonstrate that a target is genuine either by setting and achieving a percentage point or absolute increase against the target, or by introducing new measures or enhancements to a policy or strategy within a reasonable timeframe. The targets, and progress towards them, will be public and included in public reports. This includes publishing the data on the WGEA Data Explorer. Under Option 3, WGEA would encourage organisations to also publish their targets and the steps they are taking to meet targets on their own websites.

Under Recommendation 3.1.b, relevant employers would be required to have formal policies and/or strategies in place for all six GEIs. This is a significant increase on the current standard which requires large companies to have a policy/strategy in relation to only one GEI. The expectation for complying with this requirement is that employers would have a minimum of six policies and/or strategies – at least one policy and/or strategy for each GEI.

WGEA will support employers through tools and resources that facilitate their development of meaningful policies and strategies for gender equality. Under Option 3, an employer that has policies and/or strategies for each gender equality indicator would meet the required gender equality standard and the reporting requirement to WGEA. These new requirements would require employers not only to report to WGEA, but substantially increase their role and accountability in driving change at an organisational level.

Recommendation 3.2 supports the changes required under Recommendation 3.1. It recommends

*3.2 Strengthen accountability of employers to take action to improve gender equality in workplaces by amending the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) to:*

- a) 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; and*
- b) Require relevant employers to provide the Executive Summary report and Industry Benchmark report (as provided to employers by WGEA) to their Board/Governing Body.*

the Government:

These changes would embed accountability into the reporting process for employers, and foster transparency of gender equality challenges and progress within organisations (3.2.a) as well as acknowledging the strategic role boards play in driving change in organisations (3.2.b). Option 3 takes into account that leadership commitment and ownership is integral to advancing gender equality in the workplace. This is why the Executive Summary report and Industry Benchmark report provided to employers by WGEA must be shared and made accessible to the board/governing body.

### 5.3.5 What does Option 3 look like for impacted stakeholders?

Sections 13(4) and 19(1) of the WGE Act contains information on relevant notice periods in relation to instrument changes. A legislative change to an associated instrument of the WGE Act is required to be made before the start of the reporting period, effectively providing the employer with one year's notice before reporting is due. This will allow employers time to adapt and update HR systems and internal processes.

#### **Recommendation 2**

Recommendation 2 requires amendments to the WGE Act. WGEA is developing a technical solution in order to display this information and currently estimates the first organisational pay gaps to be published in early 2024.

No technical change would be required by employers in terms of reporting processes or data provided to WGEA. The work to publish organisational pay gaps will be done by WGEA. WGEA resources will include detail on gender pay gap calculations, details on drivers of the gender pay gap, myth busters in relation to the gender pay gap including the differences with pay equity. Relevant employers currently report remuneration data to WGEA, but no individual employee remuneration is published by WGEA.

WGEA will publish necessary contextual analysis alongside organisational pay gap data to ensure proper interpretation. This will include information on factors that contribute to the gender pay gap and how the gender pay gap is calculated and interpreted. WGEA would provide information to employers on how to communicate their gender pay gaps to employees and what issues contribute to the gender pay gap. Employers would have access to a suite of resources that explain the gender pay gap and ways to address it.

An early representation of how gender pay gaps are expected to be published is attached at Appendix B along with information as to how WGEA calculates the gender pay gap. A sample report is also provided at Appendix C.

#### **Recommendation 3**

Recommendation 3.1 requires changes be made to the *Workplace Gender Equality (Minimum Standards) Instrument 2014* and Recommendation 3.2 requires changes to the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* and the WGE Act. Recommendation 3 will mean that employers with 500 or more employees are required to make significant changes. In order to reduce the regulatory burden of the required changes a step-by-step process has been set out by WGEA. This is set out in Appendix D.

Under Recommendation 3.1.a, meeting targets will be tied to employer requirements for gender equality reporting to WGEA. Most simply, a large employer that meets their targets within the specified time period would also meet the gender equality standard and the reporting requirement to WGEA. At all times, large employers will be expected to maintain three targets. Employers that do not meet their target in the specified time period will be provided one more reporting period to make progress and meet the target. WGEA will assist employers in setting targets by developing tools and resources for target setting, enabling accessible analyses of gender equality data, and providing examples of targets and practical steps to take to achieve targets.

WGEA will provide employers a choice of targets set against the GEIs as well as examples of reasonable and measurable longer-term goals. WGEA will also provide employers with a pathway to

meeting targets, including examples of actions that can be taken or areas that an employer may need to address in order to reach the targets.

In order to implement Recommendation 3.1.b, relevant employers of 500 or more must have formal policies and/or strategies in place for all six GEIs. The expectation for complying with this requirement is that employers would have a minimum of six policies and/or strategies – at least one policy and/or strategy for each GEI. WGEA will support employers through tools and resources that facilitate their development of meaningful policies and strategies for gender equality. Currently 100 per cent of relevant employers with 500 or more employees comply with the minimum standards, with almost every company having a policy or strategy in place on sex-based harassment and discrimination.<sup>98</sup> This suggests a helpful level of base knowledge for large companies that they can build on when looking to develop further policies/strategies.

### **Recommendation 7.1**

Recommendation 7.1 requires changes be made to *the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)*. Recommendation 7.3 requires amendments be made to the WGE Act itself.

Current WGEA data indicates the vast majority of employers already collect the information under Recommendation 7.1, and therefore would not be required to make internal adjustments ahead of the change.<sup>99</sup> In 2020-21, WGEA collected data on the age of employees on a voluntary basis. There was a very high reporting rate, with 73 per cent of employers reporting voluntarily on age.<sup>100</sup> For data on the main workplace location of employees on a voluntary basis, 72.8 per cent of employers provided data to WGEA.<sup>101</sup> For the same reporting period, WGEA asked employers, on a voluntary basis, to state whether they pay superannuation for employees on parental leave, both paid and unpaid: 60.1 per cent of employers provided this data. 51.3 per cent of employers provided remuneration data for the CEO on a voluntary basis.<sup>102</sup> These high rates of participation mean that the majority of reporting employers already collect this data and would not have to make any internal system changes to collect the data.

### **Recommendation 7.3**

In order to implement Recommendation 7.3.c, relevant employers who currently report at a group level, will be required to assign manager categories to their employees based on their roles in the entity in which they work, not in relation to the group. In other words, an organisation would assign manager categories to employees as if it was a standalone entity. Other components of reporting to WGEA would not change with entity level reporting. For instance, corporate groups that report on multiple entities in one submission could still submit one completed questionnaire for all entities in the group, provided the gender equality strategies, policies and actions are consistently in place in all entities in the group.

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<sup>98</sup> Ibid.

<sup>99</sup> WGEA 'Australia's Gender Equality Scorecard' (2022)

[https://www.wgea.gov.au/sites/default/files/documents/2020-21\\_WGEA\\_SCORECARD.pdf](https://www.wgea.gov.au/sites/default/files/documents/2020-21_WGEA_SCORECARD.pdf).

<sup>100</sup> Department of Prime Minister and Cabinet 'WGEA Review Report' (2022)

<https://www.pmc.gov.au/resource-centre/office-women/wgea-review-report>.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.



## 6. Approach taken to determine the likely net benefit of each option

The IA answers two key questions:

*1) Is it better to do something rather than nothing? That is, will a policy intervention improve the situation significantly or will the cost of intervening outweigh the advantages?*

*2) Is the recommended policy option better than the other options proposed? That is, provided you have identified all the available and viable options, will this one deliver the best net outcome?*

In order to answer these key questions, this IA:

- identifies who is likely to be affected by each regulatory option and assess, where significant, the economic, competition, social, environmental or other costs and benefits as well as how those costs and benefits are likely to be distributed;
- where relevant, quantifies both the benefits and costs (including regulatory costs) of policy proposals on stakeholders;
- analyses qualitative impacts as well as quantitative impacts; and
- provides information on applicable international standards and whether the policy proposal differs from or adopts those standards.

In order to accurately analyse impacts of each option appropriately and in line with the Guide, this chapter of the IA will briefly outline the approach taken to impact analysis. The anticipated impacts of each policy option will be set out in Chapters 7 – 9.

Two types of impacts will be considered in relation to the three proposed policy options: overall impact and regulatory impact. These two overarching categories of impact will be applied to four main stakeholder groups:

- **Individuals** – includes men and women across Australia. Particular focus will be given to the Australian workforce, and the distributional impacts felt by women;
- **Medium business** (and community organisations) – Medium businesses are defined by this IA as business with over 100 but less than 500 employees. This corresponds to;
- **Large businesses** (and community organisations) – Businesses with 500 or more employees; and
- **Government.**

Community organisations are defined by the Australian Government Guide to Impact Analysis (the Guide) as ‘any organisations engaged in charitable or other community based activity operating under Australian law and not established for the purpose of making a profit’.<sup>103</sup> The Guide also defines businesses as ‘Any organisation engaged in commercial industrial or professional activities operating under Australian law for the purpose of making a profit’.<sup>104</sup> Both of these categories come under the definition of ‘relevant employers’ in the WGE Act.

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<sup>103</sup> The Office of Impact Analysis ‘Australian Government Guide to Regulatory Impact Statements’ (2020) [Australian Government Guide to Regulatory Impact Analysis | The Office of Impact Analysis \(pmc.gov.au\)](https://www.pmc.gov.au/australian-government-guide-to-regulatory-impact-analysis)

<sup>104</sup> Ibid.

## 6.1 Overall impacts

Measuring the net benefit of each policy option requires all of the costs and benefits to be taken into account. In the Guide, overall impact encompasses any significant economic, competition, social, environmental or other impacts on each stakeholder group. However, because of the nature of the policies examined under this IA, the vast majority of analysis will focus on economic and social impacts. Impacts are both positive and negative and will be considered for each of the four stakeholder categories for the three policy options.

The broad economic benefit that results from improving gender inequality have been identified in previous chapters. The following chapters will refer to similar benefits from closing the gender pay and addressing workplace gender inequality. The broad economic benefit that addressing gender inequality has on the Australian economy has many flow on effects to individuals, businesses and community organisations that will be further detailed below.

The distributional effects of each option will also be assessed. The Guide notes that distributional analysis is necessary when a policy proposal is likely to have a significant impact on different groups or when the proposed policy has an explicitly redistributive objective. Distributional effects, most visibly gender, will be noted where most significant.

## 6.2 Approach taken to calculation of regulatory costs

Regulatory compliance burdens are a subset of the broader costs in an impact assessment, and are calculated in line with the *Regulatory Burden Measurement Framework Guidance Note*. The Guide asks for regulatory compliance burdens to be easily identifiable in an IA, therefore for each policy option a regulatory cost will be

Under *Regulatory Burden Measurement Framework* only certain costs fall under the regulatory burden analysis. These include:

- **Administrative compliance costs** – costs incurred by regulated entities primarily to demonstrate compliance with the regulation. For example, the time and costs associated with keeping records, making an application and notifying government of certain activities
- **Substantive compliance costs** – costs incurred to deliver the regulated outcomes being sought. Examples: costs of training employees on regulatory requirements, professional services required to meet regulatory requirements
- **Delay costs** – the expenses and loss of income incurred by a regulated income as a result of an application delay, or an approval delay.

There are several types of costs specifically excluded from the Regulatory Burden Measurement Framework. These include, for example, opportunity costs, business-as-usual costs, enforcement / compliance costs (such as fines for failing to comply with regulation). These costs are not categorised as regulatory costs, and therefore are not quantified under this IA. For the purposes of impact analysis, community organisations will be treated under the same analysis as medium and large businesses. Community organisations are distinguished by not being driven by profit, as private sector businesses are. However, WGEA reporting and requirements do not change depending on the type of employer or entity reporting. The reporting requirements for businesses and community organisations are not different and generally impacts felt by medium and large businesses are the same as those felt by medium and large community organisations. To the extent that these impacts differ, the IA will ensure this is set out.

## 6.3 Analysis of overseas models

A comprehensive literature review of current scholarship was undertaken to develop the WGEA Review. Further targeted desktop research was undertaken for this IA.

Countries that have introduced elements of gender workplace reporting include the UK, Canada, and the European Union (EU). These programs are not identical to the system that currently exists under the WGE Act, or the proposed preferred Option 3 but there are similarities. Impacts were examined in order to anticipate and reduce potential impacts and learn from difficulties these systems experienced.

### United Kingdom

In 2017, the UK Government passed the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 requiring employers with 250 or more employees to annually publicly report their gender pay gap. This includes the mean and median gender pay gaps; the mean and median gender bonus gaps; the proportion of men and women who received bonuses; and the proportions of male and female employees in each pay quartile. The consequences of this information being made publicly available has enabled public scrutiny of corporate values and previously hidden salary figures. This was particularly evidenced on International Women's Day (IWD) this year when a Twitter account was used to share gender pay gap percentages in response to corporate IWD messages.<sup>105</sup>

Australia's OFW and the UK's Gender Equalities Office have maintained a dialogue on their respective experiences. The UK has a similar system of public reporting, and the OFW discussed impacts felt by the UK a few years after introduction, providing useful data for qualitative impact analysis. As Recommendation 2 suggests, the UK also uses a quartile analysis for organisational gender pay gaps and has found this to be a useful measure. The UK has not experienced issues with identifiable data. Early research in the UK has looked at organisations who are just below threshold and over the threshold (up to 250 and then between 250 and 350).<sup>106</sup> The UK gender pay gap has narrowed to 14.9 per cent from 17.4 per cent in 2019.<sup>107</sup>

### European Union

In April 2022, the EU voted in favour of a Commission proposal for a 'Pay Transparency Directive' (the Directive) with the following objectives.<sup>108</sup>

1. establishing pay transparency within organisations;
2. facilitating the application of the key concepts relating to equal pay, including 'pay' and 'work of equal value'; and
3. strengthening enforcement mechanisms.

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<sup>105</sup> ABC News, 'Gender Pay Gap Bot calls out brands tweeting about International Women's Day while paying women less than men' (11 March 2022) [Gender Pay Gap Bot calls out brands tweeting about International Women's Day while paying women less than men - ABC News](#)

<sup>106</sup> Office for National Statistics, 'Gender Pay Gap in the UK: 2022' (26 October 2022) <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/genderpaygapintheuk/2022>

<sup>107</sup> Ibid.

<sup>108</sup> European Parliament Press Release, 'Gender pay gap: Parliament backs binding pay-transparency measures' (5 April 2022) [Gender pay gap: Parliament backs binding pay-transparency measures | News | European Parliament \(europa.eu\)](#)



The Directive aims to articulate the principles of equal pay and gender equality of pay founded in the Treaty of Rome and set out in Directive 2006/54/EC and the 2014 Commission Recommendations on pay transparency.<sup>109</sup> Members of the European Parliament want companies with at least 50 employees to be required to disclose information on salaries and to have an official label for employers that have no gender pay gap. The EU has indicated that the associated costs with these proposed steps are justified within the context of the long-term benefits to business profitability and the internal EU market.<sup>110</sup> The impact assessment of the proposed objectives concluded that it was ‘proportionate and coherent’.<sup>111</sup>

## Canada

On 31 August 2021, Canada’s *Pay Equity Act* came into force with the purpose of redressing gender pay inequality.<sup>112</sup> The Act will apply to employers with as few as 10 employees and will require all employers to establish a ‘pay equity plan’.<sup>113</sup> The Act will work with the Pay Equity Regulations to ensure that workers in federally regulated workplaces receive equal pay for work of equal value.<sup>114</sup> Stakeholders were invited to a consultation process on the regulations which closed on 17 June 2022.<sup>115</sup> In addition, on 1 January 2021, amendments to the *Employment Equity Act* and the *Employment Equity Regulations* came into force requiring pay gap reporting measures for all federally regulated private-sector employers with 100 or more employees. Consequently, the ‘Legislated Employment Equity Program’ required employers to record new salary data and include pay gap information in their annual reports.

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<sup>109</sup> Directive of the European Parliament and of the Council, European Commission, Brussels (4 March 2021) 2021/0050(COD).

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> *Pay Equity Act 2021* (CAN) section 2.

<sup>113</sup> *Pay Equity Act 2021* (CAN) section 12.

<sup>114</sup> Government of Canada News Release, ‘Government of Canada announces that the Pay Equity Act will come into force on August 31, 2021’ (7 July 2021) [Government of Canada announces that the Pay Equity Act will come into force on August 31, 2021 - Canada.ca](#)

<sup>115</sup> Government of Canada, [Share your ideas: Consultation on proposed Pay Equity Regulations - Canada.ca](#)

## 7. Likely net benefit of Option 1 (status quo)

Option 1 maintains the current status quo of the reporting requirements under the WGE Act and associated Instruments. For the purposes of the IA, it is important to establish what level of current overall and regulatory impact is experienced by stakeholders in order to compare with Option 2 and Option 3.

### 7.1 Overall Impacts

This option sees a mixtures of costs and benefits experienced by stakeholder groups. Many of the costs were referred to as reasons for recommendations to change the status quo in the Review.

#### 7.1.1 Individuals

##### Benefits

The status quo will continue to close the gender pay gap and improve gender equality. Gender inequality concerns both women and men and has a strong impact on people's daily lives therefore, improving gender equality will have many benefits. Historically gender equality policies have been contextualised within a frame of 'women's issues' and this view has contributed to the perception that women are the only ones who will benefit from a more equal society.

In reality, men also benefit from gender equality as they too face gender-specific issues such as lower life expectancy, bad health, lower education levels and rigid gender norms.<sup>116</sup> It is essential that both women and men are aware of and able to access the benefits that gender equality brings to them as individuals and as members of communities and societies.

Gender equality in workplaces benefits individuals. The WGE Act, and WGEA, were established 'to promote and improve gender equality (including equal remuneration between women and men) in employment and in the workplace'.<sup>117</sup>

WGEA's current work is aimed at improving gender equality in the workplace. This impacts individuals across Australia in terms of their experiences and opportunities at work, and the second round impacts that this has on their personal and family lives. Gender equality levels the playing field by ensuring women are equipped to get jobs, succeed in those jobs and be equally remunerated so they don't continue to suffer the lifetime wealth inequalities that currently exist between women and men. The overall impacts for individuals as a result of the current WGEA and WGE Act system are detailed below. Benefits to individuals in Options 2 and 3 include these impacts and build on them further.

Since the establishment of WGEA, women's workforce participation has increased and the gender pay gap has decreased.<sup>118</sup> Women are earning higher wages - demonstrated by a fall in the gender pay gap from 24.7 per cent to 22.8 per cent (accordingly to WGEA data from March 2021)- and are

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<sup>116</sup> European Institute for Gender Equality, 'Men and Gender Equality: Gender equality is also a men's issue', accessed 30 January 2022, [file:///C:/Users/pmc18071/Downloads/european\\_institute\\_for\\_gender\\_equality\\_-\\_men\\_and\\_gender\\_equality\\_-\\_2017-06-09.pdf](file:///C:/Users/pmc18071/Downloads/european_institute_for_gender_equality_-_men_and_gender_equality_-_2017-06-09.pdf)

<sup>117</sup> *Workplace Gender Equality Act 2012*

<sup>118</sup> WGEA 'Australia's Gender Pay Gap Statistics' (August 2022) [GPG Factsheet Final August 2022 \(wgea.gov.au\)](https://www.wgea.gov.au/gpg-factsheet-final-august-2022)

more likely to enter management and leadership roles. Employers that demonstrate consistent gender equality policies and practices had an increase in female managers by 5.5 per cent.<sup>119</sup>

Second round impacts are also being experienced by women. Employment is typically the main source of household income, and determines material wellbeing and living standards.<sup>120</sup> Improved gender equality would enable women to work and earn more, delivering financial benefits for the individuals, their families and their households. Social impacts are also experienced - employment improves physical and mental health, increases a person's social circle, shapes identity and boosts life satisfaction.<sup>121</sup>

Gender equality is good for the economy, with research showing that closing the workforce participation gap between men and women would lead to projected growth in Australia's GDP of between 8-11 per cent.<sup>122</sup> In turn, a healthy economy is a good place for Australians to live, both economically and socially.

By addressing gender inequality in the workplace, WGEA's work also benefits men. A DCA report set out a range of social benefits for men that would result from progress being made on gender inequality:<sup>123</sup>

- **Men gain when women gain.** Because gender equality is good for women and girls, it is good for men too. Men and boys share their lives with women and girls, and men gain when the women and girls around them have lives which are safe and fair.<sup>124</sup>
- **Wellbeing.** Men's own wellbeing is limited by narrow ideas about how they are "supposed" to behave. Feminism gives men greater choices about working and family lives by questioning narrow, restricting gender roles for women and men.<sup>125</sup>
- **Relationships.** Gender equality is good for men's relationships. US research finds that men with feminist partners report greater relationship stability than men with non-feminist partners.<sup>126</sup>

Benefits for men in the workplace are also realised. With progress towards gender equality in workplaces, men will enjoy workplaces with greater productivity, creativity and diversity because of the wider pool of talent and fairer processes on which they are based. Men will also experience higher quality work resulting from greater teamwork and collaborating, increased workplace flexibility and a reduced emphasis on competitiveness through access to more gender equal policies.

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<sup>119</sup> Cassells R & Duncan A (2021), Gender Equity Insights 2021: Making it a priority, BCEC|WGEA Gender Equity Series, Issue #6, March 2021, <[BCEC-WGEA-Gender-Equity-Insights-2021 WEB.pdf](#)>

<sup>120</sup> Ministry for Primary Industries New Zealand, 'The social value of a job' (December 2014) <https://www.mpi.govt.nz/dmsdocument/5266-The-social-value-of-a-job>

<sup>121</sup> Ibid.

<sup>122</sup> Goldman Sachs JBWere, Australia's Hidden Resource: The Economic Case for Increasing Female Participation (2009) [Australia's Hidden Resource - The Economic Case for Increasing Female Participation - Goldman Sachs JBWere - Australian Securities Exchange - ASX](#)

<sup>123</sup> Diversity Council Australia (M. Flood, G. Russell, J. O'Leary and C. Brown), *Men Make a Difference: How to Engage Men on Gender Equality*, Synopsis Report, Sydney, Diversity Council Australia, 2017, [https://www.dca.org.au/sites/default/files/dca\\_engaging\\_men\\_synopsis\\_online\\_final.pdf](https://www.dca.org.au/sites/default/files/dca_engaging_men_synopsis_online_final.pdf)

<sup>124</sup> World Health Organisation, 'The health and well-being of men in the WHO European Region: better health through a gender approach'(2018), [mhr-report-eng.pdf \(who.int\)](#)

<sup>125</sup> Ibid.

<sup>126</sup> Rudman, L.A., Phelan, J.E. The Interpersonal Power of Feminism: Is Feminism Good for Romantic Relationships?. *Sex Roles* 57, 787–799 (2007). [The Interpersonal Power of Feminism: Is Feminism Good for Romantic Relationships? | SpringerLink](#)

Finally, men will benefit psychologically from being active participants in the process of positive change.<sup>127</sup>

Equal rights for women does not mean fewer rights for men. That is not how the system of equality works. While there may exist a perception that action to improve gender equality in the workplace could 'disadvantage' some men (some men 'losing' an advantage), the evidence is clear that equality has benefits for everyone.

Under the status quo, individuals benefit from WGEA's resources, analysis of data, resources and public tools. The public WGEA dashboard data explorer (available [here](#)) is available for anyone to access. The data explorer contains key statistics about gender inequality in the workplace. It also sets out gender pay gaps via industry and occupation and limited information as to organisations. This publicly accessible data allows individuals to be equipped with information to drive change and progress for themselves and within their workplaces.

### Costs

Under the status quo, the gender pay gap will close but it will take approximately 26 years (as outlined above). Gender pay gaps lead to significant earnings shortfalls for women across their careers.<sup>128</sup> The costs of the gender pay gap over this period of time will include an equivalent of \$898 million per week in earnings from gender discrimination; a combination of care, family responsibilities and workforce participation; and gender segregation by job type.<sup>129</sup> Analysis of WGEA data, shows if women and men both progress at the same pace, working full-time and reaching a Key Management Personnel (KMP) role in their tenth year, men can expect to have earned \$2.3 million while women can expect \$1.7 million in base salary over this period.<sup>130</sup>

Under the current system it will take 26 years (until 2049) to close the gender pay gap with a continued a \$263.90 per week loss for women, a \$348 million per week in lost national earnings due to gender discrimination and a \$232 million per week in lost national earnings due to gender segregation in job type.<sup>131</sup> Closing the workforce participation gap could lift Australia's GDP by 8.7 per cent, or \$353 billion, by 2050.<sup>132</sup>

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<sup>127</sup> WGEA, Workplace gender equality: the business case, 12 November 2018, [Workplace gender equality: the business case | WGEA; Diversity Council Australia \(M. Flood, G. Russell, J. O'Leary and C. Brown\), Men Make a Difference: How to Engage Men on Gender Equality, Synopsis Report, Sydney, Diversity Council Australia, 2017; Croft, A., Atkinson, C., & May, A. M. \(2021\). Promoting Gender Equality by Supporting Men's Emotional Flexibility. Policy Insights from the Behavioral and Brain Sciences, 8\(1\), 42–49. <https://doi.org/10.1177/2372732220984491>](#)

<sup>128</sup> Duncan AS, Mavisakalyan A and Salazar S (2022), Gender Equity Insights 2022: The State of Inequality in Australia, BCEC|WGEA Gender Equity Series, Issue #7, October 2022 [https://www.wgea.gov.au/sites/default/files/documents/BCEC\\_WGEA\\_Gender\\_Equity\\_Insights\\_Report\\_2022\\_WEB.pdf](https://www.wgea.gov.au/sites/default/files/documents/BCEC_WGEA_Gender_Equity_Insights_Report_2022_WEB.pdf)

<sup>129</sup> WGEA 'Fourth edition of the She's Price(d)less report released', 13 July 2022, <https://www.wgea.gov.au/publications/fourth-edition-of-the-shes-pricedless-report-released>

<sup>130</sup> WGEA, *The Business Case for Gender Equality*, (November 2018) [https://www.wgea.gov.au/sites/default/files/documents/wgea-business-case-for-gender-equality\\_0.pdf](https://www.wgea.gov.au/sites/default/files/documents/wgea-business-case-for-gender-equality_0.pdf)

<sup>131</sup> WGEA, Gender Pay Gap Data, <https://www.wgea.gov.au/pay-and-gender/gender-pay-gap-data#:~:text=As%20of%20May%202022%2C%20women's,earned%20%24263.90%20less%20than%20men.>

<sup>132</sup> Equity Economics, Making Australia the Best Place in the World to be a Parent (2021) <https://www.equityeconomics.com.au/report-archive/how-australias-parenting-policies-are-failing-women-and-our-economy>

## 7.1.2 – Medium and Large Businesses (and Community Organisations)

### Benefits

Achieving gender equality in Australian workplaces is good for the Australian economy and Australian businesses. The Global Gender Pay Gap report published by the World Economic Forum states, “People and their talents are among the core drivers of sustainable, long-term economic growth. If half of these talents are underdeveloped or underutilized, growth and sustainability will be compromised.”<sup>133</sup>

Gender equality in the workplace benefits both medium and large businesses by having a positive impact on organisation culture and operations, and increasing the success of a business. Research from WGEA states that ‘A diverse and inclusive workforce, regardless of size and industry, generates tangible benefits, such as increased efficiency, productivity, innovation, creativity and improved employee engagement. There is significant evidence from around the globe demonstrating the positive impacts on company performance of female representation on boards, in executive management and senior leadership. Increased gender diversity on boards and senior executive positions is associated with better financial performance’.<sup>134</sup>

Additional benefits include:<sup>135</sup>

1. diversity and organisational performance;
2. enhanced ability of companies to attract talent;
3. enhanced ability of companies to retain employees; and
4. enhanced organisational reputation.

### Costs

The above evidence demonstrates the potential benefits that will be realised by medium and large businesses to achieve gender equality. However, currently progress towards achieving gender equality is occurring at a slow pace and the gender pay gap remains. Review consultation found that many stakeholders, including businesses, want to do more to address gender inequality in the workplace.

Research shows a strong causal link between an increase in the number of women in key leadership positions and subsequent improvements in company performance.<sup>136</sup> In other words, gender inequality has an economic cost at an organisational level for businesses which results in potential lost profits for medium and large businesses.

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<sup>133</sup> World Economic Forum, *Global Gender Pay Gap Report*, (13 July 2022), <https://www.weforum.org/reports/global-gender-gap-report-2022/in-full/1-benchmarking-gender-gaps-2022/#:~:text=1.2.-,Global%20results,the%202021%20and%202022%20editions.>

<sup>134</sup> WGEA, *The Business Case for Gender Equality*, November 2018, [https://www.wgea.gov.au/sites/default/files/documents/wgea-business-case-for-gender-equality\\_0.pdf](https://www.wgea.gov.au/sites/default/files/documents/wgea-business-case-for-gender-equality_0.pdf)

<sup>135</sup> World Economic Forum, *Global Gender Pay Gap Report*, (13 July 2022), <https://www.weforum.org/reports/global-gender-gap-report-2022/in-full/1-benchmarking-gender-gaps-2022/#:~:text=1.2.-,Global%20results,the%202021%20and%202022%20editions.>; WGEA, *The Business Case for Gender Equality*, November 2018, [https://www.wgea.gov.au/sites/default/files/documents/wgea-business-case-for-gender-equality\\_0.pdf](https://www.wgea.gov.au/sites/default/files/documents/wgea-business-case-for-gender-equality_0.pdf)

<sup>136</sup> Gender Equity Insights 2020: Delivering on Business Outcomes, <https://bcec.edu.au/publications/gender-equity-insights-2020-delivering-the-business-outcomes/>

### 7.1.3 Government

#### Benefits

The data that employers report to WGEA contributes to WGEA's world leading dataset. This dataset is one of the richest in the world and has been described as a 'national treasure'.<sup>137</sup>

WGEA, as a Government agency, is afforded the benefit of being able to access and analyse this rich dataset. This data allows WGEA to publish its own research and analysis and develop high-quality resources. WGEA is also able to share data with other Government departments in order to provide evidence and data for a wide range of policies across Government. In particular, WGEA works closely with the OFW to help drive whole-of-government policies aimed at improving the lives of women. WGEA also works closely with the Australian Public Service Commission (APSC) and the ABS.

#### Costs

As set out in detail in Chapter 3, the Review identified three main issues with the current reporting system:

- Gaps exist in the current dataset;
- Certain elements of reporting are burdensome on businesses; and
- Current regulation is not ambitious enough to drive change in gender inequality

Elements 1 and 3 of the problem in particular are preventing Government from creating an impact at a faster rate. Improving women's economic equality is a key Government priority and an economic and social imperative. The cost of not acting is set out clearly under the 'Individuals section'.

Not only does gender inequality generate costs for individuals, it also impacts businesses by preventing them from operating efficiently. Government economic policy aims to ensure an environment where businesses in Australia can be successful. Where businesses are experiencing costs (as detailed above), then this is also a cost to Government.

### 7.2 Estimated Regulatory Costs

In the following sections, the status quo is the "baseline" or "business as usual" against which the potential regulatory impact of Options 2 and 3 are expressed.

The regulatory costs for Option 1 is calculated based on time and labour costs for impacted entities to comply with existing reporting requirements to WGEA annually. This includes:

- Set up costs - time taken by businesses and community organisations to initially comply with WGEA reporting requirements
- Ongoing costs - the time taken in subsequent years to continue to comply

The 'time taken' estimates reflect survey feedback from the 'in-scope' businesses and community organisations, and differ by enterprise size.

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<sup>137</sup> Department of Prime Minister and Cabinet 'WGEA Review Report' (2022)  
<https://www.pmc.gov.au/resource-centre/office-women/wgea-review-report>

### Option 1: Estimated existing WGEA regulatory hours (Status Quo)

	Initial Year (Year 1)	Subsequent years (Year 2 to 10)
New Medium employers	24 hours per annum	n.a.
Existing medium employers	14 hours per annum	14 hours per annum
Existing large employers	26 hours per annum	26 hours per annum

The number of ‘in scope’ entities is assumed to grow over time, with the growth rate based on ABS data on the number of Australian businesses 2016-17 to 2021-22; and data on the number of registered charities.

An important assumption made in calculating regulatory burden was that an average user tasked with the reporting responsibilities – at the ‘within scope entities’ – is someone new to WGEA reporting with a baseline knowledge of payroll matters and intermediate knowledge of human resource (HR) matters in the organisation. This provides a more realistic view of the additional activities required to meet the WGEA regulatory requirements, than by considering users that have limited knowledge in HR matters and payroll systems. In the case of users with limited knowledge, significant knowledge transfers and uplift in training would be required in preparation to engage with a regulated entity’s HR matters and payroll system – regardless of WGEA reporting requirements.

The estimated annual average economy-wide regulatory compliance cost of Option 1 has been estimated at \$8.75 million over a 10 year period, as set out in Table 1 below.

This figure has been developed in accordance with the Australian Government’s Regulatory Burden Measurement Framework, and relies on a range of assumptions described in further detail in Appendix E.

**Table 1: Option 1 Average annual compliance costs (i.e. business as usual scenario)**

Costs*	Business	Community Organisations	Individuals	Total Cost
Regulated entities	\$6,562,794	\$2,184,951		\$8,747,746
Total by sector	\$6,562,794	\$2,184,951	N/A	\$8,747,746

\* **Costs** are average annualised regulatory compliance costs calculated over the 10-years of regulation required by the [Regulatory Burden Measurement Framework](#).

\*\* The costs take into account the impact of regulation on new regulated employers who are required to report to WGEA for the first time and costs for existing employers who already report to WGEA.

### 7.3 Overall net benefit/ cost

Option 1, the status quo, has an average annual regulatory cost of \$8.7 million.

Under Option 1, the gender pay gap can be expected to continue to narrow (albeit slowly) and, on this basis, provide a benefit that more than offsets the regulatory cost – that is, Option 1 provides a net benefit. However, the current regulatory structure is preventing the gender pay gap from closing faster, and the net benefit from being greater. The primary drivers of the gender pay gap (gender discrimination; care, family responsibilities and workforce participation; and gender segregation by

job type) combine to an equivalent of \$898 million per week in earnings.<sup>138</sup> Over a ten year period this is leading to a shortfall in earnings for a woman of \$600,000 compared to a man.<sup>139</sup>

The pace of change under the status quo will mean that the ongoing costs of the gender pay gap to individuals, business and the economy will take approximately 26 years to end. The weekly and annual costs from a prolonged gender pay gap would close over time but commence at a \$264 per week loss in earnings for women compared to men, a \$348 million per week in lost national earnings due to gender discrimination and a \$232 million per week in lost national earnings due to gender segregation in job type.<sup>140</sup>

These ongoing costs will have long term negative impacts on the Australian economy, government, businesses, individuals and society. Therefore, this option is not recommended.

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<sup>138</sup> WGEA 'Fourth edition of the She's Price(d)less report released', 13 July 2022, <https://www.wgea.gov.au/publications/fourth-edition-of-the-shes-pricedless-report-released>

<sup>139</sup> WGEA, *The Business Case for Gender Equality*, (November 2018) [https://www.wgea.gov.au/sites/default/files/documents/wgea-business-case-for-gender-equality\\_0.pdf](https://www.wgea.gov.au/sites/default/files/documents/wgea-business-case-for-gender-equality_0.pdf)

<sup>140</sup> WGEA, Gender Pay Gap Data, <https://www.wgea.gov.au/pay-and-gender/gender-pay-gap-data#:~:text=As%20of%20May%202022%2C%20women's,earned%20%24263.90%20less%20than%20men.>



## 8. Likely net benefit of Option 2

Option 2 consists of implementing Recommendation 4 of the Review. This recommendation was made in response to feedback by stakeholders about the regulatory burden of reporting requirements, specifically drawing attention to certain ‘pain points’.

### 8.1 Overall Impacts

Option 2 reduces the reporting burden on relevant employers through changes to the WGE Act and its related instruments without implementing any broader changes to the dataset or relevant employers’ duties. Option 2 allows for a more streamlined data collection process, thereby reducing the regulatory burden on employers and enhancing the data WGEA collects.

#### 8.1.1 Individuals

##### **Benefits**

Option 2 includes all the benefit set out under Option 1 in addition to the benefits obtained through the implementation of Recommendation 4 of the Review. Option 2 involves addressing the regulatory burden that businesses experience under the current system. This is part two of the three problems set out in Chapter 3. However, in terms of the rate of progress in closing the gender pay gap, Option 2 has limited direct benefits for individuals beyond the status quo. That said, there may be benefits realised from increased compliance and reporting accuracy from employers.

Indirect benefits may include employees benefiting from companies receiving time back as a result of decreased reporting requirements. The extra time may result in some companies having extra resources to devote to company specific gender equality strategies and policies. However, this is not guaranteed and would depend on the company’s priorities.

There are no additional social benefits to individuals under Option 2.

##### **Costs**

Option 2 is not likely to have any additional negative costs beyond the status quo.

#### 8.1.2 Medium and Large Businesses (and Community Organisations)

##### **Benefit**

Medium and large businesses will benefit from a reduced reporting burden under Option 2. A key theme from the consultation conducted to inform the Review was the existence of certain reporting questions that were time-intensive and required manual programming from reporting contacts.

Option 2 addresses three key ‘pain points’ identified in consultation for the Review. With less regulation, businesses will be able to dedicate time and resources to invest, create jobs and grow the economy.

Medium businesses are more likely to have employees who undertake a wider range of roles and responsibilities than those in large businesses. With extra time freed up, these employees may have more time to spend on other core businesses functions.

Large businesses are more likely to have specific HR roles that are more focused on WGEA reporting and other HR functions. Option 2 may allow these employees the time to think more deeply about company-specific gender equality issues and workplace policy solutions.

The exact regulatory saving under Option 2, when compared with Option 1, is set out below in the Regulatory Costs section below.

### Costs

There are no additional costs beyond the status quo under Option 2.

### 8.1.3 Government

#### Benefits

Option 2 is focused on reducing the reporting burden for businesses resulting in second round benefits for Government.

With less reporting burden, businesses may have more time to focus on other functions. This could result in increased productivity or profits. Ensuring a healthy economy is a key Government priority. When businesses are succeeding, that is good for the economy and good for Government. A reduced reporting burden could also make room for larger governmental reforms to progress gender equality.

An increased burden on employers can result in increased error in reporting because manual data inputs are more likely to result in human error. By simplifying data collection for businesses, WGEA will receive more accurate data. Accurate data will strengthen the integrity of data and by extension the policy it informs.

#### Costs

There are no additional costs beyond the status quo as set out under Option 2.

### 8.4 Estimated regulatory costs

The regulatory cost for Option 2 is the estimated regulatory costs reduction experienced by impacted employers – compared to business as usual – due to a more streamlined data collection process by WGEA.

The regulatory cost is calculated based on time and labour costs to undertake the required reporting activities. This estimate has been developed in accordance with the Australian Government’s Regulatory Burden Measurement Framework, and relies on a range of assumptions described in further detail in Appendix E.

The reductions in the regulatory costs are mainly driven by removing the need for employers to manually calculate the annualised full-time equivalent earnings for each employee who has not worked full-time for the full reporting year.

#### Option 2: Reducing regulatory burden (i.e. implementing Rec. 4 of the WGEA Review)

	Initial Year (Year 1)	Subsequent years (Year 2 to 10)
New Medium employers	-3.5 hours per annum	n.a.
Existing medium employers	-3.5 hours per annum	-3.5 hours per annum
Existing large employers	-6 hours per annum	-6 hours per annum

Note: Under Option 2, similar reduction in regulatory hours will continue to apply for all years (i.e. from Year 1 to Year 10)

The regulatory compliance cost of Option 2 is estimated to be a cost reduction from the status quo of approximately -\$2.1 million in average annual terms over a 10 year period. The level of regulatory burden associated with Option 2 is \$6.6 million in average annual terms (that is, \$2.1 million lower than the status quo).

**Table 2: Option 2 Average annual compliance costs (from business as usual)**

Costs*	Business	Community Organisations	Individuals	Total Cost
Regulated entities	-\$1,566,209	-\$524,986		-\$2,091,195
Total by sector	-\$1,566,209	-\$524,986	N/A	-\$2,091,195

\* **Costs** are average annualised regulatory compliance **cost reduction from the baseline** (or business-as-usual scenario presented in Option 1) calculated over the 10-years of regulation required by the [Regulatory Burden Measurement Framework](#). The regulatory impact for the initial year of implementation is estimated to be similar to subsequent years.

\*\* The costs take into account the impact of regulation on new regulated employers who are required to report to WGEA for the first time and costs for existing employers who already report to WGEA.

## 8.5 Overall net benefit

The overall net benefit under Option 2 is greater than under Option 1 due to a reduction in the regulatory costs of \$2.1 million.

Option 2, however, has limited direct benefits for individuals beyond the status quo. However, it is expected that there will be increased compliance and reporting accuracy from employers. Medium and large businesses will benefit from a reduced reporting burden under Option 2, however the scale of the reduced burden is unlikely to result in an uptick in productivity and profits.

There would be the same long terms costs to individuals, business and government under this option; approximately \$580 million per week in lost national earnings and \$264 per week loss for women.<sup>141</sup> These costs would decline slowly over the anticipated 26 year period it would take to close the gender pay gap. Thus, while the overall initial net benefit is increased under Option 2, the cost of unrealised workplace gender equality will continue to be a significant cost for individuals, businesses and government in the long term.

<sup>141</sup> WGEA 'She's Price(d)less: The economics of the gender pay gap' (2019) <https://www.wgea.gov.au/publications/shes-pricedless-the-economics-of-the-gender-pay-gap>.

## 9. Likely net benefit of Option 3

Option 3 consists of implementing Recommendations 2, 3, 4 and 7 of the Review. Recommendations 2 and 3, in particular, are headline recommendations of the Review.

Recommendation 2 is for WGEA to publish organisational pay gaps publicly which will increase transparency, and reduce information asymmetries, for all stakeholders. Recommendation 3 includes a requirement for employers with 500 or more employees to bridge the 'action gap' by requiring employers to set, measure and achieve targets against three of the six GEIs, and to develop policies and strategies against all six GEIs.

These recommendations were made with the express aim of accelerating the rate of change to address gender inequality in Australia, and to create increased benefit for stakeholders relative to the status quo.

### 9.1 Overall Impacts

Option 3 has a lower regulatory cost than the status quo (Option 1) but provides the most significant positive impact on gender equality. Under Option 3, the estimated regulatory cost reductions from implementing Recommendation 4 of the Review (discussed in Option 2 above) **more than offset** the estimated increases in regulatory cost to implement Recommendations 2, 3, 7.1 and 7.3C of the WGEA review.

The largest driver of the estimated regulatory cost increase under Option 3 is the implementation of Recommendation 7 (i.e. 7.1 and 7.3c) of the WGEA Review.

#### 9.1.1 Individuals

##### Benefits

Option 3 will deliver all the benefits included under Option 1, but faster. Option 3 also has many first and second round benefits for individuals. Recommendations 2, 3 and 7 ultimately aim to help women reach their potential in the workplace at a faster rate.

Recommendation 2 will allow individuals to access the organisational gender pay gaps of individual companies. This will allow individuals of all genders to compare the gender pay gaps of employers and use this information to make more informed choices about their employment. An increase in transparency will allow individuals to use this information when making decisions about their careers, including negotiating remuneration and employee benefits.<sup>142</sup> Transparency will also likely reduce the gender pay gap at a faster rate reducing the individual loss to women of \$263.90 per week over less time.<sup>143</sup> Further, reducing information asymmetries in relation to organisation pay can increase competition for talent between firms, and may result in increasing real wages.

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<sup>142</sup> James Purtill 'Gender Pay Gap Bot calls out brands tweeting about International Women's Day while paying women less than men (ABC, 2022) <https://www.abc.net.au/news/science/2022-03-11/gender-pay-gap-bot-international-womens-day-twitter/100898172>; Tomasz Oblo 'Study finds "trade-off" between pay transparency and performance' (Personnel Today, 2022) <https://www.personneltoday.com/hr/study-finds-trade-off-between-pay-transparency-and-performance/>

<sup>143</sup> WGEA, Gender Pay Gap Data, <https://www.wgea.gov.au/pay-and-gender/gender-pay-gap-data#:~:text=As%20of%20May%202022%2C%20women's,earned%20%24263.90%20less%20than%20men.>

Recommendation 3 will benefit the employees of large companies. Women, in particular, will benefit from these policies as companies may remove barriers that women experience in the workplace.

Second round impacts of Recommendation 3 will be realised for all businesses not just large businesses. By changing requirements for large companies, best practice behaviour will change to meet the requirements of Recommendation 3. Consultation revealed that medium and small businesses take inspiration and influence from what large companies are doing, and seek to mirror best practice examples. With the largest companies in Australia complying with Recommendation 3, a longer term benefit is likely to be widespread change on the standard practice for all businesses and community organisations. Recommendation 3 may also benefit women by reducing barriers to success in the workplace. This may lead to increased numbers of women in management and leadership positions, and improve the recruitment and retention of women in certain companies.

The benefits of Recommendation 4 were set out in Chapter 8 above.

Recommendation 7 will ensure additional, useful data is provided to WGEA, allowing more sophisticated analysis of the gender pay gap. The impacts of the gender pay gap will be analysed further across life span, primary workplace location, superannuation payments and top management salaries. This will have second round benefits for individuals, by allowing further insights to be gained on the gender pay gap and how it affects different cohorts. In particular age and location data will help women to access more specific data relevant to their circumstances.

A report by the University of Queensland states that there is a clear link between women's mental health/wellbeing and economic insecurity. Increasing women's wages has the potential to reduce "fatigue, stress, anxiety and depression".<sup>144</sup> Women reaching their potential in the workplace will positively impact the entire population and drive economic growth. Removing disincentives for women to enter the paid workforce is estimated to increase the size of the Australian economy by about \$25 billion per year.<sup>145</sup> Research shows that closing the gap between men's and women's employment rates will boost the level of Australia's GDP in the range of 8-11 per cent.<sup>146</sup>

The cumulative impact of the Recommendations above is likely to lead to a faster reduction in the gender pay gap, economically and socially benefitting women across Australia, the individuals in their lives and their families. When women are compensated equally and recognised for the work they do, everyone stands to gain.

## Costs

Under Recommendation 2, no individual remuneration will be published. However, privacy concerns remain for employees that are employed by smaller organisations that individual salaries may be able to be deduced. WGEA is conscious of the importance of privacy safeguards, and implementation will be designed with privacy in mind. WGEA's policies and practices are in line with the obligations of the Privacy Act and Privacy Principles. WGEA conducts impact assessments in relation to privacy, and has privacy officers and champions in the Agency. The WGE Act also contains specific provisions regarding privacy in relation to the information that WGEA collects. That said,

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<sup>144</sup> Fitzsimmons, T.W., Yates, M.S. & Callan, V.J. (2022). Experiences of COVID-19: The pandemic and work/life outcomes for Australian men and women. Brisbane: University of Queensland Business School, 106.

<sup>145</sup> OECD (2012) Closing the Gender Gap: Act Now, OECD Publishing,

<http://dx.doi.org/10.1787/9789264179370-en>

<sup>146</sup> WGEA 'Australia's Gender Pay Gap Statistics' (2022) <https://www.wgea.gov.au/publications/australias-gender-pay-gap-statistics>.

concerns are assuaged by the methodology used by WGEA. The minimum employment sized organisation in-scope and the quartile breakdown of the data implies there will always be at least 25 individuals in each quartile, on this basis it would not be possible for individual salaries to be identified.

Recommendations 3, 4 and 7 are not expected to have any first or second round costs for individuals.

### 9.1.2 Medium and Large Businesses (and Community Organisations)

Implementing Recommendation 2 increases the transparency of businesses' organisational pay gaps. Transparency can be a strong motivator for businesses, both medium and large, to address their gender pay gaps. In the UK, this was most recently demonstrated by the media sensation of the Gender Pay Gap Bot that retweeted companies' International Women's Day posts alongside reported pay gaps.<sup>147</sup>

During consultation, business stakeholders expressed a strong interest in having time to prepare for these changes, indicating their desire to implement immediate changes before organisational changes are public. This demonstrates that the introduction of Recommendation 2 has already led to businesses giving thought to their organisational gender pay gaps. A number of leading Australian employers already publish their organisational gender pay gaps.<sup>148</sup> The strength of publication will be enhanced through the objectivity of WGEA and the additional in depth analysis provided by WGEA through implementation of Option 3. In addition, employers who do not currently publish their gender pay gap but that comply with WGEA reporting will have their gender pay gap calculated and published by WGEA, consequently increasing the number of organisations with published gender pay gaps significantly and reducing the burden on employers to calculate this percentage themselves.

WGEA's submission to the Review stated "increased transparency can cause organisations to assess systems and processes for pay, job evaluation and performance. Publishing individual organisations gender pay gaps can also generate stakeholder engagement and pressure and inform investment decisions. Without organisational gender pay gaps – "arguably the most important variable" – in the Agency's public dataset, the dataset is less useful for improving gender equality outcomes."<sup>149</sup>

Recommendation 3 addresses the current status quo problem of companies reporting but not taking real 'action', i.e. the 'action gap'. It requires large companies to:

- commit to, achieve and publicly report to WGEA on measurable genuine targets to improve gender equality in their workplaces against three of the six GEIs; and
- have a policy or strategy against all six GEIs, not just one of four as is currently the case.

Stakeholders supported this recommendation in Review consultations, proposing substantial strengthening of the minimum standards as a mechanism to drive change to advance gender equality. Some stakeholders criticised the current legislative framework that only requires reporting data to be sufficient for WGEA compliance – without any need for employers to take action and

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<sup>147</sup> New York Times, 'Twitter Bot Highlights Gender Pay Gap One Company at a Time', <https://www.nytimes.com/2022/03/09/business/pay-gap-international-womens-day-twitter.html>

<sup>148</sup> Department of Prime Minister and Cabinet 'WGEA Review Report' (2022) <https://www.pmc.gov.au/resource-centre/office-women/wgea-review-report>

<sup>149</sup> Ibid.

show progress on gender equality. Concerns were expressed that progress is not happening fast enough and the current target for compliance with the minimum standards is too low (i.e. policies or strategies are currently required to support one or more of the gender equality indicators).

Generally, large companies are well resourced and, in this context, Recommendation 3 of the Review only applies to large businesses. Motivating businesses to change will be a crucial step in addressing the gender pay gap and gender inequality. Recent comparative research on gender pay gap reporting shows action plans are essential for change, and that 'employers should be mandated to create time-bound targets to redress pay gaps, setting out clear and measurable goals'.<sup>150</sup> Companion research recommended that Australia introduce 'outcome-based' minimum standards.<sup>151</sup>

Medium size businesses (and community organisations) are not required to comply with the minimum standards under Recommendation 3. That said, positive second round impacts are likely to be realised as consultation feedback revealed that medium businesses look to large businesses for inspiration and as exemplars of best practice behaviour.

Over time, as large, medium and small businesses improve their approach to taking action at an organisation level, there will be an improvement in how companies address gender inequality in their workplaces. This will have many positive impacts on Australian workplaces:

- Increasing women's participation in the workforce has positive impacts on organisational culture and on operations. Diverse teams are associated with greater innovative capacity for an organisation. A United States study examined the performance of 1,500 companies over 15 years and showed that women's representation in senior management is associated with an improvement in organisational performance where a company focuses on innovation.<sup>152</sup>
- When workplaces are equally appealing to women and men, organisations have access to a larger talent pool.
- Workplace policies supporting gender equality are an important tool for retaining talented employees.  
Gender equality is critical to an organisation's success and is viewed as a necessity by leading organisations.

Benefits to workplaces also include increased profits and financial success:

- Research shows companies in the top quartile for gender diversity on their executive teams were 25 per cent more likely to experience above-average profitability.<sup>153</sup>
- Research by the Bankwest Curtin Economics Centre (BCEC) and WGEA found that an increase in the share of female 'top-tier' managers by 10 percentage points or more led to a 6.6 per cent increase in the market value of Australian ASX-listed companies, worth the equivalent of AUD\$104.7 million. The report, *Gender Equity Insights 2020: Delivering on*

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<sup>150</sup> Department of Prime Minister and Cabinet 'WGEA Review Report' (2022)  
<https://www.pmc.gov.au/resource-centre/office-women/wgea-review-report>

<sup>151</sup> Ibid.

<sup>152</sup> Cristian L Dezsó and David Gaddis Ross, *Does Female Representation in Top Management Improve Firm Performance? A Panel Data Investigation* (2012)  
[https://www0.gsb.columbia.edu/mygsb/faculty/research/pubfiles/3063/female\\_representation.pdf](https://www0.gsb.columbia.edu/mygsb/faculty/research/pubfiles/3063/female_representation.pdf)

<sup>153</sup> McKinsey & Company *Diversity wins: How inclusion matters*, (19 May 2020), [How diversity, equity, and inclusion \(DE&I\) matter | McKinsey](#)

Business Outcomes, reveals a strong and evidence based causal relationship between an increase in the number of women in key decision-making positions and subsequent improvements in company performance.<sup>154</sup>

- From a survey of companies across 25 countries, a Realindex report found that ‘more gender diverse leadership teams generate better results’. Greater gender diversity was found to ‘generate superior operating outcomes and financial results’.<sup>155</sup>
- McKinsey & Company research shows leaders in gender diversity were 15 per cent more likely to have better financial results than competitors.<sup>156</sup>

Increasing women's participation in the workforce has positive impacts on organisational culture and operations. A diverse and inclusive workforce, irrespective of size and industry, generates tangible benefits, such as increased efficiency, productivity, innovation, creativity and improved employee engagement.

Implementing Recommendation 7 will benefit medium and large businesses by expanding reporting on the GEIs, allowing WGEA to provide further insights on the gender pay gap. This will be included in the reports provided by WGEA to businesses. With WGEA collecting data on age, location and superannuation, employers will be able to translate relevant data insights into organisational level change.

### Costs

Targeted consultation on Recommendation 2 revealed some concerns of peak businesses bodies and industries. Some stakeholders are concerned about the possibility of dampening productivity due to low morale, slowing men’s wages growth to raise women’s wages comparatively, and challenges for global organisations to reconcile international reporting obligations.

Recommendation 3 requires an increase in regulatory requirements for large companies. The anticipated regulatory burden is calculated below. The Review did not recommend that the renamed and expanded gender equality standards would apply to medium sized employers with 100-499 employees given the likely regulatory impact. The Review also noted that post COVID 19 – many medium sized businesses are facing increased challenges and this was ‘not the time’ to increase regulatory burden on them. Large businesses, however, were determined to be able to comply with this new requirement, especially as many already set additional targets and have a number of policies and strategies in place.

Implementing Recommendation 7 requires expanded reporting from medium and large employers, including on employee age, location, superannuation and CEO data. Feedback from consultation for the Review revealed a high proportion of employers already report employee age, location and CEO data voluntarily, limiting the number of businesses who would have to begin doing this. The majority of businesses already collect this data but there may be a small amount of employers that may have to alter their systems to provide this data.

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<sup>154</sup> Media Release, *More women at the top proves better for business*, [BCEC WGEA Media Release - More women at the top proves better for business.pdf](#)

<sup>155</sup> Dr Joanna Nash and Dr Ron Guido, Real Index Investments, *Beyond lip service: tracking the impact of the gender diversity gap* (12 May 2022) <https://www.firstsentierinvestors.com.au/content/dam/web/australia/realindex/realindex-lip-service-report.pdf>

<sup>156</sup> McKinsey & Company, *Diversity Matters* (2 February 2015), <https://www.mckinsey.com/~media/mckinsey/business%20functions/people%20and%20organizational%20performance/our%20insights/why%20diversity%20matters/diversity%20matters.pdf>



Targeted consultation returned mixed results for ANZSCO level 4 reporting (Recommendation 7.3.a)<sup>157</sup> and group structure reporting (Recommendation 7.3.b). Some employers stated that the proposed changes would take the same amount of time to report as under current requirements, whereas others believed it would take longer. Some employers mentioned that their HR systems were set up to comply with current requirements and that proposed changes would require significant IT/ HR systems updates.

These reforms could place pressure on wages leading to increased wage bills for businesses, which is a cost. As a result, businesses may hire less people, which has a second round effect of reduced jobs. However, any such impacts are likely to be short-term as the economic growth driven through equality would then increase profits and job opportunities again.

### 9.1.3 Government

#### Benefits

The benefits to Government under Option 3 are similar to the benefits to individuals and companies. Recommendations 2, 3 and 7 are key measures that align with the Government's gender equality commitments.

Increased transparency (Recommendation 2) is a key step towards addressing the gender pay gap. Recommendation 3 requires businesses to comply with strengthened standards and develop appropriate policies and strategies. This recognises that reporting to Government can generate insights and analysis to assist companies, but that businesses need to do more and work in partnership with Government to address gender inequality. Implementing Recommendation 7 will allow Government to access more granular data to allow further analysis. More granular data on primary workplace location, superannuation payments, and age of employees will enable greater insight, particularly the impact of labour market segmentation as it contributes to the gender pay gap. Employee age and location data will enable the Government to analyse the distributional impacts of gender inequality. The reporting of non-binary employees' data will provide Government and the broader community a clearer more detailed picture of Australian workplaces.

Women reaching their potential in the workplace will positively impact all Australians and drive economic growth. Removing disincentives for women to enter the paid workforce is estimated to increase the size of the Australian economy by about \$25 billion per year.<sup>158</sup> Research shows that closing the gap between men and women's employment rates will boost the level of Australia's GDP by anywhere between eight to eleven per cent.<sup>159</sup>

#### Costs

There are no further anticipated costs to Government under Option 3. The cost of not addressing gender inequality in an effective and timely manner can, in large part, be avoided by implementing Recommendations 2, 3, 4, and 7.

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<sup>157</sup> ANZSCO reporting changes will not be implemented as part of the current policy changes (and this IA), and will be incorporated into future implementation.

<sup>158</sup> John Daley 'Game-changers: Economic reform priorities for Australia' (The Grattan Institute, 2012) [Game-changers: Economic reform priorities for Australia - Grattan Institute](#)

<sup>159</sup> Goldman Sachs, 'Womenomics in Australia – Some Progress, but More Potential', 26 November 2019, [Australia and New Zealand Economics Analyst Womenomics in Australia – Some Progress, but More Potential \(goldmansachs.com\)](#)

## 9.2 Estimated Regulatory Costs

Under Option 3, the estimated regulatory cost reductions from implementing Recommendation 4 of the Review (discussed in Option 2 above) more than offset the estimated increases in regulatory cost to implement Recommendations 2, 3, 7.1 and 7.3C of the WGEA review.

The largest driver of the estimated regulatory cost increase under Option 3 is the implementation of Recommendation 7 (i.e. 7.1 and 7.3c) of the WGEA Review. Under Recommendation 7.1 and 7.3C, regulated entities are required to increase their reporting on gender equality indicators including e.g. employees' ages, primary workplace location, remuneration data for CEO, and report workplaces data as it relates to individual entities within corporate structure.

The regulatory burden has been estimated based on discussions between WGEA and key businesses.

### Option 3: Preferred option (implementing Recs 2, 3, 4, 7.1 and 7.3c of the WGEA Review)

	Initial Year (Year 1)	Subsequent years (Year 2 to 10)
New Medium employers	4 hours per annum	n.a.
Existing medium employers	4 hours per annum	-0.5 hours per annum*
Existing large employers	6 hours per annum	-1.5 hour per annum*

\*Note: Under Option 3, the reduction in red tape burden under Rec 4 of the WGEA review more than offset the increase in regulatory burden under Rec 2, 3, 7.1 and 7.3C of the WGEA review, for subsequent years (i.e. Year 2 to Year 10).

The regulatory costs calculated for Option 3 is the estimated amount it would cost impacted entities to comply with the proposed regulatory changes, based on the time and labour costs of undertaking the new required reporting activities. The methodology by which this cost has been developed is consistent with the Australian Government's Regulatory Burden Measurement Framework, and relies on a range of assumptions described in further detail in Appendix E.

An important assumption made in calculating regulatory burden was that an average user tasked with the reporting responsibilities – at the regulated entities – as someone new to WGEA reporting with a baseline knowledge of payroll matters and intermediate knowledge of human resource (HR) matters in the organisation. This provided a more realistic view of the additional activities required to meet the proposed regulatory requirements, than by considering users that have limited knowledge in HR matters and payroll systems. In the case of users with limited knowledge, significant knowledge transfers and uplift in training would be required in preparation to engage with a regulated entity's HR matters and payroll system – regardless of changes to WGEA reporting requirements.

The regulatory compliance cost of Option 3 is estimated to be a cost reduction from the status quo of approximately -\$124,709 in average annual terms over a 10 year period. The level of regulatory burden associated with Option 3 is approximately \$8.6 million in average annual terms (that is, \$124,709 lower than the status quo).

**Table 3: Option 3 Average annual compliance costs (from business-as-usual scenario)**

Costs*	Business	Community Organisations	Individuals	Total Cost
Regulated entities	-\$95,159	-\$29,550		-\$124,709

Total by sector	-\$95,159	-\$29,550	N/A	-\$124,709
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\* **Costs** are average annualised regulatory compliance **cost impact from the baseline** (or business-as-usual scenario presented in Option 1) calculated over the 10-years of regulation required by the [Regulatory Burden Measurement Framework](#). The regulatory impact for the first year (Year 1) of implementation is estimated to be larger than subsequent years.

\*\* The costs take into account the impact of regulation on new regulated employers who are required to report to WGEA for the first time and costs for existing employers who already report to WGEA.

### 9.3 Overall net benefit

The regulatory costs are lower than Option 1 but higher under than Option 2. Option 3 involves implementing a multi-faceted approach to addressing gender inequality in Australian workplaces that has a host of increased benefits for businesses, Government, individuals and society that leads to an overall net benefit greater than Option 2. Although, it is difficult to estimate how quickly the gender pay gap will close if Option 3 is delivered as many of the benefits listed above will not be fully realised until there is pay equality.

Option 3 will reduce the costs to women per week and the lost national earnings of \$551 million due to reducing gender discrimination and segregation in work at a faster rate than Options 1 and 2. Concurrently, Option 3 will increase the number of women in the paid workforce at a faster rate which will increase productive capacity of the Australian economy by about \$25 billion per year.<sup>160</sup> Option 3 is also expected to close the gender pay gap at a faster rate than Options 1 and 2 which will increase the speed of the benefits produced by this including, lifting Australia’s GDP by up to 11 per cent, or \$353 billion.<sup>161</sup>

Closing the gender pay gap faster will have positive impacts on the profits of businesses, as outlined above. It will also create additional benefits, such as increased efficiency, productivity, innovation, creativity and improved employee engagement. The cumulative impact of the Recommendations is likely to lead to a more timely reduction in the gender pay gap, economically and socially benefitting women across Australia, the individuals in their lives and their families.

Therefore, the net expected benefits in the long term will likely outweigh any additional initial costs to the government, businesses and individuals.

<sup>160</sup> John Daley ‘Game-changers: Economic reform priorities for Australia’ (The Grattan Institute, 2012) [Game-changers: Economic reform priorities for Australia - Grattan Institute](#)

<sup>161</sup> Equity Economics, Making Australia the Best Place in the World to be a Parent (2021) <https://www.equityeconomics.com.au/report-archive/how-australias-parenting-policies-are-failing-women-and-our-economy>

## 10. Consultation and incorporation of feedback

### 10.1 Purpose and Objectives

The development and implementation of the Review's recommendations were informed by considered and comprehensive stakeholder consultation. Consultation was a key component in developing Option 3. Consultation improved the policy through canvassing varied stakeholder responses to proposed changes and to understand the concerns of business, government and individuals.

In order to fully consider and apply the broad stakeholder views implicated by the Review, two phases of consultation were carried out:

1. Review Consultation - conducted during the Review process; and
2. Implementation Consultation – conducted to inform this IA and further unpack issues from the Review Consultation.

### 10.2 Review Consultation

The Review consultation occurred in October and November 2021, and was open to all members of the public. A media release made by the Minister for Women initially announced the Review consultation to the public. In addition, the Review consultation paper was circulated on social media and emails were sent to key stakeholders inviting them to provide input.

A range of stakeholders were convened across five virtual roundtables in November 2021. These roundtables were with a variety of organisations and targeted representatives from the business and not-for-profit sectors, employee organisations, higher education providers, the women's sector, users of the WGEA data, Australian government and state and territory government and other interested parties.

Stakeholders were invited to respond to a consultation paper which was released on 20 October 2021. The consultation paper invited written responses for 10 questions and 155 submissions were received.

Several key themes emerged from consultation which informed the design of the Review recommendations:

- The Workplace Gender Equality Act and WGEA are only one part of a holistic approach to address gender inequality in the workplace. Governments, employers, and the community all have a role in promoting and improving gender equality in Australian workplaces.
- The rate of change on gender equality in workplaces is not happening fast enough.
- Current compliance mechanisms and reporting standards are not going far enough to hold organisations accountable for progressing gender equality.
- Increasing women's workforce participation is vital for economic growth and productivity.
- A number of employers expressed concern about the burden of current reporting obligations to WGEA.
- There are gaps in the dataset that mean the true state of gender equality in the economy is not being reflected, and therefore is not being fully leveraged to drive targeted action. Key gaps include intersectional perspectives from Aboriginal and Torres Strait Islander women, women living with disabilities, culturally and linguistically diverse (CALD) women, and non-binary people.

- There was strong agreement that focus on making gender pay gap data transparent at the organisation level (as opposed to just the industry level, which is currently reported by WGEA) will accelerate the pace of change towards closing the gender pay gap.

This feedback informed the recommendations of the Review, which has in turn formed the options considered in this paper.

### 10.3 Implementation Consultation

Further extensive consultation was undertaken to inform this IA and target key gaps and issues from the Review consultation. The purpose of this additional consultation was to build an in depth understanding of the impacts of these changes on businesses to inform PM&C’s assessment of the preferred option, to ensure sensitive recommendations were considered in more detail, and to ensure relevant stakeholders and industry experts’ views were taken into account when designing implementation. Stakeholders consulted include other Government departments, WGEA, peak business bodies (Peaks), partnerships, UK counterparts and experts.

Consultation on the implementation of the Review was carried out by OFW over August and September of 2022. The consultation process was executed in two parts: a survey to relevant employers and targeted roundtables.

#### Survey

An Expression of Interest was circulated to over 10,000 relevant employer reporting contacts by WGEA on behalf of OFW and 420 responses were received by OFW and a link to an online survey was circulated to these interested parties.

The online survey was completed by a total of 344 respondents. The survey was open for completion from 22 August 2022 to 16 September 2022.

The survey was split into three sections where the Review specifically called for further consultation with relevant employers:

**Section 1** – Recommendation 2: Publish organisational gender pay gaps

**Section 2** – Recommendation 3: Strengthen minimum standards

**Section 3** – Recommendation 7: including a range of issues including ANZSCO categories, reporting at a group structure level and timing of reporting.

A summary of survey feedback and full survey results are included at Appendix F.

#### Targeted Roundtables

Targeted roundtables were conducted with key stakeholders on recommendations of particular importance/sensitive recommendations. Three targeted consultations roundtables were hosted by OFW:

Date	Roundtable Topic	Stakeholders
19 September 2022	Collection of data from employees identifying as non-binary (Rec 7.2)	Consultation with organisations and experts that capture voices of non-binary people in Australia. The Stakeholder List included LGBTQI+ peaks, advocacy organisations as well as some WGEA-reporting employers.

<b>20 September 2022</b>	Peak business bodies (generally covering the Review, in particular Recs 2 and 3)	The third roundtable did not address specific recommendations, but rather provided peak business bodies the opportunity to speak to areas of the Review that were of interest or concern. The Australian Industry Group and Business Council of Australia were among those invited to this consultation.
<b>21 September 2022</b>	Partnerships (Rec 7.3(b))	This discussion with stakeholders was around the challenges and opportunities of partnership structures reporting to WGEA. The stakeholder list included a mix of legal and accounting firms recommended by WGEA and with knowledge of WGEA reporting.

Copies of the Agendas are at Appendix G.

Roundtables were designed in order to create an accessible environment for all stakeholders. Roundtables were targeted and efficient and were held virtually, in order to reach a wide range of stakeholders and to ensure flexibility for attendees. All three roundtables were chaired by a Director in Women’s Economic Policy, OFW, and were attended by WGEA as an observer. Roundtables were conducted under Chatham House Rules to encourage honest and open discussion. Therefore, de-identified summaries of the key points are provided below. The roundtables were valuable sessions where the OFW was able to draw out more detail regarding stakeholder concerns. There was a generally high level of support for the data collection work WGEA does, particularly through the non-binary and peak body consultation.

#### 10.4 Principal Views of Stakeholders

The principal views raised by stakeholders through both the survey and the roundtables are set out below.

##### Survey

- Publish the Organisational Gender Pay Gap (Recommendation 2 – Option 3)
  - Overall employers were supportive of the publication of the organisational gender pay gap.
  - Employers expressed a strong desire to be able to provide narrative alongside the publication of their organisational gender pay gap and the provision of information explaining the gender pay gap by WGEA.
- Bridge the ‘Action Gap’ with New Gender Equality Standards (Recommendation 3 – Option 3)
  - Stakeholders provided mixed feedback in response to whether employers would develop measurable and genuine targets; some expressed interest in developing more specific and useful targets for their organisation whilst others expressed concern about the burden of this task.
  - Organisations were eager to obtain further information and guidance from WGEA on how to develop and progress targets.
- Refine the Gender Equality Indicators (Recommendation 7 – Option 3)
  - Organisations were generally concerned about the increased burden required to report at ANZSCO level 4 but a majority also indicated that they were well placed to report on manager categories at an entity level.

- Organisations had mixed views on the reporting date with some expressing a preference for the calendar or financial year and others preferring the current 31 March reporting period.

## Roundtables

- Collection of data from employees identifying as non-binary (Recommendation 7.2 of the Review – Option 3)
  - Businesses are at different stages of readiness in terms of collecting and reporting non-binary employee data. It may be useful to have a runway (through a few years of voluntary reporting ahead of mandatory reporting) to allow businesses to develop this capability. Multinationals in particular often use international HR systems that are developed in other countries and will need time to make country-level updates;
  - A staged approach will help businesses to ensure data is pulled from internal systems and provided to WGEA in the right format. Despite there being a variety of HR systems and databases, there was a general willingness from stakeholders to work to get WGEA standardised data;
  - A variety of methods are currently employed by businesses in order to collect gender data from employees. The success of data collection is often closely tied to the workplace culture of a business;
  - Cultural safety, and resources around improving cultural safety at work, are key to the discussion on non-binary employee data. A staged approach will better allow for dissemination of resources to support the safety of non-binary employees.
- Peak business bodies roundtable (generally covering the Review, in particular Recommendations 2 and 3 – Option 3)
  - A number of Peaks are aware of WGEA’s current resources and circulate them to their members;
  - Peaks expressed support for publishing organisational gender pay gaps (Recommendation 2 – Option 3) but underlined that an education campaign (so people better understand what the gender pay gap is) will be important to its success;
  - Some Peaks considered that businesses being able to publish an explanatory statement alongside organisations’ pay gaps would be helpful;
  - There was general support for the setting and measuring of targets (Recommendation 3 – Option 3);
    - Peaks pointed out that different businesses would benefit from different types of targets;
    - A number of Peaks felt that successful targets were not too prescriptive and when successful, often tied targets to organisations’ broader strategies. Some stakeholders stated that longer term targets would be better than year on year targets;
    - There was interest in further resources from WGEA on developing targets and interest in an increased role for WGEA to work directly with employers to ensure the success of targets.
- Partnerships roundtable (Recommendation 7.3(b) – Option 3)

- Some partnerships already voluntarily report as much data as they can to WGEA, others do not;
- Stakeholders were concerned about the ability for partnership structures to report in the same way as employees currently do due to the large variety of partnership structures and differences in the roles of partners and employees;
- Stakeholders were keen to underline that the most value from WGEA's data analysis would be drawn from a like-for-like comparison, but questioned how a like-for-like comparison could be achieved;
- One complexity that was raised was that partners do not receive a salary in the same way employees do, and take on significantly more personal financial risk than employees do. Their remuneration is drawn from a number of different sources and is often dependant on the size and success of their practice. Additionally, take home profits can be linked to economic trends and therefore year on year trends may not be demonstrative of actual gender pay gaps;
- A number of partnerships do already calculate their gender pay gap, set targets (some publicly) and have broader D&I strategies;
- Despite the many complexities and challenges, stakeholders were amenable to further discussions and expressed a preference to work closely with Government and WGEA through the development of partnership reporting.

### 10.5 Implementation of Stakeholder Views

The preferred policy option, Option 3, has been modified to take into account stakeholder views, however, not all stakeholder feedback has been implemented and is being addressed through ongoing consultation outlined below.

#### **Stakeholder feedback not implemented**

There was some interest in WGEA publishing a narrative from an employer alongside the employer's gender pay gap. This will not be implemented because it would require too much management and administration from WGEA. Employers, however, will be able to publish narrative on their own websites and social media with the organisational gender pay gap and comment on the actions being taken to reduce it.

Some business stakeholders suggested that the WGEA reporting periods should change to either the calendar year or financial year. The reporting periods for private business, however, will not change, and will continue to conclude on 31 March annually. This date is legislated and it is not within the policy authority of Review implementation to alter this date. This could be an issue revisited at the five year review.

#### **Stakeholder feedback implemented**

To implement stakeholder feedback on the implementation of measurable and genuine targets (Recommendation 3.1b) WGEA will provide a list, or menu, of options for targets against the GEIs from which employers can choose. These targets will range in duration from one to three years. WGEA will conduct consultation with large employers on the development of targets with the view to consider and incorporate employer-suggested targets into the list of options. This implements stakeholder feedback that noted the varied applicability of targets to different businesses. In addition, the varied length of target duration fulfils stakeholder feedback from Peaks that indicated longer term targets would be better.



## 10.6 Ongoing Consultation

The following recommendations will not be implemented, however, following passage of the legislation, consultation will continue, to ensure effective implementation and robust regulation on a number of recommendations, including regarding the following matters.

### **ANZSCO Reporting (Recommendation 7.3(a))**

Stakeholders expressed concern regarding the requirement to report to WGEA at ANZSCO level 4 for non-managers. Many employers viewed this as an increased burden but also acknowledged that they were well placed to report at this level. Further, the ANZSCO classification system is being reviewed and a new version will be released in late 2024. Therefore, systemic changes to reporting such that employers would need to provide data with level 4 of ANZSCO will not be implemented. Internal engagement will continue within the OFW regarding the amendments to the ANZSCO reporting levels, which are being carried out by the Women's Economic Policy Branch.

### **Partnership data (Recommendation 7.3(b))**

Some partnerships indicated that the ability to report in the same way as employees currently do is difficult, due to the large variety of partnership structures and differences in the roles of partners and employees. Conversely, other partnerships already voluntarily report to WGEA. To manage these stakeholder complexities, the decision was made to engage in further consultation. Therefore, Recommendation 7.3(b) will not be implemented under Option 3 and

Further research and engagement with partnerships will progress this discussion. The OFW will continue to consult with key stakeholders regarding the best way to capture gender data in the partnership space.

### **Collection of data from employees identifying as non-binary (Recommendation 7.2)**

Businesses indicated that they are at different stages of readiness in terms of collecting and reporting non-binary employee data.

This feedback was considered and it was determined that further investigation was required for implementation.

### **Five Year Review (Recommendation 10)**

Recommendation 10 of the Review which states that the Act be reviewed again five years following legislative change.

## 11. Preferred Option

Option 3 is the preferred option and implements recommendations 2, 3, 4 and 7 of the Review. Implementing these recommendations addresses all three elements of the problem; it will fill gaps in the current dataset, reduce the reporting burdens on businesses and is more ambitious so will drive a faster rate of change in reducing gender inequality. Therefore, this option has the highest net benefit.

Element of the Problem	Policy Objective	Why Option 3?
Gaps exist in the current dataset	WGEA is a government agency, therefore Government action is required to enhance the data available to WGEA.	<p>The implementation of recommendations 3 and 7 will expand WGEA’s dataset and enable WGEA to produce a more sophisticated and complete analysis of the gender pay gap.</p> <p>New gender equality standards (Rec 3) will require employers to report on targets against three out of six GEIs and strengthen the accountability employers have to their employees and governing bodies.</p> <p>Refining the GEIs (Rec 7) will expand the information that is to be mandatorily reported to WGEA to include non-binary data, age, primary workplace location, superannuation payments whilst on parental leave and the remuneration of CEOs/Secretaries. WGEA will then be able to use this information to further pursue gender equality.</p>
Reporting is burdensome on business	Ensuring a healthy economy is a key Government priority and interrelated with healthy businesses.	Reducing the burden on businesses (Rec 4) will enable employers to spend more time and resources on cultural change within an organisation to further improve gender equality. This could also lead to higher productivity and profits for businesses.
Current regulation is not ambitious enough to drive change in gender inequality	The Government has committed to escalating gender equality and accelerating closure of the gender pay gap.	<p>The current approach of publishing aggregate industry gender pay gaps is not creating the transparency, accountability and insights necessary to close the gender pay gap fast enough. Enabling WGEA to publish the organisational gender pay gap (Rec 2), will increase transparency across industries and drive cultural change.</p> <p>New gender equality standards (Rec 3) that require employers to report on targets against three out of six GEIs will also further drive change through increased accountability on employers.</p>

### **Limitations of Option 1**

Option 1 does not implement any recommendations of the Review and does not address any elements of the problem:

1. it does not offer any avenues to reduce the gaps in the current data set;
2. it does not reduce reporting burdens on business; and
3. it is not driving changes in gender equality at a fast enough rate.

Elements 1 and 3 of the problem, in particular, are preventing Government from creating an impact in a timely manner. The slow rate of change is resulting in costs to individuals, to medium and large businesses, community organisations, and to Government.

In addition, the estimated regulatory costs for Option 1 are high at an estimated \$8,747,746.

### **Limitations of Option 2**

Option 2 only implements Recommendation 4 of the Review, reducing burden on business, but only addresses element 2 of the problem.

Elements 1 (gaps in the data set) and 3 (driving change in gender equality) are not addressed by Option 2 and will therefore remain unchanged and could worsen over time.

Businesses will benefit from reduced reporting burdens, however, depending on the size of the business the scale of the benefits will likely vary. The estimated regulatory costs for Option 2 is a cost reduction of approximately \$2.1 million. Therefore, this option is the most economical, however, it merely reduces burdens rather than pursuing clear positive change towards gender equality which would be attended to by addressing elements 1 and 3 of the problem.

### **Recommendation: Option 3**

The overall impacts, costs, and benefits of each of the options informed the recommendation of Option 3. This included consideration of the consultation feedback, as indicated above, and the regulatory costs of the options within the context of the number of elements of the problem they address.

Option 2, whilst being the most cost effective option, only addresses one element of the problem and therefore will not achieve the full benefits available so will continue to carry the cost burden of gender inequality. Option 3 costs approximately \$8.6 million per annum (a cost reduction of approximately \$124,709 from the regulatory costs of Option 1), but unlike Option 2, it addresses all three elements of the problem. Specifically, it will drive strong economic and social benefits, including higher wages, increased productivity and greater wellbeing. It therefore, offers the best value for money in the long term, will achieve the Government's policy objectives, and have the most impact.

Although it is the best option from those considered, Option 3 is not without risks, as discussed in Section 9. The risk profile associated with this preferred Option 3, and mitigations, are summarised in the following section.

## 12. Implementation Design & Evaluation of Option 3

Option 3 will be the most effective at addressing the Government’s objectives of:

1. WGEA is a government agency, therefore Government action is required to enhance the data available to WGEA.
2. Ensuring a healthy economy is a key Government priority and interrelated with healthy businesses.
3. The Government has committed to escalating gender equality and accelerating closure of the gender pay gap.

This will be achieved by addressing the three problem elements that are inhibiting this process: the gaps in the current WGEA dataset, the reporting burdens on businesses, and making the current regulations more ambitious.

### 12.1 Implementation Approach

The legislation will be introduced in two parts:

Part 1: Implementation of recommendations 2, 4, 7.1 and 7.3c.

Part 2: Implementation of recommendation 3 (anticipated legislative timing to be confirmed).

#### Part 1: Critical Path

There are a number of administrative dates that need to be achieved to ensure passage of the legislation and implementation of Option 3.

Parliamentary Sitting Week	Event
Week 1	OPC registers and tables 2013 Instrument
	Bill Introduced in the Senate
Week 2	Bill may be referred to Committee
Week 3	Bill passes Senate
Week 4	Bill Introduced to the House and passes the House
	Bill obtains Royal Assent
	OPC registers and tables the 2014 Instrument

Following passage of the legislation, it is estimated that the recommendations under Option 3 will come into force as per the below table. This includes the public sector reporting cycle which commenced 1 January 2023 following the passage of the Respect@Work Bill on 28 November 2022.

Rec	Description	Implementation of Recommendations	
2	Publishing the Organisational Gender Pay Gap	Private Sector	Recommendation applied for publication using 2022-2023 data.
		Public Sector	Recommendation applied for publication in 2024 using 2023 data.
3	Bridge the ‘action gap’ with new gender equality standards	Private Sector	Recommendation applied for reporting period commencing <b>1 April 2023</b>
		Public Sector	Recommendation applied for reporting period commencing <b>1 January 2024</b>

Rec	Description	Implementation of Recommendations	
4	Reduce the regulatory burden on employers	Private Sector	Recommendation applied for reporting period commencing <b>1 April 2023</b>
		Public Sector	Recommendation applied for reporting period commencing <b>1 January 2024</b>
7.1	Refine gender equality indicators to expand mandatory reporting	Private Sector	Recommendation applied for reporting period commencing <b>1 April 2023</b>
		Public Sector	Recommendation applied for reporting period commencing <b>1 January 2024</b>
7.3c	Mandatory for subsidiaries to report to WGEA (not applicable to public sector)	Reporting period commences <b>1 April 2023</b>	

### WGEA Communications

WGEA is aware that the publication of organisational gender pay gaps presents a significant change for many employers. It also presents an opportunity for the Government to highlight the importance of workplace gender equality and motivate action from employers. WGEA will begin an extended communications plan with both relevant employers and the public. This will form part of an education campaign to ensure the concept of the organisational gender pay gap is understood and therefore, interpreted appropriately when it is first published.

WGEA's communications about the publication of organisational gender pay gaps will include the following strategic pillars:

- Developing clear, concise messaging that sets out both key information about publishing gender pay gaps and provides tools for action.
- Conducting a campaign of regular communications across channels that focuses on educating key audiences on what will be published and how it will be calculated.
- Ensuring publishing gender pay gaps is a long-term measure to motivate employers to improve gender equality.

WGEA has a communications plan to help prepare employers for the release of organisational level gender pay gaps and support them after the release. At a high level, this will include:

- Communicating clearly, and early, the legislative changes and what they mean for employers.
- An ongoing educational campaign, including tools and resources, to explain how the gender pay gap is calculated, what contributes to the gender pay gap, actions that can be taken to address it and how to develop strategies and action plans to implement the changes needed.
- The provision of a suite of materials to communicate with their own employees and stakeholders Informing employers of their organisational gender pay gap prior to their gender pay gap being made public.

WGEA has established a Capacity Building team that will support and assist employers in building knowledge and capabilities to address the gender pay gap. WGEA is also developing Communities of

Practice, where employers can connect, learn, and create momentum for addressing issues important to workplace gender equality.

### **Publication of Organisational Gender Pay Gap (Rec 2)**

Based on the expected timeframe, it is anticipated that the first organisational gender pay gap for private sector employers will be released in early 2024. For public sector employers, that will be required to report to WGEA under changes passed in the Respect@Work Bill on 28 November 2022, the first organisational gender pay gap is expected to be published in 2024.

### **Targets (Rec 3)**

WGEA will provide relevant employers of 500 or more employees with a list of targets for each of the gender equality indicators. Employers will then select a target for three out of the six gender equality indicators and commit to making progress towards that target over its duration.

WGEA will provide relevant employers with resources and materials to assist them in achieving the targets and will include relevant employers' progress towards these targets in publically available information on the WGEA website.

### **Reducing Burden on Employers (Rec 4) & Expanded Mandatory Reporting (Rec 7)**

WGEA's next reporting cycle will include an altered format and questions to reflect the changes to reporting required from employers.

## **12.2 Implementation Challenges & Risks**

Whilst Option 3 has been determined the most suitable from those considered, it is not without challenges and risks. These are outlined below, including an explanation of how they are being monitored and accommodated within the implementation approach. For detail on the risk framework and ratings used, refer to Appendix H.

No.	Challenge/risk	Likelihood	Consequence	Management	Risk Rating
1	Reputational risk to organisations following publication of the organisational gender pay gap (Rec 2)	Possible	Major	<p>Discussions with the UK Government Equalities Office has informed the mitigation of reputational risk and organisational education. The UK office indicated that the focus after publication of the gender pay gap was more on what organisations were doing to change the gender pay gap, rather than the number itself and that there was no apparent impact on individual behaviour from high gender pay gap organisations.</p> <p>WGEA will provide clear and strategic communication to the Australian community about the organisational gender pay gap and clear communication to employers regarding the terms of publication and its purpose and safeguards (including prohibition on individual remuneration).</p> <p>Ongoing consultation process and transparency about decisions, their impacts and implementation will not cease with the passage of legislation.</p>	Minor
2	Poor employer compliance with the genuine and measurable targets (Rec 3)	Likely	Major	<p>WGEA is carrying out consultation as part of the target development process. WGEA will provide employers with information and guidance about targets, the process for compliance and consequences of failure to comply. WGEA will provide a list/menu of options for targets against the GEIs from which employers can choose. WGEA will conduct consultation with large employers on targets with the view to consider and incorporate employer-suggested targets into the list of options.</p>	Minor
3	There are divergent views on the nature/scope of proposed changes to the legislation, meaning that not all stakeholders will be satisfied with the final positions taken.	Likely	Medium	<p>It is acknowledged that the Bill is unlikely to be acceptable to all stakeholders. At every stage, the OFW has been fully transparent with stakeholders on its policy positions and reasoning, and has amended many positions as a direct result of stakeholder feedback. Whilst all stakeholders may not be satisfied with the final position, the impact of this can be mitigated by continuing to demonstrate transparency regarding decision-making, and a genuine willingness to consult. Additionally, the Review recommends review of the legislation five years after the passage of amendments, thus ensuring accountability and critical consideration.</p>	Minor

## 12.3 Transitional Arrangements

The Bill and associated instruments will be introduced in the Autumn 2023 parliamentary sitting period. WGEA have indicated that on this proposed timeline they are ready and prepared to provide support and materials to the public and employers on the organisational gender pay gap before its first publication. This timeframe will mean mandatory changes to reporting will come into effect in 2024, covering data from the 2023-2024 reporting period. Therefore, organisations will have ample notice of these additional obligations. Many organisations report voluntarily on the matters that will become mandatory reporting and are, therefore, already in a position to provide the data.

WGEA has indicated that they are continuously working to improve their reporting in order to smooth the transition and general reporting process for organisations. In the 2022-23 Budget, WGEA was allocated funding for additional staff. Certain ongoing staff will be hired specifically to support implementation of the Review and provide support to employers, particularly with respect to setting and achieving targets (Rec 3).

WGEA will mitigate challenges and risks associated with the implementation of Option 3 in several ways. This includes communications plans specific and relevant to each change to employer reporting; updated and detailed guidance materials for reporting, and, where relevant, research-backed education materials and capacity building support.

## 12.4 Monitoring & Evaluation

### **Purpose and scope**

The purpose of monitoring and evaluation will be to determine whether the Government objectives are being achieved and whether the Option 3 is being implemented effectively.

The scope of monitoring and evaluation will include a range of approaches.

### Legislative monitoring

Recommendation 10 of the Review states that the WGE Act, and any action flowing from the Review, should be reviewed within five years from the commencement of any changes. If implementation challenges and risks are not able to be addressed, this will offer an opportunity to make amendments and adjust.

Sections of the WGE Act also monitors the Instruments through sections 13 and 19 which state that “An instrument...has no effect in relation to a reporting period unless it is made before the first day of that reporting period”.

This means that employers will have at least a one-year notice period for changes made to the legislative instruments. Section 33A of the WGE Act requires the Minister to consult before making any legislative instruments under the Act.

### Independent evaluation

Independent evaluation will examine the effectiveness of the following recommendations:

- The actions taken by employers as a result of publishing their gender pay gaps and the impact that is having on their gender pay gaps (Rec 2).
- The achievement of targets by relevant employers (Rec 3).



- The scope and quality of additional and revised data provided by relevant employers (Rec 7.1 and Rec 4).

To assess the effectiveness of these proposals, they will be assessed against whether the objectives outlined in this paper are to be delivered. The independent evaluation will also consider the utility of these recommendations, and whether they need to be augmented to ensure the program continues to maximise benefits. The evaluation will make recommendations which will be considered by the Australian Government.

Subject to further discussion with WGEA, other elements of the independent evaluation may include:

- A program logic that considers the appropriateness, effectiveness and efficiency of existing measures.
- Avenue and areas for further research and consultation to further improve gender equality.
- Correlations and causal links between the changes and improvements in gender equality metrics (listed below).
- Consultation with key stakeholders, including businesses and individuals.
- The development of future policies.

#### Consultation

WGEA will consult with employers, including in the period following implementation, on those changes in Option 3 that present the most significant shift in the process of employer reporting to WGEA. This consultation will inform any adjustments or improvements to communicating with employers and collecting the data relevant to Option 3.

WGEA's relationship with employers is critical to success, specifically relating to reporting and also to progressing gender equality. As a result, WGEA provides multiple mechanisms through which employers can request assistance and provide feedback on the reporting and support functions of WGEA. WGEA closely monitors and captures that feedback and incorporates it into the annual evaluation of gender equality reporting and makes improvements accordingly.

Further consultation will also likely occur at the five year review point to gauge the responses from relevant employers and other stakeholders and to determine the more holistic impact of Option 3 on gender equality in the workplace. This would likely be in the form of a survey and roundtables as used for the purpose of this IA.

#### Regular Monitoring and Evaluation

As an independent statutory agency, WGEA is responsible to Parliament through the Parliamentary Committee process, and the tabling of its annual report. The Minister intends issuing a Statement of Expectations and WGEA will respond with a Statement of Intent. In addition, WGEA are obligated to produce various reports, meet standards and act in accordance with best practice pursuant to the *Public Governance, Performance and Accountability Act 2013*. OFW and WGEA officials meet regularly to discuss relevant policy priorities, implementation progress and operational and technical matters, as appropriate.

#### **Key Metrics**

WGEA anticipates that the challenges facing employers in the implementation of Option 3 will be most apparent in the first reporting period following the passage of legislation and implementation of changes. There are a number of key metrics that will be used to assess and evaluate the success

and effectiveness of the implementation of Option 3 and determine whether additional support is required by employers. An example of some possible metrics is below. These will be finalised in the context of implementing the independent evaluation.

The output from WGEA’s Gender Equality Reporting will be a key tool in monitoring the success of the implementation of the Review recommendations under Option 3.

METRIC	METHOD	OUTCOME(S)	Reported annually by WGEA (Y/N)
Reduction in Gender Pay Gap (WGEA publishes annual data)	WGEA collects data from employers on an annual basis, from which a gender pay gap will be calculated and published	If the gender pay gap narrows over time following the implementation of these changes then it will demonstrate that these changes have been effective. The aim will be to close the gender pay gap before the status quo estimated date of 2050.	Y
Relevant employer compliance rate	WGEA publishes a non-compliant list of relevant employers annually; listing employers that do not provide reports	An increase in reporting compliance of relevant employers may evidence the benefits of implementation of Recommendation 4 (reducing the reporting burden).	Y
Number of Requests for Support	WGEA will monitor the number and type of requests for support received from Relevant Employers	A high number of requests for support relating to the new gender equality standards may indicate that further education is needed or there are other issues in the implementation of Option 3 that require attention.	Y
Genuine measurable target achievement	WGEA will publish details of progress and achievement of new gender equality standards	If relevant employers show consistent progress towards achieving the targets they set then this will likely demonstrate that the targets are appropriate, achievable and effective towards improving gender equality in the workplace.	Y - following implementation of Option 3
Changes to business	Employers provide WGEA with data on an annual basis that enables WGEA to calculate gender pay gaps and assess gender equality maturity and compare it to other relevant benchmarks	Businesses that have lower organisational gender pay gaps and higher maturity may demonstrate better flexible working, female presence on governing boards, parental leave policies and other policies	Y
Changes to	Prevalence, prevention	Fewer complaints of	Y- following

<b>Australian workplace culture</b>	and response data on sexual harassment and discrimination as reported to WGEA	discrimination and sexual harassment in the workplace as reported through the WGEA annual reporting cycle.	implementation of Option 3
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## Appendix A

### WGEA and the WGE Act

In 2012, the WGE Act was passed and WGEA was established, replacing its predecessor, the Equal Opportunity for Women in the Workplace Agency. This represented a fundamental change to the way gender equality in the workplace is addressed in Australia.

The WGE Act:

1. introduced a new standardised reporting framework, requiring private sector employers with 100 or more employees to report against six Gender Equality Indicators (**GEIs**), enabling comparative analysis across employers;
2. gave WGEA new advisory, research and educational functions;
3. modified coverage so that all employers and employees in the workplace, regardless of gender, benefit from the educational resources of WGEA; and
4. provided further transparency regarding sanctions for non-compliance through the Commonwealth procurement framework of not being eligible to tender for government contracts or trade with government.

The objects of the WGE Act are to:

- promote and improve gender equality (including equal remuneration between women and men) in employment and in the workplace;
- support employers to remove barriers to the full and equal participation of women in the workforce, in recognition of the disadvantaged position of women in relation to employment matters;
- promote, amongst employers, the elimination of discrimination on the basis of gender in relation to employment matters (including in relation to family and caring responsibilities);
- foster workplace consultation between employers and employees on issues concerning gender equality in employment and in the workplace; and
- improve the productivity and competitiveness of Australian business through the advancement of gender equality in employment and in the workplace.

The aim of gender equality in the workplace is broadly, to achieve equal opportunities and outcomes for all genders. Workplace gender equality requires:

5. workplaces to provide equal pay for work of equal or comparable value;
6. removal of barriers to the full and equal participation of women in the workforce;
7. access to all occupations and industries, including leadership roles, regardless of gender; and
8. elimination of discrimination on the basis of gender, particularly in relation to family and caring responsibilities.

One way of measuring gender inequality is through the gender pay gap. The gender pay gap is an internationally established measure of women's position in the economy in comparison to men. It calculates the difference between the average earnings of women and men in the workforce, expressed as a percentage of men's earnings.<sup>162</sup> In Australia, the gender pay gap is calculated by WGEA.

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<sup>162</sup> OECD 'Can pay transparency tools close the gender wage gap' (2021) <https://www.oecd.org/gender/Pay-Transparency-2021-Policy-Brief.pdf>.

## WGEA's reporting function

One of WGEA's key functions is the collection and analysis of annual pay data from non-public sector organisations with 100 or more employees, covering more than 4 million employees in Australia.<sup>163</sup> This data includes superannuation, bonuses and other additional payments.

Under the WGE Act, relevant employers with 100 or more employees are required to report annually to WGEA against the six GEIs. These GEIs include:

- 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 flexible 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 – sex-based harassment and discrimination.

Relevant employers report to WGEA through three reporting components:

- Reporting Questionnaire – an online survey related to an organisation's policies, strategies and actions on gender equality, such as whether an employer has a policy on flexible working arrangements;
- Workforce Management Statistics – an excel worksheet designed to collect information about employee movements, including appointments, promotions, resignations and parental leave utilisation; and

## The Review

The Review team carried out consultation through a call for submissions and additional targeted roundtables. On 20 October 2021, the then Minister for Women published a media release to announce the start of public consultation on the WGEA Review consultation). A consultation paper was released by the Department of Prime Minister and Cabinet and 155 submissions were received in response (a list of all submissions received is available [here](#)).

A wide array of submissions were received from key WGEA stakeholders, including:

- Individuals (including women, men and gender diverse people);
- Medium businesses;
- Large businesses;
- Community organisations;
- Peak bodies;
- Academics; and
- WGEA/Government.

Notable academics who contributed submissions to the Review included:

1. Dr Leonora Risse (Senior Lecturer in Economics, RMIT);

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<sup>163</sup> Department of Prime Minister and Cabinet 'WGEA Review Report' (2022) <https://www.pmc.gov.au/resource-centre/office-women/wgea-review-report>.

2. Professor Marian Baird, Professor Rae Cooper and Dr Meraiah Foley (Women and Work Research Group, University of Sydney); and
3. Professor Susan Harris Rimmer, Professor Emeritus Glenda Strachan, and Professor Paula Brough (Griffith University).

Peak bodies that contributed submissions included the Australian Chamber of Commerce and Industry (ACCI), the Business Council of Australia (BCA), the Australian Industry Group (Ai Group) and the Diversity Council of Australia (DCA). Other peak bodies such as Council of Small Business Organisations Australia (COSBOA) were invited to participate in targeted roundtables.

Additional stakeholders consulted on the WGEA Review included:

- Industry Groups;
- Unions;
- Advocacy Groups;
- National Women’s Alliances;
- Academics;
- Federal Government Departments and Agencies;
- State and Territory Governments; and
- Statutory Office Holders.

Targeted roundtables were attended by 65 external stakeholders attended. A further 30 stakeholders, 18 federal government departmental stakeholders and 22 State and Territory officials attended the roundtables.

Following consultation the Review made ten recommendations to both enhance the WGE Act and make it easier for employers to report to WGEA. Key recommendations of the Review include:

- *Recommendation 1: make it easier for employers to report to WGEA and improve WGEA’s data collection* by enabling WGEA to use data employers have already provided to government, and investing in a way to assist employers to extract other data from their own employer systems using a digital solution. It is proposed that a new Gender Data Steering Group led by senior officials will oversee research and stakeholder consultation to drive this work.
- *Recommendation 2: publish organisation gender pay gaps* at an employer level – not just at an industry level as currently happens – to accelerate action to close them.
- *Recommendation 3: bridge the ‘action gap’ with new gender equality standards that set targets* by requiring large employers (500 or more employees) to commit to, achieve, and report to WGEA on measurable genuine targets to improve gender equality in their workplaces.
- *Recommendation 4: reduce the regulatory burden for employers* by replacing and refining particular ‘pain point’ questions in the WGEA reporting components including removing the ‘reporting levels to CEO’ question.

## Appendix B

### Calculating employer level gender pay gap data under Recommendation 2 and example report

### **Mean gender pay gap**

The individual organisation's mean gender pay gap will be expressed as a percentage and the average dollar difference between women's and men's earnings at an organisation.

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 include superannuation, bonuses and other additional payments.

### **Median gender pay gap**

The individual organisation's median gender pay gap will be expressed as a percentage and the average dollar difference between women's and men's earnings at an organisation.

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 include superannuation, bonuses and other additional payments.

The median describes those figures that are in the middle of the dataset. Identifying the middle of the dataset assists in accounting for outliers, which is important given the inclusion of CEO, or the equivalent, remuneration in the calculation of employer level gender pay gap data.

### **An organisation's quartile analysis**

WGEA will publish employer level gender pay gaps and workforce composition by quartiles.

This means providing data 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.

The quartile analysis will include all relevant employers, meaning for organisations with 100 employees at least 25 employees would be in each quartile.

### **CEO remuneration**

The Review recommended (Recommendation 7.1.d) the inclusion of mandatory reporting of "remuneration data for Chief Executive Officers (CEOs) or the equivalent (individual remuneration would not be public but would be aggregated to calculate gender pay gaps and used for other remuneration analysis and insights)."

WGEA will include CEO, or the equivalent, remuneration in gender pay gap calculations, both at aggregate and employer levels.

Individual CEO (or equivalent) pay information will be confidential.

# Appendix C

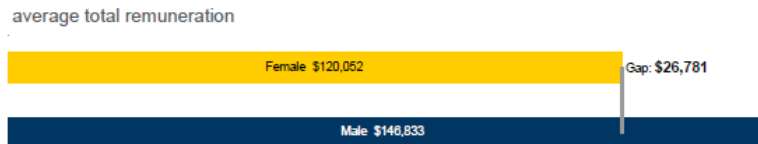
CONFIDENTIAL

## SAMPLE ORGANISATION REPORT

### ORGANISATIONAL gender pay gap

# 18.2%

The average female remuneration in your organisation is 81.8% of the average male remuneration in your organisation.



### REMUNERATION quartiles and gender composition

The gender pay gap is driven by the number of female and male employees in each of the remuneration quartiles





## Appendix D

### Detailed process to implement Recommendations 3.1.a and 3.1.b

#### Recommendation 3.1.a

##### *Process for setting and reporting on targets*

To measure employer action on gender equality without a significant increase in reporting requirements, employers will set three gender equality targets against data they already report to WGEA on the GEIs.

There are four main components to the process for setting, achieving and reporting on gender equality targets:

- **Analyse data:** In the first year, employers will first conduct an analysis of their gender equality data and identify opportunities for improvement. This analysis will draw on employers' reporting data and benchmark reports from WGEA. The analysis will provide a baseline from which employers can track and measure progress towards the target.
- **Identify targets:** Employers will receive a 'menu' of options for targets that can be set against each GEI. Employers will choose three targets from these options that will address the opportunity for improvement that they identified in their gender equality analysis. Employers will also set the timeframe for meeting each of the three targets, between one and three years (recognising some areas take more time to improve).
- **Report on targets:** Employers will report progress towards targets annually as part of their gender equality reporting to WGEA. Employers will indicate progress against their target based on the indicators and/or actions they have taken. Given that the targets and progress against them are included in reporting to WGEA, they will require CEO sign-off in line with current reporting processes.
- **Achieve targets and set new targets:** Once employers meet a target, they will set new (more ambitious) targets. The expectation under the gender equality standards is that employers maintain a minimum of three targets for gender equality. Targets may be set against the same metric or focus area in order to maintain momentum and progress towards a longer-term goal, or set against a new area of opportunity.

#### Examples of targets to be set against the GEIs

- This list provides examples of where employers can set targets against each of the GEIs. This list is not exhaustive. WGEA will develop tools to assist employers in meeting targets.
- 
- Targets against GEIs 1, 2 and 3 are more likely to be numeric and require effort over several years to achieve. Targets set against GEIs 4, 5 and 6 are more likely to involve changes in policies and/or practices within an organisation.

#### **GEI 1: Gender composition of the workforce**

Targets under GEI 1 will aim to achieve gender balance in an employer's workforce. This includes targets that improve gender equality in the composition of the workforce and in the representation of managers and occupational groups.

- Improve gender composition in Key Management Personnel (KMP) / Manager positions by \_\_\_% in \_\_\_years
- Improve gender composition in \_\_\_\_\_ non-manager occupational group by \_\_\_% in \_\_\_years
- Improve gender composition in partnership positions by \_\_\_% in \_\_\_years

#### **GEI 2: Gender composition of the governing bodies of relevant employers**

Targets under GEI 2 will aim to achieve gender balance in an employer's governing body.

- Improve gender balance on the governing body by \_\_\_% in \_\_\_years

#### **GEI 3: Equal remuneration between women and men**

Targets under GEI 3 will aim to close the gender pay gap. Organisations may target their overall pay gap or that within manager and/or occupational groups.

- Narrow the gender pay gap by \_\_\_% in \_\_\_years
- Narrow the gender pay gap in KMP / Manager positions by \_\_\_% in \_\_\_years
- Narrow the gender pay gap in \_\_\_\_\_non-manager occupational group by \_\_\_% in \_\_\_years

#### **GEI 4: Availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities**

Targets under GEI 4 will aim for employers to have best practice policies that support flexible working arrangements, employees with family or caring responsibilities, and employees experiencing family and domestic violence.

- Introduce employer-funded paid parental leave, where it was not offered before
- Offer employer-funded parental leave that is gender equal and remove the distinction between primary and secondary carers
- Pay superannuation while carers are on parental leave
- Remove a qualifying period for access to parental leave
- Expand the types of formal flexible working arrangement offered
- Increase the days of family and domestic violence leave offered by offering \_\_\_ days of leave

#### **GEI 5: Consultation with employees on issues concerning gender equality in the workplace**

Targets under GEI 5 will aim for employers to have best practice consultation policies and processes for gender equality.

- Expanding consultation to include all employees
- Achieving a response rate of \_\_\_% of employees

#### **GEI 6: Sex-based harassment and discrimination**

Targets under GEI 6 will aim for employers to have best practice policies and processes for preventing and addressing sex-based harassment and discrimination at work.

- Have best practice for preventing and addressing sex-based harassment and discrimination. (Specific examples of targets will link to Recommendation 46 from the Respect@Work report.)

#### **Recommendation 3.1.b**

- As is the case with the current minimum standards, having formal policies and/or strategies to support each of the GEIs will be tied to employer requirements for gender equality reporting to WGEA. An employer that has policies and/or strategies for each GEI meets the gender equality standard and the reporting requirement to WGEA.



## Appendix E

Appendix E outlines the approach taken to estimate the regulatory cost burden in the IA. The IA provides economy-wide, annualised regulatory burden estimates for each Option, consistent with the Regulatory Burden Measurement Framework. These costs reflect data derived from multiple sources, including analysis by the OFW in close consultation with WGEA, validated through direct consultation with potentially impacted entities.

For the purpose of this IA, we focus on the following three implementation options:

- Option 1 – Maintain the status quo
- Option 2 – Implement Recommendation 4 (reduce regulatory burden)
- Option 3 – Implement Recommendations 2,3,4 and 7 (preferred option)

The regulatory impact specifically focuses on regulatory impacts of each option and the regulatory compliance burden on regulated entities.

Regulatory costs form a subset of the overall impacts (costs and benefits) of implementing the WGEA Review recommendations. It is an Australian Government requirement that any proposed new or changed regulation must include quantification of the increase or decrease in regulatory costs imposed on businesses, community organisations and individuals. The identification and quantification of regulatory costs must be conducted in accordance with the Regulatory Burden Measurement Framework.

In accordance with government requirements, this IA calculates the estimated regulatory burden for Options 2 and 3 (noting that Option 1, as the status quo, presents no additional regulatory burden). The approach to determine this is set out below with further information on the costing methodology.

### Regulatory costs

Under the Regulatory Burden Measurement Framework, only certain costs associated with the implementation of WGEA Review recommendations are categorised as 'regulatory'. The primary categories of regulatory costs are:

- Administrative compliance costs - costs incurred by regulated entities primarily to demonstrate compliance with the regulation. For example, the time and costs associated with keeping records and notifying government of certain activities.
- Substantive compliance costs – costs incurred to deliver the regulated outcomes being sought. Examples: costs of training employees on regulatory requirements, professional services required to meet regulatory requirements
- Delay costs – the expenses and loss of income incurred by a regulated income as a result of an application delay, or an approval delay.

There are several types of costs specifically excluded from the Regulatory Burden Measurement Framework. These include, for example, opportunity costs, business-as-usual costs, enforcement / compliance costs (such as fines for failing to comply with regulation). These costs are not categorised as regulatory costs, and therefore are not quantified under this RIS.

### Regulated or relevant entities

Given the regulatory impact assessment focuses only on regulatory costs, by definition it focuses on regulated or relevant entities (employers) only.

Stakeholders to which the WGE Act would apply, and therefore the focus of this regulatory cost analysis, are:

- **Business:** Business in the context of reporting to WGEA are for-profit organisations that are large employers (those with 500 or more employees in Australia) and medium-sized employers (those with 100 to 499 employees in Australia). Small employers (those with fewer than 100 employees in Australia) are excluded.
- **Community organisations:** Not-for-profit organisations that are large employers (those with 500 or more employees in Australia) and medium-sized employers (those with 100 to 499 employees in Australia). Small employers (those with fewer than 100 employees in Australia) are excluded.

Individuals are not regulated entities under the WGE Act and therefore excluded from this regulatory cost analysis.

The regulatory costs and impacts have been considered through the lens of these specific stakeholder groups.

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## Methodology

The regulatory cost estimates included in this document have been developed in accordance with the following approach:

1. Identifying the activities that would influence regulatory costs of a regulated entity under the relevant Option.
2. Categorising the frequency of the activity as either new regulatory requirements (i.e. an initial cost incurring in Initial Year only) or ongoing (if occurrence is known and frequent more than once, e.g. ongoing reporting / monitoring obligations).
3. Estimating the resource effort (time taken) to comply with that requirement, taking the average-level scenario for each activity (see Assumptions below).
4. Estimating the labour costs associated with a regulatory task, by multiplying the time taken to complete the required compliance activity (average-level scenario) by the expected annual frequency of each activity and by the hourly cost for the relevant staff.
5. This provides the annual cost of complying with the regulatory requirements for each activity per Option and entity group as relevant, and produces a yearly per-entity regulatory cost.
6. Multiplying each yearly per-entity regulatory cost by the total number of expected economy-wide number of regulated entities (see Assumptions) for each entity group. This was calculated over the default 10-years of regulation considered by the Regulatory Burden Measurement Framework.
7. Dividing the sum of all yearly, economy-wide costs for each entity group over the 10-years (per Option) by 10, to derive the average annualised regulatory burden for each Option.

## Assumptions and sources

The key assumptions and sources used for regulatory cost estimates are described below:

1. **Initial set-up or ongoing costs:** These classifications were derived from analysis of the nature of the regulatory activities prescribed to regulated entities, broken down per individual regulated entity for each considered Option.

Initial set-up costs (Initial Year activities) were assumed to occur once in the first year a regulated entity is required to report to WGEA (Option 1 business-as-usual) and/or first year of Option adoption (i.e. Option 2 and Option 3). The initial setup costs include initial onboarding or reporting activities for example getting internal human resources and payroll systems ready to comply with changes in reporting requirements.

Ongoing costs (Post-Initial Year ongoing activities) include ongoing reporting/ monitoring/ maintenance obligation for each regulated entities. Ongoing costs maintained constant prices and were not inflated to take account of inflation over the default 10-year duration of regulation calculated (per the [Regulatory Burden Measurement Framework](#)).

2. **Annual number of regulated entities:** The estimated number of regulated entities over the default 10-year duration calculated are projected based on the number of “submission groups” reporting to the WGEA for 2021–22 reporting period as of 17 October 2020. Under the existing reporting arrangements, entities or organisations report their data to WGEA based on submission groups noting that 60 per cent of submission group contains a single entity (i.e. one employing ABN) and the remaining 40 per cent are corporate submission groups with more than one employing ABN.

We separate the regulated entities into two groups of organisations – businesses and community organisations. We then separate each group into two different size based on the number of employees – large employers (those with 500 or more employees) and medium-sized employers (those with 100 to 499 employees). Further, we assume that all new large employers transition from an existing medium-sized employers.

In Year 0 (i.e. prior to any legislative changes), it is assumed that there are:

- 2,617 medium businesses in scope
- 1,238 large business in scope
- 1,012 medium community organisations in scope
- 399 large community organisations in scope

We assume the number of regulated entities will grow each year – over the default 10-year duration – based on the average annual growth rate of **2.84 per cent** for businesses and **1.73 per cent** for community organisations. The average annual growth rate for businesses is calculated based on the data from Australian Bureau of Statistics (Count of Australian Businesses) between 2016-17 and 2021-22; while the average annual growth rate of community organisations is calculated based on the number of registered charities from Australian Charities and Not-for-Profits Commission (ACNC) unpublished data between July 2017 and July 2022.<sup>164</sup>

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<sup>164</sup> The average annual growth rate of business/community organisations is calculated as the five-year average annual growth rate of number of businesses/ registered charities operating as at 30 June each year over the last five years (i.e. since 2016–17 FY). The ABS data was accessed on 18 October 2022 and the unpublished data from ACNC was received on 20 October 2022 via email communications.

3. **Resource efforts:** These were estimated time-taken to comply with the regulatory activities prescribed per individual regulated entity (within the business sector or community organisation) for each considered Option. This analysis was informed by OFW's current understanding – in close consultation with WGEA – of the potential future regulatory activities under each Option, as detailed in the WGEA Review (and where activities were considered within the scope of the [Regulatory Burden Measurement Framework](#)).

In calculating resource effort, due to a large spectrum of users, industry sectors and organisational types, the estimated resource efforts are the average hours it would take across all regulated entities to comply with the reporting requirements. We assume the resource efforts are similar between business and community organisations. However, the resource efforts are estimated to be different between a large employer and a medium-sized employer.

We estimate that the resource efforts in the Initial Year of regulatory activities for each considered Option are larger than the regulatory activities for subsequent years (i.e. Post-Initial year). We also assume the ongoing resource efforts Post-Initial year are identical every year for the 10-year regulatory period.

4. **Labour rates:** In accordance with Australian Government guidance, the default hourly labour rate contained within the Regulatory Burden Measurement Framework was used. This was based on average weekly earnings, adjusted to include income tax. This provided an economy-wide value for employees of \$45.50 per hour. This value was then scaled up using a multiplier of 1.75 (or 75 per cent as it is input into the Regulatory Burden Measure) to account for the non-wage labour on-costs (for example, payroll tax and superannuation) and overhead costs (for example, rent, telephone, electricity and information technology equipment expenses). This resulted in a scaled-up rate of **\$79.63 per hour** (\$45.50 multiplied by 1.75). Australian Government guidance is that this default rate be used in cases where regulation cuts across a number of sectors, as is the case for WGEA's reporting requirements. Note - The rates are in accordance to the published rate outlined in the [Regulatory Burden Measurement Framework](#) (i.e. *Appendix 2: Default Work-related and non-work-related labour rates updated on 28 June 2022*) accessed on 19 October 2022.

## Appendix F – Summary of Feedback

### PART ONE:

#### Recommendation Two – Publish Organisation Gender Pay Gaps to Accelerate Action to Close Them.

Question	Summary of Response
<p>1</p> <p>WGEA will publish employer level gender pay gaps in quartiles. Do you have any comments on presenting gender pay gap data in quartiles?</p>	<p>Comments revealed that there was confusion as to the definition of ‘quartiles’. Employers were concerned that this would increase their reporting burden and might have to report quarterly. There also was confusion between the gender pay gap and equal pay. Some employers were concerned that the inclusion of CEO salary would skew the data.</p> <p>There were a number of comments from companies worried that organisational pay gaps would present ‘misleading’ results, especially from employers from male dominated industries who raised concerns about workforce participation.</p> <p>A number of employers stated that the data would be more helpful if a ‘like for like’ comparison was able to be done as to specific job roles.</p>
<p>2</p> <p>Do you have any comments about privacy, noting individual employee remuneration data will not be made public?</p>	<p>Concerns mainly raised regarding smaller companies and the potential ability to identify individuals. In particular concerns about individual salaries being revealed (even if de-identified).</p>
<p>3</p> <p>Would you prefer organisation pay gaps to be published as:</p> <ol style="list-style-type: none"> <li>a. The full time equivalent annual remuneration gender pay gap</li> <li>b. The hourly remuneration gender pay gap (noting employers would have to report additional data to WGEA to enable this calculation).</li> </ol>	<p>The majority of stakeholders preferred full time equivalent annual remuneration gender pay gap</p> <p>A small number preferred an hourly remuneration gender pay gap (noting employers would have to report additional data to WGEA to enable this calculation).</p>
<p>4</p> <p>What method of gender pay gap</p>	<p>Over half of responders indicated that both the mean and median would be useful.</p>



	Question	Summary of Response
	calculation would you find most useful?	
5	Would your organisation welcome the opportunity to provide individual narrative alongside your gender pay gap data?	A strong majority of stakeholders indicated that they would welcome the opportunity to provide individual narrative alongside their organisation’s gender pay gap data.
6	Would your organisation welcome WGEA providing general information on factors that contribute to the gender pay gap and how the gender pay gap is calculated and interpreted alongside employer-level pay gap data?	There was strong support for WGEA providing information and explaining the gender pay gap for those who are not familiar with the metric. Some employers thought it would be useful for WGEA to provide industry information. Some confusion as to whether this would be employer-specific or public/ private.
7	The quartile analysis would provide additional context to employer level gender pay gaps including organisational composition by gender. What other information or context would you like to see alongside employer level gender pay gap data?	Many suggestions for additional information: <ul style="list-style-type: none"> <li>- Industry</li> <li>- Profession</li> <li>- Level in the organisation</li> <li>- Age</li> <li>- Location</li> <li>- Length of service</li> <li>- Level of education</li> <li>- Potential strategies to resolve gender pay gap</li> </ul>
8	Do you have any further comments on any aspect of the implementation of pay gap transparency?	Concerns about publishing gender pay gaps distracting from work companies are doing and causing undue reputational damage i.e. “naming and shaming”. Concern it does not take into account enough nuance. Some companies asking for timing indication and expressing a preference for a lead time. Numerous employers expressing support for transparent pay gaps. Some concerns about generating extra regulatory burden for employers.

**PART TWO: Recommendation Three – Bridge the ‘Action Gap’ with New Gender Equality Standards**

Question	Summary of Response
1	<p>Do you have any comments on your organisation's ability to develop measurable and genuine targets?</p> <ul style="list-style-type: none"> <li>- Many employers were concerned about resourcing and the time this would take.</li> <li>- Concerns were raised from employers who already set their own targets on how WGEA's targets would be more useful.</li> <li>- Some employers were concerned that targets might appear tokenistic.</li> <li>- Concerns were raised by companies in male-dominated industries as to how this change would actually help create organisational change.</li> <li>- Clearer guidance and support from WGEA on how to achieve targets would be helpful.</li> <li>- One university sector employer in Victoria asked if current Victorian targets would be aligned with WGEA's targets.</li> </ul>
2	<p>What targets would be most helpful for you in measuring progress on gender equality in your organisation?</p> <p>There was a relatively even spread from employers drawing attention to all GEIs (1-6). This included, gender balance, women in leadership positions, equal remuneration, part-time/ full time.</p>
3	<p>What level of support would your organisation find helpful when setting gender equality targets?</p> <p>Stakeholders engaged with suggestions including:</p> <ul style="list-style-type: none"> <li>- Guidance</li> <li>- Benchmarks</li> <li>- resources</li> <li>- Targets being specific to the employer or to the industry</li> <li>- Webinars hosted by WGEA and networking/peer support opportunities to hear from other industries and agencies.</li> <li>- Peer support to discuss processes with other employers and industry specific working groups including the non-for-profit sector and partnership structures.</li> </ul>

Question		Summary of Response
		<ul style="list-style-type: none"> <li>- Access to a helpline.</li> <li>- Sample plans and case studies.</li> </ul>
4	Do you have comments on how WGEA could support your organisation to measure progress against targets?	<p>Agencies are eager to receive further guidance and clarification on what is required against the reporting process. Templates, guides, precedents and checklists were among the suggestions. Industry specific guidance and roundtables to discuss best practice examples were also suggested.</p> <p>One EOCGE holder raised that timelines for EOCGE holders should align with new changes.</p>
5	Do you have any suggestions for WGEA on what your organisation would find helpful when developing policies and strategies?	<p>Similar answers to above questions including templates, pro-forma policies, webinars with what other organisations are doing, guidelines, examples by industry, best practice examples.</p>
6	Do you have any comments on potential impacts of sharing your WGEA reports with your board/governing body?	<p>Some confusion around if employers were already required to share this information and some employers saying there already do share this information.</p> <p>Some employers were concerned about the formatting of the reports and expressed a reluctance to share with their board.</p> <p>Some employers that were in international structures would like this to be able to be shared with local leadership as board can be in international/ overseas.</p>

**PART THREE: Recommendation Seven – Refine the Gender Equality Indicators.**

Question		Summary of Response
1	Does your organisation	Over half the organisations confirmed that their organisation currently collects non-manager data at ANZSCO level

	Question	Summary of Response
	currently collect non-manager data at ANZSCO level 4?	<p>4.</p> <p>A wide variety of responses in relation to increased regulatory burden were received. Many employers felt that this would require more manual work, much more time spent in categorising employees and that this was different from how they currently categorised employees. Those employers that currently do not categorise data this way drew attention to likely required system changes.</p> <p>Some employers were unable to answer this question as they needed to consult with different parts of HR.</p>
2	Would it save your organisation time to report at ANZSCO level 4 when compared to reporting at ANZSCO level 1?	<p>A large portion of stakeholders confirmed that it would not save their organisation time to report at ANZSCO level 4.</p> <p>Organisations under the impression that reporting under the level 4 structure would increase time and regulatory burden and that level 1 coding is much simpler.</p> <p>Many organisations were unable to provide an additional anticipated time, some more specific responses included:</p> <ul style="list-style-type: none"> <li>• One additional month of a staff member</li> <li>• 2 hours</li> <li>• 4 hours</li> <li>• 20-30 hours</li> <li>• 1 extra FTE and 1 week to complete mapping</li> <li>• 6 months, 2-3 FTE</li> </ul>
3	Does your organisation report at Corporate Group level?	A large portion of organisations confirmed that they report at Corporate Group level.
4	Are you well-placed to	Most stakeholders reporting being well-placed to report on manager categories at an entity level.

	Question	Summary of Response
	report on manager categories at an entity level?	<p>Many organisations felt that this change would be possible but involve a change in systems/ increased burden.</p> <p>Some employers drew attention to the fact that their different entities did not operate as standalone entities and had specific purposes, for these structures reporting at a group level made more sense to them as it aligned with their organisational hierarchy.</p>
5	What resources would be helpful for you when transitioning to categorising Managers at an entity level?	<p>Common responses included:</p> <ul style="list-style-type: none"> <li>- Clear guidance on what is expected from organisations during the reporting process. Some organisations felt that it was difficult to get a hold of WGEA support for reporting.</li> <li>- Clear definitions on manager categories.</li> <li>- Industry specific role definitions e.g. law firms</li> <li>- Resources on how to streamline reporting.</li> <li>- Clarity on what is relevant to each entity level.</li> <li>- Tools for mapping.</li> <li>- Guidance for complex corporate structures.</li> </ul>
6	Which of the options would your organisation prefer to report on?	<p>Stakeholders were fairly evenly divided between reporting on 31 March every year and reporting on any date between 31 March and 30 June every year.</p>
7	Would Option 1 impact your organisation?	<p>Many employers expressed a preference for consistent reporting cycle aligned with either the calendar or financial year. This is because the current WGEA date requires them to run a separate report that does not align with a payroll year.</p> <p>A number of employers expressed that promotions are not finalised by 31 March so this data is not included.</p> <p>However, a number of employers also said that 31 March worked well for them and aligned with other government</p>

Question	Summary of Response
	<p>reporting.</p> <p>There was a general preference for flexibility in timing expressed. One employer expressed that should this date change they would need a year's notice in order to update system.</p>
8	<p>Would Option 2 impact your organisation?</p> <p>In contrast to the above question, majority of responses favoured a single date and drew attention to the fact that consistency would be hard to ensure.</p> <p>Some employers raised that the EOFY is a busy time for them and that the current reporting date avoids all work occurring at once.</p> <p>Some employers again raised a preference for flexibility and other said that they would be able to report to whatever data required.</p>

## Appendix G – Roundtable Agendas

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### Review of the Workplace Gender Equality Act 2012

#### Data collection – non-binary employees

##### Roundtable Agenda

19 September 2022

#	Item	Time
1	Welcome <ul style="list-style-type: none"><li>Acknowledgement of country</li><li>Welcome and introductions</li><li>Privacy notice</li></ul>	10:00
2	WGEA's dataset <ul style="list-style-type: none"><li>Overview of data WGEA currently collects</li><li>Explanation of proposed changes to Workplace Profile (WPP) and Workforce Management Statistics (WMS) to collect non-binary data explained</li></ul>	10:10
3	Availability and challenges of collecting data <ul style="list-style-type: none"><li><i>Are businesses collecting data on whether employees identify as non-binary?</i></li><li><i>What resources would be required to support businesses in collection of non-binary data?</i></li><li><i>What are the challenges of collecting this data through a third party (the employers) and not through a self-reporting mechanism?</i></li><li><i>Would there be any advantage to a phased approach that works towards mandatory data collection?</i></li></ul>	10:20
4	ABS standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables (the ABS Standard) <ul style="list-style-type: none"><li><i>The recommended standard gender question structure and output categories from the ABS Standard is provided at Appendix A. Are the output categories used in the ABS Standard the best option for WGEA to use in capturing data on non-binary employees?</i></li><li><i>Given that the ABS Standard is written to ensure individuals can accurately describe their situation, how can WGEA's data collection best align with the ABS Standard and other Government guidelines given that data is collected through employers?</i></li></ul>	10:50
5	Privacy requirements <ul style="list-style-type: none"><li><i>What are the privacy risks in collecting this data – for individuals, workplaces and WGEA?</i></li><li><i>How can WGEA support employers in creating safe work environments?</i></li></ul>	11:10
6	Wrap up and close <ul style="list-style-type: none"><li>Summary of key points raised</li></ul>	11:25

#### Appendix A – Excerpts from ABS Standard

## Question structure

The standard gender question structure is comprised of:

Download

How [do/does] [you/Person's name/they] describe [your/their] gender?

Gender refers to current gender, which may be different to sex recorded at birth and may be different to what is indicated on legal documents.

Please [tick/mark/select] one box:

Man or male

Woman or female

Non-binary

[I/They] use a different term (please specify)

Prefer not to answer

## Output

### Output categories

The standard output categories for gender are:

- Man
- Woman
- Non-binary\*
- Not stated\*\*.

\* Responses coded to 'Different term' are included in the output category 'Non-binary'.

\*\* Coded responses of 'Prefer not to answer' and inadequately described responses are included in the output category 'Not stated'.

Full text available at <https://www.abs.gov.au/statistics/standards/standard-sex-gender-variations-sex-characteristics-and-sexual-orientation-variables/latest-release>

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# Review of the *Workplace Gender Equality Act 2012*

## Further consultation with business peaks

### Roundtable Agenda

20 September 2022

1. #	2. Item	3. Time
4. 1	5. Welcome <ul style="list-style-type: none"><li>Acknowledgement of country</li><li>Welcome and introductions</li><li>Privacy notice</li></ul>	7. 9:00
8. 2	9. Recommendation 2 – Publishing Organisation Gender Pay Gaps <ul style="list-style-type: none"><li><i>Do your members make their gender pay gaps transparent already?</i></li><li><i>What information, resources or support would your members require to understand and explain the gender pay gap to their workforces?</i></li><li><i>Are there any complexities regarding implementation that we should be aware of?</i></li><li><i>Do you consider this will help close organisation gender pay gaps?</i></li></ul>	9:10
10. 3	11. Recommendation 3 – Bridging the ‘Action Gap’ with Gender Equality Standards <ul style="list-style-type: none"><li><i>What support, resources and guidelines would your members find useful in the implementation of this recommendation?</i></li><li><i>How do your members currently measure progress on targets and policies and ensuring it is measurable and genuine?</i></li><li><i>Are any members already setting gender equality targets? If so, what processes/approaches work?</i></li><li><i>Are there any complexities regarding implementation that we should be aware of?</i></li><li><i>Do you consider this will help advance gender equality in Australia?</i></li></ul>	9:35
12. 4	13. Other Recommendations <ul style="list-style-type: none"><li>Are there any other WGEA Review Recommendations you have comments on?</li><li>Is there anything further that WGEA, or the Government, could do to support your member organisations make progress on gender equality?</li></ul>	14. 10:00
15. 5	16. Wrap Up and close <ul style="list-style-type: none"><li>Summary of key points raised</li></ul>	10:25
	17.	

# Review of the Workplace Gender Equality Act 2012

## Partnerships data collection

### Roundtable Agenda

21 September 2022

#	Item	Time
1	Welcome <ul style="list-style-type: none"> <li>Acknowledgement of country</li> <li>Welcome and introductions</li> <li>Privacy notice</li> </ul>	10:00
2	Partnerships data <ul style="list-style-type: none"> <li><i>Is the structure of partnerships clear and consistent within and across firms (equity, part-equity and non-equity partners)?</i></li> <li><i>Are your partnership and non-partnership employees employed under separate entities?</i></li> </ul>	10:10
3	Review specific topics <ul style="list-style-type: none"> <li><i>Should partners be covered under the Workplace Gender Equality Act 2012 the same way as employees?</i></li> <li><i>What unique challenges do partnerships face? Should they be required to count the number of partners when determining if they are a relevant employer (i.e 100 partners or more)?</i></li> <li><i>Would reporting separately on the number of non-equity, part-equity and full-equity partners provide enough categories to identify potential gender equality gaps within a partnership?</i></li> <li><i>Other than collecting data for partners broken down into full-time and part-time by gender, what other information would be meaningful to collect (e.g., employment status - casual, permanent, on-contract)?</i></li> <li><i>Does your organisation currently collect data on promotions and resignations of partners? Would it be possible to standardise what accounts for a promotion or resignation of a partner?</i></li> <li><i>Does your organisation's reporting contact have access to the earnings of partners? If not, could access be granted?</i></li> <li><i>What earnings data is useful (and possible) to collect? How could earnings data, or an equivalent proxy such as a partner's equity percentage, be captured for reporting on part-equity and full-equity partners?</i></li> </ul>	10:15
4	Accelerating Gender Equality amongst partners <ul style="list-style-type: none"> <li><i>What does your organisation do to ensure gender equality at partner level? How are you held accountable?</i></li> <li><i>What resources could the Government provide to support the industry to accelerate gender equality at partner level?</i></li> </ul>	10:40
5	Wrap Up and close <ul style="list-style-type: none"> <li>Summary of key points raised</li> </ul>	10:55

## Appendix H –Risk Matrix

			Consequence				
			Insignificant	Minimal	Medium	Major	Severe
			A risk event that if it eventuates, the consequence will have little or no impact on achieving objectives.	A risk event that if it eventuates, the consequence will have a minor impact on achieving objectives, to the extent that one or more agreed outcomes will fall below expected but well above minimum acceptable levels.	A risk event that if it eventuates, the consequence will have a moderate impact on achieving objectives, to the extent that one or more agreed outcomes will fall below expected but above minimum acceptable levels.	A risk event that if it eventuates, the consequence will have a significant impact on achieving objectives, to the extent that one or more agreed outcomes will fall below acceptable levels.	A risk event, that if it eventuates, the consequence will have a severe impact on achieving objectives, to the extent that one or more agreed outcomes are unlikely to be achieved.
Likelihood	Almost Certain	Expected in most circumstances – 80% or greater probability	Minor	Moderate	High	Very High	Very High
	Likely	Will probably occur in most circumstances – 50% to 80% probability	Low	Minor	Moderate	High	Very High
	Possible	Might occur at some time – 20% to 50% probability	Low	Minor	Moderate	High	High
	Unlikely	Could occur at some time – 5% to 20% probability	Low	Minor	Minor	Moderate	High
	Rare	May occur only in exceptional circumstances – less than 5% probability	Low	Low	Minor	Moderate	Moderate

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Workplace Gender Equality (Matters In Relation To Gender Equality Indicators) Instrument 2023 and Workplace Gender Equality (Gender Equality Standards) Instrument 2023***

These Legislative Instruments are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the 2023 Instruments**

Workplace Gender Equality (Matters in relation to Gender Equality Indicators) and (Gender Equality Standards) Instruments 2023 and the existing 2013 and 2014 Instruments.

The purpose of the 2023 Instruments are to support and improve women's workforce participation, and to strengthen gender equality (including equal remuneration between women and men) in the workplace.

The GEI Instrument provides the Workplace Gender Equality Agency (the Agency) with legislative authority to collect additional data on age, primary workplace location, and additional superannuation details of their employees, as well as collect CEO (or equivalent) remuneration data. Furthermore, it simplifies employer reporting on earnings and access to parental leave, while strengthening accountability by requiring employers to notify their employees, shareholders or members, when they report to the Agency.

The GES Instrument provides the Agency with legislative authority to require employers with over 500 employees to have policies or strategies that cover all 6 GEIs.

#### **Human Rights Implications**

The Australian Government's international human rights and labour rights obligations relevant to the issue of gender equality in the workplace are set out in the following international instruments:

- The Convention on the Elimination of All forms of Discrimination against Women (CEDAW)
- The International Covenant on Civil and Political Rights (ICCPR)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)

In addition to the protections afforded by these instruments, worker's rights are further supported by International Labour Organisation Conventions 100, 111, 122 and 190.

### **The 2023 Instruments engage the following human rights:**

#### Freedom from discrimination in employment

The elimination of discrimination in employment engages Article 11 of CEDAW. Article 11 expressly obliges Australia to *'take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular... the right to the same employment opportunities... the right to promotion...[and] equal remuneration.'*<sup>clxv</sup>

As required under Article 5 of CEDAW<sup>clxvi</sup>, the 2023 Instruments contribute to Australia's obligations to advance freedom from discrimination in employment by strengthening employer accountability and fostering transparency of gender equality challenges and progress within organisations.

The GES Instrument will contribute to the elimination of sexual harassment, or harassment on the ground of sex by requiring relevant employers with 500 or more employees to have a policy or strategy against all six gender equality indicators, which means all larger employers in Australia will be required to have a formal policy or strategy aimed at eliminating sex-based harassment and discrimination in the workplace.

#### Protection against discrimination on the ground of sex

Article 26 of the ICCPR contains a positive obligation on states parties to take steps to protect against discrimination on the ground of sex.

The GEI Instrument contributes to this by requiring relevant employers to provide additional data to the Agency on intersectional factors contributing to discrimination on the ground of sex – age, primary workplace location and superannuation – further protections can be developed to prevent discrimination.

#### The right to fair wages and equal remuneration for work of equal value

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<sup>clxv</sup> CEDAW, Article 11(1)(b), 11(1)(c) and 11(1)(d). Article 11(1)(c) provides 'the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining.' Article 11(1)(d) provides 'the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.'

<sup>clxvi</sup> Article 5 of CEDAW obliges Australia to take all appropriate measures to modify social and cultural patterns of the conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for women and men.

Article 7 of the ICESCR recognises the right of everyone to fair wages and equal remuneration for work of equal value. The GES Instrument expressly addresses this through the mandating relevant employers with 500 or more employees to have policies or strategies in place to support equal remuneration between women and men.

#### The right to privacy

Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. The GEI Instrument maintains the protections to personal information despite expanding the scope of mandatory reporting from relevant employers. The Agency will still not be able to publish personal information as per the definition in the *Workplace Gender Equality Act 2012*.

#### **Conclusion**

The 2023 Instruments are compatible with human rights because they advance the protection of human rights.

**Minister for Finance, Minister for Women, Minister for the Public Service,**

**Senator the Hon Katy Gallagher**

**Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2023**

**Section 1 – Name**

This section provides that the title of the instrument is the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2023.

**Section 2 – Commencement**

This section provides that the whole of this instrument commences the day after this instrument is registered.

**Section 3 – Authority**

This section provides for inclusion of section 3(1A) and 13(3) as the specific authority under the Act.

**Section 4 – Schedules**

This section provides that each instrument specified in a Schedule to this instrument is amended as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Section 5 – Definitions**

This section provides for the addition of the term ‘Agency Head’ that has the same definition as the *Public Service Act 1999*. This will provide clarity following the passage of the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022* in November 2022. The public sector is now required to report to the Agency on the Gender Equality Indicators (GEIs) and the language of ‘Agency Head’ is more appropriate for the public sector than its private equivalent, ‘CEO’. This will ensure the same data is being captured in reporting for both private and public sector.

For the definitions of ‘manager’ and ‘non-manager’ the word ‘means’ has been omitted and replaced with ‘includes’. This allows the definitions to capture ‘other managers’ and ‘other non-managers’.

New definitions of ‘harass on the ground of sex’ and ‘sexually harass’ has been included to align the instrument with changes that will be made to the Act through the *Workplace Gender Equality (Closing the Gender Pay Gap) Bill 2023* (Bill) and with the language of the *Sex Discrimination Act 1984* (SDA).

The definition of ‘key management personnel’ has been amended to omit ‘in accordance with Australian Accounting Standards Board AASB124’ because the definition is sufficiently

comprehensive without the reference for the purposes of the Agency's data collection processes.

The definition of 'relevant employer' is omitted from the instrument as the definitions from the Act apply to the instrument, so this definition is not required.

## Section 6

This section provides for the relevant matters that employers must report to the Agency regarding gender composition of the workforce as per GEI 1.

Subsection (a) provides for the additional data points of 'year of birth' and 'primary workplace location' to be reported to the Agency. This implements Recommendation 7.1(a) and (b), of the Review, to enable the Agency to collect data that intersects with gender and can compound gender inequality. Age, which for clarity of reporting is listed as 'year of birth', is a critical component of the gender pay gap and primary workplace location has a significant impact on women's and men's interaction with the workforce.

Subsection (b) provides for uniformity in the language across the instrument by omitting 'strategies' and 'policies' and replacing them with the singular form and adding 'information about' the policy or strategy. This aligns the instrument with the new gender equality standards that require employers with 500+ employees to have policies/strategies against the six GEIs.

## Section 7

This section provides for the relevant matters that employers must report to the Agency regarding gender composition of governing bodies of relevant employers as per GEI 2.

At subsection (b), the additional language of 'if a relevant employer has a governing body' has been added to address the obligation of the public sector to report to the Agency, as governing bodies are not a common feature of public employers.

At subsection (b)(i), the word 'profile' is replaced with 'composition' to better reflect the data sought by the Agency, and to provide clarity to employers.

## Section 8

This section provides for the relevant matters that employers must report to the Agency regarding equal remuneration between women and men as per GEI 3.

To implement Recommendation 7.1d of the Review, the clarification of 'manager' for the purpose of this section has been omitted to enable the Agency to collect data on the CEO, or equivalent. This will enhance the Agency dataset and capture the remuneration of a key band of employees that is currently missing.



Subsection (1)(a) has been amended to exclude ‘key management personnel with a reporting distance above the CEO’. This prevents inadvertent capture of global reporting lines.

Subsection (1)(a) has been amended to create uniformity in the language across the Instrument by omitting ‘including’ and replacing it with ‘which includes the following’. Consequently, ‘and’ after each of (i), (ii) and (iii) has been removed for grammatical reasons.

Subsection (1)(a) has been amended to give effect to Recommendation 4(b) of the Review, so the items regarding ‘annualised average full-time equivalent’ have been omitted. These have been replaced with three new simplified items regarding employment status, the number of hours worked by employees but not including full-time, and ‘actual earnings’. This will reduce the reporting burden on employers and simplify the calculations required.

For the purposes of this section a new definition of ‘actual earnings’ has been included to cover all possible earnings and bonuses in addition to the base salary on an employee.

## Section 9

This section provides for the relevant matters that employers must report to the Agency regarding availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities as per GEI 4.

Subsections (g), (h) and (i) have been amended to reflect recommendation 4.1(c) of the Review by omitting ‘proportion of workforce’ and replacing it with ‘the number of employees’. This will reduce burden on employers and enable a more accurate dataset.

Subsection (j)(iv) omits ‘telecommuting’ and replaces it with ‘work from home’ to reflect updated language and workplace culture.

Subsection (n) provides for ‘information about’ a policy or strategy of an employer has to help employees who are experiencing family or domestic violence. This aligns the Instrument with the new gender equality standards that require designated relevant employers (those with 500+ employees) to have policies/strategies against the 6 GEIs, and enables data collection on these policies and strategies to ensure they include and meet gender equality objectives.

## Section 10

This section provides for the relevant matters that employers must report to the Agency regarding consultation with employees on issues concerning gender equality in the workplace as per GEI 5.

The changes to subsection (a) reflect the consistency of language under each GEI about data collection on, and ‘information about’, a ‘policy or strategy’ and strengthen the GEI so there is improved transparency between employers and employees on gender equality. The changes align the Instrument with the new gender equality standards that require designated relevant employers (those with 500+ employees) to have policies/strategies against the 6 GEIs, and

enables data collection on these policies and strategies to ensure they include and meet gender equality objectives.

Subsection (b) has been amended to include the other items 5.2 and 5.3 and omit 'mode' to replace with 'method' and reflect the Agency's reporting processes more accurately.

A new subsection (c) has been added to implement Recommendation 3.2(a) of the Review requiring employers to report to the Agency, the date they shared the public report to employees, shareholders and members. This will enhance gender pay gap transparency.

### Section 11

This section provides for the relevant matters that employers must report to the Agency regarding sexual harassment, harassment on the ground of sex or discrimination as per GEI 6.

Items 6.1, 6.2, 6.3 and 6.4 have been omitted and replaced with more comprehensive and robust reporting requirements that will support recommendation 42 of the Respect@Work Review, being the implementation of good practice indicators for measuring and monitoring sexual harassment prevalence, prevention and response. These include subsections seeking details of prevention, risk assessment, prevalence and support for victims.

The changes also align the Instrument with changes to be made to the Act through the Bill and with the language of the SDA. They will also align the Instrument with the new gender equality standards that require designated relevant employers (those with 500+ employees) to have policies/strategies against the 6 GEIs (Recommendation 3.1(b)), and enables data collection on these policies and strategies to ensure they include and meet gender equality objectives.

### Section 12

This section provides for the continuation of the 2013 Instrument following its repeal and at the time of its replacement with the GES Instrument to ensure continuity in the report period that commenced before the repeal of the 2013 Instrument.

**Workplace Gender Equality (Gender Equality Standards) Instrument 2023**

**Part 1 - Preliminary**

**Section 1 – Name**

This section provides for the omission of ‘Minimum Standards’ and replacement with ‘Gender Equality Standards’ so the title of the instrument is the Workplace Gender Equality (Gender Equality Standards) Instrument 2023.

**Section 2 – Commencement**

This section provides that the whole of this instrument commences the day after this instrument is registered.

**Section 3 – Authority**

This section provides for inclusion of ‘section 19’ as the specific authority under the Act.

**Section 4 – Schedules**

This section provides that each instrument specified in a Schedule to this instrument is amended as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Section 5 – Definitions**

This section provides for the replacement of ‘Employer’ with the term ‘designated relevant employer’ which is defined at subsection 6(1). This more clearly differentiates the subgroup of employers with 500 or more employees in Australia from all relevant employers.

**Part 2 – Minimum Standards**

**Section 6 – Minimum Standards**

This section provides details of the gender equality indicators and minimum standards.

Subsection (1) is replaced with a new subsection that provides the definition of ‘designated relevant employer’ to include relevant employers under the Act with 500 or more employees in Australia. This will provide better clarity to relevant employers and the Agency when reporting and applying the additional requirements on designated relevant employers as opposed to all relevant employers.

All references to ‘Employer’ or ‘Employers’ in section 6 are replaced with the new definition ‘designated relevant employer’.

Following the passage of the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022* in November 2022. The public sector is now required to report to the Agency on the GEIs. Subsection (2) is, therefore, omitted and replaced with a new subsection that differentiates between the reporting periods of the private sector and of the public sector, noting that the Commonwealth reporting period commences on 1 January 2024 and the private sector reporting period commences on 1 April 2023. These dates were selected because of the timing of these changes to the Instrument which, for the public sector, will come into force during its standard reporting cycle.

Subsection (3) sets out the GEI and its corresponding objective.

The words ‘one or more of’ are omitted and replaced with ‘each’ in subsection (3)(b) to implement Recommendation 3.1(b) of the Review, which will require policies or strategies against each of the six GEIs. This has been designed to accelerate gender equality in workplaces and embed accountability.

The table setting out the GEIs (column 1) and corresponding objectives (column 2) is amended to add new items. At row 2 ‘Gender composition of governing bodies of relevant employers’ is included under column 1 and ‘Supporting and achieving gender equality in the employer’s governing body’ is included at Column 2. At row 5 ‘Consultation with employees on issues concerning gender equality in the workplace’ is included under column 1 and ‘Ensuring employees are consulted and have input on issues concerning gender equality in the employer’s workplace’ is under Column 2. The pre-existing items are renumbered to accommodate the reorder. These changes implement Recommendation 3.1(b) of the Review so designated relevant employers report to the Agency on all six GEIs.

The wording of the Objective at item 3 in the table omits ‘Flexible’ and replaces it with ‘Providing effective flexible’ to set a more ambitious objective in line with the Review.

The wording of item 6 is altered. Column 1 now reads ‘Sexual harassment, harassment on the ground of sex and discrimination’ and column 2 now reads ‘Prevention of, and appropriate response to, sexual harassment, harassment on the ground of sex or discrimination in the employer’s workplace. These changes will strengthen the GEIs as a mechanism to drive change towards gender equality and bring the GEI in line with the Bill and with the language of the SDA.

## Section 7

This section provides for the continuation of certain provisions of the 2014 Instrument following its repeal and at the time of its replacement with the GES Instrument.