

Submission to Government consultation on reporting requirements under the Workplace Gender Equality Act 2012

Prepared by the Coalition for Working Women (CWW)

July 2014

The Coalition for Working Women is comprised of the following organisations:

- Australian Council of Trade Unions
- Australian Local Government Women's Association
- BPW (Business and Professional Women) Australia
- Financial Services Institute of Australasia
- Local Government Managers Australia
- National Council of Women of Australia
- National Foundation for Australian Women
- The Work and Family Policy Roundtable (UniSA)
- Women on Boards
- Women's Electoral Lobby
- YWCA Australia

Executive Summary

This submission has been prepared by the Coalition for Working Women (CWW) to outline the position of its members in relation to consultation about the gender reporting requirements outlined in the Gender Equality (Matters in Relation to Gender Equality Indicators) Instrument 2013 (No. 1). Its aim is to assist in shaping future reporting requirements to ensure a balance between employer concerns and the major long-term business benefits accruing from workforce gender reporting.

“Australia’s gender based reporting will generate a world leading data set that will develop business intelligence, enable company and industry comparisons and benchmarking, drive policy change and improve productivity and performance.”

The CWW attests that the existing reporting regime enables the Government to:

- obtain meaningful gendered data sets on workforce composition,
- make evidence-based assessments concerning whether employers are addressing gender equality, and
- benchmark and improve performance.

However, the CWW appreciates that new legislation is an evolving policy area and may require fine tuning. Following consultation with business, women’s and industry groups it is clear that some improvements can be made, although given the timing of the review, it would have been advantageous for businesses to have seen the substantive and individualised benchmark reports being made available to them by the WGEA.

The **table at Appendix A** lists some of the reporting matters employers will be reporting on in 2013-14, which will now remain in place for reporting in 2014-15, and the CWW recommendation on their retention or removal.

The **table at Appendix B** includes those reporting matters that were first listed in Schedule 2 for additional reporting in 2015 and the CWW recommendation on their retention or removal.

The remainder of the submission addresses matters raised in the context of these recommendations, arguments supporting the retention of the reporting regime - including costs and benefits – and matters raised in CWW consultation with employer groups via meetings and further discussion via email and directly.

Key points

- The consultation process has been directed by a set of ‘guiding questions’ and a deadline that ensures a focus on costs rather than benefits.
- The collection and public reporting of gendered metrics on pay, recruitment, retention and promotion is critical to improving workplace equity and female participation in the workforce in particular in management and leadership roles.
- The minimum standard of businesses with 100 employees or more should be retained as this represents approximately five percent of Australian businesses.
- Contract compliance should be retained.
- Items in Schedule 1 relating to gendered reporting for graduates, reporting of the CEO salary and some aspects of reporting for parenting leave as well as a large number of reporting items in Schedule 2 could be removed without seriously impairing the Act’s core objectives.
- Essential items in Schedule 1 must be retained including:
 - reporting gendered workforce profile data on all managers (Gender Equity Indicator 1 – 1.1.2.3)
 - reporting gendered workforce profile data on non-managers using ANZSCO classifications to underpin data comparability and analysis (Gender Equity Indicator 1.1.3.1 – 1.1.3.7)
 - workplace flexibility data (Gender Equity Indicator 4.8)–although the current requirements may be clarified
 - reporting of gender pay equity objectives, whether any gender pay gap analysis has been done and what actions have been taken in response (GEI 3 – 3.3, 3.4, 3.5)
 - reporting on the way employees are consulted on gender equity issues and the categories of employees consulted (GEI 5 – 5.2, 5.3).
- All other matters not mentioned in Appendix 1 or Appendix 2 are supported and should be retained.

Background to the review: Threshold issues

As the online consultation appears to be seeking responses primarily from employers with a focus around 'red tape', the CWW welcomes the opportunity to represent the views of women's and industry organisations on a policy that has long-term implications for the Australian economy. This is of particular importance given that the Department has asked respondents to the review to prepare their submissions based on the background information and guiding questions that are focussed almost entirely on costs to individual businesses.

Regulatory reviews should consider benefits as well as costs

The CWW notes that in regulatory reviews, it is customary to examine benefits as well as costs. Businesses have not been asked to give a view on the benefit of the individualised 45-page benchmark report they will receive from the WGEA, against the costs of reporting. Instead, before even having received their first report under the new arrangements, individual organisations have only been asked what in their view should be included in or excluded from subsequent benchmark reports. This is of concern to the members of the CWW as it means the clear public and economic benefit of having industry-specific educational benchmarks made widely available may be overlooked.

We are advised by the Department that the rationale for the review is to ensure reporting 'represents value for effort'. However, we understand that the Department estimates that the workplace gender equality reporting burden on employers is only in the order of \$9 million per annum for all businesses covered by the Act. Using current data on the Act's coverage, this figure suggests a cost of approximately \$2 000 per report. Many reports cover subsidiaries as well as standalone employers, so that the cost of reporting for each of the 13,000 entities covered by the Act is on average around \$692.

The guiding questions focus wholly on individual costs and not public benefits

Having established the costs, it is important also to identify the benefits. NATSEM has modelled the impact of the equal pay gap on women's working hours, and found that if women earned the same as men, the impact on their hours worked would see GDP grow by around \$93 billion. Access Economics has estimated that halving the gap between men and women's participation in the full-time workforce would result in a 2041-42 per capita output of \$3,385, equivalent to a gain of \$98.4 billion in real output. While these are both best case scenarios, the magnitude of the gains available to the economy generally through improved gender equality are significant when set against a cost of considerably less than \$692 per organisation. A questionnaire focussed on individual organisations cannot bring this out.

The 'guiding questions' focus on set-up costs and ignore return on investment.

Employers are only asked to report on their difficulties in the first year of reporting on data items ('How long did it take your organisation to complete the report? You may like to include a cost estimate based on the number of hours of staff time'). It is well understood that once reporting organisations have undertaken the one-off conversion of occupational data to the ABS standard, reporting for all subsequent years will be much simpler. The 'guiding questions' will not allow this to be brought out.

It should also be noted that the majority of businesses required to report have already invested in the systems and processes needed to make them compliant with WGEA reporting. At the very least they would expect these to be used for the next three to five years, to enable return on their investment and a quality data set to be developed.

Consultations will conclude before businesses will see their individualised benchmark reports.

The closing date for the submissions is 31 July 2014. This is before organisations receive their individualised benchmark report. This is a substantial 45-page analysis of gender equality issues in a given workplace set against a comparator group selected by the reporting organisation (www.wgea.gov.au/sites/default/files/Reporting_Organisations_Benchmark_Report_Sample_Report.pdf.)

Seventy-seven per cent of more than 2000 employer respondents to a recent WGEA survey said they would find the industry-specific educational benchmarks 'valuable' or 'very valuable'. The clear public and economic benefits of having industry-specific educational benchmarks made widely available may be overlooked.

In addition to indicative customised benchmark reports for individual employers, aggregated benchmark data will be publicly available through a new online interactive data centre on the Agency's website. This data relating to the first full year of reporting under the *Workplace Gender Equality Act 2012* is scheduled to be available via the data centre in late 2014. This key benefit to those with an interest in public policy has also been excluded from the evaluation process because the timing of the consultation does not allow it to be taken into account.

Background to our recommendations

The data is not already being collected

The data being collected is organisational and cannot be replaced by any ABS aggregated data. Employers will receive tailored reports from the WGE Agency that detail the gender equality performance of their organisation against industry benchmarks. For those employers who assume that they have no workplace gender equality issues, these reports will clarify whether their assumptions are accurate. Benchmarking reports will provide links to strategies that can be used to improve organisational performance in targeted areas such as pay equity or work and family measures. They will underpin much of the ongoing education, advisory and promotional work of the Agency, and assist in identifying minimum industry standards.

95% of businesses are exempt from reporting

As businesses with fewer than 100 employees are already exempt from WGEA reporting there is a strong case that the legislation is only impacting approximately five per cent of businesses who employ less than half of the employees in Australia.

The Australian Bureau reports that there were 2,079,666 actively trading businesses in Australia at June 2013, of which 815,386 were employing businesses and 1,264,298 non-employing businesses. Of the employing businesses:

- 760,824 were small businesses (1-19 employees) – 93%
- 50,946 were medium sized businesses (20-199 employees) – 6%
- 3,598 were large businesses ('200+ employee) – 1%

Savings are minimal – only \$692 per company

The rationale for proposing a new regulatory instrument is to reduce costs to businesses. However, we understand that the Department of Employment estimates that the workplace gender equality reporting burden on employers is only in the order of \$9 million per annum for all businesses currently covered by the Act, estimated to be 13,000 entities.

Reduction in gender pay gap

The WGEA reports a national gender pay gap of 17% at March 2014. The key outcome of robust gender diversity reporting would be a reduction in the gender pay gap. Some sample cases are below. A base example of a 1% increase in average annual earnings for part time and full time women would result in increases of \$0.54 billion for part time women and \$1.7b for full time working women.

Part-time female workers

	Part-time	Increase	Total increase for 2.2m females
P/T female employee annual earnings	\$ 25,806		
Plus 1% increase	\$ 26,064	\$ 258	\$ 0.54b
Plus 5% increase	\$ 27,096	\$ 1,290	\$ 2.97b
Plus 15% increase	\$ 29,677	\$ 3,871	\$ 8.9b

Full-time female workers

	Full time	Increase	Total increase for 2.7m females
F/T adult average total earnings	\$ 75,000		
F/T female employee annual earnings	\$ 63,804		
Plus 1% increase	\$ 64,442	\$ 638	\$ 1.72b
Plus 5% increase	\$ 66,994	\$ 3,190	\$ 8.61b
Plus 15% increase	\$ 73,375	\$ 9,571	\$ 25.8b

Ref: 8.11 EMPLOYED PERSONS(a), Full-time and part-time workers - 2008-09 at

<http://www.abs.gov.au/ausstats/abs@.nsf/lookup/D1627ABE11C4B12CCA25773700169C6A?opendocument>

Specific Matters

Data on occupational status for non-managers

Occupational status is a Schedule 1 matter. It forms the backbone of the proposed gender equality database. Data collection for managers is based on distance from the CEO while non-managers are classified in seven occupational groupings consistent to top level classifications under the Australia and New Zealand Standard Classification of Occupations (ANZSCO), to which the categories 'graduate' and apprentice' have been added. It is proposed these two latter categories be removed.

CWW understands that the lack of specificity in the classification of non-managers under single digit ANZSCO is causing some issues for employers. For example, for the banking sector 90% of employees fall into one occupational category – “professionals”. To their credit the major banks have been collaborating to decide on best approach to reporting to enable benchmarking. Given the ‘whole of Government’ approach to ANZSCO and initial business resistance to more granular classifications, sector collaboration on increasing granularity would seem to be the best approach and one that could be advocated more broadly. Again, ANZSCO is tailored to this purpose by enabling sectors to move progressively to 4-digit classification distinctions on a systematic and comparable basis.

The CWW notes that in using ANZSCO, the WGE Agency undertook to develop two excel spreadsheets enabling employers to do a one off conversion of occupational data, after which the process should be largely automated. These worksheets are on the WGEA site together with a simplified directory of ANZSCO occupational classifications for each industry. It was also decided that occupational data changes should be phased in to give employers time to adjust.

It is important to note that without occupational data (not just the groupings that individual employers invent for their own use, but groupings that can be compared across employers, i.e. ABS ANZSCO-based reporting for non-managers and distance from CEO for managers) there will be little capacity to create industry benchmarks. It will not be possible for employers to measure their performance on pay equity, occupational segregation and vertical segregation among senior managers. The benefit of ensuring employers are able to compare their data with employers in similar industries or with similar characteristics, far outweighs the one off effort and / or cost of converting data to the ANZCO system.

Flexibility

It is important to be clear that, parental leave aside, neither Schedule 1 nor Schedule 2 requires any employer to report on any employment conditions that have been accessed by any individual employees. However, the wording of this section continues to cause confusion and does require clarification so employers know they only need to answer if they make certain flexibilities available: answers are simply ‘yes/no’ for each type of flexibility, eg do you offer job-sharing? If yes, then in each case the questionnaire asks if the condition is available to head office / other worksites / or both..

In the case of parental leave, employers are only required to report in terms of the use of these arrangements by managers and non-managers, broken down by sex. Further occupational breakdowns are not required. These reporting requirements are clearly not onerous and should be retained.

Casuals

The CWW noted casual is an increasingly significant employment category and collection of data in this area is an effective mechanism to refine recruitment practices and understand workforce composition and career pathways for women in particular. The CWW supports efforts being made to elaborate on when and how casual employment is being used--even if this is challenging.

Contract compliance

Organisations employing over 100 employees and covered by the WGE Act need to self-identify to the WGE Agency and to report annually. The Government took the view in 2012 that mechanisms for effecting compliance with the Act would not be in the Act, but rather through procurement arrangements which are the responsibility of the Department of Finance.

Sections 15 and 21 of the Public Governance, Performance and Accountability Act 2013 (PGPA Act) specify that procurement by non-corporate Commonwealth entities must not be inconsistent with the policies of the Commonwealth. These policies include Workplace Gender Equality Procurement Principles (and User Guide) which require Australian Government agencies to obtain a letter of compliance from certain tenderers (employers with 100 or more employees) indicating compliance with their obligations under the Workplace Gender Equality Act 2012. The Principles provide advice to agencies, tenderers and suppliers, and procuring officials and officers on their roles and responsibilities under the policy.¹ This is understood to include entities in receipt of grants or payments for the provision of human services, such as age care, child care and employment services.

Contract compliance is the only mechanism in place which encourages employers covered by the WGE Act who do not report and are not known to the Agency, to identify themselves and begin reporting. Using 2009 ABS data, the Agency has estimated that there were around 4500 organisations that were covered by the Act and had not made themselves known to the Agency.² The CWW is strongly of the view that contract compliance arrangements remain in place to ensure that the Government does not do business with those who do not comply with its legislation. However, it also recommends that the Government put in place a comprehensive mechanism to identify non-reporting employers.

¹ These principles apply to procurements that exceed the relevant procurement threshold outlined in paragraph 9.7 of the Commonwealth Procurement Rules.

² EOWA submission to the Review of the Equal Opportunity in Workplace Act and Agency October 2009

Appendix A: Schedule 1 Reporting Matters for removal or amendment

Reference	CWW Recommendation	Reasons for removal/amendment
1.1.3.8	REMOVE Reporting on graduates	Defined in the WGEA report form as: ‘Any person employed by an employer as a graduate.’ Because they are separately identified, graduates are captured outside their functional occupational grouping. This reduces the information value of comparing starting salaries for male and female graduates in the same organisation. Graduate Careers Australia’s (GCA) annual Australian Graduate Survey (AGS) offers this data on a national basis.
1.1.3.9	RETAIN Reporting on apprentices	Defined in the WGEA report form as ‘Any person employed by an employer as an apprentice.’ Because they are separately identified, apprentices are captured outside their functional occupational groupings. However, because apprentices tend to be found in a limited set of male-dominated and trades-based occupations, there is still value in seeing the gender differential for apprentices employed in an organisation. This data might feed into recruitment practices that encourage women to enter these non-traditional occupations.
3.1	REMOVE Reporting on the salary of the Chief Executive Officer.	Although this item has caused considerable angst, we note the majority of listed companies already publish CEO salaries within their Annual Reports. However, smaller unlisted organisations have concerns about confidentiality, though earnings data is confidential. The data does not give information on gender equality within organisations; its main benefit is to contribute to industry benchmark data on the salaries of CEOs for women and men.
4.6	AMEND IF REQUIRED Reporting on the proportion of the workforce who have access to employer-funded paid parental leave for primary carers	This is data that the Agency has been tracking for years. Following the introduction of the Labor PPL scheme, employers have continued to use their own employer-funded schemes as top-up mechanisms. The Government plans to introduce its preferred scheme, and it is not yet clear how this will affect employer-funded top-up arrangements. We recommend retaining this provision until new PPL provisions are in place and the future of employer –funded top-up arrangements has been clarified.
4.7	AMEND IF REQUIRED Reporting on the proportion of the workforce who has access to employer-funded paid	The Government’s proposed PPL scheme initially limited secondary carers to two weeks of PPL. While the final operation of the scheme is as yet unclear, it appears that the Government may intend to displace all existing employer schemes that might provide more substantial support (and therefore encouragement) to secondary carers wishing to share care of children. This data item would enable researchers to track the implications of the Government’s scheme for gender equality in the sharing of family responsibilities. We recommend retaining this

	parental leave for secondary carers.	provision until new PPL provisions are in place and the future of employer-funded top-up arrangements has been clarified.
4.8	RETAIN / CLARIFY	<p>Confusion persists as to the meaning of this section. The wording is not clear about ongoing reporting requirements in relation to flexibility. We understand that the intention is NOT to enumerate the utilisation of the flexible working options by individuals, but to indicate only if such options are on offer, whether they are on offer to managerial employees only, non-managerial employees only, or both groups of employees, and whether they are available across all locations of the organisation or only some locations.</p> <p>We recommend the wording be amended to approximate the following: <i>“Availability by gender and manager/ non-manager of employment terms, conditions and practices including...etc”</i></p>

Appendix B: Schedule 2 Reporting Matters

The following Reporting Matters would have come into effect in April 2014 for reporting in April-May 2015; however, these have been delayed while Schedule 2 is being reviewed.

Reference	CWW Recommendation	Reasons for removal/amendment
1.3	REMOVE The composition of recruitment applications by gender and by manager/non-manager.	This item has caused considerable concern, and is indeed demanding, particularly for retail and hospitality employers, who have a high number of casuals and significant turnover. These employers (e.g. Woolworths) may receive up to 30,000 applications annually, many of which do not specify the sex of the applicant, and many of which are simply held on file rather than being used in a single recruitment round. Recruitment is also likely to be decentralised, making data collection very difficult. This item should probably be left to 'Employer of Choice' applicants and not generally required. Data on the existence of workplace policies in this area is being collected under Schedule 1 questions.
1.4	REMOVE The composition of applicants interviewed by gender and by manager/non-manager.	This item has also caused considerable concern, and is also demanding, particularly for retail and hospitality employers, who have a high number of casuals and significant turnover. These employers (e.g. Woolworths) may receive up to 30,000 applications annually, many of which do not specify the sex of the applicant, and many of which are simply held on file rather than being used in a single recruitment round. Interviewing of applicants is also likely to be decentralised, making data collection very difficult. This item should probably be left to 'Employer of Choice' applicants and not generally required. Data on the existence of workplace policies in this area is being collected under Schedule 1 questions.
1.5	REMOVE The composition of applicants appointed to positions by gender and by manager/ non-manager.	While it is arguable that this reporting matter could be retained, at least for managers, in effect data collected through the workforce profile will show ongoing changes in the gender balance of both managerial and non-managerial occupations. Data on the existence of workplace policies in this area is being collected under Schedule 1 questions.
1.6	RETAIN The number and proportion of employees awarded promotions by gender, employment status and manager/non-manager.	This data should be much easier to track than recruitment data. We propose retaining this reporting matter. While we accept that casuals who receive promotions should have been with an employer long enough to have become ongoing employees, we will not be able to confirm that this is the case without this data. Data on the existence of workplace policies in this area is being collected under Schedule 1 questions.

1.7	<p>RETAIN The number and proportion of employees who have resigned by gender, employment status and manager/non-manager.</p>	<p>We propose retaining the requirement to report on the number of resignations by gender, employment status and manager/non-manager. Recent findings of the Australian Human Rights Commission on constructive dismissal in the context of pregnancy and return to work demonstrate that resignation data would be misleading if it did not include casual and contract employees.</p> <p>Data on the existence of workplace policies in this area is being collected under Schedule 1 questions.</p>
3.6	<p>SIMPLIFY Disaggregated data by gender on annualised average full-time equivalent components of total remuneration</p>	<p>At present employers are required to report on earnings under two categories: base salary and total remuneration. Under schedule 2, there would be a further requirement to report on separate components of total remuneration. These components are not specified in Schedule 2 but could include: bonus payments, superannuation, discretionary pay, overtime, other allowances, and other remuneration components not included in these categories. We propose limiting reporting on the components of total remuneration to performance pay (including bonuses); superannuation; allowances and overtime; and another category called “Other” to include everything else.</p> <p>A second option is to limit the requirement to report on the components of total remuneration to</p> <ul style="list-style-type: none"> • applicants for Employer of Choice status, and • the subset of employers whose pay equity rating is below the industry average benchmark, or some lower threshold.
4.8	<p>RETAIN Disaggregated data by gender and manager/non-manager on return to work from parental leave.</p>	<p>The collection of this data is desirable because of its intersection with strategies encouraging RTW. These include RTW bonuses, child care referral services, child care assistance, on-site child care, breastfeeding facilities and so on. Data on the use of these strategies by industry employers is also collected in the report. Where RTW is below industry standards, an employer might be encouraged to consider introducing one or more of these strategies.</p> <p>Given that RTW data is not difficult to collect, we recommend retaining this item.</p>
4.9	<p>SIMPLIFY The number of requests and approvals for extended parental leave by gender and manager/non-manager.</p>	<p>Simplify with a narrower requirement to report on <i>the number and outcome of formal/written requests and approvals for extended parental leave</i> by gender and manager/non-manager. Employers are already required to keep these records under the Fair Work Act, so there is no data collection issue for this subset of data.</p>