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WELA Submission to the WGEA Review

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Introduction

Women's Electoral Lobby Australia (WELA), established in 1972, is an independent, national non-party political feminist lobby group dedicated to creating a society where women's participation and their ability to fulfil their potential are unrestricted, acknowledged and respected, and where women and men share equally in society's responsibilities and rewards. WELA has worked tirelessly for almost 50 years to improve the position of women in society.

WELA applies a feminist approach to all its work from policy analysis and development to campaigning. WELA has developed a Feminist Policy Framework, which sets out the values we use to measure fairness for women and fairness for society. WELA believes that good policies should address these indicators and works with governments at all levels on achieving better and fairer policy outcomes.

WELA believes that fair policies are those that:

1. Ensure the benefits and outcomes are fairly distributed between women and men, as well as between different groups of women
2. Value and reward fairly people's different skills, experiences and contributions
3. Recognise the value of caring and supporting roles, whether paid or unpaid
4. Recognise and rectify past and current inequalities between men and women; and
5. Enhance opportunities for both women and men to take on equal rights and responsibilities in all aspects of society: politics, community, employment and social life.

Overview

WELA has always supported the WGEA and its Agency (and the predecessor legislation and Agencies), as making a valuable and necessary contribution to improving gender equality in the workplace. WELA has always had some reservations about the theory of change underlying the Act

relying on transparency and public naming and shaming as the key drivers of change. That has been effective in many cases. In others it plainly has not, as evidenced by the depressingly slow rate of improvement in many areas of gender equality and the absence of improvement in some organisations. However almost all the recommendations WELA makes in this submission sit within the WGEA's current regulatory model.

Overall WELA agrees with the recommendations made in the cogent and well-evidenced WGEA Submission to the Review and signals the few areas of difference. In some more specific and technical areas, WELA has not made recommendations, considering that most of those made in the Agency's submission seem sound.

WELA acknowledges the WGEA's impressive achievements in developing and maintaining a powerful and world class data set, and in the analysis conducted using it. The limits of achievement through data collection, analysis and reporting, along with naming and shaming, may have now been reached.

WELA would now like to see a focus on assuring the quality of reporting, and on requiring organisations to take action where reports show that further progress is needed to achieve gender equality.

WELA Recommendations

- 1. WELA recommends that the WGEA be amended to enable the Agency to issue improvement notices and to provide that compliance with the notices is required for compliance with the Act.**
- 2. The coverage of the Act should be extended to cover Commonwealth, State, Territory and Local Government organisations, taking the overall proportion of the workforce covered to around 60%.**
- 3. WELA recommends research into the relationships between organisation size and capacity for data, reporting, program development and management, and net benefits of programs as a basis for reducing the threshold for coverage to 50, and for progressive further reductions.**
- 4. WELA recommends that further work be carried out on appropriate approaches to gender equity in workplaces below the coverage cut-off (whatever it may be from time to time).**
- 5. WELA recommends commensurate increases in resourcing for the Agency with each extension of coverage.**
- 6. WELA recommends that the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No.1) continue to specify data points and data calculation requirements.**
- 7. WELA recommends that gender definitions and data collections include non-binary people, consistent with the ABS Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables (2021, ABS website).**
- 8. WELA recommends mandatory data collection and reporting by employee age.**
- 9. WELA recommends mandatory data collection and reporting on each employee's primary workplace location.**
- 10. WELA recommends mandatory data collection and reporting on non-manager occupations and jobs at ANZSCO level four.**
- 11. WELA recommends that reporting be required on employees' involuntary exits by gender, employment status and occupations.**
- 12. WELA recommends that reporting be required on redundancies by gender, employment status and occupation.**
- 13. WELA recommends mandatory collection and reporting of remuneration data for CEOs or equivalent.**
- 14. WELA recommends that organisations be required to report actual earnings and hours of part time and casual employees.**
- 15. WELA recommends that reporting be required on access to and use of employer-funded paid parental leave for primary carers and secondary carers, and the eligibility period for access, disaggregated by gender, employment status and occupation.**
- 16. WELA recommends that reporting be required on whether employers pay superannuation when an employee is on paid, unpaid, employer-funded and/or government-funded parental leave.**
- 17. WELA recommends that organisations be required to report on whether employees were consulted in preparation of the report, whether employees were consulted after the**

previous year's report, the dates and mechanisms of consultation, and action taken as a result of consultation with employees.

18. WELA recommends that reporting be required on the incidence of sex based harassment, and the provision and frequency of workplace training on sex-based harassment and discrimination.

19. WELA recommends that the Agency require reporting on cultural and linguistic diversity, age, disability, location, and Aboriginal and Torres Strait Islander status.

20. WELA recommends data on individual organisations' gender pay gaps (base salary and total remuneration) in percentages and dollar figures, by workforce quartiles be included in the Agency's public dataset.

21. WELA recommends that the minimum standards apply to all organisations covered by the Act.

22. WELA recommends that all the minimum standards should be required to be addressed by action undertaken to meet industry benchmarks as specified by the Agency, and to show improvement over two reporting periods.

23. WELA recommends a comprehensive review of how the Gender Equality Procurement Principles are operating as a deterrent to non-compliance with the Act, as a basis for developing measures to strengthen the contract compliance provisions, including through extending the coverage of the contract compliance system to all non-construction contracts or grants of \$80 000 or more, while also reviewing the appropriate thresholds for construction contracts.

24. WELA recommends that a program of random and targeted reviews of reporting organisations be developed and resourced.

25. WELA recommends further work on analysis of which aspects of gender inequality in employment can be addressed at organisation level, and which require mechanisms at other levels, and what the processes and mechanisms should be.

1. Are the functions and powers of WGEA appropriate for promoting and improving gender equality in the workplace? How effective is WGEA in achieving its functions to promote and improve gender equality in the workplace including by enabling relevant employers to report on the gender equality indicators, developing benchmarks and reports, undertaking research, education and leading practice programs and contributing to the public discussion on gender equality?

Significant underfunding is the key limitation on WGEA's effectiveness in view of the scope, scale and complexity of the work it is responsible for. It is amazing and a credit to its staff that it has achieved as much as it has, especially in the quality of its data sets and analysis of them. The Agency has probably achieved almost as much as can be achieved through the driver of public reporting as an enabler of action to improve equality by employees, employee organisations, shareholders, customers, and others. There are a few areas where further gains in transparency in public reporting could be made and we cover them elsewhere.

Requiring action on what is being reported

WELA would like to see the WGEA amended to enable the Agency to issue improvement notices requiring specific actions to be undertaken within specific time frames. Compliance with the Act would require compliance with the notices.

For example, 45% of organisations reporting they had undertaken gender pay gap reviews stated that they had taken no action on the findings. A notice could be issued to require that any issues identified be addressed. The notices could operate similarly to the prohibition and improvement notices in the occupational health and safety and environmental health jurisdictions. The Fair Work Ombudsman uses several approaches to achieving compliance, including issuing compliance and infringement notices, enforceable undertakings, and compliance partnerships.

1. WELA recommends that the WGEA be amended to enable the Agency to issue improvement notices and to provide that compliance with the notices is required for compliance with the Act.

2. What is your experience of what works to improve gender equality in your workplace? How do you currently engage with WGEA and use the reporting process and their resources to improve gender equality? What changes, if any, would you like to see in the areas of future focus for WGEA to further promote and improve gender equality over the next ten years?
3. Should the coverage of the Workplace Gender Equality Act be further changed? Specifically, should the definition of 'relevant employer' be expanded? If so, would additional considerations need to be factored in for new reporting employers?

The current coverage of the Act, around 40% of employees, is too small. A significantly higher level of coverage would have the effect of increasing the spread of the commitments and techniques for gender equality in employment across and beyond the covered proportion of the entire workforce. Coverage of the public sector demonstrates the commitments of governments to gender equality and provides comparable treatment of public sector and other organisations. WELA notes that public sector organisations were excluded from the (then) Affirmative Action Act coverage on the basis that public sector organisations already had well-developed equal employment opportunity programs and reporting. For the most part they no longer exist.

A very high proportion of employing organisations fall below the existing threshold for coverage. NFAW has calculated that the proportion of employing organisations covered by the WGEA is around 0.14%. And a very significant proportion of the workforce is employed in them. It is probable that organisations below a certain size may not be able to sustain a good quality data collection and reporting system, and a fully articulated equal opportunity program, while the benefits in trying to do so are likely to be limited. However, there is no clear evidence about the relationships between organisation size and capacity for data, reporting, program development and management, and net benefits of programs. Computer-based applications and programs can provide great data collection, analysis and reporting power. It is evident that there is a wide range of thresholds for coverage for affirmative action and equal employment opportunity programs of various kinds in various countries.

While as a matter of principle all employing workplaces should provide gender equity, the model for achieving that (through data analysis and reporting on programs) may not be appropriate in smaller workplaces. Further work should be carried out on appropriate approaches to gender equity in workplaces below the coverage cut-off (whatever it may be from time to time).

WELA notes that organisations below the current threshold for reporting will have the option of voluntary reporting from 2022 and sees that as a useful beginning, while longer term measures to require reporting at a lower threshold are developed. The population of voluntarily reporting smaller organisations will provide an opportunity for analysis of how smaller organisations go about program development, management and reporting, and any specific challenges they encounter, and the benefits they derive from their programs.

Extension of coverage entails additional work for the Agency and needs commensurate increases in resources.

2. The coverage of the Act should be extended to cover Commonwealth, State, Territory and Local Government organisations, taking the overall proportion of the workforce covered to around 60%.

3. WELA recommends research into the relationships between organisation size and capacity for data, reporting, program development and management, and net benefits of programs as a basis for reducing the threshold for coverage to 50, and for progressive further reductions.

4. WELA recommends that further work be carried out on appropriate approaches to gender equity in workplaces below the coverage cut-off (whatever it may be from time to time).

5. WELA recommends commensurate increases in resourcing for the Agency with each extension of coverage.

4. Are the gender equality indicators (GEIs) in the Workplace Gender Equality Act, and the data collected with respect to the GEIs, appropriate to promote and improve gender equality? How could they be improved?

WELA notes that the WGEA's Submission to the WGEA Review (Recommendation 4) recommends that the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No.1) specify the types of data collected by the Agency rather than specifying data points or data calculation. WELA does not support this recommendation. WELA sees it as important that there is a well-specified and consistent legislated basis for data collection. Clear specification of both data required and calculation methods is an important element in quality of reporting. The recommended change would be likely to compromise the integrity of the data set over time, and therefore reduce the Agency's capacity to develop and deploy robust industry benchmarks as the basis for developing and applying minimum standards.

6. WELA recommends that the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No.1) continue to specify data points and data calculation requirements.

7. WELA recommends that gender definitions and data collections include non-binary people, consistent with the ABS Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables (2021, ABS website).

8. WELA recommends mandatory data collection and reporting by employee age.

9. WELA recommends mandatory data collection and reporting on each employee's primary workplace location.

10. WELA recommends mandatory data collection and reporting on non-manager occupations and jobs at ANZSCO level four.

This change is long overdue and is necessary for having specific, easily understandable and meaningful occupational data

- 11. WELA recommends that reporting be required on employees involuntarily exiting organisations by gender, employment status and occupation**
- 12. WELA recommends that reporting be required on redundancies by gender, employment status and occupation**
- 13. WELA recommends mandatory collection and reporting of remuneration data for CEOs or equivalent**

WELA notes that public reporting of this information is already required for other organisations.

- 14. WELA recommends that employers be required to report actual earnings and hours of part time and casual employees.**

WELA expects that there would also continue to be reports on full time equivalent earnings as calculated by the Agency.

- 15. WELA recommends that reporting be required on access to employer-funded paid parental leave for primary carers and secondary carers, and the eligibility period for access, disaggregated by gender, employment status and occupation.**

- 16. WELA recommends that reporting be required on whether employers pay superannuation when an employee is on paid, unpaid, employer-funded and/or government-funded parental leave.**

- 17. WELA recommends that employers be required to report whether employees have been consulted in the preparation of the report, whether employees were consulted after the previous year's report, the dates and mechanisms of consultations, and on action taken as a result of consultation with employees.**

WELA notes that just over half the reporting organisations report that they have undertaken consultation with employees, and thinks that this would be a useful area to consider for use of the improvement notices system we recommend above. The involvement of employees in program development and reporting is an important safeguard of the integrity and accuracy of reporting, and the adequacy of strategies and the appropriateness of actions undertaken to address identified gender gaps.

- 18. WELA recommends that reporting be required on the incidence of sex based harassment and on the provision and frequency of workplace training on sex-based harassment and discrimination.**

5. In addition to gender, should WGEA collect other data on diversity and inclusion criteria on a mandatory basis, to enable a more nuanced analysis of men and women's experiences in the workplace? If yes, please specify criteria (eg cultural and linguistic diversity, disability, age, location of primary workplace). If not, why not?

A range of employee characteristics or assumed characteristics have been found by solid research to be associated with disparate experiences and inequalities. They include cultural and linguistic diversity, age, location, disability, and Aboriginal and Torres Strait Islander status. Analysis that includes these variables will provide a more fine-grained intersectional understanding of workforce experiences across the population of women. That would enhance the prospects of developing appropriately targeted workforce strategies. It is likely that information on those variables is already available within many organisations. It is important that disclosure of personal characteristics be voluntary, and that the reported data show what proportion of employees provided the information.

There is real value in collecting information about and reporting on diversity in the organisation's workforce, in view of the significant body of research establishing the value of diverse workforces in raising efficiency and productivity, and in reducing harassment and discrimination.

19. WELA recommends that the Agency require reporting on cultural and linguistic diversity, age, disability, location, and Aboriginal and Torres Strait Islander status.

6. How could data be better collected and/or used by WGEA to promote and improve gender equality? Should there be some form of pay transparency – should remuneration data in some form be public?

Pay transparency is an important lever for addressing gender pay inequity. That has been recognised in systems enabling employees to request information about remuneration of other employees (eg in the UK), and imposing or removal of provisions prohibiting employee disclosure of remuneration. While there may be cogent reasons for not publicly disclosing remuneration of individuals, there are equally cogent reasons for enhanced reporting on remuneration - for example at sub- industry level, and at organisation level, by quartiles. There is a greater level of transparency in reporting on gender pay gaps in some other countries.

20. WELA recommends data on individual organisations' gender pay gaps (base salary and total remuneration) in percentages and dollar figures, by workforce quartiles be included in the Agency's public dataset.

7. Are there changes that could be made to the Workplace Gender Equality Act that would help reduce the regulatory burden on relevant employers while continuing to enable WGEA to promote and improve gender equality? Should other data sources, such as Single Touch Payroll data, be used by WGEA instead of employers providing the same data to two Government agencies?

It makes sense wherever possible to use, for example Single Touch Payroll data to prevent organisations having to report the same data to multiple government agencies. It will however be important to find effective ways to integrate systems, and it will be necessary to ensure that loss of important data currently collected does not occur.

WELA notes that while it is common for organisations to complain about regulatory burden, it is uncommon to provide robust evidence about the nature and extent of the burden. This would be a useful area to explore., considering the ever-increasing automation of data collection, analysis and reporting.

8. Could the minimum standards be expanded to improve the way they drive practical gender equality outcomes in workplaces? What would employers need to do to implement these changes in their workplace? Should Minimum Standards apply to all reporting employers, not just those with 500 or more employees?

The current minimum standards are not driving gender equality outcomes, and are demonstrably easy for most organisations to meet in most areas. They are not applicable to all organisations covered by the Act. At the heart of this is that the standard can be met by having a **policy or strategy** for **one** of the specified areas. That does not actually require any goal setting or any action.

The purpose of setting minimum standards and requiring action to achieve them is particularly to bring up the performance of the lagging organisations, and over time to raise the performance of the entire reporting population. The Employer of Choice citation is apparently successful in encouraging and enabling ongoing improvements of the best performers.

The Agency's industry benchmark indicators provide a sound basis for identifying organisations that need to improve their performance relative to other organisations in their industry. Compliance with minimum standards should at least require that action is taken and performance improves relative to industry benchmarks over two reporting periods. Over time, as poorer performers improved, the industry benchmarks would reflect that and higher performance levels could be expected.

- 21. WELA recommends that the minimum standards apply to all organisations covered by the Act.**

22. WELA recommends that all the minimum standards should be required to be addressed by action undertaken to meet industry benchmarks as specified by the Agency, and to show improvement over two reporting periods.

9. Are the compliance mechanisms in the Workplace Gender Equality Act, and consequences for non-compliance, effective to promote and improve gender equality? If not, how could they be improved?

The principal compliance mechanism in the Act is naming organisations that do not meet the requirement to provide reports on gender equality as required by the Agency, and making the reports provided public. The key driver of change is that employees, employee organisations, members, shareholders and others will have access to information and use the levers they have to

drive change. The other lever is the contract compliance system, requiring that only organisations that have met their reporting obligations under the Act are eligible for certain government contracts and grants.

Strengthening contract compliance

WELA supports review of how the contract compliance system is operating, and extension of its coverage to all non-construction contracts over \$80 000. Contract compliance has been used very effectively in support of affirmative action and equal opportunity in many countries. It may be worth publishing the list of organisations to which letters of compliance have been issued by the Agency. The information may be of interest to employees, employee organisations, shareholders, and members as well as to other applicants for contracts and grants. A review of how the contract compliance provisions are operating as a deterrent to non-compliance would be useful in considering how the policy could be further strengthened. Perhaps the language in the Gender Equality Procurement Principles could say that non-complying organisations would generally not be eligible for contracts or grants, rather than that they may not be eligible. The extension of WGEA coverage to Commonwealth (already agreed), State, Territory, and Local Government organisations (as WELA recommends) will amplify the reach of the contract compliance system.

23. WELA recommends a comprehensive review of how the Gender Equality Procurement Principles are operating as a deterrent to non-compliance with the Act, as a basis for developing measures to strengthen the contract compliance provisions, including through extending the coverage of the contract compliance system to all non-construction contracts or grants of \$80 000 or more, while also reviewing the appropriate thresholds for construction contracts..

10. Are there any other matters you want to comment on in relation to the Workplace Gender Equality Act and improving and promoting gender equality in the workplace in Australia?

Assuring the quality of reporting

The WGEA is based on self-reporting. In many areas where government reporting is largely self-reporting, there is a provision for what is reported to be verified. Examples include tax reporting, health and safety reporting, time and wages recordkeeping. In the tax jurisdiction, an audit typically follows a review, and involves identifying concerns, requesting documents, meetings, and/or phone calls.

It is possible for the data reported to the Agency to be cross-checked with other data in some but not all areas. The use of Single Touch Payroll data can contribute further to identifying relevant employers and improving reliability of some aspects of reporting.

The Act already includes provision for the Agency to request further information if necessary to complete or confirm what is reported, in order to assess compliance with the Act. Reviews could include requests for further information and documents, workplace visits, and interviews and

discussions. The reviews would provide a better understanding of issues in compliance and reporting, including areas where there are gaps in skills and understanding of requirements. The reviews would provide an additional incentive for best care and effort to ensure good quality reporting. The reviews would require additional resources, and some could require significant time and skill. The Agency could report the results of the reviews and any further response it is making. The Agency could signal the areas for the targeted review program each year, and also conduct some random reviews.

Braithwaite and others have found that inspections reduce accidents even where expected punishments are trivial. They have developed a strength based pyramid involving various forms of engagement (pp.306-7). Inspections are not merely a tool for sanctions - in fact they found that inspectors achieve more by working with friends of continuous improvement than against its enemies. The strengths based pyramid is complementary to the regulatory pyramid. (2007, J.Braithwaite, T.Makkai, V. Braithwaite, *Regulating Aged Care: Ritualism and the New Pyramid*, Edgar Elgar Publishing, UK).

24. WELA recommends that a program of random and targeted reviews of reporting organisations be developed and resourced.

There are some unavoidable limitations in the organisation focus of the WGEA. For example, some aspects of the gender pay gap cannot be satisfactorily addressed at organisation level, and require analysis and solutions at the levels of occupation, industry, and whole workforce. This is obviously so where gender inequality is embedded in the operation of industry, occupation, and workforce level labour markets, remuneration, and bargaining structures. Failing to recognise this, and to put in place appropriate mechanisms, means ignoring important problems and accepting quite inadequate measures. Further work is needed on analysis of what aspects of gender inequality in employment can be addressed at organisation level, and which require mechanisms at other levels, and what the processes and mechanisms should be.

One such mechanism could be that the Director of the WGEA should be enabled to notify the Sex Discrimination Commissioner of sex discrimination and sex based harassment issues in particular industries, sectors or occupations and that the AHRC should be enabled to investigate those referrals on its own initiative. A recommendation along these lines was included in *Respect@Work*, Legislation should also enable broad notification of complaints from the AHRC to the Director WGEA in relation to Employer of Choice nominations.

25. WELA recommends further work on analysis of which aspects of gender inequality in employment can be addressed at organisation level, and which require mechanisms at other levels, and what the processes and mechanisms should be.

Conclusion

In this submission WELA recommends measures to improve the quality and integrity of reporting, and to enable WGEA to require organisations to improve their performance on gender equality. A range of measures to improve data collection and reporting is also recommended. WELA expects

that these measures will strengthen the incentives to improve gender equality in Australian organisations.