

WGEA Review – Consultations

Department of the Prime Minister and Cabinet

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Submission to the review of the *Workplace Gender Equality Act 2012*

Who we are

The Australian Women Against Violence Alliance (AWAVA) brings together women's organisations and individuals across Australia to share information, identify issues and their solutions, to respond to and prevent violence against women and their children. AWAVA ensures that women's voices and particularly marginalised women's voices are heard by governments, amplifying the work of its member organisations and Friends & Supporters.

WESNET is Australia's national peak body for specialist women's domestic and family violence services, with almost 350 eligible members across Australia. WESNET represents a range of organisations and individuals including women's refuges, shelters, safe houses, and information/referral services.

The connection between gender equality and domestic and family violence

Domestic and family violence is gendered violence. While both men and women can be victims and perpetrators, the vast majority of domestic and family violence is perpetrated by men against women. The experiences of women are usually more frequent and more severe. Violence against women must be addressed from a human rights perspective, rather than from a welfare perspective or as an issue that affects specific groups only.

It is widely understood that gender inequality and discrimination is a key driver of domestic and family violence, often in intersection with other social inequalities such as age, race, ethnicity, sexual orientation, gender identity, ability and social class. Domestic and family violence also contributes to further gender inequality and discrimination.

There is a considerable weight of evidence to support this view. Studies by the United Nations (2020), European Commission (2020), World Bank (2016) and World Health Organisation (2010) all identify gender inequality as the major underlying cause of violence against women.

The risks of domestic and family violence have been found to be higher when resources such as education and income are distributed unequally between men and women, and when women's economic, social and political rights are poorly protected.

Another key factor is when there are rigid distinctions between the roles of men and women and between masculine and feminine identities. Differences in gender roles create inequalities where women are subordinate and men have more control and decision-making power in both the public and private spheres.

Gendered violence is rooted in the structural inequalities between men and women. It is both a cause and consequence of gender inequality. Violence against women and their children cannot be eliminated until gender equality becomes a core and underpinning social objective.

The *Workplace Gender Equality Act 2012* is supported by AWAVA and WESNET as an important vehicle to progress gender equality and, in turn, reduce violence against women and their children.

Modernisation of the *Workplace Gender Equality Act 2012*

The *Workplace Gender Equality Act 2012* (the WGE Act) – and its various iterations since the *Affirmative Action (Equal Opportunity for Women) Act 1988* – has performed a valuable and valued role in improving workplace gender equality and outcomes for women over time. Each iteration has served to more accurately reflect contemporary workplace practices and knowledge. The major amendments that occurred to the Act in 2012, for example, introduced and articulated the then current (and appropriate) focus on improving flexibilities for workers with family responsibilities.

Almost a decade later, the current review provides a timely opportunity to consider modernising the WGE Act to enable it and the Agency to respond better to current and emerging workplace issues and to lead cultural change. These include, but are not necessarily limited to, matters relating to: domestic and family violence; intersectionality; flexibilities expanded beyond carers; and non-binary and consistent definitions with respect to sex and gender.

Domestic and family violence

Domestic and family violence is now widely recognised as a workplace issue. The Champions of Change Coalition, for example, has prioritised efforts to support employees impacted by domestic and family violence, noting that 74.5% of its members now have a policy or programs in place. This coalition is moving the debate further along to also consider the way in which workplace responses should also cover employees who use this behaviour. Campaigns such as the one to ratify International Labour Organisation Convention 190 will see a continued focus on this issue.

Recommendation:

That the WGE Act and Agency be enabled to promote the value to employers and employees of responding to domestic and family violence by inclusion of **'arrangements for acknowledging and responding to domestic and family violence'** as a specified **employment matter**.

Intersectionality

Women may experience inequalities differently - including domestic and family violence - depending on identities and characteristics including age, race, ethnicity, ability, sexuality and class. Many women may, for example, experience multiple forms of discrimination such as race *and* sex-based discrimination.

Recognising intersectionality - the way in which different women face multiple forms of systemic and structural disadvantage and inequality - is essential to addressing inequality through legislation, policy and program design and delivery. It is essential to note also that it is not people's identities that cause vulnerability but is instead systems and practices that are based on outdated and discriminatory biases and assumptions.

Recommendations:

That the **Object of the Act 2A (c)** be amended to recognise that all forms of discrimination impact women – often disproportionately and in a compound manner - by adding 'on the basis of gender identity **and other intersecting identities such as race, ethnicity, age, sexual orientation and disability**'.

That the **definition of 'discrimination'** not be tied only to the *Sex Discrimination Act 1984* but also include reference to a range of intersectionality dimensions, including age, ability, gender identity, sexual orientation and those impacted by domestic and family violence.

That a further **employment matter** be added 'arrangements for understanding and addressing the multiple forms of disadvantage and discrimination experienced by women including in relation to race, ethnicity, age, ability and sexual orientation and/or gender identity'.

Workplace flexibilities

Workplace flexibilities are particularly important to a range of workers, not just those with caring responsibilities, or for reasons in addition to caring responsibilities. First Nations and CALD workers may, for example, have cultural responsibilities; women with disabilities may require flexible workplace accommodations; and victim-survivors of domestic and family violence may need to apply flexibilities at short notice. The intent of gender equality indicator

(d) should at least reflect the Fair Work Act's right to request flexible working, encompassing carers, people with a disability, those aged 55 or older, and those experiencing (or supporting a victim-survivor of) domestic or family violence (s. 65, *Fair Work Act 2009*).

Recommendation:

That **gender equality indicator (d)** be amended, removing 'with family or caring responsibilities' and replacing with 'with diverse needs including, but not limited to, family or caring responsibilities, disability, age, cultural responsibilities, and responding to domestic and family violence'.

Definitions of gender and sex (and women and men)

AWAVA and WESNET recognise that the WGE Act preceded the Australian Government Guidelines on the Recognition of Sex and Gender, which commenced in July 2013, and which acknowledge that neither sex nor gender is binary. This review provides an opportunity to modernise in this respect.

Recommendation:

The WGE Act should be modernised to ensure that its definitions are consistent internally (noting definitional differences between sex and gender), and that it is inclusive of people with diverse sexual orientation and/or gender identities in appropriate and respectful ways.

Data collection and reporting

AWAVA and WESNET are aware that many in the women's sector will be calling for improved data collection, largely in relation to data disaggregated on a range of grounds including age, disability, race, sexual orientation, gender identity and ethnicity. Improved data holdings generally are strongly supported by AWAVA and WESNET as a means of better informing legislative, policy and program design and delivery.

That said, the practical impediments to collecting data of this nature through the existing WGE Act reporting framework are acknowledged, along with concerns relating to the potential for misuse by employers of sensitive personal information. These issues need to be comprehensively considered, and consultation wide-ranging.

In addition to potential changes to the reporting framework, supplementary approaches could also be considered:

- Ensuring that the Agency is sufficiently resourced and empowered to access and utilise other data holdings (such as HILDA and administrative data sets) that may provide a

richness to data not otherwise able to be obtained by the WGE Act (both in terms of intersectionality dimensions, and in sectors not covered by the WGE Act, such as small business).

- Having the running of a staff survey form part of the Employer of Choice criteria, where additional intersectionality data can be collected on a voluntary (for employees) basis.
- The piloting by the Agency of a tool to collect this data on a sampling basis, or with a view to introducing incrementally by sector or by size of employer.
- Improving the employee consultation requirements of the WGE Act (currently considered largely ineffective) to include (solely or as part of a suite of options) it as having been met by the running of a staff survey.

Minimum standards

According to the WGE Act second reading speech and explanatory memorandum, the minimum standards were intended to drive incremental improvements over time mostly by enabling the agency to identify the poor-performers and target assistance at them. It was also intended that the minimum standards could be industry-specific and would be data-driven. The minimum standards in use today bear no resemblance to this vision.

AWAVA and WESNET believe that the minimum standards could be used more effectively. One way in particular would be as a tool for introducing new and emerging workplace issues and matters. While outcomes measurement is desirable and appropriate for issues such as workforce composition and remuneration, the minimum standards could also be used to ensure a base-level of awareness and activity such as the introduction of a policy or workplace condition. A workplace policy responding to domestic and family violence; and/or an awareness-raising activity relating to intersectionality could, for example, be stipulated as minimum standards.

Recommendation:

That the **minimum standards** be used more effectively to a) drive improvements in measurable outcomes and b) introduce new and emerging workplace policies and practices aimed at improving gender equality.

Key references

Australian Institute of Health and Welfare. (2018). *Family, domestic and sexual violence in Australia 2018*. Cat. no. FDV 2. Canberra: AIHW.

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VicHealth. (2007). *Preventing violence before it occurs: A framework and background paper to guide the primary prevention of violence against women in Victoria*. Melbourne: VicHealth.

World Bank Group. (2016). *Gender strategy 2016-2023: Gender equality, poverty reduction, and inclusive growth*. Washington: World Bank Group.

World Health Organization. (2010). *Preventing intimate partner and sexual violence against women: Taking action and generating evidence*. Geneva: WHO/London School of Hygiene and Tropical Medicine.

We thank you for the opportunity to participate in this inquiry. If you would like to discuss the contents of the submission further, please contact Karen Bentley, CEO WESNET, using the details below.

Signed



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WESNET acknowledges and pays respects to the Traditional Owners and Custodians of all the lands on which we live and work.