



FACT SHEET

Gender Equality Legislation

Updated: May 2016
Replaces: January 2013

On 22 November 2012 the *Workplace Gender Equality Act 2012* (Cth) ('WGE Act') was passed by Federal Parliament with effect from 6 December 2012. The WGE Act focuses on gender equality for both men and women. The WGE Act also gives effect to the Workplace Gender Equality Agency.

WHAT IS GENDER EQUALITY?

As noted above, the WGE Act seeks to address gender equality which is defined as an outcome where both women and men are able to access and enjoy the same rewards, resources and opportunities regardless of gender. Gender equality aims to achieve equal outcomes for both women and men. Gender equality does not envisage that outcomes for individual women and men be the same, or that they be treated exactly alike. Rather, gender equality is about valuing differences and assisting the underrepresented gender (e.g. women) to achieve gender equality.

LEGISLATIVE FRAMEWORK

OBJECTS OF THE WGE ACT

The principal objectives of the WGE Act include but are not limited to:

- Promoting and improving gender equality (including equal remuneration between men and women) both in employment and the workplace;
- Supporting employers to remove barriers to the full and equal participation of women in the workplace;
- Promoting the elimination of discrimination (in the workplace) on the basis of gender, particularly in relation to family and caring responsibilities;
- Fostering workplace consultation on issues concerning gender equality;
- Improving productivity and competitiveness of Australian business through the advancement of gender equality in employment opportunities.

WHO DOES THE WGE ACT COVER/APPLY TO?

The WGE Act imposes an obligation on all non-public sector employers with 100 or more employees* in Australia to provide a report on Gender Equality to the Workplace Gender Equality Agency ('the Agency') annually. When determining how many employees a company has, this should be done through a headcount and includes full-time, part-time and casual employees. From 2016, independent contractors should not be included in the headcount.

Employers with 100 or more employees ('relevant employers') are required to submit a report to the Agency. Employers with less than 100 employees in the first instance will not be required to submit a report to the Agency, however they are able to access free advice and assistance from the Agency specifically with respect to promoting and improving gender equality within the workplace.

Relevant employers who have never reported before are required to register with the Agency. This can be done online through their website (<https://www.wgea.gov.au>) if the employer is a standalone entity, or by emailing wgea@wgea.gov.au if the employer is part of a larger corporate structure.

* This is based on a headcount of all employees, including casuals.

REPORTING OBLIGATIONS

The reporting period runs from 1 April to 31 March annually and reports must be lodged between 1 April and 31 May each year. It should be noted that the Agency no longer has the ability to waive the annual reporting obligations for employers.

Employers should be aware that the information required as part of the workplace profile and reporting questionnaire may change on a year-to-year basis.

2015-2016 REPORTING PERIOD CHANGES

The changes applicable to the 2015-2016 reporting period include:

1. For workplace profiles:

- Only components of total remuneration paid on a pro-rata basis must be annualised and converted to full-time equivalent amounts.
- Remuneration data is not required for:
 - CEOs (or equivalent).
 - Managers who are more senior than the CEO and report to someone overseas, ie with a reporting level to the CEO recorded as '+1' (this mainly applies to global entities).
 - Managers employed on a casual basis.
- Data on independent contractors is no longer required (contractors for services). It is still a requirement to report on employees on a fixed-term (or non-ongoing) contract.

2. For the reporting questionnaire, the following new requirements will be added:

- Number of appointments made during the reporting period by gender and manager/non-manager.
- Number of promotions awarded during the reporting period by gender, employment status and manager/non-manager.
- Number of resignations during the reporting period by gender, employment status and manager/non-manager.
- Number of employees who, during the reporting period, ceased employment during, or at the end of, a period of parental leave (including where the parental leave is taken continuously with any other leave type, for example a person may utilise paid parental leave, annual leave and unpaid leave during a single block of 'parental leave'). This is to be provided by gender and manager/non-manager categories.

Employers should note that the reports provided to the Agency will be made available publicly. However, personal information and salary data will be omitted prior to publication. Employers are able to lodge their reports online via the website: <http://www.wgea.gov.au/>.

REPORTING CRITERIA

GENDER EQUALITY INDICATORS

The Gender Equality Indicators (GEIs) form part of the regulatory framework (i.e. legislation). These are standardised measures created to address and improve gender equality outcomes and set a benchmark for employers to measure their progress when reporting in relation to Gender Equality issues. The questions which employers must answer in the reporting questionnaire are structured around the six GEIs.

The GEIs are:

1. *Gender composition of the workforce* - this indicator seeks information about the gender composition of relevant employers in a standardised format. It is intended to cover a range of workforce characteristics including occupation, classification and employment status.

2. *Gender composition of governing bodies* - under this indicator, the term 'governing body' is broad, and means a board of directors, trustees, committee of management, council or other governing authority of the employer.
3. *Equal remuneration between women and men* - this indicator seeks to collect information about the remuneration of men and women performing the same or comparable tasks within and across occupations and industries.
4. *Flexible working arrangements* - this indicator seeks information about the 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.
5. *Employee consultation* - this indicator is to ensure that consultation occurs between employers and employees on issues concerning gender equality in the workplace. For example, consultation may include employee surveys and focus groups.
6. *Any other matter specified by the Minister - currently, sex-based harassment and discrimination* – this provides the Minister with the flexibility to legislate and provide further guidance on gender equality indicators. Currently, it requires information on whether an organisation conducts training for managers on sex-based harassment and discrimination, and if so, frequency with which training is offered to managers.

Examples of what data employers are required to provide in the reporting questionnaire include:

- Any recruitment, retention and performance management processes in place relating to gender (GEI 1);
- The entities the employer is reporting to which have a governing body and the gender composition of that body, and whether any gender targets have been set (GEI 2);
- Whether there are formal policies or strategies aimed at addressing gender pay equality (GEI 3);
- Whether the workplace has any employer funded paid parental leave (GEI 4);
- Whether there has ever been employee consultation on matters of gender equality (GEI 5);
- Whether there are any formal policies on sex-based harassment and discrimination protection, and whether managers have been provided with training on these matters (GEI 6).

MINIMUM STANDARDS

Companies employing 500 or more employees will be required to meet the minimum standards. The minimum standards are outlined in the *Workplace Gender Equality (Minimum Standards) Instrument 2014* and require an employer to have a formal policy or strategy in place which specifically supports gender equality in relation to one or more of the following GEIs:

- Gender composition of the workforce (GEI 1)
- Equal remuneration between men and women (GEI 3)
- Flexible working arrangements (GEI 4)
- Sex-based harassment and discrimination (GEI 6)

If an employer meets the minimum standard criteria (500 or more employees) and does not meet the minimum standards, they will have two further reporting periods to implement a formal policy or strategy. If they do not reach the minimum standards after such a time, they may be deemed non-compliant by the Agency.

BENCH MARKS

All compliant organisations who submit a report to the Agency will receive a confidential customised benchmark report. The benchmark report contains approximately 43 individual benchmarks representing the company's performance in comparison to other compliant organisations, and if the company has submitted previous reports, how it performed compared to previous years. This benchmark data is aimed at giving companies the statistical insight to develop strategies to improve gender equality performance over time.

OTHER REQUIREMENTS

NOTIFICATION AND ACCESS REQUIREMENTS

There are specific notification and access requirements which the WGE Act imposes. In particular, an organisation which is required to report must:

1. Inform its employees and members or shareholders, as soon as reasonably practicable, that it has lodged its report with the Agency and advise these groups about how the report can be accessed (i.e. employers could provide employees with access via a link to a website or company intranet, copy in the lunch room, update in the next annual report for shareholders).
2. As soon as reasonably practicable after lodging the report the employer must provide access to the report to employees, members and shareholders. The report provided to the abovementioned groups must exclude personal information, details on remuneration and other details specified by the Minister.
3. Within 7 days after lodging a report with the Agency, relevant employers must inform employee organisations such as unions, if there are members within the workplace, that the report has been lodged. Relevant employers do not need to make an intensive effort to identify all possible employee organisations but rather, employers must notify employee organisations they could reasonably be expected to know about, for example if an organisation was a party to an Enterprise Bargaining process or organisations to which membership fees are being deducted from employee wages.
4. Inform both employees and employee organisations (with members in the workplace) of the opportunity to comment on the report to the employer, or to the Agency. There is no time restriction with respect to when comments can be provided. However, comments provided to either the employer or the Agency within 28 days after the report has been lodged, can be used by the employer in providing additional information to the Agency, where the Agency has requested additional information to achieve compliance with the WGE Act.

POWERS OF THE AGENCY

REVIEWING COMPLIANCE

The Agency has the power to seek further information from employers to review their compliance with the WGE Act. This may be done on an ad-hoc basis, or in response to further feedback provided to the Agency by employees or employee organisations.

HOW DO EMPLOYERS COMPLY WITH THEIR OBLIGATIONS?

COMPLIANCE REQUIREMENTS

For the 2015-2016 reporting period onwards, a relevant employer will comply with the WGE Act if it:

- Lodges a report with the required information, on time.
- Complies with the notice and access requirements.
- If employing more than 500 employees, meets the minimum standards, or if at least one minimum standard is not met, makes improvements by the end of the next two reporting periods.
- Has the report signed by the CEO.
- Provides the Agency information for the purpose of reviewing compliance, if requested.
- Does not give false or misleading information in a report, or when providing the Agency with further information.

The Agency will provide a letter of compliance to relevant employers within 28 days of their report being submitted.

NON COMPLIANCE

If a relevant employer fails to submit a report, fails to provide the Agency with further information about compliance with the WGE Act if requested, or is required to meet the minimum standard and fails to do so, and does not improve after two further reporting periods, such an employer will be deemed non-compliant.

There are no specific monetary penalties for breaching the WGE Act, however employers in breach of their requirements may not be eligible to tender for Commonwealth Contracts and additionally may not be eligible for some Commonwealth grants and financial assistance. In addition, the Agency may name a non-compliant employer in a report to the Minister and may publish the name of the non-compliant employer. Currently, the Agency has a list of non-compliant companies listed on their website.

Further Assistance

If after reading this information, you have further queries about your individual situation, please contact the QHA's Employment Relations Department on 07 3221 6999 or er@qha.org.au

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