

Chapter 3

Workplace Gender Equality Act 2012, Australia

3.1 Context¹

Australia, like many other countries worldwide, has seen significant progress in eliminating gender-based discrimination in recent decades. As of June 2014, there were 105,700 more females than males residing in Australia, with 11.7 million males and 11.8 million females. The sex ratio (the number of males per 100 females) was 99.1 (ABS 2014). Despite the World Economic Forum ranking Australia first for female educational attainment, it slipped to 52nd place in female labour force participation (2014 data) (WGEA 2014d). Women continue to earn less than men, are less likely to see their careers advance as far as men, and are more likely to spend their final years living in poverty. Specifically, gender-based discrimination in the workplace manifests itself in the following ways:

- The gender pay gap: women continue to receive 17.5 per cent less in average weekly earnings (WGEA 2012).
- The under-representation of women in leadership positions in both public and private sector workplaces. The 2012 Australian Census of Women in Leadership shows found that the percentage of women on the boards of companies on the ASX 200² is only 12.3 per cent (Australian Government 2012). Furthermore, the number of women holding senior manager positions within ASX 200 companies is only 9.7 per cent (Australian Government 2012). Women are better represented within the public sector and as of 2014 constitute 57.9 per cent of that workforce. Nonetheless, even within this sector the number of women decreases with higher seniority levels – only 33.2 per cent of women are in Senior Executive Service (SES) Band 3 positions compared to 41.6 per cent in SES Band 1 positions (DPMC [no date]).
- The low workforce participation rates for women, and the large proportion of women working part time, which is double the Organisation for Economic Co-operation and Development (OECD) average. As of 2015, the workforce participation rate³ for women is 59 per cent, and for men it is 71.1 per cent (WGEA 2015b). According to a survey conducted by the Australian Bureau of Statistics (ABS), nearly 28 per cent of women gave caring for children as a reason for not working compared to just 3 per cent of men (Jericho 2015).
- Women are likely to have increased presence in a few occupational categories. In 2015, women comprised more than 60 per cent of the workforce in three occupations: clerical and administration, community and personal services, and sales (WGEA 2015a).

- The gender gap in retirement incomes and savings, which occurs largely as a result of the unpaid care women provide for their family or household members, including caring for children, people with a disability, people with a chronic illness or the elderly.
- Violence against women, particularly sexual harassment, though domestic and family violence also impact women's labour force participation (Broderick 2013).

At the same time, some men also experience gender-based discrimination, for instance those who find it more difficult than women to access family-friendly policies or flexible working arrangements (Broderick 2013). This reinforces stereotypes about women's and men's roles, which prevents the equal sharing of family responsibilities and in turn influences women's and men's workplace participation.

This case study focuses on the Workplace Gender Equality Act 2012 ('the Act'), which replaced the Equal Opportunity for Women in the Workplace Act 1999. The new, strengthened legislation is applicable to all non-public sector employers with 100 or more members of staff. It aims to improve and promote equality for both women and men in the workplace and includes innovative measures to ensure effective implementation that are likely to be of interest to other Commonwealth governments.

3.2 Key institutional actors

The Workplace Gender Equality Agency (WGEA) is the Australian Government's statutory agency charged with promoting and improving gender equality in Australian workplaces. WGEA administers the Act. The Act outlines WGEA's functions, including: to advise and assist employers in promoting and improving gender equality in the workplace; to develop, in consultation with relevant employers and employee organisations, benchmarks in relation to gender equality indicators; to review compliance with the Act by relevant employers, review public reports lodged by relevant employers and deal with those reports in accordance with the Act; to collect and analyse information provided by relevant employers under the Act; and to promote and contribute to understanding, acceptance and public discussion of gender equality in the workplace (WGEA 2014a).

WGEA is part of the Department of Employment's portfolio. It seeks to work collaboratively with employers, offering advice and assistance to promote and improve gender equality in their workplaces. WGEA also consults with a range of stakeholders to support the implementation of its activities. Feedback is sought formally through the establishment of dedicated working groups, and informally through direct engagement or roundtables. Advisory groups include, for example, the pay equity consultation group, the data consultation group (providing advice on the most effective use of WGEA's reporting data) and the implementation consultation group (to facilitate a smooth transition to the new Act) (WGEA 2016c). These groups comprise a diverse range of employers, employee groups, professional associations and researchers.

3.3 Theory of change

WGEA makes a strong case that achieving gender equality is important for workplaces because it is 'fair', 'the right thing to do' and vitally important for economic

productivity for businesses and the nation. In other words, gender equality in the workplace is conceived both as a human rights issue and a business imperative. The Act provides the legal and policy framework, while the approach and strategies of WGEA are designed to ensure its effective implementation.

According to WGEA, the aim of promoting gender equality in the workplace is to achieve broadly equal outcomes for women and men, although not exactly the same outcome for all individuals.

To achieve this requires:

- Workplaces to provide equal remuneration for women and men for work of equal or comparable value.
- Removal of barriers to the full and equal participation of women in the workforce.
- Full and genuine access to all occupations and industries, including to leadership roles for women and men.
- Elimination of discrimination on the basis of gender, particularly in relation to family and care-giving responsibilities for both women and men (WGEA 2016a).

3.4 Social institutions and discriminatory norms

WGEA's approach is based on a clear understanding that sustained and multifaceted interventions are required to address the structural and cultural barriers that prevent women and men from equally participating at all levels of an organisation. The approach and strategies of WGEA are also based on an analysis that women and men must work together to transform social norms that entrench existing gender inequalities (WGEA 2014e).

Formal policies: The Workplace Gender Equality Act 2012 provides the formal legislative and policy framework for efforts to promote workplace equality in private sector institutions. It represents a strategic and targeted approach adopted by the government to address barriers to gender equality where previous policy efforts have produced disappointing results. The Act is only one of many formal legislative and policy efforts to address gender discrimination, and there are other strategies currently being used to promote gender equality in public sector institutions (e.g. the Ministerial Statement of Intent and Board Target Gender Balance Plan to increase gender balance on government boards) (Office for Women 2013).

Access to resources and opportunities: Equality of outcomes for women and men in Australian society requires equal access to resources and opportunities in the workplace. WGEA has clearly identified barriers to such access and is working with stakeholders to overcome them. A priority area has been the gender pay gap. In 2014, for example, WGEA led an innovative project to tackle pay inequity that included two components: a range of self-service tools and resources to help employers understand the gender pay gap and its causes, conduct gender pay gap analyses, and develop pay equity strategies and initiatives; and a high-profile, employer-based direct marketing and public awareness campaign aimed at compelling senior business decision-makers

to invest time and resources to address pay gaps (WGEA 2016b). Another example is the Employer of Choice for Gender Equality citation, awarded by WGEA to employers who have met designated criteria aligned with the principles underpinning the Act and representing current best practice. The award acknowledges achievements and provides incentives for other employers to improve their practice.

Informal cultural norms and exclusionary practices: It is clear that underlying workplace gender inequalities are myths and harmful gender stereotypes that need to be challenged and transformed. For example, the notion of the ‘ideal worker’ in many workplaces still tends to be that of a man who is available for work 24/7 and unencumbered by any care responsibilities. This limits opportunities for many women to participate equally in the workplace. Likewise, gender norms related to sexual power and sexualised behaviour manifest themselves in workplaces in the form of sexual harassment.

One initiative to challenge workplace social norms is the documentary series, *Equilibrium Man Challenge* (=mc), which follows the journey of six ‘E-Men’ as they negotiate and move to formal flexible working arrangements. =mc aims to accelerate the uptake of flexible work by showcasing how demanding professional roles can be performed flexibly with the right support from the employer. Working flexibly is still largely seen as the province of working mothers, and comes with career and pay penalties. According to WGEA, the project is designed to fast track change in workplace norms so that flexible work becomes mainstream for everyone – having men signal a positive change will help start others questioning current work practices (Womanthology 2015).

Women’s and men’s consciousness: Attitudes and beliefs including what work is ‘valued’, notions about ‘appropriate’ work for women and men, and women’s capacity for leadership roles continue to serve as barriers to full participation in paid work and to career progression and leadership opportunities. Male Champions of Change is a group of male chief executives, chairpersons and government leaders from some of Australia’s most influential public and private sector organisations, who are using their collective influence to challenge such attitudes and to advocate for gender equality at both the organisational and national levels. One of the areas the group is working on is the ‘50/50: If Not, Why Not?’ initiative through which leaders confront notions about women’s leadership in their organisation. They ask ‘why not?’ instead of ‘why?’ in an effort to uncover the underlying reasons. These can then either be debunked as myths or directly addressed as significant barriers to women’s progression (Broderick 2013).

3.5 Strategies

The Workplace Gender Equality Act focuses on the removal of barriers to women’s full and equal participation at all levels of the workforce, requiring non-public organisations with 100 or more employees to provide standardised data relating to a set of gender equality indicators. The explicit recognition of equal remuneration in the Act strengthens capacity to close the gender pay gap. It also targets support for family and caring responsibilities as central to improving workforce participation

of women. Other important elements in the legislation include: the development of gender equality indicators and related industry-based benchmarks; a new reporting framework requiring relevant employers to report annually against gender equality indicators; improvements to the transparency associated with compliance and the consequences of non-compliance; and an extension of WGEA's advice and education function to all employers (AHRC 2012).

Box 3.1 Gender equality indicators

1. Gender composition of the workforce
2. Gender composition of governing bodies of relevant employer
3. Equal remuneration between women and men
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
5. Consultation with employees on issues concerning gender equality in the workplace
6. Sex-based harassment and discrimination

Source: WGEA (2014a).

Under the **reporting framework**, non-public sector employers with 100 or more employees report in a standardised format against six gender-equality indicators by completing a workplace profile (spreadsheet) and a separate questionnaire. The first year of full reporting under the Act was 2013–14. In the run up, WGEA was involved in the development of an extensive and innovative range of educational resources and a communication programme to support employers. WGEA provided reporting organisations with a confidential, customised benchmark report that can be used as a business intelligence tool, enabling them to compare their gender performance to that of their peers, identify areas for improvement and track the effectiveness of their gender equality strategies over time (WGEA 2014d).

Public reports for each company are also published on WGEA's website. This is backed up by a wealth of resources available to employers, including workplace gender equality strategy toolkits, e-learning modules that cover the legislation, reporting and compliance, and other self-service tools. E-learning modules provide innovative strategies like how to start conversations on workplace gender equality, and how to use practical tools such as the pay-gap calculator. WGEA also publishes evidence-based 'perspective papers', synthesising academic literature to provide insight into contemporary issues contributing to gender inequality in Australian workplaces.⁴

In addition to the benchmark reports, non-confidential data reported to WGEA is available in aggregated form on www.data.gov.au and through an innovative data

visualisation presentation on WGEA's website called WGEA Data Explorer, which enables stakeholders to view and interact with the data (WGEA 2014a). Non-compliant employers are also named on the website and the consequences of this include being ineligible to tender for contracts or grants under the Commonwealth and some state procurement frameworks. The new evidence-based data on gender equality in the workplace collected through the annual reporting process has been described as a 'game changer'.

Box 3.2 Gender equality beyond pay

TAL, a life-insurance company, made a commitment to achieve gender pay equity across the organisation. In 2013, the ratio of female-to-male pay was 82 per cent, which was reflective of the national average. In July 2014, TAL announced it had successfully closed the gender pay gap following an extensive internal gender remuneration analysis and comparison to the market median in relation to leadership level, employment status and tenure.

Going forward, TAL is committed to maintaining gender pay equity, promoting gender equality and building a culture of inclusion through a range of formal policies, programmes and commitments. These include:

- Female representation on the shortlist for every job and opportunity for promotion.
- A flexible work policy that requires all jobs at TAL be offered on a flexible, part-time or job-share basis.
- Dedicated female coaching and mentoring programmes.
- An active diversity and inclusion council focussed on driving measurable improvements in gender equality and other key diversity priorities.
- Expanding support and information services for working parents.
- An unconscious bias training programme for all employees, which executive and general management must attend.
- A business led gender initiative called 'Enable, Inspire and Connect', which helps women increase their profile, skills and networks.

TAL was awarded Employer of the Year in the 2014 Money Management Women in Financial Services Awards in recognition of its commitment to gender equality.

Source: WGEA (2014c).

3.6 Outcomes to date

In November 2014, WGEA released inaugural findings from the first annual gender reports provided by approximately 11,000 employers and representing nearly four million employees (about one-third of Australia's workforce) (WGEA 2014b).

The data provides clear evidence that women face structural and cultural barriers in the workplace that make it harder for them to advance.

- One-third (33.5 per cent) of employers have no key management personnel⁵ who are women, and 31.3 per cent of organisations have no other executives/general managers who are women.
- Only 8.8 per cent of organisations have set a target to increase the number of women around the boardroom table, despite only 23.7 per cent of directorships and 12 per cent of chairs being held by women.
- Only 13.6 per cent of employers have a strategy for flexible working and only 13.2 per cent of employers have a strategy to support employees with family or caring responsibilities.
- Less than one in four employers has carried out a gender remuneration gap analysis to check for potential pay equity issues.
- 53.6 per cent of employers report having a gender equality policy in place (31.6 per cent contained in another policy and 22 per cent as a stand-alone policy).
- Less than one in five employers has an overall gender equality strategy; 11.2 per cent have one contained within another strategy and only 7.1 per cent have a stand-alone strategy.
- While the majority of employers (96.1 per cent) have a policy or strategy on prevention of sex-based harassment or discrimination, only 7 per cent have a strategy in place to tackle this issue.
- Less than one in five employers (18.5 per cent) has a policy to support employees experiencing domestic violence, and only 15.3 per cent have a strategy in this area (WGEA 2014b).

When viewed as a whole, the dataset indicates that employers are not taking a strategic approach to gender equality. WGEA has developed and launched a groundbreaking methodology to build a gender strategy that measurably supports an organisation's corporate strategy, so that gender equality is appropriately and inextricably integrated into core business practices. In addition, as mentioned above, it provides a wide range of self-service tools, e-training and direct advisory support to employers and other stakeholders. The mix of reporting, compliance and capacity-building support provides a strong framework for implementing the Act. It also creates a positive dynamic for further change. As WGEA emphasises, job seekers, investors and procurement officers who are committed to working for, investing in and buying from organisations with best practice on gender equality are likely to use the WGEA list. Box 3.2 provides an illustration of an Australian company that is responding to the need for a more strategic approach to workplace gender equality, using a comprehensive range of interventions.

In keeping with the importance attached to measurement and accountability, WGEA reports annually on its own key performance indicators against stated outcomes with respect to promoting and improving gender equality in Australian workplaces

(WGEA 2014a). The performance indicators are aligned with the 2012 Act and track performance trends over time. WGEA's performance in 2013–14 was measured against four of them:

- Percentage of women in leadership, including governing board members, key management personnel and other managers.
- Percentage of relevant employers conducting gender remuneration gap analyses.
- Percentage of relevant employers with a strategy or policy to support employees with family and caring responsibilities.
- Number of visits to the WGEA website.

While 2013–14 focussed on establishing baseline data, the key performance indicators and annual assessment process will be an important tool for monitoring WGEA's progress towards its stated outcomes and the implementation of the Act more broadly.

3.7 Lessons learned and the way forward

The Workplace Gender Equality Act 2012 and its measurement, reporting and compliance framework, administered by WGEA, provide a compelling example for other Commonwealth governments of a strategy to overcome well-known implementation gaps of workplace related gender equality legislation. The case study illustrates the tremendous power and potential of gender data to drive gender equality change in workplaces. Importantly, in addition to collecting and making reporting data public, WGEA has developed a comprehensive set of tools and strategies to consult and support employers and other key stakeholders, as well as raise public awareness of workplace equality issues. The lessons learned are as follows:

- **The importance of consultation:** By engaging with stakeholders, including employers, employer and employee representatives, and professional associations, WGEA has been able to develop business methodologies to improve gender equality that are commercially focussed, relevant and highly practical (WGEA 2016c).
- **Effective use of resources:** WGEA has very limited resources to deliver a large statutory mandate. This means that it must work hard to collaborate with like-minded organisations and individuals to achieve its mandate and extend its reach. To this end, it has developed an active, wide-ranging partnership programme involving both financial and in-kind support (WGEA 2014a).
- **Challenging conceptions about reporting:** WGEA has worked hard to challenge the notion that gender reporting is just more 'red tape'. To do this, it has invested significantly to ensure that employers receive a return on their reporting that is commensurate with the effort. This means achieving an appropriate balance in the matters to be reported and providing valuable data in return (e.g. through the benchmark reports) (WGEA 2014d).
- **Shifting social norms requires new strategies:** The level of investment in working directly with men as the traditional custodians of workplace culture is striking

in the work of WGEA. Many organisations are realising that they need to stop treating gender equality as if it is ‘just a women’s issue’. Gender equality also requires the proactive engagement and personal commitment of men, particularly those who dominate the leadership ranks in governments, corporations and communities (Broderick 2013; WGEA 2014d).

Notes

- 1 This case study is primarily based on informational material available on the Workplace Gender Equality Agency (WGEA) website.
- 2 ASX 200 lists the top 200 companies listed on the Australian Securities Exchange (ASX).
- 3 The ‘participation rate’ is the sum of the employed and unemployed, divided by total population from age 15 onwards.
- 4 The topics covered include, among others: engaging men in flexible work arrangements; targets and quotas; women and negotiation: how it works (or does not work) for women and why it matters; women’s economic security in retirement; mentoring or sponsorship; and parenting, work and the gender pay gap.
- 5 Refers to persons with authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity, in accordance with Australian Accounting Standards Board AASB124.

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