



ACTU Submission to the Workplace Gender Equality Agency Review 2021

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Introduction

1. The ACTU, formed in 1927, is the peak body for Australian unions and is the only national union confederation in Australia. For more than 90 years, the ACTU has played the leading role in advocating for the rights and conditions of working people and their families. The ACTU is made up of 39 affiliated unions and trades and labour councils, and represents almost 2 million working people across all industries.
2. For decades, unions have been instrumental in working to improve gender equity at work and reduce the gender pay gap through collective bargaining, advocating for legislative reform, and running award test cases for equal remuneration and improved conditions such as carers and parental leave. Unions continue to play a pivotal role in improving gender equity in Australian workplaces. For example, recent research from the Fair Work Commission (**FWC**) shows that close to a third (32.77%) of enterprise agreements approved by the FWC between July 2018 and June 2021 (covering close to 1.2 million

employees) provide access to some amount of standalone paid family and domestic violence (FDV) leave, with more than half of these employees (about 660,000) having access to 10 days or more paid FDV leave per year. Almost all of these agreements are union agreements.¹ FDV leave is recognised as ‘a key element in efforts to secure greater gender equality’, because it maintains the economic security necessary to leave and recover from violent relationships. Without FDV leave, women face an ‘increased risk of financial instability and homelessness...’.² There are countless other examples of concrete gender equity-related improvements in workplaces that have been delivered through union action. Requiring genuine consultation with, and involvement of, workers and their unions in addressing gender equity issues is crucial to improving the state of gender equity in Australian workplaces.

3. On 21 October, stakeholders were invited to make a submission to a ‘targeted review’ of the *Workplace Gender Equality Act 2012 (the Act)* to consider whether the Workplace Gender Equality Agency (WGEA) has appropriate powers to ‘promote and improve gender equality in Australian workplaces, support employers to remove barriers to the full and equal participation of women in the workplace, and to eliminate discrimination on the basis of gender in relation to employment matters’. Submissions are due by 24 November 2021, with a report to be provided to the Minister for Women and the Minister for Women’s Economic Security ‘before the end of 2021’.
4. The Workplace Gender Equality Act has not been reviewed since its introduction almost a decade ago. This review purports to consider all aspects of the current regime, as well as areas of future focus to tackle gender inequity over the next ten years. Gender discrimination and inequality at work is entrenched and persistent. It remains one of the most significant and complex policy challenges facing our nation. While the principle of equal pay was embedded in federal industrial law over 50 years ago,³ on all measures a significant gender pay gap persists. The gap in fulltime earnings has hovered between 19% and 14.2% for two decades; increasing by 0.8% since November 2020. The true gender pay gap, factoring in hours worked, is over 30%. Australia has one of the highest rates of

¹ Social Work Innovation Research Living Space: Flinders University, Analysis of the Workplace Agreements Database for the Family and Domestic Violence Leave Review, 3 November 2021 at p 44

² Social Work Innovation Research Living Space: Flinders University, *Family and Domestic Violence Leave Entitlement in Australia: A Systemic Review*, 3 November 2021 at p 7

³ *Australasian Meat Industry Employees Union v Meat and Allied Trades Federation of Australia* (1969) 127 CAR 1142 (‘Equal Pay Case’); *National Wage and Equal Pay Case* (1972) 147 CAR 172.

insecure work in the OECD, with women disproportionately affected. The COVID-19 pandemic has further exacerbated existing gender inequalities,⁴ with Aboriginal and Torres Strait Islander women, women of colour, gender diverse people, women with disabilities, younger women, older women, and low paid and insecurely employed women affected differently. Over the 15 year period between 2006 and 2021, Australia has fallen from 15th to 50th in the World Economic Forum Gender Gap Report.⁵ The current system is demonstrably failing and requires substantial reform, not just to the powers of WGEA, but to our industrial laws, budgetary processes and other policy settings.

5. The ACTU is deeply concerned that the timeframes for this review are far too short to enable adequate consideration and consultation on the nature and scope of this entrenched problem, or the role that WGEA should play in addressing it. It is of particular concern that the current timeframes have not allowed WGEA sufficient time to consult with stakeholders to develop a set of *outcomes-based* minimum standards to guarantee genuine and effective employer action towards gender equality.⁶ The lack of focus in the current framework on concrete action and progress, as well as the lack of focus on consultation with workers and unions, is a core weakness in the system, and the government's consultation process has allowed no time for these matters to be properly considered. The government should allow proper time for a genuine review to take place, including for WGEA to develop a set of outcomes-based minimum standards for consultation.
6. This submission addresses the consultation questions in as much detail as possible given the short time available. Some of our affiliated unions have also made submissions and recommendations for reform, which we endorse.

Executive Summary and Recommendations

7. Our affiliates report that a number of limitations with the current WGEA framework hamper its effectiveness as a driver of real change in workplaces. In particular, reporting requirements and minimum standards do not apply to enough employers and workplaces; the minimum standards are not focused on actual action or real progress towards gender equitable outcomes; there is no transparency in relation to pay data; methods for

⁴ [Meraiah Foley and Rae Cooper The University of Sydney Business School, Australian Workplace gender equality in the post-pandemic era: Where to next? 2021](#)

⁵ https://www3.weforum.org/docs/WEF_GGGR_2021.pdf

⁶ WGEA submission to Review at p 32

measuring the impact of insecure work on the gender pay gap are inadequate, and compliance and accountability mechanisms are weak and ineffective, including that consultation with workers and their unions about gender equity issues is not mandated under the framework. This submission makes a series of recommendations to address these shortcomings and strengthen WGEA's capacity to meaningfully improve gender equity at work in Australia.

8. The ACTU agrees with WGEA that 'the Act should be a *driver of change* towards gender equality, and the Agency's functions must reflect and support an *action-oriented approach*' (emphasis added). WGEA's submission makes 31 recommendations to strengthen the Act. The ACTU supports a number of these recommendations as outlined below. However, two recommendations (Recommendations 4 and 27) raise concerns, which are detailed below.

Reforms to WGEA

9. The ACTU supports the following key reforms to strengthen the capacity of WGEA to meaningfully improve gender equity:
 - a. Extend reporting obligations on all gender equality indicators (GEIs) and compliance with the Minimum Standards to *all* employers regardless of size, including Labour Hire companies and all Federal, State, Territory and Local Government public sector agencies.⁷
 - b. Develop a set of *outcomes-based* Minimum Standards which set (in the Legislative Instrument) clear and objective numerical minimum benchmarks against which to measure progress towards gender equity year on year, which can be adjusted upwards once met.
 - c. Amend Item 2 in the minimum standards to 'closing the gender pay gap' (WGEA Recommendation 29).
 - d. Require reporting of both base salary and total remuneration packages (including cash and non-salary benefits) of all employees, including CEOs and partners (WGEA Recommendations 13 and 14).

⁷ Reporting and compliance obligations could be tapered to reduce the burden on small businesses

- e. Publish individual organisations' gender pay gaps in WGEA's public dataset (including base salary and total remuneration), in percentages and dollar figures and by gender pay gap and workforce composition quartiles (WGEA Recommendation 23).
- f. Include a new standalone GEI addressing work health and safety related barriers to women's participation, including:
 - i. Measuring and monitoring prevalence, prevention and responses to sexual harassment, including frequency of training (see Respect@Work Report Recommendation 43(a) and WGEA Recommendations 20 and 21).
 - ii. Measuring and monitoring the availability of sanitary, safe, suitable and accessible amenities, including toilets, for women workers.
 - iii. Where uniforms and/or personal protective equipment (PPE) is necessary, measures to provide uniforms and PPE suitable and appropriate for women workers.
 - iv. Measures to consult with women workers on health and safety matters, including gender representation on consultative committees.
- g. Make changes to data collection that allow for accurate measurement of the impact of insecure work on the gender pay gap and gender inequity, including requiring employers to report on the *actual* earnings and hours of part-time and casual employees, rather than full-time equivalent annual earnings (see WGEA Recommendation 15).
- h. Require employers to provide additional data on:
 - i. 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 manager/non-manager category (WGEA Recommendation 16).

- ii. What superannuation benefits are paid, including whether superannuation is paid on parental leave (WGEA Recommendation 17).
- iii. Terminations and redundancies by gender, employment status and manager/non-manager category (WGEA Recommendations 9 and 10).
- iv. Gender and intersecting forms of diversity, namely: primary work location, Aboriginal and/or Torres Strait Islander background, cultural background, disability, and LGBTIQ+ status, but only where this is provided on a completely voluntary basis by employees (WGEA Recommendation 22).

10. Enhance accountability and compliance powers under the Act, in particular:

- a. Mandate employers to consult with workers (and particularly women workers) and their unions on all GEIs; and to report on the action taken as a result of such consultation (WGEA Recommendation 19).
- b. Apply penalties to organisations who fail to comply with their obligations under the Act, including failure to report adequately and/or on time and/or meet outcomes-based Minimum Standards.
- c. Empower an appropriately qualified body or bodies to conduct detailed remuneration and gender equity audits where needed to measure actual year on year progress towards gender equity against outcomes-based Minimum Standards.
- d. Require reporting organisations to provide workers and their unions with a copy of their reports to WGEA, as well as notification of lodgement.
- e. Require reporting on a set date every year to improve compliance and comparability of data (WGEA Recommendation 24).
- f. Conduct a thorough review of the Workplace Gender Equality Procurement Principles to ensure they are effective in driving improvements in gender equity (WGEA Recommendation 30).
- g. Fund WGEA adequately to carry out all of its functions.

Other crucial Gender Equity reforms

11. Genuinely addressing gender inequity in Australian workplaces requires not only reforms to the powers of WGEA, but a range of substantial government interventions. Our legislative and industrial frameworks continue to perpetuate outdated norms and discriminatory practices and need urgent review.

12. The ACTU's *2021 Women and Equity Action Plan*⁸ calls for:

- a. At least 10 days paid family and domestic violence leave per year for all workers in the National Employment Standards.
- b. Urgent and full implementation of all the recommendations in the Federal Sex Discrimination Commissioner's *Respect@Work* Report, including positive duties on employers to eliminate sexual harassment, sex-based harassment and discrimination; a prohibition on sexual harassment in the Fair Work Act; a WHS Code of Practice on Sexual Harassment; and ratification of ILO Convention C.190 on Violence and Harassment.
- c. A requirement for the Fair Work Commission (**FWC**) to proactively tackle gender inequity across all of its functions, including specifying gender equity as an object of the FW Act; new Pay Equity Principles which clarify that a male comparator is not required; funding to address the historical undervaluation of work in female-dominated sectors; and the establishment of an expert Gender Equity Panel within the FWC.
- d. Providing free, universal access to quality early childhood education and care, delivered by highly skilled, properly paid and securely employed educators.
- e. Reforming aged care, including addressing chronic workforce issues such as inadequate pay, lack of access to training, and inadequate staff to resident ratios.

⁸ <https://www.actu.org.au/media/1449724/women-and-equity.pdf>

- f. Reforms to superannuation to close the retirement income gap, including superannuation on all paid and unpaid care-related absences and a legislated pathway to a superannuation guarantee rate of 15%, expedited for women.
- g. Expanding and improving Australia's Paid Parental Leave scheme to provide equal access to every worker to 52 weeks paid leave at full-wage replacement (or the national minimum wage, whichever is greater). The concept of 'primary' and 'secondary' carers should be removed, with parents entitled to access the same amount of paid parental leave and to share the entitlement as they see fit. Families should be encouraged to share the care of children more equally through the provision of an additional 2 weeks of paid bonus leave to parents who take equal amounts of parental leave.
- h. Guaranteed and enforceable access to secure family friendly working arrangements in the National Employment Standards.
- i. Modern workplace rights that support collective bargaining and provide a living wage.
- j. Action to make jobs more reliable and secure, including a clear and fair definition of casual employee, and replacing the government's ineffective and inadequate casual conversion scheme with one that works.
- k. Reinstatement of the Women's Budget Statement and gender-responsive budgeting, with input from unions and the women's sector.

Gender inequity in Australian Workplaces

Entrenched gender discrimination

13. The Australian workforce has always been, and remains, highly gender segregated by international standards. Industries and occupations dominated by women are characterised by high levels of award dependency, lower wages and fewer protections.⁹

⁹ [Wilkins R & Zilio F \(2020\), Prevalence and persistence of low paid award-reliant employment, Fair Work Commission Research Report 1/2020](#), pp 11 and Table 3; Barbara Broadway and Roger Wilkins, *Working Paper Series: Probing the Effects of the Australian System of Minimum Wages on the Gender Wage Gap*, December 2017

Female-dominated sectors have been historically under-valued due to discriminatory and gendered assumptions about the skill-level and value of the work. Australia's high rate of insecure work is a heavily gendered phenomenon and a significant contributor to the gender pay gap and gender inequity at work.¹⁰ Sectors characterised by a high prevalence of low paid and insecure work include those which have carried our community through the pandemic, including Healthcare, Retail and Hospitality.¹¹ Over the 15 year period between 2006 and 2021, Australia has fallen from 15th to 50th in the World Economic Forum Gender Gap Report, well below most other OCED countries.¹² In part, this poor performance relates to our persistently high levels of occupational and industry segregation along gender lines.

14. There is a large body of research highlighting and describing the causes of the gender pay gap. In addition to the undervaluation of work in female-dominated industries and occupations, other key contributing factors include lack of access to secure, quality flexible work, adequate paid parental leave and quality, accessible early childhood education and care (ECEC), and discrimination in hiring, access to training, and pay decisions, and the prevalence of job insecurity. Women continue to face significant health and safety-related barriers to workforce participation, ranging from sexual harassment and other forms of gendered violence at work, to lack of access to safe and sanitary amenities in male-dominated sectors. Australia's policy and regulatory settings continue to perpetuate and compound these barriers.

15. Pre-pandemic, the high cost of ECEC was already a significant barrier to women's workforce participation. OECD data shows that net ECEC costs in Australia total 14% of the earnings of a minimum wage worker with two children whose partner works full-time at 67% of the average wage; making Australia the 9th most expensive of the 31 OECD countries reviewed. A couple with two children aged 2 and 3, where one parent is on the minimum wage and the other parent works full-time at 67% of the average wage, would lose 74% of their income to either higher taxes or lower benefits if they use ECEC.¹³ Australia ranks in the bottom half of OECD countries by share of GDP spent on public funding of ECEC.¹⁴ COVID-19 has further exacerbated the ECEC crisis in Australia.

¹⁰ <https://www.actu.org.au/media/1449502/actu-sub.pdf>

¹¹ [Statistical Report – Annual Wage Review 2020-21](#) V1 26 Feb 2021 p.51 Table 7.1

¹² https://www3.weforum.org/docs/WEF_GGGR_2021.pdf

¹³ <https://data.oecd.org/benwage/net-childcare-costs.htm>

¹⁴ https://www.oecd.org/els/soc/PF3_1_Public_spending_on_childcare_and_early_education.pdf

16. Australia's PPL scheme, which is paid at the national minimum wage, is one of the least generous of any comparable country. Compulsory superannuation is not paid on Australia's PPL scheme. In a recent UNICEF report, Australia ranked 40th of 41 comparable EU and OCED countries on paid parental leave provided to mothers – providing the full-time equivalent of only 8 weeks paid leave. Australia ranks 27th on the amount of parental leave provided to fathers, providing the full-time equivalent of 0.8 weeks paid leave.¹⁵ Men account for only 6.5% of all primary carer's leave taken, with the vast majority of paid parental leave undertaken by women.¹⁶ This is a significant contributor to the gender pay gap.
17. Australia's minimum employment standards in relation to flexible work are weak and inadequate. While the majority of requests for access to family friendly working arrangements are granted, about 10%-37% are refused, either in whole or in part. In addition, a large proportion of the employees who need flexibility do not ask at all, many of whom are men.¹⁷ There is no way of knowing how many refusals are unreasonable, because employees have no right of appeal under s 65 of the FW Act. This gap in the safety net is unjustified. It discriminates against workers with family responsibilities and undermines the development of innovative family friendly work practices in Australian workplaces, which are proven to benefit employers as well as employees, and the national economy as a whole. The FW Act should 'shift the dial' to create a presumption in favour of the employer granting the employee's proposal. This would better support working parents and carers by encouraging the development of flexible modern work practices which benefit everyone.
18. Lack of access to secure family-friendly working arrangements, to high-quality, affordable ECEC, and to adequate and equitable paid parental leave continues to undermine women's workforce participation and drive the gender pay and retirement income gaps. The impact of women's care burden and the resulting work/care collision has been thoroughly examined over many years, with evidence demonstrating that for women, the effect is 'curtailed career aspirations, reduced life-time earnings, and inadequate

¹⁵ https://www.unicef-irc.org/publications/pdf/Family-Friendly-Policies-Research_UNICEF_%202019.pdf

¹⁶ [Parental leave | WGEA](#), [Towards gender balanced parental leave | WGEA](#) accessed 4 March 2021

¹⁷ [Professor Jill Murray, Family Friendly Provisions: Report to the Fair Work Commission, 4 May 2017](#)
<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/expert-jill-murray.pdf>

superannuation.’¹⁸ The propensity of women with care responsibilities to end up in ‘poorly remunerated and insecure work without training and promotion opportunities, and with continuing clashes between work and care responsibilities’ has also been well-documented over many years.¹⁹ Exacerbating this existing inequality, women have taken on even more unpaid work during the pandemic.²⁰

19. In 2004, Sharan Burrow made the following observations about women’s labour force participation, describing the existence of ‘two labour markets’:

“Women’s participation rates are closing on men’s. In many ways women’s participation in paid employment today more closely mirrors that of their male counterparts, with women joining the labour force after longer periods in education, and remaining in paid employment during their child-bearing and child-rearing years.

But in other ways women’s labour force participation is still very different from that of men, in terms of the nature of the work available to women, especially women with family responsibilities. Australia still has a highly segmented labour force and, with notions of men’s jobs and women’s jobs entrenched, there are arguably two labour markets.

The gap between male and female average earnings narrowed over the first 10 years of the [Sex Discrimination Act’s] SDA’s existence, but progress has stalled in recent times, and to date there has been little use made of remedies provided by the SDA to address the undervaluation of ‘women’s work’ that is at the core of the gender pay gap.

*Women’s employment is in other ways often associated with lack of job security, low access to standard conditions of employment, poor career and progression prospects and other indicators of poor quality work.*²¹

20. These observations remain pertinent seventeen years later. Women’s experiences in the labour market remain very different to men’s. Women are more likely than men to be both

¹⁸ Chapman, A, *Industrial Law, Working Hours, and Work, Care and Family*, Monash University Law Review (Vol 36, No 3), 190-216

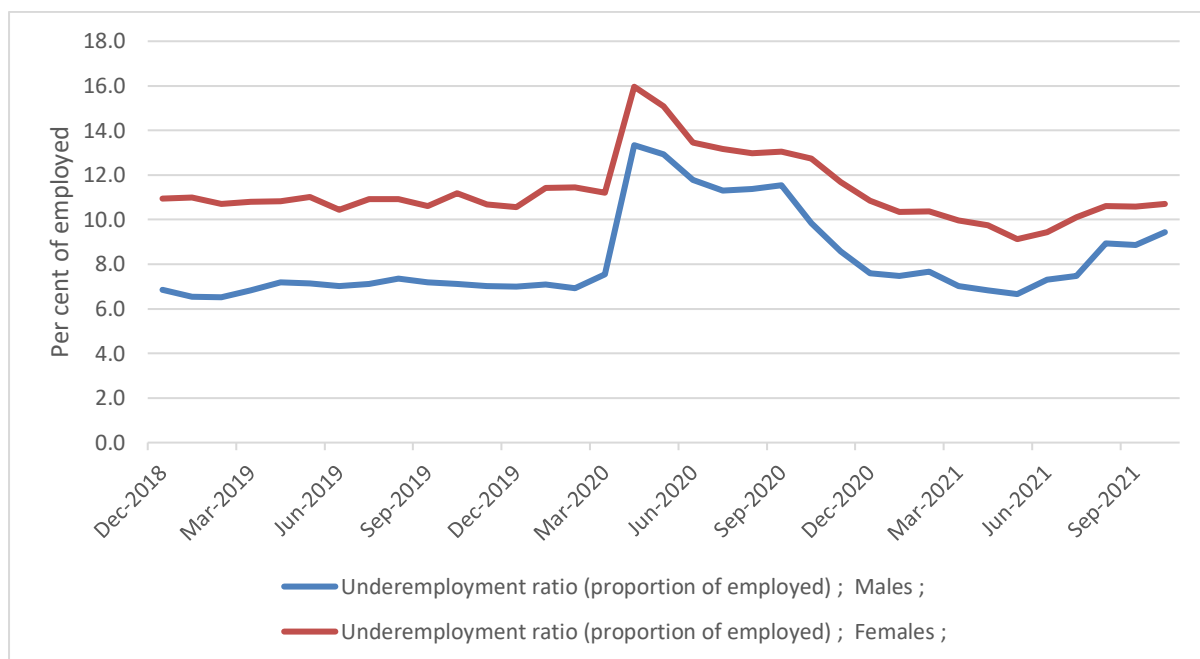
¹⁹ Ibid at 201 and 202, and references

²⁰ Craig & Churchill. (2020). Dual-earner parent couples’ work and care during COVID-19, May.

²¹ Burrow, S. *An Unequal World*, UNSW Law Journal, Volume 27(3), 884-891 at 886

low-paid and award reliant,²² and are disproportionately affected by the trend towards insecure work and underemployment. Women are underemployed at higher rates than men, both before and after the pandemic, as Figure 1 shows.²³

Figure 1: Women’s underemployment as a share of their employment, and men’s underemployment as a share of men’s



Source: data ABS 6202022

21. 24% of all women employed have been employed on a casual basis, that is without leave entitlements (compared with 20.0% of men).²⁴ 53% of casual employees are women²⁵, while women continue to comprise around 47% of the workforce.²⁶ Much of the long term growth in employment has occurred in part-time employment in award dependent industries: women account for 67.5% of the part-time workforce²⁷ and 61% of award reliant workers.²⁸ As noted by the Minimum Wage Panel in 2020, award-reliant workers are more likely to be low paid than other workers; women are significantly more likely to be paid at the award rate than are men at all levels of education and experience (except in their first

²² [Wilkins R & Zilio F \(2020\), Prevalence and persistence of low paid award-reliant employment, Fair Work Commission Research Report 1/2020](#), pp 11 and Table 3; *Annual Wage Review 2019–20* [2020] FWCFB 3500 at [115], [127] and [400]

²³ ABS 6202022

²⁴ ABS 6333 Characteristics of Employment August 2020

²⁵ ABS 6333 Characteristics of Employment August 2020

²⁶ ABS 6202 January 2021

²⁷ ABS 6202 January 2021

²⁸ ABS 6306 Employee Earnings and Hours May 2018 most recent.

year of work); and men are more likely to receive over-award payments or be subject to the higher rates of pay in collective agreements due to the industry or occupation in which they work.²⁹

22. ABS data shows record low wage growth across the economy of only 1.4% for September quarter 2019 to September quarter 2020, with female-dominated sectors such as accommodation and food services (0.5%) and administrative and support services (0.5%) growing at much lower rates than in other industries.³⁰ The Wage Price indexes increased for the September quarter 2020 to the September quarter 2021, by a total of 2.2%. This is because the lowest paid women in the lowest paid sectors lost most jobs during the period. Award reliant female dominated industries have lower levels of Average Weekly Ordinary Time earnings than others,³¹ which contributes to widening, and gendered, inequality.

23. Legislative provisions specifically designed to address the historical undervaluation of work in female-dominated sectors and close the gender pay gap - in particular the capacity to seek an equal remuneration order (ERO) under Part 2-7 of the FW Act - have largely failed. There has been only one successful case under Australia's federal ERO provisions since they were introduced in 1993. This low success rate relates largely to the drafting of the provisions, in particular the need to identify a male 'comparator group' in order to prove undervaluation. The 'low paid bargaining' stream has completely failed to deliver the benefits of collective bargaining to low paid women workers. These gendered gaps and flaws in our workplace laws need urgent attention if the gender pay gap is to be addressed and gender equity achieved in Australian workplaces.

The Superannuation Gap

24. The retirement income gap is a significant aspect of the gender pay gap that requires serious and sustained government intervention. Entrenched gender discrimination in workplaces contributes directly to lower superannuation contributions and lower balances. As outlined, women are more likely to be in insecure work and reliant on earnings other than Ordinary Time Earnings, upon which superannuation contributions are based; and are far more likely than men to require extended periods of leave to care for children or family

²⁹ *Annual Wage Review 2019–20* [2020] FWCFB 3500 at [403]

³⁰ Wage Price Index from ABS 634505b September 2021.

³¹ ABS 6302

members - leave which does not attract superannuation payments. As a result, women earn significantly less superannuation contributions than men. The result of these structural inequities is that women, on average, retire with superannuation balances **47% lower** than men.³² Compounding these problems, about a quarter of the workforce is not paid their superannuation entitlements. In 2018-19 alone, \$5 billion in superannuation was not paid by employers.³³ These problems require sustained and targeted interventions by government. The recent removal of the \$450 per month minimum threshold was a positive step forward, but much more needs to be done. Another key problem is the exclusion of superannuation from periods of paid and unpaid parental leave.

25. As of February 2021, Australians seeking to cushion the financial blow of the pandemic had made about 4.8 million applications for early release of their retirement savings, to a total value of \$36.4 billion.³⁴ According to analysis from AMP, 21 per cent of women have already withdrawn their super balances, compared with 17 per cent of men.³⁵ The top four funds with highest number of withdrawal applications were Australian Super, Hostplus, Sunsuper and the Retail Employees Super, reflecting the financial impact of the pandemic on workers in the sectors of hospitality, tourism, recreation, sport and retail.³⁶ 55% of workers in these sectors are women. Information released by HESTA, the fund covering healthcare workers, says early release data shows that the members who sought to withdraw their super were lower paid, typically earning between 9% to up to 14% less than the typical member in their age group. Younger members aged 18-24 have virtually drained their super accounts, leaving this group with a median account balance of just \$1049, a median decrease of around 78%.³⁷ The full impact of the early release scheme on the retirement income gap is yet to be fully comprehended. Allowing early access to superannuation in crisis situations is not a fair or reasonable solution to the gender pay gap – all it does is kick the problem down the road and compound the risk of poverty and homelessness in retirement for women.

³² David Hetherington and Warwick Smith, *Not so Super, for Women: Superannuation and Women's Retirement Outcomes* (Melbourne: Per Capita and the Australian Services Union, 2017), at p 6

³³ <https://www.industrysuper.com/campaigns/unpaid-super-getting-worse-while-nothing-is-done/>

³⁴ APRA, COVID-19 Early Release Scheme - Issue 36, February 2021

³⁵ Financial Standard, Super release widens gender gap: AMP, Ally Selby, 29 May 2020

³⁶ APRA COVID-19 Early Release Scheme Issue 5, 1 June 2020

³⁷ <https://www.hesta.com.au/about-us/media-centre/Early-release-super-scheme-sees-younger-women-drain-super-HESTA.html>

Women's Health and Safety at Work

26. Other barriers to women's participation continue to exacerbate the gender pay gap and gender inequity at work. Australia's regulatory framework fails to protect women's health and safety at work in a range of ways. The Respect@Work Report has highlighted the failure of our current regulatory framework to keep workers safe from gendered violence and harassment, including sexual harassment. Our laws rely solely on individuals undertaking costly and risky complaints processes, with no clear requirement on employers to proactively address sexual harassment. Full implementation of all Respect@Work Recommendations must be an urgent priority.
27. A recent report from the Electrical Trades Union (**ETU**) draws attention to the longstanding and systemic problem of sub-standard or non-existent toilet facilities for women on worksites in traditionally male-dominated sectors around the country.³⁸ Every woman worker should be able to access safe, regularly serviced, hygienic and suitable amenities, including toilets. However, as the ETU report notes '...in historically male-dominated occupations women's amenities are frequently treated as an inconvenience, an afterthought or not provided at all.' Substandard or non-existent amenities expose women to a range of safety hazards, including greater risks of harassment and violence at work. Women in insecure work are less likely to feel safe to speak up to ask for improvements.
28. Health and safety-related barriers to women's safe and equal workforce participation require urgent attention.

³⁸ [ETU, *Nowhere to Go: Barriers to participation resulting from inadequate workplace amenities for women in male dominated occupational industries*, August 2021](#)

The Impact of COVID-19

29. Women were already over-represented among workers in insecure and low-paid jobs and were shouldering the majority of unpaid domestic and care labour before the pandemic struck.³⁹ The pandemic has exposed and exacerbated these inequities, with a significant negative impact on women's employment and living standards.⁴⁰ As noted by WGEA, a predominantly female healthcare workforce has placed women on the frontlines of the pandemic, and the increase in caring responsibilities during the COVID-19 crisis has been largely shouldered by women. Social distancing measures have placed women at greater risk of violence. Disproportionate job losses in the initial stages of the pandemic and gender inequal outcomes in the recovery phase are reflective of women's overrepresentation in insecure work.⁴¹ These impacts are consistent with global trends.⁴²
30. Women's experience of disproportionate job losses when the pandemic hit is a clear insight into the poorer quality and security of their jobs, compared with men's, as well as impacts of unpaid care responsibilities. For example, a study from the Universities of Latrobe, Melbourne and Sydney shows that women in Victoria experienced job loss at higher rates than men (16% v 11%) during the first lockdown of 2020. Exacerbating the gendered impact of these job losses, 40% of these women worked in industries that were ineligible for JobKeeper.⁴³
31. During the first lockdowns from March to May 2020, 476,000 women (or 7.6%) lost their jobs compared with 380,000 men (5.5%).⁴⁴ Although women's employment recovered up to May 2021, it has fallen again to October 2021 by 205,000 or 3.3%.

³⁹ [ACTU, Leaving Women Behind: The Real Cost of the COVID Recovery, November 2020](#)

⁴⁰ [Grattan Institute, Women's work: The impact of the COVID crisis on Australian women, April 2021](#)

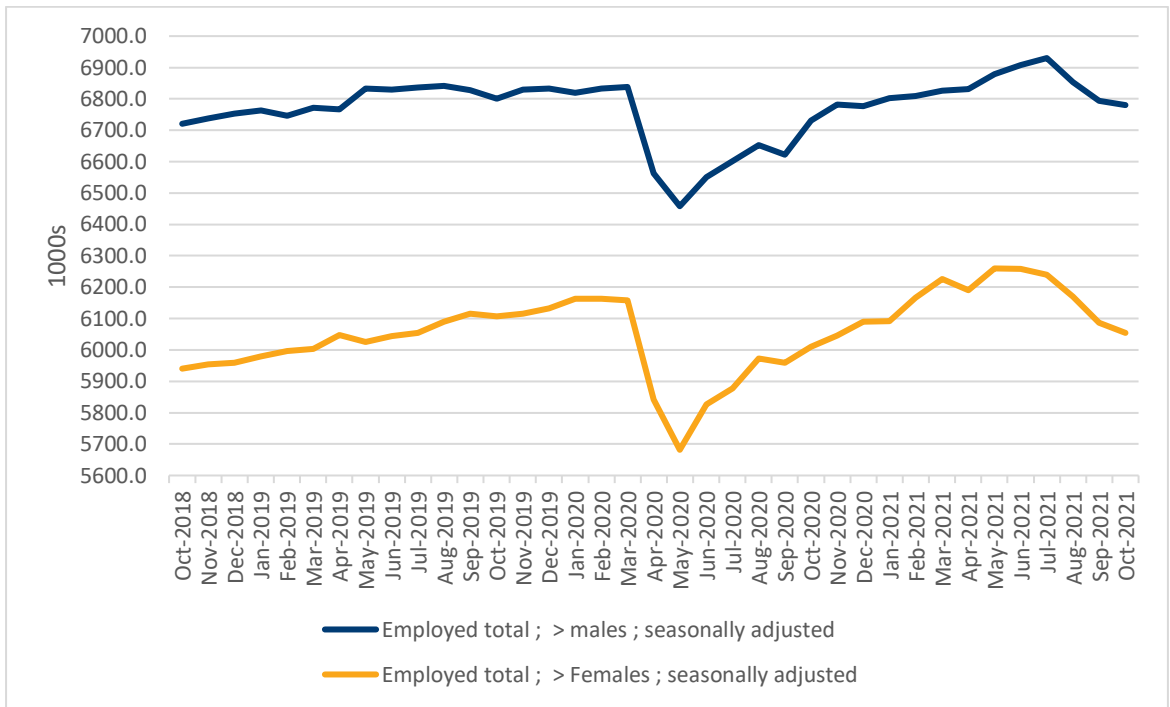
⁴¹ [WGEA, Gendered impacts of COVID-19, May 2020](#)

⁴² United Nations, Policy Brief: The Impact of COVID-19 on Women, 9 April 2020

⁴³ Carson, Andrea; Ruppanner, Leah and Ratcliff, Shaun. *Worsening of Australian Women's Experiences under COVID-19: A Crisis for Victoria's Future*. Report. September 2020 [Worsening-Gender-Equality-Report1.pdf \(unimelb.edu.au\)](#)

⁴⁴ ABS 6202 seasonally adjusted data, and ACTU calculations

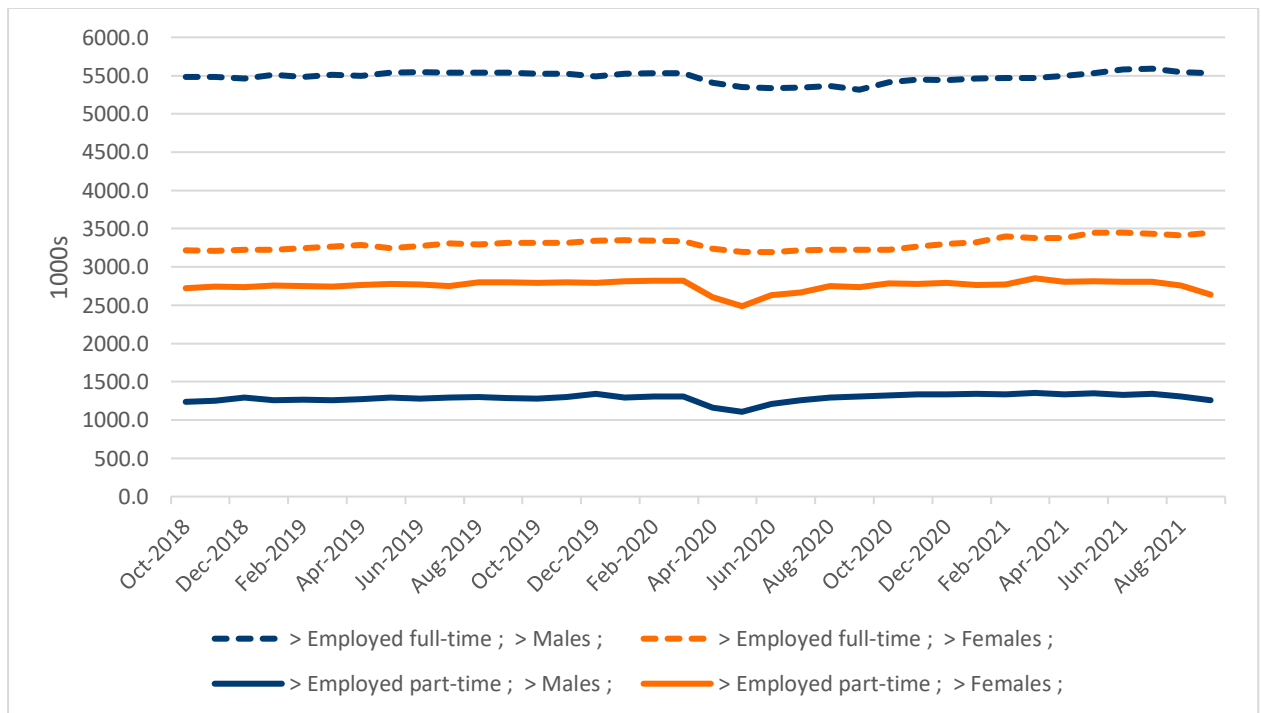
Figure 2: Women’s and men’s monthly employment, seasonally adjusted, 1000s



Source ABS 6202

32. Figure shows that both for part time and full time employment, women were affected disproportionately by lockdowns.

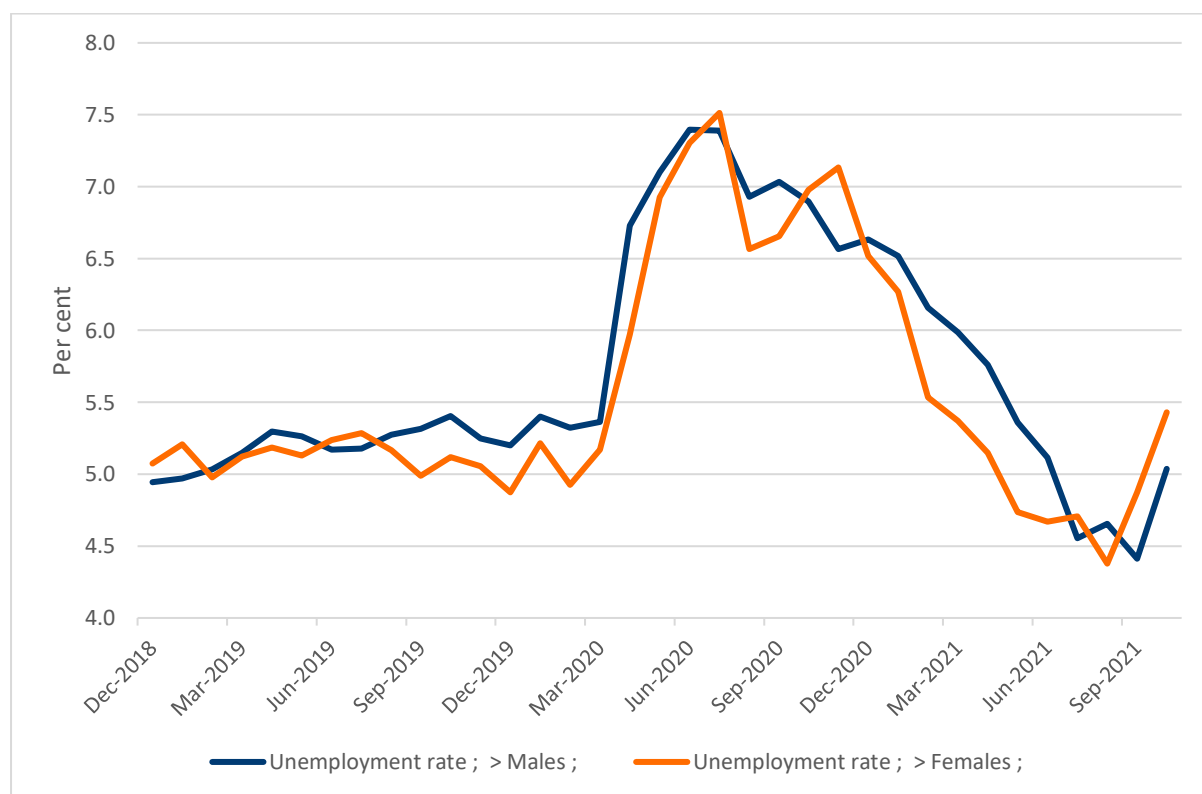
Figure 3: Women’s and men’s full time and part time employment, seasonally adjusted, 1000s



Source: ABS 6202

33. Of the women who stopped working during the pandemic up to July 2020, 50% did so to undertake unpaid housework and caring roles – compared with only 17% of men who ceased work.⁴⁵ Women are the frontline troops in the labour market in terms of vulnerability to economic fluctuations. In regard to those who were still looking for work, women experienced bigger upswings in their rate of unemployment than men during the pandemic, up to October 2021. The ABS measure of the unemployment rate for women rose from 5.2 per cent at March 2020 to 7.5 per cent at July 2020, compared with an increase for men from 5.4 per cent to 7.4 per cent.⁴⁶ The unemployment rate for women rose from 4.9 per cent at September 2021 to 5.4 per cent at October 2021, whereas men’s rose from 4.9 per cent to 5.0 per cent. This is shown in Figure 4. This reflects the higher susceptibility of women’s work to cyclical movements and volatility in the economy.

Figure 4: Unemployment rate, women and men, per cent



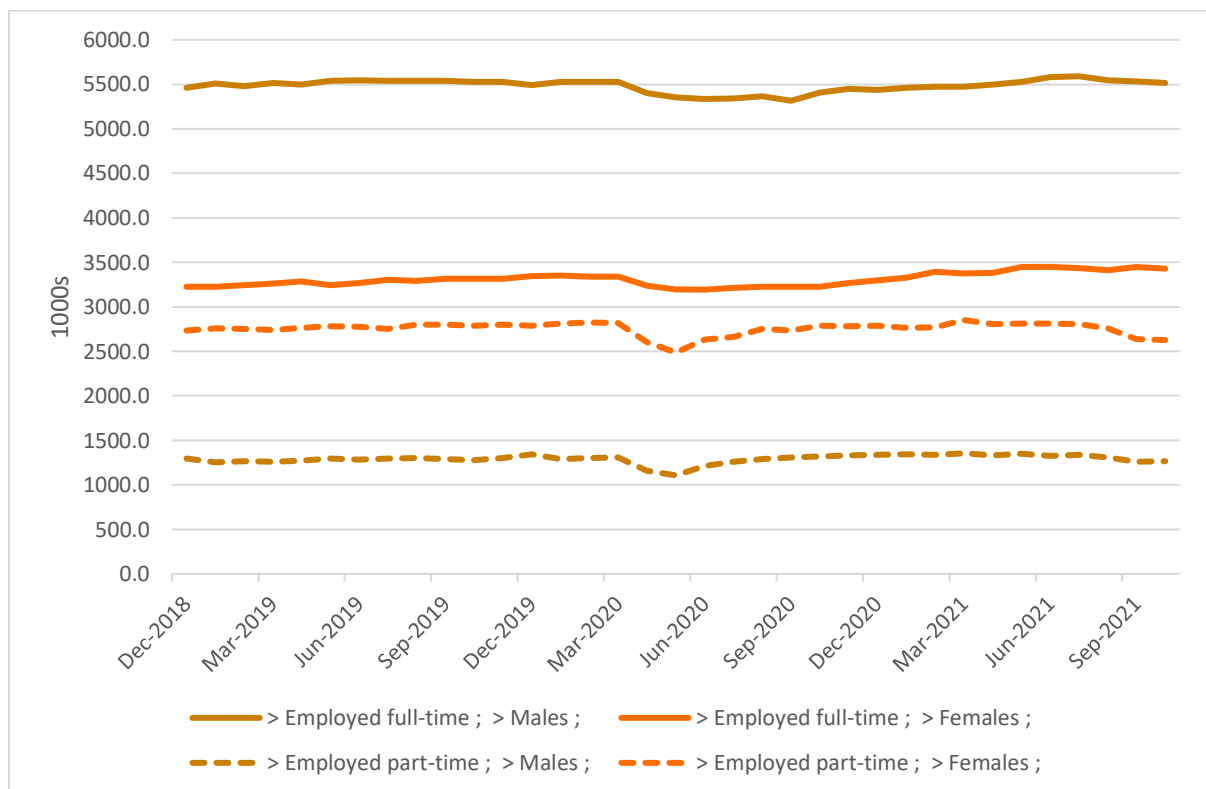
Source: data from ABS 62020

⁴⁵ ABS Catalogue no. 6291.0.55.001, EM2a - Employed persons who worked fewer hours than usual by Hours actually worked in all jobs and Sex, July 2020. Table 1.

⁴⁶ ABS 6202

34. Women’s employment was hit harder than men’s in the pandemic up to October 2020, with women’s employment falling 280,000 between March 2020 and July 2020 while men’s fell 236,000. This is despite the introduction of free childcare within that period. Between September 2021 and October 2021, women’s employment fell 32,500 while men’s fell 13,700. Women working part time were particularly vulnerable, with by the far the biggest falls in employment in the pandemic downturns of 2020 and 2021. Women’s part time employment fell by 332,000 between March 2020 and May 2020 while men’s part time employment fell 202,400. Women’s part time employment fell 177,000 between July 2021 and October 2021, whereas men’s fell 73,300. This is shown in Figure 5.

Figure 5: Full time and part time employment, women and men, 1000s.

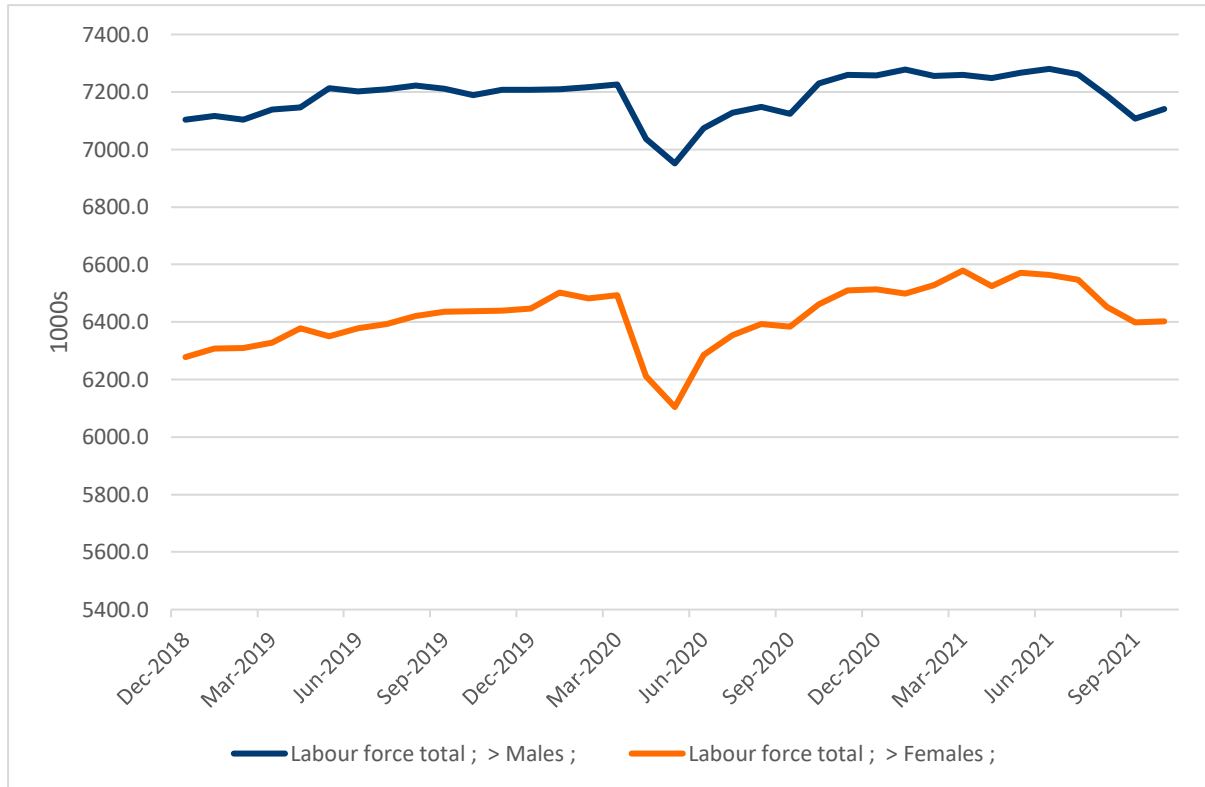


Source: data from ABS 62020

35. It is important to note that these figures exclude people who leave work and do not look for work, as well as those who give up looking for work – which many women did in order to attend to increased care responsibilities. This is shown in the larger fall in women participating in the labour force (those working and ‘actively’ looking for work) compared with men. The labour force fell by 388,900 women between March 2020 and May 2020, or by 6.0 per cent of the female labour force, whereas for men this was 273,700 or by 3.8 per cent of the male labour force. Between July 2021 and October 2021 there was a fall

of 144,700 or 2.2% in the female labour force, whereas the male labour force fell by 120,700 or 1.7%.⁴⁷ This is shown in Figure 6.

Figure 6: Women’s and men’s labour force participation, 1000s



36. Women were more likely to hold multiple jobs pre-pandemic. The number of secondary jobs declined by almost 200,000 or 20% between March and June 2020. *JobKeeper* was only payable to one employer per covered worker, exacerbating the problem of secondary job loss for women.

37. In April 2020, 47.1% of *JobKeeper* recipients were women.⁴⁸ *JobKeeper* excluded casuals with less than 12 months service from its support. Analysis shows that about 950,000 casual workers were excluded from the *JobKeeper* payment, mostly those employed in the female-dominated accommodation and food services, retail trade, and health care and

⁴⁷ ABS 6202

⁴⁸ The Treasury, *The JobKeeper Payment: Three-month review June 2020*, p 20

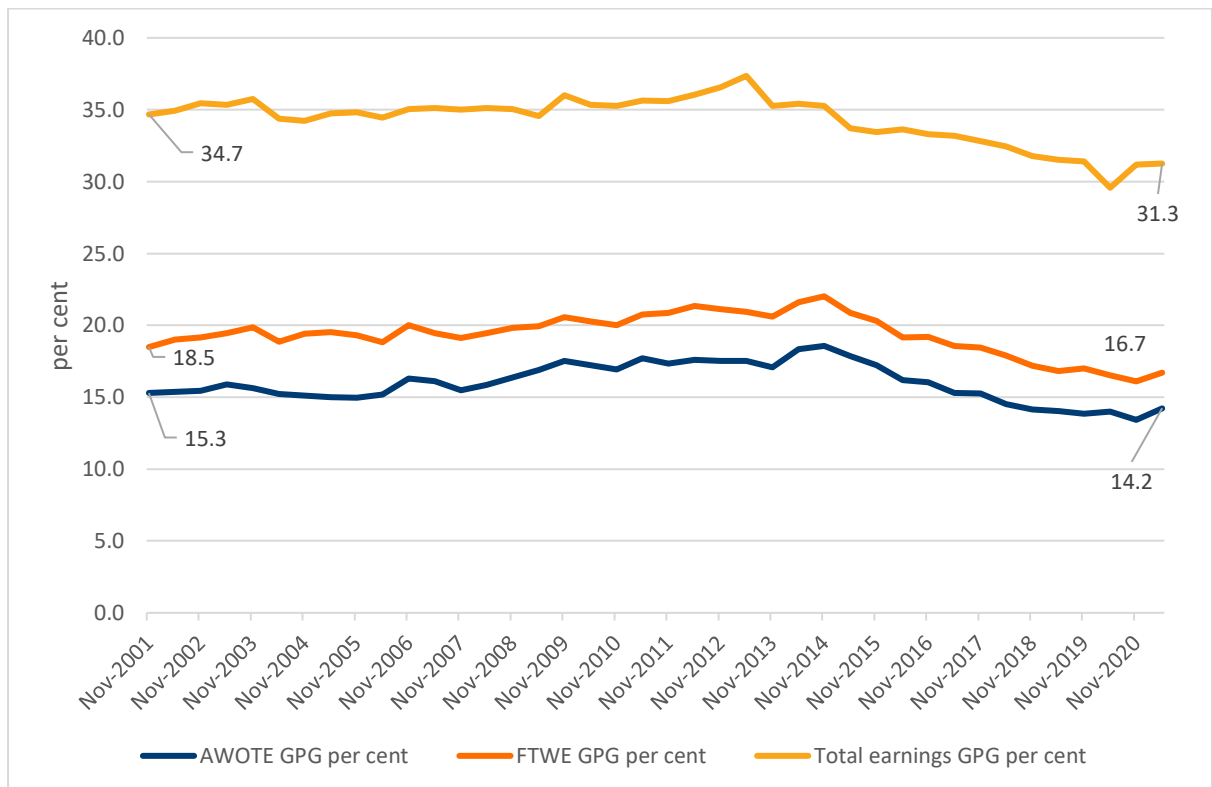
social assistance sectors.⁴⁹ In addition, many industries with high levels of female employment were excluded from *JobKeeper*, such as local government (55% of workers are women in Victoria), and universities (58% of workers are women nationally). The first industry to be removed from the Commonwealth's *JobKeeper* program was ECEC, an industry in which 95% of the workers are women.

Measuring the gender pay gap

38. While there are a number of ways to measure the gender pay gap, all data sources show ongoing gender pay gaps and high-levels of gender segregation across and within industries and occupations. Figure 7 shows the gap between men's and women's weekly earnings taking women's earnings as a percentage of men's, based on three different measures of weekly earnings: Adult average weekly ordinary time earnings, Adult average weekly full time earnings including overtime and bonuses, and Average weekly total earnings.
39. Based on Adult Average Weekly Ordinary Time Earnings, women working full-time earn \$261.50 a week less than men working full-time. It is important to note that this measure does not capture overtime or bonuses, and excludes those who work less than full-time hours, who are predominantly women performing unpaid and caring work. The gap in Average *Total* Weekly Earnings between all men and women is \$486.20.
40. The GPG has increased from November 2020 to May 2021 as shown in Figure 7. This reveals a double disaster for women, as it is not due to an unfair apportionment of increases in earnings, it is due to real full time weekly earnings falling for women, while men's earnings remain flat.

⁴⁹ Cassells, R, Duncan, A, Dockery, M, Kiely, D & Mavisakalyan, A (2020), Potential job losses in the COVID-19 pandemic, Bankwest Curtin Economic Centre Research Brief COVID-19 #2, available: https://bcec.edu.au/assets/2020/03/BCEC-COVID19-Brief-2_Potential-Joblosses_FINAL-2.pdf.

Figure 7: Gender pay gaps for Average Weekly Ordinary Time Earnings, Full Time Earnings and total earnings

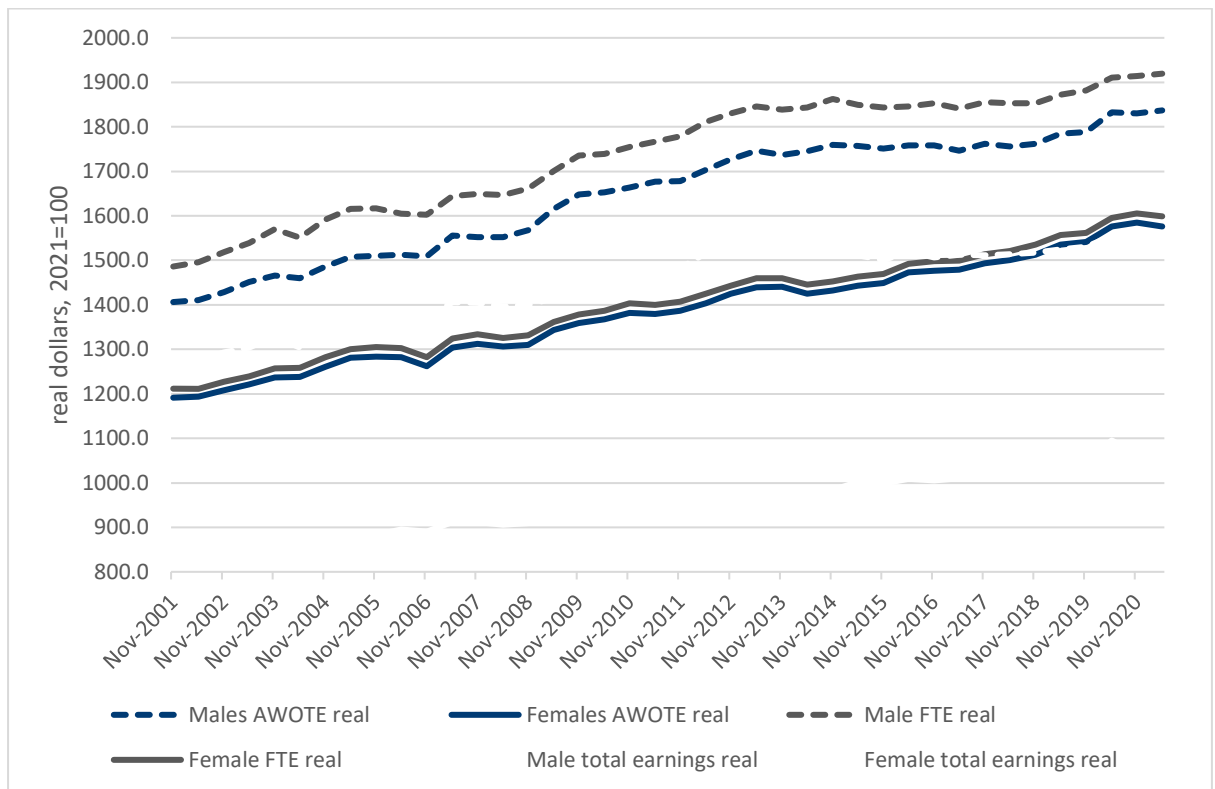


Source: ABS 6302010a, 6302010b, 6302010c, 6302010d, 6302010e, 6302010f, and ACTU calculations

41. The effect of COVID served to increase total weekly earnings during the first lockdown, at May 2020. At this point both men’s and women’s average total earnings increased but women’s increased more, before they both fell again. This was due to a combination of the lowest paid workers losing work, and those who continued to work working more hours and therefore raising their weekly earnings. This is shown in **Figure 8** which shows the three measures of weekly earnings in real terms for women and men.

42. **Figure 8** shows that the slight downward trend in gender pay gaps after 2013 is not the result of women’s wages increasing, rather it is the result of men’s average earnings flattening out, largely due to reductions in top earnings after the mining boom. In addition, the slight downtrend can be explained by overall wage stagnation since 2013, as pay gaps are lower when all wages are lower. Minimum wage increases over that period which help sustain women’s earnings may have also played a role in reducing the gender pay gap. However, the small percentage point reductions in the gender pay gaps after 2013 are predominantly driven by wages stagnating across the board, rather than a reduction in inequality or an increase in women’s wages and living standards.

Figure 8: Average Weekly Earnings, Full Time Earnings and total earnings (real dollars, 2021=100), female and male



Source: ABS 6302010a, 6302010b, 6302010c, 6302010d, 6302010e, 6302010f, 6401 and ACTU calculations

The Role of WGEA

43. Substantial reforms are required to ensure that WGEA can make a meaningful difference to the entrenched gender inequity and discrimination in Australian workplaces.
44. The *Workplace Gender Equality Act 2012* established WGEA to oversee a reporting regime under which non-public sector employers with 100 or more employees must report annually against six gender equality indicators (**GEIs**).
45. The *Workplace Gender Equality (Minimum Standards) Instrument 2014* requires employers with 500 or more employees to have a written formal policy and/or strategy in place to support one of four of the six GEIs (namely gender composition of workforce; equal remuneration between women and men; flexible work; and sex-based harassment).

46. WGEA also conducts research and education, produces a range of fact sheets on gender equality and the gender pay gap, and runs the 'Employer of Choice for Gender Equality' award and a 'Pay Equity Ambassadors' network of CEOs, which is currently under review.

47. Accountability and compliance mechanisms are limited. WGEA can publicly name employers as non-compliant (s 19D); and non-compliant employers may not be eligible for Commonwealth contracts, grants or other financial assistance (s 18). While an organisation must notify employees and unions that their report has been lodged, there is no obligation to consult with workers or unions on gender equity matters, or advise unions how to access the public report or provide them with a copy.

Consultation Questions

Question 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?

1. The facts on persistent gender inequality in Australian workplaces set out in this submission demonstrate that our current regulatory framework urgently needs strengthening. The collection of data by itself is of limited value – it must be used to set a baseline and drive action and progress towards gender equity above the baseline.
2. The GEIs and Minimum Standards must be applied to all employers, regardless of size or sector. Penalties should apply for breach of obligations under the Act. Crucially, the Minimum Standards must be strengthened to include objective *outcomes-based* benchmarks against which progress can be measured year on year. Consultation with workers (and specifically women workers) and unions on gender equity issues should be mandated.
3. These proposals are discussed in further detail below.

Question 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?

1. Some of our affiliates advise that they do use WGEA reports to engage with employers about gender equity issues. However, they report that limitations with the current framework hamper their efforts to drive real change.
2. There is significant evidence that union action is effective in achieving progress towards gender equality. There is a correlation between increasing pay inequality and a decline in collective bargaining in industrialised countries. On the other hand, studies suggest that higher collective bargaining coverage reduces the gender pay gap.⁵⁰ ABS data from August 2020 shows that union members continue to receive higher rates of pay than non-union members, and the hourly pay gap among union members is substantially lower than among non-union members. The most recent ABS data (May 2018) confirms that workers on collective agreements earn more than those on individual agreements, and that the gender pay gap is larger for those on individual agreements than collective agreements. As outlined in the introduction, unions play a pivotal role in improving gender equity in Australian workplaces. To note just one example, close to 1.2 million employees now have access to paid family and domestic violence (FDV) leave as direct result of union action.⁵¹
3. While some employers in the mining sector are attempting to address gender equity issues, they still have a long way to go.⁵² Outcomes could be strengthened by deeper engagement with and participation of employees and their unions on gender equity initiatives. For example, most recently the Western Mine Workers' Alliance has been advocating for an independent body to investigate sexual harassment claims, to overcome a culture where complaints are dismissed or ignored.⁵³

⁵⁰ Hayter, S., and Weinberg, B. (2011). Mind the gap: Collective bargaining and wage inequality. The role of collective bargaining in the global economy: Negotiating for social justice, 136-186.

⁵¹ Social Work Innovation Research Living Space: Flinders University, Analysis of the Workplace Agreements Database for the Family and Domestic Violence Leave Review, 3 November 2021 at p 44

⁵² See for example <https://www.bhp.com/careers/inclusion-diversity>

⁵³ See https://www.awu.net.au/wp-content/uploads/2021/09/WMWA_SUB_V7.pdf

4. Requiring genuine consultation with, and participation of, workers (including women workers) and unions is key to reducing gendered pay inequity and promoting gender equity, and should be mandated by the WGEA legislation.

Question 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?

1. Currently 'relevant employer' means a registered higher education provider or an employer of 100 or more employees in Australia; not including the Commonwealth, a State, a Territory or an authority (s 3). This is far too narrow and excludes the majority of the workforce.
2. For example, in the non-government education sector, over 75 % of employees are female. Most of these employees are part-time or casual. The Independent Education Union (representing workers in non-government schools) reports that it uses WGEA reports in consultation with all employers with over 100 employees. However, the smaller size of many schools and early childhood education and care centres precludes them from being required to report. This means that the data collected is not representative of the sector and does not allow proper assessment of the gender pay gap in education. It also means that employees and their unions are denied an opportunity to engage with smaller employers about gender equity issues.
3. The experience reported by our affiliates in relation to sexual harassment in the mining industry is that large public companies face the most scrutiny on gender equity and already have significant motivation to work to improve outcomes for women employees. However, smaller companies often need regulatory oversight to incentivise them to act. Our affiliates in this sector advise that they would welcome the extension of obligations under the Act to smaller businesses. Noting that regulatory burden may be an issue for smaller business, reporting requirements could be tailored so that the smallest businesses may only need to report the number of women working for them for example, with additional information about salary and conditions provided the larger the business is.
4. Coverage of reporting obligations must be extended to ensure *all employers* are covered, including:

- a. Requiring public sector organisations to report to WGEA – see Recommendation 43(a) from Respect@Work.
- b. All businesses, regardless of size, should be required to report to WGEA, with reporting obligations tapered to reduce burden for small employers.
- c. Labour hire employers should be required to report to WGEA.

Question 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?

1. Currently, relevant employers must prepare a public report to WGEA containing information about the employer and the following GEIs (s 13):
 - a. GEI 1 – gender composition of the workforce
 - b. GEI 2 – gender composition of governing bodies of relevant employers
 - c. GEI 3 – equal remuneration between women and men (Note: the CEO is excluded from reporting remuneration)
 - d. GEI 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
 - e. GEI 5 – consultation with employees on issues concerning gender equality in the workplace
 - f. GEI 6 – sex-based harassment and discrimination.

2. Work health and safety issues including gendered violence and lack of access to facilities continue to seriously undermine gender equity and women’s workforce participation. These matters need urgent attention. A new standalone GEI dealing with work health and safety related barriers to women’s participation should be developed by WGEA, including:
 - a. Measuring and monitoring prevalence, prevention and responses to sexual harassment, including frequency of training (see Respect@Work Report Recommendation 43(a) and WGEA Recommendations 20 and 21).
 - b. Measuring and monitoring the availability of sanitary, safe, suitable and accessible amenities, including toilets, for women workers.

- c. Where uniforms and/or personal protective equipment (PPE) is necessary, measures taken to provide uniforms and PPE suitable and appropriate for women workers.
 - d. Measures to consult with women workers on health and safety matters, including gender representation on consultative committees.
- 3. Our affiliates advise that reporting on salaries is not always completed properly by employers. For example, in the non-government education sector some larger employers do not report data about senior roles in circumstances where a single employee holds more than one role (for example where the principal is both an employee and a member of the Board of Management) and compliance officers and Human Resources staff are often not reported on. The Act should require reporting of both base salary and total remuneration packages (including cash and non-salary benefits) of *all* employees and positions, including CEOs and partners (WGEA Recommendations 13 and 14).
- 4. As outlined above, access to adequate periods of parental leave for both partners is key to closing the gender pay gap, as is the payment of superannuation, including on periods of parental leave. In many sectors, a major barrier to change is the lack of transparency around the real drivers of the gender pay gap including the extent and nature of insecure work. As such, the ACTU supports amendments to reporting requirements to require employers to provide additional data on:
 - a. 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 manager/non-manager category (WGEA Recommendation 16)
 - b. What superannuation is paid to workers, including payment of superannuation on parental leave (WGEA Recommendation 17)
 - c. The impact of insecure work on the gender pay gap and gender inequity, including requiring employers to report on the actual earnings and hours of part-time and casual employees, rather than full-time equivalent annual earnings (see WGEA Recommendation 15).
- 5. The ACTU does not agree with WGEA's Recommendation 4 that the Legislative Instrument should specify only the *type* of data collected by WGEA, as opposed to specific numerical data points or data calculations. While the ACTU does not oppose the capacity for the

Director to specify *new* data for collection outside of the Legislative Instrument, it is crucial that the Legislative Instrument continues to specify clear and objective numeric data points regarding the current GEIs. As the WGEA submission notes, the data collected with respect to the GEIs is ‘critical for understanding the state of workplace gender equality, monitoring progress, and identifying areas for improvement and research.’ If there are changes that need to be made to individual data points in the Legislative Instrument to make them more effective, these amendments should be proposed for consultation. The ACTU does not support changes to the Legislative Instrument so that it simply specifies the type of data, as this could potentially undermine the entire data set.

Question 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?

1. Yes, WGEA should expand its data set so that it is possible to better understand the differential impact of gender inequality on different groups, including those that experience multiple and compounding forms of discrimination, such as Aboriginal and Torres Strait Islander women. As noted in the ACTU’s submission to the most recent Annual Wage Review, further research and data in this area is needed.⁵⁴
2. The ACTU supports including additional reporting on the following categories, but only where it is provided on a *totally voluntary basis* by employees:
 - a. Cultural and linguistic diversity
 - b. Temporary visa or migrant status
 - c. Disability
 - d. LGBTIQ+ status
 - e. Aboriginal and Torres Strait Islander status
 - f. Location of primary workplace

Question 6

⁵⁴ <https://www.fwc.gov.au/documents/wage-reviews/2020-21/submissions/actu-sub-awr2021.pdf> at p 233

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?

1. Under the Workplace Gender Equality Act currently, salary and remuneration data is confidential and is not included in public data or reports (s 14).
2. The ACTU strongly supports introducing greater transparency by requiring reporting of both base salary and total remuneration packages (including cash and non-salary benefits) of all employees, including CEOs.
3. The ACTU supports the submission of the SDA, which proposes the collection of additional data which allows assessment of the *implementation* of strategies and policies that have been provided under the Minimum Standards – for example numbers of refusals of requests for flexible work or roster changes etc.

Question 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?

1. It is crucial that employers are required to report detailed and accurate data that enables a full and clear assessment of the state of gender equity in Australian workplaces. Gender equity will not improve unless the full extent of the problem is understood. Gender equitable workplaces benefit everyone - employers, employees and the national economy.
2. So far as practicable, WGEA reporting obligations should be aligned with existing reporting requirements to avoid duplication. While we are strongly of the view that all businesses regardless of size must be covered by these laws (no business should be exempt from taking action to reach minimum standards on gender equity) reporting obligations could be tapered for smaller organisations with fewer resources, with different requirements considered for business with fewer than 15 employees.

3. The 'once only' reporting recommendation relies on all employers accessing Single Touch Payroll data. If smaller employers are required to report, it is not clear whether they will have access to STP systems.

Question 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?

1. The minimum standards require private sector employers with 500 or more employees to have a policy and/or strategy in place to support *one or more* of the 4 GEIs listed in the Minimum Standards Legislative Instrument:
 - a. gender composition of the workforce
 - b. equal remuneration between women and men
 - c. flexible working arrangements, and
 - d. sex-based harassment and discrimination.
2. The ACTU agrees with WGEA that the current minimum standards are of 'little value' to improving gender equality. The bar is set far too low: they cover too few of the GEIs and they require only formal policies, rather than real action or progress towards gender equality. WGEA data shows that the employers easily meet the minimum standards; most likely because the vast majority have at least a formal policy or strategy in place for the prevention of sex-based harassment and discrimination. Our affiliates report that some large employers do not meet even this very low bar; reporting year on year that policies or strategies are 'under development' or 'under review' with no progress actually made, and no compliance mechanisms allowing employees or unions to hold companies accountable.
3. GEI 5 relates to reporting on consultation with employees on issues concerning gender equality in the workplace. It is not included in the minimum standards and should be. It is of grave concern to the ACTU that WGEA data shows very little progress in this area - only about 50% of employers report that they consult with their employees on gender equity issues.⁵⁵ This is a core problem which must be addressed. The establishment of a culture

⁵⁵ WGEA Submission at p 22

of genuine consultation with, and participation of, workers (and specifically women workers) and unions in addressing gender inequity at work is a critical piece of the puzzle. Workplace cultures will not become more equitable unless workers and their unions are genuinely and regularly consulted on - and involved in - the identification and implementation of measures to improve gender equity. Workers and their unions are in a unique position to know what measures would practically assist in tackling gender inequity at work.

4. The ACTU strongly supports a move towards outcomes-based minimum standards through the setting of clear and objective benchmarks to drive progress on all GEIs. The ACTU agrees that at a minimum this should include a requirement on all employers to have policies or strategies to support *all* of the GEIs, and to mandate the provision of WGEA reports on an organisation's data to their Board or other governing body. However, while these two improvements are important, they are far from sufficient to shift the dial on gender equity. The ACTU strongly supports a move to new *outcomes-based* minimum standards, which is consistent with international developments.⁵⁶ The WGEA submission supports a move to an outcomes-based standard; but notes that it has not had time to conduct the consultations required to undertake this detailed work. The government should allow sufficient time for WGEA to develop a set of outcomes-based minimum standards for consultation.

5. WGEA outlines for further consideration a possible scheme under which *employers* set one target against each GEI in the Minimum Standards and report progress against each target.⁵⁷ While the ACTU strongly supports a shift to an outcomes-based minimum standard, we do not agree that employers should set targets or benchmarks themselves. The purpose of the WGEA framework is to ensure all employers meet at least minimum standards relating to gender equity. If employers are able to set benchmarks themselves, they will be nationally inconsistent, potentially inadequate, and impossible to measure or monitor. This will create an additional reporting burden and a flurry of well-meaning Action Plans, but will not result in real progress towards gender equity. Clear, consistent, objective and measurable numerical benchmarks (at the industry or workplace level) should be set by the Minister and set out in the Legislative Instrument itself, with the capacity to adjust these standards upwards once met. To incentivise actual progress, businesses which fail

⁵⁶ See for example WGEA submission at p 32, which outlines development in France

⁵⁷ WGEA submission p 33

to meet these minimum standards should be subject to reasonable and proportionate compliance action, including penalties (see below).

6. The ACTU supports WGEA Recommendation 29, that Item 2 in the minimum standards (addressing equal remuneration between women and men) be strengthened to 'closing the gender pay gap'. The concept of 'equal remuneration' (or same pay for equal or comparable work) is too narrow and does not require action to address the difference between the average earnings of women and men across an organisation by removing barriers to women's equal participation.

Question 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?

1. Compliance and accountability mechanisms in the Act are too weak and too limited. They are inadequate to drive improvements in gender equity.
2. Affiliates report that some employers often do not report as they should – reports are either late or incomplete – with no penalties or consequences for this. Affiliates also report some 'gaming' of the system, for example employers who carefully time their reporting to ensure they don't have to count their casual employees. Our affiliates also advise that reports are often not provided to unions despite repeated requests. WGEA often does not publish reports until months after they are provided, meaning that the window to use the reports to drive change in workplaces often passes. The Independent Education Union reports that employers sometimes assert that they have complied with the minimum standards as they have policies or strategies 'under development' or 'under review' year on year, with no mechanism to monitor or test the veracity of these claims.
3. After consulting with affiliates, we recommend that the following improvements would strengthen the compliance framework (in combination with a new set of outcomes-based minimum standards) and make it more effective in driving change:
 - a. Require employers to consult with workers (and specifically women workers) and their unions on measures to improve gender equity; and to report on the action taken as a result of such consultation (WGEA Recommendation 19).

- b. Require reporting organisations to provide workers and their unions with a copy of their reports to WGEA, as well as notification of lodgement.
- c. Apply penalties to organisations who fail to comply with their obligations under the Act, including failure to report adequately and/or on time and meet new outcomes-based minimum standards.
- d. Empower an appropriately qualified body or bodies to conduct detailed remuneration and gender equity audits where needed to monitor actual year on year progress towards gender equity.
- e. Require reporting on a set date every year to improve compliance and comparability of data (WGEA Recommendation 24).
- f. Conduct a thorough review of the Workplace Gender Equality Procurement Principles to ensure they are effective in driving improvements in gender equity (WGEA Recommendation 30).

Conclusion

48. Gender inequity remains one of the most significant and pressing policy challenges facing our nation. The ACTU supports the existence of WGEA, but serious reforms are needed to make it effective in tackling gender inequity at work. The timeframes for this review (1 month) are far too short to give these important matters the attention they deserve.
49. This submission has outlined the extent of gender inequality and discrimination in Australian workplaces, including persistent gender pay gaps, the impact of COVID on women's jobs and living standards, the gendered nature of insecure work, lack of access to quality ECEC, adequate paid parental leave and flexible work arrangements, and the failure of current legislative and policy settings to address these issues effectively.
50. Unions have historically played a pivotal role in reducing gender inequity through law reform, bargaining, and award test cases, and continue to do so. Consultation and involvement of workers (and particularly women workers) and their unions is pivotal to improving gender equity in workplaces.

51. The lack of focus in the current framework on consultation with workers and unions, and concrete action and progress are core weaknesses in the system. Reporting requirements exclude far too many workplaces and the 'minimum standards' are far too low. Accountability and compliance mechanisms are too limited.
52. The recommendations in this submission would address these issues and ensure that WGEA can be more effective in promoting gender equity in Australian workplaces, for the good of employees, employers and the national economy as a whole.

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