Australian Government

Workplace Gender Equality Agency

September 2023

A Roadmap to Closing the Gender Pay Gap

WGEA Legislative Reforms

Explainer FAQ

On 30 March 2023, Parliament passed the *Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill 2023*.

Together with the remade Legislative Instruments, which took effect on 6 February 2023, these legislative reforms are a significant step forward to help accelerate employer action to close the gender pay gap.

This FAQ provides detailed information on the legislative changes and links to further advice and tools for employers.

Contents

Legislative reforms

Overview 3

Changes for employers

Implementation timeline 3

Who will these reforms apply to? 3

How will WGEA work with employers to ensure they understand and implement these reforms? 4

Why were these reforms introduced? 4

Who was consulted on these reforms? 4

What are the key changes for employers? 4

Publishing employer gender pay gaps

When will WGEA publish employer gender pay gaps? 6

How will WGEA publish employer gender pay gaps? 6

What will be published in the first release? 6

Why won't employer gender pay gaps, by average, be part of the first release in early 2024? 7

When will WGEA publish average employer gender pay gaps 7

How will WGEA calculate employer gender pay gaps? 8

What time period will the employer gender pay gaps cover? 8

Will employers be given advanced notice of their gender pay gap? 8

Can I explain my gender pay gap or provide context? 8

CEO and casual manager remuneration

Will WGEA publish CEO remuneration? 9

How will this impact employer gender gaps? 9

Does this include remuneration for Partners? 9

What further reforms are proposed?

Overview 9

Legislative reforms

The *Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Act 2023* amends the *Workplace Gender Equality Act 2012 (WGE Act)*.

The WGEA reform package also included changes to the associated Legislative Instruments (*Workplace Gender Equality (Gender Equality Standards) Instrument 2023* and the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2023*).

The 2021 Review of the WGE Act made 10 recommendations to accelerate change for workplace gender equality. The reforms in the Amending Act and the remade Legislative Instruments, deliver either in full, or in part, on six of the 10 recommendations.

Changes for employers

The reforms aim to accelerate workplace gender equality in Australia. Key changes are included in the table below:

What's changing?	When will it happen?
Employers must share their WGEA Executive Summary and Industry Benchmark Report with their Board	From November 2023
WGEA will publish private sector employer gender pay gaps	From early 2024
Employers must provide additional information on employees including age, primary workplace location, as well as CEO, head of business and casual manager remuneration	From 1 April 2024
Reporting on sexual harassment, harassment on the ground of sex or discrimination will be mandatory	From 1 April 2024
Employers with 500 or more staff must have a policy or strategy for each of the six gender equality indicators	From 1 April 2024
WGEA will publish Commonwealth public sector gender pay gaps	From late 2024 / early 2025

Who will these reforms apply to?

The reforms apply to organisations already required to report annually to WGEA.

Under the Act, this includes private sector employers and Commonwealth public sector organisations with 100 or more employees.

How will WGEA work with employers to ensure they understand and implement these reforms?

We understand these reforms will change the way employers have previously reported to WGEA. That's why the legislation allows appropriate lead time for employers before significant changes take effect.

WGEA will provide regular communication with employers about the changes and what they mean for them through:

- direct email
- updates to social media
- webinars and information sessions
- the provision of toolkits and resources
- communication via peak bodies.

Why were these reforms introduced?

Overall, Australian employers have made progress against most of the six gender equality indicators since reporting to WGEA began in 2013-14.

But change isn't happening fast enough.

In fact, in recent years, progress on workplace gender equality in Australia has stalled. WGEA data, collected in the annual Employer Census, indicates employers are not necessarily following up with action to address their gender pay gaps.

It's more than 10 years since Federal Parliament first passed the *Workplace Gender Equality Act 2012*. These reforms will improve transparency, accountability and motivate action to accelerate progress on gender equality in workplaces.

Who was consulted on these reforms?

Feedback and ideas from employers, industry groups, academics, unions, advocacy groups and representatives from government contributed to shaping these landmark reforms.

The 2021 Review of the WGE Act and subsequent further consultation, including a series of virtual roundtables and a survey to employers, informed the drafting of these reforms.

All employers required to report to WGEA were invited to complete a survey about these changes. The government received 344 responses to the survey.

Additionally, external stakeholders were invited to contribute via virtual roundtables. These stakeholders included a variety of organisations and targeted representatives from the business and not-for-profit sectors, employee organisations, higher education providers, the women's sector, users of WGEA's data and other interested parties.

What are the key changes for employers?

Collection of more detailed information to fill knowledge gaps

Existing gaps in the WGEA dataset mean the true state of gender inequality across Australian workplaces is not being measured. The reforms work to close these gaps.

From 1 April 2024, employers will be required to report workforce data on:

- employee age (year of birth)
- primary workplace location
- CEO, head of business and casual manager remuneration.

Mandatory reporting means data will be provided by all employers, rather than a smaller sample that may choose to provide this data voluntarily.

These more detailed insights will help WGEA better understand the factors influencing equality in Australian workplaces. Improving our understanding of this information will allow WGEA (and government more broadly) to drive targeted action for the benefit of Australian individuals, community organisations and businesses.

For more information on CEO remuneration, see **CEO Remuneration** section at page 8.

Reporting on sex-based harassment, harassment on the ground of sex or discrimination

These reforms expand reporting requirements on prevention and response to sexual harassment, harassment on the ground of sex or discrimination in the workplace.

These questions were voluntary in 2023 but will be mandatory from 2024:

- the provisions set out in any policy/strategy, including accountabilities for:
  - preventing and responding
  - the provision of training, its frequency, and content
  - the disclosure processes and management of disclosures; and,
  - leadership statements or communication to demonstrate commitment to prevention and response
- information about sexual harassment risk management
- information about the prevalence data organisations currently collect
- supports available for staff.

Mandatory sharing of Executive Summary and Industry Benchmark Report to the Board

The new legislation requires employers to provide the WGEA Executive Summary and Industry Benchmark Report to their Board.

The Executive Summary sets out the key results from your submission to WGEA's annual Gender Equality Reporting. It will include your gender pay gap, your gender composition and average remuneration per pay quartile and your organisation's key findings under each gender equality indicator.

The Industry Benchmark Report compares your results to the results of other organisations in an 'Industry Comparison Group', which is generated by the Australian and New Zealand Standard Industrial Classification (ANZSIC) industry class as well as employee size.

WGEA makes these documents, confidentially, available at the end of reporting, generally in October / November.

From 2024, employers will need to provide the date the Executive Summary and Industry Benchmark Report were provided to the Board for the previous year in their annual Gender Equality Reporting which must be signed off by the organisation's CEO.

Gender equality indicator policies for large organisations

From 2024, large organisations (500 or more employees) will be required to have policies or strategies for each of the six gender equality indicators.

The six gender equality indicators are:

- GEI 1: Gender composition of the workforce
- GEI 2: Gender composition of governing bodies
- GEI 3: Equal remuneration between women and men

- GEI 4: Availability and utility of employment terms, flexible working arrangements and support for family and caring responsibilities
- GEI 5: Consultation with employees on gender equality in the workplace
- GEI 6: Sexual harassment, harassment on the ground of sex or discrimination.

An organisation can be compliant with this requirement by having separate polices/strategies or by sharing an organisation-wide gender equality strategy/policy that includes aspects that address each of the six GEIs. Either way, the policy/strategy must explicitly address each GEI.

The requirement applies to each relevant employer with 500 or more employees. This means that if an organisation's corporate structure includes multiple entities that have 500 or more employees in their own right, each entity will each need to have their own strategy/policy. These policies could be the same or adjusted for the specific circumstances of the individual entity.

Publishing employer gender pay gaps

Under the new legislation, WGEA will publish employer gender pay gaps, in addition to publishing the gender pay gap at a national, industry and occupational level.

Until now, WGEA has collected gender pay data from employers, but has not had the legislative authority to publish employer gender pay gaps. Instead, employers received this information in a confidential report. Publishing employer gender pay gaps will draw on existing reporting data, so employers will not need to provide additional information to WGEA. These reforms will encourage employers to deploy and drive workplace policies, practices and environments that support gender equality, creating meaningful shifts in Australian working life.

International experience has shown that publishing employer gender pay gaps can lead companies to prioritise gender equality and to a lowering of employer gender pay gaps. In the UK, research indicates it motivated some employers to narrow the wage gap between men and women.

When will WGEA publish employer gender pay gaps?

WGEA will publish the first set of private sector employer gender pay gaps in early 2024. This will cover 2022-2023 reporting.

As private and public sector organisations follow different reporting timelines, the first release of Commonwealth public sector organisation's gender pay gaps will be published in late 2024 or early 2025. Data for Commonwealth public sector organisations will be based on 1 January 2023 – 31 December 2023 reporting.

How will WGEA publish employer gender pay gaps?

The majority of companies reporting to WGEA are single businesses. However, a proportion are corporate groups with multiple businesses. If some or all of their businesses have similar gender equality policies and strategies these businesses can report to WGEA as a 'Submission Group'.

In early 2024 WGEA will publish the median gender pay gap for base salary and total remuneration and gender composition and average remuneration per pay quartile by submission group.

This information will all be detailed in the Executive Summary.

Employers, please note - the gender pay gap you received in your Reporting Overview was your average total remuneration gender pay gap. This gender pay gap will not be published in early 2024. See below for what will be published.

What will be published in the first release?

For the first release of employer gender pay gaps in early 2024, WGEA will publish employer gender pay gaps by median as well as the gender composition and average remuneration per pay quartile.

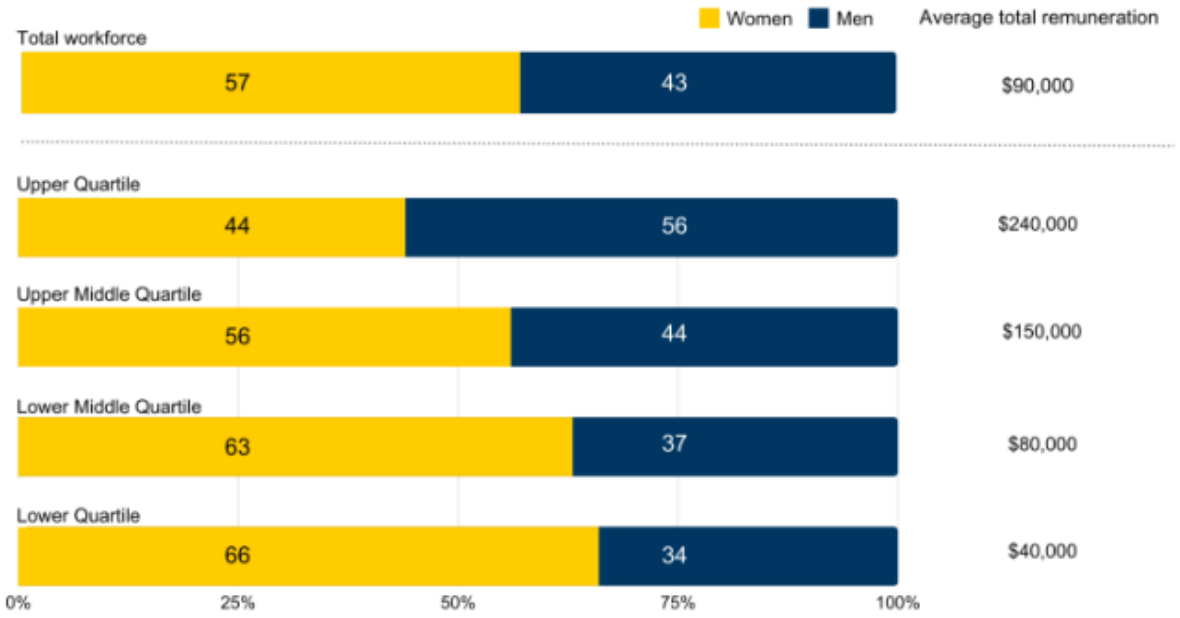
Median gender pay gap

The individual employer's median gender pay gap will be expressed as the percentage difference between women's and men's earnings at an organisation.

The median describes the figure in the middle of the dataset. Identifying the middle of the dataset assists in accounting for outliers, which can occur with CEO remuneration, for example.

Gender composition and average remuneration per pay quartile

WGEA will publish the proportion of women and men and the average total remuneration for each remuneration quartile as shown below.



Why won't employer gender pay gaps, by average, be part of the first release in early 2024?

These reforms make it mandatory for employers to report CEO, head of business and casual manager remuneration. However, this change requires employers to be given a one-year notice period.

This means WGEA will not be able to include this data in the calculations for the first release of private sector employer gender pay gaps.

CEO remuneration has a meaningful impact on the average gender pay gap calculation but is insignificant for median calculations. Therefore, to ensure future comparability, WGEA will publish the first set of employer gender pay gaps only by median.

When will WGEA publish average employer gender pay gaps?

In the second release of gender pay gaps, after CEO, head of business and casual manager remuneration data can be included in the dataset – WGEA will publish employer gender pay gaps by average as well as median.

Average gender pay gap

The individual employer's average gender pay gap will be expressed as the percentage difference between women's and men's earnings at an organisation.

How will WGEA calculate employer gender pay gaps?

The method of calculating employer gender pay gaps will not change. The reforms implement changes to the way these pay gaps are presented and require WEGA to publish them.

WGEA will continue to calculate both the base salary and total remuneration gender pay gaps for employers. To ensure comparability, part-time and casual salaries are converted to full-time equivalent earnings. The total remuneration pay gap calculations include superannuation, bonuses, and other additional payments.

What time period will the WGEA employer gender pay gaps cover?

WGEA's employer gender pay gaps will be based on data supplied by employers in their Gender Equality Reporting. The Gender Equality Reporting period covers 1 April to 31 March.

For the first release of employer gender pay gaps in early 2024, the Gender Equality Report will cover the period from 1 April 2022, to 31 March 2023.

For this reason, an employer's self-calculated, and sometimes published, gender pay gap may differ from the gender pay gap published by WGEA. The employer may be using different data timeframes or different calculation methodologies.

Will employers be given advanced notice of their gender pay gap?

Employers will be informed of their organisational gender pay gap well in advance of it being made public. To ensure the release of this information is a carefully managed process, WGEA will continue to work with employers throughout 2023 and beyond as they prepare for the changes.

Can I explain my gender pay gap or provide context?

We understand that external or internal factors influence the results of an employer's gender pay gap. So, while the gender pay gap is a proxy for gender equality, it may not provide a complete picture of an organisation's commitment to it.

For this reason, employers will have the opportunity to provide a statement that gives context to their gender pay gap results and outlines their plans for action.

This could be a Gender Equality Strategy or Action Plan. WGEA will also provide a template to help guide employers in what could be included in their statement. Instructions for how and when employer's statements can be uploaded to the WGEA website will also be provided shortly.

In the UK, employers are required to calculate their hourly gender pay gap, percentage of women in each pay quarter and bonus pay gap, which the government publishes online. Each employer can also provide an explanatory statement.

Employers can look at the UK's gender pay publishing (gender-pay-gap.service.gov.uk) to see how reporting can look and what employers say in their statements. Search for a company on this website, click "view report" then "what this employer says about their gender pay gap" to read the employer statements.

CEO remuneration

Reporting remuneration for CEOs, heads of business and casual managers is an important step forward in gaining a more accurate representation of the real gender pay gap.

It should be noted that CEO remuneration has previously been reported to WGEA. Currently, many employers (more than 50%) provide CEO remuneration to WGEA voluntarily on an annual basis.

Will WGEA publish CEO remuneration?

As with all remuneration data collected by WGEA, individual CEO pay information will be confidential.

How will this impact employer gender gaps?

Nearly 80% of CEOs in Australia are men. Because CEOs are often the highest paid employees at an organisation, we expect the inclusion of CEO remuneration to have a meaningful impact on employer *average* gender pay gaps.

This is why WGEA will only publish the first set of *average* employer gender pay gaps, in addition to *median* and *gender composition and average remuneration per pay quartile*, once CEO remuneration is reported to WGEA.

Does this include remuneration for Partners?

At this stage CEO remuneration does not include remuneration for Partners in a partnership structure. This is because Partners are not classified as employees and therefore not captured in the WGEA dataset.

WGEA is working with the government to consider how to include Partners in its data collection (For more detail, see *Recommendation 7.3b in the 2021 Review of the WGE Act*).

What further reforms are proposed?

The legislative reforms will implement many of the 10 recommendations that were made in the 2021 Review of the *Workplace Gender Equality Act 2012*.

Most of the outstanding recommendations will be fulfilled through further legislative amendments but are still undergoing careful consideration and consultation.

This includes:

- collection of information about employees who identify as non-binary
- collection of diversity information about employees
- setting and achieving gender equality targets
- additional changes to support *Respect@Work.*

Collection of non-binary data

Since 2021, employers have been able to voluntarily report to WGEA on the workplace data they collect on employees who identify as non-binary. One of the recommendations of the Review was that the Act should be amended to enable the mandatory collection of this data.

WGEA is prioritising work in consultation with specialist organisations, the community sector, unions, and industry groups to develop an approach to collecting this data that is safe and respectful to people who identify as non-binary.

Collection of diversity data

Recommendation 6 of the Review recommended investigating the best way to collect data on other aspects of identity including on Aboriginal and Torres Strait Islander background, cultural and linguistic diversity, and disability.

WGEA has commenced research alongside key stakeholders on the best approach to collecting this data. Since 2022, WGEA has included voluntary questions in its *Employer Census* related to diversity and inclusion and encourages employers to provide voluntary employee diversity data where they collect it.

Setting and achieving gender equality targets

The Review also called for the addition of a new gender equality standard, requiring large employers with 500 or more employees to commit to and achieve specific targets and to report their progress to WGEA.

Development of these gender equality targets requires consultation with businesses and other stakeholders, to make sure they are genuine, measurable, achievable and include meaningful metrics shown to help progress gender equality.

Sex-based harassment, harassment on the ground of sex or discrimination

This Bill supports implementation of recommendations made in the *Respect@Work* report. However, the report also made further findings that collecting data on the prevalence, nature and reporting of sexual harassment is essential to better understand the issue and that this data collection should be a priority.

In light of these findings, WGEA is undertaking further consultation with employers to better understand what data they currently collect relating to sexual harassment prevalence and outcomes – including NDAs or confidentiality clauses – and to understand how this data can be appropriately collected and reported at the workplace level.