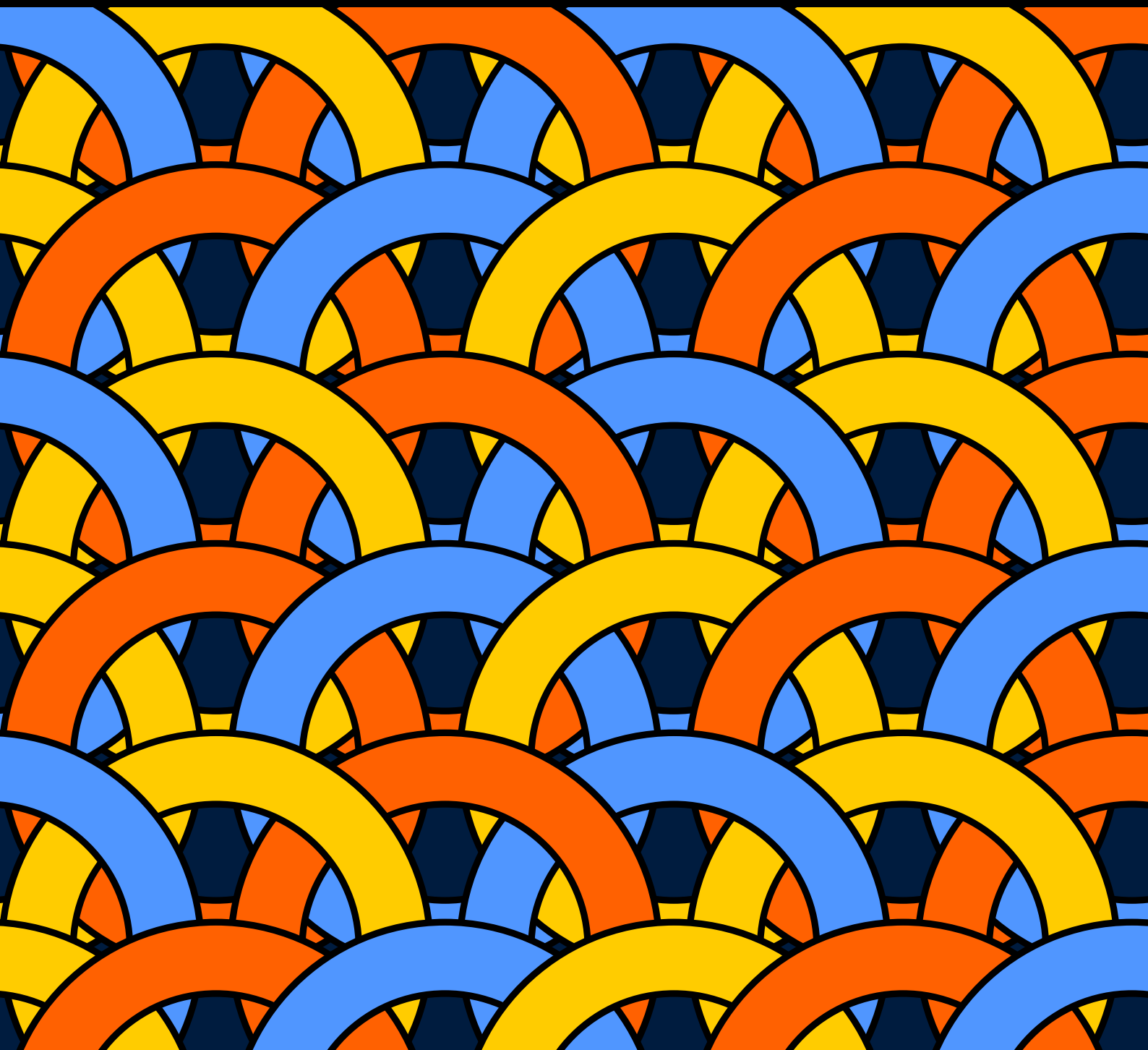


Compliance Strategy

July 2025



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SECTION 1

About the Workplace Gender Equality Agency

Promoting and improving gender equality in the workplace

Our purpose

The Workplace Gender Equality Agency (WGEA, or the Agency) is an Australian Government statutory agency created by the *Workplace Gender Equality Act 2012* (the WGE Act) to promote and improve gender equality in Australian workplaces.

Relevant employers and designated relevant employers (see Who must comply with the WGE Act?) are required to register with WGEA, lodge a report with the Agency annually and meet other requirements aimed at driving gender equality in the workplace. Throughout this Strategy, WGEA will refer to employers as relevant employers, unless there is a requirement that is specific to only designated relevant employers.

The legislation imposes additional requirements on designated relevant employers to meet gender equality standards and select and meet gender equality targets.

Our approach

WGEA works with relevant employers to help them comply with their statutory obligations. We do this by:

- **collecting, analysing and publishing information provided by relevant employers** regarding gender equality in the workplace
- **developing and publishing benchmarks** in relation to gender equality indicators and supporting employers to measure their performance against these to improve transparency and drive outcomes in relation to gender equality in the workplace
- **advising and assisting employers in promoting and improving gender equality** in the workplace, including to meet their obligations under the WGE Act
- **reviewing compliance** with the WGE Act by relevant employers and **responding to non-compliance**
- **promoting and contributing** to understanding, acceptance and public discussion, of gender equality in the workplace and partnering on research
- **undertaking research and developing educational resources and guidance** for employers (and others) for the purpose of promoting and improving gender equality in the workplace.

WGEA collates and publishes remuneration and gender information about relevant employers which is used to publish gender pay gaps, to increase transparency on the state of gender equality in Australian workplaces and to motivate employers to take evidence-informed action to improve equality and end the gender pay gap.

WGEA also publishes information on the gender equality targets selected by designated relevant employers and outcomes at the end of the target cycle.



Our compliance posture

WGEA monitors relevant employer compliance with obligations under the Workplace Gender Equality (WGE) legislation to ensure gender equality information published by WGEA is accurate and complete.

WGEA supports relevant employers to comply with their obligations under the WGE legislation. Where non-compliance is identified, WGEA works with employers to understand the circumstances of the non-compliance and to support them to become compliant in the future.

WGEA is committed to encouraging and supporting compliance and good practice through education and advice while applying a consistent, transparent and proportionate response to non-compliance. This Compliance Strategy (Strategy) demonstrates the practical application of that commitment.

Employers identified as non-compliant may be included on the Named as Non-compliant List, which is published on WGEA's website.

Employers should also be aware that compliance with the WGE Act is a precondition for entering into contracts under the Commonwealth Procurement Framework and eligibility for Commonwealth grants or other financial assistance as set out in the [WGE Act Procurement Principles](#).



SECTION 2

About this Compliance Strategy

Supporting relevant employers to comply with their obligations

Purpose of the Strategy

This Strategy assists relevant employers to understand their obligations and responsibilities under the WGE Act. It also details how WGEA identifies and responds to non-compliance. This is important so that employers and the public can have confidence in the integrity of the system for monitoring and reporting on workplace gender equality in Australia.

Objectives of the Strategy

The objectives of this Strategy are to:

- articulate the obligations of relevant employers under the WGE legislation
- identify compliance priority areas
- support employers to understand how WGEA will fairly and proportionately respond where relevant employers do not meet their obligations.

Our legislation

The Act and Legislative Instruments we operate under can be found at www.legislation.gov.au:

- the [Workplace Gender Equality Act 2012](#)
- the [Workplace Gender Equality \(Gender Equality Standards\) Instrument 2023](#)
- the [Workplace Gender Equality \(Matters in Relation to Gender Equality Indicators\) Instrument 2023](#)
- the [Workplace Gender Equality \(Gender Equality Targets\) Instrument 2025](#)

Principal objects of the WGE Act

01. to promote and improve gender equality (including equal remuneration between women and men) in employment and in the workplace
02. to support employers to remove barriers to the full and equal participation of women in the workforce, in recognition of the disadvantaged position of women in relation to employment matters
03. to promote, amongst employers, the elimination of discrimination on the basis of gender in relation to employment matters (including in relation to family and caring responsibilities)
04. to foster workplace consultation between employers and employees on issues concerning gender equality in employment and in the workplace
05. to improve the productivity and competitiveness of Australian business through the advancement of gender equality in employment and in the workplace.



SECTION 3

Compliance Principles

Outcomes-focused

WGEA's objective is to improve gender equality in the workplace. The Agency's approach to compliance is focused on driving this outcome.

The following principles inform WGEA's approach to identifying and managing non-compliance:

	Engaging and constructive	We support, advise and guide employers on compliance with the WGE legislation and on achieving greater gender equality in Australian workplaces
	Consistent and fair	We treat all employers fairly. We try to ensure that similar circumstances lead to the taking of similar action by WGEA
	Impartial	We demonstrate impartiality, balance and integrity in our dealings with employers and others.
	Transparent and accountable	We explain our decisions and provide ways for people to seek review and submit feedback or complaints
	Proportionate	We take a proportionate response to non-compliance informed by the seriousness of the conduct and the compliance posture of the employer (i.e. whether the employer is willing and able to address the non-compliance or is non-cooperative and unwilling)
	Responsive	We take action responsive to the circumstances of the employer and genuinely respond to feedback about us.



SECTION 4

Compliance obligations and types of non-compliance

Relevant employers have 4 main obligations

Who must comply with the WGE Act?

A **relevant employer** includes:

- any employer with 100 or more employees in Australia¹
- a registered higher education provider that is an employer
- a Commonwealth company or entity that is an employer of 100 or more employees in Australia.

A relevant employer can be a standalone organisation or a corporate group with 100 or more employees in total across all entities. Corporate group subsidiaries with 100 or more employees are also relevant employers.

A relevant employer does **not include certain State or Territory bodies**².

A range of compliance obligations apply to all relevant employers and some additional obligations apply only to designated relevant employers.

A designated relevant employer is:

- an employer that directly employs 500 or more employees.

Overview of compliance obligations

The compliance requirements under the WGE Act can broadly be grouped into 3 categories for relevant employers and an additional 2 categories for designated relevant employers.

Please note that for the first 3 categories, failure by a subsidiary to meet its compliance obligations renders the corporate group parent to also be non-compliant as they are ultimately responsible for the subsidiary.

¹ If, at any time, an employer ceases to be a relevant employer because the number of employees of the employer falls below 100, the Act continues to apply to the employer as if the employer were a relevant employer unless and until the number of employees falls below 80.

² Specifically a relevant employer does not include: a State or Territory; a body (whether incorporated or not) established for a public purpose by or under a law of a State or Territory, other than a registered higher education provider; the holder of an office established for a public purpose by or under a law of a State or Territory; an incorporated company over which a State, a Territory or a body established for a public purpose is in a position to exercise control.



1. Requirements to prepare and lodge annual reports with WGEA

Each year, relevant employers must prepare and lodge a Gender Equality Report (the public report).

What is the public report?

The public report³ comprises information relating to workforce demographics, remuneration, governing body composition and workplace policies and practices. It captures employer performance across 6 gender equality indicators (GEIs). The GEIs are set out in Section 3 of the WGE Act. The precise matters required to be included in the report are specified by the Minister in the WGE Matters Instrument.

The reporting documents that comprise the public report include:

- questions and answers provided in the **questionnaire**
- a **workplace profile** – information on the composition of employees based in Australia
- **workforce management statistics** – information on employee movements.

2. Requirements relating to notification and access (i.e. to make certain information available to employees, shareholders, members, employee organisations and governing bodies)

Employers are required to inform employees and other stakeholders (shareholders or employee organisations with members) as soon as practicable after lodgement of the public report and to provide them with access to a copy of it. Employees and relevant employee organisations can comment on the public report either directly to the employer or to WGEA.

Providing the public report to employees and other stakeholders and enabling them to provide comment promotes transparency and empowers employees by giving them important insights into their workplace and its gender equality performance.

Giving the Executive Summary and Industry Benchmark Report to the governing body

The CEO of a relevant employer that has a governing body is required to give a copy of the WGEA Executive Summary and Industry Benchmark Report to each member of the governing body. WGEA will perform compliance checks to verify this has occurred.

Providing the governing body with key information about the relevant employer's performance regarding gender equality in the workplace further embeds accountability into the reporting process and fosters transparency of gender equality challenges and progress within organisations.⁴

3. Requirements not to give false or misleading information and to co-operate with WGEA

The requirement for relevant employers not to give false or misleading information to WGEA ensures the integrity of the information provided to the Agency for the purposes of monitoring and promoting gender equality in the workplace. It also upholds public trust and confidence in the public reporting of workplace gender equality and enables informed policy making.

The WGE Act aims to maintain the accuracy and reliability of the information collected by WGEA, which is essential for monitoring progress and implementing effective policies to address workplace gender inequality. CEOs of relevant employers are also required to sign off prior to the lodgement of the public report. This sign off is a critical step

³ [Documents & Sign-off | WGEA](#)

⁴ Explanatory Statement, *Workplace Gender Equality (Gender Equality Standards) Instrument 2023*, p 1, www.legislation.gov.au/F2023L00086/asmade/downloads



to ensure the accuracy of the information provided. In addition to WGEA potentially naming an employer as non-compliant for providing false or misleading information, the WGE Act makes it a criminal offence which empowers WGEA to refer the matter to the Commonwealth Director of Public Prosecutions (see [Criminal prosecution for provision of false or misleading information](#)).

Extra compliance requirements for designated relevant employers

1. Requirement to meet the Gender Equality Standards

The *Workplace Gender Equality (Gender Equality Standards) Instrument 2023* contains an extra compliance requirement for a designated relevant employer. The Gender Equality Standards require designated relevant employers to have a policy or strategy in place addressing each of the 6 GEIs.

2. Requirement to select and meet gender equality targets

The WGE Act requires designated relevant employers to:

- 1) select and commit to achieve gender equality targets at the beginning of the targets cycle; and
- 2) meet or demonstrate improvement at the end of a 3-year target cycle.

A designated relevant employer is only required to select targets if they lodged a public report the year prior to making the selection (the baseline⁵).

The *Workplace Gender Equality (Gender Equality Targets) Instrument 2025* sets the targets from which an employer can select and provides the rules for selecting targets. These include that the designated relevant employer must select 3 different targets, at least one of which must be numeric. The Targets Instrument also provides that when selecting the targets the employer must nominate the increase or reduction (as a percentage) for a numeric target that is required to meet the target, and, for an action target, specify the things that will be provided to employees at the end of the target cycle, that were not provided to employees at the time of the baseline report, for the target to be met.

Whilst the statutory obligation is for a designated relevant employer to initially select targets and commit to achieving them and then, at the end of the target cycle, meet the targets, an employer who fails to meet their targets but demonstrates improvement against the Baseline Report will be compliant with the Act.

A designated relevant employer who fails to meet or demonstrate improvement against its targets will not be considered for naming if the employer has a reasonable excuse for not doing so.

5 The baseline is drawn from the data reported to WGEA in the year before the target cycle begins.



Each of the 3 targets are assessed separately for purposes of determining non-compliance and its consequences

Table 1 summarises the relevant employer and designated relevant employer obligations and provides examples of possible non-compliance.

Table 1: Summary of obligations and examples of possible non-compliance

Type of obligation	Relevant employer obligation	Examples of possible non-compliance
Requirements to prepare and lodge annual reports with WGEA *Applies to relevant employers	To prepare a public report relating to the relevant employer and the GEIs (subsection 13(1)) and lodge the public report with WGEA by the due date (or such longer period permitted through extension) (section 13A and 13B). To have the public report signed by the CEO or, for Commonwealth entities, the 'accountable authority' (subsection 13(5)).	<ul style="list-style-type: none"> • Failure to prepare and lodge a report within the required timeframe • Failure to lodge a report with the required information included. • Report is not signed by the CEO or the 'accountable authority' (as applicable) • Report purports to have been signed by the CEO but it is signed by someone else.
Requirements relating to notification and access (i.e. to make certain information available to employees, shareholders and others) *Applies to relevant employers	For employees, shareholders or members <ul style="list-style-type: none"> • inform them, as soon as reasonably practicable after lodging a report, that a public report has been lodged with WGEA and the way certain information may be accessed (subsection 16(1)) • provide them with access to the public report, as soon as reasonably practicable (subsection 16(2)) making sure that no personal information is shared. 	<ul style="list-style-type: none"> • Failure to inform employees, shareholders or members, that the relevant employer has lodged the public report with WGEA and the way in which the report may be accessed • Informing employees, shareholders or members, that the public report has been lodged but not enabling them to access it • Informing employees, shareholders or members that a report has been lodged but doing so a long time after the report was lodged.
Requirements relating to notification and access (i.e. to make certain information available to employees, shareholders and others) *Applies to relevant employers	For employee organisations (e.g. trade unions, employee associations, or other groups or organisations of employees that advocate for the rights and interests of workers) take all reasonable steps to inform them, within 7 days, that a report has been lodged (section 16A).	<ul style="list-style-type: none"> • Failure to take reasonable steps to inform employee organisations that a report has been lodged • Failure to inform employee organisations with members who are employees of the relevant employer within 7 days.



Type of obligation	Relevant employer obligation	Examples of possible non-compliance
Requirements relating to notification and access (i.e. to make certain information available to employees, shareholders and others) *Applies to relevant employers	For employees and employee organisations <ul style="list-style-type: none"> inform them, within 7 days, that comments on the report may be given to the relevant employer or to WGEA (section 16B). 	<ul style="list-style-type: none"> Failure to inform employees, and employee organisations, as soon as reasonably practicable after lodgement that comments on the report may be given to the relevant employer or to WGEA.
	For the governing body <ul style="list-style-type: none"> give a copy of the Executive Summary to each member of the organisation's governing body (if any) (section 16C (1)) give a copy of the Industry Benchmark Report to each member of the organisation's governing body (if any) as soon as reasonably practicable after receiving it from WGEA (section 16C (2)). 	<ul style="list-style-type: none"> Executive Summary and/or Industry Benchmark Report is not given to each member of the governing body as soon as reasonably practicable.
Requirements not to give false or misleading information and to co-operate with WGEA *Applies to relevant employers	<ul style="list-style-type: none"> Not to give false or misleading information as part of a public report or in response to a notice from WGEA Requesting information (section 19B). 	<ul style="list-style-type: none"> Provision of false or misleading information in a report Provision of false or misleading information to WGEA in response to a notice issued by WGEA.
	To provide information to WGEA which has been requested as part of a review of compliance with the WGE Act (section 19A).	<ul style="list-style-type: none"> Failure to respond to a notice given under section 19A Failure to provide sufficient information as requested in writing by WGEA following review of the relevant employer's compliance with the WGE Act.



Type of obligation	Relevant employer obligation	Examples of possible non-compliance
Requirements to meet the Gender Equality Standard and improve over time *Applies to designated relevant employers	Where a Gender Equality Standard has been set by the Minister: <ul style="list-style-type: none"> • meet the Gender Equality Standard • if the designated relevant employer fails to meet the Gender Equality Standard, improve against that Standard over the following 2 reporting periods (section 19C) • The Gender Equality Standard requires that designated relevant employers have a policy or strategy addressing each of the 6 GEIs. 	<ul style="list-style-type: none"> • Failure to have policies or strategies addressing each of the 6 GEIs described in the Gender Equality Standard in a reporting period and then not rectifying this after 2 more reporting periods.
Requirement to select and commit to achieving gender equality targets in the target cycle and meet or demonstrate improvement *Applies to designated relevant employers	Where a target has been set by the Minister: <ul style="list-style-type: none"> • select 3 targets (one must be numeric) • nominate percentage improvement for numeric targets • specify things that will be done or entitlements that will be provided to employees for action targets • meet or demonstrate improvement against each of the targets at the end of the targets cycle. 	<ul style="list-style-type: none"> • Failure to select targets in the public report (section 13 (3AA)) • Failure to meet or demonstrate improvement for each selected target at the end of the target cycles (section 17C).



SECTION 5

How we identify and understand non-compliance

WGEA has a wide range of ways to identify possible non-compliance. When we do, we focus on understanding the reasons for that non-compliance

Our overall approach

Not all non-compliance is the same and WGEA does not treat all non-compliance in the same way. We recognise that some relevant employers may be engaged and committed to complying but, for some reason, are unable to meet their obligations on a particular occasion. For example, employers may not be aware of (or fully understand) their obligations under the WGE legislation, may experience technical difficulties using WGEA's Reporting Portal or may need support to meet the Gender Equality Standards.

By contrast, some relevant employers may choose not to comply, and, despite multiple requests and warnings from WGEA, they may remain disengaged and non-compliant. In these cases, WGEA will take a different approach to the non-compliance.

A key focus of WGEA is understanding any non-compliance so that our response can be reasonable, proportionate and conducive to future compliance.

We verify employer compliance and identify non-compliance by undertaking routine and risk-based monitoring and reviews. Where WGEA identifies non-compliance, we notify the relevant employer and, based on the circumstances, we may take compliance action (including publicly naming relevant employers as non-compliant).

See our compliance pyramid below.



Identification of relevant employers that are not registered

Employers that have not reported previously must register with WGEA for the Gender Equality Reporting program if they have employed 100 or more employees for 6 months or more within a reporting period. These months do not need to be consecutive.

WGEA's aim is for all relevant employers to be registered for the Gender Equality Reporting program and submit information annually. Registration also ensures employers are kept informed of their obligations under the WGE Act. Once registered, employers receive reminders, specific guidance and access to online resources to help them meet their obligations. Registered employers also receive important information about changes to the legislation (and reporting obligations) which may affect them.

If WGEA identifies a relevant employer that is not registered, WGEA will first notify the employer of their obligation to register with the Agency.

Where the relevant employer fails to respond or register with WGEA, we may take compliance action. This is because our aim is to have all relevant employers registered and reporting.

Supporting employers to report

In the lead up to the public report lodgement period (and throughout the lodgement period), WGEA is in contact with relevant employers reminding them about their reporting obligations, prompting them to prepare for reporting and supporting them to complete their reports and lodge these through WGEA's Reporting Portal. This ensures relevant employers are aware of the reporting requirements and are equipped to lodge their reports with WGEA within the legislated timeframes.

WGEA's online [Reporting Guides](#) provide detailed information to support employers in reporting, including information on resolving data quality anomalies and privacy considerations. WGEA also publishes a range of guidance material, research and offers face-to-face advisory services and masterclasses that support employers to report as well as improve workplace gender equality.

When a relevant employer fails to lodge their report within the lodgement period (without an extension), WGEA engages with them to understand the reasons for the non-compliance. Our response depends on the circumstances (see [public reporting of named as non-compliant employers](#)).

Comments and tip-offs

One of the ways WGEA ensures the accuracy of information lodged by relevant employers and encourages employers to continuously improve is to require employers to make their public report accessible to employees and other stakeholders. For this reason, the law also requires that employees and relevant employee organisations must be informed about how they can make comments on an employer's report to the employer or to WGEA.

Where people have concerns about the accuracy of information reported, we encourage them to raise it with their employer within the 28-day period after the report has been lodged with WGEA. This may prompt the employer to review their report and make any necessary amendments.

WGEA also receives comments (from employees and others) on matters that directly relate to a relevant employer's report. Sometimes these may suggest that an employer has provided false or inaccurate information or has otherwise not complied with their obligations under the WGE Act.



For example:

- an employee might inform WGEA they have not been provided with access to the public report
- an employee might inform WGEA they believe the information reported by their employer is not correct (and give reasons for this belief)
- an employer may have indicated it provides primary carer's leave to both men and women, but this does not align with the employer's documented policies and/or experience of an employee
- a member of the employer's governing body might advise WGEA they have not been given access to the Executive Summary or Industry Benchmark Report.

Sometimes a complaint is based on a misunderstanding about reporting or the information that is published by the employer or WGEA. In this instance, we talk through the concerns with the informant and provide them with relevant information to address their concerns.

In other cases, WGEA assesses the information given by the informant and considers any other relevant information it already holds in relation to the employer. We then decide whether to investigate the matter further. Our first step is to put the issue or question to the relevant employer.

In all cases, we:

- comply with our privacy obligations
- respect the confidentiality of the informant where it is requested
- put any concerns we may have to the relevant employer
- afford procedural fairness to all parties
- ensure we have all the relevant information before making any conclusions (or taking any actions) in relation to possible non-compliance.

Formal review of an employer's compliance with the WGE Act

Based on intelligence, WGEA may decide to review compliance with the WGE Act. This is known as a risk-based review. WGEA may also decide to undertake a routine or random review of compliance with the WGE Act. These reviews may relate to an individual or group of employers and are typically completed at the end of a lodgement period. The reviews may relate to recently introduced legislative obligations and reflect a compliance priority.

In undertaking a review, WGEA will provide a written notice to the employer/s seeking specified information to verify the accuracy of information included in the employer's report or otherwise relating to the employer's compliance with the WGE Act. The notice will set out the period within which the information must be given (which will not be less than 14 days).

For example, WGEA might ask for evidence that the employer has complied with the obligation to give certain reports to the governing body. The review tests both compliance with a legislative requirement as well as verifying information the employer has provided in the public report. The WGE Act makes a failure to respond to a written notice a non-compliance in itself. An employer who fails to respond to a notice without a reasonable excuse could be named by WGEA.



SECTION 6

Our response to non-compliance

We are a 'right touch' regulator

Assessment and prioritisation of non-compliance

Contraventions of the WGE Act may range from relatively minor, inadvertent non-compliance through to more serious, deliberate contraventions. We assess non-compliance to determine the most appropriate response and to ensure the best use of our finite resources.

Every 2 years WGEA sets compliance priorities for the following 2 years. Our priorities are informed by:

- what we observe through reporting patterns
- our discussions with employers and other stakeholders including what is important to them
- where we see the greatest impact of our actions in terms of advancing workplace gender equality
- the need to ensure new obligations are complied with
- our observations of changes in compliance. For example, if there are areas where we are observing increased non-compliance, we may focus more strongly on these areas.

Compliance priorities for 2025-27

WGEA's compliance priorities for 2025-27 are:

- identifying relevant employers who should be reporting to WGEA, but are not
- relevant employers reporting on time
- provision of reports to governing bodies
- designated relevant employers selecting, and committing to achieve, gender equality targets.

Naming of non-compliant employers

Where a relevant employer fails to comply with the WGE legislation and does not provide a reasonable excuse, WGEA can publicly name the employer on our website, in a report to the Minister or in our Annual Report that is tabled in both houses of Parliament.

WGEA recognises that employers may not always get it right – they may:

- not understand their regulatory obligations, including to select targets
- miss reporting deadlines due to unavoidable circumstances
- accidentally lodge incorrect information in their reports to WGEA
- experience business disruption or restructure that prevents them meeting or improving against their selected gender equality targets.

Where WGEA identifies potential non-compliance with requirements under the WGE Act and before naming an employer as non-compliant, we will give employers an opportunity to explain.



The Agency can only name employers who do not have a reasonable excuse

Section 19A – Reasonable excuse

WGEA will notify the employer of the potential non-compliance by issuing a section 19A (reasonable excuse) notice. This notice:

- notifies the employer that they have been identified as non-compliant with the WGE Act
- requests the employer provide information to WGEA, within 14 days, about the circumstances and reasons for their non-compliance
- notifies the employer of the consequences of non-compliance with the WGE Act.

Where the employer accepts but provides a **reasonable excuse** for the non-compliance, the employer **remains non-compliant** but will not be publicly named as non-compliant. This is the end of the matter.

Exceptions to Section 19A reasonable excuse process

A private sector employer who lodges a report outside the lodgement period, but before 31 October, and who has satisfied all other compliance requirements, will not be considered for naming.

Section 19D – Intent to name

Where the employer fails to respond to the section 19A notice and/or provide a reasonable excuse, WGEA's discretion to name arises.

Because the naming power is discretionary, WGEA can decide **not** to pursue naming an employer who is non-compliant without a reasonable excuse. If so, the employer is advised that they are non-compliant without a reasonable excuse but will not be named. This is the end of the matter. The employer does not receive a section 19D notice and is not required to make representations as to why naming should not occur.

The legislation does not specify what factors are relevant to WGEA's 'exercise of the discretion to name' but leaves it to the Agency to decide based on the particular facts and circumstances of a given case. WGEA considers the following factors:

- the employer's response to the section 19D notice
- employer size
- previous non-compliance history.

If, for example, an employer has previously had a good track record of compliance with the Act, WGEA may exercise its discretion not to name. Or the Agency may decide not to pursue naming of a small-sized first-time reporter who is non-compliant without a reasonable excuse. Where employers are repeatedly and/or wilfully non-compliant, WGEA is more likely to publicly name them as non-compliant.

If an employer is non-compliant without a reasonable excuse and WGEA has formed the intention to name the employer, WGEA will issue a section 19D (intent to name) notice.

This notice:

- notifies the employer that they have been identified as non-compliant with the WGE Act and sets out the details of the non-compliance
- notifies the employer of WGEA's intent to publicly name the employer as non-compliant
- gives the employer 28 days to make a written representation why naming should not occur.

After having regard to any written representations made by the employer, WGEA will decide whether to proceed to name the employer and notify the employer of this decision.

If WGEA accepts a written representation as to why naming should not occur, the employer remains non-compliant but will not be publicly named as non-compliant.



If an employer does not respond to the invitation to make a written representation about the proposal to name, WGEA is unlikely to change its mind about the proposal. This is because WGEA has not received any further information relevant to the exercise of the discretion than it had when first forming the intention to name.

Naming can occur by electronic or other means. WGEA generally names non-compliant employers on its website.

What is a reasonable excuse

The availability of reasonable excuse as a defence, or to avoid liability, is a common feature in legislation. The scope of the words 'reasonable excuse' is difficult to define because legislatures intend it to be a flexible concept. This concept acknowledges that rigid application of the law should not lead to unjust outcomes when circumstances genuinely prevented someone from meeting their legal obligations.

Judicial interpretation is that 'what constitutes a reasonable excuse' must be determined by the circumstances of each case and by reference to the purpose of the statutory provision. Courts have said that reasonable excuse is not confined to physical or practical difficulties in complying with legislation, but includes any excuse which would be accepted by a reasonable person as sufficient to justify non-compliance. Courts have also held that expense and inconvenience in complying will not ordinarily provide a reasonable excuse for non-compliance.

The WGE Act's Explanatory Memorandum provides some useful guidance on Parliament's intention:

The issue whether a relevant employer had a reasonable excuse for failing to comply with the Act would depend on the circumstances of the case. However, the reasonable excuse must be one that an ordinary member of the community would accept as reasonable in the circumstances. The failure must not simply be a deliberate act of non-compliance. If the circumstance that prevented the relevant employer from meeting their requirement was unforeseeable or outside the organisation's control, this may constitute a reasonable excuse. For example, a natural disaster that has threatened the viability of an organisation could have been a factor in the organisation's failure to comply.

In determining if a reasonable excuse exists, WGEA looks at each employer's individual circumstances and asks whether a reasonable person would accept the excuse provided as sufficient to justify non-compliance.

Whilst not decisive, a useful factor suggested by the Explanatory Memorandum is whether the circumstances relied upon are an unexpected incident rather than within the control of the organisation.

WGEA is unlikely to accept the following as reasonable excuses:

- the employer was busy during the lodgement period
- there were changes to the CEO or other key personnel during the lodgement period affecting understanding of reporting obligations
- CEO or reporting contact details were not updated therefore WGEA correspondence was not received
- the CEO was unaware the Executive Summary and/or Industry Benchmark Report required sharing with the Board
- the CEO was unaware of the selected targets and therefore did not make a plan to meet them.



The excuse must be both genuine and objectively reasonable. For instance, forgetting to lodge a report would not be considered a reasonable excuse, whereas a reporting contact being hospitalised during the lodgement period might be. Overall, WGEA seeks to apply the concept of reasonable excuse in a manner that promotes the objects of the Act, and achieves fairness for all employers who take the time to report, whilst accounting for human fallibility and exceptional situations.

What to include in a representation about naming

A representation to WGEA about the proposal to name is different to providing a reasonable excuse, for non-compliance. In this context an employer is acknowledging its status as non-compliant without a reasonable excuse but asking WGEA to refrain from naming them. The employer may reiterate the reason for non-compliance, before affirming its commitment and describing what has been done to avoid future non-compliance.

A representation could also include a reasoned argument as to why public naming would be inappropriate or unjust in the circumstances. This may include significant impact on business reputation and stakeholder trust, and/or adverse effect on commercial opportunities. WGEA is unlikely to accept a representation as to why an employer should not be named in successive years.

Criminal prosecution for provision of false or misleading information

The WGEA legislation (and the public reporting of gender equality information) depends on employers being truthful in their reporting. Relevant employers that provide false information or mislead through their reporting put the integrity of the system at risk. This also threatens to undermine the confidence of the public and other employers in the public reporting of gender equality.

This is why the Parliament made the provision of 'false or misleading information or documents' an offence under sections 137.1 and 137.2 of the Criminal Code (section 5A of the WGE Act states that Chapter 2 of the Criminal Code applies to all offences against the WGE Act).

WGEA takes such conduct seriously. As with any non-compliance, WGEA will first try to understand the circumstances of the non-compliance and give employers the opportunity to remedy the non-compliance.

In the most egregious cases, where an employer has provided false and misleading information to WGEA, where this has been intentional (and without excuse) and where there is public interest in pursuing a criminal prosecution, WGEA has the power to refer the matter to the Commonwealth Director of Public Prosecutions who would deal with the matter in accordance with the Prosecution Policy of the Commonwealth.



SECTION 7

Transparency and accountability

As a regulator and centre of expertise around workplace gender equality, WGEA wants to continuously improve our performance, capability and culture, to build trust and confidence in Australia's approach to gender equality in workplaces.

One of the key ways we do this is by being transparent about our approach (including our approach to non-compliance) and by being transparent about our own performance.

As an Australian Government statutory agency, we produce and make publicly available a variety of accountability, reporting and governance documents – these are available on our [website](#).

You can use the [Contact WGEA](#) form on our website to send us an enquiry or provide feedback.

At the end of each reporting period, WGEA issues a customer satisfaction survey to employers to understand their experience. Feedback provided in response to the survey provides us with useful information to continue to improve our services and reduce the burden on employers. We report the results of our annual survey in our Corporate Plan and Annual Report.

SECTION 8

Other information

We're here to help

Contact us

For more information on our approach to compliance (or gender equality more broadly) please contact us:

- by lodging a support request in the [WGEA Reporting Portal](#)
- via an [online form](#)
- via email at compliance@wgea.gov.au
- by post – GPO Box 4917, Sydney NSW 2001.

Our [Reporting Guide](#) includes a wide range of resources to support employers to comply with their obligations under the WGE Act and our [website](#) has a range of information about how to drive change to improve workplace equality.





Additional information

For further information, please contact:

Workplace Gender Equality Agency
Level 7, 309 Kent Street
Sydney NSW 2000
T: 02 9432 7000 or 1800 730 233
E: wgea@wgea.gov.au
www.wgea.gov.au

Follow us on social media



Workplace Gender Equality Agency



@wgeagency



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