

COMMENTS BY THE AUSTRALIAN
COUNCIL OF TRADE UNIONS (ACTU)

ON REPORTING MATTERS

WORKPLACE GENDER EQUALITY ACT 2012

30 January 2013

Contents

1.	INTRODUCTION	2
1.1	DO THE PROPOSED KEY OUTCOMES SUFFICIENTLY REFLECT THE INTENT OF THE ACT?	3
1.2	DO THEY NEED AMENDING OR EXPANDING?	3
2.	MEASURABLE OUTCOMES AND PROCESS INDICATORS	4
2.1	PRIORITY MEASURABLE OUTCOMES	5
2.2	PRIORITY PROCESS INDICATORS IN TERMS OF EACH KEY OBJECTIVE	6
2.3	DO EMPLOYERS CURRENTLY COLLECT THIS INFORMATION? WHAT EXISTING INFORMATION IS MOST USEFUL? WHAT INFORMATION HAVE EMPLOYERS PREVIOUSLY COLLECTED BUT REJECTED FOR LACK OF INSIGHT?	8
2.4	WHICH OUTCOMES OR PROCESS INDICATORS ARE LIKELY TO BE MOST USEFUL FOR EMPLOYERS?	8
3.	MINIMUM STANDARDS	9
3.1	Which outcomes or process indicators will be most difficult and/or costly for employers to report on? Why?.....	9
3.2	Are there alternative ways this information could be obtained?	9
3.3	Would it be beneficial or reasonable to phase certain outcome measures or process indicators in over time? ...	10
3.4	If so, which ones, and on what basis?	10
3.5	What assistance will employers need to report on particular outcomes measures or process indicators?.....	10
3.6	Are there any outcomes or process indicators that should or should not be included for particular industries? Why?.....	10

D No. 05/2013

1. INTRODUCTION

The Australian Council of Trade Unions (ACTU) represents 47 unions and almost 2 million working Australians. The ACTU and its affiliated unions have a long and proud history of representing workers' industrial and legal rights and advocating for improvements to legislation designed to ensure all workers are given equal opportunity in the workplace. The ACTU strongly supports the new Workplace Gender Equality Act (WGEA) 2012.

The lack of progress towards equality in the workplace, in particular the gender pay gap which has stubbornly persisted at around 17% for the past decade, is well documented. The Gender Equality Indicators outlined in the WGEA address some of the reasons for this lack of progress, including how we value 'work', how we pay employees, what opportunities women and men (particularly those with family and caring responsibilities) have to fully participate in paid work and what barriers exist in the workplace to career progression and leadership opportunities.

If we genuinely wish to progress towards gender equality in the workplace, the WGEA reporting matters must be focussed on achieving real change.

Many of our members are frustrated because often their company's EEO reports do not reflect what actually happens in their workplace. They are also frustrated by the lack of connection between the lodging of reports and achievement of tangible improvements to equity issues in their workplaces. This lack of confidence in the reporting process has resulted in a fairly bleak opinion of the framework by many workers.

We are hopeful that the reporting framework outlined in the new WGEA will not only be streamlined to make it easier for employers to report, but will also be smarter and more targeted at connecting EEO Reports to tangible improvements to workplace equity across all levels organisations. To this end, it is critical that the outcomes proposed in the consultation brief reflect the objectives of the WGEA and the Gender Equality Indicators facilitate a meaningful collection of data which can be used to further those objects and outcomes.

We note that the Sex Discrimination Act (1984) does not contain any proactive or preventative equal opportunity components- rather it is complainants based legislation which relies on individuals to pursue time consuming and expensive litigation to remedy unequal treatment at work. The WGEA is the only legislative mechanism we have to identify and prevent gender inequity in the workplace.

In this context, along with government, unions and the community, employers must acknowledge their role and responsibility in tackling gender inequity in Australia. The ACTU, itself a reporting organisation, does not believe the obligation to submit an annual EEO Report as onerous, particularly in view of the tangible benefits derived by both employees and the business. We note that the obligation to lodge EEO Reports only applies to organisations employing over 100 employees who are more likely to have payroll or human resource systems in place already. It is in fact simply a matter of good management to analyse workforce policies, procedures and practices in line with the Gender Equality Indicators. This not only ensures gender equality, it also assists businesses to achieve a diverse, skilled and experienced workforce.

Australia does not have a good international reputation generally regarding gender equity in employment. Despite having one of the highest levels of educational attainment for women, we have one of the lowest workforce participation rates of mothers in the OECD. We need to address this for reasons of social equity and for the robustness and global competitiveness of the Australian labour market and economy.

1.1 DO THE PROPOSED KEY OUTCOMES SUFFICIENTLY REFLECT THE INTENT OF THE ACT?

The consultation brief proposes five key outcomes to consider in the development of reporting matters. The proposed outcomes are:

1. To improve women's workforce participation across Australia;
2. To improve women's representation in leaderships positions in workplaces and on governing bodies;
3. To improve equal remuneration for work of equal value, between women and men;
4. To increase flexible working for both women and men, particularly those with family or caring responsibilities; and
5. To promote employee and employer engagement on gender equality.

The principal objects of the Act include to:

- Promote and improve gender equality (including equal remuneration) in employment and in the workplace;
- Support employers to remove barriers to the full and equal participation of women in the workforce;
- Promote the elimination of discrimination in employment (including in relation to family and caring responsibilities);
- Foster workplace consultation between employers and employees on gender equality issues; and
- Improve the productivity and competitiveness of Australian business through the advancement of gender equality in employment.

The five key outcomes proposed do not adequately reflect the objects set out in the WGEA legislation for the following reasons:

1. The Object of '*promoting and improving gender equality*' is broader than '*improving women's workforce participation*';
2. The object to support employers to *remove barriers* to the full and equal participation of women in the workforce is not addressed;
3. The object of promoting the *elimination of discrimination* in employment is not addressed;
4. '*Promotion of employee and employer engagement*' does not appropriately reflect the object of fostering '*consultation between employers and employees*'; and
5. The object to improve the *productivity and competitiveness* of Australian business is not reflected in the proposed outcomes.

1.2 DO THEY NEED AMENDING OR EXPANDING?

1. The Object of '*promoting and improving gender equality*' is broader than '*improving women's workforce participation*'. Workforce participation alone may not be a sufficient indicator of progress towards equality, particularly in light of the evidence that women in particular are overrepresented in low paid, insecure work, lack access to career progression opportunities (particularly when returning from parental leave) and are dissatisfied with the number of hours they work. The outcome should be to improve women's full and equal workforce participation across all levels of organisations.

2. The object to support employers to *remove barriers* to the full and equal participation of women in the workforce is not addressed in the proposed outcomes. The removal of barriers is an important proactive and preventative component of the WGEA. The proposed outcomes should include this objective.
3. The object of promoting the *elimination of discrimination* in employment is not reflected in the outcomes. Statistics highlight the prevalence of gender discrimination in workplaces; most recently, ABS data released on 16 November 2012 indicated 20% of pregnant women report discrimination at work. It would be incredibly remiss of the legislation and reporting framework not to include data on gender discrimination and sex based harassment.
4. '*Promotion of employee and employer engagement*' does not appropriately reflect the object of fostering 'consultation between employers and employees'. Consultation with employees is critical to achieving real change within the organisation. Too often employees and in some instances, managers, report either not being aware of the existence of an EEO report at all, not having any input into the preparation of the report, or that the report is drafted by HR in head office which does not reflect the reality in their workplace and will not be implemented in their workplace. This lack of consultation has led to workers questioning the relevance and accuracy of EEO reports.

We note that the proposed 'spot checks' conducted by special team of WGE Agency staff to verify Reports have been downgraded in the Act to 'on the papers' checks. Without an effective employee, union and WGE Agency verification process to serve as a check and balance, the WGEA legislation will continue to be regarded as ineffective as it has been under the previous legislation and administration.

The outcome should reflect the *obligation of employers to consult with employees and their representatives* about the reporting matters during the process of preparing and lodging reports as well as generally promoting employee and employer engagement.

5. The object to improve the productivity and competitiveness of Australian business should also be reflected in the outcomes in the context of the important role the legislation plays in communicating the 'big picture' for cultural change and monitoring progress towards gender equality.
6. We believe the proposed outcome to improve *equal remuneration for work of equal value* should explicitly recognise that total remuneration includes performance bonuses, penalty rates, overtime, salary sacrifice arrangements and other additional remuneration benefits.

2. MEASURABLE OUTCOMES AND PROCESS INDICATORS

The information gathered by employers for EEO Reports needs to genuinely provide employers and employees with the information they need to identify inequity and to work towards the key objectives. The data should be quantifiable and provide a base against which future reports can clearly indicate where improvements have been made and where further attention is warranted.

The data collected should facilitate a more proactive role for the WGE Agency in terms of assisting employers to identify and develop strategies to address gender inequity in their workplaces.

As far as possible data collected should also enable WGEA to derive statistical comparisons for benchmarking and to communicate the status of employment equality to the community more broadly.

2.1 PRIORITY MEASURABLE OUTCOMES

The Gender Equality Indicators (GEIs) assist in defining the priority measurable outcomes:

1. Gender composition of the workforce;
2. Gender composition of governing body members;
3. Total remuneration payments of men and women for the reporting period;
4. Availability and usage of employment terms, conditions and practices relating to flexible work arrangements for employees with family or caring responsibilities; and
5. Consultation with employees on issues concerning gender equality in the workplace.

In addition, the ACTU strongly advocates that in order to effectively measure the key outcomes of the Act, and to assist in meeting the Object of removing barriers to full participation, the GEIs must also include:

6. Gender Discrimination/Sex-based Harassment; and
7. Training, Development and Progression.

Key measurable outcomes for each of the GEIs should as a minimum include:

1. Gender composition of workforce / governing bodies

- a. Number and gender of employees, categorised by employment status (full-time, part-time or casual), occupation / classification;
- b. Number and gender of candidates interviewed and / or appointed to available positions; and
- c. Number and gender of board/governing body members.

2. Total remuneration payments of men and women for the reporting period

- a. Total remuneration payments of men and women for the reporting period by occupation (i.e. as reported in group certificate which include all additional payments such as performance payments, penalty rates, overtime, bonus payments and allowances per annum) and employment status; and
- b. Graduate annualised base salary on entry per annum, categorised by occupation and by gender.

3. Flexible Work Practices

- a. Number and gender of employees taking and returning from paid and / or unpaid parental leave; and
- b. Number of written employee requests for flexible work practices (including part-time work; job-share; flexible start and finish times; compressed hours; working from home) across gender, occupation and employment status;
- c. Number of written grants of requests for flexible work practices categorised by gender, occupation and employment status; and
- d. Number of written refusals of the requests for flexible work practices categorised by gender, occupation and employment status.

4. Consultation with employees on issues concerning gender equality in the workplace.

- a. Verification that employees and employee representatives have participated in the EEO reporting process and have been notified of the lodgement of the report; and
- b. Verification that CEOs and senior management have authorised the report and the date the report was / will be provided to shareholders.

5. Gender Discrimination/Sex-based Harassment

- a. Number of (substantiated / settled/ unsubstantiated) complaints made by employees relating to gender discrimination and/or sex-based harassment (including bullying) categorised by gender and occupation; and
- b. Outcomes of any (*substantiated / settled/ unsubstantiated*) complaints by employees relating to gender discrimination and/or sex-based harassment (including bullying) made during the reporting period.

6. Training, Development and Progression

- a. Number of employees taking up company provided or sponsored education or training programs categorised by gender and occupation;
- b. Number of employees provided financial assistance or supportive work arrangements to attend external education or training programs categorised by gender and occupation;
- c. Number of employees provided leadership training or access to leadership opportunities categorised by gender and occupation; and
- d. Number of employees awarded internal promotion or higher duties within the reporting period categorised by gender, occupation and employment status.

2.2 PRIORITY PROCESS INDICATORS IN TERMS OF EACH KEY OBJECTIVE

Quantitative statistical data on its own does not indicate what policies, procedures or practices may be hindering or promoting gender equality in the workplace. In order to measure the state of play of gender equality in an organisation, measurement must also include some meaningful indication of the workplace culture and where improvements may be warranted. The process of an organisation asking itself about some of its key policies, procedures or practices is worthwhile in itself as a mechanism for review and analysis of potential areas of improvement.

The ACTU understands the imperative to streamline the reporting process for employers but remains concerned to ensure that the streamlined reporting process delivers meaningful measurable quantitative data as well as providing a genuine indication of the practical effectiveness and implementation of the processes employed by the organisation to meet gender equality objectives.

For example, a yes/no answer to questions such as “do you set targets for ...” is meaningless without some attempt to determine what the target is, who it applies to and to what degree it is met. The move to online reporting will assist in streamlining generally and may also provide categories of qualitative answers which are quick and easy to provide such as drop down boxes which prompt, (for example, who the targets apply to: ‘board’, ‘senior management’, ‘middle level management’, ‘positions leading to management’, ‘other’ etc.).

As a minimum, data collection on priority process indicators should include information on:

1. Gender Composition of Workforce

- Analysis of any inequity in the representation of women across the workforce;
- Evaluation / identification of strategies to improve the representation of women across areas of the organisation where inequity is identified;
- Setting of targets for the improvement in the representation of women across the workforce, in particular, in leadership positions (including representation of women in management, board/governing body); and
- Analysis of employee exit reasons categorised by gender, classification and employment status.

2. Total remuneration payments of men and women for the reporting period

- Analysis of any inequity in total remuneration payments of men and women for the reporting period categorised by occupation, classification and employment status;
- Analysis of any inequity in graduate annualised base salary on entry per annum, categorised by gender, occupation, classification and employment status; and
- Evaluation / implementation of action plan(s) to address any gender pay gap.

3. Flexible Work Practices

- Nature of requests for flexible work practices which were granted in writing categorised by gender, occupation and employment status;
- Nature of requests for flexible work practices and reasons for being refused which were provided in writing categorised by gender, occupation and employment status; and
- Training of managers specifically in managing a flexible workforce.

4. Consultation with employees on issues concerning gender equality in the workplace

- The manner in which, and on what issues, employees and employee representatives were consulted and engaged in the EEO reporting process;
- Manner in which employees and employee representatives been notified of the lodgement of the report and how they can access the Report;
- Manner in which the report was / will be provided to the board of directors and shareholders and outcome of the board's consideration of the report.

5. Gender Discrimination/Sex-based Harassment

- Analysis and action taken to reduce incidence of complaints;
- Nature and frequency of training conducted for all employees in relation to gender discrimination and sex- based harassment (including bullying); and
- Existence and operation of complaints handling procedure.

6. Training Development and Progression

- Nature of employer provided or sponsored education and training programs taken up by employees categorised by gender, occupation and employment status;
- Nature of financial assistance or supportive work arrangements provided to employees to attend external education or training programs categorised by gender and occupation and employment status;
- Analysis and identification of inequity in access to training and development opportunities and /or support and identification / evaluation of strategies to address the inequity; and
- Analysis of the number of employees awarded promotion categorised by gender, occupation and employment status.

2.3 DO EMPLOYERS CURRENTLY COLLECT THIS INFORMATION? WHAT EXISTING INFORMATION IS MOST USEFUL? WHAT INFORMATION HAVE EMPLOYERS PREVIOUSLY COLLECTED BUT REJECTED FOR LACK OF INSIGHT?

Employers currently collect much of the information required by the WGEA GELs. For example, payroll systems usually include classification and pay scales, group certificates include total remuneration, human resources staff usually keep records of appointments, higher duties promotions, returns from parental leave, written responses to requests for flexible work arrangements, attendance at training courses, discrimination or harassment complaints and so on. This material is also often presented in reports to board of directors and / or shareholders.

As a reporting organisation, the ACTU does not find it onerous to compile this information. In fact, it is regarded as an opportunity to take stock of our policies, practices and procedures and analyse the extent to which they hinder or promote equality and to identify areas in need of addressing.

The existing information often cited by employers to unions as most useful is access to other organisation's EEO reports, in particular, where there are examples of best practice strategies and policies. These reports are a resource for organisations to consider when completing their own reports especially when looking at potential strategies to address key areas of inequity in their organisation. It would be useful if these reports were available in categories which made sense for organisations wanting best practice example, for key GEL categories or from similar organisations, industry or size.

The capacity to complete reports online will assist in streamlining the reporting process significantly. It is important that the online reporting format is as compatible with the prevalent payroll and human resources data packages as possible. The key data that employers will be required to collate should be communicated as soon as practicable so as to assist organisations to adapt to the new reporting regime.

2.4 WHICH OUTCOMES OR PROCESS INDICATORS ARE LIKELY TO BE MOST USEFUL FOR EMPLOYERS?

In our opinion, the most useful outcome or process indicators are those which clearly facilitate genuine analysis and identification of inequity and provide the organisation with an opportunity to develop and evaluate strategies to address the inequity.

The reporting regime must remain consistent over a significant period of time to enable organisations to genuinely evaluate the success or otherwise of strategies.

Importantly, consistency of data will also enable businesses to track progress in addressing workplace equity in comparison to other similar businesses. One of the most common comments

unions hear from employers is that they want some guidance as to what they could be doing to improve gender equity in their organisations and guidance as to what standards or benchmarks they should be striving to achieve.

3. MINIMUM STANDARDS

The ACTU supports the introduction of industry benchmarks as a mechanism to ensure that compliance requires more than merely submitting a Report. Appropriate benchmarks will provide greater incentive and guidance to employers when analysing their policies, procedures and practices against some meaningful criteria.

We believe the benchmarks should be developed in consultation with industry representatives, unions and employers to ensure they take in to account the particular circumstances of an industry and be set at a level which is reflective of community standards and achievable for organisations operating within the industry. The benchmarks should be based on realistic efforts employers can make through their policies, procedures and practices, to improve gender equity within their organisations and industry.

This would ensure that employers in male dominated industries and occupations are not disadvantaged. Measuring the efforts employers make through policies, procedures and practices to improve gender equity, is achieved in a variety of similar programs and we note, for example, that a construction company won the most recent Work Life Balance Award despite operating in a male dominated sector.

Whilst the benchmarks should reflect an appropriate standard that all organisations can and should be able to achieve, they should be complemented with 'best practice' examples to ensure that organisations can continue to strive for improvements.

OTHER POSSIBLE CONSIDERATIONS

Impact on business

3.1 Which outcomes or process indicators will be most difficult and/or costly for employers to report on? Why?

Streamlining the process to focus on quantitative data which is by and large already collected by organisations, and facilitating on line reporting, will assist to minimise any impost on employers. Ensuring the data required is meaningful and of genuine assistance to organisations will deliver financial and organisational benefits to employers. Facilitating opportunities for 'drop down boxes' where possible in the reporting of process indicators will make it easier for employers and assist in collecting meaningful and consistent data.

3.2 Are there alternative ways this information could be obtained?

The ACTU supports collaboration with the tax office in order to assist in identification of employers with more than 100 employees and ensure they are aware of their reporting obligations.

Timing

3.3 Would it be beneficial or reasonable to phase certain outcome measures or process indicators in over time?

The ACTU strongly opposes any further extension of timelines to meet reporting obligations. The review of the legislation has been on foot since 2008 and employees have waited long enough for reform of the reporting regime.

The implementation of the new reporting regime already has a 12 month phase in period whereby employers are not obliged to submit full reports for 2012-13 in order to prepare for the new reporting format and further extension is unnecessary.

3.4 If so, which ones, and on what basis?

Employers will be provided 12 months to adjust their reporting mechanisms in 2012-13. We cannot see a situation in which this should be undertaken in separate stages or processes. Further, the integrity of the data and need for consistency would be undermined if certain measures were syphoned out of the process. We see no justification for further delaying reform of the reporting framework.

Assistance

3.5 What assistance will employers need to report on particular outcomes measures or process indicators?

In our opinion, based on the feedback employers provide to unions, access to guidance from the WGE Agency and to 'best practice' examples from similar reporting organisations is the greatest assistance employers seek in completing reports. Additional resources should be provided to the Agency to offer this support, particularly in the implementation phase of the new reporting format.

Industries

3.6 Are there any outcomes or process indicators that should or should not be included for particular industries? Why?

The ACTU strongly opposes the exclusion of particular indicators for any industry or employer group. The outcome indicators are designed to provide a quantitative snap shot of gender equity across all industries. The process indicators are designed to gauge what employers' policies, practices and procedures are in key areas related to gender equality in the workplace. Together, the indicators help employers identify the efforts they can make to reduce gender inequity in their workplaces. Identification and development of targeted strategies to reduce workplace inequity must apply to all industries and sectors. Employees are entitled to equity wherever they work, in particular those in male dominated workplaces and industries.

The minimum standards for outcome and process indicators will be set in consultation with industry representatives, unions and employers with a view to ensuring they are set at an appropriate level for that particular industry. Therefore there is no need to exclude any employers or industries from the requirement to report against those indicators.