**Submission on the Legislative Instrument**

**for the**

***Workplace Gender Equality Act 2012***

FAHCSIA

[women@fahcsia.gov.au](mailto:women@fahcsia.gov.au).

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**Submission type:** Individual Submission

**Prepared by:** Dr Pendo Mwaiteleke, BSW; MA (Public Policy); PhD

Introduction

The government is to be commended for the recent enactment of the *Workplace Gender Equality (WGE) Act 2012*. I am pleased for the opportunity to provide input into the Legislative Instrument on reporting indicators that are intended to accompany this legislation. I also wish to acknowledge Senator Louise Pratt, through whose office I have received notification, and attention drawn to opportunity for community inputs in respect of the Legislative Instrument under development to inform employers’ reporting indicators under the *WGE Act 2012*. In making this submission, specifically, I am interested in drawing attention to issues of diversity relevant to migrant women, especially those that comprise Australia’s new emerging communities. I have tied my comments in connection with the government’s Discussion Paper, the *WGE Act 2012* and the legislation’s Explanatory Memorandum.

The legislation notes the intention of this Act as follows:

2A Objects of Act

The principal objects of this Act are:

(a) to promote and improve gender equality (including equal remuneration between women and men) in employment and in the workplace; and

(b) 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; and

(c) 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); and

(d) to foster workplaceconsultation between employers and employees on issues concerning gender equality in employment and in the workplace; and

(e) to improve the productivity and competitiveness of Australian business through the advancement of gender equality in employment and in the workplace.

Under Section 3, the Act defines the employer as including:

 (b)   a natural person, or a body or association (whether incorporated or not), being the employer of 100 or more employees in Australia; but does not include the Commonwealth, a State, a Territory or an authority

Over the last 15 years or so, federal and state governments have progressively contracted out substantial parts of service delivery to Not-for-Profit (NFP) organisations and to private profit-making companies, in line with various policies on *value for money* and often in keeping with the *Financial Management Accountability Act 1997*. Put together, these contracts involve substantial public funding running into billions of dollars. Amongst these, to mention a few, they include services funded under Job Services Australia, migrant settlement services and also more recently, Medicare Locals. These types of agencies alongside other services industries are major employers of women. While a few of such organisations are likely to employ more than 100 staff, a significant number of them are likely to run operations with less staff. These leaves substantial number of women outside the coverage of this legislation as their employers are not required to report. Given that the legislation has already passed, there may be alternative administrative arrangements that can still be used to encourage equal pay measures for women. For example, prior to 1997, in facilitation of its settlement funding to the NFP sector, the Department of Immigration Settlement Branch seemed to ensure job analysis accompanied their funding for each FTE. Understandably, as federal government departments are now subject to provisions of the *Financial Management Accountability Act 1997* in a bid to achieve greater efficiency, the interest now focuses at delivering results rather than being preoccupied by what staff in the contracted non-government agencies gets paid. Hence, it would appear job analysis and pay structure which the Department used to do is no longer facilitated as the shift now is on contracted deliverables. Unfortunately, this has impacted on salary levels across the migrant settlement services. Prior to 1997 every state had migrant staff that were undertaking roles with some level of complexity involving complex casework, community development and policy that were paid equivalent of Level 5 to Level 6 (approximately equivalent to WA public State sector) or APS 6 to EL1 (approximately equivalent to federal public sector). Somehow the shift to tendering and contracting (framework that has replaced the former grant system) has also seen significant decline in the earnings of federally-funded migrant settlement services within NFP sector, at best now being close to equivalent of Level 4 (WA public State sector). The outcome of this is that the sector has lost experienced professional staff with social work and psychology qualifications – it is my understanding that in WA it is rare to have professional social workers taking up these jobs.

I would suggest that given the shift to unprecedented outsourcing of government services to the NFP sector and private companies, strategies intending to identify and measure progress in gender equality in the workplace need to take account of this change as it seems inseparable in addressing some of the factors implicated in the gender pay gap.

Recommendation:

* Government should use service procurement arrangements to monitor staff earnings, and ensure pay structure and their own funding to the NFP is commensurate with the level of task complexity
* Review the legislation in 2 – 3 years and consider requiring government agencies to ensure their service procurement practices are not unintentionally being used to depress women’s earning within NFP organisations

Measurable outcomes and process indicators

The government has proposed in its Discussion Paper the following key considerations in measuring progress

* Measurable outcomes: Data and statistics, enabling a view of the ‘state of play’ – for example, the number of women and men at the executive level, or the proportion of employees returning from parental leave. It may reveal areas for improvement in gender equality.
* Process indicators: Information on the existence of certain conditions, practices or policies – for example, the availability of flex-time for employees. This will enable employers compare their practices with those of other employers, particularly those who are making good progress towards gender equality.

As significantly, the Explanatory Memorandum, *Workplace Gender Equality Act 2012* draws attention to details concerning the government focus of what the reporting should entail. This is worth highlighting as it is part of the crux regarding which indicators of disadvantage are going to be captured by the monitoring mechanisms that the Legislative Instrument is seeking to put in place. Thus, I draw attention to this account:

Reporting requirements

A relevant employer must have a workplace program for each ***reporting period*** (a 12-month period from 1 April to 31 March).  Reports are due to the Agency by 31 May of each year (see section 13B).

Under subsection 13(1), a relevant employer must prepare, in respect of each reporting period, a public report in writing about the outcomes of the employer’s workplace program.  The public report must:

1. set out the workplace profile;
2. describe the employer’s analysis of the issues in the employer’s workplace relating to equal opportunity for women;
3. describe the actions taken by the employer during the reporting period to address the priority issues identified in the analysis; and
4. describe the actions that the employer plans to take in the next reporting period to address the issues relating to employment matters that the employer would need to address to achieve equal opportunity for women in the workplace.

From the reporting period commencing on 1 April 2013, a relevant employer must prepare and lodge a public report containing information relating to the employer and to the gender equality indicators.  The Minister must by legislative instrument, specify matters in relation to each gender equality indicator.  The public report must contain details of the matters specified in the instrument made by the Minister.

The gender equality indicators that a relevant employer must report on are:

* gender composition of the workforce;
* gender composition of governing bodies of relevant employers;
* equal remuneration between women and men;
* 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;
  + consultation with employees on issues concerning gender equality in the workplace; and
  + any other matters specified in an instrument made by the Minister.

(Explanatory Memorandum, *Workplace Gender Equality Act 2012*)

I agree with this proposal. As significantly though, a meaningful understanding of the gender gap need to clearly spell out diversity as an important attribute in understanding the workforce profile, productive diversity, and also in terms of ensuring Australia maintains a productive and innovative edge. Migrant women especially from new emerging communities tend not fare equitably – I suspect there is enough evidence to bear this out. This has been clearly demonstrated through various reports and consultations involving for example Australian-Asian women, and in recent times African-Australians. As the government will be aware, in recent years the Human Rights Commission (2009) has paid some attention to the needs of Africans settling Australia, the Commission notes that:

meaningful employment is essential to successful settlement in Australia. African Australians come to Australia with considerable qualifications and experience and are eager to gain employment and contribute to their new home. However, the Report highlights that many face considerable barriers when they seek suitable work and training (Human Rights Commission, 2009)

In my view, whilst employers try to do their bit, there are periods in history when institutional signals from higher levels of leadership play an important part in shifting employment practices, leaning towards equitable practices that can still take account of merit and productivity, whilst not remaining blind to the race dimension that can impact job progression and earnings. To this extent, it is important that indicators for gender equality also require progressively demonstration of some measures of diversity in the workforce, and also in terms of staff earnings progression. Among other things, the government proposes that the Legislative Instrument will measure and foster progress towards the following outcomes:

* To improve women’s workforce participation across Australia
* To improve women’s representation in leaderships positions in workplaces and on governing bodies
* To improve equal remuneration for work of equal value, between women and men
* To increase flexible working for both women and men, particularly those with family or caring responsibilities
* To promote employee and employer engagement on gender equality. (Discussion Paper, 2012)

As already noted, these outcomes are the sort that most of us would agree with. However, if they are to be applicable to a significant section of the community, the question of diversity in terms of at least cultural background ought to be spelled out as there are many layers constituting how gender disadvantage is experienced. As commonly acknowledged, the race dimension remains a significant feature in informing notions of gender analysis, and cannot be simply abstracted out of this dynamic.

Recommendations:

* Reporting should spell out diversity as an important attribute in understanding the workforce profile
* Measure for increased women’s representation in leadership positions need to attention to cultural backgrounds (i.e. include some indicators that over time would provide a picture of how emerging communities are faring)

Federal Government Hiring Practices and Bearing on the Pay Gap

It is worth recapping on one of the government proposals for “process indicators” which the government defines in its Discussion Paper/Explanatory Memorandum as:

Process indicators: Information on the existence of certain conditions, practices or policies – for example, the availability of flex-time for employees. This will enable employers compare their practices with those of other employers, particularly those who are making good progress towards gender equality.

In some very substantial way the federal government uses private employment agencies to hire its workforce. It’s not as clear whether the government plans to subject these agencies or monitor/scrutinise their hiring practices/methods through the new *Workplace Gender Equality Act 2012*. The role that these agencies play is an important one, and either way, their practices could benefit from being paid some special attention especially as they are undertaking recruitment on behalf of the government. The vacancies they manage are sometimes advertised as short term and sometimes, with a possibility for extension. The opportunity to access work experience of the kind connected to these jobs is crucial in building merit, leading to potentially higher future paying positions. As the world of work is changing dramatically, it seems to me, new ways of promoting gender equity need to be explored and monitored. That way, measures and monitoring mechanism are largely aligned with contemporary work hiring structures.

Recommendation:

* Process indicators need to include hiring practices of employment agencies that are securing new employees for government departments
* Where proposed indicators don’t fit within the scope of current legislation, ensure that the legislation is reviewed in two years to incorporate progressive indicators that are keeping with the spirit of this legislation

Advice to the Minister and Monitoring Issues

The legislation makes provision for an advisory mechanism as indicated in the legislative text. I agree with these provisions, although I also believe other complementary measures are required to be able to inform future workings and refinements of this policy area.

**Advisory committees**

1. Subject to this section the Minister may, in consultation with the Agency, establish such advisory committees as the Minister considers necessary for the purpose of giving advice to the Minister and to the Agency on particular matters or classes of matters relating to gender equality in the workplace, functions of the Agency or the operation of this Act.
2. An advisory committee shall consist of such persons as the Minister from time to time appoints.
3. For the purposes of assisting the Minister in the appointment of the members of an advisory committee, the Agency may provide the Minister with a list of the names of persons:
4. representing industry or business (including a part of an industry); or
5. representing employee organisations; or
6. representing registered higher education providers; or
7. having special knowledge or interest in relation to gender equality in the workplace, the functions of the Agency or the operation of this Act.

Research for policy advocacy and community engagement

The Explanatory Memorandum accompanying this legislation indicates that:

The Minister must by legislative instrument under subsection 13(3) specify matters in relation to each gender equality indicator.  In setting matters under the gender equality indicators, the intention is to establish a long term data set to provide evidence-based insight at the workplace, occupational and industry level.  This data set is expected to be valuable for employers and, at the aggregate level, to inform research and policy development for government and researchers.

I believe if we are to foster notions of industrial democracy and maximise workplace productivity and innovation, then a nurturing diversity (pluralism) in the production of research to inform policy development and advocacy is also something worth taking account of. Previously, a strong and well known migrant women’s peak advocacy body which used to be known as Association for non-English Speaking Background Women (ANESBWA) used to undertake and commission specific research on migrant women, including how they experienced the workforce and training systems. The organisation used to receive a small grant to facilitate national policy advocacy through employment of a Coordinator to run a national office. This alone assisted greatly as the employed staff also coordinated women volunteers whose expertise enriched the advocacy undertaken on behalf of migrant women. Around about 1997 the Department of Immigration ceased funding as policy advocacy was no longer seen as a role for the community sector. And in fairness to the Department, I suspect in their interpretation they sought to align their funding more closely with the quest for individual-centred outcomes, in alignment with the underpinning of *wise use of resources* and *value for money* associated with the *Financial Management and Accountability Act 1997* requirements about service procurement.

In my view, since the demise of ANESBWA, I am not aware of any institution that has managed to take on board a similar advocacy agenda looking at workplace participation issues at a level that deals with such complexity. Whilst some university players may undertake research on migrant women, it seems to me advocacy work requires research that is also informed by a proper brief commissioned by an advocacy body – and that there is continuous follow up, which is part of the crux in terms of work undertaken by peak organisations. Whilst the likes of ANESBWA are long gone and likely to be confined to future history books, governments need think more closely how they are going to support greater community engagement in the future – informed by in-depth understanding of how migrant women may be experiencing inclusion and exclusion practices in the workforce.

Recommendation:

* As part of future monitoring, government need to fund research to inform future strategy and policy advocacy intended to foster greater and equitable employment inclusion for emerging communities
* Emerging communities needs to be supported to explore their own experiences through research; and using their own expertise and voices to inform policy makers rather than simply being seen as ‘’subjects of study’’ by external stakeholders

Summary of Recommendations:

* Government should use service procurement arrangements to monitor staff earnings as well ensure pay structure is aligned with the level of task complexity
* Review the legislation in 2 – 3 years and consider including requiring government agencies to ensure their service procurement practices are not unintentionally being used to depress women’s earning within NFP organisations
* Reporting should spell out diversity as an important attribute in understanding the workforce profile
* Measure for increased women’s representation in leadership positions need to pay attention to cultural backgrounds (i.e. include some indicators that over time would provide a picture of how emerging communities are faring)
* Process indicators need to include hiring practices of employment agencies that are securing new employees for government departments
* Where proposed indicators don’t fit within the scope of current legislation, ensure that the legislation is reviewed in 2 - 3 years to incorporate progressive indicators that are in keeping with spirit of this legislation
* As part of future monitoring, government need to fund research to inform future strategy and policy advocacy intended to foster greater and equitable employment inclusion for emerging communities
* Emerging communities needs to be supported to explore their own experiences through research; and using their own expertise and voices to inform policy makers rather than simply being seen as ‘’subjects of study’’ by external stakeholders

References

FAHCSIA, 2012. Discussion Paper, 2012. *Workplace Gender Equality Act 2012 – Consultation on Reporting Matters*. Accessed 28 January 2013. <http://www.fahcsia.gov.au/our-responsibilities/women/publications-articles/consultation-process-to-develop-reporting-matters-under-the-workplace-gender-equality-act>

Human Rights Commission, 2009. Human Rights Issues Affecting African-Australia Communities. Accessed 28 January 2013. <http://humanrights.gov.au/africanaus/2011_roundtables/index.html#a3_3>

The Parliament of Commonwealth of Australia. 2012. Explanatory Memorandum, *Workplace Gender Equality Act 2012*. Accessed 28 January 2013. <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22legislation/ems/r4765_ems_21d75f48-2ce0-4719-aa15-c92c4b78dae5%22>

*Workplace Gender Equality Act 2012* – Legislative Instrument. Accessed 28 January 2013. <http://www.fahcsia.gov.au/our-responsibilities/women/publications-articles/consultation-process-to-develop-reporting-matters-under-the-workplace-gender-equality-act>