

ACON SUBMISSION TO

Women's Gender Equality Agency Review Team,
Department of the Prime Minister and Cabinet

Review of the Workplace Gender Equality Act 2012

November 2021



About ACON

ACON is Australia's largest health organisation specialising in community health, inclusion, and HIV responses for people of diverse sexualities and genders. Established in 1985, ACON works to create opportunities for people in our communities to live their healthiest lives.

ACON's Pride Inclusion Programs are social inclusion initiatives and include Pride In Diversity, Pride in Sport and Pride in Health and Wellbeing. Pride in Diversity is Australia's first and only not-for-profit workplace program designed specifically to assist Australian employers further their inclusion of lesbian, gay, bisexual, transgender employees in their workplaces.

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ACON acknowledges the Traditional Owners of the lands on which we work. We pay respect to Aboriginal Elders past, present and emerging.

Executive Summary

ACON is NSW's leading health organisation specialising in community health, inclusion and HIV responses for people of diverse sexualities and genders. As such, we welcome the opportunity to provide a submission as part of the review of the Workplace Gender Equality Act 2012 (the Act), with the aim of improving workplace inclusion for women and other people of diverse genders and sexualities.

ACON's Pride in Diversity workplace inclusion initiative, which includes over 315 members, representing over 3 million employees, annually conduct the Australia Workplace Equality Index (AWEI) Employee Survey. The AWEI Employee Survey is a repeated cross-sectional survey aimed at documenting the impact of LGBTQ inclusion initiatives on organisations and their employees.

The AWEI Survey has been run since 2012, and participation has grown consistently; in 2021 there were almost 45,000 participants employed in 190 different organisations across a wide range of sectors and industries. The findings from the AWEI Survey demonstrate the unique barriers and issues faced by LGBTQ women and non-binary people and informs many of the recommendations we have made in this submission.

Our submission highlights some of the key issues relevant for people in our communities who face unique and additional barriers in the workplace which we believe should be highlighted and responded to by WGEA through their reporting mechanisms and research activities.

Firstly, we believe that the way in which non-binary employees are captured in the current data sets collected by WGEA is inadequate. This is largely due to the fact there is no mandatory reporting of non-binary staff in WGEA's reporting mechanisms.

Additionally, we believe that the 'X' categorisation is an unsuitable descriptor for non-binary people and argue that WGEA's collecting of data and **reporting of non-binary staff should align with the Australian Bureau of Statistics' Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables 2020 (The ABS Standards)**. These Standards were developed in consultation with a range of affected groups and reflect best practice for the collection of data on people of diverse sexualities and genders.

We will also argue in our submission that **data on non-binary staff should not be removed from publicly available reports**, as this in effect makes non-binary staff invisible from public reports and from workplaces more broadly. Without these data publicly available, it is more difficult to address barriers faced by non-binary people in the workplace.

We have also addressed the unique experiences of sexuality and gender diverse people who may have experienced domestic and family violence and the importance of workplaces recognising this issue. WGEA has a proven track record of holding workplaces to account in relation to their domestic and family violence policies and procedures; we believe that WGEA could go further by ensuring that these policies and procedures are inclusive of LGBTQ people.

It is important to acknowledge that discrimination, violence and harassment experienced by LGBTQ people, regardless of gender, is gendered, as outlined in the ground-breaking initiative *Pride In Prevention*, which was led by Rainbow Health Victoria and funded by the Office for Women in the Victorian Department of Premier and Cabinet.

Our submission addresses the specific questions provided in the consultation paper produced by WGEA for this review. We thank you again for the opportunity to produce a submission and look forward to working with you to improve gender equality in the workplace.

Consultation questions

4. Are the gender equality indicators (GEIs) in the Workplace Gender Equality Act, and the data collected with respect to the GEIs, appropriate to promote and improve gender equality? How could they be improved?

6. How could data be better collected and/or used by WGEA to promote and improve gender equality? Should there be some form of pay transparency – should remuneration data in some form be public?

Reporting of Non-Binary Employees

The Act sets out the definition of gender equality indicators and states that these include the gender composition of the workforce and the gender composition of organisational governing bodies (such as boards). As you are aware, these indicators aim to better understand the gender composition of workplaces in a standardised format, to enable the aggregation of data across and within industries.

The aggregated data is supposed to assist employers in understanding the characteristics of their workforce, including in relation to occupational segregation, the position of women in management, and patterns of potentially insecure employment. However, the inability to properly record and publish data on staff who are neither male nor female (i.e. non-binary) limits the effectiveness of these reporting mechanisms.

ACON have previously expressed concerns about the exclusion of non-binary staff from reporting mechanisms, as there was no suitable field for collecting gender for non-binary staff. We note that more recently, WGEA has allowed workplaces to record staff members as 'X' (indeterminate/intersex/unspecified) within voluntary data fields when reporting to the agency.

However, we note that including the 'X' category in workplace reporting is voluntary and that any data that is included in this field will not be published as part of an organisation's public report.

As a result, workplaces across Australia are not required to report gender diverse staff, and if they do, these staff members are removed from the public reports, thereby making those who are gender diverse invisible in current reporting and data sets. This creates a situation where data sets are incomplete and unrepresentative the Australian workforce.

As a result of the reporting mechanisms currently in place, non-binary staff across Australia are being excluded from WGEA reports and are therefore made invisible.

In 2021, the AWEI Employee survey showed that non-binary participants had lower rates of full-time and part-time employment than their female and male counterparts and were far less likely to work in a CEO, senior leadership or middle management position than male and female respondents. This demonstrates the non-binary people face barriers in the workplace and should be included in WGEA reporting in order to address systemic issues and inequality for this group.

While the gender inequality experienced by women in society is of utmost importance and should continue to be prioritised in WGEA's remit and scope, we believe that the current WGEA gender equality indicators could be more nuanced in their understanding of gender.

Recommendation 1: ACON recommend having a mandatory mechanism for the reporting of non-binary staff and for WGEA to publish an accurate representation of the gender composition of Australian workplaces, including non-binary employees.

'X' Categorisation

As stated previously, ACON acknowledge that WGEA now allow employees to report their staff's gender as 'X'. However, the descriptor 'X' is insufficient in capturing the gender of non-binary people and at odds with the ABS Standards.

The ABS Standards outline the recording of gender and recommend that the question on gender include an option for 'Man or male', 'Woman or female' and 'Non-binary'. The ABS Standards are available here: <https://www.abs.gov.au/statistics/standards/standard-sex-gender-variations-sex-characteristics-and-sexual-orientation-variables/latest-release>. ACON recommends the use of the ABS Standards question in relation to gender, which is:

How [do/does] [you/Person's name/they] describe [your/their] gender?

- Man or male
- Woman or female
- Non-binary
- [I/They] use a different term (please specify)
- Prefer not to answer

Recommendation 2: ACON recommends that WGEA's mandatory reporting mechanisms and gender indicators align with the ABS Standards for questions on gender to ensure non-binary staff are mandatorily counted with an appropriate descriptor and that these data are publicly available in all WGEA reports.

Consultation questions

5. In addition to gender, should WGEA collect other data on diversity and inclusion criteria on a mandatory basis, to enable a more nuanced analysis of men and women's experiences in the workplace? If yes, please specify criteria (eg cultural and linguistic diversity, disability, age, location of primary workplace). If not, why not?

6. How could data be better collected and/or used by WGEA to promote and improve gender equality? Should there be some form of pay transparency – should remuneration data in some form be public?

Understanding the Experiences of Trans and Gender Diverse Employees

ACON believe that more could be done to better understand the impact of intersectional identities and experiences for women and non-binary employees in the workplace. Current reporting mechanisms are limited in their ability to ascertain the experiences of women who may have intersecting identities or experiences which may or may not impact their position in the workplace.

We believe WGEA could play a larger role in understanding and articulating the experiences of trans and gender diverse people in the workplace through additional forms of data collection. ACON recommends that employers collect data to better understand gender diversity within their workplace to enable the provision of support. Disclosure by employees should always be optional but can reduce some barriers that trans and gender diverse people may face in the workplace such as identification, criminal record and/or reference checks, for example.

While we do not recommend the mandatory reporting of whether employers have transgender staff in the workplace, we know from AWEI data that trans and gender diverse people face additional and unique barriers in the workplace and do less well in attaining positions in management and leadership than cisgender employees.

When collecting data on trans and gender diverse people in research, it is vital that a two-step approach is used, in alignment with the ABS Standards and ACON's Recommended Community Indicators for Research, available here: <https://www.acon.org.au/what-we-are-here-for/policy-research/#recommended-sexuality-and-gender-indicators>. The two-step approach for questions on gender suggested by ACON's Recommended Community Indicators for Research are:

1. How do you describe your gender?
 - Man or male
 - Woman or female
 - Non-binary
 - I use a different term (please specify)
 - Prefer not to answer

2. At birth, you were recorded as:
 - Male
 - Female
 - Another term (please specify)
 - Prefer not to answer

Recommendation 3: WGEA should undertake further research beyond the mandatory reporting mechanisms to better understand the experiences of trans and gender diverse employees in the workplace to address barriers faced by these groups.

Recording of Other Diversity and Inclusion Criteria

ACON believe that WGEA should collect other data on diversity and inclusion criteria on a mandatory basis, to enable a more nuanced analysis of experiences in the workplace. These criteria could include intersections such as sexuality and gender diversity, being Aboriginal and/or Torres Strait Islander, cultural and linguistic diversity, disability, and age. This would enable WGEA to form a strong evidence base to better articulate the prevalence and impact of additional intersecting identities or experiences and what impact this has on experiences in the workplace.

This greater understanding could be achieved by collecting additional Gender Equality Indicators (GEIs) through mandatory mechanisms, as well as through additional activities such as surveys and other research (including qualitative research) which would enable WGEA to better understand the factors contributing to workplace inequality when they intersect with gender.

Recommendation 4: WGEA should include additional GEIs to better understand the unique experiences of women and non-binary people in the workplace who may have other intersecting identities and/or experiences which may increase barriers to gender equality in the workplace.

Consultation questions

8. Could the minimum standards be expanded to improve the way they drive practical gender equality outcomes in workplaces? What would employers need to do to implement these changes in their workplace? Should Minimum Standards apply to all reporting employers, not just those with 500 or more employees?

10. Are there any other matters you want to comment on in relation to the Workplace Gender Equality Act and improving and promoting gender equality in the workplace in Australia?

LGBTQ People Experiencing Violence

In Australia, there has been increasing recognition of and efforts to address the impact of domestic violence on women in paid work. This has resulted in an increasing number of domestic violence clauses in awards and collective agreements that provide paid time off and other workplace protections. Indeed, WGEA have included in their reporting mechanisms questions around what policies and procedures are in place to support employees experiencing domestic violence.

This has come about due to an understanding that domestic and family violence in the general population disproportionately affects women and can impact their ability to work and to access employment. While it is commonly acknowledged that the majority of intimate partner violence is perpetrated by heterosexual cisgender men against their cisgender female partners, there is a need to acknowledge the prevalence of domestic and family violence in other communities.

There are a number of Australian studies which show LGBTQ people experience DFV at similar (if not higher) rates to heterosexual cisgender women. For transgender and gender-diverse people, that number is disproportionately higher still.

ACON notes that the consultation paper for this review states WGEA is looking at any changes needed for WGEA in order to implement the recommendations of the Respect@Work national inquiry report. The Respect@work report has highlighted the specific experiences and high rates of violence, discrimination and harassment, lack of understanding and fear of disclosure experienced by LGBTQ people in the workplace.

While many organisations already have existing DFV policies, many workplaces are still grappling with how to respond appropriately to LGBTQ employees who experience or may use abuse in their personal relationships. The reason for this is that the majority of existing DFV policies are very gendered in nature and language.

The *LGBTQ Domestic and Family Violence: A Guide to Best Practice for Workplace Policy* report, outlines several options a workplace can take to address this, including: creating a separate policy for DFV in LGBTQ relationships policy; using terminology that is genderless, speaking about DFV in general terms; introducing DFV as an issue that affects everyone; and adding extra information throughout the policy that acknowledges DFV in LGBTQ relationships.

Recommendation 5: ACON recommend that workplaces must mandatorily report whether their policies and procedures in relation to DFV are inclusive of LGBTQ people. Specific questions about what actions have been taken to ensure their policies are LGBTQ inclusive (such as whether workplaces have a separate policy for DFV in LGBTQ relationships; whether the terminology used in the policy is genderless; and/or whether LGBTQ relationships are acknowledged in existing policies) should be included in mandatory reporting mechanisms.

Recommendation 6: ACON note that Gender Equality Indicator 6 (GEI 6) refers to 'sex-based harassment'. This language should be changed to gender-based harassment in line with the other Gender Equality Indicators, which use the term gender.