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THE GLOBAL INSTITUTE FOR WOMEN'S LEADERSHIP

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Gender pay gap reporting in Australia

Time for an upgrade

Global Institute for Women's Leadership, Australian National University and King's College London

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Foreword

Despite Australian legislation enshrining equal pay for equal work in 1972, nearly 50 years later the average Australian woman still has to work an extra 61 days a year to earn the same pay as the average man.

This persistent inequality has important consequences. It leaves women economically precarious, it creates significant gaps in retirement savings, and exacerbates the poor financial outcomes that women face in both the short and long term. As well as the negative impacts on individual women, by devaluing the work of one gender, Australian society and the Australian economy are missing out on the full impact of what women and men can contribute.

Gendered preferences in working patterns and caring responsibilities that are often used to explain, and justify, the gender pay gap are driven by strong societal norms and job segmentation. This means the 'choices' women make in their careers and the types of industries in which they work, are inherently constrained.

To improve gender equality in Australia, a multifaceted approach is needed. This includes a focus on improving parental leave (particularly for men), affordable childcare, valuing women's work and work that is stereotypically done by women, addressing occupational segregation, and increasing pay transparency.

Gender pay gap reporting is an important element of the wider package of support needed to tackle gender inequality in the workplace. In *Bridging the gap? An analysis of gender pay gap reporting in six countries*, our colleagues at the Global Institute for Women's Leadership at King's College London put forward a series of recommendations to improve how gender pay gaps are reported internationally.

This companion report delves further into the Australian case study. It explores the data and insights gained through the cross-country report to provide a more detailed examination of Australia's current gender pay gap reporting arrangements and recommendations on where we can improve.

I would like to acknowledge the hard work of the ANU team both in GIWL and at the College of Business and Economics in undertaking the Australian case study and developing this companion report.

The recent increase in the national gender pay gap to 14.2% in the midst of the COVID-19 pandemic is a stark reminder that we need a renewed focus if we are to address the gender pay gap in Australia. I praise this report for the strong evidence base that it outlines, and urge you to support the recommendations that it puts forward.

Professor Michelle Ryan

Director

The Global Institute for Women's Leadership at the Australian National University

Executive summary

Despite being amongst the pioneers in legislating equal pay and gender equality reporting, Australia now compares poorly with other wealthy nations on gender equality. This is reflected in plummeting international rankings – in the last seven years Australia has fallen from 14th to 70th on women's economic participation in the World Economic Forum's global gender gap index, despite ranking first on women's education. It is resoundingly clear that more action is required.

Since the introduction of mandatory gender equality reporting in 1986, legislation has continued to be refined. The introduction of the *Workplace Gender Equality Act 2012* brought to the fore more awareness of, and a noticeable improvement in, the gender pay gap, which had been worsening in prior years. However, the gender pay gap amongst full-time employees remains at 14.2%, a level marginally better than at the turn of the century, and the gap amongst all employees is over 30%, only a marginal improvement in over forty years. The ramifications of the enduring gap are profound for women's economic security and wellbeing over their lifetime, with an increased risk of homelessness and poor retirement outcomes the reality for many Australian women.

This report is a companion report to *Bridging the gap? An analysis of gender pay gap reporting in six countries* (2021) by the Global Institute for Women's Leadership, King's College London and the Australian National University. Bridging the gap is a cross-country comparative examination of pay gap reporting frameworks in Australia, France, South Africa, Spain, Sweden and the United Kingdom. This companion report focuses on the Australian experience, drawing on insights from other countries for context to provide meaningful avenues for progress in Australia. Over 80 interviews were conducted internationally, with 17 interviews in Australia across four key stakeholder groups: government, gender equality advocates and experts, employers and trade unions. Interview data were also supplemented with information gathered from academic literature, reports and publications from international and country specific organisations relating to pay, gender pay gaps, good practice and more. The purpose of this report is to identify strengths and weaknesses of the current national gender pay gap reporting regime and recommend pathways to better enable the legislation to be a driving force for reducing, and ultimately eliminating, gender pay gaps in Australia.

Key findings

1. At the time of writing, the coverage of employers under Australia's gender pay gap reporting legislation compares poorly across the countries examined, with both a higher employer size threshold and exclusion of public sector employers.[1]

2. Australia's legislation is unique in its emphasis on quantitative reporting through survey responses and the submission of raw remuneration data. As a result of this and the extensive data translation activities of its regulator, the Workplace Gender Equality Agency, Australia's workplace gender equality dataset is world-leading. Conversely, the absence of qualitative data or action plan disclosure impedes stakeholders' ability to engage with individual employers about their gender equality activities.

[1] The Federal Government announced expansion to the public sector in the May 2021 budget commitment.

3. Australia does not collect intersectional data or require reporting on additional measures of disadvantage. The absence of such data means that it is difficult to understand how gender intersects with other factors to contribute to specific types of discrimination and contrasts with most public sector equality reporting frameworks that capture Indigenous status, disability and language background. Furthermore, all reporting frameworks focus on a binary measure of gender.
4. Australia's reporting regime compares poorly with other countries regarding the obligations of employers to address gender pay gaps. Of the countries examined, the strongest requirements exist in Spain and France where organisations must create action plans and must provide evidence as to their implementation or outcomes.
5. Australia's compliance is high, suggesting that the 'naming and shaming' of non-compliant organisations is reasonably effective. However, recent slippage in compliance suggests that the use of available sanctions is needed.
6. Australia has moderately high transparency with most reporting data publicly available, the notable exception being organisation-level gender pay gap data.
7. Australia received the joint-lowest ranking on the gender pay gap reporting scorecard across all countries studied in the companion cross-country report. The poor ranking reflects the weaknesses outlined above and the limited ability to leverage existing gender equality reporting legislation to influence gender equality practice.

These findings have important implications for the effectiveness of the current gender pay gap reporting regime in Australia. Our recommendations, summarised below and set out at the end of this report, therefore seek to leverage design features of the existing regulatory framework with the aims of increasing transparency and providing clearer performance guidance and accountability.

Recommendation 1. Publish gender pay gaps of individual organisations to enable external stakeholders to hold employers accountable for gender equality performance.

Recommendation 2. Nominate outcome-based minimum standards related to rolling average reductions in the gender pay gap to establish expectations for closing the gap.

Recommendation 3. Enact the existing non-compliance sanctions to exclude non-compliant organisations from government procurement, contracting and financial assistance to reaffirm Federal government commitment to gender equality and deter further slippage in compliance rates.

We also highlight two important considerations that require further research and consultation to operationalise for the Australian context. They relate to organisational coverage and collection of intersectional data for disaggregation of gender pay gap reporting. Although these issues are of major policy concern, feedback from stakeholders reflects a lack of consensus on how they can be best incorporated into the current Australian system given the already heavy reporting burden. A possible path forward is a reassessment of the reporting requirements of employers, to simplify and streamline them to better enable intersectional data to be collected and smaller employers to be captured. We propose a public consultation to explore options for operationalising these two important weaknesses of the current reporting regime.

Our recommendations are designed to empower stakeholders and the regulator to monitor and hold organisations to account for making progress on gender equality and closing the gender pay gap. Without higher levels of transparency and minimum requirements related to outcomes (rather than policies), Australia risks falling further behind other countries as a place where women will continue to face economic insecurity and inequality across their lifetime. Making enhancements to Australia's gender pay gap reporting is critical for Australia to reclaim its once world-leading position on legislating for gender equality. This is increasingly urgent in light of the recent worsening of the national gender pay gap in the midst of a global pandemic, which serves as a timely reminder to ensure continued commitment to progress.

Image: Monkey Business Images, shutterstock.com

1. Introduction

The history of gender equality in Australia is mixed. The country has been upheld as one of the first to legislate protections for women, but outcomes have lagged behind. The pre-Federation colony of South Australia was one of the first in the world to grant women's suffrage and the first to allow women to stand for election to Parliament (NMA, 2021a). Australia was also an early mover in legally granting women the right to equal pay for work of equal value in 1972[2] (NMA, 2021b) and introducing mandatory gender equality reporting for most organisations with the *Affirmative Action Act 1986*.

Despite starting at the forefront of the charge to achieve gender equality, Australia appears to be losing ground. On contemporary measures of equality outcomes, Australia is only a mid-range performer and ranks below comparably wealthy nations. The country ranks only 50th in the World Economic Forum's Global Gender Gap Index, sliding from 24th in 2014. Much of this decline can be attributed to the workplace: Australia has been ranked in equal first place for women's education since 2014 but has fallen from 14th in 2014 to 70th in 2021 for women's economic participation and opportunity (WEF, 2014; 2021). Women now outnumber men in university graduations, but female dominated occupations continue to be lower paid than those that are male dominated, and women remain under-represented in senior and leadership positions (WGEA, 2019a).

One of the most widely reported dimensions of gender inequality is the gender pay gap. As Australia is overtaken by other countries in fostering opportunities for women at work, the gender pay gap for full-time employees is only marginally better than it was at the turn of the century, and the gap amongst all employees has changed little in forty years (Charlesworth & Smith, 2018). With the gap being both a symptom and a cause of gender inequality, it is important to address this troubling lack of progress if Australia is to return to its promising start and become a leader in fostering a balanced society that places equal value on the contribution and well-being of men and women.

One mechanism that governments around the world are increasingly using to close the gap is legislation that requires employers to report their organisation's gender pay gap data. Australian organisations have been required to report this information to the regulatory body the Workplace Gender Equality Agency (WGEA) since the introduction of the *Workplace Gender Equality Act* 2012 (hereafter the 2012 Act). Given Australia's deteriorating position on international gender equality rankings, it is timely to understand stakeholder experiences with regards to the Australian pay gap reporting regime and examine what Australia can learn from other countries.

As such, this report employs insights from stakeholder interviews and cross-country comparisons to identify strengths and weaknesses in the current Australian regime and provide meaningful avenues for progress. Before presenting the findings of our research, we provide important background information about the gender pay gap and the role of reporting in striving to close the gap.

[2] This decision followed an earlier ruling in 1969 that women should be paid the same as men when performing identical work in traditionally male roles, while the minimum wage for women generally was set at 85% of their male counterparts.

2. The gender pay gap – what is it and why is it important?

In order to examine the strengths and weaknesses in Australia's gender pay gap reporting regime and seek avenues for improvement, it is important to understand the gender pay gap itself. This section, therefore, outlines the measurement of the gender pay gap, historical trends and antecedents of the gap and its economic and social implications for women.

2.1 Measuring the gender pay gap in Australia

The gender pay gap is an internationally recognised measure of inequality between the earnings of women and men, and therefore, serves as an important indicator of women's relative position in the economy. It is based on a statistic that quantifies the disparity in average earnings by gender, although the exact formula can vary by country and the measurement of its inputs can be controversial (ILO, 2018). This controversy largely stems from two important issues: the first is the definition of 'pay' and the second is the group that is included in the population for measurement.

In Australia, the formula used to calculate the gender pay gap is as follows:

$$GPG = 100\% * \frac{\textit{Male Average Earnings} - \textit{Female Average Earnings}}{\textit{Male Average Earnings}}$$

Australia's headline figure, the **national gender pay gap**, is calculated by WGEA using data from the Australian Bureau of Statistics (ABS). This calculation is based on *average weekly ordinary full-time earnings* (AWOTE) across all industries and occupations at a specific point in time. The use of AWOTE excludes overtime and compulsory employer superannuation contributions to give an indication of average weekly "base" pay. In addition to this headline national measure, WGEA also collects data on the gender pay gap for organisations required to report under the 2012 Act, although the pay gaps of individual organisations are not publicly disclosed. This includes non-public sector organisations with 100 or more employees. Their data include base salary but also superannuation, bonuses and other additional payments to derive total remuneration.

Importantly, both the AWOTE national gender pay gap and the total remuneration gender pay gap statistics are calculated for *full-time employees* only, and do not include part-time and casual employees. WGEA does collect data from their reporting organisations for all employees, and other statistics are easily accessible through their database and website.[3] Similarly, relevant measures that cover all employees are also available through the ABS and are shown in the subsequent section.

The cross-country study found that simple headline figures such as these are

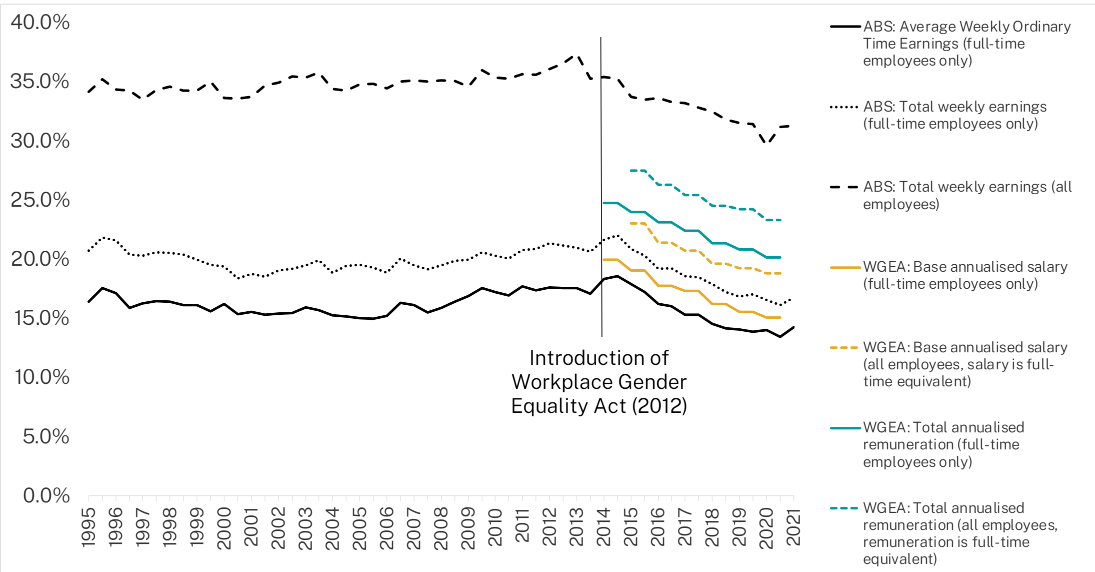
[3] Another data source also exists in Australia for gender pay gap statistics through the Household, Income and Labour Dynamics in Australia (HILDA) Survey and this is often used for research (KPMG, 2019) and international comparisons (ILO, 2018). The ABS also conducts other labour force surveys for gender pay gap reporting but these are infrequent (ABS, 2018).

useful 'attention-grabbing tools' to facilitate comparisons, but it is also essential that broader coverage of measures and associated narratives are published to unpack the underlying causes of the gap within organisations and across the wider workforce. More details on these measures and others are in the Findings Section relating to Coverage (Section 6.1) and historical trends for key measures follow.

2.2 Historical trends in the Australian gender pay gap

Since the 2012 Act reporting requirements were enacted in 2014, the gender pay gap has steadily declined – as presented in Figure 1 below. Importantly, the enactment of the 2012 Act coincided with a reversal of the *increasing* trend in the gender pay gap that was observed from 2007. While this is encouraging, the current national gender pay gap sits only marginally below that at the turn of the century and shows an uptick in the latest reporting period, highlighting the need for further progress.

Figure 1: Australia's gender pay gap measures



Source: ABS, 2021b, Average Weekly Earnings, Australia, Catalogue no. 6302.0 (1995-2021); WGEA Data Explorer: Gender pay gaps https://data.wgea.gov.au/industries/1#pay_equity_content (2014-2020 for base salary; 2015-2020 for total remuneration).

The historical trends show significant differences in the gender pay gap when different measures are used. As shown in Figure 1, the current national gender pay gap is 14.2%. This increases to 16.7% when we measure using total earnings and to over 30% when we include all employees. This is of particular concern, as it shows the significant impact of women's working patterns on the gender pay gap in Australia and the need to represent all women in our national measures. Another concern is the recent increase seen in all these measures, which likely takes into account the negative impact of the COVID-19 pandemic on women's earnings. The gender pay gap for WGEA reporting organisations shows similar declining trends since reporting commenced in 2014. The total remuneration gender pay gap amongst full-time employees is currently 20.1%. The figure increases to 23.3% when all employees are included and reduces to 15.0% when using only full-time employees' base remuneration. WGEA also reports that the gender pay gap persists across all industries and occupations (WGEA, 2021).

It should be emphasised that, while these trends show that the gender pay gap has improved following the enactment of legislation, there are several other factors within the broader context of gender equality in Australia that have also had a significant part to play. Indeed, the importance of using many levers to improve gender equality in Australia is paramount to collectively achieving meaningful change. The recent *increase* in the national gender pay gap, in the midst of the COVID-19 pandemic, also serves as a timely reminder that continued focus, effort and commitment is required to maintain progress (WGEA, 2021). Furthermore, Australia's improvement should also be considered within the international context, in which the pay gap remains higher than in many other similar countries, and Australia is in fact declining in international gender equality rankings. International comparisons of the gender pay gap are shown in the Findings section relating to Impact (Section 6.6).

2.3 Main antecedents of the gender pay gap

The cross-country study shows that women across the world are united in shared experiences of economic disparities and their underlying causes. The key issues they face that serve as major contributors to the gender pay gap include disproportionate burdens of unpaid care work, occupational segregation, undervaluation of their work and discrimination in the workplace. Despite being praised as an early mover on gender equality over fifty years ago, Australia is far from immune from the pervasive effects of societal norms affecting the way people live and work.

Unpaid care

The disproportionate care burdens, for both children and elders, that women face have a significant impact on their ability to participate fully in the workforce. A recent Australian study found that this contributed 39% to the gender pay gap in 2017 (KPMG, 2019). Moreover, as at June 2021, the female labour-force participation rate (those that are employed or looking for work) was 61.7%, 9.2% less than that of men (ABS, 2021a). Women in Australia are also more likely (than their male counterparts) to work part-time, work flexibly (Sanders et al., 2015, Chief Executive Women, Bain & Company, 2021) and take career-breaks to support their family (KPMG, 2019). The gendered differentials in working patterns are largely driven by these caring burdens and are known as the 'motherhood' penalty (Budig & England, 2001) as they often start after the birth of a child. This penalty was also observed in South Africa, Sweden, France and the UK in the cross-country study. In Australia, this issue is often compounded by the high cost of quality childcare and aged care. While it is often suggested that women have chosen to work less, societal norms and job segmentation can mean that these 'choices' are inherently constrained (KPMG, 2019; Preston & Yu, 2015). The impact of these career interruptions cannot be understated – the loss of valuable experience, missed promotions and leadership opportunities compound over a woman's lifetime.

Occupational and industrial segregation

Occupational segregation refers to the unequal distribution of women and men in particular occupations. Specifically, women are over-represented in lower paid roles and under-represented in higher paid, senior and leadership roles. Industrial segregation relates to the gendered concentration in different industry sectors and is an issue when women's employment is concentrated in lower paid sectors (KPMG, 2019). This type of segregation was also found in several other countries in the cross-country study, with female-dominated occupations being under-valued and lower paid than male-dominated occupations. This issue is particularly prevalent in Australia within the health and education sectors (WGEA, 2019).

Discrimination

Disturbingly, the most significant contributor to the gender pay gap in Australia is gender discrimination, accounting for 39% of the gap in 2017 (KPMG, 2019). This is in line with considerable evidence about the impact of discrimination on wage gaps in Australia (KPMG, 2019) and abroad, as evidenced in the cross-country report. Despite Australian legislation mandating equal pay for equal work for the past half century, it remains an issue to this day, with some corporations still misunderstanding the basic definition of the gender pay gap (WGEA, 2019b). Furthermore, while the law may prevent overt pay discrepancies, subconscious biases and societal norms still prevail in many countries, including Australia. These affect Australian workplaces in a myriad of ways, including through adverse recruitment, promotion and retention outcomes for women. Finally, the landmark National Inquiry into Sexual Harassment (Respect@Work) in Australia has revealed the alarming prevalence of sexual harassment in Australia's workplaces, which is a major inhibitor to the progression of women at work and beyond (AHRC, 2020).

2.4 Implications of the gender pay gap

The ramifications of the gender pay gap, and the lack of action to address it, are profound and far-reaching. It affects the economic security of women across their lifetime and increases the risk of poor short and long term financial outcomes. Given Australia's occupational superannuation system, gender gaps in lifetime earnings lead directly to a gap in retirement savings, with male median superannuation balances 44% higher than for females[4] and 25% of women still retiring with no superannuation (ASFA, 2019). Occupational superannuation systems by their very nature disadvantage those with low incomes or disrupted work patterns and women are typically heavily concentrated in this group. These poor long term outcomes are exacerbated by longer life expectancies, changing family dynamics including the growing incidence of divorce (Brown, 2016) and lower financial literacy (Preston & Wright, 2019). The compounding nature of these issues and the slow progress that has been made to date is perhaps best illustrated by the rising incidence of homelessness in older Australian women. Women over 55 were the fastest growing cohort of homeless Australians between 2011 and 2016 (AHRC, 2019) and at particular risk of living in poverty (Coates, 2018; Hetherington & Smith, 2017).

[4] ABS data on median superannuation balances used for calculation (ASFA, 2019 p5).

Image: Emanuele Colombo, shutterstock.com

3. The role of gender pay gap reporting legislation

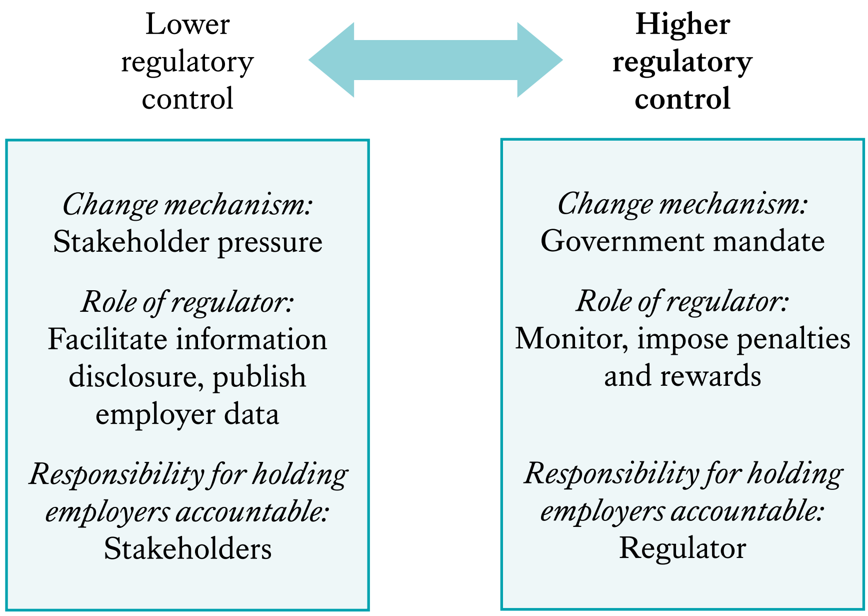
In recognition that equal pay legislation alone has been insufficient to close gender pay gaps, many jurisdictions (both national and state) have enacted gender pay gap reporting legislation in an attempt to drive employer action to address gender disadvantage in pay and employment. Organisation-level pay equality legislation is an important complement to anti-discrimination laws, as many decisions on pay and the valuation of work are made by individual employers. However, employer-level interventions have limited capacity to impact structural barriers relating to unpaid care work and occupational segregation, or to impact earnings in centrally determined wage-setting systems.

The requirement for employers to report their gender pay gap assumes that *what gets measured gets done*. In other words, when employers measure and report gender pay gaps, there is an assumption that these employers will then act to reduce the gender pay gap. However, experience has shown that this is not always the case, and the obligation to disclose relevant activities and/or outcomes does not impose an obligation for positive action. Positive action obligations require employers to undertake activities to correct the disadvantaged position of women in employment, and they can range from the enactment of relevant policies to the achievement of specific designated outcomes.

Image: fizkes, shutterstock.com

When it comes to the role of regulation in influencing employers to close their gender pay gap, there are different change mechanisms that sit along a spectrum involving varying degrees of regulatory control, as outlined in Figure 2. At one end of the spectrum is *low regulatory control*, which involves using market forces through stakeholder pressure to bring about change. This change mechanism is based on the influence of disclosure and involves stakeholders applying pressure on employers to close the gender pay gap. The role of the regulator is to facilitate information disclosure on gender pay gaps, so that interested stakeholders can hold employers accountable for closing the gaps in their organisations. Stakeholders could include investors, consumers, employees, trade unions and activist groups. At the other end of the spectrum is *higher regulatory control*, in which government mandate provides the regulator with a high degree of control over employers. This approach uses force through legally obligating employers to take positive action to close the gender pay gap and involves the use of penalties and rewards. The regulator therefore has significant power over employers to bring about change and holds employers accountable.

Figure 2. Change mechanisms for closing organisational gender pay gaps with mandatory reporting



4. Australian gender pay gap reporting legislation

In Australia, equal pay is legislated in Federal and State anti-discrimination laws, and through equal remuneration orders under the *Fair Work Act 2009*. Australia enacted gender pay gap reporting under the 2012 Act. This Act was preceded by two gender equality reporting Acts, the *Affirmative Action Act 1986* and the *Equal Opportunity of Women in the Workplace Act 1999*, both of which focused on qualitative reporting of gender equality policies, practices and workforce composition. The 2012 Act involved a significant change to the type of information reported by employers. It saw a move from largely qualitative assessments of practice and workforce composition to quantitative data on remuneration (to enable the calculation of gender pay gaps), workforce composition by occupational group, employment type and managerial level and numbers for recruitment, promotion and resignations by gender. As such, while the requirement to report on workplace policies and practices was retained, the emphasis shifted towards quantitative outcome measures that could be used to assess and monitor progress. The 2012 Act allocated authority to determine minimum standards for performance, and to adjust these over time, to the relevant Minister, at the same time removing the capacity for waiving annual reporting to higher performers. The Act is overseen by WGEA.

The objectives of the 2012 Act are:

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

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;

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);

d. to foster workplace consultation 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.

The 2012 Act requires non-public (private, non-government, unions and universities) sector employers[5] with 100 or more employees to report annually to WGEA against a range of gender equality indicators. In turn, WGEA provides reporting entities with an industry benchmark report contextualising their performance against industry peers. WGEA awards a 'Workplace of Choice for Gender Equality' citation for employers who submit an application and are deemed to be achieving a high standard of performance on gender equality against a range of standardised measures.

At present, the minimum performance standard determined under the Act by

[5] Coverage is planned to be extended to the public sector, as announced in May 2021.

the relevant Minister is to have a formal policy or strategy supporting gender equality in at least one indicator domain such as recruitment, promotion, performance management or overall gender equality. Only employers with over 500 employees are required to meet the minimum performance standard to comply with the Act, whereas employers with over 100 and under 500 employees need to fulfil the annual reporting requirement but not the minimum standard. In both cases, non-compliant employers may be named in Parliament and on the WGEA website and may not be eligible for certain government supports or contracts.

Having presented background information about the gender pay gap and the role of gender pay gap reporting, the following sections detail the research conducted into the Australian pay gap reporting regime and a comparison of Australia's reporting framework to five other countries.

Image: Tyler Olson, shutterstock.com

5. Research methods

The Australian case study was one of six country case studies used for cross-country comparisons. The other countries in this study were France, South Africa, Spain, Sweden and the United Kingdom (UK). Over eighty interviews were conducted internationally between February and June 2021, with 17 interviews in Australia across four key stakeholder groups: government, gender equality advocates and experts, employers and trade unions. Semi-structured interview protocols were developed from earlier research by Kings College London on legislative design (published in *Gender Pay Gap Reporting: A Comparative Analysis,* 2020). In practice, interviews ranged from semi-structured through to more fluid conversations, depending on the experience and range of knowledge of the interviewees.

Most interviews lasted around an hour. Some interviews were with two or more individuals, particularly if they represented different specialities in a broader organisation. Some organisations and individuals preferred to submit written responses to the questions. Details of the interviewees are listed in the Appendix. Interviews were recorded and auto-transcribed using Zoom software.

Interviews have been supplemented with information gathered from academic literature, reports and publications from international and country-specific organisations relating to pay, gender pay gaps, good practice and more. Surveys of legislation, government documentation from legislative reviews, public consultations and associated public submissions on both existing and previous gender equality reporting legislation and gender gaps as well as data from monitoring authorities and government bodies were also included.

Data were analysed in an interpretive and iterative fashion (Miles & Huberman, 1994). First, all forms of data (individual and group interviews as well as written responses) were collated. Second, raw data were categorised thematically. Third, themes were checked against the raw data from each participant to re-define the themes until researchers were satisfied that the emergent findings were valid and the research process accounted for all changes in the analytic process, thus presenting a set of valid findings and transparent research process. Finally, the supplementary secondary source data from academic literature, reports, surveys, etc. were cross-checked against the primary data collected for this project. Any discrepancy led to re-analysis of relevant sections of the data and themes were re-defined if necessary. All such changes were discussed and consensually agreed upon by the researchers.


Image: chinasong, shutterstock.com

6. Research findings

A range of factors must be considered in assessing the strengths and weaknesses of Australia's current gender equality reporting regime. In this discussion, findings from a review of the academic and grey literature are supplemented by the interviews of stakeholders conducted for this research, who provide contemporary perceptions on this important issue. Experiences in other countries are brought in to highlight strengths and potential adjustments to the legislation in light of its perceived weaknesses. The following sub-sections discuss the legislation in the context of coverage, employer obligations, compliance and enforcement, and transparency, followed by an examination of how these aspects affect the impact of the legislation to address the enduring gender pay gap in Australia.

6.1 Coverage of the legislation

In Australia, the threshold for reporting has been set at employers with 100 or more employees since 1986. Initially capturing only private sector firms, the reporting mandate was extended to most non-public sector entities following the 1992 review, and in May 2021 the Federal Government announced an expansion to public sector employers.[6] As outlined in Section 2.1, WGEA releases statistics on the average pay gap (including total remuneration; WGEA, 2021a) of reporting organisations from data collected as part of the reporting requirements, as well as a national headline gender pay gap statistic based on ABS data. Both statistics focus on full-time employees.

International comparison

Employer size The minimum employee threshold legally bound by gender pay gap reporting legislation.					
Australia	France	South Africa	Spain	Sweden	UK
100+	50+	50+	50+ (from 2022)	All (10+ must report)	250+
Employer sector Whether the legislation applies to public or private employers, or both.					
Australia	France	South Africa	Spain	Sweden	UK
Private (extension to public sector planned)	Private	Public and Private	Private and some public sector employees	Public and Private	Public and Private

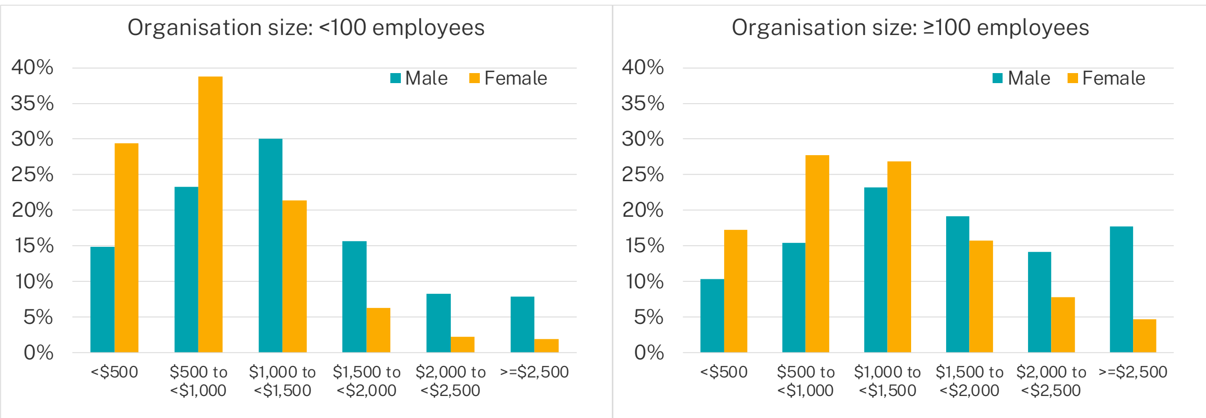
Australia fares relatively unfavourably regarding the coverage of its gender equality reporting legislation. The threshold for employer size is notably higher than in most comparator countries, and to date the public sector is excluded. Collectively, these mean that far fewer women are captured in Australia's reporting legislation. Specifically, WGEA reported that its dataset covered 40.3% of the estimated overall Australian workforce in 2019/20 (WGEA, 2020a).

[6] The public sector has long been covered by separate Federal or State legislation, but coverage and reporting requirements in the public sector have not been universal.

Cross-country comparative analysis led to the conclusion that, from an international perspective, the problem of the gender pay gap was too important to only target large employers, and all employers should be covered in the legislation. Within Australia, however, there was no consensus among stakeholders interviewed that the threshold should be adjusted within the current reporting regime. Despite the relatively unfavourable international comparison for employer size threshold, interviewees generally expressed similar perspectives to those articulated in earlier public reviews of the legislation – that a case to reduce the threshold is not clear cut, as adjustments to the threshold would carry both benefits and costs. On the one hand, there is significant concern amongst academics and advocacy groups that the existing threshold leads to the exclusion of a large proportion of female employees, particularly the most vulnerable who are over-represented in casual and part-time employment by smaller businesses. Confounding the issue, however, is the view that the reporting burden in Australia is heavier than comparison countries due to the breadth of data collected. Additionally, an increase in reporting organisations would increase the administrative workload of WGEA, meaning an increase in funding would also be needed.

The ramification of retaining the existing employer size threshold is illustrated in Figure 3, which shows that the earnings distributions by gender vary markedly by organisation size. There is a higher proportion of women in lower earning categories for smaller organisations (<100 employees) compared to larger organisations. This highlights the relatively advantaged population of employees represented in larger organisations that fit within the current reporting threshold. It also highlights that a segment of the labour force with the highest gender pay gap is not covered by gender equality reporting legislation.

Figure 3: Distribution of male and female employees by average weekly cash earnings



Source: ABS Employee Earnings and Hours, Australia (2018) (Table Builder).

Notes: Includes both public and private organisations.

To some extent, pay gap data pertaining to smaller Australian businesses are captured in the headline national gender pay gap figure reported by WGEA. As outlined in Section 2.1, this national measure is based on AWOTE data from the ABS, which have broader organisational coverage (with inclusion of public sector and smaller organisations). However, this measure has several shortcomings related to the coverage it affords in terms of employees and earnings (Charlesworth & Smith, 2018; ILO, 2018; Todd & Preston, 2012). To summarise, while the focus on full-time employees provides a consistent basis for comparison, it only covers 32% of adult[7] women (and 54% of adult men) in Australia (ABS, 2021a; June 2021 figures). That is, part-time employees, who represent 27% of adult women (and 13% of adult men), are excluded (ABS, 2021a; June 2021 figures). The use of ordinary time also hides the gendered access to other benefits (such as bonuses or overtime) that are more fully reflected in total earnings (Charlesworth & Smith, 2018) and the use of an average wage does not reveal trends across the full wage distribution (Todd & Preston, 2012). While the statistics calculated by WGEA based on the reporting obligations in the 2012 Act are annualised and more inclusive of all types of earnings including superannuation, the focus remains on full-time employees.

The reporting of the Australian national gender pay gap may be compared to the UK national measure, which covers all employees but uses median hourly pay (excludes overtime). The use of hourly earnings (and annualised earnings) may also give a more consistent basis for comparison by disentangling the impact of working time from earnings, but it is important to acknowledge that these measures do not take into account gendered differences in hours worked. Conversely, the use of other measures (monthly, weekly or daily pay) can reflect differences not only in hourly pay but also in the number of hours worked (ILO, 2018). That is, in aiming to derive a homogenous basis for comparison, it is difficult to also illustrate the impact of hours worked, and the resulting calculation could disproportionately exclude women or understate the magnitude of their wage disadvantage. This is of particular concern in Australia with high rates of lower-earning, part-time and casual work amongst women. Other countries have different approaches but also generally acknowledge the importance of a broad set of measures that are inclusive of all working women (ILO, 2018).

An additional issue related to coverage is that the Australian legislation does not require organisations to report remuneration data for workers not classified as employees, such as subcontractors and partners. The exclusion of partner remuneration data in particular has the potential to significantly skew reported gender pay gaps, in light of the under-representation of women at the most senior levels of organisations.

[7] Adults are defined as civilian population aged 15 years and over (ABS, 2021a).

> *"More interesting data [would be produced] if partners were included in the WGEA pay gap reporting. In the UK, a number of large organisations (including us) are choosing to include partners in their gender pay gap reporting in order to present a more complete picture of any potential pay gap."*
>
> **– Danielle Kelly, Head of Diversity and Inclusion, Herbert Smith Freehills**

6.2 Obligations of employers – Reported information

The WGEA dataset is considered world-leading because of the comprehensiveness of data collected and the requirement for submission of raw data on remuneration and workforce composition. Information to be disclosed under the 2012 Act includes a comprehensive range of employment policies and practices, and data enabling measurement against six gender equality indicators. Employment policies and practices covered include recruitment, promotion, termination, training, employee consultation, flexible working arrangements, parental leave, domestic violence leave and sexual harassment.

Employers report on these conditions via completion of an online survey and submission of raw data on remuneration, workforce composition and employment terms against six gender equality indicators:

a. gender composition of the workforce;

b. gender composition of governing bodies of relevant employers;

c. equal remuneration between women and men;

d. 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;

e. consultation with employees on issues concerning gender equality in the workplace;

f. any other matters specified by the Minister.

Image: Alice-photo, shutterstock.com

International comparison

Reported information* What information is required to be reported to fulfil the obligations of a country's gender pay gap legislation?		
Australia	France	South Africa
Remuneration data: Yes (submitted electronically and analysed by WGEA) **Intersectional data:** No **Action plan:** Presence not content	**Remuneration data:** No (pay gap included in index) **Intersectional data:** No **Action plan:** Yes	**Remuneration data:** Yes (submitted manually) **Intersectional data:** Yes **Action plan:** No
Spain	Sweden	UK
Remuneration data: No (report analysis of inequalities, including pay) **Intersectional data:** No **Action plan:** Yes	**Remuneration data:** No (report results of pay audit) **Intersectional data:** No **Action plan:** No	**Remuneration data:** No (report calculated pay gaps) **Intersectional data:** No **Action plan:** No

**Note: unlike later international comparative boxes, this comparative box is not colour coded according to assessments of relative performance, due to the broad range of reporting requirements and the treatment of reported information.*

There are significant cross-country differences in the information required to be reported. Of the countries examined, only Australia and South Africa require the submission of raw remuneration data, with Australia leading the way through electronic submission and subsequent analysis by WGEA as an independent body. Other countries require employers to submit calculated statistics on pay gaps, analysis of pay inequalities, or, in the case of France, an overall equality index score that includes pay gap data as one input. Only South Africa requires the submission of intersectional data, with the country's pay gap reporting focused on racial inequalities and including gender as an intersectional factor. In France and Spain, organisations are required to create action plans and negotiate them with unions or employee representatives. In Australia, employers respond to a survey question on whether they have an action plan ('gender strategy'), but do not need to publish or negotiate its contents (action plans are discussed further in the subsequent section).

The value of mandatory reporting of gender equality outcome measures was highlighted in stakeholder interviews, with most interviewees praising the shift to quantitative outcome measures in the 2012 Act, particularly the measurement of gender pay gaps.

The interviews, however, highlighted areas for improvement in how data are required to be reported. In particular, the use of 'yes'/'no' survey responses and the classifications systems were seen both to limit the insights able to be gained from the data and to undermine organisational accountability. Interviewees also noted a lack of dimensions of disadvantage in addition to gender, but they had conflicting views as to whether these should be included, as outlined below.

The presence, not substance, of gender policies

Under the 2012 Act, employers disclose the presence of gender policies via survey response, but do not disclose the policies themselves. The most common criticism expressed by stakeholders of the information reported under the Act was the 'yes'/'no' style disclosure on policies and practices. Concerns were raised about the usefulness of such responses, as they provide no indication of quality, implementation, uptake or effectiveness. Australia contrasts with international comparison countries in quantifying the number of gender policies rather than disclosing and/or negotiating their content. Although this facilitates comparison across firms, it limits the capacity for stakeholders to hold individual employers accountable for the quality and implementation of their gender policies.

To illustrate, when discussing their routine monitoring activities stemming from WGEA data releases, one union (SDA) interviewee noted that, in the absence of any minimum quality standards, organisations could legitimately report 'yes' to WGEA on the presence of a relevant policy without that policy meeting legislative requirements for employee protection.

> *"One concern is around the fact that the questions vary to 'yes or no, do you provide, do you have policies or procedures?'. They don't specify what those policies and procedures should contain, so there's no requirement that they met legislative obligations. And we see a lot of policies that we would argue, don't even meet the legislative obligations of an organisation."*
> **– Katie Biddlestone, National Women's Officer, SDA Union**

Consistent with this, after nearly four decades of gender equality reporting in Australia many organisations have gender equality policies in place, but evidence suggests that many policies are ineffective. For example, in the 2020 WGEA dataset, 98.5% of organisations reported having a sexual harassment policy, yet regular surveys by the Human Rights Commissioner continue to find experiences of widespread workplace sexual harassment (AHRC, 2018; 2020).

Disclosure requirements that may limit the transparency, accountability and monitoring of sexual harassment prevention are of particular significance in the current environment, which has been described as Australia's own #MeToo movement. Reflecting growing concerns about high levels of workplace sexual harassment in the wake of accusations of rape and assault in the Australian parliament, in May 2021 the Federal Government announced an additional six million dollars in funding for WGEA to enhance reporting on workplace sexual harassment over the next five years.[8] Conversely, it is still unclear whether all

[8] Details are yet to be released.

the recommendations from the National Inquiry into Sexual Harassment will be actioned, which is of significant concern.

Oversimplification of classifications

A lesser order concern expressed by stakeholders about reported information was an oversimplification of classifications and the categories required to be reported on. To enable comparison across sectors and employers, a set of defined classifications is nominated for grouping by occupation, managerial status and industry. Numerous submissions (e.g. Tilley, 2014) to a 2014 public consultation on reporting requirements under the 2012 Act raised concerns that the classification systems designated for reporting, particularly occupational classifications, do not reflect real worker designations or occupational groups. Consistent with this, both employers (BHP & Herbert Smith Freehills) interviewed for this study noted significant differences between internal and WGEA classifications that limited the usefulness of reported data for internal monitoring purposes and increased the reporting burden through data cleansing requirements.

Intersectional data

Most stakeholders noted the absence of other measures of disadvantage in the Australian gender equality reporting legislation, in addition to the binary measure of gender. The absence of such measures contrasts with most public sector equality reporting frameworks that capture Indigenous status, disability and language background; and recently passed public sector workplace equality legislation in Victoria captures these in addition to sexual orientation and religion. An intersectional approach was also recommended in the cross-country study, with South Africa a pertinent example of how gender disparities intersect with race.

While several Australian interviewees acknowledged the benefits of capturing additional dimensions of inequality, there was no consensus on whether the requirements of the 2012 Act should be extended to reflect intersectional disadvantage in the short term. The Diversity Council of Australia CEO, Lisa Annese, noted that classifying ethnicity is more complex in Australia than in many international settings due to the common tendency for individuals to identify with multiple ethnic identities and/or ancestries. She described Australia as *"not ready"* for reporting on ethnicity due to the absence of an agreed, standardised measure. This highlights the challenges of including intersectional data within the diversity context of Australia in the short term, but also the benefits in enabling organisations to take better account of these complex issues when an appropriate set of standardised measures is identified in the future.

In summary, the inclusion of intersectional data, while important for policy discussion, developing targeted interventions and driving change, had inconclusive feedback from stakeholders when it came to implementation. The feedback largely reflects the already heavy reporting burden in Australia. A possible path forward is a reassessment of these reporting burdens to simplify and streamline what is required of employers to better enable intersectional data to be collected.

6.3 Obligations of employers – Corrective action

The 2012 Act does not mandate corrective action on gender pay inequality. Rather, employers are required only to disclose details of employment practices and outcomes. Employers with over 500 employees have an additional duty to enact at least one relevant policy, but do not need to evidence policy implementation.

International comparison

Mandated action plans Are employers made to create action plans to address their gender pay gaps?		
Australia	France	South Africa
No, but measures in place should be indicated.	Yes, if an employer's score on the Equality Index fails to meet the threshold, in addition to equality plans negotiated with trade unions.	No, but employer must take measures where disproportionate wage differentials or pay discrimination are found.
Spain	Sweden	UK
Yes	No, but any pay discrepancies must be remedied.	No (except for the Welsh public sector).
Mandated corrective action Do employers need to present evidence pertaining to the implementation or outcomes of action plans?		
Australia	France	South Africa
No	Yes	No
Spain	Sweden	UK
Yes	Yes	Not Applicable

Australia compares poorly with regard to the obligations of employers to correct inequalities. The strongest requirements exist in Spain and France, where organisations must create action plans and must provide evidence as to their implementation or outcomes. While Sweden and South Africa do not require formal action plans, organisations in both must take action to remedy gender pay discrepancies, with evidence of implementation required in Sweden. Australia does not currently have mandated action plans, and therefore, also does not need to provide evidence of their execution. This is similar to the UK, although Australia does require reporting on whether certain policies exist.

The absence of mandated corrective action was heavily criticised by most stakeholders interviewed. Numerous stakeholders labelled the Australian legislation "toothless", "hopeless", or "useless" without a specific obligation for corrective action. The lack of widespread progress on gender equality was cited as evidence that any regime without mandatory corrective action will fail to achieve its objectives.

> *"I think the problem is it's inconsistent; so we'll have pockets of progress, but sometimes you need to have something that's just a mandatory regime with some real accountability, and penalties. Otherwise, [employers] can just get away with not doing it."*
> **– Catherine Fox, journalist**

Others saw the absence of specific requirements on corrective action as a missed opportunity for legislation to provide clearer guidance on the process of achieving gender pay equality. The lack of specific requirements for corrective action was also seen as granting employers the opportunity to deny responsibility for gender inequality. Philippa Hall, a career gender equality advisor and important architect of early iterations of gender equality reporting in Australia, discussed her observations of the enduring tendency for organisations to account for gender inequality in a way that negates their own role in it.

> *"In my experience, there's a very great readiness to explain away the contributing factors in the gap. And see, if you have actually explained it, you don't need to do anything."*
> **– Philippa Hall, Convenor Women's Electoral Lobby NSW**

A 2014 audit of qualitative gender equality reports submitted under the *Equal Opportunity for Women in Women in the Workplace Act 1999* made similar observations. This included the finding that many organisations reported having established a range of gender friendly policies and consequently had no further responsibilities (Ainsworth et al., 2010).

Stakeholders also emphasised that requirements for corrective action should be supported by mechanisms to ensure accountability for outcomes. This is particularly relevant in light of Australia's history of gender equality reporting. Earlier iterations to the 2012 Act included requirements for employers to submit reports on their intended actions on gender equality. However, these were often found overly general and not linked to measurable outcomes.

> *"More often than not, there are no measures in place to monitor how [action plans are] going, to report on that to anybody, or for there to be accountability. And very often plans have such a level of generality that it would be impossible to know whether anything was actually changing or not. If you really were wanting to be accountable, I think you would have to have reporting to senior management, to the governing body … and to employees."*
> **– Philippa Hall, Convenor Women's Electoral Lobby NSW**

6.4 Compliance and enforcement

In Australia, monitoring of employer compliance with reporting obligations is conducted by WGEA, which pursues a 'naming and shaming' strategy involving the annual publication of a list of non-complying entities. Scope also exists for the Federal Government to enact sanctions through the withholding of eligibility for government supports or contracts.

International comparison

Enforcement Are there robust measures of enforcement for gender pay gap reporting, and can penalties be used when employers fail to act?		
Australia	France	South Africa
Medium: Companies named if they do not report. Non-compliant employers can be excluded from government support and public procurement, but this has not always been enforced.	High: Employers can be penalised up to 1% of turnover, and agreements are monitored by government inspectors.	Low: Poor monitoring with few inspectors, although the Labour Court can issue fines for non-compliance.
Spain	Sweden	UK
High: Scope significantly strengthened in past 2 years (although effectiveness yet to be seen). Penalties can reach over 180,000 Euros and non-compliant employers can be excluded from public procurement.	Low: Poor monitoring, although fines are available.	Medium: Companies named if they do not report. Fines are available but rarely used.

Australia's enforcement mechanisms sit in the middle of the range of countries examined. Like the UK, Australia follows a practice of 'naming and shaming' non-compliant organisations, which evidence suggests serves as a reasonably effective incentive mechanism. All other countries have scope to issue fines, although this is rarely used in the UK and its effectiveness is undermined by poor monitoring in South Africa and Sweden. France and Spain exhibit the strongest enforcement mechanisms through specific and sizable penalties.

Despite an absence of strong sanctions, there has generally been widespread public support for mandated reporting. This is demonstrated in high compliance rates by international standards (98% in 2019-20, WGEA, 2020). However, non-compliance rates have more than doubled since reporting under WGEA began (WGEA, 2014; 2020), suggesting a continued need to focus on strategies for enforcement. In comparison to other countries, Australia fares well on compliance, with the UK at 100% in 2017/18 and 2019/20, France at

77% (for organisations with 1000+ employees) and compliance either unknown or not easily validated in the other countries (South Africa, Spain & Sweden).

In light of high compliance rates, stakeholders generally considered the 2012 Act's compliance mechanisms to be appropriate, although the slippage in recent years raises concern. Key to effective enforcement is the credibility of the threat to impose penalties or other sanctions. A 2021 audit of government tender records by national news outlets found that 31 non-compliant organisations were awarded Federal government contracts, suggesting that government sanctions through withholding eligibility were not being imposed (SMH, 2021).

Finally, a recurring theme in interviews was that the impact of high compliance and strong enforcement mechanisms was only as strong as the requirements themselves. As outlined in the previous section, compliance with the Act does not require organisations to correct identified gender inequalities, or reduce their gender pay gap. As such, failure to undertake positive actions is not a breach of reporting obligations and carries no penalty.

> *"We don't have any kind of targets and stretches to really push change."*
> **– Dr Fiona Macdonald, RMIT University**

6.5 Transparency

For a transparent reporting regime, gender pay gap reports should provide the government reporting body, the employees or employees' representatives, and the public with a sufficient quality and quantity of information for gender equality processes and outcomes to be understood. In Australia, most of the data collected by WGEA are made available to the public, with the notable exception of organisation-level pay gap data.

Aided by moderately high transparency (excluding organisation-level pay gaps) and extensive data translation by WGEA, monitoring of employer performance against reported indicators is largely left to third party stakeholders. Reporting entities are required to share public reports with employees and unions. WGEA conducts a range of important knowledge translation activities, including conversion of raw data into user friendly graphs that present aggregated data at industry and employer levels, and at both single time points and longitudinally across all seven reporting years. This enables reporting entities to contextualise their performance amongst industry peers, ensures that reporting data are accessible to a wide audience and assists with monitoring by third parties. The interactive WGEA DataExplorer page allows users to select multiple employers and/or industries to compare, and publishes employer public reports in full. Raw data (excluding remuneration data) for each reporting period are publicly available for download in spreadsheet form to enable statistical analysis.

International comparison

Transparency The level of access to information by the public. Where insufficient information is available (e.g. the headline result but not the contributing data), the country is given a medium score. Where no information is mandatory to be made public, the country is given a low score.		
Australia	France	South Africa
Medium	Medium	Low
Spain	Sweden	UK
Medium (but central index is being created).	Low	High

Although the Australian monitoring agency conducts extensive data processing and translation to make reporting its dataset navigable and comparable, organisation-level gender pay gaps are not reported, which limits its usefulness. These pay gaps are published in the UK – making it the most transparent of the comparator countries. Like Australia, France and Spain publicise some data, but public transparency is voluntary in South Africa and Sweden.

Through a formal partnership with Curtin University, WGEA's dataset is analysed annually and has been extensively interrogated to identify trends and best practices. Annual releases of WGEA data are widely published by media outlets, and periodically about particular issues like parental leave or female leadership. Both unions (SDA and United Workers) interviewed reported using data published by WGEA in advocacy activity and/or communications with employers, although one union (SDA) interviewed reported often receiving reports from reporting entities too late to comment and/or needing to chase employers for copies. The superannuation fund (Verve Super) interviewed reported using WGEA data in investment research and company screening.

The major criticism of current transparency mechanisms amongst interviewees was the aggregation of gender pay gaps to the industry level, rather than releasing the remuneration gaps of individual reporting entities in publicly available data. The absence of arguably the most important variable (that is, the gender pay gap) in the dataset limits its usefulness and impedes monitoring of performance over time.

A particularly important implication is that it weakens the potential for market forces to impact the gender pay gap through increased stakeholder pressure. Verve Super, a gender focused ethical investment superannuation fund, described a gender-based investment movement in the US and UK, in which investment is directed towards companies achieving progress in gender equality outcomes. Although the Australian investing landscape was described as embryonic in this field, it is well positioned to drive change through the prevalence of superannuation funds, which are increasingly moving towards socially responsible investment principles including gender.

> *"Superannuation funds in Australia own about half of the Australian Stock Exchange, so as a collective, we are the most important investors in Australia, which means that we can advocate on a whole lot of issues [including gender equality]."*
> **– Christina Hobbs, CEO, Verve Super**

For example, the funds management industry, led in particular by guidance from the Australian Institute of Company Directors, has already demonstrated its influence in gender advocacy through a push for female representation on company boards. Data on the board composition of Australian listed companies have been required to be disclosed for over a decade, during which time the proportion of women on ASX200 listed boards has grown from under one in ten in 2008, to over one in three in 2021 (Fitzsimmons et al., 2021).

> *"The industry funds basically said 'if you don't appoint a woman to the board, we're not going to support you at the AGM'. So – a big stick."*
> **– Dr Terry Fitzsimmons, Managing Director, Australia Gender Equality Council**

Yet, board representation is just one facet of gender equality. Verve Super noted that the multi-dimensional WGEA dataset potentially provides Australian investors with a unique opportunity to pursue a holistic approach to gender-based investment. Without the release of the organisation-level gender pay gap data, however, it is difficult to perform a thorough assessment of organisations' performance that can be used as a criterion to invest, and thereby influence the gap.

6.6 Impact of the current legislation

The strengths and weaknesses of the Australian legislation highlighted in Sections 6.1 to 6.5 have important implications for the effectiveness of the current gender pay gap reporting regime. We have previously discussed the noticeable improvement in the gender pay gap since the introduction of the 2012 Act (see Figure 1, Section 2.2). While this improvement likely stems from a multitude of wide-ranging initiatives in gender equality, it is also likely that the legislative regime plays an important role in achieving this level of systemic change. As a minimum, annual reporting keeps gender pay gap movements on the agenda for many stakeholders, including WGEA, employers, researchers and the general public.

However, these improvements have occurred within the context of a global environment that has started to outpace Australia, so it is unsurprising that there continue to be many barriers to change and notable weaknesses in our legislation compared to international counterparts. Indeed, these weaknesses led to Australia's joint-lowest ranking in the cross-country study. Furthermore, in Australia, lack of impact has been the focus of much of the academic research on the topic (e.g. Braithwaite, 1993; French & Strachan, 2007; Macneil & Lui, 2017; Peetz et al., 2008), suggesting room for improvement in maximising the effect of Australia's legislation on the gender pay gap. During the interview process, stakeholders were therefore asked about the impact, if any, that they had observed after, or because of, the 2012 Act.

International comparison

Gender pay gap*						
	Australia	France	South Africa	Spain	Sweden	UK
Median hourly	11.9%	11.8%	26.1%	14.4%	12.0%	20.6%
Median monthly	30.2%	17.6%	30.8%	21.9%	17.5%	35.2%

**Source: International Labour Organization Global Wage Report 2018/19: What lies behind gender pay gaps.*

Direct international comparisons on impact of the legislation by country are difficult to draw, as countries are at different stages of implementation and are not equivalent in terms of coverage and measures used for reporting. There are also significant differences in cultural factors across countries. However, there was a consistent theme across all countries that legislative reform was important and had symbolic value, but that organisational reporting alone was not enough. For consistency, we focus on international comparison of national measures of the gender pay gap above (which may differ to measures used for reporting organisations). This comparison shows that Australia fares well on gender pay gap measures using hourly wages, but not for monthly wages which takes hours worked into account. In fact, we have the highest discrepancy between median hourly and monthly gender pay gaps across all comparator countries. Importantly, this is suggestive of higher rates of part-time and casual work amongst women in Australia compared to other countries.

Existing legislation is essential but not enough

> *"If employers were doing the right thing, we [wouldn't] have to have those placards outside Parliament House saying 'treat us fairly'."*
> **– BPW Australia (Equal Pay Alliance)**

Most stakeholders noted the important contribution that the 2012 Act has made to the evidence base on organisation-level gender inequality. However, most stakeholders also reported that such evidence has not been enough to substantially change either attitudes or practices. Reliance on third party monitoring and advocacy was highlighted as a weakness of the Australian legislation, as it appears that information leverage is not sufficient to overcome the disadvantaged bargaining position of women and women's advocates in relation to employment.

> *"Gathering that information and putting those research reports out is very useful. No question about it. But if we are relying on that to have a wholesale shift in thinking, and more action around things like the gender pay gap, I think that it would have happened by now. And it hasn't."*
> **– Catherine Fox, journalist**

Stakeholders interviewed widely viewed the disclosure approach of low regulatory control as ineffective, particularly in the context of the current legislation, which does not include organisation-level gender pay gaps and therefore limits opportunity for stakeholder pressure. Further, stakeholders believed stronger government action would be required to make employers accountable for gender equality. Gender pay gap reporting legislation was often described as potentially enabling for more privileged women in professional or managerial roles, but of relatively little benefit for most women. Industrial relations scholar, Associate Professor Anne Junor, stated:

> *"Most women really have no power to say where they're going to work. With less than half the workforce in secure jobs – for women, it's not exactly a seller's market for labour."*
> **– Associate Professor Anne Junor, University of New South Wales**

Driving real change starts with accountability

A common theme across countries was the importance of accountability and measurable goals to achieve meaningful change. While the Australian legislation ranks fairly well when it comes to related issues (e.g., transparency and compliance), there remain some elements that do not compare as well and would benefit from refinement. The two main areas of concern are regarding (1) public disclosure of organisation-level pay gaps, as discussed above, and (2) mandating positive action to encourage both action and accountability.

> *"The way to drive progress is for companies to set targets and report progress externally. That's why we're transparent on gender representation, and we openly communicate what our pay gap is to our directors and in our external reporting. But there's nothing that obligates organisations to do that and [it is] one of the biggest opportunities for change in Australia."*
> **– Fiona Vines, Head of Diversity and Inclusion, BHP**

These concerns are evident across the many factors of reporting we have discussed in this report, but further evidence is found using data from WGEA. Figure 4 below shows that despite high levels of transparency, less than 50% of organisations analysed their pay gap data and just over half of those took action to close the identified gap – meaning only around 25% of reporting organisations are analysing and addressing pay inequalities. Disappointingly, a mere 26.7% of organisations reported pay metrics to the executive (WGEA, 2021c).

Figure 4: WGEA statistics on actions taken to reduce gender pay gap

Source: WGEA website, Pay Equity (https://www.wgea.gov.au/pay-equity)

Furthermore, accountability and genuinely taking responsibility for progressing equality outcomes appear key to closing the gap, and are proactively practiced in organisations leading the way. Employers who consistently did pay audits between 2015 and 2020 closed their managerial pay gaps faster than all other companies; in contrast, those who stopped doing pay audits actually saw their managerial pay gaps increase (Cassells & Duncan, 2021). Both employers interviewed are amongst the leaders in their industries on gender equality outcomes and, in describing the evolution of gender equality activities in their organisations, both noted policy development as an early step in a long journey towards cultural change. For example:

> *"We completely revamped our flexible work and parental leave policies as well as the support we provided to parents. And looking back, that was all the easy stuff… that was the low hanging fruit. And so since then, it's been much more focused around the deep seated, unconscious biases that could be slowing the advancement of women towards senior levels in the organisation."*
> **– Danielle Kelly, Head of Diversity and Inclusion, Herbert Smith Freehills**

Such narratives reinforce the importance of maintaining standardised measures of organisation-level gender equality, such as the gender pay gap, in equality reporting legislation to ensure that employer performance can be assessed on more than presence of policy documents alone. The need to 'raise standards to raise results' was noted in the cross-country report, with the removal of 'tick-box' elements of reporting suggested to prevent complacency from employers.

> *"It's easy to tick boxes; it's much harder to prove that you're making change, that there's actually been an impact of the work. And of course the pay equity gap is the result of all the other things that you're doing to create more gender equal workplaces. So it's almost like it's the ultimate, ultimate measure."*
> **– Champions for Change Coalition**

It is notable that a leading Australian advocacy group places high importance on the gender pay gap as the 'ultimate' measure of gender equality in the workplace. Following this, the question remains as to the major omission of

public disclosure of organisation-level gender pay gaps – as publishing this will encourage accountability and provide much needed incentives to act. In an interview with WGEA following her succession as its Director, Libby Lyons stated that the one change that she would like to see made to improve gender equality in Australia is the publication of the organisational pay gap:

> *"I would like to see the Agency able to publish the gender pay gaps of the organisations who report to us...I believe holding organisations to account by publishing their gender pay gaps would drive organisations to do further analysis, to understand their own pay gaps and move them away from justifying why they have them and towards action to address them. It would move organisations towards really addressing the gaps, and in my mind that would be huge in driving real change."*
> **– Libby Lyons, former WGEA Director (WGEA, 2021b)**

A useful comparator and success story on this issue comes from the UK, where organisation-level gender pay gaps must be publicly reported. This level of transparency was a major strength of their regime, and early signs show that market reactions could induce a reduction in the pay gap. For example, there is emerging evidence that the publication of organisation-level gender pay gaps is influencing consumer behaviour, by reducing consumers' purchase intentions from high pay gap firms (Schlager et al., 2021). Early evidence also suggests that the preference of employees, in particular females, to work at organisations with lower pay gaps, is contributing to narrowing the gap now that data is publicly available (Blundell, 2020). The UK case study highlights that the public release of pay gaps can be introduced successfully, and with high approval among external stakeholders with regard to transparency and accessibility.

Image: Supplied

Other barriers to change

It is important to reiterate that gender pay gap reporting must form part of a broader architecture supporting gender equality. In stakeholders' interpretations of the enduring gender pay gap in Australia, two major barriers to change were cited as beyond the control of individual organisations, and, consequently, outside the remit of organisation-level gender equality legislation. First, unpaid care burdens are disproportionately placed on women. This is symptomatic of pervading societal norms on gender roles. This reality, coupled with less affordable, quality child and aged care than is provided in European comparison countries, leads to the particular over-representation of Australian women in part-time and casual roles. Although employers can combat the trend of these roles being lower paid and holding fewer advancement opportunities, a pay gap will remain due to difference in hours worked.

Second, while the gender pay gap persists across all industries and occupations, the undervaluation of women's work is further perpetuating inequalities between male- and female-dominated occupations and industries in a highly gender segregated workforce. This is corroborated by analysing the gender pay gap improvements by industry. Most of the reductions have been concentrated in a few industries, most notably mining, whereas the pay gaps in many industries have remained relatively stable and some have even increased. Overall, female dominated industries have seen the least reductions (WGEA, 2020). Furthermore, women are concentrated in industries dominated by Award wages (a system for setting sector wide pay and conditions), which serves to create wage ceilings (Charlesworth & Macdonald, 2014). Recent attempts to address pay equity across Awards through legal cases have been unsuccessful (Smith & Whitehouse, 2020).

> *"The problem is, they're going to remain feminised industries until pay goes up. All the research shows that."*
> **– Emma Cannen, National Research Director, United Workers**

These barriers reinforce the importance of a broader gender equality architecture to achieve holistic societal change. Other specific areas of continued focus and need are: improving parental leave for all people, the availability of high-quality, affordable childcare, the valuation of women's work and ensuring a living minimum wage.

Image: Ju PhotoStocker, shutterstock.com

Summary and recommendations

Once a world leader in gender equality, Australia has fallen behind and is failing to transform high female educational attainment into better workplace outcomes. Reporting on and ultimately closing the gender pay gap, while only part of the solution, is an important regulatory tool for achieving gender equality.

While our gender pay gap reporting framework has many of the necessary features to be effective, these features are not currently being utilised to achieve maximum impact. These missed opportunities have resulted in Australia ranking joint-lowest on the gender pay gap reporting scorecard amongst the countries studied in the companion cross-country report.

There are a range of avenues through which the impact of Australia's gender equality reporting regime could be improved, each offering different benefits and involving differing levels of complexity in implementation. Our recommendations seek to leverage design features of the existing regulatory framework to enhance the value of the 2012 Act, increase transparency and provide clearer performance guidance and accountability. These recommendations are based on those presented by stakeholders in interviews and are supported through cross-country analysis.

1. Publish gender pay gaps of individual organisations

To advance capacity for stakeholder monitoring and pressure, it is necessary to increase transparency to include publicly available gender pay gaps (total remuneration for full-time employees and all employees) at the organisation level. This was the most common recommendation amongst stakeholders interviewed and the most important change nominated by recently outgoing Director of WGEA, Libby Lyons (WGEA, 2021b). Publishing organisation-level pay gaps would bring Australia in line with the UK on this issue and maximise the opportunity for market forces to impact the gender pay gap through increased stakeholder pressure.

Relevant section of report	Transparency (Section 6.5)
Benefits	**Moderate-High:** Further enables stakeholders to exert pressure on reporting entities for gender equality performance.
Required change to legislation	**Minor:** Requires an amendment to the legislation to enable the publication of calculated pay gaps at the organisation level.
Bureaucratic burden	**Low:** Remuneration data are already collected by WGEA, with the calculated pay gaps reported back to organisations.
Sensitivities	**Medium:** May generate resistance amongst some reporting entities but expected to have widespread public support (as was the experience in the UK).

2. Nominate outcome-based minimum standards related to rolling average reductions in the gender pay gap

Throughout all iterations of Australia's gender equality legislation, women's rights advocates, trade unions and academics have been critical of the lack of mandated corrective action. Consistent with this, while the publication of organisation-level pay gap data was the most common suggestion among interviewees, when asked to nominate a *single* most important change, the one most commonly cited was the enactment of mandated positive action on gender equality. Expectations for corrective action can be achieved within the scope of the 2012 Act, through the authority designated to the relevant Minister to nominate minimum standards (for reporting organisations with over 500 employees).

At present, the minimum standard is satisfied by stating that a formal policy or strategy is in place to support gender equality in at least one indicator domain such as recruitment, promotion, performance management or overall gender equality. The creation of policies in itself does not guarantee improved gender equality, particularly if these policies are inappropriate or poorly executed. Moving the mandated minimum standard to one related to outcomes would increase the accountability of organisations for achieving progress through positive action. Rolling average reductions are recommended as natural workforce fluctuations may make it impossible to achieve reductions in every year. Furthermore, to reduce their gender pay gap over the medium to long term, some employers may need to recruit more junior women to train in non-traditional (male-dominated) occupations, which would result in a short-term increase in their pay gap. As an additional benefit, such standards would better inform third party monitoring, enhancing the impact of Recommendation 1. It is important to note that the determination of appropriate standards would require extensive consultation.

Relevant section of report	Obligations of employers – Corrective action (Section 6.3)
Benefits	**High:** Requires organisations to correct pay inequalities and reduce their gender pay gap over time. Establishes clear expectations for performance around which both WGEA and external stakeholders can provide support and monitoring.
Required change to legislation	**None/minor:** Depending on whether the application of the minimum standard criteria is extended from 500+ to 100+ employees, in order to apply mandated outcomes to all reporting entities defined under the 2012 Act.
Bureaucratic burden	**Low:** Minister would nominate a replacement for existing minimum standards as per authority designated under the 2012 Act.
Sensitivities	**High:** Likely to generate resistance from reporting entities, and the identification and nomination of relevant reductions is complex.

3. Enact the nominated non-compliance sanctions to exclude non-compliant organisations from government procurement, contracting and financial assistance

Failure to enact sanctions for non-compliance symbolises a lack of commitment to gender equality by the Federal Government and may discourage compliance by reporting entities into the future. Although the Act does not prescribe sanctions, it makes them available by specifying that non-compliant entities *"may not"* be eligible for government contracts and financial assistance such as Commonwealth grants. However, recent audits found 31 non-compliant organisations in receipt of government contracts (SMH, 2021). To maximise the symbolic value of the Act, administrative controls should be strengthened to prevent both intentional and unintentional ignorance of non-compliance by government departments.

Relevant section of report	Compliance and enforcement (Section 6.4)
Benefits	**Moderate:** Discourages further slippage in compliance through reaffirming government commitment, and strengthens incentive-based impact on compliance.
Required change to legislation	**None**
Bureaucratic burden	**Low:** Need to ensure procurement bodies cross-check contractors/suppliers against WGEA non-compliant list.
Sensitivities	**Low:** Specified in the 2012 Act and likely widespread public support.

We also highlight two important considerations that require further research and consultation to operationalise for the Australian context. They relate to organisational coverage and collection of intersectional data for disaggregation of gender pay gap reporting. Although these issues are of major policy concern, feedback from stakeholders reflects a lack of consensus on how they can be best incorporated into the current Australian system given the already heavy reporting burden. A possible path forward is a reassessment of the reporting requirements of employers, to simplify and streamline them to better enable intersectional data to be collected and smaller employers to be captured. We propose a public consultation to explore options for operationalising these two important weaknesses of the current reporting regime.

Our recommendations are designed to work together to accelerate Australia's progress towards closing the gender pay gap, as a key component of achieving gender equality. Without stronger support for change, including a renewed focus on meaningful action, Australian women will continue to face economic insecurity across their lifetime with poor retirement outcomes and a heightened risk of homelessness the devastating reality for far too many. Tackling the gender pay gap is crucial to ending this inequality and realising the full potential of all women.

Image: Adam Calaitzis, shutterstock.com

Appendix: Interviews

Australian stakeholders were interviewed as part of a broader cross-study analysis for the GIWL (2021) report *Bridging the gap? An analysis of gender pay gap reporting in six countries*. The countries included Australia, France, South Africa, Spain, Sweden and the United Kingdom (UK). Over 80 interviews were conducted internationally between February and June 2021 across four key stakeholder groups: government, gender equality advocates and experts, employers and trade unions. A breakdown by country is provided below.

Stakeholder group	Australia	France	South Africa	Spain	Sweden	UK	Multi-national
Government	1	1	1	2	4	3	-
Gender equality advocates and experts	11	8	3	9	4	5	-
Employers and employers representatives	3	2	3	3	2	5	6
Trade unions	2	-	-	3	2	3	-
Total	*17*	*11*	*7*	*17*	*12*	*16*	*6*

The 17 Australian stakeholders interviewed were as follows:

Dr Emma Cannen, National Research Director, United Workers Union	26 March 2021
Professor Beth Gaze, University of Melbourne	26 March 2021
Catherine Fox, journalist	9 April 2021
Professor Gillian Whitehouse, University of Queensland	19 April 2021
Kirrily Lansdown, Head of Rewards, and Fiona Vines, Head of Inclusion and Diversity, BHP	21 April 2021
Workplace Gender Equality Agency	23 April 2021 (written)
Champions for Change Coalition	3 May 2021
Dr Terry Fitzsimmons, Managing Director, Australian Gender Equality Council	5 May 2021
Angela Tomazos, Vice President, BPW Australia (Equal Pay Alliance)	7 May 2021
Philippa Hall, Convenor Women's Electoral Lobby NSW	10 May 2021
Danielle Kelly, Head of Diversity and Inclusion, Herbert Smith Freehills	12 May 2021
Katie Biddlestone, National Women's Officer, SDA union	24 May 2021
Christine Hobbs, CEO Verve Super	7 June 2021
Dr Fiona MacDonald, Royal Melbourne Institute of Technology	8 June 2021
Associate Professor Anne Junor, University of New South Wales	16 June 2021
Lisa Annese, CEO Diversity Council of Australia	18 June 2021
Professor Sara Charlesworth	18 June 2021

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