



# Diversity, Equity and Inclusion

Concurrent Session Paper

ANNUAL PIR CONFERENCE

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The forum for  
workplace relations leaders



## OVERVIEW

This paper provides background for the Concurrent Session of Ai Group's 2024 PIR Conference on 'Diversity Equity and Inclusion', which takes place on **Tuesday 13 August, from 3.30-5.00pm.**

A diverse, equitable and inclusive (**DE&I**) workplace environment is a workplace in which workers feel valued, respected and equal to others, regardless of their personal characteristics or circumstances. DE&I has immeasurable benefits, including by improving workplace culture, driving greater productivity, expertise and agility, and cultivating and supporting innovation.

In this session, we discuss the importance of DE&I in the context of the following recent regulatory changes or developments:

- the separate and co-existing duties to prevent sexual and gender-based harassment and other related behaviours under the *Sex Discrimination Act 1984* (Cth) (**SD Act**) (and Victorian anti-discrimination legislation) and Commonwealth, state and territory work health and safety laws (**WHS laws**)
- the expanded entitlements for unpaid parental leave and requests for flexibility working arrangements under the *Fair Work Act 2009* (Cth) (**FW Act**)
- the publishing of individual employers' **gender pay gaps** under the *Workplace Gender Equality Act 2012* (Cth) (**WGE Act**) and related developments.

This PIR Concurrent Session unpacks DE&I in this context and aims to facilitate the exchange of ideas, practices and initiatives between organisations to collectively build initiatives relevant to these regulatory obligations.

Please see the **discussion questions** [here](#) (and at the end of each topic) which may provide a framework for this session. Members may raise any areas of concern and share their experiences related to diversity, equity and inclusion and are not confined by these questions.

# TOPICS

This PIR Concurrent Session focuses on the following five areas:

- [The positive duties and the relevance of diversity, equity and inclusion](#)
- [Workplace flexibility](#) – unpaid parental leave and flexible work requests
- [Employer gender pay gaps](#)
- [Future developments in diversity, equity and inclusion](#)
- [Effective and new practices](#)

Ai Group has detailed member resources relevant to diversity, equity and inclusion and the capability to work with members with particular concerns on managing DE&I and the regulatory obligations we have focused on in this paper.

We include a list of key member resources [here](#).

## PART 1 - THE POSITIVE DUTIES AND THE RELEVANCE OF DIVERSITY, EQUITY AND INCLUSION

### THE TWO POSITIVE DUTIES

Under the SD Act, persons conducting a business or undertaking (**organisations**) have a positive duty to take reasonable and proportional measures to eliminate:

- unlawful sex discrimination
- sexual harassment
- gender-based harassment
- conduct which creates a hostile workplace environment on the ground of sex (i.e., gender); and
- related victimisation,

as far as possible, in the workplace (**Respect@Work targeted behaviours**).

At the same time, WHS laws require organisations to identify where harmful Respect@Work targeted behaviours might occur (in addition to a range of other psychosocial hazards) in the workplace. Organisations must implement measures to eliminate risks to health and safety arising from such behaviours so far as is reasonably practicable. If elimination is not reasonably practicable, the organisation must minimise the risks so far as is reasonably practicable.

## THE RELEVANCE OF DIVERSITY, EQUITY AND INCLUSION TO THE POSITIVE DUTIES

One action item which is key for an organisation in preventing Respect@Work targeted behaviours is utilising a risk management framework.

The risk-management framework is informed by diversity, equity and inclusion, especially in relation to the guiding principles of gender equality and intersectionality.

### WHAT IS THE RISK MANAGEMENT FRAMEWORK?

The risk management framework is proactive, consultative and continuous and has multiple entry points.

The risk management framework requires an organisation to:

- **identify** where Respect@Work targeted behaviours are occurring or might occur
- **assess** the nature of the harm the Respect@Work targeted behaviours would cause, the seriousness of the harm and the likelihood of the harm occurring
- **implement *reasonably practicable control measures*** to eliminate or, if not possible, minimise the risks of Respect@Work targeted behaviours occurring and identify control measures which will remain effective over time
- **maintain and review control measures**, including to ensure they are used correctly, are working as planned and make changes as required.

If control measures are not working, the risk management framework should be used, as appropriate, to identify a new control measure, replace a control measure and/or adapt an existing one.

If an injury or incident occurs, this framework supports the organisation in identifying whether different or additional measures are needed to prevent a recurrence.

### HOW DOES DE&I HELP IN IDENTIFYING RISKS OF RESPECT@WORK TARGETED BEHAVIOURS

To be able to '**identify**' where Respect@Work targeted behaviours are occurring or might occur, it is important that an organisation consider its diversity, inclusive practices and equality (including gender equality).

For example, there is a higher risk of Respect@Work targeted behaviours occurring (even if workers have not reported it) where:

- there is a gender pay gap
- women and gender-diverse workers do not have access to appropriate facilities
- there is a limited capacity to work flexibly and a lack of support for

pregnant employees, parents and carers

- a workplace is male dominated:

*A recent report<sup>1</sup> found that men are more likely (24%) to engage in workplace technology facilitated sexual harassment as compared to women (7%) and it is most common in male-dominated workplaces (45%). The prevalence is significant lower in female-dominated workplaces (16%).*

Relevantly – sexual harassment in male-dominated workplaces is not just directed at females, it is also directed at males. This means it will not reduce the risk of sexual harassment to have an all-male or male-dominated workforce.

- a workplace has a gendered segregation along occupational lines
- a workplace culture includes or normalises sexism, harmful gender stereotypes, sexual innuendo or nudity:

*A recent report<sup>2</sup> found that sexist and gender discriminatory attitudes and the endorsement of sexual harassment myths are the two most common predictors for perpetrators of workplace technology facilitated sexual harassment, including as follows:*

- *people who hold sexist and gender-discriminatory attitudes (e.g., that women flirt to be hurtful, and men are more capable bosses) were 15 times more likely to engage in these behaviours.*
- *people who strongly believe sexual harassment myths (e.g., that women enjoy being hit on at work or that stopping sexual harassment is as simple as saying you were not interested) were almost 5 times more likely to engage in these behaviours.*
- there are power imbalances along gendered lines (e.g. workplaces where one gender holds most management and decision-making positions or where significant power disparities are present)
- there is a lack of diversity more generally in the business or undertaking
- there are cultural factors or taboos amongst workers, which may, for example, mean they are less likely to report Respect@Work targeted behaviours
- there are vulnerable and high-risk workers who experience multiple forms of harassment and discrimination – noting they may also be less likely to report sexual harassment concerns or incidents:

*“I work with women who have just arrived in Australia ... and they’re working in regional Australia ... in meat factories, with 99 percent males in the workforce, and are going to work with minimal, very basic English skills ... they’re*

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<sup>1</sup> [Workplace technology-facilitated sexual harassment: Perpetration, responses and prevention](#)

<sup>2</sup> [Workplace technology-facilitated sexual harassment: Perpetration, responses and prevention](#)

wearing head scarves, they're battling the sexism, the sexual harassment, the racism, and every other form of 'ism' that they can encounter in that<sup>3</sup>."

## HOW DOES DE&I HELP ASSESS THE RISK AND EXTENT OF HARM?

To be able to 'assess' the risk (i.e., likelihood) of Respect@Work targeted behaviours occurring and identify what actions can prevent or eliminate the behaviours, it is crucial for an organisation to consider the diversity in its workforce.

This is necessary because some workers may be:

- **"high-risk' because their particular characteristics or circumstances make it more likely that they will experience Respect@Work targeted behaviours**

These particular characteristics or circumstances commonly include race, ethnicity, Aboriginal or Torres Strait Islander identity, disability, LGBTIQ+ status, workers who do not confirm to traditional gender stereotypes, gender, age, culturally and linguistically diverse backgrounds, workers holding temporary visas and/or migration status.<sup>4</sup>

For example, a LGBTIQ employee in a fashion store: *"they [women] feel that because the gay man isn't necessarily attracted to them physically, it then permits or gives them the right to be a little more touchy feely with them or say things that they probably wouldn't say to a heterosexual male"* (Neil, 31, fashion manager)<sup>5</sup>

- **more 'vulnerable' to injury or ill-health because they often experience multiple forms of harassment and discrimination, and this exacerbates the harm caused by these behaviours**

For example:

- *a worker with a disability may be reluctant to report sexual harassment because they thought they would not be taken seriously or there were assumptions about their capacity because of their disability<sup>6</sup>*
- *a female worker who is culturally and linguistically diverse does not report sexual harassment because of the amount of time spent in Australia, language proficiency, insecure work or visa status, not*

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<sup>3</sup> [Culturally and linguistically diverse | Respect@Work \(respectatwork.gov.au\)](https://respectatwork.gov.au)

<sup>4</sup> [Just another day in retail: Understanding and addressing workplace sexual harassment in the Australian retail industry](#) and the [Model Code of Practice: Sexual and gender-based harassment | Safe Work Australia](#)

<sup>5</sup> [Just another day in retail: Understanding and addressing workplace sexual harassment in the Australian retail industry](#)

<sup>6</sup> [People with disability | Respect@Work \(respectatwork.gov.au\)](https://respectatwork.gov.au)

*understanding their rights or where to go for help, distrust of the government or official complaint channels and concerns about career progression or her place in her community*<sup>7</sup>.

- *"I find a lot of the male customers tend to go after younger female retail workers because of the societal expectations and professional expectations that, "Oh, if I say something to her, she can't do anything. She just has to smile and take it." (Ava, 30, supermarket manager)*<sup>8</sup>.

This directly informs the risk-rating and assessment of harm. It means that where there are vulnerable and/or high risk workers, the risk rating will be moderate or high-risk and the organisation will be required to implement targeted control measures.

### **DE&I CAN BE A CONTROL MEASURE IN ITSELF AND INFORMS OTHER MEASURES**

Having an understanding and commitment to diversity, equity and inclusion in a workplace is in itself an effective control measure that an organisation can add to its toolbox in preventing and responding to Respect@Work targeted behaviours.

It will also enhance an organisation's capacity to develop other effective control measures that will respond to the distinctive characteristics and circumstances relevant to its workplace.

Examples of control measures include:

- changing the in-store marketing/advertising in-store

*"The advertising and the campaigns they make don't help us either, because they can be quite sexualised ... When they [customers] do come into the store, you have all these signs around, you have all these slogans, and we're in the centre of it." (Celeste, 31, intimate apparel store worker)*

- changing reporting procedures including providing anonymous options and in multiple languages

*[M]igration status places women in an unequal position where more often women will prioritise financial need over personal safety [and] thus not report their experiences. The situation is similar for women engaged in domestic work*<sup>9</sup>.

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<sup>7</sup> [Culturally and linguistically diverse | Respect@Work \(respectatwork.gov.au\)](https://respectatwork.gov.au)

<sup>8</sup> [Just another day in retail: Understanding and addressing workplace sexual harassment in the Australian retail industry](#)

<sup>9</sup> [Culturally and linguistically diverse | Respect@Work \(respectatwork.gov.au\)](https://respectatwork.gov.au)

- introducing policies and strategies to address gender inequality, lack of diversity and power imbalances
- ensuring that there are the right skills, staff numbers (e.g., avoid short staffing), experience and diversity in staffing groups to support workers.

### The positive duties and the relevance of diversity, equity and inclusion

- Do you manage the two positive duties together?
- What does your organisation do to support diversity, inclusion and equality and do you do this as part of your compliance with the positive duties?
- Have you identified any areas or groups as high risk and/or vulnerable in your workplace – what have you done about it? Has it worked?
- What are you planning to differently in relation to the positive duties?

## PART 2 - WORKPLACE FLEXIBILITY – PARENTAL LEAVE AND FLEXIBLE WORK REQUESTS

The Federal Government made certain regulatory interventions which compel organisations to address 'structural barriers to work' which arise from personal characteristics of workers such as gender or parent or carer status.

We focus in particular on changes to unpaid parental leave (and Government parental pay leave) and the entitlement to request a flexible working arrangement.

### UNPAID PARENTAL LEAVE/PAID PARENTAL LEAVE

Employees who wish to become parents can potentially access three different entitlements relating to parental leave:

- Unpaid parental leave (UPL) - this is a workplace minimum entitlement found in the National Employment Standards in the FW Act. UPL is, for most employees, the source of their entitlement to take unpaid leave from their jobs following the birth or adoption of a child.
- Government Parental Leave Pay (PLP)- this is a payment made by the Federal Government under the *Paid Parental Leave Act 2010 (Cth) (PPL Act)*. This scheme does not provide an entitlement to leave. It permits eligible persons to apply for what is, in effect, a social security payment which funds time taken off work to care for a newborn or newly adopted child. Government PLP complements parents' entitlements to UPL and can be received at the same time as any employer funded PPL.



- Paid parental leave (employer funded PPL) – this is an optional entitlement which employers may give to employees under an enterprise agreement or employment contract, and which is funded by the employer.

## Unpaid parental leave

The key changes to UPL include the following:

- increased flexibility in the way employees can use UPL;
- more onerous obligations on employers when they respond to employee requests to extend UPL beyond 12 months; and
- a new Fair Work Commission jurisdiction for disputes between employers and employees regarding requests to extend UPL beyond 12 months

### Flexibility – UPL

The *Fair Work Amendment (Protecting Employee Entitlements) Act 2023* amended the FW Act to increase flexibility in relation to UPL as set out below:

- Employees can:
  - take up to 100 days of flexible UPL (or a higher number prescribed by regulation) – this was previously 30 days;
  - commence flexible UPL at any time in the 24 months following the birth or placement of their child; and
  - take flexible UPL before and after a period of continuous UPL (or just take flexible UPL).
- The provisions relating to "employee couples" were removed. All eligible employees can take up to 12 months' UPL and request a further 12 months, regardless of how much UPL their spouse or partner takes.
- The concept of "concurrent leave" was removed. This means couples may take UPL at the same time and without limitation.
- Pregnant employees may take flexible UPL in the six weeks prior to the expected date of birth of their child.

### Responding to requests to extend to extensions of UPL and resolving disputes

The *Fair Work Amendment (Secure Jobs Better Pay) Act 2022* amended the FW Act to impose more onerous obligations on employers in the following ways:

- Employers have additional obligations when responding to a request to extend a period of unpaid parental leave beyond 12 months.
- Parties can access a new statutory dispute resolution mechanism in the FW Act for the resolution of disputes regarding unpaid parental leave extension requests under the NES – this is before the Fair Work Commission.

## Government Parental Leave Pay (PLP)

The *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Act 2023* and the *Paid Parental Leave Amendment (More Support for Working Families) Act 2024* recently amended the PPL Act and made the following changes:

- created a single Government PLP entitlement
- reserved an amount of Government PLP for each parent
- is expanding the ‘reserved’ amount from the current entitlement of 2 weeks by one week each year from 1 July 2025 to reach 4 weeks from 1 July 2026
- expanded eligibility requirements (salary threshold, eligible persons etc.)
- is increasing the maximum amount of Government PLP by 2 weeks each year from 20 to 26 weeks (i.e., currently 22 weeks)
- removed the limitation of 6 weeks (30 days) on the portion of Government PLP that could be taken as flexible Government PLP days and allowed claimants to take PLP in multiple blocks, including for ad hoc single days, within 2 years of the birth or adoption of the child – this aligns with flexible UPL
- removed the requirement on eligible claimants to not return to work, which also aligns with the ability to take flexible UPL

Set out in the table below is the summary of these Government PPL changes.

<b>Date commenced</b>	<b>Maximum of Government PLP</b>	<b>Reserved period for each parent</b>	<b>Remaining period</b>	<b>Number of days which can be taken concurrently</b>
1 July 2023	20 weeks (100 flexible Government PPL days)	2 weeks reserved for each parent (10 flexible PPL days)	18 weeks (90 flexible PPL days)	2 weeks (10 flexible PPL days)
1 July 2024	22 weeks (110 flexible Government PPL days)	2 weeks reserved for each parent (10 flexible PPL days)	20 weeks (100 flexible PPL days)	2 weeks (10 flexible PPL days)
1 July 2025	24 weeks (120 flexible Government PPL days)	3 weeks reserved for each parent (15 flexible PPL days)	21 weeks (105 flexible PPL days)	4 weeks (20 flexible PPL days)
1 July 2026	26 weeks (130 flexible Government PPL days)	4 weeks reserved for each parent (20 flexible PPL days)	22 weeks (110 flexible PPL days)	4 weeks (20 flexible PPL days)

From 1 July 2025, the Government has committed to pay superannuation on the parental leave pay benefit.

### Workplace flexibility – parental leave

- Do you offer a paid parental leave scheme?
- Who accesses unpaid parental leave?
- Are employees using flexible unpaid parental leave?
- Have you found that more workers are qualifying for parental leave?
- Do you top up the Government PLP?

### REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS

The *Fair Work Amendment (Secure Jobs Better Pay) Act 2022* amended the FW Act and expanded the operation of the flexible working arrangements as follows:

- pregnant employees became entitled to make a flexible work request
- an employee who is (or where a member of their immediate family or household is), experiencing family or domestic violence became entitled to make a flexible work request
- employers' technical obligations when considering an employee's request, became more onerous
- a dispute resolution mechanism was introduced which empowered the Fair Work Commission to arbitrate certain disputes relating to a flexible work request, including:
  - whether an employer had reasonable business grounds to refuse a request (see discussion below)
  - where an employer refused an employee's request; or
  - where an employer did not respond to a request within 21 days.
- it was clarified that contraventions of the entitlement (including the technical requirements associated with the operation of such requests) are captured by the civil remedy provisions under the FW Act – which means a penalty may be imposed for a contravention

In this paper, we are focusing on circumstances in which an employer is entitled to refuse a request on 'reasonable business grounds' and discuss this below.

These changes mostly took effect 6 June 2023.

## When is a person eligible to make a request?

Under the FW Act, an employee is entitled to request a flexible working arrangement in writing if they satisfy the following requirements:

- a prescribed circumstance must apply to the employee as follows:
  - the employee is pregnant;
  - the employee is the parent, or has responsibility for the care, of a child who is of school age or younger;
  - the employee is a carer (within the meaning of the Carer Recognition Act 2010);
  - the employee has a disability;
  - the employee is 55 or older;
  - the employee is experiencing family and domestic violence;
  - the employee provides care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing family and domestic violence;
- the employee's desire for changed working arrangements must be because of one of the relevant circumstances and the request for a change in working arrangements must relate to it;
- the employee must have a minimum period of continuous service of 12 months – although (as is the case with parental leave) the actual worked period of service can be less and includes, for example, unpaid leave;
- the request must be in writing; and
- the request must set out the details of the change sought and the reasons for the change.

As it is an entitlement to request (i.e., rather than an entitlement to work flexibly), an employer has the discretion to either approve or reject the request. However, an employer may refuse a request only if:

- the employer discusses the request with the employee;
- the employer genuinely tries to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate their circumstances; and
- where the employer and employee have still not reached an agreement, the employer may only refuse the request on **reasonable business grounds** (see below).

## What needs to be established to refuse a request on reasonable business grounds?

The Fair Work Commission in its first arbitrated decision,<sup>10</sup> provided insight into what might be a “reasonable business ground” for an organisation to refuse a request.

According, to the Fair Work Commission:

- an employer must demonstrate a **likely detriment to the business** and if there is no detriment to the employer in accommodating the request, it will be in the employer’s interest to accommodate the employee as the Fair Work Commission says this encourages employee retention and provides job security;
- while there are acknowledged benefits in collaborating with workers, an employer must consider how the benefits may be impacted by the employee’s personal circumstances and **“generic and blanket HR answers are not sufficient alone to establish a reasonable business ground for refusing a request for a flexible working arrangement”**.
- examples of what may be a **likely detriment** in the context of working remotely/at home include:
  - if an employee was not meeting targets, was difficult to contact, and tasks were not being performed to a specific standard while he or she was working remotely;
  - if there were performance issues, the lost opportunity to assist an employee to improve performance through collaboration and guidance if working from home 100% of the time;
  - if an employer had concerns about an employee’s wellbeing on the basis that work from home arrangements on a full-time basis can be isolating, particularly in a potentially stressful home environment – working in the office in some kind of regular pattern may allow an employer to ensure there are adequate support processes at work for the employer.

When the Fair Work Commission exercises its arbitral powers to make an order, it will have regard to the following considerations:

1. **The Fair Work Commission will account for the processes that the employer took in reviewing the request per s.65A(3) of the FW Act.**

The Fair Work Commission will usually provide some time for the employer to come up with a solution that is operationally viable considering the employees’ circumstances. This allows the employer some flexibility.

The Fair Work Commission may order the employer to properly consider

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<sup>10</sup> [\[2024\] FWC 1845](#)

the request and provide alternative options, and then report back to the Fair Work Commission before a final order is made.

**2. The Fair Work Commission will account for the operational needs of the employer.**

The Fair Work Commission consider the size of business and industry in which the business operates as an indicator of their operational needs and this will be relevant to any arbitrated order. For example, in industries where there is a prominence of rostering, the operational needs may support a refusal of a request for flexible working arrangements if they fall outside or cannot be accommodated within the existing rostering arrangements.

The Fair Work Commission will also have regard to the reality that businesses are constantly evolving in response to external markets, regulation, supply and many other factors. Businesses experience growth organically and through acquisition, they morph and change structure in response to market demands and supply and may downsize or reduce when facing market pressures. It is intended that orders made will not inhibit businesses from making operational decisions or in making a lawful and reasonable request of the employee.

**3. The Fair Work Commission will account for the circumstances of the employee and the gravity of the employee's circumstance.**

The Fair Work Commission recognises that a flexible working arrangement is a National Employment Standard and a statutory minimum entitlement.

**4. The Fair Work Commission will account for any other factors that may be relevant in affecting the practicality of the order and whether it can be complied with.**

The Fair Work Commission will consider circumstances which it described as being relevant to certainty and stability for both the employer and the employee.

For example, if the employee has failed to comply with their employer's lawful and reasonable directions as to working arrangements prior to the order being made, this may count against them when the Fair Work Commission determines the practicality of any arbitrated order.

As stated by the Fair Commission in this case:

*"[The Applicant] has not attended the office since 18 September 2023. On 2 April 2024, the Applicant raised issues of discrimination by [the Employer] stating that the direction to work in the office one day of the week was not lawful and reasonable, and that he would not comply with the return to office mandate until the Commission has made a decision*

*There is assumption by the Applicant that he is entitled to be working*

*a flexible working arrangement without an approved request. This assumption is incorrect. Employees are to follow a lawful and reasonable direction until the request for a flexible working arrangement is granted<sup>11</sup>."*

**5. A flexible working arrangement order can be subject to review and should not be indefinite unless there are very good reasons to do so.**

Orders made will generally be temporary.

When the arbitrated flexible working arrangement expires, the employee can make a new request to extend the flexible working arrangement or request a change of the terms upon trialling the new arrangement. This new request would be subject to the processes in the FW Act.

**Workplace flexibility –flexible work**

- Which groups of people commonly make flexible working requests?
- What kinds of flexible working arrangements are being requested?
- How do you manage requests?
- What is your experience of flexible working – is it a positive?
- Do any of your leaders/managers work flexibly (including part-time)?

## PART 3 - INDIVIDUAL EMPLOYER GENDER PAY GAPS

On 12 April 2023, the *Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Act 2023* commenced and amended the WGE Act.

This introduced several changes to the reporting obligations of relevant employers under the WGE Act, including the publishing of gender pay gap information relating to each relevant employer's individual performance and progress in achieving gender equality in respect of remuneration.

On 27 February 2024 and for the first time, Workplace Gender Equality Agency (**WGEA**) published gender pay gaps for private sector employers with 100 or more employees that reported to the Agency for the 2022-23 reporting period.

This included:

- Base salary and total remuneration **median** gender pay gaps.

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<sup>11</sup> [2024] FWC 1845 at paras [40] - [41]

- Gender composition per pay quartile

Some corporate groups which have subsidiaries with similar gender equality policies and strategies, were able to report as a “submission group”. In the first round of publishing, pay gaps for these corporate groups were published by submission group.

Unlike the WGEA gender pay gap (which is the **average** remuneration for men and women who work for relevant employers expressed as a percentage of men’s pay), the first reporting of employer gender pay gap was reported as the difference between the **median** remuneration for men and women who work for the employer, expressed as a percentage of men’s pay. This was because until the 2023-24 reporting period, it was voluntary to report CEO, Head of Business and Casual Manager remuneration. This has now become mandatory, and the next set of reports will publish averages.

In the second round of publishing in early 2025, WGEA will be using data collected for the 2023-24 reporting period and it will expand what it publishes to include:

- gender pay gaps individually for all relevant employers, this includes those who submit their data as a part of a submission group
- base salary and total remuneration **average** gender pay gaps, as well as base salary and total remuneration median gender pay gaps
- gender composition and **average** remuneration per pay quartile

WGEA expects that employer gender pay gaps using the average gender pay gap will indicate a wider gap than the median.

Employers with at least 500 employees must have a policy or strategy for each of the six gender equality indicators. The sixth gender equality indicator relating to sexual harassment, harassment on the ground of sex or discrimination has been expanded. From 6 April 2023, these large employers have been additionally required to report on their policies or strategies relating to the prevention of, and appropriate response to, sexual harassment, harassment on the ground of sex or discrimination in the designated relevant employer’s workplace.

### Employer gender pay gaps

- What was your experience of the first publishing of the employer gender pay gap?
- What initiatives are you implementing in your workplace to improve the gender pay gap (if you need to)?
- Have you experienced any backlash from implementing gender equality measures? How have you dealt with that?
- Do you think the reporting of individual employer pay gaps is helpful?
- What is your experience of reporting to WGEA – any difficulties, any wins?



## PART 4: FUTURE DEVELOPMENTS FOR DIVERSITY, EQUITY AND INCLUSION

There are ongoing government developments and reviews relevant to diversity, equity and inclusion, including:

- the implementation of outstanding recommendations from the Respect@Work Report, including the inserting a [cost provision into the AHRC Act](#) to provide that a party to proceedings may only be ordered to pay the other party's costs in limited circumstances – this is still in Parliament
- the implementation of the remaining recommendations from the 2021 [review of the WGE Act](#), which includes the collection of non-binary data, the collection of diversity data, setting and achieving specific gender equality targets and the collection of data on the prevalence, nature and reporting of sexual harassment (see [here](#) for more information about this)
- Federal Government proposals<sup>12</sup> (which will need to be legislated) to introduce:
  - A requirement for businesses with 500 or more employees to commit to – and achieve – workplace targets against at least three of the Gender Equality Indicators, in order to win government work.
  - A public and searchable supplier register to identify women owned and led businesses. The register will also track and monitor Government contracts being awarded to women-owned and led businesses and allow for these businesses to register their willingness to supply to government. The register will help identify relevant suppliers for Government and will support development of future actions by building the evidence base on the experiences of women owned and led businesses navigating Government procurement processes.
- the increased sharing and collaboration between WHS regulators and authorities in relation to compliance and enforcement with the positive duties relating to Respect@Work targeted behaviours
- the further development of regulations, guidelines and codes under WHS laws to address sexual and gender-based harassment
- the outcome of the statutory review of paid family and domestic violence leave
- any Government response to the upcoming report by the General Manager of the FWC on the operation of the entitlement to request flexible working arrangements and extensions of unpaid parental leave, which must be

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<sup>12</sup> [Working for Women: A Strategy for Gender Equality | PM&C \(pmc.gov.au\)](#)

provided to the Minister in early 2025 (and will cover the period 26 May 2021 to 25 May 2024) – see here for the [2021 report](#) which was tabled on 14 April 2022

- the outcome of the statutory review of the changes to unpaid parental leave and requests for flexible working arrangements which is due to commence in December 2024 (i.e., as well as other aspects of the changes made by the *Fair Work Amendment (Secure Jobs Better Pay) Act 2022*)
- the Senate Inquiry and Report on [Issues related to menopause and perimenopause](#) which is due to report on 17 September 2024 and any subsequent government response – Ai Group has pressed that there be no change to entitlements relating to menopause and perimenopause
- the flow-on effect from the inclusion of gender equality as part of the object of the FW Act and also as part of the modern awards objective in s.134(1) and the minimum wages objective in s.284(1)– noting the minimum wages objective is expressed more broadly as “the need to achieve gender equality, including by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and addressing gender pay gaps”<sup>13</sup>
- Federal Government action in response (if any) to the 2025 Status of Women Report Card (see 2024 [here](#)) and as part of its [National Gender Equality Strategy](#)
- Federal Government action in response (if any) to the [Inquiry into Australia’s Human Rights Framework](#) which [reported back](#) in May 2024, which proposed, amongst other things, the establishment of a Human Rights Act
- reviews and potential changes to anti-discrimination and equal opportunity legislation in States and Territories, including the introduction of a [Queensland Bill](#) which proposes the introduction of a positive duty to prevent Respect@Work targeted behaviours and the NSW Law Reform Commission review of the *Anti-Discrimination Act 1977* (NSW).

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<sup>13</sup> [Justice Hatcher speech - ALERA Conference 27 October 2023 \(fwc.gov.au\)](#)

## OTHER RESOURCES

### **HR RESOURCES**

#### **Respect@Work**

[Toolkit](#) – Respect@Work

[Sample Prevention & Response Plan](#) – Respect@Work

[Sample Discrimination, Bullying & Harassment policy](#)

Webinars – Respect@Work: Positive Duty Guidelines [Part 1](#) and [Part 2](#)

#### **Unpaid parental leave**

[Timeline for employees eligible for UPL, including up to 100 days of flexible UPL](#)

[Quick facts about flexible unpaid parental leave](#)

Other HR resources are [here](#).

### **WHS RESOURCE CENTRE**

WHS webpage – [Managing psychosocial hazards in the workplace](#)

### **CONSULTING**

The WHS Consulting team can assist with Psychosocial Hazard Journey (including survey, risk assessment and prevention plan). Email: [safety.services@aigroup.com.au](mailto:safety.services@aigroup.com.au)

Ai Group can also provide various services, including advice on steps required to meet positive duty, support in developing a prevention and response plan and conducting risks identification and assessments on sexual harassment, bespoke training, developing policies and standard documents, conducting investigations and advisory work relating to individual grievances and managing related litigation. Email: [info@aigroupworkplacelawyers.com.au](mailto:info@aigroupworkplacelawyers.com.au)

## DISCUSSION QUESTIONS

As stated above, these questions may assist our discussions about the key areas in this paper. However, members can raise any areas of concern related to diversity, equity and inclusion and discussion is intended to be organic.

### **The positive duties and the relevance of diversity, equity and inclusion**

- Do you manage the two positive duties together?
- What does your organisation do to support diversity, inclusion and equality and do you do this as part of your compliance with the positive duties?
- Have you identified any areas or groups as high risk and/or vulnerable in your workplace – what have you done about it? Has it worked?
- What are you planning to differently in relation to the positive duties?

### **Workplace flexibility – parental leave and flexible work**

#### Parental leave

- Do you offer a paid parental leave scheme?
- Who accesses unpaid parental leave?
- Are employees using flexible unpaid parental leave?
- Have you found that more workers are qualifying for parental leave?
- Do you top up Government PLP?

#### Flexible work

- Which groups of people commonly make flexible working requests?
- What kinds of flexible working arrangements are being requested?
- How do you manage requests?
- What is your experience of flexible working – is it a positive?
- Do any of your leaders/managers work flexibly (including part-time)?

### **Employer gender pay gaps**

- What initiatives are you implementing in your workplace to improve the gender pay gap (if you need to)?
- Have you experienced any backlash from implementing gender equality measures? How have you dealt with that?
- Do you think the reporting of individual employer pay gaps is helpful?
- What is your experience of reporting to WGEA – any difficulties, any wins?



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