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WGEA Review Team – Consultation  
Department of the Prime Minister and Cabinet  
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## REVIEW OF THE WORKPLACE GENDER EQUALITY ACT 2021

On behalf of the Australian Council of Superannuation Investors (ACSI), thank you for the opportunity to make a submission related to the review of the Workplace Gender Equality Act ('the Act') 2021.

### About ACSI

Established in 2001, ACSI exists to provide a strong voice on financially material environmental, social and governance (ESG) issues. Our members include 34 Australian and international asset owners and institutional investors with over \$1 trillion in funds under management.

Through research, engagement, advocacy and voting recommendations, ACSI supports members in exercising active ownership to strengthen investment outcomes. Active ownership allows institutional investors to enhance the long-term value of retirement savings entrusted to them to manage. ACSI members can achieve financial outcomes for their beneficiaries through genuine and permanent improvements to the environment, social and governance (ESG) practices of the companies in which they invest.

### Summary of ACSI's position

The Workplace Gender Equality Agency (WGEA) carries out important work to advance gender equality in Australia, and the Workplace Gender Equality Act has helped establish a fundamental framework and culture of disclosure, aimed at improving gender equality in Australian companies. We support the function of the Act, as there is significant evidence on how diversity is linked to more sustainable and successful financial outcomes. Institutional investors require robust and up-to-date data to make informed decisions in the best financial interests of their beneficiaries, and the Act helps to facilitate this through increased transparency and accountability on gender equality.

There remains an opportunity for improvement. The Act and the functions of WGEA can be further strengthened to advance and accelerate gender equality. This could be achieved by:

1. Requiring monitoring and reporting on the outcomes of policies and performance across the gender equality indicators.
2. Encouraging organisations to set targets and timeframes to achieve those targets, as far as possible across all gender equality indicators, but particularly in relation to board and management composition and the gender pay gap.

We also outline ways in which the data on WGEA's website could be made more accessible and useful for stakeholders, and our support for focus on other diversity indicators.

Our more detailed comments are set out in this submission. I trust they are of assistance. Please contact me or Kate Griffiths, ACSI's Executive Manager – Public Policy and Advocacy, should you require any further information on ACSI's position.

Yours faithfully



Louise Davidson AM  
Chief Executive Officer

## Diversity is linked to performance

The financial benefits of gender diversity and the connection between diversity and company performance are clear.<sup>1</sup> A study by McKinsey of companies in the UK and US found that companies with more than 30 percent women executives were more likely to outperform companies with less gender diversity.<sup>2</sup> Companies in the top quartile for gender diversity on their executive teams are 21 per cent more likely to experience above-average profitability than companies in the fourth quartile.<sup>3</sup> Other studies have demonstrated that a higher percentage of women on boards can be associated with lower variability of stock market returns.<sup>4</sup>

Gender diversity is clearly financially material for investors, who are keen to see their investee companies establishing diverse and inclusive workplaces that have a greater likelihood of high performance.

## Room for Improvement in the Workplace Gender Equality Act

When it was introduced in 2012, the Act set a baseline of requirements in relation to gender equality, and since then, has facilitated a culture of greater disclosure. At the same time, the landscape in Australia has significantly advanced, and the Act should now be updated to better reflect societal expectations and good practice.

As noted in the consultation paper, '[c]urrently 100 per cent of relevant employers with 500 or more employees comply with the minimum standards, with almost every company having a policy or strategy in place on sex-based harassment and discrimination.'<sup>5</sup> However clear gender inequalities remain, including a \$25,500 gender pay gap,<sup>5</sup> and in ASX200 companies women comprise only 5 per cent of CEOs<sup>6</sup>, 26 per cent of Executive Management Teams<sup>7</sup> and 32.9 per cent of boards.<sup>8</sup> The minimum requirements are set at a low threshold that does not support continued improvement.

Many of the reporting indicators and the minimum requirements in the Act focus on the existence of policies or strategies, rather than monitoring outcomes. The Act should be updated to encourage a shift in focus from policy to outcomes by:

1. requiring monitoring and reporting on the outcomes of policies, along with performance across the gender equality indicators; and
2. encouraging organisations to set concrete targets and timeframes to achieve those targets, as far as possible across all gender equality indicators, but particularly in relation to board and management composition and the gender pay gap.

## Monitoring and disclosing actual outcomes

Robust measurement and data analysis can facilitate better practice and outcomes. As Credit Suisse has noted, '[t]o drive real change business, investors, policy makers and other stakeholders need access to quality data'.<sup>9</sup> Likewise, the ASX Corporate Governance Principles and Recommendations make clear that companies should set 'appropriate and meaningful benchmarks that are able to be, and are, monitored and measured'.<sup>10</sup>

There are some existing gender equality indicators that require disclosure of outcomes and impacts, for example the proportion of employees that took paid parental leave, and the gender of employees being promoted and appointed to leadership positions. However, there are a number of areas where there is opportunity to strengthen the focus on outcomes, for example:

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<sup>1</sup> WGEA, 'Workplace gender equality: The business case', <https://www.wgea.gov.au/publications/gender-equality-business-case>

<sup>2</sup> McKinsey, 'Diversity wins: how inclusion matters', 19 May 2020, <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters>

<sup>3</sup> Ibid.

<sup>4</sup> Frontier Advisors, 'The power of gender diversity in the workplace', July 2018, <https://frontieradvisors.com.au/wp-content/uploads/2018/07/Frontier-Line-138-The-Power-of-Gender-Diversity-in-the-Workplace-V5.pdf>

<sup>5</sup> WGEA Data Explorer: <https://data.wgea.gov.au/home>

<sup>6</sup> Chief Executive Women, 'Time for targets: Chief Executive Women call for gender balance targets for executive leadership roles' 8 September 2021, <https://cew.org.au/wp-content/uploads/2021/09/CEW-Census-2021-Media-Release-210908.pdf>

<sup>7</sup> Ibid.

<sup>8</sup> Australian Institute of Company Directors, 'Gender Diversity Progress Report', Nov 2020 – Feb 2021, [https://aicd.companydirectors.com.au/-/media/resources/membership/pdf/gender-diversity-report-mar-2021-a4-18pp-1\).ashx](https://aicd.companydirectors.com.au/-/media/resources/membership/pdf/gender-diversity-report-mar-2021-a4-18pp-1).ashx)

<sup>9</sup> Credit Suisse 'Gender diversity is good for business', 10 Oct 2019, <https://www.credit-suisse.com/about-us/news/en/articles/news-and-expertise/cs-gender-3000-report-2019-201910.html>

<sup>10</sup> ASX Corporate Governance Principles and Recommendations, 4<sup>th</sup> edition, February 2019, Recommendation 1.5, <https://www.asx.com.au/documents/regulation/cgc-principles-and-recommendations-fourth-edn.pdf>

- **Pay gap analysis and disclosure:** Improved data collection and reporting on pay gaps at the aggregate level would enable a better understanding of the risks and of the effectiveness of gender diversity programs, which should encourage faster progress.<sup>11</sup> A requirement to undertake pay gap analysis, and to disclose the outcomes of the analysis would be a useful addition to the Act.
- **Flexible working arrangements:** In many organisations, flexible working arrangements can be under-utilised. It would therefore be valuable to have information on the extent to which policies on flexible working arrangements are achieving their objectives.
- **Employee engagement:** The requirement to report on consultation with employees could be strengthened by including the outcomes of such engagement, and the actions taken as a result.
- **Sexual harassment:** the cost to the Australian economy of sexual harassment was estimated to be \$3.8 billion in 2018, through lost productivity, staff turnover, absenteeism and other associated impacts.<sup>12</sup> A shift from reaction to prevention would better manage the risks. The Act's requirements to report on policies, grievance mechanisms and training are important baselines, however there is opportunity for improvement, for example tracking the effectiveness of systems to prevent and manage sexual harassment, and reporting both internally and externally on performance. The Act should be updated to reflect and facilitate the recommendations of the Respect@Work report, where relevant.

### Target-setting

Requiring companies to set targets would also enable a move from a focus on policy to outcomes.

While the Act requires disclosure on whether targets have been set for board representation, it does not require that targets are set, disclosure of performance against targets, nor specify what those targets should be. As stated in the ASX Corporate Governance Principles and Recommendations<sup>13</sup>, '[n]on-numerical objectives such as "introducing a diversity policy" or "establishing a diversity council", and aspirational objectives such as "achieving a culture of inclusion", while individually worthwhile, are unlikely to be effective in improving gender diversity unless they are backed up with appropriate numerical targets'.

Gender targets related to board composition are now well accepted in Australian listed companies and women now comprise 32.9 per cent of the seats at ASX200 board tables.<sup>14</sup> While there have been positive steps, requiring companies to set a time frame in which they will achieve a target of 40:40:20 on their boards would encourage further progress.

Likewise, diversity at executive level requires focus. The 40:40 Vision<sup>15</sup> is supported by investors with more than \$4 trillion in funds under management or advice. 50 per cent of ASX100 and 29 per cent of ASX300 companies have set 40:40 targets in senior roles,<sup>16</sup> so further progress is needed. The Act could more effectively advance gender equality by requiring companies to adopt the requirements of the 40:40 Vision, which focus on target setting, accountability and disclosure of performance.

We also recommend that targets and timelines be set to eliminate gender pay gaps.

### Avoiding overly burdensome reporting requirements

We recognise the importance of avoiding overly burdensome requirements for companies, so the Act should facilitate efficiency as far as possible. Consideration should be given to harmonization across the reporting requirements, so that useful information is provided and duplication is minimized, particularly across the ASX listed cohort, where multiple reporting requirements can apply.

### Improvements in accessibility of data on WGEA's website

The data collected and made available on the WGEA website is useful in providing a snapshot of trends across sectors and the Australian economy as a whole. Nonetheless, improvements could be made to support data accessibility and usefulness for investors and other interested stakeholders. This includes:

<sup>11</sup> This is also recognised by the ASX Corporate Governance Principles and Recommendations, which encourage companies to undertake gender pay equity audits and consider disclosing actions taken as a result.

<sup>12</sup> Australian Human Rights Commission. 'Equality across the board: Investing in workplaces that work for everyone', June 2021, <https://acsi.org.au/wp-content/uploads/2021/06/Equality-Across-the-Board-2021-Digital.pdf>

<sup>13</sup> ASX Corporate Governance Principles and Recommendations, Recommendation 1.5.

<sup>14</sup> Australian Institute of Company Directors, 'Gender Diversity Progress Report', see above no.8.

<sup>15</sup> Hesta, 40:40 Vision, <https://www.hesta.com.au/4040Vision#whatare>

<sup>16</sup> Chief Executive Women, see above no.6.

- **Aggregating company groups:** some companies report for each separate entity or subsidiary, while others report for the company group as a whole. Information could be presented both at the group level and entity-by-entity basis.
- **Underlying data:** As far as possible, it is useful to be able to access the underlying/raw data (eg the reports and responses from specific companies), in addition to the aggregated data in the form of tables and charts.
- **Comparability between companies:** While the website allows for a company to be compared against its industry, it would be useful to be able to compare companies directly against each other.

### Encouraging cultural and ethnic diversity

Companies are likely to be most successful when they approach decisions with diversity of all forms (including diversity of thought, gender, culture, ethnicity, age, skills and other characteristics). Companies that promote diversity are also more likely to attract and retain a wider pool of talent, which can improve performance.<sup>17</sup>

Research has estimated the potential benefit to the UK economy of full representation of Black and Minority Ethnic people across the labour market to be £24 billion, or 1.3 per cent of the UK's GDP.<sup>18</sup> The UK's Parker Review also demonstrates the value of target-setting, robust data collection and monitoring of performance.<sup>19</sup>

While shifts are happening, progress in Australia is slow. The Governance Institute's 2021 Board Diversity Index notes that '[b]ased on current trends, it will take 18 years for the boardroom to be reflective of Australia's cultural diversity'<sup>20</sup>. Aboriginal and Torres Strait Islander peoples face significant barriers in Australian workplaces, and are under-represented in leadership positions in companies.<sup>21</sup> Aboriginal and Torres Strait Islander women are less represented in the workforce than men, and often face situations in which they feel unsupported or culturally unsafe.<sup>22</sup>

There is a need for accelerated change, and Australia should work towards target-setting on cultural diversity of boards and executive management, combined with better monitoring to track progress.

There is therefore an opportunity for WGEA to promote broader indicators of diversity, including cultural/ethnic diversity, recognizing the challenges and that the shift will take time to implement.

<sup>17</sup> From a study conducted in 2019 on companies in the UK and US, McKinsey found that companies in the top-quartile in terms of degree of ethnic and cultural diversity outperformed those in the fourth quartile by 36 percent in profitability (McKinsey, see above no.2). The importance of broader diversity is also reflected in the ASX Corporate Governance Principles and Recommendations, Rec 1.5.

<sup>18</sup> The McGregor-Smith Review, 'Race in the workplace', [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/594336/race-in-workplace-mcgregor-smith-review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/594336/race-in-workplace-mcgregor-smith-review.pdf). Likewise, research in the US has also demonstrated the significant cost to the economy of racial inequality gaps. See Citigroup, 'Closing the racial inequality gaps', September 2020, [https://ir.citi.com/NvUkiHPilz14Hwd3oxqZBLMn1\\_XPqo5FxsZD0x6hhil847xaxEuJUWmak51UHvYk75VKeHCMI%3D](https://ir.citi.com/NvUkiHPilz14Hwd3oxqZBLMn1_XPqo5FxsZD0x6hhil847xaxEuJUWmak51UHvYk75VKeHCMI%3D).

<sup>19</sup> The Parker Review tracks and publishes data (that is voluntarily reported) on ethnic diversity of boards in the FTSE 100, and recommended that every FTSE 100 board should have at least 1 director of colour by 2021, and that this target should extend to FTSE 250 companies by 2024. The Parker Review Committee, 'Ethnic Diversity Enriching Business Leadership', 5 February 2020, [https://assets.ey.com/content/dam/ey-sites/ey-com/en\\_uk/news/2020/02/ey-parker-review-2020-report-final.pdf](https://assets.ey.com/content/dam/ey-sites/ey-com/en_uk/news/2020/02/ey-parker-review-2020-report-final.pdf).

<sup>20</sup> Watermark and the Governance Institute of Australia, '2021 Board Diversity Index', [https://www.watermarksearch.com.au/rails/active\\_storage/blobs/eyJfcmFpbHMiOnsibWVzc2FnZSI6IkJBaHBBeljGQXc9PSIsImV4cCI6bnVsbCwicWicHVljoiiYmxvYlI9pZCJ9fQ==--56fb7ee4b231db6c73229d9acdcfc4c2ec1bff86/2021%20Board%20Diversity%20Index.pdf](https://www.watermarksearch.com.au/rails/active_storage/blobs/eyJfcmFpbHMiOnsibWVzc2FnZSI6IkJBaHBBeljGQXc9PSIsImV4cCI6bnVsbCwicWicHVljoiiYmxvYlI9pZCJ9fQ==--56fb7ee4b231db6c73229d9acdcfc4c2ec1bff86/2021%20Board%20Diversity%20Index.pdf).

<sup>21</sup> Australian Human Rights Commission, 'Leading for Change: A blueprint for cultural diversity and inclusive leadership revisited', April 2018, [https://humanrights.gov.au/sites/default/files/document/publication/Leading%20for%20Change\\_Blueprint2018\\_FINAL\\_Web.pdf](https://humanrights.gov.au/sites/default/files/document/publication/Leading%20for%20Change_Blueprint2018_FINAL_Web.pdf).

<sup>22</sup> UTS, Diversity Council of Australia and Jumbunna Institute for Indigenous Education and Research, 'Gari Yala: Speak the Truth', November 2020, [https://www.dca.org.au/sites/default/files/dca\\_synopsisreport\\_web\\_0.pdf](https://www.dca.org.au/sites/default/files/dca_synopsisreport_web_0.pdf).