

Ai GROUP SUBMISSION

The Office for Women

Review of the Workplace Gender Equality Procurement Principles

19 September 2023



Review of the Workplace Gender Equality Procurement Principles

The Australian Industry Group (**Ai Group**) welcomes the opportunity to provide a response to the Australian Government's Review of the Workplace Gender Equality Procurement Principles (**Procurement Principles**). We note the Consultation Paper prepared by the Office for Women in relation to recommendation 8 of the Australian Government's Review of the *Workplace Gender Equality Act 2012 (Cth)* (**Review**). Ai Group participated in the Review and we accept many of the recommendations made.

Ai Group considers it reasonable and appropriate for the Australian Government to consider compliance with the *Workplace Gender Equality Act 2012 (Cth)* (**WGE Act**) as part of its procurement decisions.

Measures to improve gender equality are varied, and we consider the use of Government procurement decisions to be one of a number of incentives for businesses to address gender equality and their reporting obligations to the Workplace Gender Equality Agency (**WGEA**).

We note that some significant and important changes have already occurred this year as part of the Australian Government implementing key recommendations from the Report.

Specifically, on 12 April 2023 the *Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Act 2023* (**WGE Amendment Act**) commenced operation and introduced changes that enables the Workplace Gender Equality Agency (**WGEA**) to publish organisational gender pay gaps and requires CEOs of relevant employers to provide certain WGEA reports to their governing bodies.

Separate to the WGE Amendment Act, on 3 February 2023 the Australian Government made the *Workplace Gender Equality (Minimum Standards) Instrument 2023* and the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2023* (**the WGE Instruments**). The WGE Instruments introduced some important changes to reporting standards for relevant employers and will apply to the reporting period commencing on 1 April 2023.

Both the new WGE Instruments and WGE Amendment Act will create new obligations and increased public scrutiny on relevant employers in relation to workplace gender equality and the gender pay gap. Ai Group members are reporting that there will be many direct and indirect impacts from the new WGE Instruments and WGE Amendment Act that will draw upon business resources and efforts in expanding organisational gender equality frameworks and governance structures - particularly in the areas of sexual harassment prevention, gender pay gap analysis, and workforce composition. It is important that relevant employers be supported to expand and continuously improve their strategic efforts.

Relevantly, the WGE Amendment Act and the WGE Instruments expand the circumstances upon which relevant employers may be taken to be non-compliant with their reporting obligations under the WGE Act (see in particular, ss.19C, 19CA). To this end, Commonwealth procurement

decisions considering compliance with the WGE Act should now take into account an expanded range of employer obligations for the purposes of being compliant with the WGE Act. In this respect, there has been some strengthening of the legislative framework upon which the Commonwealth may base its procurement decisions and principles.

Given the effect of these new legislative obligations and additional reporting requirements on relevant employers, Ai Group does **not** see the need for the Government to:

- Amend relevant provisions in the *Workplace Gender Equality Act 2012 (Cth)* (**WGE Act**) relating to non-compliance;
- Amend the Procurement Principles in a substantial way that would create additional obligations on relevant employers.

Reasons for non-compliant reporting can vary. Ai Group is aware that some relevant employers undergo significant organisational structural change (as we saw during the pandemic), or experience unplanned changes in key personnel that can negatively impact compliance with reporting obligations. We also know that reporting can be a significant and complex exercise for relevant employers with a large number of corporate entities or large workforces performing diverse functions and that this can negatively impact compliance obligations. These reasons often explain single instances of non-compliance and do not reflect a broader pattern of non-compliance with reporting.

Accordingly, while holders/tenderers of Government contracts should be required to submit a WGEA issued compliance certificate, it is important that the Procurement Principles enable the exercise of Commonwealth discretion to consider any relevant reasons or a history of relevant employer's non-compliance with reporting. We also expect this may assist the Commonwealth in circumstances where competition for Commonwealth contracts is limited and where satisfying other procurement criteria is also relevant.

Consequently, it is also important that sections 18 and 19 in the WGE Act be preserved to allow the Commonwealth to exercise discretion in relation to procurement decisions.

Should the Commonwealth proceed to vary its Procurement Principles, we encourage that this be well-communicated with industry while reiterating that compliance with the WGE Act is required.

ABOUT THE AUSTRALIAN INDUSTRY GROUP

The Australian Industry Group (Ai Group®) is a peak national employer organisation representing traditional, innovative and emerging industry sectors. We have been acting on behalf of businesses across Australia for 150 years. Ai Group and partner organisations represent the interests of more than 60,000 businesses employing more than 1 million staff. Our membership includes businesses of all sizes, from large international companies operating in Australia and iconic Australian brands to family-run SMEs. Our members operate across a wide cross-section of the Australian economy and are linked to the broader economy through national and international supply chains.

Our vision is for thriving industries and a prosperous community. We offer our membership strong advocacy and an effective voice at all levels of government underpinned by our respected position of policy leadership and political non-partisanship.

With more than 250 staff and networks of relationships that extend beyond borders (domestic and international) we have the resources and the expertise to meet the changing needs of our membership. Our deep experience of industrial relations and workplace law positions Ai Group as Australia's leading industrial advocate.

We listen and support our members in facing their challenges by remaining at the cutting edge of policy debate and legislative change. We provide solution-driven advice to address business opportunities and risks.

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