



GENDER EQUITY BILL

RESPONSE TO CALL FOR SUBMISSIONS ON THE PROPOSED WORDING
FOR THE VICTORIAN GENDER EQUITY BILL

Women's Health in the South East
29 November 2018

Acknowledgement of the Traditional Owners

Women's Health in the South East acknowledges the traditional owners of the land of the Southern Metropolitan Region of Melbourne including the Bunurong People and Wurundjeri People of the Kulin Nation. We pay our respects to elders past, present and emerging. WHISE acknowledges that sovereignty of this land has never been ceded and we are committed to honouring Australian Aboriginal and Torres Strait Islander peoples in our work.



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WHO IS WHISE?

Women's Health in the South East (WHISE) is the regional women's health service for the Southern Metropolitan Region.

WHISE is a not-for-profit organisation that focuses on empowering women. We work to improve the health and well-being of women in our region by providing health information and education to governments, organisations, education providers, and community groups.

Our team of health promotion professionals work to promote gender equality, sexual and reproductive health and the prevention of violence against women.

WHISE proudly provides settlement services for refugee and migrant women. Funded through the Federal Government, our team assist women to access mainstream services, increase their knowledge of Australian society, and to help them better participate in the broader community. We run support sessions, provide assistance to liaise with government departments and referrals when required.

Primary prevention

Primary prevention in health promotion is at the very core of what we do. It is a deliberate way of changing the underlying causes of poor health. Rather than treating disease, our work seeks to prevent disease. WHISE work aims to reduce incidence of poor health of women in our community.

We train and raise understanding about gender equality because we know that this is the root cause of violence against women. We work in partnership with communities on sexual and reproductive health to support women to take control over their own health and well-being.

Health Promotion and Primary Prevention increases community well-being and most importantly for us, empowers women.

Where we work

We work across 10 local government areas. Our area of work is called the South Metropolitan Region and consists of approximately 1.3 million people, representing about one-quarter of the state's total population.

We cover Port Phillip, Bayside, Kingston, Frankston, Stonnington, Glen Eira, Dandenong, Cardinia, Casey and Mornington Peninsula.



Why we make this submission

As an expert in the promotion of women's health across the Southern Metropolitan Region, WHISE views the skills and knowledge of the barriers to the wholesale adoption of Gender Equality principles to be crucial to the successful roll out of this law.

WHISE recommends that Government seek out and partner with existing regional gender equity networks such as that found in the Regional Women's Health Services (including WHISE) to assist in the implementation of the legislation. Our current role and legacy in the community would provide an excellent conduit for Government to create sustainable and lasting change in the community.

It is our view that the legislation represents significant social change and leadership. Translating this from the point of assent into the everyday workings of 'in-scope entities' and their aligned suppliers and partners, needs to occur in a way that builds community ownership of both the issue and the solution.



OUR SUBMISSION

Feedback on the Draft Bill

Part 1 - Preliminary

Defining Gender

In defining the term *Gender Equality*, the Bill uses the language of “people of different genders”¹ indicating an acceptance of the non- binary nature of gender. This runs into some difficulty with the later stated purpose of the bill as being to “improv[ing]e the status of women.”²

The Bill must be clear in its definition of gender as either being non-binary or binary. We respectfully recommend that if a binary definition of gender is preferred, the definition reflects the description adopted by OurWatch, the peak body for Victoria:

*Gender is the socially learnt roles, behaviours, activities and attributes that any given society considers appropriate for men and women; gender defines masculinity and femininity. Gender expectations vary between cultures and can change over time.*³

We recommend that the language throughout the bill be consistent, so that the bill is clear in the definition of gender.

Purpose of the Act

WHISE notes that the primary purpose of the act should be to advance the status of women, by pursuing a gender equality agenda.

The available evidence is settled on gender equality being a prerequisite for the advancement of women, and these two concepts should not be listed as two independent hierarchical aims. The object of the bill currently reads that the *primary* purpose of the act is to “promote and encourage progress towards achieving gender equality” and lists “improv[ing]e the status of women”⁴ as the secondary object of the act.

We therefore recommend that *section 3* be amended as follows:

¹Exposure Draft; Gender Equality Bill, s 4

²Exposure Draft; Gender Equality Bill, s 3

³ Our Watch Australia's National Research Organisation for Women's Safety (ANROWS) and VicHealth, 2015, p. 8

⁴ Exposure Draft; Gender Equality Bill, s 3



The object of this Act is to improve the status of women by promoting and encouraging gender equality within defined entities.

Power of the Finance Minister

An object of this bill is to empower the Finance Minister to “make regulations to assist defined entities to comply with this act.”⁵ The power of the Finance Minister *must* be defined in this bill, to ensure that the core principles of the act are not negatively impacted, and to ensure consistency and predictability on the implementation of the act, to encourage compliance.

Further, the hierarchy of ministerial involvement must be clarified by this bill. There must be clarity in how the role of the Ministerial Council, the Minister for Women's Equality and the Finance Minister interact.

We respectfully recommend that the Minister for Women's Equality be the only Minister empowered to make regulations in relation to the bill, to ensure that the key principles are appropriately entrenched in all regulations.

Establishment of a Minister

While the definition of the *Finance Minister* is provided, reference is made throughout the Act of another ‘Minister’⁶ who is not defined in any section of the bill.

We respectfully recommend that the drafters include a definition of this Minister’s role, title and powers, as this is a core administrative concern of the current bill. The bill refers to the interaction that the Finance Minister will have with the ‘Minister’⁷ and this begs questions concerning the interaction of the two Minister’s functions and powers which cannot be resolved on an ordinary reading of the bill in its current form.

Non-Derogation Clause

The non-derogation clause is problematic when considering in conjunction with the lack of enforcement measures for defined entities to comply with the obligations contained in the bill.

The law is not purely practical or instrumental in terms of establishing offences and punishment. Law has an inherently symbolic value, reflecting both the values of the citizens, and a vision for the state, and law acts the voice of the state to the citizens, which has assumed legitimacy and authority.ⁱ

⁵ *Exposure Draft; Gender Equality Bill, s1(c).*

⁶ *Exposure Draft; Gender Equality Bill, s16.*

⁷ *Exposure Draft; Gender Equality Bill, s 13 (1).*



By including a non-derogation clause, the message sent from the Victorian Parliament is that the obligations contained in the bill; to work for the advancement of women by embedding gender equality principles, are optional or avoidable. This is not consistent with the strong stance the Victoria Parliament has taken on gender equality and the prevention of violence against women⁸

To take affirmative action on gender equality this bill *must* set a new *higher* standard which binds defined entities.

In various parts of the European Union, there exist “a reasonably high number of countries, where criminal sanctions have been introduced for the infringement of provisions on equality (in employment) in particular.”⁹ Various European Union states also have the capacity to impose monetary penalties to deal with breaches of gender pay gaps and/or discrimination based on sex/gender discrimination in relation to employment. In “Norway and Portugal, criminal-law sanctions can concern all discrimination grounds, in both private and public employment, but can only consist of penalties.”¹⁰

These examples highlight the role penalties and sanctions can play to compel workplaces and organisations to better align themselves with the principles of gender equality. Although, the European examples above do not always follow through with imposing specific sanctions or penalties, the act of enshrining these in the legislation can (and does) promote better adherence to the regulations in place.

C. Part 2 - Defined Entities Must Advance and Promote Gender Equality

Gender Equality Principles

The gender equality principles contained in the bill¹¹ are not representative of current evidence.

We consider the most appropriate expression of principles of gender equity to be in our guiding international instruments, take human rights focus, and be applicable in the wide variety of settings where people work, live and play.

WHISE considers the principles of gender equality to be;

All Victorians, regardless of sex and gender, have the right to liberty and security of person.

⁸ Victorian State Government and Family Safety Victoria, 2017

⁹ Directorate-General for Justice and Consumers (European Commission), 2018

¹⁰ Directorate-General for Justice and Consumers, 2016

¹¹ *Exposure Draft; Gender Equality Bill*, s 7(1-7)



Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Women have a right to life and bodily integrity.

Women have the right to just and favourable conditions of work

We consider the principles of gender equality in the bill do not represent the best international practice, but rather the *effects* of gender equality being *achieved*, such as significant economic benefit for Victoria,¹² or the *business case* for gender equality being the benefit for all Victorians.¹³

WHISE does however appreciate the recognition contained in the bill that gender equality is necessary for the prevention of violence against women¹⁴

Reasonable Adjustments

We implore the drafters of the Bill to consider reviewing the use of the term ‘reasonable adjustment’ as the benchmark or test for defined entities actions to achieve gender equality.

We note that there is a clear intention of Parliament neither to derogate obligations from other acts, nor to give rise to any legal rights through this bill. The use of an established legal test of “reasonable adjustment” indicates an intention for defined entities to be held to this standard, this is problematic as the bill does not contain any dispute resolution mechanism, nor as mentioned, gives rise to any legal rights.

If the drafters do not intend for any legal rights to be transferred, then legal tests which ordinarily carry recognisable duties and rights ought to be avoided.

Intersectionality

We applaud the drafters of the legislation for highlighting that “an individual’s experience of gender inequality may be compounded by other forms of disadvantage and discrimination”¹⁵ but note that there is no use of the term ‘intersectional’ or ‘intersectionality’ or any further direction throughout the act on *how* a defined entity should apply an intersectional lens in any of the actions for achieving gender equality.

¹² *Exposure Draft; Gender Equality Bill, s 7(5)*

¹³ *Exposure Draft; Gender Equality Bill, s 7(3)*

¹⁴ Our Watch Australia’s National Research Organisation for Women’s Safety (ANROWS) and VicHealth, 2015

¹⁵ *Exposure Draft; Gender Equality Bill, s 8(c)*



We respectfully recommend that the drafters consider highlighting more clearly the methods of, and importance of an intersectional approach to achieving gender equality.

Legislating against Legal Rights and Obligations

WHISE is concerned that the drafters do not intend to confer any legal rights on any defined entity. WHISE considers the creation of legal rights, and the publication of sanctions for non-complying defined entities to be essential to the success of the bill, once it passes into law.

As mentioned above, a number of European countries have included the provision of sanctions and penalties within the various legislation pertaining to gender equality. For many in the European Union, these provisions have served as a form of deterrent highlighting the important role sanctions can play in compelling organisational change.

In addition to those penalties and sanctions already mentioned, a number of European nations have also included systems “which allow exclusion from public procurement for employers who have been found guilty of (wage) discrimination.” This has been seen in countries including Belgium, Italy and the Netherlands.¹⁶ As a result, discriminating employers would experience difficulties to securing public procurement contracts in the future.

WHISE’ opinion is that a system of “naming and shaming” as an alternative to sanctions will not carry enough weight to enforce compliance.

Further, the drafters’ intention to limit the interpretive function of the act¹⁷ does not reflect whole of population approach that needs to be taken to make the areas where women live work and play more gender equitable. WHISE notes that our peak body OurWatch endorses a whole of population approach on gender equality.¹⁸

Gender Equality Action Plan

WHISE commends the drafters for their formulation of the Gender Equality Action Plans, including the outline of the purpose of the plan, what the plans ought to include and recognising that the information provided to other institutions can be relied upon as a Gender Equality Action Plan for the purpose of this bill.

¹⁶ Directorate-General for Justice and Consumers (European Commission), 2018

¹⁷ *Exposure Draft: Gender Equality Bill*, s 9(c)

¹⁸ Our Watch Australia’s National Research Organisation for Women’s Safety (ANROWS) and VicHealth, 2015



We express concern however over the paucity of any sanctions for defined entities who do not comply with this Division. We rely on our earlier comments at **Part B(v)** regarding the symbolic value of the law, in reflecting both the values of the citizens, and a vision for the state.

We reiterate that in failing to prescribe any sanction for non-compliance with the Gender Equality Action Plan, the message from the Victorian Parliament is that the obligations contained in the bill are optional or avoidable. This is not consistent with the strong stance the Victoria Parliament has taken on gender equality and the prevention of violence against women.¹⁹

Further, WHISE views that the risk of defined entities not complying, and the State not taking a strong position on this, by way of sanctions, is a serious credibility risk for the newly created Ministerial Council for Women and the Minister.

Procurement Guidelines

The procurement guidelines must clarify the role of the Finance Minister and the ‘Minister’ in the issuing of procurement guidelines.²⁰ We reiterate the concerns raised at **B(iv)** in relation to paucity of clear definitions, powers and roles of the two Ministerial roles.

As the literature reveals, procurement policies have become more commonplace throughout the world due to the way procurement policies can “promote inclusive economic growth and gender equality... to ensure that businesses owned by women have chances of success equal to those of enterprises owned by men and as a way for governments to use their purchasing power to pursue social justice.”²¹

Interestingly, procurement policies tied to social justice outcomes are not new to Australia. For example, the Indigenous Procurement Policy introduced in 2015 originally set a “target of 3 percent of all procurement being sourced from indigenous-owned businesses by 2020.”²² In its first year of operation, a 15% increase was seen in government spending with indigenous owned businesses. As a result of this success, the target date was moved to 2017.

In other parts of the world procurement policy has also become more widespread and acceptable. In the United States, for example, procurement policy saw the established of the Women-Owned Small Business

¹⁹ Victorian State Government and Family Safety Victoria, 2017

²⁰ *Exposure Draft; Gender Equality Bill*, s 13(1)

²¹ Rimmer, et al., 2017; McCrudden, 2007.

²² *Ibid.*



Federal Contracting Program.²³ The program saw an increase of \$43 billion over seven years in purchasing from Women Owned Small Businesses.²⁴

The legislation pertaining to procurement policies, however does require clarification and a more proactive path for better inclusion. Procurement policies should not just be about promoting gender equality in organisations and businesses that the State Government may already have business and funding connections or dealings with. Rather, as literature reveals, procurement policies can also go some way to diversifying the range of suppliers and service providers – particularly those that might previously or ‘normally’ have been overlooked due to their size or lack of experience in providing goods and services to government entities. WHISE suggests creating opportunities for a diverse range of suppliers and service providers to promote gender equality in the wider community.

The diversification of suppliers and service providers, however, does not come without some challenges or limitations as stated above. This might include inexperience in the tendering process, lack of awareness of procurement opportunities and so on. Despite these challenges the gender equality legislation could (and perhaps should) provide the necessary measures to support and provide guidance to those businesses which may not have previously sought such contracts or entered the tendering process previously. As a result, tendering processes may need to be reassessed. Given that the legislation in terms of procurement practices will reward those businesses and organisations that align with gender equality principles, it may be necessary for the tendering process to be simplified or streamlined to make it more accessible and thus drive change to greater parts of the community.

WHISE also suggests the legislation be clearly outlined on what specifically will be required of businesses and organisations to be able to be viewed positively for any future tenders or contracts.

WHISE holds a position that due to the importance of gender equity, and recognising the prevalence of family violence in our State, the obligations contained in the bill ought to be tied to *any funding* granted from the State to the defined entities.

We would note our previous advice in this submission (Our Understanding of the matter at Hand) with regard to the lessons learned through the Affirmative Action legislation and ask drafters to consider the risks through the currently drafted procurement measures if they are not strong enough.

²³ United States Small Business Administration (SBA), 2018;

²⁴ Rimmer, et al., 2017



WHISE respectfully requests that the drafters of this bill consider clearly outlining the power of the Minister to issue regulations, and place clear parameters on those powers, to ensure that the core principles of the act, including the quotas, are somewhat insulated from a change in political climate.

Gender Equality Targets

The use of the phrase “reasonable steps” is of concern, as it is undefined, and there are no further directions to defined entities as to what ‘reasonable steps’ may require of them.

Further, the citizens jury has delivered a decision on quotas, and clarification is required as to the effect of that decision on this division. It is unclear on an ordinary reading of the bill what the regulations will cover in relation to targets, and WHISE reiterates our concerns at **C(xi)** that those import quotas be protected from a change in political climate.

WHISE reiterates the above concerns as well in relation to the power of the secretary in relation to their power to issue guidelines;²⁵ there are no clear parameters set for these guidelines, or any indication for defined entities as to what weight will be given those guidelines.

It would be unacceptable to WHISE that the decision of the jury is not sustainably implemented by strong regulation to ensure that their aspirational goals are achieved.

D. Part 3 - State Gender Equality Plan

State Gender Equality Plan

WHISE expresses concern about the lack of detail provided on the State Gender Equality Plan in the Bill. We view this plan as being integral to the whole of population attitudinal shift required to achieve gender equality.

We respectfully recommend that the drafters of the bill outline in more concrete terms the details of this plan, including the role that the Ministerial Council will have in this role, including the relationship between the State Plan and the gender equity plans the defined entities are to complete.

WHISE recommends that this State Plan be published and freely available to the public, along with any advice or recommendations issued to the Minister from the Ministerial Council for the Equality of Women. We reiterate our concern at **B(iv)** that the drafters have not included a definition of this Minister’s role, title and powers.

²⁵ *Exposure Draft; Gender Equality Bill, s 14(3)(b)*



A plain reading of this section does not indicate that the responsible Minister is the Finance Minister.

Publication of Names of Non-complying defined entities

WHISE notes our considerable concern that there is no indication of whether the 'Minister' the Finance Minister or the Secretary is responsible for deciding whether a non-complying defined entities name will be published. This is a considerable concern, considering the lack of any dispute resolution within the bill.

WHISE respectfully recommends that the drafters of the bill clarify this as a matter of urgency, to ensure the validity of the administration of this act.

Further, we hold grave concerns regarding the wording of section 18(2)(b) which appears to grant the decision maker discretionary power to *not* publish the name of a non-complying defined entity. We note that there are no limitations placed on this discretionary power, and there is no mechanism for review of this decision. WHISE recommends that either some limits be placed on this discretionary power, *or* a review mechanism be created, to avoid this significant credibility risk.

We take this moment to reiterate our concerns at **B(v)** that we cannot risk the Victorian Parliament transmitting a message that the obligations contained in the bill; to work for the advancement of women by embedding gender equality principles, are optional or avoidable. This is not consistent with the strong stance the Victoria Parliament has taken on gender equality and the prevention of violence against women.²⁶

E. Part 4 - Ministerial Council on Women's Equality

We congratulate the drafters on their creation of a Ministerial Council on Women's Equality. We note the intention of the drafters for the Council to be advisory, and affirm that WHISE' position is for a Council which has the capacity to issue recommendations to the Minister, which are freely available to the public.

WHISE respectfully recommends that *section 19(4)* be struck out, and the Council be empowered to issue independent recommendations that the Minister is obligation to respond to. The Council is an important check and balance on the power of the Minister, and ought to have their independence entrenched in this bill.

²⁶ Victorian State Government and Family Safety Victoria, 2017



Further, WHISE recommends that the bill make clear that the Council members be leaders in their respective fields. We reiterate our concern at **B(iv)** that this Part does not define the role, powers or function of the ‘Minister.’

We strongly urge the drafters of the bill to require the publication of reports produced by the Council, and any reply from the Minister, to ensure accountability and transparency.²⁷ We also strongly recommend that the Bill legislate that the Council an annual response to the State Budget from the perspective of its impact on improving equality for women – again this would be publically available along with any response from the State Government. It is WHISE position that a secretariat is required for the Council to fulfill this role.

²⁷ *Exposure Draft; Gender Equality Bill, s 24*



Implementation

It is our view that the ability to challenge existing prejudices or discrimination within organisations - which we see as a core driver to the creation of this bill, and the Safe and Strong strategy - will require additional support and guidance.

Primary prevention organisations (including organisations like WHISE) are ideal to be called upon to help implement the gender equality legislation and so assist organisations affected by the legislation better understand its principles and requirements— particularly in relation to action plans and reporting requirements.

Investment in Capacity Development

Our recommendation to the Victorian Government is that implementation of the Bill needs to be supported by a strong clear strategy based on a clear understanding of the value of capacity and capability development to:

1. Build strong leadership that both models the value of Gender Equality and Equity and champions the outcomes of the principles it contains
2. Create and embed the systems changes across organizational policies and practices to support ongoing consistent, congruent implementation of the legislation
3. Create sustainable change and understanding across the workforce about what the role of the legislation is, how it works and what role individual workers in organisations play in seeing it realized.

As experts in primary prevention our experience tells us that:

1. Gender equity is for many organisations – government, private and not-for-profit – still a work in progress
2. Turnover of staff and leadership requires strong embedded systems and processes to ensure longevity of practices
3. Alignment across leadership, staff capacity, policies and procedures is required to ensure whole or organisation congruence and culturally consistent understanding of equity in the workplace
4. A strong organizationally-relevant why-frame needs to be established around gender equity and equality so that regulation does not force workers/leaders into seeing gender equity/equality as a compliance issue. (Rather than what it should be which is a valuable cultural and organizational driver for thriving organisations.)



5. Organisations should be empowered and facilitated to design and implement strategies for gender equity and culture change that are co-designed to maximize buy in.

WHISE has in depth, long term and significant experience in undertaking capacity and capability building to create culture change towards gender equality in organisations and the community. We understand acutely the importance of this role especially when it is delivered in a systemic, whole of organisation way at the local level (to accommodate regional variability and issues).

We note for reference that women’s health services across Victoria have similar experience.

We strongly recommend that the legislation’s implementation learn from the lessons of previous similar legislation and create a capacity and implementation supporting strategy. This strategy should utilise the skills and support of Women’s Health Services such as WHISE to maximize the outcomes and benefits of the legislation to the Victorian community and government.

Communication of the Bill

Once the proposed legislation goes through royal assent, energy and resources should be immediately made available to effectively communicate and socialize the laws in the community. If the legislation hopes to enact change at all levels within organisations, and the community at large, a top down approach may not be appropriate nor helpful. Rather, as the Fair Work Ombudsman advocates, “best practice is about developing and implementing effective consultation mechanisms which encourage cooperation and engagement of employees and management.”²⁸

WHISE have seen first-hand the benefits of the clear consistent messages from State Government on Prevention of Violence against Women. We would argue that the assent of the legislation is significant social change for Victorians, and as such, requires coordinated communication and information strategy to maximize the public’s understanding of the value of the legislation, its purpose and role. For WHISE the legislation represents a significant driver of change to improve health and wellbeing of all women in Victoria. To that extent, we see opportunities for the Victorian Government in utilising the iterative processes available through the Communication for Social Change model (SFSC) “where community dialogue” and “collective action” work together. The model is “people-inclusive, integrated.” and builds on a range of theories of change and communication practice.²⁹

²⁸ Australian Government Fair Work Ombudsman, 2018

²⁹ Figueroa, Kincaid, Rani, & Lewis, 2002



Our assumption is that the Government would create a traditional communications strategy to inform and persuade about the value of the legislation, build its profile and continue to consult with the community on initiatives that flow from the legislation. To create sustainable change in the community, WHISE would recommend a balanced approach that is locally based³⁰ and where:

1. The challenge (problem) of gender equality is recognised
2. At the community level leaders and stakeholders are identified as catalysts for change
3. Current perceptions of the challenge are identified from the agency of the community
4. Shared needs are expressed for change
5. Vision for the future of gender equality is articulated
6. Current status identified and objectives set
7. Consensus on action identified
8. Action plan for implementation created³¹

The importance of local communication for the change cannot be underestimated. Communities at the local level need to be supported to translate significant pieces of legislation into “real-life” understanding and practice. WHISE recommends that translation via communication for social change and collective impact occur via targeted settings for those defined “in-scope entities” with a priority put on:

- Organisations – Local Council
- Organisations – Public Utilities
- Organisations – State Departments
- Organisations – Those who will be influence through revised procurement/funding policies.

Further, communities that are connected to these settings could be involved in the change process (eg. Local Government connects with those entities that it procures from, and via its partnerships on the legislation changes.)

Conclusion

Our submission is based upon our considerable length of experience of working to create gender equity and equality in our community – much of it with similar entities to that proposed in the legislation (exposure draft). Further, this submission seeks to advocate that:

³⁰ Adapted from Communication for Social Change Working Paper Series 2002

³¹ Figueroa, Kincaid, Rani, & Lewis, 2002



- A. Language and wording change in the exposure draft is needed to ensure that the goals of the Safe and Strong strategy are realised
- B. Implementation of the legislation post royal assent, needs to be mindful of regional variability and the complex context that the “in-scope entities” operate in. Any implementation and communication strategy will need to build capacity through the prism of social change

In closing we would highlight the significant level of experience that both WHISE and its colleague Women’s Health Services have in gender equality and would strongly recommend that in any implementation these health services are looked upon as partners in the change process. With our existing strong networks, in depth working knowledge of how to create social change, and create ownership of the value of gender equality, we believe that we provide a strong conduit for Government to leverage change.



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