



D23/25339

Ms Louise Perry
Deputy Secretary
Fairer Victoria, Engagement and Coordination
Department of Families, Fairness and Housing
50 Lonsdale Street
MELBOURNE VIC 3000

24 February 2023

Dear Ms Perry,

REGULATORY IMPACT ASSESSMENT FOR THE GENDER EQUALITY AMENDMENT REGULATIONS 2023

I would like to thank your staff at the Department of Families, Fairness and Housing (the Department) for working with the team at Better Regulation Victoria on the preparation of the Regulatory Impact Assessment (RIS) for the proposed Gender Equality Amendment Regulations 2023 (the Regulations).

As you know, the Commissioner for Better Regulation provides independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be written clearly so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 24 February 2023 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

Background and problems

The *Gender Equality Act 2020* (the Act) came into effect on 31 March 2021. It imposes a positive duty on defined entities (certain Victorian public sector organisations with 50 or more employees) to promote workplace gender equality and contains obligations in relation to advancing gender equality and addressing gender inequality. Obligations relevant to the proposed Regulations include:

- undertaking a Workplace Gender Audit (WGA) every four years (which establishes a baseline status for entities to measure their progress and informs the development of a Gender Equality Action Plan (GEAP));
- developing a GEAP every four years (which includes the results of the WGA and refers to the seven Workplace Gender Equality Indicators (WGEI) outlined in the Act); and
- submitting a progress report every 2 years (which reports against the GEAP and progress against the WGEI).

Regulations accompanying the Act have been developed in stages. The first two stages have already been implemented.

- The first stage relates to specific inclusions, exemptions and alternative reporting periods of certain classes of entities under the Act, such as tribunals, school councils, local councils and universities.
- The second stage relates to alternative gender audit processes and dispute resolution functions for universities, and introduced a set of gender pay equity principles, which defined entities must consider when developing their GEAP.

The proposed 2023 Regulations are the third stage and are intended to address other problems and impacts identified in the first year of operation, including:

- Defined entities are not currently required to provide updated WGEI information from their WGA in their progress reports to the Commissioner, making it difficult to assess progress against gender equality outcomes.
- Defined entities are not providing consistent or complete WGEI information to the Commissioner. This imposes an unnecessary burden on the Commissioner and limits their ability to measure outcomes. In addition, the Commissioner does not have the power to prescribe the format of WGAs or progress report, limiting their ability to mitigate this issue.
- Not all Victorian libraries have the same gender equality reporting and responsibilities under the Act and accompanying Regulations despite delivering the same services. Whether a library is in scope of the Regulations depends on its legal status under the *Public Administration Act 2004*.

Options and Impact Analysis

In the RIS, the Department analyses three options, which are a combination of the following five elements:

1. *Requiring defined entities to submit limited WGEI information.* This includes provision of a limited scope of workforce and employee experience data every two years as part of progress reports.
2. *Requiring defined entities to submit more detailed WGEI information.* This includes providing more comprehensive workforce and employee experience data every two years as part of progress reports.
3. *Requiring defined entities to submit more detailed WGEI information as well as limited intersectionality¹ information.* This means that defined entities will have to collect and submit data on gender and other aspects of employees' identity (e.g. Indigenous status, ethnicity and sexuality) every two years as part of their progress reports.
4. *Providing the Commissioner with the power to prescribe the format of progress reports.*
5. *Recognising library corporations as defined entities and designated bodies under the Act, so that they have the same obligations and access to the dispute resolution functions as other defined entities.²*

The three options analysed in the RIS are:

1. Option 1 – Submission of limited WGEI information and prescribing the format of progress reports (elements 1 and 4);
2. Option 2 – Submission of detailed WGEI information, prescribing the format of progress reports and including library corporations (preferred option) (elements 2, 4 and 5); and
3. Option 3 – Submission of detailed WGEI information, limited intersectionality information and including library corporations (elements 3 and 5).

These options are analysed using a multi-criteria analysis (MCA). Each option is assessed against a base case where the current regulatory requirements would continue to operate without the proposed Regulations. The criteria and weightings in the MCA are:

¹ Section 6(8) of the Act outlines that "gender inequality may be compounded by other forms of disadvantage or discrimination that a person may experience based on Aboriginality, age, disability, ethnicity, gender identity, race, religion, sexual orientation and other attributes." The Commission refers to this concept as "intersectional gender inequality".

² Note, the responsible Minister has the power under the Act to prescribe new regulated entities in regulations.

- *Effectiveness* (30 per cent weighting) – the extent to which the relevant option is expected to improve gender equality by promoting and enhancing the objects of the Act, including by assisting defined entities to comply with their progress reporting obligation under the Act and by enabling the Commissioner to carry out their functions under the Act.
- *Clarity* (10 per cent weighting) - the degree to which the relevant option increases clarity for defined entities about their obligations under the Act.
- *Equity and access* (10 per cent weighting) - the degree to which the relevant option increases equity and access across the Victorian Public Sector, in respect to the rights and obligations under the Act. Equity and access is promoted through greater coverage of entities and includes access to dispute resolution services.
- *Cost on defined entities and the Commission* (50 per cent weighting) - the degree to which the relevant option increases or reduces the burden on defined entities (including the compliance costs associated with the time and resources employed by defined entities to comply with the specific requirements of the option) and on the Commission (including the time and resources spent to administer and enforce the particular option).

Option 2 is highlighted as the preferred option. The Department estimates that the cost to defined entities and the Commission for Option 2 is **\$24.5 million over 10 years**, higher than Option 1 (\$18.5 million over 10 years) but lower than Option 3 (\$35.2 million over 10 years).

The Department explains that Option 2 provides greater benefits than Option 1 as it requires entities to provide more detailed WGEl information and includes library corporations as defined entities, which increases effectiveness. Option 2 also rates higher in terms of clarity and equity and access.

Option 2 provides greater clarity compared to Option 3, as it sets the format for progress reports and does not include intersectionality information (which is anticipated to add to the complexity of progress reporting requirements).

Implementation and Evaluation

In the RIS, the Department explains that the proposed Regulations are intended to come into effect on 1 July 2023. This will mean that, while defined entities have already submitted their first audit and GEAP under the Act, the Regulations will commence prior to the first progress reporting cycle on 31 October 2023 (i.e. every 2 years).

To assist with implementation, the Commissioner has provided all defined entities with an extension for submission of their progress reports, which are now due on 20 February 2024.

The Commissioner will implement the proposed Regulations and monitor implementation, including:

- developing guidelines,
- delivering the education and communications plan, and
- updating the reporting platform.

The requirements in the proposed third stage of Regulations will be implemented in parallel with the other requirements under the Act and Stages 1 and 2 Regulations, as discussed above.

The Department explains that it will evaluate the proposed Regulations as part of the broader review of the Act, which must be undertaken within the first four years of operation (i.e. prior to 31 March 2025). It explains that in its evaluation, possible indicators could include:

- Improvement in the comprehension of progress reporting requirements by defined entities;
- Improvement in the quality of the data provided to the Commissioner;
- Improvement in the Commissioner's ability to engage in effective analysis of the state and nature of gender equality in defined entity workplaces;
- Reduction in the burden of data collection and analysis on defined entities and the Commissioner; and
- Improved consistency in access to the Commissioner's dispute resolution function and scope of the gender equality obligations.

These indicators will draw on survey data from defined entities, GEAP and progress reporting data from defined entities, as well as the Department's own analysis.

Yours sincerely



Anna Cronin

Commissioner for Better Regulation