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| Gender Equality Amendment Regulations 2021: Feedback Report |
| 30 December 2021 |


# Background

Regulations are critical to the success of the *Gender Equality Act 2020* (Act) and are being developed in stages. The first stage of regulations, the Gender Equality Regulations 2020 (Principal Regulations) came into effect alongside the Act on 31 March 2021.

The Commission for Gender Equality in the Public Sector (Commission) is finalising the second stage of regulations, the Gender Equality Amendment Regulations 2021 (Regulations), which will amend the Principal Regulations to:

* Prescribe universities as Designated Bodies, therefore expanding the scope of the Public Sector Gender Equality Commissioner’s (Commissioner) dispute resolution function to include universities;
* Provide an alternate data capture period for the purpose of universities’ workplace gender audits to align with existing obligations under Commonwealth legislation; and
* Incorporate a set of gender pay equity principles into the Act, which defined entities must have regard to when developing their Gender Equality Action Plan (GEAP).

The final, revised Regulations were approved and published on the [Victorian Legislation website](https://www.legislation.vic.gov.au/as-made/statutory-rules/gender-equality-amendment-regulations-2021) on 21 December 2021. The Regulations will come into effect on 1 February 2022.

# Overview of Regulations

### Expanding the dispute resolution function to include universities

The Act provides the Commissioner with certain powers to help Victorian public sector employers and local councils deal with disputes about systemic gender equality issues. Universities are currently the only entities under the Act without access to the dispute resolution function.

This regulation will prescribe universities as ‘designated bodies’ under section 38(1) of the Act. This will enable universities or groups of their employees to refer systemic gender equality issues to the Commissioner, if the dispute is referred in accordance with a term of a relevant enterprise agreement or workplace determination. Access to the Commissioner for dispute resolution is a voluntary process for both complainants and respondents.

Local Councils were prescribed as designated bodies in the Principal Regulations, which were published in September 2020.

### Alternative data capture period for universities’ workplace gender audits

This regulation will exempt universities from the existing data capture period under the Act for the purposes of workplace gender audits, provided that they adhere to an alternative data capture period to align with existing obligations under the Commonwealth’s *Workplace Gender Equality Act 2012*.

Under sections 11(2) and 11(3) of the Act, defined entities must assess the state and nature of gender equality in their workplace as at 30 June in a Gender Equality Action Plan (GEAP) reporting year, for the purpose of their workplace gender audit.

Under the changes, universities will instead be able to collect data to assess the state and nature of gender equality in their workplace as at 31 March in a GEAP reporting year. This regulation is designed to reduce the burden and duplication of data collection activities for universities.

### Gender pay equity principles

This regulation will incorporate a set of gender pay equity principles into the Act.

These principles are currently in the Commission’s GEAP guidance as a ‘recommended’ action and are included in the Victorian Public Service Enterprise Agreement 2020.

The proposed regulation will mean that under section 10(1)(c) of the Act, defined entities must take into account the gender pay equity principles in preparing their GEAP.

Please note that the gender pay equity principles will **not** apply to the GEAP that is due to be submitted in March 2022.

# Consultation Process

The Commission consulted with, and sought the consent of, the Minister for Industrial Relations, and the Minister for Higher Education and Minister for Training and Skills, as per obligations under the Act prior to prescribing additional bodies.

The Commission conducted both targeted and public consultations with a range of stakeholders to ensure they were aware of the changes and to gather feedback on the proposed Regulations. See the Appendix for the full list of organisations that the Commission consulted.

As two of the Regulations applied only to universities, the Commission ran targeted consultations with this sector by inviting key university contacts to an online consultation session in October 2021. Other unions, including the Australian Higher Education Industrial Association, were also invited to provide feedback on the proposed Regulations.

The Commissioner consulted with university Vice Chancellors in March 2021 regarding the regulation to provide an alternative data capture period for universities.

The Commission also consulted with the Gender Equality Act Implementation Support Advisory Committee at each stage of the Regulations process and invited the Act’s Practice Leaders Group to provide feedback on the proposed Regulations.

On 18 October 2021 the Commission released a draft of the proposed Regulations for public consultation via the Engage Victoria website. The online consultation ran for two weeks from 18 October – 29 October 2021. All defined entities, as well as other key stakeholders, such as individuals, peak bodies and unions were invited to submit feedback either directly to the Commission or through the Engage Victoria website.

# What we received

The Commission received submissions from 22 different organisations, including 16 submissions through the Engage Victoria website and six via email. Each of the 22 organisations submitted feedback on the gender pay equity principles Regulation. Two of these organisations also submitted feedback on the alternate data capture period and expanding the dispute resolution function regulations. Both organisations were supportive of those proposed changes and raised no concerns.

A number of organisations that provided feedback on the gender pay equity expressed support for the reform but requested further clarity and guidance on the definition and practical application of the gender pay equity principles. For example, some organisations requested clarity regarding:

* the parameters and application of the requirement to take into account the ‘gender pay equity principles when preparing their GEAP, as stipulated in subsection 5A(1) of the Regulations’;
* how to fulfil the requirements of subsection 5A(e) ‘interventions and solutions are collectively developed and agreed to’ when consulting with their workforce to develop their GEAP; and
* how similar organisations might compare types of work under section 5A(a) ‘equal pay for work of equal or comparable value which refers to work valued as equal in terms of skill, effort, responsibility and working conditions, including different types of work’.

A few organisations also raised concerns with:

* the pay transparency requirement due to potential privacy issues; and
* resource inefficiencies and budget constraints that may impact an organisation’s ability to fulfil some of the requirements under this Regulation.

Some organisations recommended:

* adding a principle that workplace cultures support employees to openly raise concerns and provide feedback about pay equity issues, and
* amending some of the wording on the Regulations, for example from ‘pay’ to ‘remuneration’, from ‘equal’ to ‘equal or comparable’ and from ‘worker representatives’ to ‘unions’.

Finally, several organisations recommended making specific reference to the Equal Workplaces Advisory Council Gender Pay Equity Principles (EWAC Principles) either in the Regulations or in the guidance material.

# What we did

The feedback provided by stakeholders gave the Commission an insight into the concerns and recommendations that organisations, including defined entities and expert stakeholder groups, had in relation to the proposed changes. The feedback was important for informing the finalisation of the Regulations and will inform the development of detailed guidance materials to support organisations to apply the gender pay equity principles in the workplace..

The Commission has taken this feedback into consideration and amended the wording of the gender pay equity principles, Regulation 5A. Specifically:

* Inserting a new subregulation to define ‘pay’ for the purpose of subregulation 5A(1)(a), which refers to equal pay for work of equal or comparable value. The new subregulation provides clarity around the meaning of ‘pay’ and will ensure this principle is applied consistently across defined entities. The new subregulation 5A(2) states:
	+ ‘In subregulation (1)(a), ***pay*** means remuneration and includes but is not limited to salary, bonuses, overtime payments, allowances and superannuation’
* Amending 5A(a) to read: equal pay for work of equal or comparable value, which refers to work valued as equal **or comparable** in terms of skill, effort, responsibility and working conditions, including different types of work. This will ensure the definition of ‘equal or comparable’ remains consistent throughout the Regulations.
* Amending 5A(f) to refer to ‘union’ instead of ‘employee representatives’. This definition is consistent with Australian labour laws and other legislation.

# What we will do

The Commission is working to develop detailed guidance materials to accompany the Regulations. These materials will reflect stakeholder feedback and include clear guidance on how to fulfil and apply each of the gender pay equity principles in the Regulations, and how to address the gender pay equity principles in a GEAP.

The guidance material will be included in the GEAP guidance, which can be accessed on our website here: <https://www.genderequalitycommission.vic.gov.au/gender-equality-action-plans>

Some of the feedback provided by organisations will not be applied to these Regulations, such as the addition of further gender pay equity principles. Other recommendations to amend the wording of the Regulations have not been actioned, as to do so, would create inconsistencies with the language and current scope of the Act. For example, some submissions recommended that the word ‘employee’ be amended to ‘worker’ to capture other types of workers such as volunteers and labour-hire workers, however this amendment would make the Regulations inconsistent with the Act.

The Commission will continue working through the remaining stakeholder feedback and consider whether to include this feedback as part of the guidance material. Some of the remaining feedback will also be considered in the development of further Regulations in 2022-2023.

Overall, the Commission is grateful for the valuable and important feedback provided by the community, and which helped to finalise the Regulations and will inform the development of other supporting documentation, such as guidance materials.

The Commission would like to thank all the stakeholders who participated in the consultation process.

# Appendix

* Australian Higher Education Industrial Association
* Australian Services Union
* Banyule City Council
* City of Port Phillip
* Community and Public Sector Union
* Deakin University
* Department of Education and Training Victoria
* Department of Justice and Community Safety Victoria
* Department of Treasury and Finance
* East Gippsland Water
* Equal Workplaces Advisory Council
* Glen Eira City Council
* Greyhound Racing Victoria
* Hepburn Shire Council
* Industrial Relations Victoria
* Kingston City Council
* Latrobe City Council
* Melbourne Convention and Exhibition Centre
* Melbourne Recital Centre
* Monash University
* Office of the Victorian Information Commissioner
* Royal Melbourne Hospital
* Royal Victorian Eye and Ear Hospital
* Swinburne University of Technology
* University of Melbourne
* Victorian Equal Opportunity and Human Rights Commission
* Victorian Public Sector Commission
* Visit Victoria