

This is an advance, pre-copy-edited version of an article that has been accepted for publication in
Volume 49(3) of the *Monash University Law Review*.

Enacting Intersectionality: A Case Study of Gender Equality Law and Positive Equality Duties in Victoria

Alysia Blackham*, Lauren Ryan[#] and Leah Ruppanner^a

Abstract: While intersectionality offers important ideas to advance and extend understandings of inequality, it can be difficult to operationalise in practice. Intersectionality has rarely been integrated into the Australian legal framework. The *Gender Equality Act 2020* (Vic) is one of the first discrimination statutes in Australia seeking to operationalise intersectionality. The Act establishes a new positive equality duty for the Victorian public sector, including requirements for ‘defined entities’ to report data on intersectional gender equality. The Act, and its implementation, therefore offers a critical case study for evaluating an intersectional approach to equality.

Drawing on legal doctrinal research; 44 qualitative expert interviews with those involved in the development and implementation of the Act; and documentary analysis, we consider how the Victorian public sector has responded to this new legal regime, and identify barriers and difficulties in advancing an intersectional approach to equality in practice. We argue that major implementation gaps have emerged in Victoria, reflecting intersectional inequality in the public service itself, and the developing understanding of intersectionality by key players. We put forward suggestions and reforms to address these limitations.

Keywords: intersectionality; equality; discrimination; gender; positive duty; public sector; Victoria; Australia

I. Introduction

Intersectionality is critical for meaningfully understanding how inequality manifests in practice. As Crenshaw describes in developing a Black feminist perspective on law, intersectionality challenges a ‘single-axis’ view of inequality, which focuses on one ground of discrimination and thus ‘distorts’ the ‘multidimensionality of Black women’s experience’.¹ A single-axis view of discrimination marginalises and erases those who are ‘multiply-burdened’.² For Crenshaw, then, ‘any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated’,³ serving instead to categorise struggles as ‘singular issues’ and reinforcing the status quo.⁴ Instead, Crenshaw argues that we should ‘recenter discrimination discourse at the intersection’ by focusing on the lives and

* Associate Professor, Melbourne Law School, the University of Melbourne. This research was funded by the Victorian Government through the Victorian Commission for Gender Equality in the Public Sector Inaugural Research Grants Round, as part of the project *Laying the Foundation for Gender Equality in the Public Sector in Victoria*. The project team included Associate Professor Alysia Blackham, Professor Beth Gaze, Professor Leah Ruppanner, and Professor Susan Ainsworth; Research Project Manager Lauren Ryan, and Research Assistants Eileen Yang, Rosalind Scasserra, Sum Kiu Shu and Lloyd Rouse. The project team advised on the design and execution of this project.

PhD Candidate, the University of Melbourne; Research Project Manager, *Laying the Foundation for Gender Equality in the Public Sector in Victoria*.

^a Professor and Director of the Future of Work Lab, Social and Political Sciences, the University of Melbourne.

¹ Kimberle Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ [1989] (1) *The University of Chicago Legal Forum* 139, 139.

² Ibid 139–40.

³ Ibid 140.

⁴ Ibid 167.

experiences of the most disadvantaged.⁵ Experiences at the intersection of race and gender cannot be captured by looking at gender and race separately;⁶ indeed, the way race and gender intersects shapes structural, political and representational aspects of the experiences of women of colour.⁷ For Crenshaw, then, intersectionality compels us ‘to account for multiple grounds of identity when considering how the social world is constructed.’⁸

Intersectionality therefore does not just entail seeing different grounds of discrimination as adding on to each other; intersectional disadvantage is more than this, recognising the complex and ‘unique compoundedness’ at the intersection of different forms of inequality.⁹ As Blackham and Temple have mapped using data from the Australian Bureau of Statistics 2014 General Social Survey, many people in Australia experience discrimination on the basis of multiple grounds; as those authors conclude, ‘focusing on only one protected characteristic tends to significantly understate individuals’ lived experiences of discrimination ... Discrimination is not experienced in a simple or straightforward way: in practice it is multiple, overlapping and complex.’¹⁰

While intersectionality offers important ideas to advance and extend our understanding of inequality, it can be difficult to operationalise in practice. As Part III maps, intersectionality has rarely been integrated into the Australian legal framework, meaning there are a few practical examples of how these ideas can be deployed and advanced in law and in organisations. To address

⁵ Ibid.

⁶ Kimberle Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color’ (1991) 43(6) *Stanford Law Review* 1241, 1244 (‘Mapping the Margins’).

⁷ Ibid.

⁸ Ibid 1245.

⁹ Crenshaw (n 1) 149–50.

¹⁰ Alysia Blackham and Jeromey Temple, ‘Intersectional Discrimination in Australia: An Empirical Critique of the Legal Framework’ (2020) 43(3) *UNSW Law Journal* 773 (‘Intersectional Discrimination’).

these gaps, we draw on a mixed methods study of the implementation of the *Gender Equality Act 2020* (Vic), one of the first discrimination statutes in Australia seeking to operationalise intersectionality. The *Gender Equality Act 2020* (Vic) established a new positive equality duty for the Victorian public sector, including requirements for ‘defined entities’ to report data on intersectional gender equality. The *Gender Equality Act 2020* (Vic) and its implementation therefore offer a critical case study for evaluating an intersectional approach to equality. Drawing on multiple data sources – legal doctrinal research; 44 qualitative expert interviews with those involved in the development and implementation of the Act; and documentary analysis – we consider how the Victorian public sector has responded to this new legal regime, and identify barriers and difficulties in advancing an intersectional approach to equality in practice.¹¹ We argue that major implementation gaps have emerged in Victoria, reflecting intersectional inequality in the public service itself, and the developing understanding of intersectionality by key players. We put forward suggestions and reforms to address these limitations.

II. Unpacking Intersectionality

‘Intersectionality’ is a complex idea; for Al-Faham, Davis and Ernst, it has been described as ‘a lived experience, an aspiration, a strategy, a way to analyze inequality, and even a movement.’¹² Collins describes this as ‘intersectionality’s definitional dilemma’.¹³ For Al-Faham, Davis and Ernst, though, intersectionality consists of (at least) two general conceptualisations: the first being

¹¹ This research had ethics approval from the Human Research Ethics Committee of the University of Melbourne (ID number 2021-22402-21620-4). To maintain source anonymity, each interview respondent is identified with R and a number (e.g. R1).

¹² Hajer Al-Faham, Angelique M Davis and Rose Ernst, ‘Intersectionality: From Theory to Practice’ (2019) 15(1) *Annual Review of Law and Social Science* 247, 248 (‘Intersectionality’).

¹³ Patricia Hill Collins, ‘Intersectionality’s Definitional Dilemmas’ (2015) 41(1) *Annual Review of Sociology* 1, 2.

its usefulness as an academic tool (in the form of a theory or research paradigm); and the second as a ‘critical praxis’ for ‘social justice projects aimed at remedying complex social inequalities’.¹⁴

At its core, though, intersectionality represents a challenge to and a critique of established ideas of discrimination (law) and inequality (individual, social and institutional structures). Established ideas of discrimination, and the framing of discrimination law, encourage us to think about disadvantage ‘along a single categorical axis’¹⁵ such as gender or race, limiting our inquiry to a single identity within a diverse group, and (in the case of sex discrimination, for example) ignoring class and race-based disadvantage.¹⁶ This silences and marginalises those who experience compounding disadvantage within any group.¹⁷

By contrast, *intersectional* discrimination is where disadvantage is compounded; the sum of disadvantage is greater than its individual parts.¹⁸ As Crenshaw argues, the experiences of black women cannot be captured by examining gender and race separately.¹⁹ Protected characteristics and grounds therefore interact to produce disadvantage which is unique and distinct from discrimination based on any single ground,²⁰ reflecting the complex ‘compoundedness’ of intersectional experiences.²¹

¹⁴ Ibid 15.

¹⁵ Crenshaw (n 1) 140.

¹⁶ Ibid.

¹⁷ Ibid 139–40.

¹⁸ Beth Gaze and Belinda Smith, *Equality and Discrimination Law in Australia: An Introduction* (Cambridge University Press, 2017) 84 (*‘Equality and Discrimination Law in Australia’*); see also Sarah Hannett, ‘Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination’ (2003) 23(1) *Oxford Journal of Legal Studies* 65, 68 (*‘Equality at the Intersections’*).

¹⁹ Crenshaw (n 6) 1244.

²⁰ Mary Eaton, ‘Patently Confused: Complex Inequality and Canada v. Mossop’ (1993–1994) 1(2) *Review of Constitutional Studies* 203, 229 (*‘Patently Confused’*).

²¹ Crenshaw (n 1) 149–50.

Intersectionality is therefore distinct from the idea of *multiple* discrimination, where disadvantage across different grounds is additive.²² Indeed, Atrey has mapped a continuum of judicial approaches to intersectionality, ranging from an approach focused on single-axis discrimination; to multiple discrimination, where there is no causal connection between grounds, and grounds are seen as independent; to additive discrimination, where grounds compound and interact; to embedded discrimination, where two or more grounds are seen as coming together to form a separate ground of discrimination; to, ultimately, intersectional discrimination, which understands multiple identities as a whole, in context, and requires transformational change (see Figure 1).²³ For Atrey, intersectionality is therefore a radical demand, which focuses on both sameness and difference, and understands people's multiple identities holistically, with the ultimate aim of transforming group disadvantage.²⁴

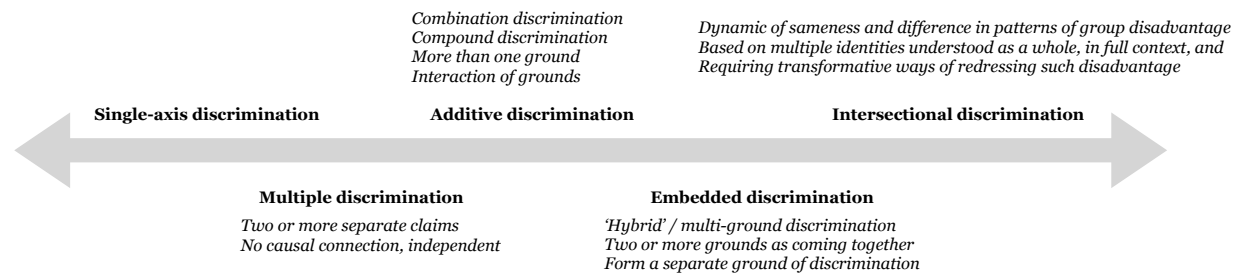


Figure 1: Continuum of judicial approaches to intersectionality (based on Atrey, 2019)

²² Gaze and Smith (n 18) 84; see also Hannett (n 18) 68.

²³ Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, 1st ed, 2019).

²⁴ *Ibid* 2.

Concerns have been raised regarding how a meaningful understanding of intersectionality should be operationalised, including in law and the legal framework. Intersectionality risks devolving into the ‘infinite elaboration of inequality subgroups’, fragmenting ideas of equality and disadvantage;²⁵ focusing too much on the individual and individual experiences, at the expense of considering social processes;²⁶ and downplaying the fluid, dynamic and changing nature of identity.²⁷ To address these concerns, Atrey focuses on the contextual and transformative nature of intersectionality. Intersectionality is grounded in context; it is concerned with identity categories *because of* the inequalities and power relations that attend them.²⁸ Thus, intersectionality, in effect, uses individual identity as a tool for critiquing systemic power disparities; it is deeply embedded in social processes and power dynamics. Further, intersectionality’s transformative focus emphasises social processes, looking beyond the individual.²⁹ Thus, by deploying identity categories purposefully and in a grounded way, with the aim of redressing and transforming disadvantage, intersectionality can avoid the infinite regress issue³⁰ and recognise the fluidity of identity.³¹

The question remains, of course, whether this focus on transformation, social processes and power dynamics has sufficient utility to overcome the abiding practical and theoretical problems inherent

²⁵ Joanne Conaghan, ‘Intersectionality and the Feminist Project in Law’ in Emily Grabham et al (eds), *Intersectionality and beyond: Law, Power and the Politics of Location* (Routledge-Cavendish, 2009) 21, 31.

²⁶ Ibid 29; though see Beth Goldblatt, ‘Intersectionality in International Anti-Discrimination Law: Addressing Poverty in Its Complexity’ (2015) 21(1) *Australian Journal of Human Rights* 47.

²⁷ Emily Grabham, ‘Intersectionality: Traumatic Impressions’ in Emily Grabham et al (eds), *Intersectionality and beyond: Law, Power and the Politics of Location* (Routledge-Cavendish, 2009) 183, 184; Davina Cooper, *Challenging Diversity: Rethinking Equality and the Value of Difference* (Cambridge University Press, 2004) 48 (‘*Challenging Diversity*’).

²⁸ Atrey (n 23) 57.

²⁹ Ibid 62.

³⁰ Ibid 59.

³¹ Ibid 58–59.

in intersectionality. While intersectionality offers an improved lens for understanding disadvantage and its practical manifestations, particularly when compared to a siloed approach to protected characteristics, it remains a theory which is difficult to comprehend, communicate and implement in a statutory framework. It is to these practical questions of law and legal implementation that we turn in the next section, using empirical data to better illustrate the theoretical ‘murkiness’ of intersectionality in a concrete attempt towards operationalization.³²

There is a risk, too, that extending intersectionality to encompass ‘everyone’ might erase or marginalise the groups that are most disadvantaged, and silence the voices of women of colour.³³ Crenshaw, though, did not confine her analysis of intersectionality to gender and race exclusively, though those grounds were her focus.³⁴ As a research team of women – and a majority of white women – we therefore deploy intersectionality as a research paradigm with caution. Further, through our empirical research methods, we seek to profile and give voice to those from other backgrounds, particularly women of colour.³⁵

III. Intersectionality in the legal framework

Few jurisdictions have successfully integrated intersectionality into their discrimination law framework; in the UK, for example, a provision relating to combined or additive discrimination in the *Equality Act 2010* (UK) has never commenced. In Australia, most jurisdictions exclude any

³² Jennifer C Nash, ‘Re-Thinking Intersectionality’ (2008) 89(1) *Feminist Review* 1.

³³ Al-Faham, Davis and Ernst (n 12) 251.

³⁴ Crenshaw (n 6); Al-Faham, Davis and Ernst (n 12) 249.

³⁵ Though this proved challenging in practice due the demographics of our research respondents and the public service; we consider these issues in Part IX.

explicit consideration of intersectionality in discrimination law statutes, and intersectional discrimination is rarely raised in case law.³⁶

However, there is a gradual move towards an intersectional understanding of inequality evident in Australian discrimination law. For example, the *Discrimination Act 1991* (ACT) s 8 has been amended to explicitly provide for treatment on the basis of one or more protected attributes. That section says:

(2) For this section, a person ***directly*** discriminates against someone else if the person treats, or proposes to treat, another person unfavourably because the other person has 1 or more protected attributes.

(3) For this section, a person ***indirectly*** discriminates against someone else if the person imposes, or proposes to impose, a condition or requirement that has, or is likely to have, the effect of disadvantaging the other person because the other person has 1 or more protected attributes.

The federal *Sex Discrimination Act 1984* (Cth) also provides that in determining whether a reasonable person would anticipate the possibility that a person subject to sexual harassment would be offended, humiliated or intimidated, circumstances that can be taken into account include the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, national or ethnic origin, or disability of the person harassed.³⁷ Again, this potentially enables an intersectional understanding of how behaviour might affect people differently.

³⁶ See the detailed discussion in Blackham and Temple (n 10).

³⁷ *Sex Discrimination Act 1984* (Cth) s 28A.

A more radical approach to intersectionality is embedded in the *Gender Equality Act 2020* (Vic) (the Act). The Act aims to transform gender equality in the Victorian Public Service. The Act requires defined entities (public sector organisations, universities and local councils with more than 50 employees) to consider intersectionality when conducting gender impact assessments³⁸ and workplace gender audits.³⁹ The Act also requires defined entities to base their workplace gender audit on gender-disaggregated data and, if available, data about Aboriginality, age, disability, ethnicity, gender identity, race, religion and sexual orientation.⁴⁰

Under s 9 of the Act, a defined entity must undertake a gender impact assessment (GIA) ‘when developing or reviewing any policy of, or program or service provided by, the entity that has a direct and significant impact on the public.’ That assessment must,

if practicable, take into account that gender inequality may be compounded by disadvantage or discrimination that a person may experience on the basis of any of the following—

- (i) Aboriginality;
- (ii) age;
- (iii) disability;
- (iv) ethnicity;
- (v) gender identity;
- (vi) race;

³⁸ *Gender Equality Act 2020* (Vic) s 9(2)(c).

³⁹ *Ibid* s 11(2)(c).

⁴⁰ *Ibid* s 11(3).

- (vii) religion; [and]
- (viii) sexual orientation.⁴¹

Similarly, under s 11, a workplace gender audit must have regard to:

the disadvantage or discrimination that a person may experience on the basis of any of the following in addition to gender inequality—

- (i) Aboriginality;
- (ii) age;
- (iii) disability;
- (iv) ethnicity;
- (v) gender identity;
- (vi) race;
- (vii) religion;
- (viii) sexual orientation;⁴²

A workplace gender audit must be based on gender-disaggregated data and ‘if available, data about Aboriginality, age, disability, ethnicity, gender identity, race, religion and sexual orientation.’⁴³

The *Gender Equality Act 2020* (Vic) places radical demands on public sector organisations to consider the intersectional impacts of policies and programmes, and to seek data about

⁴¹ Ibid s 9(2)(c).

⁴² Ibid s 11(2)(c)

⁴³ Ibid s 11(3)(b).

intersectional inequalities, especially among their workforce. The Act goes far beyond provisions at the federal level, which focus solely on gender equality.⁴⁴ However, these demands are not absolute: gender impact assessments need only take into account intersectional discrimination ‘if practicable’; and intersectional data only needs to be used in a workplace gender audit ‘if available’.

The question, though, is how these provisions are being implemented in practice: are defined entities able to understand and apply ideas of intersectionality to their operations? Does an understanding of intersectionality help to address compounding inequality? Or is the operationalising of intersectionality prohibitively confusing, or leading to an infinite regress problem, such that the Act is unable to effect meaningful and transformative change?

IV. Method

To investigate these issues, we conducted a mixed methods study of the implementation of the Act over the second half of 2021. Data were collected through 44 qualitative semi-structured interviews with 47 participants who were key players and stakeholders involved in the development and implementation of the Act. Forty-four of the participants identified as women, with the other three identifying as men. Five of the participants spoke openly of being gay or lesbian. Only one participant identified as having Asian heritage, with all other participants identifying as White or Caucasian. Two spoke openly about living with a disability. The participants came from 40 different organisations including metropolitan, regional and rural

⁴⁴ *Workplace Gender Equality Act 2012* (Cth).

councils; state government departments; unions; TAFEs; universities; hospitals and health care providers; women's health sector; women's NGOs; sporting organisations; ministerial staff and gender-based consultants. Participants held positions of varying levels of seniority, with job titles including (but not limited to) Manager, Diversity Equity and Inclusion; Diversity Equity and Inclusion Officer; Inclusion Officer; Manager, Gender Equity; Gender Equity Officer; Manager, Health and Wellbeing; Health and Wellbeing Officer; CEO of Health Organisation; CEO of Community Organisation; Assistant Secretary of a Trade Union; Advisor to a Minister; Executive Director of a Public Department; Lawyer; Prevention Violence Director; Policy Lead and People and Culture Lead.

The first round of respondents were contacted using lists provided by the CGEPS that represented key stakeholder groups and previously engaged entities and supporting organisations. Building on this initial list, additional respondents were contacted and engaged using snowballing techniques and targeted desktop research to find a broader sample of participants from across a range of different entities and with a range of experiences. Additional participants were sought to diversify the sample across a range of factors include geographical location, size and type of entity/organisation, level of maturity with respect to the implementation of the Act, and a broader gender split. Despite significant efforts to reach and engage more male and non-binary participants, those responsible for the implementation of the Act overwhelmingly identified as women, which limited the sample diversification.

Interview respondents were assigned a randomised number to preserve their anonymity throughout the process. Interviews were conducted online using Zoom due to the COVID-19 pandemic, which

made in-person engagement unfeasible. Interviews lasted between 30 minutes and 75 minutes in duration, with the average being 45–60 minutes. Data were transcribed using Otter.ai transcription software, then checked manually. Data were then thematically coded using the software platform Dedoose and analysed by the research team.

Interview questions focused on developing a broader understanding of a) how the Act evolved, and the social, economic and political conditions that encouraged its adoption; b) how the Act was being implemented, examining the work of the Commission and of defined entities; and c) how the Act's future success could best be secured, drawing on the experiences of defined entities, as well as other jurisdictions nationally and internationally. We also conducted documentary analysis of legislative materials (such as second reading speeches and parliamentary debates), inquiries, submissions, and Commission documents, to complement and inform the qualitative interviews.⁴⁵

The Act commenced on 31 March 2021, meaning this study was conducted at a critical juncture in the implementation of its provisions. As we conducted this study, defined entities were being asked to develop their first workplace gender audit and Gender Equality Action Plan, meaning this research was timed to capture the first reactions of defined entities as the implementation of the Act progressed. This article therefore offers critical insights into the challenges and opportunities of rolling out intersectional ideas into organisational structures, and to the public sector in particular.

⁴⁵ Other quantitative aspects of the project are not reported here.

In this article, we focus on three critical questions, drawing on the findings from the qualitative semi-structured interviews. First, how do respondents understand intersectionality? Second, what are the challenges of operationalising intersectionality? Third, what data gaps are evident in the Victorian public sector? We then consider how these gaps and challenges can best be addressed.

V. Understandings of intersectionality

In implementing the Act, the Commission produced significant supporting materials to help defined entities and their staff to understand and apply the idea of intersectionality.⁴⁶ In one training module, intersectionality is explained as going beyond a focus on different characteristics, to emphasise dismantling structural barriers:

the ultimate aim for taking an intersectional approach is actually to address the systems and structures of oppression. ... So, we want to encourage you to try and remember that when you're thinking about this work, that it's not just about having more diverse people in the room. ... That's part of it and it's important, but it's also about trying to think about what are the actual structures and barriers or systems, that are causing some of these problems in the first place, and how can we dismantle those.⁴⁷

The Commission's website provided defined entities with a suite of guidance materials to assist with conceptualising and understanding intersectionality, including a detailed summary section⁴⁸

⁴⁶ Commission for Gender Equality in the Public Sector, 'Leading Practice Resources', *Commission for Gender Equality in the Public Sector* (6 July 2021) <<http://www.genderequalitycommission.vic.gov.au/leading-practice-resources>>.

⁴⁷ Commission for Gender Equality in the Public Sector, '4. Intersectionality and GIA', *Commission for Gender Equality in the Public Sector* (2 August 2021) <<http://www.genderequalitycommission.vic.gov.au/media/40950>>.

⁴⁸ Commission for Gender Equality in the Public Sector, 'Applying Intersectionality', *Commission for Gender Equality in the Public Sector* (6 June 2022) <<https://www.genderequalitycommission.vic.gov.au/applying-intersectionality>>

and dedicated advice on how to apply intersectionality to an entity's duty to promote gender equality,⁴⁹ gender impact assessments,⁵⁰ workplace gender auditing and analysis,⁵¹ and Gender Equality Action Plans.⁵² In this study, some respondents explicitly noted that intersectionality had been raised in the briefings around the Act,⁵³ implying that Commission training and briefings have supported defined entities in their approach to the Act.

In each interview, then, we asked respondents to describe, in their own words, what they understood 'intersectionality' to mean. Respondents struggled with this; as one replied, 'that's a really good question, because I've toyed with that a lot in the last couple of months.'⁵⁴ Another found it 'hard to summarise, even though I should know how to do this, because we've talked about it in training.'⁵⁵

This perhaps lends support to one respondent's view that people struggle with the notion of 'intersectionality':

I don't think many people have a really practical view of what it means. ... I think it's an issue that people need to spend more time on. And people don't want to spend more time on it. Because

⁴⁹ Commission for Gender Equality in the Public Sector, 'Applying Intersectionality; Duty to promote gender equality', *Commission for Gender Equality in the Public Sector* (6 June 2022)

<<https://www.genderequalitycommission.vic.gov.au/applying-intersectionality/duty-promote-gender-equality>>

⁵⁰ Commission for Gender Equality in the Public Sector, 'Applying Intersectionality: Gender Impact Assessments', *Commission for Gender Equality in the Public Sector* (6 June 2022)

<<https://www.genderequalitycommission.vic.gov.au/applying-intersectionality/gender-impact-assessments>>

⁵¹ Commission for Gender Equality in the Public Sector, 'Applying Intersectionality: workplace gender auditing and analysis', *Commission for Gender Equality in the Public Sector* (6 June 2022)

<<https://www.genderequalitycommission.vic.gov.au/applying-intersectionality/workplace-gender-auditing-and-analysis>>

⁵² Commission for Gender Equality in the Public Sector, 'Applying Intersectionality: Gender Equality Action Plans', *Commission for Gender Equality in the Public Sector* (6 June 2022)

<<https://www.genderequalitycommission.vic.gov.au/applying-intersectionality/gender-equality-action-plans>>

⁵³ R29, R31

⁵⁴ R36

⁵⁵ R31

a) they're embarrassed they don't know about it, or b) they think they should, or they just do that additive thing. Oh, yeah, she's a black woman. So therefore, it's going to be different. But they don't really go, well ... it's different in a very fundamental way.⁵⁶

More promisingly, though, we identified five key themes in respondents' answers to this question: a view of intersectionality as additive discrimination; a view of intersectionality as compounding disadvantage; a focus on grounds, in either a siloed or holistic way; an individualised view of intersectionality; and a focus on structures, power and norms.

A. Intersectionality as Additive

For some respondents, intersectionality was seen as additive, with 'additional attributes to gender that people ... have that add an added level of disadvantage, or discrimination'.⁵⁷ For some, this created 'multiple layers of advantage and disadvantage'.⁵⁸ Others, though, rejected this 'layering notion'.⁵⁹

B. Intersectionality as Compounding

For other respondents, then, intersectionality meant increased disadvantage,⁶⁰ discrimination,⁶¹ and marginalisation,⁶² where other protected characteristics and factors 'compounds the issues of

⁵⁶ R32

⁵⁷ R43

⁵⁸ R29

⁵⁹ R15

⁶⁰ R17, R38, R40, R11, R19

⁶¹ R40, R11

⁶² R19

gender equality’⁶³ and ‘exacerbate disadvantage’.⁶⁴ Different characteristics ‘magnify and grow bigger and intensify each other’.⁶⁵ For some, this created effectively a hierarchy of disadvantage:

at your peril, you must not ignore the fact that the inequities and the hardship and the deprivation incurred by women, for example, are going to be compounded more and more, depending on her background, her class, her race, her sexuality, her creed. ... if you haven’t got the conceptual capacity to embrace, for example, that a Filipino women woman working in a Melbourne hotel as a cleaner, is actually going to be dealing with issues of hardship, and access and opportunity that are sharper, focused, and more pointed, then a working class white woman working in the same cleaning division of the hotel...⁶⁶

For others, though, intersectionality meant more than just increased disadvantage; different grounds created entirely different experiences of the world: ‘it’s that connection point that those things connect and make ... the experience of the world very different’.⁶⁷ Respondents recognised the complexity of intersectionality: ‘[attributes] just combine to make this complicated way in which you’re not experiencing equality’.⁶⁸ As one respondent summated:

So if you are a woman of color, you’re not only discriminated and disadvantaged through your gender, but also your race. And those two things often have a unique and multiplying effect rather than, you know, to be considered separately, or even in an additive way or summative way.⁶⁹

C. A focus on grounds

⁶³ R17, also R2, R42, R24, R18, R45, R4, R10, R6, R39, R8, R19, R28, R31, R35

⁶⁴ R17

⁶⁵ R19

⁶⁶ R2, also R15

⁶⁷ R32

⁶⁸ R24

⁶⁹ R45

When talking about how they understood intersectionality, a number of respondents focused on other protected characteristics which might intersect with gender, including cultural identity,⁷⁰ cultural background,⁷¹ culture,⁷² language,⁷³ race,⁷⁴ ethnicity,⁷⁵ colour,⁷⁶ sexual identity⁷⁷ and sexuality,⁷⁸ disability,⁷⁹ Aboriginality,⁸⁰ coming from another country,⁸¹ migration status,⁸² age,⁸³ religion,⁸⁴ but also socioeconomic status,⁸⁵ pay,⁸⁶ class,⁸⁷ education,⁸⁸ wealth,⁸⁹ and ability,⁹⁰ alcohol issues, drug issues, housing, and homelessness,⁹¹ and place (in rural and regional locations).⁹² For some respondents, this list of grounds is one means of identifying, acknowledging and understanding ‘difference’.⁹³ ‘it’s getting a really practical understanding that the experience is fundamentally different.’⁹⁴

Arguably, though, this focus on grounds reflects a siloed approach to intersectionality, which risks devolving into the ‘infinite elaboration of inequality subgroups’,⁹⁵ rather than a more sophisticated

⁷⁰ R17

⁷¹ R38, R7, R44, R24, R4, R8, R23

⁷² R40, R36, R29

⁷³ R40

⁷⁴ R2, R40, R45, R6, R8, R39, R19, R28, R32

⁷⁵ R9, R32

⁷⁶ R18, R10

⁷⁷ R17

⁷⁸ R2, R40, R9, R44, R18, R4, R10, R6, R8, R39, R28

⁷⁹ R17, R38, R40, R36, R9, R44, R24, R18, R4, R10, R39, R28

⁸⁰ R38, R36, R9, R6, R8, R39, R28, R23

⁸¹ R36, R32

⁸² R44

⁸³ R9, R39

⁸⁴ R39

⁸⁵ R17, R38, R24

⁸⁶ R9

⁸⁷ R2

⁸⁸ R7, R9

⁸⁹ R7

⁹⁰ R7

⁹¹ R14

⁹² R20, R28

⁹³ R32

⁹⁴ R32

⁹⁵ Conaghan (n 25) 31.

understanding of how inequality manifests and intersects. The interviews also revealed some more concrete risks with adopting this approach to intersectionality: respondents tended to focus on only certain protected characteristics, reflecting their own positionality. For example, only two respondents raised age as an issue, one of whom self-identified as being older.⁹⁶

Most respondents' view of intersectionality was firmly grounded in gender as the primary characteristic; intersectionality was then about 'recognizing the multiplicity inherent in any concept of gender'.⁹⁷ As one respondent summarised, 'I think we're looking at [intersectionality] from a gender equality perspective.'⁹⁸ Again, this likely reflects the training provided by the Commission, and the nature of the Act as aiming to address gender inequality, but potentially misrepresents the spirit of intersectionality. Concerningly, too, a number of respondents emphasised 'culture' and 'cultural background' as the critical characteristic that overlays gender.⁹⁹ This risks grouping all 'other' (non-white) cultures in one category, ignoring the nuance and complexity of different religions, ethnicities, and indigenous backgrounds, and placing all non-white cultures as 'other'. It also lacks a more comprehensive understanding of intersectionality capturing divergent experiences across other protected statuses, thus minimizing its power to redress discrimination across a range of measures.

However, some respondents saw beyond this focus on individual grounds, seeking to understand people's multiple identities holistically.¹⁰⁰ One respondent described this view of intersectionality

⁹⁶ R9

⁹⁷ R29

⁹⁸ R8

⁹⁹ R29; also R40, R36, R29, R38, R7, R44, R8

¹⁰⁰ Atrey (n 23) 2.

as a ‘patchwork quilt’,¹⁰¹ another as focusing on ‘multiple identities’.¹⁰² Indeed, some respondents recognised that intersectionality was intended to move beyond this siloed approach¹⁰³ to see aspects of our identity as ‘interconnected’.¹⁰⁴ For these respondents, then, intersectionality meant ‘you can’t separate aspects of your identity from other aspects of your identity and your intersectionality is really treating your identity as a whole, or as a whole person.’¹⁰⁵

For one respondent, then, intersectionality was about meaningful inclusion through a holistic understanding of identity and lived experience:

understanding people’s lived experiences of life and taking them into account and actually creating cultures that [are] not just inclusive of the diversity of our world, but actually creates a safe place for those people. It’s not just about increasing the numbers, but it’s actually about belonging and inclusion. And for me, that’s ultimately what, what intersectionality is about, because you can’t do those things if you don’t take into account the actual diversity of who people are.¹⁰⁶

D. Individualised understandings

Even a holistic understanding of identity, though, can overly focus on individual needs and identities, to the neglect of structures and systems. In this study, respondents tended to adopt an individualised approach to intersectionality. As one respondent noted, in taking all these factors into account, ‘when you look at going through an intersectional lens, you come up with a very

¹⁰¹ R36

¹⁰² R9

¹⁰³ R42

¹⁰⁴ R33

¹⁰⁵ R41; also R33, R15

¹⁰⁶ R16.

individual experience, you know, that can't really be replicated.'¹⁰⁷ For another, 'people's experiences in their lives intersect to give them a point in time of where they're at, and why they're at.'¹⁰⁸ Intersectionality then becomes 'the unique makeup of a person, I suppose, based on their own experiences, and attributes and traits'.¹⁰⁹ As one respondent noted, then, intersectionality means:

your place in the world or your experience ... is unique. And it comes from a multitude of different influences and factors. And whether they be around your past experiences, or who you are, your identity. And ... those components can't be separated, they can't get put into boxes. Because that experience is unique.¹¹⁰

This highly individualised approach may distract from a focus on dismantling structural barriers to equality. If everyone's experience is unique, it is difficult to build collective responses to inequality or identify systemic disadvantage. This poses a significant risk, then, to how we address inequality if intersectionality is reduced to highly individualized and unique profiles.

E. Intersectionality and structural power

Respondents did recognise, though, that these individual characteristics created a complex web of advantage and disadvantage; as respondents described,

¹⁰⁷ R7

¹⁰⁸ R14

¹⁰⁹ R11

¹¹⁰ R13.

[I]ntersectionality is ... a different kind of relationship between different forms of identity, and the relationship between them that kind of creates the complexity, and the sort of interplaying sort of forces between advantage and disadvantage and ... how they come together to influence society.¹¹¹

[W]e are all made up of different aspects of identities, which means we have different mixes of experiences of privilege and oppression. ... understanding those kind of intersecting aspects of identity that shape our experiences of privilege and oppression in the world...and the workforce.¹¹²

A number of respondents talked about increased barriers as a result of intersectionality,¹¹³ including barriers to access and equality,¹¹⁴ echoing the emphasis on dismantling structural barriers in the Commission's training materials. Indeed, some respondents related this individualised approach to a focus on addressing structural barriers:

[P]eople's experiences in their lives intersect to give them a point in time of where they're at, and why they're at. They're dependent on a whole range of different characteristics. But really, at the heart of it, it is about systemic discrimination and disadvantage. And how do we look at somebody's experiences, taking all of those things, and look at the system they're operating in, and its contribution to them experiencing discrimination and disadvantage. So it's looking at these intersecting identities and experiences to understand a point in time for a particular person or group of people.¹¹⁵

So for me, intersectionality means thinking about all the different elements of a person's life, their background, their circumstance, and how that intersects with other power structures and other

¹¹¹ R26

¹¹² R34

¹¹³ R17, R38, R11, R44

¹¹⁴ R17

¹¹⁵ R14

opportunities to really determine what is their level of if you like, opportunity or oppression?...Somewhere on a continuum really I would say.¹¹⁶

Similarly, another respondent spoke of: ‘the way that those [characteristics] when added on to each other, can affect an individual’s experience of life within the structures that that they operate within.’¹¹⁷

Other respondents focused on power and norms,¹¹⁸ or on the need to accommodate and ‘create equitable outcomes and pathways’ for ‘intersecting points of disadvantage’.¹¹⁹ Indeed, it was failing to recognise this diversity that compounded disadvantage,¹²⁰ not diversity itself. Intersectionality, then, is

an understanding ... of power, and the intersection of the relationship between power and identity, therefore, access to resources, opportunities ... Because structures have been written or systems have been written and designed for people, the dominant culture or the or the dominant people, especially in a workplace. So intersectionality is about understanding the power, the dynamics, the opportunities, the discrimination, that exists for people who might sit outside those norms, and organizational norms.¹²¹

Intersectionality, then, is itself about ‘overlapping and intersecting systems of oppression and how they impact ... people in their lives.’¹²² This focus on power and systems of oppression was explicitly contrasted with an individualised focus on identity:

¹¹⁶ R25

¹¹⁷ R39

¹¹⁸ R20, R21

¹¹⁹ R3

¹²⁰ R8.

¹²¹ R21.

¹²² R27.

[I]f you focus too much on the identity aspect [of intersectionality] it individualizes your approach so you kind of look at how individuals can change in order to interact more effectively with the systems and structures, but an intersectional approach, I think, focuses on how the systems and structures create oppression, what are the mechanisms there, and so you do really focus on changing those systems and structures in order to kind of eliminate or reduce the impacts of that oppression or reduce the oppression itself.¹²³

[Intersectionality is] not about like, problematizing people's identities. It's about looking at [us] as a society and all of our norms and practices and cultures and institutions and structures and what have you, [and asking] how are we contributing to discrimination and oppression of people with different intersecting identities?¹²⁴

This sophisticated, contextual and transformative understanding of intersectionality aligns closely with Atrey's scholarship.

VI. Organisational understandings of intersectionality

Building on these individual understandings of intersectionality, we further asked respondents how well they believed issues of intersectionality (and diversity more broadly) were understood within their organisation or entity. These responses were more mixed. Respondents recognised that understanding of intersectionality varied across organisations and sectors¹²⁵ forming a 'real spectrum';¹²⁶ it is 'uneven'¹²⁷ and 'pretty mixed':¹²⁸

¹²³ R27

¹²⁴ R31

¹²⁵ R1, R18, R23, R43

¹²⁶ R12

¹²⁷ R16

¹²⁸ R1

There's ... people with a very deep knowledge and a deep understanding, and they're sort of the experts, but then there's the vast majority of people who would probably have a very basic, if that, knowledge, and I think part of the whole idea of, you know, the legislation and gender equality strategy is to ... increase that balance across organizations.¹²⁹

For some respondents, their immediate contacts or teams were highly knowledgeable about intersectionality, but they did not think that this extended to the entire organisation.¹³⁰ In some cases, it was hard to know how well the idea was understood across the organisation as a whole.¹³¹ For others, those involved in doing GIAs, for example, were well informed, but those 'not in this space' had limited understanding.¹³²

Some respondents felt that intersectionality was 'pretty poorly'¹³³ or 'not very'¹³⁴ understood at the institutional level: 'I reckon it's that 10% ... well below a fail mark. ... I think people have maybe heard of the term.'¹³⁵ Intersectionality is not broadly understood as a term, or with particular clarity,¹³⁶ and some understandings are 'at a very kind of introductory basic level':¹³⁷ 'I'm not sure that there's a huge grasp of what it is or of how it really is a big part of the Act. I think that a lot of people have become sort of stuck on the name.'¹³⁸ For one respondent, then, intersectionality

¹²⁹ R26

¹³⁰ R4, R34, R23

¹³¹ R4

¹³² R45

¹³³ R7

¹³⁴ R31, also R15, R39, R32, R34

¹³⁵ R20

¹³⁶ R11, also R39

¹³⁷ R33, also R14

¹³⁸ R39

had created ‘some of the biggest uncertainties’ around the Act:¹³⁹ ‘the word intersectionality, I think, means nothing to anyone.’¹⁴⁰

Understandings of diversity are still ‘very siloed’:¹⁴¹ ‘understanding how those things interconnect and that, for some people, it’s not a siloed experience is not well understood’.¹⁴² Instead, there is ‘competition’ across and between grounds for attention: ‘almost competing for attention with each other within the organization to get their message across ... , to get their agenda heard, and on the radar of the organization.’¹⁴³ To embrace an intersectional lens, then, ‘there’s a long way to go’.¹⁴⁴

This reflects, in part, the complexity of the notion of intersectionality itself: ‘I think there’s an assumption that it was an easy concept to get. And it’s not’;¹⁴⁵ ‘it’s very difficult to explain’.¹⁴⁶ Intersectionality is not a term or idea used in the popular press: ‘in our ... white male privileged world, it’s not a known term.’¹⁴⁷ Generally, then, ‘people have got to kind of come along this journey and learn stuff’.¹⁴⁸ As a relatively new idea for defined entities,¹⁴⁹ it was taking time for the idea to be bedded down: ‘we’re at the beginning’.¹⁵⁰ However, this does not mean that intersectionality itself is a new idea: ‘is just a sort of new way to sort of frame work that we should have been doing for a long time.’¹⁵¹

¹³⁹ R38

¹⁴⁰ R38

¹⁴¹ R33, also R15, R13, R14, R42

¹⁴² R33

¹⁴³ R33

¹⁴⁴ R33

¹⁴⁵ R20

¹⁴⁶ R7

¹⁴⁷ R7

¹⁴⁸ R7

¹⁴⁹ R34

¹⁵⁰ R28

¹⁵¹ R1.

This lack of organisational understanding was also, in part, due to a lack of internal training:

[I]ntersectionality is a really difficult concept to understand when you don't have kind of D&I 101 training ... and at this point in, our organization doesn't have diversity and inclusion, basic training. So to try and add those sort of elements on top of it. ... There's opportunities there to try and just help support people ... but we're not there with that. It's definitely something we're working on, though.¹⁵²

Importantly, though, gaps in knowledge and understanding were being recognised, and respondents were working proactively to improve organisational understanding, including by holding workshops to 'start the conversation around intersectionality, it's a foundational piece of work'.¹⁵³ Others are using 'plain English terms' to explain intersectionality,¹⁵⁴ avoiding complex technical language to help organisations translate intersectionality into pragmatic actions.¹⁵⁵ At present, though, intersectionality is often used in organisations as a

shorthand for diversity. ... it's not even addressing that base level thing of intersecting identities within like one person, or different people. Let alone then actually really addressing what are the structures and the institutions or the ... norms ... let alone kind of taking that next step to look at well, what are we doing to make sure that we're not just perpetuating all of these kind of compounding ... oppressions.¹⁵⁶

This echoes the limited understanding of intersectionality among some individual respondents (see above).

¹⁵² R18

¹⁵³ R20

¹⁵⁴ R9

¹⁵⁵ R14

¹⁵⁶ R31

For others, there was a positive evolution in understandings of intersectionality, in part prompted by the Act:

[I]ntersectionality is having its time ... say five years ago, no one would know ... what it meant. And now, I think that there'd be a broad understanding what that might mean. And now, I think, you know, in another five years that might be even different still.¹⁵⁷

[T]o be honest, I think we're getting there¹⁵⁸

[W]e're on the journey. And ... we're a long way further along than we were five years ago.¹⁵⁹

[T]here's been a lot of work happening in this space over the last year, particularly, I think there has been a big improvement.¹⁶⁰

[I]t's getting there ... I have been a little pleasantly surprised actually in our engagement with our staff, around how many people actually really get that ... I thought we would have had to have done a fair bit more work around, you know, what does that mean? So yeah, I think there's a fairly good level of understanding.¹⁶¹

We're making great steps. So the fact that we're even using this term right now, I think that that's a way forward, but there's still a lot of work to be done. It's not [yet] understood or recognised.¹⁶²

To some extent, though, the Act has simply been applied on top of this natural progression:

I do believe that we are much better placed in 2021 than we were in 2015 and in 2005. I think there has been an upward movement around awareness, responsibility, ownership of these issues. And a lot of people trying to do the right thing, trying to actually get policies in place in their

¹⁵⁷ R12

¹⁵⁸ R35

¹⁵⁹ R42

¹⁶⁰ R13

¹⁶¹ R17

¹⁶² R24

organisations, trying to walk the walk and talk the talk, not just ... dealing with stuff at a tokenistic level, but you're going to get variations on that.¹⁶³

Still, though, 'there's a lot who don't really understand what to do with it';¹⁶⁴ 'the intersectionality piece has got a long way to go'.¹⁶⁵

For others, training and outreach had helped to build understanding across the organisation. As one respondent noted,

We've designed in the last 12 months an intersectionality workshop, particularly to school up people around the Gender Equality Act, and that idea of what is intersectionality? And what are you going to do about it? ... to get into the data and the analysis and the action plan. Because we found people had heard of the word, a lot of them had a very misplaced idea of what intersectionality [is], it's been messed around with significantly. But the workshop is really about drilling down into intersectionality. And then stepping through what's a GIA? What [an] audit would look like? And then what an action plan [would look like] just to start the conversation with people.¹⁶⁶

Strong leadership buy-in and role modelling has also assisted with building understanding, though this is exceptional: 'There is a small proportion of leaders who get it'.¹⁶⁷ One director, for example, talks about intersectionality

¹⁶³ R2

¹⁶⁴ R12

¹⁶⁵ R42

¹⁶⁶ R20

¹⁶⁷ R3

in every presentation ... that platform and that position has been something that she's really taken on ... [she] has been really supportive of the way that we work in that intersectional space. ... she's a woman of color, she's in leadership. So when we talk about intersectionality, she says a lot about that ... about how it plays out, ... and others might just sit there and listen, so I feel they're receptive.¹⁶⁸

For some, the CGEPS's guidance was critical in supporting organisational measures,¹⁶⁹ and in helping to embed an intersectional lens into their work.¹⁷⁰

Other organisations have a strong foundation on which to embed an intersectional lens; one had a staff member appointed specifically to 'a position where intersectionality's in someone's job title'.¹⁷¹ For organisations who are already actively advancing equality around disability, Aboriginality, and multiculturalism, as well as social justice, 'we've got quite a strong understanding of diversity and inclusion and intersectionality.'¹⁷² For these organisations,

the timing of the Act just happened by chance, just happened to work really, very nicely with [our existing strategies] ... making sure that [the Act] was ... our support, I guess that was our backup to say, we're not just doing this because we feel like it, there's something else going on.¹⁷³

In sum, then, understanding of intersectionality at an organisational or entity level is mixed; it is 'certainly a work in progress'.¹⁷⁴ Further, the impact of the Act must be seen in the broader context of the diversity of the public service, where organisations have different approaches, commitments

¹⁶⁸ R35

¹⁶⁹ R35

¹⁷⁰ R35

¹⁷¹ R37

¹⁷² R41, also R8, R9, R36

¹⁷³ R36

¹⁷⁴ R34

to equality and willingness to engage in transformative projects. In some areas, intersectionality might be understood ‘at a kind of technical level, but [not] understood in terms of the deep importance and the deep experience. Disadvantage or exclusion ... I think they’re very poorly understood, actually.’¹⁷⁵ There is a difference, then, between *understanding* and *committing* to intersectional equality. That said, the first step towards commitment is an understanding of intersectionality; our findings suggest some elements are better understood than others.

VII. Transformative intersectionality in practice?

The question, then, is whether integrating intersectionality into the *Gender Equality Act 2020* (Vic) has helped to address structural forms of oppression and disadvantage.

A. Intersectionality in the Act

For some respondents, the Act did not yet do enough to recognise or advance intersectionality.¹⁷⁶ Some respondents felt that intersectionality provisions in the Act ‘were wound back quite a lot’ due to privacy concerns;¹⁷⁷ for others, ‘I can’t remember anything that was specifically not included, but there are certainly difficulties in interpreting non-legislative terms such as intersectionality into legislation.’¹⁷⁸

¹⁷⁵ R29

¹⁷⁶ R10, R13

¹⁷⁷ R5

¹⁷⁸ R12

For others, though, the Act represents national and international best practice, and is an effective way to embed an intersectional understanding of gender equality:

from my perspective, [the Act] is equal to the best practice that I've seen across the world. ... it is up there with ... some of the best legislation in the world when it comes to the intersectional experience of gender inequality.¹⁷⁹

The Act is significant in that it attempts to practically operationalise intersectionality – an idea often criticised for being too difficult to operationalise. This has posed challenges since the Act was first being drafted:

the focus on intersectionality in the Act ... is one of the more ground-breaking aspects of the Act. ... when they first introduced the idea to the people drafting the legislation, they're like, ... 'you want me to do what in the legislation?' ... And so to actually have something like that crystallised into legislation, I think is incredible.¹⁸⁰

This was tempered, though, by the Act's primary focus on gender:

with the Gender Equality Act, it's like, 'oh, but we're just talking, this is about gender' ... And I think that that we do need to work on, particularly for our people, it is like broadening our understanding out to say, 'yes, you know, this is talking about gender. But we need to actually keep an open mind and a broader perspective about the other lenses that we should be bringing into this.' And, you know, think about, if thinking about gender creates a pause for us to apply that gendered lens, then take the opportunity when we do that to apply other lenses as well.¹⁸¹

As another respondent noted, this focus on gender (yet with an intersectional lens) could cause confusion within an organisation:

¹⁷⁹ R41

¹⁸⁰ R16

¹⁸¹ R11

[We've] actually got [a] pretty good gender profile on our board. So ... we're looking good from the data, but ... there's five women on the board but they're five white women And so ... is the intent that we need to be having really specific strategies here now around, you know, getting people of different backgrounds on the board, but then they're like, this is our Gender Equality Action Plan so what is the scope of things that we should be focusing on? As like really targeted strategies? Or is it just associated with, you know, maybe a gender specific strategy, but considering how that would look through an intersectional lens?¹⁸²

This highlights potential risks, then, of extending intersectionality to 'everyone', yet silencing the voices of women of colour; but it also demonstrates the importance of not just focusing on gender as part of an equality strategy.

B. Transformative or window dressing? More than a cupcake

For some respondents, too, there was scepticism as to whether organisations were committed to meaningful structural change: instead, 'the diversity agenda ... allows organisations ... to basically tick the box that they're doing something about it without changing much'.¹⁸³ Diversity strategies, then, can become 'a neoliberal tool'.¹⁸⁴ While some organisations might understand what intersectionality entails, they simply pay 'lip service' to it,¹⁸⁵ and might not take meaningful action.¹⁸⁶ Some parts of organisations are more or less receptive to structural change; some divisions:

¹⁸² R38

¹⁸³ R32

¹⁸⁴ R32

¹⁸⁵ R19

¹⁸⁶ R10

they can write about [intersectionality] ... even though they might be able to talk about the policy framework, when you start looking at their workforce ... or you start interrogating the outputs that they claim are demonstrative of intersectionality ... it's not enough.¹⁸⁷

That said, for other respondents, the Act could be a 'transformative tool because it includes the intersectionality aspect as well. So it's really about seeing how all of our policies affect everyone in different ways. But I'm not sure that it is actually widely understood.'¹⁸⁸ In some organisations, then, limited structural change may be attributable, in part, to a lack of understanding of intersectionality: 'the level of knowledge is still so low, that you can't apply any of it into anything in a meaningful way. I think for some [entities], the intent is there but the practical capability is not.'¹⁸⁹ Even those with a sophisticated understanding of intersectionality, 'who can ... get their head around the theoretical concept, are really struggling with the practical side of things.'¹⁹⁰ For some respondents, then, the Act has asked 'too much too early.'¹⁹¹

For others, though, the Act is a critical tool for building public sector capacity to address intersectional inequality:

it actually makes sense now, because the public sector still need to build up some of that capacity to be in a position to be able to do intersectionality work well, they've been doing it for a little while, but there's not necessarily the complexity.¹⁹²

¹⁸⁷ R19

¹⁸⁸ R39

¹⁸⁹ R38

¹⁹⁰ R38

¹⁹¹ R20

¹⁹² R5

The Act therefore provides an opportunity to ‘level up’ equality initiatives across different grounds.¹⁹³ Indeed, some respondents are already seeking structural change to policies, programs and processes, and considering how that translates to meaningful outcomes:

So getting them to actually look at, first of all, within the organization, what programs and processes and policies [do] they have in place? And how is that translating to outcomes? Okay, you’ve had a program for 10 years that you’re going to increase diversity in your workforce? Are you measuring it? Have you? Have you benchmarked this? ... and if you found that it’s wanting, what programs have been put in place? There’s a difference between just raising awareness and being actively engaged.¹⁹⁴

This, then, entails more than just ‘rainbow ticks’ and acknowledging country,¹⁹⁵ or cupcakes for Pay Equity Day;¹⁹⁶ it entails meaningful, substantive change. Importantly, though, some of our respondents identified the Act as a useful catalyst for conversations about equality in the workplace.

C. Data collection

One of the key requirements of the Act is that workplace gender audits be based on gender-disaggregated data and ‘if available, data about Aboriginality, age, disability, ethnicity, gender identity, race, religion and sexual orientation.’¹⁹⁷ This proved challenging for many respondents

¹⁹³ R16

¹⁹⁴ R44

¹⁹⁵ R44

¹⁹⁶ R32

¹⁹⁷ *Gender Equality Act 2020* (Vic) s 11(3)(b).

and their organisations. Respondents identified six key barriers to collecting intersectional data: limited understandings of intersectionality; inadequate data systems (and push back from providers when trying to update systems); low response rates; privacy concerns; data errors; and a lack of meaningful data analysis. Data collection is ‘at a very embryonic stage’ in many entities.¹⁹⁸

First, in terms of how entities are gathering intersectional data, there was a sense that this was limited by understandings of intersectionality and its relationship to data:

when people start talking about where’s the intersectional data, like they’re not actually talking about intersectional data, they’re just talking about, have you broken this down by gender, or by ethnicity, or by sexuality or whatever, but then even that is still siloing different identities rather than even looking at yeah, like, it’s not about how many men, women and gender diverse people, it’s like, okay, well, within that, how many like women of color versus how many white women versus how many heterosexual ... Or how many, like I said, black lesbian women versus white lesbian [women].¹⁹⁹

Quantitative data may not lend itself easily to an intersectional analysis: ‘data doesn’t lend itself very well to that multifaceted analysis. It’s very binary.’²⁰⁰

Intersectionality was raised often in consultation as being important,²⁰¹ yet intersectional data collection was often minimal:²⁰²

¹⁹⁸ R5

¹⁹⁹ R31

²⁰⁰ R5

²⁰¹ R11

²⁰² R25

They're not collecting that sort of data. They're barely collecting gender disaggregated data, some of them and so therefore, I think they find [collecting intersectional data] really challenging²⁰³

[W]e don't currently collect really any intersectional data.²⁰⁴

Some respondents collected data on age and gender only, not other grounds.²⁰⁵ Others had some data on disability and Aboriginality.²⁰⁶ Another felt 'we're probably not great at collecting anything beyond gender.'²⁰⁷ Some organisations were surprised to find that their 'pretty patchy' data was 'better than pretty much everyone [else's]'.²⁰⁸

Collecting more comprehensive data represented a 'major piece of work'²⁰⁹ and is 'very, very labour intensive'.²¹⁰ Respondents noted the 'mad scramble' to collect intersectional data as a result of the Act:²¹¹ 'there's a bit of awkwardness around having to admit to the Commission that they don't have it ... that they didn't even think to collect it' before.²¹² The Act had therefore revealed gaps in data and data capacity;²¹³ some organisations are committing to better data gathering in their action plans, laying the foundation for broader change.²¹⁴ The question, though, is how this will be done in practice: 'the how is still a big question mark'.²¹⁵

²⁰³ R12

²⁰⁴ R11

²⁰⁵ R11, R17, R43, R21

²⁰⁶ R45

²⁰⁷ R8

²⁰⁸ R45

²⁰⁹ R45, also R43

²¹⁰ R45

²¹¹ R20

²¹² R20

²¹³ R3

²¹⁴ R3, R43, R38, R23

²¹⁵ R38

Second, then, a commitment to better data likely requires better data systems: the current lack of data may reflect the limits of human resource data and payroll systems;²¹⁶ HRM providers might refuse to provide intersectional data²¹⁷ or to update systems to capture more nuanced data.²¹⁸ ‘Software actually won’t allow them to collect it ... in [the] first place. It’s not that they’re not doing it, it’s actually that there’s no mechanism to do it.’²¹⁹ Many respondents noted that their entity depended on the People Matter Survey to collect data of this nature;²²⁰ others saw the People Matter Survey as ‘very surface level’,²²¹ ‘but at least it’s a start’.²²²

For some entities, then, the Act entailed a ‘whole body of work around “Well, how do we do that? And how do we reset our system? Or buy a new system? What will enable us to collect some of this data easily? So we can translate it into what the indicators are asking us?”’²²³ It is easier, to some extent, to collect comprehensive data about new recruits through the recruitment system;²²⁴ collecting data for existing staff is more challenging. This may reflect the difficulties more generally with data and systems in some parts of the public sector: ‘it’s something that we need to do much better.’²²⁵

²¹⁶ R34, R45, R9, R33

²¹⁷ R30

²¹⁸ R17

²¹⁹ R20

²²⁰ R4, R18, R35, R34, R3, R10, R40, R28, R41

²²¹ R39, also R10, R40

²²² R40

²²³ R20

²²⁴ R38, R34

²²⁵ R9. Indeed, a large proportion of government outsourcing and consultancies is around IT and data systems: Alysia Blackham, ‘A Life Course Approach to Addressing Exponential Inequalities: Age, Gender, and COVID-19’ in Shreya Atrey and Sandra Fredman (eds), *Exponential Inequalities: Equality Law in Times of Crisis* (Oxford University Press, 2023). There is a risk, then, that seeking to upgrade systems leads to significant expenditure on consultants and outsourced services, without increasing public sector capacity to manage or evaluate data internally.

For some respondents, then, responding to these data challenges would best be done at a systemic, public-sector level, rather than on an entity-by-entity basis, but this requires dedicated funding:

[T]here should be some consideration given to how you're going to help defined entities to improve their data. ... this is going to be [a] consistent [challenge] across the whole public service, or public sector. So again, that's a data investment question. ... if [Victoria Police] has got a data issue, they get a wad of cash. ... I have a feeling that we're not going to see a wad of cash being given to people to address intersectional gender data. So you know, I think that's a problem.²²⁶

Our systems are appalling. ... just like everybody else's ... we should be putting in a whole Victorian Government bid to get a data platform ... that we can use ... help to commit to investing in data to meet [the Act's requirements], because it's not only this Act, but everything else that we need to do in so many different intersectionality areas, it would just help so much to be able to cut that data into people's experiences. But that requires a massive investment, because there are so many systems, so many applications.²²⁷

Third, privacy concerns – especially in small entities – might limit the degree to which data can be broken down by different protected characteristics.²²⁸ Privacy concerns might be one way to cloak resistance to the Act,²²⁹ but they can still be valid, as privacy breaches can occur²³⁰ and limited representation of intersectional groups can make identification a serious risk. To some extent, privacy concerns reveal entities' uncertainty with handling sensitive personal information: 'I think we're interpreting it as they need more support to feel comfortable with this sort of information'²³¹

²²⁶ R19

²²⁷ R14

²²⁸ R30, R31, R3

²²⁹ R5

²³⁰ R5

²³¹ R5, also R31, R33

Fourth, where systems are in place, or have been put in place as a result of the Act,²³² and data collection is voluntary, few individuals might choose to disclose their protected characteristics.²³³ Low response rates in organisational surveys might reflect individual hesitance to trust employers with their personal data²³⁴ and a lack of ‘cultural safety’:²³⁵ disclosure is ‘going to take trust’.²³⁶ In one entity, for example, 94% of workers did not disclose their cultural identity.²³⁷ As one respondent noted, ‘The workplace is not safe ... it’s complex. ... How do you collect data about the extent to which you’ve got people from the LGBTIQ+ community in decision making positions, when you don’t have a safe workplace for them to come out?’²³⁸ As one consultant noted:

I’ve had a couple of clients saying, around the time of surveys, there’s emails that go around saying, warning, you know, people just be more careful, [you could] be identified by this data, either don’t do the survey or don’t disclose your gender, or put your gender as the opposite to what it is so that you can’t be re-identified.²³⁹

Low response rates mean ‘some of the data is not useful, because it is so low, and so skewed, ... some of it is not really coherent, in terms of what the Act is imagining’;²⁴⁰ ‘it’s been disclosed in

²³² R41

²³³ R18, R35, R45

²³⁴ R30, R21, R15, R25

²³⁵ R35, also R5, R31, R27, R25

²³⁶ R21, also R17, R38

²³⁷ R35

²³⁸ R27, also R15

²³⁹ R38

²⁴⁰ R20

such small numbers that ... reliability and validity is a real concern. And our ability to publish and comment on that data is also in question, if it's such a small sample.'²⁴¹

While allowing anonymous disclosure (as in the People Matter Survey)²⁴² can boost reporting,²⁴³ increasing disclosure rates also requires a 'whole piece [of work] around cultural safety and how that data is going to be used and why we need that data to leverage more change';²⁴⁴ 'it's partly [a] cultural project, partly a systems project.'²⁴⁵ In some organisations, disclosure rates were boosted with targeted communications, encouraging people to update or include further details:

we put it out the comms to update and ran a campaign with multiple opportunities and reminders for people out there, we ended up getting just over 50% of our organisation providing their diversity data, or updating their data for new responses, which wasn't awful. It wasn't great, wasn't awful.²⁴⁶

Comprehensive data and its connection to employee outcomes (pay equity, promotions, workplace bullying, etc.) is critical to dismantling systematic discrimination. Yet, at this stage, expecting data *analysis* is unrealistic: instead, to start, 'we need to build the trust in the ability to collect and hold that information in terms of privacy considerations in an appropriate way.'²⁴⁷ Foundational work, before the Act commenced, might have supported the creation of cultural safety that facilitates sharing of personal information in the workplace:

I think there sort of needed to be a lot more pre-work before the Act actually came into effect ... how do you make sure that organisations are creating a safe space, where everyone is accepted for

²⁴¹ R5

²⁴² R41

²⁴³ R35

²⁴⁴ R35, also R7

²⁴⁵ R21

²⁴⁶ R41

²⁴⁷ R5

exactly who they are, and there's ... no judgment, no discrimination, and people do feel safe to say, 'yes, I'm a proud, you know, this person or that person or whatever' ... so I think there's a lot more sort of pre-work [to be done].²⁴⁸

Respondents felt the CGEPS could support this work, by helping organisations consider how to gather data in a way that is both 'accurate and safe',²⁴⁹ and how to communicate with staff regarding why and for what purpose certain 'private' information was being gathered.²⁵⁰ Organisations could also learn from each other to identify good practice.²⁵¹

Fifth, where data is disclosed, errors in data reporting can make analysis impossible. In the LGBTIQ+ space, for example, in one organisation staff 'ended up being put into the self-described space, because I think it was coded to asexual or something ridiculous'.²⁵² This was partly due to the CGEPS template for reporting changing over time; initial categories did not fit the ultimate version, meaning the data was lost.²⁵³ This may make monitoring over time difficult.

Sixth, even if quality data is reported, there is a challenge in then

grappling with the data, ... and then trying to get it out of just numbers into what does this say about gender and intersectionality? ... There's a huge gap between 'here's the numbers, use the spreadsheet, leave me alone', to then how does that come off the page? And what does that say about us? And how will we use it for the Gender Equality Act purpose?²⁵⁴

²⁴⁸ R31

²⁴⁹ R27

²⁵⁰ R45

²⁵¹ R27

²⁵² R41

²⁵³ R41

²⁵⁴ R20

Data might be ‘sitting there in databases’ but not effectively captured or disseminated,²⁵⁵ or used to effect change.

D. Consultation, assessment and planning

This lack of intersectional data had flow on effects to other areas of work, such as the completion of Gender Impact Assessments, which were based on partial data:

we actually don’t even collect the data that gives us a better understanding of the intersectionality, or the impact of intersectional experience. So we actually don’t know we haven’t got, we don’t collect the data, ... our data sets aren’t speaking to that. And that needs to be addressed. Because we don’t well understand, for example, the impact on migrant women. ... you just don’t have the data. ... we’re doing Gender Impact Assessments, and they’re based on data, but we just don’t have the data that tells the intersectional story.²⁵⁶

Without comprehensive data, it is difficult to meaningfully measure progress.²⁵⁷ A minority of entities – perhaps two or three of 18 clients engaging one respondent – recognised the need for their Gender Equality Action Plans (GEAP) to adopt an intersectional lens, and were engaging in further consultation to achieve that.²⁵⁸ Being mindful of the limits of policy work was therefore critical: ‘intersectionality is kind of hard to translate into policy. ... you just need to kind of recognise those limitations, and be really conscious of them in your work ... I don’t know if there’s a perfect solution.’²⁵⁹ Respondents also recognised the importance of capturing intersectional

²⁵⁵ R44

²⁵⁶ R28

²⁵⁷ R35

²⁵⁸ R38

²⁵⁹ R13

perspectives through consultation,²⁶⁰ though this was not necessarily occurring already, including due to a lack of resourcing.²⁶¹

For other respondents, though, there was optimism that the GEAP process would help to embed intersectionality in the organisation, including by focusing on unconscious bias and other targeted actions.²⁶² This embedding process was assisted by the CGEPS's guidance, which made it clear that each indicator required at least one action around intersectionality.²⁶³ Thus, through practice, organisational understandings of intersectionality could be enhanced and improved:

our approach is, is trying to actually do the practice first, get the case studies and then say to people, 'this is intersectionality' ... rather than saying 'you must all know about intersectionality'.²⁶⁴

The process of creating and implementing GEAPs and conducting GIAs might therefore help to increase and balance understanding of intersectionality across organisations.²⁶⁵ For some organisations, though, it has been difficult to look past a lack of data to see other ways in which they might advance intersectionality:

[U]nderstanding what intersectionality actually means ... within your workplaces, it doesn't mean, let's ensure all of our marketing material includes a person of color ... It means actually listening to those people. And do you have people in your focus groups that are women of color, or disabled women or women who identify, have different sexual identities? ...

²⁶⁰ R7

²⁶¹ R7

²⁶² R35, also R17

²⁶³ R35

²⁶⁴ R14

²⁶⁵ R26, also R9, R45

Some departments and agencies are really struggling with that, getting really caught on ‘Well, we just don’t have the data on that stuff.’ ... but that doesn’t mean you can’t make strategies to address the issues ... what do we actually do to address these issues? And how do I, as someone who doesn’t experience any of this and doesn’t have that personal experience, like find out what needs to be done?²⁶⁶

Framing these questions, and finding answers, is a process that needs tailored support from the CGEPS.²⁶⁷

VIII. Strengthening learning

These data capture the early days of the implementation of the *Gender Equality Act 2020* (Vic). They reflect the uncertainty, challenges, and significant effort required to embed and operationalise new ideas and processes in the public sector. Understandably, many respondents felt this weight and burden keenly. What is promising, however, is the extent to which there are glimmers of possibility and optimism in these findings. Progress is being made. Understandings are being developed, and provide a good foundation for the ongoing refinement and implementation of the Act. Further, there is clear qualitative evidence that the Act is having a significant impact on how members of the public sector see and consider intersectional equality in their day-to-day work:

I really acknowledge there’s a lot of work for us to do in that. And I think that yeah, we probably would have liked to have done more. ... we will incorporate intersectionality in our Gender Equality Action Plan. I think a lot of it will be around gathering that information and building ...

²⁶⁶ R10

²⁶⁷ R10

awareness and education ... for people in our organisation. That will be the primary focus around intersectionality. ... And then we'll advance that as we go.²⁶⁸

In these early days, we found variable levels of understanding of intersectionality among respondents. Some had a nuanced and sophisticated understanding of the interplay between attributes, power, and systemic barriers; others had scope to develop their understanding, to move beyond an individualised view that risks infinite regression of protective characteristics. All respondents, though, had some familiarity with the notion of intersectionality, and some noted that they had given the concept and its practical meaning significant thought since the Act's introduction. By considering these ideas, and trying to put them into practice, respondents had significantly increased their understanding of (in)equality, and how policies and processes might impact upon individual disadvantage. There is considerable evidence of 'learning by doing', which is not uncommon when implementing innovative policy programmes.²⁶⁹

To continue this process of learning, respondents felt that the CGEPS could offer further examples or case studies of intersectionality being translated into practical action.²⁷⁰ This guidance would ideally be tailored to specific sectors.²⁷¹ Training for practitioners – who are doing the work of implementing the Act – to help them integrate a reflective intersectional practice into their work was also desired.²⁷² Critical to the success of the Act is capacity building;²⁷³ for practitioners, leaders and across the public sector more broadly. The CGEPS can fill a critical role in supporting

²⁶⁸ R11

²⁶⁹ See, eg, Terje Hagen and Lawrence Rose, 'Learning by Doing? Experimental Programmes as a Tool for Public Policy Formation in Norway' (1989) 6(1) *Scandinavian Housing and Planning Research* 17 ('Learning by Doing?').

²⁷⁰ R20, R14

²⁷¹ R14

²⁷² R14

²⁷³ R3

entities to adopt an intersectional approach,²⁷⁴ though this requires the CGEPS to be appropriately funded and resourced to fulfill this role. These findings also underscore the importance of a significant investment in data infrastructure, to ensure robust data to evaluate the Act.

IX. Conclusion: The Future is Intersectional?

This study has illustrated the potential of the *Gender Equality Act 2020* (Vic) to advance intersectional equality in the public sector in Victoria. It is critical, though, that the next stage of the Act's implementation seeks to elevate the voices of other members of the public service, particularly those who experience complex, compounding and intersectional disadvantage. At present, the implementation of intersectionality in defined entities appears highly feminised and lacking in other forms of diversity. Despite the Act's best intentions, a meaningful, inclusive and participative intersectional approach to implementation has not yet been found. While a more diverse group of participants might be included through consultation processes in individual defined entities – as through community panels²⁷⁵ – this is not sufficient to overcome the lack of diversity in those who are actually tasked with the Act's implementation. As respondents noted, then, it is critical that people with lived experience of other perspectives and backgrounds are employed within the public service, and engaged as part of this change agenda.²⁷⁶ While lived experience is ideally complemented by data and evidence,²⁷⁷ there are clear benefits to having more diverse voices and perspectives when analysing such data and evidence.²⁷⁸ This flags, then,

²⁷⁴ R27, R10

²⁷⁵ R7

²⁷⁶ R1

²⁷⁷ R13

²⁷⁸ R4

the need to monitor not just workforce data for intersectional representation, but also to monitor who is tasked with advancing diversity and inclusion in organisations.

As the Act is embedded and implemented across the Victorian public sector, we can also consider its future development and expansion. Expanding the Act to encompass the private sector, including industries like hospitality, manufacturing and retail,²⁷⁹ ‘would be a lovely long term aim’.²⁸⁰ In the short term, entities can focus on how they might ensure the Act encompasses non-employees, such as through procurement.²⁸¹ The future is intersectional: the Act, with all its implementation challenges, offers a critical example to other jurisdictions of how we can advance equality in a way that is holistic, contextual and transformative. While law is only one tool for achieving structural change, it offers an important first step in advancing intersectional equality.

²⁷⁹ R27

²⁸⁰ R27

²⁸¹ R27