

Workplace Gender Equality Amendment (Setting Gender Equality Targets) Bill 2024

Finance and Public Administration
Legislation Committee

December 2024



**Submission to the Senate Standing Committees on Finance and Public Administration
Workplace Gender Equality Amendment (Setting Gender Equality Targets) Bill 2024**

16 December 2024

The Australian Industry Group (Ai Group) welcomes the opportunity to provide a submission in response to the Workplace Gender Equality Amendment (Setting Gender Equality Targets) Bill 2024 (the Bill) currently before the Senate Finance and Public Administration Committee (the Committee).

Ai Group is a peak national employer association representing and connecting thousands of businesses in a variety of industries and sectors across Australia. Our membership and affiliates include private sector employers large and small from more than 60,000 businesses employing over 1 million staff.

We support the advancement of gender equality in Australian workplaces. Significant improvement across a range of gender equality indicators has been made in recent years, with changes in societal factors, economic and labour market conditions, workplace regulation, and the actions of employers all contributing to this positive development. We advocate for changes to our workplaces that support the further narrowing of gender inequalities and support employers to implement the practices needed to advance this important agenda.

Current Requirements

Under the Workplace Gender Equality Act 2012 (the Act), relevant employers (generally employers with more than 100 employees in Australia) must promote and improve gender equality in the workplace, including through the lodgement of annual reports containing information relating to the six Gender Equality Indicators (GEIs) to the Workplace Gender Equality Agency (WGEA).

The six GEIs are:

1. Gender composition of the workforce
2. Gender composition of governing bodies of relevant employers
3. Equal remuneration between women and men
4. Availability and utility of employment terms, conditions, and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities
5. Consultation with employees on issues concerning gender equality in the workplace
6. Sexual harassment, harassment on the ground of sex, or discrimination

An employer's annual report must contain certain information, as set out in the Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2023 made by the Minister for Women.

The Act also requires the Minister to set, by legislative instrument, minimum standards in relation to specified GEIs, specified relevant employers, and specified reporting periods. These are currently set out in the Workplace Gender Equality (Gender Equality Standards) Instrument

2023. The minimum standards apply to relevant employers with 500 or more employees and require them to have policies or strategies in place to support each of the GEIs.

WGEA may name a non-compliant employer in a report given to the Minister or by electronic or other means (for example, on WGEA's website or in a newspaper). While there are no direct financial penalties, in accordance with the Workplace Gender Equality Procurement Principles, a significant consequence of non-compliance is that the employer will not be issued with a certificate, which is considered (and in practice required) as part of the employer's eligibility to contract with the Australian Government through procurement processes when the relevant employer is seeking to supply goods or services to government at or above \$80,000.

The GEI Target Scheme

The Bill implements Recommendation 3.1a of the 2021 Review of the Workplace Gender Equality Act 2012. It seeks to introduce a new requirement for large employers (those with 500 or more employees) to commit to, achieve, or at a minimum improve on, and report to WGEA on measurable targets to progress gender equality in their workplace against the six GEIs.

Our members recognize the importance of gender equality and inclusive workplace participation. Many members have invested significant time and resources to progress this objective. However, the Bill as proposed will likely present difficulties for our members in what is already a crowded compliance space. Of particular concern is that a failure to meet or demonstrate compliance with the targets will adversely and inappropriately impact an employer's eligibility to contract with the Australian Government through its procurement process.

The new 'action' requirement is for large employers to achieve or improve on targets selected by them from a 'menu of targets' which relate to the six GEIs. Employers will have a three-year period to achieve or improve on those targets. At the end of the three-year period, employers will then select more targets for the next three-year cycle, and so on for every three-year cycle following.

The Minister will have the power to set targets and the rules for the selection of the gender equality targets. The proposed list of targets from which relevant employers can make their selection is in Attachment A to this submission.

Targets will be either 'action' or 'numeric'. For example, a numeric target will require a reduction or increase of percentage points related to either gender representation or remuneration gaps. An action target requires an employer to implement or improve upon one or more policy or strategy objectives. Some GEIs will have multiple targets from which an employer can select.

The Bill provides that at the end of the three-year cycle, an employer must have met or demonstrated improvement against the selected target as compared to the baseline. If not, employers will be non-compliant with the WGEA Act unless they have a reasonable excuse (as determined by WGEA). If the employer is non-compliant, WGEA will not issue a certificate of compliance which directly impacts an employer's eligibility for Government procurement (as set out above) and to be considered for funding and grants.

Compliance and Accountability

We support providing optionality in relation to the selection of action or numeric targets, noting that a minimum of one numeric target must be chosen. However, we note that if members have already achieved several listed targets in the menu, their choice will be significantly diminished and they may be compelled to select 'more difficult' and/or costly targets. This could create significant unfairness between employers who are competing for Government work, funding, or grants. We recommend the Committee consider permitting all employers to select from the full range of targets, irrespective of what they have already achieved in relation to the GEIs so as to ensure that there is a level playing field. This would acknowledge the existing initiatives already implemented by employers and which promote compliance with WGEA principles.

We observe that the Minister will have the power to set targets and rules for the selection of targets by instrument and that the only consultation requirement is with WGEA. Given the potential significant impact on eligibility for procurement, funding, and grants, we ask the Committee to consider amending the Bill to also require consultation with key stakeholders, including Ai Group, in relation to the setting of targets and rules. Although we acknowledge there has been a limited level of engagement by WGEA with parties such as Ai Group about the targets, this consultation did not consider the impact of the targets on employers' eligibility for procurement. We were also not provided with an opportunity to provide feedback on any draft legislation. As a result, there has not been sufficient consultation to date, including in relation to eligibility for procurement and whether the targets can be further adapted by organisations to align with their particular needs and WGEA's objectives.

In relation to the proposed menu of targets, we note that some of the language used may not necessarily be consistent with how the terms are used in workplace relations legislation and how they align (or not) with any applicable awards or enterprise agreements.

Employers wishing to apply for tenders, grants, or funding often have extremely strict and inflexible timing requirements that they need to meet, including in relation to the provision of the WGEA certificate of compliance. The Bill fails to provide clarity on the rules an employer will need to comply with in relation to the selection of targets and/or nomination of level of improvement or the timeframes within which WGEA will confirm compliance and/or provide uplift to enable compliance. If this is to be provided through the Minister issuing an instrument, we ask the Committee to require the Minister to consult with key industry stakeholders to ensure that the rules have appropriate regard to Government procurement, funding, and grant requirements.

Similarly, employers must have clarity on what may be a "reasonable excuse" for non-compliance. We ask the Committee to require WGEA to provide appropriate guidelines, support, and educational materials so that employers understand acceptable extenuating circumstances. We note by way of example, that a reasonable excuse should have regard to significant business changes such as a merger, demerger, restructure or redundancy program. In such circumstances, it would be appropriate for employers to be able to reset their agreed targets, if necessary.

We note that the Bill does not establish a review mechanism. We ask the Committee to include such a mechanism given the potential and very significant financial costs which may accrue to members who are, as a consequence of a determined "non-compliance," unable to apply for tenders, grants, or funding.

Specific Objections

1. **Discrimination Against Large Employers:** The Bill discriminates against businesses with over 500 employees, which contradicts the core principles of the Commonwealth Procurement Rules (CPRs) and the World Trade Organisation Agreement on Government Procurement (GPA).
2. **Discrimination Against Progressive Employers:** Businesses that have already made significant progress in gender equality may find it difficult to select new targets, creating an unfair competitive environment. It also effectively dismisses any progress achieved prior to the new scheme, punishing those employers who have invested already and rewarding laggards.
3. **Local vs. Foreign Businesses:** Only Australian businesses require the compliance certificate, giving foreign businesses an advantage in government procurement.
4. **Inconsistency in Application:** Different businesses may receive different targets, undermining the principles of competitive neutrality and a level playing field.
5. **Procurement Officer Discretion:** The certificate requirement removes the ability of procurement officers to consider gender commitments within the procurement process.
6. **Lack of Review and Transparency:** There are no guidelines on what constitutes a “reasonable excuse” for non-compliance, and no mechanism to appeal decisions outside WGEA.

Conclusion

Ai Group supports the advancement of gender equality in Australian workplaces and the efforts to promote the uptake of gender equality targets by employers. However, the proposed linkage of these targets to government procurement eligibility presents significant challenges and potential unfairness. We urge the Committee to consider our recommendations to ensure a balanced and effective approach to promoting gender equality while maintaining fair and competitive procurement practices.

Should you wish to discuss the matters raised in this submission, please feel free to contact Louise McGrath at louise.mcgrath@aigroup.com.au.

Sincerely yours,

Innes Willox

Chief Executive, Australian Industry Group

