

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

ACTU Submission to the Senate Finance and Public
Administration Legislative Committee Inquiry

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About the ACTU

Since its formation in 1927, the Australian Council of Trade Unions has played the leading role in advocating for and winning almost every Commonwealth legislative measure concerning employment conditions and trade union regulation. The ACTU has also appeared regularly before the Fair Work Commission and its statutory predecessors, in numerous high-profile test cases, as well as annual national minimum and award wage reviews.

The ACTU is Australia's sole peak body of trade unions, consisting of affiliated unions and State and regional trades and labour councils. There are currently 35 ACTU affiliates who together have over 1.6 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

Introduction: continuing progress in reducing the gender pay gap

Encouragingly, Australia's full time gender pay gap has dropped from 14.1% to 11.5% over the past two years.¹ This represents a positive acceleration in the closing the pay gap: more than three times the rate achieved under the former Coalition Government.² Significant progress in lifting wages in female-dominated occupations and sectors has been a key driver, particularly in aged care and early childhood care and education. Measures to assist women to remain connected to work and for families to better share caring responsibilities have also made a significant difference, including stronger rights to request and secure flexible working arrangements, improvements to Commonwealth Paid Parental Leave and lifting childcare subsidies.

Arguably the biggest barrier to making further progress in closing the gender pay gap is the discrimination women face in securing work, better pay and promotions. Gender discrimination at work is thought to contribute 36% of the gender pay gap, making it the largest barrier, according to the fourth edition of the *She's Price(d)less Report* commissioned by the Diversity Council of Australia and the Workplace Gender Equality Agency (WGEA).³ This is also commonly

¹ ABS Average Weekly Earnings, May 2024

² ACTU [Minding the Gap: the 20 reforms that are closing the Gender Pay Gap faster](#) November 2024

³ KPMG, [She's Price\(d\) Less: The economics of the gender pay gap](#), July 2022 page 39.

the biggest barriers in other countries.⁴ This is not surprising. While discrimination on the basis of gender at work has been prohibited for over 40 years at a federal level, prohibition alone has not been enough to unseat workplace cultures and power imbalances between employers and employees that perpetuate inequality.⁵

An interesting illustration is the recent attempt to promote pay transparency, by banning pay secrecy clauses in employment contracts, under the *Secure Jobs Better Pay* legislative reforms of late 2022. While it appears that pay secrecy clauses are largely disappearing from new employment contracts, according to the ACTU's affiliated unions, the impact of the ban on ending cultures and practices of pay secrecy is an open question. A recent study in the United States, where many jurisdictions have had laws prohibiting pay secrecy for some time, found that half of all workers in those states still report confronting barriers at work to discussing pay. This was only slightly better than the rate in states that had not prohibited pay secrecy.⁶ The authors concluded that this was likely because employers reacted to such prohibitions by making their pay secrecy rules more informal. The power of the employer in the workplace continued to have a chilling effect on discussions and actions around pay despite laws protecting such discussions.

In this context, the introduction of the *Workplace Gender Equality (Setting Targets) Amendment Bill 2024* (the **Bill**) represents important progress. By requiring an employer to take significant proactive steps to addressing gender workplace inequality, the chances of unseating negative culture and practices that prolong gender inequality are improved.

The Bill seeks to do this through requiring certain employers with 500 or more employees to set and make progress towards workplace gender equality targets over a three-year cycle. The failure to either set a target or make progress towards it can result in the employer being publicly named and potentially barred from Commonwealth procurement opportunities.

The ACTU welcomes this Bill and the chance to participate in this Inquiry. While we support the overall aims of the Bill, it is taking very cautious steps. It will cover a bit over 1 in 4 employees by only applying to employers with 500 or more employees. It will allow employers to pick easier

⁴ Ibid, page 39.

⁵ See *Sex Discrimination Act 1984*

⁶ Oswald M, Rosenfeld J and Denic P, "Power and Pay Secrecy", 99 *Indiana Law Journal* 43 (2024).

targets to reach and has a fairly soft system of consequences if they fail to make any progress towards achieving them. The Bill also ignores the role of workplace delegates and employees organised into trade unions as the key factor at work in driving progress towards gender equality. After all, speaking up and winning progress on workplace gender equality requires more than just measures around transparency, it requires confident and empowered employees.

Accordingly, the ACTU recommends the following:

Recommendation 1: Define a Designated Relevant Employer (DRE) as having 100 or more employees.

Recommendation 2: Include any workers engaged by the company via contract for labour with a labour hire providers in the headcount definition of both a Relevant Employer and a DRE and the WGEA reporting requirements.

Recommendation 3: Require all DREs to make progress under the equal remuneration target, as well as choosing three other gender equality targets.

Recommendation 4: Include a job security target under Gender Equality Indicator (GEI) 1 as a gender equality target.

Recommendation 5: Put in place a system of civil penalties for non-compliance and additionally bar any non-compliant employer from being eligible to receive Commonwealth Government grants, as well as procurement.

Recommendation 6: Require more public reporting to better assess performance including action plans, progress reports and requiring and publishing reasons for a company not meeting its targets.

Recommendation 7: Form an intergovernmental taskforce that also includes unions and other stakeholders, with the goal of bringing state and territory government and related entities under either the WGEA system of reporting and target setting, or states schemes that achieve the same or better outcomes.

Recommendation 8: Require an employer to consult unions on the gender equality targets to select and on the plans and implementation to achieve them.

Recommendation 9: Amend proposed GEI 5 to require that employers to agree workplace consultation measures with workplace delegates and their unions as a first step.

The ACTU has also had the advantage of reading the submission of the Finance Sector Union (FSU) and supports its additional recommendations not already covered here, including recommendations 3, 5 and 7 which seek to improve the targets in the GEIs.

The Designated Relevant Employer

The Bill would require employers with 500 or more employees (called “**designated relevant employer**” or “**DRE**”) (at s. 4A(1)) to set and make progress towards gender equality targets. According to WGEA, this threshold will cover an estimated 1,950 employers and 3.9 million employees.⁷ But this very high threshold will leave out nearly three in four: 10.6 million employees, or 73% of the labour force work for a firm with less than 500 employees.⁸

The reasoning behind setting such a high threshold does not appear to be strong. The Explanatory Memorandum to the Bill simply states that it is implementing the recommendation of the 2022 review into the *Workplace Gender Equality Act 2012* (the **Act**).⁹ That review recommended the 500 number on the basis that this was in line with the reporting framework in the Minimum Standards Legislative Instrument that requires companies of 500 or more employees to have formal policies or strategies to support gender equality. The review added that employers with 100 to 499 employees “would be more likely to have to develop policies or strategies to meet such a proposed change”, and that was too much of a regulatory burden.¹⁰

At one level this is unhelpfully circular reasoning: employers at the 100 to 499 employee tier that do not have such policies would have them if they were covered by the reporting framework in the first place. At another level, it is no longer really true: WGEA now positively report that 90% of employers with 100 employees or over have a policy or strategy to support gender equality in the workplace in any event¹¹ presumably further encouraged by these companies publicly reporting their gender pay gap for the first time since early 2024.

The review also states that 500 was chosen as the threshold given the “likely regulatory impact” on smaller employers, particularly in the then context of Covid-19.¹² Thankfully the worst of Covid-19 is behind us, and the “likely regulatory impact” is not quantified anywhere. The Impact

⁷ Australian Government, *Workplace Gender Equality Amendment (Setting Gender Equality Targets) Bill 2024 briefing*, Slide 6.

⁸ ABS Labour Force, October 2024

⁹ Explanatory Memorandum to the Bill, page 5

¹⁰ See [WGEA Review Report 2021](#), page 38

¹¹ WGEA Gender Equality Scorecard 2023-24 [WGEA Gender Equality Scorecard | Latest results employer reporting](#)

¹² WGEA Review Report, page 38.

Analysis to the Explanatory Memorandum does not attempt to do this, unlike other similar Explanatory Memoranda. This could be because the impact is so minimal as to not be worth quantifying, or, as WGEA itself argues elsewhere, the impact is actually positive or neutral because there is a strong “business case for gender equality”.¹³

Given that employers with 100 employees or more are already required to report publicly to WGEA each year on their Gender Pay Gaps, and the vast majority already have policies and strategies in place to, the ACTU recommends instead setting the DRE threshold at employers with 100 or more employees. This would cover at least additional 3 million employees, lifting the proportion of employees covered closer to 1 in 2.¹⁴

Further, given that many businesses deliberately use outsourcing arrangements to engage staff, such arrangements should also be captured in the head count definition where a business has a contract for labour with a labour hire provider, as well as for reporting purposes.

Recommendation 1: Define a Designated Relevant Employer as having 100 or more employees.

Recommendation 2: Include any workers engaged by the company via contract for labour with a labour hire providers in the headcount definition of both a Relevant Employer and a DRE and the WGEA reporting requirements.

Gender Equality Targets

The Bill requires a DRE to select gender equality targets that the employer commits to achieving in the target cycle (s. 13(3AA)). Those targets and rules related to them are to be set by legislative instrument (s. 17B). The Explanatory Memorandum contains 19 intended targets (either “numeric” or “action” targets) across the six broader Gender Equality Indicators (GEI) that would be the basis for this instrument.¹⁵ The intent is for DREs to select “at least three targets in every three-year cycle with at least one numeric target in any three-year cycle”¹⁶ and either meet or make progress towards them over that cycle.

¹³ See e.g. WGEA [The Business Case for Gender Equality](#), November 2018

¹⁴ ABS Employee Earnings and Hours (EEH), May 2023.

¹⁵ Explanatory Memorandum, *ibid*, pages 32 to 37.

¹⁶ *Ibid*, page 6

Reviewing the proposed targets, the ACTU is concerned that such broad flexibility in choice of targets could let an unscrupulous employer pick the easier targets and make little or no meaningful progress on gender equality.

Let's take an extreme case: for its first target, an employer carries out a staff survey and focus group as per GEI5 and completely ignores the results of them. For its second target, it conducts an annual payroll analysis (GEI3), which is not very different from its existing reporting obligations to WGEA and then does nothing with the analysis. Finally, for the numeric target, it appoints its first ever woman to the board at the very end of the three-target period, which, to be sure, is good news. At the same time, the company makes no progress whatsoever on closing the gender pay gap or improving gender diversity among its work force. The new Bill and proposed model of targets would allow for all of this.

The ACTU instead recommends that all DREs be required to make progress to “reduce the employer gender pay gap towards 0%”, under GEI3.¹⁷ This measure is the single clearest indicator of progress towards gender equality that all other indicators and targets within the Gender Equality Targets would clearly contribute towards. This requirement should be made clear in the Bill via an amendment and reflected in the proposed rules.

Recommendation 3: Require all DREs to make progress under the equal remuneration target, as well as choosing three other gender equality targets.

A job security target

A lack of job security can often put an employee's life on hold. They have no guarantee of hours or even if they'll have any future work. They are also typically trapped in lower paid roles, face significantly higher financial, physical and mental stress, less access to workplace training and promotions, and a harder time balancing work and family responsibilities.¹⁸ Unfortunately, women are more likely to be in insecure working arrangements, particularly because of the

¹⁷ Ibid page 32.

¹⁸ ACTU [Morrison's record of failure on secure jobs](#), April 2022. Page 10.

disproportionate burden they face in balancing work and care. Most employees in casual work or fixed term arrangements are women.¹⁹

The Australian Government and Parliament recognised the importance of job security under the *Secure Jobs Better Pay* legislative reforms, by amending the Object of the Fair Work Act 2009 to include the “promotion of job security and gender equality” (at s. 3).

Given the role of job security in supporting workplace gender equality, the ACTU recommends including a job security target within GEI1 of the Gender Equality Targets. This would require increasing the representation of an unrepresented gender in a secure job. This would include not just those employees on casual or fixed term arrangements, but also labour hire workers engaged by the company via a contract with a labour hire provider.

Recommendation 4: Include a job security target under GEI1 as a gender equality target.

Consequences for non—compliance

The Bill requires that a DRE will be non-compliant with the Act if, at the end of the three-year cycle it has not achieved the target, or not demonstrated improvement against the baseline for all of their targets, without reasonable excuse. They would also be non-compliant if they failed to set a target. The consequences of non-compliance are being named publicly by WGEA and then potentially not being issued with a certificate of compliance which would make the company ineligible to contract with the Australian Government through procurement processes.

It is unclear how many DREs are involved in Commonwealth Government procurement and to what extent. Without knowing this it is difficult to know if this is a meaningful incentive to drive the right type of employer behaviour. At a minimum, the Government should bar any non-compliant employer from being eligible for a Commonwealth Grant as well.

The ACTU however instead recommends a system of civil penalties for non-compliance to drive good behaviour. This could include enforcement measures such as infringement notices. This is

¹⁹ ABS Labour Force Detailed, August 2024

what will be considered coming out of the recent review into the *Modern Slavery Act 2018* and its analogous reporting requirements.²⁰

To better drive good behaviour an employer should also be required to provide and publish up front any reasons for not meeting a target. Action plans and progress reports from employers should also be made publicly available, as is currently required under some State schemes.

Recommendation 5: Put in place a system of civil penalties for non-compliance and additionally bar any non-compliant employer from being eligible to receive Commonwealth Government grants, as well as procurement.

Recommendation 6: Require more public reporting to better assess performance including action plans, progress reports and requiring and publishing reasons for a company not meeting its targets.

Coverage of state and local governments and related entities

The Act explicitly does not cover employers that are a State, a Territory or related entities.²¹ This leaves out a significant number of employees from the benefits of the Act and the changes in the Bill. There are no clear constitutional reasons for this exclusion. The Commonwealth can clearly legislate with regard to Territory matters, and federal and state anti-discrimination laws operate concurrently, given the reliance on the external affairs power in the Commonwealth Constitution. The main barrier is likely just a practical one of coordination, given that some states already have similar reporting regimes e.g. Victoria and Queensland, but most do not. The Government has also raised possibly barriers regarding compatibility with the Commonwealth Privacy Act.²²

These entities should be covered by the same or similar reporting and target setting requirements. They are operationally similar to entities that have reporting obligations (e.g. large private employers; the APS) to WGEA; these entities are significant employers of women; there is often significant gender pay gaps within these entities and the gender composition of senior roles in these entities tends to be predominantly men. Reporting obligations on these entities would

²⁰ See *Australian Government response to the review report of the Modern Slavery Act 2018 (Cth)*, page 8.

²¹ WGEA Act s. 4(2) Meaning of *relevant employer*

²² Stakeholder Roundtable into the Bill, December 2024.

improve transparency and the opportunity to address the gender pay gap and the under-representation of women in these entities.

If there are genuine privacy or practical issues preventing the inclusion of States and Territories in the WGEA reporting system, then we propose that the Commonwealth, State and Territory governments reach intergovernmental agreement that would place on the relevant entities gender reporting obligations identical to (or better than) the reporting obligations in the WGE Act.

Of the States and Territories that do impose reporting obligations on public sector employers, we note that the Victoria's Gender Equality Act imposes more detailed gender reporting obligations than those contained the WGE Act.

In such circumstances, we believe that State and Territory public sector employers should be subject to both their own State or Territory's as well as the Commonwealth's reporting schemes. Regarding the specifics of such obligations, we support reporting obligations that are detailed and comprehensive and allow for the comparison of data across jurisdictions and employers. If superior state-level reporting requirements are proving to be more effective at driving positive change, then adopting those requirements at the Federal level should also be considered.

Recommendation 7: Form an intergovernmental taskforce that also includes unions and other stakeholders, with the goal of bringing state and territory government and related entities under either the WGEA system of reporting and target setting, or states schemes that achieve the same or better outcomes.

Role of trade unions and workplace delegates.

Through giving employees a voice, trade unions and workplace delegates have a proven track record of improving pay and conditions, improving workplace health and safety, and reducing the negative impact on employees of workplace change among other benefits.²³ To pick a very recent example on the value of worker voice, when workers were consulted over the introduction of AI,

²³ Peetz, D, "[Employee voice and new rights for workplace union delegates: impacts on wages ,productivity, cooperation and union training](#)", 1 July 2024, pages 17 to 19

better outcomes were achieved on health and safety, productivity, satisfaction and management than when they were not, according to a survey of over 5,000 workers at 2000 firms and across seven countries.²⁴

The Federal Government and Parliament have recently recognised the critically important role that workplace delegates play, by legislating for new rights and protections for them in the *Fair Work Act 2009*.²⁵ Workplace delegates now have a clear right to represent the industrial interests of union members or potential members at a particular enterprise. The WGE Act also partly recognises the role of unions through requiring relevant employers to let them know that it has lodged its report to WGEA (s. 16A) and that the union could provide comments on it to the employer or WGEA (s. 16B).

Yet there is no role for workplace delegates or unions in the new Bill, or the proposed rules and targets that will sit alongside it. This is particularly problematic where the targets proposed would establish alternative means of consulting employees that are not independent of the employer and seriously risk undermining the representative role of workplace delegates and their trade unions.²⁶

The ACTU instead recommends that DRE's should be required to consult with relevant unions and workplace delegates prior to selecting gender equality targets via an amendment to the Bill after proposed s.13(3AC). Further, GEI 5 which concerns consultation with employees on issues concerning gender equality should be amended to require consultation with workplace delegates to together decide on the most appropriate methods of workplace consultation.

Recommendation 8: Require an employer to consult unions on the gender equality targets to select and on the plans and implementation to achieve them.

Recommendation 9: Amend proposed GEI 5 to require that employers to agree workplace consultation measures with workplace delegates and their unions as a first step.

²⁴ Peetz Ibid, page 19.

²⁵ See s. 350C of the *Fair Work Act*.

²⁶ See *GEI 5 – Consultation with employees on issues concerning gender equality* in the Explanatory Memorandum at page 36.

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