



16 December 2024

Committee Secretary
Senate Finance and Public Administration Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: fpa.sen@aph.gov.au

Dear Sir/Madam

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

The Australian Financial Markets Association (AFMA) represents the interests of over 130 participants in Australia's wholesale banking and financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. Many of our members are reporting entities for the purpose of existing Workplace Gender Equality Agency (**WGEA**) reporting requirements.

We are pleased to provide a submission to the Committee's inquiry into the *Workplace Gender Equality Amendment (Setting Gender Equality Targets) Bill 2024 (the Bill)*.

AFMA members have designed and implemented policies and initiatives within their own organisations that are aligned to the WGEA principles and will continue to do so regardless of whether specific targets are legislatively mandated. The comments below in relation to the provisions contained in the Bill and the accompanying Explanatory Memorandum are to be read in light of AFMA's support for WGEA's objectives.

Executive Summary:

AFMA notes the following, by way of executive summary:

- Given that improvements already made by employers in relation to targets varies considerably, the legislation should encourage steps to be taken by employers that are in the early stages of their approaches and incremental steps from employers that have already undertaken positive steps to enhance gender outcomes in the workplace;
- A decision by the Agency not to issue a Certificate of Compliance should be subject to a review mechanism;
- The targets, and the target selection process, should be included in the legislation as opposed to a separate Legislative Instrument that is authorised by the Minister; and
- The Government should consider ways in which it can support employers in achieving progress against the targets.

Policy Position

AFMA supports the objectives of WGEA, principally:

- The promotion and improvement of gender equality in the workplace;
- Supporting employers to remove barriers to the full and equal participation of women in the workforce;
- The promotion of eliminating discrimination on the basis of gender in relation to employment matters;
- Fostering workplace consultation between employers and employees on issues concerning gender equality in the workplace; and
- Improving the productivity and competitiveness of Australian business through the advancement of gender equality in the workplace.

AFMA's members operate in an industry where the attraction and retention of females is a well-known challenge. The pipeline of female university graduates for roles in wholesale/institutional finance is less robust than in other industries, which heightens the challenge of effecting significant change in gender outcomes compared to other industries. This does not diminish the commitment of members to making progress towards WGEA's objectives but provides context on the particular challenges facing parts of the AFMA membership.

Prospective Application

Under the proposed provisions in the Bill, designated reporting entities (**DREs**) are required to choose from a number of proposed targets, as determined by the Minister and aligned with the WGEA Gender Equality Indicators, and then demonstrate improvement in relation to these targets over a three-year cycle. In the absence of improvement against the baseline, the DRE may be named publicly, and may not be issued with a Certificate of Compliance, the consequence being that the DRE may be precluded from contracting with the Australian Government.

The concern that AFMA has with this proposed approach is that setting the baseline as the next reporting period after commencement (i.e. applying prospectively), the proposed approach does not acknowledge those DREs that have previously undertaken steps to improve outcomes under the targets, as the baseline for these DREs will be higher than other entities where more could have been achieved. This will make evidencing improvement against the targets more difficult for those DREs

that have, to date, been proactive in seeking to enhance gender equality outcomes, which is contrary to the policy intent of the target setting process.

It may also disincentivise organisations from taking proactive steps in areas that are not the subject of their current targets and instead ‘bank’ them for a later cycle so that those achievements will count towards their record of compliance. For example, an employer may wish to set up a diversity committee but the legislation, as currently drafted, may delay that employer from doing so on the basis that it is not the subject of its WGEA targets for the present cycle, preferring to put it off until a future cycle. This would have the perverse outcome of limiting progress that would otherwise be made by employers who are already proactive in this space.

In determining the baseline against which improvement by DREs is to be evidenced, AFMA suggests that the legislation permits DREs to include initiatives undertaken prior to commencement to ensure that positive outcomes that have already accrued are recognised and that DREs are not impacted by their previous activities. Under the current proposal, theoretically an employer that has done far more to advance gender equality to date could fail to obtain a Certificate of Compliance because that record of action is not acknowledged, whereas an employer who has done much less except demonstrate some modest progress against its compulsory targets may be deemed to have complied.

International Competitiveness

Many AFMA members operate in multiple jurisdictions and actively assess the competitiveness of the regulatory and employment settings in competing jurisdictions to determine the optimal location to conduct business and to employ staff. For this reason, AFMA has always advocated for policy settings that enhance Australia’s financial centre competitiveness, including supporting regulatory cohesion with other jurisdictions. In this light, AFMA has noted with concern the fall in ratings over the last decade of Australia’s two leading financial centres, Sydney and Melbourne, in the Global Financial Centre Index.

The Explanatory Memorandum that accompanies the Bill states that “the gender equality targets scheme would be the first of its kind globally.” In this light, the local idiosyncrasies that will be introduced by the Bill add a layer of complexity in terms of global organisations understanding the conditions associated with employing people in Australia as opposed to elsewhere.

Procedural Fairness

AFMA notes that the comments in the draft Explanatory Memorandum that a DRE that is found to be non-compliant is able to have an opportunity to make representations to the Agency as to why being named publicly should not occur. However, the decision by the Agency not to issue a Certificate of Compliance does not appear to be a decision that the DRE has an opportunity on which to make representations. Given the significance consequences for a DRE from not being issued with a certificate of compliance from an Australian Government procurement perspective, DREs should be able to make representations in relation to this decision and ideally there should be a review mechanism in relation to a decision by the Agency not to issue a Certificate of Compliance.

Targets and Selection Process in Legislation

The proposed statutory approach in the Bill is for the gender equality targets and selection rules to be determined by the Minister through legislative instrument. While DREs may have an expectation that the targets will be substantially similar to those set out in the Impact Analysis that accompanies the draft Explanatory Memorandum, there are no requirements in the Bill as to what considerations need to be adhered to by the Minister in determining the targets/selection rules, nor any requirement for consultation to be undertaken on the same.

While the draft Explanatory Memorandum states that the menu of targets is that included in the Impact Analysis, AFMA's preference would be that the legislation specifically includes the menu of targets and the process that the Minister must undertake in selecting the targets.

Government Collaboration to Assist with Targets

Finally, we note that the approach in relation to each of the proposed targets is that the onus is wholly on the employer to undertake activities conducive to meeting the targets and enhancing gender outcomes in the workplace. As opposed to only setting targets, the Government is well-placed to provide tangible support to assist with the achievement of some of the targets, such as:

- policies to make child-care more accessible and affordable;
- increasing the government paid parental leave entitlement;
- high school education programs on the profession;
- subsidies and HECS relief to broaden the number of students who choose to study and enter the profession;
- financial incentives to employers to support increased headcount; and
- shared internships and exchange programs where private enterprise and government authorities partner on industry internships and study programs to the extent they are permitted, (e.g. partnerships between banks and Reserve Bank of Australia and similar organisations that provide interns/graduates with job experiences from different perspectives).

In progressing the legislation, AFMA recommends that the Government consider ways in which it can provide support to employers to enhance gender outcomes in the workplace.

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Yours sincerely,

Rob Colquhoun
Chief Operating Officer