



**Submission to the
Parliament of Australia**

**Senate Finance and Public
Administration Committee**

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Introduction

1. The Queensland Council of Unions (**QCU**) is the peak council of registered unions in Queensland representing 24 affiliated unions and 400,000 workers.
2. We have expertise in all work-related legislation and policy areas, including industrial relations, work health and safety, workers' compensation, training and skills, and discrimination. The QCU have represented the interests of workers in these policy areas since 1885.
3. The QCU thanks the Senate Finance and Public Administration Committee (**Committee**) for the opportunity to make a submission on the Workplace Gender Equality Amendment (Setting Gender Equality Targets) Bill 2024 (**Bill**).
4. The QCU is supportive of legal requirements for employers to take action to improve gender equality in their workplaces, and data-driven approaches to bring objectivity and transparency to gender equality efforts by employers.¹
5. However, for this targets scheme to be effective, we make the following preliminary observations:
 - a. the targets set under this Bill set a low bar for employers. In order to be genuine and measurable targets, they should go further than the legal requirements employers are already expected to comply with;
 - b. the draft menu of targets, attached as an addendum to the Explanatory Memorandum to the Bill, should be amended as detailed below; and

¹ Leonara Risse, *Target Setting for Gender Equality: A Review of the Literature* (Literature Review, March 2024) <https://www.wgea.gov.au/sites/default/files/documents/Target-Setting-for-Gender-Equality_A-Review-of-the-Literature-Dr_Leonora_Risse_March-2024.pdf> 5-6.

- c. recognising that governing bodies are key drivers of cultural change, annual reporting to governing bodies should be expanded to cover every gender equality indicator (**GEI**).
- 6. The QCU also supports the ACTU's submission to this Committee and all seven of the recommendations they provide.

Summary of recommendations

Recommendation 1

Further consideration of how the targets scheme interacts with other relevant legislation and national strategies is recommended, to ensure that the menu of targets goes further than existing legal requirements.

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Recommendation 2

Amend GEI 4 to:

- a. Remove the opt-out approach to accessing paid parental leave in action target 3.
- b. Re-draft action target 7 to provide a commitment for paid family and domestic violence leave, in addition to existing entitlements under the NES.
- c. Add a commitment to provide 10 days paid reproductive health leave entitlement in line with the QCU/ACTU model clause.²

Pages 10–12

Recommendation 3

Include commitments in GEI 5 for:

- a. how the results of employee consultation should influence improvements by the employer, and
- b. how feedback should be provided to the governing body.

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²Queensland Unions and Australian Council of Trade Unions, *Reproductive Health Leave Clause* (Model Clause, 2024) <https://itsforeverybody.au/wp-content/uploads/2024/04/QU_Reproductive-Health-Leave-Clause.pdf>.

Recommendation 4

For GEI 6:

- a. Remove commitments that represent the bare minimum legal obligations employers should already be meeting.
- b. Re-draft the commitments in action target 1 to be consistent with what is expected from large organisations or businesses under the Guidelines and through consultation with the AHRC and unions.
- c. Re-draft the commitment regarding non-disclosure or confidentiality clauses to:

“processes for considering whether, and how, to use non-disclosure or confidentiality clauses in sexual harassment settlement agreements based on the Respect@Work Council’s Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints”.

Pages 13–20

Recommendation 5

Expand reporting to governing bodies to apply to each GEI.

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WGEA review

7. In December 2021, the Department of the Prime Minister and Cabinet published their review report of the *Workplace Gender Equality Act 2012* (Cwth) (**Review**), making 10 recommendations for accelerating progress on gender equality in workplaces and streamlining reporting for employers to WGEA.
8. Among other things, the Review identified an “action gap” that exists between employers having policies and strategies in place on gender equality, sex-based harassment and discrimination, and taking action to address these issues.³
9. Recommendations 2, 3, 5 and 9 of the Review were implemented by the *Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Act 2023* (Cwth).
10. The Bill implements Recommendation 3.1a of the Review to:

“add a new minimum standard to require relevant employers with 500 or more employees to commit to, achieve and report to [the Workplace Gender Equality Act (**WGEA**)] on measurable genuine targets to improve gender equality in their workplace against three of the six gender equality indicators”.⁴
11. The Review cited comparative research by the Global Institute for Women’s Leadership on gender pay gap reporting which recommended that “action plans are essential for change” and that Australia should “introduce ‘outcome-based’ minimum standards”. Further, this research found that “employers

³ Department of Prime Minister and Cabinet, Review of the Workplace Gender Equality Act 2012 (Review, December 2021) <https://www.pmc.gov.au/sites/default/files/resource/download/wgea-review-report_1.pdf> 37 (WGEA Review Report).

⁴ WGEA Review Report, 38.

should be mandated to create time-bound targets to redress pay gaps, setting out clear and measurable goals”.⁵

12. The recommendations below consider changes that are required in order for the targets scheme to achieve its intended purposes.

Setting genuine targets

13. In the consultation process for the Review, stakeholders raised concerns that the bar for employers to comply with minimum standards was too low. At that time, employers with 500 or more employees were required to have policies or strategies in place to support at least one out of four gender equality indicators.⁶

14. Therefore, the Review proposed a shift away from a minimum standards approach with three recommendations to “bridge the action gap”:

- a. Recommendation 3.1a was a “central recommendation of the Review” (quoted above);
- b. Recommendation 3.1b: to strengthen the existing minimum standards by requiring relevant employers to “have a policy or strategy against all six gender equality indicators, not just one of four”;
- c. Recommendation 3.1c: to rename existing minimum standards as “gender equality standards” in order to “reflect the increased ambition of these proposals to enhance the minimum standards”.⁷

15. However, despite the intention to move away from a minimum standards approach in favour of setting “genuine and measurable” targets and providing an opportunity for employers to “make ambitious commitments through the

⁵ Ibid.

⁶ *Workplace Gender Equality (Minimum Standards) Instrument 2014* (Cwth).

⁷ WGEA Review Report, 38.

targets scheme”,⁸ the draft menu of targets replicates the same problem by setting low bars for compliance.

16. Rather than accelerating action on gender equality as intended by this Bill, the targets scheme in its current form creates a perverse incentive for employers to select targets they are already legally required to meet, in order to remain eligible to contract with the Australian Government through procurement processes.⁹
17. This problem stems from the fact that the draft menu of targets replicates legal requirements employers must already comply with under the *Sex Discrimination Act 1984* (Cwth) (**SD Act**); industrial relations laws, such as the *Fair Work Act 2009* (Cwth); work, health and safety (**WHS**) laws; and State and Territory anti-discrimination laws.¹⁰ The Explanatory Memorandum to the Bill makes no mention of the links between this Bill and other relevant legislation or national strategies.
18. This oversight demonstrates the limitations of a targets scheme operating in a silo within WGEA. As noted in the Review, WGEA is one part of a broader approach to gender equality in Australian workplaces.¹¹
19. The targets scheme can afford to be more ambitious because it is limited to employers with 500 or more employees and compliance is attached to progress rather than achievement.

Recommendation 1

⁸ Explanatory Memorandum, Workplace Gender Equality Amendment (Setting Gender Equality Targets) Bill 2024, 8 (*Explanatory Memorandum*).

⁹ Ibid.

¹⁰ See, eg, *Respect at Work and Other Matters Amendment Act 2024* (Qld).

¹¹ WGEA Review Report, 38.

Further consideration of how the targets scheme interacts with other relevant legislation and national strategies is recommended, to ensure that the menu of targets goes further than existing legal requirements.

Draft menu of targets

20. The draft menu of targets, as attached to the impact analysis addendum to the Explanatory Memorandum of the Bill, is considered below.

GEI 1: Gender composition of the workforce

21. The QCU supports the ACTU's recommendation to include a job security target under GEI 1.

22. With respect to Action targets 1 and 4, we note that in the context of female-dominated sectors, it may be challenging to achieve greater representation of men in certain pay quartiles, such as lower paid administrative streams. It is necessary to consider potential perverse or unintended consequences of these targets that may not yield the intended outcomes of the Bill. For instance, this may lead to a reduction of employment opportunities for women within those streams.

23. Consideration should be given to ensuring that the GEI1 proposed targets also support the workplace inclusion of people from diverse gender identities and sexualities.

GEI 3: Equal remuneration

24. The QCU supports the ACTU's recommendation to require all relevant employers to make progress under the equal remuneration target, in addition to choosing three other gender quality targets.

GEI 4: Flexible working arrangements and support for employers with caring responsibilities

25. Action target 3 for GEI 4 allows for relevant employers to commit to adding an 'opt-out' approach to their universal or primary carers paid parental leave policy or strategy. This could have the unintended consequence of encouraging or pressuring employees to opt-out from accessing their full paid parental leave entitlement.
26. Action target 6 for GEI 4 is to increase the proportion of managers working part-time. It is unclear why part-time has been specifically mentioned. A commitment to increasing the proportion of managers working *flexibly* would be more effective.
27. Action target 7 for GEI 4 encourages relevant employers to add unpaid domestic violence leave to their existing policy or strategy. The NES entitles employees to 10 days of paid family and domestic violence leave.¹² If the intention is to extend this existing entitlement, the commitment should be redrafted to say it is additional to the NES. It would otherwise allow a free pass to relevant employers to select a commitment that they are already legally obligated to provide employees. Further, the commitment should be to provide an additional paid, rather than unpaid, leave entitlement.
28. GEI 4 should also include a target for improving supports for employees experiencing reproductive health issues. This has been a major area of advocacy by unions, in particular through the *It's for Everybody* campaign to

¹² *Fair Work Act 2009* (Cwth) s 106A; as introduced through the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* (Cwth).

introduce 10 days of paid reproductive health leave and flexibility entitlements into the NES.¹³

29. All workers, regardless of sex or gender, will experience reproductive health issues at some point throughout their working lives. A commitment by relevant employers to providing a reproductive health leave entitlement would accelerate progress on gender equality by:

- a. Promoting health and wellbeing by enabling workers to manage their reproductive health without compromising their employment;
- b. Fostering inclusivity by recognising the diverse health needs of all employees and promoting a fair and supportive workplace;
- c. Encouraging preventative care by allowing time for necessary health screenings and treatments, reducing long-term health risks.

30. It would also be a way for this targets scheme to lead the way in obtaining genuine and measurable commitments from relevant employers that go beyond minimum legal obligations.

Recommendation 2

Amend GEI 4 to:

- Remove the opt-out approach to accessing paid parental leave in action target 3.
- Re-draft action target 7 to provide a commitment for paid family and domestic violence leave, in addition to existing entitlements under the NES.
- Add a commitment to provide 10 days paid reproductive health leave entitlement in line with the QCU/ACTU model clause.¹⁴

¹³ Australian Unions, *It's For Every Body* (Webpage, 2024) <<https://itsforeverybody.au/>>.

¹⁴ Queensland Unions and Australian Unions, *Reproductive Health Leave Clause* (Model Clause, 2024) <https://itsforeverybody.au/wp-content/uploads/2024/04/QU_Reproductive-Health-Leave-Clause.pdf>.

GEI 5: Consultation with employees on issues concerning gender equality

31. Employee consultation is ineffective if findings from the consultation are ignored.

32. GEI 5, as currently drafted asks relevant employers to:

- a. commit to undertaking annual consultation on gender equality using at least two consultation methods (employee experience surveying, focus groups or exit interviews), and
- b. establish one of the following: a diversity committee or employee representative group/network.

33. GEI 5 does not include any commitment for how the results of employee consultation should influence improvements by the relevant employer. Nor does it include a commitment around how feedback should be provided to the governing body.

34. The QCU supports the ACTU's recommendation to amend GEI 5 to require employers to consult with relevant unions and workplace delegates in the first instance to decide the most appropriate methods of workplace consultation.

Recommendation 3

Include commitments in GEI 5 for:

- a. how the results of employee consultation should influence improvements by the employer, and
- b. how feedback should be provided to the governing body.

GEI 6: Sexual harassment, harassment on the ground of sex or discrimination

35. GEI 6 squarely intersects with the SD Act, WHS laws, and the *Respect@Work: Sexual Harassment National Inquiry Report (Respect@Work)* by the Australian Human Rights Commission (**AHRC**).¹⁵ As they are currently drafted, the commitments listed under GEI 6 represent the bare minimum required of employers to comply with their obligations under these laws.

36. The positive duty under the SD Act¹⁶ requires organisations and businesses to take reasonable and proportionate measures to eliminate, as far as possible:

- a. Discrimination on the ground of sex in a work context;
- b. Sexual harassment in connection with work;
- c. Sex-based harassment in connection with work;
- d. Conduct creating a workplace environment that is hostile on the ground of sex; and
- e. Related acts of victimisation.¹⁷

37. The AHRC has developed Guidelines for Complying with the Positive Duty under the SD Act (**Guidelines**).¹⁸ The Guidelines are centred around seven standards:

- a. Standard 1: leadership;
- b. Standard 2: culture;
- c. Standard 3: knowledge;
- d. Standard 4: risk management;
- e. Standard 5: support;
- f. Standard 6: reporting and response; and

¹⁵ Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report* (Review, 19 January 2020) <<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>>.

¹⁶ *Sex Discrimination Act 1984* (Cwth) s 47C.

¹⁷ *Sex Discrimination Act 1984* (Cwth) ss 47C(1), 47C(2)(d), 47C(4)(a)-(c).

¹⁸ Australian Human Rights Commission, *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)* (Guidelines, 2023) <[https://humanrights.gov.au/sites/default/files/2023-08/Guidelines for Complying with the Positive Duty %282023%29.pdf](https://humanrights.gov.au/sites/default/files/2023-08/Guidelines%20for%20Complying%20with%20the%20Positive%20Duty%202023%29.pdf)>.

g. Standard 7: monitoring, evaluation and transparency.

38. To comply with the positive duty under the SD Act, employers are required to demonstrate actions to meet these standards. The Guidelines drill down into the details of providing outcomes, examples of practical ways to achieve the outcomes and examples of records to demonstrate actions taken to meet the standards.¹⁹

39. Employers do not need to implement all the practical examples in order to satisfy the positive duty. Rather, it depends on what is reasonable and proportionate in their circumstances. 'Large organisations or businesses' is defined in the Guidelines as organisations and businesses that generally have 200 or more workers.²⁰

40. In comparison, the commitments identified in the targets for GEI6 are drafted more broadly than the standards employers are already required to meet to demonstrate compliance with the positive duty in the SD Act. In practice, they would provide relevant employers a free pass, enabling them to comply with the targets scheme by meeting their bare minimum legal obligations. The broad drafting also compromises transparency in the reporting process by allowing employers to interpret the commitments narrowly.

41. The first action target for GEI 6 and relevant standards from the Guidelines are provided in the table below. The final column provides an opinion as to whether the commitment as currently drafted meets the relevant standard/s in the Guidelines or goes beyond the standard.

Target	Commitment	Guidelines	Assessment
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¹⁹ Ibid, 27.

²⁰ Ibid, 90.

Improve and expand policy or strategy relating to the prevention, reporting and response to sexual harassment and harassment on the grounds of sex or discrimination.	Add at least four of the following to existing policy or strategy: <ul style="list-style-type: none"> Leadership accountabilities and responsibilities for prevention and response to sexual harassment 	Standard 1 ²¹	Bare minimum
	<ul style="list-style-type: none"> Manager and non-manager training on respectful workplace conduct and sexual harassment 	Standard 3 ²²	Bare minimum
	<ul style="list-style-type: none"> Process to disclose, investigate, and manage and sexual harassment 	Standard 6 ²³	Bare minimum
	<ul style="list-style-type: none"> Processes relating to the use of non-disclosure or confidentiality agreements 	Standard 6 ²⁴	Additional, however it needs redrafting (see below).
	<ul style="list-style-type: none"> The frequency and nature of reporting to the governing body and management on sexual harassment 	Standard 1 ²⁵	Bare minimum
	<ul style="list-style-type: none"> Access to trained, trauma-informed support staff/contact officers 	Standard 5 ²⁶	Bare minimum

²¹ Ibid, 29.

²² Ibid, 49.

²³ Ibid, 68.

²⁴ Ibid, 69.

²⁵ Ibid, 33.

²⁶ Ibid, 65.

	<ul style="list-style-type: none"> Confidential external counselling 	Standard 5 ²⁷	Bare minimum
	<ul style="list-style-type: none"> Protection from adverse action based on disclosure of sexual harassment and discrimination 	Standard 4, Standard 5, Victimisation is unlawful under the SD Act, Adverse action is unlawful under industrial laws.	Bare minimum
	<ul style="list-style-type: none"> A system for monitoring outcomes of sexual harassment and discrimination disclosures, including employment outcomes for those impacted by sexual harassment and the respondent 	Standard 7 ²⁸	Bare minimum

42. The commitment for relevant employers to put in place “processes relating to the use of non-disclosure or confidentiality agreements” would be a positive step. Employers should make reference to Respect@Work Council’s Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints,²⁹ which provides information about best practices for considering whether, and how, to use confidentiality clauses in sexual harassment settlement agreements. We also note the Victorian Trades Hall

²⁷ Ibid, 64.

²⁸ Ibid, 75.

²⁹ Respect@Work Council, *Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints* (Guidelines, 2022) <[https://www.respectatwork.gov.au/sites/default/files/2022-12/Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints.pdf](https://www.respectatwork.gov.au/sites/default/files/2022-12/Guidelines%20on%20the%20Use%20of%20Confidentiality%20Clauses%20in%20the%20Resolution%20of%20Workplace%20Sexual%20Harassment%20Complaints.pdf)>.

Council's campaign to 'End the Silence' by restricting the use of non-disclosure agreements in Victoria.³⁰

43. The other commitments represent bare minimum actions that employers are already legal required to be taking under the positive duty in the SD Act. It is recommended that these should be removed, and re-drafted in line with the Guidelines and through consultation with the AHRC and unions.

44. For the second action target for GEI 6:

Target	Commitment	Guidelines	Assessment
Improve and expand mechanisms for reporting to key management personnel and the governing body on sexual harassment and harassment on the ground of sex.	Expand annual reporting to key management personnel and the governing body by adding three of the following: <ul style="list-style-type: none"> Identified risks of your workplace with regards to sexual harassment 	Standard 1, ³¹ Standard 4, ³² Standard 7 ³³	Additional measure
	<ul style="list-style-type: none"> Measure prevalence of workplace sexual harassment 	Standard 1, Standard 7	Additional measure
	<ul style="list-style-type: none"> Nature of workplace sexual harassment reported 	Standard 1, Standard 7	
	<ul style="list-style-type: none"> Analysis of sexual harassment trends and reporter/respondent profiles 	Standard 1, Standard 7	Additional measure
	<ul style="list-style-type: none"> Organisational action to prevent 	Standard 1, Standard 7	Additional measure

³⁰ We are Union, End NDAs (Webpage, 2024) <https://www.weareunion.org.au/end_ndas>.

³¹ Guidelines, 29.

³² Ibid, 52.

³³ Ibid, 81.

	and respond to sexual harassment		
	<ul style="list-style-type: none"> Outcome of disclosures of sexual harassment 	Standard 1, Standard 7	Additional measure
	<ul style="list-style-type: none"> Response to disclosures of sexual harassment 	Standard 1, Standard 7	Additional measure
	<ul style="list-style-type: none"> Use of non-disclosure agreements or confidentiality clauses. 	Standard 1, Standard 7	Additional, however it needs redrafting (see below).

45. Under the Guidelines, senior leaders are primarily responsible and accountable for the elimination of unlawful conduct.³⁴ They are required to be “actively involved in the development and implementation of measures to eliminate relevant unlawful conduct and regularly review the effectiveness of those measures” through active oversight and the endorsement of a “prevention and response plan”.³⁵

46. Additional measures that are provided under the Guidelines for medium to large organisations and businesses include informing senior leaders and the board about:

- a. the implementation of and performance against the prevention and response plan;
- b. education and information for workers;
- c. the nature of any incidents reported and actions taken in response;
- d. required changes to policies, education or training.³⁶

³⁴ Senior leaders are defined in the Guidelines to refer to: “any person with responsibility for the management and governance of the organisation or business. In a small organisation or business, this will usually be the owner and any manager. In larger organisations and businesses, this will usually include the board (or equivalent), chief executive officer (CEO), executive leadership team (ELT), partners or executive manager”.

³⁵ Guidelines, 30.

³⁶ Ibid, 33.

47. The commitments under the second action target for GEI 6 are therefore a positive step, encouraging active oversight by governing bodies through annual reporting.

48. Further, we note the relevance of WHS laws which provide a comprehensive legal framework to protect workers from risks to health and safety while at work, including from psychosocial hazards such as sexual harassment. 'Persons undertaking a business or undertaking' have a duty to eliminate or minimize the risk of sexual harassment so far as is reasonably practicable.³⁷

49. Finally, Respect@Work made recommendations for improved good practice indicators for measuring and monitoring sexual harassment prevalence, prevention and response. The Good Practice Indicators Framework for Preventing and Responding to Workplace Sexual Harassment should be consulted in drafting the commitments for GEI 6.³⁸

Recommendation 4

- a. Remove commitments in GEI 6 that represent the bare minimum legal obligations employers should already be meeting.
- b. Re-draft the GEI 6 commitments in action target 1 to be consistent with what is expected from large organisations or businesses under the Guidelines and through consultation with the AHRC and unions.
- c. Re-draft the commitment regarding non-disclosure or confidentiality clauses to: "processes for considering whether, and how, to use non-

³⁷ See, eg, *Work Health and Safety Regulation 2011* (Qld) s 176; *Work Health and Safety (Sexual Harassment) Amendment Regulation 2024* (Qld).

³⁸ Good Practice Indicators Framework for Preventing and Responding to Workplace Sexual Harassment
<<https://www.respectatwork.gov.au/sites/default/files/2022-12/Attachment B - Good Practice Indicators Framework for Preventing and Responding to Workplace Sexual.pdf>>.

disclosure or confidentiality clauses in sexual harassment settlement agreements based on the Respect@Work Council's Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints".

Annual reporting

50. Governing bodies are key drivers for cultural change and creating safe, respectful, diverse and inclusive workplace cultures that prioritise gender equality. They also hold ultimate responsibility and accountability for the governance and legal compliance of their organisation or business. Boards are increasingly interested in being actively involved in efforts to accelerate progress on gender equality and this should be leveraged by the targets scheme.

51. The draft menu of targets currently only involves governing bodies in relation to:

- a. GEI 2: increasing gender diversity. A numeric target for relevant employers to commit to increasing the representation an underrepresented gender on the governing body.
- b. GEI 3: reporting results of payroll analysis. An action target for undertaking annual payroll analysis and reporting results to the governing body.
- c. GEI 6: reporting on sexual harassment and harassment on the ground of sex. An action target for expanding annual reporting to key management personnel and the governing body on risks, prevalence, nature, trends and profiles, action, outcomes, responses and use of non-disclosure or confidentiality clauses.

52. In recognition of the key role governing bodies play in improving workplace culture and gender equality in workplaces, and the great influence they have

over whether commitments are put into action and whether they will be successful and supported, the Committee should consider how reporting to governing bodies can be incorporated into the commitments across all of the GEIs.

Recommendation 5

Expand reporting to governing bodies to apply to each GEI.

Conclusion

53. The QCU thanks the Committee for the opportunity to make this submission, and we encourage the Committee to carefully consider our recommendations.