



Submission to the Inquiry into the *Workplace Gender Equality Amendment (Setting Gender Equality Targets) Bill 2024*

December 2024

For enquiries: mwc@migrantworkers.org.au

1. The Migrant Workers Centre (MWC) welcomes the opportunity to make a submission to the Finance and Public Administration Legislation Committee's Inquiry into the *Workplace Gender Equality Amendment (Setting Gender Equality Targets) Bill 2024* (the Bill).
2. The MWC is a community legal centre that connects migrant workers with one another and empowers them to understand and enforce their workplace rights. The MWC collaborates with unions and community partners to organise grassroots campaigns, deliver education sessions on workplace safety and rights, and advocate for long-term solutions to the exploitation of migrant workers in Australia. The MWC advocates for all workers who were born overseas and work in Australia, irrespective of their migration status.
3. The MWC commends the Albanese Labor Government for committing to the continued implementation of the *Review of the Workplace Gender Equality Act 2012* (hereafter 'the Review'). This Bill seeks to implement **Recommendation 3.1(a)** of the Review by requiring 'designated relevant employers' (those with 500 or more employees) to select gender equality target(s), work towards achieving or improving upon them, and publicly report on their progress. This will be tracked over a three-year 'target cycle'. The Minister for Women, through legislative instrument, will have the power to set gender equality targets related to six Gender Equality Indicators and to specify the rules governing those targets.
4. The Bill seeks to bridge the 'action gap'—that is, the disconnect between stated commitments to gender equality and the tangible actions or outcomes required to realise those goals. To be effective, gender equality targets must be supported by strong reporting and compliance mechanisms. The MWC welcomes the reforms as a crucial step forward in advancing gender equality in Australian workplaces, however, we believe that further, considered amendments are needed to strengthen both the Bill and the existing legislative framework. We address these below.

Reporting and data collection

5. Currently, the *Workplace Gender Equality Act 2012* (Cth) (the Act) does not mandate the collection of diversity and intersectional data. This creates a gap in data collection that obscures the full picture of gender inequality in Australian workplaces, particularly for groups who experience differential impacts due to multiple and compounding forms of disadvantage. This includes women from migrant and refugee backgrounds, who face high levels of workplace sexual harassment,¹ greater representation in low paid 'feminised' industries,² higher underemployment due to racial discrimination, language barriers, and the undervaluing of their qualifications and experience.³ These factors may also push migrant and refugee women into exploitative or unsafe work conditions.
6. Under the Bill, employers would select gender equality target(s), provide a baseline report of their current status, and track progress against that baseline through annual public reports (which are

¹ Marie Segrave, Shih Joo Tan, Rebecca Wickes, Chloe Keel and Nuria Alarcón Lopez, *Migrant and refugee women: A national study of experiences of, understandings of and responses to sexual harassment in the workplace* (Report, ANROWS, August 2024); Anna Boucher, 'Migrant Sexual Precarity through the Lens of Workplace Litigation' (2025) 32(1) *Gender, work, and organization* 458.

² Centre for Economic Development of Australia (CEDA), *Occupational Gender Segregation* (Report, 2023) 10.

³ Vassilissa Carangio, Karen Farquharson, Santina Bertone, and Diana Rajendran (2021) 'Racism and White privilege: highly skilled immigrant women workers in Australia' 44(1) *Ethnic and Racial Studies* 77.



currently required by the Act). At the end of each three-year cycle, progress towards the selected target will be measured against the baseline.⁴ The Minister is empowered to set targets and specify rules for the selection of those targets, which may include defining the number for targets to be selected by employers and the improvement level employers must achieve. The Minister is required to consult with the Workplace Gender Equality Agency (WGEA) when exercising these powers.⁵

7. The collection of intersectional data is essential for effectively setting targets, tracking progress, and reporting outcomes under the Bill. It would enable the WGEA to more readily identify the intersectional drivers of gender inequality, accounting for factors that interact with gender, such as race, age, visa status, class, sexuality, and disability. This is particularly important for understanding the experiences of women from migrant and refugee backgrounds.⁶ Without a robust or comprehensive baseline to start from, the assessment of progress against a selected target would risk only reflecting “inequality for women in Australian workplaces as a homogenous experience”.⁷ As a result, the WGEA will be unable to meaningfully measure progress, advise the Minister on how to adequately scale up the targets following each reporting period, or support employers in developing tailored strategies to advance gender equality for women from migrant and refugee backgrounds.
8. In the initial consultation process for the reform of the Act, the majority of stakeholder submissions expressed support for the collection of additional diversity data. The subsequent Review, under **Recommendation 6.1**, recognised the importance intersectional data but expressed hesitation about its collection without further qualitative research into “the best way” to approach it.⁸ Recommendation 6.1 also highlighted concerns regarding the collection of diversity data, citing the potential ‘regulatory burden’ on employers and privacy concerns about the use and handling of such information, particularly for workers in hostile work environments. However, it provided no meaningful direction for addressing these issues.
9. The collection and analysis of intersectional data should be prioritised, with concerted efforts made to minimise any associated challenges. This is particularly important given the Australian Government’s growing emphasis on the skilled migration program to address labour shortages. The skilled visa streams tend to have gendered intakes, with the majority of secondary applicants—those who are provided a visa alongside a primary applicant as their dependent—being women. In 2021, 65% of primary applicants in the permanent skilled migration program were male, compared to 35% female.⁹ In contrast, 58% of secondary applicants were female and 42% male. The gendered intake of the Temporary Skills Shortage (TSS) visa is the most pronounced: 73% of primary applicants were male and 27% female, while this trend reverses among secondary applicants, with 65% being female and 35% male.¹⁰ This means that the success of the visa application is more often determined by the skills of male entrants, as the skills or occupation of secondary applicants are currently not assessed. This contributes to occupational segregation, as female migrants are more likely to work in lower-paid occupations as a result.¹¹

⁴ Workplace Gender Equality Amendment (Setting Gender Equality Targets) Bill 2024 (Cth) sch 1 item 8 ss 13(3AA) ('WGEA Bill').

⁵ Ibid sch 1 item 11 s 17B.

⁶ Diversity Council of Australia (DCA), [Submission No 70 to the Department of the Prime Minister and Cabinet](#), *Review of the Workplace Gender Equality Act 2012*, 9.

⁷ Caitlin Konzen and Sandy Noakes, ‘Anti-Essentialism and Intersectionality: An Analysis of the “Workplace Gender Equality Act 2012” (Cth) and the Review of the “Workplace Gender Equality Act 2012” (Cth)’ (2023) 46(4) *University of New South Wales Law Journal* 1196.

⁸ Department Prime Minister & Cabinet, [Review of the Workplace Gender Equality Act 2012](#) (Review, Australian Government, December 2021) 15.

⁹ Australian Bureau of Statistics (ABS), *Australian Census and Migrants 2021*, ABS TableBuilder (Accessed 9 December 2024).

¹⁰ ABS, *Australian Census and Temporary Entrants 2021*, ABS TableBuilder (Accessed 9 December 2024).

¹¹ CEDA (n 2) 9-10.



10. Many skilled migrants experience difficulties finding employment that is commensurate with their skills and qualifications.¹² However, research suggests that the labour market opportunities of skilled migrant women are more limited, with poorer wage outcomes—particularly if they are secondary applicants, have caring responsibilities, and low English language proficiency.¹³ The Australian Government is currently reviewing the skilled migration program to better support gender equality in the Australian labour market.¹⁴ Collecting comprehensive, intersectional data will be essential to tracking and measuring targets in this context, particularly for employers operating in gender-segregated industries, many of which rely on migrant labour.
11. Australia's economy remains heavily gender-segregated across key sectors,¹⁵ including growth industries that face pressing workforce and skills gaps that skilled migration is posed to remediate. These industries include health care and social assistance, education and training, mining and construction.¹⁶ In its analysis of the skilled migration program, the Grattan Institute noted that its gender impacts are shaped by the “gendered composition of the industries into which migrant workers enter”:¹⁷

... [W]here there are many TSS visa-holders entering male-dominated industries, such as mining or construction, it is likely that the employment outcomes of women compared to men will improve, since migrants will add more to the supply of labour, competing with the existing male-dominated workforce, than they will add to labour demand in those industries. Similarly, extending temporary migration to fill labour shortages in the low-income, female-dominated care industry is likely to work against efforts to raise wages in those sectors, and would widen the gender pay gap. After all, gender discrimination that undervalues work predominately done by women is a key factor in the low pay rates seen in strongly-feminised care-economy workforces today.¹⁸
12. The collection of intersectional data can help identify barriers to workforce diversity, improve labour market outcomes for secondary applicants, and support efforts to disrupt entrenched patterns of inequality for migrant and refugee women. Being able to measure and appropriately target these disparities is likely to yield significant benefits, not only for individual workers but also for the broader Australian workforce and economy.

Recommendation 1. That serious consideration be given to how the privacy concerns raised by the Review of the *Workplace Gender Equality Act 2012* (Cth) in relation to the collection of diversity data may be mitigated through additional safeguards and through existing federal and state anti-discrimination law. State-based regulatory models, such as the *Gender Equality Act 2020* (Vic), should be looked to for guidance.

Recommendation 2. Conduct further consultation with representative organisations and peak bodies about amending the *Workplace Gender Equality Act 2012* (Cth) to collect mandatory intersectional and diversity data.

¹² MWC and Unions NSW, [*Unlocking Talent: Empowering Migrant Workers with Equal Work Opportunities*](#) (Report, 2023).

¹³ Sue Webb, Denise Beale and Miriam Faine, [*Skilled migrant women in regional Australia: promoting social inclusion through vocational education and training*](#) (Report, October 2013) 19–20; CEDA (n 2) 9–10.

¹⁴ Department of Home Affairs, [*Review of the points test*](#) (Discussion Paper, April 2024).

¹⁵ CEDA (n 2) 4.

¹⁶ Workplace Gender Equality Agency (WGEA), [*'Gender segregation in Australia's workforce'*](#) (Website, 17 April 2019).

¹⁷ Brendan Coats, Trent Wiltshire and Tyler Reysenbach, [*Australia's migration opportunity: how rethinking skilled migration can solve some of our biggest problems*](#) (Submission, 2022) 44.

¹⁸ Ibid.



Compliance and accountability

- 13.** The Bill provides that employers would have three years to achieve, or improve on, the selected targets. At the end of the reporting period, they will select new targets for the next three-year cycle. Where an employer has failed to meet a target or demonstrated that they have made improvements against the target, they will have failed to comply with the Act. This will be assessed at the end of the three-year target cycle against the employer's baseline report. In practice, this means that positive movement from the baseline towards the target will be sufficient to demonstrate improvement and satisfy compliance requirements at the end of the target cycle. For example, where an employer has made progress towards an ambitious target but has failed to meet it, they will not be held to have failed to comply with the Act.¹⁹
- 14.** Accountability and compliance mechanisms remain limited,²⁰ with no additional measures introduced in this Bill to strengthen them. The WGEA may name employers who fail to comply and set out the details of their non-compliance in a published report.²¹ Additionally, the WGEA may withhold a certificate of compliance from non-compliant employers, which may preclude them from being eligible for Commonwealth contracts, grants or other financial assistance.²²
- 15.** We broadly support the use of a baseline to measure action and progress towards selected gender equality targets; it provides a starting point for tracking improvements, identifying gaps, and refining strategies to achieve sustainable progress in gender equality. We propose the following measures to strengthen compliance and accountability within the overall legislative framework, and provide greater consistency in assessing compliance with the Bill:

 - 17.1** The Explanatory Memorandum should provide further, practical guidance as to what might constitute a 'reasonable excuse' for failing to meet or demonstrate improvement against the selected gender equality targets. This guidance should include non-exhaustive examples, documentation requirements, and a clear process for assessing progress on a case-by-case basis, as well as addressing industry-specific contexts (which can vary considerably). Such clarity would assist employers in meeting their obligations and provide a fair framework for assessing compliance.
 - 17.2** A stronger compliance mechanism and sanction should be introduced for employers who are repeatedly non-compliant with the Act (for example, employers who are identified and named as non-compliant under the Act over a two-year period). These employers should become subject to a mandatory compliance assessment, which allows authorised workplace inspectors to conduct site visits and issue enforceable compliance notices. Employers who receive compliance notices should have access to support and guidance from the WGEA to help them meet the requirements. To improve operational efficiency, these audit functions could potentially be combined with those of the Fair Work Ombudsman, whose staff are already trained and authorised to enter workplaces under existing legislation.²³
 - 17.3** Currently, the Minister is only required to consult with the WGEA when exercising their power to set gender equality targets and specify the rules in relation to those targets (see paragraph 6 above). In its initial scrutiny of the Bill, the Australian Senate Standing Committee for the Scrutiny of Bills noted:

¹⁹ Explanatory memorandum, WGEA Bill, 16–18.

²⁰ Australian Council of Trade Unions (ACTU), [Submission No 21 to the Senate Finance and Public Administration Committees, Workplace Gender Equality Amendment \(Closing the Gender Pay Gap\) Bill 2023](#) (3 March 2023) 9–10.

²¹ Workplace Gender Equality Act 2012 (Cth) s 19D(2) ('WGE Act').

²² Ibid s 18; Department of Prime Minister and Cabinet, [Workplace Gender Equality Procurement Principles and User Guide](#) (Principles, August 2013) 2, 10–11.

²³ National Foundation for Australian Women, [Submission No 48 to the Department of the Prime Minister and Cabinet, Review of the Workplace Gender Equality Act 2012](#) (26 March 2022) 10.



The targets and selection rules for gender equality indicators are an essential part of the workplace gender equality scheme. The committee's view is that significant matters should be included in primary legislation unless a sound justification for the use of delegated legislation is provided ... The committee requests that an addendum to the explanatory memorandum containing a justification for the use of delegated legislation, to set gender equality targets and selection rules, be tabled in the Parliament as soon as practicable, noting the importance of these explanatory materials as a point of access to understanding the law and, if needed, as extrinsic material to assist with interpretation.²⁴

- 17.4** We agree with the Committee's concerns and believe that, should the use of delegated legislation be passed under the Bill with the suggested amendments, additional consultation requirements should be legislated. As representatives of workers, unions are well-placed to advise on the development of the gender equality targets. Unions have been instrumental in advocating for practical measures to reduce the gender pay gap. Their efforts include securing rights that support women to remain connected to work, such as flexible working arrangements, advancing equal pay in female-dominated industries, and addressing gender undervaluation in modern awards.²⁵ Setting targets alone will be insufficient to achieve desired outcomes unless the regulatory environment itself is amenable to those targets; unions will be able to advise the Minister on whether the targets are achievable, and the concrete actions needed to achieve them. For example, it may be that once a broad target is set, more detailed interim targets may need to be considered, particularly for lower paid, feminised sectors that face more systemic challenges to progressing gender equality.

Recommendation 3. Provide further guidance as to what constitutes a 'reasonable excuse' in the Explanatory Memorandum.

Recommendation 4. Establish a formal mechanism for stakeholder consultations with trade unions or other bodies representing employees likely to be affected by the use of delegated legislation to set gender equality targets.

Recommendation 5. Employers repeatedly non-compliant over a two-year period should undergo an external audit conducted by the WGEA or another government agency equipped with the authority to enter workplaces, access relevant information, and issue enforceable compliance notices.

Recommendation 6. Resourcing for the WGEA should be increased to ensure that it is able to sustainably carry out additional functions in relation to the proposed gender equality targets.

²⁴ Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, [Scrutiny Digest](#) (Digest No 15 of 2024, 27 November 2024) 30.

²⁵ ACTU, [Minding the Gap: the 20 reforms that are closing the gender pay gap faster](#) (Report, November 2024).