



THE LAW SOCIETY
OF NEW SOUTH WALES

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10 December 2024

Dr James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
Braddon ACT 2612

By email: adam.fletcher@lawcouncil.au

Dear Dr Popple,

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

Thank you for the opportunity to contribute to the Law Council's response to the inquiry of the Senate Finance and Public Administration Legislation Committee into the provisions of the Workplace Gender Equality Amendment (Setting Gender Equality Targets) Bill 2024 (**Bill**). The Law Society's Employment Law and Diversity & Inclusion Committees contributed to this submission.

General comments

We note that the new target setting provisions in the Bill appear to support the following statements made in the Workplace Gender Equality Agency's (**Agency**) Scorecard 2023-24:

Gendered patterns of remuneration at a national level and differences in workforce composition and remuneration between industries are two key drivers fuelling the size of Australia's gender pay gap ... Evidence shows the actions employers are taking, particularly in relation to target setting, will drive improved results in future years.¹

Meaning of 'reasonable excuse'

The Bill provides, under proposed section 17C, that employers will be non-compliant with the *Workplace Gender Equality Act 2012* (Cth) (**Act**) if, at the end of the three-year cycle, they have either: not achieved the target; or, not demonstrated improvement against the baseline for all their targets, without reasonable excuse.

If found non-compliant without reasonable excuse, designated relevant employers may be named publicly as non-compliant by the Agency, but first have an opportunity to make representations to the Agency as to why the naming should not occur. Where the Agency accepts a reasonable excuse for failure to comply, the employer may not be publicly named by the Agency.

¹ Workplace Gender Equality Agency, 'WGEA Gender Equality Scorecard 2023-24' (22 November 2024) <<https://www.wgea.gov.au/publications/australias-gender-equality-scorecard>>.

We note that there is no definition of 'reasonable excuse' in the Bill, and this is likely to create uncertainty among employers as to what will constitute a 'reasonable excuse' for this purpose. We suggest, to give effect to the aims of the legislation, that the Bill should incorporate specific guidance for employers, through a non-exhaustive list of factors that may be considered by the Agency in forming a view on whether an excuse offered by an employer is reasonable and should be accepted. Further, if the Bill passes, we suggest that the Agency publish additional guidance in the form of practical examples of what could be acceptable for these purposes.

We hope this input is of assistance. Please contact Mimi Lee, Policy Lawyer, on (02) 9926 0174 or mimi.lee@lawsociety.com.au in the first instance if you have any queries.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Brett McGrath', with a long horizontal stroke extending to the right.

Brett McGrath
President