



**Submission to the Department of Health and Human Services on the Gender Equality Exposure Draft Bill**

Submitted by:	Victorian Women Lawyers Association Inc
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## About us

Victorian Women Lawyers (**VWL**) is the peak body for women lawyers in Victoria. VWL is a voluntary association that promotes and protects the interests of women in the legal profession and provides a network for information exchange, social interaction and continuing education and reform within the legal profession and the broader community. Since 1996, VWL has advocated for the equal representation of women and promoted the understanding and support of women's legal and human rights by identifying, highlighting and eradicating discrimination against women in the law and in the legal system, and achieving justice and equality for all women.

VWL's Law Reform Committee aims to empower female lawyers in achieving satisfying and successful professional lives through facilitating their participation in law reform work, including through hosting events and through making submissions to law reform inquiries.

## Introduction

VWL welcomes the opportunity to make this submission to the Australian Government's Department of Health and Human Services (**DHHS**) in relation to the inquiry into the proposed Gender Equality legislation (**the Bill**). The Bill proposes that Victorian Government departments, the public sector and local governments work towards achieving gender equality through introducing quotas, action plans and reporting requirements under the law. Australia does not currently have any laws that proactively target progressing gender equality through specific measures.

VWL agrees that the implementation of a Gender Equality Action Plan targeted at Victorian Government departments, public sector entities and local governments would provide a complimentary avenue to the existing gender equality legislation and frameworks, including international commitments, as well as clearer and consistent support of gender equality in the private sector and Australia wide by the flow-on impact to businesses and organisations.

VWL believes that the Government policies and practices may help to influence the behaviour and actions of decision makers, social norms, cultural expectations and popular attitudes in the community.

VWL believes if it may also help influence organisations outside of the Bill's scope. For example, businesses which may elect to voluntarily undertake some or all of the measures contained in the legislation. VWL wishes to draw attention to recent data regarding gender equality within the legal services industry in Australia. While the majority of employees in the legal service industry are female, only 9.5% of Chief Executive Officers and heads of business are female.<sup>1</sup> Only 36.3% of employers in the legal industry have specific gender pay equity objectives in their remuneration policies and only 58.5% of employers have a formal strategy or remuneration policy in place at all.<sup>2</sup> The gender pay gap in the legal industry for full time employees is 29.7%.<sup>3</sup>

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<sup>1</sup> WGEA Data Explorer, *Legal Service summary for 2017* <<http://data.wgea.gov.au/industries/115>> .

<sup>2</sup> WGEA Data Explorer, *Legal Service summary for 2017* < <http://data.wgea.gov.au/industries/115>> .

<sup>3</sup> WGEA Data Explorer, *Public Administration and Safety within All Industries*, <[http://data.wgea.gov.au/industries/115#employer\\_action\\_content](http://data.wgea.gov.au/industries/115#employer_action_content)>.



VWL hopes that the introduction of the measures contained in the Bill will create meaningful changes for legal professionals working for Victorian Government departments, public sector entities and local governments. VWL also hopes that, if the Bill does lead to legislation being enacted, employers outside of the scope of the legislation will be inspired to apply some of the measures (if not all) contained in the legislation.

### **Terms of Reference**

The Bill exposure draft Discussion paper, released by the DHHS in August 2018 (**Discussion Paper**), asks for responses to 15 questions relating to the Bill, including the following:

1. What do you think are the critical actions necessary for the success of gender equality legislation?
2. What other activities should the Government undertake to support this legislation?
3. What do you think is best practice in measures to support implementation of legislation that drives lasting social change?
4. Do you agree that these are the critical principles and actions that should underpin the legislation? What should be added, or needs to be changed?
5. What else should be included in Gender Equality Action Plans to support demonstrating compliance to the principles?
6. What preparation, guidance materials or training is needed to support organisations to develop Gender Equality Action Plans?
7. What kinds of public sector targets should be included in the regulations of the Bill?
8. What is needed to ensure representation of women from diverse backgrounds?
9. What frequency or volume of reporting would strike a balance between transparency and accountability, whilst minimising regulatory burden?
10. How can the Victorian Government leverage procurement and funding practices to promote gender equality in the wider community?
11. Do you think that the proposal for monitoring and compliance of the Bill is fair and balanced?
12. It is clear that the impact of gender equality is compounded by the way that gendered barriers interact with other forms of disadvantage and discrimination. What is needed to ensure that the advice of the Ministerial Council is considered in other policy areas that may compound or contribute to gender inequality?
13. Do you think [the proposed] timeline is appropriate for the proposed roll out?



14. What preparations are needed to ensure readiness of impacted organisations before legislation takes effect?
15. What should be done to encourage or incentivise broader sectors or organisations to voluntarily comply with the principles, even if they are not obliged to do so?

### **VWL's submissions**

VWL's responses to each of the questions outlined in the Discussion Paper are outlined below.

#### **1. Critical actions necessary for the success of gender equality legislation**

##### *Ongoing education*

As part of the implementation of the gender equality legislation, VWL believes that it is critical to facilitate and maintain ongoing education of employees working in public sector organisations on the importance of gender equality. This should include unconscious bias training for all employers and employees. Increasing awareness can mitigate the effects of unconscious bias and other biases such as affinity bias, through training and prompts to serve as reminders which may aid in the implementation of the Bill.

Despite 88% of Australians agreeing that gender inequality is still a problem in Australia, there are complex and often contradictory value systems underpinning the gender equality debate.<sup>4</sup> In a 2018 report, 58% of men and women agreed on the areas where sexism is most widespread.<sup>5</sup> These areas included politics, the workplace and the media. Although females were significantly more likely to consider sexism to be most widespread in areas of politics and the workplace, males were more likely to claim that sexism was not widespread in any of the suggested areas of society.<sup>6</sup> Furthermore, nearly half of all male respondents agreed, or strongly agreed, with the statement that gender equality strategies in the workplace do not take men into account.<sup>7</sup> This indicates that men should also be actively involved in ongoing gender equality training to avoid backlash against workplace interventions to address gender inequality.<sup>8</sup>

Ongoing organisational and wider community education is particularly important in the initial stages of implementation. VWL submits that appropriate education is also imperative during stages of monitoring and compliance of public sector organisations' alignment with the principles in the Bill. Successful implementation of Gender Equality legislation needs to be aided by long-term cultural change that promotes gender equality at home, in the workplace and in our major public sector institutions and organisations.

VWL proposes that education focus on the following aspects:

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<sup>4</sup> Mark Evans, Virginia Haussegger AM, Max Halupka and Pia Rowe, 'From Girls to Men: Social Attitudes to Gender Equality in Australia', *50/50 by 3020 Foundation Report* (University of Canberra, 2018) 20 <<http://www.broadagenda.com.au/assets/reports/documents/From-Girls-to-Men.pdf>>.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*, 12.

<sup>7</sup> *Ibid.*, 27.

<sup>8</sup> *Ibid.*, 28.



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- a) consider the impact of gender inequality on Australia's long-term productivity;<sup>9</sup>
- b) encourage all employees across all levels to adopt a supportive and enabling culture;
- c) address the high incidence of workplace sexual harassment experienced by women;<sup>10</sup>
- d) address the fact that men working in public administration and safety are much more likely than women to be in leadership roles;<sup>11</sup>
- e) discuss and address the current gender pay gap in Victoria and across the public sector;<sup>12</sup>
- f) address the fact that women are much more likely to work part time to look after children and experience the 'children penalty' being reduced incomes and lower superannuation as a result;<sup>13</sup> and
- g) acknowledge and address those that experience discrimination and unconscious bias due to working part time to look after children, as well as negative workplace cultural norms that prevent them from progressing, and are less likely to continue in the workplace after having children.<sup>14</sup>

## 2. Activities to support the legislation

VWL is supportive of the monitoring and compliance processes which will allow greater transparency at the state level about what processes are working and what processes need to change. However, VWL believes that a complaints process for employers or

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<sup>9</sup> Maria Rae et al, *The gender pay gap is hurting productivity*, (15 May 2017), The Conversation, accessed on 27 September 2018 via <<https://theconversation.com/the-gender-pay-gap-is-hurting-productivity-76780>>.

<sup>10</sup> A national survey conducted by the Australian Human Rights Commission in 2012 found that one in four women had been sexually harassed at work in the past five years and in last reporting has seen a 13 per cent increase in complaints of sexual harassment. See Australian Human Rights Commission, *Sexual Harassment* (13 April 2018), accessed on 27 September 2018 via <<https://www.humanrights.gov.au/our-work/sex-discrimination/projects/sexual-harassment-0>>.

<sup>11</sup> WGEA Data Explorer, *Public Administration and Safety within All Industries*, accessed on 27 September 2018 via <<http://data.wgea.gov.au/industries/2>>.

<sup>12</sup> Workplace Gender Equality Agency, *2018 Gender Equity Insights – Inside Australia's Gender Pay Gap Report* (2018) accessed on 27 September 2018 via <[https://www.wgea.gov.au/sites/default/files/97249\\_Gender-Equity-Insights-2018.pdf](https://www.wgea.gov.au/sites/default/files/97249_Gender-Equity-Insights-2018.pdf)>. It is noted that the Public Administration and Safety Sector has seen the part-time gender pay gap widen in favour of women. However noted that this sector had relatively few reporting organisations and captured only a small proportion of the Public Administration and Safety workforce.

<sup>13</sup> Australian Bureau of Statistics, *Barriers and Incentives to Labour Force Participation* (2017), accessed on 27 September 2018 via <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6239.0Main+Features1July%202016%20to%20June%202017?OpenDocument>>.

<sup>14</sup> Australia Bureau of Statistics, *Pregnancy and Employment Transitions*, Australia (November 2017) accessed on 27 September 2018 via <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4913.0>> and Australian Bureau of Statistics, *Australian Social Trends 'Pregnancy and Work Transitions'* (November 2013), accessed on 27 September 2018 via <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4102.0Main+Features10Nov+2013#p4>>.



employees to notify DHHS - primarily through the Office for Women - would be beneficial to increase transparency and accountability for public sector organisations that are non-compliant.

Currently, an Australian employee or employer that believes a workplace has been discriminatory may make a complaint to the Australian Human Rights Commission under the *Victorian Charter of Human Rights and Responsibilities Act (2006) (Vic)*, *Sex Discrimination Act (1984) (Cth)*, and the *Equal Opportunity Act (2010) (Vic)*. However, there is no complaint process for an organisational-wide failure to adopt policies and procedures that support equality or are indirectly discriminative at a structural level.

VWL supports the extension of a complaints process to non-compliant public sector organisations and proposes that in addition to inviting a prescribed non-compliant entity to respond prior to the proposed publishing as non-compliant, the entity is also given an opportunity to develop and undertake education on the importance of supporting gender equality, and how it persists in many areas including the gender pay gap and opportunities to participate in decision making and senior roles.

### **3. Best practice measures to support the implementation of legislation**

#### *Open consultation in the development of indicators and compliance procedures*

VWL welcomes the proposed measures to implement the Bill, such as developing workplace gender equality indicators pursuant to sections 4 and 11(1)(b) of the Bill. Setting a key indicator and target reporting system is a necessary element in the information and evaluation system of a democratic society. The initial setting of the key indicators, targets and compliance process should involve open consultation with relevant stakeholders and expert organisations via submissions, focus groups and public discussion.

#### *Educating the community*

As submitted earlier in this submission, educating the community is an important aspect of lasting social change. The Gender Equality Action Plan provides a positive platform for running programs to strengthen the gender equality as well as the overall human rights competence of the public sector workforce. This assists the Government to drive lasting change in gender equality. VWL welcomes development and production of high quality educational materials assisting organisations in this regard.

#### *Strong and stable regulation*

VWL welcomes further detail of the procurement consideration in section 13 of the Bill. A strong and stable approach in this regard is encouraged to regulate the organisations' procurement and funding policies; independent of any uncertain ministerial discretionary guidelines to the extent it is possible. VWL recommends procurement and funding policies to be regulated in more detail and to contain the following:

- a) sourcing criteria explicitly addressing gender equality provisions as applicable; and



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- b) including procurement as part of the Gender Equality Action Plan, and thereby subject to monitoring, reporting and compliance pursuant to the Gender Equality Action Plan.

#### *Decision-making and gender mainstreaming*

VWL supports mainstreaming gender perspective in the everyday operation of an organisation. Lasting social change with respect to gender equality is not possible unless gender mainstreaming is expressly made part of all decision-making processes, internally and externally.<sup>15</sup> VWL encourages consideration of focussing more on gender equality consideration in executive decision-making processes.

#### **4. Critical principles and actions to underpin the legislation**

VWL welcomes the principles outlined in section 7 of the Bill, and supports amending the principles to reflect the importance of gender mainstreaming in executive decision-making.

#### **5. Gender Equality Actions Plans to support compliance to the principles**

VWL encourages the development of Gender Equality Action Plans to support compliance with the principles. In order to ensure that the facilitation of accountability, and successful outcomes, action plans should be tailored to specific public sector organisations and include sufficient detail.

In addition to the items contained in the Bill, VWL submits that Gender Equality Action Plans should include identifying gender equality objectives pursuant to the specific public sector organisation.

The term 'gender equality' can provoke different interpretations, especially from a practical perspective, depending on the nature of the workplace and the industry. Furthermore, gender equality objectives may vary depending on the specific challenges experienced in a particular industry. For example, in June 2017, 89% of employees were in nursing services positions were female, whereas 4% of employees were female in fire and emergency positions. Accordingly, the specific gender equality objectives for employers in public health would be different to employers in emergency services. Given the varying gender equality objectives for employers in the public sector, it would be beneficial for Gender Equality Action Plans to include specific and tailored gender equality objectives to ensure such objectives are relevant, targeted, and provide greater practical meaning for staff.

Furthermore, VWL submits that Gender Equality Action Plans should include identifying a communication strategy, both internally and externally, to successfully implement the plan.

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<sup>15</sup> European Institute for Gender Equality, *What is Gender Mainstreaming*, accessed on 27 September 2018 via <<https://eige.europa.eu/gender-mainstreaming/what-is-gender-mainstreaming>>; UN Women, *Gender Mainstreaming*, accessed on 27 September 2018 via <<http://www.un.org/womenwatch/osagi/gendermainstreaming.htm>>.



In order to successfully implement a gender equality strategy, continuous communication and engagement with key stakeholders is critical. Effective consultation with employees during workplace change is important to facilitate a smooth and successful transition process. Good communication strengthens staff commitment, creates accountability, and helps prevent inefficiency during implementation. Conversely, a lack of communication can cause resistance.

## **6. Preparation, guidance materials and training to support organisations to develop Gender Equality Action plans**

VWL submits that public sector organisations should receive information regarding the development of a Gender Equality Action Plan, particularly explaining its importance, including relevant and compelling data highlighting the inequality between men and the public sector. Effectively, the information should present a business case for gender equality to encourage public sector organisations to embrace the development of an effective Gender Equality Action Plan.

A step-by-step guide on how to develop a Gender Equality Action Plan would also assist public sector organisations to develop Gender Equality Action Plans which are consistent, tailored to the organisation, and of a high quality. The guide should include information on how to set gender equality objectives, how to effectively consult with staff prior to developing the Gender Equality Action Plan, how to set measurable and achievable targets, how to successfully launch the new Gender Equality Action Plan, and how to handle resistance to the changes.

Further, the guide should include information regarding how to communicate the introduction of the Gender Equality Action Plan to staff. In order to ensure that there is appropriate communication and transparency, it is necessary to have a clear concept of gender mainstreaming and to pursue a stringent strategy. The guide on communication should also address communicating gender equality externally to ensure that it is a visible part of the organisation's identity and operations. For example, the Swedish government has established an online platform that serves as a national resource for gender equality. Their website offers a range of information such as news, examples of good practices and other tools.

## **7. Targets regarding the regulations of the Bill**

VWL supports the regulations of the Bill, including targets to assist financial and operational performance. The targets must be measurable and achievable in order to ensure that it is possible to achieve the relevant targets.

VWL submits that the regulations should include a specific deadline by which all public sector organisations are required to have implemented the Gender Equality Action Plan.

Further, the regulations should require public sector organisations to report the number of females in management positions. VWL is of the view that to successfully develop and maintain gender equality in the workplace, gender equality must be promoted and exhibited by management.



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## 8. Ensuring representation of women from diverse backgrounds

### *Cultural diversity*

In considering the steps that can be taken to ensure executive and board-level representation of women from culturally diverse backgrounds, we have had regard to the Diversity Council of Australia's 2017 report 'Cracking the Glass-Cultural Ceiling: Future Proofing Your Business in the 21st Century'.<sup>16</sup> VWL agrees that culturally diverse women can face 'amplified bias' as described in the report, such as 'where gender and cultural biases have a compounding or amplifying effect on culturally diverse women and their lack of career progress or opportunities'.<sup>17</sup> VWL recommends the following suggestions for organisations put forward in the report:

- a) provide education about bias-free decision making;
- b) encourage staff to call out and address inappropriate workplace banter, even where 'minor' comments may still serve to reinforce unhelpful stereotypes;
- c) address potential backlash about diversity and inclusion initiatives by explaining privilege and how changes are needed to remove bias and create a level playing field;
- d) diversify social events and activities that extend beyond alcohol based evening/weekend events;
- e) diversify mentors and sponsors to include a variety of demographic backgrounds, leadership styles and ways of working (e.g. part time, full time, from home etc.);
- f) promote a broader view of 'the effective leader' which addresses the bias towards masculine western leadership styles where extroversion, self-promotion and assertive direct communication are overvalued; and
- g) consider introducing targets to create a culture of accountability and publicly report on progress in meeting targets.

### *Other aspects of diversity*

While ensuring representation from culturally diverse women is vital in 21st century Victoria, VWL further considers that it is necessary to engage with other indices of intersectionality. Representation should therefore also be sought from Lesbian, Gay, Bisexual, Transgender, Questioning, Intersex, Asexual (**LGBTQIA**) women, disabled women, women working flexibly or part-time and women from a diverse range of socio-economic backgrounds more broadly. Intersectionality in this setting is ultimately about recognising that there are multiple voices within a demographic and that, by reason of their differing backgrounds, women have a range of different experiences and perspectives. VWL submits that all of these perspectives are valid and worthy of representation at the board and executive level.

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<sup>16</sup> The report can be found at <<https://www.dca.org.au/research/project/cracking-glass-cultural-ceiling>>.

<sup>17</sup> Ibid.



### *Addressing intersectionality in the legislation*

VWL acknowledges that the Bill is primarily concerned with gender equality, and that, while consideration ought to be given to whether similar quotas are needed to ensure diverse representation generally in public sector organisations, this may be beyond the scope of the present legislation. However, it is submitted that some amendments to the Bill may be appropriate to encourage diverse representation of women. The importance and relevance of intersectionality is presently acknowledged by section 8(c) of the Bill. Having regard to some of the suggestions made in the Diversity Council's report, VWL submits that consideration should also be given to the feasibility of the following options:

- a) whether the requirement in section 11(3) (regarding the examination of data and evidence in relation to gender equality) could be expanded to also require entities to provide data and evidence in relation to the proportion of culturally diverse women, Indigenous and Torres Strait Islander women, LGBTQIA people, disabled women as well as women who work flexibly or part-time (**diverse women**);
- b) whether the requirement in section 11(1)(b) could be expanded to require that entities also have specific strategies and initiatives to, as part of gender equality, support the careers of diverse women; and
- c) whether the functions of the Ministerial Council on Women's Equality could be expanded to include providing advice on initiatives advancing gender equality in respect of diverse women.

### **9. The frequency and volume of reporting**

VWL considers that, in circumstances where most entities are already in the practice of producing annual reports, annual reporting should not create an unfair regulatory burden. If there is a reason to be concerned that some entities may be unfairly burdened by annual reporting (for example, because of their size), then the Bill could provide for an exemption process by which entities could apply for a two-year reporting period where it is justified.

### **10. Leveraging procurement and funding practices**

This topic is beyond the scope of VWL's expertise.

### **11. Monitoring and compliance**

VWL considers that the proposal for monitoring and compliance of the Bill is fair, balanced, and indeed critical for the purposes of ensuring that maximum progress is made.

### **12. Ensure the Ministerial Council's advice is considered in other policy areas**

VWL submits that a multi-disciplinary and multi-faceted approach is required to tackling long-term gender inequality. It is clear that gender inequality pervades all areas of life and in order to tackle the issue both substantive and cultural change is required.

In these circumstances, it is important to ensure that the advice and work of the Ministerial Council has wide reaching effect across the whole of the Government.



Although the Bill requires certain public sector organisations to develop and implement strategies related to its own organisational management, it is also critical ensure that gender equality is promoted in policy making more broadly.

### **13. The appropriateness of the timelines**

It is proposed that the Bill will be implemented over a three-year period in order to fully harness the aims of the Bill. Over the first two years following the commencement of the Bill, the focus of implementation will be upon ensuring that all relevant public sector organisations comply with the new requirements of the Bill, including developing and reporting on the organisation's Gender Equality Action Plan. It is further proposed that the procurement guidelines (which will affect whole of the Government suppliers) will take effect from the third year following commencement of the Bill.

In determining an appropriate timeline for the roll out of the Bill, it is important to take a considered approach to maximise the effective implementation of the Bill and its objectives. This will require a balancing exercise so as to ensure that there is consistent progress towards the aims of the Bill, without compromising the delivery of the objectives. This is particularly important to ensure that relevant stakeholders (public and private sector organisations alike) have confidence in the strategic objectives of the Bill.

Accordingly, whilst the timeline for rollout should generally be flexible, review periods should also be scheduled so as to ensure the roll out can be appropriately monitored.

### **14. Ensuring readiness of impacted organisations**

In the long term, the Bill will have a far-reaching effect on the whole of the Victorian Government. Whilst it is proposed that the Bill will be implemented gradually in phases over a number of years, preparations should commence well in advance to ensure the readiness of impacted organisations. For example, an education and public awareness campaign as to the objectives of the Bill and compliance requirements should commence well in advance of the commencement of the legislation. The campaign should be targeted and involve the general public as well as all levels of affected organisations. This might include holding 'Town Hall' style forums within each of the affected organisations for public sector employees. Public sector organisations should also be encouraged, in advance of the commencement of the Bill, to develop steering committees to consult internally about their particular organisation's approach to gender equality. In many instances, these processes may already be in place in some shape or form.

More targeted education campaigns may also be useful, such as providing assistance to organisations about the content of Gender Equality Action Plans and best practice. This could include the provision of checklists and template documents that organisations may seek guidance from. Such targeted preparation may be particularly relevant for smaller public sector organisations and offices that may not currently have the resources to implement the change required.

### **15. Encouraging and incentivising broader sectors and organisations**

In order to meet the broader objectives of the Bill, it is important to ensure that programs promoting gender equality are undertaken across all of Victoria. In order to promote



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this, the Victorian Government may wish to incentivise organisations to voluntarily comply with the principles by allocating a fund or offering grants to organisations that may wish to comply with the principles but are not otherwise equipped to. This may also include the development of a grant program whereby financial assistance is awarded to organisations that submit feasible proposals to implement strategies or initiatives within the workplace to advance gender equality.

This may be a particularly effective method of incentivising smaller organisations that may wish to promote gender equality but are otherwise under-resourced to do so. This approach also allows organisations to develop programs that are tailored to their particular circumstances.

**Concluding remarks**

VWL submits that the Bill is a welcomed and proactive step toward achieving gender equality in Victoria. VWL hopes that the Bill is introduced to allow new measures to be put in place towards achieving the goal of gender equality for those working in applicable organisations. VWL also hopes that other organisations voluntarily model the structures and practices on these organisations.

VWL appreciates the Victorian Government's efforts so far to achieve gender equality and, if required, welcomes further consultation in its measures to achieve balanced and appropriate regulatory framework within this space.

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