



28 July 2015

Senate Finance and Public Administration Committees
PO Box 6100
Parliament House
Canberra ACT 2600

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

Dear Committee Secretary,

Submission on the Inquiry into the Australian Government Boards (Gender Balanced Representation) Bill 2015 (Cth)

The Australian Human Rights Commission (the Commission) welcomes the opportunity to make a submission to the Senate Finance and Public Administration Legislation Committee in relation to the *Australian Government Boards (Gender Balanced Representation) Bill 2015 (Cth)* (the Bill).

The Commission supports the passage of the Bill.

Australian Government 2015 gender balance target

In 2010, the Australian Government committed to achieving gender balance on Australian Government boards, by setting a gender diversity target of a minimum of 40% women on Government boards, a minimum of 40% men, and 20% to be made up of either gender, by 2015 (the 40:40:20 target).¹ This target was set to apply to each Government portfolio, rather than at the individual board level.²

Since 2010, the Australian Government Office for Women has reported annually on the numbers of women and men on Australian Government boards, reflecting on the progress made against the Government's commitment to the 40:40:20 target.

The findings of the Government's most recent report, *Gender Balance on Australian Government Boards Report 2013-14*, show that women held 39.7% of the 3,206 board positions on 387 Australian Government boards and bodies as at 30 June 2014.³ This figure represents a 2% decrease in numbers since June 2013,⁴ a 1.3% increase since June 2012,⁵ a 4.4% increase since June 2011⁶ and a 5.2% increase since June 2010.⁷ While the June 2014 outcome of 39.7% is slightly lower than that of June 2013 at 41.7%, the overall results are nonetheless indicative of a general

increase in overall Government board appointments for women since the establishment of the 40:40:20 target.

A four year comparison of the number of Government board portfolios to have met or exceeded the gender diversity target also yields some positive results. As at 30 June 2014, nine Government portfolios out of 18 met or exceeded the 40:40:20 target,⁸ compared with five portfolios out of 19 in 2010, when the target was first established.⁹

However, individual portfolio progress in relation to the representation of women on boards remains mixed. While a number of portfolios including, but not limited to, the Attorney-General's Department, the Department of Health, the Department of Environment and the Department of Foreign Affairs and Trade showed improvements between 2010 and 2014 and exceeded their 40:40:20 target as at 30 June 2014, progress within other portfolios has been slow. As at 30 June 2014, portfolios such as the Department of Defence and Treasury were recorded as having 28.3% and 34.2% representation of women on their boards respectively, while the representation of women in the Prime Minister and Cabinet and Veterans' Affairs portfolios decreased over the four year period, to 29.4% and 23% respectively.

The Office for Women also reported that, of the 639 new appointments made to Government boards throughout 2013-2014, 36.5% (233 appointments) were awarded to women and 63.5% to men.¹⁰

Objectives of the Bill

The Commission understands that the purpose of the Bill is to convert the existing Government policy in relation to gender balance on Government boards into legislation by requiring, except under certain exemptions provided for in Subclause 7(2):

a Government appointer to ensure that a Government board consists of at least 40 per cent men and at least 40 per cent women when making an appointment.¹¹

Specifically, the Bill seeks to:

move from the current aspirational target to a positive obligation that will apply in relation to each appointment to a Government board.¹²

The Bill also requires the Secretary of each Department of State to provide an annual report on the gender composition of each Government board within its portfolio, which the Minister responsible for the administration of the Act must subsequently publish in a consolidated report for tabling in Parliament.¹³ The Commission commends this commitment to transparency in reporting, which is a key aspect to ensuring progress in the advancement of women's participation in leadership and decision-making roles.

The concept of introducing legislation to strengthen the representation of women at decision-making levels formed one of the recommendations of the Commission's *2010 Gender Equality Blueprint* report. Specifically, the report recommended that:

a target of 40% representation of each gender on all publically listed Boards in Australia, to be achieved over five years should be promoted. If progress is not made,

the Australian Government should consider legislating to require publicly listed companies and other large employers to achieve a mandatory gender diversity quota of a minimum of 40% of both genders within a specified timeframe, failing which penalties will be imposed.¹⁴

Australia's obligations under international law

The Parliament intends the establishment of the *Australian Government Boards (Gender Balanced Representation) Act 2015* (Cth) (the Act) to be a special measure for the purpose of assisting Australia in meeting its international obligations under the *Sex Discrimination Act 1984* (Cth) (SDA). Section 7D of the SDA states that special measures may be taken for the purpose of achieving substantive equality between men and women.¹⁵

The Bill is compatible with Australia's international obligations under Articles 2, 16 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR) and Articles 2, 3, 4 and 15 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW).

Article 4(1) of CEDAW specifically states that:

the adoption by States Parties of temporary special measures aimed at accelerating equality between men and women shall not be considered discrimination as defined in the present Convention... these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.¹⁶

General Recommendation No. 5 of the *Committee on the Elimination of Discrimination against Women* also encourages States Parties to make more use of temporary special measures to 'advance women's integration into education, the economy, politics and employment'.¹⁷

Conclusion

The Commission supports the passage of the Bill as a special measure to address the under-representation of women in decision-making roles in Australia. This Bill will strengthen the representation of women on Government boards, ensure transparency and accountability in reporting on women's participation on Government boards, and bring Australia closer in line with its obligations under the SDA, ICCPR and CEDAW.

Government boards have long been considered as benchmarks for better gender balance on boards overall. The establishment of the Act would therefore provide a model for private sector boards to strive to follow.

The Commission continues to strongly advocate that the under-representation of women on boards and in positions of senior management across both the corporate and government sectors is an issue which must be addressed, both immediately and at the highest levels.

I hope this submission assists in your consideration of the Bill.

Please do not hesitate to contact the Commission should you have any queries about this submission.

Yours sincerely

Elizabeth Broderick
Sex Discrimination Commissioner

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- ¹ Parliament of the Commonwealth of Australia, *Explanatory Memorandum: Australian Government Boards (Gender Balanced Representation) Bill 2015* (2015), 1; BoardLinks, *Supporting Women into Leadership*, <http://www.boardlinks.gov.au/sites/default/files/board-links-fact-sheet.pdf>.
- ² Australian Government, *Gender Balance on Australian Government Boards Report 2010-11* (2011), 1, 9. At https://www.dss.gov.au/sites/default/files/documents/05_2012/gbgb_april2012.pdf.
- ³ Australian Government, *Gender Balance on Australian Government Boards Report 2013-14* (2014), 5. At <https://www.dpmc.gov.au/sites/default/files/publications/Gender%20Balance%20On%20Australian%20Government%20Boards%20Report%202013-14.pdf>.
- ⁴ Australian Government, *Gender Balance on Australian Government Boards Report 2012-13* (2013), 8. At https://www.dss.gov.au/sites/default/files/documents/08_2013/attachment_b_-_gender_balance_on_australian_government_boards_report.pdf.
- ⁵ Australian Government, *Gender Balance on Australian Government Boards Report 2011-12* (2012), 9. At https://www.dss.gov.au/sites/default/files/documents/11_2012/gender_balance_boards_0.pdf.
- ⁶ Australian Government, *Gender Balance on Australian Government Boards Report 2010-2011* (2011), 1. At https://www.dss.gov.au/sites/default/files/documents/05_2012/gbgb_april2012.pdf.
- ⁷ Australian Government, *Women on Australian Government Boards Report 2009-2010* (2010), 4. At https://www.dss.gov.au/sites/default/files/documents/05_2012/women_austr_govt_board_rpt_2010.pdf.
- ⁸ Australian Government, *Gender Balance on Australian Government Boards Report 2013-14* (2014), 5. At <https://www.dpmc.gov.au/sites/default/files/publications/Gender%20Balance%20On%20Australian%20Government%20Boards%20Report%202013-14.pdf>.
- ⁹ Australian Government, *Women on Australian Government Boards Report 2009-2010* (2010), 3. At https://www.dss.gov.au/sites/default/files/documents/05_2012/women_austr_govt_board_rpt_2010.pdf.
- ¹⁰ Australian Government, *Gender Balance on Australian Government Boards Report 2013-14* (2014), 7. At <https://www.dpmc.gov.au/sites/default/files/publications/Gender%20Balance%20On%20Australian%20Government%20Boards%20Report%202013-14.pdf>.
- ¹¹ Parliament of the Commonwealth of Australia, *Explanatory Memorandum: Australian Government Boards (Gender Balanced Representation) Bill 2015* (2015), 3.
- ¹² Parliament of the Commonwealth of Australia, *Explanatory Memorandum: Australian Government Boards (Gender Balanced Representation) Bill 2015* (2015), 1.
- ¹³ Parliament of the Commonwealth of Australia, *Explanatory Memorandum: Australian Government Boards (Gender Balanced Representation) Bill 2015* (2015), 1.
- ¹⁴ Australian Human Rights Commission, *2010 Gender Diversity Blueprint* (2010), 5. At http://www.humanrights.gov.au/sites/default/files/document/publication/Gender_Equality_Blueprint.pdf.
- ¹⁵ *Sex Discrimination Act 1984* (Cth), Section 7D.
- ¹⁶ *Convention on the Elimination of All Forms of Discrimination against Women*, Article 4(1).
- ¹⁷ *Committee on the Elimination of Discrimination against Women*, General Recommendation No. 5 (Seventh Session, 1988).