

The Senate

Finance and Public Administration
Legislation Committee

Australian Government Boards (Gender
Balanced Representation) Bill 2015

November 2015

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Senator the Hon Joseph Ludwig	ALP, QLD
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Senator Larissa Waters (replaced Senator Janet Rice)	AG, QLD

Participating Members

Senator Jacqui Lambie	IND, TAS
Senator Glenn Lazarus	IND, QLD
Senator Nick Xenophon	IND, SA

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Report

Introduction

1.1 On 25 June 2015 the Senate referred the Australian Government Boards (Gender Balanced Representation) Bill 2015 (the bill) to the Senate Finance and Public Administration Legislation Committee for inquiry and report by 8 September 2015.¹ On 7 September 2015, the Senate granted an extension until 10 November 2015.²

1.2 The bill, introduced into the Senate on 24 June 2015, is a private senators' bill sponsored by Senators Xenophon, Lambie, Lazarus and Waters.³

Purpose of the bill

1.3 According to the Explanatory Memorandum (EM), the bill seeks to implement existing policy in relation to gender-balanced representation on Government boards:

The existing policy, introduced by the [previous] Government in 2010 and maintained under the current Government, provides for a gender diversity target of 40 per cent men on Government boards, 40 per cent women, and 20 per cent to be made up of either gender. This 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.⁴

1.4 The second reading speech states the bill will 'emphasise the Government's position as a leader in gender equality'.⁵

Conduct of the inquiry

1.5 Details of the inquiry, including links to the bill and associated documents were placed on the committee's website at: www.aph.gov.au/senate/fpa. The committee also directly contacted a number of relevant organisations to notify them of the inquiry and invite submissions by 31 July 2015. The committee received 14 submissions and these are listed at Appendix 1.

1.6 The committee held a public hearing on 12 October 2015 at Parliament House in Canberra. A list of the witnesses who gave evidence at the public hearing is available at Appendix 2.

1.7 The committee thanks all those who made submissions and appeared at the hearing.

1 *Journals of the Senate*, No. 102 – 25 June 2015, pp 2828-2829.

2 *Journals of the Senate*, No. 111 – 7 September 2015, p. 3039.

3 *Journals of the Senate*, No. 101 – 24 June 2015, p. 2808.

4 Explanatory Memorandum (EM), p. 2.

5 *Senate Hansard*, 24 June 2015, pp 4464-4465. Leave was granted for Senator Xenophon to have the second reading speech incorporated into *Hansard* when the EM to the bill was tabled.

Background to the bill

1.8 In late 2010, the then Labor Government committed to a target of 40 per cent representation for both women and men on Australian Government Boards by 2015.⁶ The then Minister for the Status of Women, the Hon Kate Ellis MP, noted the importance of improving the representation of women on boards:

We know that boards make better decisions when they are representative of the entire community. Tapping into women's skills and experience is not just good for women – evidence shows that a gender balance in top level decision making roles and forums is associated with improved governance and decision making.⁷

Current gender balance on Australian Government Boards

1.9 The latest *Gender Balance on Australian Government Boards Report 2014-15* (2014-15 Report) was released on 8 October 2015.⁸ Table 1 of the 2014-15 Report shows the gender balance on Australian Government Boards as at 30 June for the previous three years.⁹

6 Australian Government, Office for Women, *Women on Australian Government Boards Report 2009-2010*, p. 3.

7 Australian Government, Office for Women, *Women on Australian Government Boards Report 2009-2010*, p. 3.

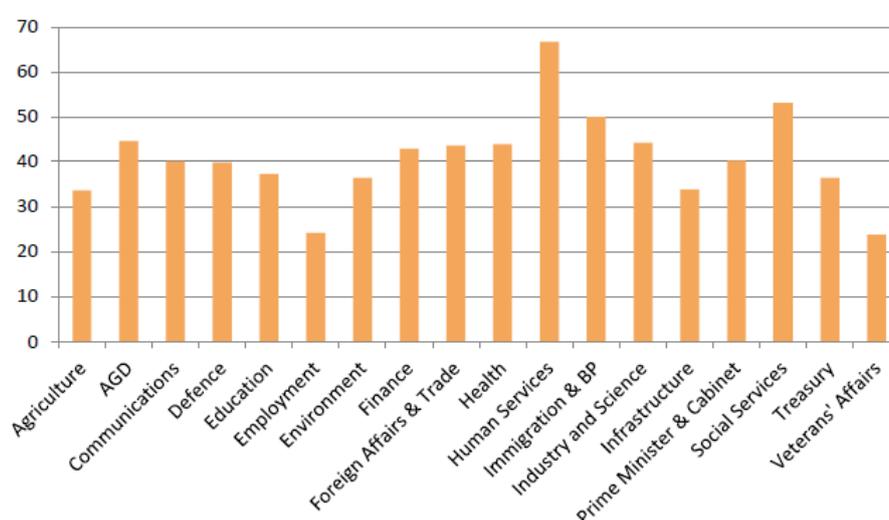
8 Available at: www.dpmc.gov.au/sites/default/files/publications/gender_balance_aust_govt_boards_report_14-15.pdf (accessed 15 October 2015). The *Gender Balance on Australian Government Boards Report 2014-15* (2014-15 Report) was released after submissions for this inquiry had closed, but prior to the committee holding its public hearing. For this reason, submissions referred to data in the *Gender Balance on Australian Government Boards Report 2013-14* (2013-14 Report), while the discussion at the public hearing focussed predominantly on the results in the 2014-15 Report.

9 Australian Government, 2014-15 Report, p. 2. The Appendix to the 2014-15 Report notes that Guidelines for the Report establish the parameters for the boards and appointments included in the report. Boards that are within the scope of the 2014-15 Report are as follows: bodies covered by the *Public Governance, Performance and Accountability Act 2013*; ministerial advisory committees; review committees where the appointments are made by a minister or Cabinet; and Commonwealth statutory authorities. Within this subset of boards, only appointments having some level of input or sign-off from particular representatives of the Government are included, that is: the Prime Minister; one or more Australian Government ministers; the Governor-General in Council; and Cabinet. The 2014-15 Report excludes appointments that are: ex-officio; to a Commonwealth Court or Tribunal, or to a quasi-judicial body; formally elected with no formal Government approval; nominated by a third party with no formal Government approval; appointed by an organisation without Government involvement; nominated by a State or Territory Government without Commonwealth Government approval; or nominated by a government of another country without Commonwealth Government approval.

Table 1: Gender Balance on Australian Government Boards

<i>Year</i>	<i>Number of boards</i>	<i>Number of positions</i>	<i>Number of women</i>	<i>Number of men</i>	<i>% women</i>
2015	361	2570	1005	1565	39.1
2014	387	3206	1272	1934	39.7
2013	460	4039	1685	2354	41.7

1.10 The 2014-15 Report also sets out portfolio performance against the gender diversity target.¹⁰

Figure 1: Portfolio performance against the gender diversity target

Other measures

1.11 In addition to the 40:40:20 gender balance target, there are other measures in place to increase the representation of women on Government boards.

1.12 Boardlinks is a government initiative which provides opportunities for women to be appointed to Government board positions by:

- enhancing opportunities for women actively seeking leadership roles, and enhancing their economic and workforce participation; and
- providing a valuable resource for organisations – public, private, and not-for-profits – through identifying talented and board-ready women, which will assist with addressing skill shortages, and improving economic and governance outcomes for organisations in all sectors.¹¹

¹⁰ Australian Government, 2014-15 Report, p. 2.

¹¹ See Boardlinks website, *About Boardlinks*, available at: www.boardlinks.gov.au/boardlinks.html (accessed 17 August 2015).

1.13 On 8 October 2015, the Minister for Women, Senator the Hon Michaelia Cash, announced new 'BoardLinks Champions':

The new Champions are leading Australian business figures, who will work with Government to strengthen the BoardLinks programme.¹²

1.14 The *Gender Balance on Australian Government Boards Report 2013-14* (2013-14 Report) noted the following partnerships that the Australian Government has developed:

- with the Australian Institute of Company Directors to deliver the Board Diversity Scholarship programme; and
- with the Australian Mines and Metal Association to deliver the Australian Women in Resources Alliances E-mentoring programme.¹³

1.15 On 8 October 2015, the Minister for Women announced the Government would also commit \$100,000 to help fund Chief Executive Women scholarships to support women's participation and leadership in science, technology, engineering and mathematics (STEM) industries.¹⁴

Summary of the bill

1.16 As stated above, the bill would implement in legislation the existing Government policy in relation to gender balance on Government boards. The current policy provides for a gender diversity target of 40 per cent men and 40 per cent women on Government boards, with the remaining 20 per cent to be made up of either gender.

1.17 The second reading speech explains which Government boards the bill will apply to:

The bill applies the gender balance target to Commonwealth entities under the *Public Governance, Performance and Accountability Act 2013*; Ministerial advisory committees; review committees where the appointments are made entirely by a Minister or the Cabinet; and Commonwealth statutory authorities. This definition is consistent with the boards that are currently required to report for the purpose of the *Gender Balance on Australian Government Boards Report*.¹⁵

12 Minister for Women, Senator the Hon Michaelia Cash, *Government and business unite to promote women in leadership*, Media Release, 8 October 2015, available at <http://minister.women.gov.au/media/2015-10-08/government-and-business-unite-promote-women-leadership> (accessed 14 October 2015). The new Boardlinks Champions are: Diane Smith-Gander; Jennifer Westacott; Anne Fulwood; Ann Sherry; and Paris Aristotle.

13 Australian Government, *Gender Balance on Australian Government Boards Report 2013-14*, December 2014, p. 4.

14 Minister for Women, Senator the Hon Michaelia Cash, *Government and business unite to promote women in leadership*, Media Release, 8 October 2015.

15 *Senate Hansard*, 24 June 2015, p. 4465.

1.18 The bill provides for certain exceptions from the obligation for gender balance on Government boards, including where there are 'extraordinary circumstances that mean it is not reasonably practicable...to comply with the obligation'.¹⁶ The EM describes what constitutes 'extraordinary circumstances':

For the purposes of this bill, extraordinary circumstances may be considered to have occurred when the Government appointer can demonstrate that reasonable efforts have been made to find a candidate of the appropriate gender, and despite these efforts it has not been possible to appoint a suitable candidate of the necessary gender to meet the requirement of at least 40 per cent men and at least 40 per cent women on the relevant Government board.

For these purposes, reasonable efforts would include where all of the following steps have been taken:

- a. the board vacancy has been advertised and/or there has been a call for expressions of interest in the board position;
- b. relevant government databases such as AppointWomen or BoardLinks have been searched for potential candidates;¹⁷
- c. a gender balanced shortlist of candidates has been compiled;
- d. candidates have been interviewed that reflect the gender balanced shortlist; and
- e. each candidate has been evaluated against a consistent set of selection criteria.¹⁸

1.19 The bill also sets out reporting requirements in relation to the targets for gender balance on Government boards. The EM notes:

[The bill] replicates the existing reporting requirements for Government portfolios, under which they are required to provide statistical information to the Office for Women for the purpose of publishing the *Gender Balance on Australian Government Boards Report*. Currently, the report is consolidated and published by the Department of [the] Prime Minister and Cabinet as the portfolio under which the Office for Women sits...

The bill requires...each portfolio department to prepare a report each financial year, setting out the gender composition of each Government board within that portfolio. Further, the Minister for Women must then publish that information in a consolidated report, to be tabled in Parliament.¹⁹

16 See subclause 7(2) of the bill.

17 The committee understands that Boardlinks is the preferred avenue for identifying potential candidates for Australian Government boards.

18 EM, p. 4.

19 EM, p. 2.

Discussion

Benefits of gender balanced boards

1.20 A number of submissions referred to the research demonstrating the benefits of gender balanced boards. For example, the Women's Leadership Institute Australia stated:

There is a vast body of research, both locally and globally, demonstrating the "business case" for gender diverse boards and leadership teams. Gender diverse boards (as opposed to those with no gender diversity) achieve higher financial returns. They also perform better on a range of other metrics, including increased levels of innovation, improved corporate governance and better average growth.²⁰

1.21 The Australian Institute of Company Directors also highlighted the evidence that increasing gender diversity on boards improved corporate performance.²¹

1.22 The Community and Public Sector Union (CPSU) outlined why it was important for Government boards to lead the way on this issue:

There is strong evidence that gender-balanced boards are more effective, and the role of the public sector in serving the interests of the Australian community demands public sector boardrooms that reflect the gender diversity of our community. Furthermore, government must provide leadership to the private sector in this area, where despite positive trends gender diversity among company directors and key executive management personnel remains generally poor.²²

1.23 Similarly, the Equality Rights Alliance, argued:

Achieving gender equity on Government boards and thereby increasing women's representation, participation and leadership in the public domain is a critical policy imperative...Government boards are an opportunity for the Federal Government to lead by example on increasing women's leadership and participation. Beyond the instrumental benefits engendered by women's equal participation, women have a right to equal participation in public life leadership and decision-making.²³

The 40:40:20 target for Government boards

1.24 Submissions also noted the overall improvement in the gender balance of Government boards since 2010 when the 40:40:20 gender balance target was introduced. For example, Women on Boards stated:

The success of [the] Gender Balance Target for Government Boards...is evident in the numbers; as at 30 June 2011 women held 35.3 per cent of the 460 Government boards and bodies, rising to 41.7 per cent in the two

20 *Submission 5*, p. 2.

21 *Submission 12*, pp 1-2.

22 *Submission 6*, p. 1.

23 *Submission 13*, p. 2.

years to June 2013. Significant gains were made in traditionally male dominated portfolio areas including finance, treasury, employment [and] workplace relations and industry [and] innovation.²⁴

1.25 However, Women on Boards expressed concern at the figures for the 2013-14 financial year:

[T]he number of positions held by women fell by two per cent as at June 2014, spectacularly so in the case of Prime Minister [and] Cabinet and the areas of Employment and Education.

Perhaps the most problematic figure from the 2014 report, and a concerning indicator of where gender balance on Government Boards is tracking is that 36.5 per cent of the 639 appointments in 2013 were awarded to women. In some portfolio areas this number was significantly lower and not even close to the number of female appointments required to continuously meet the 40 per cent target currently in place.²⁵

1.26 The former Sex Discrimination Commissioner, Ms Elizabeth Broderick, also noted that individual portfolio progress in relation to the representation of women is 'mixed', but placed the 2013-14 figures into a broader context:

The findings of the Government's [report for 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. This figure represents a 2% decrease in numbers since June 2013, a 1.3% increase since June 2012, a 4.4% increase since June 2011 and a 5.2% increase since June 2010. 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, compared with five portfolios out of 19 in 2010, when the target was first established.²⁶

1.27 The overview to the 2013-14 Report notes that the year was one of 'significant change and transition' for the Australian Government and its boards, agencies and committees:

The Government has repealed a range of legislation and reporting requirements as part of its deregulation agenda. The Government is also making progress to reduce the size of government and to ensure that government services are as efficient and well-targeted as possible.

The findings of the National Commission of Audit informed the Government's agenda to minimise the size of Government, including the

24 *Submission 4*, p. 3.

25 *Submission 4*, p. 3.

26 *Submission 3*, pp 1-2.

rationalisation of the number of boards. As a result a number of boards were reduced in size, merged with other bodies that performed similar functions, or abolished as part of this reform agenda in 2012-14.

As of 30 June 2014, the number of reportable boards decreased to 387 from 460 at the same time in 2013. The number of board positions also decreased from 4,039 to 3,206. New appointments to Government boards throughout 2013 has almost halved in comparison to 2012-13 – from 1,069 to 639.²⁷

1.28 The 2013-14 Report also referred to 'significant restructures of portfolios and departments' and noted:

As a result of these changes...it is not possible to directly compare some portfolio level-level data in [the 2013-14 report] with that of previous years.²⁸

1.29 At the public hearing witnesses commented on the recently released 2014-15 Report, which showed that the overall representation of women on Australian Government Boards was 39.1 per cent. Ms Carolyn Hewson, a director of BHP Billiton and the Stockland Group, noted:

You are all well aware of the government's current bipartisan policy of the 40-40-20 target—which I recognise is a great policy position. It has been in place since 2010 and, indeed, reaffirmed by each government since then. However, in the last two years it appears the policy has been easy to neglect and the downward trend in proportion of women on government boards from a high of 41.3 per cent in 2013 to 39.1 per cent now is disappointing. At present, the bipartisan policy of 40-40-20 and its accompanying reporting arrangements do not appear to have the support of, nor be taken seriously by, a number of government ministers. Even after five years, there are still nine of the 18 portfolios currently not meeting the targets and two portfolios remain under 30 per cent for female representation.²⁹

1.30 At the public hearing, Mr Troy Sloan, Acting First Assistant Secretary, Department of the Prime Minister and Cabinet (PM&C), outlined why there may be a decrease in the overall representation of women on Government boards:

Consistent with the government's smaller-government agenda, there has been a significant decrease in the number of boards and board positions and that has, in my understanding, contributed somewhat to that decline.³⁰

1.31 Mr Sloan described the report as a 'backward-looking document' and noted that the time of appointment of board members was the more important time for consideration of gender balance.³¹ To this end, Mr Sloan referred to the guidance in

27 Australian Government, *Gender Balance on Australian Government Boards Report 2013-14*, p. 3.

28 Australian Government, *Gender Balance on Australian Government Boards Report 2013-14*, p. 3.

29 *Committee Hansard*, 12 October 2015, pp 8-9.

30 *Committee Hansard*, 12 October 2015, p. 23.

31 *Committee Hansard*, 12 October 2015, p. 22.

the Cabinet Handbook in relation to proposals for appointments, which requires that a Minister's proposal should confirm that 'due regard has been paid to gender balance in appointments'.³²

1.32 In terms of the role the Office for Women has in the process, Ms Donna-Jean Nicholson, Acting Assistant Secretary, Office for Women, PM&C, explained:

The Office for Women do play a coordination role, and we do support portfolios in their work to meet the gender diversity target.³³

1.33 However, in an answer to a question on notice, PM&C noted:

Individual portfolios are responsible for ensuring gender balance in board appointment processes, including adherence to the policy on appointments in the Cabinet Handbook and [the Australian Public Service Commission's policy guideline] *Merit and Transparency: Merit-based selection of APS agency heads and APS statutory office holders*.³⁴

1.34 The committee also sought information about changes to the presentation of data between the 2013-14 and 2014-15 Reports, particularly that the percentage of men on Government boards is not included in the 2014-15 Report. Mr Sloan stated that he did not think that there was any particular reason for the change.³⁵

Issues in relation to the bill

1.35 While the majority of submissions expressed support for the bill, the Australian Institute of Company Directors (AICD), while acknowledging the need to increase the number of women on Government boards, opposed the introduction of legislated quotas:

International experience suggests that quotas do not necessarily generate the desired outcomes... There is also a risk that the use of quotas will mean that women who are appointed to government boards as a result of the legislation will be viewed negatively. Research has shown that more prescriptive forms of affirmative action can undermine and marginalise those who benefit from it as they are viewed as less competent or deserving.³⁶

1.36 AICD pointed out potential negative impacts of the bill:

As a general proposition, we are of the view that mandated standards of corporate governance result in a "one-size-fits-all" approach which should be avoided wherever possible. Appointments to boards need to be made

32 *Committee Hansard*, 12 October 2015, p. 26. See also Australian Government, Department of the Prime Minister and Cabinet, *Cabinet Handbook*, 8th Edition, 2015, p. 22.

33 *Committee Hansard*, 12 October 2015, p. 22.

34 Answer to question on notice, received 22 October 2015, p. 1.

35 *Committee Hansard*, 12 October 2015, p. 25.

36 *Submission 12*, pp 2-3. In a supplementary submission the Australian Institute of Company Directors indicated that they would support the bill with amendments which focussed on targets, accountability and disclosure, *Supplementary Submission 12*, p. 1.

based on the business needs of an organisation, including the skills and abilities that it needs represented on its board.

There is also the risk that, by mandating a certain percentage of women be appointed, this will act as a hard ceiling on female representation on boards. Quotas can have the effect of focussing attention only on reaching the required percentage without providing any incentive [to] exceed the quota or to address any underlying issues that may have caused the lack of diversity.³⁷

1.37 In a supplementary submission the AICD noted its understanding that the bill's intention is to strengthen the existing policy target and not to introduce a quota. AICD indicated it would support the bill with amendments which focussed on targets, accountability and disclosure.³⁸

1.38 At the public hearing, Dr Mikayla Novak, Senior Fellow, Institute of Public Affairs, was unconvinced of the potential impact of the bill:

The representation of women in private and public sector management has been on the long-term improve, though not as fast as many would like. So the question is: what kinds of strategies are most conducive to bolstering diversity? Although the bill would surely effect a change in Commonwealth public sector hiring practices, it is not entirely convincing that the bill will effectively usher in the broader gender diversity improvements that are so widely desired.³⁹

1.39 Dr Novak argued:

[T]he general trajectory for economic improvement for women in terms of representation on boards has been on a dramatic long-term improve and you would expect that trend to continue in as much as human capital accumulation continues and in as much as there is continuing openness within the labour market.⁴⁰

1.40 Ms Carol Schwartz, Founding Chair, Women's Leadership Institute Australia stated the reporting obligations in the bill were such that 'there is no additional reporting burden or red tape on the government or the public service to report on these targets'.⁴¹ Ms Carolyn Hewson also argued:

It is important to understand there is no additional work required for data collection, and to oppose this bill on the basis of additional red tape would be unequivocally wrong.⁴²

37 *Submission 12*, p. 3.

38 *Supplementary Submission 12*, p. 1.

39 *Committee Hansard*, 12 October 2015, p. 12.

40 *Committee Hansard*, 12 October 2015, p. 13.

41 *Committee Hansard*, 12 October 2015, pp 1-2.

42 *Committee Hansard*, 12 October 2015, p. 9.

1.41 However, proposed paragraph 8(3)(d) of the bill does require that an explanation be provided where there have been any appointments during the financial year which did not comply with the requirement the Government boards must be gender balanced. Mr Troy Sloan, Acting First Assistant Secretary, PM&C confirmed that under the current policy there is no requirement for such an explanation to be provided.⁴³ Mr Sloan indicated that no work had been done by PM&C to determine the additional resources which would be required in obtaining that additional information.⁴⁴ Mr Sloan emphasised that with respect to the information which is currently collected:

The Office for Women invest a lot of effort in quality assuring the numbers we are providing and in going back and checking with departments to ensure that the report is of a high enough quality to be released.⁴⁵

Other measures to improve gender balance on Government boards

1.42 As noted earlier, the current gender diversity target is complemented by other measures. The 2013-14 Report provides more details on some of these measures:

The Government has shown its commitment to fuelling the leadership pipeline with strong, confident and capable women, by partnering with a range of world class organisations.

The Government is partnering with the Australian Institute of Company Directors to deliver the Board Diversity Scholarship programme. The programme has been significantly expanded, contributing \$650,000 over two years to deliver 140 scholarships to targeted groups of women.

A partnership between the Government and the Australian Minerals and Metals Association has also been established to deliver the Australian Women in Resources Alliances E-mentoring programme. The Government is providing \$440,000 over two years to the programme, which will support talented women in the mining and resources sector to advance their careers through mentoring and technical training.⁴⁶

1.43 The 2013-14 Report notes that while the government has a role in increasing women's representation in leadership and participation in the workforce generally, business must also play a part:

Continued action and innovation from business is essential to boosting the presence of women at all levels of an organisation, specifically in leadership and decision making roles.

The Government recognises the many initiatives underway in the business sector to promote women in leadership. For example in 2013, the Business

43 *Committee Hansard*, 12 October 2015, p. 21.

44 *Committee Hansard*, 12 October 2015, p. 21.

45 *Committee Hansard*, 12 October 2015, p. 22.

46 Australian Government, *Gender Balance on Australian Government Boards Report 2013-14*, p. 4.

Council of Australia set a target of 50 per cent female representation in all senior management roles in their member organisations within a decade.

The Male Champions of Change initiative – established in 2010 by the Sex Discrimination Commissioner, Ms Elizabeth Broderick – comprises 21 men in November 2014 in senior leadership positions from business and the public sector, who are dedicated to advocating for the improved representation of women in leadership positions.

The Government is also providing practical assistance to improve women's representation on Australian boards, including through the BoardLinks Programme.⁴⁷

Committee view

1.44 The committee strongly supports the policy of gender balance for Government boards. The research on this matter is clear: gender diversity on boards improves overall outcomes.

1.45 However, it is the committee's view that legislated targets for gender balance are not the best way to achieve this goal. Since the 40:40:20 gender balance target was introduced in 2010, there has been overall improvement in female representation on Government boards. In fact, in 2012-2013 the representation of women on Government boards surpassed 40 per cent.

1.46 The committee acknowledges that the 2013-14 and 2014-15 figures show a slight decrease in female representation on Government boards, falling just below the 40 per cent target for women on Government boards overall. However, these figures must be viewed in the context of change and transitions within portfolios and across government, which have impacted on the make up of Australian Government boards and the rationalisation of the number of boards.

1.47 The committee does not believe that these figures are a reason to legislate for gender balance targets. The committee notes that the government is supporting programs and providing practical assistance to improve women's representation on Australian Government boards, such as Boardlinks and the Board Diversity Scholarship programme.

1.48 In the committee's view, the 2013-14 Report provided more details on the context of the 40:40:20 policy and a more expansive explanation of the measures that the government are investing in order to assist portfolios to meet the targets. The committee suggests that future reports are presented with the same level of detail as the 2013-14 Report.

Recommendation 1

1.49 The committee recommends that the Senate not pass the bill.

47 Australian Government, *Gender Balance on Australian Government Boards Report 2013-14*, p. 4.

Senator Cory Bernardi

Chair

Dissenting Report by Senators Xenophon, Lambie, Lazarus, Waters, Gallagher and Moore.

Walking the walk, not just talking the talk

- 1.1 At the outset, we would like to thank the organisations and individuals who made submissions to this inquiry. It is not an exaggeration to say there are many strong and passionate supporters of gender balance on boards, although their advocacy takes many forms. It is our hope that, working together, we can continue to make headway towards much-needed equality in representation.
- 1.2 It is interesting to note that the Chair's report, while strongly supporting the existing policy of 40:40:20 representation on government boards and acknowledging that '*(t)he research on this matter is clear: gender diversity on boards improves overall outcomes.*'¹, it is still the position of the Chair that the bill should not be supported. This is disappointing, to say the least, and particularly so in light of the new Turnbull Government's initial steps toward increasing the representation of women in leadership roles. It is also puzzling that, in making so many arguments in support of the bill, that the Government will not vote for these measures in Parliament.
- 1.3 It is clear that, while the Government is willing to talk the talk in relation to gender balance on government boards, they are not yet willing to walk the walk.
- 1.4 It was demonstrated during the inquiry process that research on the benefits of gender balance on boards is clear. As the second reading speech to the bill outlines, '*a significant body of research has shown that boards with more balanced gender representation lead to better financial outcomes for companies*'.² This research includes studies by Credit Suisse in September 2014³ and in 2012⁴, as well as a paper produced by Professor Robert Wood

¹ *Chair's Report*, Senate Finance and Public Administration Legislation Committee, Australian Government Boards (Gender Balanced Representation) Bill 2015, p. 12, 1.44

² *Senate Hansard*, 24 June 2015, pp 4465-4465. Leave was granted for Senator Xenophon to have the second reading speech incorporated into Hansard when the EM to the bill was tabled.

³ '*The CS Gender 3000: Women in Senior Management*', Credit Suisse, September 2014

⁴ '*Gender diversity and corporate performance*', Credit Suisse, August 2012, pp. 12-19.
<https://publications.credit-suisse.com/tasks/render/file/index.cfm?fileid=88EC32A9--83E8--EB92--9D5A40FF69E66808>.

from the University of Melbourne's Centre for Ethical Leadership, which summarises over forty pieces of research that support the argument that gender equality on boards leads to better outcomes.⁵

- 1.5 The Chair's report also went so far as to acknowledge the numerous submissions to the inquiry that gave evidence of research '*demonstrating the benefits of gender balanced boards*',⁶ and cited the submission from the Women's Leadership Institute Australia⁷, The Australian Institute of Company Directors⁸, The Community and Public Sector Union (CPSU)⁹ and the Equality Rights Alliance¹⁰.

The Government's role as a leader in gender equality

- 1.6 It is our view that the Government not only has the opportunity to role model best practice in gender equality, but it has the obligation to lead by example. As stated by leading company director Carolyn Hewson during the public hearing on the 12th of October, '*corporate Australia does look to the government to guide and influence in this area*'.¹¹
- 1.7 The Community and Public Sector Union (CPSU) agreed with this position, and stressed that the '*government must provide leadership to the private sector in this area, where despite positive trends gender diversity among company directors and key executive management personnel remains generally poor*.'¹²
- 1.8 Beyond this, government boards can play a particular role in fostering gender balance and female talent. As Ms Hewson asserted, access to government boards '*allow(s) women to gain experience of government boards before or along with the time moving to corporate boards*'.¹³ She also highlighted the significance of her personal experience on a government board early in her career; noting that it '*allowed me to roll up my sleeves and become very, very*

⁵ '*Building a Business Case for Gender Diversity*', Professor Robert Wood, Centre for Ethical Leadership, The University of Melbourne, July 2014. <https://cel.edu.au/our--research/building-a--business--case--for--gender--diversity>

⁶ *Chair's Report*, Senate Finance and Public Administration Legislation Committee, Australian Government Boards (Gender Balanced Representation) Bill 2015, p. 6, 1.20

⁷ *Submission 5*, p. 2.

⁸ *Submission 12*, pp 1-2.

⁹ *Submission 6*, p. 1.

¹⁰ *Submission 13*, p. 2.

¹¹ *Committee Hansard*, 12 October 2015, p 10

¹² *Submission 6*, p. 1.

¹³ *Committee Hansard*, 12 October 2015, p 10

*involved in strategy, ... it was an excellent board to have in a portfolio and certainly one that I look back on as a great training ground*¹⁴.

- 1.9 Ms Amy Mullins, Executive Director, Women's Leadership Institute Australia, also commented along this line, noting that *'that experience on a government board can be a valuable stepping stone from men and women seeking to become professional company directors in the corporate sector.'*¹⁵
- 1.10 Similarly, the Equality Rights Alliance sees that greater gender equality on government boards will directly *'increase women's representation, participation and leadership in the public domain'* and that government boards are an opportunity for the Federal Government to lead by example on increasing women's leadership and participation.¹⁶
- 1.11 It is our view that government boards can play a vital role in this regard, particularly in response to those who claim a lack of experienced female non executive directors is the reason for the significant and marked gender imbalance we see on Australian boards today.

The private sector in desperate need for leadership

- 1.12 The hearing heard of the 'bleak picture' painted in the Credit Suisse Research Institute report of 2014, titled *The CS Gender 3000: women in senior management*, which highlights that in Australia the level of women in senior management positions or on boards is much lower than other countries in our region, such as Indonesia or Malaysia.¹⁷
- 1.13 It is vital to note that the argument for gender balance on boards is not a superficial one; the research referenced earlier in this report clearly outlines that businesses with gender diverse boards perform better than those without.
- 1.14 Ms Carol Schwartz, Founding Chair of the Women's Leadership Institute Australia noted that *'(w)ith women making up 20.6 per cent of directors on ASX 200 company boards and men at 79.4 per cent, the corporate sector has a very long way to go to reach gender balance'* and that *'government can play,*

¹⁴ *Committee Hansard*, 12 October 2015, p 10

¹⁵ *Committee Hansard*, 12 October 2015, p 2

¹⁶ *Submission 13*, p. 2.

¹⁷ *Committee Hansard*, 12 October 2015, p 10

and does play, a very strong role in influencing change by establishing an even stronger pipeline of potential company directors and by setting an example for the corporate sector.’¹⁸

- 1.15 Ms Hewson reiterated the need for Government leadership on this matter, stating at the public hearing that *‘(d)espite a lot of talk over a long period of time, Australia is not doing well in increasing the number of females in executive positions in corporate Australia. I think passing this bill would send a very positive message.’¹⁹*
- 1.16 In the words of Ms Schwartz: *“why don’t we just put some heat into this ... let’s actually show our real support and put it into legislation”*.²⁰ It is Ms Schwartz’s view, and we agree, that *‘(t)he Australian Government Boards (Gender Balanced Representation) Bill 2015 would move the dial on government boards and have significant flow-on effects for listed company boards.’*
- 1.17 It is our belief that Australia is, quite simply, missing out on the performance and economic opportunities gender balanced representation provides.
- 1.18 Enshrining the existing Government policy – which was strongly supported in the Chair’s report – into legislation sends the strong message that the Government views gender equality as more than a token aspirational ‘nice-to-have’ target, but instead as an essential ingredient of good governance.
- 1.19 Passing this bill should be seen as a catalyst for much-needed change, both in the public and private sectors.

A deeper issue than worrying statistics alone

- 1.20 While it is the committees view that the business case for the bill relies solely on the decrease in female representation on Government Boards reported for 2013-14 and 2014-15²¹, this does, with respect, rather miss the point.

¹⁸ *Committee Hansard*, 12 October 2015, p 2

¹⁹ *Committee Hansard*, 12 October 2015, p 10

²⁰ *Directors argue for more women on boards, but against quotas*, *The Australian*, 6th August 2015

²¹ *Chair’s Report*, Senate Finance and Public Administration Legislation Committee, Australian Government Boards (Gender Balanced Representation) Bill 2015, p. 12, 1.46 & 1.47

- 1.21 The committee excuses this downward trend by equating it to ‘change and transitions within portfolios and across government, which have impacted on the makeup of Australian Government boards and the rationalisation of the number of boards’.²²
- 1.22 Senator Gallagher, however, highlighted that this explanation is not entirely accurate, revealing at the public hearing that *‘the reduction of women has been more than the reduction of men... male appointments have been maintained to a greater degree than the women even though there was a reduction.’*²³
- 1.23 But the case for establishing a sustainable model for the policy of gender balance for Government boards in legislation reaches far beyond this worrying decrease. As Ms Hewson illustrated, the current policy is not achieving its aims: *‘the bipartisan policy of 40-40-20 and its accompanying reporting arrangements do not appear to have the support of, nor be taken seriously by, a number of government ministers. Even after five years, there are still nine of the 18 portfolios currently not meeting the targets and two portfolios remain under 30 per cent for female representation.’*²⁴
- 1.24 In particular, the exchange between Senator Waters and Ms Mullins during the public hearing highlighted that the status quo is not enough, and that vigilance must be maintained:

Senator WATERS: ... why do you think that—even though we have had a commitment to this non-legislative target to date, which this bill seeks to legislate—in the last two years, under the figures just most recently released, have we gone backwards on the overall number of woman on boards and, in particular, the number of female chairs or deputy chairs?

Ms Mullins: I believe, and it has been our experience watching other sectors, that you need to be vigilant about maintaining successes that happen. ... I think the main problem is that it (the policy) is aspirational and, where things have worked and where momentum has been maintained was when targets were instituted and they had teeth. ... I believe the ASX has implemented, what they could call ‘targets with teeth’ quite successfully recently in terms of their executive management team. I think the bill is important because it actually follows that next step to say: ‘We’ve had it (the

²² *Chair’s Report*, Senate Finance and Public Administration Legislation Committee, Australian Government Boards (Gender Balanced Representation) Bill 2015, p. 12, 1.46

²³ *Committee Hansard*, 12 October 2015, p 25

²⁴ *Committee Hansard*, 12 October 2015, p 9

policy) in for five years. We've made some progress, but not enough has changed. What is the corporate sector doing? What is the next logical step for us to take that still maintains the flexibility and ease of implementation of the policy itself.'²⁵

- 1.25 The public hearing also uncovered inadequacies in the reporting framework of the existing policy: for example, the current report does not provide a breakdown of new appointments by chair and deputy chair broken down by each department²⁶. The bill would introduce these requirements, as well as consistency in the data and how it is reported, which would address the issue of changing formats over the years.
- 1.26 Particularly of note is the fact that formatting changes have led to the data on the percentage of men on boards being dropped from the annual report completely²⁷.
- 1.27 While the committee acknowledges this in the Chair's report, stating that '*(i)n the committee's view, the 2013-14 Report provided more details on the context of the 40:40:20 policy and a more expansive explanation of the measures that the government are investing in order to assist portfolios to meet the targets (compared to the 2014-2015 Report)*'²⁸, it does not offer solutions on how this might be remedied without passing the bill.
- 1.28 In short, the bill will ensure that reporting against the 40:40:20 target doesn't erode further and will require '*each portfolio department to prepare a report each financial year, setting out the gender composition of each Government board within that portfolio. Further, the Minister for Women must then publish that information in a consolidated report, to be tabled in Parliament.*'²⁹
- 1.29 It is our view that the need for a 'legislative seatbelt' has been clearly proven. While the existing policy is supported by the current Government, it does not prevent against future governments paying lip service to the policy and allowing what gains have been achieved to slide further backwards.

²⁵ *Committee Hansard*, 12 October 2015, p 4

²⁶ *Committee Hansard*, 12 October 2015, p 26

²⁷ *Committee Hansard*, 12 October 2015, p 25

²⁸ *Chair's Report*, Senate Finance and Public Administration Legislation Committee, Australian Government Boards (Gender Balanced Representation) Bill 2015, p. 12, 1.48

²⁹ Explanatory Memorandum, p. 2.

- 1.30 It is also unclear how the current policy interacts with the recruitment process and the operation of board appointments. This was outlined in an exchange during the public hearing between Acting First Assistant Secretary, Department of the Prime Minister and Cabinet, Mr Troy Sloan and Senator Xenophon³⁰:

Senator Xenophon: [A]re there any guidelines ministers should follow, either generally or within each department, to engage in a transparent recruiting process?

Mr Sloan: That is set out in the cabinet handbook that is available on the PM&C website.

Senator Xenophon: It is in the cabinet handbook—it sets out the level of transparency required?

Mr Sloan: I have it here in front of me. It is on page 22 of the cabinet handbook.

Senator Xenophon: So page 22 has the relevant criteria, and that applies to all departments?

Mr Sloan: Correct. All portfolios.

Senator Xenophon: Can you tell us ... what it actually says?

Mr Sloan: The minister needs to confirm several things, including the appropriateness of the expertise that the person brings; the qualifications; the experience; whether it is consistent with any applicable legislation; and whether due regard to gender balance been paid—that is part of it.

Senator Xenophon: Is there any definition of 'due regard'? Is that the wording—'due regard'?

Mr Sloan: 'Due regard' is the wording. I do not know if there is a definition. I am not sure if there is. 'I do not think so' is the answer.

Senator Xenophon: I am happy for you to take that on notice.

Answer to Question on Notice: There is no definition of due regard in the Cabinet Handbook.³¹

³⁰ *Committee Hansard*, 12 October 2015, p 26

³¹ *Questions on Notice – Department of the Prime Minister and Cabinet*, Senate Finance and Public Administration Legislation Committee, Australian Government Boards (Gender Balanced Representation) Bill 2015

- 1.31 The bill provides a solution to these deficiencies in the current policy by outlining how these measures should interact with recruitment and appointments. It requires an explanation as to why the 40:40:20 target could not be met under 'extraordinary circumstances'. The Explanatory Memorandum (EM) clearly outlines what constitutes reasonable efforts to achieve the gender balance targets, eliminating ambiguity and ensuring equality and transparency, through a clear list of practical steps:

For the purposes of this bill, extraordinary circumstances may be considered to have occurred when the Government appointer can demonstrate that reasonable efforts have been made to find a candidate of the appropriate gender, and despite these efforts it has not been possible to appoint a suitable candidate of the necessary gender to meet the requirement of at least 40 per cent men and at least 40 per cent women on the relevant Government board.

For these purposes, reasonable efforts would include where all of the following steps have been taken:

- a. the board vacancy has been advertised and/or there has been a call for expressions of interest in the board position;*
- b. relevant government databases such as AppointWomen or BoardLinks have been searched for potential candidates;¹⁷*
- c. a gender balanced shortlist of candidates has been compiled;*
- d. candidates have been interviewed that reflect the gender balanced shortlist; and*
- e. each candidate has been evaluated against a consistent set of selection criteria.³²*

- 1.32 Ms Mullins reiterated the importance of a clear set of guidelines and transparency around appointments, stating at the public hearing '*the bill starts to have a conversation about ... having guidelines that suggest to appointers what might be the best process to take when recruiting and to increase the transparency around appointments. I think that is particularly critical. The Victorian government has a very clear set of guidelines for appointers which allows for that transparency of process and, obviously, they are doing*

³² Explanatory Memorandum, p. 4.

*extremely well with their aim to have 50 per cent of all new appointments to be women and 50 per cent men.*³³

- 1.33 As highlighted at the public hearing; ‘(n)etworks, unconscious bias and exposure and opportunity for women are the top three barriers for greater female participation or greater gender diversity³⁴. The bill provides a clear set of guidelines and encourages transparency around appointments to create an environment that can expose unconscious bias and increase gender balance.

Conclusion

- 1.34 The aim of this bill is to increase gender balance on government boards. It does this by implementing an existing policy that was introduced under the Gillard Government and, as the Chair’s report acknowledges, is strongly supported by the current Government. It creates a positive obligation to meet the currently aspirational target of 40:40:20 gender balanced representation. The debate about whether or not this bill imposes a “quota” is a matter of semantics. It includes a generous exception to the obligation to achieve the 40-40-20 target where a government appointer can show that they have made reasonable efforts to meet the target but have not been able to do so. We anticipate that these situations will be rare. The bill provides a useful, practical and robust framework to ensure the bipartisan 40:40:20 target is met.
- 1.35 The Turnbull Government has taken significant steps to establish its position as inclusive, balanced, and supportive of women in leadership positions. The Opposition has likewise reaffirmed its support for gender balance, the bipartisan 40:40:20 policy and the intent of this bill. If the Government cannot and will not support this legislation alongside the cross-bench representatives and the Opposition, we would be interested to see what positive steps it intends to take in this regard beyond the measures it currently has in place. In particular, addressing concerns relating to the recruitment process would be beneficial, and we would suggest looking at the Victorian Government’s appointment procedure and guidelines³⁵ as well as the supporting toolkit by the Victorian Public Sector Commission as an example of best practice.³⁶

³³ *Committee Hansard*, 12 October 2015, p 3

³⁴ *Committee Hansard*, 12 October 2015, p 5

³⁵ *Appointment and Remuneration Guidelines*, Department of Premier and Cabinet, State Government of Victoria, October 2015.
<http://www.dpc.vic.gov.au/index.php/policies/governance/appointment-and-remuneration-guidelines>

³⁶ *Recruitment and Appointment Toolkit*, Victorian Public Sector Commission, March 2015.
<http://vpssc.vic.gov.au/resources/recruitment-and-appointment-to-the-board-toolkit/>

1.36 In short, to support the existing policy is to support this legislation. There is no reason to vote against it but, as this inquiry has shown, there are countless reasons to support it.

Recommendation 1

1.37 That the Bill be passed.

Senator Nick Xenophon

**Senator Katy Gallagher
Deputy Chair**

Senator Jacqui Lambie

Senator Claire Moore

Senator Glenn Lazarus

Senator Larissa Waters

APPENDIX 1

Submissions and additional information received by the committee

Submissions

- 1 ASX
- 2 Security4Women Incorporated
- 3 Australian Human Rights Commission
- 4 Women on Boards
- 5 Women's Leadership Institute Australia
- 6 Community and Public Sector Union CPSU
- 7 YWCA Canberra
- 8 Property Council of Australia
- 9 Dr Karen Morley
- 10 Ms Jane Alver
- 11 Chief Executive Women
- 12 Australian Institute of Company Directors
- 13 Equality Rights Alliance
- 14 National LGBTI Health Alliance

Answers to Questions on Notice

- 1 Answers to questions taken on notice from Canberra public hearing, 12 October 2015, provided by Department of the Prime Minister and Cabinet, received 22 October 2015

APPENDIX 2

Public hearing

Monday, 12 October 2015

Senate Committee Room 2S1

Parliament House, Canberra

Witnesses

Women's Leadership Institute Australia

Ms Carol Schwartz AM, Founding Chair

Ms Amy Mullins, Executive Director

Ms Carolyn Hewson, Private capacity

Institute of Public Affairs Australia

Dr Mikayla Novak, Senior Fellow

Office for Women, Department of the Prime Minister & Cabinet

Mr Troy Sloan, Acting First Assistant Secretary, Social Policy Division

Ms Donna-Jean Nicholson, Acting Assistant Secretary, Office for Women

