



## National LGBTI Health Alliance

Health and wellbeing for lesbian, gay, bisexual, trans, intersex (LGBTI) people and sexuality, gender, and bodily diverse people and communities throughout Australia  
PO Box 51 Newtown NSW 2042

Executive Director: Rebecca Reynolds

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Committee Secretary  
Senate Finance and Public Administration Committees  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
*Sent via email to [fpa.sen@aph.gov.au](mailto:fpa.sen@aph.gov.au)*

Dear Committee Secretary

### **RE: Inquiry into Australian Government Boards (Gender Balanced Representation) Bill 2015**

The National LGBTI Health Alliance is pleased to make a submission to the Senate Finance and Public Administration Committees for the Inquiry into Australian Government Boards (Gender Balanced Representation) Bill 2015 (subsequently described as 'the Bill').

#### **About the National LGBTI Health Alliance**

The Alliance is the national peak body of organisations and individuals working to improve the health and wellbeing of lesbian, gay, bisexual, trans, and intersex (LGBTI) people and sexuality, gender, and bodily diverse people and communities throughout Australia. We support measures that contribute to improved health and wellbeing for all LGBTI people in Australia.

Formed in 2007, the Alliance includes the major providers of services for LGBTI people in Australia, with organisational members from each State and Territory. The Alliance provides a representative national voice to: develop policy and to support LGBTI health issues; seek increased commitment to services for LGBTI people; develop the capacities of LGBTI organisations; and support evidence-based decision-making through improved data collection covering sexuality, relationships, genders, and bodies.

#### **Privacy and anti-discrimination concerns regarding the Bill**

We have major privacy and anti-discrimination concerns regarding the Bill. This legislation is likely to have a disproportionately negative impact on the Australian Government board representation of women and men of trans experience, people of non-binary experience (i.e., people who do not identify as either women or men), and intersex people (i.e., people born with gonadal, genital, hormonal, and/or genetic characteristics that are not considered stereotypically 'female' or male').

We are concerned that the Bill requires Commonwealth officials to make Government Board appointments that ensure that each board is made up of at least 40 percent men and at least 40 percent women. This functional definition of 'gender balance' as stated in the Bill falsely assumes all people are either women or men and that such determinations can be accurately and reliably determined by third parties. The Bill also makes no provision for the inclusion of people who do not identify as either women or men, and who are explicitly protected from direct and indirect discrimination under the [gender identity provisions of the Sex Discrimination Act 1984](#). We note that there is no exemption in the Act that would permit direct or indirect discrimination against this population in the administration of Australian Government boards.



The Bill specifies neither how gender will be determined for the purposes of ensuring ‘gender balance’ nor the provisions that will be made when a member of an Australian Government board obtains recognition for a current gender after having been counted as a previous gender on the board. For example, if a person’s gender for the purposes of board administration is determined based on one or more of their perceived or actual physical characteristics, this will create predictable barriers to board inclusion for intersex people and for people of trans and/or non-binary experience. Thus in its current form, the Bill does not adequately safeguard against the potential for discrimination on the basis of gender identity or intersex status.

The Bill would also require each portfolio department to prepare a report each financial year, setting out the gender composition of each Government board within that portfolio, which will later be published in a consolidated report by the Minister for Women, with the report to be tabled in Parliament. No provisions have been specified for how the privacy of people who have served on an Australian Government board in a previous gender will be protected. In its current form, the Bill appears to require gender representation on Australian Government boards to be published and available in a way that raises unique safety concerns for board members at risk for discrimination and violence on the basis of gender identity and intersex status. Given that the Australian Government’s collection, use, storage, and disclosure of personal information about sex and gender is regulated by the Information Privacy Principles in the *Privacy Act 1988*, it is essential for the Bill to address these privacy concerns.

In paragraph(2)(e), the shortlisting of candidates is specified as occurring based on ‘gender balance’. Yet misgendering (i.e., misattribution of a person’s own understanding of their gender) frequently occurs on the basis of assumptions about people’s names, gender histories, visual appearance, voice, and physical characteristics. Given the frequent and widespread experiences of misgendering reported to us by our members, we are concerned that this attempt to ‘gender balance’ when shortlisting candidates is likely to result in discrimination. We are concerned that advertisement of board vacancies and calls for expressions of interest will mention only women and men. Research documents how gender-associated language in job advertisements can affect perceptions of and deter potential applicants (e.g., Askehave & Zethsen, 2014; Gaucher, Friesen, & Kay, 2011; McNab & Johnston, 2002). These findings indicate that board position advertisements that reference only binary (woman and man) genders are likely to result in fewer applications from people at risk for discrimination on the basis of gender identity or intersex status. Given that interviews will be granted based on this ‘gender-balanced’ shortlist, we are concerned about the likely disadvantage to applicants with a trans and/or non-binary experience and intersex applicants who experience misgendering. We note that the binary framing of gender as referring only to women or men and the lack of clarity regarding whether people’s self-determined genders will be respected are aspects of the Bill that appear inconsistent with federal anti-discrimination protections on the basis of gender identity and intersex status.

The [Australian Government Workplace Equality Agency](#) acknowledges that the achievement of gender equality in the workplace in terms of broadly equal outcomes requires: workplaces to provide all people with equal pay for work of equal or comparable value; the removal of barriers to full and equal workforce participation, access to all occupations and industries, including leadership roles; and the elimination of discrimination on the basis of gender and family and caring responsibilities. Although the AGWEA website as of the date of this submission describes gender equality solely in terms of women and men, these principles also apply to workplace equality on the basis of the federally protected categories of gender identity and intersex status.

It would be deeply unfortunate if a Bill intended to redress one type of gender imbalance had the unintended result of legislating other forms of gender imbalance and contributing to direct or indirect discrimination on the basis of gender identity or intersex status. Thus we recommend careful consideration of the privacy and anti-discrimination concerns we have raised and would welcome further discussion with the Committee regarding how to adequately address these concerns.

### **Conclusion**

Based on our concerns about the Australian Government Boards (Gender Balanced Representation) Bill 2015, **we recommend that the Australian Government revise the wording of the Bill to adequately address the privacy and anti-discrimination concerns we have raised in this submission.**

As the peak LGBTI health organisation in Australia, we thank you for taking the time to consider our concerns about how to address gender equity on Australian Government boards. We encourage you to contact the Alliance's Research and Policy Manager, Dr Gávi Ansara, to discuss the issues identified in this submission.

Yours sincerely

Rebecca Reynolds  
EXECUTIVE DIRECTOR

### **REFERENCES**

Askehave, I., & Zethsen, K. K. (2014). Gendered constructions of leadership in Danish job advertisements. *Gender Work & Organization*, 21(6), 531-545.

Gaucher, D., Friesen, J., & Kay, A. C. (2011). Evidence that gendered wording in job advertisements exists and sustains gender inequality. *Journal of Personality and Social Psychology*, 101(1), 109-128. doi: 10.1037/a0022530

McNab, S. M., & Johnston, L. (2002). The impact of equal employment opportunity statements in job advertisements on applicants' perceptions of organisations. *Australian Journal of Psychology*, 54(2), 105-109.