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2 October 2015

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

Email: fpa.sen@aph.gov.au

Dear Sir/Madam

The Australian Institute of Company Directors (AICD) would like to take this opportunity to make a further submission with respect to the *Australian Government Boards (Gender Balanced Representation) Bill 2015* (the Bill).

As noted in our previous submission, the AICD supports the objective of increasing representation of women on Government boards. We consider it appropriate that governments establish targets to promote gender diversity on government boards to be implemented through policy and practice. We note that the federal government policy, introduced in 2010 and maintained with bipartisan support, establishes a gender diversity target for government boards of 40 per cent men, 40 per cent women, and 20 per cent to be made up of either gender.

The AICD supports effective policies to improve and strengthen gender diversity on government boards. In this regard, we recently wrote to Prime Minister Turnbull to encourage a recommitment to the gender diversity policy in government appointments and offered our support for programs and initiatives to achieve this outcome.

With respect to the Bill, the AICD considers the better approach is to recognise the government's existing target and for this to be supported by clear disclosure obligations.

It is our understanding that the intention of the Bill is to strengthen the existing policy target and not to introduce a quota. To this end, we propose that the Bill be amended (see attached) to remove ambiguity while achieving this outcome by focusing on targets, accountability and disclosure.

The AICD also supports greater transparency and disclosure on the performance of government boards against the government's gender diversity policy target as proposed by the Bill. As we have previously advised, we consider the ASX Corporate Governance Council's Corporate Governance Principles and an 'if not why not' model of disclosure an appropriate starting point for this enhanced transparency.

The AICD would support the Bill if it was amended to this effect.

Yours sincerely

JOHN BROGDEN
Managing Director & Chief Executive Officer

2013-2014-2015

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

Australian Government Boards (Gender Balanced Representation) Bill 2015

No. , 2015

(Senators Xenophon, Lambie, Lazarus and Waters)

**A Bill for an Act to require Government board
members to be appointed with regard to **ensuring**
gender balanced representation, and for related
purposes**

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Part 1 Preliminary

Section 3

3 Simplified outline of this Act

~~This Act requires Commonwealth officials making appointments to Government boards to ensure that each board is made up of at least 40% men and at least 40% women.~~

This Act ~~also~~ requires each portfolio Department to prepare a report each financial year setting out information relating to the gender composition of Government boards within that portfolio, including disclosure of whether each Government board is made up of at least 40% men and at least 40% women.

The Minister must then publish a consolidated report setting out the statistics regarding gender composition across all Government boards.

4 Definitions

In this Act:

Australia, when used in a geographical sense, includes the external Territories.

board member means a member of a Government board, and includes the chair of the board (if any).

Cabinet includes a committee of the Cabinet.

gender balanced board means a Government board that consists of:

(a) at least 40% male board members; and

(b) at least 40% female board members.

Government appointee means a person who is appointed to a Government board by a Government appointer.

Government appointer means any of the following to the extent that the person or body is responsible for appointing an individual to a Government board:

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Preliminary **Part 1**

Section 5

- (a) the Governor-General;
- (b) the Cabinet;
- (c) a Commonwealth Minister;
- (d) a Secretary of a Department of State.

Government board means the following:

- (a) a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*);
- (b) a Ministerial advisory committee;
- (c) a review committee that is comprised entirely of appointments made by a Minister or the Cabinet;
- (d) a Commonwealth statutory authority.

5 Crown to be bound

This Act binds the Crown in right of the Commonwealth.
However, it does not bind the Crown in right of a State, of the Australian Capital Territory, of the Northern Territory or of Norfolk Island.

6 Extension to external Territories

This Act extends to every external Territory.

Part 2 Gender balanced representation on Government boards – reporting requirements

Section 7

**Part 2—Gender balanced representation on
Government boards – reporting
requirements**

~~**7 Government boards must be gender balanced**~~

~~———— (1) When appointing a Government appointee to a Government board,
a Government appointer must ensure that the Government board
consists of:~~

~~———— (a) at least 40% male board members; and~~

~~———— (b) at least 40% female board members.~~

~~*Exceptions*~~

~~———— (2) Subsection (1) does not apply to the following:~~

~~———— (a) appointments to a court or tribunal;~~

~~———— (b) appointments which must be made on the basis of a
nomination by a non-Government third party (including a
State or Territory, or a foreign country);~~

~~———— (c) appointments that a Commonwealth law requires a particular
individual or office holder to hold;~~

~~———— (d) appointments to a Government board where:~~

~~———— (i) the maximum number of board members is 4 or less; or~~

~~———— (ii) the maximum number of board members means it is not
mathematically possible for the requirement to be
complied with;~~

~~———— (e) where there are extraordinary circumstances that mean that it
is not reasonably practicable for the Government appointer to
comply with the obligation in relation to a particular
appointment.~~

~~Example 1: In relation to paragraph (2)(c) — an Act may require that the Secretary
of a Department also be the chair of a particular board.~~

~~Example 2: In relation to paragraph (2)(d) — if a Government board has 3 members
(2 female board members and 1 male board member) it is not~~

Gender balanced representation on Government boards – reporting requirements **Part 2**

Section 7

1 ~~mathematically possible for both of the requirements in subsection (1)~~
2 ~~to be met.~~
3 ~~—— (3) If paragraph (2)(d) or (e) applies, the Government appointer must~~
4 ~~ensure that the Government board consists of a balance of male~~
5 ~~and female board members that complies with the requirements of~~
6 ~~subsection (1) to the greatest extent possible.~~

Part 3 Reporting requirements

Section 87

~~Part 3—Reporting requirements~~

~~87~~ Annual report on gender composition

- (1) The Secretary of a Department of State must, no later than 30 days after the end of each financial year, prepare a report on the gender composition of the Government boards in the Department's portfolio.
- (2) A report under subsection (1) must be given to:
- (a) the Minister; and
 - (b) if the Minister responsible for administering the Department to which the report relates is another Minister—that other Minister.
- (3) A report under subsection (1) must include the following:
- (a) a list of all the Government boards in the portfolio;
 - (b) the number of positions on each Government board, including information regarding any requirements as to the minimum or maximum number of board members;
 - (c) the gender composition of each Government board, expressed as both an aggregate and a percentage, as at:
 - (i) the end of the financial year; and
 - (ii) the end of the 3 previous financial years;
 - (d) if at the end of the financial year any Government board in the portfolio is not a gender balanced board, there have been any appointments during the financial year in relation to which the Government appointer has not complied with section 7—the particulars as to why the Government appointer did not comply with that section this is the case and the steps being taken by the Government appointer to achieve a gender balanced board in the future;
 - (e) the total number of Government appointees appointed during the financial year:
 - (i) as board members (other than the chair of a board); and

Reporting requirements **Part 3**

Section 87

- 1 (ii) as chair of a board;
- 2 (f) the aggregate gender of those Government appointees.
- 3 (4) A report under subsection (1) must not include:
- 4 (a) the name of a Government appointee; or
- 5 (b) in relation to any particulars included in the report in
- 6 accordance with paragraph (3)(d)—any information that
- 7 may:
- 8 (i) directly identify a Government appointee; or
- 9 (ii) directly or indirectly identify any other individual who
- 10 may have been considered by a Government appointer
- 11 for a board member position.
- 12 (5) The Secretary must include in the Department's annual report for
- 13 the financial year:
- 14 (a) ~~if at the end of the financial year any Government board in~~
- 15 ~~the portfolio is not a gender balanced board, the particulars as~~
- 16 ~~to why this is the case and the steps being taken by the~~
- 17 ~~Government appointer to achieve a gender balanced board in~~
- 18 ~~the future a statement of compliance setting out whether or~~
- 19 ~~not each appointment to each Government board in the~~
- 20 ~~portfolio during the financial year was in compliance with~~
- 21 ~~section 7; and~~
- 22 (b) ~~if section 7 was not complied with in relation to each~~
- 23 ~~appointment during the financial year—the particulars as to~~
- 24 ~~why the Government appointer did not comply with the~~
- 25 ~~requirements of that section in relation to the appointment;~~
- 26 ~~and~~
- 27 ~~(c) information regarding how the details of the portfolio's~~
- 28 ~~compliance board compositions can be accessed in the report~~
- 29 ~~tabled under section 98.~~
- 30 (6) Information included in the Department's annual report under
- 31 subsection (5) must not include:
- 32 (a) the name of a Government appointee; or
- 33 (b) in relation to any particulars included in the information in
- 34 accordance with paragraph (5)(b)—any information that
- 35 may:

Part 3 Reporting requirements

Section 98

- 1 (i) directly identify a Government appointee; or
2 (ii) directly or indirectly identify any other individual who
3 may have been considered by a Government appointer
4 for a board member position.

5 **98 Minister must prepare and publish compiled report**

- 6 (1) The Minister must prepare and publish a consolidated report on the
7 gender composition of Government boards in the previous
8 financial year.
- 9 (2) A report under subsection (1) must include the following:
10 (a) the information provided in each report under subsection
11 87(1);
12 (b) the total number of Government boards in each portfolio;
13 (c) the total number of positions on Government boards in each
14 portfolio;
15 (d) the gender composition of Government boards in each
16 portfolio, expressed as both an aggregate and a percentage, as
17 at:
18 (i) the end of the financial year; and
19 (ii) the end of the 3 previous financial years;
20 (e) the total number of Government appointees appointed during
21 the financial year:
22 (i) as board members (other than the chair of a board); and
23 (ii) as chair of a board;
24 (f) the aggregate gender of those Government appointees.
- 25 (3) The Minister must cause copies of a report under subsection (1) to
26 be tabled in each House of Parliament within 10 sitting days of that
27 House after the Minister has received all the reports under
28 subsection 87(1).
- 29 (4) A report under subsection (1) must not include:
30 (a) the name of a Government appointee; or

Reporting requirements **Part 3**

Section 98

- 1 (b) in relation to any particulars included in the report in
2 accordance with paragraph ~~87~~(3)(d)—any information that
3 may:
4 (i) directly identify a Government appointee; or
5 (ii) directly or indirectly identify any other individual who
6 may have been considered by a Government appointer
7 for a board member position.

Part 43 Miscellaneous

Section 109

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Part ~~43~~—Miscellaneous

~~109~~ Act is special measure

To avoid doubt, this Act is a special measure for the purposes of
section 7D of the *Sex Discrimination Act 1984*.