

Committee Secretary  
Joint Committee of Public Accounts and Audit  
PO Box 6021  
Parliament House  
Canberra ACT 2600

25 August 2023

Dear Committee Secretary,

We are a non-partisan coalition of national, state and territory-based women's and LGB groups concerned about the erosion of women's sex-based protections and rights and the impact of gender medicine on children and young people.

Our purpose in making this submission is to raise our concerns that the Department of Health and Aged Care (DOHAC) has compromised its capacity to administer certain grants and provide impartial advice to the Government on specific issues as a result of its participation in the Australian Workplace Equality Index (AWEI).

We note and commend the recommendations of the Auditor General – along with the responses provided by DOHAC – to improve DOHAC's financial and ethical governance of community health programs. These include addressing the adequacy of evidence underpinning advice DOHAC provides to the Government. But much remains to be done to ensure an impartial, apolitical, and professional public service that provides the Government advice that "is frank, honest, timely and based on the best available evidence" (APS Values, *Public Service Act 1999*).

### **The Australian Equality Workplace Index (AWEI)**

The committee may be familiar with the AWEI through reading agencies' annual reports to Parliament. Participating agencies attach substantial importance to their success in the scheme, which sees them awarded tier status and celebrated at gala events. In the case of the Department of Health and Aged Care, recent annual reports note:

Department of Health and Aged Care, annual report 2019/20

*The Department continues to participate in the annual Australian Workplace Equality Index (AWEI), which is the national benchmark for Lesbian, Gay, Bisexual, Transgender and Queer/Questioning (LGBTQ) workplace inclusion in Australia. In June 2020, the Department retained Bronze Employer tier status, with a total score of 122 out of 200. The Department missed achieving Silver Employer tier status by only a few points, and will further align with the AWEI as we continue to mature through implementation of our LGBTI+ Action Plan 2020–22. This continuous improvement demonstrates a sustained commitment to workplace inclusion for people of diverse sexual orientations and genders.*

Department of Health and Aged Care, annual report 2020/21

*The Department is committed to measuring its progress in pursuing greater inclusivity. The Department participated in the annual Australian Workplace Equality Index (AWEI), which is the national benchmark for LGBTQ workplace inclusion in Australia. In June 2021, the Department retained Bronze Employer tier status. The Department missed achieving Silver Employer tier status by only a few points, and will continue to mature through implementation of our LGBTI+ Action Plan 2020–22. This continuous improvement demonstrates a sustained commitment to workplace inclusion for people of diverse sexual orientations and genders.*

Department of Health and Aged Care, annual report 2021/22

*The Department is committed to measuring its progress in pursuing greater inclusivity. In June 2022, the Department achieved Silver Employer tier status for the*

*first time in the 2021–22 Australian Workplace Equality Index (AWEI), which is the national benchmark for LGBTQ workplace inclusion in Australia. This improvement demonstrates a sustained commitment to workplace inclusion for people of diverse sexual orientations and genders.*

Committee members may also be aware that the AWEI is the initiative of ACON, an LGBTQ advocacy group based in New South Wales.<sup>1</sup> ACON advocates for a range of policies in relation to workplace inclusion – such as the establishment of gender-neutral toilets and facilities in the workplace, gender affirmation leave, the promotion of pronouns and other identity markers in staff communication. ACON is also a high profile advocate for a range of legislative and policy changes, many of which engage DOHAC’s specific public functions, including Medicare and PBS coverage of ‘gender affirming’ surgery and hormones and for community financial grants.<sup>2</sup>

### **So, what’s the problem?**

The *Public Service Act 1999* sets out that the Public Service is *impartial*:

*The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.*

Putting aside for a moment the issue of workplace inclusion, DOHAC’s striving to win points under the AWEI creates an irreconcilable conflict of interest so that Australians cannot know if DOHAC’s policy advice to the Government on areas of interest to ACON is based on the “best available evidence” or is designed to win points under the AWEI scheme.

What DOHAC’s annual reports fail to acknowledge, but is of relevance to this committee, is that the AWEI scheme does not simply relate to participants’ workplace inclusion policies. On the contrary, the scheme requires participants to provide evidence to the standards required by ACON of their public functions – their “outward facing policies and customer services.”<sup>3</sup> In DOHAC’s case, DOHAC’s outward facing policies are by definition public health policies and customers are the Australian citizens and residents who are dependent on our health care system.

Information DOHAC has released under FOI<sup>4</sup> has confirmed that in 2021/22 – the year DOHAC achieved silver tier status under the AWEI for the first time – DOHAC claimed and secured points under the scheme for providing funding for ACON-endorsed initiatives QLife, MindOUT!, and LGBTIQ+ Health Australia, as well as for administering the Health Peak and Advisory body grant programs, for sponsoring specific conferences (including LGBTI Aged Care and “Health In Difference”) and for de-gendering public facing documents (in 2021 removing the word ‘mum’ from pregnancy advice material).

We trust this committee will not misinterpret our concerns here. It is not that we object to DOHAC funding specific conferences and community grants in this area of health care. Nor do we oppose DOHAC consulting ACON: we believe APS agencies *should* consult community groups and others.

But the integrity of the process of APS agencies consulting advocacy groups and the maintenance of a level playing field for all stakeholders make it imperative that agencies avoid all actions and relationships that put them at the behest of such groups. This is the essence of APS impartiality. How are Australians to know that DOHAC administered specific grants in 2021 based on DOHAC’s consideration of the evidence of the programs’ efficacy,

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<sup>1</sup> [ACON website](#)

<sup>2</sup> See inter alia, [ACON pre-budget submission 2022-23](#), January 2022; ACON, [Gender affirming surgery evidence brief](#); ACON, [A blueprint for improving the health & wellbeing of the trans & gender diverse community in NSW](#)

<sup>3</sup> ACON, Pride In Diversity, AWEI, [AWEI: evidence and scoring guide](#), 2021

<sup>4</sup> Documents DOHAC released to us after we sought a review of DOHAC FOI 4058. Currently not on DOHAC disclosure log but available on request to us (or DOHAC).

efficiency, and economy – as DOHAC is legally required to do – or because DOHAC is striving for AWEI points to secure its silver tier AWEI status?

Unlike other similarly structured schemes,<sup>5</sup> ACON does not charge organisations to participate in the AWEI. We suggest this should serve as a red-flag that ACON expects – or may be seen to expect – a non-monetary return such as influence to recompense its commitment of time and resources. Separately, DOHAC has chosen to join Pride In Diversity (ACON’s employer support program) at an annual cost of \$6000 and for which it receives AWEI points. DOHAC has voluntarily funded ACON-sponsored events, including gala awards for which it can also claim AWEI points. DOHAC engages ACON to provide workplace training for which it also claims points.

The imperative of upholding APS impartiality extends to the advice an agency opts *not* to provide to the Government, just as it does to the advice it does provide. In this regard, we are deeply troubled that DOHAC – as confirmed by DOHAC in a response to an FOI inquiry<sup>6</sup> – has not sought to evaluate the ‘Standards of Care’ developed by AusPath (the Australian Professional Association for Trans Health) in partnership with ACON for “trans and gender diverse children and adolescents.” This is despite a growing body of expert opinion, and the view of health authorities in England, Finland, Norway, Sweden, France and Denmark that the evidence base for nearly identical standards is weak – especially in relation to the efficacy of puberty blockers and alternative approaches for treatment.<sup>7</sup> In fact DOHAC appears to have advised the Minister about these assessments only in a set of media talking points designed to discredit them.<sup>8</sup>

### **Beyond impartial grant administration and policy advice**

While this inquiry centres on the administration of grants, we believe that participation in the AWEI by DOHAC and other agencies raises questions about agency compliance with a range of other legal obligations. The AWEI asks participating organisations to provide the names and roles of LGBTQ members of their senior leadership teams.<sup>9</sup> While DOHAC may have secured the permission of currently serving individual SES officers to provide their names under the scheme, the practice creates pressure on others to ‘come out’ in the workplace in clear breach of the spirit and letter of Australian Privacy Principles (as set out in the *Privacy Act 1988*) as well as the *Sex Discrimination Act 1984*.

Insight from our female public servant members suggests the scheme also puts agencies in breach of legally mandated APS employment principles as well as obligations under the *Fair Work Act 2009* to provide meaningful consultation regarding workplace changes, such as the phasing out of single sex toilets. These women have advised us, however, that they are afraid to speak out about AWEI benchmarks given the importance their leadership attaches to its AWEI status.

### **The experience overseas**

We draw the attention of this committee to the experience of government bodies with similar schemes overseas. ACON based the AWEI on the Diversity Champions Workplace Index administered by the LGBT charity Stonewall in the United Kingdom.<sup>10</sup> However, after examining the workings of the Diversity Champions scheme, a growing number of

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<sup>5</sup> [Australian Network on Disability Access and Inclusion Index](#)

<sup>6</sup> DOHAC FOI reference FOI 4366

<sup>7</sup> Abbruzzese, E., Levine, Stephen B., Mason, Julia W. [The myth of 'Reliable Research' in pediatric gender medicine: A critical evaluation of the Dutch Studies—and research that has followed](#), *Journal of Sex and Marital Therapy*, 2 January 2023; *The Economist*, [The evidence to support medicalised gender transitions in adolescents is worryingly weak](#) 5 April 2023

<sup>8</sup> [FOI 4366 – Released Document – Email to Minister Butler’s Office](#) with quick points of gender dysphoria, use of puberty blockers, standards of care, the experiences of young people

<sup>9</sup> ACON, Pride In Diversity, AWEI, [2021 AWEI: evidence and scoring guide](#)

<sup>10</sup> ACON, Pride In Diversity, AWEI, [Welcome to the Australian Workplace Equality Index](#)

government bodies in the UK have chosen to withdraw to ensure they remained “impartial and independent at all times” and to avoid “conflict or risk of perceived bias.”<sup>11</sup> These bodies include the UK Department of Health and Social Care, the Equalities and Human Rights Commission, the Cabinet Office, the Department of Work and Pensions, and Ofcom (the Office of Communications).<sup>12</sup> The BBC has also withdrawn, noting that membership raised questions about whether it could be “impartial when reporting on public policy debates where Stonewall is taking an active role.”<sup>13</sup> A number of UK universities have also withdrawn.<sup>14</sup>

Though they are not the focus of this inquiry, we note that many other APS agencies participate in the AWEI. We believe – and in some instances our FOI inquiries have confirmed – that these agencies may have compromised their capacity to provide impartial advice in policy areas where ACON is also active. We assess the ABC and SBS,<sup>15</sup> along with some of our ‘Group of Eight’ universities and others, have similarly compromised their impartiality and independence.

### Our recommendations

We commend the work of this inquiry into probity and ethics in the Australian Public Sector. We urge you to recommend that DOHAC and other participating agencies withdraw from the AWEI scheme so that Australians can have confidence that these agencies act impartially in all matters relating to the administration of public funds and in providing advice to the Government.

We hope you can also recommend that the Australian Public Service Commission and the Australian National Audit Office fulfil their proper role in ensuring agencies understand and implement APS values, notably the value of impartiality in the provision of honest, frank, and timely advice to the Government based on the best available evidence. A relationship such as that which agencies have constructed with ACON through the AWEI is incompatible with these values.

We stand ready to provide further information to the Committee should it so request. Please feel free to contact us at [womensactionall@gmail.com](mailto:womensactionall@gmail.com).



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<sup>11</sup> Ofcom, [Ofcom statement on Stonewall's Diversity Champions](#), 25 August 2021

<sup>12</sup> Tom Pyman, [Government's Legal Department DROPS Stonewall Diversity Champions scheme after backlash over the LGBT rights charity's controversial practices](#), *Mail Online*, 12 August 2022; Jo Bartosch, [Department for Work and Pensions abandons Stonewall diversity plan](#), *The Times*, 20 June 2022; Ewan Somerville, [Exodus over transgender advice continues as Government pulls out of Stonewall diversity training. Whitehall cuts ties over growing fears that the LGBT charity's workplace policies are at odds with the 2010 Equality Act](#), *The Telegraph*, 17 June 2021

<sup>13</sup> [BBC statement on Stonewall Diversity Champions Programme](#), 10 November 2021

<sup>14</sup> Chris Parr, [LSE ends affiliation with LGBTQ+ rights charity Stonewall](#), *Research Professional News*, 19 January 2023

<sup>15</sup> [ACON & the ABC](#), *Mediawatch*, 17 October 2022