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Dear Sirs,

Pre Budget Submission 2023

Who we are

Governance Institute of Australia is a national membership association, advocating for our network of 43,000 governance and risk management professionals from the listed, unlisted, public, and not-for-profit sectors.

As the only Australian provider of chartered governance accreditation, we offer a range of short courses, certificates, and postgraduate study. Our mission is to drive better governance in all organisations, which will in turn create a stronger, better society.

Our members have primary responsibility for developing and implementing governance frameworks in public listed, unlisted and private companies, as well as the public sector and not-for-profit organisations. They have a thorough working knowledge of the operations of the markets and the needs of investors. We regularly contribute to the formation of public policy through our interactions with Treasury, ASIC, APRA, ACCC, ASX, ACNC and the ATO.

We are a founding member of the ASX Corporate Governance Council. We are also a member of the ASIC Business Advisory Committee, the Modernising Business Registers Program Business Advisory Group, the ASX Business Committee and the ACNC Sector Users Group.

Our recommendations

The policies outlined below are critical to foster greater confidence in Australian capital markets, enhance the performance of Australian organisations, modernise the current regulatory infrastructure and reduce the burden of continually increasing legislative and regulatory compliance. Above all, Governance Institute's members believe that the policies outlined below have the capacity to improve Australia's productivity. For these reasons, they

should be factored into the budget deliberations.

Governance Institute recommends that the Government:

1. Adopts standardised, internationally aligned climate-related financial disclosure standards as a priority.
2. Ensures the competitiveness and efficiency of the financial markets by ensuring regulators have adequate legislative power to address any potential anti-competitive conduct in relation to post trade equity market clearing and settlement functions including the CHES Replacement Project.
3. Reforms the current outdated state and territory laws on charitable fundraising and includes company secretaries on the ACNC register to enhance productivity for the NFP sector.
4. Undertakes significant consumer centred privacy and data security framework reform.
5. Continues the reform of the whistle-blower protection regime by enacting stand-alone whistle-blower protection legislation, applicable to the private sector) and establishes a lead agency to undertake the whistle-blower protection role.
6. Maintains the momentum to update the Corporations Act to make it technology-neutral and shift it from its basis in a 'hard copy' 19th century world to a 21st century one as well as maintaining the impetus on the reform of other Treasury portfolio laws to also make them technology neutral.
7. Continues funding for the Modernising Business Registers Project and includes company secretaries in the Director ID reforms.

We provide more detail on the following pages.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Megan Motto', written in a cursive style.

Megan Motto

CEO

1. Climate-related financial disclosure

As Treasury's December 2022 Consultation Paper notes, climate change is recognised internationally as a material risk to the global financial system.¹ An important tool to manage both individual and systemic climate-related financial risks is the disclosure of these risks. Governance Institute supports a global approach to the development of sustainability, particularly climate-related financial disclosure standards and has also expressed strong support for the International Sustainability Standards Board (ISSB) being the global body to issue these standards.² Governance Institute is encouraged that the implementation of these standards in Australia is actively under consideration.

When implementing these reporting requirements, the key steps are:

- Incorporating a climate first approach that recognises the climate risk to the Australian economy, the financial system and investors
- Scalable and practical implementation of best practice that incorporates a phased approach to adoption across entity types, sectors and/or sizes
- Inclusion of independent external assurance to lend credibility to sustainability information
- A consideration of our local legal context when implementing the ISSB standards in Australia, and
- Ensuring appropriate funding for the body or bodies charged with implementing the Standards in Australia.

Governance Institute recommends the adoption of standardised, internationally aligned climate-related financial disclosure standards in Australia as a priority and that the body or bodies charged with implementing these Standards in Australia be appropriately funded to carry out this work.

2. Post trade clearing and settlement functions including the CHES replacement project

The CHES System is a key part of Australia's financial markets infrastructure. Governance Institute has been actively involved in the CHES Replacement Project (CHES Replacement) for some years and has engaged with ASX and other industry participants on behalf of its members.

The pausing of this Project by ASX in November 2022 has been a source of concern to regulators and other market stakeholders. Our members consider it vital that the current CHES system functions effectively so that it can continue to service the market reliably, and

¹ See Consultation Paper, *Climate-related financial disclosure*, Treasury December 2022 at page 5.

² See [Peak Australian Bodies Submission](#) to the International Sustainability Standards Board, 15 July 2022.

that CHES Replacement Project is brought back on track so ASX's commitment to deliver safe and reliable clearing and settlement infrastructure is fulfilled.

The pausing of the Project provides an opportunity for consideration of the regulatory framework for Australian post-trade clearing and settlement facilities.

In 2015 the Council of Financial Regulators (COFR) and the Australian Competition and Consumer Commission (ACCC) provided advice to the Federal Government that proposed the introduction of rule-making and arbitration powers through which: ASIC would be given the power to enforce the regulatory expectations and set minimum conditions for competition in clearing and settlement services for cash equities and the ACCC would be given the power to arbitrate access disputes between parties for cash equity clearing and settlement services.

In March 2016, the Government announced its commitment to implement these legislative changes. These legislative changes have still not passed.

In our December 2019 submission to the Reserve Bank of Australia on financial market infrastructure reform, we expressed our support for competitive and efficient financial markets, particularly in the context of post-trade clearing and settlement facilities.³ We also expressed support for giving ASIC the power to make rules for clearing and settlement facility licensees to promote 'fair and effective provision of clearing and settlement facility services'.

This reform would be an important potential avenue for market stakeholders to seek ASIC's direct intervention if the CHES replacement Project produces unfair, monopolistic or inefficient service and market outcomes.

Given the demonstrated issues with the CHES Replacement our members also consider that it is vital that the regulators charged with oversight of this important initiative have adequate funding to carry out their role.

Governance Institute recommends the enactment of the reforms proposed by the ACCC and the COFR as a priority in line with the COFR's and ACCC's 2015 advice. We also recommend that the regulators charged with oversight of this important initiative have adequate funding to carry out their role.

3. Enhance productivity of charitable and NFP sector

- **#FixFundraising**

We are a founding member of the #fixFundraising coalition, which has consistently advocated for nationally consistent, principles-based regulation of charitable fundraising. We welcomed the Minister's declaration in October 2022 that a framework for national consistency on charitable fundraising has been agreed, but as of the date of this submission, no further detail has been released and charitable fundraising laws remain a mess. At a time

³ See [Submission to Consultation Paper on Financial Market Infrastructure Regulatory Reforms](#), CHES Replacement Stakeholder Group, 20 December 2019.

when the charitable sector has been under sustained stress for many years as a result of bushfires, COVID-19 and floods, it needs to have certainty and simplicity around one of its key sources of income.

The potential benefits that could flow from unified and harmonised fundraising regulation have never been more urgent. We therefore reiterate that there are three core things that need to happen to improve the NFP sector fundraising. These are:

- A single point of registration.
 - i. If a charity is registered with the Australian Charities and Not-for-profits Commission (ACNC) and complying with its requirements, it should not have to apply for an authority to fundraise in every state and territory.
- Single set of rules to help ensure ethical fundraising practice.
 - ii. Seven different sets of fundraising laws are not workable, particularly because most fundraising does not happen within state borders. Much fundraising is now conducted online - a shift that is being hampered by outdated laws. There are too many layers of regulation and too much inconsistency.
- Single place of reporting – ‘report once, use often’ via the ACNC
 - iii. With this regime in place, fundraising charities would only be required once a year, to one regulator: the ACNC. Each state and territory need to align with the ACNC reporting and auditing thresholds, and remain aligned when the Federal government increases the current reporting tiers. Charities would report their compliance with the AFPs to the ACNC through the Annual Information Statement. It would be on the public register for donors and available to state and territory regulators.

- **Inclusion of the company secretary on the ACNC register**

The ACNC register should display the details of a charity’s company secretary, something for which Governance Institute has long advocated.

Our members consistently report to us the practical issues their organisations face due to the inability of banks, landlords and other third parties to easily locate details of the company secretary on the ACNC register.

As ASIC no longer maintains updated information on directors and company secretaries of companies regulated by ACNC, users are directed to the ACNC register, which records the details of a charity’s directors (referred to as ‘responsible persons’).

Unless the company secretary is also a responsible person, their details do not appear on the ACNC register.

It is vital to the efficacy, transparency and accountability of the sector that a charity’s company secretary details are displayed on the ACNC register. Placing the company secretary details on the ACNC register will then provide a ‘one-stop shop’ for third parties seeking details of the responsible persons and company secretary of a charity and will assist them in their dealings with that organisation.

Governance Institute recommends company secretaries of charitable organisations be displayed on the ACNC register.

4. Privacy reform and funding for upskilling on cyber

Governance Institute proposes including consumer and owner consent at the forefront of any changes to Australia's privacy and cyber security legislation reforms.

Following the many high profile cyber security attacks in 2022, it is clear that Australia's privacy regulatory framework is out of date and urgently requires reform. Given the digital economy is global, our current frameworks undermine Australia's digital competitiveness. Building commercial and consumer trust is necessary for our economic competitiveness into the future.

Governance Institute therefore suggests all privacy reform is framed in three parts:

- Increased funding for cyber and data security education
- Increased options of data ownership related consumer consent, and
- funding for a more intuitive digital identity validation process

Australia should follow in the footsteps of other developed countries in implementing a 'right to be forgotten', similar to the General Data Protection Regime (GDPR) regime in Europe. Our Privacy Act must be modernised and be reformed to be fit for purpose in a digital world, rather than one fit for the 1980's.

Australian consumers should have the right to better understand what data they are consenting to release, the storage methods of that data and the right to withdraw their consent. Reforms should ensure that consumers receive simpler and a more user-friendly information to assist in removing barriers to knowing what personal data is being acquired.

We have also consistently advocated for funding for better societal knowledge of cyber risks. This needs to be a significant focus of this budget, with significant long-term investment to build trust of Australians in the digital economy.

Finally, digital validation services need to be reviewed to ensure private data is not stored unnecessarily. Digital validation is crucial in the economy, but our members do not believe that the actual details of, for example, the 100 points of ID needs to be stored, rather than deleted following the crosscheck validation process. Key to building digital trust and ensuring consumer rights is that organisations do not collect and hold unnecessary information.

Governance Institute recommends that there should be significant reform of Australia's privacy legislative framework, with increased budgetary investment in cyber security awareness and education. The privacy framework reform should be centred on data security and what data is necessary to keep, while involving a focus on the role of consumer consent at all stages.

5. Whistleblower protections

Governance Institute has long advocated for the strengthening of whistle-blower protections. Our members consider it encouraging that the Government passed amendments to the Public Interest Disclosure Act 2013 late in 2022. Yet, Australia still lacks a comprehensive whistle-blower protection mechanism, and is therefore far behind the rest of the world.

As proposed by the Human Rights Law Centre in their 2021 report '*Protecting Australia's Whistleblowers: The Federal Roadmap*', Governance Institute endorses the need for an independent whistleblower protection authority. This is not a new suggestion, having been recommended by a Senate Select Committee in 1994, a Parliamentary Joint Committee in 2017 and then as part of previous national integrity commission designs. The government should act in this budget to ensure such an authority is created to coincide with a new, stronger whistleblower protection regime.

Governance Institute continues to **support and recommend**:

- A stand-alone, general whistleblower protection regime in its own Act, applicable to the private sector, and
- The establishment of a whistle-blower protection authority, such as an Ombudsman or Office of the Whistleblower to undertake the whistleblower protection role and implement the new scheme.

6. Modernising business communications

Governance Institute has consistently supported Government initiatives to modernise existing business communication requirements. As such, our members were pleased to see the introduction of the Treasury Laws Amendment (Modernising Business Communications and Other Measures) Bill 2022 to the House of Representatives and hope it passes Parliament as soon as possible.

This bill will expand the current regime so that all documents under the Corporations Act can be signed electronically and additional documents can be sent electronically.

Our members strongly encourage the Government to maintain the momentum and funding for the modernisation agenda and associated projects to make business and financial communications far simpler and more appropriate for the digital economy. Examples of areas where reform continues to be necessary include: communications with and from regulators, the giving and receiving of notices, forms and the provision of prescribed information to regulators including ASIC, communication by companies and other organisations with members, clients and customers, and record keeping. Our members also believe that any reforms should not entrench existing inefficient manual processes.

Governance Institute recommends:

- Continuation of the reform of the Corporations Act to make it technology-neutral and further shift it from its basis in a 'hard copy' 19th century world to a 21st century one.
- Maintaining the impetus on the reform of other Treasury portfolio laws to make them technology neutral.

7. Modernisation of key business registers

Governance Institute is a longstanding supporter of Government initiatives to modernise existing business infrastructure. We have lodged various submissions to Treasury supporting the objectives of the Modernising Business Register program, particularly Government's commitment to improving service delivery to, and reducing complexity for business.

These reforms are needed to improve user experience by simplifying the way clients interact with Government registers and streamlining internal processes. Our members report significant inefficiencies and costs for users with existing registers.

As a member of the Modernising Business Registers Business Advisory Group, Governance Institute urges Government to maintain momentum and funding for this critical project while continuing to maintain the existing registers until new systems are in place.

We also advocated for the introduction of a Director ID and for an identification number for company secretaries to address information confidentiality and security concerns of directors and company secretaries concerning publication of their personal data.

Governance Institute recommends that Government maintains the momentum and funding for the Modernising Business Registers Project and includes company secretaries to the Director ID reforms in 2023.