

31 March 2023

Ms Lynelle Briggs AO
Review of Public Sector Board Appointment Processes
Department of Prime Minister and Cabinet
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By email:

Dear Ms Briggs,

Review of Public Sector Board Appointment Processes (Review)

Who we are

Governance Institute of Australia is a national professional association, advocating for our network of 43,000 governance and risk management professionals from the public, listed, unlisted 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 sector, public listed, unlisted and private companies 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.

Governance Institute is a founding member of the ASX Corporate Governance Council, which produces the leading Australian statement on corporate governance, the Corporate Governance Principles and Recommendations and a member of the Drafting Committee which will be involved in production of a fifth edition of the document.¹ While directed at listed companies, the Corporate Governance Principles and Recommendations strongly influence governance practices in other sectors.

In preparing this submission, Governance Institute consulted our standing Public Sector Governance Committee comprised of members currently and previously employed in governance roles at all levels of government.

Our members welcome the Review as an important part of the Government's integrity agenda. This submission does not comment on all aspects of the Review's Terms of Reference but on issues of interest and concern to our members.

¹ [Corporate Governance Principles and Recommendations](#), 4th edition, 2019.

Public integrity and good governance

For the last seven years, Governance Institute has commissioned the Ethics Index, a nationally representative independent survey of 1000 Australians. Governance Institute's 2022 Ethics Index found that the perception of ethical behaviour on the part of government declined significantly from the previous year and that Federal politicians were among the occupations perceived to be least ethical. The Survey found a wide gap between the high importance Australians place on ethics in the public sector, and how ethically they believe those in public service do in fact conduct themselves.² These findings illustrate the importance of restoring trust in public institutions by addressing behaviour that erodes trust.

Public integrity and good governance are closely related, with trust being the vital link between them. Good governance in the public sector means that Government is entrusted by the public to govern in and for the public interest, and not for improper or extraneous purposes. Good governance practices and acting with integrity in the public sector will enhance public trust, while poor governance and a lack of integrity erode it. For this reason, our members consider it is critical that there is a robust, merit based process for the appointment of public sector board members.

Governance Institute's Governance principles for boards of public sector organisations

Governance Institute has recently released an updated edition of its Governance principles for public sector boards (Public Sector Principles).³ First published in 2016 these Principles have been updated to reflect the significant changes to the public sector environment since their publication. In recognition of the important work of the ASX Corporate Governance Council, and Governance Institute's belief in the value of cross-sector knowledge sharing, they have also been brought into closer alignment with the fourth edition of the Corporate Governance Principles and Recommendations.

Governance Institute developed the Public Sector Principles with the knowledge that while there are differences between the ways boards in the public and private sector operate, they also have many features in common. Designed as principles rather than prescriptions they do not require a 'one size fits all approach' to governance:

... Instead, they provide suggestions and recommendations of a general nature for practices designed to optimise the performance and accountability of public sector entities as they play important roles, with allowance for flexibility to account for the unique circumstances of individual entities. Some recommendations reflect what is accepted as common practice or minimum standards, while others are intended to encourage better practice beyond the minimum...If a public sector entity considers any recommendation is inappropriate to its particular circumstances it has the flexibility not to adopt it, irrespective of how strongly worded the recommendation may be, although the entity may consider the merits of explaining this decision to key stakeholders — similar to the 'if not, why not' approach adopted by the Corporate Governance Principles and Recommendations.⁴

² [Governance Institute Ethics Index 2022](#). In 2022 the lowest ranking occupations were State politicians (-22), Federal politicians (-20) and Real estate agents (-18).

³ [Governance principles for boards of public sector entities in Australia](#), Governance Institute of Australia, 2023.

⁴ See Note 3 above at page 7.

Role of the board

Principle 1 of the Public Sector Principles sets the scene and contains a series of Recommendations directed at achieving a strong governance foundation in all types of public sector organisations:

- establishing a clear governance framework where all involved understand their roles and responsibilities
- setting a long-term strategy that aligns with government policy priorities
- the importance of balancing the public interest
- establishing a delegation framework
- clearly distinguishing between the roles of board and management and importantly having a shared understanding of the distinct roles, and
- regularly evaluating the performance and competence of management.

Implementing these Recommendations in a public sector organisation will mean that all involved in the governance process are clear about their roles and responsibilities, are making decisions for the long-term, understand the importance of the public interest and hold those responsible for implementation of strategy to account.

An effective board that adds value

Principle 2 of the Public Sector Principles includes a series of Recommendations directed at achieving a board of an appropriate size, composition, skills mix, diversity and level of independence from government to enable it to discharge its duties and meet its objectives effectively. The Principles acknowledge that the appointment of public sector board members is a ministerial responsibility but suggests that boards should ensure government is appropriately advised about the required and desirable skills, competencies, attributes and composition profiles that align to the entity's strategy so a fully informed decision can be made.

It is vital that the appointment process should:

- be consistent, merit-based and aligned to the needs and strategy of the entity
- take into account board succession needs, with an emphasis on the timing required for replacement board members to maintain a balance between new and existing members
- identify the current skills, knowledge, experience and capabilities of the board
- identify any gaps in skills or competencies, including behavioural competencies, that can be addressed in future appointments
- consider the unique environment or context in which the entity operates
- consider board diversity, and
- allow for a formal application process that is publicly advertised to promote transparency and encourage quality applicants to apply.⁵

The commentary to Recommendation 2.1 of the Public Sector Principles suggests that at a minimum boards create and maintain a skills matrix, a tool commonly used in the private sector as a means of assessing and monitoring a board's current and future skills and diversity needs. The commentary goes on to add skills matrices should be provided to ministers to inform their decisions about board appointments.

Board diversity

Governance Institute's members strongly support diversity and inclusion and advocated strongly for the amplified discussion of the various aspects of diversity in the 4th edition of the Corporate

⁵ See Note 3 above at 15.

Governance Principles and Recommendations⁶ The Public Sector Principles refer to the importance of ‘tangible efforts to increase the representation of women, diverse ethnic groups, age groups, people with disabilities, and First Nations peoples’ on government boards.⁷ Our members therefore support the Review’s consideration of the diversity of board membership.

For some years the public sector has led the private sector, particularly listed companies on the issue of board gender diversity to the point where the Department of Prime Minister and Cabinet’s 2022 Report indicates overall gender balance on Australian government boards. The target [introduced](#) by the Australian Government in 2016 has been instrumental in driving this change in the public sector.⁸

Governance Institute has partnered for several years to produce a Board Diversity Index.⁹ The Index is a comprehensive investigation of the ASX 300 examining five types of diversity: gender, cultural background, skills/experience, age, and tenure and independence. The Index is the only Report to examine five types of diversity. The 2022 Index found that while gender diversity on large, listed company boards has improved from a historically low base, cultural diversity has stagnated.

Our members consider there is no one initiative that will achieve greater public sector board diversity in the expanded sense but rather there will need to be a range of initiatives to drive change. They include: education and awareness campaigns, monitoring, measurement and reporting on various types of diversity on public sector boards and the increased use of various types of diversity in board skills matrices.

If you wish to discuss any of the issues raised in this Submission, please contact me or Catherine Maxwell.

Yours faithfully,



Megan Motto
CEO

⁶ See Note 1 above at page 10.

⁷ See Note 1 at page 16.

⁸ See [Women in the boardroom: International Governance Stocktake 2021](#), Chartered Governance Institute at page 24.

⁹ Governance Institute/Watermark Search International [Board Diversity Index](#).