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25 January 2024

The Treasury
Langton Crescent
PARKES ACT 2600
AUSTRALIA

By email: prebudgetsubmissions@treasury.gov.au

2024-25 Pre-Budget Submission

Dear Associates,

Who we are

Governance Institute of Australia is a national membership association that advocates for a community of governance and risk management professionals, equipping over 8,000 members with the tools to drive better governance within their organisation. 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 ASX Business Committee and the ACNC Sector Users Group.

Vision for the Australian economy

Governance Institute's members support an economic reform agenda that aims to enhance the performance and productivity of Australia's corporate, commercial, and not-for-profit sectors. This submission provides recommendations on Australia's economic potential through modernised regulatory architecture, reformed corporations laws and frameworks, a coherent digital strategy and clearer guidance to drive sustainable business practices and national climate targets. Our members have first-hand experience in what is involved in managing and mitigating the risks facing corporate and commercial entities, including cyber threats, navigating the challenges of adopting critical technologies and understanding the significant undertaking required to transition to a low emissions economy.

The four pillars outlined below are intended to support a dynamic, safe, and resilient economy.



Challenges and opportunities facing the economy

The economy is at a critical crossroad as it transitions to a low-carbon economy and becomes increasingly digitised across all industries and sectors. There is a significant task to transition traditional industries and their workforces to combat challenges and harness new opportunities. Qualified governance and risk professionals will play an increasingly important role in their organisations in identifying, transforming, and mitigating the risks associated with the economic transformation taking place over the next decade. Governance Institute sees itself and associated professional associations as playing a critical role in upskilling their members to enable them to assist commercial and corporate entities in their attempts to tackle challenges head on.

Australian organisations and individuals are becoming increasingly targeted by cyber criminals at a time when an increasing number of products and services are being accessed and delivered online. Increased resourcing, preparation and response planning and appropriate communication will act to minimise the impacts of future cyber-attacks on vulnerable individuals and organisations. The protection and security of critical infrastructure should continue to be prioritised with adequate funding and resourcing of compliance and monitoring systems to ensure the protection of critical infrastructure and assets continues.

"Cyber risks will continue to grow and challenge the business community."

Australia has a recognised opportunity to promote and protect critical technologies to ensure its economic and social prosperity and national security. However, Australia's confidence in the adoption and integration of AI technologies is currently lagging comparator economies.¹ Australian individuals and business leaders have demonstrated higher levels of scepticism about the benefits of AI than their international counterparts putting Australia at a significant risk of falling behind its international peers. Increasing confidence in the benefits of critical and emerging technologies such as AI is essential

"AI and emerging technologies are critical to driving economic growth and productivity."

¹ <https://itbrief.com.au/story/bsi-study-australians-have-lowest-trust-in-ai-globally>

to enable Australia to participate fully in the fourth industrial revolution. This increased public confidence in emerging technologies requires greater Government engagement and leadership in critical global technology standards and greater coordination of digital economy policy and regulation including support for the development of governance frameworks that underpin these technologies.

Australia is recognised as having an undiversified export profile and is currently ranked 93rd out of 133 countries, on an index ranking of economic complexity, placing us behind Uganda.² The Australian economy's current reliance on a narrow list of commodities to support terms of trade, is placing the economy at risk of global supply shocks and geopolitical instability. This has created the conditions for a highly volatile and uncertain economic future that is no longer viable to sustain economic growth and resilience.³ Australia's services economy continues to be an untapped export potential. In 2022, services trade, such as legal, financial services, communications, digital and cyber security, was valued at \$171 billion and made up 11 per cent of Australia's total exports.⁴

"Low levels of economic complexity and an undiversified export profile continues to risk Australia's economic resilience and future."

The international community is moving rapidly to create the conditions for ecologically sustainable development, via the formation of international standards, disclosure, and reporting frameworks.⁵ The legal rights of nature, an expanding field of international environmental law and policy is anticipated to have

"International environmental and climate law and policy is rapidly evolving placing local businesses at risk of declining competitiveness."

further emerging impacts on Australia's biodiversity, conservation, land-use, and planning laws. The development of Australian environmental and climate governance frameworks is required to lead and influence the adoption of sustainable business practices. This requires greater industry coordination, including prioritisation and planning for workforce transition and development. Governance Institute has a unique opportunity to assist our members and their

organisations to develop and implement governance frameworks that align with national sustainability and climate targets and objectives. Government is encouraged to leverage the existing trust and relationships that professional associations such as Governance Institute have in driving these outcomes.

Our members consider that productivity reform will play an important role in reducing business and transaction costs across the economy. Inefficient, time-consuming, and costly business transactions and dealings, including the ever-increasing regulatory burden contribute to increased costs of doing business that is subsequently passed through to consumers. Government can play a key role in reducing business costs and associated inflationary pressures via the adoption of modern regulatory architecture and structural economic reforms that drive productivity enhancing investment. Comprehensive corporate law reform is required to kickstart the productivity reform process. The latest review of Australia's corporations and financial services legislation by the ALRC, shows that the *Corporations Act* is no longer fit-for-purpose. This has a flow on effect that impacts all Australians that interact with corporations and financial services.

"Addressing Australia's productivity gap is key to lower inflationary pressures and driving higher living standards."

² <https://www.innovationaus.com/australias-economic-complexity-ranking-worsens-again/>

³ [https://www.aph.gov.au/About Parliament/Parliamentary departments/Parliamentary Library/pubs/BriefingBook47p/GlobalTradeRisksAndOpportunities#:~:text=Australia%20is%20a%20major%20exporter,elsewhere%20in%20this%20Briefing%20book\).](https://www.aph.gov.au/About%20Parliament/Parliamentary%20departments/Parliamentary%20Library/pubs/BriefingBook47p/GlobalTradeRisksAndOpportunities#:~:text=Australia%20is%20a%20major%20exporter,elsewhere%20in%20this%20Briefing%20book).)

⁴ <https://www.dfat.gov.au/trade/services-and-digital-trade/services-trade-policy#:~:text=In%202022%2C%20services%20trade%20was,specialist%20services%20suppliers%20and%20investors.>

⁵ <https://www.ifrs.org/>

Corporate law reform should be institutionalised via a dedicated independent corporate law reform body with the skills and expertise to make recommendations to the government for implementation. Without a comprehensive program of structural reform, the economy will continue to suffer from high regulatory incidence and costs that impacts consumers and their living standards. The Australian Law Reform Commission's latest assessment of Australia's corporations law describes the *Corporations Act* as unnecessarily complex, shrouded in obfuscation and obscurity and a legislative maze.⁶

Our members consider the recommendations outlined in this submission are critical to foster greater confidence in Australian capital markets, enhance the performance and productivity of Australian organisations, modernise current regulatory infrastructure, reduce the burden and incidence of compliance costs with the aim of making Australia a dynamic, safe, and resilient economy.

Please refer to the attachments for a full list of policy recommendations. If you have any questions in connection with this submission, please contact me or Daniel Popovski, Senior Policy and Advocacy Adviser.

Yours faithfully,

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

Megan Motto
CEO

⁶ <https://www.alrc.gov.au/wp-content/uploads/2024/01/ALRC-FSL-Final-Report-Summary-Report-141.pdf>

Attachment A – Summary of policy recommendations

Pillar 1 - Develop modern regulatory architecture to allow for the efficient allocation of resources.

Update key business registers by adopting 'Option 3' outlined in the Final Review of the Modernising Business Registers Report, that narrows the scope of the project to companies only at an estimated implementation cost of \$1.7-1.9 billion.

Pillar 2 - Adopt corporate and commercial productivity reforms to support economic growth and limit inflationary pressures.

Establish an independent, expert Corporate Law Reform Body to drive corporate and securities law reform.

Initiate the process to create a consistent whistleblower protection regime for both the private and public sectors, so the duplicative or different rules do not deter whistleblowers or confuse employers about whether or how protections apply.

Create an independent Whistleblower Protection Authority. An independent, single source, sector agnostic authority for whistleblower protections would provide the necessary clarity and confidence for potential whistleblowers across all sectors to report unlawful and unethical behavior.

Pillar 3 - Embrace the role of professional associations in educating and supporting individuals and organisations on their journey to a low-emissions economy.

Create a pool of funding for professional membership-based associations to access on a tendered basis to deliver capacity-building tools and programs to meet Australia's climate targets.

Fund a government and industry partnership initiative to lift the profile of the TNFD and support education and awareness to drive early adoption, particularly amongst nature-exposed industries.

Pillar 4 - Continue to prioritise and strengthen Australia's cyber security defenses and modernise privacy laws to support trust and confidence in Australia's digital economy.

Work with industry to develop a targeted and fit for purpose cyber governance standard supported by guidance suitably tailored for organisations of differing sizes.

Implement a Cyber Health-Check Program that provides small and medium sized enterprises with a free, tailored cyber health check and associated tools that identify security vulnerabilities and suggested solutions.

Initiate the development a National Cyber Governance Standard to help support businesses of all sizes into a culture of identifying, protecting, and responding to cyber security risks.

Create an Office of the Privacy Commissioner and expand funding and resourcing for the OAIC to support education and awareness of new privacy laws, provide affordable and accessible dispute resolution processes and an Annual Report for the Attorney General's consideration. In addition, continue to work with states and territories to harmonise laws and regulations as a matter of priority.

Attachment B – Detailed policy recommendations

Pillar 1

Develop modern regulatory architecture to allow for the efficient allocation of resources.

Update key Business Registers

Issue

Governance Institute acknowledges the findings presented in the independent review of the business registers program, particularly the higher than anticipated investment required for its implementation. However, the business community has major concerns with the government's decision to abandon the MBR project, as announced in the MYEFO 2023-24 Budget, *Ceasing the Modernising Business Registers Program*. The cessation of the program and the return of responsibilities from the ATO to ASIC is short-sighted and does not fully capture the effects this will have on businesses.

The Review of the MBR program acknowledges that the current processes, policies, and technology that enable registry services in Australia are aged and the technology ecosystem hosting the registers face significant operational, cyber security and sustainability risks. The Review also confirms that the current registry system delivers a poor digital experience, that continues to lag other governments creating uncertainty, re-work and unnecessary cost for businesses and government.

The modernisation of business registers was aimed to deliver several benefits including:

- Creating a single source of truth for directors' identity.
- Suppressing personal director information.
- Creating a free and frictionless portal to company information.
- Combining the Australian Business Register (ABR) and thousands of ABNs within the new ABRS platform.
- Enabling users to create and maintain company information and streamline the cessation of a company via a user-friendly ABRS platform.
- Enabling officeholders' details to be updated once across all their companies and entities, and
- Preventing the registration of a company without providing Director ID numbers.

Our members consider abandoning the program is likely to lead to even higher costs and further complexity in the future when the current systems and processes become unviable. The current systems and processes also increase the costs of other activities of the government, such as cyber security awareness, detection, and response as there is greater room for manipulation and error in the identification and reporting of businesses. Our members consider that the assessment of the costs presented in the Review have not fully captured these future costs and benefits to the Australian economy, particularly where cyber-attacks and fraudulent activities are a cause of significant harm to Australian businesses and the broader community. The Review assumes the business community will continue to bear the associated cost and risk of interacting with outdated processes and systems.

Our members have expressed serious concerns with the cessation of the MBR program given its significance to the business community and Australians. Our members urge certainty moving forward with the goals of the project revisited rather than left behind. Australia's business registry is critical national regulatory infrastructure which enables individuals and businesses to engage in the economy and operate within the legal system more confidently and securely.

Proposed solution

There are four critical elements when considering the best way forward for the Australia's Companies Register to be fit-for-purpose now and sufficiently agile to harness emerging technology for further development including, a direct linking of Director IDs to the Companies Register to assist with anti-phoenixing activities and to deter other fraudulent activities. Other key elements should include the de-identification of directors' and company officers' personal information and the abolition of search fees so that all Australians can harness the information in the Companies Register to ensure they are dealing with a genuine Australian business and a properly appointed director or officer.

Governance Institute and other peak industry associations support Option 3 outlined in the Report as the best next step – that is, to proceed with the scope narrowed to companies only. Option 3 is most likely to create a world-class data and digitally capable functioning Companies Register that meets the needs of most users. It would also assist the Government in meeting its data and digital strategy and its vision 'to deliver outstanding outcomes for all people and business'.

Policy recommendation

Update key business registers by adopting 'Option 3' outlined in the Final Review of the Modernising Business Registers Report, that narrows the scope of the project to companies only at an estimated implementation cost of \$1.7-1.9 billion.

Policy benefits

- Meets the national data and digital strategy objective and vision to deliver outstanding outcomes for all people and business.
- Creates a digitally capable Companies Register that meets the needs of end-users.
- Reduces the significant ongoing cost and compliance burden created by outdated and risky business identification processes and systems.
- Reduces the incidence of fraud and phoenixing activities and the size and threat of future cyber-attacks.
- Drives business productivity and lower business transaction costs.

Pillar 2

Adopt corporate and commercial productivity reforms to support economic growth and limit inflationary pressures.

Establish a Corporate Law Reform Body

Issue

Cost of living pressures are impacting all Australians yet most importantly, the cost of doing business which impacts the purchase of all goods and services continues to rise. There is a need to address the drivers of business costs including corporations law and regulations that are no longer fit for purpose and are shrouded in complexity and obfuscation. Australia has not undertaken large scale structural reform in corporate law since the implementation of the *Corporations Act 2001*. Now over 20 years old, the *Corporations Act* was designed and structured on content that goes back much further. A series of ad hoc reforms with no systemic review or reform of corporate law has resulted in the ballooning of the size and scope of the *Corporations Act*. It has become increasingly complex and expensive to engage with the *Corporations Act* which is no longer fit for purpose, particularly for many small and medium-sized corporate entities.

Current efforts to review corporate and financial services law within the Australian Law Reform Commission – a non-specialist corporate law reform body, has taken several years. Australia requires an efficient, nimble, and independent corporate and securities law reform body that can keep pace with the current fast moving and dynamic period of change in the corporate, financial and securities markets landscape, such as the emergence of fintech innovation, volatility in cryptocurrency and increasingly sophisticated financial crime networks. The latest report by the Australian Law Reform Council, *Confronting Complexity: Reforming Corporations and Financial Services Legislation*, has found that Australia's Corporations Act is no longer fit for purpose, described as unnecessarily complex, shrouded in obfuscation, obscure, convoluted, and likened to a maze. The Government's current approach of notional amendments and the creation of conditional exemptions creates more problems and confusion than they aim to solve.

The international experience, particularly Singapore's Accounting and Corporate Regulatory Authority (ACRA) Companies Act Working Group has proven instrumental in driving holistic corporate law reform in that jurisdiction. Common features of holistic corporate law reforms in common law jurisdictions include a central authority that steers the reform process and delegates aspects of work to specialist groups of practitioners, professionals, and scholars. This is often backed by a set of guiding principles and values that provide a foundation for the law reform debate that goes beyond reactive law reform that typically responds to calls from specialist professionals or interest groups. This approach is complemented by broad and deep consultation with the patience, skill, and expertise to understand the complexities of corporate law.⁷

Australia can no longer afford to take a reactive corporate law reform approach based on complaints from specialist interest groups proposing ad hoc law reforms. Recent law reform proposals are often driven by ministerial-led directions rather than from detailed policy development. This top-down process is grossly inadequate to meet the needs of modern corporate law frameworks as the scope of reform is narrowed and focused on specific issues.

Reliance on ad hoc commissions into certain aspects of corporate and financial services law are no longer financially sustainable. While Royal Commissions provide independence, they are no substitute for establishing an expert, consultative and independent body with a deep history in corporate law and a focus on potential reform that is responsive to the needs of Australia's financial markets and investors.

Australia lacks a clear policy for what modern Australian corporate law should look like and there is no roadmap or guiding principles that might shape that discussion. This is also holding Australia back from structural economic reform, the likes of which have not been observed, since the Hawke-Keating era.

Proposed solution

From 1978 until 2018, Australia had an independent and specialist research-based body, enshrined in legislation, that was focused solely on continuous improvement of Australia's corporations and financial markets legislation. The Companies and Securities Law Review Committee (CAMAC) provided specialised advice to successive Labor and Coalition governments on market law reform and corporate legal policy issues.

The Committee was abolished as part of the push for smaller government in the 2014-15 Federal Budget, however the savings recouped from abolishing CAMAC was thought to be only \$1 million as it used a network of professionally sourced committees and subcommittees that were paid modest sitting fees and was operated with a full-time staff of two people.

⁷ Dr. Jason Harris, 'The failure of Corporate Law Reform in Australia' in Rosemary Teele Langford (ed) *Corporate Law and Governance in the 21st Century: Essays in Honour of Professor Ian Ramsey* (The Federation Press, 2023)

The establishment of a specialist corporate law reform body will deliver to government holistic structural reform proposals that are capable of driving productivity reforms to support economic growth, job creation and living standards. This is necessary at a time when dynamic industry forces are shaping the future of the economy and productivity growth continues to lag historical averages.

Policy recommendation

Establish an independent, expert Corporate Law Reform Body to drive corporate and securities law reform.

Policy benefits

- Initiates the conversation and process for holistic structural corporate law reform.
- Keeps pace with international peers with the aim of attracting global business investment.
- Drives productivity enhancing reforms that delivers on the efficient allocation of capital investment, resources, and expertise in the economy.
- Reduces the cost and uncertainty of doing business and reduce pressure placed on the judicial system to deal with corporate legal issues.
- Makes it easier for small and medium sized businesses to engage and interpret corporate law.
- Kick-starts the productivity reform process.

Strengthen whistleblower protections

Issue

Australian whistleblower protection laws are a complex patchwork: the Commonwealth Public Interest Disclosures Act, the Fair Work (Registered Organisations) Act, the Corporations Act, the Aged Care Act, Taxation Administration legislation as well as State legislation. The area is complex to understand, complex to administer and confusing for anyone contemplating speaking up about unlawful, unethical or irresponsible behaviour. Having raised wrongdoing in the workplace, whistleblowers continue to face detrimental outcomes for speaking out. A poll conducted by Essential Media shows that 71 per cent of respondents supported stronger protections for whistleblowers, while 68 per cent of respondents believed that whistleblowers should not be prosecuted when they speak up in the public interest.

Proposed solution

Governance Institute's members support and endorse the Griffith University, The Human Rights Law Centre and Transparency International Australia 2022 report '*Protecting Australia's Whistleblowers: The Federal Roadmap*', they consider there is a continuing need for a stand-alone, general whistleblower protection regime in its own Act (applicable to the private sector), rather than the current approach across multiple pieces of legislation applicable to different sectors. While the recent amendments to the Public Interest Disclosure Act are welcomed, they consider a more uniform approach to whistleblowing would be preferable. Similarly, the recent consultation on amendments to the Taxation legislation indicate that there are still gaps in coverage. Given the complexities involved in whistleblower protections, our members consider there is a need for an independent whistleblower protection authority with the ability to enforce whistleblower protection legislation which could also play an important role in giving practical support to whistleblowers, providing guidance and educating organisations about their obligations. The 2019 amendments to the Corporations Act and the Taxation Administration Act are due for statutory review in 2024. Our members consider that there is an opportunity both to take stock of the current state of Australian whistleblower legislation and to carry out broader reform. Effective whistleblower protections need a consistent and harmonised regulatory approach.

Policy recommendation

Initiate the process to create a consistent whistleblower protection regime for both the private and public sectors, so the duplicative or different rules do not deter whistleblowers or confuse employers about whether or how protections apply.

Create an independent Whistleblower Protection Authority. An independent, single source, sector agnostic authority for whistleblower protections would provide the necessary clarity and confidence for potential whistleblowers across all sectors to report unlawful and unethical behavior.

Policy benefits

- Harmonising the regimes would eliminate the current gaps in protection coverage (for example, for private sector employees including consultants who 'blow the whistle' on public sector wrongdoing, and vice versa), so no-one is in doubt which protections apply to them.
- Supports the role of whistleblowers in the community by recognising their right to call out negligent and harmful behaviours.
- Protect the rights of individuals calling out wrongdoing in the public and private sectors.

Pillar 3

Embrace the role of professional associations in educating and supporting individuals and organisations on their journey to a low-emissions economy.

Climate-related financial disclosure

Issue

In our submission to Treasury in June 2023, we noted that the Consultation Paper into Climate-related financial disclosures significantly underestimated the impact of the proposals. Our members consider the impact of the Proposals and the uplift required, particularly for smaller-sized entities, will be significant and they are unlikely to be in a position to report meaningfully within the timeframes outlined.

In addition, many of the companies that fall into the scope of the new reporting and disclosure framework have limited outside investment and given that the purpose of making the proposed disclosures is to provide high quality, comparable information for investors our members question whether requiring these entities to make public disclosure of climate information will achieve this aim.

We also raise caution at the speed at which capacity to carry out audit and assurance of climate-related disclosures will build, absent Government support to assist with increasing capability and capacity across assurance providers. Our members consider that the number of sufficiently skilled and independent assurance providers is still likely to be in short supply by the end of the phasing period.

There is currently insufficient guidance on how the proposed reporting and disclosure framework will work in practice. Guidance will need to be developed in close collaboration and consultation with industry partners, including governance, audit, assurance, and accounting professionals before mandatory reporting obligations are legislated.

Proposed solution

Engaging membership-based associations as a critical conduit for Australia's transition to a low emissions and climate-resilient economy is becoming increasingly important. Education and awareness raising of the impending climate related regulations will be crucial given that the requirements will

capture entities unfamiliar with climate change concepts. The Climatewise Associations' approach outlines the potential for Australia to meet and exceed its climate change targets by activating associations and their millions of member businesses and individuals.

Governance Institute has the unique opportunity to provide significant uplift in professional capability and capacity building. We leverage our extensive network of experts across the membership to develop a range of practical tools and training programs to increase their working knowledge and understanding of corporate governance, risk management and corporate accountability issues. Governance Institute also runs a series of workshops and a year-round range of seminars and workshops that aim to lift the knowledge of current corporate governance issues, including the emerging fields of climate, environmental and sustainability target setting, reporting and disclosure.

Governance Institute has an established Sustainability Policy Committee and associated working groups comprised of senior industry leaders with expertise across a spectrum of climate and sustainability stewardship. Our extensive network of professionals has a demonstrated interest in developing material on climate disclosure and reporting with the aim of uplifting their understanding of new regulatory requirements. A recent example is the Governance Institute's latest publication, *Greenwashing: a governance perspective*, an essential guide for governance professionals to better equip organisations and their boards with the tools and skills needed to understand and comply with regulations.⁸ Government support for the development of appropriate material will greatly assist broader corporate knowledge and uptake of climate reporting disclosure and sustainable business practices, particularly in smaller companies.

Standards setting bodies also play a crucial role. The AASB and AuASB, require sufficient funding and resources for the significant task ahead, including the expedited and proper development of Australian standards. ASIC will also require adequate funding to develop appropriate guidance and associated regulatory activities to support the climate-related disclosure framework.

Policy recommendation

Create a pool of funding for professional membership-based associations to access on a tendered basis to deliver capacity-building tools and programs to meet Australia's climate targets.

Policy benefits

- Work with industry to develop world class climate reporting and disclosure frameworks.
- Help educate and uplift the working knowledge of thousands of professionals on the climate disclosure reporting requirements.
- Support sustainable industry development.
- Work with industry to deliver an initiative for improved climate reporting and disclosure.
- Support the transition to a low emissions economy.

Nature-related financial disclosure

Issue

There is broad consensus that the acceleration of nature loss globally is an increasing source of risk to businesses and providers of financial capital. Yet most companies, investors and lenders are inadequately accounting for nature-related risks and opportunities in their decisions. The World

⁸ https://www.governanceinstitute.com.au/news_media/governance-institute-unveils-its-essential-guide-to-navigating-greenwashing-challenges/

Economic Forum (WEF)'s 2022 Global Risk Report identified large-scale nature degradation and biodiversity loss as one of the five most threatening long-term risks facing the world in the next five to 10 years. The commitment by over 190 nation states to ambitious goals and targets under the [Global Biodiversity Framework](#) at COP 15 in Montreal in 2022, including 23 targets to be achieved by 2030 and four long-term goals for 2050 has also driven significant momentum for best practice accountability and reporting.

The [Taskforce on Nature-related Financial Disclosures](#) (TNFD), has published a risk management and disclosure framework for organisations to drive best practice reporting and action on evolving nature-related risks and opportunities. It is designed for companies and financial institutions of all sizes across all sectors and value chains with the aim of supporting the identification and assessment of nature-related issues, regardless of whether organisations are required to disclose those to regulators and other stakeholders. The TNFD disclosure framework is designed to meet the corporate reporting needs of a wide range of organisations across jurisdictions and sectors and assists in the provision of better information to support strategy and risk management.

The TNFD framework, that incorporates a greater consideration of biodiversity impacts and nature loss, will reshape the risk profile of capital investment in unsustainable industries. Greater risk premiums and constraints on capital flows may be placed on industries with known impacts on nature and biodiversity loss. Industries that are highly dependent on nature generate 50 per cent of global gross domestic product (GDP), with the three largest sectors being construction, agriculture and livestock, and food and beverages.

Proposed solution

Taking early action to identify and report on nature related risks better prepares organisations to respond to the risk and opportunities, particularly where cost of capital and access to insurance is concerned. Natural capital has been undervalued and mispriced by the public and private sectors and a revision to this risk profile may lead to higher insurance premiums for those highly exposed industries. The TNFD disclosure framework aims to promote more informed investment and insurance underwriting decisions by financial institutions and enable a better understanding of nature-related risks and opportunities, based on insights into the dependencies and impacts on nature.

With the assistance of industry partners and the Department of Climate Change, Energy, the Environment and Water, greater awareness raising and promotion of the TNFD and how it can support organisation's strategy is necessary.

Policy recommendation

Fund a government and industry partnership initiative to lift the profile of the TNFD and support education and awareness to drive early adoption, particularly amongst nature-exposed industries.

Policy benefits

- Reduces the cost of insurance and the risk profile of Australian organisations.
- Assists nature exposed industries to initiate a phase down of biodiversity loss and environmental degradation.
- Ensures Australian industries remain internationally competitive.
- Assists corporations increase their understanding of nature-related dependences, impacts, risks and opportunities to drive better environmental outcomes.

Pillar 4

Continue to prioritise and strengthen Australia's cyber security defenses and modernise privacy laws to support trust and confidence in Australia's digital economy.

Cyber security

Issue

Cyber security is a national security issue that requires ongoing attention from the Government. Cybercrime costs the economy billions of dollars annually, with ransomware alone causing up to \$3 billion in damages to the Australian economy every year.⁹ Cyber criminals are using creative tactics targeting high profile Australian businesses that impact all sectors, including hospitals and information technology.

Our members are of the view that businesses do not find cyber security obligations clear or easy to follow. In our [submission](#) on Strengthening Australia's cyber security regulations and incentives, we identified at least 15 pieces of legislation, voluntary industry standards and potential future regulation potentially applicable to Australian businesses in this area, which are administered by a wide array of Government departments, regulators, agencies and industry associations. This number has not decreased and leaves industry and consumers facing a 'spaghetti' of regulatory obligations and standards at a time when cyber-attacks and 'cyber anxiety' are at an all-time high.

The Australian Cyber Security Strategy correctly identifies that small and medium sized businesses lack time, resources, and expertise to uplift their cyber security and the knowledge and skills to uplift their cyber resilience. As a result, smaller sized entities incur higher costs and longer periods to recover following a cyber incident event. Small businesses that are integrated as part of a network of suppliers to larger organisations play a particularly dangerous role by potentially unlocking a 'back door into larger organisations that malicious actors can exploit. Whilst larger organisations are better placed to deal with cyber security incidents, they provide a much more lucrative incentive for cybercriminals and will continue to be the focus for cybercriminals.

Proposed solution

Enhancing cyber resilience across industry ecosystems by mobilising collective action should be a key priority for the Commonwealth Government. We encourage all levels of government to coordinate to ensure better harmonisation and greater simplicity between cyber security, data breach, data sovereignty, critical infrastructure, and privacy regulation.

Ensuring that small and medium sized businesses have access to cyber health checks that can identify security vulnerabilities is a step in the right direction. This should be supported with the creation of a voluntary cyber governance standard.

Policy recommendation

Develop a well-designed, well-targeted and fit for purpose cyber governance standard supported by guidance suitably tailored for organisations of differing sizes.

Implement a Cyber Health-Check Program that provides small and medium sized enterprises with a free, tailored cyber health check and associated tools that identify security vulnerabilities and suggested solutions.

⁹ <https://www.homeaffairs.gov.au/cyber-security-subsite/files/2023-cyber-security-strategy.pdf>

Initiate the development a National Cyber Governance Standard to help support businesses of all sizes into a culture of identifying, protecting and responding to cyber security risks.

Policy benefits

- Strengthens cyber security measures as a national priority.
- Supports small and medium sized businesses to close the backdoor to malicious actors targeting larger organisations.
- Works with industry leaders to develop a voluntary cyber governance standard for businesses.

Privacy reforms

Issue

The rise of the digital economy has led to advances in productivity and efficiency and a range of innovations that have benefited Australians. However, the creation of big data underpinning digital ecosystems has also created the conditions for major data breaches and cyber-attacks, that have compromised the sensitive personal information of millions of Australians. This is driving hesitancy across a range of digital technologies. For instance, Australian individuals and business leaders have demonstrated higher levels of scepticism about the benefits of AI than our international counterparts putting Australia at a significant risk of falling behind its international peers.¹⁰ Stronger privacy laws are crucial to building security, confidence and trust necessary to drive digital innovations and economic growth.

The Government's response to the Privacy Act Review Report, has agreed to implement 38 out of the 116 proposals with a further 68 agreed to 'in-principle' support pending further consultation. With the vast bulk of recommendations deferred for further consultation, there is concern that the lengthy review processes will create further delay and uncertainty. Governance Institute members have experienced firsthand the burden and confusion created by inconsistent legislation, particularly across state and Commonwealth legislation. They welcome Government recognition by demonstrating in-principle support for establishing a working group towards harmonising key elements of Commonwealth and state and territory privacy laws subject to agreement with states and territories. They also welcome amendments to the Act to permit organisations to disclose personal information to state and territory authorities under an Emergency Declaration, a proposal supported through our submission to the Privacy Act review.

We also noted recognition of our members' view that the OAIC should provide additional guidance to entities about what reasonable steps an entity should take to keep personal information secure and what reasonable steps an entity should take to destroy or de-identify personal information. They also note the OAIC will also be tasked with providing individuals at higher risk of experiencing vulnerability with additional guidance that would be complimented by additional protections for this cohort. However, they still consider the OAIC should develop guidance on consent settings. Governance Institute also considers it is necessary to expand the OAIC to develop standardised templates and layouts for privacy policies and collection notices as a way of maintaining consistency across the economy.

The GDPR is the 'Magna Carta' of data protection and is the highest privacy and security law in the world. Data protection in the EU has been recognised as a fundamental right alongside the right to privacy and is an important component of EU privacy law and human rights law. Whilst we support the

¹⁰ <https://itbrief.com.au/story/bsi-study-australians-have-lowest-trust-in-ai-globally>

strengthening and expansion of privacy protections, early lessons from the implementation of the EU GDPR should be closely monitored. The proposal to incorporate all-sized businesses will require significant public resources to provide clear guidance, tools, and training to lift the compliance needs of implementing such a complex legislation.

The Government has agreed to consult on introducing a criminal offence for malicious re-identification of de-identified information where there is an intention to do harm. But only agreed in principle to a statutory tort for serious invasions of privacy. The Government has agreed in principle to amend the Act to allow for a direct right of action to permit individuals to apply to the courts for relief. However, our members continue to have concerns about the potential for abuse of processes and the unnecessary high case load for the court system. Judicial processes can be costly and time-consuming creating barriers to justice particularly for individuals from lower-socio economic backgrounds that may be unprepared or lack the financial means to access the court system.

Proposed solution

There may be scope to incorporate small businesses into parts of the privacy legislation to lift the privacy rights of its customers, but to do so in its entirety would potentially entrench small business into costly barriers of conducting business. Government should expedite a cost-benefit analysis to assess the small business experience of privacy laws in other jurisdictions, such as the EU GDPR to assess the impact it has had on business competition.

The OAIC will play an increasingly important role in guidance and awareness, and it is critical that it is adequately resourced and funded to provide quality resources in a timely manner. This will be necessary to help inform entities about what reasonable steps an entity should take to keep personal information secure and steps to destroy or de-identify personal information.

The creation of an Office of the Privacy Commission should avoid the need for a range of proposals that will place unnecessary pressure on our court system. The Commission should be adequately resourced and provided with sufficient powers to deal with complaints and issues raised.

It is critical that efforts towards harmonising key elements of Commonwealth and state and territory privacy laws are pursued. This should simplify the cost of doing business and make it easier and safer to store and process personally sensitive information.

Policy recommendation

Create an Office of the Privacy Commissioner and expand funding and resourcing for the OAIC to support education and awareness of new privacy laws, provide affordable and accessible dispute resolution processes and an Annual Report for the Attorney General's consideration. In addition, continue to work with states and territories to harmonise laws and regulations as a matter of priority.

Policy benefits

- Strengthens Australia's privacy laws to keep pace with increasing data flows and international jurisdictions.
- Supports affordable, accessible, and quick access to justice to individuals and businesses with compromised privacy data by legislating the Office of the Privacy Commission.
- Alleviates pressure on the judicial system.
- Makes it easier to conduct business and handle sensitive data by simplifying and harmonising privacy laws across Commonwealth, state, and territory jurisdictions.
- Raises awareness and understanding of how privacy laws impact and interact with individuals and businesses and work with industry to create useful guides and toolkits.