



**CHARTERED SECRETARIES
AUSTRALIA**

Leaders in governance

17 September 2013

Mr Vincent Tophoff
IFAC Senior Technical Manager
International Federation of Accountants (IFAC)
6th Floor
529 5th Avenue
New York NEW YORK 10017

By email: vincenttophoff@ifac.org

Dear Committee Members

**Good Governance in the Public Sector
Consultation Draft for an International Framework**

Chartered Secretaries Australia (CSA) is the peak body for over 7,000 governance and risk professionals. It is the leading independent authority on best practice in board and organisational governance and risk management in Australia. Our accredited and internationally recognised education and training offerings are focused on giving governance and risk practitioners the skills they need to improve their organisations' performance. CSA is also part of an international network of organisations focused on promoting good governance practice.

CSA's Members are all involved in governance, corporate administration, legal practice and compliance within their organisations, with their primary responsibility being the development and implementation of governance frameworks in a variety of organisations, including public listed and public unlisted companies, private companies, public sector agencies and not-for-profit organisations.

CSA welcomes the opportunity to comment on the *Consultation Draft on Good Governance in the Public Sector* (the consultation draft) and draws upon the experience of our Members in responding to the consultation.

General comments

CSA supports the Chartered Institute of Public Finance & Accountancy (CIPFA) and the International Federation of Accountants (IFAC) in its principles-based approach to an international framework for good governance in the public sector.

CSA notes that the consultation draft offers an excellent contribution to the public debate on governance in the public sector, alongside providing well-researched information and established resources for those embarking on a global consideration of public sector governance.

The consultation draft, therefore, adds weight to the international governance debate, and provides a coherent set of principles to support public sector entities to develop and implement good governance.

CSA is cognisant that governance in the public sector can be complex and convoluted in its implementation. In Australia, public sector service delivery takes a variety of organisational forms, from traditional government agencies such as departments, statutory bodies or authorities, through to government-owned public or private companies, and more collaborative arrangements such as expert advisory committees / boards or commercial joint-ventures and public private partnerships. Across the three levels of Australian government; namely Commonwealth, state and territory, and local government, various legislative instruments, policy or contractual arrangements have been applied to public sector governance sometimes leading to inconsistencies or problems in the resulting organisational governance arrangements.

CSA notes that some of the following issues have arisen:

- a lack of clarity about the role and powers of public sector governing bodies and/or their boards, which has implications for the understanding by directors/members (and indeed other stakeholders, including 'owners') of their accountability, responsibilities and obligations — this lack of clarity in turn adversely affects the transparency of governance arrangements
- a myriad of legal structures, which has implications for consistency in the types of governance frameworks that are implemented for each entity
- uncertainty about differing funding and reporting obligations for different types of public sector entities, and
- increases in associated costs for entities that may be required to seek advice about their reporting, audit and other accountability requirements.

It is evident, therefore, that a global approach to governance in the public sector must be based on principles which have universal applicability.

In the Australian private sector, the Australian Securities Exchange (ASX) Corporate Governance Council's *Corporate Governance Principles and Recommendations* (Principles and Recommendations)¹, the framework of the Corporations Act, and the ASX Listing Rules, including for example ASX Listing Rule 3.1 on continuous disclosure, offers a foundation for good practice against which listed companies are required to act and report. This principles-based approach to governance provides a good example of an approach which takes into account the diversity of the sector. The Principles and Recommendations have also been adapted and recommended for use in some Australian public sector organisations, including, for example in a "Governance Lighthouse" publication by the Audit Office of New South Wales².

All listed companies must report against the Principles and Recommendations on an 'if not, why not' basis — if a company considers that a Recommendation on governance practice is inappropriate to its particular circumstances, it has the flexibility not to adopt it but it must explain to shareholders and other stakeholders why it has not adopted it. This provides a consistent structure for those stakeholders wishing to understand the governance of companies listed on the ASX. The Principles and Recommendations offer a flexible framework for the corporate governance of listed companies, irrespective of their size or industry, providing transparency and accountability to their investors, the wider market and the Australian community.

¹ The ASX Corporate Governance Council is currently consulting on the draft 3rd edition of the Principles and Recommendations, further information on the consultation can be found at <http://www.asxgroup.com.au/corporate-governance-press-releases.htm>

² Available from <http://www.audit.nsw.gov.au/Publications/Governance-Framework>

Such an approach might also be appropriate in the public sector, whereby a principles-based approach with appropriate external reporting, can improve public sector governance because it:

- provides a comparative basis on which to compare public sector entity governance
- provides insight into the governance and decision-making functions of public sector entities
- encourages the public to better examine an entity's thinking and behaviour
- recognises that there is no 'one-size-fits-all' approach to many of the governance issues that face the public sector, and
- recognises the diversity of circumstances facing the public sector at both the state and federal levels.

Importantly, however, a principles-based approach also affords flexibility to departments and other agencies to select a governance approach most suitable to their circumstances.

A principles-based approach must also be clear in providing entities with achievable objectives and outcomes. Any lack of clarity within the framing of the principles might translate into under-reported or unreported information dealing with governance matters, thereby undermining attempts at instilling good governance practice.

By way of example, CSA points to Principle D, in the section entitled 'Key Principles of Good Governance in the Public Sector' which suggests that achieving good governance in the public sector requires the public sector to determine the interventions necessary to optimise the achievement of intended outcomes. CSA believes that this is correct; however, we also note that further direction could be provided in the principle to guide the manner in which the outcomes are achieved, that is, the intended outcomes should also be optimised to be achieved in an efficient, effective and economic way.

As a further example, CSA notes that Principle F refers to the management of risks and performance for an entity through robust internal controls and strong public financial management. Again, while CSA concurs with the sentiment of the Principle, we also believe that good governance and risk management within the public sector is broader than financial management, and should include identification and management of all risks faced by a public sector entity.

CSA notes that a strong financial approach, while important, focuses too narrowly on spending and the creation of financial value, without asking agencies and departments longer-term questions about the management and sustainability of resources being promoted in the public interest.

Conclusion

CSA recognises that overhauling the public sector system by imposing the requirements of private-sector listed companies, or trying to import a style of oversight incompatible with the current public sector system, for example the Westminster system in Australia, is both unworkable and unwarranted.

Instead, a principles-based approach such as the one put forward in the consultation draft offers a way forward for those seeking to understand and implement good governance in the public sector.

As highlighted above, CSA strongly supports the principles-based approach put forward and looks forward to seeing the international framework following the consultation period.

Yours sincerely

A handwritten signature in black ink, reading "Tim Sheehy". The signature is written in a cursive, flowing style with a large initial "T" and a long, sweeping underline.

Tim Sheehy
CHIEF EXECUTIVE