

Friday 24 March 2023

Ms Lynelle Briggs AO
Review of Public Sector Board Appointments Processes
C/- APS Reform Office
Department of Prime Minister and Cabinet

Via email: chloe.chadwick@pmc.gov.au

Dear Ms Briggs,

Review of Public Sector Board Appointments Processes

Thank you for the opportunity to provide input to the Review of Public Sector Board Appointments Processes (**Review**).

The Australian Institute of Company Directors (AICD)'s mission is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. The AICD's membership of more than 50,000 includes directors and governance leaders of not-for-profits, large and small businesses and the public sector.

The AICD welcomes the review of Public Sector board appointments. This submission sets out the AICD's view on enduring principles that should inform public sector board appointment processes.

Commonwealth public sector boards play a critical role in ensuring effective governance of public sector entities and services for the Australian community.

Strong and effective public sector governance is a key contributor to community confidence and trust in the quality and oversight of vital Commonwealth agencies, services and structures. Public sector governance appointments should reflect high standards of trust, transparency and clarity of role.

The AICD has a commitment to effective governance processes and structures in the public sector. Many AICD members contribute to Commonwealth public sector boards as members of boards and advisory committees. The AICD also offers specific education to support directors on government boards, including our Foundations of Directorship (Public Sector) course covering the fundamentals of Governance, Risk and Strategy, and Finance, convened by facilitators with specific public sector knowledge and with tailored public sector case studies. The AICD also offers public sector governance webinars and events to support members. As you know, we are also holding targeted consultations through our director advisory forums on issues relevant to the Review's terms of reference and will provide further feedback as relevant.

Summary

Our key points are as follows:

1. Appointments to public sector boards should follow processes that are transparent, rigorous and independent and driven by skills matrices, to the extent possible.

2. Public sector governance frameworks should reflect the distinct nature of public sector organisations and the unique constraints, challenges and accountability mechanisms relevant to each public sector entity. The primary focus of public sector entities is to deliver against their statutory or public sector mandate and objectives. Individuals who are appointed into governance roles in the public sector should be supported by clarity on their board's accountability, governance remit and decision-rights.
3. Governance structures should ensure that public sector boards can provide independent leadership distinct from management and/or the relevant Minister, within well-defined mandates.

Director identification, selection, appointment and renewal

The AICD considers the following **key principles** should generally apply:

4. **Role clarity:** To support effective governance, every Commonwealth board or equivalent (whether established by statutory, administrative or discretionary powers) should have a clear outline of role, authority and decision-making processes. The AICD recommends that every Commonwealth public sector board (or equivalent) have a clear and regularly reviewed board charter setting out these functions, and the interaction with the governance authority (for example, the Cabinet, Minister, Department, Statutory Authority or other governance authority under its remit). The charter should clearly establish:
 - a. governance function (for example, decision-making, oversight and/or advisory);
 - b. governance relationship with the relevant authority (e.g. Parliament, Cabinet, Minister, Department, public sector entity), including decision-rights, advisory recommendations and engagement to support approval authority delegated to the board;
 - c. the role of the Minister or relevant governance authority in appointments, receiving and acting on the board's decisions or advice, and power to dismiss the governance body; and
 - d. the process for engagement with the Minister or relevant governance authority and the board on issues of composition, appointment and performance.
5. **Board composition:** The board should comprise directors who, as a whole, have relevant and diverse range of skills, expertise and experience relevant to the scope and responsibilities of its role. The board should be tasked with developing a board skills matrix (or similar tool) to assess the mix of skills, experience, independence and diversity that is currently represented on the board and identifying any gaps and priorities for recruitment/appointment. As a general principle, the board skills matrix should be made public, through annual reporting, and be included in the recruitment processes for new directors or appointees.
6. **Clear criteria:** The criterion for director appointment should be an ability to add value to the board and progress its objectives. As discussed above, processes should be in place to identify capability gaps in existing boards by reference to a skills matrix, and to have this gap form the basis of new director appointments. Subject to meeting any regulatory prescribed criteria, the AICD considers that appointments should have regard to the following principles:
 - a. the board should have an appropriate number of independent non-executive directors (where relevant, political appointees would generally be labelled as non-independent);
 - b. the board should at all times be of sufficient size to meet its responsibilities, but not so large as to be unwieldy;

- c. the board should comprise directors who, as a whole, have skills, experience and attributes appropriate for the governance of the organisation; and
- d. each director must be able to allocate sufficient time to their role.

7. **Appointment processes:**

- a. board recruitment should be conducted transparently;
- b. board turnover should be driven by the governance needs of the organisation;
- c. board positions should be advertised, with information on the skills matrix and priority skills and expertise being sought clearly outlined;
- d. advertisements and recruitment should include clarity on the role of the public sector board, the process for appointment (including the decision-making authority and consultation or endorsement by Cabinet if relevant), term of appointment and timeframe for recruitment;
- e. recruitment practices across the public sector should be improved, drawing on good practice from the corporate and NFP sectors. AICD members have noted that recruitment processes for Commonwealth public sector boards can be opaque, varied and selective. Examples include open invitations for expressions of interest without clear selection/skills criteria; selective approaches rather than open advertisements; lack of clarity on appointment decision rights (specifically, whether the Minister, Department or Cabinet has a role in reviewing or approving appointments); and/or lack of timeframes for appointment decisions;
- f. a central Commonwealth public sector board register for all public sector board vacancies (incorporating detail such as selection criteria, assessment processes and timeframes) could be created to serve as a central, transparent hub; and
- g. public sector boards should have, at all times, a quorum. Where public sector boards fall below quorum, filling vacancies should be a clear priority for the relevant authority,

8. **Selection process:** As a general principle, a selection panel should be tasked with short-listing nominees and making a recommendation to the Minister or relevant appointment authority. The selection panel should include serving board members (preferably including the Chair) and, where possible, at least one independent external member who is preferably a practising non-executive director. When vetting candidates, the alignment of candidates to the objectives, values and strategic vision of organisations should be considered, along with skills and expertise, overall board diversity and specific priorities identified in the board skills matrix.

9. **Appointment:** Where possible, appointees and reasons for their appointment should be made publicly available, as is the case for listed company boards. It is also critical that all public sector boards have sufficient members, at all times, to fulfil their charters and make decisions. The AICD has been advised that delays in appointments leave public sector boards operating with minimum numbers to operate, or in worse cases insufficient directors to exercise the governance functions of the board. In some instances, serving directors on public sector boards have faced unilateral extensions of terms to allow boards to continue to operate without full consultation or timeframes for resolution.

10. **Reappointment of directors:** Reappointments should not be automatic. Where a director's term is due to expire, a recommendation for reappointment should generally be made following an assessment of the director's performance, including board and committee meeting

attendance and contribution. To ensure minimum disruption to board operations, no more than one-third of the board should be rotated at any one time. Chair (or equivalent) succession should be staggered appropriately, in particular to generally ensure that both roles (Chair and CEO-equivalent) are not replaced at the same time.

11. **Role of the Chair:** The Chair's role is pivotal to effective governance. On public sector boards, the Chair may play a unique role in terms of: engagement with the Minister or relevant authority; in leading initiatives to deliver community and stakeholder transparency and accountability; in supporting the board to fulfil its charter relating to Ministerial or other authority expectations and directives; in advocating for timely appointments; and in driving engagement on skills matrix and new director recruitment. Appointment processes for the Chair may also vary or have more focused political oversight. The performance of the Chair, and the continuing confidence of the board and key stakeholders in the Chair, will be critical to the effective performance of a public sector board. Appointment of the Chair should, in general, be transparent, based on defined criteria, and informed by Chair and board evaluation feedback.

Governance considerations post-appointment/renewal


The following considerations should apply to governance post-appointment/renewal:

1. **Performance assessment:** The performance of the board, its committees and individual directors should be periodically reviewed based on accepted governance practices and standards. Generally, this should include regular independent external evaluations, including review of the role of the Chair, the composition and effectiveness of board committees, and the contribution of board members. The periodic assessment of the board should be discussed by the Chair and relevant governance authority as part of the review process, with a view to continuous improvement and clarity on expectations, performance and accountability.
2. **Induction:** Induction processes should on board new directors by providing information about the organisation such as to enable full and active participation in board decision-making. In addition to the usual board induction topics, induction for public sector boards should include clear information on the board's relationship with the relevant Minister or authority.
3. **Professional development:** All directors should have access to continuing professional development to ensure that they are up to date with key organisational and sector developments, as well as developments in the regulatory environment, governance practices and financial reporting.

Next steps

We hope our submission will be of assistance to you. If helpful, the AICD would be pleased to facilitate further feedback from directors with relevant experience with public sector appointments and processes. If you would like to discuss these matters further, please contact Louise Petschler, General Manager (Education and Policy Leadership) at lpetschler@aicd.com.au or Anna Gudkov, Senior Policy Adviser at agudkov@aicd.com.au.

Yours sincerely,



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