



**CHARTERED SECRETARIES
AUSTRALIA**

Leaders in governance

26 November 2009

Advisory Group on Reform of Australian Government Administration
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

By email: reformgovernment@pmc.gov.au

**SUBMISSION
REFORM OF AUSTRALIAN GOVERNMENT ADMINISTRATION**

Chartered Secretaries Australia (CSA) is the independent leader in governance and risk management. As the peak professional body delivering accredited education and the most practical and authoritative training and information in the field, we are focused on improving organisational performance, transparency and accountability. We also influence governance and risk management thinking and behaviour in Australia. Our members are all involved in governance, corporate administration and compliance with legislative and regulatory obligations. They work in listed, unlisted, private and government-owned corporations, as well as in government agencies and departments.

General comments

CSA welcomes the opportunity to comment on the issues raised in the discussion paper, *Reform of Australian Government Administration* (the paper). We note that the paper places importance on the skill-sets and professional development requirements to carry the Australian Public Service (APS) into the future. CSA's mission is to promote and advance the effective governance and administration of organisations in the private and public sectors through the continued development and application of governance and administrative best practice. We have therefore given practical recognition to the professional development of the APS through our Graduate Diploma of Applied Corporate Governance. It is the only applied postgraduate course in governance in Australia with higher education accreditation that includes tailored public and private sector subject options, as well as a dedicated subject on risk and compliance. Our focus is also on providing a shared learning environment for both public and private sector students.

Our active membership base of more than 7,000 governance professionals means that we are in a position to provide information on the latest issues and standards in the evolving areas of governance and risk management in both the public and private sectors. For example, CSA has already published a number of Good Governance Guides designed specifically for the public sector. These are available in the public domain section of our website and are intended to assist public sector agencies in implementing good governance frameworks.

CSA has also been progressive in understanding the growing need for improved public sector governance and the emerging landscape in the metamorphosis of the APS at all levels of government. Our commitment to this has been facilitated by the creation in 2008 of a Public Sector Governance Committee, a formal committee of the Board of CSA. Members of this committee come from a number of different government jurisdictions with a wide range of public

and private sector experience and they strongly support the need for good governance, risk management and ethics in the public sector. In preparing this submission, CSA has drawn on the expertise of the members of this committee.

General governance issues

CSA welcomes the opportunity to comment on what it considers to be the general governance issues of relevance to the reform process of public administration within the APS. CSA notes that governance comprises four critical elements: transparency; accountability; stewardship; and integrity. We leave it to others to comment in detail on various matters canvassed in the paper and focus in this submission on governance and risk management issues that we believe should be considered by the government in any reform process of government administration.

CSA is of the view that the Australian Government has the opportunity to lead a nationally integrated approach to governance frameworks for both the public and private sectors at the federal, state and local levels. In the private sector, the Australian Securities Exchange (ASX) Corporate Governance Council's *Corporate Governance Principles and Recommendations* are applicable to all listed companies and are widely used as the governance framework by other private sector entities, not-for-profit organisations and many government organisations. The Council's guidelines are non-prescriptive principles against which public, listed companies disclose on an 'if not, why not' basis in their annual reports. The 'if not, why not' regime accommodates the reality that there is no 'one size fits all' approach to governance, and provides the opportunity for listed companies to explain their governance practices to their shareholders.

The increasing convergence of private and public sector governance is reflected in the adoption by many government agencies of the Council's guidelines, with increasing clarity within the public sector that they provide a useful framework for the development, implementation and reporting of governance arrangements. CSA is aware of some state jurisdictions having adopted or being in the process of adopting all, or part, of the Council's guidelines. The self-assessment and reporting by public sector agencies against these principles provides consistency between public and private sector governance and also provides government agencies with the opportunity to explain their governance arrangements to key stakeholders.

Notwithstanding that key private sector standards of corporate governance are relevant to inform the practices and procedures for government agencies, the context of government ownership creates different circumstances for public sector agencies. The ASX Corporate Governance Council's principles, tailored for the public sector, need to be supplemented by guidelines developed specifically for the sector.

Specific comments

1 Accountability, transparency, stewardship and integrity

Good governance encompasses not only the system by which organisations are controlled but also the mechanisms by which organisations and those who comprise them are held to account. CSA is of the view that achieving and maintaining a high-performing APS is based upon its strong adherence to the principles of public accountability. Clarity of decision-making within agencies, together with the processes to make sure that the right people have the right authority and the right competencies for the agency to make effective and efficient decisions, with appropriate consequences delivered for failures to follow those processes, are crucial to accountability. However, there is no 'one-size-fits-all' approach that can be imposed on government administration.

For example, CSA recently conducted an inaugural survey of the standards and practices of company secretariat functions and the application of governance practices in commercialised government entities, that is, government-owned corporations (GOCs), government business enterprises (GBEs), state-owned corporations (SOCs) and government trading enterprises

(GTEs). Our research is intended to clarify how governance operates in such companies and to provide benchmarking for all government-owned corporations on this important issue.

We contacted all company secretaries or equivalent in commercialised government entities, at both the Commonwealth and state levels, to invite them to participate. We had a 66 per cent response rate. The main finding of the survey of governance practice in Australian commercialised government entities is that adoption of the corporate form has not resulted in the clarity this form is intended to provide. This is because the roles of the various parties in the governance framework, that is, the shareholder (government); the board of directors (governing body); and management lack clarity. For example, the board's role as the governing body is affected by the governance arrangements in such entities where the Minister is both a shareholder and a decision maker. A fundamental question is whether there is sufficient delineation or separation between government and the entity it creates. The findings suggest that corporatised bodies owned by the government cannot be considered optimal from a corporate governance perspective, while such lack of clarity as to role definition exists.

The relevance of the survey results to the issues under discussion in the paper are that they show some confusion within commercialised government entities and their shareholding departments as to the identities of the key stakeholders in the governance framework. These entities are probably best suited to the ASX Corporate Governance Council guidelines, yet appear to be struggling with central governance concepts.

In order to achieve public accountability, each public sector agency and its administrative personnel will need to develop a governance framework fit for the organisation. This will involve being clear and unambiguous about the organisation's structure, operations and performance, both externally and internally, and maintaining a genuine dialogue with, and providing insight to, stakeholders. It will also involve developing and maintaining an organisation-wide recognition that the agency is managed for the benefit of the public, which in turn requires the development and maintenance of a culture committed to ethical behaviour.

2 Engaging with risk

CSA is of the view that, if there is an interest in pursuing a closer alignment between the public and private sectors with respect to governance practice and principle, then the APS needs to adopt risk management strategies that are appropriate for individual organisations and their mandate. For example, in some instances the APS may need to pursue innovative and creative policies which may require it to develop a greater tolerance for failure when it occurs as a result of carefully considered risk taking. In other instances, it may need to be more risk averse. The adoption of a cost-based approach to governance demonstrating that the cost of governance is commensurate with the risks rather than a 'one-size-fits-all', prescriptive, box-ticking approach is an important consideration.

CSA notes that with the increased convergence of public and private sector governance and a desirable increased movement of personnel between the two sectors, conflicts of interest need to be managed, for which appropriate governance frameworks need to be implemented.

CSA also notes that another area of risk that requires attention is IT governance. CSA agrees that technological change provides significant challenges for the public sector. CSA notes that any implementation of technology should be accompanied by a budgetary regime that allows for the management of long-term assets such as IT systems spanning over their life cycles. IT systems are a major asset of government and history has shown that some systems have been utilised far beyond their expected life cycle due to the inability of agencies to secure the significant funding that would be involved in replacement. The implementation of a capital budget program that will allow the introduction of a whole-of-government approach to the maintenance and replacement of IT assets would improve the overall efficiency of the public sector.

CSA recently published *Enterprise Risk Management*, which examines the centrality of risk management to governance frameworks. With the adoption of the international standard, it is more important than ever for directors, officers and members of governing bodies to demonstrate that they have applied an appropriate level of care and diligence. CSA considers that this applies equally to the public sector as to the private sector.

CSA encourages the Advisory Group to refer to the Innovation in Services project undertaken by the UK Department of Business Enterprise and Regulatory Reform (BERR) and the National Endowment for Science, Technology and the Arts (NESTA) in 2007, which identifies the key barriers to services innovation in specific sectors and provides a basis for practical action by government to tackle these.

CSA also commends to the Advisory Group the discussion paper recently released by the Canadian Government in association with the Canadian Comprehensive Auditing Foundation, *Taking Chances*, on principles for innovation, risk and control as guidance to public sector managers, auditors and legislators.

3 The role of the APS in government

CSA supports any effort to reinvigorate the Westminster tradition of an APS that upholds and strengthens its capacity to provide frank, fearless and creative advice to the government of the day. To achieve a constructive outcome for the APS, CSA considers the approach to reform should comprise three essential elements.

The first element is to strengthen the application of principles embedded within the Westminster tradition and administered through the application of the *Public Service Act 2000*. The principles are currently interpreted through the loose and selective application of 'ideals'. The ideals are merit-based selection processes; equal employment opportunity; impartiality; independence; transparency; accountability and integrity of APS officers. CSA is aware of the practical difficulties which flow from the competing requirements that officers within the public service be, at the same time, both apolitical but also responsive to the government of the day. CSA is of the opinion that the Public Service Act requires a wholesale and far-reaching reform to align it with the demands of the modern APS, and the increasing convergence of public and private sector management principles, without losing reference to the above-mentioned Westminster ideals.

The second element is to rationalise the current myriad of agencies and statutory authorities that represent diverse organisational structures, many of which are technically outside of the mainstream public service. These are largely represented within a whole-of-government, portfolio approach which, in the budget process, is managed by departments of state. These agencies are often created under differing forms of legislation and subjected to differing financial management principles — albeit the officers are still subject to the Public Service Act, regardless of financial management and organisational principles through which they are expected to operate.

For example, the annual federal budget cycle as administered by the Department of Finance and Deregulation is applied through a common set of financial and governance budget management principles (for 2009—2010 the principles were driven by Operation Sunlight), regardless of the agency or authority being subjected to either legislation. In this instance, the operating principles of agencies and authorities subjected to the *Financial Management and Accountability Act 1997* are fundamentally different from the principles enunciated by the *Commonwealth Authorities and Companies Act 1997*, yet they are expected to produce budget input according to a common template which does not discriminate according to operating and financial planning principles. This is a particularly inefficient and confusing approach to management when the commonwealth body has a quasi-commercial foundation to its operations. CSA is of the view that these arrangements pose significant challenges in terms of achieving sound structural reform and a more efficient public sector.

The third element is to strengthen the professionalism and excellence of the APS. Indeed according to the *Canberra Times*¹, Prime Minister Rudd is reported in a recent speech delivered to the Robert Garran Oration in Brisbane as having stated that ‘...the APS needs to improve in three key areas: service delivery; the development of excellent policy advice; and planning to ensure it has the highest-quality workforce to meet the challenges ahead’. CSA agrees with Prime Minister’s Rudd’s statement and, furthermore, considers his suggestion within the same speech that investing in staff development and education is a key recommendation. CSA believes that the drive toward excellence can be encouraged by expediting issues of remuneration, flexibility and mobility through the transition of talented Australians between the public and private sectors. We consider that mobility between the public and private sectors would contribute to reducing the skills gap within the APS and improve overall convergence and performance particularly in the policy formulation areas.

CSA understands that one of the major issues in achieving excellence in the public sector is to facilitate the transference and adoption of management principles and policy ideas between the public and private sectors. We consider that this can be achieved through the adoption and utilisation of ‘strategic policy centres’, incorporating collaboration between academics, business people and overseas researchers with APS officers (this was also reported in the same speech by the Prime Minister). The second means of achieving this outcome is to encourage the public sector officers to undertake specialist training through institutions such as CSA and other professional bodies that are also utilised by the private sector.

CSA encourages the Advisory Group to refer to other relevant initiatives that have been undertaken in the United Kingdom in recent years, particularly the employment protection policies such as the Employment Rights on the Transfer of an Undertaking (TUPE) developed in 2007 by the Department of Business Enterprise and Regulatory Reform (BERR). This undertaking facilitates the transfer of employees from the public to the private sectors while protecting their employment conditions.

4 Citizen engagement

Good governance includes the capacity of public sector agencies to develop and maintain strong stewardship of the public service. A significant part of this stewardship is the recognition that the public service is managed for the benefit of the community as a whole. Essentially, public services are ‘owned’ by the community. As ‘owners’ of services, the community has a legitimate expectation that its interests be understood and taken seriously and that citizens be part of the decision-making process of government.

Public consultation is a long-standing mechanism adopted by government for taking soundings of community opinion before significant legislative or policy steps are taken. We hope that due consideration will be given to public consultation on the issues canvassed in this submission, as well as in other areas where public comment is sought, and that the consultation process will not be a mere formality.

Conclusion

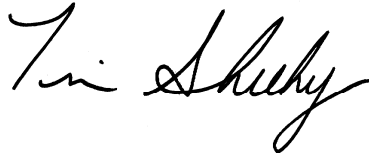
CSA appreciates the opportunity to comment on such a significant undertaking by government. CSA is concerned that any proposal for reform would need to take account of jurisdictional issues and the commensurate governance issues raised by jurisdictional differences. These differences give rise to issues of ambiguity and confusion. CSA notes that the real impact of any reform of the APS is likely to be limited if the broader issues of jurisdictional overlap are not addressed.

¹ ‘Public Service Could Try Harder’, *Canberra Times*, 21 November 2009, front page

CSA believes that consistent public sector reform across all layers of government is required. The focus should be on getting the right conditions of competition and contestability to secure better overall performance within the APS, that is, high-performing agencies, positive partnerships and, importantly, acceptance across the political spectrum.

CSA would welcome further contact during the consultation process and the opportunity to be involved in further deliberations.

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 tail.

Tim Sheehy
CHIEF EXECUTIVE