

29 July 2014

The Hon Joe Hockey MP
Treasurer
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Senator the Hon Mathias Cormann
Minister for Finance
PO Box 6100
Senate
Parliament House
Canberra ACT 2600

Dear Treasurer and Senator Cormann

Recommendations 55 and 56 of the National Commission of Audit

Governance Institute of Australia (formerly Chartered Secretaries Australia) is the only independent professional association with a sole focus on the practice of governance. We provide the best education and support for practising chartered secretaries, governance advisers and risk managers to drive responsible performance in their organisations.

Our Members are all involved in governance, corporate administration, risk management and compliance with the Corporations Act 2001 (the Act) with their primary responsibility being the development and implementation of governance and risk management frameworks in public listed and public unlisted companies, private companies, public sector entities and not-for-profit organisations.

Governance Institute notes Recommendations 55 and 56 of the Report of the National Commission of Audit, concerning the establishment of a central register, proposing new guidelines for establishing public sector bodies, and proposing the rationalisation of public sector boards, committee and councils. We wish to signal, in principle, our support for these recommendations, but also point to the importance of ensuring that appropriate frameworks are constructed for implementing these recommendations.

A central register of Commonwealth bodies and guidelines to support the establishment of public sector bodies

Our Members strongly support the need for the introduction of a central register of Commonwealth bodies and the development of guidelines to support the establishment of public sector bodies. As recognised in the Commission of Audit, there are significant operating and governance costs associated with the scoping, development and implementation of public sector bodies. The current public sector model, however, contains a mixture of various public sector organisational forms.

We note that the variety in types of public sector bodies arises predominantly out of the manner in which these bodies are developed, for example, public sector bodies may be:

- established by an Act of Parliament
- deemed by legislation to be a public sector entity because they are controlled by another public sector entity, or

- established by a specific constituting Act.

the introduction of various types of public sector bodies has resulted in inconsistencies in the definition of a public sector entity, and importantly, it has also resulted in the potential for the following issues to arise:

- a lack of clarity about the role and powers of public sector governing bodies/boards, which has implications for the understanding by directors/members (and indeed other stakeholders, including 'owners') of their accountability, responsibilities and obligations
- a myriad of legal structures, which has implications for 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.

Governance Institute strongly recommends, therefore, that the Federal Government, its Ministers, and any panels advising them utilise a limited menu of pre-defined categories of organisations from which to choose when creating a public sector entity.

We believe that such an approach will ensure that clarity is achieved as to the governance framework that is being established, including the accountability and responsibilities of the governing body/board. We also believe that such an approach is consistent with the Recommendation to have guidelines in place which establish the framework for scoping and developing public sector bodies. We also believe that the guidelines should extend to detailing the accountabilities, responsibilities and obligations of the head of various public sector bodies, where not otherwise stated.

In developing the guidelines, Governance Institute refers you to our *Good Governance Guide: Issues to consider in the formation of public sector entities* (a copy of which is appended to this letter) to provide guidance on the issues to consider when developing the framework for the development of public sector bodies.

Reduction in the number of boards, committee and councils

From the Recommendation it is clear that the current framework has failed to address the plethora of public sector boards, committees and councils, as a result of limited oversight of the need for their continued existence.

Governance Institute recommends, therefore, that not only should guidelines be drafted with respect to public sector bodies, but that guidelines also be drafted in relation to boards, committees and councils. Alongside our guidance on the issues to consider when forming public sector entities, we also refer you to our *Good Governance Guide: Issues to consider in the formation of public sector boards* (a copy of which is also appended to this letter) to provide guidance on the issues to consider when developing the framework for the development of public sector boards, committees or councils.

However, we do have some concerns with aspects of Recommendation 56. We recognise that there is merit in asking the public sector to assess boards, committee and council in their various portfolios with a view to improving the efficiency and effectiveness of their operations. Indeed, Governance Institute agrees that in some circumstances, such as where the functions of the public sector board, committee or council is no longer required, it is appropriate for the board, committee or council to be disbanded.

However, we believe that there should be an appropriate framework for the ongoing review of boards, committees and councils, which includes an appropriate process for signing off or

assigning the responsibilities associated with those boards, committees or councils. Our concern with Recommendation 56 is that the criteria are too generic and provide little guidance on the matters to be considered when determining the usefulness, effectiveness, or efficiency of boards, committees and councils. We believe that there must be established, good reasons for wanting to remove boards, committees and councils.

The recent example of the Australian Government's budget announcement of the abolition of the Corporations and Markets Advisory Committee (CAMAC), with its functions to be transferred to Treasury, provides an illustration of our concerns. We have already written to the Minister of Finance and expressed our concerns about this matter (a copy of our letter is appended to this letter).

We believe that the decision to abolish CAMAC has been made without due consideration given to the merits of the decision, including the importance of the expertise, independence and depth of issues which CAMAC is responsible for investigating and reporting on. We are the view that access to the calibre of expertise represented by the members of CAMAC cannot be replicated by Treasury in any ongoing and timely fashion.

We strongly believe that the development of appropriate governance frameworks in line with both Recommendations 55 and 56 is an appropriate starting point in seeking to enhance the scope and efficiency of the Commonwealth government.

We would be happy to discuss our views with you further.

Yours sincerely

A handwritten signature in black ink, reading "Tim Sheehy". The signature is written in a cursive, flowing style.

Tim Sheehy
Chief Executive