

## REVIEW OF ARRANGEMENTS AND PROCESSES FOR APPOINTMENTS TO PUBLIC SECTOR BOARDS

The Centre for Strategy and Governance (CSG) welcomes the Minister for the Public Service's initiative to review the standards and processes by which members are appointed to public sector governance boards and was pleased to see Ms Lynelle Briggs appointed to lead the review.

The CSG takes the view that this review is an important part of the Australian Public Service reform process. We observe that robust and thorough board appointment processes are a foundation for effective governance, trust in institutions and optimal enterprise performance in the public interest.

We acknowledge that many quality appointments have been made to government boards. However in the context of the broader APS reforms currently being progressed, this review will contribute to restoring integrity and trust in the institutions of Government. It is timely to improve appointment processes to optimise selection of the very best people for important public sector boards.

The appointment process should ensure that the public sector attracts the most competent pool of candidates and that appointments are on merit (not favouritism) reflecting a robust and transparent process.

A whole of government approach should apply, acknowledging the many processes and requirements currently in place, including arrangements for some boards already prescribed in legislation. Overall, the CSG is of the view that embedding robust appointment processes would be achieved by a combination of principles-based legislation and protocols that reinforce a culture of transparency and excellence. This would also allow flexibility for the diversity of boards across the public sector, including potentially applying to appointments to advisory public sector boards.

Key elements CSG recommends should be included in legislation include:

- principles of appointment process arrangements such as merit, transparency, and a robust and independent process;
- the role of the Australian Public Service Commissioner to provide assurance about the appointment process, the adequacy of the pool and prior endorsement of the proposed process for the conduct of the appointment processes by departments; and reporting annually on effectiveness and outcomes of appointment processes (with key indicators such as merit, diversity and compliance);
- details or plans of a proposed selection and appointment process should be transparent and included on agency websites; and
- reporting of the outcome of the process and where appointments have occurred outside of a proposed process.

Suggestions on how these key elements could be realised are included below.

Initially it is important to ensure a **strong and competent** pool of candidates with the necessary skills and capability to be considered for public sector boards, particularly with commercial-type boards which bring quite different requirements than private sector boards such as public sector accountability requirements and expectations of the government (in many instances, the shareholders).

Trust and integrity require ministers to be **clear about expectations and the role of the board**. This requires early engagement between departments and ministers and other stakeholders to develop a pool of competent candidates. Transparency about the role of the board, expectations of a proposed appointee, and the composition of the skills and capability required for a particular board should be clear early in the process. This transparency and information could be included on portfolio websites. It is important there is an agreed **skills matrix** for the board, which is important for discussions with decision makers and potential candidates about skills gaps the board currently has and how they might be addressed.

We did consider the concept of developing a whole of government register, noting in the past these have not been kept up to date or well utilised. We thought the resources and effort required would not be of benefit. Portfolio departments and the affected agencies are well placed to develop a pool of suitably skilled and experienced candidates. This could be supplemented, on occasions, by calling for expressions of interest and drawing on professional search firms to canvas candidates and undertake due diligence assessments. In this context a whole of government approach should be undertaken on what vacancies are coming up, with the Commissioner and secretaries being forward-looking and considering potential people to be included early in selection processes in a more co-ordinated manner.

In terms of the **selection process**, as mentioned, it should be transparent, based on merit, be independent and robust. In our experience, on many occasions, in addition to requiring clarity about the role and context, it is not clear to proposed appointees what the process entails, the timeline of the process, who is the decision maker and the consultation processes to be undertaken. In this context it is important **board chairs** for example, have a role or be consulted in selection processes, particularly to ensure the balance of skills required on the board and an understanding of the dynamics of board operations, including relationships with the portfolio, ministers and the chief executive officer. Ideally a **selection panel** should be established to oversight the process, to ensure all principles and obligations are met and provide recommendations to government. The selection panel could include senior and authoritative people such as the portfolio secretary, an independent business or governance person, and a senior figure who understands the subject matter of business or function for which the board is responsible.

In addition, the CSG thought it important for selected appointees to undertake a **comprehensive induction process** to fully understand the legal and policy frameworks applying to public sector boards. While noting induction processes do currently exist these should be embedded as a requirement in the appointment arrangements. Such induction

processes should be the responsibility of the portfolio department and agency affected.

Secretaries and/or their delegate, on some occasions, including in legislative provisions, are included as members on some boards. This does present the secretary/delegate and the department with potential, if not actual, conflicts of interest and has caused problems in the past. CSG members saw the benefit of **senior public servants** or secretaries attending board meetings, but not as a full voting board member. CSG members also considered that where secretaries or senior officers are appointed to boards, they should not delegate that responsibility to other officers in the department.

The review's terms of reference require consideration of **standards** applying to private sector boards and not-for-profit boards and whether Australian Government boards should meet those or a different standard. The Australian Institute of Company Directors (AICD) has a plethora of guidance, information and tools for company board selection processes. For example, the AICD not-for-profit governance principles say in relation to board appointments: "directors are appointed based on merit, through a transparent process and in alignment with the purpose and strategy" and "the board reflects a mix of personal attributes which enable it to fulfil its role effectively". These are broadly consistent with what should be applied to public sector board appointments and an important source of guidance. They need to be supplemented by any special public sector requirements given the distinctive challenges and public sector accountability requirements applying to Australian Government boards. It would also be useful to understand and draw on contemporary better practice arrangements from other jurisdictions including overseas public sector experience.

We recognise the **role of ministers** and other decision makers in government, and their prerogative to make decisions about board appointments, not limited to those recommended through the selection process. However, it is extremely important for decision makers who do so, to articulate (in public or through government processes) why they have a different view than the result of the selection process. For example, we reflected on current ABC board appointment process (in legislation) to articulate why Government/Minister has decided on a particular appointment.

While the legislation should set out principles applicable to public sector governance board appointments, it should also provide for the Australian Public Service Commissioner to have more responsibility and provide guidance. This could be given effect through a 'notifiable instrument' under the Legislation Act 2003 (Commonwealth) that could:

- list the boards to which the notifiable instrument applies;
- require an agency responsible for the process for appointments to one of those boards to prepare, ahead of any proposed appointment, a plan for conducting the appointment process;
- require that the plan be notified to the Australian Public Service Commissioner – either as advice and comment; for approval; or for implementation within 14 days unless any contrary message is received from the Australian Public Service

Commissioner;

- require the agency, at the completion of the appointment process, to prepare a report to the Commissioner on the conduct of the appointment process, including notification on whether there was any deviation from the plan notified; and
- require the Australian Public Service Commissioner to prepare a periodic report on the appointments occurring under the notifiable instrument.

*Ms Lynelle Briggs AO, a member of the CSG, did not participate in the preparation of this statement.*