

2 May 2019

Mr David Thodey AO FAICD
Chair, Independent Review of the APS
Department of the Prime Minister and Cabinet
PO Box 6500
Canberra ACT 2600

Via Email: apsreview@pmc.gov.au

Dear Mr Thodey

Re: Independent Review of the APS

Thank you for the opportunity to provide a submission in relation to the Independent Review of the APS (**Review**).

The Australian Institute of Company Directors (**AICD**) has a membership of more than 44,000 including directors and senior leaders from business, government and the not-for-profit sectors. The mission of the AICD is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society.

This submission responds to governance related topics raised within your *Priorities for Change* document (**Interim Report**).

Common Purpose

The AICD supports the recommendation that the APS have a “common purpose and vision that unites and inspires the APS”. In January 2019 we released our revised not-for-profit (**NFP**) Governance Principles of which the first Principle is ‘Purpose and Strategy’. Further detail is available on the AICD website [here](#).

This Principle states that “the organisation has a clear purpose and a strategy that aligns its activities to its purpose”.

We consider that following the establishment of a common purpose, individual APS departments and agencies should be able to clearly articulate how, in achieving their own aims, they are helping to achieve that higher-level APS purpose.

Performance goals: genuine transparency and accountability for delivering outcomes

As outlined in the Interim Report, of key importance is the need to have clear and appropriate performance measures linked to the “common purpose”, and further, clear and appropriate performance measures for each entity.

Anecdotally we have heard that not all departments and agencies are well equipped to report against their performance goals - particularly for non-financial measures, that are at the core of policy development and program delivery. Having audit and risk functions with capacity to provide

confidence in the reporting of non-financial performance is an important consideration for departments and agencies across the APS.

It is also vital to have clarity on where responsibility lies within each department and agency for reporting against the overarching common purpose statement.

The roles and responsibilities of boards, advisory boards, and Ministers

Related to the concept of clarity and purpose are clearly demarcated reporting lines and responsibilities. In particular, we understand there can be difficulties where an organisation has an external board as well as a responsible minister that they are accountable to. Further there is a need for those in APS non-executive director positions to have a very clear understanding of what is expected of them, and any limitations on their responsibilities.

While we understand that the enabling legislation for a department or agency generally sets some of this out, direction and practical guidance could be provided to heads of departments and agencies, and APS non-executive directors, in managing this tension of organisations having 'more than one master'. Such clarity can support leaders in executing their functions confidently and with integrity. This is somewhat addressed below in relation to statements of expectation (SOE) which can be delivered by ministers and statements of intent (SOI) issued by departments, agencies or regulators.

In relation to the Review's consideration for an advisory board to the APS Commissioner, again we would encourage clarity around the nature of advisory boards and the expectations of those involved where recommendations are made by such a board.

More generally, it may be useful to have guidance indicating circumstances in which advisory boards, or indeed independent boards (see below regarding ASIC and APRA), should be utilised in public service governance structures.

Consideration of a requirement for key regulators to have board oversight

Effective governance frameworks support effective accountability, and the AICD through various submissions, has recommended that key regulators (specifically, ASIC and APRA) be supported with the implementation non-executive boards.

From an international perspective, there are a number of examples of such regulators with board structures in place, including the Financial Conduct Authority and the Financial Reporting Council in the UK, and the Financial Markets Authority in New Zealand.

A recent report on oversight of regulators, "Who Guards the Guards" prepared by The New Zealand Initiative in 2018, points to evidence that suggests that the model creates better internal checks and balances on regulatory decision-making than alternative governance models.

Indeed, Commissioner Hayne in his Financial Services Royal Commission final report commented that both ASIC and APRA would benefit from having non-executive directors including through the likely improvement in the scope and quality of internal oversight that such individuals would bring.

ASIC

The 2015 ASIC Capability Review Final Report commented on ASIC's governance arrangements (in particular, Commissioners having both an executive (management) and non-executive (governance) role). While it acknowledged the model's strengths (including close alignment between operational and strategic decision-making), it also noted that it results in a number of key challenges and tensions including potential erosion of the strength of internal accountability and lack of bandwidth for Commissioners to focus on strategic issues and external engagement. The AICD has advocated for a change in ASIC's governance structure to improve accountability

and culture and suggested that having a board with a majority of non-executive directors will provide greater oversight, objectivity, independent thinking and external perspectives to ASIC.

APRA

The Financial Services Royal Commission final report suggested that the appointment of non-executive directors may be an issue for consideration in an APRA capability review. Again, the AICD believes that having a board with a majority of non-executive directors would strengthen oversight, objectivity and independent thinking, and bring external perspectives to APRA – all objectives that APRA itself considers to be important, including in its prudential standards.

SOEs and SOIs

We also note that relevant ministers have the power to give a direction in writing to ASIC or APRA about policies and priorities. The report on the 2003/2004 Review of the Corporate Governance of Statutory Authorities and Office Holders (Uhrig Review) recognised that these powers are rarely used, and recommended that:

- Ministers should issue SOEs to their portfolio bodies to clearly articulate the Government's expectations of each body; and
- The body should respond to the Minister in a Statement of Intent (SOI) which outlines how it proposes to meet the Minister's expectations.

In Uhrig's view, this would ensure that 'individuals responsible for the performance of statutory authorities clearly understand the expectations of government including the outcomes for which they would be held accountable'. Uhrig's report contemplated that SOEs and SOIs should be subject to review on an annual basis, or more regularly where appropriate. We support the use of SOEs and SOIs to help manage mutual expectations, while noting the importance of them being regularly reviewed to ensure they remain current and fit for purpose.

Secretaries Boards and Head of Service

We support collaboration and information-sharing at the most senior level of the APS through the 'Secretaries Board' to support effective policy development and program delivery. Further we note that the Interim Report seeks to enshrine the Secretary of the Department of Prime Minister and Cabinet in legislation as the APS' defined head of service, and install them in the role of Secretaries Board Chair.

Typically the Chair of a board is a 'first amongst equals', and while this is generally in reference to a non-executive board, some clarity around the role and responsibilities of the Chair in this context may assist.

Consistency in naming conventions

Re-naming of the Secretaries Board should also be considered, given that a board is traditionally understood to be an entity tasked with oversight function rather than management function.

We also note that across the APS there is significant variance in the naming of senior positions and titles. Departments, agencies and regulators have their executive head known as Secretary, CEO, Director and Chairman. For example the (executive) head of the Australian Prudential Regulation Authority (APRA) is known as Chairman, and the executive team as 'members'.

This inconsistency can at times create confusion, and may warrant further consideration given this review aims to address 'clarity of purpose' and 'clear roles and responsibilities for the APS at its most senior levels'.

Clarity and confidence in the appointment and expectation of secretaries and government boards

We note that the APS mission is to “be an apolitical public service that acts with integrity in all it does, and is efficient and effective in serving the government, the Parliament and the Australian public.”

As such we support measures to improve the “confidence in the appointment, performance management and termination processes for secretaries”. While recognising that it is the responsibility of the Prime Minister to make such decisions, we consider that a more transparent approach may provide greater confidence in the process.

We would also welcome equivalently robust appointment processes for boards of government organisations. There are various past examples of newly elected governments refreshing entire APS boards. Confidence may be enhanced in the process for appointments to government boards and any board renewal where there is a transparent process, justification for any changes – for example against a skills matrix (as one of many measures) – and performance monitoring against a clear set of expectations.

The AICD’s 2017 and 2018 Blueprint for Growth publications canvass issues of short-termism’ in public sector governance and emphasise the need to “modernise systems of government to support longer-term policy decisions.” Frequent changes in leadership across the APS can work against sound long-term policy planning and consistent, effective governance.

Culture setting and tools for measuring culture

Entities from all sectors are increasingly recognising the importance of culture in terms of performance and risk management. In the private sector, public revelations of corporate wrongdoing including through the Financial Services Royal Commission have demonstrated that poor culture often leads to misconduct that can damage stakeholder interests as well as the reputation and standing of institutions.

Regulators have also had a heightened focus on accountability of those in positions of leadership through measures such as the Banking Executive Accountability Regime (BEAR) in recent years. We note that the Interim Report states that “strong accountable leaders are key to successful change”, a point reiterated by Hayne when he states “clear accountability is vital to effective governance” Where ownership of outcomes and culture can be apportioned to senior executives in the APS strong performance may be expected to follow. Of note is that Commissioner Hayne recommended that a BEAR type arrangement be applied to both ASIC and APRA to help drive greater accountability.

The AICD teaches that the heart of contemporary governance is the issue of values, and the question of what is right and wrong. These matters are inextricably linked to organisational culture. One of the most critical drivers of culture is leadership of the organisation.

The AICD understands that organisations are increasingly looking at ways of measuring culture. Some include culture audits, staff engagement surveys, senior executive and board interaction with staff, and analysis of various wellness and metrics including: staff turnover; staff training; performance management; learning and ongoing development; WHS incidents, near-misses and accountability; whistleblowing incidents/complaints; breaches of codes of conduct; risk metrics; Innovation (e.g. new products, speed to market); and remuneration.

AICD resources and services

The AICD provides an array of free resources across all aspects of governance some of which may be useful to APS departments, agencies, regulators and boards. The AICD also provides tailored public sector governance courses through our Foundations of Directorship program. This

program canvasses the fiduciary duties, responsibilities, liability, and general roles of APS directors, including directors of public sector corporate entities.

The AICD also has capacity to provide tailored courses to APS departments, agencies and boards.

Next steps

If you would like to discuss any aspect of this submission, please contact me or Amber O'Connell, Advocacy Manager, on 02 8248 8424 or via aconnell@aicd.com.au.

Yours sincerely



LOUISE PETSCHLER
General Manager, Advocacy