

Report of the Review into Public Sector Board Appointments Processes

NO FAVOURITES

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Executive Summary

I was asked by the Australian Government to conduct a high-level review of the appointments process for government boards¹; propose appropriate standards for the processes by which board members are appointed to government boards; and consider how appointments to boards can contribute to integrity and trust in the institutions of government. It has been a privilege to conduct this review and is my pleasure to deliver my report.

As the basis for this high-level review, I have concentrated on the two hundred or so governing and decision-making boards² that make important decisions affecting all Australians as set out in [Annexure 3](#). For ease of reference, I refer to them as boards, board members or other in-scope office holders. My recommendations are directed at these groups and do not cover other bodies like advisory committees. I have not gone into detail on any individual board or entity or reviewed their legislation as that was beyond the bounds of the review in the time available.

It has been important for me to maintain the confidences of those consulted as part of this review, so I have not quoted them directly. I can guarantee, however, that they have provided me with a treasure trove of information on which to base my findings, and some challenging complexities to deal with. Suffice it to say that with their help I have done my best to navigate through the string of different appointment arrangements and to reach common ground on a workable solution to politicisation of the appointments process.

It is also important to add that I do not wish nor do I intend to cast any aspersions in this report against any serving board members who may be tagged as political or direct appointees. I simply set out the board appointments situation as I see it in general and report the problems and challenges identified in this review arising from politicised appointments.

Loss of Trust and Failing Confidence

Integrity in board appointments is one of the first gateways to integrity in the government.

The extent of what are perceived as political appointments in recent years has contributed to a climate where public trust in government has been undermined. Even though only 6-7% of all board appointments can be automatically described as “political”, as many as 50% of appointments in some portfolios are “direct appointments” made directly by Ministers. I expect that the public is unable to differentiate between political and direct appointments

¹ In this review, any reference to government or government boards refers to the Australian Commonwealth Government and Australian Commonwealth Government boards.

² Where “boards” refers to a group of people that may be described as a governing or decision-making board of a Commonwealth entity or company.

and there is a perception that all direct ministerial appointments³ are politically motivated. In and of itself, that is a cause for concern in our Westminster system of government.

While appointment arrangements vary across portfolios and government bodies, officials reported in this review that board appointments are generally made by Ministers in the absence of clearly defined rules or processes and there is little transparency about how appointment decisions are made. In the absence of clear, generally applicable appointment standards to guide and help their appointment decisions, Ministers have the prerogative to appoint whomever they see fit to important entity governance positions. This can have significant impacts on our national life. Once appointed, the public has limited ability to hold these board members to account for their actions.

I found in this review that there are not enough checks and balances in the current appointments system to enable Ministers to balance their ministerial autonomy to make appointments directly with their accountability obligations.

Recruitment is the most important people management decision that can be made because people are the primary determiner of the quality of work and added value delivered in any organisation. The direction of any government entity can be changed through the choice of the individuals who oversee or work in it. It is therefore understandable that government would wish to ensure that the members of government boards are able to work constructively with the government of the day in an atmosphere of mutual trust and respect.

That said, too often the practice in recent years has been to appoint friends of the Government to boards, either as a reward for past loyalty or to ensure alignment with government priorities and all too often these appointments have looked like forms of patronage and nepotism that should have no place in the modern Australian society. The public expects to see board appointees who are professionally qualified for the roles they are expected to perform and who are willing to work for the good of the country rather than for a particular political party.

I found that the current board appointment arrangements are not fit for purpose. They have let down the Australian people, undermined the integrity and effectiveness of the public sector and exposed Ministers to unnecessary risk. They do not provide Ministers with a disciplined and structured appointments process that ensures a broad, relevant, and diverse skill set for their boards. They do not provide Ministers with the support that they need to find the best candidates and make appointment decisions. They do not always provide the best people for the job.

When the United Kingdom, Canada and New Zealand found themselves in similar circumstances, they acted to introduce or restore independence to appointment processes

³ Reference to “ministerial appointments” refers to appointments to boards that are the responsibility of, and require formal approval from, Australian Government representatives. This includes appointments primarily made by Commonwealth Ministers, but can also include the Prime Minister, the Governor-General in Council or the Cabinet. Similarly, references to “Ministers” may also be extended to the relevant government appointing authority, where the individual is not a Minister.

and to codify how the appointment processes would work. Australia stands out in having done little to support ministerial prerogative in making appointments.

Integrity Reforms

I am proposing a series of careful and measured reforms to the processes by which board members are identified, selected, appointed, and supported in their roles. The idea is to systematise appointment processes in legislation so that there is a standard appointment process that is disciplined and rigorous in its application and which will provide the benchmark for ministerial appointment practice. The proposed appointments model will deliver better candidates, from a wider range of circumstances, for board positions.

Under this system, Ministers remain responsible for decision-making, and their departments will have more responsibility for progressing board appointments for their Ministers and will do so in a manner that inspires greater public confidence through more thorough and more independent and transparent appointment processes. To ensure that the new system works effectively, departments will need to up their game significantly by applying more consistent drive and energy to appointment processes and by using assessment panels who understand what is required at the board level and can recognise it.

The appointment process that I have outlined in detail later in this report is comprehensive, flexible, independent and arms-length. It will deliver better candidates from a wider range of diverse backgrounds and better overall recruitment results.

I have endeavoured to ensure that Ministers are engaged thoroughly in the appointment process and that the process does not limit their choice of candidates or their capacity to make these important decisions. It will also permit them to go beyond the “safe choice” of known board members and provide legitimacy to appointments of more diverse candidates, especially those with great potential.

By far and away the biggest issue Ministers raised with me in this review is the need to extend the candidate pool to a wider and more diverse range of eligible people and to recognise the potential of others who would usually be overlooked for government board appointments. The model I recommend involves advertising of all board positions and proposes a range of candidate search and talent management arrangements that will increase board diversity and improve board quality. Importantly, assessment panels will need to be much more pro-actively engaged in finding stronger, more diverse fields and Ministers and Secretaries will set expectations that require them to do so. Stronger fields will mean that Ministers will be enabled to make better appointments.

The model still provides for Ministers to make direct appointments but puts transparent and clear process around those decisions to minimise the risk that appointments are the cause of National Anti-Corruption Commission inquiries or claims of breaches of the Code of Conduct for Ministers, or accusations that appointments are political in nature.

The core elements of the appointment process are straightforward and not onerous.

First, potential board vacancies are notified publicly on a regular basis in advance. Then, an independent assessment panel with the necessary skills is formed by the portfolio Secretary for the positions at least 6 months out from when they are due to be filled.

Second, Ministers and officials determine the range of skills, expertise, experience and diversity relevant to the scope and responsibilities of the role to be filled, using a skills matrix that reflects the purpose and objectives of the entity and the expertise and capability required, which will become the basis for the recruitment process.

Third, Ministers advise officials about the names of people they would like considered as part of the competitive recruitment process.

Fourth, the independent assessment panel advertises board positions on a central government site and in other places or through population-based agencies⁴, and actively pursues other mechanisms such as executive search, sector organisations and representative bodies, or diversity groups, talent pools and talent pipelines to find the widest choice of suitably qualified candidates.

Fifth, the panel excludes applicants with a conflict of interest which cannot be managed, then from the long list of candidates determines if the field is sufficient to enable a good appointment to be made. If not, they return to the market and conduct a deeper search. The Minister is kept informed.

Sixth, once a quality field is obtained, the assessment panel assesses the candidates in a competitive process, using a range of potential assessment mechanisms—from assessment on the paper through to informal discussions and interviews, references and so on.

Seventh, the assessment panel provides written recommendations to the Minister, with a short list of highly suitable candidates and suitable but not recommended candidates, including qualitative and comparative commentary on the candidates and advice on the candidates that the Minister put forward earlier.

Eighth, the Minister may meet or converse with the recommended candidates to give the Minister confidence that they are suitable for appointment and can work constructively with the Government. If, for any reason, the Minister is unhappy with the recommendations, they can ask for a second search to be undertaken and add more names into the search.

Ninth, the Minister takes a decision about who to appoint or who to recommend to the Cabinet to be appointed, giving the Prime Minister reasons for any direct appointments. Where direct appointments are made, the Minister will be transparent about it and will explain the reasons publicly in the announcement of the appointment.

Finally, the appointment is announced, the appointees are inducted and trained, and the Minister engages with the board as part of their usual oversight duties. Government boards are fundamentally different to other boards. Board members need support and guidance to help them understand their place and role in our system of government and their level of

⁴ By this, I mean advertising positions through relevant professional and community networks and platforms.

independence from government, and to help them establish relationships with key stakeholders, especially their Minister and senior portfolio officials.

I have also proposed that restrictions apply to the making of direct ministerial appointments in the six months leading up to elections to minimise overtly political appointments, and that politicians and their staff members cannot be appointed to boards for 6 months after leaving political employment or 18 months in the case of Ministers' portfolio areas.

These reforms are a necessary first step in rebuilding public trust in government appointments and in improving the quality of the appointments. But they are not sufficient. To promote integrity in appointments, I was also asked to provide appropriate standards to assist the appointments process.

I propose that a public interest duty be introduced that would require Ministers to make appointments honestly and in good faith in the best interests of the nation. It would guide the practice and behaviour of all ministerial appointments. I have identified a series of core operational standards for government board appointments that should be legislated: ministerial responsibility, public interest duty, duty of care, integrity, best choice or merit, diversity, openness, stewardship, fairness, respect and value, timeliness, standards in public life, performance, and assurance.

I also recommend that government board tenure be for a standard, single term of 4 years, whilst retaining some flexibility for Ministers to appoint for a second 4-year term where circumstances require it. A 4-year term should be sufficient in most cases for board members to make a difference. Where board Chairs are appointed from within the board another 4-year term of tenure is proposed. These arrangements will reduce the tendency to reappoint the same members over and over again. I also propose that the number of paid Australian government boards that any person can be appointed to be limited to 2 entities at any one time so that certain favoured individuals do not dominate government boards. Existing appointments would be grandfathered.

Once appointed, I recommend that board members be required to comply with the standards expected of board members in the wider Australian community. Board members are required in legislation to act honestly and in good faith with a view to the best interests of their entity and to exercise care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Members of government boards should be expected to maintain similar standards of behaviour and this requirement should be legislated alongside a new government Board Code of Conduct that will set out the integrity standards expected of them; and ultimately enable government to establish mechanisms for performance management or their removal should they not comply with the code.

My consultations have revealed that there is virtually no process associated with measuring and benchmarking board member performance. Poor member performance can seriously undermine board teams and entity effectiveness. I recommend an external performance review process for boards each five years that would enable Ministers and Secretaries to be alerted early about issues and, with the support of the Public Service Commissioner, address individual board member performance, including through dismissal.

I have been struck in this review by the extent to which no one portfolio has ownership or co-ordinating authority and influence over board appointment processes. The result is that there has been little done centrally to support Ministers' decision-making or to guide officials in doing so; so there is no consistent standard applied. Departments would benefit from a stronger supporting hand at the centre of government with over-arching responsibility for government board processes, as occurs in other countries.

After considering the options, I found that the Australian Public Service Commission should assume these important new responsibilities as the single central source of board policy advice and co-ordination. The Commission has recruitment expertise, is relatively independent and has the wherewithal to assume the function.

Even though departments will still have primary responsibility for appointments, I propose that the Public Service Commission should take responsibility for, amongst other things, generic board policy and associated guidelines; board oversight; co-ordinating board appointment activity across government; sharing good practice with portfolios; maintaining a central pool of possible candidates for boards; active search for young, diverse or new talent; centralised board advertising, data collection and reporting; overseeing board performance, evaluation and reporting; and board appointment assurance to the Parliament.

This change will likely result in the Public Service Commission becoming the integrity centre of government.

To be effective, the reforms I recommend will need to be driven strongly and carefully. The Public Service Commission is not currently resourced for this new role and would need to build up its capability to deliver the many reforms I recommend.

Ministers Gain

These changes will deliver significantly wider and much more diverse recruitment fields, better recruitment results, more highly performing government entities, and improved ethical standards in government.

Ministers will be enabled to make an informed choice as to who to appoint. They will receive much more support and services from their departments to make the right appointments, as departments will be proactively involved in driving independent recruitment and assessment processes and will be expected to search thoroughly and widely to find great candidates from a broader range of backgrounds and experience and who can work with their agenda.

Ministers and the Australian people will have greater confidence that the best people available will be found for government jobs and that old systems of favouritism, patronage and jobs for the boys will no longer be widespread.

More highly capable people and eminent people will in turn want to join government boards. The chance to do meaningful work that contributes to our country is attractive and

will no longer be seen as a closed shop accessible only by the chosen few. Instead, government board service will be an honour that more people aspire to.

Ministers will have greater confidence that their boards will work better because board members will be better selected and have depth of relevant capabilities. They will be given more training and guidance for government work. Ministers will be able to call upon external reviews and the Board Code of Conduct to target board performance.

In trading off some of their freedoms to recruit as they choose, Ministers will be part of a significant integrity reform, which will bring with it better business outcomes, greater transparency and a degree of personal satisfaction in doing the right thing by the nation in restoring its important national institutions.

Legislation or Convention

While it is usually sufficient to rely on conventions to institutionalise government practice, I am not confident that conventions will work in this area at this time. Australia does not have the history of clear conventions to rely on in this area that other comparable countries had before they strengthened them. Our board appointment practices are at best ad hoc and unpredictable and are degraded to such an extent that they cannot be depended upon. There are few benchmarks, standards or practices to rely on and I am concerned there is little that would make the integrity reforms stick without legislation.

Ministers from both major parties have said over the years “that the other side will do it when they get in”, which signifies that politicization can only be managed through legislation that provides operational standards to be applied.

The fact is that the public’s confidence in the integrity of appointments is so low that the clarity and assurance of legislation is required to rebuild trust and embed integrity in board appointment processes.

To change Ministerial behaviour among all political parties needs the strength of legislation to enforce the change, then a period of some stability to embed it so that it becomes the way government appointments business is done. It also requires individual Ministers to take their personal responsibility seriously to act in the national interest when making these important appointments. And, it needs to be underpinned by proactive management of the assessment process by Secretaries, assessment panels and the Public Service Commissioner.

My preference is that the legislation should be comprehensive and cover the range of integrity reforms I recommend to safeguard against the reforms being undermined.

I recommend a new Act, the Government Boards Services Act to highlight the new requirements and enable them to be managed comprehensively.

In recommending comprehensive legislation, I do not want this to be taken to mean that rigid, finely detailed and prescriptive appointment process is to be legislated in a one size fits all manner, because this would be unworkable. I intend, rather, that the core elements, the principles, standards and spirit of the reforms would be set out in principles-based

legislation, with exclusions as necessary⁵ so as not to impede the effective functioning of government.

Moreover, if legislating the details for implementation proves impractical or is not preferred, then I propose that the core elements of my reforms should nonetheless be codified in legislation and that the Public Service Commissioner be provided with a power to regulate the details for implementation of standards, the appointments process and the Board Code of Conduct, independent of Ministers and government. This is not my preferred approach yet it would at least enable the principled application of the appointments process and the guidelines.

The nature of the appointment and performance management reforms I recommend are significant and will have wide-ranging ramifications for many other pieces of legislation, which will need careful consideration. The reforms cannot be introduced instantaneously. I have set out in the report transition arrangements to facilitate a smooth and measured passage to the new appointments system—including that current members are able to serve out their terms; not all board members will “turn over” at the same time; and entities will be transitioned to the new arrangements over 2024-25.

Other

In the course of this review, I found that governments have oftentimes left their entities and boards alone to get on with the job and that there are likely to be many matters that Ministers may wish to consider further. It may be that there are issues of changing directions in government policy, remuneration consistency questions, entity capability and performance issues, and a raft of other matters that need consideration at an appropriate time. I have recommended that Ministers consider these matters directly and determine if changes are required.

Conclusion

I have proposed in this review a series of measured reforms that should help to restore public confidence in the governance of public entities, whilst maintaining Ministerial responsibility for board appointment decisions. They start with an acknowledgement that Ministers need a generally applicable and standard appointments process that is applied consistently in all portfolios in order to have access to a fairer, more effective and more transparent system that builds in strength over time as practice is embedded and built upon.

Such a process will give Ministers confidence that they will be able to appoint the best available people to government boards. “Only the best will do” will become the mantra for public sector boards and other in-scope officer holder appointments and the reality for Ministers as they make these appointments.

⁵ Government is complex and multifaceted, and there will need to be valid exceptions which give Ministers latitude to address various needs or to meet the particular requirements of a situation, a circumstance, a crisis or even a rare and specialist skill set, and that should be provided for in the legislation.

Recommendations

I have set out my recommendations from this review into core and other recommendations. “Board” and “board members” includes other in-scope office holders (as set out on pages 20-22 and in [Annexure 3](#) of this report), unless they are specified separately.

Core Recommendations

Board integrity through legislation and new board appointment processes

1. Independent and competitive board recruitment and appointment practices should become part of the Government’s integrity agenda.
2. These practices and associated processes should be enshrined in new principles-based legislation, the Government Boards Services Act, taking effect from 1 October 2024, with transitional arrangements and associated schedules and instruments as set out in various parts of this report (pp. 28-29, 41-42, 47-52, 62-64, 68, 78-84, 90).
3. Remove special requirements and processes for board member selection from entities’ enabling legislation so that board appointments become subject to the same generic appointment legislation, thereby achieving greater consistency and predictability across selection processes, but providing for diversity specification in an instrument if necessary (pp. 28-29, 41, 48, 81-84, 90).
4. Ministers should be supported in their board appointment duties by sound assessment processes led by their department that reflect the needs of individual government entities, increase the pool of quality and diverse candidates, and enable candidates’ capabilities to be fairly and thoroughly reviewed in a competitive merit-based and transparent environment (pp. 40-61, 65).
5. A generally applicable, independent standard public sector selection process be legislated for board appointments, along the lines outlined in this report (pp. 41-68), to depoliticise and strengthen the appointments process. The process should include:
 - a) planning, diagnostics and seeking candidates
 - b) reviewing the candidates and determining who is the preferred candidate and then appointing them
 - c) induction and training, and

be supported by the development of appointment process guidelines by the Public Service Commissioner, which will highlight amongst other things merit, diversity and proactive candidate search.

6. To provide certainty and consistency, the process should become the default process for board appointments, unless the Prime Minister deems there to be exceptional circumstances warranting immediate or direct appointments or where these arrangements would be inappropriate for practical purposes, as set out in this report.
7. All government board appointments should be guided by the foundation that the purpose of merit in government board appointments is to act in good faith to secure the best people for boards in the interests of good government, with appointments being delivered through fair and open recruitment processes which reflect the spread of experience, potential contribution, behaviours, diversity, capabilities, and skills that will strengthen board team effectiveness (pp. 36-40, 44-57, 65, 79).

Operational Standards

8. The following operational standards should be legislated for Ministers' board appointments processes (pp. 78-79):

CORE STANDARDS

Ministerial responsibility: The responsibility for board appointments rests with Ministers who are accountable to the public for their decisions and actions.

Public Interest Duty: Board appointments are to be made by Ministers honestly and in good faith in the best interests of the nation.

Duty of Care: Care and diligence are to be exercised in appointment processes, using skills matrices, capabilities and entity requirements as the primary assessment basis for quality board appointments.

Best choice or Merit: Board appointments are to be governed by the principle of meritorious appointment. This means assessment panels providing Ministers with a choice of high-quality candidates, drawn from a strong and diverse field, whose skills, experiences, potential and qualities have been judged to best meet the needs of the public entity.

Diversity: Board appointments should reflect the diversity of Australian society. Appointments should be made taking account of the need to appoint boards which include a balance of skills, diverse backgrounds and different perspectives.

Standards in public life: Those appointed to public roles should display high integrity and ethical standards. They must comply with the Board Code of Conduct.

Openness: Processes for making board appointments should be open and transparent, with all positions advertised centrally (except in urgent or exceptional circumstances) on a single government site and all appointments announced publicly.

OTHER STANDARDS

Stewardship: Ministers and officials should steward the appointments process to protect the long-term interests of public institutions and the communities they serve.

Integrity: Any interests or relationships that might undermine the integrity of the board selection process must be declared, and conflicts of interest avoided.

Fairness: Selection processes should be fair and impartial, with each candidate assessed against the same selection criteria for the role in question.

Respect and value: Board candidates and members are to be treated with respect and their contributions valued. Candidate care is to be sensitively managed throughout the process.

Timeliness: Appointment processes should be completed in a timely manner.

Performance: The performance of board members and teams should be reviewed externally every 5 years.

Assurance: The Public Service Commissioner should independently oversee appointment processes and provide independent assurance that board appointments are made in accordance with these standards and associated legislation and guidelines in six-monthly reports to the Public Accounts Committee of the Parliament.

9. All board members should become subject to, and comply with, a new Board Code of Conduct as set out in this report on pages 71-76.

Board Tenure

10. Board appointments should be for a single, standard term of 4 years, with flexibility to appoint for a second 4-year term as necessary or for appointment of a new Chair from within the board (pp. 62-64).
11. In-scope statutory office holder appointments should be for a standard 5 years unless provided for otherwise in legislation (p. 63).
12. No person should serve on more than two paid Australian Government boards at any one time, with the exception of specialist or significant and eminently talented people as agreed by the Prime Minister (p. 63).
13. Current serving board members remain in their positions until their terms end, at which time they would be subject to the new arrangements (p. 63).

Restrictions of Powers

14. Politicians and their staffers are not to be appointed to government boards within 6 months of them leaving government positions or 18 months in Ministers' portfolio areas (pp. 53-54).
15. For a period of six months before the last possible election date, no direct Ministerial board appointments should be made that have not been progressed through the standard appointments process (pp. 86-87), other than as provided for in Caretaker conventions.
16. No significant direct appointments should be made for dates beyond the election, other than as provided for in Caretaker conventions (pp. 86-87).

Ministers' Roles

17. The Minister's role in the appointments process (pp. 41-68, 79-83, 88) is to:
 - a) oversee all board appointments in their portfolio
 - b) reinforce with Secretaries and agency heads the need to embed independent appointment processes and operational standards in their portfolio
 - c) discuss and agree with the Secretary and/or the assessment panel chair the selection criteria and other appointment considerations that will be necessary to guide applicants and the panel, including expectations about widening board diversity and developing potential (pp. 44-47, 83)
 - d) advise each board of their intentions regarding short-term reappointments or board refresh
 - e) give suggestions to the panel in the diagnostic stage about possible candidates for consideration in the merit-based selection process
 - f) meet with recommended Chair or other significant appointees if practical, before making appointment decisions or recommendations to Cabinet
 - g) decide who should be appointed from the recommended short-list provided by the assessment panel, and
 - h) either:
 - (a) recommend appointment or reappointment to the Prime Minister and Cabinet or make these appointments where the Minister has the delegation,

or

 - (b) if they are not satisfied after a second recruitment round as directed by the Minister, provide the assessment panel's recommended list of candidates to the Prime Minister along with the Minister's

recommendations for a direct appointment, giving reasons why a direct appointment is necessary and which will be made publicly available on announcement

- i) after consulting with the Prime Minister, make a direct appointment in urgent or unforeseen circumstances
- j) announce the appointments once due process has been exercised
- k) engage with significant boards or their Chairs as practical to improve two-way communications and board effectiveness (pp. 30-32, 71).

Central Support

Public Service Commission assumes central agency responsibility for boards

18. Complementary to Ministers and departments being responsible for boards in their portfolios, the Australian Public Service Commission should assume responsibility for central agency board support services policy advice and support to portfolios for board and in-scope office holder appointments and performance processes, as set out in this report (pp. 33-35).

- a) A single set of board appointment guidelines and training materials should be developed and promulgated by the Public Service Commission, based on the detail provided in this report and covering all boards and statutory appointments (pp. 66-68).
- b) Those guidelines should include specific guidance on best practice and good governance around selection and appointments procedures, including as it relates to diversity, standardised advertising, guidance for nomination of appointments, and use of a central appointments system for data collection and reporting to ensure consistency and interoperability.
- c) A training and induction package of supports be developed by the Commission, portfolios and Chairs for board members (pp. 66-68).
- d) The new appointment process should be published and publicised to ensure public understanding and encourage public expectations that the processes will be followed diligently. The public should be enabled to make procedural complaints through a public channel operated by the Public Service Commissioner (p. 81).
- e) The Public Service Commission will provide independent assurance to the public and the Parliament by monitoring and reporting publicly on compliance and the performance of these new appointment arrangements (pp. 34-35).

19. A cross portfolio task force should be stood up immediately in the Commission to hasten the preparation of legislation, guidelines, and systems and other changes needed to implement this report (p. 35).
20. Additional funding will need to be made available to the Commission for it to undertake this new role, particularly for advertising, the development and management of the talent pool, talent pipeline, and whole of government data sources, as well as for assurance (p. 35).
21. The Commission should work with government boards to develop mentoring and coaching programs in order to build a pipeline of younger board-ready talent (p. 53).

Other recommendations

22. Portfolios with board responsibilities should have a unit (where they have significant board responsibilities) or person responsible for boards to provide expert appointment and conduct advice to their line divisions and portfolio entities (p. 33).
23. Government boards should develop a skills matrix, consider board succession and identify new board candidates (especially in specialist skills areas) for their Secretary (pp. 45, 63).

Board Performance Measures

24. New processes should be legislated for external reviews of board performance every 5 years, including the performance of individual board members (pp. 69-71).
25. Underperforming board members or those failing to meet integrity or public standards in office requirements should be encouraged to consider their position. Otherwise, Ministers, Secretaries, Chairs and other appointers should be enabled in legislation to initiate and/or take action against them, including dismissal (pp. 76-77).
26. Ministerial engagement with their boards is crucial to effective entity operations. Depending on the size and criticality of the entity and the numbers of boards in each portfolio, Ministers should make best endeavours to meet with their significant boards or at least their Chairs annually. These meetings should be scheduled in advance and enable boards and Ministers to discuss their deliverables and their priorities, having regard to statements of expectations and other specified products and outcomes (p. 32).

Portfolio Board Reviews

27. As part of the ongoing government reform agenda, portfolio Ministers should progressively review their portfolio entities and authorities to determine if the bodies are necessary and that legislation and the governance arrangements applying are

appropriate to achieve the Government's outcomes in the most efficient and effective way (pp. 89-90).

28. The Public Service Commission and the Cabinet Division, in consultation with Secretaries, review the significance of entities with board appointments and make recommendations to the Cabinet about which entities' appointments are sufficiently significant that they need to go to Cabinet (Tier 1 entities), and which appointments could be made by Ministers without reference to Cabinet (Tier 2 entities) (pp. 90-91).
29. As another part of public sector reform, there should be a review of board and statutory officer remuneration arrangements to weed out inconsistencies and establish a fairer system (p. 91).
30. An independent evaluation of the appointment and performance reforms be undertaken, commencing in October 2027 (p. 91).

Background

I was asked by the Australian Government to conduct a high-level review of the appointments process for government boards; propose appropriate standards for the processes by which board members are appointed to government boards; and consider how appointments to boards can contribute to integrity and trust in the institutions of government. My terms of reference are at [Annexure 1](#).

I consulted widely in the preparation of this report. A list of those I have spoken to or have received advice from as part of this review is at [Annexure 2](#). Even though, for confidentiality reasons, I have not attributed views to them, their contributions have informed my views and enriched my findings. I would like to thank all of them very much for their time, interest, and enthusiasm for reform, especially to the Ministers who participated in good faith and helped my consideration of implementation. I also wish to thank Ms Chloe Chadwick who supported me throughout the review with great competency, insights, patience, and excitement about the prospect of reform.

A copy of this report to the Minister for the Public Service will be published on the APS Reform Website.

Entities

Most corporate Australian Government entities, some non-corporate government entities and all government companies are governed by boards. Governing boards are subject to various legislative requirements and governing boards of Australian Government entities are subject to the requirements of the enabling legislation that set up their organisations. Board members of government companies are subject to the requirements of the Corporations Act, company constitutions, or a combination of both.

There are over 100 principal government bodies⁶ with governing boards and there is a myriad of different legislative and other instruments governing their appointments. These positions tend to be part-time positions. There are over 250 other government boards and similar bodies⁷ outside of these principal bodies that also require appointments to be made by the Government. These additional bodies include full and part-time appointments to advisory boards, commissions and tribunals. In consultation with departments, I have endeavoured to set out in [Annexure 3](#) the 200 or so bodies that are in-scope for this review⁸.

For the purposes of this review, I am considering board appointments where formal Government approval is required. This includes appointments, as per their governing legislation, which are made by the Prime Minister, at least one Commonwealth Minister, the

⁶ Where Principal Australian Government Bodies include non-corporate Commonwealth entities, corporate Commonwealth entities and Commonwealth companies as defined by the Department of Finance Australian Government Organisations Register 'Types of Bodies'.

⁷ Using Department of Finance Organisations and Appointments Register (OAR) data (as of 4 April 2023).

⁸ I would be the first to acknowledge that this list may be modified at the margins as legislation is developed because there is, surprisingly, no single source of truth on the numbers of these decision-making boards.

Governor-General in Council, or the Cabinet. These appointments usually fall in to two categories, where the more significant appointments are considered by the Cabinet and appointments of lesser significance are determined by the Minister. The categorisation of significance for these appointments⁹ takes into account a number of factors, including past practice.

Although the terms of reference focus on government boards, I received clear guidance from the then Secretary for Public Sector Reform on behalf of the Minister for the Public Service that the review should also provide the basis for the appointment processes for significant other Australian Government positions outside the APS, such as major government bodies like the ACCC, ASIC and APRA, or other authorities, such as the Productivity Commission, the Charities Commission, the Human Rights Commission and the Future Fund. The Ministers and Secretaries consulted for the review also agreed that this was the right approach to take.

In-scope

For ease of reading, where I use the term “board” in this report, it should be taken to also cover other in-scope office holders unless otherwise specified. Where I have so specified, it is generally because the particular positions are often full-time positions which also have other management and functional responsibilities that are additional to the usual responsibilities of board members.

The following bodies are included within the scope of this review and its recommendations:

- statutory boards, occupied by both full-time and part-time office holders
- non-statutory boards which are deemed to be significant where the relevant Minister makes a direct appointment to the entity, though consultation or otherwise, and
- non-statutory boards deemed to be significant where the relevant Minister is responsible for making a candidate recommendation to the board and where the appointment is made by the board.

Not in-scope

Out of scope appointments are those where:

- appointments are made to Royal Commissions, Commonwealth Courts and tribunals
- appointments are initiated outside of the department or the Minister’s purview, such as jurisdictional nominees
- appointments with no formal government approval, such as departmental appointments
- time-limited appointments and appointments to time-limited boards
- advisory boards where the entities are not statutory decision-making bodies, and
- appointments out of scope at the position-level, namely single executive appointments, acting appointments of six months or less, ex-officio appointments of

⁹ As per the 15th Edition of the Cabinet Handbook.

employees already engaged under the Public Service Act, positions nominated by a third party and appointed with no formal government approval¹⁰, and positions on the board designated for a particular office holder, such as the chief executive officer, as these are often written into legislation.

Also out of scope are those positions on boards that are representative, such as boards governed by international treaties and boards which have State and Territory appointees, organisational representatives, and so forth. However, all other positions on those boards, if they are filled by Australian Government Ministers and are not representative, are included within the scope of this review.

Where appointments are out of scope, it is always open to Ministers to use the legislated processes identified in this review as a best practice guide where elements apply to the appointments or to bring them into scope through an omnibus bill (discussed in further detail at page 90).

In providing this basis for appointments processes more broadly, implications for specific appointments will need further consideration. This includes, for example, where, as per legislation or convention, the Prime Minister must consult with the Leader of the Opposition or refer appointments to parliamentary committees.

If Ministers are of a mind to do so, the appointment principles could be extended progressively to other smaller committees and bodies over time should they individually wish to do so, but I make no recommendations in this regard.

Reporting

The Public Governance, Performance and Accountability Act Rule 2014 sets out reporting requirements for accountable authorities and for directors of government companies. The Auditor-General's Report No 37 of 2021-22 provides helpful information on the nature of government board appointments.¹¹ The Department of Finance's Government Business Enterprises guidelines¹² provide helpful guidance for GBEs on appointment processes, conduct and performance. The Act requires all PGPA entities to report annually on board attendance.

¹⁰ Formal government approval can include the ability for a government representative (the Prime Minister, at least one Commonwealth Minister, the Governor-General in Council or the Cabinet) to sign off, veto or request changes to an appointment.

¹¹ Australian National Audit Office, The Auditor-General Report No 37 2021-22, Reporting on Governing Boards of Commonwealth Entities and Companies, Commonwealth of Australia, 2022.

¹² Department of Finance, Commonwealth Government Business Enterprises—Governance and Oversight Guidelines, Resource Management Guide No 126, Commonwealth of Australia, January 2018.

Political appointments

Throughout history, rulers have appointed their friends and loyalists to powerful positions and, in so doing, created a governing hegemony which, in turn, reinforced their philosophy and power. This tradition extends through to today, with the last government initially deciding not to reappoint anyone the previous government had appointed to a government board, then towards the end of their period in office, making political appointments to many board roles. The tradition is common to both major political parties in this country, across all jurisdictions; such that some direct and political appointments, with little in the way of selection processes, continue to be made even today.

In our Westminster system of government, there remain a number of prerogatives reserved for Ministers, and one of them is to make appointments directly to boards. The Grattan Institute¹³ has documented appointment practice and identified that Labor governments appoint more politically aligned Labor people and Coalition governments appoint more Coalition aligned people.

While it is important to understand that most of the board appointments made by Ministers are not political (that is, directly related to a political operative or partisan), with Grattan reporting that currently around 6-7% of all public appointments are clearly politically aligned, the extent of political appointments in some areas is much higher—22% in government business enterprises and higher elsewhere—and there are many fellow travellers or friends of Ministers who might not otherwise be counted in these figures.

In this review, I found that sometimes as many as half of the appointments in some portfolios in the last few years have been direct appointments by Ministers without any formal appointments process. This level of direct appointments is without parallel in other similar Westminster countries and has brought about a climate where Australians now think that all appointments are political appointments.

Under the current rules of operation, there is nothing intrinsically wrong in Ministers making political or other direct appointments. It is entirely consistent with the many pieces of legislation establishing government boards or governing other in-scope appointments, that Ministers and Cabinets can make these appointments directly, without other process.

However, there is much to be concerned about if direct appointments do not put candidates of the highest calibre into government board positions. In consultations with Ministers and Secretaries in this review many expressed particular concern that the number of political and other direct appointments in recent years has undermined board and entity effectiveness in their portfolios, which has put them and their entities potentially at risk.

¹³ Danielle Wood, Kate Griffiths and Anika Stobart, [New Politics: A better process for public appointments](#), The Grattan Institute, July 2022.

The national interest

I expect that when the Parliament originally made the laws affecting appointments to public institutions there was likely to have been an implicit expectation that Ministers and Cabinets would act in good faith and appoint in the national interest the most meritorious people to boards. This is because what is at stake is of enormous significance—it is the effectiveness of government boards and the national institutions they oversee.

These national institutions are usually established outside departments in reflection of the type of work they do, which involves deep focus or effort or commercial considerations to achieve important outcomes. The work invariably requires some independence from Ministers and involves enduring public protections in the long-term national interest.

These public institutions perform a wide range of important national functions—from regulation through to service delivery, research, major project management and reform initiatives. They may be regulating health, education and aged care; leading vital CSIRO research work; delivering ABC and SBS broadcasting services or promoting the arts; or driving major infrastructure such as the rail freight network, Western Sydney airport or Snowy Mountains hydro; and delivering reform processes such as digital health, and government services like the NDIS or Australia Post.

Their reach is enormous. They are of crucial importance to Australians' health, wellbeing and future prosperity, and our country is enriched if they operate to their full potential.

Boards of governance of these entities are expected to bring independent judgement to decisions affecting their institutions. They are responsible for the strategy, policies and processes; risk and compliance; stakeholder relations; performance outcomes and, ultimately, the success of the important national institutions they oversee.

It follows that they need to be led by people of the highest calibre, who feel they have the confidence of government to work independently to deliver their desired outcomes. Failure to appoint the highest quality people to these roles likely reduces the quality of these institutions' outcomes and limits their potential to succeed.

This is because effective recruitment is the key to realising government board value add. Choosing a great candidate can change a government entity and propel it forward to better things. It has been proven to be the case over and over again in the private and not-for-profit sectors; and is also evident in states such as NSW and countries like Singapore and New Zealand, where there are more credible government board recruitment and appointment processes designed for longer-term agency effectiveness, which have delivered progressive improvements in the performance of their public institutions. They are able to draw on a wider collection of high quality candidates who are prepared to work in the public sector and consider it an honour to do so.

The extent of recent political appointments appears to have affected the public's confidence that Australia's public institutions will be led and directed by the very best available people. It seems that political appointments have progressively reduced people's trust in government and its institutions, and they have fed into the current climate of public disquiet

about the integrity of government. There appears to be an increasing lack of confidence that important national organisations will operate in the nation's best interests and protect the public's interests.

The short-term nature of political cycles deepens these concerns because effective boards need to take a longer-term perspective in the interests of the long-lived institutions they oversee and have the security of tenure to do so. It seems that the shorter a government's horizons, the greater the incentive to appoint politically rather than strategically and in good faith in the country's best interests.

This suggests that a new system of board appointments is necessary. The new system should be built around protecting the national interest by taking a longer-term perspective on appointments by determining what types of capabilities, skills and direction each government entity needs, searching widely for those capabilities, and then by taking the necessary actions to acquire them through soundly developed appointment processes.

The appointment process fails Ministers

It would be quite wrong to assume that every political appointment is conceived out of the pursuit of political ends or a desire to recognise or reward a friend. Ministers report that they know from their many contacts the best person for a particular board, or the safe pair of hands needed to deliver the right outcomes. This is especially the case after years of shadowing or leading a particular portfolio area and observing people operating at these levels, with Ministers often having a fresher set of eyes for new recruits beyond current incumbents.

The point that current arrangements fail to identify these people and include them in recruitment fields is indicative of the fact that the appointments process fails Ministers. But it is equally the case that any politically dodgy direct appointments can lay Ministers open to embarrassing and difficult parliamentary questioning and corruption allegations, which have seen the demise of Ministers in other jurisdictions.

Ministers and others involved in board appointments would be mindful that appointment processes have become subject to investigation by the National Anti-Corruption Commission from 1 July 2023. There can also be issues raised and penalties imposed under the Code of Conduct for Ministers¹⁴.

It is therefore especially important that Ministers are expertly and diligently supported by the public service to make great board appointments by thorough and documented processes. But I found that they are not. Ministers feel that little effort is made to find great candidates from more diverse pastures, and report that they are often unhappy with the candidates provided to them for appointment. They would be more comfortable with others in whom they have much greater confidence. Ministers are also looking for people who understand and can work with the government reform agenda and are wanting to reshape boards to deliver on those priorities.

¹⁴ Australian Government, Code of Conduct for Ministers, Commonwealth of Australia, 2022.

Ministers advise that they feel rushed and frustrated by public service appointments processes that either take way too long or are very last minute and provide them with insufficient time to conduct a search for better quality candidates. They are asked to reappoint people they may not know, or haven't met, which makes their position difficult and reduces their confidence in the process. They are especially concerned about being asked to reappoint some Chairs who, in their opinion, are not up to scratch.

While there are aspects of various appointment arrangements set out in some pieces of enabling legislation and guidelines¹⁵, there is no government-wide standard which is used to support and guide ministerial board appointments in a merit-based and transparent way. There is no consistency in appointment approach between or within portfolios. There are few checks and balances in the current appointments system, nor is there any assurance oversight.

Lacking any consistent or solid guidance or central controls in how the system operates, departmental officials feel their way and have little to stand on by way of good practice in conducting a process and taking candidates forward to Ministers. Sometimes there might be a thorough assessment process and others not. Some involve the putting together of a list of names (in no particular order and/or with no attempt to review them) for Ministers that might be considered for appointment. While in others, Ministers are left entirely to their own devices to find candidates and make appointments.

Government board positions aren't usually advertised. The candidate pool is limited and not diverse. The appointments system is characterised as delivering jobs for the boys, is not regarded publicly as fair, and is not fair. It limits the talent pool available to Ministers by excluding many higher quality candidates who might otherwise make their names available. The names of quality candidates are not usually retained and put forward for other appointments, so are lost from the pool of available talent. There is limited candidate care. Little thought is given to board dynamics and independence of mind among board members.

Suffice it to say, there is also a lot that can and should be done bureaucratically to make candidate recruitment and assessment work much better for Ministers.

A clear and consistent process will provide Ministers a level of protection not available in the current disparate and inconsistent arrangements. Ministers will find that effective, merit-based board recruitment is more efficient and is much less risky for them. The calibre and diversity of those appointed in a good process will be better than otherwise, which is a crucial consideration for Ministers eager to improve entities and deliver better results. And, Ministers can have confidence that all the candidate suggestions they make will be subject

¹⁵ The APS Merit and Transparency Policy and Guidance provide instructions for the appointment of heads of statutory and executive agencies, but excludes a large number of board-related appointments, and the Department of Finance's Guidance for Government Business Enterprises also provide some information on appointments. Notably these pieces of guidance are not broad ranging in their coverage and/or consideration of board appointments, however, I have heard that they are often referred to by appointments teams, even when they don't strictly apply.

to competitive stress testing to ensure that they are genuinely the best candidate for the board position.

I consider that it is in all Ministers' best interests to have a robust and independent board appointment system that deals them in at the beginning of the process and serves their needs during the assessment part so that the best candidates are found and put before them to aid their decisions. The better the appointment decision, the more likely the board is to deliver a highly performing public institution that will deliver better results.

There is some understandable ministerial concern that the public service has lost knowledge and networks and is out of practice in giving their opinion on people or in finding new people for boards. A concerted public sector rebuild in this crucial area is central to making government entity appointments work better. Uplifting public service recruitment services and tools to assist Ministers in making these appointment decisions will be key. This rebuild will need ministerial engagement and a level of patience with, and trust in, the public service to make it work in practice.

Fortunately, departments recognise that their processes and appointment teams are not sufficiently mature, and Secretaries indicated in this review that they are already putting much more effort into merit-based appointment processes to support their Ministers and will continue to do so. They strongly endorse the reforms.

Convention or Legislation?

Australia stands out in having done little to support ministerial appointment prerogatives. When other nations, such as the UK, Canada and New Zealand, found themselves in a similar position to Australia, they acted, as I have outlined in [Annexure 4](#), to introduce or restore independence to appointment processes and to codify how appointment processes would work.¹⁶ More often than not, they were propelled to do so because of scandals and, when they did act, they were confident that the normal conventions of government would ensure that due process was observed. Notably, however, they all concede that when there is a change of government, they cannot guarantee that their reformed practices will remain in place.

While it is usually sufficient to rely on conventions to institutionalise practice, I am not confident that conventions will work in this area at this time. Australia does not have the history of clear conventions to rely on in this area that other comparable countries had before they strengthened them. Our board appointment practices are at best ad hoc and unpredictable and are degraded to such an extent that they cannot be relied on. We cannot fall back on them as “conventions” as there are few benchmarks, standards or practices to rely on.

There is no incentive and no apparent reward for ceasing to make political or other direct appointments, especially if after another change of Prime Minister or government new Ministers recommence making political appointments in spite of new conventions.

Our appointments practice has been so poor that the public’s confidence is so low that the clarity and assurance of legislation is required to rebuild trust and embed integrity in board appointment processes.

It may be that at some point in future we could afford to rely on conventions. However, I am convinced that to change behaviour now, we need the strength of legislation to enforce the change, then a period of some stability to embed it.

Legislation passed through the Parliament will likely have the respect of both sides of politics and the cross bench. That will help culture change and more rapidly normalise standard and more independent recruitment processes.

I therefore recommend enshrining a new board appointment system in legislation, so that it becomes the practice, the culture and the expectation of how board appointments are to be made at a ministerial level by both sides of politics.

As The Grattan Institute points out, a more “robust process can help to change culture...and help to rebuild important [ethical] norms”¹⁷. In my view, establishing in legislation and embedding the standard and meritorious approach to board appointments that I

¹⁶ It must be said, that even with these changes, there are still occasional problems, as no system is foolproof.

¹⁷ Ibid, The Grattan Institute, July 2022, p 30.

recommend will improve the way politics is done in Australia, and do a great deal to make public institutions work to their full potential. That is something that all Ministers aspire to.

In view of the tide of concern about integrity and trust in government in this country, it seems sensible for the Government to move now to change the board recruitment system and embed through legislation a more defined and better one that will guide all future appointments, irrespective of which party is in power. This will enable Ministers to exercise their discretion in making board appointments in such a way as to act always in good faith in the best interests of the nation.

The legislation should be called the Government Boards Services Act. It would be designed specifically with the people who occupy and aspire to occupy board positions in mind—so that they and the board can excel in achieving their duties. It will ensure that board members are usually appointed independently; are trained and supported so that they are able to do their jobs well; and can be held up to performance and behaviour standards and scrutiny. It will also enable the provision of support to entities to perform their duties under the Act.

The Government Boards Services Act will be principles-based legislation, supplemented by legislative instruments or schedules (as applicable) and guidance and support as set out in this report.

The new Act will make omnibus provisions covering all board and in-scope office holder positions and associated legislation. This is the cleanest and most efficient way to drive consistent change in a timely way, rather than leaving many pieces of legislation and appointments processes hanging, possibly for years, before they are able to be changed.

Respecting and Valuing Boards

In order to recruit the highest quality candidates to government boards, it is important that Ministers and the public service respect applicants and understand and value their contributions more than they appear to have done to date.

It is usual practice for Ministers and senior officials to spend most of their time dealing with the day-to-day pressures of their departmental responsibilities. Portfolio agencies and government owned enterprises are often left to run themselves, especially when they have legislative independence from government. It can seem that Ministers and senior officials give little thought to the importance of their national institutions, until something goes wrong, or they do something that causes Ministers grief.

It is particularly worrying that some board members report and despair at the poor treatment and disrespect they have endured from Ministers, including Ministers not turning up to meetings, leaving Chairs waiting outside their offices and then cancelling meetings, failing to engage with boards in spite of the important work they do, and not keeping them abreast of recruitment activities or letting them know at the very last minute if they have been successful or not.

A quick reality check. Significant government boards are usually made up of successful people who have, or had, substantial careers in public companies or key public sector agencies or have driven important issues or organisations. They have valuable skills and expertise and are experienced in business and community, and in governance. They possess a proven track record in the exercise of commensurate levels of judgement and accountability. Typically, they tend to serve professionally on around 4 or 5 boards, only one of which will be either a government or a not-for-profit board. They are usually busy people who are prepared to give up their time and livelihoods to make a contribution to their country. We should be grateful for that and show them respect.

People at this level have a lot of choice about what they will do. They make their decisions about whether they will participate on a government board through the lens of their personal passion and commitment to the endeavour, their dedication to the greater good and the opportunity they have to make a difference.

More often than not, the board recruitment process and government practice fails these people. Their expertise can be given scant acknowledgement by recruitment assessment panels, or they can be put through the mill by panels who do not understand board governance and are unable to distinguish between board candidates and lower level public service appointments. It is insufficient and inappropriate to apply the usual public service recruitment thinking to these people.

Recruiters should instead be spending time with candidates and discussing with them what they can bring to the board and to the success of the institution, and how they would fit within the board's and the Government's priorities; having considered beforehand their skill sets against board requirements. In return, candidates expect a discussion about how a

particular board role could be of interest to them; how they would fit within the board team; and what exciting priorities they might be delivering on. It's a two-way street.

This is even more important in the recruitment process for board Chairs. Australian governments rightly aspire to appoint eminent Australians to Chair positions. Eminent people can deliver great insights, experience, and credibility to government entities and often play a significant role in board-Minister-Secretary relationships. However, it is often the case that because eminent people are well known, they can be put off by rigid and humiliating public service recruitment processes; not usually because of ego or arrogance, but because they feel that their capabilities are sufficiently well known that they will be sought out for a role and likely engaged directly by Ministers or Secretaries.

I have heard some examples in this review of where eminent people have refused point blank to go through an interview process. It is therefore important that recruitment processes factor in a level of respect for their potential candidates' achievements and their future role and are sufficiently flexible to maintain their interest and engagement and their willingness to serve in this or in other positions by adopting recruitment processes that work for high-level candidates.

It is also the case that more extensive search processes will throw up a new field of potential Chairs that are not currently known nor yet eminent. They should be welcomed into the process and their capabilities and potential should be given due weight and fair consideration so that Ministers have access to a fresh and wider pool of Chairs from whom they can appoint board leaders.

Candidate care and engagement

Candidate care matters. It is imperative that board candidates are supported and kept informed through the selection process, and that the process is kept as short and timely as possible to keep them engaged and positive about the appointment. It is not uncommon for board candidates to be left waiting for months and months before being told that they have been appointed or reappointed.

A better process would involve ongoing communication and feedback with candidates, with early advice if they are not going to be reappointed. If this were done and together with the tenure arrangements I recommend, a government's desire to refresh a board with new members would not be taken so much as a slight against retiring board members, but a reflection of government practice in recognition that things move on and circumstances change, requiring different people and new talent.

Candidate care is particularly important in the current tight board candidate market when some potential board members may have been put off from applying for government positions because they fear their reputation will be tainted or that they could be treated in a similar way to how the former CEO of Australia Post was treated. Reputation matters among these high-level people; and governments would be wise to understand that in their dealings publicly with boards.

That said, many very capable people have reconsidered their lives during the Covid period and have determined that their next step is to do more meaningful work and use their considerable capabilities to make a contribution to their country through government or not-for-profit service. Government has the opportunity to find those people and recruit them to do valuable work in its service on its many boards.

Once appointed, however, it is often the case that there is little engagement between government boards and the government of the day. This creates tension and frustration within boards and will not satisfy new and powerful recruits to government service.

While it has been assumed that political appointees will develop and nurture strong and productive relationships with the government of the day, I have seen little or no evidence of this. Once appointed, they seem not to have much greater access to their Minister than other appointees, nor greater sway on the direction of policy.

It would be better practice to formalise engagement and communication arrangements. In pursuit of better institutional outcomes, and in line with the need to respect and value the contributions of board members, it is highly desirable that Ministers meet with the most significant of their boards or their Chairs at least annually. They might also choose to do so with a group of their Chairs. These meetings should be scheduled in advance and enable boards and Ministers to discuss their deliverables, their priorities, the reform agenda and the political context in which they are operating. The kinds of lively strategic conversations that will occur, will develop the board team and strengthen their engagement.

Likewise, Secretaries and Deputies need to elevate their board focus and engage regularly in scheduled meetings with board Chairs in their portfolios so that the lines of communication are strengthened, issues or implementation concerns are highlighted early to the department, and government directions and changes are made known to boards.

A Supportive Hand

Responsibility for managing government board appointment and review processes is spread between the Department of Finance (data collection and legislative reporting), the Department of the Prime Minister and Cabinet (Cabinet approval processes and BoardLinks) and the Australian Public Service Commission (for advice on occasion about boards), with line departments carrying most of the day-to-day appointment advisory work, through either specialist units or ad hoc appointment-by-appointment arrangements. There is also an emerging public sector community of practice, chaired by Treasury, involving all portfolios, which seeks to improve public service board appointment capability and practice.

Despite these local efforts, the spread of responsibilities and absence of clear direction has driven a situation where there is no standardisation of appointment practice and each Minister and their portfolio has been left to develop their own appointment arrangements. In this landscape, there is no one central agency that is seen to take a whole of system view, to care whether quality appointments are made or to provide stewardship to the entire appointments system.

I have determined, nevertheless, that a wholly centrally managed approach to board recruitment is not appropriate. There are way too many government boards to make this an option. And, there is too much to be done to fix current processes before such a radical move could be contemplated and, even then, I think there is considerable advantage in building on the subject matter knowledge and expertise held within portfolios as a key part of the board appointment process.

Ministers and their departments are best placed to understand the specific requirements of the boards within their portfolios. I therefore consider that line departments should continue to have lead responsibility for progressing board appointments for their Ministers, but that they should do so in a more deliberate and formalised manner that inspires greater public confidence through more independent merit-based and transparent appointment processes, as set out in this report. Secretaries will need to lean in and drive these more proactive appointment arrangements.

All portfolios with significant numbers of boards and in-scope entities, will need to assign a particular area with responsibility for co-ordinating their portfolio's ministerial appointment arrangements¹⁸ so that processes are more efficient and effective and organised by experienced people who build capability to deliver what is needed to fulfil board and statutory roles. Portfolios with fewer boards will need to designate to an individual officer or office their internal board co-ordination responsibilities.

In doing this work, departments would benefit greatly from a stronger supporting hand at the centre of government with experience, expertise, knowledge, and over-arching

¹⁸ The Cabinet Division reports that board appointments processes are complex to administer, and many departments require a lot of education and assistance to prepare Cabinet documentation. The better performers are largely self-sufficient and are able to apply the necessary level of judgement and procedural propriety required throughout the appointment process.

responsibility for government board processes, including but not limited to board appointments. They would drive a common approach to government appointments, provide guidance on how appointments are to be made, and keep a record of performance; which is a policy and oversight role well beyond the “rule maker” guidance in various pieces of legislation.

The responsibilities of the single central source of board services advice and co-ordination that I recommend would include: board policy and associated appointment and performance guidelines; development and ongoing responsibility for the new Government Boards Services Act; board oversight and prior endorsement of the proposed process for the conduct of appointments by departments; co-ordinating board appointment activity across government; sharing good practice; expertise in utilising modern ICT resources; developing and maintaining a central pool of possible candidates for boards and working with departments to address the adequacy of their talent pools; active search for young, diverse or new talent; managing centralised board advertising, data collection and reporting; evaluation of board performance reporting; board conduct oversight; and board appointment assurance and reporting on the effectiveness and outcomes of the independent appointment processes.

The success of the central co-ordination and support unit will be dependent on it not only being well funded, but also how it is positioned to succeed and its perceived value to line departments. It takes a lot to make new processes work. If there is not the leadership to drive it forward and keep hammering on the critical path to deliver the reforms then embed better appointment processes, and if key decision-makers don’t support it or sufficient resources aren’t provided, reforms won’t happen as they should.

I envisage that the area responsible would be headed by a very senior executive, well versed in advising officials and government on the sorts of high-level appointments boards require and able to identify potential candidates and manage a central talent pool and access to other candidate pools. It will need a new government-wide board data collection and reporting system (building on those available already or in development), and a central advertising portal for all government appointments, with links to departmental systems for efficient data collection and reporting.

There are three potential locations for this function—Departments of the Prime Minister and Cabinet and Finance or the Australian Public Service Commission. Finance has had a co-ordination role at least since the Public Governance, Performance and Accountability Act was introduced but has been somewhat distanced in practice from appointment practices beyond government business enterprises. The Prime Minister’s Department is sometimes perceived as too politically aligned.

I consider that the Australian Public Service Commission is best placed to assume the responsibility due to its relative level of independence from government, which I think is essential for depoliticization of the process, and its preparedness to build onto its public service role and take on this wider public sector function. While this may raise questions about the breadth of its activities and its name, I am confident that this wider public sector

role for the Public Service Commission will not only be welcomed but provide a more powerful impetus to enable the Commission to do its work more effectively. With this new function, it is possible to imagine the Public Service Commission becoming the integrity centre of government and a strong force for good sector-wide governance.

The Public Service Commissioner would become responsible for stewardship of the appointment reforms, and one of the deputies already in the organisation would drive the mechanics of the function. Additional funding will be required in the Commission to support these enhanced functions beyond the resourcing that will be transferred across from the Department of Finance.

I also envisage that a multi-agency task force would be stood up for six to twelve months in the Commission to implement the changes I recommend. The work of the multi-agency task force would be to prepare drafting instructions for new legislation; to settle upon the systems to be used for advertising, holding the board candidate pool, etc.; to develop core guidelines on board appointments; develop the board performance framework; and establish assurance arrangements to satisfy the Parliament that independent recruitment practices are operating effectively. In doing this work, the task force would draw on work already available in departments and the detail in this report.

It is important to understand that the reporting on trends and performance in the appointments model I recommend and how the model works in practice would be a new role for the Public Service Commission and a key mechanism for public accountability and Parliamentary assurance. The role will need careful design, but I envisage that it will be modelled on the UK's Commissioner for Public Appointment's role and include ensuring that assessment panels act in accordance with Commission guidelines; audit procedures and practices; hear complaints and conduct investigations; and report to the Parliament on the outcome.

The Best Choice: Meritorious Choice and Diversity

Merit-based appointments have been the focus of public service recruitment for well over a century in Australia, but the concept of merit has not always been extended to the wider public sector. Transparent and merit-based appointment processes across the public sector are now critical to ensuring credibility of candidates and public trust in government. There is a critical need to update how we think about merit so that merit-based recruitment works better in board and other appointment processes.

The challenge is that the concept of merit can, and often does, vary between appointment processes, and is frequently misunderstood. It can be taken to mean whatever the decision maker wants it to mean at any particular point in time.

It is not surprising that board appointments have historically favoured “people just like us, who think just like us”. Sadly, merit has been the excuse decision makers have used for excluding relative outsiders—like women, people with lived experience but perhaps without formal qualifications, First Nations peoples, those with disabilities and of different language groups and heritage, people from outer suburbia, rural, regional and remote areas, young people, or people of different political affiliations—from government board appointments. Yet, what has been increasingly evident over recent times is that greater board appointment diversity delivers more highly performing boards¹⁹.

Merit

Merit in board appointments should be viewed through the lens of government board membership as a whole—what the board needs as a team—and the relevant opportunities, challenges and needs that the entity faces at any particular point in time and the aspirations and values of the government of the day. This perspective should inform the consideration of both reappointments and new appointments. Like any high performing team, the aim should be to build a champion team fit for the times rather than a team of champions.

Experience, capabilities and skill sets have an incredibly important place in merit-based board selections, and there should always be alignment between merit and skills.

Nonetheless, merit can be backward looking if it focuses only on past performance and demonstrated capabilities and skill sets. These attributes should not be relied on to the extent that they exclude all those who have potential to perform and to deliver something new, different perspectives, and capabilities to meet new challenges. The board generation change that we should now be experiencing from baby boomer to later generations needs to involve an appreciation of potential and a wider source of candidates, and the value that different perspectives will bring to the board.

Considering potential in board appointments should be about finding the spark of behaviours and skills that ignite opportunities that will take the institutions of government

¹⁹ Bankwest Curtin Economics Centre, [Gender Equity Insights 2020: Delivering the Business Outcomes](#) (2020); McKinsey & Company, [Delivering Through Diversity](#) (2018); Lorenzo et al., [‘The Mix That Matters: Innovation Through Diversity’](#) (2017).

forward and enable them to deal with the new challenges our nation faces and to new times. It is arguably the responsibility of government merit-based board appointments to promote the power of potential, motivation and entrepreneurialism as part of the board appointments process.

Ministers may wish to consider mandating in the selection planning and diagnosis process for some or all boards, representation of younger people or diversity groups, as we see now in some board legislation, or mandating the finding of new people to bring about generational change.

The closest any jurisdictions get to a good definition of merit for boards is in the UK, where it is set down in legislation that “[A]ll public appointments should be governed by the principle of appointment on merit. This means providing Ministers with a choice of high quality candidates, drawn from a strong, diverse field, whose skills, experiences and qualities have been judged to meet the needs of the public body or statutory office in question”.²⁰ But, even this definition misses potential.

It is very important that Ministers and selection committees see merit as a signal that they should find the best person to fulfil each board’s needs now and into the future so that they make the best board appointment choices possible and deliver the most cohesive board team, using sound processes.

This will be facilitated if Ministers and officials understand that the purpose of merit in government board appointments is to act in good faith to secure the best people for boards in the interests of good government. This should be done through fair and open recruitment processes which reflect the spread of experience, potential contribution, behaviours, diversity, capabilities and skills that will strengthen board team effectiveness. All government board appointments should be guided by this foundation.

Factoring in Diversity

Diversity changes the dynamics of the board room and generates more informed discussion around different life experiences and perspectives. Whereas, a lack of diversity at the top infects the entire organisation and its competitiveness.

It has been demonstrated continually²¹ that diversity of board membership can lead to improved board performance and organisational outcomes, strengthened decision making and bolstered innovation. In recent reports²², the business case for diversity has been well-made, where diverse boards have been seen to financially outperform their less-diverse counterparts.

²⁰ UK Cabinet Office, Governance Code on Public Appointments, December 2016.

²¹ Ibid, Bankwest Curtin Economics Centre; McKinsey & Company; Lorenzo et al.

²² See, for example: McKinsey & Company, Diversity wins: How inclusion matters (2020); Vafaei et al. Board diversity and financial performance in the top 500 Australian firms. *Australian Accounting Review* (2015).

Government board appointments should reflect the diversity of the society in which we live, and appointments should be made taking account of the need to appoint boards which include a balance of skills and backgrounds. This means that diversity should not be an add-on to the recruitment process, but an integral part of the search and appointment process. As Meredith Edwards²³ notes, a broad definition of merit not only takes into account competencies and capabilities but also takes into account non-traditional activities and career paths, while encouraging a greater number of diverse groups to participate in the selection process.

A key factor in encouraging greater diversity in board appointments is broader and more open advertising of available board positions. This should promote applications from a wider range of people, including through the search process and the building of lists of people in identified under-represented groups identifying their areas of expertise.

All positions should be advertised, where possible, in a centralised and easily accessible location, to encourage a broad pool of potential candidates to apply. This will provide opportunities for applicants who may have historically been overlooked or are outside established networks, to apply. Advertising of positions should ideally list the skills requirements and needs that are being sought for the board, to encourage only the most appropriate applicants. As part of this process, candidates should also be able to flag any reasonable adjustment requirements as part of the application process.

The UK's process of advertising public board appointments provides a good model for Australia, where all positions are advertised in a single central location. The skills requirements for the position are listed, alongside other specifications including time commitment and length of term. As part of an application, the UK's process asks applicants to provide information for diversity monitoring purposes.

Data

The imposition of a government target for women to hold 50% of government board positions and for men and women to both hold at least 40% of positions on individual boards (the '40-40-20 target') and mandatory reporting has done a lot to improve the representation of women on government boards. However, there remain significant differences across portfolios and boards, with only 55% of reportable boards meeting the 40-40-20 target, and only 38% of board Chairs and Deputy Chairs being women.

Beyond gender reporting, no centralised data collection and reporting exists for other groups, so the level of current diversity of government boards is unknown. To encourage diversity and representation from a wider cross-section of the community, and not just

²³ Meredith Edwards, Appointments to Public Sector Boards in Australia: A Comparative Assessment, University of Canberra Australia, Corporate Governance ARC Project, Issues Paper Series no 3, July 2006.

“replacing the old white boy’s club with the new white girls’ club”²⁴, data collection, monitoring and reporting of broader diversity factors needs to be improved.

The Organisation and Appointments Register contains data in respect of public sector board composition for the purposes of Senate Order 15 reporting. The register is administered by the Department of Finance and the data is provided, maintained and verified by portfolio departments. Whilst the scope of this register’s data collection relating to indicators of diversity is presently limited, it could be expanded to include other diversity indicators to increase visibility and understanding of the current status of diversity of public sector boards for First Nations people, regional and remote representation, people from culturally and linguistically diverse backgrounds, people with disability and people under 45.

Whole-of-government reporting on public sector boards, beyond gender balance, will also support strategies to increase board diversity, as we have experienced with women. Under Senate Order 15, all government departments and agencies are required to table a list of appointments made by the Government, and a list of existing vacancies to be filled by government appointment. I understand that this reporting is currently fulfilled inconsistently, and at an agency level.

Bringing together cohesive information on public sector boards at a whole-of-government level and expanding reporting to include broader diversity measures and other skills and indicators, would support improved public understanding of appointments, and enable the monitoring of progress against strategies to encourage greater participation on boards by diverse groups.

An example of this can be seen in South Australia, where an annual report on cross-government board appointments, including gender and First Nations representation, is prepared and tabled in Parliament. Notably, South Australia’s reporting also includes detail on the type of position that each board member holds (Chair, member, ex officio etc.), and the length and expiry of the member’s term. Bringing together this information publicly in a central location, and not just at an individually reported portfolio level, would also assist in board succession planning.

The development of a comprehensive, whole of government system to securely facilitate the management of appointment processes across government could support this data collection, as well as supporting consistent processes and data collection on board appointments more broadly. I understand that work is already underway to consider the development of such a whole of government system within the public service, and I recommend it continue.

²⁴ Women on Boards 2022, [Truth Be Told: Cultural Diversity on Australian Boards](#).

Centralised data collection and reporting of broader diversity indicators, as is done in SA, is best practice and that approach should be adopted by government and overseen through the boards unit I propose in the Australian Public Service Commission.

Appointment processes and guidance

As with other parts of the appointments process, guidance on diversity considerations as part of government board appointments processes is mostly absent, inconsistent or unclear. This lack of clarity, combined with inconsistent or outdated legislation, can discourage a broader and more open process, where a diverse pool of potential candidates is sought. Where, for example, some boards' enabling legislation is highly prescriptive about the skills and experiences that are required to be represented, a more formal process for appointments may be circumvented either due to a perceived lack of suitable candidates or to avoid the administrative burden that is required by the process.

It is in our collective interests to overturn overly prescriptive legislative requirements that are no longer appropriate, or which do not contribute to good outcomes; prescriptive requirements that leave gaps allowing good process to be avoided; and loose or non-existent drafting that allows recruiters to largely make up the requirements.

A generally applicable appointments process which includes guidance relating to consideration of broader diversity factors would enable decision-makers and portfolio appointment teams to more readily include diversity considerations throughout the appointments process, and provide Ministers with clarity and certainty when providing advice across different appointments. This would also align the Commonwealth with the majority of States and Territories (NSW, Victoria, Queensland, the ACT and South Australia) who explicitly include diversity as part of centralised appointments policies.

The Canadian Government came into power in 2015 with a particularly strong diversity mandate. They have found that open advertising and transparent processes, with strong diversity goals, has opened up the candidate pool well beyond the "old school" boys, and produced transformative change in appointments, with sizable numeric improvements across the board. They have also noticed that even though their processes have been successful in bringing in a lot of newer, younger, technical people from different backgrounds and regions, with great knowledge, skills and life experience, those people don't necessarily have governance knowledge or senior level networks or relationships with Ministers. This is wise counsel and suggests that diverse candidates would particularly benefit from induction and support from the Chair.

The Independent Appointment Model

I provide a guide as to how government board appointment processes should be managed to reduce politicisation and to achieve consistency, predictability and transparency across government, whilst maintaining flexibility to accommodate Ministerial appointment prerogatives across the range of different boards and bodies involved.

No two appointments processes are the same, but most have common features: seeking candidates, reviewing the candidates, deciding who is preferred and appointing them. Well before actual recruitment commences, the best recruitment processes also involve a lot of positioning and planning work up-front to diagnose what is needed and assist in the management of the selection process. Then, once appointments are made, they induct, train and support new members, including on the code of behaviour expected of all board members.

In this section, I explain my proposed board appointments model in considerable detail, building on these common features. I would like to emphasise beforehand, though, that the arrangements I discuss here should not become a straitjacket or inflexible set of processes that give Ministers and officials no room to move. I have provided this amount of detail to help recruiters understand what options are available for them to use.

Each step in the appointments process will necessarily involve a level of judgement about the depth and detail necessary to enable Ministers to take good recruitment decisions, drawing on these options as needs be. Nevertheless, there are some elements—like the advertising of all board vacancies, the fair and competitive assessment of candidates, and making appointment recommendations based on the best and more meritorious people for the job—that should be commonplace in all recruitment exercises. I have also prepared appointments operational standards to guide the entire board appointments process and establish common benchmarks for appointments.

As I said earlier, in my model departments will remain responsible for managing the independent and competitive board appointment process on behalf of their Ministers. According to the level of the boards involved, Secretaries, Deputy Secretaries and Division Heads will have carriage of managing these processes to support Ministers and will make appointment recommendations to Ministers.

An outline of the independent appointment model is provided in the following diagram and detail on responsibilities for each part of the appointments process is provided illustratively thereafter.

The appointments model is not radically different to appointment processes commonplace elsewhere, but it does establish a level of assessment independent of Ministers and provides the discipline of more thorough diagnostic, advertising, search and merit-based recommendation processes. The introduction of a new Act, new operational standards and a new Board Code of Conduct will reinforce the need for ethical appointment practices for government boards. Taken together, they will provide the basis for better appointments.

In developing the model, I have endeavoured to ensure that Ministers are engaged thoroughly in the appointment process and that the process does not limit their choice of candidates or their capacity to make appointment decisions. Ministers will always need to be satisfied that the field provides the best person for each board job not only because these appointments are their appointments but also because Ministers want to make better appointments to board positions for the good of government entities.

The model will provide Ministers with confidence that comprehensive and well-considered selection methods have been used in formulating recommendations and will also provide potential applicants with a clear understanding of the processes that government will apply to its future appointments. The model will result in better candidates, drawn from wider fields, and better board recruitment outcomes for Ministers and the general public.

Main Features of Appointments Process

- A new Board Act, with associated appointment operational standards, and new guidelines sets out the appointment requirements.
- The portfolio Secretary convenes an independent assessment panel for board positions.
- The assessment panel engages the Minister in consideration of the required skills and other selection requirements.
- The Minister advises who they would wish to see included as possible candidates.
- All board positions are advertised on a central government site and elsewhere.
- The panel searches widely for possible board candidates, including from diversity groups or to meet other specifications.
- The panel assesses the candidates competitively and qualitatively against the agreed selection criteria.
- The panel shortlists the best and most meritorious candidates for the Minister's consideration.
- The Minister takes a decision on the appointments or recommends appointments to Cabinet, once final probity and other checks, such as agreement to the Board Code of Conduct, are undertaken.
- Appointments are announced.
- Board members are inducted and trained.

Outline of Board Appointments Standard Responsibilities

Ministers are responsible for public sector board appointments

1. Planning, Diagnostics and Seeking Candidates

- **Minister:** Agrees selection criteria and skills requirements for process, having regard to the Appointments Operational Standards. Advises panel of people they wish to be considered as part of process.
- **Secretary:** Agrees assessment panel composition; agrees appointment process, skills matrix and selection criteria with Minister [includes input from Board Chair].
- **APSC:** Provides central oversight role for boards, including issuing guidelines, advising and providing some assurance on board appointments processes; advertises all vacancies; provides advice on potential candidates from central talent pool and talent pipeline; provides central guidance and templates.
- **Assessment panel:** Pursues wide field of candidates, including drawing on central talent pools, search firms, and Ministers' suggestions.

2. Candidate Review and Appointment

- **Assessment panel:** Reviews candidate pool (consulting talent pool where necessary); determines assessment approach in line with the Appointments Operational Standards; excludes candidates with clear conflicts of interest that can't be managed; assesses candidates against selection criteria; shortlists candidates and seeks references; rates suitability of candidates based on a qualitative assessment of strengths/weaknesses; provides report to Minister including recommendations for appointment.
- **Minister:** Considers panel recommendations and decides whether they will appoint/recommend appointment from shortlist (panel to revisit shortlist a second time to seek a higher quality field as needed – see Appointment Stipulations). If direct appointment is made justification is given to PM and publically shared alongside appointment.
- **Portfolio:** Oversees process; conducts probity checks on shortlisted candidates and ensures sign-up to the Code of Conduct; supports announcement of appointment.
- **APSC:** provides advice on potential candidates from central talent pool and talent pipeline as appropriate.

3. Induction and Training

- **Board/Board Chair:** Provides board induction and briefing for new members; facilitates training as needed, particularly working in government and the Code of Conduct.
- **Portfolio:** Supports strong working relationships with Ministers and between departments, entity boards and CEOs.
- **APSC:** Provides central guidance, templates and training modules; provides guidance on the ways of working between portfolio Secretaries, entity boards and chief executive officers.

Appointment stipulations

- Board tenure limit
- Appointments limited to no more than 2 boards simultaneously.
- All vacancies advertised centrally (unless PM deems it appropriate to appoint directly in accordance with central guidance).
- All board members to agree new Board Code of Conduct.
- List of possible appointees provided to the Minister must exclude those rated unsuitable/marginally suitable.
- If Minister does not accept recommendations, further work will be done by the panel, to find an alternative field. The Minister provides the second shortlist to the PM for consideration as well as reasons for direct appointment.

Step 1: Planning, Diagnostics and Seeking Candidates

The planning, diagnostics and seeking candidates step should begin at least 6-8 months out from appointment and should involve important preparatory work before positions are advertised and searches are commenced.

Panel Selection

The composition of the recruitment assessment panel whose role it is to make recommendations to Ministers is important. It should be the portfolio Secretary's responsibility to choose each selection assessment panel, and they should do so having regard to the nature of the board, the need for the process to be independent from Ministers and their offices, and with consideration of diversity. Care needs to be taken to ensure that the composition of the panel will give Ministers confidence in the appointment list generated by them.

The size and makeup of assessment panels for boards will be at the Secretary's discretion, but its membership will be subject to the Public Service Commissioner's approval and include one independent member designated as the Commissioner's representative. It is important that the Secretary satisfies themselves that each panel is at the right level and understands the particular board's business and needs; has subject matter expertise and knowledge-based perspectives; has independent representation from outside the portfolio, which can include government, business and non-government representation, as appropriate and subject to conflict exclusions; and diverse representation (always including, at least, both men and women, but including other diversity groups as appropriate). A reasonable panel size would usually be three or four people.

Unless a government wishes to replace the Chair or the entire board, there is no reason why the Chair should be excluded from the assessment panel, which would be more in line with practice in other sectors. At a minimum there should be an expectation that the Chair will be intimately involved in the identification of possible candidates, especially for commercial boards.

Selection Parameters

As Leblanc and Gillies have found ²⁵, building a board is a complex task and involves consideration of whether the board's current members have the specific competencies (qualifications, skills and capabilities) necessary to exercise sound judgement on the issues the entity faces; have the behavioural characteristics that lead to effective decision-making; and are capable of recognising and helping management to develop strategies for dealing with change, new directions, new pressures, and new situations.

It follows that a sound government board recruitment process starts with diagnostic consideration of what is needed to enable each agency to deliver the best outcomes. Is the board effective? Is the board delivering? Does the board understand government policy and the Government's reform agenda? Is board refreshment necessary? Who should be let

²⁵ Richard Leblanc and James Gillies, Inside the Boardroom: How Boards Really Work and the Coming Revolution in Corporate Governance, John Wiley & Sons Canada, Ltd, 2005, Chapter 11.

go and why? Is a new Chair needed? How to balance continuity with any need to refresh membership and talent? Is the current board best positioned to take on and handle future environment and technological developments? What are the dynamics and culture of the current board? Is the board competent in behavioural, governance, technical and industry specific areas? Where are the board's skill or capability gaps or deficiencies, as identified against their skills matrix and review processes? Are diversity considerations being met and are diversity indicators part of board skills matrices? Is specialist recruitment and/or executive search necessary? Are there any particular requirements set down in an entity's enabling legislation? Is the board balanced in terms of regional and city or labour and business representation? How will the process work; and so on.

These are common diagnostic considerations that can be brought together in any fashion to deliver the appointment arrangement suited to a particular board or its vacant position(s). The greater the change needed, the greater the depth of the considerations that might be drawn upon. Significantly, several Ministers mentioned to me how critical a board skills matrix that reflects the breadth of expertise and capability required on the board, is to them for depoliticization of the process.

Boards or their Chairs should also be invited to contribute to these considerations as they hold vital information about board requirements, team dynamics and challenges, and may also be aware of quality potential candidates. Indeed, in the absence of nomination committees, all government boards and committees should develop a skills matrix in consultation with their department; consider board succession on a six-monthly basis; and regularly provide potential candidate information to their Secretary and to the central talent pool.

Ministers will have strong views about what they are looking for on their boards and should be involved in setting the parameters of the recruitment exercise. How Ministers are involved is, of course, a matter for them individually—some may want a discussion, others may prefer a minute setting out the considerations—but it is important that Ministers are involved in setting the parameters of the recruitment exercise to ensure their views are taken into account. Ministers should be provided at this time with the appointment operational standards to assist the development of their views and guide the performance of their duties.

It is essential that Ministers have an early pathway to bring talented people known to them into the field. I therefore intend that Ministers should let it be known at this pre-advertising stage if they know of potential candidates who might be approached and considered as part of the selection process. Ministers will have a particular interest in potential Chair candidates and their views should be canvassed early in this regard. All Ministerial nominees will then need to apply for the role, as other candidates would do, by making a CV available to the panel.

It is necessarily important that Ministers not make appointment promises to anyone and they should declare any possible conflicts of interest associated with those named. Ministers should not attempt to influence the assessment panel in favour of their candidates

and panels need to avoid displaying any unintended bias. If the people nominated are competent and capable, they will make their way through the independent process to the top.

Once the diagnostic work is done, the recruiters will have a much better understanding of what they are looking for and how to target advertising and the wider recruitment process, including reaching a set of search and selection criteria agreed with the Minister, to be used by the assessment panel to assess candidates and develop recommendations. And Ministers will have assurance that the independent assessment process will work in the way they desire to deliver the better recruitment outcomes they want.

Group selection

It may be optimal for consistency and efficiency reasons that portfolios consider group board selection processes. By that I mean that selection processes for a group of government boards—such as for government business enterprises or military canteens—could be run together as a single recruitment process. This efficiency mechanism recognises that certain boards have similar core requirements and many of the same candidates would otherwise be applying for a series of related boards.

Group selection processes could be supported by general expressions of interest registers, where interested candidates could register their interest in being considered for general government board appointments within specific areas or fields of expertise, beyond a particular board.

It would remain important nevertheless that relevant Ministers are still able to provide input to the recruitment parameters, including specific requirements for their boards, and are able to put forward names for consideration by the assessment panel.

Standard selection criteria?

I have considered carefully the issue of whether there should be a set of core selection criteria applied to all of these government board positions. I note that departments often use the senior executive service selection criteria as the basis for their appointments. This is quite understandable, as departments had little else to work with and needed some guidance.

I accept that the selection criteria for various full-time statutory office holder positions, which equate for the most part to standard public service jobs, could involve alignment with the public service criteria, albeit with the addition of particular requirements for various Commissions, as necessary.

However, I remain unconvinced that board selection criteria should always be the same as the selection criteria used to appoint Secretaries or senior executive service officers as the positions are, for the most part, fundamentally different, require different skills, and are part-time in nature. I prefer a much more fluid arrangement for boards.

In the normal course of events, boards do not run entities as senior executives do; instead, they are the governance body of the entity to whom the chief executive is accountable and

in which the overall governance, management and strategic direction of the organisation and its external accountability sits. That means that selection criteria should be framed around good independent team decision making and strategic leadership, rather than on doing the work of the entity, for which the chief executive is actually responsible.

That said, where there are areas of commonality, it may be good practice to adopt some standardisation, which may prove to be invaluable to assessment panels. There may also be individual criterion that could be developed for broad areas of board activity such as regulation, research, government business enterprises, and so on. Where group selection processes are conducted there will be need for more core selection criteria, however this should not be to the exclusion of criteria that Ministers deem necessary for particular positions.

There is also much to be said for common or core criteria in two key areas—the expectations of the Chair role and the behaviours expected of all board members. Those common criteria could be developed by the Public Service Commission in consultation with Secretaries.

The Chair of the board is the most important board role as they are responsible for setting the overall strategy and direction of the entity, chairing the board and its decision-making, representing the board or the entity, and providing guidance and support to the chief executive. The sorts of selection criterion that might be adopted for the Chair is:

High level Leadership and Direction from the Chair

- High level judgement, intellect, instinct and experience
- Sets the strategic direction of the entity and oversees delivery
- Presides over the board in an engaged and inspiring way that enables the entity to innovate, operate effectively, and achieve results
- A collaborative and influential leadership style; adheres to high ethical standards; and promotes personal integrity and professionalism in the entity
- Engages effectively with stakeholders
- Commitment to quality organisational governance and alignment between the board and management.

Beyond the obviously common elements, I find that the range and scope of board appointments and board requirements at different times is so great as to render further standardisation of selection criteria extremely difficult and potentially unwise. I think it would be better to leave the other criteria up to Ministers, Secretaries and Chairs to determine on a case-by-case basis to fit the needs to each entity board.

Many pieces of legislation set out skills set, qualifications and representation requirements which will also need to be taken into account in this phase. These requirements have usually been inserted into legislation for sound reasons—namely, to ensure that people of the right

calibre, with the necessary skill sets, or from diverse backgrounds are appointed to positions.

I have found throughout this review, however, that some of the skills and qualifications requirements in legislation are long since out of date and can be an impediment to securing the best people to deal with the challenges facing government boards today. Deficiencies in modern and future digital, technical and scientific expertise are a case in point. Sophisticated officials can always manage these conundrums, but it would be better if board positions were designed, advertised and filled reflecting current and future agency requirements and expectations.

It would be useful if all boards became subject to the same generic appointment legislation to achieve consistency and predictability across government boards. Ministers and departments would then be enabled to target recruitment on the skills, expertise, capabilities and potential needed now amongst the board to deliver each agency's desired outcomes. Regional input would be part of these considerations, as would diversity. As an important part of this process, the onus would be on the department to think through the issues and needs and to make suggestions to Ministers about the skills and requirements necessary for board positions, including diversity considerations.

The independent Public Service Commissioner should be given the responsibility to sign off on the selection plan to be used and the assessment panel before the selection process moves into full swing.

It is important in this phase that the Minister write to the Chair and other board members, setting out how the recruitment process will be run, and advising them whether or not they will be reappointed or, should the Minister want to test the field, inviting them to reapply for the short-term. If they are retiring or if further board refreshment is settled upon, the Minister should thank them for their service and let them know that the Minister is looking for new blood on the board.

Apart from ministerial engagement, such positioning and planning arrangements are usually part of the recruitment processes for large private and not-for-profit organisations, but they are usually run through their board nominations committees.

Growing the Field

In Australia, most candidates for high-level board positions are drawn from other boards or senior or chief executive-level people in business, the community sector and in government because they have the skills, experience and governance competencies that are usually prerequisites for these sorts of appointments. The desire to grow the field of eligible candidates beyond senior executives or those living in the wealthier suburbs of Sydney and Melbourne, is a common ministerial aspiration for government boards.

Sadly, there is no easy prescription for finding the best candidates for board positions; it is not an exact science, and approaches vary widely from formal to ad hoc. Recruitment arrangements should, nevertheless, seek to maximise the pool from which board members

can be recruited to provide the widest possible choice of candidates²⁶, thereby promoting greater public confidence in the outcomes.

I have set out here some mechanisms to do that. Chief among them is early notification and then advertising the availability of board positions, which should be the core means of growing the potential pool. Beyond that, Ministers and assessment panels can use other means of more intensive search and talent pool development arrangements to deepen the pool of candidate talent. It is more likely to be efficient to determine the intensity of extra mechanisms required according to the type of board (its size, importance or complexity), with the most important boards in each portfolio getting more intensive treatment.

Importantly, the appointment steps identified should not be seen as preventing search work being done in parallel. So, advertising positions could be done concurrently with proactive searching of talent pools, using executive search firms and using various personal, business and organisational networks to find candidates.

Public Notification

Letting people know what board vacancies are likely to come up is a good way to enable potential candidates to hear about board positions in areas of interest to them in sufficient time to consider applying. Senate Order 15 requires all departments and agencies to table in Parliament a list of existing vacancies to be filled by government appointment. This transparency mechanism could be used by the Public Service Commission to post on its board portal potential vacancies and could be managed in such a way as to send out automated notifications/alerts to those with interests in particular boards.

Advertising

The process used to identify potential candidates for appointment must be transparent, without bias, and open to qualified people seeking appointment²⁷.

Advertising all board positions on one single government board site would open up fields for wider recruitment; bring in many more potential candidates; and provide new opportunities for people who have the skills and capabilities and would otherwise miss out on the opportunity to apply.

Centralised advertising does not preclude more targeted advertising in specialist journals or broader distribution channels (such as on-line or industry networks), or other forms of candidate search), particularly when a wider or specific set of skills is being sought. It should also facilitate advertising with detail—meaning that the advertisement would cover the skills, capabilities, knowledge and selection criteria and any other considerations, such as regional location, State representation, and remuneration—that Ministers and assessment panels deem necessary to be clear publicly about how candidates will be assessed.

²⁶ Lynton Barker, *Building Effective Boards: Enhancing the Effectiveness of Independent Boards in Executive Non-departmental Public Bodies*, HMSO, UK Government, 2004.

²⁷ NSW Public Service Commission, *Appointments Standards: Boards and Committees in the NSW Public Sector*, July 2013, page 7.

Information about the requirements and steps involved in the selection process should, in turn, open-up the field to more quality applications and a wider range of circumstances.

Once people come to understand that centralised advertising is the gateway to government board appointments, it will become commonplace for those seeking government appointments to go online to the central site and be notified about and find board jobs that interest them, or they have passion for. Of course, there will be urgent, unforeseen or exceptional circumstances when Ministers deem advertising to be contrary to the public interest, and the Prime Minister will determine those occasions.

While I think advertising every position is the right way to go for all government board positions, it must be said that universal advertising is not the panacea that it is made out to be. It tends to attract numerous unqualified candidates who reckon they can do the job even though they demonstrably cannot; it can take a lot of extra time to manage; and it may exclude from applying some diversity groups who need support and encouragement to apply. Nonetheless, universal advertising is fairer because it will make vacant board positions much more widely known and, over time, I am confident that the volume issues can be managed by regular scrutiny.

Beyond advertising, other search avenues may be required to grow diverse fields and, albeit not exclusive, I have listed a number here.

Executive Search

Executive search firms provide very useful additional search capabilities, bringing new people or eminent people in particular to the table, and prioritising more interaction with candidates. They are widely used in all sectors because of their expertise in finding the right candidates and in approaching them skilfully, and for their professionalism in managing recruitment processes.

I understand that under the Commonwealth Procurement Rules, use of the People Panel, which includes executive search, is mandatory for non-corporate entities that are subject to the Public Governance, Performance and Accountability Act, but optional for others. There is another panel—the Governance and Executive Search Panel—that has a specific focus on board governance and appointments. Surprisingly, this panel does not include many of the top tier executive search firms that usually operate at this level. It has been suggested to me in this review that this is based on cost grounds, although the Department of Finance says it reflects value for money.

Suffice it to say that there are mixed views in government about executive search, ranging from executive search being very helpful especially in filling niche roles, through to executive search firms being too expensive and only supplying candidates already identified by the public sector. This uncertainty is reflected in the composition of the Governance and Executive Search panel firms.

Good recruitment is the key to board value add and is essential in this context, so I do not support excluding quality search firms on price grounds. Where apparently higher priced

firms can demonstrate value for money, a few extra dollars spent now may make a lifetime's difference to board capability.

A better approach would be to target the search panel around the areas of the market that various firms specialise in and pay accordingly, while providing healthy feedback on individual search company's panel performance to the central unit so that future assessment panels will know which companies have performed the best. As used with good effect in NSW, portfolios should also be able to keep using those firms who have delivered successfully for them over the years because that develops a level of sector/needs knowledge and hastens the search, while improving the value-add.

However, those firms also need to be more open to new and emerging talent to replace older specialists or increase the diversity of boards. Medical expertise or large infrastructure development knowledge, commercial expertise, etc. are all specialist skills, as are seeking out regional people, diversity groups and young people who might refresh a board.

There would be much to be gained by the Public Service Commission in the lead up to the expiry of the current Governance and Executive Search Panel in February 2024, determining if the panel is fit for purpose and making necessary changes to get more executive search firms with the requisite high-level expertise onto the panel. I also understand that the Department of Finance is in the process of establishing a whole of government mandatory procurement panel involving recruitment and executive search services, labour hire services and contractor services. Ideally, the Commission would move rapidly to engage with Finance on the expectations of executive search firms providing board recruitment on the new panel and then encourage the top tier firms to apply for the panel.

Talent Pools

There is a lot to be said for the development of candidate talent pools for future vacancies. Having interested and good quality candidates on the Government's books will make the search process easier and more effective. There is evidence that these are already under development for the government business enterprises²⁸, but their use is not widespread for board appointments and, unfortunately, where one was developed for women (BoardLinks), it failed to prove useful to portfolios who gained more successful candidates from the Women on Boards organisation.

When I looked into this, it was clear that merely collecting candidates is not the answer. What is required is considerable and committed appointment expertise at the executive officer level—a dedicated talent scout—who spends a lot of time with potential candidates, and the application of a senior executive person's lens over the candidates' names to determine whether they are at or approaching the level of a board or commission member and if they can successfully provide advice to assessment panels on names that are targeted to meet the selection criteria of particular positions.

The Canadians describe this as having any eye for talent and the ability to see potential in people and to take advantage of that in recommending them for positions. Such talent

²⁸ The Public Service Commission has also developed a talent pool for the public service.

spotting expertise is hard to come by and not usually valued in the public service; but needs to be acquired and nurtured to develop and maintain a great talent pool.

As well as candidate expertise, the candidates' names need to be entered into the talent pool in a systematic and disciplined way that will provide consistency and clear information about the candidates. Promising unsuccessful candidates' details should also be retained in the talent pool for future consideration, with a particular focus on reconsidering quality candidates from under-represented groups. However, where someone is clearly not at the right level, they should be informed and left out of the talent pool.

A centrally managed government talent pool should be developed in the Public Service Commission that is led by a senior officer and receives information on potential candidates from government agencies and other sources it deems appropriate and provides this information in a targeted form to portfolios as part of their recruitment arrangements.

I am attracted to the idea that the talent pool could either be developed at the sector level or be portioned down to sector level, with groupings of portfolios around health and welfare, resources, defence and security, economics and business enterprises, and so on enabling the pool to be finessed into areas of board subject matter. It could also be developed to support visibility of diverse candidates—for First Nations, regional and remote representation, cultural and linguistically diverse backgrounds, people with disability and young people—or for specialist groups such as engineers, lawyers, doctors, accountants and economists. Each of these sectoral and diversity talent pools would need to feed into the centrally managed pool, so consistent terms and formatting would need to be agreed at an early stage by the implementation task force.

The Canadian experience is that a wholly centrally managed talent pool takes some time to build. After 8 years, they now have the high-level expertise and systems in place and are able to use it to assign people to positions fast. They are still, however, bedevilled by privacy considerations which prevent other portfolios from accessing the central pool. In the model I suggest, legislative guidance will need to be developed for talent pools in a way that establishes a beneficial access pathway which addresses candidate privacy while enabling the pool to be opened up for portfolios as well as centralised talent searches and vice versa.

Singapore has developed a talent pool that is split into private business and public sector people. The system enables a like-for-like review of potential candidates, and also facilitates the appointment of ex-officio members of the public service and former public servants to government boards on occasions where Ministers determine that such appointments are necessary for governance and government relations purposes and for developing future public sector leaders. That should be considered here too.

Developing a pipeline of board-ready diverse talent

The identification of emerging and future skills needs, and how younger people or those from diverse backgrounds can also be encouraged to participate in public sector boards, are important appointment considerations during this phase. Younger people are often seen as not possessing the required governance experience and senior networks to be appropriately

board-ready, and some other underrepresented groups who have historically been excluded from consideration, have also not had the opportunity to accumulate extensive governance experience or training, although they have significant other competencies.

It was reported in this review that the few First Nations people on government boards are often on many boards across different sectors and can be stretched so thinly with all their obligations that they find it hard to consolidate their positions. This is no excuse for departments not doing more to find more First Nations people or other groups with the right prerequisite skills and potential to be engaged on boards.

In order to genuinely champion diversity of appointments, public sector boards could provide an opportunity for diverse talent to be equipped with the appropriate governance skills and experience to deliver the future success of our national institutions.

It is recommended that the Public Service Commission and public sector boards consider mentoring and talent development programmes in order to build a pipeline of board-ready talent that also takes into account their future and emerging skills needs. This could be enabled by targeted financial support for underrepresented groups to upskill, or the identification of talented individuals for non-voting member positions or as board member alternates where these members are able to observe and learn the fundamentals of governance.

Beyond this, Ministers may also wish to promote new talent onto spare board positions and, as they do this, provide intensive training in governance, legal requirements, financial management and so on that are needed to equip them fully for the role. Assessment panels should be alert to those considerations and prepared to accommodate them.

Exclusions

Experience in and around government doesn't necessarily mean that public servants, former politicians or staffers know much about governance or have the skills, expertise and experience needed for board roles. Nor does it mean that they should be excluded from board positions as many are often highly talented Australians with a lot to contribute through boards. Indeed, there are many examples where politically aligned people and former public servants have performed exceptionally well on boards and in other positions.

However, the potential for conflict of interest and the perception that politicians and their staff might manage their board roles to advance political interests or a particular political philosophy, is great. In the circumstances, it may be wise to restrict the candidature of those leaving political positions for a period and require them to make an attestation about their political experience in their applications.

The Code of Conduct for Ministers sets out arrangements which appear to have the effect of excluding Ministers from appointments in their portfolio areas for 18 months²⁹. There is no

²⁹ Australian Government, Code of Conduct for Ministers, p 9.

guidance beyond that. Standdown periods are necessarily arbitrary in nature but can provide important integrity signals to politically aligned people who may seek to capitalise on their connections and to Ministers making appointments to their staffers. It seems to me that a lesser stand down period of 6 months would seem reasonable for Ministers in areas outside their portfolios, Senators and Members of Parliament, and for political staff.

If, after this time, politically aligned candidates apply and are selected meritoriously, they should not be discriminated against, but should be required to, as other board members are required to do, declare areas of potential conflict and how they will be managed before they are appointed. If they are unable to do this to the satisfaction of the assessment panel, they should not be recommended for appointment.

Other sectors

The private and not-for-profit sectors use a variety of means to seek out candidates for board positions. Companies rarely advertise and often use their established networks of acquaintances and colleagues or family members to fill positions. In the major companies, more rigorous processes apply, with many having nominations committees backed up by executive search firms who maintain a close longer-term relationship with the company, and specialist bodies who source candidates with particular diversity, skills or capabilities. Not-for-profits advertise more often, but also make extensive use of personal networks, well-known local people, and affiliated direct appointments (from their membership, unions, employer groups, state bodies, churches and charities); the larger ones also use executive search.

In both cases and in contrast to government practice, board Chairs are typically appointed from within the board or the family or sector if it's a family company or sector body, but it is increasingly the case that these boards will also seek Chairs outside their current team with some independence.

Summary of the planning, diagnostic and seeking candidate step

- The Secretary decides on an assessment panel that must include a person with subject area knowledge, one independent member and both men and women.
- The Secretary invites the Chair of the board to undertake a needs analysis which addresses the board's skill matrix and skills gaps and makes suggestions as to possible reappointments or new candidates for positions on the board.
- The Secretary and/or the assessment panel chair meet or correspond with the Minister to position the appointment process based on diagnostics (such as changing board strategy, Chair feedback, the board's skill matrix, gaps in capabilities, legislative requirements, diversity considerations, and so on) and settle the associated selection criteria, calling upon common government-wide parameters if developed.
- The Minister advises the Secretary and/or the assessment panel of people they wish to be considered for the positions, without making any promises to these people.
- The Public Service Commissioner is given the selection plan and assessment panel composition and advises the Secretary if they are acceptable.
- The Minister writes to the current Chair and board members thanking them for their service if their term is up; or advising them of their short-term reappointment or selection processes for reappointment if the Minister deems it necessary to run a process to refresh the board.
- Assessment panels have a responsibility to be active and take the initiative in building the field. They should extend the recruitment field as widely as possible to increase the range and diversity of candidates considered for appointment.
- Using Senate Order 15 information, all forthcoming board vacancies should be posted well in advance on a central government site so that potential candidates are alerted early to jobs in their area of interest.
- All government board and commission positions must then be routinely advertised on a central government site and in other locations as appropriate to the position, unless the Prime Minister deems it appropriate to appoint directly to government positions for reasons consistent with those that will be set out in the proposed Public Service Commission guidelines.
- Assessment panels may use government talent pools, specialist and other executive search firms, talent pipelines, and suggestions of names by Ministers and others to extend the candidate field.
- A centrally managed government talent pool and a talent pipeline should be developed in the APSC overseen by a senior official, drawing on sector and departmental talent pools to collect information on potential candidates and provide targeted advice to assessment panels about potential new talent, and to facilitate candidate development and support for First Nations, younger and other diversity groupings.

Step 2: Candidate Review and Appointment

Assessment

The fair assessment of candidates can involve a number of different approaches and should be suited to the board or entity involved.

At a minimum, an application for a position will involve the provision of a curriculum vitae (CV) and a proforma cover note which should cover name, address, contact arrangements, diversity and a conflict of interest declaration, all of which will need to be lodged electronically.

It's then up to the assessment panel to decide if they have a field of candidates strong enough and diverse enough to proceed to assessment. If not, they should extend the search period, possibly with the additional support of executive search firms or others, such as population-based agencies, to raise the quality and depth of the field.

In cases where it is necessary to dig deeper to find more candidates of quality, assessment panels should accept the responsibility to proactively seek out quality candidates and tap on the shoulder others who are potentially suitable and ask them to apply or further draw from the public sector-wide talent pool of possible appointees.

They should be bound by diversity considerations, which means that they are to promote diverse selections and must manage carefully any tension between diversity and experience, so that those with potential or unique skills and competencies but less governance or other experience are not excluded unfairly or inappropriately from boards. Diversity doesn't have to mean someone from a diverse group; it can mean someone who brings the perspective of those groups or with a record and philosophy of inclusion.

At this initial long list of candidates stage, candidates would not be required to provide references because there are sensitivities in the private and not-for-profit sectors associated with approaching referees, which could disadvantage the people concerned. However, they could be excluded from further consideration if they identify conflicts of interest that would prevent them performing the duties of the particular board position with integrity.

It is important to understand that a conflict of interest should not automatically be a reason for exclusion. Candidates are likely to bring particular expertise to the role and it is often those very skills that will enrich the board and enable it to fulfil its charter, but that will also potentially raise conflict situations. For example, maritime or aviation experience and expertise are likely to be important for the Australian Maritime Safety Authority and Airservices Australia boards and it would be foolhardy to exclude people with such expertise from consideration. The necessary corollary is that potential board members should be prepared to openly and transparently identify their conflicts and manage them to the satisfaction of the Chair and in the context of meeting accepted community ethical standards.

Once the field is of an optimal standard the assessment panel would establish what mechanism it will use to assess candidates fairly. This is an issue of great potential sensitivity

and needs to be managed carefully, as well as thoughtfully, to ensure that quality candidates are not missed or put off. Some First Nations people, those from some culturally and linguistically diverse backgrounds as well as some prominent people may be particularly unwilling to engage in formal interviews.

One means to ease non-government candidates through the assessment process would be to give them something prepared by the Public Service Commission which would explain how the government board recruitment process works so they would be educated to a base level before actual assessment begins. This should be supplemented with advice from the assessment panel about who the ultimate decision-maker will be—the Minister, the Cabinet, or the Governor-General—and through provision of the Board Charter³⁰ setting out amongst other things the governance arrangements for the entity.

Assessments will be based around the mix of competencies and behaviours that match the search and selection criteria and associated strategy and priorities of the entity as agreed with the Minister. Effective teamwork and good team players are vital for board and entity effectiveness, so as part of the assessment process, the panel needs to consider how the competencies and behavioural characteristics of those under consideration complement each other and the wider board, and how they match the strategies that the entity has for achieving its goals,³¹ or government has for achieving its goals.

As in the public service, the final assessment and preparation of a short list of candidates can take a variety of forms. It could be made “on the papers” if the likely outcome is clear cut. Otherwise, the assessment panel might convene formal interviews to test candidates’ claims. Importantly, the assessment process does not need to involve an interview with rigid procedures and frightening formality. Instead, the assessment panel or one or two of its members might choose to meet with candidates informally over coffee and test their suitability as part of a conversation about the role, while enabling candidates to determine if the board role will meet their expectations.

What will distinguish this process from usual public service processes is that competitive assessment doesn’t necessarily mean just one assessment methodology. Assessment panels will be able to determine that they will use either informal or formal (interview) processes or a combination of both, depending on the needs and wishes of individual candidates.

In my experience, informality works best for potential board members as it shows a level of respect and consideration of each candidate’s position, experience and capabilities, and will bring out the best in them. It also enables assessment panels to get a window into the personality of the candidates and how they confront challenges.

If, however, an interview is deemed appropriate, the candidates should be informed in advance, so that they can prepare themselves and reflect upon the selection requirements,

³⁰ The Australian Institute of Company Directors in its submission recommended a charter covering governance function, relationship with the Minister and their department, the role of the Minister and department in appointments and their role in dismissing board members, and the process for engagement with the Minister on appointments.

³¹ Richard Leblanc and James Gillies, *Ibid*, p 4

so they are not put-off from this or other board positions in government. If they need a support person, they should be enabled to have one attend the interview so the process is culturally safe and disability friendly.

Interviews will generally be involved where appointments are to be of the nature of public service appointments. They should involve a consistent line of questioning designed to test the candidates' capabilities and potential against the skills mix and any selection criteria agreed with the Minister or determined centrally between Secretaries and the Public Service Commissioner for such positions.

In all cases it will then be necessary to seek out references for highly ranked candidates. The board Chair might also be approached to ascertain their views about whether the shortlisted candidates will add to or undermine board effectiveness, and if they can work with them.

It will then be necessary to undertake probity and final conflict of interest checks. Again, where a candidate is conflicted and is unable to explain how they would manage the conflict, they should not be considered further for appointment, however, they may be referred to the central talent pool for consideration for a different appointment in another entity. Panels would also be wise to check each candidate's social media to ascertain if they have views or a record hitherto undisclosed that may cause difficulties down the track.

The appointment of a new Chair to a government board or committee is a key appointment and deserves careful attention to get it right. People operating at this level may not look for an advertisement or bother applying. They generally expect to be approached personally and sounded out. There is nothing wrong in this. Nevertheless, if they are interested, they will need to go through the discipline of supplying a CV and being considered competitively in the assessment process, just as other candidates for Chair would do. I would be surprised if anyone would object to this as it is standard practice in other sectors.

Some Chair positions are extraordinarily powerful and sought after roles. So, there will need to be a level of drilling by the assessment panel to test the candidates' passion for the role, their board management and team building capabilities, and their knowledge about governance, government entities and ministerial relations, among other things. This can be done sensitively but it needs to be effective in testing their ability to perform the role.

The assessment panel should then prepare its report in such a manner that the Minister will be provided with a fulsome qualitative and comparable assessment of each shortlisted candidate's strengths and weaknesses against the selection methodology agreed initially with the Minister. The final field should be split into those highly suitable and recommended for appointment and suitable but not recommended for appointment so that the Minister has genuine choice from the top candidates about who to appoint. Marginally suitable and unsuitable candidates would not be recommended and therefore precluded from appointment.

It is important to say that more often than not, the differences between top ranked candidates in most fields will be marginal, with some candidates more suitable in certain areas and other candidates in other areas; a rigid numerical ranking may fail to capture the

nuances that a qualitative assessment of candidates can deliver. However, to better inform their decision, the Minister should be made aware when an exceptional candidate has been found.

The business and not-for-profit sectors use a range of different mechanisms to review candidates—from formal interviews through to chats over a cup of tea or coffee—but the better organisations will set up nominations committees in advance and have a good knowledge of potential and a clear perspective on who they want to meet, so the shortlisted fields tend to be smaller. Often, though, the process is no less arduous for candidates and can take some time to complete.

Candidate care makes the fundamental difference to how people view these processes. Regular engagement with candidates keeps them interested and reduces the chance that they will take up appointments elsewhere. The executive search community handles this function much better than the public sector, which is overly timid in engaging with candidates. Moving at a fair pace through the process also works positively for candidates.

Appointment

Ministers should have at least a month before board and other positions become vacant and after they have received recommendations from assessment panels, to put appointments to Cabinet³². Because the appointments are ministerial appointments and within the bounds of assessment panel independence, the Minister should have been kept apprised throughout the selection process about the quality of the field, timing of assessment panel arrangements, likely contenders, and so on.

The assessment panel should submit its recommendations formally in writing, through the Secretary for endorsement, enroute to the Minister. The panel should list the top or highly suitable candidates for appointment to each position and the Minister should be made aware of any exceptional candidates. Sufficient detail needs to be provided to the Minister about why these particular candidates are the best and most highly rated for appointment in order to satisfy the Minister that the appointment list is meritorious and involves only high-quality candidates who will improve overall board performance. It would be prudent to explain to the Minister where any candidates he or she put forward earlier were ranked and why. The panel also needs to provide the Minister with the necessary documentation for appointments as set out in *The Cabinet Handbook*.³³

On receiving the panel's report, the Minister may wish to meet with or talk to prospective appointees, and that is entirely proper. I suggest that Ministers consider meeting with all prospective Chairs to significant boards. This fulfils two purposes: it enables prospective Chairs to ensure that they are simpatico with the Minister and understand and are in alignment with the Government's directions and priorities for the entity, and it enables Ministers to be confident that they have the best candidate to oversee the board and the entity and to lead reform or major projects, and that there is a degree of comfort that they

³² When Cabinet approval of an appointment is required.

³³ The Department of the Prime Minister and Cabinet, *The Cabinet Handbook*, Commonwealth of Australia, 2022, pages 46-47.

can establish a good working relationship with the Chair. If they diverge, then either or both of them may reconsider the appointment.

Sometimes, there are other processes that Ministers need to go through before appointments decisions are made, including consultation with State and Territory governments or other bodies. This will need to be provided for in the new arrangements.

The Minister should have sufficient time to consider the recommendations and advise the assessment panel of their decision. If the Minister is happy with the panel's recommendations, they decide who they intend to appoint, then they either make the appointment themselves if it is in their discretion to do so or decide to recommend the appointment to the Prime Minister. In the latter case, the Minister will write to the Prime Minister seeking approval of the appointment before any action is finalised. While all significant appointments will require Cabinet consideration, the Prime Minister will determine if that is necessary and may authorise the appointment by the Minister.

If the Minister is not satisfied with the recommendations from the panel, they have every right to advise the panel chair or the Secretary and ask that further work be done to find a more suitable list of candidates. Ministers may inject new candidates into the mix at this stage too.

If after their work is done, and the Minister is still not satisfied, they must at least put the recommended highly suitable candidates' names and anyone else they consider to be appointable to the Prime Minister for consideration and decision. The Minister should report to the Prime Minister the reasons for departure from the recommended candidates and be required to provide these reasons publicly in their subsequent announcement, if the Prime Minister agrees and/or the Cabinet decides to make a direct appointment.

As part of this process, the Minister cannot recommend to the Prime Minister the appointment of anyone found to be marginally suitable or unsuitable by the assessment panel.

There will, of course, be times when unforeseen or sudden vacancies occur and immediate appointments need to be made. In these circumstances, it might be possible to act someone in the job for a temporary period until an appointment process is run. However, if the Minister or the Prime Minister are made aware of an eminent person ideally suited to the job or are given access to the talent pool, they may choose to make a direct appointment. The process should be sufficiently flexible to provide for this.

The Cabinet Handbook will need to be adjusted to support these new appointment arrangements. Amongst other things, the handbook directs that to avoid pre-empting decisions, potential appointees are to be approached at this stage only to ascertain their willingness to be considered and to cover off conflict of interest requirements.³⁴ All too often, this leaves candidates either confused as to what is happening or surprised when

³⁴ Department of the Prime Minister and Cabinet, Ibid, p 19.

their names are announced publicly. It also makes the preparation of Cabinet documents in support of the appointment challenging.

A more mature, respectful and trustworthy approach would be to advise recommended candidates that their names are going forward to Cabinet, but an appointment is subject to Cabinet consideration and cannot be guaranteed and, where the appointment requires the Governor-General's authorisation, there may be a time lag before any announcements are made.

It is not unusual now for Cabinet to determine that a recommended candidate should not be appointed. It is the Cabinet's prerogative to do so. Nothing will change that, but I would expect to see it happen less often as candidates will be more thoroughly scrutinised and fields more comprehensive. I would also hope that there would be greater cultural onus on Cabinet to respect soundly run and independent recruitment exercises, and to defer to the recommendations from such processes more often.

In the circumstances, I recommend that candidates should be advised when being recommended for appointment and that they are to keep their possible appointment confidential until its confirmation and announcement³⁵.

The appointment announcement should not only announce the appointment but also explain briefly the process undertaken to select the candidate and the reasons for their selection. The announcement should be transparent about each appointee's background, which could include their experience and expertise, as well as their prior involvement as a politician or ministerial adviser, or their lobby group, industry group, union or political party involvement. Governments should be open about these affiliations as it is fair and reasonable for such candidates to be appointed if they are ranked suitable or highly suitable by the assessment panel.

The most transparent arrangement for explaining direct appointments would be for the announcement to explain that the Prime Minister agreed that this was the appropriate action and/or that the Cabinet decided it was appropriate, giving the reasons provided, and explaining in general terms why the candidate was appointed ahead of the claims of others, especially where the standard appointment process was used.

Accepting that this might draw some comment from the media and in the Parliament, it should be acceptable for transparency reasons to explain openly that an independent process was undertaken and, despite best intentions and endeavours, did not yield a candidate of the quality of the person ultimately appointed; emphasising the skills and experience of the person appointed as the reason for the decision.

Unsuccessful candidates should be advised once an announcement is made and, if they are at the required performance level, asked if their names might be added to the centrally managed talent pool, so that talented people are not lost to government service. For those

³⁵ Similar arrangements apply where awardees are advised well in advance that they are to receive an Australian Honour from the Governor-General, and are asked to keep the award confidential. These arrangements work perfectly well. There is no reason why they shouldn't work well here too.

deemed either marginally suitable or unsuitable, their names should not be added to the talent pool at this time, unless there is an expectation that they could perform the duties of other boards because certain skills they possess or diversity characteristics might make them ideal for other roles (e.g. legal or accounting skills or First Nations people), or for consideration for lower-level committees or advisory boards. They will, of course, not be prevented from reapplying at a later date when their experience and expertise may have developed.

Tenure and Term

In non-government sectors, board reappointment to serve a second or third term is common practice in order to maintain both continuity and the balance of new and experienced members; terms are generally 3 or 4 years each. In the Australian government sector, board members can be turned over after only one term, and the tenure practice varies widely between portfolios and boards, with reappointments being common. According to the ANAO³⁶, the length of each board term varies from 1-5 years, but the median term of appointment is 3 years, the average length of service is 3.7 years, and the common average maximum length of service is 6-10 years.

The practice of departments recommending reappointments was an issue of particular concern identified by all Ministers who were keen to refresh boards and wanted more imagination and enthusiasm brought to the appointments process by officials. On the other hand, many Ministers also saw benefits from continuity and the avoidance of costly turnover, through a second term. They were reluctant to prevent a board member from serving two terms if they were contributing well and performing highly, had expertise that was hard to find, were needed to complete a major project, or were more likely to contribute philanthropically if they had at least a couple of guaranteed terms. Many thought that a standard 4-year term was appropriate, with an extra term not by default, but as deemed necessary by the Minister.

In the circumstances, it would be sensible to adopt a common single government board term of 4 years, but with a possible second term of up to 4 years, at the discretion of the Minister. Another 4-year term would also be possible if a serving board member was to become Chair. This will provide both flexibility and certainty.

There will, of course, be cases where a shorter term is required, such as for time-limited projects or initiatives, or where a new board is formed, and Ministers want to initially spread the appointments over a couple of tenure periods to provide for continuity (then move to the standard 4 years). The system should be flexible enough to provide for this on the rare occasions it is necessary. In other instances, it may be necessary to extend the 4-year term for a limited period where the board is at risk of not meeting its quorum or key functionality requirements, which should also be permissible under the legislation.

This clarification of board tenure arrangements has a number of advantages. It provides for consistency in approach across government boards. It is easy for board candidates and

³⁶ ANAO, Ibid, p 18-19, 28.

current board members to understand, in terms of duration of tenure and terms, thereby reducing expectations for reappointment. It avoids board appointment terms linked to 3-year political cycles. It provides for both board continuity and ongoing board renewal, thus enabling governments to open up board opportunities to others on a regular basis, whilst not losing rare and essential skills or individuals. Importantly, it will focus board members' attention on early, active engagement and timely delivery, which should facilitate more rapid board performance improvements than is possible currently, while providing the opportunity for successful serving board members to become Chair.

There are some very competent board members who are selected frequently to serve on government boards for their expertise and sometimes for their political affiliations. I am advised that appointments to three or four government boards are not uncommon in these cases, but also in many other cases where particular favourites are appointed often. No one seems to know why people are so widely spread across many boards, although recruitment "laziness" is frequently cited, and I suppose that familiarity breeds a level of comfort among both officials and Ministers.

However, the practice of multiple paid board appointments can smack of favouritism and has the effect of limiting board opportunities for talented others, especially where boards need to be refreshed or made more diverse.

In the circumstances, it is recommended that no one person who is external to government should be able to serve on more than two paid Australian Government boards covered by this review at any one time, with the exception of specialists or significant and eminent talent or in the last 3 months of a final term, as agreed by the Prime Minister. To make this work practically, from 1 October 2024, if someone is already on two government boards and is to be recommended for a third, they will need to decide which two boards they really want to be on, and be prepared to ditch another. This will need to be made clear to all board members.

Those affected could still, of course, make their services available free of charge in any capacity or as an occasional consultant to the board. But the point remains that much more effort needs to go into finding new specialist or highly skilled talent, with such specialist board members being encouraged to develop new talent in their fields or emerging fields and identify those talented people to their Chair and for the talent pool.

As part of the transition to the new arrangements, current serving board members will keep their positions until their current term is completed and then their positions will be reviewed for consistency with the new legislated tenure arrangements.

Incumbent senior government officials would continue to be able to serve in an official capacity on as many boards as deemed appropriate by Ministers in order to fulfil their day-to-day responsibilities or to ensure that the proper functions of an entity are met. There should however be genuine efforts within government to spread and share those opportunities around other capable officials.

The situation of office holders is somewhat different. The standard appointment arrangements are usually 5 years for agency heads and many Commissioners, but can be longer in some integrity bodies. Reappointment is not unusual as it provides for leadership continuity and stability within the entities. I don't see a compelling reason to change these arrangements. With the likely consolidation of legislation relating to their appointment in a single new Act, however, their tenure arrangements may need to be included in a legislative instrument.

Taken together these tenure arrangements will be unique to the government sector and will need to be explained to board members and candidates in the Commission's guidance. They will also take some time to work their way through because they will be applied prospectively thus enabling incumbents to serve out their terms.

Summary of the reviewing candidates and candidate appointment step

- Candidates' CVs for board appointments, proforma cover pages and full job applications for full-time appointments are to be made available to the assessment panel.
- The assessment panel decides if the field is sufficiently strong or diverse to proceed to assessment and, if not, goes out again into the market in a more targeted search and consults the talent pool.
- Non-government candidates are provided with a guide as to how government board appointment processes work and who the decision-maker is.
- The independent assessment panel determines the approach they will use to assess candidates, providing for interviews, or conversations and discussions, or decisions based on the papers as appropriate to the candidates and the position. Full time positions will generally involve interviews.
- Assessments are made against the selection criteria agreed with the Minister, including any core criteria and consideration of team competencies, behaviours, diversity and dynamics.
- Special attention and care will be taken by the assessment panel to find the right Chair.
- The assessment panel seeks out references for the short-listed candidates.
- The assessment panel ensures that candidates are apprised of where the process is at and their likelihood of being considered as part of a short list of candidates recommended for appointment.
- For those likely to be recommended, the assessment panel should arrange for probity checks and final conflict of interest declarations to be made and exclude from further consideration those who fail the tests or cannot manage conflicts.
- The assessment panel makes its decisions about who is highly suitable for appointment on the basis of a qualitative, comparative assessment of their strengths and weaknesses.
- The assessment panel provides the Minister with their report, including recommendations for appointment.
- The Minister considers the recommendations and decides if they will confirm the panel's recommendations and make or recommend to Cabinet an appointment based on the recommended shortlist.
- If they are not prepared to accept the recommendations, further work will need to be done by the panel, in consultation with the Public Service Commission, to find a higher quality field. Thereafter, the Minister must put the shortlists to the Prime Minister and Cabinet for their consideration as well as the Minister's preferred candidate and their reasons for a direct appointment if they wish to make one.
- If a Minister intends to make a direct appointment, they need to explain their reasons for their decision publicly in the announcement.
- Announcements are made and appointments commence. The announcement needs to cover the appointment process, the reason for appointment, provide transparency about the appointee's background, and if they were appointed directly or by a merit-based process.
- Board tenure limits of 4 years apply ordinarily, but with ministerial discretion to appoint for a second 4-year term, including an extra term for Chairs. Appointments are generally limited to no more than 2 government boards at any one time.
- All board members should sign onto a new Board Code of Conduct before their appointment is ratified.

Step 3: Induction and Training

Induction to government boards is important because there are additional constraints involved in government that may not be apparent to outsiders, especially in terms of legislative requirements, limitations on their decision-making powers, the prudent use of taxpayers' money and the nature of ministerial shareholder and reporting arrangements to Ministers. There are also extra integrity and non-partisanship requirements and sensitivities around conflicts of interest that are different for government bodies and are not always readily appreciated.

There are also relationships to be managed that are different to other sectors. In their report³⁷, NGS Global suggest that those on government boards need to show credibility and connectedness to government or acquire it. They suggest that boards must have some people who are seen as credible, able to advise the Minister and able to maintain a connectedness to government. One board Chair they interviewed said that the links between the Minister, the organisation, the Chair and the board itself is “a well calibrated dance”. If any one of those four falters, or is seen as “cavalier, disrespectful, neglectful, or inattentive”, there will be a significant impact on others. In effect, they are saying that membership of a government board is a particular art that requires some different skills that may need to be developed by those appointed from outside government.

To aid this familiarisation, all new board members should receive a centrally devised and comprehensive induction package and familiarise themselves with the entity, its functions, powers, and priorities. The core features of the induction package would be prepared by the Public Service Commission, with additions particular to each board entity and their portfolio being prepared by departments' board units in collaboration with board Chairs. The induction package will include the Board Code of Conduct, and members will need to be trained in its application.

As part of the induction process, the board Chair should ensure that new board members meet others on the board personally and are inducted and upskilled with the level of training or entity familiarisation that is necessary for them to contribute and perform well on the board. I envisage that the Public Service Commission will develop in consultation with departments a series of board training modules covering the essentials and organise or deliver the training. This is particularly important for those new members who have not been able to afford, or not had the opportunity to attend, privately provided board training.

The Chair will also play a critical ongoing role not only in mentoring new or potential board members, but also in facilitating upskilling by all board members to deliver strong board performance and to address matters raised in performance reviews.

Appointees from diverse backgrounds may particularly benefit from training and active mentoring by the Chair and other members to bring them along. This approach is often

³⁷ Marianne Broadbent and Mark Elliott, NGS Global, 12 Exemplary Practices Delivering Effective Government Boards, September 2019, p 12-13.

taken in the not-for-profit sector, which brings many more diverse candidates onto their boards.

Further, because Ministers expect a level of familiarity with their board members, it will be important that candidate care evolves from support through the appointment process into engagement with Ministers where feasible, into support post-appointment for certain individuals who may not have the requisite high-level experience or networks or government experience. These training and candidate care support mechanisms should be a normal part of board operations as we go forward.

It is incumbent upon departments to maintain strong connections with their portfolio agencies and for boards to maintain close connections with departments. Senior level meetings should occur regularly. In turn, this will enable departments to better support their Ministers as they meet with board Chairs and boards.

I note that the relationship between Secretaries and their portfolio agencies has not been codified. There is obvious role tension between the roles of Secretaries, independent boards and chief executive officers who have responsibility for their agencies under the Public Service Act. The Public Service Commission should issue guidelines to clarify these relationships.

Summary of the induction and training step

- New board members are to be inducted to the board using a standard induction brief prepared by the Public Service Commission for government boards, supplemented by information and requirements from portfolios specific to the board and the needs of individual members.
- They should be engaged in meeting other board members and provided with training and support as advised, agreed and orchestrated by the Chair.
- The Public Service Commission should codify the relationship between portfolio Secretaries, entity boards and chief executive officers, with the expectation of strong working relationships being maintained.
- Ministers should endeavour to meet with significant boards or their Chairs annually.

Conclusion

The processes for government board appointments that I have outlined should provide the Government and public with confidence that politicised appointments will be minimised, and candidates of the very highest calibre are appointed in future. I therefore recommend that the Government:

- adopts the board appointment process that I have set out in this review
- legislates the key principles of the process so that it becomes standard appointment practice for all entities
- extends the process to relevant commissions and other high-level bodies, and
- adopts a new Board Code of Conduct.

To support Ministers and officials, a sector-wide standard set of board appointment guidelines should be developed and promulgated by the Public Service Commission, based on the detail provided in my report and covering all relevant boards and statutory appointments. Those guidelines should include specific guidance on best practice and good governance around selection and appointments procedures as they relate to diversity, including standardised advertising, guidance for nomination of appointments, data collection and reporting to ensure consistency and interoperability, and training and support.

Board Performance

Since the corporate collapses during the global financial crisis, board performance has been an area of increasing focus in boardrooms, among shareholders and regulators, and in wider government. The Australian board regulatory regime is well regarded internationally, and the performance of the top tier companies and financial services bodies is rigorously overseen. The stronger companies and larger not-for-profits will also regularly test the performance of their boards usually through:

- some form of major external review every few years, which includes individual board member and executive reports interviews, questions about team and individual performance and prospective Chairs, as well as consideration of the views of external stakeholders and overall company performance; and
- annual informal reviews within the board and through their nomination committees.

Within government, entities are required to comply with statutory reporting requirements, the Public Governance, Performance and Accountability Act and related guidelines. Each year, they submit annual reports including financial statements, corporate plans, budget estimates, entity performance statements and board meeting attendance information. These reports give assurance to government that they are working properly and provide valuable information on their financials and future directions.

However, they tell government and the wider public little about the performance of individual board members, the effectiveness of the Chair and the board as a team³⁸. In consultations for this review, I found that there is not much actual scrutiny of board effectiveness; considerable inconsistency in approach to board performance between portfolios; virtually no evaluation of Chair or member performance; and no formal process to enable board performance to be benchmarked. This gaping hole in the government board performance framework needs to be addressed.

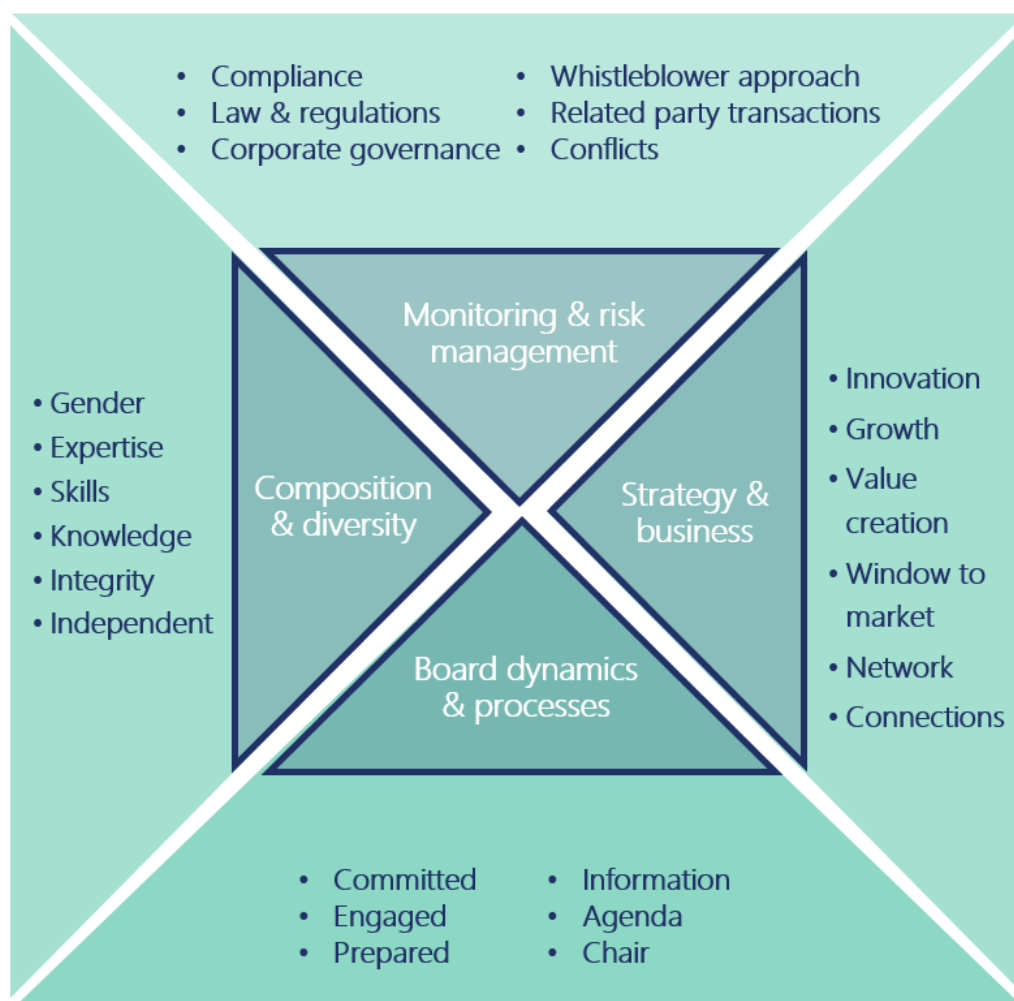
The corporate sector practice of a major external review every few years, where individual board member performance is probed, with annual internal reviews in-between, is good practice and should be introduced for public sector boards in entities of sufficient size and complexity to make external reviews a practical option.

The sort of external board review that I have in mind for government is one where the reviewer examines the overall performance and effectiveness of the board in delivering on its mandate as well as the performance and effectiveness of individual board members and the board as a team. This two-tier approach is designed to enable Ministers, Secretaries and Chairs to get the sort of information they need about how government boards are working together against their objectives and how particular boards and board members are performing personally. It will also enable the board to anticipate difficulties and encourage continuous improvement among its members.

³⁸ This is despite the GBE Guidance that recommends in s2.21 a biennial independent board performance assessment, however the only requirements stipulated are an assessment of attendance.

That said, effective board performance is by no means the only measure of organisational success and cannot be seen in isolation from the effectiveness of the entity itself as led by the chief executive.

The Australian Institute of Company Directors developed a very helpful guide to board evaluations in 2018³⁹, which emphasises the need to spend some time up front considering amongst other things the objectives of board evaluations; the primary motivation—what is worrying people and what will be reviewed; the focus and scope; director skills, relationships, role performance and motivation; board committees; external relationships; how will the evaluation be done; who will be consulted; how the outcomes will be handled and so on. The Australian Institute of Company Directors⁴⁰ uses the Organisation for Economic Co-operation and Development’s four dimensions of board evaluations⁴¹ in its Director’s Tools:



³⁹ Geoffrey Keil, Gavin Nicholson, Jennifer Tunny and James Back, Reviewing Your Board: A Guide to Board and Director Evaluation, Australian Institute of Company Directors, 2018.

⁴⁰ Board Evaluation and Director Appraisal, Director’s Tool: Board, Australian Institute of Company Directors, 2023

⁴¹ OECD, Board Evaluation: Overview of International Practices, 2018.

External board reviews should take place each 5 years. To support this significant change, it is proposed that the Public Service Commission be responsible for giving some flesh to this brief overview and for developing the external performance review framework. Secretaries in consultation with entity Chairs will be responsible for developing the schedule for external reviews amongst their relevant portfolio entities. Board Chairs would be responsible for commissioning and paying for external reviews and for initiating any action necessary to address the recommendations. It may well be that the Public Service Commission will need to establish a board performance procurement panel to assist Secretaries and Chairs to identify and acquire board performance assessment skills, which are different from recruitment skills.

Board Chairs should provide all external reviews to the Minister, the Secretary and the Public Service Commissioner, who may also be involved in follow up action.

BoardOutlook⁴² has suggested in a submission to this review that systematic solutions through diagnostic software tools are increasingly available for tracking performance, behaviours and the effectiveness of boards. They suggest that the systemic adoption of a platform for board review will enable comparability and benchmarking board performance across a wider group of entities, without the subjectivity of different review processes and reviewers, and enables immediate tracking of board improvement or slippage. That remains to be seen and should be tested by the Public Service Commission in due course as it works with portfolios on the details of external reviews.

The strength in this board performance model is that reviews are independent and will provide Ministers and Secretaries a health check on the effectiveness of government boards, the board team, the Chair and individual members. The model will assist Ministers and Secretaries in their consideration of board members for reappointment or appointment to other government boards.

Of course, the option is also open to Secretaries and Ministers to conduct a full capability review of any government entity, where they have particular concerns that an entity delivering important public services is off-track. Because capability reviews go beyond the board domain, I have not made specific recommendations about them in this review.

Board Code of Conduct

I have found in my wide-ranging discussions that a number of board members do not know what is required when working in a government owned body; have only the slightest understanding of conflicts of interest and how to manage them; or whose behaviour is sorely lacking. It is evident that boards need a standard code of conduct that would govern all government board member behaviour and set integrity expectations. Such codes are commonplace in other sectors.

⁴² Steven Pell, BoardOutlook Pty Ltd, Submission to the Review of Public Sector Board Appointments Processes, March 2023.

The introduction of the Board Code of Conduct that I recommend would be a major integrity reform and is likely to become a transformative whole-of-government charter of expectations of government board members and other appointees.

My expectation is that all board members would be required to sign onto the Board Code of Conduct as an important assurance of integrity and trust, and that they should do so along with their completion of other Cabinet appointment documentation. If they are not prepared to sign onto the Code, they should not be appointed. If they are not prepared to live by the Code, action should be taken to dismiss them.

In considering the features of the Code, I reviewed a range of possible codes of conduct informed by the guidance for GBEs and the Victorian, New Zealand, UK and Scottish codes of conduct for public sector boards as well as my proposed operational standards and current codes operational in the Australian public service. My preference is to keep the document short.

I have settled upon the following recommended Board Code of Conduct, which would also apply to statutory office holders.

Australian Government Boards Code of Conduct

Key Principles

The ethical standards required of Australian Government board members and board Chairs are derived from the fact that board members are part of governing bodies of important public institutions that perform a wide range of national functions on behalf of the Australian people that directly impact their lives and circumstances.

Government boards must have the trust and confidence of the Australian community and government in order to be fully effective.

Collective Duties of a Public Sector Board

Members of government boards have individual and collective responsibilities. These are their collective responsibilities:

1. Stewardship and professional conduct

The board is responsible for overseeing and upholding management of the Commonwealth entity. This includes managing the entity's relationship with stakeholders, including the portfolio Minister and Department, on matters of governance.

The board acts in the spirit of service to the Australian community.

The board is responsible for upholding the entity's reputation and managing intellectual capital.

The board ensures that appropriate arrangements are in place for the entity to meet its legal, ethical, financial and policy obligations, and is responsible for overseeing the effective management of risks faced by the entity.

2. Best interests of the Commonwealth entity

Government boards act in the best interest of the functions and objectives of the entity or company as a whole.

3. Conflicts of interest and integrity

The board should take reasonable steps to avoid and/or manage any conflict of interest (real or apparent)⁴³ and have policies and procedures in place to help disclose and manage actions that pose threats to the public interest, including annual declarations of interests.

⁴³ Conflicts of interest are not desirable. However, it is not unusual for board members to bring particular expertise to the role that might give pause, but not exclude their involvement, as it is those very skills that will enrich the board and enable it to fulfil its charter. The necessary corollary is that board members manage openly and transparently their conflicts to the satisfaction of the Chair and in the context of meeting accepted community ethical standards.

Personal Duties of Public Sector Board Members

These are the requirements for individual public sector board members:

4. *Honesty and integrity*

Integrity: Board members at all times must act with honesty and with high standards of professional and personal integrity.

Stewardship: Board members should steward the entity's reputation and stakeholder relationships, to protect the long-term interests of public institutions and the communities they serve.

Fairness: Board members must act fairly and impartially. Decisions are made using the best evidence and without discrimination or bias against particular individuals or interests. Members contribute to an environment where diverse perspectives and backgrounds are supported and respected. Members are courteous to others, and contribute to a culture that is free from intimidation and bullying.

Non-partisan: Board members should act in a non-partisan manner, irrespective of political interests. On matters relating to the work of the entity, members should not make political statements or engage in any other political activity.

Good behaviour: Board members must demonstrate and uphold the highest standards of personal behaviour. They should behave in a manner consistent with the public service values, treating people, officials and stakeholders with respect and courtesy and ensuring that their entities provide a safe working environment. They should co-operate as a team with other board members and respect their contributions as part of collective board decision-making.

5. *Care and diligence*

Diligence: Board members should understand the business of the public entity, role of the board, and statutory and administrative requirements and responsibilities.

Duty of Care: Board Members carry out their work with care, diligence and skill, acting responsibly, and drawing on all available information they possess when considering matters before the Board. Members seek further information where necessary and base their decisions on the best information available at the time.

Acting lawfully: Board members should understand and act in accordance with all statutory and administrative requirements relevant to their role. They should also understand and act in accordance with their collective and individual duties and responsibilities as outlined in any legislation and policy relevant to their entity and position.

Participation: Board members participate in a full and engaged capacity with the work of the board, and respect the duties of the board, principle of collective decision-making and corporate responsibility.

6. *Best interests of the government entity*

Public Interest Duty: Board members are to act in good faith, and in the best interests of the functions and objectives of the entity or company as a whole, while serving in the national interest. Members' judgement should not be influenced by their personal or professional interests or relationships.

7. *Conflicts of interest*

Board members must take reasonable steps to avoid and/or manage any conflict of interest (real or apparent). Members need to identify, disclose, manage and regularly review all interests and declare their interests annually. Members should be familiar with conflicts of interest requirements, including those associated with their entity. Members are not precluded from having outside employment, but should be alert to potential conflicts and manage them to the satisfaction of the Minister and Chair.

8. *Representative members*

Where a board member is a representative of a State Government or other body and has been appointed directly by those bodies to the board, the representative member will have a relationship with their constituency in addition to their accountability to the Australian Government Minister. In these circumstances, board members must consider how to maintain that relationship while ensuring their actions do not jeopardise the effective governance of the entity, and establish operational arrangements with the Chair.

9. *Use of position and information*

Proper use of position: Board members must not use, or attempt to use, their position to promote their personal interests or those of any connected party. Members must not misuse official resources for personal gain or for political purposes.

Proper use of information: Board members must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the board member's role. Board members must not improperly use inside information or their duties, status, power or authority to:

- gain, or seek to gain, a benefit or an advantage for the member or any other person; or
- to cause, or to seek to cause, detriment to the board entity, the Commonwealth or any other person.

Gifts: Board members must not seek gifts or hospitality. Members must not accept any gifts or hospitality which may, or might appear to, compromise the member's judgement or integrity. When gifts or hospitality are accepted, correct process, including accurate record-keeping, is followed.

Social media: Board members should be aware when engaging with social media of instances where they could be, or could be perceived to be, acting as a member of the public sector entity. Members should note that social media is a public forum, and should take the same considerations as would apply when speaking in public or writing for publication, either in a personal or official capacity.

Not only will the new Code provide board members with clear guidance about what is expected of their performance, it will also empower Secretaries and Ministers to set up a process to enable inappropriate behaviour to be actioned and culpable board members to be cautioned and/or dismissed, which is sorely lacking in the current arrangements. The Code will set the performance standard for members of government boards.

Individual performance management

It is never easy to talk about performance management, but it is important for the integrity of our system that performance discussions become a normal part of how boards do their business and, where issues are raised, they should be addressed by the individual member, the Chair, the Minister, the Secretary and the Public Service Commissioner as required. At the moment, however, these arrangements are largely limited to the Minister as the “appointer”⁴⁴ having the right to terminate some appointments. Secretaries have no clear role in performance management even though they are Secretaries for the entire portfolio and are often the first to be drawn in when things go wrong.

Lebanc and Gillies⁴⁵ have pointed out, that “[w]ith power goes responsibility and the responsibility of every director is to assess continually if their contribution through the board is adding value to the enterprise. Resignation over principle may well be the practice among some directors; resignation on the basis of incompetence does not seem to be widely accepted practice”. It is more usual practice in Australia to let underperformers complete their terms and not reappoint them.

In my opinion, all board members should review their personal performance critically as part of the five-yearly external reviews that I have recommended. Where there are minor issues or skills deficits to be addressed, the Chair should facilitate corrective actions, such as skills training, as part of the review follow-up.

In cases where a board member declines to undertake meaningful performance improvement, there will need to be a power that enables Chairs and Secretaries (or their delegate) to direct board members undertake remedial action to address underperformance or poor conduct.

If a member’s performance is found in the external review to be so poor that they are not at the standard expected or are incompetent or not meeting the Board Code of Conduct standard, there should be a discussion with the member led by the Chair, and the board member would be wise to take the honourable and principled course of resigning. I expect few will. If they fail to do so, it should be the Chair’s responsibility to raise such serious performance issues with the Secretary and for the Secretary to consider their options, including taking corrective action.

⁴⁴ The appointer role can also apply in some legislation to the Prime Minister or the Governor-General.

⁴⁵ Richard Lebanc and James Gillies, Inside the Boardroom: How Boards Really Work and the Coming Revolution in Corporate Governance, John Wiley & Sons Canada, Ltd, 2005, p 53

Similarly, where performance matters are serious and apparent beyond the context of an external review, the Chair should raise the matters with the Secretary.

Where there is such serious concern about a board member's or even the Chair's behaviour or performance that warrants an investigation under the Board Code of Conduct, the sort of performance assessment process I have in mind is one that should be driven by the Secretary at arm's length from the entity. In this arrangement:

- A conduct/performance issue could be referred to the Secretary by the Chair, a regulatory body, or any other person or official or stakeholder or a whistleblower, or by the Minister, or the Secretary or Public Service Commissioner could initiate action themselves.
- The Secretary or their delegate would take the lead role in either conducting or facilitating the conduct of an assessment against the Board Code of Conduct and other legal and associated board member stipulations pertaining to the board member.
- A report with recommendations would be prepared by or on behalf of the Secretary and, subject to comment and endorsement by the Public Service Commissioner, the report would be provided to the Minister or other appointer (the Prime Minister or Governor-General) for a decision.
- The Secretary would advise the Chair and initiate action to implement the decision, including by dismissing the board member.

Given the new and very serious nature of the actions involved, the new legislation I propose should include performance assessment, conduct/performance reviews and dismissal arrangements, and the Public Service Commissioner should set down guidelines for how these procedures would work.

Where a person is dismissed or not reappointed due to underperformance, their names need to be recorded centrally with the Public Service Commission and Cabinet Office so that they are not appointed to another government board for a fair and reasonable period, if at all.

How to Make it Stick

One of the issues most often raised with me in this review about government board appointments is that because all board appointments are the prerogative of Ministers or Cabinet, it is very hard to codify good practice and make it stick. It is particularly challenging when a new government comes into power and may overturn the integrity improvements that might have been made earlier.

As an example, to depoliticise what had been a highly charged appointment process, the then Minister set down in legislation in considerable detail the ABC and SBS board appointment processes. The pity is that these processes have often been observed by governments in the breach as Ministers have been able to leap-frog the assessment panel's recommendations and make their own appointments. So, while legislation is a very important component of rigorous appointment practices, it must be supplemented by sound personal ethics and integrity by all those involved in the process, and by serious penalties for any abuse of process.

Appointment Operational Standards

It is important to understand that recruitment is never easy and always challenging, and public sector board appointments are no exception.

The perfect process is nigh impossible to achieve, so both hard and soft mechanisms are necessary to guide the process and the hands of officials and Ministers as they go about their business. By that, I mean that we need both board appointments legislation and principled application of processes and guidelines by Ministers, the Cabinet, officials and also by board members to make the appointments process work to its best.

It is a legislative requirement that all board directors in the wider Australian community are required to act honestly and in good faith with a view to the best interests of their organisation (the fiduciary duty), and to exercise care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances (the director's duty of care). I think it would be entirely reasonable to expect that Ministers should apply similar standards in making their appointments, and that this be enacted in two such duties.

The public interest duty that Ministers should make appointments honestly and in good faith in the best interests of the nation is likely the most important duty, and it should guide the practice and behaviour of all ministerial appointments.

Beyond these two duties and in line with my terms of reference, I have identified a complete set of operational standards for government board appointments, using as its basis, the UK's principles of public appointments⁴⁶. The operational standards should be legislated, and are:

⁴⁶ UK Cabinet Office, Governance Code on Public Appointments, Government of the United Kingdom, December 2016, Annexure.

Appointment Operational Standards

Core standards

Ministerial responsibility: The responsibility for board appointments rests with Ministers who are accountable to the public for their decisions and actions.

Public Interest Duty: Board appointments are to be made by Ministers honestly and in good faith in the best interests of the nation.

Duty of Care: Care and diligence are to be exercised in appointment processes, using skills matrices, capabilities and entity requirements as the primary assessment basis for quality board appointments.

Best choice or Merit: Board appointments are to be governed by the principle of meritorious appointment. This means assessment panels providing Ministers with a choice of high-quality candidates, drawn from a strong, diverse field, whose skills, experiences, potential and qualities have been judged to best meet the needs of the public entity.

Diversity: Board appointments should reflect the diversity Australian society. Appointments should be made taking account of the need to appoint boards which include a balance of skills, diverse backgrounds and different perspectives.

Standards in public life: Those appointed to public roles should display high integrity and ethical standards. They must comply with the Board Code of Conduct.

Openness: Processes for making board appointments should be open and transparent, with all positions advertised centrally (except in urgent or exceptional circumstances) on a single government site and all appointments announced publicly.

Operational standards

Stewardship: Ministers and officials should steward the appointments process to protect the long-term interests of public institutions and the communities they serve.

Integrity: Any interests or relationships that might undermine the integrity of the board selection process must be declared, and conflicts of interest avoided.

Fairness: Selection processes should be fair and impartial, with each candidate assessed against the same selection criteria for the role in question.

Respect and value: Board candidates and members are to be treated with respect and their contributions valued. Candidate care is to be sensitively managed throughout the process.

Timeliness: Appointment processes should be completed in a timely manner.

Performance: The performance of board members and teams should be reviewed externally every 5 years.

Assurance: The Public Service Commissioner should independently oversee appointment processes and provide independent assurance that board appointments are made in accordance with these standards and associated legislation and guidelines in six-monthly reports to the Public Accounts Committee of the Parliament.

The practice elements

New legislation should also specify that there will be a **standard appointments process**, which is to be the operational basis for all ministerial appointments, unless the Prime Minister determines otherwise on a case-by-case basis.

I have heard arguments for special cases and the old “if it ain’t broke; don’t fix it” line to enable the exemption of one board or another or even of all government business enterprises. I am not convinced that there is a need for exemptions; in fact, I hold firmly to the view that failure to include all the relevant boards and organisations considered as part of this review will undermine the depoliticization goal and significantly reduce the effectiveness of the appointment reforms. I would go as far as to say that not including GBEs, arguably some of the most important boards, would emasculate the reforms.

By way of clarification and as I said earlier, the boards and organisations encompassed in the new arrangements are:

- statutory boards, occupied by both full-time and part-time office holders
- non-statutory boards which are deemed to be significant where the relevant Minister makes a direct appointment to the entity, though consultation or otherwise, and
- non-statutory boards deemed to be significant where the relevant Minister is responsible for making a candidate recommendation to the board and where the appointment is made by the board.

For practical reasons I have specifically excluded from these standard legislated appointment arrangements advisory boards where the entities are not statutory decision-making bodies, other smaller entity arrangements, representative board member appointments, and cross-jurisdictional bodies made up of incumbent officials. The full list is set out in the introduction to this report. I also discuss the treatment of representative boards and acting arrangements later in this report.

Legislation will, of course, need to be carefully nuanced and enable sufficient flexibility so that Ministers and assessment panels can tailor the assessment process to the needs of each entity, reflecting its size and importance, and this is achievable in **principles-based legislation** though the new Government Boards Services Act I propose.

Legislation also will need to specify the role of the Minister, Prime Minister and Cabinet and the Governor-General in the appointment process, and specify that ministerial staffers have no role in ministerial appointments. Deviations around the core process will need to be justified to the Prime Minister and reported on annually by the Public Service Commissioner as part of their assurance role.

Guidelines to be developed in the Public Service Commission, while not necessarily legally binding, will also add clarity, encourage transparency, timely and cost-effective processes, and ensure that greater attention is paid to relevant skills and experience and the need for

diversity.⁴⁷ The guidelines should also provide the Commission with the power to direct departments to follow best appointments practice so that they have little wriggle room.

Guidelines should be promulgated through centralised training, developed and run by the Commission for ministerial offices and portfolios, to provide education and advice on their roles and responsibilities as part of the new appointments process.

The new appointments framework should ideally be regarded by Ministers as part of the Government's integrity commitment to do things better. It should be a core integrity element of how this government operates and, hopefully, will become core to future governments.

To emphasise and enshrine this, it is proposed that mandate letters from the Prime Minister to Ministers might also require Ministers to uphold the appointment standards, the independent appointment process and diversity objectives. Ministers should provide similar mandate letters to their portfolio Secretary and agency heads, which reinforce the integrity agenda and the independent appointments process for boards and statutory office holders.

It is, of course, entirely reasonable to expect that Ministers will act in good faith in the nation's best interests. But where they teeter, enforcement mechanisms beyond legislative procedural prescription will be necessary to change the culture and practice of ministerial discretion in appointments that has built up over the years.

Legally banning direct appointments in the final six months before the last possible election date will stop some of the worst excesses, but not all.

Adoption of the operational standards and the standard appointments process will like other ministerial responsibilities come under the banner of the Code of Conduct for Ministers, with the usual penalties for failure to comply.

Importantly, the National Anti-Corruption Commission already has the power to review Ministers' actions and make corruption findings where warranted.

Finally, it will be necessary to publish and publicise the new appointment processes to ensure public understanding and encourage public expectations that the processes will be followed diligently. The Public Service Commissioner will also open up a public channel for procedural complaints as part of their assurance role.

I encourage fast action to implement these reforms while the integrity agenda is still strong and the public's interest is great. I am advised that an **omnibus bill** covering off and amending the many pieces of existing legislation with appointment details would be the most efficient way to proceed so that most elements of the new arrangements could be implemented together. This will be a significant bill, given the magnitude of the amendments required.

⁴⁷ Meredith Edwards, *Ibid*, p 19.

Legislation for full implementation of the reforms should take effect from 1 October 2024, so preparations will need to begin immediately.

Again, for practical reasons relating to the volume of work involved with the many boards and entities covered, it may be necessary for the legislation to provide for a tightly limited **phased implementation schedule**. Ideally, I would expect to see:

- initial inclusion from 1 October 2024 of full time and part-time office holders in both statutory and non-statutory entities and of boards without legislated appointments processes
- followed by implementation for the remaining boards on 1 July 2025.

A number of Ministers are keen to start the new appointment model as quickly as possible in their portfolios. The legislation should provide sufficient flexibility in a schedule to enable some or all of their boards with legislated appointment arrangements to be included as early as 1 October 2024.

For practical purposes, I expect that what would finally be included in the two staggered implementation dates would be agreed between the Public Service Commissioner and the relevant Secretary after discussions with their Ministers. These entities and implementation dates would then be covered in the forementioned schedule to the new Act so that Ministers and departments will have certainty about implementation timeframes for their entities.

Taken together, these measures should provide the Australian public with much greater confidence that political appointments are a thing of the past.

I am heartened in this belief by the experience of the UK, Canada, New Zealand and Singapore, where Ministers rarely overstep their appointment processes despite their not always being required to do so in legislation.

Sequencing Implementation

It is important that we establish the new practices in this integrity reform early and codify them. The sooner the public service starts to implement these practices, the sooner they will become established practice and the culture of the way board recruitment works in the public sector. Indeed, there is little to prevent many board positions being filled using the spirit of the standard appointments model once the Government has considered this report.

There is a lot to be done over the next year to implement these integrity reforms. The core elements of the reforms are:

- active engagement of Ministers in the appointments process
- legislation to enact more competitive and independent board appointments processes and overarching standards
- the Public Service Commission assuming overarching policy co-ordination responsibility for government board appointments and board performance, and issuing guidance to portfolios on the new processes
- board performance review arrangements, and

- a new Board Code of Conduct for board members and statutory office holders.

Immediate action

I have proposed that a task force be set up in the Public Service Commission immediately to begin the process of drafting the legislation, writing guidelines, fixing data collection, developing a talent pool and pipeline and managing board performance. There is a lot of existing material that is available already in the Departments of Finance, Treasury, Infrastructure and Health in particular that will help the task force do its work. But, in view of the size of the change involved and legislative timing, I consider that the task force may need up to a year to do its work.

In the meantime, the Prime Minister may choose to change the Administrative Orders to refer co-ordinating responsibilities for matters to do with board appointment and performance management policy co-ordination to the Public Service Commission. The Department of Finance will relinquish some functions and will need to determine the additional level of resources necessary for the Commission to take on these increased ongoing responsibilities, both initially and in the longer term.

Ministers and Secretaries will need to start reviewing each of their portfolio entities' legislation as to the timing of their inclusion in the legislation (October 2024 or July 2025), and to take decisions about the nature of their diversity inclusions.

By that I mean that Ministers will need to decide if they want specific diversity requirements to be set out in a disallowable instrument to the legislation to ensure ongoing specification about representation from diverse groups, such as First Nations or regional people or people with disability. That is something that should occur by exception rather than as a rule because the merit recruitment model I propose should be sufficient to ensure diversity on boards as necessary for them to fulfil their charter.

In readiness for the new legislation to be passed, departments should be changing their internal appointments practices and setting up units or individuals with expertise in board appointments. All board positions could start to be advertised. All board positions could start to be considered as part of a competitive, merit-based selection process. All potential candidates, including those put forward by Ministers, could be considered by independent assessment panels.

The final detail of those arrangements will, of course, be subject to legislation and Commission guidance, but the sooner better appointments practice is introduced, the faster it will be embedded.

Before legislation, Secretaries and Board Chairs should also determine a schedule in each portfolio of external board reviews for major boards and commence the board performance reviews with the entities of greatest concern to Ministers.

After legislation

Assuming the passage of legislation, the Public Service Commissioner would issue guidelines on the new appointments process, board performance management, and the new Board

Code of Conduct on 1 October 2024. Ministers and their portfolios would be required to comply with the legislation and associated guidelines from that time as they progressively relate to the particular boards appointments.

The single central board advertising portal should be in place on 1 October 2024.

Board performance reviews will commence in 2025.

Thereafter, the Public Service Commissioner would set in train mechanisms for providing assurance to the Parliament that the new processes have increased the integrity of board appointment processes, including through an annual report to Parliament.

Ministers may also decide to reconsider the number of boards within their portfolios to ensure that they are fit for purpose and are still needed.

Well after legislation

I was struck in this review by the extent to which government attention to government boards and their entities has been underdone over many years. Not only is it important to get boards right, but it is also important to ensure that government entities are doing what they should be doing to deliver great public services. Much can be done to facilitate this through better ongoing relationships between boards, Ministers, officials and chief executives. It is also worth considering whether some entities should be subject to capability reviews as well as board performance reviews.

If there is no legislation

If the Government decides not to legislate in this area, many of the actions set out above to improve the independence and competitiveness of board appointment processes could still be implemented. Co-ordination of the recruitment process and assurance mechanisms should still be delegated to the Public Service Commission, and the Commissioner would then be empowered to issue guidelines consistent with the rest of my recommendations to improve the board appointment processes and monitor compliance and report to Parliament about the how portfolios are performing.

While I cannot guarantee that these arrangements would endure the test of time without the integrity measures and especially the operational standards being included in legislation and without changes to entities' legislation, I am pretty confident that in due course, they will be seen as best practice and portfolios will continue to apply them.

I am also sure that if they are not legislated now, the reforms will ultimately need to be if the National Anti-Corruption Commission begins to delve into recruitment processes.

As the National Anti-Corruption Commission is now established, these standards will also provide the standard which could be used by the NACC to scrutinise previous and ongoing appointments processes.

Summary of Implementation

	<i>Action</i>	<i>Scope of work</i>
Immediate action	Taskforce set up in the Public Service Commission	Drafting legislation, writing guidelines, fixing data collection, developing a talent pool and pipeline, and managing board performance.
	Review of entities	- Ministers review entities' legislation for diversity considerations and timing of adoption of the reforms. - Changes to entity legislation to align, as appropriate. - Ministers to consider boards within their portfolios to ensure fit for purpose and need.
	Consider Administrative Orders changes and required resourcing	- Amend Administrative Orders to refer board policy and performance co-ordination responsibilities to the APSC. - Resourcing required for Commission to take on increased ongoing responsibilities to be determined.
	Departments begin changing their internal appointments practices	- Establish units with expertise in board appointments - All board positions could start to be advertised - All board positions start to be considered as part of a competitive, merit-based selection process. - All potential candidates considered by assessment panels, including those put forward by Ministers.
	External board reviews for major boards	In each portfolio Secretaries and Board Chairs establish a 5-year schedule of external board reviews for major boards.
	Legislation	Practices and processes enshrined in new legislation, taking effect from October 2024.
After legislation	Guidelines issued by Public Service Commissioner	Commissioner to issue guidelines on the new appointments process, board performance management, and the new board code of conduct.
	Commencement of board reviews	Commence the board performance reviews of the entities of greatest concern to Ministers.
	Assurance and reporting	- Public Service Commissioner establishes mechanisms for providing assurance to the Parliament. - Issuing of an annual report to Parliament.
Future work	Support for entity performance	- Institute regular meetings between boards, their Chairs and Ministers and Secretaries. - Work to facilitate improved ongoing relationships between boards, Ministers, officials and chief executives. - Consideration of capability reviews for some entities, in addition to board performance reviews.
If there is no legislation	Responsibilities of the Public Service Commission and issuing of guidelines	- Co-ordination of the recruitment process delegated to the Public Service Commission - Commissioner empowered to issue guidelines consistent with the rest of the recommendations

Other

A change of government

Former Prime Minister, Paul Keating, is reported to have said, “when you change the government, you change the country”. All governments know that. It is therefore unsurprising that appointment processes are under the greatest stress when there is a change of government.

Each side of politics fears that the other side will behave against their perceived wishes and philosophies, and the practice of successive governments proves this to be true. Hence, it is relatively common practice that outgoing governments appoint their people to boards and bodies before they lose elections. It is also common practice for incoming governments to seek to redress this imbalance by rebalancing board appointments and restoring some equilibrium so that their people are given a chance and in order to propel boards to change their strategies and emphasizes to reflect those of the new government. In my experience, a change in even one or two board members can substantially change board direction or obstruct it and that is one of the reasons why better appointments processes are necessary.

I do not pretend that there is an easy answer to this phenomenon, although I offer a partial response in the next section to one of the more disturbing elements.

The wider issue is how to stop systemic undermining of board appointments arrangements by getting the balance in appointments about right. The standard appointments process that I have proposed will restore greater integrity to the appointments process and lead to better candidates being appointed. Legislated appointment operational standards will prove themselves over time in providing the best board members for the circumstances of the day. Moreover, highly performing political operatives will not be excluded from access to government jobs. Time-limited appointments will see regular and predictable board turnover that holds advantages for incoming governments. There will always be an issue of acting according to the spirit of the national interest if individual Ministers choose to take their own course; those individuals will be held to account by the NACC where systemic and potentially corrupt behaviour is involved.

Last minute bequests

Nonetheless, one particularly egregious matter is the extent to which political staffers and former politicians or supporters and friends have been appointed to government positions in the lead-up to elections, with seemingly little regard for the consequences. These appointments are widely held to be job bequests or gifts to loyal followers and supporters to provide well-paid appointments as staging points until the party is next in power; or as a promise or a thank you for service; or as a comfortable refuge for supporters when a change of government is anticipated; or as a means to influence the future policy and direction of the entities concerned in a manner that is consistent with the views of a particular political party, thus making it difficult for a new government to change direction.

Such bequests in the dying days of a government are shameless; are widely frowned upon by the public; and bring governments into disrepute.

I propose that for a period of six months out from the last possible election date, no direct ministerial appointments be made that have not been progressed through the standard appointments process; thus banning all last minute job gifts or staging jobs for political appointees. Appointments where the usual standard process is involved will, of course, proceed.

There should also be a clear rule that direct appointments are not to be made before elections for board and statutory officer positions that will fall vacant after an election date, unless provided for in the Caretaker Conventions.

Representative members

There are government boards that have some or many positions that are filled by members appointed by representative bodies, such as State and Territory governments, First Nations organisations, defence and veterans' bodies, agriculture and science bodies and so on. Representative members fulfil the important role of ensuring that matters of interest to the bodies they represent are given due prominence in board discussions and decisions. Often these arrangements are set down in legislation to also provide diversity on boards.

Where a board is made up entirely of Commonwealth and State and Territory Government official representatives or where the legislation specifies that a particular representative person occupying a particular office (e.g. the president of a body) should be on the board, it makes good practical sense to leave the appointment arrangements unchanged. Other non-representative board members would be included in the new appointment arrangements.

However, it is important that Ministers take the opportunity to review their boards with representative positions to ensure that member representative positions are still required and who those representative bodies should be. Without in any way prejudicing the independence of representative appointments, Ministers may consider providing representative bodies with information about the sort of skills, capabilities and experience they would like to see representative members bring to the board in order to assist sponsoring organisations to put forward candidates who can perform well on boards or with the potential to do so.

Ministers might also provide an expectation that representative members will generally "turn over" each 4 years, consistent with other board members.

Alternates and Acting Arrangements

One of the reasons commonly given by departments for leaving current representative arrangements in place is that representative bodies can immediately drop another person in to act as a board member (without any process) when the incumbent member cannot attend for one reason or another. This is common practice in Commonwealth-State boards where officials with full-time jobs are required to attend to their other duties at the discretion of Secretaries and Ministers.

In the business and not for profit sectors, board members are expected to attend board meetings, and non-attendance is rightly frowned upon because board duties are important and are to be taken seriously. Board attendance is published in most annual reports. Board attendance should be taken equally seriously in the public sector.

By the same token, it is not unusual for some representative boards, such as industry superannuation boards, to have alternate members who can step in for the actual board member when they are called away on other business. Oftentimes, these arrangements provide a good developmental opportunity for younger up and coming people who may in future be nominated as the actual board member.

I propose that representative bodies be asked to nominate another suitably qualified person to act as an alternate to their representative board member when required and that specialist board members suggest an alternate member who might be trained up to replace them when the time comes for turnover. Ministers may also wish to identify an alternate for continuity when (their) government officials are appointed to a board and cannot attend a meeting.

Finally, as mentioned earlier, it may be necessary for Ministers to act someone in a board role to ensure the ongoing functioning of a board during Caretaker periods, in the interim before new board members can take up their roles, when unexpected things happen such as the death or serious illness of a member, to acquire quickly key functionality, or to set up a new government entity quickly, and so on. This needs to be provided for in legislation.

Ex-officio members

Since the Uhrig Report was released in 2004 it has generally been considered that public servants should not be members of government boards. Uhrig highlighted the potential for public servants on boards to be conflicted between their board and their official role, and the difficulties associated with managing these loyalties and conflicts.

Since that time, the number of public servants with an ex-officio role on boards has reduced considerably. I was advised as part of this review that the distance between boards and departments and Ministers has increased as a result and that the usual supportive arrangements where officials assist boards understand government and ministerial decisions have been lessened. As a result, some boards have gone off on tangents and forgotten to align their strategies with the government of the day, with serious consequences for board and entity effectiveness.

Where expert knowledge is required that only officials can bring to the table, either officials should be appointed to the particular board as full members or the expertise of a former public servant should be brought onto the board to address the skills gap. It is especially the case that governance expertise for government entities is an important skill set that should be recognised in government board skills matrices.

In my experience, an ex-officio public service board member soon becomes for all intents and purposes akin to a full board member and participates in board discussions and decisions as any other board member would do. They should, of course, act solely in the

best interests of the entity when they are in that role and assist the board in meeting its objectives through their insights and knowledge. They should not display split loyalties with their official day-to-day role—in other words, they are not on the board to represent the Minister and Ministers cannot direct them in this capacity. Their active role therefore means that they are also considered as board members for regulatory purposes.

In the circumstances, it seems to me that officials should not be excluded from boards, and that their dual board and public service role should be codified. To ensure that loyalties and conflicts are managed properly when officials are directed by their Secretary on behalf of the Minister to become a board member, their appointment should be subject to Public Service Commissioner approval. Officials should be required to set out for the Secretary and the Commissioner their areas of potential conflict of interest and how they intend to manage them for the public record. If they are unable to do this to the satisfaction of the Secretary and Commissioner, they should not be appointed. Other officials or former officials should instead be considered.

If officials are appointed to a board by a Minister to get the board to do what the Minister or Government wants, then this directly challenges the independence of the board. In the circumstances, the Minister and Secretary may wish to reconsider whether a separate board is actually required, and whether another arrangement would be better, as proposed below.

The Singaporean experience of including officials on lower-level boards also has some merit, as it both provides much needed governance expertise to these boards and builds up practical governance knowledge among up-and-coming officials with good future potential.

In the event that Ministers do not wish to appoint an official as a member of a board, they may still ask that an official attends board meetings on occasion to assist a board in strategic discussions or about alignment with government policy. This would be akin to commercial and not-for-profit boards bringing in expertise or executives or key stakeholders to assist them develop their strategic settings and their decision-making.

Whether an official is appointed as a member or attends board meetings to assist the board to meet its priorities, I consider that close relationships between portfolio officials and boards will generally deliver stronger partnerships and better outcomes.

If an official oversteps the mark or threatens board independence and the Chair, in consultation with the Secretary or Minister, considers that they should step down, the official should remove themselves from the board room and should not return.

Review of boards

Many new Ministers have been surprised by the extent and nature of the boards in play in their portfolios. There are large numbers of boards, committees and advisory bodies across government. Senate Order 15 has identified around 450 boards, tribunals, commissions and committees. Many of them were established to meet a different and a particular need at a particular point in time and some may not be needed anymore.

Since the Uhrig Report⁴⁸ was delivered in 2004 there has been little attempt to review and cull them down to the core bodies requisite for performing key government functions at arms-length from government and separating them out from the large number of advisory and other committees that support Ministerial functions. I am advised that a number of bodies could be removed and that the enabling legislation of many others requires change. It is timely for each portfolio to conduct such a review.

Given the number of bodies involved, the review would need to be undertaken progressively, starting with the bodies of greatest immediate concern. I imagine that it would take many years to complete. I suggest Ministers start first with the most obvious candidates for abolition or in most need of more contemporary recruitment arrangements, and that other legislation is changed progressively as and when appropriate, including as a part of various portfolio omnibus bills.

Legislative alignment

There is an issue as to how to manage the alignment of legacy statutory requirements with the proposals recommended in this report, so that they are not in conflict. I have separately proposed above that Ministers and Secretaries progressively review their board legislative arrangements. It needs to be acknowledged that, as a result, any appointment changes that I recommend will take some time to be fully implemented in all government entities with boards.

Nonetheless, I recommend that the most efficient way to achieve legislative alignment is to introduce an omnibus bill, with associated schedules and instruments that sets out the detail of when individual entities will be brought under the new Act and any particular circumstances that will need to be provided for, such as the length of CEOs' and statutory office holders appointments or maintenance of some diversity specifications in instruments.

Categorisation of Boards

I was surprised to find that there was considerable conjecture as to what was in-scope for the review and how many entities' appointments were considered sufficiently significant to be referred to the Cabinet for decision. It has been reported to me, irrespective of who is in power, that large chunks of Cabinet time can be taken up with appointments, which may reflect the extent to which appointment decisions are politicised and/or that Ministers do not trust appointment processes.

In any event, introduction of the appointment reforms should reduce the need for the Cabinet to allocate its precious time to many of these appointments because they will be conducted using a much more effective and comprehensive recruitment process.

I therefore recommend that the Public Service Commission and the Cabinet Division, in consultation with Secretaries and Ministers, review the significance of entities with board appointments and make recommendations to the Cabinet about which entities'

⁴⁸ John Uhrig, Review of the Corporate Governance of Statutory Authorities and Office Holders, Commonwealth of Australia, 2004.

appointments are sufficiently significant that they need to go to Cabinet (Tier 1 entities), and which appointments could be made by Ministers without reference to Cabinet (Tier 2 entities).

This will have the advantage of focussing Cabinet's time on only the most important of appointments, and free up Cabinet time for other more important policy matters. It will also mean that Ministers will be empowered to make many more appointments relevant to their responsibilities, reflecting not only trust in them and the new standard appointment processes but also the important fact that they are responsible for their portfolio entities.

Parliamentary Review

Even as I prepared this review, a Private Members Bill from Ms Sophie Scamps MP has been circulated, which proposes that all board appointments would, amongst other things, be tabled in Parliament along with a certification statement prepared by an independent selection committee for each shortlisted candidate that they are eligible for appointment. If Ministers determine that further integrity assurance is needed beyond the processes I have suggested, then this approach cannot but help grow trust in the community that its boards are working in the national interest. The likely person to prepare such a certification statement would be the Public Service Commissioner's independent panel member.

Evaluation

The reforms to board appointment and performance arrangements envisaged in this review are significant and will require a lot of work to implement effectively. I have no doubt that issues may arise in implementation that were not considered or that some aspects of the legislation or administrative guidelines may need refinement in due course. It will therefore be important to schedule an independent evaluation of the legislation and the new reforms three years after October 2024.

Remuneration review

On many occasions throughout this review, I have been taken through serious concerns about the remuneration paid to board members and statutory office holders. Remuneration seems to be littered with the same problems of inconsistency and gendered outcomes that befuddle appointment processes. While remuneration was not the subject of my review, it may be timely to have a roots and branches review of board and statutory officer remuneration arrangements to weed out inconsistencies and to establish a fairer system.

In the meantime, one remuneration issue has emerged around statutory office holders and officials serving on government boards occasionally receiving payment for board attendance as if they were external to the Commonwealth. It is recommended that this practice be stopped, with no incumbent full-time Commonwealth government official being paid for serving on a government board as outlined in the Remuneration Tribunal Act.

Conclusion

Hardly anyone seems to be happy with the current system of appointments for boards and office holder positions. Ministers are frustrated that officials seem unable to deliver new talent and high-quality fields in a timely manner, and that they are often advised to reappoint people whose capabilities are uncertain. Officials feel that the system is fundamentally flawed because there no clear framework for appointments, widely inconsistent practice, and there is too much ministerial discretion. Public trust has been undermined to such an extent by the level of direct appointments in recent years that people fear that they are being landed with overpaid political hacks who cannot do these important jobs properly and that some of these bodies may not be operating in the public interest. Almost everyone is worried about what this means for the state of our government entities, and the impact this has on our nation.

When other nations, such as the UK, Canada and New Zealand, found themselves in similar circumstances or with serious conflicts of interest that were damaging their institutions, they acted to introduce or restore independence to appointment processes and to codify how the appointment processes would work. Australia stands out in having done little to fetter ministerial prerogative to appoint whomever they want to government positions.

I have proposed in this review a series of measured reforms with necessary flexibility that should help to restore public confidence in the governance of public entities, whilst maintaining ultimate ministerial responsibility for board appointment decisions.

The reforms start with an acknowledgement that Ministers need a generally applicable and standard appointments process that is applied in all portfolios in order to have access to a predictable and fairer recruitment system that builds in strength over time as its practice is embedded and built upon through talent pools, talent pipelines, diversity responsibilities, and other mechanisms.

They open up the board recruitment process through advertising virtually all positions, formalising ministerial and departmental roles in the process, collecting and publishing appointments data, and explaining how and why appointment decisions were made.

They engage the public service directly in independent ownership of, and accountability for, appointment processes and, in so doing, secure them as willing partners in achieving better appointment results for Ministers through good process.

They establish a centre of board expertise in the Public Service Commission, which is also responsible for assurance reporting.

They enforce operational standards and correct process in the Government Boards Services Act, with the stick of the National Anti-Corruption Commission and breaches of the Code of Conduct for Ministers.

I would like to think that these reforms will ensure that “only the best will do” will become the mantra for public sector board and other appointments and the integrity-safe reality for Ministers as they make these appointments.

Terms of Reference

I was asked by the Australian Government to conduct a high-level review of the appointments process for government boards.

The terms of reference require me to consider and propose appropriate standards for the processes by which board members are appointed to government boards. In considering these processes, I was also to consider how appointments to boards can contribute to integrity and trust in the institutions of government. The review was to include consideration of:

- the process to identify suitable pools of candidates for consideration for different Board roles;
- the professional qualifications and experiences, lived experience and identification of skills and expertise required to fulfil particular roles;
- how expertise and professional qualifications are balanced across the composition of boards;
- the diversity of board membership, including in terms of gender, culturally and linguistically diverse, First Nations and geographic representation;
- review processes to track performance, behaviours and effectiveness of boards;
- the role of the Chair and board in selection processes;
- the role of APS staff in selection processes;
- the role of Ministers and the processes through which board appointments are made; and
- the standards expected of private sector boards in Australia and whether Australian Government boards should meet those, or a different standard. This may include legislative, policy or case law expectations.

The review specifically precluded me from consideration of current appointments or appointment processes related to specific individuals. I was asked to consult widely in the preparation of this report.

Consultation list

Ministers and Ministerial Offices

- Hon Tony Burke MP, Minister for Employment and Workplace Relations and Minister for the Arts
- Hon Mark Butler MP, Minister for Health and Aged Care, Deputy Leader of the House
- Senator the Hon Katy Gallagher, Minister for Women, Minister for Finance and Minister for the Public Service
- Hon Mark Dreyfus KC, MP, Attorney-General
- Hon Ed Husic MP, Minister for Industry and Science
- Hon Catherine King MP, Minister for Infrastructure, Transport, Regional Development and Local Government
- Hon Amanda Rishworth MP, Minister for Social Services
- Senator the Hon Murray Watt, Minister for Agriculture, Fisheries and Forestry and Minister for Emergency Management
- Ms Jenny Mason, Deputy Chief of Staff to the Hon Anthony Albanese MP, Prime Minister
- Mr Damian Hickey, Office of the Hon Richard Marles MP, Deputy Prime Minister and Minister for Defence
- Mr Ben Rillo, Chief of Staff to Senator the Hon Don Farrell, Minister for Trade and Tourism and Special Minister of State

Secretaries and Agency Heads

- Mr Jim Betts, Secretary of the Department of Infrastructure, Transport Regional Development, Communications and the Arts
- Professor Glyn Davis AC, Secretary of the Department of Prime Minister and Cabinet
- Dr Gordon de Brouwer PSM, Secretary for Public Sector Reform and Public Service Commissioner
- Mr David Fredericks PSM, Secretary for Climate Change, Energy, the Environment and Water
- Ms Katherine Jones PSM, Secretary of the Attorney-General's Department
- Dr Steven Kennedy PSM, Secretary to the Treasury
- Mr Greg Moriarty, Secretary of the Department of Defence
- Professor Brendan Murphy AC, then Secretary of the Department of Health
- Ms Jenny Wilkinson PSM, Secretary for the Department of Finance
- Mr Peter Woolcott AO, then Australian Public Service Commissioner

All Portfolio Secretaries were then consulted on a draft of this report.

International jurisdictions

- Mr Peter Hughes, Public Service Commissioner, Te Kawa Mataaho Public Service Commission
- Ms Donnalyn McClymont, Deputy Secretary to Cabinet Privy Council Office, Government of Canada
- Mr William Shawcross CVO, Commissioner for Public Appointments, HM Government
- Singapore Public Service Commission
 - Mr Lee Tzu Yang, Chairman
 - Ms Ong Toon Hui, Secretary, Dean & CEO of Civil Service College

Members and former members of public sector boards and entities

- Mr Michael Brennan, Chair of the Productivity Commission
- Ms Ita Buttrose AC OBE, Chair, Australian Broadcasting Corporation
- Mr Mark Campbell, Chief Executive Officer and Managing Director, Australian Rail Track Corporation
- Mr David Gonski AC, Chancellor, University of New South Wales, President of the Art Gallery of NSW Trust & Chairman of the UNSW Foundation Ltd
- Mr Ken Matthews AO, Centre for Strategy and Governance
- Mr Malcolm Thompson, Centre for Strategy and Governance
- Emeritus Professor Andrew Podger AO, Australian National University.
- Mr Greg Fraser, Centre for Strategy and Governance

Executive search

- Ms Felicity Stalley, Omera Partners
- Ms Kathleen Townsend, Kathleen Townsend Executive Solutions
- Ms Penny Wilson, SHK Asia Pacific
- Korn Ferry
 - Ms Patrizia Anzellotti, Mr Graeme Bignell and Mr Adrian Piccoli

APS SES Officers and Staff

- Department of Infrastructure, Transport, Regional Development, Communications and the Arts
 - Dr Stephen Arnott PSM, Deputy Secretary, Department of Infrastructure, Transport, Regional Development and Communications and Ms Ann Campton, Assistant Secretary, Office for the Arts
- Department of Finance
- Department of Prime Minister and Cabinet
 - Mr David Williamson, Deputy Secretary Governance and Corporate
 - Cabinet Division, Department of the Prime Minister and Cabinet
 - Office for Women, Department of the Prime Minister and Cabinet
- Department of the Treasury

- Ms Roxanne Kelley, Deputy Secretary, Corporate and Foreign Investment Group and Dr Angela Barrett, a/g First Assistant Secretary Corporate Division
- IDC on Government Boards Gender Balance (cross-APS), convened by Office for Women, Department of Prime Minister and Cabinet

Other

- Australian Network on Disability
- Ms Claire Braund, Women on Boards
- Mr Roger Fisher, Director Pegasus Consulting
- Mr Graeme Head AO, Port Jackson Partners
- Professor Richard Leblanc, University of York, Ontario, Canada
- Mr Steve Pell, BoardOutlook Pty Ltd
- Australian Institute of Company Directors
 - Ms Louise Petschler and Mr Christian Gergis
- Centre for Public Integrity
- Centre for Strategy & Governance
- Governance Institute of Australia

Annexure 3

List of Commonwealth entities and companies with governing boards

Commonwealth entities and companies as defined by the Public Governance, Performance and Accountability Act 2013. This list includes where an entity or company has a “board-type” body as its accountable authority or where the entity has a governing board⁴⁹ (as of 6 March 2023⁵⁰). The list excludes other entities with “board-type” governing structures, such as tribunals, advisory boards and other secondary bodies with board structures.

Portfolio	Board or body name or entity/company with a governing board	Type of entity
Agriculture, Fisheries and Forestry	Australian Pesticides and Veterinary Medicines Authority (Board)	Corporate Commonwealth entity
	Cotton Research and Development Corporation (Board)	Corporate Commonwealth entity
	Fisheries Research and Development Corporation (Board)	Corporate Commonwealth entity
	Grains Research and Development Corporation (Board)	Corporate Commonwealth entity
	Regional Investment Corporation (Board)	Corporate Commonwealth entity
	Rural Industries Research and Development Corporation (Board)	Corporate Commonwealth entity
	Wine Australia (the Authority)	Corporate Commonwealth entity
Attorney General's	Australian Human Rights Commission	Corporate Commonwealth entity
	Office of the Australian Information Commissioner	Non-corporate Commonwealth entity
Climate Change, Energy, the Environment and Water	Australian Institute of Marine Science Council	Corporate Commonwealth entity
	Australian Renewable Energy Agency (Board)	Corporate Commonwealth entity
	Clean Energy Finance Corporation (Board)	Corporate Commonwealth entity
	Clean Energy Regulator (the Regulator)	Non-corporate Commonwealth entity
	Climate Change Authority (the Authority)	Non-corporate Commonwealth entity
	Great Barrier Reef Marine Park Authority (the Authority)	Non-corporate Commonwealth entity
	Murray-Darling Basin Authority (the Authority)	Corporate Commonwealth entity
	Snowy Hydro Limited Board	Commonwealth company
	Sydney Harbour Federation Trust	Corporate Commonwealth entity
Defence	AAF Company (Trustee of Army Amenities Fund and Messes Trust Fund) (Board)	Commonwealth company
	Army and Air Force Canteen Service Board of management	Corporate Commonwealth entity
	Australian Military Forces Relief Trust Fund Board of Trustees	Corporate Commonwealth entity
	Australian Strategic Policy Institute Limited (Board)	Commonwealth company
	Defence Housing Australia (the Council)	Corporate Commonwealth entity
	RAAF Welfare Recreational Company (Board)	Commonwealth company

⁴⁹ Where the listed board or body may, or may not be, the entity's accountable authority.

⁵⁰ Drawing on the 'List of Commonwealth entities and companies under the *Public Governance, Performance and Accountability Act 2013*' and enabling legislation.

	Royal Australian Air Force Veterans' Residences Trust Fund (Board)	Corporate Commonwealth entity
	Royal Australian Air Force Welfare Trust Fund (Board of Trustees of the Australian Military Forces Relief Trust Fund)	Corporate Commonwealth entity
	Royal Australian Navy Central Canteens Board (Royal Australian Navy Central Canteens Fund) (Board)	Corporate Commonwealth entity
	Royal Australian Navy Relief Trust Fund (Board)	Corporate Commonwealth entity
Education	Australian Curriculum, Assessment and Reporting Authority (Board)	Corporate Commonwealth entity
	Australian Institute for Teaching and School Leadership (Board)	Commonwealth company
	Tertiary Education Quality and Standards Agency Commissioners	Non-corporate Commonwealth entity
Employment and Workplace Relations	Asbestos Safety and Eradication Agency Council	Non-corporate Commonwealth entity
	Coal Mining Industry (Long Service Leave Funding) Corporation (Board)	Corporate Commonwealth entity
	Safe Work Australia	Non-corporate Commonwealth entity
	Seafarers Safety, Rehabilitation and Compensation Authority	Non-corporate Commonwealth entity
Finance	ASC Pty Ltd (Board)	Commonwealth company
	Australian Electoral Commission	Non-corporate Commonwealth entity
	Australian Naval Infrastructure Pty Ltd (Board)	Commonwealth company
	Commonwealth Superannuation Corporation (Board)	Corporate Commonwealth entity
	Future Fund Board of Guardians	Non-corporate Commonwealth entity
	Independent Parliamentary Expenses Authority	Non-corporate Commonwealth entity
Foreign Affairs and Trade	Export Finance Australia (EFA) Board	Corporate Commonwealth entity
	Tourism Australia (Board)	Corporate Commonwealth entity
Health and Aged Care	Australian Commission on Safety and Quality in Health Care Board	Corporate Commonwealth entity
	Australian Digital Health Agency (Board)	Corporate Commonwealth entity
	Australian Institute of Health and Welfare (Board)	Corporate Commonwealth entity
	Australian Sports Commission (Board)	Corporate Commonwealth entity
	Australian Sports Foundation Limited (Board)	Commonwealth company
	Cancer Australia (Board)	Non-corporate Commonwealth entity
	Food Standards Australia New Zealand (Board)	Corporate Commonwealth entity
	Independent Health and Aged Care Pricing Authority (Board)	Corporate Commonwealth entity
	National Blood Authority (Board)	Non-corporate Commonwealth entity
	National Health and Medical Research Council - Council	Non-corporate Commonwealth entity
	National Mental Health Commission (Board)	Non-corporate Commonwealth entity
	Sport Integrity Australia (Board)	Non-corporate Commonwealth entity
Industry, Science and Resources	Australian Nuclear Science and Technology Organisation Board	Corporate Commonwealth entity
	Commonwealth Scientific and Industrial Research Organisation (Board)	Corporate Commonwealth entity
	National Offshore Petroleum Safety and Environmental Management Authority Board	Corporate Commonwealth entity
Infrastructure	Airservices Australia (Board)	Corporate Commonwealth entity
	Australia Council (Board)	Corporate Commonwealth entity
	Australia Post Board	Non-corporate Commonwealth entity

	Australian Broadcasting Corporation (Board)	Corporate Commonwealth entity
	Australian Communications and Media Authority (ACMA members)	Non-corporate Commonwealth entity
	Australian Film, Television and Radio School (Council)	Corporate Commonwealth entity
	Australian Maritime Safety Authority (Board)	Corporate Commonwealth entity
	Australian National Maritime Museum (Board)	Corporate Commonwealth entity
	Australian Rail Track Corporation Limited (Board)	Commonwealth company
	Australian Transport Safety Bureau (Board)	Non-corporate Commonwealth entity
	Bundanon Trust (Board)	Commonwealth company
	Civil Aviation Safety Authority (Board)	Corporate Commonwealth entity
	Creative Partnerships Australia Ltd (Board)	Commonwealth company
	Infrastructure Australia (Board)	Corporate Commonwealth entity
	National Capital Authority (Board)	Non-corporate Commonwealth entity
	National Film and Sound Archive of Australia (Board)	Corporate Commonwealth entity
	National Gallery of Australia (Board)	Corporate Commonwealth entity
	National Intermodal Corporation Limited (Board)	Commonwealth company
	National Library of Australia (Board)	Corporate Commonwealth entity
	National Museum of Australia (Board)	Corporate Commonwealth entity
	National Portrait Gallery of Australia (Board)	Corporate Commonwealth entity
	National Transport Commission (Board)	Corporate Commonwealth entity
	NBN Co Limited (Board)	Commonwealth company
	Northern Australia Infrastructure Facility Board	Corporate Commonwealth entity
	Old Parliament House (Board)	Corporate Commonwealth entity
	Screen Australia (Board)	Corporate Commonwealth entity
	Special Broadcasting Service Corporation (Board)	Corporate Commonwealth entity
	WSA Co Limited (Board)	Commonwealth company
Prime Minister & Cabinet (including NIAA)	Aboriginal Hostels Limited (Board)	Commonwealth company
	Australian Institute of Aboriginal and Torres Strait Islander Studies (Board)	Corporate Commonwealth entity
	Indigenous Business Australia (Board)	Corporate Commonwealth entity
	Indigenous Land and Sea Corporation (Board)	Corporate Commonwealth entity
	National Australia Day Council Limited (Board)	Commonwealth company
	Northern Territory Aboriginal Investment Corporation (Board)	Corporate Commonwealth entity
	Outback Stores Pty Ltd (Board)	Commonwealth company
Social Services	Australian Hearing Services (Hearing Australia)	Corporate Commonwealth entity
	National Disability Insurance Agency (Board)	Corporate Commonwealth entity
Treasury	Australian Competition and Consumer Commission (Board)	Non-corporate Commonwealth entity
	Australian Prudential Regulation Authority (Board)	Non-corporate Commonwealth entity
	Australian Reinsurance Pool Corporation (Board)	Corporate Commonwealth entity
	Australian Securities and Investments Commission (Board)	Non-corporate Commonwealth entity
	Australian Taxation Office (Board)	Non-corporate Commonwealth entity
	Commonwealth Grants Commission (Board)	Non-corporate Commonwealth entity
	National Competition Council (Board)	Non-corporate Commonwealth entity
	National Housing Finance and Investment Corporation (Board)	Corporate Commonwealth entity
	Office of the Auditing and Assurance Standards Board (Board)	Non-corporate Commonwealth entity

	Office of the Australian Accounting Standards Board (Board)	Non-corporate Commonwealth entity
	Productivity Commission (Board)	Non-corporate Commonwealth entity
	Reserve Bank of Australia (Board)	Corporate Commonwealth entity
Veterans' Affairs (Defence Portfolio)	Australian War Memorial (Board)	Corporate Commonwealth entity

Other within scope boards

Listed below is other in-scope boards by portfolio, including: non-statutory boards which are deemed to be significant, where the relevant Minister makes a direct appointment to the entity, though consultation or otherwise; and non-statutory boards deemed to be significant where the relevant Minister is responsible for making a candidate recommendation to the board and where the appointment is made by the board.

There is a lack of consistent and comprehensive reporting of boards and appointments to these bodies, so this list draws on a number of sources, including information provided by individual portfolios, Department of the Prime Minister and Cabinet, and the Department of Finance⁵¹. This list is indicative, and it is noted that there may be further bodies that will be within-scope, established through the process of implementation.

Portfolio	Board name or body name
Agriculture, Fisheries and Forestry	• Australian Fisheries Management Authority Commission • Forest and Wood Products Council • Indonesia - Australia Partnership on Food Security in the Red Meat and Cattle Sector • Statutory Fishing Rights Allocation Review Panel • Wine Australia Selection Committee • Cotton Research and Development Corporation Selection Committee • Fisheries Research and Development Corporation Selection Committee • Grains Research and Development Corporation Selection Committee • Rural Industries Research and Development Corporation Selection Committee • Australian Pesticides and Veterinary Medicines Authority Advisory Board
Attorney-General's	• Admiralty Rules Committee • Family Law Council • Information Advisory Committee • Privacy Advisory Committee
Climate Change, Energy, the Environment and Water	• Alligator Rivers Region Technical Committee • Australian Heritage Council • Emissions Reduction Assurance Committee • Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development • Indigenous Advisory Committee • Threatened Species Scientific Committee
Defence	• Centre for Defence Industry Capability Advisory Board • Defence Families of Australia • DHA Advisory Committee • Naval Shipbuilding Advisory Board • Woomera Prohibited Area Advisory Board • Young Endeavour Youth Scheme
Education	• Tuition Protection Service Advisory Board • National School Resourcing Board • Australia's Economic Accelerator Advisory Board • Australian- American Fulbright Commission Board • Education Services Australia • Australian Children's Education and Care Quality Authority • Higher Education Standards Panel • Council for International Education
Employment and Workplace Relations	• National Careers Institute Advisory Board • National Vocational Education and Training Regulator Advisory Council • National Construction Industry Forum

⁵¹ Using Australian Government Organisations Register data. List of Secondary Entities as of 1 April 2023.

Foreign Affairs and Trade	• Australia-India Council • Australia-Indonesia Institute • Australian Centre for International Agricultural Research Commission • Australian Centre for International Agricultural Research Policy Advisory Council • National Foundation for Australia-China Relations (NFCAR)
Health and Aged Care	• Aged Care Quality Advisory Council • Australian Community Pharmacy Authority • Australian Medical Research Advisory Board • Australian National Advisory Council on Alcohol and Drugs • Australian Organ and Tissue Donation and Transplantation Authority Board • Australian Sports Drug Medical Advisory Committee • Australian Technical Advisory Group on Immunisation • Gene Technology Ethics and Community Consultative Committee • Gene Technology Technical Advisory Committee • Life Saving Drugs Program Expert Panel • Medical Services Advisory Committee • Medicare Participation Review Committee • National Pathology Accreditation Advisory Council • Pharmaceutical Benefits Advisory Committee • Professional Services Review - Determining Authority • Professional Services Review Panel • Radiation Health and Safety Advisory Council
Home Affairs	• Australian Multicultural Council • National Accreditation Authority for Translators and Interpreters • Ministerial Advisory Council on Skilled Migration
Industry, Science and Resources	• Anti-Dumping Review Panel • Industry Innovation and Science Australia Board • National Offshore Petroleum Safety and Environmental Management Authority Advisory Board • National Reconstruction Fund Board • Joint Accreditation System of Australia/New Zealand (JASANZ) Governing Board • Trans-Tasman IP Attorneys Board
Infrastructure	• Classification Board • Classification Review Board • Film Certification Advisory Board • International Air Services Commission • National Archives of Australia Advisory Council • National Cultural Heritage Committee
Social Services	• Independent Advisory Council to National Disability Insurance Scheme • OurWatch • Australian National Research Organisation for Women's Safety Limited (ANROWS)
Treasury	• Australian Charities and Not-for-Profits Commission Advisory Board • Australian Statistics Advisory Council • Board of Taxation • Companies Auditors Disciplinary Board • Financial Regulator Assessment Authority • Financial Reporting Council • Foreign Investment Review Board • Global Infrastructure Hub • Payments System Board • Takeovers Panel • Tax Practitioners Board
Veterans' Affairs (Defence Portfolio)	• Military Rehabilitation and Compensation Commission • Repatriation Commission • Repatriation Medical Authority

Number of public sector boards and bodies across the Australian public sector

Australian Government boards, as reported for the purposes of Senate Order 15 where all Australian Government entities (including Departments of State) are required to table a list of appointments made by the Government, have been listed by portfolio below. This includes governing boards, advisory boards, tribunals and commissions.

The listing of secondary bodies includes proposed in-scope boards, as well as other bodies including advisory boards and non-ministerial appointments.

Portfolio	Boards with Senate Order 15 appointments ⁵²	Number of Secondary bodies ⁵³
Agriculture, Fisheries and Forestry	15	72
Attorney General's	16	24
Climate Change, Energy, the Environment and Water	28	70
Defence	19	40
Education	20	26
Employment and Workplace Relations	9	15
Finance	6	16
Foreign Affairs and Trade	21	27
Health and Aged Care	49	94
Home Affairs	4	39
Industry, Science and Resources	17	49
Infrastructure, Transport, Regional Development, Communications and the Arts	98	80
Prime Minister & Cabinet (including NIAA)	14	28
Social Services	5	14
Treasury	26	58
Veterans Affairs (part of the Defence Portfolio)	7	25

⁵² Using Organisations and Appointments Register (OAR) data. Numbers as of 4 April 2023.

⁵³ Using Australian Government Organisations Register (AGOR) data. Numbers as of 1 January 2023.

International Perspectives, Public Sector Board Appointment Processes

Canada

Overview

There are approximately 2,000 positions in Canada where appointments are made by the Governor in Council—the Governor General acting on the advice of Cabinet. This includes appointments to commissions, boards, Crown corporations, agencies and tribunals.

The Prime Minister establishes the policy approach for making Governor in Council appointments, through which Ministers, supported by their departments, make recommendations to Cabinet for appointments within their portfolio, with few exceptions. The Senior Personnel Secretariat in the Privy Council Office provides public service support to the Prime Minister and his Office on most Governor in Council appointments and on appointment policies and procedures.

Selection processes are guided by a set of principles, which include:

- open processes with positions publicly listed to provide opportunity for all Canadians to apply
- transparent processes, with publicly listed job descriptions and selection criteria (education, experience and knowledge requirements for the position) on the Privy Council Office web site
- selection processes that are based on merit and designed to identify qualified candidates to meet the requirements of the position to be filled and the needs of the organisations, and
- recruitment strategies to attract qualified candidates who also reflect the diversity of the national population.⁵⁴

Guidance on the ‘selection process’ and ‘appointments process’ is published by the Privy Council Office⁵⁵, as announced by the Prime Minister.⁵⁶

Context for approach

The Trudeau Government announced the new Governor in Council appointments process in February 2016, alongside a commitment to increase openness and transparency in the Canadian Government.

⁵⁴ Privy Council Office, [Governor in Council appointments](#), Government of Canada, July 2023.

⁵⁵ *ibid*

⁵⁶ Government of Canada, [Prime Minister announces new Governor in Council appointment process](#), 25 February 2016.

Primary features of approach and discussion

The appointments system was designed to require central oversight. The Privy Council Office is highly involved in the majority of appointments, and chairs selection processes for all leadership and non-leadership positions (except for certain administrative tribunals that have delegated authority to run their own selection processes).

A centralised system enabled the creation of a broad talent pool of high calibre, qualified candidates and allows the Privy Council Office's appointments team to have a keen understanding of potential candidates with suitable skill sets. Consultation suggests that this pool needs to be managed by senior officials with specialised appointment skills, and that this central function needs appropriate resourcing, or it could impact timelines for making appointments.

The process has been highly successful in increasing the diversity of appointments. Alongside this broadening of the skills and diversity of candidates, consultation also highlighted the need for appropriate onboarding and training to support new appointees who are not familiar with the Government machinery or have little public sector experience.

New Zealand

Overview

New Zealand has centralised guidance and standards on good practice for public sector board appointments processes, issued by the New Zealand Public Service Commission. Departments run appointments processes independently, however the Public Service Commission has an oversight role and offers guidance and advice. Formal guidance is issued under the Commissioner's general functions of the Public Service Act 2020 (44[b]).

The Board Appointments and Induction Guidelines⁵⁷ outline a standard appointments process which includes the following phases: planning appointments; recruiting candidates; assessing candidates; and appointing candidates. These phases include guidance on the identification of skills needs and agreeing processes with the board Chair and Minister, advertising processes, outlining Ministerial and Departmental involvement throughout the process, guidance around candidate care, and induction and training needs.

New Zealand board appointments come under the Crown Entities Act 2004 which provides a consistent framework for the establishment, governance, and operation of Crown entities, and appointment of boards. This also includes standard conflict of interest disclosure rules and the collective and individual responsibilities of board members. This Act sits alongside other establishing legislation for each entity.

The Public Service Commission issues a Code of Conduct for Crown Entity Board Members which sets out minimum standards of integrity and conduct for these members.

⁵⁷ Te Kawa Mataaho Public Service Commission, Board Appointment and Induction Guidelines, New Zealand Government, 2021.

Context for approach

The current appointments guidance was issued in 2021 by the Public Service Commissioner. This followed a suite of Public Service Reforms under the Public Service Act 2020, which saw the Public Service Commissioner's powers extended to include Crown Entities.

Primary features of approach and discussion

The appointments process is issued through guidance, however if the process is not followed, Ministers have to certify why this was the case as part of their Cabinet papers.

The Crown Entities Act, Public Service Commission Guidance, and directions by Cabinet⁵⁸ have stipulated that appointments processes seek to broaden the diversity of board membership.

New Zealand's approach to building a centralised talent pool is still in its early stages, and has required a dedicated talent scout, whose full-time role is focussed on building and maintaining this talent pool and identifying potential candidates.

Consultation also revealed the benefits of having a standardised approach to background checking and identifying Conflicts of Interest, which should be done as early in the process as possible in order to avoid wasting candidate and appointments teams' time.

Singapore

Overview

The Singapore Public Service comprises both ministries and statutory boards. The latter are separate legal entities tasked to perform operational or regulatory functions as stipulated in their statutes. The board members typically comprise members from the private, public and people sectors.

The Singapore Public Service Commission is not involved in the selection process for boards. The Singapore Public Service Division establishes and reviews the guidelines and frameworks governing the appointment of board directors. There is a tiered approach to the board appointments—based on size and complexity—which also guides the board allowances paid to board members.

Context for approach

The Singapore Public Service has in place what it describes as a principled and fair system, founded on the principle of meritocracy⁵⁹, and anchored on key values such as integrity, service and excellence. The Singapore Public Service works with the political leadership of the day, in a partnership that is built on trust, complementing and supporting one another⁶⁰.

⁵⁸ Cabinet Office Circular, Government Appointments: Increasing Diversity of Board Membership, November 2002.

⁵⁹ Speech by Minister Chan Chun Sing at the IPS 35th Anniversary Conference: Revisit, 12 Jun 2023.

⁶⁰ Speech by Prime Minister Lee Hsien Loong at the Administrative Service Appointment and Promotion Ceremony, 12 Apr 2022.

Ministers trust the advice of the public service on proposed candidates and skills needs for various boards.

Primary features of approach and discussion

The Public Service Division provides guidance to Ministries on the board appointment process and considerations, including having diversity in expertise, perspectives and backgrounds.

The Division curates and managed a central candidate database to enable boards to be refreshed and potential talent to be identified. The database includes referrals and suggestions from senior public officers, board members and political office holders and there are processes to validate the suitability of the potential candidates.

Public officers are also appointed to boards. While some of them are appointed to contribute their specific expertise, board appointments are also used to provide developmental exposure for up and coming public service leaders to the important governance work of boards. The appointment of public officers on boards are governed by guidelines, including on tenure, a cap on the board allowances, limits on the number of board appointments per person and safeguards against conflict of interest. Newly appointed public sector directors also have access to sponsored training on board responsibilities and duties.

The United Kingdom

Overview

Public sector board appointments are overseen by the Commissioner for Public Appointments in an assurance capacity. The Commissioner for Public Appointments regulates the processes by which Ministers make appointments to the boards of over 300 national and regional public bodies. Judicial appointments are excluded.

The Commissioner monitors the appointments process, which includes assuring appointments have been made in accordance with the Government's Governance Code, and carrying out audits on non-compliance.

The Government's Governance Code published by the Cabinet Office, came into effect on 1 January 2017 and sets out the regulatory framework for public appointments processes within the Commissioner's remit. The Code sets out the Public Appointment Principles, and also codifies the Ministers' role in the appointments process, as well as detail around re-appointments, length of tenure, the role of Advisory Assessment Panels, the role of Senior Independent Panel Members, the role of Departments and appointments teams, customer care, transparency, handling conflicts and re-appointment scrutiny.

At its most basic, the Code establishes the requirement for open, transparent and merit-based processes to be run for each appointment, with positions advertised on the Cabinet Office Public Appointments website. The Advisory Assessment Panel and selection process should also be published alongside the appointee's details. The Code also stipulates that

appointments should be made taking into account the need to appoint boards which include a balance of skills and backgrounds.

Context for approach

The role of the Commissioner for Public Appointments was created by the Public Appointments Order in Council 1995.

This followed the First Report of the Committee on Standards in Public Life under the chairmanship of Lord Nolan, who recommended the creation of a Public Appointments Commissioner, following concerns around the integrity of appointments.

In 2010 a review of UK non-departmental public bodies was conducted, recommending the closure or merger of nearly two hundred bodies, and the transfer of others to the private sector.

Between 2011 and 2015 the role of First Civil Service Commissioner and Public Appointments Commissioner was combined.

In 2015 a Review of Public Appointments was conducted by Sir Gerry Grimstone. Following that review, the government published new rules for public appointments in its Governance Code which took effect on 1 January 2017. These changes were set out in a new Order in Council, and the government reinstated the Commissioner role as separate from the First Civil Service Commissioner.

Primary features of approach and discussion

A key limitation of the UK appointments process as explored through consultation includes the large number of appointments under the remit of the Commissioner for Public Appointments, who is supported by a very small team (3 people) to monitor appointments to over 300 bodies. This has implications for the scope of monitoring and assurance. Similarly, the timeliness of candidate nominations as part of the appointments process more broadly was described as being a potential limitation.

The Commissioner plays an important role in providing assurance to the public that appointment processes have been followed correctly, and that appointments have been made fairly and based on merit. Through the Commissioner's annual report, they are also able to provide an overview and commentary on the functioning of board appointments processes across the public sector more broadly, and areas for further focus. To this end, the independence of the Commissioner's role is crucial.

Consultation also highlighted the important role the Commissioner plays in encouraging participation from diverse backgrounds. As a senior and public-facing figure, his role includes visiting regions to speak with potential candidates, including those, for example, who are outside of the London political and civil service networks.

Consultation also found that these processes are well-respected by Ministers, with the role of the Commissioner providing a visible figurehead and champion for the appointments' values and rules.