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Dear Sirs,

### **Who we are**

Governance Institute of Australia (Governance Institute) is the only independent professional association with a sole focus on whole-of-organisation governance. Our education, support and networking opportunities for directors, company secretaries, governance professionals and risk managers are unrivalled.

Our members have primary responsibility for developing and implementing governance frameworks in public listed, unlisted and private companies, as well as not-for-profit organisations (NFPs) and the public sector. They have a thorough working knowledge of the operations of the markets and the needs of investors. Our active membership base of more than 7,500 chartered secretaries, governance advisers and risk managers ensures that Governance Institute is at the cutting edge of knowledge of issues and support of sound practice in the continuous evolution of governance and risk management. We regularly contribute to the formation of public policy through our interactions with Treasury (Markets Group), ASIC, APRA, ACCC, ASX, ACNC and the ATO.

We are a founding member of the ASX Corporate Governance Council. We are also a member of the ASIC Business Advisory Committee, the Modernising Business Registers Program Business Advisory Group, the Director Identification Number Reference Group and the ACNC Sector Users Group.

### **Our recommendations**

The policies outlined below are critical to foster greater confidence in Australian capital markets, enhance the performance of Australian organisations and reduce substantially the burden of continually increasing legislative and regulatory compliance. Above all, Governance Institute believes that the policies outlined below have the capacity to improve Australia's productivity. For these reasons, they should be factored into the budget deliberations.

**Governance Institute recommends** that the Government:

1. Facilitate corporate law and governance legislative reform by establishing an independent research-based reform body to advise government on corporate law and implement sound processes for the development, introduction and implementation of reforms.
2. Update the Corporations Act to make it technology-neutral and shift it from its basis in a 'hard copy' 19<sup>th</sup> century world to a 21<sup>st</sup> century one. As a first step streamline the Corporations Act to enable electronic or digital shareholder communications, savings cost and reducing waste.
3. Reduce compliance costs and facilitate shareholder engagement by undertaking a wholesale review of corporate reporting, including remuneration reporting.
4. Maintain momentum and funding for the Modernising Business Registers Project and include company secretaries in the Director Identification Number reforms.

5. Ensure the competitiveness and efficiency of the financial markets by passing legislation to empower regulators to address any potential anti-competitive conduct in relation to the CHES Replacement Project.
6. Continue the reform of the whistleblower regime by enacting a stand-alone whistleblower protection regime (applicable to the private sector) in its own Act and establishing a lead agency to undertake the whistleblower protection role.
7. Enhance productivity for the NFP sector by:
  - Assisting the sector to respond effectively to the current bushfires and drought by reforming the fundraising regulatory regime through minor amendments to the Australian Consumer Law to ensure its application is clear and broad
  - Releasing the Government response to the ACNC review as a priority
  - Including the company secretary on the ACNC register to assist in the ACNC register acting as a 'one stop shop'.

We provide more detail on the following pages.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Motto', written in a cursive style.

Megan Motto  
CEO

## Attachment

### **1. Better regulation, not increased regulation, including sound processes for the development, introduction and implementation of legislative reform**

As the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry has highlighted the current regulatory landscape is extremely complex. Governance Institute has long supported modernisation and simplification of the current complex regulatory landscape, particularly the Corporations Act given its importance as national infrastructure.

Our members have also consistently advocated that no new regulation is proposed before the impact of reforms currently in progress is assessed. Any new individual element of the regulatory landscape needs to be evaluated for its impact on the regulatory 'whole' or 'sum of the parts'. The greatly increased amount of corporate law and governance legislation introduced in recent years has led to significant complexity as well as unintended consequences. The practice of adding to the law by means of regulatory guidance has also created a complex landscape, which is difficult to navigate even for those with access to legal and other advice.

The approach to any new regulation should be measured, so that it can be appropriately bedded down and reviewed for efficacy in achieving the desired policy objectives. This is as opposed to the all too frequent approach in recent years of almost non-stop regulatory reform in the corporate law and governance arena, where layer upon layer of legislation or regulation is added to the existing framework, often with truncated consultation periods.

Our members have also advocated for some time for the establishment of an independent body to assist in the process of law reform. An independent research-based reform body able to provide advice through a transparent process, structured with appropriate expertise and supported by a Legal Committee, could play a valuable role in regulatory reform. Such a body would be able to provide advice outside the constraints of the political and electoral cycle.

While we appreciate the role that Treasury plays in coordinating advice, more often than not it provides advice to governments in response to particular policies that a government wishes to introduce and expresses how such policies can be implemented. An independent external body would be able to provide advice on matters on which the government has not yet formed a policy position, in order to assist the government to formulate policy. It is difficult for Treasury to secure access to a similar calibre of expertise which is required for many regulatory matters in an ongoing and timely fashion or at an appropriate cost.

**Governance Institute recommends** that Government facilitate corporate law and governance legislative reform by establishing an independent research-based reform body to advise government on corporate law and implement sound processes for the development, introduction and implementation of reforms

### **2. Bringing the Corporations Act into the 21<sup>st</sup> Century**

Governance Institute members have consistently highlighted the need to update the Corporations Act to make it technology-neutral and shift it from its basis in a 'hard copy' world. The Act was developed prior to the shift to a digital world and many aspects of it are mired in an assumption that the world operates in hard copy, as it did in the 19<sup>th</sup> century. While some provisions have been updated over the years, other provisions still do not contemplate the use of technology.

Government should aim to enable transactions and business to be carried out digitally end-to-end: regulation should not make it more difficult and expensive to conduct business through purely digital channels. However, importantly, given the speed of technological change, it is important that any amendments to the Corporations Act be technology-neutral. That is, they need to provide for the use of technology without specifying any particular technology. This allows for innovation in shareholder engagement and corporate reporting, as technology evolves.

**Governance Institute recommends** that Government update the Corporations Act to make it technology-neutral and shift it from its basis in a 'hard copy' 19<sup>th</sup> century world to a 21<sup>st</sup> century one

### **3. Digital shareholder communications – streamlining the Corporations Act to improve shareholder communications**

Currently, shareholders must notify companies if they wish to receive their notices of meeting and meeting materials by email. If they fail to make that notification, companies are required to send the notices of meeting by post. Despite many campaigns over a number of years, listed companies only hold email addresses for about 50% of their shareholders. Each year these companies spend hundreds of thousands of dollars printing and posting meeting packs to their shareholders. Much of this material ends up in landfill.

In 2016 Treasury worked on a simple amendment to the Corporations Act which would bring shareholder communications into the 21st century and allow companies to digitally engage with their shareholders. This did not proceed.

Governance Institute and the Australasian Investor Relations Association (AIRA) have made a joint submission to the Federal Government's Deregulation Taskforce on the basis that the Task Force presents an ideal opportunity to make this straightforward regulatory change. We propose amending the Corporations Act to provide that shareholders who fail to opt in to receive their notices of meeting by either mail or email are deemed to receive them if the company makes them universally available on their website.

We still support the rights of shareholders to 'opt in' to receive hard copy meeting materials. This is important, particularly for older Australians. However, companies are 'hitting a wall' when it comes to collecting email addresses from shareholders and regulatory change is required in order to move to the next step.

Shareholders already access the annual report digitally. In 2007, the Corporations Act was changed to enable shareholders who do not elect to receive a hard copy of the annual report to access it on a website. More than 90 per cent of shareholders no longer receive a hard copy annual report in the mail. This has led to major cost savings and a reduction in paper waste.

**Governance Institute** and AIRA **recommend** amending the Corporations Act to enable companies to digitally engage with their shareholders which would lead to cost savings and waste reduction.

### **4. Reduction of compliance costs and the facilitation of shareholder engagement through a wholesale review of corporate reports**

The aim of reporting should be to ensure that shareholders want to and can read the disclosures and remain knowledgeable about and engaged with the entity in which they invest. Many commentators, including Governance Institute, accounting bodies and investor groups have consistently noted that corporate reporting needs improvement. This is not due to any

current lack of legislative disclosure requirements, or an unwillingness of companies to engage with their investors through enhanced reporting. The current regime is simply too complex and too difficult to navigate.

Disclosure needs to be more than simply comprehensive. As the Final Report of the Royal Commission and the recent ASIC [Report 632 Disclosure: Why it shouldn't be the default](#) highlighted the value of the current disclosure regime, particularly for retail investors and consumers, is limited. The cumulative impact of increased disclosure requirements in relation to corporate reporting has seen much reporting become largely incomprehensible to investors, particularly retail investors, despite strenuous effort on the part of issuers to not only meet statutory requirements but also provide meaningful disclosure.

One of the main barriers to effective shareholder engagement is the sheer volume of statutory-driven information required, the statutory annual reports of large listed entities can run to 300 pages or more of detailed financial and accounting disclosures. Remuneration reports have also become long and complex documents, as more and more disclosure requirements are added in piecemeal fashion to the legislation.

Governance Institute has previously recommended there be an assessment of the total sum of mandated corporate reporting sent to shareholders, possibly under the auspices of the Department of Treasury, or through providing the Financial Reporting Council with the powers to specifically deal with corporate reporting in a broad context or through the creation of a separate body or task force dealing with corporate reporting. Enhancing corporate reporting is only feasible following a holistic review of existing mandated corporate reporting.

In addition, remuneration in Australia operates within a patchwork of law, guidance and the accounting standards. Since the requirement to put the remuneration report before shareholders was introduced (s 250R), there have been a substantial number of new requirements added to the Corporations Act in relation to this disclosure requirement. Each new requirement supplements rather than replaces existing remuneration disclosure requirements. With the stated policy objective of simplification, the addition of more layers of regulation rather than adopting the approach of taking a holistic view, has resulted in complexity and confusion for investors, particularly retail investors. Governance Institute considers there is a pressing need for an approach to legislative reporting requirements surrounding remuneration that aims to simplify reporting, rather than adding further layers of complexity.

**Governance Institute recommends** that Government reduce compliance costs and facilitate shareholder engagement by undertaking a wholesale review of corporate reporting, including remuneration reporting.

## **5. Modernisation of key business registers**

Governance Institute is a longstanding supporter of Government initiatives to modernise existing business infrastructure. We have lodged various submissions to Treasury supporting the objectives of the Modernising Business Register program, particularly Government's commitment to improving service delivery to, and reducing complexity for, business. These reforms are needed to improve the user experience, simplify the way clients interact with Government registers and streamline internal processes. Our members report significant inefficiencies and costs for users with existing registers. It was pleasing to note the funding granted for the Project as part of the 2019-20 Mid-Year Economic and Fiscal Outlook.

As a member of the Modernising Business Registers Business Advisory Group, **Governance Institute urges Government** to maintain momentum and funding for this critical project and to continue to maintain the existing registers until the new systems are in place.

We have also advocated for the introduction of a Director Identification Number (including company secretaries) to address information confidentiality and security concerns of directors and company secretaries concerning publication of their personal data. We recommend that company secretaries be included in this reform.

**Governance Institute recommends** that Government maintains momentum and funding for the Modernising Business Registers Project and includes company secretaries in the Director Identification Number reforms.

## **6. CHES Replacement**

We are a founding member of the CHES Replacement Stakeholder Group (Stakeholder Group), a diverse group of financial market firms and industry bodies concerned by ASX Ltd's conduct in relation to the development of the CHES Replacement project.

A particular concern is its potential to further entrench ASX's existing monopoly powers over post-trade services and to facilitate extension of those monopoly powers into other areas.

The Stakeholder Group recently made a submission to the Council of Financial Regulators (CFR) on its Consultation Paper on Financial Markets Infrastructure Regulatory Reforms. While we broadly support the proposals outlined in the Consultation Paper that should help streamline the regulatory environment with clear allocation of authority and improved rule-making capacity.

The Stakeholder Group considers the regulatory regime is, however, unprepared for the effects of the CHES replacement project, which will permanently disrupt the market and regulatory landscape for market operators, benchmark administrators, clearing and settlement facilities and derivative trade repositories. We fully support the goal of driving further innovation in the Australian financial market as CHES did when it was introduced. We also support the concept of a distributed ledger technology (DLT) platform, in principle. However, a DLT platform of this complexity, scale and criticality (to a diverse range of market stakeholders) has yet to be introduced to replace core market infrastructure in any major equity market anywhere around the world. Any platform needs to strike a sensible balance between risk, commercial viability and innovation.

The Stakeholder Group considers the CFR must be given more defined and specific powers to enforce appropriate parameters around ASX's use of its monopoly powers and ensure competitive markets are maintained for the best outcomes for all Australians. These parameters are already outlined in the Council's Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia.

Without appropriate oversight, vertical integration by ASX through the distributed ledger on which the CHES replacement system will reside could lead to a substantial lessening of competition in key market segments adjacent to ASX's existing monopoly. This could include hampering, damaging or even threatening the long-term survival of brokers, share registries and other stakeholders. If competition for clearing and settlement services does not emerge, this lack of competition could lead to higher prices than would be case in a competitive market as well as barriers to transparent and non-discriminatory access to those services and/or limited responsiveness to users' evolving needs. This would be contrary to the objectives of maintaining competitive and efficient financial markets... If competition does not emerge, then it is important that regulators have appropriate powers to address the potential for anticompetitive conduct of any incumbent.

The CHES replacement program is expected to go live in 2021 and regulators do not have the "appropriate powers" referenced in the CFR Consultation Paper to address anticompetitive conduct. This is despite CFR's and the ACCC's 2015 advice to the Federal Government that proposed the introduction of rule-making and arbitration powers through which would give ASIC

the power to enforce the regulatory expectations and set minimum conditions for competition in clearing and settlement services for cash equities and give the ACCC the power to arbitrate access disputes between parties for cash equity clearing and settlement services. The Government announced its commitment to implement these legislative changes in early 2016. As of December 2019, these legislative changes had not passed.

**Governance Institute recommends** the passing of legislation to empower regulators to address any potential anti-competitive conduct in relation to the CHES Replacement Project in line with the CFR's and ACCC's previous 2015 advice and the Government in 2016 commitment to passage of the legislation.

## 7. Whistleblowing

Governance Institute was a partner supporting the ground-breaking *WWTW2* research project research led by Griffith University. The is thought to be the largest dataset to have been collected for the specific purpose of understanding whistleblowing in organisations, and the first conducted across the public and private sectors, using the same methodology, at the same time. The research reinforces the importance of legal and regulatory arrangements to underpin, incentivise and enforce good organisational practice on whistleblowing.

Governance Institute has also advocated for some time for the reform of the whistleblower legislation. Our members consider that the legislation passed by parliament is an improvement on the previous regime and a good first step towards reform, but that there are several recommendations of the Parliamentary Joint Committee's Inquiry into Whistleblower protections that were not addressed as part of the recent reforms.

**Governance Institute continues to support and recommend:**

- a stand-alone, general whistleblower protection regime in its own Act (applicable to the private sector), and
- a lead agency such as an Ombudsman or Office of the Whistleblower to undertake the Whistleblower protection role and implement the new scheme.

## 8. Enhance productivity for the NFP sector

- **Assist the sector to respond to the current bushfires and drought by reforming fundraising laws**

Many parts of the sector are actively responding to the current bushfires and drought and there have been unprecedented amounts donated to the sector to assist those affected. In November 2019 the ACNC Commissioner issued a Media Release entitled *Safe fundraising and giving in response to drought and bushfire disasters*. In advising charities what not to do he observed 'Don't start raising money until you are familiar with how fundraising is regulated in the state or territory you wish to fundraise in.'

The ACNC Commissioner's comments graphically illustrate the current piecemeal state and territory-based regulatory framework which governs fundraising. It is fragmented, burdensome, rarely enforced and is fundamentally failing in its objective to protect donors and provide for transparency and public trust and confidence in fundraisers at a time when this is most needed.

As part of the **#Fixfundraising** coalition we have repeatedly called on Government to reform the fundraising regulatory regime which can be achieved through:

- minor amendments to the Australian Consumer Law (ACL) to ensure application to fundraising activities is clear and broad and would not require a referral of powers, rather than pursuing streamlining state-based fundraising laws, and

- working with other regulators (for example, state-based regulators and self-regulatory bodies) to improve fundraiser conduct (for example, door-knocking, telemarketing, excessive spending of funds on third party services)

which would create a nationally-consistent regulatory system.

Despite our public campaign which has received widespread community support charities and not-for-profits are forced to continue to waste significant amounts of time and money in meeting outdated fundraising laws that differ considerably across Australia. The Government has also not yet released its response to the ACNC review which is critical for the sector.

**Governance Institute recommends** that Government directs future efforts to fix charitable fundraising into tailoring the ACL, a regime that is already enforced by the states, territories and the ACCC, rather than pursuing streamlining of piecemeal state legislation which does not require a referral of powers. **Governance Institute also recommends** that the Government release its response to the ACNC review as a priority.

- **Inclusion of the company secretary on the ACNC register**

Governance Institute has long advocated for the ACNC register to record the details of the company secretary of charitable companies.

As ASIC no longer maintains updated information on directors and company secretaries of companies regulated by ACNC, users are directed to the ACNC register which records the details of a charity's directors (referred to as 'responsible persons').

Unless the company secretary is also a responsible person, their details do not appear on the ACNC register.

Our members consistently report to us the practical issues their organisations face due to the inability of banks, landlords and other third parties to easily locate the details of the company secretary on the ACNC register.

It is vital to the efficacy, transparency and accountability of the sector that a charity's company secretary details are displayed on the ACNC register. Placing the company secretary details on the ACNC register will then provide a 'one-stop shop' for third parties seeking details of the responsible persons and company secretary of a charity and will assist them in their dealings with that organisation.