

18 March 2022

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Dear Sir/Madam,

## **Respect@Work Consultation on Legislative Recommendations**

### **Who we are**

Governance Institute of Australia is a national membership association, advocating for our network of 40,000 governance and risk management professionals from the listed, unlisted, public and not-for-profit sectors.

As the only Australian provider of chartered governance accreditation, we offer a range of short courses, certificates and postgraduate study. Our mission is to drive better governance in all organisations, which will in turn create a stronger, better society.

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 and the public sector. They have a thorough working knowledge of the operations of the markets and the needs of investors. We regularly contribute to the formation of public policy through our interactions with Treasury, ASIC, APRA, ACCC, ASX, ACNC and the ATO.

### **Our activities in this area**

Governance Institute takes issues of gender equality and the prevention of sexual harassment in workplaces in all sectors very seriously. We regularly engage and advocate on these issues on behalf of our members. The Australian Human Rights Commission's landmark Respect@Work final report recommended that Governance Institute develop education and training for boards and company officers on good governance practice in relation to gender equality and sexual harassment.<sup>1</sup> We are developing a series of initiatives to respond to this recommendation, including a recent sector briefing session on 'Respect, behaviour and governance'. We have also held women-exclusive Effective Director Courses to promote the availability of qualified female directors, which was strongly attended. We also commissioned research on gender diversity on the boards of Australian listed companies.<sup>2</sup> We are a founding member of the ASX Corporate Governance Council which produces the leading Australian statement on corporate governance, the *Corporate Governance Principles and Recommendations*.<sup>3</sup> We strongly supported the inclusion in that document of recommendations on improving the level of diversity on Australian listed company boards.

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<sup>1</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, Recommendation 41, p. 48.

<sup>2</sup> Watermark Search International and the Governance Institute of Australia 2020, *Board Diversity Index*, <https://www.watermarksearch.com.au/2020-board-diversity-index>.

<sup>3</sup> ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations*, 4<sup>th</sup> edition, February 2019.

Governance Institute has participated in the consultation *Respect@Work – Options to progress further* legislative recommendations through the Citizen Space survey.

We commend the Government and the Australian Human Rights Commission for their work to address sexual harassment in workplaces.

### **Key issues**

- Our members support amending the Sex Discrimination Act to prohibit the creation or facilitation of a hostile work environment on the basis of sex. This amendment would be an important step in aligning the Sex Discrimination Act with the existing work, health and safety regulatory framework.
- Our members strong preference is to see harmonisation, across jurisdictions, and greater clarity around sexual harassment laws, supported by appropriate guidance.
- Governance Institute considers culture is the sum of an organisation's shared values, principles and behaviours. In our members' experience, cultural problems are often the systemic cause of workplace issues. Cultural change is driven by leaders at the top of an organisation. Governance Institute's 2017 joint guidance on culture makes it clear that boards are responsible for 'setting the tone from the top', including by 'modelling the firm's desired behaviours and values when interacting with management and staff'. Even with the best policies, procedures and oversight mechanisms in place, workplace issues will persist in the absence of demonstrated, visible leadership. It is crucial for leaders to model the culture they wish to see. Values need to be lived and codes of conduct must be supported by actions. Directors, senior management and other leaders must take ownership of these issues not only by supporting practical and systemic reforms, but personally as well, by setting the right example for their staff. The creation of workplaces that are not hostile is the responsibility of all, but must be lead from the top of the organisation.
- Our members in principle support introducing a positive duty through the Sex Discrimination Act. However, they would like greater clarity about the positive duty to enable them to consider the practical implications for companies and other organisations.
- Education, building capacity across industries and the establishment of accreditation frameworks are additional important steps to addressing this issue. Our members consider that preventative measures are preferable to the need for enforcement after the event. Where possible, it would be useful to form cross agency and sectoral working groups and centres of knowledge and expertise on the prevention of sexual harassment in Australian workplaces.
- Our members support a hybrid model for enforcing the positive duty. This model would address individual complaints through alternative dispute resolution mechanisms and the court system. It would address systemic complaints through a responsible regulator with powers to investigate a suspected contravention of the positive duty that is serious in nature, relates to a class or group of persons and cannot reasonably be expected to be resolved by dispute resolution.
- If the Government chooses to appoint a specialist regulator it must be properly resourced and funded with qualified and trained staff, so that matters can be resolved quickly, efficiently and fairly.
- The responsible regulator's powers in relation to sexual harassment should be limited to discrimination under the Sex Discrimination Act- for example, discrimination on the ground of sex, sex-based harassment and sexual harassment, not discrimination regulated by other legislation.

- Our members do not support amending the Australian Human Rights Commission Act to allow representative bodies to commence representative actions in the Federal Court in relation to anti-discrimination matters.
- On the issue of costs our members recommend:
  1. Any changes to sexual harassment legislation must integrate alternative dispute resolution mechanisms to reduce matters escalating to court hearings, and
  2. Costs should follow a model whereby each party bears their own costs in the first instance, but the courts have discretion to make exemptions in the interests of justice.

Our members consider this is an important consultation which they hope will provide the impetus for a genuine shift in workplace and societal culture across all sectors.

If you wish to discuss any of the issues raised in this letter, please contact me or Catherine Maxwell.

Yours faithfully,

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

Megan Motto  
CEO