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Review of the Corporate Governance Principles and Recommendations Public Consultation

Thank you for the opportunity to make a submission to the public consultation on the Review of the ASX Corporate Governance Principles and Recommendations.

AHRI represents around 20,000 HR practitioner and people management professional in Australia. The institute undertakes research, publishes material and provides services and tools for its members.

Our particular interest in this consultation relates to the role that listed entities can play in the employment of people with disability through the ASX Corporate Governance Council Principles and Recommendations, as mentioned in item 52 of the Consultation Paper.

Reporting on disability employment and Principle 1

At the outset, we agree with the recommendation under item 9 of the consultation paper's overview that diversity-related recommendations have been relocated from Principle 3 (ethical and responsible decision making) to Principle 1 (lay solid foundations for management and oversight).

That said, we do not share the view as set out in item 52 that the matters to do with the employment participation of people with disability are not matters to be properly characterised as a matter of "corporate governance". We believe they are and that they are pertinent to the laying of solid foundations for management and oversight, as expressed in the wording of Principle 1.

We note the amendment under item 9 to the diversity-related recommendations on reporting gender equity indicators and the call for entities reporting on the matter to define "senior executive" for these purposes.

We also note under item 9 the amendment on the meaning of "measurable objectives" and the steps a listed entity can take to measure its achievements against objectives set by its board.

With respect to reporting by listed entities of the employment of people with disability, which we contend should be mandatory, the definition of 'senior executive' is not pertinent because the reporting required relates to employees at all levels. If a definition is required it might relate to how the entity wishes to define 'person with disability' for the purposes of reporting.

On the matter of "measurable objectives", AHRI's position on this with respect to reporting on disability employment is different from that which applies to reporting on gender equity. While measurable objectives on gender need to refer to numbers and targets, that should not be the case for reporting on disability employment.

"Light-touch" reporting

The model proposed by AHRI is that the reporting requirement should be a "light-touch" approach that involves the listed entity simply reporting on anything that relates to the way the entity decides to report on the matter. It may involve reporting on a policy, on a plan to draft a policy, on a plan to encourage disclosure. We would see no requirement to report on the setting of a target unless the entity wants to report on that. And if the entity has nothing at all to report, it should report on that. But it should report.

We take the point noted under item 52 of the consultation paper that reporting on numbers or targets relating to the employment of people with disability may raise privacy issues and prove difficult to implement in practice. We recognise that employees with a disability are within their rights to decide not to disclose.

However, by recommending mandatory reporting on the basis of a "light-touch" model, the danger of breaching privacy protections is obviated and the implementation issue is significantly reduced.

The thinking behind the "light-touch" model is that if no one within a company has a KPI on the matter, in the great majority of companies nothing will happen. That continues to be the present situation, though a small number of companies do make progress and report on what they have done. If there is a general requirement to report, the issue gets on the radar, responsibility is delegated and more widespread progress might follow. It could become a game-changer, which is what we see as necessary.

Disability employment as a governance issue

It is stated under the heading related to the laying of solid foundations for management and oversight as set out in Principle 1, that "a listed entity should establish and disclose the respective roles and responsibilities of the board and management and how their performance is monitored and evaluated".

According to the Australian Bureau of Statistics in 2009, over one million working Australians with disability were in paid employment. Assuming that number is made up of employees who disclose their disability, to that number can be added an unknown number of employees working in Australia whose disability is not disclosed either to the world at large, to their work colleagues or to the managers of the organisation that employs them. The Australian Public Service Commission *State of the Service Report 2010-11* commentary on the decreasing representation of public sector workers with disability is premised on an unknown level of non-disclosure; that is, on the belief that there are many more people working in the public service with a disability than the figures reveal.

The APSC is conscious of a management obligation with respect to data on employees with disability and has authorised various management advisory committees to oversee the issue over time.

Disability and workplace risk

AHRI workplace research conducted in 2011 and 2013 indicates that among other stigma issues related to the employment of people with disability is the workplace perception, rightly or wrongly, that they pose a risk to the organisation that employs them and could be costly.

Without making a judgement on the merits or otherwise of that perception, it would appear that a case exists for appropriate management and oversight, and that a reporting regime in some form would amount to evidence that companies take the matter seriously.

To illustrate, it is necessary resort to a fictional case because by their nature undisclosed cases of disability are not available in the public domain. With that in mind, we ask you to consider the fictional case of the central character in the award-winning US television series “Homeland”. Her case is a highly believable example of an employee with a serious bi-polar disability. Her condition on the one hand is one that needs to be personally managed by daily medication, and on the other it is a condition that enables her as an employee to perform at a higher level as an intelligence operative than her colleagues who do not suffer from the condition, and she is widely recognised and relied upon as a top performer by her superiors.

However, out of fear of losing her job she does not disclose her disability to the managers who employ her and who have come to rely on her continued high performance and good judgement. That fear is fully justified and so she also needs to source her medication covertly so her employer is not alerted to her condition. A number of things can go wrong in such a situation, and do. It is a case not simply of perception of workplace risk but becomes real risk.

That type of risk, we propose, would not be necessary were management to take responsibility for the creation of a workplace culture that encourages disclosure and to report, among other things, that it was doing just that. It would not need to be a form of disclosure made to co-workers or to the world at large but simply to management who could ensure the employment of the person was properly managed and that cover-up activities were not required to ensure it remains hidden from knowledge. That way, the privacy of employees with disability would be protected and the employer would be in a better defensive position in the event of an untoward incident to show that proper oversight was foreseen and exercised.

If your office wishes to contact AHRI further, please do so in the first instance through the National Manager, Government and Media Relations, Paul Begley, on 03 9918 9232 or 0402 897 884 or email paul.begley@ahri.com.au



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