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Keeping up appearances: the quest for governance legitimacy

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Keywords

Corporate governance; institutional theory, non-executive directors; public sector; Commonwealth Authorities and Companies Act 1997

Disciplines

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Keeping Up Appearances: The Quest For Governance Legitimacy

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Abstract

An effective corporate governance structure is as crucial to a public sector organisation as it is to a private sector organisation. This paper reviews the profile of directors on governance boards of government controlled organisations and finds that, while the governance structures are similar with those in the private sector, the real power to set the strategic, financial and operational directions of these organisations is not in the hands of the directors, as it is in the private sector, but in the hands of the responsible ministers. This de-coupling, it is argued, is due to the perception that private sector governance practices are superior to public sector practices and therefore these government organisations, in an attempt to maintain the appearance of good governance and to legitimise their place in society, have adopted on the surface private sector governance structures and practices.

Keywords: Corporate governance; institutional theory, non-executive directors; public sector; Commonwealth Authorities and Companies Act 1997.

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Introduction

The Australian public sector has undergone significant changes since the late 1980s. Many of these changes can be viewed as responses to both internal and external institutional pressures to adopt private sector behaviours, processes and values in an attempt to appear legitimate to the people of Australia and [more importantly?] to the businesses which operate in Australia.

Consistent with the private sector, the Australian Commonwealth Government has significantly increased its focus on corporate governance arrangements for Government, government departments, agencies, and statutory authorities. For the Commonwealth Public Sector, corporate governance refers to “the processes by which organisations are directed, controlled and held to account. It encompasses authority, accountability, stewardship, leadership, direction and control exercised in the organisation” (ANAO, 2003a, p. 6). This definition of public sector corporate governance is supported by Uhrig, who in his 2003 report¹ explained that corporate governance is concerned with “the power of those in control of the strategy and direction of an entity ... taking into account risk and the environment in which it is operating” (2003, p. 2).

The Australian system of government is based upon the Westminster system, which originated in the United Kingdom, where the head of state is not the head of government, and the ministers from the governing political party, the executive, are from and accountable to the parliament (APH, 2003). This paper will focus on one component of executive accountability to the parliament, the non-executive directors of the government-controlled Commonwealth Statutory Authorities. The 2005–06 Annual Reports of 19 material² Commonwealth Statutory Authorities

¹ The Uhrig Report was based on a review of the corporate governance of Commonwealth Statutory Authorities and office holders. The objective of the review was to identify issues surrounding existing governance arrangements and to provide options for Government, both to improve performance and to get the best from statutory authorities, office holders, and their accountability frameworks. For a list of the recommendations of the Uhrig Report refer to appendix 2.

² Material entities comprise 99% of revenues, expenses, assets and liabilities of all the Commonwealth Statutory Authorities (DOFA, 2007).

were reviewed to determine the following: mix of executive and non-executive directors; gender of directors; highest level of qualification of directors; average length of service of directors; remuneration of non-executive directors; and number of other directorships. The findings are then reviewed in the context of the new managerialism environment which is engulfing the Australian Commonwealth public service.

This paper examines the roles and mix of public sector non-executive directors through the lens of institutional theory. Institutional theory has often been used to explain how private sector organisations react to socially rationalised concepts on the practices, procedures and structures of organisations. However, with the recent focus on performance, efficiency and effectiveness in the public sector, institutional theory is becoming more appropriate in the evaluation of public sector organisations.

Background

The corporate governance structures of both public and private sectors have areas of commonality (Edwards, 2002, p. 52), particularly in relation to performance and the roles and responsibilities of their governing boards and executive. For example the governing boards of organisations in both sectors include executive directors (directors who hold executive positions within the organisation) and non-executive directors (who come from outside the organisation). For the public sector the increased focus on performance and responsibilities is consistent with the move to “new managerialism” in the public sector (Jackson and Lapsley, 2003, p. 360) and the perceived need of the public sector to improve its efficiency, effectiveness and accountability (Guthrie, 1998, p. 2; Barton, 2005, p. 138). Dr Peter Boxall, the previous Secretary of the Commonwealth Department of Finance and Administration, explained the main objectives of new managerialism as encouraging a culture of performance and making the public sector more responsive to the needs of government (Boxall, 1998, p. 18). These comments imply that the public sector before “new managerialism” was inefficient and unresponsive to the needs of the government and in turn unresponsive to the needs of the Australian public. This follows from the common misconception that the best way for the public sector to improve its performance would be to adopt private sector behaviours

such as appointing governing boards of directors for some government organisations.

One of the key processes required to develop an effective corporate governance structure in any organisation is the clarification of appropriate roles for management and for the board of directors (ASX, 2003, p. 3). While the roles and powers of directors on public sector boards appear similar to those of directors on private sector boards, there are fundamental differences. The most significant difference is in relation to the level of power the directors have to act. Directors on the board of a private sector company usually have both the full power to act and the responsibility to do so. This includes the power to formulate and approve the strategy of the organisation and to develop and implement important company policies (Uhrig, 2003, p. 4).

In contrast, a board [and its directors] governing a public sector organisation has limited power, primarily because government organisations are created for the implementation of established government policy and the realisation of intended outcomes (Uhrig, 2003, p. 31). The real power in a public sector organisation rests not with the board of directors, but with the responsible Minister who controls the appointment of board members, therefore influencing their behaviour and reducing the autonomy of boards (Howard and Seth-Purdie, 2005, p. 60).

Regardless of the level of power and autonomy of public sector boards, they still need to ensure the corporate governance structures of their organisations enable them to effectively meet their responsibilities to their key stakeholders: Parliament, Government [particularly via the Departments of Finance and Administration, Treasury and Prime Minister and Cabinet], Ministers, public service officers and the Australian public. To assist, the Australian National Audit Office has developed comprehensive Better Practice Guides for use amongst the public sector³. These guides outline explicitly the frameworks,

³ There is also specific legislation developed for Commonwealth Government entities which prescribes the required processes and functions that affect the governance of these entities. This specific legislation includes [do these acts need to be in italics?] the Auditor-General Act 1997, the Public Service Act 1999 (PS Act), the Financial Management and Accountability Act 1997 (FMA Act), the

processes and practices government organisations should take to ensure their corporate governance arrangements meet the expectations of their key stakeholders and effectively discharge their accountabilities.

Two specific pieces of legislation have been enacted to outline the financial reporting requirements and financial accountabilities for Commonwealth government organisations. The first, the *Financial Management and Accountability Act 1997*, provides the “framework for the proper management of public money and public property by the Executive arm of the Commonwealth” (DOFA, 2006). The second, the *Commonwealth Authorities and Corporations Act 1997*, “regulates certain aspects of the corporate governance, financial management and reporting of Commonwealth authorities, which are in addition to the requirements of their enabling legislation; and the corporate governance and reporting of Commonwealth companies which are in addition to the requirements of the *Corporations Act 2001*” (DOFA, 2005).

This paper refers to the Australian National Audit Office’s Better Practice Guidelines, along with a number of other Australian and international documents and reports on corporate governance. For example, the Higgs Report⁴ 2003, based on the United Kingdom context, is considered to be of particular relevance as it was written specifically for the guidance of non-executive directors. This paper also refers to the Uhrig report 2003 and the ASX⁵ Corporate Governance Council Principles of Good Corporate Governance and Best Practice Recommendations. The paper then discusses the various sections of the *Commonwealth Authorities and Companies Act 1997*, the primary legislation for Commonwealth Statutory Authorities. Following this discussion the paper focuses on institutional theory, the theoretical lens used to analyse the empirical data. The empirical data comprises an analysis of the board composition of 19 Commonwealth Statutory

Commonwealth Authorities and Companies Act 1997 (CAC Act) and the Corporations Act 2001 (ANAO 2003a, p.10).

⁴ In April 2002 the UK Secretary of State and the Chancellor appointed Derek Higgs to lead a short independent review of the role and effectiveness of non-executive directors.

⁵ Australian Stock Exchange

Authorities according to certain key criteria. The paper concludes with a summary of this initial research and outlines possible future areas for research.

Commonwealth Authorities and Companies Act 1997 (CAC Act)

The *Commonwealth Authorities and Companies Act 1997* was developed to regulate the financial reporting and accountability of Commonwealth Statutory Authorities (referred to as CSAs for the remainder of this paper) and Commonwealth Companies (referred to as CCs for the remainder of this paper). CSAs are body corporates incorporated for a public purpose by an Act or by regulations under an Act (CAC Act, ss.7) that hold money on their own account and are separate legal entities to the Commonwealth. CCs are *Corporations Act 2001*⁶ companies in which the Commonwealth has a controlling interest (ss.34).

The creation of CSAs and CCs is based on various decisions made by government to operate government-controlled entities “outside a traditional departmental structure” (Uhrig, 2003 p. 16). To ensure these detached organisations operate effectively and in line with government expectations, the majority of CSAs have a governing body such as a council or board where the members are defined as directors (CAC Act, ss.5). These directors are selected and appointed by the responsible Minister and their role is rather more complex than the role of directors of private sector organisations. CSA directors are subject to the specific requirements for directors of private sector companies outlined in the *Corporations Act 2001*. For example, section 27E of the *CAC Act 1997* states:

If the directors of a Commonwealth authority delegate a power under its enabling legislation, a director is responsible for the

⁶ The Corporations Act 2001 is the principal legislation regulating companies in Australia. It regulates matters such as the formation and operation of companies, duties of officers, takeovers and fundraising (APLA, 2007)

exercise of the power by the delegate as if the power had been exercised by the directors themselves.

This is comparable to section 198D of the *Corporations Act 2001*:

The directors of a company may delegate any of their powers ... the exercise of the power by the delegate is as effective as if the directors had exercised it.

The directors of a CSA are required to prepare an annual report that is tabled in Parliament and forwarded to the responsible Minister (CAC Act 1997, ss.9). In addition, they are also required to prepare budget estimates for each financial year (ss.14). These budget estimates contain the proposed annual expenditure of the CSA required to achieve the Government-agreed organisational outcomes and are published in Portfolio Budget Statements. The Portfolio Budget Statements are referred, via the Government, to one of the Senate's legislation committees for examination and report. The legislation committees' scrutiny of the estimates provides an opportunity for the Senate to assess the performance of the public service and its administration of government policy and programs (Evans, 2004). The review of the budget estimates is one of the most important accountability functions of the Parliament. Therefore the directors must not fail to provide the responsible Minister with the budget estimates, in the format specified by the Department of Finance and Deregulation, and by the required deadline.

Consistent with the requirements for directors of private sector companies under the *Corporations Act 2001*, the directors of CSAs are legally required to ensure the financial statements of the organisation are audited by an appropriately qualified auditor. However the directors of a CSA do not have the authority to choose an auditor; rather:

... the directors of a Commonwealth authority must do whatever is necessary to ensure that all relevant subsidiary's financial statements are audited by the Auditor-General. (ss.12.1)

In support of this requirement the *CAC Act 1997* (ss.12.3) states that the Auditor-General must provide a copy of the audit report for the responsible Minister.

While directors of both private and public sector entities have fundamental differences, they do have similar duties as required by the

legislation governing corporations. The next section of the paper will use institutional theory to examine some of these similarities and explore some of the differences.

Institutional Pressures on Public Sector Governance

Along with the move to “new managerialism”, public sector organisations are now under increased pressures “to conform to external expectations about what forms or structures are acceptable (or legitimate)” (Hoque, 2005, p. 370). The introduction of a governing board of directors in CSAs to ‘improve’ their corporate governance is in response to external expectations [institutional pressures] to ensure that the public sector organisations can remain, or at least be seen to be, legitimate within Australian society.

The institutional pressures which result in organisations changing and adopting structures and processes may be explained by institutional theory which is defined as “a way of thinking about formal organisation structures and ... the social processes through which these structures develop” (Dillard *et al* 2004, p. 508). Institutional pressures – which often result in homogeneous organisational structures (DiMaggio and Powell, 1983, p. 147) such as the development and acceptance of governing boards as the preferred form of organisational governance control – illustrate the concept of isomorphism (DiMaggio and Powell, 1983, p. 148).

This paper will focus on institutional isomorphism, which is explained by three different mechanisms: coercive, mimetic and normative (DiMaggio and Powell, 1983; Scott, 1987; Pollitt, 2001; Dillard *et al.*, 2004).

Coercive isomorphism results from both formal and informal pressures exerted on organisations by other organisations upon which they are dependent (DiMaggio and Powell, 1983; Dillard *et al.*, 2004). In the Commonwealth public sector, the main organisations that apply coercive pressure are the three central agencies, the Departments of Finance and Deregulation, Treasury and Prime Minister and Cabinet. These central agencies direct many of the processes, practices and policies required to be implemented by other government organisations.

Mimetic isomorphism is a process that takes place when an organisation attempts to imitate a more successful organisation (DiMaggio and

Powell, 1983, p. 151; Dillard *et al.*, 2004, p. 509). This view is supported by Oliver (1991), who explains that it is expected organisations will conform to certain practices when the practices are validated externally by other organisations (p. 148). The move to new managerialism and the adoption of processes and practices associated with this new managerialism in the public sector could be considered the result of mimetic isomorphic processes.

Normative isomorphism focuses on processes of professionalisation. Professional staff undergo relatively uniform training, and then carry the ideas they learnt to the different organisations which employ them (Pollitt, p. 938). An example of normative isomorphism is where professionally qualified accountants may drive to adopt within their organisation new techniques which they learnt in their studies, such as activity based costing⁷ and balanced score card⁸.

Institutional theory also suggests that in organisations, in response to institutional pressures, there may be significant differences between their formal structure and their actual day-to-day work activities (Meyer and Rowan, 1977, p. 342). This deliberate act is defined as de-coupling however it is important to note that de-coupling is not a mechanism to hide dishonest practices but rather it is seen as an attempt to maintain some rough equilibrium between inconsistent norms (Brignall and Modell, 2000, p. 300).

Institutional theory offers a satisfying explanation of the move over the past decade to a “new managerialism” in the public sector (Jackson and Lapsley, 2003, p. 360). Based on a culture of performance (Hoque and Moll, 2001; Boxall, 1998) and an increased focus on accountability, efficiency and effectiveness, this new managerialism requires public sector organisations to be more responsive to the needs [real and perceived] of government (Hoque and Moll, 2001; Boxall, 1998). Global expectations of improved productivity and competitiveness in the public

⁷ A cost accounting system in which costs are assigned to products based on cost drivers for the various production activities required to produce a product or service (Hoggett, Edwards and Medlin 2006, p. 1107)

⁸ A measurement-based management system which aligns business activities with the vision and strategies of an organisation (Hoggett, Edwards and Medlin 2006, p. 1108).

sector (Boxall, 1998) have been institutionalised in Australian public sector practice. The following empirical data is reflective of the impact of institutional pressures that CSAs have been exposed to in the public sector's misguided path to legitimacy.

Empirical Tests

Sample Selection

There are 71 statutory authorities which are CSAs, according to the definition in the *CAC Act 1997*. Of these, 25 are defined as material entities, as they comprise 99% of revenues, expenses, assets and liabilities of all the CSAs (DOFA, 2007). From the 25 material CSAs, six were eliminated, leaving 19 for this review. The 19 remaining CSAs (refer to appendix 1) are part of 11 different Commonwealth government portfolios. The six CSAs eliminated from the study include the Australian Securities and Investments Commission, which was excluded because it operates under the *Financial Management and Accountability Act 1997*. The Australian Government Solicitor, Comcare, and the Civil Aviation Authority were excluded as they have a "single person at the apex of the body rather than a multi-member board" (DOFA, 2007). The Australian Industry Development Corporation and the Coal Mining Industry (Long Service Leave Funding) Corporation were also excluded as their operations and structure are significantly different from the other CSAs.

Results

Number of Directors

The 19 CSAs in the review had a total of 176 directors, with approximately 9 directors per CSA board. This was consistent with the findings of the Higgs (2003, p. 22) report, which stated that "the board should be of sufficient size that the balance of skills and experience is appropriate for the requirement of the business". One of the better practice recommendations of the Uhrig Report (2003) is that board size "should be developed taking into consideration factors such as an entity's size, complexity, risk of operations and the needs of the board". The ASX Corporate Governance Principle 2 recommends that the size of the board should be conducive to encouraging expedient and efficient decision making (ASX 2003, p. 22). The Uhrig and Higgs reports, as

well as the ASX principles, indicate that board size should be based on individual organisational needs rather than a prescribed definite size. Another important recommendation of these reports is that the majority of directors should be non-executive directors who are generally considered to be independent of the executive and “free from any business or other relationship which could materially interfere with the exercise of their independent judgement” (Higgs, 2003, p. 36).

In addition to the information about the number of directors, the 2005–06 Annual Reports for each of the 19 CSAs were used to collect the following information: mix of executive and non-executive directors; gender of directors; highest level of qualification of directors; average length of service of directors; remuneration of non-executive directors; and number of other directorships. This data is presented in the following section.

Mix of Executive and Non Executive Directors

Of the 176 directors, 15 are executives of the organisation and 161 (91%) are non-executive directors (NED). The non-executive director does not hold an executive or management position in the organisation and could therefore be considered to bring to the board a higher degree of independence. Non-executive directors typically participate in long-term decision making, contribute external business expertise, identify potential business opportunities, and monitor the actions of company executives (Pass, 2004, Long *et al.*, 2005; Higgs, 2003). However, of these 161 directors, 23 are also current senior public servants or members of parliament and are considered to be non-independent non-executive directors. That is, while these directors are not executives of the organisation, they have conflicting interests in relation to their position on the board in areas such as funding and the setting of the strategic direction of the organisation. For example, Senator George Brandis (member of the Government) and Martin Ferguson MP (member of the Opposition) are both on the board of the National Library and their presence would be to ensure the interests of Parliament are represented. However, as members of different political parties, they may need to be excluded from a number of board decisions, such as the implementation of government policy, where their roles as members of

specific political parties could result in a conflict of role⁹. There are currently two Departmental Secretaries¹⁰ holding directorships on the boards of organisations within their portfolios. These are Ms Lisa Paul, Secretary of the Department of Science, Education and Training, and Ms Helen Williams, Secretary of the Department of Communications, Information Technology and the Arts. Ms Paul is a director on the board of the Commonwealth Scientific and Industrial Research Organisation, which is a CSA within her portfolio. Ms Helen Williams sits on the boards of the National Library of Australia and the Australian Sports Commission; again, both of these come under the umbrella of her portfolio department. This high level of non-independent directors was criticised in the Uhrig (2003, p. 13) report because representational appointments have the potential to place the success of the entity at risk. Further, it has been suggested that having the portfolio secretary as a member of the board, regardless of whether or not he or she has voting rights, is “a further complication, particularly when financial matters are at stake” (Howard and Seth-Purdie, 2005, pp. 56–57). Both Ms Paul and Ms Williams assist in preparing and signing-off the Annual Reports and Budget Estimates of their CSAs and, as departmental secretaries, are required to consider and approve funding requests from these same statutory authorities.

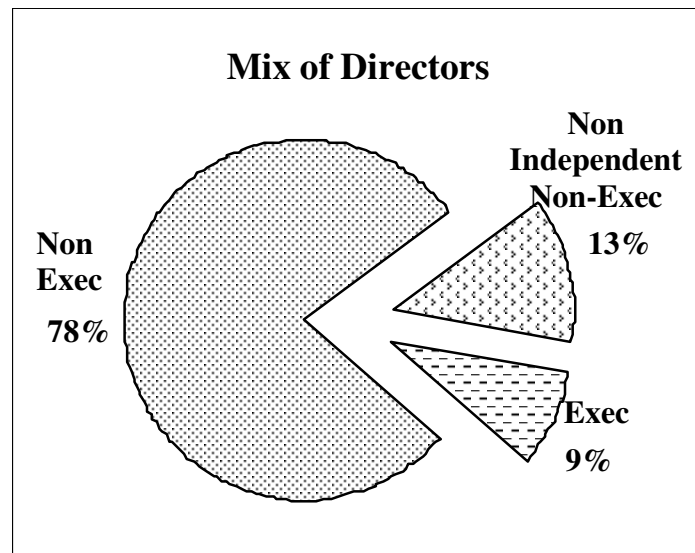
Howard and Seth-Purdie (2005, p. 62) describe this “independence paradox” as an interesting position where “a secretary would be simultaneously policy advisor to the minister, major client of the authority and authority board member”. They (Howard and Seth-Purdie, 2005, p. 61) further assert that new public sector non-executive directors who come from the private sector initially struggle to come to terms with the processes and practices of public sector organisations, as they lack the exposure to public sector norms. This situation contributes to the independence paradox, as the non-executive directors, in the course of

⁹ Conflicts of role arise when an officer is required to fulfil multiple roles that may be in conflict with each other to some degree. Unless properly handled, such conflicts can impair the quality of working relationships across government organisations and lead to a loss of credibility and effectiveness (ANAO 2003c).

¹⁰ The Secretary of a Department is responsible for managing [i.e. is head of] the Department and must advise the Agency Minister in matters relating to the Department (PSA Act 1999, ss. 57.1). That is, a Secretary is the equivalent of the CEO of a private sector organisation.

fulfilling their responsibilities, rely heavily on the information and guidance provided by the same executives from whom they are to said to be independent (Hooghiemstra and van Manen, 2004).

Figure 1



The results from figure 1 are consistent with the recommendations of the Higgs report that “at least half of the members of the board, excluding the chairman, should be independent non-executive directors” (2003, p. 35) and the ASX Corporate Governance Principles that “a majority of the board should be independent directors” (2003, p. 19).

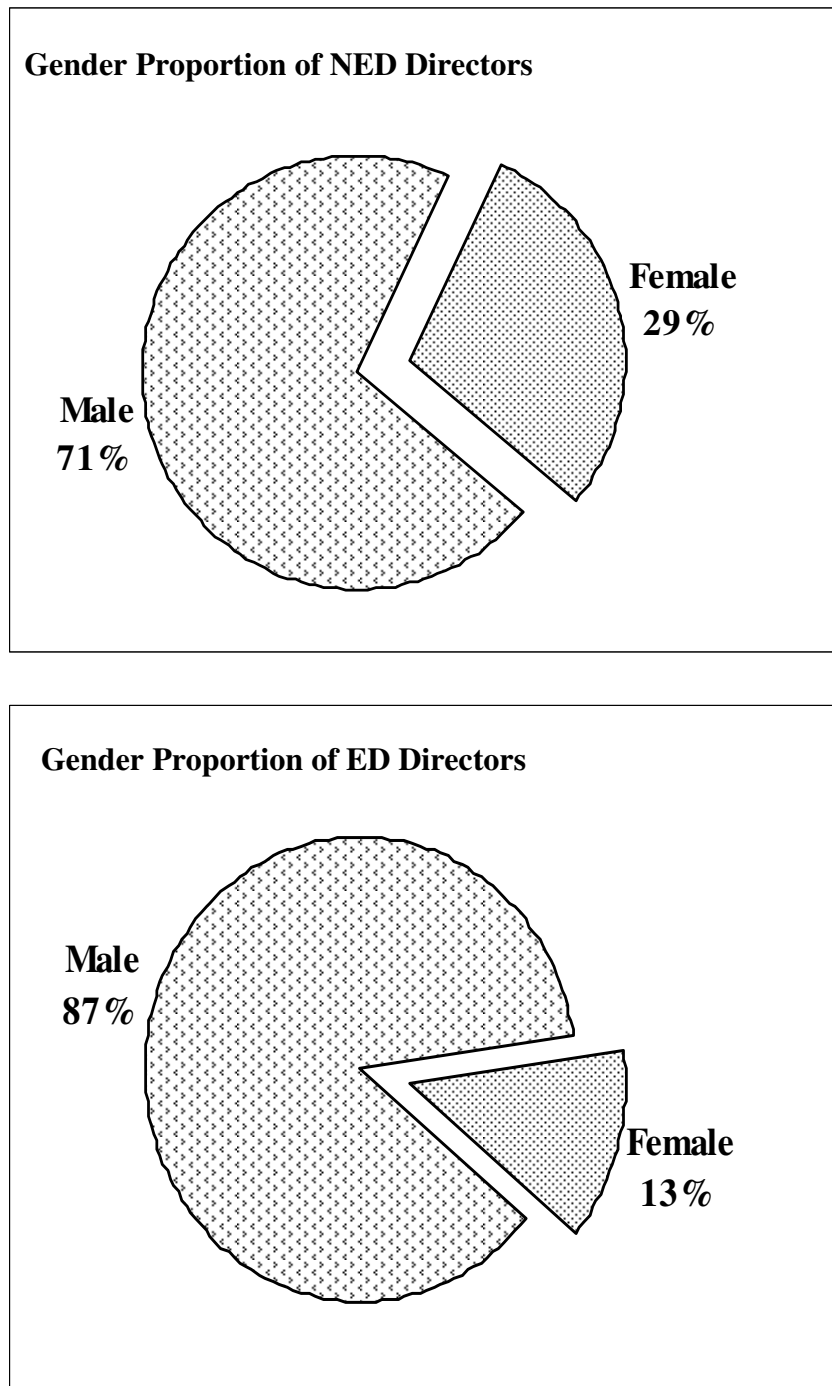
Gender of Directors

The proportion of female non-executive directors (29%) is significantly higher than comparable studies of non-executive directors in the private sector. Kang, Cheng and Gray’s 2007 study of the top 100 Australian companies in 2003 indicated that 10% of non-executive directors were female (p. 200), where Cortese and Bowrey’s 2007 study of the top 50 Australian listed companies in 2006 found 16% were female.

Even more significant than the larger proportion of female non-executive directors is the fact that all statutory authority boards in the study had one or more female non-executive directors. The Kang, Cheng and Gray study showed in 2003 that, of the top 100 Australian companies, 67% had a female director (p. 200) while the Cortese and Bowrey 2007

study indicated 83% of the top 50 Australian listed companies had one or more female board members.

Figure 2

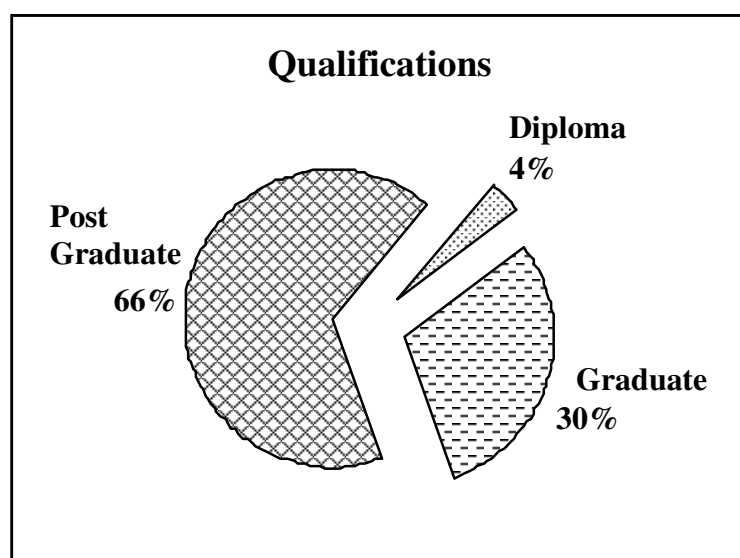


Along with gender, age is also a much measured characteristic of directors of boards. The Cortese and Bowrey (2007) and the Kang, Cheng and Gray (2007) studies both measure and discuss the age mix of directors; however, unlike the annual reports of private sector companies, the annual reports of CSAs do not disclose the ages of the directors. The ethnicity of directors is also not explicitly disclosed in the annual reports. This information would be useful in determining the level of representation of the various minority groups in society, which in turn would demonstrate the breadth of accountability to the Australian public.

Directors' Levels of Education

The level of education of 113 directors could be determined from the various CSAs' annual reports (64% of the sample). Figure 3 shows the highest level of formal qualifications these 113 directors have attained.

Figure 3



It is apparent from the data that most directors have some level of tertiary qualifications. Of the directors with post graduate qualifications, a significant proportion (25%) have been awarded PhDs, with the remainder holding Masters degrees and/or professional qualifications such as CPA Australia status. This result can be explained due to the normative isomorphic process where the selection of appropriate people to become non-executive directors is guided by their level of perceived

suitability, based on their qualifications and membership of particular organisations.

Length of Service

The length of service of non-executive directors has also been identified as a possible key indicator of board performance and the level of director independence. The ASX listing rules suggest that non-executive directors should serve on a board only for a period of time where it would not interfere with the director's ability to act in the best interests of the company (ASX, 2003, p. 20). This view is reflected in Uhrig's (2003, p. 53) report, which suggested a maximum board service period be set to allow for appropriate rotation of directors. Higgs (2003, p. 53) concluded that non-executive directors could appropriately serve two three-year terms with a company and suggested that it would be of questionable value for a non-executive director to serve a longer term as a non-executive director...

Figure 4

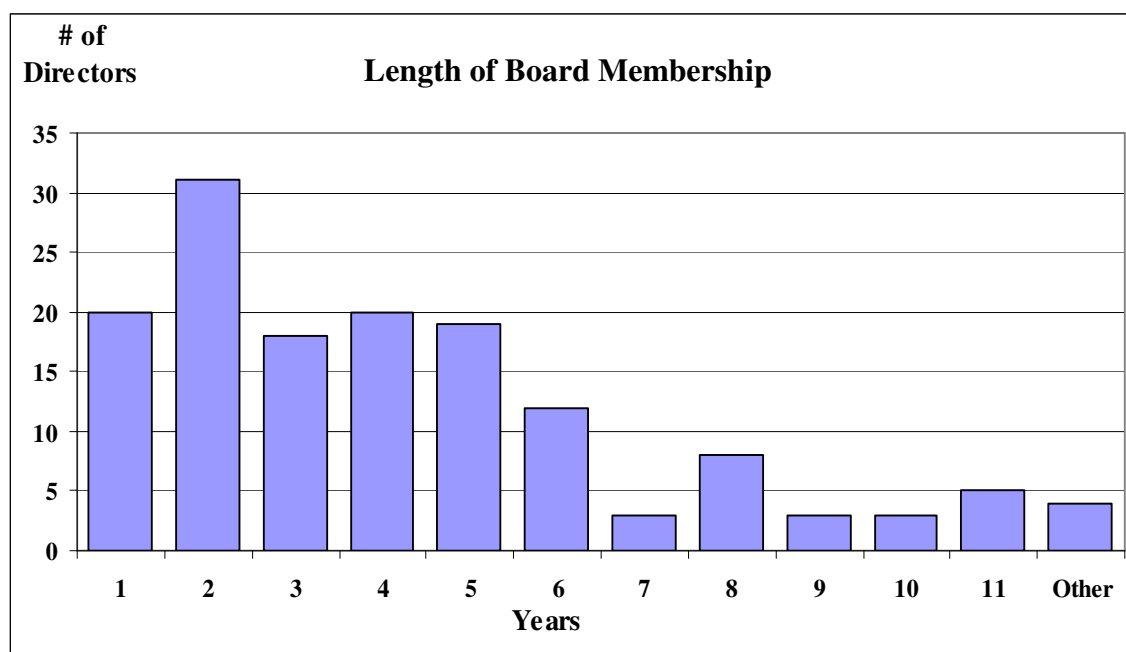


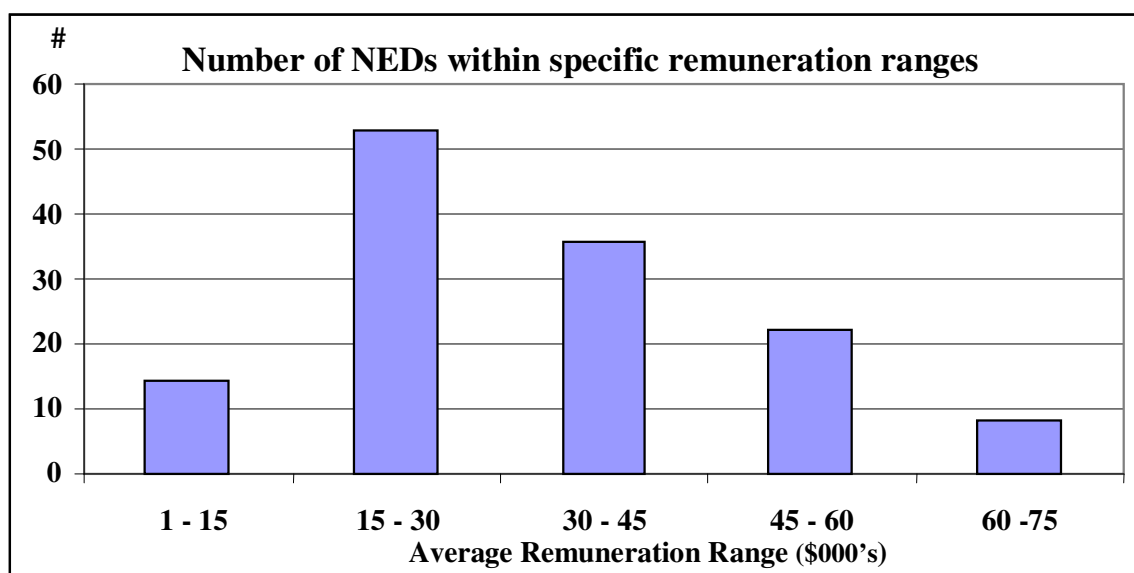
Figure 4 shows the average length of service of non-executive directors in the sample statutory authorities to be 4.5 years, which is similar to the

findings of the comparable study of ASX 50 corporations (Cortese and Bowrey, 2007). There is, however, some concern, as approximately 8% of the non-executive directors in the sample have served as non-executive directors on their respective boards for 10 or more years. This length of service could present problems, particularly in relation to the independence of non-executive directors, since “the substantial length of time served by some non-executive directors could reasonably be perceived to interfere with the independence of these board members” (ASX, 2003, p. 20).

Director Remuneration

The most obvious difference between non-executive directors of CSAs and of private sector companies is the level of remuneration for non-executive directors. Cortese and Bowrey (2007) found that the majority of the ASX 50 companies provided their non-executive directors with average remuneration in excess of \$140,000. Figure 5 shows that the majority (68%) of non-executive directors in the sample received remuneration between \$15,000 and \$45,000 per year, with the average level of remuneration being \$32,000.

Figure 5



Excluded from the above figure is the average level of remuneration for the non-executive directors of the Reserve Bank of Australia board. This is because the Reserve Bank of Australia's 2005–06 Annual Report discloses in the financial notes (Note 12, p. 85) only the consolidated remuneration of key management personnel, which includes the Governor and Deputy Governor, eight non-executive Reserve Bank of Australia's Board members, five non-executive Payments System Board members and five senior staff. Even though the Reserve Bank of Australia is a statutory authority operating under the *CAC Act 1997*, it was not possible to identify separately the remuneration of its board members. This lack of clear disclosure of director remuneration of the Reserve Bank of Australia is not in accordance with ASX Corporate Governance Principle 9 (ASX, 2003), which requires the disclosure of non-executive directors' remuneration to be clear and adequately distinguished from the remuneration structure applied to company executives.

Also not included in Figure 5 is the remuneration of the non-executive directors who are also senior public servants and members of parliament, as they do not receive any remuneration for their directorships on statutory authorities boards. This is generally made clear in the Notes to the Financial Statements. For example, the National Library of Australia 2005–06 Annual Report Note 13 (p. 115) states "Parliamentary members of Council do not receive any remuneration from the Library for their service on Council".

The average remuneration of non-executive directors who had been a director for one year was \$29,000, while those who had been a director for six or more years was \$31,000, indicating no correlation between non-executive director remuneration and the length of time they serve on the boards of material CSAs.

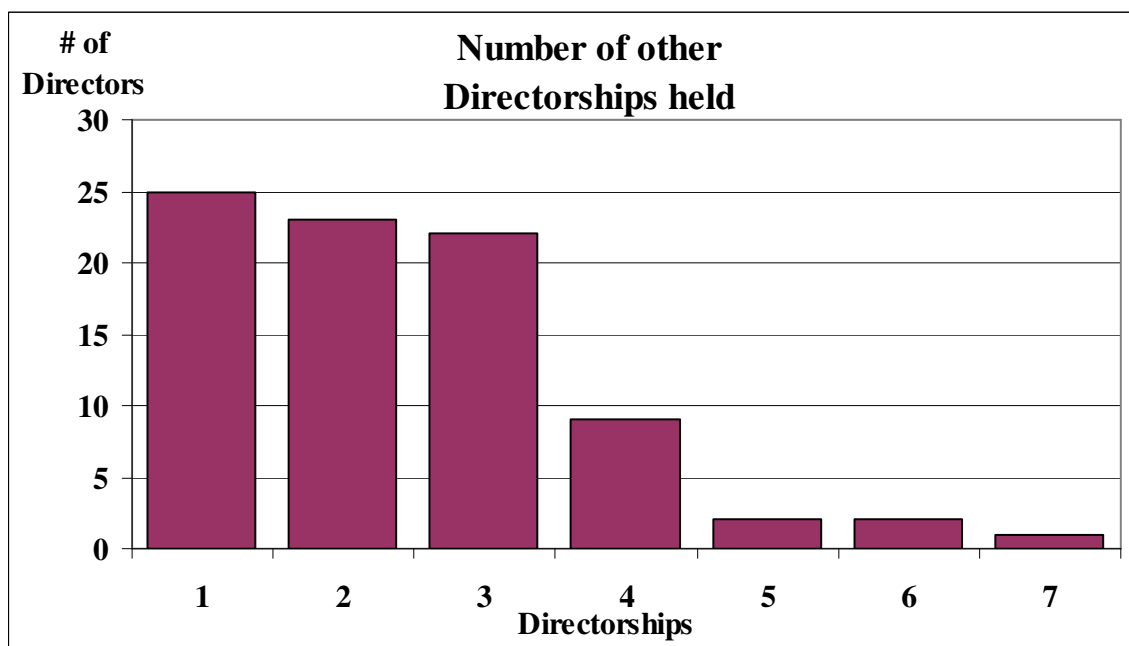
Number of Directorships

The data collected in Figure 6 shows that 84 directors of statutory authorities (48% of the sample) held at least one other directorship, with 70 (43%) of non-executive directors holding more than one directorship.

However, of all the directors in the sample, only five held at least one other directorship with another material statutory authority. Two of these were non-independent non-executive directors: Mr Mark Paterson, Secretary of the Department of Industry, Tourism and Resources (DITR)

and Ms Helen Williams, Secretary of the Department of Communications, Information Technology and the Arts (DCITA). This relatively high percentage (43%) of non-executive directors holding at least one directorship in both the private and the public sectors tends to indicate that the non-executive directors of CSAs are able to contribute a significant amount of private sector corporate experience to the boards of CSAs. This is a clear example of both how institutional pressures to have access to the CSAs and how mimetic and normative isomorphic processes are in a position to be internally exerted. It could also be considered that this level of 'private sector' experienced non-executive directors will contribute to legitimising the existence, role and responsibilities of CSA's governing board of directors.

Figure 6



Discussion

The boards of directors of CSAs are unique in a number of ways when compared to the boards of private sector organisations. On the surface they appear similar, for example their size and composition, but beneath the surface are a range of different characteristics and requirements. The initial surface similarities could be explained by institutional theory

as the result of coercive isomorphic processes, with the *CAC Act 1997* specifying certain governance requirements of CSAs. In the private sector there is a definite drive to increase the proportion of non-executive directors to improve the level of, or at least the appearance of, independence of the board from the management of the organisation¹¹. However, independence does not appear to be a characteristic either required or encouraged of directors in statutory authorities.

The findings from this study indicate that the proportion of non-executive directors on the governing boards of directors in CSAs is comparable to if not higher than public corporation boards, and therefore these public sector organisations could actually be perceived as being more compliant with the ASX's Principles of Good Corporate Governance. However in reality the responsible Minister selects and appoints (or recommends for appointment) governing board members, which negates the independence of these public sector governing board directors. The high level of institutional pressure from the responsible Minister supports the notion that the public sector has adopted this governance structure from the private sector, not to improve corporate governance, but to legitimise the organisations in the sector.

This institutional pressure from the Minister also results in the de-coupling of the governance structure, as the board appears to be relatively highly independent, due to the presence of a high proportion of non-executive directors [who are usually considered independent]. However, because they are appointed by those who are not independent of the CSA, the reality of their existence is different from the appearance they present. So why the need for de-coupling? The answer seems to be the wholesale adoption of new managerialism philosophy in the public sector. The myth that private sector practices, for example the ASX's Good Corporate Governance and Best Practice Recommendations, are required if the public sector is to operate efficiently and effectively. The inclusion of governing boards of directors in the corporate governance structures of public sector organisations appears to be in line with Boxall's explanation that the main objectives of new managerialism are the encouragement of a culture of [board and

¹¹ Principle 2 of the ASX's 2003 Corporate Governance Council Principles of Good Corporate Governance and Best Practice Recommendations outlines the suggested structure of the board of directors such as composition, size and commitment to adequately discharge its responsibilities and duties (ASX, 2003).

organisational] performance (1998, p. 18) and the perceived need of the public sector to improve its accountability (Guthrie, 1998, p. 2; Barton, 2005, p. 138). Yet the de-coupling of the governing board of directors with the authority and power of the responsible Minister seems to imply that government itself does not trust the operation and function of the governing board of directors which it has adopted from the private sector.

Besides having executive and non-executive directors, some boards of CSAs also include non-independent non-executive directors who are literally representational directors. These directors are either senior public servants or members of parliament. Their role is to represent the government or parliament and to protect the interests of these bodies, rather than to participate independently in the governance of the CSA. Their presence may be explained as a function of the coercive isomorphic process.

In addition to appointing board members, the responsible Minister can also direct the board to comply with general government policies (ss.28 of the *CAC Act 1997*) as well as determine the overall strategy of the CSA (Uhrig, 2003, p. 35). This creates a situation where there is very little real independence and autonomy of the board. Uhrig (2003, p. 23) commented that the power to act is essential to a board's ability to govern effectively. However, due to the powers of the responsible Minister, it appears that the boards of CSAs are not able to govern effectively as they do not have the power to act with autonomy.

There is no doubt corporate governance structures are critical in the public sector; however, as the environment is so different to the private sector, the need for and value of similar governance arrangements is questionable. Why adopt private sector governance practices when some of the most spectacular corporate collapses have occurred recently in spite of their governance structures? It could be argued that the presence of implementing similar governance arrangements is based on the misconception that the private sector is more efficient and effective, rather than on improving public sector governance. The Uhrig Report (2003) suggested that CSAs focused on regulating or service delivery objectives would be better served having a Chief Executive Officer reporting directly to the Minister rather than a board. Bartos (2005) reflected that, should the Uhrig model be accepted, many statutory authorities including Commonwealth Scientific Industrial Research Organisation, Australian Broadcasting Corporation, Special

Broadcasting Services Corporation, National Gallery, National Library, National Museum and Australian War Memorial (p. 97) would no longer have a board. However, at present these statutory authorities still have governing boards. The continuing presence of governing boards in these public sector organisations can be considered to be the result of the impact of various institutional pressures which have been placed on the CSAs, with the goal of contributing to the legitimacy of the board for both the government and Australian public.

Conclusion

It can be argued that the adoption of private sector practices by the public sector can be seen, not as an attempt to improve efficiency, effectiveness and performance, which are the objectives of the new managerialism in the public sector, but rather as a need for public sector organisations to legitimise themselves within society (Hoque, 2005, p. 370). The strong belief that private sector organisational practices and structures are superior to public sector practices and structures has led to various institutional pressures being exerted, both internal and externally, on public sector organisations, with a mix of results. One such institutional pressure is the belief that good corporate governance is based on the presence of a governing board consisting of a particular mix of directors.

This study has shown that the majority of CSAs have a governing board consisting of both executive and non-executive directors, which is consistent with private sector organisations. Indeed, based on the data above, the boards of CSAs appear to be more in line with the recommendations from bodies such as the Australian Stock Exchange than private sector organisations are. However, while it appears the presence of CSA governing boards should improve the corporate governance of the organisations, and in turn increase their legitimacy in this era of new managerialism, the structures behind the boards and the legislated roles of the directors contradict some of these aspects, such as independence. The increased legitimacy of these CSAs, associated with the presence of governing boards, can be considered as a part of the de-coupling mechanism that persists throughout the public sector. That is, while these CSAs have governing boards that undertake many of the roles of private sector boards, the real power to set the strategic,

financial and operational directions of the CSRs is not in the hands of the directors but in the hands of the responsible ministers.

This study has drawn data from the boards of “material” CSAs. Further research could extend this study to include the board compositions of non-material statutory authorities. This would be particularly interesting, as materiality is defined according to the value of assets and liabilities and not to the social value of the services provided. As these organisations operate in the same environment as the material CSAs, it would be interesting to examine whether the financial situation of organisations influences the composition of their governing boards or whether there are other influencing factors at play.

A future research project could perform an analysis of the changing board structures of the material CSAs since the enactment of the *CAC Act 1997*. Such a research project would provide an interesting account of the impact of this Act in line with the public sector’s move to new managerialism and the corresponding increased focus on public sector organisation performance.

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Appendix 1**Statutory Authorities Included in the Analysis**

Statutory Authority	Portfolio
Grains Research and Development Corporation	Agriculture, Fisheries and Forestry
Australian Broadcasting Corporation (ABC)	Communications, Information Technology and the Arts
Australian Postal Corporation	Communications, Information Technology and the Arts
Australian Sports Commission	Communications, Information Technology and the Arts
National Gallery of Australia	Communications, Information Technology and the Arts
National Library of Australia	Communications, Information Technology and the Arts
National Museum of Australia	Communications, Information Technology and the Arts
Special Broadcasting Service Corporation (SBS)	Communications, Information Technology and the Arts
Defence Housing Australia (DHA)	Defence
Australian Nuclear Science and Technology Organisation (ANSTO)	Education, Science and Training
Commonwealth Scientific and Industrial Research Organisation (CSIRO)	Education, Science and Training
Indigenous Business Australia	Employment and Workplace Relations

Statutory Authority

Export Finance and Insurance Corporation

Australian Hearing Services

Tourism Australia

Australian Reinsurance Pool Corporation

Reserve Bank of Australia

Australian War Memorial

Airservices Australia

Portfolio

Foreign Affairs and Trade

Human Services

Industry, Tourism and
Resources

Treasury

Treasury

Veteran's Affairs

Transport and Regional Services

Appendix 2

The Uhrig Report 2003 –

Summary of Better Practice Guidance for Boards

1. Board size should be developed taking into consideration factors such as an entity's size, complexity, risk of operations and the needs of the board.
2. Committees are a useful mechanism for the board to enhance its effectiveness through further detailed oversight and supervision of the management of risks that are critical to the success of the entity. Committees should be used only for this purpose.
3. In getting the best from boards, appropriately experienced directors are critical to good governance.
4. Representational appointments to boards have the potential to place the success of the entity at risk.
5. Responsible Ministers should issue appointment letters detailing government expectations of directors.
6. Maximum board service periods allow for a structured rotation of directors.
7. All boards should have orientation programs and directors should have the opportunity for ongoing professional development.
8. Annual assessments of the board need to occur to ensure government gets the best from the board.