



# PUBLIC SECTOR GOVERNANCE Volume I



Better Practice Guide

Framework,  
Processes and  
Practices

JULY 2003



# Public Sector Governance Volume 1

## Better Practice Guide

Framework, Processes  
and Practices

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# Auditor-General's Foreword

Corporate governance has received extensive attention in recent times, with much interest presently focused on regulatory and other responses to improving corporate governance in the private sector. The public sector has often been considered to lead the private sector in the adequacy and conduct of its governance. However, Australian National Audit Office (ANAO) audits have continued to clearly show that considerable scope still exists for Commonwealth organisations to improve many aspects of their governance.

The ANAO has produced this guide, therefore, to assist public sector organisations to improve their governance framework, processes and practices. Good public sector governance is important to provide adequate accountability to its many stakeholders, including taxpayers, and to encourage performance improvement while satisfying control and compliance requirements.

The intention of the guide is to provide governance options for public sector organisations to consider. It is not a prescriptive guide, and has no legislative status. Governance arrangements must be tailored to individual agency circumstances, based on a risk management approach that considers potential benefits and costs associated with activities that contribute to meeting specified objectives.

This guide updates two previous ANAO guides published in 1997 and 1999.<sup>1</sup> It provides guidance relevant to all public sector organisations—covering those subject to the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997*.

Guidance Papers in Volume 2 of the guide may be updated in the future as other governance issues gain prominence and would benefit from ANAO guidance, and as governance arrangements change. On the latter point, this guide has been released at a time of considerable 'action', and has taken into account recent corporate governance releases, such as the Australian Stock Exchange *Principles of good corporate governance and best practice recommendations* and the suite of Australian standards on corporate governance from Standards Australia International. However, the forthcoming release of the Uhrig Committee *Review of corporate governance of Statutory Authorities and Office Holders* and the Commonwealth Government's *Corporate Law and Economic Reform Program* (CLERP 9) draft legislation are likely to generate further developments in corporate governance, that may require the ANAO to update and extend its governance Guidance Papers.

The ANAO appreciates the assistance provided by individuals and agencies in preparing the guide. In particular, I would like to thank the National Institute for Governance at the University of Canberra, and Blake Dawson Waldron Lawyers who provided invaluable inputs to this guide.



P J Barrett  
Auditor-General

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<sup>1</sup> ANAO, *Applying principles and practice of corporate governance in budget funded agencies*, Discussion Paper, July 1997; and ANAO, *Corporate governance in Commonwealth authorities and companies*, Discussion Paper, May 1999.



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# The focus of this guide

## What the guide is about

The purpose of this guide is to assist Commonwealth organisations to achieve better public sector governance by discussing the overarching public sector governance<sup>2</sup> framework and proposing processes and practices to address commonly encountered governance problems.

While the guide focuses on Commonwealth organisations, many of the governance issues it examines affect public sector entities outside the Commonwealth sector. It should, therefore, also assist such entities, especially those in Australia's state and local government sectors.

The issues canvassed in the guide are as follows:

- what are the principles and objectives of public sector governance?
- what is the Commonwealth's legal and policy framework?
- what structures and processes best support good public sector governance?
- what are the behaviours, values and standards—both organisational and individual—that support good public sector governance?
- what are the main issues in public sector governance and what guidance is available?
- where can further information, guidance and updates be obtained?

Given the breadth and complexity of the subject, this guide cannot be exhaustive. However, it does cover a wide range of issues that affect every organisation in the Commonwealth. It therefore highlights the major issues of public sector governance. Many of these were identified in a series of interviews conducted in 2002 with senior managers and board members in a selection of Commonwealth organisations.

*This guide aims to assist personnel at all levels to implement better public sector governance.*

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<sup>2</sup> The term 'public sector governance' is explained on page 4. For the sake of brevity, the word 'governance' is used to refer to public sector governance, except where otherwise indicated.



## Who will benefit from using the guide?

The guide is aimed at the following groups:

- **chief executives and board members** to ensure the organisation establishes an effective governance framework, processes and practices;
- **corporate governance practitioners** to provide detailed and practical guidance in implementing better practice; and
- **other management and staff** to ensure they understand their legislative and other responsibilities in discharging their duties.

### Benefits from using the guide

- Greater understanding of governance framework and related better practices
- Increased capacity to manage specific governance issues
- Knowledge of ANAO audit expectations about public sector governance

## Structure of the guide

The guide is published in two separate volumes.

- **Volume 1: Better Practice Public Sector Governance: Framework, Processes and Practices.** This volume outlines the context and overarching framework for public sector governance and then discusses processes and practices (including behaviours) that can provide good governance across the wide range of public sector organisations.
- **Volume 2: Governance Guidance Papers.** Summarises specific, separate modules of guidance on current governance issues in the Commonwealth, frequently cited as being of concern to senior Australian Public Service (APS) managers and board members interviewed during research for this guide. These will be updated from time to time as warranted by developments in public sector governance and as better approaches are developed.

The guide has been structured to allow the reader, and especially governance practitioners in the APS, to quickly access different types of guidance on public sector governance.

## Using Volume 1 of the guide

This volume can be read as a stand-alone outline of the key requirements for better practice governance in the public sector. However, it also cross-references the Guidance Papers in Volume 2, which provide more specific guidance on selected issues. As indicated above, additional Guidance Papers may be published in the future, as other governance issues gain prominence.

*This volume of the guide is divided into five parts:*

**Part 1: Overview of Public Sector Governance** introduces the topic, placing it in the current context of public sector management in the Commonwealth and defining the term 'public sector governance'. The objectives and principles of public sector governance are also discussed.

**Part 2: Legal and Policy Framework** outlines the key elements of the Commonwealth's legal and policy arrangements relating to the governance of its various organisations.

**Part 3: Framework, Processes and Practices for Good Public Sector Governance** canvasses the key governance issues to be addressed by Commonwealth organisations, including: leadership, ethics and culture; stakeholder relationships; risk management; external conformance and accountability; internal conformance and accountability; planning and performance monitoring; information and decision support; and review and evaluation of governance arrangements.

**Part 4: Overview of Guidance Papers** lists specific, separate modules of guidance on current governance issues in the Commonwealth that are currently contained in Volume 2 of the guide.

**Part 5: Further Information** provides information on further sources of information and guidance, including key publications.



# Part 1:

## Overview of public sector governance

### Context

In recent years there has been growing worldwide interest in, and concern about, corporate governance in both the private and the public sectors. Shortcomings in corporate governance have been exposed in major company failures in Australia and internationally. In response, there have been a number of recent reviews, programs and better practice guidelines aimed at improving corporate governance in Australia.<sup>3</sup>

Since early 1997 there have been:

- major changes in the legal and regulatory framework for the governance and management of Commonwealth organisations—including the passage of several major pieces of relevant legislation (discussed in Part 2 of this volume);
- significant developments in the Commonwealth's management and financial arrangements—especially the introduction of an accrual-based outcomes and outputs resource management framework in 1999; and
- widespread developments in general managerial practice—such as the application of systematic approaches to risk management and significant outsourcing or privatisation of program delivery and support functions.

This guide is, therefore, being published at a time when there has already been considerable change in the public sector. It is highly likely that further changes affecting governance arrangements and practices in the Commonwealth will continue to be implemented. Accordingly, it is important that organisations seek current information on these matters, as they affect individual organisations and as they apply across groups of organisations.

*Changes in public sector management have significantly influenced public sector governance in recent years.*

<sup>3</sup> For example: ASX Corporate Governance Council, *Principles of good corporate governance and best practice recommendations*, March 2003. The Uhrig Committee will shortly release its report, *Review of corporate governance of statutory authorities and office holders*. The Corporate Law and Economic Reform Program (CLERP 9) reforms to the *Corporations Act 2001* are likely to be debated in the Spring Session of Parliament, 2003.

## Definitions

While there are many definitions of corporate governance, the definition provided in the previous ANAO Discussion Paper remains valid.<sup>4</sup> This definition has been adopted by the Department of the Prime Minister and Cabinet in its *Requirements for Annual Reports*.

Broadly speaking, '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.

The term 'public sector governance' has been chosen to focus this guide on the governance arrangements for public sector organisations at the Commonwealth level in Australia, as outlined in the definition below.

Public sector governance has a very broad coverage, including how an organisation is managed, its corporate and other structures, its culture, its policies and strategies and the way it deals with its various stakeholders. The concept encompasses the manner in which public sector organisations acquit their responsibilities of stewardship by being open, accountable and prudent in decision-making, in providing policy advice, and in managing and delivering programs.

## Objectives of public sector governance

Public sector governance aims to ensure that an organisation achieves its overall outcomes in such a way as to enhance confidence in the organisation, its decisions and its actions. Good governance therefore means that the organisation's leadership, its staff, the Government, the Parliament and the population can rely on the organisation to do its work well and with full probity and accountability.

Good governance generally focuses on two main requirements of organisations:

- **performance**, whereby the organisation uses its governance arrangements to contribute to its overall performance and the delivery of its goods, services or programs; and
- **conformance**, whereby the organisation uses its governance arrangements to ensure it meets the requirements of the law, regulations, published standards and community expectations of probity, accountability and openness.

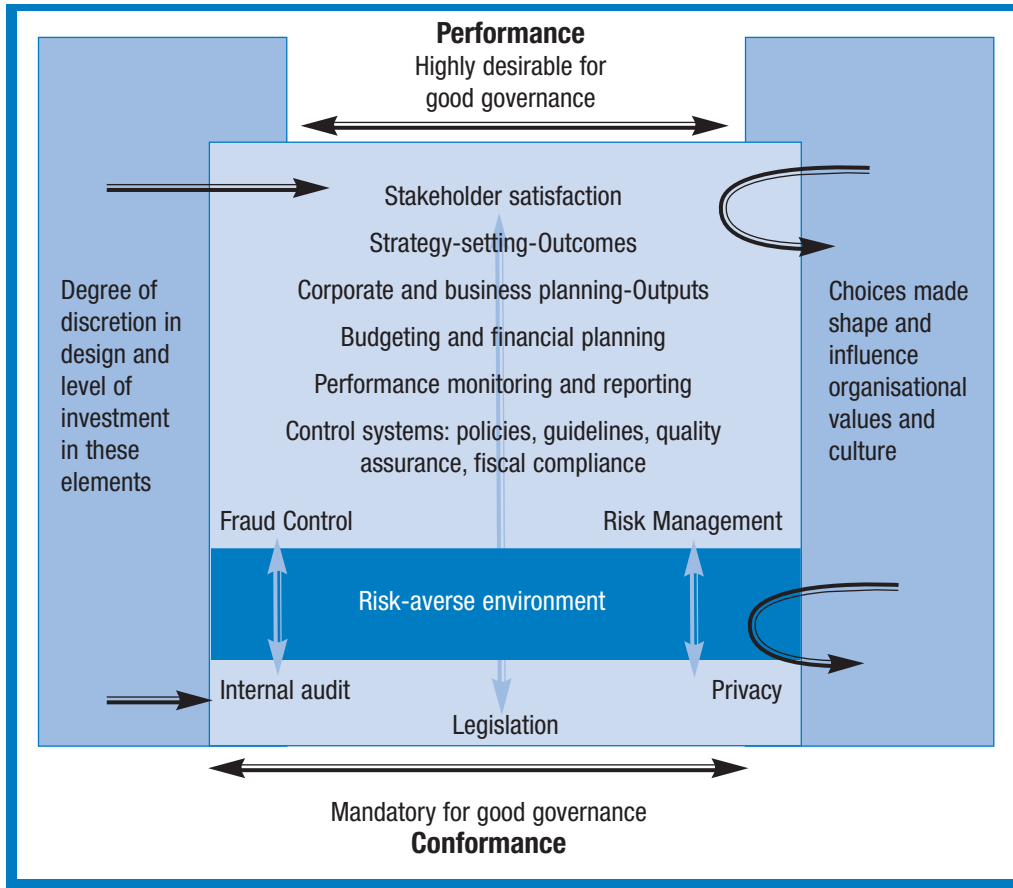
Risk management should underpin the organisation's approaches to achieving both performance and conformance objectives. An integrated risk management system develops the control environment, which provides reasonable assurance that the organisation will achieve its objectives with an acceptable degree of residual risk.<sup>5</sup> Figure 1 illustrates elements of governance that contribute to conformance and performance.

*Good governance considers both performance and conformance, treating each within a risk management framework rather than trading one off against the other.*

<sup>4</sup> ANAO, 1999, Op. cit.

<sup>5</sup> For a discussion of these issues, see Dahms, T, 'Systems and commitment in corporate governance', in *Keeping Good Companies*, October 2002.

Figure 1: Governance treatments for performance and conformance



Source: Based on a diagram provided by the Department of Health and Ageing, 2003.

Ian Dunlop, a former CEO of the Australian Institute of Company Directors (AICD) has observed that the compliance or conformance responsibilities that have dominated boards' thinking remain critically important and must be discharged to impeccable standards, but in essence they are 'hygiene' issues. The real added value for boards, or equivalently chief executives of FMA agencies, is at the strategy level. This requires them to be forward looking, proactive, innovative, and not risk-averse.<sup>6</sup>

### Principles of public sector governance

Most Commonwealth organisations apply many of the structures and processes associated with good governance (such as those described in Part 3). However, better practice requires that these structures be supported by the application of core governance principles<sup>7</sup>, as outlined in Box 1.

<sup>6</sup> Dunlop, I., 'The board of the future – governance for a new era'. Address to the Australian Institute of Company Directors, Perth, 7 September 2000.

<sup>7</sup> Such as those articulated in the International Federation of Accountants, *Governance in the public sector: a governing body perspective*, August 2001, which forms the basis for Box 1.

## Box 1:

**Principles of Public Sector Governance**

**Accountability** is the process whereby public sector organisations, and the individuals within them, are responsible for their decisions and actions ... and submit themselves to appropriate external scrutiny. It is achieved by all parties having a clear understanding of those responsibilities, and having clearly defined roles through a robust structure. In effect, accountability is the obligation to answer for a responsibility conferred. This responsibility extends across a range of concerns, including probity and ethics as well as the effective and efficient implementation of programs and encompasses a range of processes.<sup>8</sup>

**Transparency/Openness** is required to ensure that stakeholders can have confidence in the decision-making processes and actions of public sector organisations, in the management of their activities, and in the individuals within them. Being open, through meaningful consultation with stakeholders and communication of full, accurate and clear information, leads to effective and timely action and stands up to necessary scrutiny.

**Integrity** comprises both straightforward dealing and completeness. It is based upon honesty and objectivity, and high standards of propriety and probity in the stewardship of public funds and resources, and management of an entity's affairs. It is dependent on the effectiveness of the control framework, influenced by relevant legislation (such as the APS Values and Code of Conduct) and ultimately determined by the personal standards and professionalism of the individuals within the entity. It is reflected both in the entity's decision-making procedures and in the quality of its financial and performance reporting.

**Stewardship.** Public officials exercise their powers on behalf of the nation. The resources they use are held in trust and are not privately owned. Officials are therefore stewards of those powers and resources. It is important to govern public sector organisations so that their capacity to serve Government and the public interest is maintained or improved over time. This includes financial sustainability and the efficient and effective management of resources, as well as less tangible factors, such as maintaining the trust placed in the organisation and/or the Government as a whole.

**Leadership** sets the 'tone at the top', and is absolutely critical to achieving an organisation-wide commitment to good governance.

To these could be added **efficiency**, that is the best use of resources to further the aims of the organisation with a commitment to evidence-based strategies for improvement. Efficiency thus requires objectivity and the application of the merit principle. For example, in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.<sup>9</sup>

<sup>8</sup> Mulgan, Richard, 'The processes of public accountability', in *Australian Journal of Public Administration*, 56(1), pp. 25–36, 1997.

<sup>9</sup> Nolan Committee (UK), *First report of the Committee on Standards in Public Life*, 1995.

## Part 2:

# Legal and policy framework

### Introduction

This part provides an overview of the current legal framework and policy settings for governance in Commonwealth organisations. Specific guidance on matters such as the impact of legislation on APS staff and handling conflicts of interest is provided in the relevant Guidance Papers (in Volume 2 of this guide).

### Legal and regulatory framework

This section provides an overview of the governance aspects of the main pieces of Commonwealth legislation. It is not an exhaustive review of the legislation.

Given that the legal framework is subject to change, organisations should ensure that their understanding and application of it is fully up to date. This includes maintaining regular communication with the departments and agencies responsible for developing the legislation. Many Commonwealth organisations also have specific legislation that regulates aspects of their governance (for example, the appointment of directors). This organisation-specific legislation should also be regularly consulted.

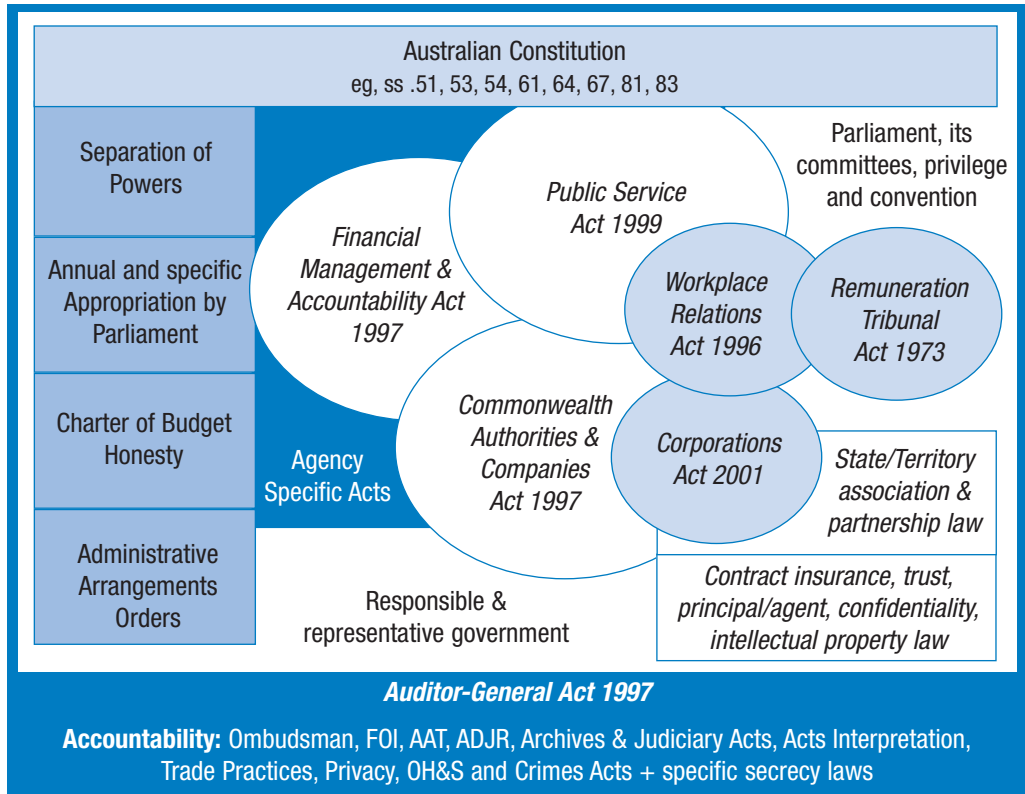
Where there are any doubts about the legislation or regulations (for example, apparent inconsistencies between agency-specific legislation and general legislation such as the *Commonwealth Authorities and Corporations Act 1997* (CAC Act), professional legal advice should be sought.

The major pieces of legislation and other aspects of the legal framework affecting public sector governance in the Commonwealth are shown in Figure 2.

*There are many, inter-related and sometimes partly conflicting legal elements that affect public sector governance, requiring care by agencies to ensure they comply.*



Figure 2: Legal elements affecting governance in the Commonwealth



Source: Department of Finance and Administration.

Altogether, this suite of legislation and accountability arrangements constitutes a complex and interconnected framework that regulates the management, governance and scrutiny of all Commonwealth Government organisations.

The major related legislation—the *Auditor-General Act 1997*, the *Public Service Act 1999* (PS Act), the *Financial Management and Accountability Act 1997* (FMA Act), the CAC Act and the *Corporations Act 2001* — is outlined in Appendix 1.

Other laws that may affect specific aspects of governance in the Commonwealth include the *Remuneration Tribunal Act 1973* (concerning remuneration of office holders, including board members), the *Trade Practices Act 1974* (which applies to the Commonwealth insofar as it may be carrying on a business), various parts of the administrative law regime (including freedom of information and administrative appeals) and the *Privacy Act 1988*. The *Archives Act 1983* also affects governance matters through the obligations it places on Commonwealth organisations to meet specific standards of record-keeping and data management. The *Workplace Relations Act 1996* takes precedence where it covers issues in common with the PS Act.

Running across the system is the *Auditor-General Act 1997*, which subjects all Commonwealth organisations to audit scrutiny by the Auditor-General, who is an independent officer of the Parliament.

All laws and actions of the Commonwealth must be in accord with the relevant provisions of the Constitution.

## Policies

Other than for Government Business Enterprises (GBEs),<sup>10</sup> there is no express policy statement relating to governance arrangements in Commonwealth organisations. For the most part, such policy is revealed through legislation, regulations and actions rather than through comprehensive policy and operational statements.

The package of legislative reforms outlined above was designed and implemented against the background of a set of particular reform objectives concerned, among other things, with:

- sharpening accountabilities for chief executives (in the case of organisations subject to the PS and FMA Acts) and boards (in the case of bodies under the CAC Act);
- devolving responsibility to individual agency heads or boards of directors;
- highlighting standards of ethical behaviour and probity (particularly in relation to the PS Act); and
- aligning, as far as possible, financial and accountability arrangements for GBEs with those pertaining to the private sector.

*Corporate governance policies are largely dictated by broad public sector legislation but must be tailored to each organisation.*

At the same time, the shift to an outcomes and outputs accrual-based management and reporting regime in 1999 has focused attention on organisational performance and delivery of cost effective outputs to meet specified outcomes. Under this broad umbrella of reform, there has also been a growing emphasis on: risk management; stakeholder engagement; outsourced program delivery; knowledge management; corporate and information technology support; and the need for effective coordination of Whole-of-Government and inter-agency issues.<sup>11</sup>

## Main governance structures in the Commonwealth public sector

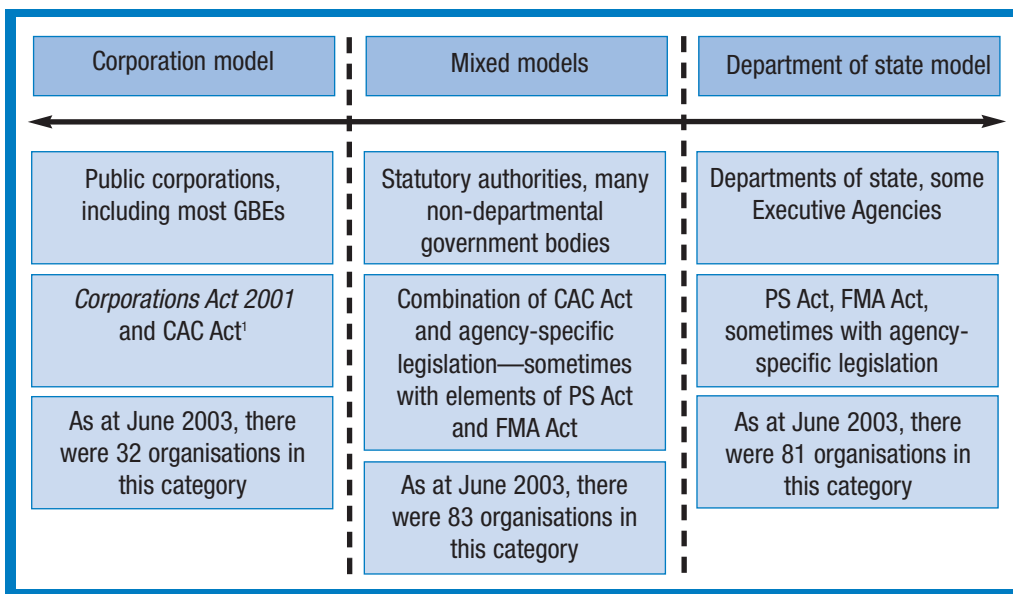
Figure 3 indicates the main governance structures in the Commonwealth public sector. For FMA agencies, the emphasis is on accountability residing with the chief executive. While the chief executive may choose to appoint an advisory board to help with the management of his or her agency, formal accountability for the performance of that agency resides with the chief executive. The formation of an executive board is likely to assist in ensuring good governance of the agency.

In contrast, GBEs and Commonwealth corporations to which the CAC Act applies, have structures that generally mirror the broad-based arrangements pertaining to the *Corporations Act 2001*. In this setting, directors share responsibility for decision-making and the overall performance of the body.

<sup>10</sup> Department of Finance and Administration, *Governance arrangements for Commonwealth Government Business Enterprises*, June 1997, Canberra. This policy document may be revised in the light of the Joint Committee of Public Accounts and Audit's Report 372, *Corporate governance and accountability arrangements for Commonwealth Government Business Enterprises*, tabled in February 2000.

<sup>11</sup> Edwards, Meredith 'Public sector governance: future issues for Australia', *Australian Journal of Public Administration*, 2002, 61(2), pp. 51–61.

Figure 3: Structures of governance in the Commonwealth public sector



Source: Department of Finance and Administration, *List of Bodies Subject to the CAC Act 1997* (as at June 2003) and *List of Agencies Subject to the FMA Act 1997* (June 2003).

Note: (1) Several GBEs are subject only to the CAC Act

The CAC Act applies to Commonwealth companies. A Commonwealth company is defined under the CAC Act as ‘a Corporations Act company in which the Commonwealth has a controlling interest’ (s. 34). However, where the Commonwealth has a non-controlling interest in a company, the CAC Act does not apply. These companies are typically subject to the *Corporations Act 2001*. The Australian Securities and Investments Commission has primary responsibility for regulating the corporate governance of such companies.

Many such companies (and other private entities) obtain Commonwealth funding, through various means, including direct budget funding and tied levies. The Commonwealth’s main control over these entities is via funding agreements, and especially performance criteria that are included in associated contracts. However, as Ministers may be held partly accountable for such entities if they fail, especially in the political arena, a question arises as to whether the Commonwealth should have a governance role beyond the specified contractual agreements.

The ANAO understands that, beyond specific contracted funding arrangements, the Commonwealth generally does not have a legally-based governance role. However, given Parliamentary concerns about organisations involving public moneys, portfolio agencies and such entities should consider the possible extent of ministerial responsibility and, where appropriate, mutually agree protocols that would allow the Commonwealth to monitor governance arrangements in these entities and to suggest steps to remedy identified limitations.

Located between the two extremes of FMA agencies and Commonwealth companies are a large number of statutory bodies, mostly but not entirely subject to the CAC Act, that also operate under specific legislation. In many cases, this specific legislation dictates the structure, make-up, appointment arrangements, planning and reporting for the body, its board and/or its chief executive.

This categorisation of Commonwealth organisations is not mutually exclusive. For example, some Commonwealth bodies subject to the CAC Act are also subject to provisions of the FMA Act relating to public money that they hold (as is the case with the Australian Securities and Investments Commission).

## Part 3:

# Good public sector governance: framework, processes and practices

### Introduction

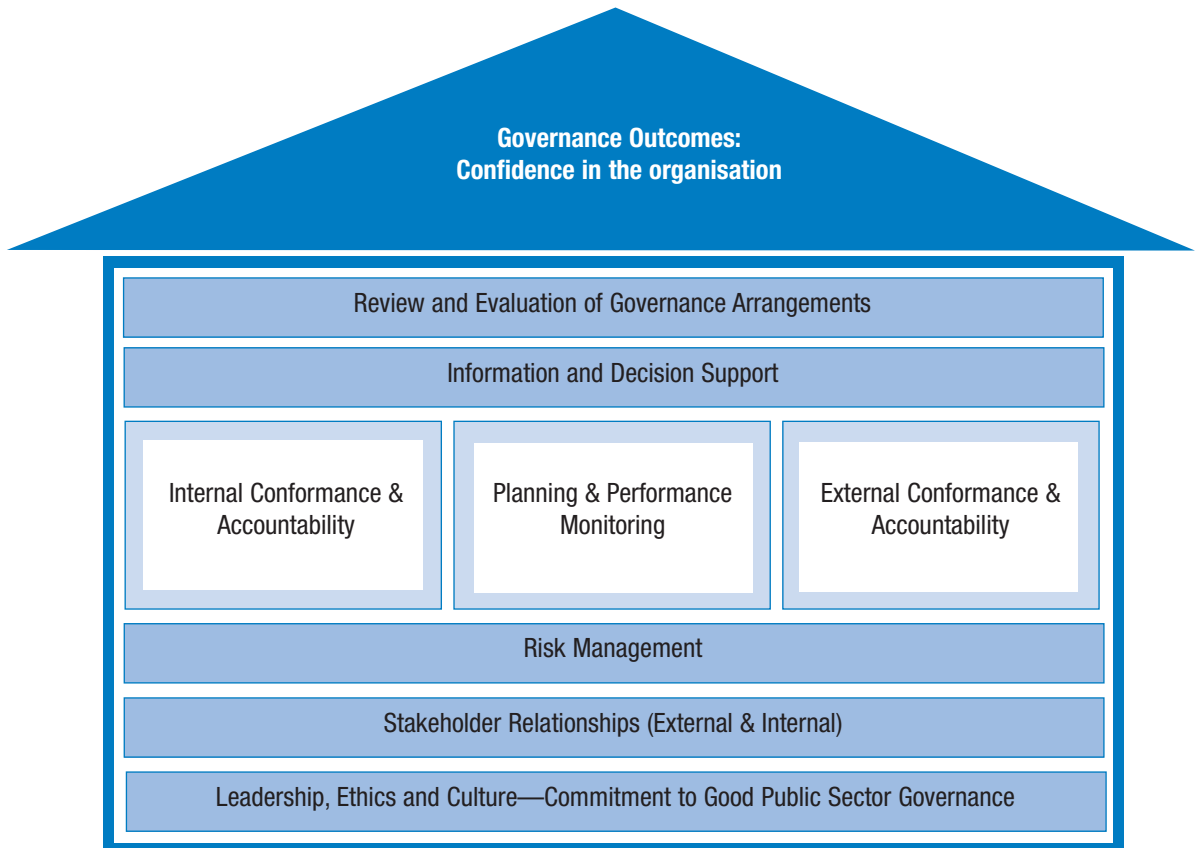
This part of the guide outlines the elements Commonwealth organisations should have in place in order to support good governance. These elements are important and useful in themselves, but the relationships established between the various elements of good governance are crucial to successful performance.

Differences in the legislative and regulatory arrangements discussed in Part 2 have a significant effect on the structures and processes of good governance. Each of the components, therefore, is discussed with reference to the different implications of the FMA and CAC Acts in particular. The PS Act also has specific implications for those organisations that are subject to it. Similar distinctions arise for GBEs and incorporated bodies subject to the *Corporations Act 2001*.

### Illustrating the governance framework: the house of governance

Figure 4 (The House of Public Sector Governance) shows clearly the key organisational and process elements of good public sector governance.

Figure 4: The house of public sector governance



Source: Adapted from a model developed by the Queensland Department of Transport in its *Corporate Governance Framework for Queensland Transport and Main Roads: Final Report*, July 2001.

On the basis of effective consultation with stakeholders—both external and internal—and good information and decision support, an organisation can establish arrangements that enable it to plan and deliver the organisation’s required outcomes and outputs as well as meeting the demands for external and internal conformance and accountability. These elements are, however, dynamic factors and can be greatly affected by the human dimensions of behaviour and values.

*Most Commonwealth agencies have in place the required elements of public sector governance. However, many difficulties typically surround their successful implementation, including integration.*

Implementing, maintaining and enhancing these elements maximises the chances that the organisation will enjoy the confidence of its stakeholders, clients, staff and management and that it will be recognised as making sound, well informed and accountable decisions that lead to appropriate and effective actions. Applying better practice governance arrangements is not a guarantee of an organisation’s performance and conformance, but it is a crucial element and increases the probability of success in both areas. Conversely, it is highly likely that an organisation that pays scant regard to governance issues will eventually face serious failures in terms of meeting minimum statutory requirements or performance expectations, or both.

The relationships established between the various elements of good governance are crucial. Leadership, ethical conduct and a performance culture support and sustain the framework as a whole. Without them, there would be no foundation to build on.

In the ‘House of Public Sector Governance’, stakeholder relationships influence the effectiveness of all three central components of the structure, that is, the ‘windows’ of internal conformance and accountability, external conformance and accountability, and planning and performance monitoring.

These ‘windows’ represent the core activities of governance for Commonwealth organisations. They are the elements on which governance boards and committees are focused.

Each ‘window’ exerts an influence on the other two as the following indicates:

- planning and performance monitoring set the management framework within which external and internal conformance and accountability processes take place—accountability is integral to the performance of public organisations;
- internal conformance and accountability needs to be aligned with, and generate the information required for, external conformance and accountability; and
- external conformance and accountability establishes the base line for internal processes, as information required for external purposes should generally form a subset of what is required internally.

The usefulness of the three ‘windows’ (for internal and external stakeholders) depends on:

- information and decision support, which ensure the right information gets to the right people at the right time to support their decision-making, and which also generates the information needed to account for decisions and performance achieved;
- ongoing review and evaluation of governance arrangements, which ensures the organisation learns from its experience, including any problems, and adapts to changing circumstances affecting its governance structures or practices; and
- a structured, detailed and integrated approach to risk management, which ensures that risks are identified and managed in both operational arenas and policy development.

The following sections discuss each of the elements in Figure 4. It is important to keep in mind, however, that the elements form part of a unified whole, with overall success being largely determined by how well the various elements are integrated and related to the strategic objectives of the organisation.

## Leadership, ethics and performance culture

### *Overview and importance*

Leaders have dual responsibilities for governance:

- to ensure implementation, evaluation and improvement of good governance structures and processes; and
- to enact good governance through their own performance and behaviours.

While rules, systems and structures are certainly important, they are primarily the vehicles by which crucial values and behaviours are applied.<sup>12</sup> Good governance is, therefore, primarily a function of the behaviours and values of the organisation’s leaders and of the overall culture of the organisation.

*The ‘tone at the top’ strongly influences virtually all elements of governance.*

<sup>12</sup> See: Donald J. Johnston (Secretary-General of the Organisation for Economic Cooperation and Development), ‘Better values for better governance’, *OECD Observer*, 18 October 2002; and Jeffrey A. Sonnenfeld 2002, ‘What makes great boards?’, *Harvard Business Review*, September 2002.

In particular, it is important that leaders demonstrate an active commitment to the principles of good public sector governance outlined in Part 1 earlier (including accountability, openness, integrity, stewardship and efficiency). It is also vital that staff adopt good governance practices through their own behaviour and performance.

The recent Inquiry into the HIH collapse emphasises the importance of leadership, ethics and performance culture in determining good corporate governance, as outlined below.<sup>13</sup>

*[A] danger with an overly prescriptive approach to systems and structures is that it may unwittingly encourage a superficial or 'tick the box' approach to the achievement of governance objectives.*

*Systems and structures can provide an environment conducive to good corporate governance practices, but at the end of the day it is the acts or omissions of the people charged with relevant responsibilities that will determine whether governance objectives are in fact achieved.*

### ***Critical success factors for governance leadership***

According to the Australian Public Service Commission's *Senior Executive Leadership Capability Framework*,<sup>14</sup> effective leaders:

- shape strategic thinking;
- achieve results;
- cultivate productive working relationships;
- exemplify personal drive and integrity; and
- communicate with influence.

Effective communication—both internally and externally—is therefore a primary function of leadership. It is through clear and consistent communication of the values and objectives of the organisation to staff, management and external stakeholders that an agency's leadership most effectively supports good governance outcomes and contributes to stakeholder confidence in the organisation. Top-down and bottom-up communication must focus strongly on risk management, to ensure a risk management culture prevails in the organisation.

It is also through consistent communication and actions that leaders support ethical behaviour in the organisation, and influence the culture necessary to support the objectives of the organisation and achieve the required results.

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<sup>13</sup> The HIH Royal Commission, *The failure of HIH Insurance*, Canberra, April 2003.

<sup>14</sup> Australian Public Service Commission, *Senior Executive Service Leadership Capability Framework*, 2002, available at: [www.apsc.gov.au/selc](http://www.apsc.gov.au/selc).

### **Indicators of success**

It is difficult to objectively measure factors such as leadership, ethics and organisational culture, or to identify problems before they become manifest in organisational performance. It is often only through significant failures (for example, corrupt behaviour, staff or management acting contrary to the interests and objectives of the organisation, or high staff turnover in critical work units) that problems in these areas are detected.

Nevertheless, it is possible to use tools such as staff surveys, performance appraisals and leadership self-assessment techniques to determine the degree to which these factors match expectations articulated in, for example, the APS Values and Code of Conduct, the organisation's corporate plan and key statements made by the chief executive and other leaders. Publications, such as the Public Service Commissioner's *Annual State of the Service Report*, can provide a guide to key issues to be monitored.

External board members (in bodies subject to the CAC Act) or advisory groups (such as audit committees or consultative forums) can provide feedback on governance performance. If there is trust and goodwill between the external board members and management, it may be possible for the organisation to benefit from the availability of external insights into the organisation's leadership, values and culture that may not necessarily be obvious to internal management or staff. Such feedback would normally be provided in confidence to the chief executive, and perhaps the senior management team.

Guidance Papers No. 3 and No. 4 in Volume 2 of this guide discuss better practices of CAC and FMA boards, respectively.

### **Stakeholder relationships**

Most public sector organisations have a wide range of stakeholders with an interest in their operations. The interests represented by these stakeholders can be disparate, to the point where they can be in conflict with one another. As such, stakeholder management is a key aspect of risk management for public organisations. It is relevant, for example, to reputation risk. As a consequence, governance arrangements should ensure that the legitimate interests of stakeholders are properly and appropriately considered.

### **Key governance mechanisms to represent external stakeholder interests**

External stakeholders may often be represented through the formation of a consultative forum with membership from across the spectrum of stakeholders. They may also be represented in other consultative processes that allow their views and needs to be heard by the organisation, without their sitting on any boards or committees.

The *Review of GBE Governance Arrangements* report by Mr Richard Humphry AO states that:

Boards should not be appointed on the basis of representation... Appointments to boards should be made on the basis of the person to contribute to the operations of the board, based on experience achieving a mix of skills that will provide for the firm to be managed in a way that produces the best outcomes for the shareholders.

The ANAO supports this view. However, the ANAO notes that, as a matter of law or policy, some Commonwealth organisations may be required to have client representatives on their boards or committees.

**Relationships with stakeholders need to be reflected formally in governance structures to provide adequate communication flows and manage possible conflicts of interest.**



### ***Managing conflicts of interest***

In seeking stakeholder representation, it is important to consider carefully the potential conflicts of interest (that is, where the individual may have a personal, financial or other interest in the work of the organisation) or conflicts of duty (that is, where the individual may hold one or more official positions that could come into conflict with one another). It is often not possible to avoid all potential conflicts absolutely. After all, stakeholders with the most to offer the organisation are often those who have the greatest interest in its outcomes. It is, however, important to consider the degree, nature and extent of such potential conflicts; make these known to the parties involved (including other members of the board or committee); and put protocols in place to minimise the likelihood of such conflicts. Guidance Paper No. 6 discusses better practices for managing conflicts of interest.

Stakeholder representatives should be particularly encouraged to avoid potential or actual conflict of interests in relation to:

- supply of goods or services to the organisation; and
- purchase of goods or services from the organisation.

There is a considerable risk that competitors will perceive such representation as unfair, denoting favoured access even where arrangements are put in place to ensure such representatives are not present when relevant contracts are being considered. Such circumstances should be avoided where possible. Accordingly, Commonwealth organisations should review policies and legislation that require supplier or client representatives on boards, with a view to advising reconsideration of the requirement if potential or perceived conflicts of interest are evident.<sup>15</sup>

One way to reduce problems with conflicts of interest or conflicts of role is to consult relevant stakeholders without giving them privileged access to decision-making. It is important that such consultations are (and are seen to be) genuine and not merely going through the motions of consultation with little or no scope for actual influence on the outcome.

### ***Internal stakeholders***

Internal stakeholders include staff and managers as well as the units, divisions and branches that make up the organisation. High level boards and committees risk becoming distant from staff and middle level management unless there are mechanisms in place to encourage feedback and suggestions from these groups. Such mechanisms range from regular formal staff surveys through to occasional meetings with groups of staff and managers, as well as taking opportunities during normal business activities to ask the views of staff and managers that come in contact with the organisation's boards and committees from time to time.

Appendix 2 illustrates overarching agency governance relationships, including interaction with internal and external stakeholders. Guidance Paper No. 2 discusses potential conflicts in the governance of CAC bodies, which can involve the treatment of internal and external stakeholders.

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<sup>15</sup> However, where Commonwealth entities continue to have supplier and/or client representatives on their boards or committees, it is important to make the selection process, and the rules for participation, as transparent as possible, to gain the confidence of those who might otherwise feel excluded from the privileges of representation.

## Risk management

Risk management establishes a process of identifying, analysing, treating, monitoring and communicating risks.<sup>16</sup> These risks could either prevent the organisation from achieving its business objectives or provide the opportunity for extra benefits to be realised. Risk management therefore provides organisational flexibility as well as control.<sup>17</sup>

Risk management often encourages a more outward looking examination of the role of the organisation, thereby increasing customer/client focus, including a greater emphasis on outcomes, as well as concentrating on resource priorities and performance assessment as part of management decision-making.

### *Key components of effective risk management*

Risk management is ultimately the responsibility of the chief executive in FMA agencies and directors of CAC agencies. However, all managers and staff have a responsibility to manage risk. The chief executive in FMA agencies and directors of CAC agencies are personally liable for decisions and thus for risk management. It is their responsibility to ensure that there is a focus on managing risk and to supervise the management of risk. Accordingly, they must have robust systems in place to protect themselves as well as the organisation. This requires:

- governing bodies such as boards, executive committees and audit committees to include in their deliberations detailed consideration of the risks facing the organisation as a whole as well as major policy developments and/or operational tasks or projects;
- the establishment by management of appropriate processes and practices to manage all risks associated with the organisation's operations<sup>18</sup>;
- analysis and review of risk management approaches; and
- the active involvement in risk management of everyone in the organisation.

*Risk management provides organisational flexibility as well as control.*

To be effective, the risk management process needs to be rigorous, structured and systematic.<sup>19</sup> However, it is important that the emphasis is on real actions and outcomes so that it does not become essentially a procedures-based exercise. Effective risk management requires an organisation to have a risk-assessment culture whereby all major decisions are considered in terms of risk management principles.

This is particularly important as the nature and significance of risks change in the public sector as the role of the public sector itself changes.

<sup>16</sup> Risk management processes are generally well known and understood in the public sector, based on these key steps.

<sup>17</sup> Dahms, 'Systems and commitment in corporate governance', *Keeping Good Companies*, 54(9):529-533, 2002.

<sup>18</sup> Department of Finance and Administration, 'Submission to the JCPAA Inquiry into Corporate Governance and Accountability Arrangements for Commonwealth GBEs'. *Submission No. 4*, Canberra, 2 July 2002.

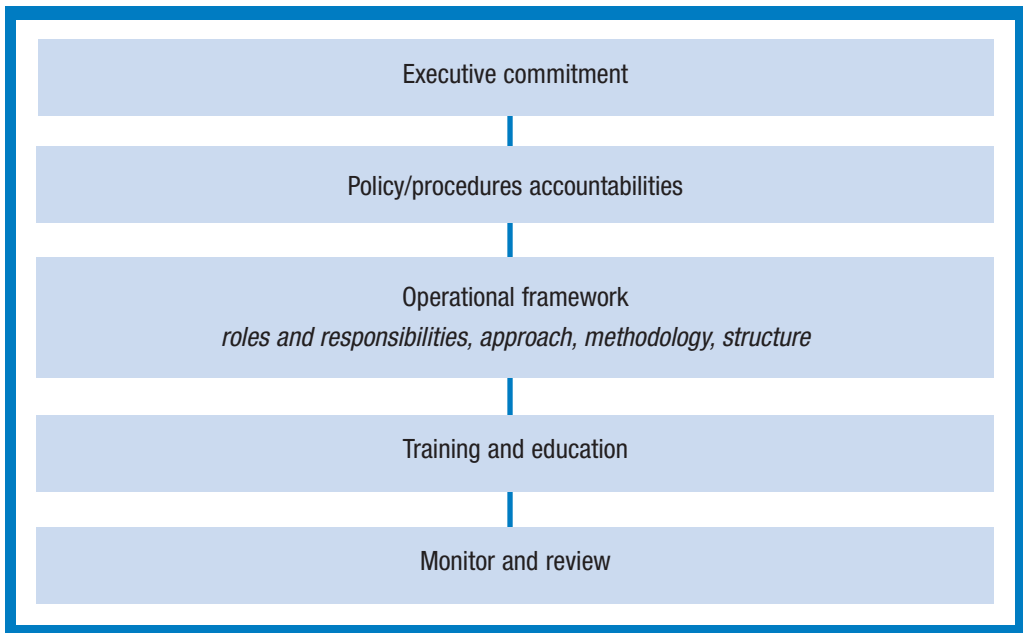
<sup>19</sup> Standards Australia, *AS/NZ 4360: 1999 Risk Management*, 1999.

**Developing a risk management culture**

Figure 5 below outlines the key elements required to establish a risk management culture. A risk management culture supports a holistic approach to the identification and management of risk throughout an organisation. This requires a strong alignment between identification of strategic risks and their treatment, in conjunction with the treatment of management, operational and financial risks. It also requires risk management to guide the control environment, for example in order to determine and prioritise the agency functions and activities that need to be controlled.

Risk management should be part of the strategy and planning processes, rather than a back-end control. For example, risk management activities, including the design of treatments, should be undertaken at the same time as an initiative is designed. Risk treatments, therefore, should be resourced at the same time that the resourcing decision is made for the initiatives they are designed to support.

**Figure 5: Key elements to foster a risk management culture**



Source: O’Callaghan, P, ‘Avoiding Corporate Governance Failures by Establishing a Risk Culture’, Presentation to IIR Conference on *Corporate Governance in the Public Sector*, Canberra, 13 August 2002.

*Extensive external scrutiny of Commonwealth organisations requires good record-keeping and reporting, that are aligned with, and underpin, key strategic objectives.*

**External conformance and accountability**

Commonwealth agencies that perform well in acquitting their external accountability responsibilities typically seek to incorporate these requirements in the earliest stages of their planning, policy development, decision-making and program design work. External scrutiny should not be regarded as something that happens ‘to’ the organisation but as a factor integral to the organisation performing its role as part of Government.

Meeting public sector conformance and accountability obligations is one of the measures of success for Commonwealth agencies, rather than an after-thought addressed only when an external agency initiates scrutiny of the organisation. In practical terms, this means that well governed organisations in the Commonwealth seek to ensure that Parliamentary scrutiny, for example, is aided by the way programs

are designed, managed and monitored. Such scrutiny requires good record-keeping and documentation of decisions and actions.

### **Key external accountability institutions**

There are often several external bodies to which Commonwealth organisations are accountable or to which they are required to provide information on their performance and/or conformance with regulatory requirements. It is through effective governance arrangements that Commonwealth organisations acquit their responsibilities to these bodies.

Key external accountability institutions include:

- the Parliament, especially relevant committees such as the Joint Committee of Public Accounts and Audit (JCPAA), the various Senate and House of Representatives Standing Committees and Senate Legislation and Reference Committees;
- the Auditor-General, who is responsible to the Parliament for conducting both financial and performance audits in the Commonwealth and with whom organisations' often liaise on such matters as internal audit arrangements and practice;
- the Commonwealth Ombudsman, who has the power to investigate complaints about Commonwealth organisations' actions to see if they are unlawful, wrong, unjust or discriminatory;
- the Privacy Commissioner, who has responsibilities under the *Privacy Act 1988* and who assists citizens who have privacy complaints relating to Commonwealth or Australian Capital Territory Government agencies, consumer credit reporting activities, tax file numbers and spent convictions;
- the Administrative Appeals Tribunal, which provides independent review of a wide range of administrative decisions made by the Commonwealth Government and some non-Government bodies;
- the Australian Securities and Investments Commission (ASIC), which enforces company and financial services laws to protect consumers, investors and creditors. GBEs are subject to the *Corporations Act 2001* and thus ASIC; and
- the Courts, which may be called upon to scrutinise the actions or decisions of Commonwealth bodies, for example, in reviewing a tender process on the action of an unsuccessful tenderer.

In addition, Commonwealth organisations respond to a number of central agencies that have a coordination and oversight role. Included in this group are the Australian Public Service Commission (APSC), the Department of Finance and Administration (Finance), the Treasury, the Department of Employment Workplace Relations (DEWR) and the Department of the Prime Minister and Cabinet (PM&C). Each of these central agencies has a key role in Commonwealth public sector governance arrangements.

The APSC is responsible for the PS Act and advises on strategic people management issues. Finance is responsible for the FMA and CAC Acts and provides guidance on procurement and annual reporting requirements for bodies subject to the CAC Act. DEWR oversees the application of the *Workplace Relations Act 1996* within the Commonwealth public sector. PM&C provides advice on Cabinet and accountability processes, including publishing the annual report requirements for FMA agencies, as approved by the JCPAA.

### **Key processes for acquitting external accountability requirements**

There are several processes through which external accountability requirements are acquitted. These include the following:

- annual reporting to the Parliament in accordance with specific guidelines issued by Finance for CAC authorities and PM&C for FMA agencies. Both CAC authorities and FMA agencies are required to include in their annual report financial statements prepared in accordance with Finance Minister's Orders. Specific agency legislation may also stipulate reporting obligations to the Parliament;
- communicating with stakeholders via electronic methods, such as an up-to-date, comprehensive and user friendly website and by providing up-dated information on request via e-mail;
- providing detailed budgetary information through the Portfolio Budget Statements tabled in the Parliament as part of the Federal Budget each year. These documents, which are produced in accordance with guidelines issued by Finance, are scrutinised particularly by Senate Legislation Committees;
- the examination of each organisation's accounts by the Auditor-General, with the results published in the annual reports tabled in the Parliament;
- occasional performance audits carried out by ANAO in accordance with its audit work program;
- the Ombudsman's Office Own Motion Investigations of Systemic Issues; and
- specific parliamentary inquiries into matters of public interest, which generally involve the establishment of a Senate Select Committee on the particular matter.

Under the Finance Minister's Orders, authorities subject to the CAC Act are required to include in their report of operations a 'Statement on Governance'. The annual report requirements for FMA Act agencies also specify corporate governance as a topic required for reporting to the Parliament. Both sets of requirements refer to the Australian Stock Exchange listing rules.

A key aspect of reporting to the Parliament is the need to ensure that the agency informs the Parliament about what it is planning to do (that is, usually through the Portfolio Budget Statement) and subsequently reports in similar terms on what it actually did (that is, in the annual report tabled in the Parliament). Where circumstances have changed in the intervening period (for example, new performance indicators have been developed), these changes must be clearly articulated and the implications for reporting addressed. The objective is to be clear and consistent in external reporting, directly addressing the interests and concerns of the scrutinising body.

### **Internal conformance and accountability**

Internal accountability arrangements should be closely aligned with external requirements. This is both efficient—by reducing reworking of similar material—and effective—by establishing internal arrangements on the basis of broader standards and expectations. A well governed organisation will, for example, ensure that its internal audit plans and activities are coordinated with the requirements and plans of the external auditor, including through inviting a representative of the ANAO to participate in the Audit Committee<sup>20</sup>, often mainly in an observer role.

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<sup>20</sup> See the ANAO's *Better Practice Guide: Audit Committees* (June 1997), and *Controlling Performance and Outcomes: Better Practice Guide to Effective Control* (December 1997) for more information.

Where an organisation finds itself having to carry out a great deal of additional work to meet external accountability requirements, it may be necessary to review internal structures and processes to more closely align them with those requirements.

### ***Key elements of internal conformance and accountability***

The primary function of internal accountability arrangements is to ensure clarity of roles and clarity of communications about decisions and actions. The fact that such arrangements are internal does not mean they are necessarily confidential or not transparent to persons and organisations outside the organisation. Key elements of internal conformance and accountability include:

- documentation of the objectives, roles and powers of the board (for CAC Act bodies governed by boards) or executive committee (for other bodies, including some of those subject to the FMA Act);
- internal audit and review processes and functions;
- documentation of objectives, roles and powers of other corporate committees (for example, the finance committee, remuneration committee and consultative forums);
- corporate and business planning arrangements that aim to make conformance and accountability integral to the way the organisation meets its business objectives;
- performance planning and monitoring arrangements;
- fraud control plans and processes;
- up to date and consistent rules relating to financial and other delegations (for example, through the Chief Executive's Instructions for FMA Act agencies and similar documentation for other bodies); and
- clear and widely communicated policies on handling conflicts of interest, and standards of professional and ethical behaviour.

As a general indicator, an organisation with effective internal conformance and accountability arrangements will have staff and management who know, understand and communicate clearly their own roles, powers and responsibilities and how these relate to others in the organisation.

At times, the public sector operating environment provides unavoidable ambiguities or uncertainties (for example, through the organisation having an express obligation to reconcile competing or discordant community or business interests, such as the need for safety regulation and the need to minimise regulatory costs on industry). These points of complexity will ideally be articulated and identified in the way the organisation does business, especially in the way its peak board or executive committee discusses and resolves policy and planning issues.

External stakeholders who work closely with the organisation (for example, related Commonwealth bodies, state and territory departments operating in the same policy area, peak community and business organisations) will also often have valuable perspectives on how well the organisation deals with complex or ambiguous objectives.

## **Planning and performance monitoring**

Governance is not only about conformance and meeting formal accountability requirements. It is above all concerned with ensuring the organisation performs as well as possible in meeting its policy and operational objectives. It is therefore important to ensure that governance arrangements and practices do not focus unduly on conformance at the expense of performance.

***Internal conformance requires a strong control environment, with reporting mechanisms and measures aligned with the external accountability framework.***

### **Key governance structures and processes**

A well governed organisation will include the following in its governance structures and processes.

- **Effective corporate and business planning.** It is particularly important to ensure such plans—down to, and including, individuals' performance plans and agreements—are aligned and mutually supportive. This reduces scope for confused objectives or gaps in performance planning and monitoring. Effective corporate planning and business planning cascades from the Commissioning Letter, or equivalent, sent to each secretary/chief executive by the relevant Minister.
- **A clear and robust budgeting and financial planning system,** overseen by an appropriately constituted and resourced finance committee or equivalent, or by the peak board or executive committee itself. In the current Commonwealth environment, this will include addressing the financial and non-financial aspects of the organisation's specified outcomes and outputs.
- **Chief executive officer (or equivalent) and chief financial officer (or equivalent) sign-off** to the board **that the financial reports: present a true and fair view**, in all material respects, of the organisation's financial position and operational results; and accord with relevant accounting standards and the Finance Minister's Orders.<sup>21</sup>
- **A structured and regular system of performance monitoring.** This system should be aligned with the organisation's outcomes and outputs structure and generate information that is appropriate for both internal performance management needs and external reporting requirements.
- **Consideration of Whole-of-Government and cross-agency issues in policy development and program delivery.** Increasingly, Commonwealth organisations are working in an environment characterised by work that cuts across agency boundaries. This raises issues of joint or shared accountability, risks and responsibilities that can affect governance arrangements, especially where major initiatives (for example, Australians Working Together) are concerned. Guidance Paper No.7 in Volume 2 of this guide discusses these governance arrangements in detail.
- **A structured, detailed and integrated approach to risk management.** It is good practice for governing bodies such as boards, executive committees and audit committees to include in their deliberations detailed consideration of the risks facing the organisation as a whole and major policy development and/or operational tasks or projects.

*An effective planning and performance monitoring regime can be viewed as comprising six main elements.*

Boards and committees that regularly and systematically address these performance-related factors are more likely to be seen by staff, management and stakeholders as: providing real leadership; being credible and relevant; and actively contributing to the success of the organisation.

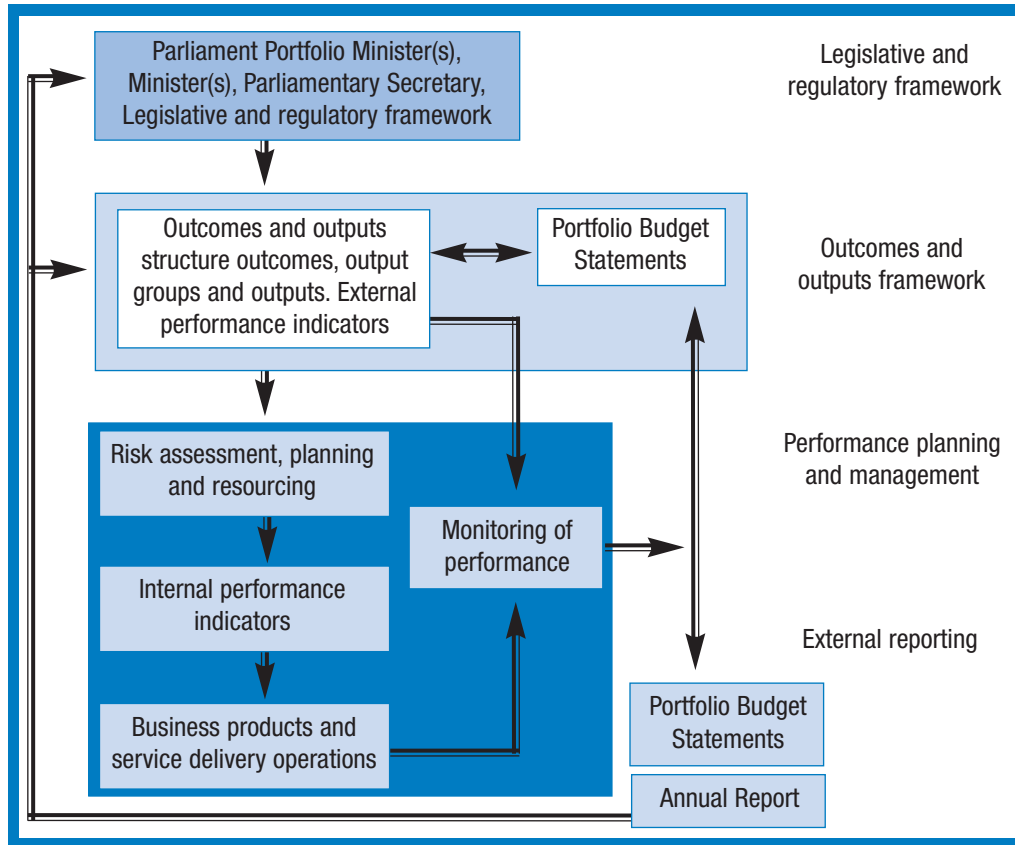
<sup>21</sup> Based on ASX Corporate Governance Council – *Principles of Good Corporate Governance and Best Practice Recommendations*, (Recommendation 4.1).



**The role of performance information in the governance framework**

Figure 6 highlights the key role performance information plays in the governance framework.

**Figure 6 – Agency planning, management and governance framework**



Source: ANAO Better Practice Guide, *Performance Information in Portfolio Budget Statements*, May 2002.

**Information and decision support**

In an increasingly complex and multi-faceted operating environment, public sector organisations have to manage their information in more sophisticated ways. This involves ensuring the basics of good record-keeping, such as file maintenance, minuting of meetings and decisions are all observed while at the same time taking advantage of the new information and communication technologies to create, store and retrieve knowledge, information and data in a timely fashion. The objective is to ensure that the right people (that is, decision-makers) have the right information at the right time in order to allow them to make the right decisions.

**Requirements of information and decision support**

For most Commonwealth organisations, standards for the creation and retention of public records are established under the *Archives Act 1983*. It is important that those responsible for such records—especially board and committee secretariats—are aware of those standards and have procedures in place to meet them.

Beyond the *Archives Act 1983* requirements, however, it is also better practice to ensure that good records are kept of decisions by governance boards and committees, including the information on which those decisions were based and the main points considered or discussed in reaching those decisions. It is possible that decisions taken by a board or committee may be challenged in a court or made the

*Information must satisfy both performance and conformance requirements but must be provided judiciously to support major decisions.*



subject of a request under the *Freedom of Information Act 1982*. This, therefore, becomes the standard by which such records should be assessed: would they stand up to public scrutiny as a complete and accurate record of the decisions and the processes that lead to them?

Data, information and analysis are also needed to ensure decisions are based on as much of the available evidence as possible. Time constraints can mean that boards and committees must take decisions on the basis of incomplete information. Where this is unavoidable it may be possible to take an interim decision pending receipt of further information or to make the decision contingent on emerging data. It is important, however, to minimise the need for such a process. Secretariat staff and those submitting matters to boards and committees for consideration have an obligation to make all reasonable efforts to provide sufficient information on which to base a decision.

Providing information has resourcing implications. Boards and committee members need, from time to time, to consider the adequacy of resources when making business decisions about their secretariat support. While short-term savings in such areas can be tempting, the long-term risks of poorly informed or recorded decisions could be extremely costly. The impact could come in the form of a crisis—such as a failure to meet a legal requirement to consider certain matters, a failure that subsequently results in high costs or political embarrassment—or through a gradual decline in the effectiveness of the organisation as a whole.

### *Emerging trends in information and decision support*

The nature of what constitutes data to support decisions is changing as a consequence of the new information and communication technologies. E-government initiatives, the use of the internet to gather information and stakeholder opinions, and the development of sophisticated intranets to disseminate information within the organisation and to gather views and information from staff and management<sup>22</sup> all mean that there is an increasing amount of information. As well, that information is increasingly qualitative as well as quantitative.

Government decision-making is therefore now taking into account information and views from a wider range of groups, organisations and individuals. This also has implications for the resourcing and constitution of secretariats and other areas of Commonwealth organisations responsible for supporting governance boards and their committees.

## **Review and evaluation of governance arrangements**

Review and evaluation of the performance of the organisation and its operations is an important part of what governing boards and their committees do. From time to time, it is also important for governing boards and their committees to invest in evaluation of overall governance arrangements, including of their own roles and performance. This can aid the learning process, leading to improvements and adjustments to changed circumstances that allow the organisation and its boards or committees to meet new challenges successfully.

### *Types of evaluations of governance arrangements*

Reviews or evaluations of governance arrangements can take various forms. The following factors need to be borne in mind.

- **Timing:** As a general rule, governance arrangements should be reviewed on an on-going basis and in detail every year or two. Governance arrangements should also be reviewed whenever there is a significant event affecting the organisation's accountability or management arrangements (for example, major changes in legislation or relevant recommendations from an external body such as a Parliamentary committee or the Auditor-General).

<sup>22</sup> See the National Office for the Information Economy's web site for more information: [www.noie.gov.au](http://www.noie.gov.au).

*Evaluation of governance arrangements, including of the board, is necessary, and will vary according to characteristics and circumstances of the entity.*

- **Internal versus external review:** It may be sufficient to carry out an internal review, whereby senior executives and/or the board of directors conduct an assessment of the organisation's governance structures and their performance. A more formal, externally facilitated review can be carried out less frequently, and it can provide benchmark information for comparisons over time.
- **Scope:** A governance review can extend across the full range of the organisation's committees, consultative forums and their interconnections, or it may simply be limited to a regular performance assessment of the board of directors or governing committee. It is important, in either instance, to cover both conformance aspects (such as adherence to legal requirements, and general standards of structure and form) and performance issues (such as the quality of decision-making, conduct of meetings and effectiveness of communications of decisions).

Smaller and/or less complex organisations will generally not need to review their governance arrangements as frequently, or in as much depth, as larger or more complex organisations.<sup>23</sup> Organisations operating in high-risk areas (that is, where there are significant policy or operational risks that might flow from failures in governance) will generally need to review their governance practices more frequently and/or more thoroughly.

### *Using results from governance reviews*

It is important that whatever results come from reviews of governance arrangements and performance are acted upon. Staff and management—as well as board or committee members—can become cynical if areas for improvement are identified but not subsequently addressed within a reasonable timeframe.

Guidance Paper No. 5 discusses better practices for monitoring and evaluating board performance.

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<sup>23</sup> However, sustained integrity of governance arrangements is not necessarily related to organisational complexity. Governance arrangements can degrade for example, when a key officer leaves a position. This can have a pronounced effect in a small organisation where one person may have responsibility for many elements of governance.



## Part 4:

# Overview of Guidance Papers

This part lists the topics on which the ANAO has prepared specific, detailed guidance within the overall framework of this guide. Although they can be used as stand alone documents, the Guidance Papers are best read in conjunction with this volume of the guide. The ANAO's web site ([www.anao.gov.au](http://www.anao.gov.au)) should be consulted for up-to-date Guidance Papers.

Guidance Papers generally follow a standard structure:

- **Introduction** (introduces the topic and the purpose of the Guidance Paper);
- **Legal & Policy Framework** (discusses the issues involved, explaining why the topic is important to governance outcomes);
- **Elements of Better Practice** (points for organisations to check that they have in place to support better practice);
- **Examples** (examples of better practice, including outlines of relevant documents); and
- **References and Further Information** (key references on the topic, and organisations that can provide further information, guidance or support).

The series of Guidance Papers include:

1. Public Sector Governance and the Individual Officer;
2. Potential Conflicts in the Governance of CAC bodies;
3. CAC Boards;
4. Executive Boards in FMA agencies;
5. Monitoring Board Performance;
6. Conflicts of Personal Interest and Conflicts of Role;
7. Cross-Agency Governance; and
8. Summary of Current Legal Requirements that may be Applicable to CAC and FMA Bodies.



## Part 5:

# Further Information

Aside from the ANAO, there are various organisations within the Commonwealth and elsewhere that can provide advice and assistance on aspects of public sector governance. These include:

- Department of Finance and Administration (responsible for the FMA and CAC Acts)—[finance.gov.au](http://finance.gov.au)
- Australian Public Service Commission (responsible for the PS Act)—[apsc.gov.au](http://apsc.gov.au)
- Australian Institute of Company Directors (provides advice and training for directors)—[companydirectors.com.au](http://companydirectors.com.au)
- Certified Practising Accountants Australia (advice on accounting and financial accountability issues)—[cpaaustralia.com.au](http://cpaaustralia.com.au)
- The Institute of Chartered Accountants in Australia (advice on accounting and financial accountability issues)—[icaa.org.au](http://icaa.org.au)
- National Institute for Governance (advice, research and training in governance issues)—[governance.canberra.edu.au](http://governance.canberra.edu.au)



# Appendix 1

## Relevant Legislation

There are several pieces of legislation that affect governance in the Commonwealth public sector. The following sections outline the key acts.

### ***Auditor-General Act 1997***

All Commonwealth organisations are subject to the *Auditor-General Act 1997*. It is the main vehicle for external scrutiny of financial and other aspects of their performance.

The *Auditor-General Act 1997* provides for the appointment, powers and independence of the Commonwealth Auditor-General. In particular, it stipulates that the Auditor-General is ‘an independent officer of the Parliament’ (s. 8(1)). The Auditor-General has audit powers relating to Commonwealth agencies, authorities (including statutory agencies) and companies. The office is subject to oversight by the Joint Committee of Public Accounts and Audit, and takes into account the Committee’s audit priorities (s. 10).

The Auditor-General’s role is significant in corporate governance terms because it is a major element in the system of external scrutiny and accountability, which reviews the efficiency and effectiveness of departments’ and agencies’ governance arrangements. As such, examination of corporate governance issues constitute a significant component of the ANAO’s audit program.

The ANAO can be consulted should specific information be required on the application of the *Auditor-General Act 1997*.

### ***Public Service Act 1999 (PS Act)***

Most, but not all, civilian Commonwealth employees are employed under the PS Act. That Act establishes the ground rules for APS values and behaviours, giving explicit legislative force to the Parliament’s expectations in relation to the performance and accountability of public servants in general, and of agency heads in particular.



Under section 3, the main objects of the PS Act are:

- to establish an apolitical public service that is efficient and effective in serving the Government, the Parliament and the Australian public;
- to provide a legal framework for the effective and fair employment, management and leadership of APS employees;
- to define the powers, functions and responsibilities of agency heads, the Public Service Commissioner and the Merit Protection Commissioner; and
- to establish rights and obligations of APS employees.

The PS Act details the APS Values (s. 10) and Code of Conduct (s. 13), the rights and responsibilities of APS employees (including whistleblowers—s. 16), the senior executive service (Part 4, Division 2) and agency heads (including secretaries of departments—Part 7). It also defines the role and powers of the Public Service Commissioner (Part 5) and other relevant office holders.

In relation to parliamentary departments, the PS Act is complemented by the *Parliamentary Service Act 1999*.

The PS Act has effect subject to the provisions of the *Workplace Relations Act 1996* (s. 8). In considering the PS Act's application to corporate governance issues, however, there are few circumstances where the *Workplace Relations Act 1996* is likely to apply.

The Australian Public Service Commission can be consulted should specific information be required on the application of the PS Act.

### ***Financial Management and Accountability Act 1997 (FMA Act)***

The principal matters covered by the FMA Act are:<sup>24</sup>

- the responsibilities and powers of the Minister for Finance and Administration (called the 'Finance Minister' in the Act);
- the collection and custody of public money and the control and management of public property;
- the accounting framework, Parliamentary appropriations and certain payments matters;
- borrowing and investment powers of the Finance Minister and the Treasurer;
- special responsibilities of chief executives of Agencies for the control and management of public money and public property;
- audit of the financial statements of the Commonwealth as a whole and of individual Commonwealth agencies by the Auditor-General; and
- delegation of powers or functions of the Finance Minister, the Treasurer and chief executives of agencies.

In contrast to the CAC Act, the FMA Act places specific and sole responsibility on the chief executives of FMA agencies to promote the 'efficient, effective and ethical use of Commonwealth resources' (s. 44). This complements the provision in the PS Act stipulating that a secretary of a department (the main FMA Act agencies) 'is responsible for managing the department' (s. 57 (1)).

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<sup>24</sup> Department of Finance and Administration 2002, FMA Legislation, at [http://www.finance.gov.au/finframework/fma\\_act.html](http://www.finance.gov.au/finframework/fma_act.html).

The Department of Finance and Administration can be consulted should specific information be required on the application of the FMA Act.

### ***Commonwealth Authorities and Companies Act 1997 (CAC Act)***

The CAC Act regulates:<sup>25</sup>

- the corporate governance, financial management and reporting of Commonwealth authorities (including statutory agencies), which are in addition to the requirements of their enabling legislation;
- the corporate governance and reporting of Commonwealth companies which are in addition to the requirements of the *Corporations Act 2001*; and
- the duties and liabilities of directors and other officers of Commonwealth authorities and companies.

The principal matters covered by the CAC Act are:

- reporting by an authority or a company to a Minister or, through a Minister, to the Parliament;
- contents of the annual report of operations of an authority;
- audit of financial statements of an authority or a company by the Auditor-General;
- banking and investments powers of authorities;
- submission to the responsible Minister of budget estimates each financial year by authorities and companies other than GBEs and partly-owned companies;
- compliance of authorities and wholly-owned companies with general policies of the Government; and
- conduct of directors and officers of authorities, including the civil consequences of the directors and officers contravening civil penalty provisions.

The broad objective of the CAC Act is to bring governance and reporting arrangements for Commonwealth companies and authorities into line with those pertaining to other bodies corporate. To this end, relevant sections of the CAC Act have been amended to reflect the provisions of the *Corporations Act 2001*. In particular, the duties and responsibilities of directors are essentially the same under the CAC Act as they are under *Corporations Act 2001*, with suitable modifications to reflect the public sector environment. In contrast to the FMA Act (discussed above), the CAC Act places responsibility for meeting the requirements of the Act on directors of CAC bodies.

The Department of Finance and Administration can be consulted should specific information be required on the application of the CAC Act.

### ***Corporations Act 2001***

The *Corporations Act 2001* applies to Commonwealth companies limited by shares or by guarantee. This means that these organisations are subject to the same legal requirements as their private sector counterparts. Part 2D.1 of the *Corporations Act 2001* details some of the most significant duties of directors, secretaries, other officers and employees of corporations.

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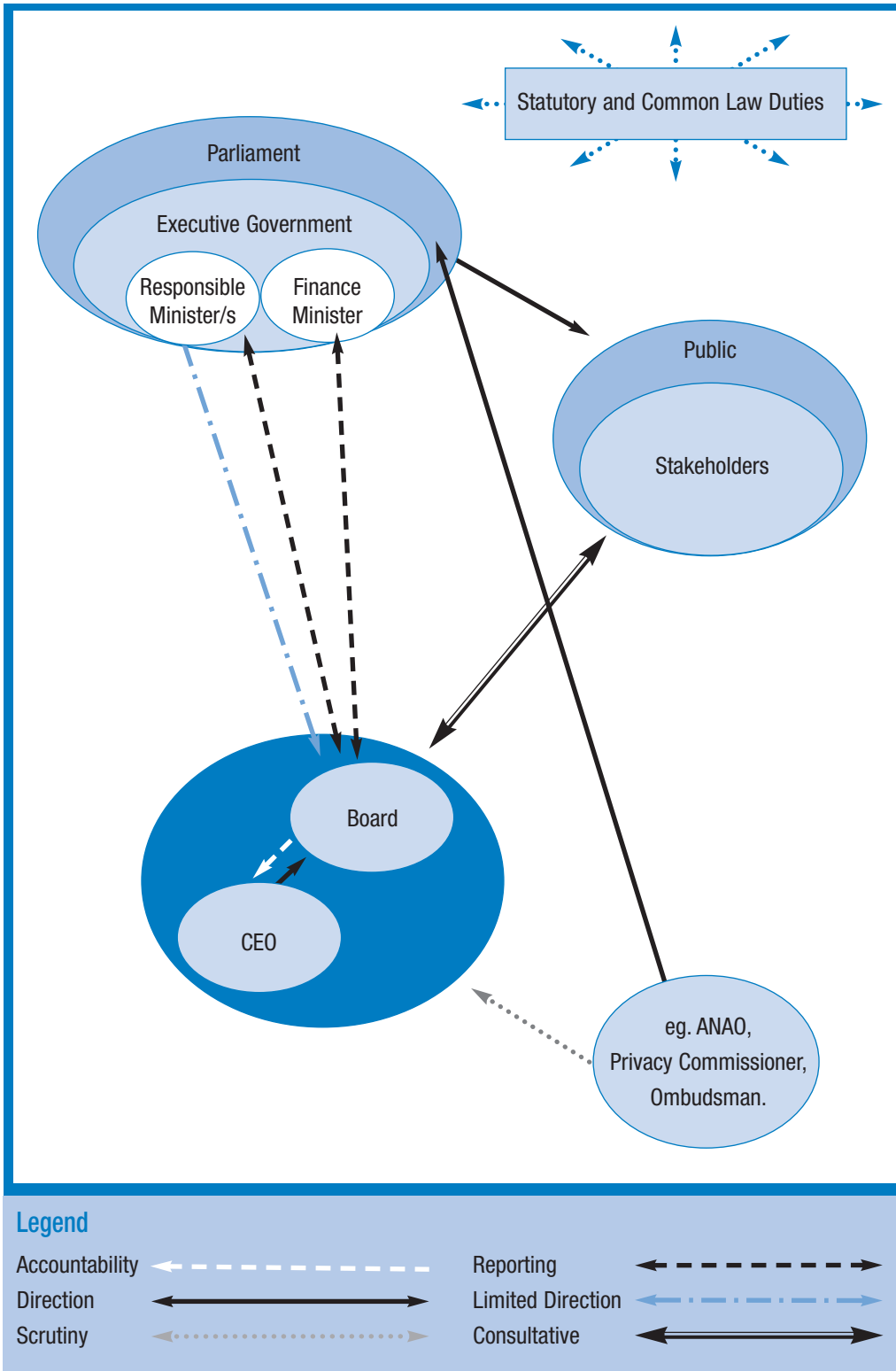
<sup>25</sup> Department of Finance and Administration 2002, CAC Legislation, at [http://www.finance.gov.au/finframework/cac\\_act.html](http://www.finance.gov.au/finframework/cac_act.html).



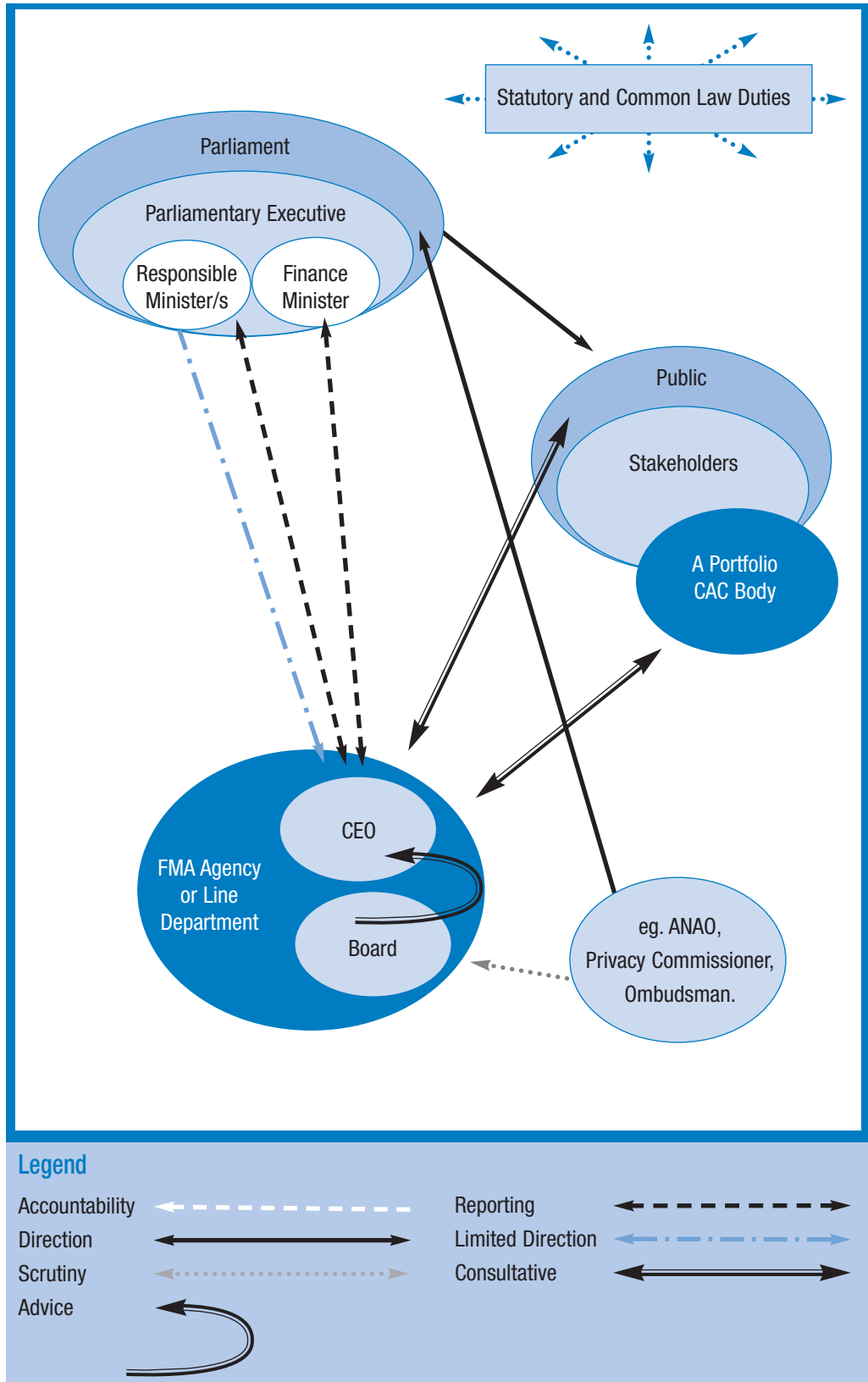
# Appendix 2

## Governance Maps

### CAC Agency governance



FMA Agency governance



Note that relationships with central agencies such as the Department of Finance and Administration and the Department of Prime Minister and Cabinet have been omitted.