

# **ombudsman** VICTORIAN

**A review of the governance of public sector  
boards in Victoria  
December 2013**

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# Letter to the Legislative Council and the Legislative Assembly

To

**The Honourable the President of the Legislative Council**

and

**The Honourable the Speaker of the Legislative Assembly**

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament a report on *A review of the governance of public sector boards in Victoria*.



G E Brouwer

**OMBUDSMAN**

10 December 2013

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## Executive summary

1. During recent years, I have presented a number of reports<sup>1</sup> to Parliament which identified serious governance failures by Victorian public sector boards and their senior management. Some of the issues included:
  - inadequate processes for appointing board members
  - conflicts of interest
  - inadequate performance reviews of boards and board members
  - poor oversight of the operations of entities by boards.
2. Based on the issues raised in these reports and the pivotal role boards play in controlling and managing the performance of entities and institutions, I decided that an own motion investigation into governance by boards in the Victorian public sector was warranted.
3. Victoria's system of devolved public administration relies heavily on thousands of public entities to deliver a range of services and functions that are essential to the running of the state. The State Services Authority (SSA) estimated that at 30 June 2012 the Victorian Government had 3,732 public sector boards, serviced by an estimated 34,397 board members.
4. Attempts to rationalise the number of entities in Victoria have had mixed results. For example, recommendations<sup>2</sup> relating to the rationalisation of TAFEs, Catchment Management Authorities, cemeteries and Alpine Resorts, have not been implemented. However, in the water sector, the number of water authorities has been reduced from 370 to 19.
5. The importance of the board-governed public entity sector to the state's economy is shown in the following financial statistics for the 2011-12 financial year, which demonstrate that the groups of entities classified as commercial alone:
  - Paid dividends of \$659.3 million
  - Generated revenue of \$14.7 billion
  - Controlled \$151.5 billion in assets
  - Incurred expenses of \$15.8 billion<sup>3</sup>.

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<sup>1</sup> See, most recently, the following reports:

- Victorian Ombudsman, *Own motion investigation into the governance and administration of the Victorian Building Commission*, December 2012.
- Victorian Ombudsman, *Investigation into improper conduct by CenITex Officers*, October 2012.
- Victorian Ombudsman, *Own motion investigation into Greyhound Racing Victoria*, June 2012.
- Victorian Ombudsman, *Investigation into the Foodbowl Modernisation Project and related matters*, November 2011.

<sup>2</sup> These recommendations were made in:

- Department of Sustainability & Environment, *Securing our Natural Future – A white paper for land biodiversity and climate change*, Melbourne, 2009.
- TAFE Reform Panel, *A strong and sustainable TAFE sector*, Melbourne, 2013; Department of Education and Early Childhood Development, *Next Steps for Refocusing Vocational Training in Victoria – Supporting a Modern Workforce*, Melbourne, 2013.
- State Services Authority, *Review of Cemetery Trusts*, Melbourne, June 2007.
- State Services Authority, *Review of Alpine Resort Areas, Final Report*, Melbourne, June 2008.

<sup>3</sup> Information provided by the Department of Treasury and Finance.

6. My investigation examined the governance framework for public sector boards and how that framework is being applied in practice. The investigation also sought to identify whether there are systemic issues and weaknesses which create risks for the good governance by Victorian public sector boards. The evidence obtained during my investigation did not indicate that the use of boards in Victoria was conceptually or practically flawed. It showed that the use of boards was appropriate in a range of circumstances for valid reasons.

## Risks to good governance

7. Boards, however, can and do present certain risks to the State. My investigation identified a range of areas of risk to the good governance of boards, including increasingly complex entity structures and governance arrangements; variable understandings and views about the level of autonomy from government granted to boards; the poor availability of data on the number of boards in existence and their cost to the State; and a lack of clarity, or perceived lack of clarity, around internal and external accountabilities.
8. Many boards function in an increasingly challenging environment where they must:
- operate in volatile financial markets that have resulted in lower returns on investments while they are under pressure from the government to contain costs and operate efficiently
  - manage the performance of outsourced services<sup>4</sup>
  - work within a number of regulatory, compliance and oversight frameworks, agreements and guidelines
  - provide evidence of decision making and planning
  - report meaningfully on their performance
  - manage the risks of complex business models such as joint ventures and subsidiary companies.
9. The growing number of devolved and increasingly complex entity and venture structures operating in the Victorian public sector present a risk to good governance of boards. My investigation identified that boards of entities undertaking similar functions with the same legal status do not necessarily have the same legislative governance arrangements. Further, there is no consolidated list of the formal governance structures that apply to individual entities and boards in Victoria. This is in contrast to the comprehensive public list prepared by the Commonwealth Government of all statutory and non-statutory bodies, companies and incorporated associations that the government has a formal governance link to.

<sup>4</sup> For example, the Victorian WorkCover Authority (WorkSafe) contracts out both the collection of premiums and the management of claims to authorised agents (including private insurers and the Transport Accident Commission) while the Transport Accident Commission contracts out the collection of premiums (to VicRoads).

10. In response to my draft report, the Department of Premier and Cabinet said:

Whilst there is no single comprehensive governance framework for public entities, Part 5 of the *Public Administration Act 2004* ... provides minimum governance standards which apply to all entities formed after the commencement of the Act, and those brought under the Part by Order in Council. They also serve as better-practice guidance for other entities.

11. Adding to these risks, my investigation identified that many of the entities have not been subject to a strategic or performance review for 10 years or more and many have never been subject to an independent or public review. In addition, the reviews that have been undertaken have tended to be reactive, often instigated following the emergence of high profile issues as in the case of the Foodbowl Modernisation Project<sup>5</sup> and Greyhound Racing Victoria<sup>6</sup>.
12. There is a lack of definitive information available as to the number of government boards in the state and their cost. A review of the annual reports of a number of entities revealed that it is difficult to get an overall picture of the cost of the different types of boards because remuneration for board members is reported in broad income bands. In most cases, there is no indication of the amount of fees paid in total including on-costs.

## Accountability

13. A range of issues were also identified in relation to accountability. Ministers are accountable to the parliament for each of the entities within their portfolio's responsibilities. It is, therefore, essential that they are aware of and have ready access to information regarding those bodies. For that purpose, Ministers are entitled to rely on their department for that information. I am, however concerned that the level of record keeping regarding entities is variable between departments. I have recommended that each department should maintain a database of boards relevant to each departmental Minister. The database would comprise at least details of:
- each board relevant to each departmental Minister
  - the functions of those boards
  - the powers of the Minister to direct or control each board
  - the reporting requirements of each board
  - the members of each board
  - the particulars of appointment for each board member.
14. Lack of understanding of accountability relationships and poor separation of roles between parties in the public sector board accountability framework were the most apparent risks to good governance identified in my investigation. The government has recently acknowledged the need to provide greater role clarity in the accountability framework for commercial public sector entities.

<sup>5</sup> Victorian Ombudsman, *Investigation into the Foodbowl Modernisation Project and related matters*, November 2011.

<sup>6</sup> Victorian Ombudsman, *Own motion investigation into Greyhound Racing Victoria*, June 2012.

15. The governance framework for public entities can be challenging from a number of perspectives. The threats of takeover and bankruptcy, which impose market discipline on private sector boards, are usually missing in the public sector and there is increasing tension around where the boundaries are seen to lie in the spectrum of policy, legal, financial and managerial autonomy of government entities.
16. A significant variable in external governance of public entity boards is the degree to which boards are subject to Ministerial direction. The chain of accountabilities – from management to boards to Ministers (advised by ministerial and departmental staff) to taxpayers – can be seen as complex and can dilute accountabilities and the understanding of those involved as to how those accountabilities operate. The ability of Ministers to direct the operations of an entity is often constrained by the limited direction powers provided in the empowering legislation for particular boards.
17. There is also much confusion in certain boards and departments as to the relationship between the entities and departments, which can be a cause of tension. There seems to be a widely held assumption that departments or the Secretaries of departments have an automatic but unclear role in the governance of boards. This view is incorrect.
18. It should be recognised that the line of accountability for boards is relatively clear. A board is accountable to its responsible Minister, which is usually the Minister named in the General Order as having responsibility for the board's empowering legislation<sup>7</sup>. To avoid the obvious confusion held in certain boards and departments regarding board accountability, I consider that greater attention should be provided to the legal framework in which each board has been established, rather than other secondary and less accurate sources.
19. Boards were established at arm's length from Government and Ministers were given varying and often limited or no direction powers. In the absence of any specific legislation providing a department with a role in relation to a public entity or board, departments serve to assist Ministers in their functions to the extent that the Minister intends them to be involved. They have, therefore, no automatic role in the governance of boards or even in monitoring boards<sup>8</sup>. It is up to the responsible Minister, to the extent of his or her direction powers, to require, if necessary, that the board allows the department to have access to board material so that the department can advise the Minister regarding the board's performance.

<sup>7</sup> General Orders can be found at: <<http://www.dpc.vic.gov.au/index.php/resources/legal/machinery-of-government/general-orders-and-supplements>>.

<sup>8</sup> There are, of course, some exceptions where some entities also have direct accountability to the portfolio department or Secretary, created by legislation. Most notably, the *Health Services Act 1988* provides that the Secretary of the Department of Health has a range of specific responsibilities with respect to metropolitan health services such as Melbourne Health and other entities within the Victorian health sector, including ensuring that the objectives of the Health Services Act are met through developing policies and plans with respect to health services provided by health care agencies and funding, monitoring, evaluating and reviewing publically funded health services.

20. While there is a trend towards the government or departments seeking to increase oversight of entities, the legal and constitutional framework for that increase is not present or has not been exercised. However, at the time of finalising my report, the *Public Administration Amendment (Public Sector Improvement) Bill 2013* was before Parliament. This bill proposes amendments to the Public Administration Act which will provide departments with a statutory role in the accountability framework for public sector boards.

### **Relationship between the board and the CEO**

21. Internal accountability issues also pose a risk to the good governance of boards. The relationship between the board and the Chief Executive Officer (CEO) is the principal internal accountability relationship for a public entity. Issues arising in this relationship, if not promptly addressed, pose a significant risk to the operation of an entity.
22. Most concerns about the board/CEO relationship raised by witnesses stemmed from insufficient role definition or separation. Witnesses noted that a board becoming overly involved in matters which management perceives to be within its purview can create tension between the board and the Executive of the organisation and potentially lead to a failure of governance.

### **Board appointment processes**

23. Obtaining the best possible mix of skills on a board is also a crucial issue for the governance and performance of boards. For this reason, the board member appointment process is an important element of the board governance framework and potentially a key area of risk. While the *Appointment and Remuneration Guidelines for Victorian Government Boards, Statutory Bodies and Advisory Committees* provide advice on board appointments; the composition of boards, selection processes and the criteria upon which board members are appointed vary widely and in many cases are fixed by legislation. In some cases, the needs of the board itself in terms of skills and collegiality are not being sufficiently considered in the recruitment process.
24. The recruitment process for board members in the Victorian public sector was also described by witnesses as unnecessarily cumbersome and repetitive. At present there is no centralised recruitment system for board appointments. One way in which board member recruitment processes can be improved is through the development of a central e-recruitment system for board members.

### **Size of boards**

25. The size of a board is a key element of board composition and can have an impact on the effectiveness of a board. Board sizes in the Victorian public sector vary, with some boards having as many as 15 members. Consideration should be given to whether boards with membership over nine are appropriate.

26. Victoria was one of the first jurisdictions that chose to use boards in great numbers, primarily to separate decision making from political influences. While there are a range of risks present in the system of board governance for public entities, my investigation did not identify substantial conceptual or systemic deficiencies in frameworks for board operation in Victoria. Boards have served Victoria well for over 150 years and continue to do so.
27. The total number of boards in Victoria however, is unclear but likely to be approaching 4,000; and the variations of board types is highly diverse. This report, therefore, has recommended that the primary effort should be directed at improving departmental records on existing boards, measures to restrict the creation of new boards and fostering a clear understanding of accountability and relationships.
28. I have made a number of recommendations, including:
  - Ministers, board members and departments pay greater attention to the legislative framework for particular boards in interpreting the functions and accountability of boards, rather than secondary sources.
  - The Premier give consideration to prioritising the development of an e-recruitment system for board appointments in the Victorian public sector.
  - Departments undertake performance and governance reviews of existing public entities, individually, or as classes, over the next five years to determine whether they are still fit for purpose, cost effective and their functions are still necessary.

## Background

29. During recent years, I have presented a number of reports<sup>9</sup> to Parliament which identified serious governance failures by public sector boards and their senior management. Some of the issues included:
- inadequate processes for appointing board members
  - conflicts of interest
  - inadequate performance reviews of boards and board members
  - poor oversight of the operations of entities by boards
  - inadequate information provided to boards by Chief Executive Officers and other officers
  - failures to comply with public sector legislation or ministerial directions
  - failures to appreciate/comply with standards expected of public officers, including undeclared and inadequately managed conflicts of interest by board members
  - inappropriate acceptance of gifts and hospitality by board members
  - poor departmental oversight of boards
  - imbalance of power between the board and the Chief Executive Officer.
30. While the issues identified in relation to the boards were ancillary to the initial complaints investigated, they ultimately led to some boards being dismissed by the responsible Minister.
31. Based on the issues raised in these reports and the pivotal role boards play in controlling and managing the performance of entities and institutions, I decided that an own motion investigation into governance by boards in the Victorian public sector was warranted.

## Scope of the investigation

32. My investigation examined the governance framework for public sector boards and how that framework is being applied in practice. The investigation also sought to identify whether there are systemic issues and weaknesses which create risks for good governance by Victorian public sector boards.
33. For the purpose of this investigation, public sector boards do not include those which exercise judicial or quasi-judicial functions – such as the Building Appeals Board or the Police Registration and Services Board. In response to my draft report, the Department of Education and Early Childhood Development said:

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<sup>9</sup> See, most recently, the following reports:

- Victorian Ombudsman, *Own motion investigation into the governance and administration of the Victorian Building Commission*, December 2012.
- Victorian Ombudsman, *Investigation into improper conduct by CenITex Officers*, October 2012.
- Victorian Ombudsman, *Own motion investigation into Greyhound Racing Victoria*, June 2012.
- Victorian Ombudsman, *Investigation into the Foodbowl Modernisation Project and related matters*, November 2011.

The Department considers that the Merit Protection Board and the Disciplinary Appeals Board fulfil a similar function to the Police Registration and Services Board and the Building Appeals Board, and as such should be considered outside the scope of this report.

## Investigation methodology

34. Given the number and diversity of boards in the public sector, I decided to examine the governance arrangements for a sample of boards. Although the boards reviewed are primarily involved in the delivery of key public services, they do not represent the full range of governance frameworks that Victorian public sector boards operate within.
35. My investigation examined the governance framework for each board by reviewing its establishing legislation and other governance documentation. To determine how the governance arrangements work in practice, my officers met with the chairs and the Chief Executive Officers of the entities. They also met with the responsible Ministers, the secretaries of their departments, and senior departmental officers who have a role in monitoring the operations of these boards.
36. To gain a broader perspective, my officers met with several individuals with extensive knowledge and experience of board governance arrangements. The investigation also included discussions with Commonwealth officials and academics.

## Corporate governance

37. The following definition of governance, taken from the State Services Authority (SSA) website, was adopted for my investigation:

Governance defines relationships between the Board and senior management, the Minister, stakeholders (including consumers), and others interested in the affairs of the public entity, including regulators and auditors.

Governance encompasses authority, accountability, stewardship, leadership, direction and control exercised in the organisation<sup>10</sup>.

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<sup>10</sup> State Services Authority, accessed 30 July 2013, <[http://www.ssa.vic.gov.au/governance/nature-of-entity-a-governance-implications/governance-faq.html#What is governance](http://www.ssa.vic.gov.au/governance/nature-of-entity-a-governance-implications/governance-faq.html#What%20is%20governance)>.

## Primary findings of investigation

38. The evidence obtained during my investigation did not indicate that the use of boards in Victoria was conceptually or practically flawed. It showed that the use of boards was appropriate in a range of circumstances for valid reasons.
39. However, boards can and do present certain risks to the State. One of those risks is in the mounting tension about where the boundaries are seen to lie in the spectrum of policy, legal, financial and managerial autonomy across government entities. The growing number of devolved and increasingly complex entity and venture structures present a risk to good governance of boards. Public sector boards are required to negotiate and manage the new risks and accountabilities posed by these structures in situations where the line between 'public' and 'private' is considered by those involved, to be increasingly blurred.
40. Other risks arise from the lack of definitive information as to the number of government boards in the State or the costs of boards. The SSA estimated that at 30 June 2012 the Victorian Government had 3,732 public sector boards, serviced by an estimated 34,397 board members. School councils comprise the largest group of boards, followed closely by Crown land committees of management and cemetery trusts. The vast majority of the board members are, however, unremunerated, and perform their functions on an honorary basis. Unfortunately, neither the SSA nor the central policy departments could estimate the whole of government cost of bodies and committees that oversee boards.
41. This report concentrates on such issues and identifies areas of risk within the governance framework which justify further attention by Ministers, departments and boards.

# The governance framework for Victorian public sector boards

## A long history of governing with boards

42. The Victorian Government has historically relied heavily on bodies<sup>11</sup> governed by boards<sup>12</sup> made up of members from the business sector and the community, to manage a significant part of its activities.
43. From 1851 when Victoria became a separate colony, it inherited from New South Wales a system of boards administering education. As government involvement in the economic development of the state expanded, a significant number of public entities<sup>13</sup> were established in many key areas such as transport, electricity, water, sewerage, housing, public health, ports, banking and insurance. Many of these entities were managed and controlled by governing boards. Those entities and their boards were established to place them at ‘arm’s length’ from Ministers.
44. Professor Paul Finn, as he then was, made the point that Victoria’s use of statutory boards ‘began a long tradition in a “style of government”’ that in 1883, with the transfer of railway management to a statutory board:
- ... won for Victoria, then and subsequently, a notoriety for the use of boards in the conduct of administrative government. To the contemporary English politician, the cause for ‘astonishment’ and the ‘complete surprise’ in this was the dramatic deviation from the British creed of ministerial administration.<sup>14</sup>
45. He also makes the point that the use of boards was pragmatic rather than built on constitutional principle<sup>15</sup> and that the relationships of boards with government ‘knew no fixed formulae’<sup>16</sup>. The degree of board independence ranged from close Ministerial control in the case of the board of Land and Works, to almost complete independence. The latter can be seen in the case of the former Victorian Railways Commissioners:
- A corporation erected designedly to remove the conduct of one of the then great functions of government from the corrosive effects of political interference.<sup>17</sup>
46. Over the decades as various reforms to the Victorian public sector have been implemented, the number and type of entities have increased. However, since the 1990s the number of large public commercial entities has reduced. This is in contrast to the sharp increase in the number of regulatory, advisory and management entities that now proliferate in the public sector.

11 Such as corporations committees, trusts and governing councils.

12 Governing boards are not always known as boards and can be called a variety of names including committees, trusts and governing councils.

13 Public entities are organisations that exercise a public function but are established outside departments. As bodies operating at ‘arm’s length’ from government, public entities perform their day-to-day functions with some or complete autonomy from Ministers.

14 Finn, Paul, *Law and Government in Colonial Australia*, Oxford University Press, Melbourne, 1987, page 95.

15 *ibid.*

16 *ibid.*, page 96.

17 Finn, Paul, *Law and Government in Colonial Australia*, Oxford University Press, Melbourne, 1987, page 97.

## The current landscape

47. Victoria's system of devolved public administration relies heavily on thousands of public entities to deliver a range of services and functions that are essential to the running of the state.
48. Public entities is a general term covering a number of non-departmental bodies. Essentially, the common feature between them is that they all exercise a public function but are established outside departments and operate at 'arm's length' from government. Most, though not all, are incorporated and can employ staff, enter into contracts and hold property. They take many forms including commissions, corporations, trusts, authorities, councils, institutes, panels, committees and offices. Many of these entities are governed by boards made up of more than one person. The SSA notes that using a board of governance 'is generally the default position' when establishing a new entity<sup>18</sup>.
49. The size and composition of this public entity sector and the number of boards in Victoria changes from year to year depending on decisions of the government. For example in 2011-12 a significant change involved the transfer of the management of public transport services to a new public entity – Public Transport Development Authority<sup>19</sup> which merged with the Transport Ticketing Authority (an existing entity) and Metlink (formerly a private sector employer). Evidence received during my investigation indicates that approximately five new entities are established each year.
50. From a financial risk perspective, the most significant group of entities are those classified as commercial. These include the Rural Finance Corporation of Victoria, State Trustees Limited, Treasury Corporation of Victoria, Transport Accident Commission, Victorian Funds Management Corporation, WorkSafe and Victorian Managed Insurance Authority and 78 other entities including water corporations. Together they received government funding of \$2.7 billion in 2012-13. The importance of this sector to the state's economy is shown in the following financial statistics for the 2011-12 financial year, where these entities and their boards:
  - Paid dividends of \$659.3 million
  - Generated revenue of \$14.7 billion
  - Controlled \$151.5 billion in assets
  - Incurred expenses of \$15.8 billion.<sup>20</sup>
51. These entities operate with varying levels of autonomy from the government and sometimes with very different governance arrangements. They range from large organisations employing thousands of staff and administering billions of dollars of public money to small advisory committees with no independent budget or staff. They perform tasks from regulating industry to delivering critical services such as health care; education and training; public transport; emergency services;

<sup>18</sup> State Services Authority, *Legal form and Governance Arrangements for public sector entities guidelines*, revised May 2013, page 28.

<sup>19</sup> Which operates under the name Public Transport Victoria.

<sup>20</sup> Information provided by the Department of Treasury and Finance.

and water and land management. Others provide Ministers with expert advice on initiatives that can affect millions of Victorian citizens or entire industry sectors. They employ over 150,000 staff and amongst them are some of the largest employers in Victoria<sup>21</sup>.

52. The boards of many entities operate in a complex and challenging environment. For those that were established decades ago, such as WorkSafe and the Transport Accident Commission, the landscape has changed significantly. These boards now have to:
- operate in volatile financial markets that have resulted in lower returns on investments while they are under pressure from the government to contain costs and operate efficiently
  - manage the performance of outsourced services<sup>22</sup>
  - work within a number of regulatory, compliance and oversight frameworks, agreements and guidelines
  - provide evidence of decision making and planning
  - report meaningfully on their performance
  - manage the risks of complex business models such as joint ventures and subsidiary companies.
53. Many of the large entities have not been subject to a strategic or performance review for 10 years or more, and many have never been subject to an independent or public review. In addition, the reviews that have been undertaken have tended to be reactive, often instigated following the emergence of high profile issues as in the case of the Foodbowl Modernisation Project<sup>23</sup> and Greyhound Racing Victoria<sup>24</sup>.

## Number of boards

54. How many entities there are is far from certain. The SSA in 2009 considered that ‘the total number of Victorian public entities [was] ... over 10,000’<sup>25</sup>. By 2013, the figure it produced had fallen to 3732<sup>26</sup>. The latter figure is, no doubt more accurate and was produced after the SSA developed the Government Appointments and Public Entities Database (GAPED). That database is dependent on information provided by departments.
55. The SSA, however, acknowledges that the GAPED does not provide an entirely accurate picture of the number or composition of entities in the Victorian public sector. The reasons for this include:

21 State Services Authority, *The State of the Public Sector in Victoria, Report Overview 2011-12*, page 10.

22 For example, the Victorian WorkCover Authority contracts out both the collection of premiums and the management of claims to authorised agents (including private insurers and the Transport Accident Commission) while the Transport Accident Commission contracts out the collection of premiums (to VicRoads).

23 Victorian Ombudsman, *Investigation into the Foodbowl Modernisation Project and related matters*, November 2011.

24 Victorian Ombudsman, *Own motion investigation into Greyhound Racing Victoria*, Melbourne, June 2012.

25 State Services Authority, *Welcome to Government, Your introduction to the Victorian public sector*, 2009, page 11.

26 State Services Authority, *The State of the Public Sector in Victoria, Report Overview, 2011-12, 2013*, page 10.

- The onus is on departments to ensure the information in the database is maintained. On occasions, departments either fail to advise the SSA about the status of entities (e.g. that a new entity has been created, or an entity is abolished or re-categorised) or there are delays in providing this information. My investigation identified one example of a body which has only recently been identified as a public entity which should be included in the GAPED, despite the entity having been established over seven years ago. At the time of writing, this board had not yet been added to the GAPED.
- There is poor data on school councils.
- Many of the fields used to capture information in the database do not have clear or robust definitions or business rules.
- There is no consistent practice in departments in maintaining databases of boards for which their Ministers are responsible.

56. In response to my draft report, the Department of Education and Early Childhood Development said:

... it is noted that one of the reasons the SSA consider that the Government Appointments and Public Entities Database (GAPED) does not provide an entirely accurate picture of the number or composition of public sector boards in Victoria is due to the poor data on school councils.

...

The Department ... maintains a ... database containing information on the 1,534 school councils and the approximately 18,600 council members. Details of the members of each council and particulars of the appointment of each member are collected via the Department's intranet and provided by principals, who are required to provide such details to the Department following annual school council elections and by 30 April each year pursuant to Ministerial Order 52 School Council Composition and Elections Order. Principals are reminded of the school council reporting requirements via circulars and support is provided to schools by the Regional Monitoring and Support Division to assist in completing the data. Schools that have not submitted data by 30 April are directly contacted to ensure compliance.

The Department is aware that over the last two years, despite developing an online reporting system to replace paper based returns to regional offices, approximately 30% of schools have not entered data by 30 April. When data is entered, validity and completeness cannot be assured without significant compliance and quality assurance activity by the Department. This would be a resource-intensive process given the number of councils and individual members.

Furthermore, the Department considers that any duplication in recording board information by individual departments and a central government authority should be avoided. Currently, the Department only provides certain data about school council members (specifically, the total number of members and a breakdown of that number by gender) to the State Services Authority on an annual basis. This data was agreed on by the State Services Authority and the Department in 2011 following extensive negotiation and within the context of what was practical to collect within a timeframe each year given the number of school councils and councillors.

57. The extent to which departments keep records of the boards for which their Minister is responsible varies. Ministers are accountable to the parliament for each of the entities within their portfolio responsibilities. It is, therefore, essential that they are aware of and have ready access to information regarding those bodies. And for that purpose, Ministers are entitled to rely on their department for that information. I am concerned that the level of record keeping regarding entities appears variable between departments.
58. A desirable and appropriate process would be for each department to keep records of, at a minimum:
- each board relevant to each departmental Minister
  - the functions of those boards
  - the powers of the Minister to direct or control each board
  - the reporting requirements of each board
  - the members of each board
  - the particulars of appointment for each board member.
59. Attempts to rationalise the number of entities in Victoria have had mixed results. For example recommendations<sup>27</sup> relating to the amalgamation of TAFEs and Catchment Management Authorities and the rationalisation of the number of cemeteries and Alpine Resorts, have not been implemented. However, in the water sector, the number of authorities has reduced from 370 to 19.
60. In response to my draft report, the department of Education and Early Childhood Development said the recommendation relating to the amalgamation of TAFEs:
- Was not supported by Government due to concurrent and ongoing reform programs and funding for regional TAFE institutes. However, consideration is being given by the TAFEs that were the subject of that recommendation of all options to achieve long-term sustainability.
61. The Premier has however, in relation to new entities, issued Premier's Circular 2013/2 the purpose of which is to limit the creation of new non-departmental entities. According to the Circular, three steps are necessary to create a new entity:
- Cabinet approval is required, and for that purpose submissions 'should include a robust case' which considers costs and benefits and specifically address:
    - Is there a role for government?
    - What degree of autonomy from departments or Ministers is required?

27 These recommendations were made in:

- Department of Sustainability & Environment, *Securing our Natural Future - A white paper for land biodiversity and climate change*, Melbourne, 2009.
- TAFE Reform Panel, *A strong and sustainable TAFE sector*, Melbourne, 2013; Department of Education and Early Childhood Development, *Next Steps for Refocusing Vocational Training in Victoria - Supporting a Modern Workforce*, Melbourne, 2013.
- State Services Authority, *Review of Cemetery Trusts*, Melbourne, June 2007.
- State Services Authority, *Review of Alpine Resort Areas, Final Report*, Melbourne, June 2008.

- o What is the appropriate form of the entity?
- o Can the functions be performed by an existing entity?
- All new entities must have a sunset date of no more than ten years (or a clearly articulated rationale for why a sunset is not appropriate)
- All new entities will be reviewed after three years of their creation.

## Cost of boards

62. Cabinet approves the rate of payment for many board members and chairs. The *Appointment and Remuneration Guidelines for Victorian Government Boards, Statutory Bodies and Advisory Committees*, which are endorsed by the Premier and administered by the Department of Premier and Cabinet, are used to determine the level of remuneration paid as follows:
- For Group A entities - Chairs are paid from \$10,769 to \$121,205 per annum. Board members from \$6,461 to \$53,103 per annum.
  - For Group B entities - either an annual fee is paid (ranging from \$10,769 to \$45,462 for a chair and from \$6,461 to \$18,203 for a board member) or a daily sitting fee (ranging from \$345 to \$562 for a chair and from \$264 to \$485 for a board member).
  - For Group C entities - a daily sitting fee (ranging from \$162 to \$485 for a chair and from \$140 to \$371 for a board member).
  - For Group D entities - payment levels are not specified as Ministers determine remuneration on a case-by-case basis.
63. In addition, board members who receive an annual fee also get superannuation and may be eligible for an allowance (of up to \$4,954 per annum) for serving on a board committee.
64. The SSA estimated that at 30 June 2012 the Victorian Government had 3,732 public sector boards, serviced by an estimated 34,397 board members. School councils comprise the largest group of boards, followed closely by Crown land committees of management and cemetery trusts. However, the vast majority of the board members are unremunerated and performing their functions on an honorary basis.
65. Neither the SSA nor the central policy departments could estimate the whole of government cost of boards and committees that govern entities.
66. A review of the annual reports of a number of entities revealed that it is difficult to get an overall picture of the cost of the different types of boards because remuneration for board members is reported in broad income bands. In most cases, there is no indication of the amount of fees paid in total including on-costs (for example motor vehicle allowance, travel, committee fees).

67. However, there are a few exceptions: WorkSafe's annual report shows that \$966,000 was paid to board members in 2012-13. This amount includes the remuneration of the CEO, who is also a board member. The Barwon Water annual report indicates that \$613,000 was paid to board members in 2012-13. Again, this includes the CEO, who is a board member.
68. It is also difficult to determine the administrative costs incurred by an entity to meet its reporting obligations to government. One regional water entity estimated that it spends approximately \$1.5 million per year meeting its reporting obligations to government and industry groups.
69. In response to my draft report, the Department of Environment and Primary Industries said:
- ... this figure should be ... placed in context - i.e. water corporations are monopoly businesses with a statutory duty to provide essential services to an adequate level whilst meeting and reporting on the required governance standards. Compliance reporting requirements are consistent with the high level of assets and revenue, etc. dealt with by these entities, for example:
- In 2012-13 Barwon Water serviced a population of 295,799 with drinking water and 264,261 with sewerage services and treated 24,979 mega litres of waste water in its water reclamation plants In doing so, it:
- managed \$2.2b of assets;
  - received revenue of \$200m;
  - had a capital works program of \$154m; and
  - employed 394 staff.
70. Added to this, is the cost of servicing the board or committee and the departmental structures and salaried time spent in overseeing the entity, as well as the board appointment processing costs. This generally involves an external recruitment agency as well departmental officers.

## Classification and remuneration framework for boards

71. There are different approaches used across government to determine the appropriate classification and remuneration level for boards. For example the *Appointment and Remuneration Guidelines for Victorian Government Boards, Statutory Bodies and Advisory Committees* use a classification system<sup>28</sup> (referred to above) which categorises boards as being one of the following types:
- Group A: Commercial boards of governance (five bands).
  - Group B: Significant industry and key advisory bodies and significant boards of management (two bands).
  - Group C: advisory committees, registration boards, management boards of small organisations and quasi-judicial tribunals (three bands).
  - Group D: inquiries/task forces and ad hoc expert panels (three bands).

<sup>28</sup> Department of Premier and Cabinet, *Appointment and Remuneration Guidelines for Victorian Government Boards, Statutory Bodies and Advisory Committees*, Melbourne, July 2011 (updated July 2012).

72. Within each group there are a number of types (14 in total) and for each the classification system 'sets out the suggested rates of payment for the four groups and suggest the appropriate classification of organisations to enable the determination of payment levels'.
73. Ministers are responsible for classifying bodies according to the advice in the Schedules. Where there is an exceptional case, it should be referred to the Government Branch, Department of Premier and Cabinet for advice.
74. The financial profile of the entity is often a key determinant in its board's classification; the higher the turnover, assets or profit, the more significant the entity and the greater the remuneration for its board members. A secondary consideration is the nature of the work of the board and the degree of responsibility for board members. For Groups B, C and D the criteria also takes into account the expertise and qualifications of members.
75. There are, however, difficulties in obtaining a consistent approach to classifying entities because:
  - Individual departments determine which categories and bands apply to their portfolio boards and entities. Consequently, some departments apply different criteria and this can lead to inconsistencies in classification and remuneration.
  - The Department of Treasury and Finance (DTF) uses a different classification system for entities that is based on accounting/ economic principles used by the Australian Bureau of Statistics for preparing the national accounts. This system classifies all entities into sectors according to the nature of their activities and funding arrangements.
  - Non-statutory advisory boards can have complex or unclear objectives.
  - There is limited independent review of the classifications decided by departments.
76. While this is unfortunate, no evidence has been provided to me to show that this has caused poor board performance or that it is the source of poor management of boards.

## Recommendations

In order to allow appropriate records to be maintained of the boards in the State and so as to allow departments to provide adequate advice to Ministers relating to the boards for which Ministers are responsible:

I recommend that:

### Recommendation 1

Each department should maintain a database of boards relevant to its respective Minister and ensure that it provides up-to-date information to the GAPED from this database. The database should comprise at least details of:

- each board relevant to each departmental Minister
- the functions of each board
- the powers of the Minister to direct or control each board
- the reporting requirements of each board
- the members of each board
- the particulars of appointment for each board member.

## **Recommendation 2**

The government consider how the GAPED can be improved to support departments in ensuring the information they provide to the GAPED is complete, accurate and up-to-date.

## Governance arrangements and their importance

77. The framework of rules, relationships, processes and systems in which public entities operate is known as their governance arrangements. The governance framework for public entities can be challenging from a number of perspectives. First, the chain of accountabilities – from management to boards to ministers (advised by ministerial and departmental staff) to taxpayers – can be seen as complex and can dilute accountabilities and the understanding of those involved as to how those accountabilities operate. The ability of Ministers to direct the operations of an entity is often constrained by the limited direction powers provided in the empowering legislation for particular boards.
78. Second, the threats of takeover and bankruptcy, which impose market discipline on private sector boards and their management and are an incentive to operate efficiently, are usually missing in the public sector. Moreover, government-owned commercial entities (where significant public funds can be at stake) usually have a different approach to commercial risk than private companies, particularly with regard to activities with potentially high returns but also relatively high risk. For example, responsibilities for expenditure of public funds can lead to entities being risk averse, while government guarantees, or the ability to borrow at a lower cost than the private sector, can increase risk taking.
79. There are two main aspects to the governance arrangements for the boards of entities:
- *External governance* – the roles, relationships and distribution of powers and responsibilities between Parliament, the responsible Minister and the relevant government department. These arrangements include:
    - o the directions powers provided to Ministers
    - o the entity’s legal authorisation and form
    - o its decision-making powers
    - o its accountability to the government, Parliament and independent oversight and regulation bodies.

The basis for these arrangements is usually the entity’s enabling legislation and depending on the form of the entity, a range of other legislation including the Public Administration Act; *Financial Management Act 1994*; *State Owned Enterprises Act 1992*; *Audit Act 1994*; *Borrowing and Investment Powers Act 1987*; *Public Records Act 1973*; *Information Privacy Act 2000*; *Equal Opportunity Act 2010*; *Fair Work Act 2009 (Cth)*; *Freedom of Information Act 1982*; *the Ombudsman Act 1973*; *Independent Broad-based Anti-corruption Commission Act 2011*; and *Charter of Human Rights and Responsibilities Act 2006*. In addition, there are Premier’s circulars, ministerial directions, Statements of Obligations or Expectations and codes of conduct.

For some entities, depending on their structure, they may also be subject to the *Corporations Act 2001* (Cth), the *Trade Practices Act 1974* (Cth) and Commonwealth taxation law.

- *Internal governance* – an entity’s organisational structure and lines of reporting, internal processes and procedures, financial and performance management practices, social and environmental responsibilities and code of conduct. These are usually set out in internal policies and procedures.

## Variations in governance arrangements

80. During the past decade, a number of overseas and other Australian jurisdictions have undertaken reviews of the governance arrangements for their public entities. In many cases, these reviews have been driven by governments reassessing the shape, extent and performance of their public services, in order to reduce costs and deliver better services.
81. While the reviews covered a range of issues, key themes which emerged were the need to:
- reduce the number and cost of public entities
  - improve the transparency and accountability of entities
  - ensure greater consistency in the governance arrangements and frameworks for entities undertaking similar roles or functions.
82. Some of the changes recommended included:
- applying a public interest test to determine whether there is a continuing need for public entities. In many cases, this has resulted in a significant reduction in the number and type of entities and cost savings
  - clarifying the relationship between the responsible Minister and the public entity
  - increasing the transparency of entities’ activities and operations
  - requiring some public entities to share back end services and improve collaboration across sectors, for example, with procurement.
83. While there is considerable variation in the governance models used in these jurisdictions, there are some interesting initiatives being implemented that could provide useful information in developing a contemporary governance framework for entities and their boards in Victoria.
84. Of most interest is the approach adopted in New Zealand which has enacted a single piece of legislation to provide a consistent framework for the establishment, governance and operation of Crown entities. This Act recognises the different types of entities, the different levels of accountability and control for those types of entities and clarifies the monitoring function of departments in relation to Crown entities.

85. The benefit of this approach is that it provides a single base for the rules for the governance of statutory bodies and by doing so, serves to remove much of the uncertainty (which is discussed later in this report) as to the relationships between boards, Ministers and departments.

For further information, see Appendix B.

## Board design

86. There is no consolidated list of the formal governance structures that apply to individual entities in Victoria. This is in contrast to the comprehensive public list prepared by the Commonwealth Government of all statutory and non-statutory bodies, companies and incorporated associations with which the government has a formal governance link. This document is titled *List of Australian Government Bodies and Governance Relationships* and provides details for each entity, the date it was created, its functions, governance relationships and classification<sup>29</sup>. The list states that it is designed to:

- ensure that the Parliament has access to comprehensive information on how the Australian Government is structured
- assist citizens and others to understand which entities are controlled by, or are connected to, the Australian Government
- assist government bodies to identify other entities that service or are otherwise involved in the community.

87. The SSA has issued guidelines on governance arrangements to be used in the creation and review of public entities titled *Legal form and governance arrangements for public entities – guidelines*. According to these guidelines, as a general principle, consistent legal and governance arrangements should apply to entities that perform similar functions or require similar degrees of Ministerial control and direction. The guidelines propose a process for determining the most appropriate legal form and governance arrangements when establishing a public entity and state that they are not intended to be prescriptive.

88. The guidelines provide some broad advice on the different governance arrangements available and touch on the types of frameworks that may be more suitable for certain bodies, but provide very little specific guidance. For example, in relation to board size, the guidelines note that boards with more than nine members ‘should be considered carefully’. They do not, however, provide any guidance on issues such as which types of entities might be more suited to the Executive Director model or what type of Chief Executive Officer appointment and dismissal arrangements might be suited to particular types of entities and their boards.

89. My investigation identified that entities and their boards undertaking similar functions and with the same legal status do not necessarily have the same legislative governance arrangements. Examples include:

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<sup>29</sup> Department of Finance and Deregulation, *List of Australian Government Bodies and Governance Relationships as at 1 October 2009*, 3rd Edition, Canberra, 2009.

- One significant commercial transport entity may have a board (for example Vic Track) while another may not (for example VicRoads).
- Some boards have a direct power to remove their CEO (for example Rural Finance Corporation<sup>30</sup>) while in other cases the dismissal of the CEO requires the approval of the responsible Minister (for example Public Transport Development Authority<sup>31</sup>).
- Some boards have members appointed for five years (for example Emergency Services Superannuation Board<sup>32</sup>) while most boards have members appointed for three years (for example Victorian Managed Insurance Authority<sup>33</sup>).

Further examples are listed at Appendix A.

90. Such variations occur because decision making on the particulars of board design is often not considered as the predominant issue in the planning of board legislation. It often effectively occurs at officer level between the instructing office and Parliamentary Counsel in the process of preparing a particular Bill, which is then approved by the responsible Minister.
91. Thus, many decisions on board design in the past have been based on pragmatic reasons, rather than well thought out plans or intentions or a systemic design criteria. This is not necessarily problematic as the needs of the particular board have been the essential criteria in the design of that board. However, as noted by the Department of Premier and Cabinet in response to my draft report:

While there may not be conceptual or systemic deficiencies in the existing framework, there may be opportunities to implement better and more consistent practice, and to simplify compliance with the legislative framework. Although not a direct risk to performance, issues such as compliance burden of the inconsistent governance arrangements, could be material.

## Design review

92. Some entities operate under governance arrangements specified in legislation which has not been subject to substantial review in decades. For example, the 2011 *Report of inquiry into the effect of arrangements made by the Country Fire Authority on its volunteers*, observed that the *Country Fire Authority Act 1958*, had been subject to ‘piecemeal amendments’ by no less than 125 amending Acts and subordinate instruments since it commenced in 1959. The report stated that it was ‘clear that a broad review of the 53 year old CFA Act is required’ in order to ‘modernise’ it. It recommended a review of the CFA Act and regulations and said:

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<sup>30</sup> Section 15(6) *Rural Finance Corporation 1988*.

<sup>31</sup> Section 79O(3) *Transport Integration Act 2010*.

<sup>32</sup> Section 7(7) *Emergency Services Superannuation Act 1986*.

<sup>33</sup> Section 12(1) *Victorian Managed Insurance Authority Act 1996*.

A review should involve consideration of the provisions relating to the structure and appointment of the CFA Board. Those provisions have been in place for a long time and the substantial change in circumstances that have arisen over that time mean that the current structure and method of appointment may no longer be in the public interest. It is necessary for alternatives to be considered so that the CFA, being a public authority, is governed by a Board that best serves the interests of the community in 2011.

93. On 21 December 2012 the former Premier announced an economic action plan which may have broader application to public entities. A number of the foreshadowed reforms have potential implications for the governance arrangements for boards of public entities. These include<sup>34</sup>:
- Adopting a more 'active shareholder model' for public sector commercial entities. This is seen as involving the government:
    - o providing clarity on the responsibilities of independent board members and nominee board members and matters at the direction and discretion of management, the board or the shareholder; and
    - o establishing savings and efficiency targets for entities. This includes benchmarking entities to best practice in both service delivery and financial performance.
  - Streamlining the government's non-departmental entities to address entity proliferation, out-dated governance structures, duplication and unclear purpose.
94. There appears to be considerable uncertainty about what constitutes the 'active shareholder model'. However, my investigation has been advised that key questions to be addressed include:
- How can government ensure Government Business Enterprises (GBEs) are operating efficiently and effectively?
  - How can disciplines be put into the governance framework to identify and remedy poor performance or bad behaviour in the absence of market disciplines?
95. The government has also established the Better Services Implementation Taskforce (the Taskforce) to oversee a range of improvements to Victoria's public services. The Taskforce has been considering major changes to the governance and operations of public sector entities<sup>35</sup>. The Taskforce and its Secretariat, located within the Department of Premier and Cabinet, have developed a list of projects related to public sector entity governance and a timeframe for the work to be completed. The Secretariat, made up of staff from the two policy departments, Premier and Cabinet and Treasury and Finance, are undertaking some specific governance projects such as:

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<sup>34</sup> *ibid.*

<sup>35</sup> Department of Premier and Cabinet, *Securing Victoria's Economy, Executive Summary* accessed 24 July 2013 <[www.dpc.vic.gov.au/index.php/featured/securing-victorias-economy/22/htm/409-securing-victorias-economy-html#execut](http://www.dpc.vic.gov.au/index.php/featured/securing-victorias-economy/22/htm/409-securing-victorias-economy-html#execut)>.

- reviewing the types of entities in the Victorian public sector
  - reviewing the governance arrangements for commercial Government Business Enterprises (to be undertaken over three years)
  - reviewing the appointment guidelines for boards
  - developing best practice guidance on the creation of entities<sup>36</sup>.
96. The Secretariat is also supporting the departments in conducting reviews of their portfolio entities. Each department will determine the methodology to be adopted in these reviews. According to one departmental secretary, this may involve a 'soft' option such as a 'desk top review' in the case of advisory entities or a 'hard' option of 'an external review' for the large commercial entities, carried out over a period of two years.
97. The difficulty with this approach, as shown in a similar experience in the United Kingdom (see Appendix B), is that reviews of public bodies undertaken by different departments can lack rigour, have varying standards and result in few changes. However, the alternative, a centralised review, while it might be regarded as systematic and consistent, would have the disadvantage of the review body being greatly separated from the actual needs and conditions of the bodies under review. Presumably it is for these reasons that the reviews of all entities conducted pursuant to the Premier's Circular are not to be conducted centrally.
98. It is considered that it would be appropriate for every department to review each of the entities relevant to their Ministers either individually, or as a class, over the next five years in accordance with criteria set out in Premier's Circular 2013/2.

## Recommendation

I recommend that:

### Recommendation 3

Departments undertake performance and governance reviews of existing public entities, individually, or as classes, in accordance with criteria established by Premier's Circular 2013/2 over the next five years to determine whether they are still fit for purpose, cost effective and their functions are still necessary. Those reviews may include initial self-assessment by individual boards.

The reports on these reviews, or summaries thereof, should be made publically available.

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<sup>36</sup> Premier's Circular No. 2013/2 is a product of this project.

***In response to my draft report, the Department of Environment and Primary Industries said:***

DEPI notes that Premier's Circular no 2013/2 Creation and review of non-departmental entities, sent to ministers by letter from Premier Napthine dated 6 September 2013, contains Policy and Processes for review of portfolio agencies that are based on work by BSIT. Premier Napthine's letter states that:

"BSIT is working with departments to identify some targeted reviews of existing entities - particularly where there may be opportunities to improve their efficiency, governance arrangements or accountability. I encourage you to commission reviews of those entities in your portfolios that you consider may present opportunities along these lines. The new policy framework, criteria and processes should apply to this targeted work."

DEPI has over 1,200 portfolio entities. In line with Premier Napthine's letter and circular, which "do not require the systemic review of all existing entities", DEPI will conduct a targeted review program of existing portfolio entities. This program will:

- include a project plan with standard criteria for determining:
  - which entities will be reviewed;
  - priorities for review; and
  - for each entity targeted for review, the type of review that will occur (e.g. "desktop review by department through to detailed, independent processes with extensive consultation"); and
- as the basis of each review, apply the policy framework, criteria and processes set out in the Premier's circular.

This targeted review of existing entities will form part of a broader review program, which will also include the regular review of new entities in accordance with the Premier's Circular.

It was also submitted by the Department of Environment and Primary Industries 'that the decision whether to publish the report of a review should be determined at portfolio level on a case-by-case basis'.

***In response to my draft report, the Department of Education and Early Childhood Development said:***

[C]onsideration should be given to activity already taking, or recently taken, place in respective departments. By way of examples:

- The Department is conducting a review of governance in Victorian government schools based on national and international research, commissioned research, stakeholder consultation and a survey of school council presidents and principals. Through this process, a set of principles has been identified to underpin the practice of governance, as well as a number of strategies to build the capacity of school councils and support their operation.
- The Department has commissioned various reviews of TAFE institute and AEI governance in recent years, which have resulted in a range of legislative amendments for the implementation of best-practice

governance. For example, amendments to the Education and Training Reform Act 2006 (Vic) were made in 2012 relating to the size, membership, skills required and appointment processes for TAFE institute and AEI board directors.

- The Department has developed and implemented Commercial Guidelines and Strategic Planning Guidelines to support best practice governance within TAFE institutes. The Strategic Planning Guidelines set out the Department's oversight role in ensuring that TAFE institutes are being appropriately governed and the issues to be considered in deciding whether to take a more interventionist approach.

It further stated:

The Department supports this recommendation in principle, however considers that it would be preferable for reviews to focus on areas of priority.

...

The Department also considers that the currently proposed recommendation would create a substantial administrative burden for departments with large numbers of public sector boards within their portfolios that is unlikely to pass a cost-benefit test.

## Risks to good governance

99. My investigation identified areas of risk to the good governance of boards. These risks fall into two broad categories – Accountability and People.

*Accountability* – the risk of uncertain, unclear or confused understandings of the accountability relationships relevant to boards.

There are three primary accountability relationships for each board:

- the relationship between a board/entity and Ministers
- the relationship between the board/entity and departments
- the relationship between the board and the CEO/Management.

The first two are relationships external to the entity, while the third is internal.

*People* – which comprises three elements:

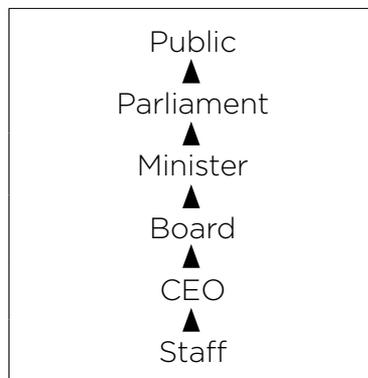
- culture within the board
- appointment processes for board members
- induction and ongoing training programs for board members.

These risks are addressed in the following chapters.

## Accountability

100. Accountability is one of the cornerstones of good governance. The degree to which public entities are intended to and in practice operate at 'arm's length' from Government varies. Public sector boards are required to understand, manage and navigate the inherent challenges and 'grey areas' created by their 'quasi-independent' status. In this complex environment, it is crucial that boards ensure there is clarity at all levels of their entity's accountability framework regarding who is accountable to whom and for what.
101. The most basic view of the system of accountability for a public entity with a board is:

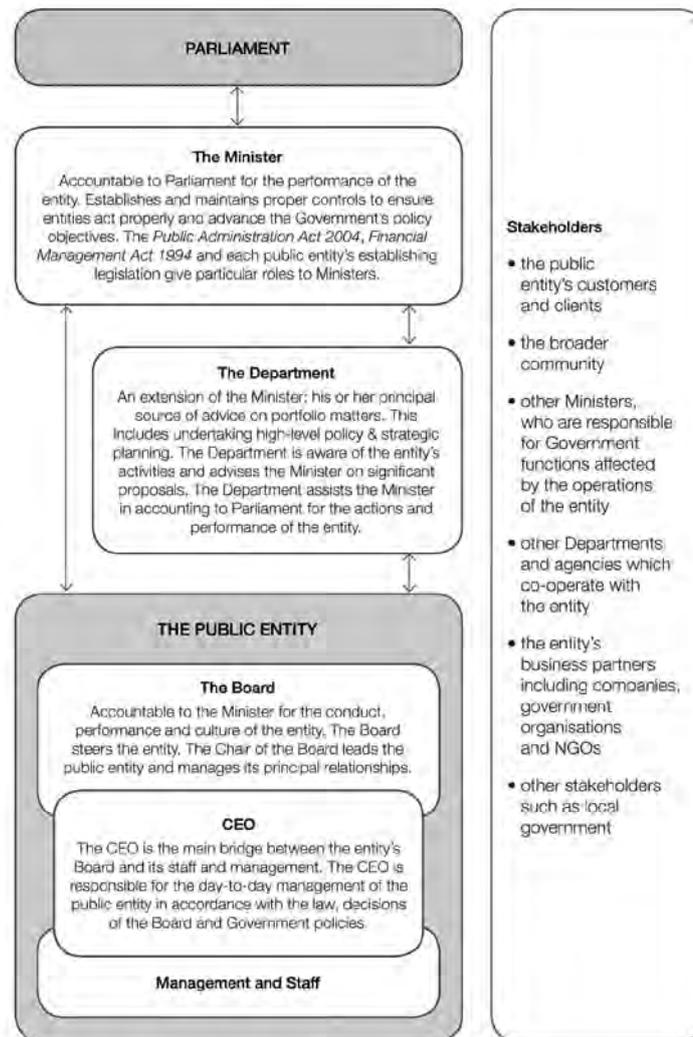
**Figure 1: Basic accountability arrangement for public sector boards**



102. The reality is more complex. Legislation, other governance instruments and administrative arrangements have led to confused understandings of reporting and accountability lines between the parties in the above structure. For example, some entities are responsible to more than one Minister for the same or different functions; some CEOs are also board members; departments may be involved in the governance of a board (sometimes to an extent greater than the relevant legislation allows or the Minister's power to direct the board); and some entities may have subsidiaries with their own boards.
103. The diagram below is a more detailed representation of the key accountability relationships for public entities with boards, although it also, in an effort to simplify the picture, contains inaccuracies. First, as the late Professor Winterton wrote: 'Ministers are not responsible to Parliament for the activities of statutory authorities over which they have no control'<sup>37</sup>. Second, and as discussed further below, the relationship between departments and boards is not as clear as the diagram represents as departments have no automatic role in governance of most statutory bodies. Their role is dependent on the desire of the Minister; the Minister's power to direct the statutory body; and in the absence of such a power or the exercise of such a power, the consent of the board. Thus, the line between public entities and departments should have been shown as a dotted line, and a pale one in many instances.

<sup>37</sup> Winterton, G., *Parliament, the Executive and the Governor-General: A Constitutional Analysis*, Melbourne University Press, 1983, page 110.

**Figure 2: Accountability framework and key relationships for Victorian public entities with boards<sup>38</sup>**



104. A lack of understanding of accountability relationships and poor separation of roles between parties in the public sector board accountability framework were the most apparent risks to good governance identified in my investigation.

105. The government has recently acknowledged the need to provide greater clarity in relation to the roles of the various parties in the accountability framework for public sector commercial entities. Its economic strategy paper, 'Securing Victoria's Economy'<sup>39</sup>, released in December 2012, states that the Government intends to:

strengthen the State's focus as a shareholder to more actively manage public sector commercial entities. This will include providing clarity on the relevant responsibilities of independent directors and nominee directors, along with clarity on the matters at the direction and discretion of management, board or the shareholder.

<sup>38</sup> Diagram Reproduced from: *State Services Authority, Legal form and governance arrangements for public entities-guidelines*, Melbourne, May 2013, page 27.

<sup>39</sup> Department of Premier and Cabinet, *Securing Victoria's Economy*, Melbourne, December 2012, page 50.

106. Precisely what this undertaking will mean is not clear. The Department of Treasury and Finance advised that this project was still in the planning stage in July 2013.

## External accountability relationships

### Relationship between board and Minister

107. A significant variable in external governance of public entity boards is the degree to which boards are subject to Ministerial direction. This depends on the powers provided to the Minister in the relevant legislation. The extent to which Ministers are provided with power to direct boards is largely based on policy decisions and perceptions made when individual boards are established and thereafter. It seems that many decisions in relation to direction powers have been made on a pragmatic basis and without taking into account a general scheme for organisational design.
108. An example of the varying direction powers applying to similar institutions can be seen in the State's Arts institutions. Some (Australian Centre for the Moving Image<sup>40</sup>; Museums Board<sup>41</sup>; Libraries Board<sup>42</sup>; Film Victoria<sup>43</sup>) are subject to the 'direction and control of the Minister' although in one case, Film Victoria, those directions must be Gazetted. Others, however, are subject to a lesser direction regime, the 'general direction and control of the Minister' (Victorian Arts Centre Trust<sup>44</sup> and the Geelong Performing Arts Centre Trust<sup>45</sup>).
109. In other areas, the range (or lack) of direction powers is greater. For example, Greyhound Racing Victoria and Harness Racing Victoria are not subject to any Ministerial directions, while Sustainability Victoria is subject to written direction only. Even in similar bodies, such as the Transport Accident Commission and the Accident Compensation Authority, there are variations. Both are subject to the general direction and control of the Minister and to specific written directions, but the Transport Accident Commission is also required to Gazette and include in its annual report written directions received, while the Accident Compensation Authority is not subject to that obligation.
110. Each of those limitations on Ministerial direction powers, whether it is a restriction to 'general' directions, or a requirement that directions be in writing or be gazetted, are methods of extending the 'length of the arm' of Ministerial control and of providing boards with a greater level of independence from the Executive. These decisions are made by the Parliament largely on a case-by-case basis when a board is created and it would be unwise to undermine that independence without giving greater consideration to the reason why that independence was provided.

40 Section 27 *Film Act 2001*.

41 Section 22A *Museums Act 1983*.

42 Section 21 *Libraries Act 1988*.

43 Section 9 *Film Act 2001*.

44 Section 4 *Victorian Arts Centre Act 1979*.

45 Section 6A *Geelong Performing Arts Centre Trust Act 1980*.

## The nature of the Ministerial accountability relationship

111. A board is accountable to the Minister who is allocated, by the Premier, with responsibility for that board. Generally this can be identified from the 'General Order' periodically issued by the Premier<sup>46</sup>, which identifies the Minister responsible for the legislation that establishes the board.
112. This can, however, be the cause of some confusion when the responsibility for the Act is shared. An example can be seen in the case of Catchment Management Authorities which are established by the responsible Minister pursuant to section 11 of the *Catchment and Land Protection Act 1994* and are subject to Ministerial direction pursuant to section 19A of that Act. The difficulty in this instance arises because two Ministers are allocated responsibility for the Catchment and Land Protection Act by the Premier's General Order. Both the Minister for Water and the Minister for Environment and Climate Change have been allocated joint and several responsibility for the administration of that Act. Thus each of the Ministerial functions under the Catchment and Land Protection Act can be exercised by both Ministers, either jointly or individually.
113. Witnesses explained that in this case, the practical problems have been avoided by both Ministers managing their accountability relationships with Catchment Management Authorities jointly. As a result, the Ministers receive the same reporting from all Catchment Management Authorities. In future, a more straightforward approach for both Ministers and boards is to keep dual Ministerial responsibilities to a minimum.
114. Other Ministers, most notably, the Treasurer, can also have particular functions in relation to boards and this is often referred to, incorrectly, as the board also being accountable to that second Minister. This confusion is not assisted by documents such as the 'Corporate planning and performance reporting requirements: Government Business Enterprises' issued by the Department of Treasury and Finance (DTF) which refers to Government Business Enterprises (GBE) as being:
- primarily* accountable to their portfolio Minister and the Parliament for their performance. They are *also accountable to the Treasurer* where the Treasurer has a legislated role to receive corporate planning or other financial facet documents. This is generally known as the 'Shareholder' role<sup>47</sup>. [emphasis added]
115. The expression 'GBE' is a non-legislative term, but is used, largely by central agencies for financial purposes. For example, the Department of Treasury and Finance's 'Treasury management guidelines: Borrowing and Investment Powers Act 2007' list 48 Victorian entities which are classified by the Department of Treasury and Finance as GBEs. It is questionable, however, whether the use of that non-legislative term is of great assistance in the understanding of board accountability, as its use has led some witnesses to consider that board accountability to two Ministers was due to a board's GBE status and that there were challenges in ensuring clear lines of accountability and objectives in

<sup>46</sup> See <<http://www.dpc.vic.gov.au/index.php/resources/legal/machinery-of-government/general-orders-and-supplements>>.

<sup>47</sup> Department of Treasury and Finance, *Corporate planning and performance reporting requirements: Government Business Enterprises*, Melbourne, October 2009, page. 2.

the 'GBE accountability framework'. No doubt its use was intended as a label to assist in the understanding of the complexities of Ministerial/board relationships. However I consider that excessive reliance on such secondary tools can be, and has been, the cause of greater confusion as to the actualities of those relationships than the complexities of the relationships themselves.

116. It should be recognised that the line of accountability for boards is relatively clear. A board is accountable to its responsible Minister, which is usually the Minister named in the General Order as having responsibility for the board's empowering legislation<sup>48</sup>.
117. Other Ministers may have some particular functions which they perform in relation to boards, but those functions do not render those boards 'accountable' to those other Ministers. The use of the word 'accountable' is of concern in that it creates the false impression that the board is equally accountable to the second Minister.
118. Those additional functions sometimes performed by Ministers other than the responsible Minister include:
- The Minister of Finance's Standing Directions pursuant to section 8 of the Financial Management Act which boards must comply with.
  - The financial approval functions of the Treasurer under the *Borrowing and Investment Powers Act 1987*, such as:
    - o to provide approval to obtain a financial benefit or assistance to obtain a financial benefit by way of overdraft of account at any authorised deposit-taking institution or other financial institution in Australia (section 5)
    - o to provide approval to obtain a financial accommodation (sections 8, 9 & 10)
    - o to provide authority to invest moneys of the authority in any manner approved by the Governor in Council on the recommendation of the Treasurer in relation to the authority (section 20).
  - The Treasurer's power, as responsible Minister for the Financial Management Act, to determine the information contained in reports of an operational nature and financial statements of public bodies, vary reporting requirements and to direct a public body to submit particular financial statements<sup>49</sup>.
  - Particular functions in relation to particular types of boards, such as:
    - o the need for the responsible Minister to confer with the Treasurer before giving written directions to a water authority (section 307 *Water Act 1989*)

48 General Orders can be found at: <<http://www.dpc.vic.gov.au/index.php/resources/legal/machinery-of-government/general-orders-and-supplements>>.

49 See sections 47, 48, 49, 51, 52(2) Financial Management Act.

- o the obligation on the Treasurer, as well as the responsible Minister, to comment on the Corporate Plan of Places Victoria and to approve any variations of that plan (section 57 *Urban Renewal Authority Victoria Act 2003*)
  - o the Treasurer's power to require the boards of 'State Business Corporations' to provide information 'such as the Treasurer considers necessary' (section 53 *State Owned Enterprises Act 1992*).
119. An example of the confusion around these secondary Ministerial functions is seen from the evidence provided by officers from the Department of Treasury and Finance who gave evidence that they are presently considering the issue of how the GBE accountability model is applied in practice and what it is doing to drive outcomes. One issue identified was that for some GBEs, it may not be clear what the respective roles of the Treasurer and the portfolio Minister are, or which Minister has the lead role and why. In response to questions around dual ministerial accountability, one officer from the Department of Treasury and Finance noted that some governance models existed 'almost by quirk of history' and that they had not been reviewed in some time.
120. I am concerned that the concentration on the 'GBE accountability framework', is not reflected in legislation and is indicative of a lack of appreciation of the legal and constitutional actualities of Ministerial accountability and of the Parliament's intention when boards were established. I also consider that, whatever merits it might be perceived to have for financial management, its use unduly confuses the otherwise relatively clear accountability framework established by legislation.
121. To avoid the obvious confusion held in certain boards and departments regarding board accountability, I consider that greater attention should be given to the legal framework in which each board has been established, rather than secondary and less accurate sources.

### **Relationship between boards and departments**

122. There is also much confusion in certain boards and departments as to the relationship between the entities and the departments. Witnesses referred to a range of issues causing tensions in relationships between entities and departments, including:
- A lack of clarity around the role of the department in the accountability framework.
  - Board members struggling with their limited capacity to act independently and feeling like 'a postbox for the department' or that they were being 'hamstrung' by the department.
  - Board members having the perception that departmental officers do not understand what the board is trying to achieve because they are too 'removed' from the entity.
  - Departmental involvement in the reporting and accountability framework delaying the process of reporting to the Minister.

- Entities receiving advice from a Minister's department that conflicts with the advice provided by the Minister.
- Board members from commercially focused entities feeling their responsible departments lack sufficient understanding of their commercial operations or the conflicts between their commercial and policy objectives.
- In cases where a department has multiple functions with respect to an entity (eg. monitoring, funding, providing governance guidance etc); insufficient clarity around where each of those functions sits within the department and what 'hat' the department or individual departmental officers are 'wearing at what time'.

123. Other witnesses also provided evidence of resentment or resistance towards departmental involvement in entity affairs. One Secretary said they were aware that receiving pushback in response to departmental involvement is a 'common experience' in government. Another witness referred to preliminary data obtained from research in one sector which showed negativity being displayed by board members towards the department, which the witness attributed in part to the board members feeling they were being 'micromanaged' by the department. The existence of such negative cultures or perceptions was also indicated by some board members and entity executives repeatedly referring to the department as 'the bureaucracy', a term which commonly carries negative connotations of inefficiency and inflexibility.
124. As that evidence indicates, there seems to be a widely held assumption that departments or the Secretaries of departments have some automatic but unclear role in the governance of boards. This view is incorrect.
125. Boards are established at arm's length from Government and Ministers are given varying and often limited direction powers, or no direction powers at all. In the absence of any statutory provision providing a role for a department in relation to an entity, departments serve to assist Ministers in their functions to the extent that the Minister intends them to be involved. They have, therefore, no automatic role in the governance of boards or even in monitoring boards<sup>50</sup>.
126. It is up to the responsible Minister, to the extent of his or her direction powers, to require, if necessary, that the board allows the department to have access to board material so as to allow the department to advise the Minister regarding the board's performance. But if the Minister does not have such a direction power, or chooses not to exercise it, the access of the department is dependent on both the desire of the Minister and the consent of the board. In determining whether that consent should be provided, the board will need to assess whether providing access is consistent with the commercial and other objectives provided to the board by its empowering legislation. Accordingly, the board member 'resentment' and 'pushback' referred to earlier, may well have been appropriate and justified.

<sup>50</sup> There are, of course, a few exceptions where some entities also have direct accountability to the portfolio department or Secretary, created by legislation. Most notably, the *Health Services Act 1988* provides that the Secretary of the Department of Health has a range of specific responsibilities with respect to metropolitan health services such as Melbourne Health and other entities within the Victorian health sector, including ensuring that the objectives of the Health Services Act are met through developing policies and plans with respect to health services provided by health care agencies and funding, monitoring, evaluating and reviewing publically funded health services.

127. The confused understanding was apparent at Secretary level in this investigation and is also of some concern. One Secretary said, some Secretaries have a 'strong view that the Secretary should act as though they were the Minister' while others take the view that 'no, that's not the way the legislation ... is prescribed'. The existence of these different perspectives at the departmental Secretary level was supported by the evidence provided by Secretaries at interview – and it is of concern that the application of legislation seems to be an optional variable in the approach of some Secretaries to boards, rather than the guiding principle.

### Possible remedial measures

128. While boards are accountable to their Minister/s, there is much confusion as to the extent of that accountability; accountability to other Ministers and the role departments play in the governance of those boards – which is caused by lack of understanding of the legislative framework in which boards operate and an excessive reliance on other sources. This is compounded by certain incorrect understandings that:

- boards are 'accountable' to other Ministers who have particular legislative functions in relation to those boards
- departments have some automatic role to play in the governance of boards, irrespective of the power of the responsible Minister to direct the board to involve the department or an exercise of that power.

129. There is a trend towards the government or departments seeking to increase oversight of entities. However, the legal and constitutional framework for that increase is not present or has not been exercised.

130. Certain jurisdictions, most notably New Zealand, have considered or introduced a legislative regime for non-departmental bodies. Such legislation would provide for a consistent framework for the establishment, governance and operation of the various types of Crown entities in that country. By providing a single source for the various rules regarding the relationships between entities, Ministers and departments, such legislation would serve to remove much of the confusion existing regarding those issues in Victoria. The difficulty with this approach, however, would arise, if it was to apply to existing entities. While it would be of great benefit, the approach would entail locating and classifying each of the thousands of Victorian entities and possibly altering the structure of some. This would be a demanding task for Victoria in view of the number of bodies in existence and it is possibly the reason why Queensland elected not to follow this course in relation to its 457 entities<sup>51</sup>.

131. A more modest approach was attempted in Victoria in late 2009, when the *Public Finance and Accountability Bill 2009*<sup>52</sup>, was introduced to Parliament by the former government. One of the aims of the bill was to clarify 'the responsibilities and powers of ministers, departments and public bodies, delineating clear lines of accountability for various

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<sup>51</sup> See Appendix B.

<sup>52</sup> Legislation proposed to replace Victoria's principal public finance legislation, the *Financial Management Act 1994*.

functions'<sup>53</sup>. The Bill sought to provide department heads with a statutory governance role with respect to entities, being to advise the Minister on an entity's discharge of a number of specific and fundamental governance responsibilities imposed on the entity under the Bill. The Bill also provided that entities were required to provide department heads with any information necessary for them to fulfil this requirement<sup>54</sup>. The Bill did not proceed through the Parliament.

132. At the time of finalising my report the *Public Administration Amendment (Public Sector Improvement) Bill 2013* was before Parliament. This bill proposes that the following section be inserted into the Public Administration Act:

(2) A Department Head is responsible for –

(a) advising the public service body Minister or Ministers on matters relating to a relevant public entity, including the discharge by the public entity of its responsibilities, including those under this or any other Act; and

(b) working with, and providing guidance to, each relevant public entity to assist the entity on matters relating to public administration and governance.

(3) Unless prohibited from doing so by or under any law, a relevant public entity must provide to the Department Head any information required by the Department Head to enable the Department Head to comply with subsection (2)(a).

(4) Nothing in this section authorises or permits a Department Head to direct or control a relevant public entity or public entity Head in the performance of the functions conferred on the public entity or the public entity Head under this or any other Act.

133. This new section, if passed, will provide greater uniformity and clarity around the relationships departments have with public sector boards and may remedy some of the issues identified in this report.

## Recommendations

I recommend that:

### Recommendation 4

The Premier seeks to avoid making boards accountable to more than one Minister in his allocation of Ministerial responsibilities.

### Recommendation 5

Ministers, board members and departments pay greater attention to the legislative framework for particular boards in interpreting the functions and accountability of boards, rather than secondary sources.

53 Tim Holding MP, *Second Reading Speech, Public Finance and Accountability Bill*, Legislative Assembly, Parliament of Victoria, 10 December 2009.

54 Clause 12(3) and (4) *Public Finance and Accountability Bill 2009*.

## Internal accountability relationship between the board and the CEO

134. The relationship between the board and the CEO is the principal internal accountability relationship for a public entity. Issues arising in this relationship, if not promptly addressed, pose a significant risk to the operation of an entity.
135. Many witnesses referred to the board/CEO relationship as a significant governance concern. For example, the Victorian Healthcare Association (VHA), the peak body representing Victoria's public healthcare sector, stated in May 2012 that during the previous two years one of the top three governance areas health service board members had sought further professional development in was 'managing the important relationship between the board and the CEO'<sup>55</sup>.
136. Most concerns about the board/CEO relationship raised by witnesses stemmed from insufficient role definition or separation. As shown in Figure 2, the role of the board with respect to an entity is generally considered to be 'steering' or setting the strategic direction for the entity, while the role of the CEO is 'day-to-day management'. However, the line between strategy and management is not always clear. The level of guidance provided by legislation in this area differs between entities. Some entities or their Ministers choose to supplement legislative provisions with other governance documents clarifying roles.
137. Witnesses noted that a board becoming overly involved in matters which management perceives to be within its purview can create tension between the board and the Executive of the organisation and potentially lead to a failure of governance. It can also cause the board to give insufficient attention to strategy, due to meetings being consumed by operational concerns.
138. One board member referred to a relationship breakdown between a board and a CEO they had witnessed and partially attributed the breakdown to insufficient distinction being drawn between their areas of responsibility and the board being 'quite operational'. The witness noted that the relationship breakdown also highlighted the inadequate performance measures the board had in place for the CEO at the time and the impact of poor role separation on accountability. The witness said:
- The concern I have is what then happens is you blur where the responsibilities and accountabilities lie and we have to be able to hold the management accountable and responsible for what they have to deliver. If we start telling them how to do it then we're taking over their responsibilities and accountabilities. So we've not been very good at that in the past, but we're getting better ...
139. Witnesses noted that there are times when it is appropriate for a board to become more involved in the operations of an entity due to factors such as board members being new to an entity and needing to familiarise themselves with its operations or finances; the CEO being new and needing additional support; or where the board is more closely scrutinising the CEO due to concerns about the CEO's performance.

<sup>55</sup> The Victorian Healthcare Association, *HealthMatters*, Issue 1, 9 May 2012, page 3.

140. However, witnesses also highlighted a number of scenarios where the risk of board members becoming *unduly* involved in operational matters was increased:
- One CEO observed that in the lower paid, less commercial boards, members tended to be motivated by personal interest in the entity's work and their passion for particular topics could cause them to stray into operational matters that were within the remit of management.
  - A Chair made a similar point with respect to board members who are appointed via nomination by a specific stakeholder group, saying they had observed those board members can become overly involved in operational matters that are of interest to the nominating group.
  - Another CEO described a situation where they felt a board had attempted to 'step into the shoes of management' and related it to the skills mix on the board being weighted towards hands-on industry experience in the sector.
141. Another issue which emerged during the investigation in relation to the board/CEO accountability relationship was that of CEOs sitting on boards as Executive Directors (often under the title of Managing Director), hereafter referred to as CEO-Directors. Of the 12 example boards examined in this investigation, three are legislatively required to operate under a CEO-Director model; one may appoint a CEO-Director if either the board chooses to or the Minister directs it; one was only able to have a CEO-Director with the Minister's approval; three are legislatively prohibited from doing so; and the legislation is silent in relation to the remaining four.
142. Witness views on the CEO-Director model and its impact on the accountability of the CEO-Director to the board were mixed. Some argued that clear structural separation between the roles of the board and management is important and that the CEO-Director structure risks the CEO-Director dominating the board. One CEO-Director's evidence also highlighted the potential for conflict of interest in this structure. While not directly objecting to the CEO-Director model, the CEO Director noted the 'irony' of having to 'put [*their*] director's hat on' at a board meeting and 'ask the hard questions' of the management team about reports the CEO-Director had themselves signed off on.
143. Where the CEO-Director model is utilised, witnesses suggested the following to improve accountability:
- *The CEO-Director should not be the Chair.* This concentrates too much power in one individual and dilutes the effectiveness of board oversight of management. As one witness put it, 'you do not put the Chief Poacher in charge of the Game-keeping Unit'.

- *The board should be responsible for the appointment and removal of the CEO-Director.* These views were based on the understanding that a CEO-Director must be directly accountable to the board. Where the appointment and removal of the CEO-Director is the responsibility of a third party (usually the Minister) this can create an unclear or divided accountability relationship between the CEO-Director and the board.
  - *Board meetings should include a portion of time where the CEO-Director is not present.* This allows the board to discuss any issues which may be difficult to discuss freely in the presence of the CEO-Director, such as the CEO-Director's performance. This is a practice that a number of boards have adopted.
  - *The CEO-Director should remove themselves from voting on decisions directly affecting them.* This is based on the duty of board members to avoid conflicts of interest. However, it is worth noting that the line between a decision which directly affects a CEO-Director and one which does not, is often blurred.
144. In many cases, the first and second of these issues are dealt with by empowering legislation. For example the Water Act provides that the board of a water corporation is responsible for the appointment of the CEO-Director<sup>56</sup> and prohibits the CEO-Director from concurrently holding the role of Chair or Deputy Chair<sup>57</sup>. By contrast, the CEO-Director of the WorkSafe board is legislatively required to be appointed by the Governor in Council<sup>58</sup>.
145. Recent amendments to the *Education and Training Reform Act 2006* prohibit the CEO of a TAFE from being appointed to the board<sup>59</sup>. Prior to these amendments, TAFE CEOs were required to be board members. Witnesses from the TAFE sector noted that one of the issues amendments were designed to address was that of some TAFE boards operating as 'puppets' of their CEOs. Witnesses said that there was insufficient separation between boards and CEOs and it was perceived that boards were just 'ticking off' or 'rubber stamping' CEO decisions rather than strategy and guidance flowing down from the board to the CEO.
146. This highlights another issue raised by witnesses with respect to accountability and poor definition between the roles of the CEO and the board - that of CEOs who dominate the board. Controlling behaviour by a CEO can destroy the effectiveness of a board very quickly, the CEO-Director model may increase the risk of this type of situation arising.

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<sup>56</sup> Section 99(1) *Water Act 1989*.

<sup>57</sup> Section 99(3) *Water Act 1989*.

<sup>58</sup> Section 25 *Accident Compensation Act 2006*.

<sup>59</sup> Section 3.1.16(3)(b) *Education and Training Reform Act 1985*.

147. Some witnesses discussed the impact lengthy CEO appointments can have on the board/CEO relationship, noting that they could cause a 'knowledge imbalance' and can lead a board to become too dependent on its CEO. One witness noted that CEOs can 'have a lot of technical power that, if not imparted correctly can actually be used to bamboozle the board into just agreeing'. Another said that controlling the flow of information to a board was one method CEOs can use to dominate a board, noting that 'smart managers' know how to 'work the system' so the board does not actually get to do very much. A number of witnesses said that a CEO failing to fully inform the board of key issues or actions was a sign that the entity was heading for a governance breakdown.
148. A board's power to appoint and remove a CEO is often cited as the key accountability mechanism in the relationship between board and CEO. A number of examples of Victorian public sector board members resigning from their positions have recently been reported. In each of these examples, the resignations were linked to the CEO appointment process which highlights its importance as one of the foundations of a CEO's accountability to the board. They also show that selection and appointment of a CEO is perceived by many board members to be a key function of a board and one of its primary accountabilities to the Minister.
149. The CEO of an entity is the conduit between the board and the rest of the entity. An effective accountability relationship between board and CEO is crucial to the functioning of an entity. The evidence obtained by my investigation indicates that separation between the roles of the CEO and the board greatly assists the effectiveness of the governance of boards and insufficient accountability can dilute responsibility and poses a risk to good governance.
150. The prolonged or undue intrusion of a board into the operations of management also has the potential to be just as damaging to an entity as a board which is subservient to its CEO. It can also make it more difficult to hold the CEO to account for their performance.
151. A board must be able to clearly identify and communicate the accountabilities of the CEO and have appropriate measures in place to assess performance. Ensuring clarity in this area is a precondition for a board's ability to evaluate and drive performance and becomes critical in the event that the performance of a CEO is called into question.
152. The CEO-Director board model also faces the risk of unnecessarily confusing the accountability relationship between the board and its CEO and can create a conflict for the CEO with respect to the entity's operational performance.
153. In light of the issues, my draft report recommended that the CEO-Director model be avoided for future boards. In response to my draft report, the Department of Education and Early Childhood Development said:

The Department supports this recommendation in principle, however such support is limited in scope to those boards with a strictly commercial nature. The Department considers that boards with a community focus (for example and in particular, school councils) should not be subject to this recommendation.

The Department conducted a recent review which resulted in legislative amendments to prohibit the CEO-Director model in relation to TAFE institute and AEI boards. In relation to these boards, the Department determined that the CEO-Director model was an inappropriate model in the pursuit of best practice governance.

However, such an approach may not be appropriate for school councils. The Department notes that this recommendation may have the consequence that principals are unable to sit as voting members on school councils. Principals have the distinguishing factor of being employed directly by the Department and therefore there is a considerably higher level of supervision and control over them by the Department than with CEOs of more independent and autonomous public sector bodies. Consideration of this issue is currently underway as part of the Department's 'Review of Governance in Victorian Government Schools'.

154. In order to address these concerns I have amended my recommendation to allow for the CEO-Director model to be used where clear and objective reasons can be demonstrated. Such reasoning should take into consideration issues identified in this report in relation to the CEO-Director model.

## **Recommendation**

I recommend that:

### **Recommendation 6**

The CEO-Director model be avoided for future boards unless clear and objective reasons for exception can be demonstrated.

## People

155. The 2003 HIH Royal Commission observed the following in relation to corporate governance<sup>60</sup>:

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. For example, the identification of the background, skills and expertise of the people who walk into the board room is a good start, but it is what they do when they get there that is critical.

156. Similarly, one witness interviewed during my investigation noted with respect to board governance that ‘good people in bad structures still do good work. Good structures help good people do better work’. Another view however, was that any structure will work if those in the structure want it to work; but no matter how good a structure is, it will not work successfully if the people are wrong.
157. Every board is made up of individuals who bring their own experiences, skills, knowledge and personalities to the task of being a board member. How those individuals are selected and supported are critical aspects of governance and potential areas of risk. However, the impact of individual and group behaviours of board members cannot be ignored in any discussion of board governance.

## Culture

158. A board is responsible for setting ‘the tone at the top’ of an organisation, not only by ensuring it has appropriate values, policies and procedures in place, but also by showing leadership in how it applies them. While governance frameworks and processes were the primary focus of my investigation, witness evidence highlighted the importance of less tangible factors, such as relationships and culture, to good governance by public sector boards.

159. One board member said :

In the end it is about culture. You can have all the rules you want, but unless the culture is right, about how [*people within the entity*] interact, what is expected of them etc. then it’s to nought. So I think setting the tone [*is important*] and that’s not just the chairman’s job, but the board as a whole, how they interact with staff and the fact that they’re interested, supportive ...

160. Another said:

Culture is such an intangible thing and when it goes wrong you see it immediately and how toxic it is. When it’s going well ... you kind of don’t think about it.

<sup>60</sup> HIH Royal Commission, Report of the HIH Royal Commission, (Vol 1, Part 3: 105), 2003.

161. Witnesses observed that when a poor culture develops within an entity, it is difficult to repair. One board member described cultural problems which had developed within their organisation, including bullying amongst staff and a 'toxic' relationship between the board and management. The witness said that at board meetings, management and the board would sit on opposing sides and 'chuck rocks' at each other. The board member explained that the process of improving the entity's culture had involved external consultants, personnel changes and substantial work on an 'organisation-wide culture building exercise'.
162. The need to avoid an overly adversarial boardroom culture which makes management feel like they are being 'scored' by the board during meetings was further emphasised by witnesses. However, many also stressed the importance of balancing this with an appropriate level of scrutiny, saying that:
- 'healthy' and 'robust' challenges at the board table indicated a good culture
  - the relationship between the CEO and the board, especially the Chair, should not be (or be seen to be) 'too cosy'; and
  - a board that does not challenge its CEO is an early warning sign of governance breakdown.
163. Evidence provided by witnesses with respect to culture also showed that in commercially focused entities, there can be a tension between private and public sector values and practices at board level. One board member described the culture of their commercially focused entity as, 'somewhere between public service and private sector'. They said that due to the nature of the entity's operations, policy was not the primary focus and that the entity had to operate 'as a hard-nosed business'. Another witness noted that board members from private sector backgrounds sometimes 'struggled' with the 'constraints' of being a public sector board member and the need to balance commerciality with the public good. The witness said that some board members 'who are experienced in the commercial world evidence a set of behaviours when they ... come across into the public sector ... [and] actually can't rationalise [the] two different ways of thinking about an issue'.
164. Two of my previous investigations highlighted failures by public sector boards to show leadership in this area<sup>61</sup>. In both cases, I identified cultures and patterns of behaviour inconsistent with public sector principles at the most senior levels of the entity. These examples evidence failures by the boards involved to give sufficient attention to driving and maintaining an appropriate public sector culture within those entities.
165. Effective governance frameworks and processes must be underpinned by productive working relationships and a culture based on public sector values.

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<sup>61</sup> Victorian Ombudsman, *Investigation into improper conduct by CenITex Officers*, October 2012; Victorian Ombudsman, *Investigation into the Foodbowl Modernisation Project and related matters*, November 2011.

166. While an entity may have a commercial mandate, its board should remain attentive to the public sector values and principles underpinning its processes and the underlying public purpose of the entity. Failure by boards to cultivate awareness within their entity of public sector values and responsibilities such as integrity, impartiality and respect was identified as a key area of risk by my investigation. It is the responsibility of individual board members, and particularly the Chair, to lead by example in this area through their behaviours and attitudes.
167. Culture and relationship problems within an entity, once entrenched, can be difficult and costly to repair. It is the responsibility of the board as a whole to pay ongoing attention to culture and to fostering and maintaining productive relationships both internally and externally.

## Board composition and appointment process

168. The composition of a board is crucial to its ability to govern effectively. For this reason, the board member appointment process is an important element of the board governance framework and potentially a key area of risk.
169. Different entities require a different set of skills in their board members. Sometimes the skills, experience and knowledge required for a board is specified in the entity's establishing legislation. Alternatively, it may be identified through the development of a skills/capability matrix specific to that board. Usually, the desired 'skills mix' for a board will be a combination of generalist skills (e.g. law, finance, public administration) and skills specific to the sector in which the entity operates (e.g. health, education, environment).
170. Ministers are responsible for most appointments to boards of Victorian public sector entities within their portfolios<sup>62</sup>, usually with the assistance of the Minister's department managing the administration of the appointment process. The *Appointment and Remuneration Guidelines for Victorian Government Boards, Statutory Bodies and Advisory Committees* provide advice to Cabinet, Ministers and departments on making appointments and determining appropriate remuneration levels for members of boards, committees and tribunals<sup>63</sup>. While the guidelines provide advice on board appointments, the composition of boards, selection processes and the criteria upon which board members are appointed vary across the Victorian public sector and in many cases are fixed by legislation.
171. The appointment of public sector board members contrasts with the mechanisms used to appoint members of a private sector board. While board members are elected by shareholders the board itself has significant responsibility for managing succession planning and board renewal.

62 These appointments are generally made either by the responsible Minister directly, or by the Governor in Council acting on the recommendation of the responsible Minister. The authority for making appointments to the board of a public sector entity is usually prescribed in an entity's establishing documentation and that is usually found in legislation.

63 The guidelines apply to part-time non-executive directors and members of statutory authorities, advisory committees and the boards of Government Business Enterprises. The guidelines also apply to unpaid appointments to such organisations.

172. The Corporate Governance Principles and Recommendations (the Principles) developed by the Australian Stock Exchange Corporate Governance Council (the Council) provides companies with guidance regarding these issues. The Council recommends that boards establish nomination committees with responsibility to make recommendations about:
- the necessary and desirable competencies of directors
  - review of board succession plans
  - the development of a process for the evaluation of the performance of the board, its committees and directors
  - the appointment and re-election of directors.
173. My investigation identified the following issues relevant to the good governance of Victorian public sector boards in respect to board composition and appointment:
- the involvement of the Chair in relation to board appointments
  - conflicts of interest arising from board composition
  - board size.

## Chair's involvement in appointment process

174. The involvement of the chair in the appointment process has been widely recognised as a useful tool in identifying the skills and experience required on that board, as well as achieving the right 'personality mix' and cohesion of the board. There is no requirement that chairs be involved in appointment processes for Victorian public sector boards, however the DPC guidelines recommend that consideration be given to serving board members' participation on the selection panel where a vacancy exists. The chair's involvement is ultimately at the discretion of the responsible Minister.
175. Ministers are responsible for the performance of boards, even where the direction power is limited, so it is in the interests of the Minister, as well as the State, for boards to operate effectively. One of the ways many witnesses considered that this could be assisted would be to increase the role of the chair in the appointment process. An expert in board governance said appointments of board members had 'to be a two way discussion'; they said that 'the board itself has to have a say in the composition of the board, because they're the only ones who can actually make a judgement about what the skill mix [*is*] and what's working'. A Chief Executive Officer said board appointments are 'undoubtedly the Minister's prerogative, but appropriate protocols would say they work together, [*they should*] talk to the chairman'. The former Chief Executive Officer of one entity said 'I think the process of appointing the chair to then assemble the board [*when the entity was established*] was a good process, [*the chair*] was heavily involved ... I would say that that was a strong thing to do'.

176. While the chairs of the boards had some level of involvement in the last appointment process undertaken for vacancies on those boards, some interviewees advised that this is not always the case. An expert in board governance said that ‘at the moment ... the needs of the board itself either in terms of skills or collegiality ... are not taken into account enough in the public sector’. The chair of one board who is also the former Deputy Chair of another Victorian public sector board, noted that generally under legislation, board appointments are the Minister’s responsibility but said that ‘some Ministers take that responsibility in different ways’. They said that in their experience in the roles of chair and deputy chair on Victorian public sector boards, they had been heavily involved in the appointment process on some occasions, but had ‘also had the situation where the Minister ... called [*them*] and said ... you have two new directors’, without any consultation. A senior public officer said that they would advocate for heavily involving chairs in the appointment process and that they considered it ‘really poor that ... they ask chairs to run these complicated groups of men and women, who they often don’t know and they have no idea who they’re going to be’.
177. It should, however, be observed that there is an associated risk in providing Chairs with too great an involvement in the appointment process. That is, the potential for appointment of ‘yes – persons’, being those who are unwilling to disagree with the Chair over difficult and challenging issues facing the board. This is a factor that Ministers also need to be aware of in making board appointments.

## Board size

178. The maximum and minimum numbers of members on a board is usually prescribed in an entity’s establishing instrument<sup>64</sup> or legislation. Of 12 example boards reviewed, one board required that the board have 10 members. Of the others, the maximum number of board members ranges from eight to 11, with seven having a maximum of nine members. One board did not have a minimum number of members, while the minimum number of members on other boards ranges from three to nine.
179. Witnesses interviewed during my investigation said that the efficiency and functionality of a board can be hampered when a board is too large or too small. Large boards were collectively described by witnesses as ‘inefficient’, ‘unwieldy’ and ‘unworkable’. The chair of one of the larger boards said that the number of members on the board could become ‘unwieldy’ particularly in the context of board meetings, where the number of opinions around the table sometimes became ‘a bit unmanageable’. The Chief Executive Officer of another entity, the board of which currently has six members, said that the board is a good size and very effective, and that they believed larger boards would ‘struggle to get decision-making done’. An expert in board governance said that smaller boards work better than big boards, with the ideal number of members being about seven to nine, and that ‘once you get to a dozen or more, it becomes much more like a formal theatre ... people are limited in how much they can say’. They also said that ‘if a CEO is a control freak, he wants to control the board, the best way of him doing it is [to] have a big board’.

64 Such as an Order in Council.

180. Outside the 12 example boards, other examples of larger boards in the Victorian public sector include the Victorian Curriculum and Assessment Authority board (maximum of 15 members), the board of the Cancer Council Victoria<sup>65</sup> (maximum of 14 members), the Victorian Registration and Qualifications Authority board (maximum of 13 members), class B cemetery trusts<sup>66</sup> (maximum of 11 members) and the Alpine Resorts Co-ordinating Council (maximum of 11 members<sup>67</sup>).
181. A board's ability to effectively govern an entity can equally be affected when a board is too small, including when a board is operating at a reduced capacity as a result of delays in vacancies being filled.
182. A reduced number of members on a board has the potential to unreasonably increase members' workload, through greater participation in board committees. According to the SSA, the establishment of committees allows boards to distribute their workload and enables the committee to perform a detailed analysis of important or sensitive matters before making recommendations for the board to consider. Having all of the members on a board sit on all of the committees undermines the effectiveness of the committee structure, and to some extent, the purpose of committees. Also, a reduced number of board members reduces the diversity of the skills and expertise of the board.

## Centralised e-recruitment database for board appointments

183. At present there is no central online recruitment system for board appointments in the Victorian public sector comparable to <careers.vic.gov.au>, which is used for the recruitment of Victorian public sector employees. Board vacancies and appointments are usually advertised and managed by individual portfolio departments.
184. A number of persons interviewed during my investigation noted the absence of such a centralised recruitment system and said that centralising recruitment would assist board appointment processes.
185. The chair of one board pointed out the complexities of the current appointment processes for Victorian public sector boards, describing the process as 'cumbersome' and said that 'if you had a more centralised approach ... to board appointments, you'd get a better quality of [*candidates*]'. They provided the example of the application process for boards of water corporations and health services, saying that 'every time you apply ... you have to fill out interminable forms, [*the*] same old forms, over and over again' and said that it would take an 'inexperienced person' 15 hours to complete the paperwork.

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<sup>65</sup> Section 12 of the *Cancer Act 1958*. Note board is referred to as 'executive committee' in the Act.

<sup>66</sup> Section 6 of the *Cemeteries and Crematoria Act 2003*.

<sup>67</sup> Section 17 of the *Alpine Resorts (Management) Act 1997* states that the council consists of a chairperson, the chairperson of each Alpine Resort Management Board (of which there are currently 6) and 4 persons appointed by the Governor in Council on the recommendation of the Minister.

186. A Minister responsible for one of the entities said that ‘it would probably be worthwhile to have something more central, so that people who are interested could have a look ... [at] what the government is seeking’, and suggested that this may increase the number of applications received from suitable candidates for board positions. A senior public officer interviewed noted that ‘the process to recruit a director is exactly the same as the process to recruit a staff member’. It is unclear why a central online recruitment system for Victorian public sector employee appointments exists, but no comparable system for board appointments has been established to date.
187. A SSA report<sup>68</sup> completed in 2010 recommended that the SSA investigate the development of an e-recruitment approach to the management of board vacancies. The timeframe for implementation of this recommendation was June 2012. The SSA advised that it is considering the development of an on-line centralised board member recruitment system, however it is not known at this stage when the system will be established and functional.
188. A centralised online recruitment system for board appointments in the Victorian public sector could be modelled on systems in place in other jurisdictions, such as the New Zealand Crown Ownership Monitoring Unit’s (COMU) board appointment database. This database is the central point of contact for all persons wishing to register their interest in being considered for Crown company board roles. The database is the primary tool used by COMU to manage appointment processes and maintain board records, and provides COMU with the ability to identify candidates for specific board roles through searching the database for particular skills and attributes. Other jurisdictions in Australia have similar but slightly less sophisticated systems, including:
- The New South Wales (NSW) government maintains a register of people who are interested in serving on NSW government boards and committees, who upon registering, receive regular email alerts regarding vacancies. Ministers and government agencies consult the register when filling vacancies.
  - The Queensland Government’s Department of Premier and Cabinet maintains a register for persons interested in being considered for vacant positions on government boards and committees. When filling vacancies, government agencies request a search of the register for names of people with skills to suit the vacancies.
  - The Commonwealth and Tasmanian Governments have an electronic register for persons to express interest in serving on specific Tasmanian government boards.
189. Multi-person boards exist to bring together a range of skills and expertise possessed by a group of people into a single decision-making body. Obtaining the best possible mix of skills on the board is a crucial issue for the governance and performance of boards. Both the legislative requirements for board member appointments and the way those requirements are applied by boards, departments and Ministers impact on governance.

68 State Services Authority, *Public Entity Directors: supply, selection and appointments*, Melbourne, 2010.

190. Each board will have advanced views as to the skills and attributes necessary for its task and there are clear benefits in consulting the chair of a board in an appointment process, and this is an issue that Ministers should consider in any board appointment process.
191. The size of a board is a key element of board composition. Consideration should be given to whether boards with membership over nine are appropriate. The potential risks that can arise when a board is either too large or too small must be considered when new boards are established in the Victorian public sector and when planning recruitment processes. Vacancies left unfilled for a prolonged period of time can create a risk to effective governance and place undue burden on the remaining board members.
192. One way in which board member recruitment processes can be improved is through the development of a central e-recruitment system for board members. There are clear benefits in the development of such a system in Victoria, including:
- increased efficiency of board appointment processes; and
  - increased number of quality candidates applying for vacancies, as a result of greater and more central accessibility to information on board vacancies across the Victorian public sector.
193. In response to my draft report, the Chairperson of Places Victoria said:
- One matter that may be relevant to your deliberations, and of which you may not be aware, concerns section 19A of this Authority's enabling legislation. The section was introduced in 2011 when the Authority was established as the successor to the Victorian Urban Development Authority. It is possible that other statutory bodies may be subject to similar provisions.
- Under section 19A the Minister must 'ensure as far as practicable that collectively the directors have skills, experience or training' in 8 separately listed disciplines. These range across the funding of infrastructure, urban planning, housing delivery, corporate governance, land development, and commercial law.
- It is agreed that it is highly desirable that the Board have access to highly skilled practitioners in these fields. Obliging the Minister, however, to ensure that the directors themselves exhibit skills and experience in all of these diverse fields produces some consequences that were perhaps not intended when the section was introduced:
1. The requirement potentially limits the field from which the Minister can choose Board members. It means that the Minister is practically prevented from appointing, say, two directors who have expertise in one of the fields, as this could mean one of the other skills could not be represented within the cap of 9 directors.
  2. Board members will be selected for skills in fields that precisely overlap the skills that management should exhibit. This necessarily makes it more difficult for directors to discern the delicate line between their responsibilities and those of management, an issue you raised in ... your draft report.

3. It means that the Board will likely always consist of the maximum number of possible appointees.
4. Boards are in need of the necessary skills to set strategy, ensure proper governance and to identify and mitigate risk. The approach required by section 19A could potentially lead to 'ticking the boxes', rather than seeking out and appointing directors who have the required experience and ability.

## Recommendations

I recommend that:

### Recommendation 7

The Premier give consideration to prioritising the development of an e-recruitment system for board appointments in the Victorian public sector.

***In response to my draft report, the Department of Premier and Cabinet stated:***

The SSA has advised that a project to develop eRecruitment is progressing (consultation and development of business requirements has commenced) and endorsement will be sought at each stage from the Deputy Secretaries Sub-Committee.

### Recommendation 8

Ministers give consideration to consulting with the board chair in any board appointment process.

### Recommendation 9

In any review of boards and in the establishment of new boards, boards with more than nine members should preferably be avoided unless particular circumstances require otherwise.

***In response to my draft report, the Department of Environment and Primary Industries said:***

Agree in principle, on the basis that the application of this principle be determined: (a) on a case-by-case-basis and (b) in a manner that is consistent with the policy framework, criteria, and processes in Premier's Circular no 2013/2 Creation and review of non-departmental entities.

Currently, there are a substantial number of boards in the DEPI portfolio with the capacity for a maximum of more than nine members, for example: 19 water corporations (10 members, including managing directors); three regional coastal boards (12 members); three traditional owner bodies (10-11 members); 12 regional waste management groups (no maximum; currently one with 10 members); and a variety of other entities, including: councils (e.g. Victorian Catchment Management Council -10 members), advisory committees (e.g. Animal Welfare Advisory Committee -14 members), and other entities (e.g. PrimeSafe -10 members; Trust for Nature -10 members).

***In response to my draft report, the Chairperson of Holmesglen Institute said:***

As you are aware, the Institute's Constitution has the number of directors at a minimum of 9 and a maximum of 11. It is suggested that it would be better if the size of the Board is determined by skill set rather than maximum number.

***In response to my draft report, the Department of Education and Early Childhood Development said:***

While the Department agrees that nine members is considered good practice by the Australian Institute of Company Directors, the Department considers that flexibility in the number of board members should be maintained and addressed as part of the business case for new entities. Specific considerations or circumstances may result in a decision being made that it is appropriate to have more than nine members (for example, during the transition period following a merger of two or more boards).

Recent legislative amendments to the Education and Training Reform Act 2006 (Vic) allow TAFE institute and AEI boards to have between 9-15 members, with the actual number for each board specified in their respective constitution. The Department notes that of the 14 TAFE institute boards:

- 11 board constitutions stipulate nine members (eight directors plus the Chair),
- one board constitution stipulates board membership between nine and 11 (currently with only nine members),
- one board constitution stipulates board membership up to 10 (currently with nine members), and
- one board constitutions stipulates 11 members.

Further, a recent regulation review of statutory bodies within the Department's portfolio considered that the size of certain boards could be reduced without impacting on operational efficiency. The Department notes in this regard that although the Victorian Curriculum and Assessment Authority and the Victorian Institute of Teachers are permitted to have boards of between eight and 15 members and up to 20 members respectively, each board currently only has 12 members.

The legislation governing university councils provides flexibility for each university to determine the appropriate size for their circumstances.

At the present time, school councils can have up to 15 members, or more if approved by the Minister. The Department considers that this flexibility should be maintained, pending the result of the Department's 'Review of Governance in Victorian Government Schools'.

## Induction and training of board members

194. Many board members interviewed by my investigation said the task of being a new member to a board can be particularly challenging. One interviewee stated that newly appointed board members ‘spend the first year learning, second year understanding, and the third year really starting to add value’. As board members are required to participate in boardroom discussion and decision-making from the outset, induction as well as the provision of further training and development opportunities are important aspects of a board’s responsibility to ensure that it is an effective governing body.
195. My investigation reviewed the induction programs and ongoing training<sup>69</sup> available to board members on Victorian public sector boards, based on the 12 entities and other witness evidence.
196. When board members are first appointed, they generally participate in an induction program to assist them in understanding and meeting their obligations. Induction provides a means to disseminate information to board members regarding their duties, role and responsibilities; the operation of the entity; its governance structures; and the sector in which it exists. Opportunities for ongoing training and professional development may also be available to board members throughout their term of appointment. Failure to provide appropriate induction and training is a risk to good governance, particularly in the case of new board members who may have limited experience in the public sector or in the industry in which their entity operates.
197. The responsibility for providing induction to boards members falls on the Chairs of those boards. There is no overarching legislative requirement for induction or training and there are few instances of specific requirements. Specific requirements were located for boards of public health services, which are required under the *Health Services Act 1988*<sup>70</sup> to provide appropriate training for members. A Chair’s leadership duties include assisting board members to understand their role and responsibilities and leading the process for the induction of new board members.
198. All of the entities that this investigation reviewed had an induction program in place. While not all had formal processes in place for ongoing board member training, most indicated that at a minimum, they would consider any board member requests for ongoing training and development. New board member induction programs generally involve formal meetings with the Chair, the Chief Executive Officer and other relevant staff as well as the new board member receiving an induction package containing relevant documentation<sup>71</sup>. Beyond this, additional features of induction programs and ongoing training offered to board members varied between the entities reviewed.

69 Throughout this report I will use the terms ‘induction’ or ‘induction program’ to refer to the education, information and training provided to newly appointed directors, and the terms ‘ongoing training’ or ‘training’ to refer to the various professional development and training opportunities available to board members throughout their term of appointment.

70 Section 65S(2)(m) of the *Health Services Act 1988*.

71 Such as the entity’s establishing legislation, organisational chart, board meeting minutes, governance publications from the State Services Authority, etc.

## Operational versus governance induction and training

199. Induction and ongoing training can generally be divided into two categories – operational and governance. Operational induction may include: meeting with members of the entity’s executive team; attending site visits to see how the entity operates on the ground level; meeting with clients and stakeholders; and attending training on specialist or technical areas of the business. Governance induction and training may cover such things as the relationship between the board and internal and external stakeholders, members’ legislative responsibilities and applicable codes of conduct.
200. While a sound understanding of the management and day to day operations of an entity and the sector in which it functions is essential for board members, some interviewees stated that their induction programs focussed more on operational matters, and did not sufficiently cover governance principles or individuals’ responsibilities as members of a public sector board. One interviewee commented that ‘induction should have a greater focus on governance/public sector expectations’.
201. Appropriate focus on public sector governance in induction and any ongoing training for board members is one way to mitigate the risk of failures by boards to give sufficient attention to guiding and maintaining an appropriate public sector culture within their entities. This is where the involvement of the SSA or the relevant department could greatly assist board member inductions.

## Departmental involvement in induction and training

202. One notable difference between the induction and ongoing training programs reviewed was the level of involvement of portfolio departments. Some departments had no involvement in induction and ongoing training, while others had substantial involvement.
203. Representatives from some departments said that their departments have little to no involvement in the induction or training of board members, generally because they perceive this to be ‘a role for the independent entity’. One department advised that it ‘sees its role as to provide resources for general governance training’ but considers it is the entity’s responsibility to provide induction on other matters. One Secretary interviewed said that his department’s involvement in the induction of new board members tended to be ‘proportional to the size and risk’ of the entity. Another department advised that while it had run a number of induction sessions between 2006 and 2008 for new board members within the portfolio, it ceased running the sessions ‘as the resources required to administer these sessions, particularly in terms of the time commitments required of senior officers, was disproportionate to the level of interest displayed by new statutory appointees’.

204. Portfolios containing multiple similar entities (such as health services, water corporations and catchment management authorities) tend to have greater departmental involvement in board member induction and training. This is particularly so where succession planning is arranged around large numbers of appointments being made at the same time across entities. One example of this is the Department of Environment and Primary Industries, with respect to water authorities and catchment management authorities<sup>72</sup>.

## **Involvement of SSA and Australian Institute of Company Directors**

205. The use of induction programs and ongoing training is promoted by the SSA and it publishes a web-based guide to public sector governance, which includes information about the induction of new board members. A number of interviewees commented on the usefulness of the materials produced by the SSA. Board members are commonly provided various materials and publications produced by the SSA as part of their induction package or with a letter from the Minister welcoming them to the board. A number of boards use the SSA materials as a starting point for developing their own governance resources.
206. Ongoing professional development for board members often includes the use of external governance courses, such as those offered by the Australian Institute of Company Directors (AICD) or Chartered Secretaries Australia (CSA). Some board members said they felt the training offered by government for board members was limited and that they were reliant on private external providers or organisations such as AICD and CSA for these services.
207. The AICD has recently developed a training program, in conjunction with the SSA, designed specifically for board members appointed to Victorian public sector boards. A pilot program was held in early 2013. While in its infancy, the course is aimed at covering matters specifically relevant to the public sector, such as the requirements of the Public Administration Act, the differences between a private company as opposed to an entity funded by government, and the relationship between boards, entities, departments and Ministers.

## **Reasons why boards may not give adequate attention to induction and training**

208. My investigation identified a number of reasons why boards may not give adequate consideration to their induction and training requirements. Some of these reasons included:
- the cost and time required

<sup>72</sup> At the time my investigation commenced, catchment management authorities and water authorities were both within the Department of Sustainability and Environment's portfolio. The Department of Sustainability and Environment was merged with the Department of Primary Industries in April 2013 to form the Department of Environment and Primary Industries.

- board members are seen to be responsible for their own professional development
  - it is thought that some board members do not require comprehensive governance training as they have experience on other boards
  - the fact that board members were appointed demonstrates they are already sufficiently qualified and knowledgeable.
209. The cost of training is obviously a relevant consideration. However, there are a range of resources and options available to assist with board member induction and development which can be utilised at minimal or no cost to the entity. In the area of governance, these include the SSA and its materials; the portfolio department; and mentoring programs which pair less experienced board members with board members who are more experienced. In a 2010 public report<sup>73</sup> the SSA stated its long term goal was to investigate ‘the viability of facilitating a mentoring program which could target board candidates in areas of limited supply’. The timeframe for completing this goal was June 2012, however the SSA advised my investigation that as at August 2013 this had not proceeded.
210. There is risk in boards or Chairs operating under the assumption that qualification for appointment means a board member does not need any further development or training; or that any such training should be the individual responsibility of the board member. One of the reasons boards are generally more effective and productive governance bodies, in comparison with vesting governance in a single person, is that boards allow for a greater range of skills and knowledge to be incorporated into a decision-making body than can be achieved with a single person.
211. The ‘skills based’ approach to board member recruitment means that even on larger commercial boards, some board members will have weaker skills and knowledge in certain areas than others. There may also be areas where the whole board would benefit from gaining a deeper understanding of a particular issue. For example, where a complex legal or technical issue is having a significant impact on an entity. A well-functioning private sector board, if acting consistently with the principles published by the Australian Stock Exchange Corporate Governance Council, will, through its nomination committee, develop and implement a plan for identifying, assessing and enhancing director competencies. That plan will be based on an explicit assessment of the skills required for the board to perform its functions.
212. Induction programs should be more than simply the provision of an ‘induction pack’. In my view, they should include:
- The opportunity for face-to-face interaction and dialogue with key internal and external stakeholders.
  - A strong focus on public sector principles and values, irrespective of whether the entity is classified as ‘commercial’ or otherwise.
  - A clear explanation of the accountability framework for the entity and the roles of various parties within it.

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<sup>73</sup> State Services Authority, *Public Entity Directors: supply, selection and appointments*, Melbourne, 2010.

213. My investigation identified that some board member induction programs in the Victorian public sector are lacking in the above areas.
214. Departmental involvement can be a beneficial element of the induction and ongoing training programs, irrespective of whether a portfolio has multiple similar or inter-related entities. It can provide the opportunity for a board to foster a healthy working relationship between an entity and the department and to ensure that there is clarity around the department's role in the accountability framework.
215. Boards, through their Chair, should have a process in place to identify any ongoing training and development needs of their members. One option for formally incorporating this into board governance processes would be to include it in the annual self-assessment process undertaken by most boards in the Victorian Public sector.

## Recommendation

I recommend that:

### Recommendation 10

Boards consider State Services Authority<sup>74</sup> and departmental involvement in the induction and ongoing training of board members.

***In response to my draft report, the Chairperson of Holmesglen Institute said:***

Whilst SSA and may have a role in the induction process, I do not believe the department should be involved at this level. The department should focus on oversight and not confuse its role in this regard with matters that are more effectively managed by external agencies such as SSA or within the organisation itself. The induction would include generic training on interaction with the relevant government department and introduction to key departmental personnel.

<sup>74</sup> At the time of finalising my report, the *Public Administration Amendment (Public Sector Improvement) Bill 2013*, was before Parliament. Among other things, this bill proposes to abolish the State Services Authority and replace it with the Victorian Public Sector Commission. In the event that this legislation is passed, this recommendation should be taken to refer to the 'Victorian Public Sector Commission', rather than the 'State Services Authority'.

## Conclusions

216. Boards have served Victoria well for over 150 years and continue to do so. Victoria was one of the first jurisdictions that chose to use boards in great number, primarily to separate decision making from political influences. The total number of boards in Victoria however, is unclear, but likely to be approaching 4,000; and the variations of board types is widely diverse. Furthermore, there is considerable uncertainty as to the cost to the State of Victoria's boards.
217. For that reason, measures have been examined in this report to provide means to:
- Restrain the creation of new boards; and
  - Improve the information that departments hold regarding boards.
218. In addition, this investigation has examined measures to simplify board types and to review the need for particular boards. While there is considerable advantage in adopting such measures for both existing and new boards, my investigation did not identify substantial conceptual or systemic deficiencies in the framework for board operations in Victoria. Therefore I consider that the primary effort should be directed at improving departmental records on existing boards, measures to restrict the creation of new boards and fostering a clear understanding of accountability and relationships.
219. This investigation found considerable uncertainty as to the accountability relationship between boards and Ministers and departments. Although the accountability relationship is generally quite straightforward, confusion arises from the diverse nature of board types and their means of creation. This confusion has been accentuated by reliance on secondary, non-legislative sources, which have confused understandings as to the origin and nature of accountability relationships and the rules that do or should apply. This uncertainty is found in both boards and departments and can be overcome by greater attention being paid to the legislative basis for each board, rather than secondary documentation. Proposed amendments to the Public Administration Act relating to the role of departments with respect to public sector entities are also likely to assist in overcoming this uncertainty.

# Summary of recommendations

I recommend that:

## Recommendation 1

Each department should maintain a database of boards relevant to its respective Minister and ensure that it provides up-to-date information to the GAPED from this database. The database should comprise at least details of:

- each board relevant to each departmental Minister
- the functions of each board
- the powers of the Minister to direct or control each board
- the reporting requirements of each board
- the members of each board
- the particulars of appointment for each board member.

## Recommendation 2

The government consider how the GAPED can be improved to support departments in ensuring the information they provide to the GAPED is complete, accurate and up-to-date.

## Recommendation 3

Departments undertake performance and governance reviews of existing public entities, individually, or as classes, in accordance with criteria established by Premier's Circular 2013/2 over the next five years to determine whether they are still fit for purpose, cost effective and their functions are still necessary. Those reviews may include initial self-assessment by individual boards.

The reports on these reviews, or summaries thereof, should be made publically available.

## Recommendation 4

The Premier seeks to avoid making boards accountable to more than one Minister in his allocation of Ministerial responsibilities.

## Recommendation 5

Ministers, board members and departments pay greater attention to the legislative framework for particular boards in interpreting the functions and accountability of boards, rather than secondary sources.

## Recommendation 6

The CEO-Director model be avoided for future boards unless clear and objective reasons for exception can be demonstrated.

### **Recommendation 7**

The Premier give consideration to prioritising the development of an e-recruitment system for board appointments in the Victorian public sector.

### **Recommendation 8**

Ministers give consideration to consulting with the board chair in any board appointment process.

### **Recommendation 9**

In any review of boards and in the establishment of new boards, boards with more than nine members should preferably be avoided unless particular circumstances require otherwise.

### **Recommendation 10**

Boards consider State Services Authority<sup>75</sup> and departmental involvement in the induction and ongoing training of board members.

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<sup>75</sup> At the time of finalising my report, the *Public Administration Amendment (Public Sector Improvement) Bill 2013*, was before Parliament. Among other things, this bill proposes to abolish the State Services Authority and replace it with the Victorian Public Sector Commission. In the event that this legislation is passed, this recommendation should be taken to refer to the 'Victorian Public Sector Commission', rather than the 'State Services Authority'.

# Appendix A

## Examples of contrasting governance arrangements for boards

- One significant commercial transport entity may have a board (for example Vic Track) while another may not (for example VicRoads).
- Some boards can remove the CEO (for example Rural Finance Corporation<sup>76</sup>) while in other cases the dismissal of the CEO requires the approval of the responsible Minister (for example Public Transport Development Authority<sup>77</sup>).
- Some boards have members appointed for five years (for example Emergency Services Superannuation Board<sup>78</sup>) while most boards have members appointed for three years (for example Victorian Managed Insurance Authority<sup>79</sup>).
- One board has elected or appointed deputies for all board members (the Emergency Services Superannuation Board<sup>80</sup>); however this arrangement does not apply to the majority of other boards.
- One piece of enabling legislation has provision for delegates to be appointed to assist with running the board (for example health services<sup>81</sup>) while most others do not.
- Some enabling legislation is silent on the role of the board (for example Film Victoria<sup>82</sup>) while other enabling legislation specifies in very general terms the responsibilities of the board (for example Victorian Managed Insurance Authority<sup>83</sup> and Public Transport Development Authority<sup>84</sup>) or prescribes the functions and powers of the board in detail (for example Victorian Funds Management Corporation<sup>85</sup>).
- Some enabling legislation requires the CEO to be a member of the board (for example Treasury Corporation<sup>86</sup>) while other enabling legislation provides an employee is not eligible to be a board member (for example Victorian Managed Insurance Authority<sup>87</sup>).

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76 Section 15(6) *Rural Finance Corporation Act 1988*.

77 Section 79O(3) *Transport Integration Act 2010*.

78 Section 7(7) *Emergency Services Superannuation Act 1986*.

79 Section 12(1) *Victorian managed Insurance Authority Act 1996*.

80 Section 9 *Emergency Services Superannuation Act 1986*.

81 Section 40C *Health Services Act 1988*.

82 *Film Victoria Act 2001*.

83 Section 8 *Victorian Managed Insurance Authority Act 1996*.

84 Section 79B(3) *Transport Legislation Amendment (Public Transport Development Authority) Act 2011*.

85 Section 6A *Emergency Services Superannuation Act 1986*.

86 Section 11(2) *Treasury Corporation of Victoria Act 1992*.

87 Section 11(3) *Victorian Managed Insurance Authority Act 1996*.

- Some enabling legislation provides the board appoints the CEO directly (for example Victorian Managed Insurance Authority<sup>88</sup>) while in other cases the approval of the Treasurer and/or the responsible Minister is required (for example Victorian Funds Management Corporation<sup>89</sup>).
- Some boards determine the terms and conditions of the CEO's appointment (for example Rural Finance Corporation<sup>90</sup>) while in other cases the Minister determines this (for example Public Transport Development Authority<sup>91</sup>).
- Some enabling legislation provides that the entity is subject to the general direction and control of the Minister (for example Rural Finance Corporation<sup>92</sup>) and in other enabling legislation there are restrictions that limit the powers of Ministers to issue directions (for example Victorian Managed Insurance Authority<sup>93</sup>).
- In most cases such directions must be published in the Government Gazette (for example Public Transport Development Authority<sup>94</sup>) while in other cases copies of the direction are only available on request (for example Ambulance Services<sup>95</sup>) or the legislation is silent on whether the directions are to be made public (for example Rural Finance Board<sup>96</sup>).
- In a minority of cases the Minister is required to consult with the entity before issuing a direction (for example Ambulance Victoria<sup>97</sup>).
- Some boards (for example Public Transport Development Authority<sup>98</sup>) have continuous disclosure requirements but most boards do not have this requirement.
- Some enabling legislation outlines board procedures in detail (for example Emergency Services Superannuation Board<sup>99</sup>) while in other cases the procedures are at the discretion of the board (for example Ambulance Victoria<sup>100</sup>).

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88 Section 21 *Victorian Managed Insurance Authority Act 1996*.

89 Section 28(1) and (2) *Victorian Funds Management Corporation Act 1994*.

90 Section 15(3) *Rural Finance Corporation Act 1988*.

91 Section 79BI *Transport Integration Act 2010*.

92 Section 8 *Rural Finance Act 1988*.

93 Section 8 *Victorian Managed Insurance Authority Act 1996* (Minister must not give a direction that is inconsistent with the functions of the Authority).

94 Section 79BI *Transport Integration Act 2010*.

95 Section 34(5) *Ambulance Services Act 1986*.

96 Section 8 *Rural Finance Act 1988*.

97 Section 34A *Ambulance Services Act 1986*.

98 Section 79T *Transport Integration Act 2010*.

99 Section 12 *Emergency Services Superannuation Act 1986*.

100 Section 9 *Ambulance Services Act 1986*.

- Some enabling legislation provides that boards may appoint a board member as Chief Executive Officer (for example Victorian Funds Management Corporation); other enabling legislation provides the board with the approval or the responsible Minister may appoint the Chairperson as Chief Executive Officer (for example Public Transport Development<sup>101</sup>). Some enabling legislation provides that a person who is the CEO of the corporation is not eligible to be Chairperson or Deputy Chairperson of the board (for example Treasury Corporation<sup>102</sup>).
- In some cases, amendments to corporate planning documents are made after 'consultation' between the board and responsible Minister/s (for example Public Transport Development Authority<sup>103</sup>, Victorian Funds Management Corporation<sup>104</sup>) while in other cases changes may be made unilaterally by direction of the responsible Minister/s (for example Ambulance Victoria, Victorian Managed Insurance Agency<sup>105</sup>).

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101 Section 79BC(2) *Transport Integration Act 2010*.

102 Section 11(4) *Treasury Corporation of Victoria Act 1992*.

103 Section 79P *Transport Integration Act 2010*.

104 Section 25 *Victorian Funds Management Corporation Act 1994*.

105 Section 22E *Ambulance Services Act 1985*, Section 19 *Victorian Managed Insurance Agency Act 1996*.

## Appendix B

### Public entity governance – developments in other jurisdictions

#### United Kingdom

In July 2009 the government announced a review of government bodies as part of a 'Smarter Government' initiative. This review was driven by two factors: the perceived need to reduce the budget deficit and concern that too many functions and decisions made by public bodies had moved too far away from direct ministerial accountability.

As part of the review, departments undertook a two-stage assessment of each public body. The first considered whether the body's functions needed to continue. The second considered whether a continuing function should be undertaken at arm's length from departments and Ministers. The Cabinet Office issued guidelines that a body should remain at arm's length if it:

1. performed a technical function; or
2. required impartiality; or
3. required independence.

This review process resulted in the government abolishing more than 200 bodies, merging over 170 bodies into fewer than 80 and reducing the number of bodies by 300. Of the remaining bodies, 120 were substantially reformed and almost all reduced their administrative costs. It represented the largest restructure of public bodies in many decades.

Some of the associated reforms were:

- the introduction of sunset clauses for all new entities, in order to ensure bodies that are no longer fit for purpose are phased out
- all entities being limited to 'strictly administrative functions' with all policy work returning to departments
- all bodies being reviewed on a three-yearly basis. These reviews have two principal aims:
  - to provide a robust challenge of the continuing need for individual bodies – both their functions and their forms; and
  - where it is agreed that a particular body should remain, to review the control and governance arrangements to ensure the body is complying with good corporate governance principles.

A review undertaken by the National Audit Office in January 2012 revealed that over half of all public bodies had been through some sort of reform, though a large number of the bodies abolished were relatively small advisory bodies.

Since then the government has taken other steps to rationalise and reform these bodies.

## New Zealand

Over the last 15 years the Crown entities sector has increased in size and importance. New Zealand has passed legislation to provide governing rules and principles for 'Crown entities'. The Act categorised entities and identified a range of generic principles for each category. It also clarified the accountability relationships between Crown entities, their boards and Ministers<sup>106</sup>.

Crown entities are comprised of:

- Statutory entities, of which there are three types:
  - o Crown Agents - which must give effect to government policy when directed by the responsible Minister
  - o Autonomous Crown Entities - which must have regard to government policy when directed by the responsible Minister,
  - o Independent Crown Entities - which are generally independent of government policy
- Crown entity companies - these are companies incorporated under the Companies legislation and are wholly owned by the Crown
- Crown entity subsidiaries -these are companies incorporated under the Companies legislation that are controlled by Crown entities
- school boards of trustees
- tertiary education institutions.

Each group represents relative degrees of distance and independence from government decision-making. They are a diverse group, both by design and function. Although they mostly engage in regulatory or operational activities, some have policy functions.

That Act has also been recently amended<sup>107</sup> to:

- provide a monitoring role to departments
- change the collective board duties for statutory entities to ensure they collaborate with other public entities, where practicable
- allow government to use directions to achieve a broader range of all-of-government purposes, and to be more selective about the groups of Crown entities to which they can apply
- provide the Minister of State Services with a statutory power to require information from a group of Crown entities for the purpose of assessing the capability and performance of those entities.

Changes have also been made to the strategic planning and reporting requirements for entities.

<sup>106</sup> *Crown Entities Act 2004* (NZ).

<sup>107</sup> *Crown Entities Amendment Act 2013* (NZ).

## ***Other Australian jurisdictions***

### **Commonwealth**

In response to growing tension about where the boundaries lie in the spectrum of policy, legal, financial and managerial autonomy across government entities, in 2010 the Commonwealth Government undertook a review of the performance, accountability and governance aspects of the Commonwealth public financial framework. In response to that review, the government recently passed principles based legislation to provide a consistent governance framework for all Australian Government bodies. One of the intentions of the legislation is to curb the proliferation of entities. In future new functions will, if possible, be conferred on existing bodies.

Governance, accountability and reporting issues which were previously included in two separate Acts (*Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997*) have been consolidated into a single Act<sup>108</sup>. The intention is to:

- establish a coherent system of governance and accountability across Commonwealth entities
- establish a performance framework across Commonwealth entities
- require commonwealth entities:
  - to meet high standards of governance, performance and accountability
  - to provide meaningful information to the Parliament and the public; and to use and manage public resources properly
  - to work cooperatively with others to achieve common objectives, where practicable
- require Commonwealth companies to meet high standards of accountability
- provide rules for establishing new corporate entities.

The intention is to move away from prescriptive governance legislation to a principles based model that will focus on areas of high risk. The new framework will not commence until 1 July 2014 so that consultation with departments and entities can take place on the governance rules that will underpin the framework.

Future options will include streamlining financial reporting requirements for Commonwealth entities, through the introduction of tiered or differential financial reporting arrangements that will be based on a system of earned autonomy.

This approach involves:

- Specifying certain approval and oversight requirements (for example in the Statement of Obligations or Ministerial Directions). These could be associated with the size of property purchases or other decision areas where approval from the Minister or discussion is required.

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<sup>108</sup> *Public Governance, Performance and Accountability Act 2013* [Cth], s.5.

- Relaxing these requirements on the basis of demonstrated performance.

This arrangement is seen as rewarding good performance while retaining closer oversight over entities where this is considered necessary. It means that delegated autonomy is something that has to be earned, and can be taken away if performance issues arise.

## New South Wales

A NSW Commission of Audit undertaken in 2011 found that governance arrangements did not provide a complete, well understood and consistent governance framework. Deficiencies included:

- inconsistencies between the main legislative instruments used for entity classification
- lack of appreciation by some entities, particularly advisory entities, about the limitations of their powers
- confusion concerning the relative responsibilities of an entity and its sponsoring department
- incomplete understanding of some entities obligations in relation to financial management reporting
- lack of clear approval processes for creation and dissolution of entities
- lack of comprehensive and authoritative guidance for decision-making around the most appropriate type of structure for new entities.

The Commission recommended a review of the number and type of entities be undertaken and immediate steps taken to group or merge entities where appropriate and abolish them if they no longer serve a purpose.

Following on from this work, the Government issued a number of guidelines to improve the governance arrangements for government entities and their boards and committees.

The guidelines include:

- A list of factors to be considered when establishing a board/or a committee.
- A requirement that at the time of establishing a new board or committee appropriate review processes be included in the establishing legislation and/or board charter that require that a formal review be conducted at arm's length. It is suggested this be undertaken every five years and in the case of boards of committees the reviews could be undertaken on a more informal basis and on an annual basis. That the outcomes of the reviews be included in the annual report of the board/committee.
- A formal review of a board or committee and its members may consider whether:

- o the board or committee is fulfilling its functions and objectives, its successes and the outcomes of its work in respect of its business plan
- o delivery through the board or committee is the most cost effective approach
- o there is an ongoing need for the board or committee, or if its functions could be delivered through another existing board or committee, or other entity
- o the board or committee has an appropriate number of members for the functions being performed
- o members have the appropriate mix of skills, experience, and diversity
- o individual members are fulfilling their responsibilities.
- Factors that may be considered as part of a formal review or an internal member review include:
  - o participation in and contribution to the objectives and workload
  - o meeting attendance and engagement with other members
  - o clear understanding of the roles and responsibilities of the board or committee, its members and other key participants involved with the board or committee, its operating environment and the relationship with Ministers, statutory officers and other key stakeholders
  - o any actual or potential conflicts of interest.

In addition, an entity's relationship with the Minister will now be defined in the board's establishing legislation and guidelines for a new classification system for categorising different types of boards and committees and remuneration framework have been issued.

The New South Wales government has also announced a review of the legislative framework for State Owned Corporations aimed at:

- improving the commerciality of the corporations;
- improving the efficiency and effectiveness of the government's oversighting of the corporations; and
- streamlining and strengthening the accountability and governance framework that applies to these corporations.

## Queensland

In March 2008, the then Queensland Premier announced a major public sector reform program. As part of that process, an independent review was conducted of Queensland's public bodies.

The first stage considered the corporate governance framework of government bodies and identified a number of weaknesses including:

- the extent of fragmentation across the public sector with some wrong structures and different approaches adopted ( at that time there was no up- to-date and complete list of all government bodies readily available)
- unclear and inconsistent understandings and obligations for ministerial responsibility.
- incomplete governance framework.
- unclear or inconsistent accountabilities or gaps in accountabilities
- absence of current, consistent, sector-wide process in making a decision whether to create a body.
- different departmental organisational capacity to oversight government bodies.

The second stage reviewed all 457 government bodies individually against a public interest test that included:

- Does the activity need to be done?
- Should the Queensland Government undertake the proposed activity?
- Is there any compelling reason why a department cannot, or should not, undertake the proposed activity?

Recommendations were made about which bodies were working efficiently and which should be abolished. The government has accepted the majority of these recommendations.

The government also indicated that it supported the underlying principle that the establishment of a separate government body should only occur if it is in the public interest and that the ongoing need for government bodies must be subject of regular review.

The report of the review recommended that a generic Government Bodies Act should provide a legislative taxonomy of form, and within each form type, a minimum set of standards should apply. The government has elected not to pursue the legislative model but instead has issued administrative directions relating to these matters.

# Ombudsman's Reports 2004-13

## 2013

*Ombudsman Act 1973* Report on issues in public sector employment  
November 2013

*Ombudsman Act 1973* A section 25(2) report concerning the constitutional validity of aspects of Victoria's new integrity legislation  
October 2013

*Ombudsman Act 1973* Own motion investigation into unenforced warrants  
August 2013

*Whistleblowers Protection Act 2001* Investigation into allegations of improper conduct by a Magistrates' Court registrar  
May 2013

## 2012

Own motion investigation into the governance and administration of the Victorian Building Commission  
December 2012

A section 25(2) report to Parliament on the proposed integrity system and its impact on the functions of the Ombudsman  
December 2012

*Whistleblowers Protection Act 2001* Investigation into allegations concerning rail safety in the Melbourne Underground Rail Loop  
October 2012

*Whistleblowers Protection Act 2001* Investigation into allegations of improper conduct by CenITex officers  
October 2012

*Whistleblowers Protection Act 2001* Investigation into allegations of improper conduct involving Victoria Police  
October 2012

*Whistleblowers Protection Act 2001* Investigation into allegations against Mr Geoff Shaw MP  
October 2012

Investigation into the temporary closure of Alfred Health adult lung transplant program  
October 2012

Investigation into an alleged corrupt association  
October 2012

*Whistleblowers Protection Act 2001* Investigation into allegations of detrimental action involving Victoria Police  
June 2012

Own motion investigation into Greyhound Racing Victoria  
June 2012

The death of Mr Carl Williams at HM Barwon Prison – investigation into Corrections Victoria  
April 2012

*Whistleblowers Protection Act 2001* Conflict of interest, poor governance and bullying at the City of Glen Eira Council  
March 2012

Investigation into the storage and management of ward records by the Department of Human Services  
March 2012

## 2011

Investigation into the Foodbowl Modernisation Project and related matters  
November 2011

Investigation into ICT-enabled projects  
November 2011

Investigation into how universities deal with international students  
October 2011

Investigation regarding the Department of Human Services Child Protection program (Loddon Mallee Region)  
October 2011

Investigation into the Office of Police Integrity's handling of a complaint  
October 2011

SafeStreets Documents – Investigations into Victoria Police's Handling of Freedom of Information request  
September 2011

Investigation into prisoner access to health care  
August 2011

Investigation into an allegation about Victoria Police crime statistics  
June 2011

Corrupt conduct by public officers in procurement  
June 2011

Investigation into record keeping failures by WorkSafe agents  
May 2011

*Whistleblowers Protection Act 2001* Investigation into the improper release of autopsy information by a Victorian Institute of Forensic Medicine employee  
May 2011

Ombudsman investigation – Assault of a Disability Services client by Department of Human Services staff  
March 2011

The Brotherhood – Risks associated with secretive organisations  
March 2011

Ombudsman investigation into the probity of The Hotel Windsor redevelopment  
February 2011

*Whistleblowers Protection Act 2001*  
Investigation into the failure of agencies to manage registered sex offenders  
February 2011

*Whistleblowers Protection Act 2001*  
Investigation into allegations of improper conduct by a councillor at the Hume City Council  
February 2011

## **2010**

Investigation into the issuing of infringement notices to public transport users and related matters  
December 2010

Ombudsman's recommendations second report on their implementation  
October 2010

*Whistleblowers Protection Act 2001*  
Investigation into conditions at the Melbourne Youth Justice Precinct  
October 2010

*Whistleblowers Protection Act 2001*  
Investigation into an allegation of improper conduct within RMIT's School of Engineering (TAFE) – Aerospace  
July 2010

Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments  
June 2010

Own motion investigation into Child Protection – out of home care  
May 2010

Report of an investigation into Local Government Victoria's response to the Inspectors of Municipal Administration's report on the City of Ballarat  
April 2010

*Whistleblowers Protection Act 2001*  
Investigation into the disclosure of information by a councillor of the City of Casey  
March 2010

Ombudsman's recommendations – Report on their implementation  
February 2010

## **2009**

Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre  
December 2009

Own motion investigation into the Department of Human Services – Child Protection Program  
November 2009

Own motion investigation into the tendering and contracting of information and technology services within Victoria Police  
November 2009

Brookland Greens Estate – Investigation into methane gas leaks  
October 2009

A report of investigations into the City of Port Phillip  
August 2009

An investigation into the Transport Accident Commission's and the Victorian WorkCover Authority's administrative processes for medical practitioner billing  
July 2009

*Whistleblowers Protection Act 2001* Conflict of interest and abuse of power by a building inspector at Brimbank City Council  
June 2009

*Whistleblowers Protection Act 2001*  
Investigation into the alleged improper conduct of councillors at Brimbank City Council  
May 2009

Investigation into corporate governance at Moorabool Shire Council  
April 2009

Crime statistics and police numbers  
March 2009

## **2008**

*Whistleblowers Protection Act 2001* Report of an investigation into issues at Bayside Health  
October 2008

Probity controls in public hospitals for the procurement of non-clinical goods and services  
August 2008

Investigation into contraband entering a prison and related issues  
June 2008

Conflict of interest in local government  
March 2008

Conflict of interest in the public sector  
March 2008

### **2007**

Investigation into VicRoads' driver licensing arrangements  
December 2007

Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters  
November 2007

Investigation into the use of excessive force at the Melbourne Custody Centre  
November 2007

Investigation into the Office of Housing's tender process for the cleaning and gardening maintenance contract - CNG 2007  
October 2007

Investigation into a disclosure about WorkSafe's and Victoria Police's handling of a bullying and harassment complaint  
April 2007

Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong  
February 2007

### **2006**

Conditions for persons in custody  
July 2006

Review of the *Freedom of Information Act 1982*  
June 2006

Investigation into parking infringement notices issued by Melbourne City Council  
April 2006

Improving responses to allegations involving sexual assault  
March 2006

### **2005**

Investigation into the handling, storage and transfer of prisoner property in Victorian prisons  
December 2005

*Whistleblowers Protection Act 2001*  
Ombudsman's guidelines  
October 2005

Own motion investigation into VicRoads registration practices  
June 2005

Complaint handling guide for the Victorian Public Sector 2005  
May 2005

Review of the *Freedom of Information Act 1982*  
Discussion paper  
May 2005

Review of complaint handling in Victorian universities  
May 2005

Investigation into the conduct of council officers in the administration of the Shire of Melton  
March 2005

Discussion paper on improving responses to sexual abuse allegations  
February 2005

### **2004**

Essendon Rental Housing Co-operative (ERHC)  
December 2004

Complaint about the Medical Practitioners Board of Victoria  
December 2004

Ceja task force drug related corruption - second interim report of Ombudsman Victoria  
June 2004



