SERVICE PRIORITY REVIEW

BACKGROUND PAPER

GOVERNMENT BOARDS AND COMMITTEES
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1. Agency capability reviews
2. Best practice regulation
3. Overview of the budget process
4. Counterproductive rules and processes
5. Digital transformation
6. Engaging with the community
7. Functional leadership
8. Government boards and committees
9. Government trading enterprises
10. Leader performance management and accountability
11. One sector workforce
12. Privacy and information sharing
13. Procurement of goods and services
14. Public sector employment framework
15. Role of the centre
16. Service design and delivery
17. Successful implementation of reform
18. Whole-of-government targets
SERVICE PRIORITY REVIEW - BACKGROUND PAPER

Government boards and committees

Introduction

The Service Priority Review’s focus on systems, practices, culture and leadership in the public sector complements the structural reforms generally falling under the scope of the machinery of government changes, many of which took effect from 1 July 2017. In this context, an examination of government boards and committees is an area where more work could be done to ensure optimal structures are in place to support the public sector in achieving clarity of purpose, focus on priorities and efficient service delivery.

Statutory boards or committees are used globally as a mechanism to provide independent and expert advice to government and, where appropriate, to provide management oversight of critical government functions. They perform an important role in good governance and provide a link between government and the community. And, as history shows, if left unchecked they can proliferate: in 2009 there were more than 1,270 boards and committees in the Western Australian public sector.¹

In 2012, the Public Sector Commission (PSC) conducted a review to verify the existing boards and committees, recommend reductions in the number of boards and committees (where appropriate), and recommend policies and processes related to the administration of information on boards and committees. This led to a significant reduction in their number.

The 2017 machinery of government changes have entailed substantial reorganisation of the reporting lines of statutory boards. The opportunity arises to check again that the Government has the right boards and committees doing the right jobs. This paper outlines the general types of entities that exist in Western Australia and notes several criteria and principles for assessing what bodies are required and in what form.

What is a board and why have one?

In the Western Australian public sector, Premier’s Circular 2017/08: State government boards and committees² outlines what constitutes a government board or committee and provides guidance on the general purpose of boards and committees and remuneration for people who sit on them.


The Department of the Premier and Cabinet (DPC) maintains the State Government boards and committees register to provide transparency and a tool for monitoring which entities are operating. This is in line with the objectives of promoting efficiency in the public sector and making government more responsive to the needs of West Australians.

The Premier’s Circular 2017/08 description of a State Government board or committee defines a State Government board or committee as a body:

i. established for the purpose or function of having a major impact on government policy; or

ii. which has a cross-over of ministerial responsibilities; or

iii. where members are paid a fee (other than reimbursements for travel expenses).

All establishments, abolitions (including abolition due to expiry) and changes in name of, and appointments and reappointments to State Government boards and committees are matters for Cabinet consideration.

Boards and committees can:

- enable participation by government in commercial or semi-commercial operations
- provide capacity for decision and advice that are independent from government
- provide an avenue for the input of specialist knowledge and expertise not normally available in government
- facilitate high level engagement and ‘ownership by specific groups’.

In WA, the government trading enterprises and most of the statutory corporations with non-commercial functions have governing boards. These have oversight and governance functions and duties analogous to those of boards of corporations under the Corporations Act 2001 (Cth).

Some statutory boards and committees are established to exercise stewardship functions in the public interest – these include for example, the Aboriginal Lands Trust, Public Education Endowment Trust and Local Government Grants Commission.

Some statutory boards and committees have registration, professional accreditation or other oversight roles – these include the Legal Practice Board of Western Australia and the Local Governments Standards Panel.

There are also ‘policy, review and specialist boards’ which are not established under statute.

**Having the right boards and committees**

Historically, the WA public sector has been found to have a large number of boards and committees relative to other jurisdictions.

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4 Ibid. p1.
5 Ibid. p9.
The policy statement embedded in Premier’s Circular 2017/08 encourages ministers and agencies to “utilise interdepartmental working groups, drawing upon external advice and engaging in other forms of consultation that do not involve the establishment of a State Government board or committee and the payment of fees”.7

The Economic Audit Committee 2009 review, noted that statutory authorities – which generally have boards – “provide less flexibility for the Government to reorganise structures and resources to meet its priorities and emerging issues”.8 And in line with this, the review committee noted that the Government of the day had committed to reducing the number of boards and committees in the WA public sector. The review methodology for this purpose drew on the Queensland public interest framework and threshold criteria applied in the Commonwealth Government Uhrig9 Review of governance arrangements for boards and committees. The key questions in this approach remain relevant:

- Does the activity need to be done?
- Should government undertake the activity?
- Is there a compelling reason why a department cannot undertake the activity?

The machinery of government principles put forward by the EAC review and relevant to the creation or continuation of boards and committees are contained in Appendix 1.

It is worth noting that in WA it is common for Acts establishing a statutory authority to require a review of the effectiveness and need for continuation of the authority five years after the commencement of the Act. There is no requirement for further reviews after this point and there are no specific criteria for such reviews.

Other jurisdictions

Commonwealth

In 2003, the Commonwealth Government received the report of its review of corporate governance of statutory authorities by former Rio Tinto and Westpac chairman John Uhrig AO.10 The report received mixed responses, with some criticism that it was responding too heavily to business wishes, that it was too narrowly focused and that the terms of reference were poorly formed.11 However, the report did raise issues and principles with universal application and which may be useful for future reviews in the WA public sector.


10 Ibid.

The review identified elements that it saw were central to the governance of entities, whether they operate in the public or private sector. These were:

**Understanding success**: Those in control of an entity need to be clear about what the entity is to achieve and to communicate that effectively to management. This involves the establishment of a clear sense of purpose and the development of clear expectations of performance.

**Organising for success**: Once an entity has developed an understanding of what it needs to achieve, it should be organised appropriately.

- **Implementing the right organisational structures**: Structuring an organisation in a way that is most likely to assist it to achieve its objectives is a commonly accepted proposition. The right structure will depend on many factors, including the nature of the entity’s functions. A key question to consider in getting the structure right is whether it is designed so as to support (rather than impede) the operation of governance.
- **Power must be**: in existence, delegated, limited and exercised. In order for an entity to achieve its purpose, power must be given to executives to develop strategy and direction for higher level approval. Power will need to be further delegated as it is not feasible for a small number of individuals to make all decisions. Delegated power needs to be limited to manage risk associated with decision making and to limit the opportunity for non-alignment with the interests of those granting power. Finally, parties in receipt of power must exercise it and do so in a responsible manner.
- **Clarity of roles**: In organising for success, all parties within the governance framework must have a clear understanding of their roles and responsibilities, including their personal accountability.\(^{12}\)

Uhrig also noted that the role of government was itself a defining factor in proper governance for statutory authorities:

> Governments are held accountable by the electorate for the performance of government as a whole. Where statutory authorities are failing to perform adequately, the electorate will expect governments to act. Inevitably, therefore, there is a role for ministers in the governance of statutory authorities.\(^{13}\)

The set of principles established by Uhrig are contained in Appendix 2.

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13 Ibid. p5.
Queensland

In assessing the need for and type of entity to establish, the Queensland Government adopted a public interest map policy\(^{14}\) as a public sector governance model for improving the relevance, economy, efficiency, effectiveness and accountability for non-departmental government bodies (excluding companies and government-owned corporations). The policy consists of the:

- Threshold test: why have a non-departmental government body?
- Organisational form guide: if justified, what form should it take?
- Good governance framework: how should it govern and be governed?

To establish any new government body outside a department, a minister and/or department must prove there is a public interest case for its establishment. The public interest case must be developed in consultation with the Department of the Premier and Cabinet and is subject to approval by the Premier and by Cabinet.

New Zealand

The New Zealand Government maintains a range of organisations with a range of characteristics and responsibilities. Options are available to government regarding the classification and design of each organisation. The creation and management of these entities is subject to machinery of government principles outlined in Appendix 3. These principles may be useful in any future consideration of boards and committees in WA.

Victoria

An alternative to the statutory authority is used by the Victorian Government which is able to establish (and abolish) administrative offices through orders under section 11 of the Public Administration Act 2004 (Vic) and each is established in relation to a department. Examples of administrative offices include: Environmental Protection Authority, Local Government Investigations and Compliance Inspectorate, the Government Solicitor’s Office, Moving Victoria – Rail Office and Moving Victoria – Road Office.

This instrument allows an administrative office to be established for major projects, embedded within a broader governance structure (a department) and given clear focus and direction by government. It would be headed by an officer generally at deputy secretary level. An administrative office may be time-limited and project-specific and allow the Government to test the effectiveness of the arrangement before taking the further step of establishing a stand-alone statutory authority under its own enabling legislation.

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Conclusion

Across many jurisdictions there is a wealth of different criteria and principles to guide decision making about the need for and form of government boards and committees. Arguably, regular and ongoing review of such entities should form part of establishing and maintaining a fit for purpose governance system.

Options for reform

Immediate term

Portfolio level reviews: subject to further outcomes from machinery of government reforms, ministers and their agencies could review arrangements for statutory authorities falling within their portfolio responsibility. Portfolio level reviews are arguably more in tune with the requirements of the specific business, but they should not preclude accessing external advice.

The timing of such reviews needs careful consideration. On the one hand, reviewing arrangements as part of settling in machinery of government changes to departments is a logical time to make shifts before structures completely solidify. On the other, deferring change for a period will allow ministers and new chief executives time see how their new businesses operate and what support and oversight structures are required. Ministers and chief executives could be required to provide a plan to Cabinet on how they propose to review their boards and committees within a specified time.

Clarify relationship between minister, chair and chief executive: There are important relationships between the minister, board chairs and chief executives. The relationship between a minister and a board will vary depending on the nature of the board and how the relationship is defined in the board’s enabling legislation. For clarity, a minister would normally issue a formal statement of expectation with the board responding to this with a statement of intent. It would be appropriate, especially in light of recent reforms, to check that these instruments have been renewed. It is also important to clarify the role of each party in terms of appointment and performance of the chief executive in these arrangements.

Clarify the role of central agencies: the PSC noted the roles that it and the DPC play in supporting aspects of board management. In pursuing portfolio level reviews, engagement with PSC and DPC would be appropriate.

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Medium term

Establish regular assessment of the needs and functions of boards as normal practice

For future reviews, DPC and PSC could support ministers and agencies by developing principles to meet contemporary circumstances.

It could be further suggested that reviews of boards and committees become a much more regular feature of the public sector landscape, rather than current arrangements which suggest that once a board has been established any suggestion of review is regarded as disruptive and possibly politically contentious.
References


Appendix 1

Western Australian machinery of government principles\(^{17}\)

The following points are taken from the Economic Audit Committee 2009 review and may be applicable in reviewing the establishment or continuation of government boards and committees.

1. A balance needs to be achieved between efficiency and responsiveness to customer needs – big is not necessarily the best. Structure of government reform is not about ‘jamming agencies together’, regardless of ‘fit’.

2. Effectiveness and efficiency should not be achieved at the expense of appropriate governance and accountability frameworks. Accountability cannot be satisfactorily achieved when agencies are established as partnerships or limited liability companies.

3. Responsibility for policy development, regulation and service delivery should be separated where separation is economic and feasible and synergies are not adversely affected.

4. Effectiveness should be promoted by encouraging close client relationships.

5. Amalgamation of agencies should be considered where there are:
   a. Multiple related agencies reporting to the same portfolio minister
   b. Overlapping areas of responsibility or service delivery
   c. Common customers and demands
   d. Common skills bases
   e. Compatible information and administrative management systems and processes.

6. Efficiencies should be sought through:
   a. Appropriate economies of scale (i.e. agencies should not be too small nor should they be too large)
   b. Seeking alternative means of service delivery through private or not for profit sectors where there is a competitive marketplace
   c. Eradication of over-staffing and duplication of functions
   d. Increased budgetary flexibility in larger agencies
   e. Increased workforce flexibility within and between agencies.

7. Where appropriate, statutory authorities and boards/committees should be subject to a sunset clause or regular statutory review. The effectiveness of a statutory authority or board/committee should be determined prior to any decisions being made about its future. At the time of review, an examination of the organisational form and accountability framework should be undertaken.

8. Reforms to the machinery of government should be prioritised and sequenced. In determining the rate and timing of reform activity, due account should be taken to materiality and proportionality of benefits to costs, public interest considerations

\(^{17}\) Economic Audit Committee. 2009. p188-189.
(including election commitments, resisting the temptation to focus on ‘icons’), the need for legislative change and the status of chief executive positions involved.

9. In undertaking machinery of government reform, due regard should be given to the principles of natural justice; to planning and communication; consultation; redeployment consequences; and to ensuring that appropriate support mechanisms for staff are in place. These are further described in the people management aspects of change included in the Hicks machinery of government review.

10. A review of an agency can be triggered in response to a statutory requirement, a sunset clause in its terms of reference, or to address performance issues. Wider structural consolidation of the sector can be triggered by government strategic policy goals. Reviews undertaken without a justifiable trigger or clear objective may be counter-productive to the principles of effectiveness and efficiency. Typically, a review would be guided by the following stages and questions:
   a. Determine the effectiveness of the entity.
   b. Should the entity be abolished or merged with another entity?
   c. Should the State Government be undertaking the function?
   d. If it is determined that the State Government is the most appropriate body to undertake the function then should it be undertaken by a department rather than a statutory authority?
   e. If it is determined that a non-departmental government body is the most appropriate body to undertake the function then the organisational and accountability frameworks should be examined.
Appendix 2

Commonwealth principles for assessing statutory authorities proposed by the Uhrig Review\(^\text{18}\)

Owners, or their representatives, need to establish, clearly, an understanding of success for the activity, including their expectations of performance.

- Owners of an organisation need to set its purpose clearly and state their expectations of performance.

Governance should be present and the arrangements should be appropriate for the entity given the nature of ownership and its functions.

- The appropriate organisational structure will vary from entity to entity and will depend on functions, complexity of operations, ownership characteristics and objectives.

To be successful, power must be: in existence, delegated; limited and exercised.

- Power frameworks will influence the efficiency and effectiveness of decision making and the capacity of decision makers to produce quality outcomes.

There should be clarity of roles within the governance arrangements of organisations to ensure that efforts are directed towards success and that responsibilities are performed in an efficient manner.

- Those who own, govern and manage an organisation should have a clear understanding of their roles and responsibilities.

With responsibility there needs to be accountability.

- Individuals should understand what they are required to achieve, have the capacity to achieve and be held accountable for their performance.

For a board of directors to be effective, it must have the full power to act, including the ability to appoint, supervise and remove senior management as well as approve strategy.

Appendix 3

New Zealand State Services Commission machinery of government principles[^19] [Last updated: 3 July 2002]

Principles could be developed to shape the advice on each of these machinery of government questions. Thus, when the label ‘machinery of government principles’ is used, reference could be being made to one or more of four categories of principle:

- **Scope of central government principles** - principles which guide advice on the functions which appropriately might be undertaken by central government rather than by local authorities, non-government agencies or individuals.
- **Decision-making principles** - principles which guide the identification of, assessment of, and choice between different approaches to achieving the central government’s public policy objectives.
- **Organisational design principles** - principles which guide advice on which of the available organisational design options should be preferred assuming that policy objectives are to be pursued through ownership of one or more organisations.
- **Internal management structure principles** - principles which guide advice on what internal management structure for the Crown-owned organisation would best achieve the government’s public policy objectives.

This appendix deals only with ‘organisational design principles’. The Commission's organisational design principles are:

- **Effectiveness and efficiency** - organisational design choices should be made to best achieve the Government's desired outcomes (i.e. effectiveness), and the low cost production of outputs (i.e. efficiency).
- **Risk management** - organisational design choices should be made to best manage the risks posed for the Government by the activities to be undertaken by a Crown-owned organisation.
- **Constitutional conventions** - organisational design choices should be made to best protect established constitutional arrangements and conventions.

Each of these principles can be 'operationalised' by applying the following subsidiary propositions:

**Effectiveness and efficiency**

- **Match commercial to commercial** - commercial activities should be assigned to organisations with commercial objectives, preferably to SOEs.
- **Transparent funding for non-commercial activity** - non-commercial activities should be assigned to a commercial organisation only if the full cost of those activities is to be explicitly funded by the Crown.

• Contestable is better, sometimes - there is a presumption in favour of making contestable the activities of commercial organisations and non-commercial service delivery activities that do involve the exercise of significant statutory powers.

• Functional separation: sometimes yes, sometimes maybe - functions which clearly conflict for constitutional or commercial reasons should be assigned to separate organisations; in other cases, the costs and benefits of functional separation should be considered, and a decision to co-locate or separate the functions made on the specifics of each case.

• Multiple functions usually means department - where an agency is to be asked to undertake potentially conflicting functions, there is a presumption in favour of the departmental form.

Managing risk

• Strategic risk - if an activity represents a high level of strategic risk the departmental form may be preferred.

• Contracting risk - if an activity poses significant contracting risks, there is a presumption in favour of the departmental form.

• Flexibility - if the choice between a departmental form and a non-company Crown entity form is not clear-cut, there is a presumption in favour of the departmental form.

Constitutional conventions

• Ministerial oversight - where constitutional considerations indicate a need for close ministerial oversight, or for direct ministerial responsibility, there is a presumption in favour of the departmental form.

• Need for independence - if an activity must be, and must be seen to be, undertaken free of political interference, and there are no compelling reasons for close Ministerial oversight, the non-departmental form may be preferred.