2. Rise of Corporate and Public Governance

This chapter examines the emergence of governance as a primary concept during the last three decades and the ways in which two different forms of governance — corporate governance and public governance — have risen to prominence in the Australian public sector. To understand the significance of this it is necessary to explore the context of public sector reforms, and specific policy and reform agendas. The changing theories and broader conceptions of governance that were considered in chapter 1 assist with this task.

The intersection of the public and private sectors has been a fundamental and under-researched dimension of changing governance. The connections between the public and private sectors that have been so central to reform over the last three decades build on a much longer history as governments have turned to business for advice about efficiency and economy. There are two streams within this relationship. The first is the transfer of private sector ideas and techniques to the public sector (ranging from different modes of management to the corporatisation of functions and marketisation). The second is the flow of assets and various forms of outsourced activity from the public sector (this includes variations on privatisation). Underlying the relationship are the shifting boundaries between government/public concerns and market/private concerns.

Prior to the term ‘governance’ coming into vogue, the nomenclature used for similar concepts was that of government and public administration. This nomenclature provides the backdrop for mapping movements in the emphases of public sector governance, which are examined in this chapter in terms of three phases of public sector reform over the last 30 years. Reflected in these phases we find distinctive modes of governance emerging during different decades: corporate management in the 1980s, corporate governance in the 1990s and public governance in the 2000s. The pattern for the 2010s is still emerging during a period of turbulence and uncertainty.

Three phases in public sector reform

The Australian experience can be summarised with reference to the phases of reform and the decade in which they became significant during the reform era (from the early 1980s) (Table 2.1). Managerialism (Pollitt 1993; Zifcak 1994; Considine and Painter 1997; Halligan 2007b) best reflects the first phase in which management became the central concept and reshaped thinking as part
of a paradigm change. This was succeeded by a phase that, for a time, came close to the mainstream depiction of new public management (NPM) (Hood 1991), in which the market element was favoured and features such as disaggregation, privatisation and a private sector focus were at the forefront. In turn, NPM was followed, although not displaced, in the 2000s by integrated governance (Halligan 2006).

The sequence of reform has run from administration to stages that have been dominated first, by management, then markets, and then performance-based governance. The Australian tradition has been administrative rather than managerial; the latter being historically more closely identified with the commercial arms of government than the core public sector. In each of the three reform phases it is possible to distinguish elements that applied particularly to the departments of state and those that pertained to statutory authorities, corporations and companies (Table 2.1).

**Table 2.1: Reform phases 1980s to 2000s**

<table>
<thead>
<tr>
<th>Reform dimension</th>
<th>Managerialism</th>
<th>New public management</th>
<th>Integrated governance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central concept</td>
<td>Management (based on private sector)</td>
<td>Market</td>
<td>Performance management to demonstrate results</td>
</tr>
<tr>
<td>Reform focus in core public service</td>
<td>Financial management improvement</td>
<td>Outsourcing</td>
<td>Whole-of-government</td>
</tr>
<tr>
<td>Reform focus in outer public sector</td>
<td>Corporatisation and government business enterprise (GBE) companies</td>
<td>Privatisation Public–private</td>
<td>Uhrig review (2003) and rationalising public bodies/authorities</td>
</tr>
<tr>
<td>General trends</td>
<td>Paradigm change to results management</td>
<td>Devolving and disaggregating</td>
<td>Integrating and strengthening centre</td>
</tr>
<tr>
<td>Public–private trends</td>
<td>Importing private sector concepts/techniques</td>
<td>Exporting assets and functions, Importing corporate governance ideas</td>
<td>Renewal of public sector as the centrepiece of governance</td>
</tr>
<tr>
<td>Public engagement</td>
<td>Reassessment of relationship and costs of public provision</td>
<td>Service delivery to customers</td>
<td>Citizen-centric policy and delivery</td>
</tr>
</tbody>
</table>

**Managerialism**

The initial period of reform in the 1980s displaced traditional administration with a package of reforms that were based on management. Over about a decade, a new management philosophy was developed and implemented, which replaced the emphasis on inputs and processes with one on results (Halligan and Power 1992).
The main elements of the reform program (under a Labor government) focused on the core public service (including commercialisation, decentralisation and the senior public service) and improving financial management, followed by corporatisation and later privatisation. The Financial Management Improvement Program (FMIP) dominated the reforms of the 1980s. The Australian focus on results, outcomes and performance-oriented management dates from this time, although the emphasis then was on program budgeting and management. The flagging reform momentum in the mid 1980s produced new directions that were linked to an emerging micro-economic reform agenda, the most significant element being the major reorganisation of the machinery of government (for details see Campbell and Halligan 1993; Zifcak 1994; Halligan 1997).

A central element of reform was creating more business-like operations in the public sector. The movement towards corporatisation that occurred from the late 1980s, through either GBEs or incorporation as companies, produced significant changes to the status of major organisations (Halligan and Power 1992: 109–10).

**New public management**

The first phase of this reform era displayed incipient NPM in several respects, but the dominant theme was management improvement. The commitment to neo-liberal economic reforms that existed in the 1990s, following the advent of a conservative coalition government, led to the public service becoming highly decentralised, marketised, contractualised and privatised.

This new reform stage became most apparent with the increasing acceptance of the need for market-oriented reform by the mid 1990s. A major impetus for the application of market principles came from the National Competition Policy Review (1993), which was a flow-on from the micro-economic reform agenda that emerged in the mid 1980s. The Commonwealth and the states agreed to implement its recommendations, including competitive neutrality between the government and the business sector, and the structural reform of public monopolies to allow competition between providers within sectors. By the mid 1990s, the Australian public service was again in transition as the pressures for further reform intensified. The new agenda centred on competition and contestability, contracting out, client focus, core business, and the application of the purchaser/provider principle.

Market principles were applied first to the outer public sector and subsequently to the core public service. The private sector and market forces were closely related: the exporting of responsibilities to the private sector and/or making the public sector subject to market disciplines; and the importing of business techniques combined with attempts to replicate market conditions internally. Several tiers of markets became accepted within the public sector, the main
distinction being between the internal (or activities within the public service involving purely public transactions, such as user charging) and the external market (or public–private transactions, such as contracting out). A more significant dimension of management reform occurred in instances where there was a major organisational transformation (corporatisation or privatisation: Wettenhall 2001), although this was normally within the broader public sector. The national focus on improving competitiveness, and the emergence of a Council of Australian Governments, produced an agenda for rationalising and decentralising the delivery of services within the national public sector.

The agenda also covered a deregulated personnel system; a core public service that was focused on policy, regulation and oversight of service delivery; and contestability of the delivery of services with greater use of the private sector. A major financial management framework was introduced with budgeting on a full accrual basis for 1999–2000, implementation of outputs and outcomes reporting, and extending agency devolution to budget estimates and financial management.

The devolution of responsibilities from central agencies to line departments (responsible for specific functions) was highly significant in the late 1990s and resulted in a diminished role for central agencies (Halligan 2003b). As a result, the Australian Public Service Commission’s (APSC) role was modest while the Department of Prime Minister and Cabinet’s (PM&C) interventions were constrained and it was no longer providing overall public service leadership. The role of the then Department of Finance also contracted substantially.

Integrated governance

The new phase, integrated governance, which began in the 2000s, had an impact on relationships within and the coherence of the public service, delivery and implementation, and performance and responsiveness to government policy. Four dimensions were designed to draw together fundamental aspects of governance: resurrection of the central agency as a major actor with more direct influence over departments; whole-of-government as the new expression of a range of forms of coordination; central monitoring of agency implementation and delivery; and departmentalisation through absorbing statutory authorities and rationalising the non-departmental sector. A centralising trend within the Commonwealth system was also identified within specific policy sectors. In combination these provide the basis for integrated governance (Halligan 2006).

These trends placed greater emphasis on horizontal relationships through cross-agency programs and collaborative relationships. At the same time, vertical relationships were extended and reinforced. The whole-of-government approach was centralising in that central agencies were driving some policy
directions across agencies and the public service. The result was the tempering of devolution through strategic steering and management from the centre and a rebalancing of the positions of centre and line agencies.

An underlying element was political control: the use of programs to improve financial information for ministers; greater emphasis on strategic coordination by cabinet; controlling major policy agendas; the abolition of agencies and bodies as part of rationalisation and integration; and monitoring the delivery and implementation of government policy. These measures increased the potential for policy and program control and integration using the conventional machinery of cabinet, central agencies and departments as well as other coordinating instruments.

The intensity of the Australian reassertion of the centre and the ministerial department resulted from both system shortcomings and a response to the threat of uncertainty, which favoured the security of a stronger centre. A core principle of the 1980s was to require departments to manage as well as to provide policy advice. The language of the mid 2000s came to emphasise effective delivery as well as policy advice with the latter defined in terms of outcomes (Shergold 2004b). Departmentalisation was expressed through absorbing statutory authorities and reclaiming control of agencies that were managed by hybrid boards that did not accord with a particular corporate (and therefore private sector) governance prescription.

Underlying change, then, was a mainly state-centric focus on sorting out the architecture and processes of systems to provide for more effective government. Less apparent was thinking and action about external relationships. Those concerns were evident in the whole-of-government agenda, and the rhetoric intensified about citizen engagement and collaborative governance (O’Flynn and Wanna 2008), but the Commonwealth government had yet to centre public governance more clearly within societal processes.

**Modes of governance at the system and agency levels**

A different mode of governance has emerged during each of the last three decades, reflecting the tone and content of the then reform agenda: the narrow concept of corporate management in the 1980s, corporate governance in the 1990s and two variants of public governance in the 2000s. Their relationship to the reform agenda discussed above is indicated in Table 2.2. The society-centric notion of collaborative governance indicates general discourse about, and official aspirations for, public governance in the 2010s that has yet to be
properly reflected in reality. Nevertheless, Ahead of the Game: Blueprint for the Reform of Australian Government Administration, which is discussed later in the chapter, gives the idea of collaborative governance a more substantial foundation in public governance. At the very least, collaborative governance involves aspects of wider societal accountability, shared intra- and intergovernmental governance accountabilities (chapter 1), and participatory governance and stakeholder engagement (chapter 7).

Table 2.2: Reform agenda and agency modes of governance

<table>
<thead>
<tr>
<th>Period</th>
<th>Public management reform agenda</th>
<th>Governance mode</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-reform</td>
<td>Public administration</td>
<td>Machinery of government</td>
</tr>
<tr>
<td>1980s</td>
<td>Managerialism</td>
<td>Corporate management</td>
</tr>
<tr>
<td>1990s</td>
<td>New public management</td>
<td>Corporate governance</td>
</tr>
<tr>
<td>2000s</td>
<td>Integrated governance</td>
<td>Public governance (state-centric)</td>
</tr>
<tr>
<td>2010s</td>
<td>Collaborative governance</td>
<td>Public governance (society-centric)</td>
</tr>
</tbody>
</table>

The first phase of reform had embedded management and more commercial thinking, whereas the second phase placed increasing emphasis on markets, contracts and disaggregation. Labor governments favoured the public sector but pushed it towards the private sector; the Coalition government favoured the private sector but recognised the need to maintain a strong core public service.

A focus on corporate thinking as a means of binding new management systems and processes produced the more powerful combination of corporate governance, only to be supplanted but not entirely succeeded by public governance, the second version of which points to the more inclusive reform agenda of collaborative governance.

In terms of the organisational focus, three public sector reviews need to be noted. The first was the Dawkins/Walsh reforms of the 1980s (Wettenhall 1988), which sought a specific refocusing of relationships between ministerial departments and authorities. The second was the revision of legislation governing public bodies in the 1990s, which lead to new Acts — the Financial Management and Accountability Act 1997 (Cth) (FMA Act) and the Commonwealth Authorities and Companies Act 1997 (Cth) (CAC Act). The third was the Review of the Corporate Governance of Statutory Authorities and Office Holders (Uhrig 2003) which lead, in the 2000s, to more generally integrated governance, and is discussed later in this chapter (see also chapter 8 on the implications of the Uhrig review for governance design). These reviews had an impact on the role, constitution, numbers and significance of public bodies.
Finally, it is worth observing that a distinguishing feature of much reform is that it has been comprehensive, and involves different phases and modes of governance over time. There is now international acceptance that, through the reform process, no one model dominates and that layering, sedimentation and hybridisation have occurred. Recent analysis of patterns of change indicates that successive phases of reform have added new governance frameworks rather than replacing old ones (Christensen and Lægreid 2006) and that coordination and integration have co-existed with disaggregation (Richards and Smith 2006). Public sector systems such as that in Australia display several tendencies concurrently as they have wrestled with different demands to deregulate and regulate, devolve and control.

Ultimately, one reason for governments pursuing contrary actions is that contradictions exist between reform agenda (Aucoin 1990). Where once it was appropriate to articulate and operate within a single coherent model, this has become increasingly difficult. The consequence is hybridisation, which involves multiple modes of governance that may be exchanged or combined with variable results.

Rise of corporate governance

Corporate governance in government must be understood and practised within a variety of related systems and dimensions of governance. It is neither fully derived from, nor transposable to, the private sector. At the same time, an understanding of some key comparisons and contrasts between the two sectors is important, for reasons outlined in chapter 1. Throughout the 1990s, private corporate governance held some sway over public sector management (Table 2.2) and it is largely as a result of experience that was gained during this period that each sector continues to have governance insights for the other. Contemporary governance challenges often engage both sectors, and therefore presuppose awareness of the governance dynamics in each. Private sector notions and experiences still exerted residual gravitational pull in the public sector at the outset of the twenty-first century (e.g. Uhrig 2003), although they were less influential on public service agenda by the end of its first decade (e.g. Moran 2010a).

In the private sector, a number of forces for improved corporate governance can be traced from the late 1980s through to the 1990s. These forces continue to identify some of the most distinctive features of corporate governance today. The initial stimulus for improved corporate governance stemmed in the late 1980s from the failures of private law and regulation that became so evident, internationally, in the collapse of many major corporations. Given the rapidly
inflating asset values of the 1980s, many entrepreneurial and highly leveraged shareholders were able to take control of corporate boards and, with this, the control of major corporate assets. The corporate role of the ‘owner’, who commonly filled the roles of both chief executive and chairman of the board, remained ill defined. The roles of other directors sitting on the board were also poorly defined, so that much of the corporate governance debate throughout the 1990s involved the separation of the roles of the chairman and chief executive, and the clarification of the roles of non-executive directors and specialist board committees.

The era was marked by a shift in legislative style to provide more prescriptive processes for board and corporate decision-making, thus providing checks upon the discretionary power of the board. Reinforcing these legislative developments, voluntary codes and practice guides further clarified the roles and responsibilities of individual directors and specialist board committees such as the audit and remuneration committees. Commonly, these processes also involved a clearer supervisory and regulatory role for the Australian Securities and Investments Commission (ASIC). These developments have provided the backbone for both corporate ‘self-regulation’ and ‘co-regulation’. Good examples of these prescribed processes include those for company officers declaring their material personal interests in transactions and for the approval of directors’ remuneration reports by the general meeting.

In addition to a more prescriptive legislative approach to the processes of management and corporate decision-making, clearer obligations upon directors and executive management were also added to assist ASIC in its regulatory role, together with an array of new civil penalties that were designed to aid ASIC in dealing with company officers who contravened the law. Many key elements of corporate governance that were introduced over this period had the effect of highlighting deficiencies in corporate law and regulation, which became evident throughout the 1990s in the articulation of voluntary codes of practice. By the end of the 1990s, the market and market judgments of corporate governance practice had also come to provide important non-judicial elements in the public assessment of corporate management decisions and the exercise of corporate powers generally. As part of this process, in 2003, the Australian Securities Exchange (ASX) finally released its *Principles of Corporate Governance* (ASX Corporate Governance Council 2003).

The impact of these key developments in modern corporate governance is now well understood. A less well-appreciated influence upon the evolution of corporate governance in the private sector was the rise of large, publicly responsible shareholders, such as superannuation and investment funds, to displace small, individual shareholders in public companies. It is arguable that this circumstance brought corporate governance in the private sector closer
to public sector and public governance. The activism of these shareholders, particularly in the late 1990s, refined the measures of corporate and management performance and established a clearer link between good corporate governance practice and superior corporate performance. While this activism has waned since the early 2000s, a period that has seen the codification of shareholders’ voting policies, pension and investment funds remain an important force in determining corporate policy on issues such as director remuneration and other aspects of board governance that attract public attention. Most significantly for the evolution of public sector governance, pension fund shareholders are in essence trustee investors and they are themselves responsible for maintaining significant social obligations. Thus, their influence as trustees continues to broaden the responsibilities of corporate management beyond their more narrowly conceived legal obligations to the company.

Over the last 20 years, the four most enduring legacies of corporate governance in the private sector have been: first, the incorporation of a number of statutory, voluntary and market checks upon discretionary management power through the refinement of the responsibilities of board members and the processes of decision-making within the corporation; secondly, the embedding of corporate self-regulation and cooperative regulation rather than ‘command and control’ styles of regulation; thirdly, the adoption of voluntary codes and practice guides to supplement corporate law and regulation; and forthrightly, a greater reliance upon the market for public assessments of corporate governance practice and corporate performance.

**Corporate governance’s contribution to public sector governance**

Within the framework that was established in chapter 1, it has been seen as convenient to consider corporate governance as a subset of public sector governance, public governance and governance more generally. At the same time, however, corporate governance has provided both one impetus for the governance debate in the public sector and the foundational principles and codes of practice on which public sector governance is based. In recent decades, the public sector has adopted many of the ideas and practices of private sector management and corporate governance (Horrigan 2002; Edwards 2002; Nicoll 2002; Ahn, Halligan and Wilks 2002), which have covered language, forms, structures and practices, in moves to enhance goals as various as management efficiency, stakeholder representation, organisational responsibility, and overall public accountability (Halligan 1997; Barrett 2002a; Edwards 2002). This process has been apparent across the full range of agencies, from departments of state, statutory authorities to government corporations (Wettenhall 2000, 2001; Thynne and Wettenhall 2002).
Perhaps the most obvious influence of the private sector is seen in the adoption of the corporate form itself, and with this a corporate-style board with autonomous power approaching that enjoyed in private corporations. The adoption of Commonwealth companies, and the incorporation of the same law and directors’ liabilities that are applicable to corporations incorporated under the *Corporations Act 2001*, may have suggested a reason for importing also the corporate codes and corporate governance practice that were developed for private corporations throughout the 1990s.

While the link between corporate failures in the private sector, board dynamics, and bad corporate governance requires closer analysis, the elements and impact of corporate governance provide one focal point for assessing organisational performance and accountability (Heracleous 2001; Bhagat and Black 2002; Edwards and Clough 2005). Together, organisational and individual performance constitutes a key component of corporate governance, on any definition of it that applies across sectors. At the same time, differences in values across the public and private sectors, and in the dynamics of relationships with shareholders and stakeholders across both sectors, all affect the degree of corporate governance transposition from one sector to the other (Bottomley 2000; Barrett 2002a, 2002b; Horrigan 2003). This has implications for performance measurement and evaluation too, not least because of the different context for public sector performance.

Given the origins of corporate governance conceptually and operationally within the private sector domain, the transposition and transmutation of corporate governance to government is anathema to some. Yet, applying the term to aspects of the relationship between organisational governance and government has a tradition within government and academia in countries like Australia and the United Kingdom. The strong common emphasis upon components of corporate governance such as accountability, conformance, performance and assurance, in both the public and the private sectors, also indicates points of convergence that exist across the two domains.

**Corporate failures expose gaps in the law and regulation of corporate boards**

In the United Kingdom, the failure in the early 1990s of media owner Robert Maxwell’s company and the international bank, Bank of Credit and Commerce International (BCCI), spurred the publication of corporate governance codes and practice guidelines throughout that decade. In many respects, the United Kingdom took the lead internationally in promoting corporate governance reform and articulating the principles of corporate governance throughout the period.
In Australia, the collapse of Rothwells Ltd in 1987 provided the impetus for a decade of corporate law reform and the examination of the legal duties of directors. This initial period of law reform was accompanied by great public interest in better defining the roles and responsibilities of non-executive directors, chairmen and chief executives more generally. With the collapse of Enron Corporation in 2001 and the passage of the Sarbannes–Oxley Act (2002) in the United States, the royal commission investigating the collapse of HIH Insurance extended reforms in corporate governance to include examinations of the functional roles and liabilities of senior executive management operating below board level (HIH Royal Commission 2003: 130).

The early codes and practice guides that built upon the 1992 Cadbury Report were framed as voluntary codes, emphasising corporate management ethics and providing guidance for directors and management in practice. By the end of the 1990s, however, driven by the growing power of pension funds and investment managers, these codes increasingly linked corporate governance practice to improved corporate performance and began to incorporate a wider range of corporate social obligations and responsibilities to stakeholders other than shareholders.

Towards the end of the 1990s, the different aspects of these expanded codes were consolidated internationally in the Organisation for Economic Co-operation and Development’s (OECD) *Principles of Corporate Governance* (1999). Accumulated codes and practice guides were adopted in 2001 in the United Kingdom by the London Stock Exchange in its *Combined Code*, and by the Australian Securities Exchange (ASX) in 2003 in its *Principles of Corporate Governance* (ASX Corporate Governance Council 2003).

Corporate governance within a private sector context was authoritatively defined in the landmark Cadbury Report in the United Kingdom in 1992 (CFACG 1992). Many later regulatory, organisational, and academic definitions of corporate governance across sectors and jurisdictions take their lead from the Cadbury Report. Indeed, its definition probably sets more of the tone and structure of contemporary definitions of corporate governance than any other single source. According to the committee, which was chaired by leading company chairman and corporate governance expert, Sir Adrian Cadbury: ‘Corporate governance is the system by which companies are directed and controlled’ (CFACG 1992: 2.5). What follows in that definition has become a classic statement of the formal and structural components of corporate governance (CFACG 1992: 2.5–2.7):

Boards of directors are responsible for the governance of their companies. The shareholders’ role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting
the company’s strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board’s actions are subject to laws, regulations and the shareholders in general meeting.

Within that overall framework, the specifically financial aspects of corporate governance … are the way in which boards set financial policy and oversee its implementation, including the use of financial controls, and the process whereby they report on the activities and progress of the company to the shareholders.

The role of auditors is to provide shareholders with an external and objective check on the directors’ financial statements, which form the basis of that reporting system.

For anyone concerned with corporate governance in the public sector, what is striking about the Cadbury Report’s crystallisation of corporate governance is how many of its features are tied not only to the ‘hard’ structural and formal aspects of corporate governance, but also to the institutional arrangements and management practice of the private sector.

In Australia, a more recent consideration of corporate governance occurred in the Report of the HIH Royal Commission, following the collapse of one of the country’s largest insurers, HIH Insurance Ltd. A significant addition made by Royal Commissioner, Justice Owen, to the development of corporate governance in Australia was his consideration of the roles and responsibilities of executive management below the level of the board. Owen observed that ‘corporate governance’ refers to the control of corporations and to systems of oversight and the accountability of those in control’, and ‘Many publications describe corporate governance in terms that emphasise the structures, systems and processes in existence to ensure that an entity is properly directed and controlled’.

To this point, his analysis conforms to the Cadbury conception of corporate governance, but Owen (HIH Royal Commission 2003: xxxiii) then embraces the formal, behavioural, and relational elements:

Corporate governance … describes a framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations. Understood in this way, the expression ‘corporate governance’ embraces not only the models or systems themselves but also the practices by which that exercise and control of authority is in fact effected.

These extended insights on corporate governance embrace both the ‘hard’ and ‘soft’ aspects of governance, which were mentioned in chapter 1, while their context remains firmly fixed in the private sector.
The OECD Principles formalise codes and ‘relational’ responsibilities

A significant extension to the Cadbury Committee’s conception of corporate governance was apparent in the OECD’s *Principles of Corporate Governance* (1999). The importance of these principles lies in the new international standards in corporate governance that they established. A distinguishing feature of the OECD principles is the description of corporate governance in terms of a series of ‘relationships’ between those involved in or affected by decisions, rather than in terms of corporate law and traditional constitutional board powers. This confirms the interest of shareholders, and even stakeholders, as participants in corporate decision-making. The OECD (1999: 11) principles define corporate governance as:

> a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and shareholders and should facilitate effective monitoring, thereby encouraging firms to use resources more efficiently.

These principles have potential for application beyond the private sector to state-owned enterprises (OECD 2004a: 11). Here too are glimpses of the wider systemic dimensions of organisational corporate governance: ‘The presence of an effective corporate governance system, within an individual company and across an economy as a whole, helps to provide a degree of confidence that is necessary for the proper functioning of a market economy’ (OECD 2004a: 11).

The 2004 OECD guidelines refer to the range of company-specific investments by various stakeholders that contribute to a company’s success (OECD 2004a: 11). A company’s interests need to be assessed over the long term, and it is in a company’s long-term interests to stimulate ‘wealth-creating cooperation among stakeholders’, thus emphasising the importance of the relationship-based aspects of corporate governance. Yet, despite the relationship-focused orientation of such conceptions of corporate governance, the context of relationship-management in the private sector, with its fundamental concern for the business of business, differs in important respects from that applicable in the public sector, with its fundamental concern for the business of government.
Corporate governance, ‘self-regulation’ and ‘co-regulation’

Contemporary corporate governance has evolved beyond a ‘top-down’ and ‘command-and-control’ vision of how corporations are structured, managed, and controlled. Its coverage also extends beyond the relations between corporate directors, managers, and shareholders as corporate actors engaged in private ordering of private interests. Responding to canonical accounts of corporate governance that focus on boards mediating relations between corporate management and investors, four leading corporate governance scholars have argued for accountability to relevant constituencies (Bradley et al 1999: 11). Under their formulation corporate governance extends beyond:

the relationship between the firm and its capital providers. Corporate governance also indicates how the very constituencies that define the business enterprise serve, and are served by the corporation. Implicit and explicit relationships between the corporation and its employees, creditors, suppliers, customers, host communities … fall within the ambit of a relevant definition.

Such views of corporate governance again highlight the importance of the formal and structural (i.e. ‘hard’) aspects of corporate governance in tandem with its informal and non-structural (i.e. ‘soft’) aspects (chapter 1). They also dovetail with other authoritative, contemporary encapsulations of corporate governance that are sensitive to the importance of meaningful stakeholder relations and engagement, such as guidelines on stakeholders in the OECD’s principles (2004: 46). In addition, they introduce the notion of multiple levels and forms of accountability to different corporate governance participants. Bringing all of these different levels, contexts, and forms of governance to bear, overall ‘corporate governance’ can be viewed in terms of the mechanisms by which organisations in all sectors conduct their affairs and interact with others within and across relevant systems and dimensions of governance.

Redefining governance in the public sector: Ahead of the Game, CFAR and Uhrig

Ahead of the Game and the Uhrig review represent different official attempts at the federal level, from different perspectives and times in the evolution of Australian public administration, to grapple with the interactions between basic aspects of public administration, on one hand, and influences from the external global and societal environments upon public administration, on the other. In doing so, these reports relate policy-making and law-making, regulatory oversight and enforcement and delivery of public services to core elements
of corporate governance for public sector organisations and whole-of-sector governance frameworks and arrangements. They also connect those related aspects to wider influences from the external global and societal environments upon public administration.

**Recent refinements to corporate governance: The Uhrig review**

The Uhrig review was significant because it addressed an important difficulty with absorbing autonomous corporate entities and their boards within the public sector. The review identified the features of a truly autonomous decision-making board and suggested that such a board be restricted to use by those bodies that were most clearly able (and expected) to act independently of government.

Chaired by an experienced company director, John Uhrig, the review of governance arrangements of key agencies was announced by the Coalition government of John Howard in 2002. The Uhrig review’s main brief from the government was to examine the governance structures and practices of Commonwealth governmental authorities and office-holders, especially those of particular relevance to the business community, such as the Australian Taxation Office, ASIC, Australian Competition and Consumer Commission, Australian Prudential Regulation Authority, and the Reserve Bank of Australia (see chapter 8), but also other major agencies such as Centrelink (Uhrig 2003: 105–06). Those terms of reference also established the Howard government’s expectation that the Uhrig review would result in ‘a broad template of governance principles and arrangements’ (see chapter 8).

Importantly, extending any principles more widely than the remit provided to Uhrig was always likely to prove difficult, since the terms of reference required the review to concentrate its attention chiefly upon the eight specified administrative and regulatory entities that were considered likely to have particular impact upon the business community. These entities were quite diverse in character — they included some which were constituted as authorities and statutory agencies, some reporting under both the FMA Act and the CAC Act, and some with boards that were established for both advisory and governance roles. For these reasons, the ‘Board’ and ‘Executive Management’ templates that were ultimately proposed by Uhrig need careful consideration in their application to public sector bodies generally.

In approaching the terms of reference, Uhrig considers governance ‘[to be] about ensuring the success of an activity’ (Uhrig 2003: 21), and then examines the proper pathway to success through good governance and the well-defined
roles of individuals. Uhrig also stated the central importance of identifying the clear function and purpose of the entity concerned. In this respect, the Uhrig review thus provided a different starting point than had the Australian National Audit Office (ANAO 2003c) guidelines for governance in the public sector. Implementing the ANAO guidelines had been an issue for certain CAC bodies. While defining the role and authority of individuals within the public sector would seem a sensible restatement of agency principles for individuals reporting under the FMA Act, legislating the role and authority of a governance board within the CAC Act, without also unduly confining its authority and rationale, is a more difficult task.

Criticism of the Uhrig review

The Uhrig review approach has been criticised from many standpoints. One long-standing commentator on public administration and statutory authorities summarised the immediate post-Uhrig reaction of commentators as follows (Wettenhall 2005: 45):

Corporate lawyers have been kindest to the report, at least in the sense of proclaiming its likely strong reformative impact ... Mostly, however, commentators have been less supportive, with criticisms focusing on a variety of perceived problems such as the style of writing; inadequate consultations; excessive reliance on private sector models; subservience to business; lack of concern with relevant history, academic research and overseas experience; massive generalising from just eight cases; failure to see that government is often the problem rather than the authorities themselves.

Despite its rhetorical references to constitutional, parliamentary, and public responsibility and accountability, some critics noted the relatively light treatment of these dimensions in the review’s recommendations about governance arrangements and accountability frameworks, compared to the heavy emphasis upon executive government control of public sector entities and their accountability to the executive government. In particular, some decried its scant incorporation of parliamentary accountability within its governance arrangements and frameworks, given the interdependent relationships that exist between parliament, ministers, and departments concerning the establishment and operations of statutory authorities (Wettenhall 2005).

The review was also criticised for extrapolating too simple a two-limbed template for statutory authorities from too limited a sample of investigated bodies — a deficiency that, if present, was compounded by the Howard government’s extension of the Uhrig review’s recommendations to all portfolio bodies. Some castigated it for overestimating what private sector lessons on corporate governance might offer the public sector, and for underestimating
some aspects of the public sector that affect the easy transposition of corporate
governance lessons from the private sector. Others queried the review’s lack
of engagement with earlier official reports and inquiries, comparative public
sector developments overseas, and the wider body of governance knowledge
and expertise in the national and international literature on public sector
governance generally and corporate governance in particular.

Considered from a legal perspective, there is a clear tension between the apparent
simplicity of the Uhrig-based twin templates for governance arrangements
and the more complex reality of the law’s regulation of the distribution, use,
and abuse of public power. In other words, the design and implementation
of both cross-sectoral and organisational governance arrangements must also
navigate the public sector governance implications of public law’s allocation
and conditioning of public power across the executive, legislative, and judicial
branches (Gath 2005: 18; Miller and Sanders 2006: 28).

While there has been criticism of the ultimate extension of the Uhrig review’s
recommendations beyond those governmental regulators to the Commonwealth
public sector as a whole, that possibility was also foreshadowed in the
terms of reference (Uhrig 2003: 105). As the main department charged with
implementing the Uhrig review’s recommendations, the Department of Finance
and Administration produced governance guidance for other Commonwealth
public sector bodies in the form of its Governance Arrangements for Australian
Government Bodies (DFA 2005b; and chapter 8, this volume).

The new public service agenda: Ahead of the Game

The review of the Reform of Australian Government Administration was
announced in September 2009 as a six-month process. A discussion paper was
released the following month (AGRAGA 2009), and the report, Ahead of the
Game: Blueprint for the Reform Australian Government Administration in March
the following year (AGRAGA 2010). The head of PM&C, Terry Moran, chaired
the advisory group. Kevin Rudd’s Labor government charged the advisory
group with moving from incremental and stop-gap reforms to Commonwealth
public administration to producing ‘a more sweeping reform driven by a long-
range blueprint for a world class, 21st century public service’ (Rudd 2009a).

The Ahead of the Game recommendations directly affect departments and
agencies as well as having implications across the sector. The report covered 28
recommendations in nine reform areas that were organised under four themes:
citizen needs, leadership and strategic direction, public sector workforce
capability, and high standards of operational efficiency. The nine reform areas

1 For details of the process, see the comprehensive review by Evert Lindquist (2010).
were more specific about a melange of questions, such as service delivery, open government, policy capability, a new APSC for driving change, strategic planning and agency expectations (agility, capability, effectiveness, and efficiency) (see Appendix 1). The recommendations also reflected the emerging governance significance of relations with other Commonwealth public sector bodies, non-governmental actors, and levels of government. Specific recommendations addressed the roles and responsibilities of secretaries and agency capability reviews, while others were pitched at the APS level, such as strengthening leadership, assessing the senior executive service, and cross-portfolio and sector relationships.

The overall tenor of *Ahead of the Game* was to fine-tune, and augment, systemic features of the Australian public service. The corporate governance and NPM emphases of previous public sector reform were not prominent. Instead, new themes like mechanisms of transparency, engagement, integration, collaboration, and shared responsibility joined traditional ones of efficiency, deregulation and public sector values.

**Critique and aftermath of *Ahead of the Game***

*Ahead of the Game* picked up a number of matters that were already the subject of discussion, debate and reports within the public sector. The catalogue of items compiled in the report included efficiency dividends, revising APS values, reducing red tape, the roles of secretaries — including stewardship as a response to short-termism — weaknesses in policy making, and the consequences of different conditions of employment for joint activity. Without an ‘urgent, politically “hot” reform trigger, the Moran group … found it difficult to weave a coherent narrative that holds the disparate activity clusters together’ (*t Hart 2010). This lack of a distinctive and unifying core issue or theme contributed to the mixed acceptance of the overall reform agenda.

By its nature, this was not an exercise that had the potential to generate innovations that would rank internationally. Compare the earlier creation of Centrelink, for example, which was originally hailed internationally as a multi-purpose delivery agency for providing services to purchasing departments, and for seeking customer-focused delivery that provided integrated services (Halligan 2008b). This is not to say that innovation might not emerge in the continuing implementation process, and a commitment to being innovative is evident (MAC 2010).

The report did present ideas that were new to the APS, but which were based on practice elsewhere. The report addressed the question of citizen engagement, which had been the subject of debate within governance circles for some time (Briggs 2009), and borrowed from Canada and New Zealand the technique of
conducting satisfaction surveys. Capability reviews were adopted from the United Kingdom and directed at departments, but the concept was substantially adapted to Australian needs.

It is possible to see the report as an exercise in comprehensive design and maintenance, but the way that it is perceived depends greatly on the execution of its recommendations; *Ahead of the Game* was essentially the precursor to an extended reform process that is managed by the public service. It contains an agenda for change, which addresses a large range of elements and encompasses many players (in particular, two leadership groups, a new secretaries board and APS 200, a senior leadership forum for supporting the secretaries). In this respect, the era presaged by *Ahead of the Game* was not unlike the 1980s and the 2000s, except there was no roadmap then.

With the removal of Rudd from the prime ministership in 2010, the implementation process was disrupted. Prior to the 2010 elections, several processes were under way to implement the report’s recommendations. The most significant was the augmentation of the APSC’s powers by government endorsement of *Ahead of the Game*. It was made the lead agency for around half the recommendations and the APSC was allocated $39 million for the purpose of implementation under the 2010 budget. This sum was heavily cut by the new Labor prime minister, Julia Gillard, when she projected fiscal rectitude during the election campaign, and the funding was reduced for a succession of budgets (Sedgwick 2011a). The reform agenda has not been a priority for the prime minister, as indicated by the inattention to *Ahead of the Game* — which received a passing reference only in her 2011 Garran Oration to the Institute for Public Administration (Gillard 2011). Without explicit political support, and given some ambivalence towards the overall reform exercise within the senior public service, the implementation of *Ahead of the Game* will be constrained and selective.

Nevertheless, some discrete agendas that were derived from *Ahead of the Game* have been pursued. Of particular significance were those associated with a reconstituted APSC, which continued to be the lead agency for reform. The commission’s new approach was to engage collaboratively with departments and agencies in pursuit of common outcomes. The agencies have funded the commission to provide a range of services covering leadership and skills, talent management, workplace planning and standards, and a range of staffing matters, which affect public service capacity. Special reviews have become standard and they include the piloting of capability reviews of several agencies and a system review of the senior executive service (Sedgwick 2011a, 2011b, 2011c).

The overall coordination and review of the results of reform lies with the Department of the PM&C, with a departmental network being important for
both systemic agendas and agency-specific reforms. The constitution of the secretaries’ board as a formal central mechanism, which is chaired by the PM&C secretary, and secretaries’ performance agreements have been implemented.

The Public Service Amendment Bill 2012 proposed a legislative basis for the revised roles of a number of actors, which was foreshadowed in Ahead of the Game, including secretaries, a secretaries board, the senior executive service and the public service commissioner. Reformulated public service values were also to be enacted.

In addition there were two sets of recommendations for ‘improving agency efficiency’ (Halligan 2011b). One set addressed the need to strengthen the governance framework by simplifying governance structures for new and existing entities; and amending the governance arrangements to ensure clarity for interjurisdictional entities and that new (and existing agencies) were ‘fit-for-purpose’ (chapter 8). Finance was charged with reviewing ‘the different categories of entities … with a view to simplifying and rationalising them’. The department was to amend the governance policy framework and to review ‘(e)ntities in portfolios that could be amalgamated either due to efficiency and/or synergies in structures and tasks; and opportunities for small agencies to be incorporated into departments or other agencies’ (AGRAGA 2010: recommendation 9.2).

With the second group of recommendations, efficiency was accorded primacy with arguments expressed in terms of maximising outcomes against inputs and improving productivity in a challenging fiscal environment (AGRAGA 2010). This led to Finance producing the Review of the Measures of Agency Efficiency (2011: 46), which proposed elements of a strategic efficiency agenda to be centred on ‘Efficient structures: reviewing the shape of government and identifying opportunities for rationalising the number of government bodies’. The review recommended rationalising the number of small agencies because of inefficiencies arising from duplication and the costs of corporate services, and for the economies of scale to be derived through managing programs. The review also focused on the efficiency dividend as a mechanism having implications for portfolio management, as discussed in chapter 5.

Commonwealth Financial Accountability Review

Another inquiry of broader and greater significance, the Commonwealth Financial Accountability Review (CFAR), was commenced in 2011 as an internal public service consultation around a series of issue papers, which led to a public discussion paper in 2012 (DFD 2012b).2 The issue papers ranged widely over

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2 Twelve issues papers were released plus an overarching paper on foundations for better government. The papers were for internal circulation and feedback within the public service.
financial and related matters including governance. In some respects, CFAR is more important as a review than *Ahead of the Game* as it has resulted in extensive opportunities for consultation via a process run by a team in Finance, but the discussion paper is more reflective and thought-provoking.

The essential purpose of CFAR is to review the existing financial framework, to examine options and to develop a new framework. In doing so, the discussion paper ranges over major questions about accountability and transparency, governance, improving performance, and the handling of risk. The rationale for change, and the prompt for undertaking the review, reflects both the limitations of the existing financial framework and the need to respond to attitudinal and environmental changes concerning the role of citizens, policy complexity, technological developments, and joined-up government interdepartmental coordination. The directions being taken by Finance, which have been prompted by the significant issues raised by the CFAR process, will become apparent after the responses to the discussion document have been digested in mid 2012.

### The emergence of public governance

Having reviewed the evolving corporate and public governance agenda and formulations, three strands can be seen as converging to produce new understandings of governance in its public form: corporate governance-like features that are inherited from NPM; public governance; and governance in general.

First, NPM had opened up government to new ideas and approaches. As NPM reforms were introduced into the public sector, elements of corporate governance ‘began to accompany them as the default accountability and control tool advocated to replace the traditional process-based controls that historically had been used’ (Tucker 2010: 3). The flow on from government outsourcing is the acceptance of third party relationships as a normal part of government. The experience with markets led government to regard non-hierarchical (ie non-bureaucratic) instruments as an option for solving a policy problem. Moreover, the policy imperatives of the last decade have increasingly required joint action and collaboration.

Secondly, as discussed in chapter 1, the rise of a broader concept of governance has been significant in that the role non-government organisations is recognised. It has a range of meanings and definitions in the relevant literature such as an over-arching theory of institutional relationships within society (Kooiman 1999) or self-organising inter-organisational networks (Kickert 1993) — the common element being the breadth of the application. A traditional view defines governance in terms of a governing process associated with formal structures of

plural state, where multiple inter-dependent actors contribute to the delivery of public services and a pluralist state where multiple processes inform the policy making system. As a consequence of these two forms of plurality, its focus is very much upon inter-organisational relationships and the governance of processes, and it stresses service effectiveness and outcomes.

The formulation that has received considerable acceptance, however, covers both the traditional and recent conceptions. Central governments remain central as the responsible decision-makers on public policy, but they are expected to use third parties and networks, to be responsive to external preferences and to incorporate meaningful interactions with citizens and civil society. In the OECD context, when it is removed from any specific national or sectoral limits, governance is defined in terms that embrace a broader set of relationships, processes and outcomes, and thus includes more than public administration and the institutions, methods and instruments of governing. It also encompasses the set of relationships between governments and citizens, acting as both individuals and as part of or through institutions, e.g. political parties, productive enterprises, special interest groups, and the media (OECD 2000). Recent agendas reflect a growing concern with horizontal relationships inside and outside government and citizen engagement (see chapters 7 and 10).

Thirdly, the official position on corporate governance in the public sector has evolved through several stages. The rhetoric from ministers and departments originally paid lip service to the concepts, but did not produce an overarching formulation, leaving the ANAO to take up the mantle for articulating and propagating ideas. The auditor-general at that time, Pat Barrett, ‘was an early and intense advocate of corporate governance: of the 139 public addresses he made between 1995 and 2005, one in three addressed public sector corporate governance and accountability issues’ (Tucker 2010: 3). The ANAO also took the lead with a series of statements on corporate governance for the public sector in general and a statement of principles and better practice for authorities and companies in particular (ANAO 1999). In contrast, there appear to have been minimal contributions from government ministers, although several, such as Senator Eric Abetz (2003a; 2003b), advocated corporate governance as an approach in the public sector. According to Tony Tucker (2010: 3) these were ‘isolated occurrences by individual ministers rather than a comprehensive approach endorsed by government’.
As chapter 1 has indicated, the ANAO then adopted the term ‘public sector governance’ when it came to issuing guidelines in 2003 for principles that covered both board agencies and government departments (ANAO 2003c). By the mid 2000s, a range of central agencies (APSC and PM&C) and integrity agencies (ANAO and the Commonwealth Ombudsman) were contributing statements and guidelines as governance failure became a central issue. In these subsequent statements, both governance and corporate governance were used in official documents, as discussed in chapter 5 (ANAO and PM&C 2006; PM&C 2009a).

The lack of a coordinated approach has, according to Tucker (2010), contributed to interdepartmental ‘variations in the acceptance of corporate governance’. A different approach was adopted by PM&C (based on the Australian Securities Exchange guidelines) to that taken by the ANAO in its departmental requirements for annual reporting of corporate governance. Both approaches involved parliament, in one case an officer of the parliament, the auditor-general, while in the other, PM&C’s statement was endorsed by the Joint Committee on Parliamentary Accounts and Audit. ‘With such a failure of Parliament and central agencies to agree on the nature of corporate governance there is little wonder at the lack of uniformity of application in the APS’ (Tucker 2010: 4).

The consequence of this history is that there is general understanding of the principles of corporate and public governance, and of the variations between different types of government organisation (particularly departments of state and authorities with executive boards), but no formal framework to put good governance into operation. Chapters 3 and 5 pick up the variations in perceptions of governance for these different public sector bodies, while chapter 4 concentrates upon the central perspective.

**Conclusion**

The revolution in public management of the 1980s to 1990s was the introduction and institutionalisation of public management that was based, in large part, on private sector practice. There was much debate about the merits and applications and the contradictory components (Considine and Painter 1997) but, by international standards, a remarkable level of change was accomplished and sustained in Australia (Pollitt and Bouckaert 2011; Halligan 2007b). This was succeeded by a lesser-understood ‘quiet revolution’ in the late 1990s to the early 2000s, through the infusion and acceptance of corporate governance as a mode of operating in the public sector, thereby continuing the application of business-like forms and practices across the public sector. In addition,
the acceptance of governance as a generic term that applies at several levels, and particularly across multiple boundaries, has extended the operative and collaborative basis of government.

The public sector governance of today has absorbed these influences to produce a blend of these features. An organisation may be inclined towards public sector governance features such as private sector aspects, citizen engagement or core public service values, depending on its location and function in the system of public administration. The overall mix, though, appears to emphasise traditional public administration principles, which are discussed in later chapters.