Chapter 3 explores a number of tensions that underlie the different aspects of public sector governance that are examined in subsequent chapters of this book. These areas of tension are firstly: those currently encountered in the relationship between politicians and the bureaucracy; secondly, those existing within the organisational foundations of central government departments; thirdly, tensions arising in the integration of authorities and companies established under the Commonwealth Authorities and Companies Act 1997 (Cth) (CAC Act); fourthly, tensions arising in processes of coordination and collaboration within government and between government and external groups; and finally, tensions associated with defining and adopting the broader governance concepts of accountability, corporate regulation and performance across the public sector as a whole.

One source of these tensions was examined in chapter 2, which discussed the state-centric and society-centric elements of public governance that are now sought to be integrated in a central government responsible for providing both strong leadership and strategic direction within the sector (AGRAGA 2010: 20). This integration requires the reinforcement of traditional vertical lines of accountability and responsibility and, in this respect, tensions exist in the relationship between ministers and the senior public service, in organisational aspects of government departments and line agencies (chapters 4 and 5) and in integrating bodies that have been established under the CAC Act (chapter 6).

At the same time, however, difficulties in horizontal integration across government departments and portfolios increasingly intrude, pointing to the tensions that are associated with maintaining the traditional bureaucracy while admitting flexibility in policy formation and program delivery. The society-centric elements of public governance add new horizontal elements, requiring further collaboration within government and between government and external groups (chapter 7). Collaboration is increasingly a problem for governments as it may involve those from outside the public sector in decision-making and, thus, these horizontal elements may be less formally defined. Nevertheless, they must be permitted to open central government to the influence of new ideas and collaboration with others such as academics, business and the broader community (AGRAGA 2010: 20).
Tensions in context

Tensions in public governance have existed, at least in a proto-modern sense, ever since ministers’ roles were more clearly differentiated from those of departments and a variety of public organisations began to emerge. Invariably these tensions are centred on boundaries and relationships, on politicians and the extent of their reach over different organisations. In addition to these tensions within government, some tension also arises in the integration of several different forms of corporate-style organisations, and their boards, on which governments have at times relied. In Australia, these organisations have included statutory authorities and government business enterprises.

For the purposes of this book, the focus is on the last decade of change and the contemporary position. Evidence of the tensions referred to above emerge from studies undertaken by the authors during three significant periods over the last ten years. Few empirical studies have captured this breadth of public sector bodies and officials in transition during the implementation of new governance measures. The significance of the interviews undertaken in this study is that they capture point-in-time reactions of high-level participants while they were engaged in these reform periods. The interviews are utilised elsewhere in the book to illustrate clear attitudes and approaches to significant structural and legislative developments that were identified within the sector.

Many of the issues that were suggested by the authors’ earliest interviews in 2002 were confirmed and explored further in the more comprehensive range of interviews they later undertook, in 2005–07, with representatives of all arms of the Commonwealth public sector for the Australian Research Council–funded grant: Corporate Governance in the Public Sector. These interviews were undertaken with all federal government departments and a wide selection of statutory agencies, authorities and companies following the release of the 2003 Review of the Corporate Governance of Statutory Authorities and Office Holders (Uhrig review). The interviews sought to clarify the understanding of the terms ‘corporate governance’ and ‘governance’ within the Australian public sector, the value and utilisation in practice of key governance indicators for improved performance, the assumption of responsibility for the regulation of governance and the effective coordination of governance across the sector as a whole. A note on the methodology adopted for this study and the interview schedule can be found in appendix 1. Further interviews and analysis were finally undertaken in the post-Uhrig review period of the late 2000s, as the public sector landscape began to settle, and in the transitional years of the early 2010s.

1 For details from administrative history dating from the nineteenth century, see Halligan and Wettenhall 1990; Wettenhall 2007.
Interviews that were undertaken in 2002 with representatives of CAC bodies had confirmed the existence of manifestations of new public management and revealed difficulties in the adoption of the Australian National Audit Office (ANAO) governance principles in practice. A lack of clarity was registered in the different roles played by executive and management boards within federal government departments and agencies — given the adoption of more formally constituted ‘corporate’ boards under the CAC Act in Commonwealth authorities and companies. The interviewers sought to explore the ways in which CAC bodies were being utilised and adopted within the sector (Edwards, Nicoll and Seth-Purdie 2003).

The interviews suggested uncertainty as to the ‘independence’ of the boards and directors of CAC bodies. They also revealed uncertainty in the processes for the appointment of directors, difficulties in ensuring that the appropriate skills were represented upon the board and problems associated with the dynamics of decision-making by CAC boards in the public sector context. Overall, they suggested that significant difficulties were being encountered within the public sector in integrating the new legal concepts of board authority and individual director responsibility, which were introduced by the CAC Act, and the associated concepts of corporate governance, corporate self-regulation and performance measurement.

The interviews that were undertaken from 2005–07 sought to examine governance issues within the public sector system as a whole. Within federal government departments and agencies, interviewees asserted their strong support for maintaining the traditional legal authority and responsibility of the chief executive. At the same time, those sitting on the boards of bodies reporting under the CAC Act, which were generally conceived in law as commercially oriented and independent ‘decision-making’ boards, appeared acutely mindful of government policy while mostly maintaining the independence of their boards. Importantly to the coordination of governance across the system as a whole, the clear endorsement of the authority of the secretary and chief executive, and the assertions of the independence and authority of the decision-making board by many directors within CAC bodies, pointed to continuing difficulties in the integration of corporate entities and governance within the sector.

As these interviews were undertaken during the period in which the Uhrig review was being implemented, the representatives of corporations and authorities operating under the CAC Act were conscious of the possible conversion of authorities and companies to agencies. Interviewees were therefore clearly giving thought to questions such as the ‘independence’ of their board and the features of ‘corporate’ governance that were applicable to their body.
Across the sector, these interviews confirmed great diversity of opinion in the understanding of the concept of corporate governance and its application in the public sector.

Many of the elements of corporate governance that have been seen to be so influential in the private sector are often considered to be inappropriate for the federal public sector. The mechanisms for the scrutiny of public sector decision-making are seen to be far more significant checks upon the proper exercise of public powers than the regulatory controls and management checks that are associated with corporate governance in the private sector. In keeping with the strong support for the authority and responsibility of the secretary and chief executive, governance for many agencies in the public sector is seen in terms of meeting compliance and reporting requirements. Many other essential differences in the application of principles of governance drawn from the private sector, which were identified in 2002 interviews, were also confirmed in the later interviews. The processes for appointing board members, maintaining relevant skills on the board, and measuring the performance and effectiveness of governance arrangements, were all seen to be different in the public sector.

Organisational basis for the governance of public bodies

The spectrum of public bodies is summarised briefly in Figure 3.1. To the right of the spectrum lie the departments of state and executive agencies, which are the central organisational forms associated with the constitutional supremacy of parliament, ministerial and executive responsibility and the features of vertical accountability within the Westminster system. To the left lie the corporate-style bodies that have been created by parliament but influenced substantially by private corporate law. In the middle lie a mix of government and statutory authorities, which in part reflect the historical evolution of the relationship between the state and private corporations. While the CAC Act defined the legal and constitutional features of authorities and companies operating within the public sector far more sharply in terms of corporate law concepts than ever before, the features of a mixed model remain clearly in evidence. The minister, for example, makes appointments to the boards of CAC bodies, and the chief executive of several CAC bodies reports directly to the minister.

It might be anticipated that both the closeness and complexity of the relationship between government and private corporate bodies generally will continue to grow. So, too, will the exchanges between government and private corporations as new bodies evolve to meet changing circumstances. This is largely due to the fact that the corporation has proven a remarkably adaptable and convenient legal form, not merely for the conduct of private enterprise but for a wide range of other governmental and organisational purposes as well.
For the purposes of outlining the statutory institutional framework within which public sector governance must operate, the Department of Finance and Deregulation (Finance) has fully catalogued the bodies that are relevant to governance in the public sector in its *List of Australian Government Bodies and Governance Relationships* (DFD 2009). It also provides a regularly updated ready reference guide to this list of *Financial Management and Accountability Act 1997 (Cth)* (FMA Act) agencies and CAC bodies in a flipchart (DFD 2012a). A copy of the flipchart is reproduced in appendix 2. Table 3.1 summarises the number and types of different bodies reporting under the FMA Act and under the CAC Act.

### Table 3.1: Agencies and other bodies under the FMA Act and CAC Act

<table>
<thead>
<tr>
<th>111 Agencies under the FMA Act</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Departments of state</td>
<td>20</td>
</tr>
<tr>
<td>Departments of the parliament</td>
<td>4</td>
</tr>
<tr>
<td>Prescribed agencies</td>
<td>67</td>
</tr>
<tr>
<td>Prescribed agencies encompassing ‘executive agency’</td>
<td>8</td>
</tr>
<tr>
<td>Prescribed agencies — statutory but staffed through departments or agencies</td>
<td>2</td>
</tr>
<tr>
<td>Prescribed agencies — non-statutory and staffed through departments or agencies</td>
<td>5</td>
</tr>
<tr>
<td>Prescribed agencies — engage staff under their own act</td>
<td>5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>84 Bodies under the CAC Act 1997</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory authorities</td>
<td>62</td>
</tr>
<tr>
<td>Commonwealth companies</td>
<td>22</td>
</tr>
</tbody>
</table>

Source: Chart of Agencies and CAC Bodies (Finance 2010).
Within this framework, those bodies that are most immediately relevant to the organisation and management of the business of government comprise the departments of state, departments of parliament and ‘prescribed agencies’ — which are named as such in regulations promulgated under the FMA Act. The essential governmental character of these 111 agencies is set by the distinctive and varied statutory requirements under which they operate. These requirements set the constitutional and operational parameters for these agencies and, therefore, they provide the ultimate point of reference when defining their roles in integrated government. There are 20 departments of state that are regulated under the Public Service Act 1999 (Cth) (PS Act) and four departments of the parliament regulated under the Parliamentary Service Act 1999. Of the prescribed agencies, 67 are also statutory agencies under the PS Act. The remaining agencies are referred to in Table 3.1.

The central importance of these FMA agencies to government, and to the business of government, is established by their capacity to receive appropriations in their own right and by the ‘materiality’ of 41 such agencies to government. The essential character of these bodies as government agencies is established in the FMA Act, which renders the chief executive of the agency solely responsible for the efficient, effective and ethical use of Commonwealth resources.

**Tensions between the political and executive arms of government**

Under the Westminster model, the relations between politicians and bureaucrats have traditionally centred on the coexistence of the neutral public service and responsible government. The embedded tension between the two elements has been kept in balance by applying well-established principles. During the last 30 years, however, an imbalance between these two branches of government has become apparent and politicians, in response to the ascendancy of the bureaucrats, have sought to expand their authority.

The continuing jostling between politicians and public servants was maintained during the last decade with the role of ministerial advisers featuring prominently as the main source of tension. A new factor became more salient as the short-term inclinations of politicians exerted continuous working pressures, thereby exacerbating relations with public servants scrambling to meet real time demands (a new meaning of responsiveness?). Measures to ameliorate the last problem came into play in the 2010s.
Organisational tensions within departments and agencies

Committees and ‘decision-making’ bodies within departments

Executive management boards, advisory boards and cross-jurisdictional commissions have long been utilised in government departments and agencies (Horrigan 2001: 62–6). These boards are not conceived to have independent autonomy or authority, however, and they must be considered in the context of the ultimate responsibility of the chief executive for the ‘efficient, effective and ethical use’ of Commonwealth property and resources. They are committees conceived to assist the departmental secretary or chief executive in the discharge of his or her ultimate statutory responsibilities. The Commonwealth Financial Accountability Review (CFAR) discussion paper *Is Less More: Towards Better Commonwealth Performance* (2012) notes that the use of boards within departments can provide a diverse range of skills and experiences that secretaries might utilise, although the paper also makes it clear that such boards do not function as corporate boards and should not affect a secretary’s authority and accountability for the operations of the department (DFD 2012b: 41).

For a time following the passage of the CAC Act, these boards sometimes appeared to assume a more ambiguous place than they had held previously within FMA agencies. Despite the attempt (Uhrig 2003) to resolve ambiguities by drawing the distinction more clearly between ‘governance’ (or ‘decision-making’) boards and ‘management’ boards — the term ‘board’ continues to be used by some secretaries even though, in the context of executive government, the terminology is misleading. Management boards are essentially committees appointed by the secretary. The important consequence of conceiving boards as merely ‘advisory’ or ‘executive management’ within the overall responsibility of the departmental secretary or chief executive is that their operation is ultimately subject to a number of different mechanisms of statutory oversight. This statutory oversight of public sector boards differs markedly from the internal checks and balances upon private sector boards that are now achieved in modern corporate governance through a mix of prescribed statutory processes, voluntary codes of practice and market assessments.

The governance arrangements that have been published by Finance tend to predispose against the formation of new bodies. They begin by asking whether it is necessary to create a new body at all and whether new functions might not be best accommodated within departments (DFA 2005b: 13). They suggest that an FMA agency should be the ‘preferred form’ in establishing new bodies (DFA
2005b: 18). At the same time, however, Finance’s List of Government Bodies also identifies four decision-making ‘bodies’ within departments. These bodies are interesting because they arise within government departments, rather than in CAC bodies. Unlike management and advisory boards, however, they sit less comfortably with the supervening authority of the secretary.

The four bodies that are nominated by Finance are: those with ‘distinct functional branding’, ministerial councils, joint Commonwealth–state or international bodies, and advisory bodies. Joint Commonwealth–state bodies, ministerial councils and international bodies bear scrutiny since they appear to require the representation of particular interests on the board. In this respect Finance, in its 2005 governance arrangements, suggests that governance boards should not be ‘representative’ boards and that such boards should not find a place within departments in which they appear difficult to reconcile with the ultimate authority and responsibility of the chief executive under the FMA Act.

In interviews, which were undertaken around the time of the Uhrig review, interviewees confirmed that boards such as intergovernmental committees and regulatory commissions might be considered to have a role beyond providing mere advice and management. When referring to the boards of Commonwealth–state bodies, regulatory, and international bodies, they spoke of the value of a collective (or even representative) decision-making board. If such boards do not sit comfortably within FMA bodies, they may be suggesting the possibilities for an advisory board of a distinctive character in the public sector.

Regulatory commissions, particularly, were not seen to fit comfortably within the FMA Act-reporting framework. Finance has generally returned such commissions to the FMA Act fold, suggesting that a regulatory body should be constituted as an FMA agency when it is required to enforce the law under enabling legislation. Further, Finance would generally discourage the appointment of particular ‘representative’ appointees to such FMA agencies. In the case of such commissions, good governance may prove difficult in a dynamic federal system in which some state representation may be desirable.

External appointments to management and advisory boards

It might be thought that, because of the ultimate authority of departmental heads and chief executives, the scope exists for tailoring boards with the addition of members who are equipped with the necessary external skills — effectively ‘designing’ the management or advisory board to provide maximum assistance to the secretary. The CFAR discussion paper notes the potential benefits in doing this (DFD 2012b: 41). This possibility, however, is said to meet
with the significant obstacle in Australia that most appointments are likely to be internal appointments. Those reporting under the FMA Act expressed concerns for the appointment of ‘external’ (i.e. outside the portfolio) representatives on departmental boards. Executive and management boards are generally filled by internal appointees, who are all accountable to the departmental head or chief executive — and interviewees generally agreed with the view that ‘nothing would ever be implemented with an independent “expertise-based” board’. External appointees may be chosen only to provide the necessary expertise or to meet the particular needs of the case. As might be expected, audit committees were cited as one important exception — a special case in which external appointments and more formal procedures were seen to be most desirable. Commissions were cited as another special case.

At the same time, those representing the boards of agencies reporting under the FMA Act also noted that it was becoming increasingly difficult to find internal appointments to the board with the appropriate skills. One reason for this was seen to be the high turnover of staff; small agencies, in particular, were seen to suffer as a result of staff turnover. These comments suggest that, despite concerns being expressed for importing external expertise, the pool of ‘internal’ expertise within the Australian public sector may now be too limited to fulfil the need for expertise-based board members.

Tensions in integrating authorities, companies and corporate governance

Tensions in the adoption of corporate entities and concepts of corporate governance have been recognised for some time in the literature and appear likely to persist. As noted above, the CAC Act has, more clearly than previously, defined the legal features of authorities and companies that operate within the public sector in terms of corporate law concepts. Because of this, corporatisation now raises ‘in acute form’ the public/private distinction (Farrar 2005: 445). The distinction is particularly marked, not only because of the different functional roles that are fulfilled by corporatised entities in the public sector (Bottomley 1994: 530), but also because of the essentially different regulatory and market frameworks that prevail in the public and private sectors (Farrar 2005: 446). So, public sector governance must accommodate differences between sectors in transposing structures and standards from one to another, as well as in developing suitable engagement and accountability mechanisms.

In terms of the recent assessment of the public sector in *Ahead of the Game: Blueprint for the Reform of Australian Government Administration* (AGRAGA 2010), the same public/private distinction seems likely to arise in endeavouring
to maintain a strong central government — one that is capable of steering and coordinating the whole public sector, while also maintaining control over the outer reaches of government. In this broad sense, the ‘outer reaches’ of government include both line agencies, which are more removed from departmental control within portfolios, as well as the departments and agencies of other portfolios. As a result, maintaining central control invokes both vertical and horizontal (or lateral) dimensions. Chapter 7, in particular, notes the ‘pressing’ tension that exists today between the horizontal responsibilities of government for non-government organisations and citizens and the vertical accountabilities of the Westminster system (Briggs and Fisher 2006: 16; Fung 2009).

The key players in the effective coordination of these vertical and horizontal elements of government are first, ministers and departmental secretaries; secondly, the departmental advisory and management committees that are utilised by secretaries; and thirdly, the corporate entities and boards governed chiefly by the CAC Act. Like departmental advisory boards, the corporate boards of authorities and companies may broaden the scope for participatory governance, but their appointment processes also present greater challenges for governments because independent and external board members pose potential obstacles to lines of accountability and responsibility within traditional public sector administration (chapter 9).

Following the Uhrig review (chapter 2), and consistent with strengthening the centre, the number of Commonwealth authorities has declined and a more cautious approach has been adopted by Finance in establishing new entities (chapter 8). For some time, there have been underlying tensions in the workings of the corporate-style boards of authorities and companies — tensions that are considered in greater detail at board level in chapter 6.

**Sources of tension in integrating authorities and companies**

Successive phases of private sector influence have placed stresses upon the traditional vertical hierarchy of authority and accountability in public sector administration. The reasons for this are best understood through a brief consideration of the statutory framework and Finance’s catalogue of government bodies, as outlined above. This framework assists in identifying the legal authority and reporting requirements of individuals, agencies and corporate bodies within the public sector. A potential difficulty arises because more recent concepts of corporate law and governance, which are associated with bodies regulated under the CAC Act, have been superimposed upon this departmental framework, thereby raising possible tensions between traditional
statutory mechanisms for government accountability and more recent private sector principles directed to improving the accountability, efficiency and performance of CAC bodies.

The difficulties found in integrating corporate bodies within a public sector setting, and positioning them within a framework of individual and agency accountability in central government, arise firstly, because the corporate board is conceived as an autonomous board that is empowered and authorised to make collective decisions embracing diverse views, rather than as a single decision-making secretary or officer. Secondly, further difficulties arise in integrating corporate bodies in the public sector setting because the authority of the board remains subject to significant government controls both in law and practice.

The features of the CAC Act that are most relevant to the governance of Commonwealth authorities and companies are outlined in greater detail in chapter 6, but it may be seen in Table 3.1 that 84 authorities and companies, which lie at arms length from central government, report under this legislation. Both authorities and companies operate in a corporate form with boards of directors whose members are subject to duties cast in similar terms to those of the directors of private corporations. This statutory formulation for the structure of authorities and companies, the authority of their boards and the responsibilities of their directors and officers all suggest the difficulties encountered in their assimilation within government departments and other agencies within government portfolios.

More broadly, the quantitative performance metrics of listed corporations (such as rates of return on investment, assets or equity) as well as both ‘hard’ performance measures (board composition and independent directors) and ‘soft’ or strategic measures (such as leadership and risk-taking), which are now included in governance ranking research, are ultimately founded upon market and shareholder assessments. A difficult question then arises as to whether it is sustainable to proceed with the multiple accountabilities that are now required for both public and private entities across the system (chapter 7).

The passage of the CAC Act highlighted several related areas of tension — some of less practical significance than others. In so far as the CAC Act refers to Commonwealth companies that are subject to the *Corporations Act 2001*, and imports the principles of directors’ duties from the Corporations Act, there is continuing legal uncertainty as to the regulation and accountability of CAC bodies. Questions may arise, for example, as to whether the Australian Securities and Investments Commission (ASIC) or ministerial shareholders should be responsible for the regulation of these bodies and the enforcement of directors’ duties. In addition, developments in Australian corporate law surrounding directors’ duties and the defences available to them will affect the interpretation
of equivalent law governing the directors and officers of agencies and companies under the CAC Act. Further questions may arise as to the extent to which concepts of private corporate governance, now supervised by ASIC, should govern the constitution and processes of the board. Finally, questions may also arise as to the extent to which measures of corporate performance, founded in the private sector upon shareholder and market expectations, provide valuable performance measures for corporations operating in the public sector.

In other areas, real tensions are felt in practice. In chapter 6, the authority of the boards of many authorities and companies reporting under the CAC Act is considered in the light of the various controls exercised by government in practice. In particular, board members must remain mindful of government policy and their appointment to the board generally rests upon responsible ministers — a factor examined in detail in chapter 9. These and other factors in practice remain significant constraints upon the authority and independence of such boards. Seen in this context, CAC bodies may never have been quite as independent of government as they have sometimes been assumed to be. Nevertheless, the corporate structure of these bodies makes them at once both critical to coordination between central government and the outer reaches of government and open to the kind of collaboration with outsiders that is envisaged in *Ahead of the Game*.

**Directors of corporate bodies within the public sector**

Within the public sector, particular tensions are now likely to be felt by the directors of corporate bodies. These difficulties stem largely from the legal authority of the body’s board, the legal duties owed by directors to the corporate body and the governmental constraints upon the body that arise in practice. Within the board, these tensions manifest in the constraints under which the directors and corporate officers themselves must exercise their corporate powers while remaining mindful of the supervening influence of government and responsible ministers. The purpose of the CAC Act is to regulate certain aspects of the financial affairs of Commonwealth authorities and companies. With respect to Commonwealth-owned or controlled authorities, the CAC Act provides detailed rules about the reporting obligations of authorities and their accountability. It also deals with the conduct of the directors and officers of authorities, and with their banking and investment obligations. For companies, the Act provides reporting and other requirements that apply in addition to those encompassed by the Corporations Act.

These provisions dealing with directors’ duties provide a good example of the way in which statutory provisions, of great significance in the private sector, may seem less relevant in an Act designed to regulate director behaviour in a
public sector entity. In practice, the directors of CAC bodies are less likely to be sued by shareholders or called to account by regulators for contravention of the Corporations Act than are their private sector counterparts. Their legal duties highlight the essentially different character of corporate boards and their regulation within the private sector. Directors in this context owe their legal duties specifically to the corporate body — note the public duty of the chief executive under s 44 of the FMA Act to make ‘efficient, effective and ethical use’ of Commonwealth resources. Accordingly, their duties, as stated in the CAC Act, stand to be judged by reference to their corporate (as distinct from their governmental) responsibilities. Other potentially difficult legal questions may also arise in the future as to the applicability of directors’ defences that are generally available in private corporate law — such as defences of due diligence and business judgment — in the foreign context of the public sector.

Difficulties in coordination and collaboration within and external to government

A further difficulty that continues to arise is that of coordinating collaboration across agencies and portfolios within the public sector and externally. This tension arises partly because of the need to coordinate policy formation and implementation vertically through the Commonwealth and state governments as well as horizontally, across the institutional ‘silos’ of each level of government. Effective policy implementation and service delivery across the whole of the public sector may sit uneasily with the formation of policy within government departments that are adhering to principles of individual responsibility, line accountability and the ultimate authority of parliament within the Westminster system. Chapter 5 outlines the formal mechanisms for collaboration between departments, which include interdepartmental committees and task forces.

An important consideration in advancing cross-government approaches is the recognition that the key foundations for cross-governmental coordination are often the ‘softer’ associations of an informal and unstructured character, which supplement more formal processes such as interdepartmental committees. Senior executives interviewed for this project generally felt that the contact they undertook with others to maintain whole-of-government approaches, although informal, was extensive, relevant and effective. One rationale given for the effectiveness of this contact (that seemed to sum up the general sentiment) was that ‘the public sector works for the public good while the private sector has the profit principle as its bottom line’. Participants were generally happy to maintain informal relationships across departments, which they believed to be effective. One CEO said of the exchange of information: ‘In terms of policy — none of
these forums provides an opportunity. I don’t think that there is a need to set up something formal but we do our policy work better when we are talking to other people about it. We try hard to have open lines of communication with other departments but I’d be hesitant to say that it could not be improved.’

Managing government ‘as a whole’ represents a distinct element in the conception of governance within the public sector literature. It addresses a practical and conceptual difficulty in the public sector that is quite distinct from the conceptual problems addressed in private corporate governance. The most significant issue, and the most significant source of tension within the public sector, however, remains one of horizontal coordination in practice within a traditional system that is built upon individual and agency accountability.

Reflections of difficulties in practice

Reflecting the tensions between vertical and horizontal government identified above, interviewees in the mid 2000s, who were required to report under the FMA Act, tended to acknowledge the continuing difficulties in realising the concept of whole-of-government. They noted that the FMA Act did not encourage whole-of-government approaches — rather, it simply made the chief executive separately accountable. Mindful of the responsibility of the chief executive for the efficient, effective and ethical use of resources under the FMA Act, one chief executive said: ‘The FMA Act focuses on the individual responsibility of the CEO. I like the concept of separating decision making from the minister (e.g. through a board), but I also like the concept of me being personally responsible. Requiring the co-signature of the CFO was a good move’.

It was also said that some CAC bodies, which had been set up for program delivery, were assuming a policy-making role. This perception emerged in interviews with some CAC body interviewees whose bodies operated within small portfolios, and was significant in the case of Centrelink, an FMA agency that is discussed in chapter 5.

FMA agency respondents remarked upon the increasing accountability requirements, both in CAC bodies reporting to central agencies and in the ANAO’s performance audits. One interviewee observed that ‘the layers are building up’. Thus, the effective integration of agencies and authorities within the whole-of-government remains a significant difficulty. With an eye to improving this, one option considered by FMA agency participants was to make portfolio bodies accountable to the minister. They saw a ‘fragmentation’ of the bureaucracy at

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2 At times, there appear to be analogies with the broader concerns of private corporate governance — for example, the improvement of corporate social responsibility and corporate ethics may appear to have similar ultimate objectives to some whole-of-government objectives.
the very time when service delivery and national security demanded greater coordination within government. They thought, for example, that the delivery of extended entitlement programs now presented difficulties, as did achieving broad political agreement among commissions. They commented on the difficulties now associated with performance management and understanding the risk profiles of quite different organisations across the public sector.

Some more specific structural and procedural issues, which have tended to highlight this fragmentation, were also referred to. These included the fundamental difficulty perceived in the minister delegating power to a board and the difficulties involved in strengthening the relationship between minister and chair (a suggestion made by the Uhrig review) when the chief executive remained the full-time employee. Another related issue was a clear concern among many FMA agency interviewees for the difficulties and ultimate value in maintaining stakeholder representation. There appeared a weakening faith in the value of the ‘representative’ board — the only possible exception to this being the value seen by many interviewees in maintaining jurisdictional representation in regulatory commissions.

Finally, senior executives saw a significant gap between the concept of ‘governance’, considered as a universal code of good practice within the public sector, and the need for more active public engagement with (and access to), the public sector in practice. A few interviewees felt that the ‘governance’ era had been less successful in publicising and addressing its ‘sins of omission’ as distinct from highlighting its achievements. They questioned their true capacity to control what was actually happening in the field.

**Cross-portfolio board representation**

In chapter 9 it is noted that, for some secretaries, departmental representation on CAC bodies is considered a part of their role. The explanation given by those reporting under the FMA Act for not undertaking such representation was their concern for ‘ending up in a position of political vulnerability with the minister — since the minister is ultimately accountable’. This group also provided plausible explanations for their view that representation by CAC body representatives on departmental executive boards would not be a good idea. They emphasised the need to preserve the confidentiality of agency decisions and their concern for the lack of public CAC Act responsibility within the sector. FMA agency participants were also equivocal about the value of the chief executive sitting on the boards of CAC bodies. Other difficulties in secretarial representation on boards are canvassed in chapter 9.

Further, FMA agency participants commonly saw other more effective and less risky ways for departments to obtain input from CAC bodies (e.g. through
portfolio chief executives’ meetings, representation of CAC bodies on policy committees and other specific departmental subcommittees). As noted earlier, some FMA agency participants expressed their concern for ‘external’ (i.e. outside the portfolio) representatives on executive boards. For example: ‘I wouldn’t want it. Perhaps on subcommittees yes, for technical expertise. But not on the executive board because some of the business is highly confidential and what does a non-executive director become — a conscience?’

Coordination with CAC bodies

Departmental perspectives on their relations with CAC bodies and other portfolio agencies were also addressed during interviews. Within state-centric public governance, the effective coordination of department and agencies within the portfolio is a key indicator of the successful melding of horizontal and vertical governance. For their part, CAC bodies often held a firm view that departments could do more to keep them informed of policy directions and suggested that more representation by departments upon their boards might be helpful (chapter 6). As noted above, however, some agency heads saw difficulties in their being represented on the boards of CAC bodies. These difficulties emerged in this comment: ‘I would never come between a chair and the minister, but they (i.e. CAC bodies) do need to understand that the minister will ask advice of the secretary. It’s the secretary’s responsibility to report to the minister on the whole portfolio’. This divergence in the views of those reporting under the FMA and CAC acts identifies a potential difficulty for integrated government and whole-of-government objectives.

Tensions in accommodating concepts and language of governance

The difficulties of absorbing corporate entities within the framework of central government are relatively apparent in the previous consideration of the statutory framework. Possibly less well understood, however, has been the extent to which private corporate law and governance has tended to import to the public sector new concepts and measures of corporate regulation and performance monitoring (chapter 2). As mentioned earlier in this chapter, the passage of the CAC Act served to highlight once again the different and distinctive aspects of the public/private divide that are associated with corporatisation and the privatisation of public enterprises (Farrar 2005: 445; Bottomley 1994: 530). One ongoing difficulty for the governance of the public sector in the future will be the need to sustain the variety of accountability regimes that are best suited to bodies of varying public and private character.
The very language of accountability in the public sector echoes the vertical responsibilities of those deriving their power and authority from the constitutional power and authority of parliament and cabinet. By contrast, the corporate board enjoys relative constitutional autonomy and its members are subject only to external regulation by ASIC, an independent corporate regulator. For this reason, difficulties may be expected to arise in considering whether ASIC or the Finance Minister should assume responsibility for bringing legal action against the directors of such bodies (DFD 2012b). Corporate governance in the private sector can only be understood by reference to market expectations and monitoring. Questions therefore arise as to the way in which the multiple concepts of accountability within government might be reconciled with the regulation and market monitoring of private corporations and corporate entities.

In the authors’ empirical study, questions of accountability were raised in three areas in particular, namely interviewees’ recognition of structural (or ‘hard’) elements in regulation and accountability, their recognition of ‘soft’ elements of accountability, and their measuring and promoting of superior performance.

‘Hard’ and ‘soft’ elements in accountability and governance

As noted in chapter 1, the distinction drawn between ‘hard’ and ‘soft’ elements in governance recognises differences between the formal and structural (hard) elements and the behavioural and relational (soft) elements (Edwards and Clough 2005). In practice, many in the public sector identify three ‘hard’ elements of accountability within the Commonwealth public sector. These are first, the system of arrangements, organisational structures and processes that are employed to ensure accountability and responsibility in policy/service design and delivery; secondly, the multifaceted elements of public accountability, compliance, and performance (chapter 1); and thirdly, the demands of essential governmental functions which include service delivery, policy outcomes, legislative administration, statutory responsibilities, reporting lines and financial management.

In interviews with the authors, there remained a primary emphasis upon ‘hard’ rather than ‘soft’ governance, with relatively fewer references to ‘soft’ governance elements. Nevertheless, interviewees appeared aware of the importance of both hard and soft elements in measuring ‘good governance’ and monitoring performance within the sector. A typical ‘hard’ governance orientation was: ‘Governance is primarily about the compliance environment in which we operate. It’s about ensuring that we implement the systems, processes and safeguards so that we are operating legally and appropriately within our remit.’ In considering this environment, FMA agency interviewees commonly
referred to parliamentary accountability (senate estimates), accountability to ministers and accountability through ‘informative and comprehensive’ annual reporting (chapter 5).

Some FMA agency interviewees distinguished between ‘accountability’ in a strict sense and other, more informal, monitoring mechanisms such as stakeholder surveys, meeting performance measures or adopting risk management techniques, such as ‘traffic lights’ warning systems. Others were reluctant to accept the views of outside stakeholders as a measure of accountability. One interviewee put it this way:

I don’t find our constituencies all that helpful. If you look at the mission statements of some of them it’s the ‘take no prisoners’ approach — protecting the environment at all costs. They don’t take account of economic factors and so on … there is no one style of leadership that is necessarily right. I’ve seen secretaries at extremes — highly directive or a kibbutz-style management. Neither is right — I want to hear people’s views, but then I take action.

The responses of interviewees demonstrate that, while both hard and soft factors are considered relevant at different times, there is a wide range of different approaches adopted and no particular method is favoured. This range of different approaches tends to reflect interviewees’ recognition and management of multiple accountabilities and their underlying public values, as detailed in chapter 1.

While most interviewees emphasised hard elements of governance, there was nevertheless a clear appreciation (especially at departmental level) that governance is not limited to ‘hard’ elements alone (i.e. structures and processes). A number of ‘softer’ elements were also identified as very significant, including transparency, trust, behaviour and ethics. These elements reflected the norms and values of public sector governance that were outlined in chapter 1. One atypical ‘soft’ governance approach that appeared more conducive to integrated governance was: ‘to start with a couple of softer concepts … and then, given the establishment of the sum of that, we set out the systems and the structures that go together to make up the governance arrangements’.

**Measuring and promoting superior performance**

At the time the CAC Act was passed in 1997, many of the accepted elements of good corporate governance in the private sector appeared to have possible application in the public sector as well. In the private sector, a positive correlation had been found between good corporate governance and improved efficiency (Millstein and MacAvoy 1998), although the link proved difficult to
establish satisfactorily until more complex composite measures of both hard and soft factors in corporate governance were utilised (Larcker, Richardson and Tuna 2004; Edwards and Clough 2005).

Although good corporate governance (measured across a range of hard and soft variables) has been acknowledged to improve corporate performance in the private sector, those reporting under the FMA Act seem less convinced of its relevance to improved performance in the public sector. Individual and organisation performance management had been well established in the public sector since the 1980s (Bouckaert and Halligan 2006; Mackay 2004).

As might have been expected, participants reporting under the FMA Act, in particular, tended to see issues of accountability and performance in terms of their accountability to the minister and parliament. There seemed a less technical approach generally to assessing and measuring performance, suggesting that this driving force for good corporate governance practice in the private sector might be one area deserving of closer consideration in its application in the public sector. One interviewee said, for example: ‘There’s a performance assessment with the secretary to individual executive members. There isn’t a formal process. However, I monitor it closely in my head and am very conscious of it all the time’.

Further comments, which served to reinforce the impression that improved performance may not have been among the primary considerations for interviewees, were these: ‘We focus on behaviours, rather than measuring performance assessment against outcomes. But I guess it’s hard to assess behaviours without having some link to outcomes,’ and ‘We don’t have an instrument for measuring and assessing the decision-making success of the board — and perhaps we could have’. A number of interviewees referred to the excessive focus they saw upon individual performance agreements and assessments rather than upon the collective performance of the board.

Conclusion

This chapter has highlighted several tensions that are associated with the state-centric and society-centric elements of public governance; these are explored further in subsequent chapters of the book. Some tensions within the vertical lines of traditional departmental authority have acquired new dimensions. The relationship between ministers and the senior public service, for example, has been complicated by the interposition of ministerial advisers. Less prominent aspects of departmental authority may also have been brought into sharper relief following the passage of the CAC Act, the implementation of the recommended Uhrig review board templates and the subsequent classification
of public sector bodies by Finance. The advisory and executive management status of departmental committees remains clearly established within government, although, the status of certain ‘decision-making’ bodies, such as joint Commonwealth–state bodies, regulatory bodies, international bodies and ministerial councils raise interesting questions.