8. Creating and Regulating Public Sector Bodies

Many of the matters that are covered in the first two parts of this book become most significant when governance structures and other arrangements for public sector bodies are designed, implemented and reviewed. This occurs, for example, when new bodies are created, existing bodies are restructured, and new or revised governance regulatory requirements are introduced. Accordingly, the formulation of governance arrangements and key appointments for public sector bodies warrant attention from both central and organisational perspectives. These topics constitute the focus of chapters 8 and 9 respectively.

The conventional spectrum of bureaucratisation, commercialisation, corporatisation and privatisation of government entities still leaves much room for a multiplicity of governance arrangements at both sectoral and organisational levels. The adoption of particular approaches to designing, implementing and reviewing corporate governance arrangements at the federal level in successive Commonwealth government initiatives that have been undertaken this century, (e.g. Uhrig 2003; DFA 2005b; AGRAGA 2010; and DFD 2012b) marks a break from twentieth-century practice, and also reflects changes in priorities and trends in public administration from one government to another. The implications beyond the Commonwealth public sector of such developments in governance architecture are still a work-in-progress across the Australian states and territories (e.g. NSW PBRC 2006: 68–70).

Accordingly, this chapter concentrates upon the Commonwealth level of government, but with modelling implications for other levels of government in Australia and other countries in the Westminster tradition. It addresses issues affecting the design and regulation of governance arrangements in the public sector that stem from a range of sources. These include public sector trends, official reviews of governance arrangements, whole-of-government guidelines, and legislation for specific public sector bodies that regulates their governance. Two case studies are provided that cut across these different sources — the Reserve Bank of Australia (RBA) and the Future Fund.

The changing environment for governance design

The features of the governance and regulatory environment that surround an existing or proposed public sector body affect its design and reform. First, the selection of appropriate governance frameworks and arrangements is
responsive to the cyclical and counter-responsive trends within the public sector itself (chapter 2), as well as the different governance orientations and models that are adopted by central government over time (chapter 4). In short, the phases of public sector reform and their influence upon systemic, central and organisational conceptions and forms of governance have flow-on effects for the governance of public sector bodies of all kinds, together with official policy and other guidance about their governance.

This connection between public sector reform and governance’s own evolution is evidenced by the continuous attention that is given, in official reviews of Australian public administration both before and after landmarks such as the *Review of the Corporate Governance of Statutory Authorities and Office Holder* (Uhrig review) (see chapter 2, this volume), to the structures and forms of governance and their connection to governance performance and accountability. Indeed, the multiplicity of governance structures and forms across the Commonwealth public sector that existed before the Uhrig review stands in contrast to the rationalisation and recentralisation of public sector bodies in its aftermath.

Secondly, as governance becomes more integrated within and across societal sectors, levels of government, and geographical borders, the cyclical trends and counter-trends within the public sector become subject to a series of cross-cutting influences. This, too, has an influence upon governance structures and relationships. For example, *Ahead of the Game: Blueprint for the Reform of Australian Government Administration*, foreshadows a range of innovative governance structures for developing strategy and delivering outcomes across agency portfolios, societal sectors, and levels of government (AGRAGA 2010; see also chapters 2 and 10, this volume).

This sits well with an ‘interconnected environment’ that is witnessing ‘a considerable expansion of government and some new approaches to government intervention’, as well as ‘some underlying changes in the means of delivering government programs and services’ which, according to the Australian Auditor-General, include ‘increasingly complex inter-relationships between: government agencies; different levels of government; and the private sector including not-for-profits’ (McPhee 2008b: 3). The continuing attention to governance arrangements in subsequent official reviews (e.g. DFD 2012b) evidences the ongoing need for sophisticated matching of governance models to evolving governance needs, from a range of sectoral and other perspectives.

Finally, designing and implementing good governance arrangements presupposes that the governance architecture thereby established is used properly and neither circumvented nor undermined. Much of the potential for systemic breakdowns and dysfunctionalities, divergences of expectations, and conflicts
of roles and interests amongst ministers, public servants, and other public officials, lies in situations in which the integrity of the governance architecture that safeguards the public trust is lacking, compromised, or bypassed altogether (Finn 1995). Examples of such fault lines from the literature include the use of informal ministerial influence to achieve what should properly be the subject of formal ministerial direction, the potentially conflicting obligations of allegiance for agency heads and board members in serving the twin masters of their organisation and the government of the day, and the over-identification of ministerial, governmental, and bureaucratic self-interest with the public interest.

All of these surrounding environmental features influence the creation and operation of governance structures and other arrangements for Commonwealth public sector bodies. In light of this, the next part of this chapter covers the aspects of governance design that have been embedded in governance architecture as a result of recent reviews, and which affect the choice of organisational form for a Commonwealth public sector body.

**The impact of governance regulatory architecture upon governance arrangements**

**From Uhrig to *Ahead of the Game* and beyond**

Whatever the shifts in governance priorities and trends from the standpoint of public administration that accompany the transition from one Commonwealth government to another, the governance regulatory architecture that is enshrined in the *Commonwealth Authorities and Companies Act 1997 (Cth)* (CAC Act) and the *Financial Management and Accountability Act 1997 (Cth)* (FMA Act), the Uhrig review templates, and other official guidance on governance arrangements (eg DFA 2005b, DFD 2011) have ongoing significance until superseded or replaced. Even subsequent reviews of governance models, such as those in *Ahead of the Game* and the Commonwealth Financial Accountability Review (CFAR), must take as their starting point for reform the interplay between such official sources of influence on governance design.

The Uhrig review and its general implications for governance are covered in chapter 2. This part of the chapter focuses more particularly upon the specific features of the Uhrig review-inspired agenda that have regulated the design and implementation of governance arrangements for Commonwealth public sector bodies, notwithstanding other ways in which public management and administration has moved on from that agenda. This understanding is essential...
for anyone involved in studying or critiquing governance arrangements, implementing or reviewing such arrangements, and reforming or modelling them. In addition, it is necessary to cover here at least those analyses and criticisms of the Uhrig review that highlight its benefits or, alternatively, relate to its gaps and weaknesses, from the standpoint of designing and implementing governance arrangements under prevailing official standards.

Against that necessary background, four scene-setting comments set up the analysis that follows. First, the Uhrig review does not cover (or purport to cover) all aspects of corporate governance in the Australian public sector. The brief in its terms of reference focused upon ‘the *structures* and the *governance practices* of Commonwealth *statutory authorities* and office holders’ — hence the primary emphasis upon ‘governance arrangements’, ‘accountability frameworks’, ‘best practice corporate governance *structures*’, ‘*formal* accountability and risk management requirement’, ‘relationship *structures*’, ‘accountability and reporting *mechanisms*’, and ‘a *template* of governance principles and policy options’ (emphases added). These have intrinsic relevance for designing and restructuring Commonwealth government entities.

Secondly, while the Uhrig review certainly mentions a number of higher-order aspects of governance in passing — e.g. the Australian people’s ownership of government, the constitutional system of government, the connection between parliament and statutory authorities, and organisational cultures and values — its main emphasis lies elsewhere. Reflecting and expanding upon the thrust of the Uhrig review, two years after the government received it from him, John Uhrig spoke revealingly about the report bearing his name. ‘The more power you hand to somebody else, then the more you need governance to ensure that that power is not improperly used and is in fact used in a constructive way’, he noted, adding that ‘if you’re going to reach the right conclusions about governance then you must see all of the issues *from the point of view of the owners*’ (Uhrig 2005; emphasis added). This owner-centred priority has implications for how Commonwealth government entities are created and administered in ways that enhance those aspects of governance that relate most directly to their answerability to ministers and the government of the day.

Thirdly, the Uhrig review adopts a particular conception of corporate governance and its key elements. This is evident from the outset, in its conception of governance as encompassing ‘the arrangements by which owners, or their representatives, delegate and limit power to enhance the entity’s prospects for long-term success’ (Uhrig 2003: 21). This particular conception and orientation permeate its underlying thrust, its detailed analysis, and its recommendations, organised around its professed governance framework of ‘understanding success
(clarity of purpose), organising for success (structures, powers and relationships) and ensuring success (accountability and disclosure’ (Uhrig 2003: 37; original emphasis).

As a result, some things that are critical to successful governance risk being under-emphasised or untouched, such as a balance between hard and soft dimensions of governance, and even the relationship between enhanced accountability to government and broader notions of governance, of which that relationship forms part (chapter 1). These emphases and limitations condition the use of the governance arrangements that flow from the Uhrig review and remain enshrined in the regulatory framework for public sector governance to this day.

Finally, at present, the governance regulatory framework for Commonwealth government entities contains a crucial alignment respectively between the choice of Uhrig review-based management templates, applicable governance legislation (i.e. CAC Act and FMA Act), and balance of regulatory and commercial functions. This also makes the Uhrig review and its implementation and criticism of ongoing significance, at least until a subsequent review unravels or reshapes those intertwined strands of the underlying governance architecture. At the same time, the CFAR review signals the ongoing need for review and possibly reform of this governance legislation, to improve its applicability to the multiplicity of Commonwealth public sector bodies, enhance their risk and performance management, facilitate better compliance and regulatory enforcement, and facilitate cross-governmental and cross-organisational outcomes.

**Departing from the Uhrig templates in governance design and review**

Importantly, from the standpoint of governance arrangements, the Uhrig review concluded that board structures are inappropriate for a number of statutory authorities, particularly those with mostly regulatory and not commercial functions (Uhrig 2003: 54). Together with another important finding ‘that entities undertaking similar functions do not necessarily have comparable governance arrangements’, especially in terms of the conditions under which Commonwealth public sector entities choose to have governing boards (chapters 2 and 6), these findings support the Uhrig review’s overall recommendation for greater ‘clarity’, ‘alignment’, and other enhancement of governance structures and processes (Uhrig 2003: 7). These findings sit within the broader movement within government ‘to revisit the independent operation of statutory authorities and agencies and to bring them closer to the centre of government’ (Gath 2004: 3; and chapter 4, this volume).
Most importantly, the Uhrig review creates the management templates that are canvassed in chapters 2 and 6 — namely, a ‘board’ template and an ‘executive management’ template. These templates dovetail neatly with distinctions between board and non-board management structures, on one hand, and commercial and regulatory functions, on the other, as well as the conditions under which such things are regulated respectively by the CAC and FMA acts. In the Uhrig review’s own words, use of the board template is confined to situations ‘where government takes the decision to delegate full powers to act to a board, or where the Commonwealth itself does not fully own the assets or equity of a statutory authority (that is, there are multiple accountabilities)’, with the executive management template applying in all other cases (Uhrig 2003: 10). This step also produces a greater alignment in Uhrig terms between organisational autonomy, independent legal status, and financial separation from the government for organisations with a commercial focus, which are best governed by a proper board under the management, financial and reporting accountability framework of the CAC Act.

Under Uhrig’s rationale, this is distinct from the kind of governmental control and ownership, ministerial direction and decision-making, and financially responsible use of public funds for policy, regulatory, or essential service delivery purposes that is best suited to an agency chief executive (with or without an executive management or advisory group: see Uhrig 2003: 8), under the different accountability framework of the FMA Act. The central rationale and division of functions in play here is crystallised in the Uhrig review in the following terms (2003: 45):

> The freedom from general government policy associated with the use of resources, and accountability to the Minister for Finance and Administration for the use of those resources, is justified for those authorities competing with the private sector, or for those authorities not funded by the commonwealth [but not where] authorities perform functions on behalf of the Government and are funded by the commonwealth budget, and consequently should comply with general government policy in the use of resources.

However valuable the two management templates offered by the Uhrig review, the range and basis of justified exceptions to the templates are critical. The more that attention is focused on those bodies in the sector that are not simply engaged in service delivery, directed implementation of policy, and departmental advice and assistance to ministers, the more that anomalies and exceptions emerge that diverge from the two basic Uhrig templates. One Uhrig review-based response might be that, despite the wide range of different entities with different roles
across the Commonwealth public sector, most will fit one of the two Uhrig review templates from both internal management and ‘accountability to government’ perspectives.

Another Uhrig review-based response might be that the two basic templates do not prevent or limit whatever internal governance arrangements might be necessary for essential organisational functioning. Still, the Department of Human Services, the auditor-general (and the Australian National Audit Office), and the Australian Research Council are different creatures from federal courts (including the High Court of Australia), the RBA, official regulators and commissions like the Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC), and a federally created university like The Australian National University. Of course, none of this necessarily detracts from what might be one of the Uhrig review’s ultimate benefits — namely, clarifying and addressing some of the problems and inconsistencies in how statutory authorities have been created and managed over time.

In any case, both the Uhrig review and the Howard government’s formal response to it also accepted that the basic templates might need adjustment or modification for particular public sector bodies and circumstances. In words pregnant with possibilities that allow exception-arguing lawyers and policy advisers some room to move, the Howard government’s published response to the Uhrig review accepted that ‘in applying the templates, consideration will be given to any unique factors that may require an adaptation of the relevant template’ (Minister for Finance and Administration 2004: 2).

The Commonwealth public sector has operated successfully since 1997 with a corresponding two-limbed legislative governance framework in the form of the CAC Act (i.e. for governmental entities pursuing commercial activities and appropriately managed by a corporate board) and the FMA Act (i.e. for other entities engaged in non-commercial activities and managed by an executive management group, headed by a departmental secretary in whom statutory responsibility resides). As others note, this also reflects a broad distinction between bodies that remain part of the Commonwealth government for the purposes of financial administration and accountability, and bodies that have a separate legal status and fund-holding capacity in their own right, but still fit broadly within the fold of executive government (Wettenhall 2004–05: 67). The CFAR review, however, raises questions about the viability of the basic models in the Uhrig templates and their corresponding governance legislation for governance design in the future (DFD 2012b: 32–3 and 87).
Formal governmental guidance on governance design arrangements

A number of policy and regulatory imperatives underpin the selection of appropriate governance structures and other arrangements for Commonwealth public sector bodies that operate under whole-of-government guidance provided by Finance. This guidance was developed in the post-Uhrig review phase in the form of *Governance Arrangements for Australian Government Bodies*, which was originally published in 2005. First, under a policy of reducing ‘unnecessary proliferation of Government bodies’, governmental functions and activities desirably should be allocated to and performed by an existing governmental entity, provided that a suitable governmental vehicle already exists for this purpose (DFA 2005b: x, 12–15). All things being equal, policy preferences also extend to creating new Commonwealth governmental authorities instead of new government-owned companies (DFA 2005b: 24–7) and to non-legislative structures for new bodies instead of additional legislation for them (DFA 2005b: 13–15).

Secondly, the policy decision to create a new Commonwealth governmental body must devote considerable attention to its overriding purpose, functions, and powers, on one hand, and, on the other, ‘its financial, legal and staffing status’ (DFA 2005b: x, 18–29). In making that decision, central agencies and other stakeholders within government must be consulted (DFA 2005b: x), from the standpoint of whole-of-government coordination in general and central agency oversight of Commonwealth public sector governance in particular.

Thirdly, in deciding appropriate governance structures and arrangements for a new governmental entity, attention should focus upon key matters such as its policy purpose and methods of interacting with governmental bodies, periodic review arrangements, financial relationship with governmental budgetary and appropriation matters, board or executive management structures, engagement of staff under or outside the *Public Service Act 1999 (Cth)* (PS Act), and appropriate balance of organisational independence and governmental control (DFA 2005b: xiv–xv, 32–42).

Fourthly, where the new governmental entity needs its own incorporating or governing legislation, that legislation must be attentive not only to the new entity’s financial, legal and regulatory status, but also to the legislation’s interaction with other public sector governance regulation, such as the CAC Act, FMA Act and PS Act. Beyond that set of regulation, it must also be sensitive to others laws and regulation with which an entity’s incorporating or governing legislation might interact, in setting the boundaries of the entity’s legal responsibilities, liabilities, and immunities (DFA 2005b: x–xi, xv, 42).
Amongst such sources of legal risk that are identified in the Finance’s *Governance Arrangements for Australian Government Bodies* are laws concerning administrative and judicial review, taxation, governmental trade practices liability, copyright, and the shield of the Crown. The extent to which a statutory corporation or government business enterprise has the legal status and immunities of the Crown, and is subject to laws applicable to all, is an important question of governance design as well as legal responsibility. This affects the applicability of the *Corporations Act 2001 (Cth)* to the Future Fund board, for example.¹

Such questions of legal risk allocation are important in contexts as varied as government contracting and outsourcing, public–private partnerships, establishment of statutory bodies and state-owned enterprises, and transformations of governmental status through corporatisation and privatisation. For such reasons, Finance’s guidance in the *Governance Arrangements for Australian Government Bodies* includes advice to those creating and advising on governmental bodies to address the application of various laws to them, within a set of other factors affecting the choice of governance arrangements for these bodies (DFA 2005b: 42).

Fifthly, additional policy decisions about the new entity’s regulatory or commercial focus, and its need for a governing board, as informed by consideration of the Uhrig review templates, determine its location primarily within the CAC Act or FMA Act management, reporting, and accountability frameworks (DFA 2005b: x–xi, 8). Under the influence of the Uhrig-based templates, corporate boards are reserved for commercially focused bodies that are legally and financially at arm’s length from the government, with ‘board-like’ executive management structures being reserved for ‘an advisory function to assist the Chief Executive’ or ‘where collective statutory decision-making requires a commission’ (DFA 2005b: x, 35–8). The considerations that govern selection and use of public sector boards are covered in chapter 6.

Sixthly, given the connection between the FMA Act, the PS Act, and the core of executive government, a policy preference exists for new entities and their staff to be governed under this framework, unless there is a demonstrated need for the kind of commercial focus, governing board, and greater organisational independence that characterises the alternative CAC Act framework and Uhrig review-based board template (DFA 2005b: x). Seventhly, while departures from these Commonwealth public sector governance frameworks are undesirable for bodies located wholly within the Commonwealth government sector, the contemporary need for coordination, cooperation, and other regulatory action across levels of government and even societal sectors raises additional issues about governance structures and arrangements for such vehicles (DFA 2005b: x, 28–9). *Ahead of the Game* also addresses these issues (chapters 2 and 10, this volume).

¹ *Future Fund Act 2006 (Cth)*, s. 39.
Finally, whatever governance framework applies, there are important aspects of
departmental, ministerial and even parliamentary oversight of new governmental
entities that also apply (DFA 2005b: x). This covers everything from minister–
agency communication, departmental advice, and portfolio oversight (DFA
2005b: x) to a series of non-executive and even non-governmental accountability
mechanisms that are evolving along with democracy itself (chapters 1 and 10).

In addition to official guidance from Finance, *Ahead of the Game* also contains
analysis and recommendations that relate to matters of governance design. In terms
of enhancing public sector efficiency and effectiveness, for example, it highlights a
connection with governance design questions, as follows (AGRAGA 2010: 29):

> Agency efficiency can also depend on governance structures. For example
> larger agencies can achieve economies of scale that are not available to
> smaller agencies. In small agencies, different governance arrangements may
> have different costs. It is therefore important to consider what governance
> option will work best, particularly when establishing small agencies.

Most significantly, a number of its recommendations go directly to the public
sector governance framework for designing and establishing new Commonwealth
public sector bodies, as well as reviewing existing ones. In particular, Reform
8 (i.e. ‘Ensuring agency agility, capability and effectiveness’) and Reform 9 (i.e.
‘Improving agency efficiency’) suggest actions that relate to various aspects
of governance arrangements, such as regular ‘agency capability reviews’,
streamlined agency compliance, shared responsibility for cross-portfolio
outcomes, alternative agency efficiency measures, and simplified and enhanced
governance structures.

For example, Recommendation 9.2 (‘Strengthen the Governance Framework’)
outlines the following brief for Finance, as the lead agency involved in developing
and revising the *Governance Arrangements for Australian Government Bodies*
(AGRAGA 2010: 69):

- Simplify governance structures for new and existing entities by
  consolidating the categories of entities that can be created.
- Amend the Governance Arrangements for Australian Government
  Bodies (Governance Guide) to ensure:
  - clear governance arrangements for inter-jurisdictional entities;
  - APS employees are clear about their responsibilities when
    appointed to company boards; and
  - all new and existing agencies are fit-for-purpose.

In outline form, some of these recommendations potentially cut across aspects
of the Uhrig review implementation agenda, while others expand governance
reform in new directions. Where the Uhrig review aligned each of its templates (i.e. board or executive management) with its corresponding function (i.e. commercial or regulatory) and correlative legislative framework (i.e. CAC Act or FMA Act) from both organisational and sectoral perspectives, *Ahead of the Game* more directly contemplates the need for innovative cross-portfolio and interjurisdictional governance models.\(^2\)

Indeed, there is much in *Ahead of the Game* that reflects the virtues of a holistic system of public administration, with integration of whole-of-government, intergovernmental, and cross-sectoral elements, along with synchronisation of cross-agency coordination and shared best practices and outcomes. This alternative approach to governance framework-setting is underpinned by related themes of innovation (e.g. digitalisation), optimisation (e.g. regulatory deburdening), collaboration (e.g. cross-sectoral service delivery and shared expertise), participation (e.g. community-involved and business-engaged planning and delivery), empowerment (e.g. agency and community capacity building), and monitorability (e.g. regular agency reviews).

While reinforcing some of the themes and discussion of *Ahead of the Game*, the initial public discussion paper resulting from the CFAR, *Is Less More?: Towards Better Commonwealth Performance* (DFD 2012b), charts its own directions in outlining options that affect the design and implementation of governance arrangements. For example, it records that ‘(t)he issue of whether an entity is governed by a board or executive management is divisive under present legislative settings’ and contemplates a possible reform agenda for ‘revisiting the structure of financial framework legislation and considering whether the existing delineation of FMA Act and CAC Act entities is optimal’ (DFD 2012b: 32 and 89).

The dynamic balance between central control and organisational autonomy means that ‘(i)t is therefore important to pay close attention to the design of the control arrangements for entities’ (DFD 2012b: 31). Importantly, the CFAR discussion paper suggests refocusing attention on basic governance principles that apply to government bodies across the board, regardless of their organisational form and management structure, and signals the possibility of ‘a single piece of legislation with templates that outline a set of core governance provisions covering financial and governance matters for new government bodies’ (DFD 2012b: 32 and 42). Such legislation for ‘fit-for-purpose governance arrangements’ would complement moves towards ‘more integrated portfolio governance’, ‘improved joint activities’ and otherwise ‘strengthening the whole-of-government performance framework’ (DFD 2012b: 12, 33, 39 and 43).

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\(^2\) Assuming that it becomes law in a form that does not differ too greatly or at all from the Bill introduced into the federal parliament in early 2012, the *Public Service Amendment Act 2012 (Cth)* facilitates these developments in its enhancement of the roles and responsibilities of departmental secretaries, along with the creation of the Secretaries Board.
From policy design to legislative implementation

In the discussion to this point, this chapter covers the key public sector sources that regulate official decisions to establish, review or restructure Commonwealth government bodies. The final part of this chapter covers the two cases studies and concluding observations and questions.

What makes the RBA and the Future Fund suitable case studies in designing and reviewing governance arrangements? The RBA is one of the regulators of relevance to business whose governance arrangements the Uhrig review was specifically tasked to examine, along with other key official business regulators such as the ACCC, ASIC, and the Australian Prudential Regulation Authority. It is not only an example of a major official regulator in its own right, but also one whose governance arrangements are left largely intact by the Uhrig review, whatever reforms might otherwise affect it. It is governed by legislation that is specific to the organisation, and therefore illustrates the important connection between governance requirements and legislation beyond the CAC Act and FMA Act. The RBA is also the subject of debate about matters of independence and allegiance that raise some of the governance issues canvassed in this and other chapters.

The Future Fund serves as a primary example of a major new entity whose regulatory design is informed, first, by what the Uhrig review set in train for governance arrangements and, secondly, by the choice between governance primarily under the CAC Act or FMA Act. It serves as an innovative illustration of how to combine aspects of both regulating acts and also provides an example of how the basic Uhrig review management templates are customised to particular needs in creating major new entities under legislation. Indeed, the statutory overlay for both the RBA and the Future Fund also serves to underline the importance of considering governance arrangements for statutory authorities and corporations through the prism of both executive and legislative domains of concern.

The Reserve Bank of Australia

The RBA is Australia’s central bank. The Reserve Bank Act 1959 establishes the following governance structure and arrangements for the RBA: it is a body corporate, can hold property, and is able to sue and be sued (Reserve Bank Act 1959, s. 7); it has wide general powers to fulfil its functions (s. 8); it is a CAC Act body, although it is statutorily exempted from some of the CAC Act’s provisions (ss. 7 and 7A); its board is charged with ensuring ‘that the monetary and banking policy of the Bank is directed to the greatest advantage of the people of Australia’, and that its powers are directed towards best contributing to ‘the stability of the currency in Australia’, ‘the maintenance of full employment in Australia’, and ‘the economic prosperity and welfare of the people of Australia’ (s. 10).
The separation between the RBAs monetary and banking responsibility and its responsibility for payment systems is structurally built into the allocation of these two responsibilities; respectively to the Reserve Bank Board (RBB) and the Payments System Board (s. 8A). This example of aligning functional responsibilities with governance structures and other arrangements has modelling significance beyond the RBA to central banks in other countries (Caruana 2010: 60). These modelling implications go both ways, in light of the RBA's structural divergence from monetary and banking policy models in other countries (Uren 2011). For example, the 2007 ‘Statement on the Conduct of Monetary Policy’ on behalf of the Australian government and the RBA has been criticised for introducing governance reforms that ‘leave the RBA operating under an outdated and internationally anomalous governance structure that is incompatible with modern demands for central bank transparency and accountability’ (Kirchner 2008: 18). In the wake of the global financial crisis (GFC), various issues concerning ‘governance structures’ arise for central banks across jurisdictions, and also for private sector participants in the market, as acknowledged in the RBAs 50th anniversary symposium (Caruana 2010: 54 and 60; and Kent and Robson 2010: 3).

For some time, successive Australian governments have publicly emphasised the independence of the RBB. At the same time, the Reserve Bank Act creates a number of important points of connection between the government and the board. The board must keep the government informed of the RBA’s monetary and banking policy (s. 11(1)). If the government has ‘a difference of opinion’ with the board about how well its monetary and banking policy promotes ‘the greatest advantage of the people of Australia’, the federal treasurer and the board must strive to reach agreement. In the exceptional situation where they cannot reach agreement, the government has formal mechanisms available to ensure that its view prevails and that the board complies (s. 11(2)–(7)). The governor of the RBA and the secretary of Treasury are statutorily instructed to ‘establish a close liaison with each other’ and to ‘keep each other fully informed on all matters which jointly concern the Bank and the Department of the Treasury’ (s. 13).

Matters concerning different aspects of the RBAs governance regularly feature in both official and media scrutiny. Federal parliamentary committees scrutinise the RBAs annual reports, for example. In recent years, scrutiny of the RBAs governance in the financial press has ranged over a wide variety of issues. These include: broadening the RBAs network of overseas offices to provide on-the-ground assessments to inform monetary policy consideration (e.g. Freebairn 2011); institutional and personal conflicts of interest for RBB members (e.g. Uren 2011; and Kirchner 2011); governance structures and audits of RBA subsidiaries that have been targeted in official investigations (e.g. Maiden 2011; and McKenzie and Baker 2011); RBB composition and independence (e.g. Kerr
The historical antecedents of the RBA's governance structures (e.g. Cornish 2010) and the Australian Government's satisfaction with the RBA's performance in the aftermath of the GFC (Uren 2011) stand apart from these concerns. Although not completely separate from each other, assessment of the RBA's economic impact is distinct from assessment of the RBA's governance performance against world-class benchmarks for institutional independence from governmental interference, board structures and representation, balance and appointment of internal and external members, public communication and transparency, and separation of monetary, governance, and statutory roles (Kirchner 2008).

Most significantly for the question of the board's independence, the membership of the board includes the secretary of Treasury, as well as provision for a senior public servant who is nominated by the secretary as an alternate member when the secretary cannot attend board meetings (ss. 14 and 22). At least five of the six board members appointed, in addition to the secretary and the RBA's governor and deputy governor, must not be RBA service staff or public servants (s. 14). This means that only a small minority of board attendees could ever have a current public service affiliation. Under long-standing practice, it also results in business leaders from various industry sectors forming a significant part of the RBB's external membership.

Even if the only person appointed with a dual board membership and public service role is the secretary to Treasury, the question is whether that alone jeopardises the much-heralded 'independence' of the board from governmental direction and control in setting monetary and banking policy. The secretary will have obligations to the treasurer as a senior public servant and the treasurer's departmental head, as well as to Treasury (and the government of the day) under the FMA Act, in addition to whatever obligations they might have as a member of the RBA's board. In particular, could the secretary ever be in a position where the secretary's other obligations realistically compromise or conflict with the secretary's obligations as a board member?

This question can be approached from a number of different angles. The structural framework established by the Reserve Bank Act still has to operate in a political and behavioural context, where both hard and soft aspects of governance are relevant (chapter 1). So, from that perspective, a board member's expertise, behaviour, and judgment are not reducible to matters of formal independence from government alone. At the same time, the post-Uhrig reinvigoration of the
role of secretaries in agency and portfolio oversight for ministers arguably cuts across such representative roles for departmental secretaries and other senior public servants (see chapter 9).

Distinctions must also be kept in mind here between individual board members’ legal responsibilities, their collective responsibility as a decision-making organ, and the impact (if any) of divided loyalties for a minority of individual members. Still, the burden of wearing too many hats is at its worst when the employment, professional, ministerial, parliamentary, and public service obligations of public servants pull them in different directions (Finn 1993: 51–2; and Finn 1995: 22–3, 26). This potential fragmentation of otherwise interlocking accountabilities makes it even more important, for the sake of institutional integrity, to ensure that systemic safeguards of independence are in place and followed.

The question here is whether the perceived or actual influence of government over public service members of the RBB undermines, or even compromises, its independence as a collective decision-making organ, on legal or other governance grounds. At the very least, factors such as overseas models of central bank independence, the relationship between Commonwealth ministers and departmental secretaries, and the legislative requirement for official liaison between the RBA’s governor and Treasury secretary all condition perceptions of the secretary’s place on the RBB and also distinguish the secretary from other board members.

In an opinion piece on governance in public institutions, former leader of the federal opposition, John Hewson, focuses at first upon the governance issue of separation of board roles, as applied to the RBA (Hewson 2007: 90):

The RBA’s board and governance processes, for example, are almost farcical. The governor, as chief executive, is also chairman of the board, a practice increasingly frowned on and discouraged in governance circles.

The separation of the chairmanship and CEO roles on the board is a long-standing issue of corporate governance regulation of the private sector in Australia, the United Kingdom and elsewhere, with different approaches prevailing across jurisdictions at different times. To the extent that current Australian corporate governance thinking in the private sector favours separation of the two roles, the RBA’s governance arrangements may seem exceptional (e.g. Uren 2011; Kalokerinos 2007). The question is whether the public sector context, past practice and the regulatory results justify that divergence.

Turning his attention to the question of the RBA’s independence, Hewson says (2007: 90):
Much is made of the independence of the RBA. True, it’s pretty independent of government these days, but it is still not independent within government. There is no reason for the secretary of the Treasury to be a designated member of the RBA board. This is a relic of the past when Treasury was the dominant source of advice to the government — indeed, the bank used to report to the Treasurer only through Treasury.

Other financial press commentary also singles out the anomalous position of the Treasury secretary on the RBB, in terms of both prevailing governance trends and international benchmarks, as follows (Uren 2011):

The presence of the Treasury secretary on the board is a further oddity. The Campbell committee in the late-70s reviewed this and concluded it should be continued in the interests of coordinating both the fiscal and the monetary policymaking.

In practice, whenever there is a question of whether interest rates should rise or remain steady, the Treasury secretary can nearly always be counted on to advocate steady rates.

The New Zealand model, in which the Treasury secretary plays no part, appears to be closest to best practice for central bank independence. It would be assumed that the Treasury secretary and the governor would be in frequent discussion on economic policy, which ought to be enough for coordination purposes.

Importantly, these comments collectively expose different meanings and contexts for arguments about independence as a governance design issue. As in the private sector, a board member can be subject to a range of influences and relationships, not all of which necessarily compromise their independence of mind for board decision-making purposes. Independence from formal government direction and control is different from independence from all executive government involvement and influence. All of these aspects of independence are different again from independence from accountability arrangements that are applicable to institutions within the executive arm of government.

The question of board representation of senior public servants straddles these different standpoints from which considerations of independence might be assessed. The presence and appropriateness of such representation varies from one organisation to another. No Commonwealth employee or full-time public office holder is eligible to sit as a board member on the Future Fund’s Board of Guardians, for example (s. 38(4)). Whatever the differences between such major institutions, there is a question of consistency and justification here from a whole-of-government perspective.
The question of the RBB’s independence also attracts attention from legal experts on governance. Noting both the status of the secretary of Treasury as a board member and the secretary’s alleviation of responsibility as a board member when acting in accordance with any conflicting obligations as a senior public servant, Shaun Gath evaluates the position as follows (2006: 6–7):

How, then, is one to regard the role of the government director on the Reserve Bank Board now that he/she is freed from any fiduciary obligation to consider the interests of the Bank when performing her role and is, rather, it seems duty bound as a public servant to represent the views of the Treasurer?

Might it not be said that the changes made to the CAC Act have had the practical (even if unintended) effect of circumventing the formal process for resolution of disputes between the Board and the Government established by the Reserve Bank Act 1959 by ensuring that the Treasurer will have as a powerful and direct voice for his views at least one director who has no other function other than to directly report the Treasurer’s opinions, untrammelled by any considerations going to the interests of the Bank itself?

So, one may feel prompted to ask: is the Board of the Reserve Bank really ‘independent’ or not? … Perhaps, when one takes into account the fact that there are other directors who will always outnumber the government director, the answer, on balance, is still ‘yes’ … But this much seems to me to be unarguable: it is certainly not as independent as it was.

This passage contains a number of important steps in the development of Gath’s argument — hence its reproduction here in full. The generic problem — which has the potential to create conflicts of interests and duties, particularly for governmental board directors — was identified more than 25 years ago by the Senate Standing Committee on Finance and Government Operations (SSCFGO 1982: 76, as cited in Gath 2006: 2):

(A) departmental officer, as a member of the executive government, is placed in an impossible position in reconciling that role with his role as a member of a statutory authority. It is by no means inconceivable that the interests of an authority could conflict with those of a minister … (M)embers of authority boards have a corporate responsibility to put the interests of the authority before any other interests. Consequently, department officers who are also members of authorities could be faced with very painful conflicts of interest.
Underpinning Gath’s concern about the scope of the board’s independence is his view of the CAC Act’s conditioning of board members’ duties when acting in accordance with their obligations as public officials. Under the CAC Act, directors and other officers of government authorities have duties that closely mirror their equivalents in the Corporations Act, with suitable modifications to account for their transition to a public sector context (chapter 6). Here, performance of an officer’s statutory duties must also interact with and accommodate ministerial and portfolio oversight, adherence to applicable government policy, and compliance with financial management, reporting and other public sector regulatory requirements.

Since the turn of the century, the chief mechanism for alleviating such concerns is the exemption of an officer of a Commonwealth authority from breaching at least some of the designated duties where the officer is doing something required elsewhere under the CAC Act or else, where the officer is also a public servant, the officer acts ‘in the course of the performance of his or her duties as a public servant’. However, this legal sidestep around such conflicts is criticised by Gath for leaving government directors and other officers ‘effectively removed from the scheme of accountability established under the CAC Act … with a stroke of the parliament’s pen’ (Gath 2006: 5).

Taking all of these issues into account, the question remains whether or not the reporting of ministerial views and relevant policy for the information of a board, by someone with multiple obligations as a board member, ministerial adviser and senior public servant, inevitably compromises the board’s collective decision-making, either in how other board members treat such views or in the perceptions of others. In light of such strong concerns about board member independence and loyalty, how does the Uhrig review deal with the RBA and its board? Consistent with the principle that governing board members should be appointed for their expertise and not simply the constituencies they represent, the Uhrig review takes a general stance against representational appointments on boards (Uhrig 2003: 98–9):

The review does not support representational appointments to governing boards as representational appointments can fail to produce independent and objective views. There is the potential for these appointments to be primarily concerned with the interests of those they represent, rather than the success of the entity they are responsible for governing. While it is possible to manage conflicts of interest, the preferred position is to not create circumstances where they arise.
Focusing in particular upon the appointment of public servants (especially departmental secretaries) to governing boards in the public sector, the Uhrig review maintains a healthy scepticism about such appointments, and views their appropriateness as being the exception rather than the norm (Uhrig 2003: 99):

Similarly, care should be exercised when appointing public servants to boards. In circumstances where a departmental staff member is appointed on the basis of representing the government’s interests or having a ‘quasi’ supervision approach, conflicts of interest may arise and poor governance is likely. Through participation in decision-making, either directly or implied, the departmental representative may become an advocate for the organisation rather than contributing critical comment. This also has the potential to create an incentive for the other members of the board to meet to discuss and agree on important issues separately from formal meetings, without involving the departmental representative, thereby removing the formal board meeting as the main decision-making forum of governance. Membership of the board by the related departmental secretary is unwise unless there are specific circumstances which require it. (emphasis added)

In short, representational appointments present governance risks of a lack of true independence, an inhibition of candour in boardroom discussion, a potential mixing of hat-wearing roles, and a ‘constituency representation’ focus (instead of a ‘best interests of the organisation’ focus). The common governance problem of wearing multiple hats is particularly acute in the case of departmental secretaries, who have a fundamental obligation as public servants to follow and communicate government policy as well as comply with lawful government directions. They also have a statutory obligation under the FMA Act to ensure ‘proper use’ of their department’s resources, along with a governmental advisory role on matters concerning public sector bodies within their ministerial portfolio. Avoiding or managing potentially conflicted institutional loyalties is a key aspect of systemic integrity and the norms to which it gives effect.

Hewson’s final comments on the RBA concern its non-executive directors and their governance function in context (Hewson 2007: 90):

Similarly, the RBA’s ‘non-executive’ directors — a spread of business people, a token academic — are political appointments who don’t really function as non-executive directors should. They are, of course, expected to comment on economic circumstances from their own positions, but essentially they are fed the information the bank’s management wants to give them to achieve the decisions management wants.
In an important sense, of course, most non-executive directors are dependent to one degree or another on the information that is provided and contextualised by management. This is a fact of life that leads to governance safeguards to ensure effective organisational oversight. Such safeguards include prudential supervision of management and corporate controls (especially over two-way information and communication flows), active questioning of information and advice from management (including drill-down enquiries beyond senior management where necessary), and resorting to more independent sources of advice from external experts (especially on major corporate decisions affecting a company’s future). Still, the present law on differences between executive and non-executive directors is in a far from optimal state (Austin 2010, cited in Eyers 2010: 10-11).

Notwithstanding all of the concerns canvassed above, the Uhrig review recommended maintaining the RBA’s existing governance and board arrangements. Citing the significance of a board’s ability to appoint and remove the CEO, as well as the strength and effectiveness of the relationship between the CEO and the portfolio minister, the Uhrig review made an exception in the case of the RBA (Uhrig 2003: 41):

One exception to this principle identified in the course of the review is the RBA. While the board does not have the power to appoint and terminate the CEO, based on evidence provided to the review, the board was assessed as providing effective governance in determination of RBA policies. The structure of the board and the nature of its responsibilities meet the expectations of the international financial community with respect to effective governance arrangements. Divergence from such arrangements may affect international confidence in the independence of the RBA. The governance arrangements should remain unchanged.

Testing these conclusions is difficult, given the conduct of the Uhrig review as an internal governmental review with select outside consultations and the absence of additional detail in the review itself on the basis for this assessment. At the very least, the exceptionalism with which the RBA is treated in the Uhrig review represents a pragmatic approach to the RBA’s perceived success, independence and international reputation. Such considerations affecting the RBA are not necessarily in sync with the Uhrig review’s strong emphasis upon enhancing the answerability of public sector bodies to the government of the day.

Still, the RBA was specifically identified in the review’s terms of reference, and the Uhrig review’s failure to address some aspects of the RBA’s governing legislation and other aspects has been criticised (e.g. Wettenhall 2004–5). Senior RBA officials accept publicly that the importance of the banking industry to
a national economy requires more than ‘the normal principles of corporate governance’, including acceptance that ‘certain higher standards of prudence are required of banks than of the average corporate entity, and there is more intrusive supervision of their activities’ (Stephens 2005). Similarly, the RBA’s central role in economic and financial stability gives its independence and other governance arrangements a unique context, and also elevates them to a new level of significance (Stephens 2005), as tested in the GFC and its aftermath. Nevertheless, the countervailing considerations in this chapter point to substantive issues concerning appointments, membership, independence, oversight and other features that are likely to figure in ongoing scrutiny and any future official reviews of the RBA and its governance.

**The Future Fund**

The governance structure and arrangements for the Future Fund, and its amenability to governmental direction and influence, are important features in any debate about the ultimate policy uses of its investments. Governance arrangements for the Future Fund and its Board of Guardians are established under the *Future Fund Act 2006 (Cth)* (Parts 2 and 4). In the election year of 2007, political disputes occurred federally between the major political parties about the best use of the Future Fund. The government established it initially to meet at least expected public sector superannuation payments in coming decades, as indicated in the statutory objects of the Future Fund (s. 15). It later placed its residual Telstra shareholding in the Future Fund, with the opposition (and succeeding government) proposing to use the Future Fund for national broadband telecommunications infrastructure.

The legislation establishing the Future Fund draws much from the templates that were recommended by the Uhrig review. In establishing the Future Fund, Future Fund Board of Guardians, and Future Fund Management Agency, the Future Fund Act combines aspects of the Uhrig review’s board and executive management templates in the one combined scheme. Moreover, as the Future Fund Act itself contemplates, both the CAC Act and the FMA Act apply to different component parts of that overall scheme. For example, members of the Future Fund Board of Guardians have statutory duties that closely correspond to those of board members of governmental corporations and authorities under the CAC Act, but the chair of the board cannot breach particular duties simply by doing what is required of them under the FMA Act, and the chair also cannot be directed by the board in relation to the chair’s functions and powers under the FMA Act and PS Act concerning the agency (ss. 56–63 and 79).

Similarly, the Future Fund board and the Future Fund Management Agency that support it are together treated as a single agency for various FMA Act purposes,
with the board’s chair also responsible to the relevant minister for the agency’s management (ss. 76–77 and 80). Indeed, the Future Fund’s combination of regulatory features under the CAC and FMA acts is cited in a CFAR case study, as ‘an example of an entity structure that involves a board and an FMA Act agency’ (DFD 2012b: 33).

The basic legislative framework for the Future Fund under the Future Fund Act is as follows: decisions about investments for the Future Fund are the responsibility of the Future Fund Board of Guardians, and investments are made in its name (ss. 16–17); the board is constituted under the Future Fund Act (s. 34); the board is a body corporate that can execute contracts, hold property, and sue or be sued, but it holds any property or money ‘for and on behalf of the Commonwealth’ (ss. 36 and 37); the board comprises its chair and six other members, who must each have designated financial or corporate governance expertise (s. 38); board members are appointed part-time, and their appointment can be terminated by the relevant ministers for breach of duty and other deficiencies (ss. 40 and 44); the board also has ministerial reporting obligations (ss. 54 and 55); it is not a Commonwealth government authority, and so the CAC Act does not apply to the board, except where the Future Fund Act itself makes the CAC Act applicable to the board, most notably for the consequences of breaching any statutory duties owed by board members (s. 66).

Mirroring the directors’ duties enshrined in the CAC Act and the Corporations Act, the main duties of board members cover duties of care and diligence (with a correlative business judgment defence), good faith, use of position, use of information, and conflicts of interest, with some of those duties applying to agency staff (ss. 56–62 and ss. 68–72). As with directors’ duties in the CAC Act, these duties of board members are conditioned by their other statutory obligations concerning the Future Fund, so that they will not be in breach of duty simply because of compliance with those obligations (s. 63). As in both the CAC Act and the Corporations Act, other defences or safeguards for board members include reasonable reliance on information or advice that is provided by relevant agency staff, professional advisers or experts, or other board members or committees (s. 65).

The responsible ministers for the Future Fund set the Investment Mandate for the Future Fund (s. 18), in consultation with the board (s. 19); the board is bound by that Investment Mandate (s. 20). The board is advised and assisted by the Future Fund Management Agency, comprising the chair of the Future Fund Board of Guardians and the staff of the Future Fund Management Agency, which has no legal identity separate from the Commonwealth of Australia (s. 74). Relevant accounting, auditing, and reporting requirements under the FMA
Act apply to the board and the agency as though they comprise a single agency with the chair as its chief executive (s. 80). Similarly, the chair and the agency staff are treated as a statutory agency for the purposes of the PS Act (s. 77).

‘In the performance of its investment functions, the Board must seek to maximise the return earned on the Fund over the long term, consistent with international best practice for institutional investment’, which is the board’s primary investment objective (s. 18(10)). This remains subject, however, to directions by the relevant ministers. In the case of any conflict between the board’s primary investment objective and the ministerially directed investment mandate, the mandate prevails (ss 18(6) and 18(11)).

So, any future controversies about how governments use and influence the Future Fund are likely to centre at least upon the mechanisms for governmental direction and control that are built into the legislative framework for its investment mandate. The starting point is ministerial involvement in setting the investment mandate by giving directions: ‘The responsible Ministers may give the Board written directions about the performance of its investment functions, and must give at least one such direction’ (s. 18(11)).

The ‘responsible Ministers’ here are the treasurer and the finance minister (s. 5). Any directions given by them collectively form the investment mandate (s. 18(3)). The boundaries and content of those ministerial directions are framed under the Act, in terms of the considerations that must guide the ministers in giving directions (s. 18(2)):

(a) maximising the return earned on the Fund over the long term, consistent with international best practice for institutional investment; and

(b) such other matters as the responsible Ministers consider relevant.

The first consideration in that list accords with prudential investment advice and practice, and concentrates upon optimising the Fund’s financial performance and returns, although it raises in-built issues about what optimises sustainable returns from a whole-of-investment-portfolio perspective (Horrigan 2010). Nothing in that consideration directly raises political or governance concerns. The same cannot necessarily be said, however, for the second consideration, which is not limited on its terms to additional matters that simply facilitate or support the first consideration. In theory anyway, it is pregnant with the possibility of political manipulation of the fund to the potential and even unintended detriment of its financial objectives. At the same time, it is difficult to foresee any conventional political purpose that would be at cross-purposes with optimising the value of the Future Fund, whatever political choices are made in the ultimate uses of the fund.
Hypothetically, there could be a direction to invest a particular proportion of investments in designated areas (e.g. to prefer Australian investments), or to give priority in investment decision-making to designated standards (e.g. to promote corporate responsibility and sustainability in the overall economy, consistent with other governmental policies to that effect (Horrigan 2010)). As this example shows, political and other socio-ethical motivations can shape investment approaches, although no government in reality will want an outcome of fewer financial returns for the Future Fund in the long run, whatever the government might do to the Future Fund’s Investment Mandate in the short term. In other words, while the political capacity for shaping the fund’s investment mandate exists, other systemic and institutional factors combine to inhibit directions that stray too far from the central objective of ‘maximising the return earned on the Fund over the long term, consistent with international best practice for institutional investment’.

In practice, of course, the Future Fund Act facilitates close consultation between the government and the board in setting the investment mandate. All parties have a common commercial interest in optimising the fund’s investment returns. The legislative governance framework for the Future Fund does other things to support this, such as making transparent and exposing to parliamentary scrutiny any board submission (and concern) about a draft ministerial direction affecting the investment mandate, and making public the board’s investment policies in accordance with its investment mandate (ss. 18(2) and 24). Accordingly, ministerial directions above and beyond what is ‘consistent with international best practice for institutional investment’ are perhaps best reserved for matters that are truly ancillary, supplemental, and facilitative, rather than broader policy matters that risk being financially counterproductive in effect. At the very least, such mechanisms provide opportunities for scrutiny and dialogue concerning proposed governmental intervention of this kind.

The reputation of the Future Fund can be affected by other governance matters, in addition to management of its investment mandate. As with appointments to the RBA, the process and outcome of appointments to the Future Fund Board of Guardians can affect its reputation in the investment community and its future relations with governments of all political colours. The appointment of David Gonski as its chair in early 2012 is an example of a meritorious candidate emerging from a flawed appointment process (Edwards 2012: 71). This appointment generated considerable media debate, which surrounded Gonski’s earlier involvement as an adviser to government on selecting a new chair, the degree of consultation with Future Fund board members about potential successors, the involvement of former politicians as board and chair appointees,
and the publicly unknown aspects of the appointment process. The controversy in the recent past surrounding various board appointments by government, including appointments to the Future Fund and RBA boards, reinforces the need for comprehensive, merit-based selection processes of sufficient transparency, independence and accountability (see chapter 9).

### Conclusion

Such considerations return us to the central theme in this chapter, concerning the interplay between governance norms, frameworks and mechanisms in the design, implementation and review of governance arrangements. These features also relate to the systemic multi-order mechanisms that act as safeguards of institutional integrity and other public interests that are enshrined in the underlying political and legal architecture for the business of government.

As the discussion in this chapter shows, there are questions surrounding the creation and implementation of appropriate governance structures and other arrangements for public sector bodies that remain of ongoing significance. Despite the transition from the Uhrig review agenda to the respective agendas that are expressed in *Ahead of the Game* and the CFAR, each of those official milestones maintains at least some focus upon governance design and implementation. More broadly, governance design in the twenty-first century must also embrace a new order of shared governance challenges and responsibilities that require governance innovations in cross-governmental, trans-sectoral and even international coordination and leadership. This is a theme that is picked up in the final chapter, which addresses future governance challenges.

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