



Structural tensions in the government sector

By **Julie Garland McLellan**,
Non-executive director*

- *Company Secretaries in this sector need a dual focus on the big picture and the internal processes*
- *Non-alignment of organisational strategy with public policy causes tensions that must be managed*
- *Different timescales frequently apply to the formulation of corporate strategy and public policy*

Company Secretaries in the government-owned sector face a set of challenges that are every bit as complex and demanding as those faced by their private sector counterparts.

Government-owned organisations are, however, very different from private sector organisations. They are usually far more regulated, subject to scrutiny from their shareholder and other governmental and quasi-governmental organisations and often work in areas where they are required to assist the government of the day to implement its policy platform. Government entities are often expected to achieve societal or environmental outcomes in addition to financial targets.

Many people would characterise government-owned businesses as inherently less risky than private-sector enterprises. This is a misconception. Frequently, government businesses work in fields in which commercial business cannot operate effectively. Monopoly status leads to conflicts between the need to generate profits and the need to supply essential services. An elected shareholder, responsible for supplying the community with adequate levels of service, as well as for effective stewardship of assets, is an imperfect solution to this problem, but it appears

the best solution available. In addition to the usual business risks there is a greater risk to society or the economy that arises from the often essential nature of the goods or services provided. Balancing the risks and rewards is a constant challenge. Often asset lives are very long and the need to gain a 'market-level' reward for the risks of the business would lead private companies to charge excessively or to fail to reinvest appropriately.

The main aim of the government in establishing an independent board to oversee the management of government-owned entities is to remove the risks of directorship from the Minister and the department and reposition them with the board and management. Accountability in the government-owned sector is as real, and often more rapid, than in the private sector.

This all adds up to a very demanding company secretarial environment.

Complexity, volume and scrutiny

In 1997, the Audit Office of NSW conducted a study of governance in the government-owned sector¹ and reached the conclusion that many directors had difficulty in understanding, and adapting to, the differences between private and public sector entities. In the seven years since the study was published, corporate governance has become a hot topic and, especially in the listed sector, has expanded the role of the Company Secretary to the point where many organisations are starting to split the role into two or more positions. While the scandals of the private sector have, thankfully, not been repeated in the government arena, governance demands and increasing complexity are adding to the burden of the government-owned Company Secretary. Although there is a popular view that government organisations are fully (or over) staffed, the sector has been less likely to appoint additional staff to assist the Company Secretary in dealing with the increased workload. Instead, the incumbent is expected to work both smarter and harder.

Best practice

Governments are, generally, very focused on due process and keen to ensure that governance (and management) in their organisations is either close to best practice or setting the new best practice benchmark for the private sector to follow. In one major organisation, a letter asking how the company complied with the ASX Corporate Governance Council *Principles of good corporate governance and best practice recommendations*, and what principles and guidelines were in place to assist in decision making in the areas where the ASX principles and guidelines were inappropriate, was received from the relevant treasury department within three days of the ASX making the guidelines public. The letter, of course, expected an immediate answer. The organisation provided one.

The Company Secretary is usually the person charged with the responsibility for ensuring that the corporate governance demands of the shareholder are effectively satisfied by the practices and procedures of the board. The increasing complexity and rapid rate of change in the government sector is driving a change in the nature of the Company Secretary role, from a minute taker and administrator, to a networker, negotiator and ally of the board, carrying out a delicate task of clarifying the way in which the board can best fulfil the requirements of the shareholder. This requires the Company Secretary to have a clear understanding of the big picture issues and how they look from the perspective of the shareholding and portfolio ministers, relevant departments and regulators, as well as a detailed understanding of the boardroom processes and procedures.

Dual focus

This dual focus on the big picture and the internal processes is possibly most apparent when the organisation is dealing with the often-conflicting requirements of organisational strategy and public policy. It is imperative that the board have regard to the current policy environment when setting its strategy and selecting (or approving) management's tactics. Governments and councils are elected by the portion of the population that is eligible to vote in the relevant electoral area. As part of its campaign to be elected, the government will issue policy statements that set out what the government will do if it is elected. Once it has been elected, it has a right, referred to as a mandate, to implement those policies. It is the duty of all government-owned agencies, companies and businesses to support their shareholder in that implementation.

It is specifically required, however, that these organisations should remain impartial and not become part of the political machinery. Obviously

this balance between policy implementation and not supporting a political agenda can, at times, require rigorous consideration of actions and clear documentation of the reasoning behind specific strategic choices.

Additional difficulties arise when the policy is not clear or when the policy changes. These difficulties can be mitigated by referring to the relevant department or to the Minister's office for guidance. Judgment is needed, as overly frequent requests will reflect poorly on the board and organisation, but a failure to clarify, followed by acting upon an unchecked assumption, can leave the organisation in the unenviable situation of having acted contrary to the prevailing policy.

The Company Secretary is often not the person making this judgment call or, indeed, the person who will seek clarification. It is important for directors, and especially chairmen and managing directors, to be aware of the possible implications before they start a conversation with the department or the Minister. They should ascertain whether an 'informal' (and discussions with a Minister are never really informal) chat will suffice or whether they should seek a written clarification of the policy. Many Company Secretaries in the sector relish their role as confidant and adviser to the board, acting behind the scenes to ensure that all goes smoothly.

It goes without saying that there is a special relationship between the chairman of a government-owned organisation and the shareholder. Unlike the private sector chairman, who is elected by his or her fellow directors, the government sector chairman is appointed by the government, usually following a fairly robust and competitive process.

When the Minister has approved the chairman's appointment there is a natural tendency for a quasi superior/subordinate dynamic to enter the relationship. This is heightened when the chairman is seeking direction or clarification. Most chairmen are experienced and astute enough to recognise this dynamic and to ensure that it does not prevent a proper relationship from developing. While on the face of it there may seem to be little wrong with a chairman receiving instructions from the relevant Minister, it can become very difficult for the Company Secretary if any instructions are not properly documented or do not comply with policy, particularly if they would lead to decisions that affect the profitability of the organisation or that favour one group of stakeholders above other groups.

It is important to remember that the organisation must be mindful of both substantive and procedural policy in formulating and implementing strategy. Substantive policy deals with the issues that are important for the government and sets out the basic aims that the government is

attempting to achieve. Procedural policy is concerned with the way in which the government will act in achieving those aims. It is all about due process and regulations regarding the processes and procedures for administering activities. It is remarkably easy, in the complex regulatory environment, to fall foul of the procedural policy while pursuing perfectly sound substantive policy outcomes.

Regulation, legislation and strategy

Some regulations, such as the economic price regulation affecting many monopoly service providers, require the entity to develop detailed long-term plans and to operate under either a revenue or a profit cap. These plans, while detailed, may often differ from the strategic plans that the organisation must develop. Timing issues, as well as issues of emphasis and focus, can result in the detailed plans developed for the regulator being very different from those developed for management, board and shareholder purposes. Where targets differ it is important that the company should have clear communication and records about which targets apply and in which circumstances. Many organisations report licence, regulatory and business targets as three separate groups of results, even though they may be indicated by the same measure of progress.

Often the regulator will be staffed by people who are excellent regulators but have little, or no, experience of running a business. This can lead to conflict that will often require tactful handling to resolve. The knowledge of the Company Secretary can be highly useful in brokering an outcome that is acceptable to all sides even when the Company Secretary is not personally involved in the discussions. Clear and factual briefing of directors and executives who are engaged in detailed discussions with the regulator can make a very important difference in the outcome.

While many organisations may be tempted to seek regulatory relief, or even legislative change, when the discussions or the implementation of a regulator's requirements prove difficult, time-consuming or costly, this is rarely forthcoming. Most regulators are established with a high degree of autonomy, which they need to effectively fulfil their roles, and the government may have very little power to effect any requested changes.

Timing issues

The different timescales that apply to the formulation of corporate strategy and public policy frequently cause tension. While many organisations nowadays undertake their strategy development in a highly consultative manner, there are nonetheless commercial time constraints operating in many organisations that simply do

not exist in the government departments or agencies with which the organisation may be working.

Most governments, whether local, state or federal, go through a policy development cycle that includes the stages of issue identification, policy analysis, selection of possible policy instruments, stakeholder consultation, agency coordination, formal decision making, policy implementation and post-implementation review. It can be a very time-consuming activity. This process makes for good policy and rigorous consideration of possible outcomes (both intentional and unintended). It is frequently performed using committee (or panel) structures to ensure that adverse outcomes are acceptable, even if not palatable, to all concerned.

Boards, on the other hand, have to operate as teams to pursue the best possible outcome and not as committees that ensure that the worst possible outcome is acceptable to all concerned. They are also subject to commercial time pressures and considerations of commercial confidentiality that are quite alien to the staff of departments and other agencies. To exacerbate these differences, boards in the public sector often operate under a legislated strategy-development agenda and need to have their plans accepted by the relevant Ministers, departments and regulators before predefined dates. This is especially important for organisations that need to have their strategic or business plans tabled in parliament.

During election periods, and immediately after an election if there is to be a major policy change, there can be additional difficulties in gaining briefings and information, particularly when the information is required to assist in planning future events. Most Company Secretaries will be familiar with the caretaker provisions and able to navigate within them.

Even when certainty as to the election outcome has been attained, organisations can have previously approved business plans and strategy that do not comply with the policies of the government of the day. The situation can often be resolved by a changed plan or by a memorandum of understanding about how the organisation will manage the transition to the new policy environment.

Additional compliance burdens

In addition to the above, there is the requirement, applicable to all entities involved in disbursing public funds, that they should obtain value for money at all times. This places compliance burdens on any tender process and requires that larger disbursements be subject to an audit to demonstrate that the money was spent as

originally intended. Again, the Company Secretary, while not directly responsible for the financial records, is a key executive in ensuring that the organisation's processes satisfy all relevant policies and legislation.

Other agendas

A final vexatious issue can be the efforts of nominee or special interest representatives to control the board agenda to suit the dictates of their own constituencies. Nominee and representative directors are often appointed to the board because they can contribute a special viewpoint or information that may assist in generating a better consideration of issues around the boardroom table. They are not appointed to be the instruments of their supporters or nominators, however, but to enhance the organisation's effectiveness in reaching its strategic aims. While controlling dissident directors is a difficult task and one best left to the chairman, the Company Secretary can greatly assist by ensuring that new directors are properly inducted and understand their duties of good faith, proper purpose and confidentiality.

Intangible rewards

While the main thrust of this article has been to highlight some of the difficulties, with a view to

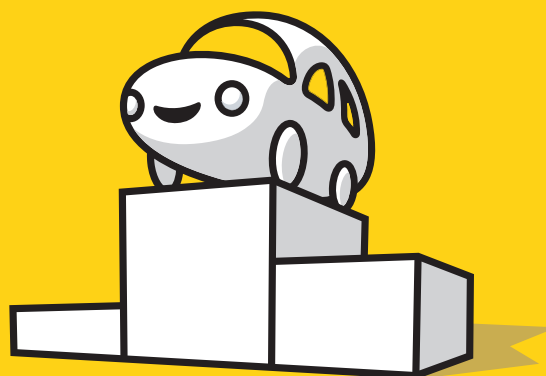
assisting in managing them for successful outcomes, it should be remembered that the government-owned sector offers more than just a set of onerous duties. The government is a major developer of talent, and education and development opportunities frequently exceed those available in the private sector, but the true reward is in the nature of the work of the organisations themselves.

There is great satisfaction in dealing with essential services and providing the support that keeps our society functioning. When all goes well and relationships between an organisation, its stakeholders and the shareholder are healthy and productive, the government-owned organisation can provide the challenge, inspiration and motivation for Company Secretaries to reach and set higher benchmarks for organisational performance.

** Julie Garland McLellan is a professional non-executive director and the author of All Above Board: Great Governance for the Government Sector, published by the Australian Institute of Company Directors.*

Note

- 1 The Audit Office of NSW, Performance Audit Report No. 39. *Corporate Governance: In Principle (Vol. 1) and In Practice (Vol. 2)*, 1997. ●



go with the world's #1

If you're a member of CSA, you can save money when you rent with Hertz. Simply quote the CDP#1217835 and you'll receive a discounted rate. To make a booking, call 13 30 39 or visit hertz.com.au.