



THE GOVERNMENT BOARD CONUNDRUM: DOING THE IMPOSSIBLE – YESTERDAY

By Ali Cromie*

Directors wary of personal liability frequently see appointment to government boards as a less risky proposition.

A "misconception" says Julie Garland McLellan, author of *All Above Board: Great Governance for the Government Sector* – a new AICD publication. Directors sitting on government-owned boards have "all of the same risks as sitting on a private-sector board, and the added dimension of dealing with the sensitivities of your political owners and all their additional stakeholders.

"You're frequently asked to do the impossible and to do it yesterday," says Garland McLellan.

Another risk for directors on a government board is that they can be held "personally liable" for any adverse outcome, for example, if they are found to have allowed the organisation they oversee to act in a way beyond its stated purpose, she writes.

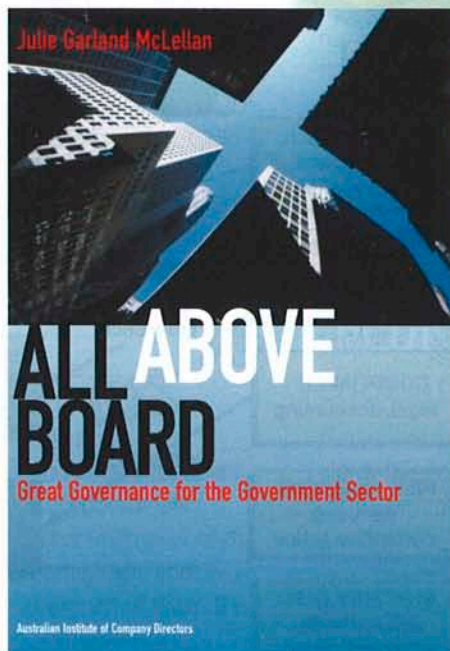
Key differences between government-owned organisations and their private-sector counterparts include:

- Government entities created for a specific purpose are typically limited in their scope of activities
- They are in fields in which commercial organisations cannot operate effectively, for example, when asset lives are long in essential services and it is difficult to gain market-level reward for the business risks.

EXPERIENCE TALKS

Director Charles Macek says the complexity of managing single-shareholder organisations encompassing a political and policy dimension "can challenge even experienced directors".

Macek advises Federal Treasurer Peter Costello on



All Above Board: Great Governance for the Government Sector is available from AICD Publications Services 8248 6600.



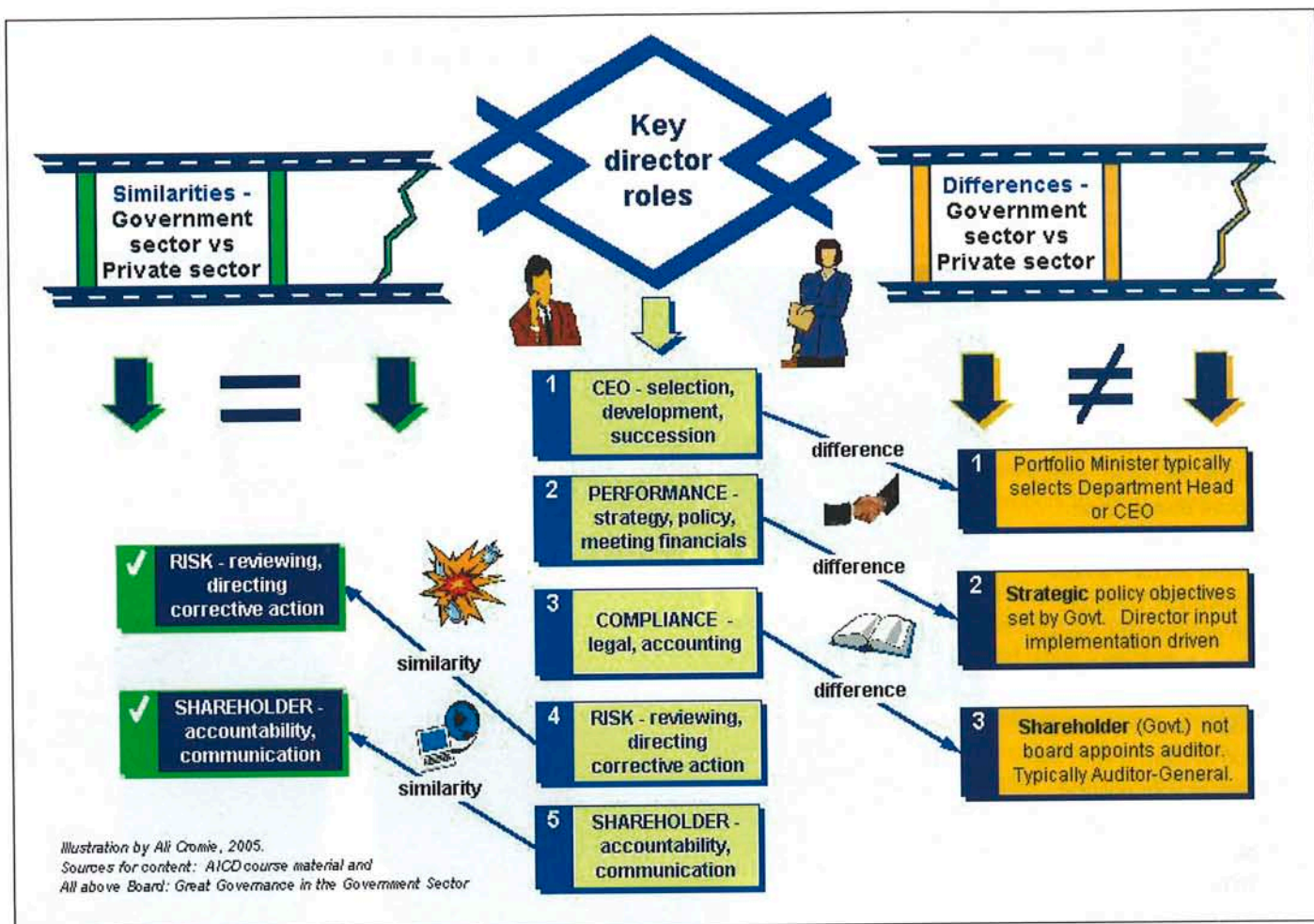
accounting and auditing standards in his role as chairman of the Financial Reporting Council and he is a director of 51 percent government-owned Telstra.

In the foreword to *All Above Board: Great Governance for the Government Sector*, Macek writes: "It is clear that achieving the appropriate balance between commercial objectives and broader social objectives is not easy.

"Combined with the mix of stakeholders around the board table, the role of the chairperson becomes even more critical to ensuring board effectiveness," he says.

Garland McLellan says the direct appointment of the chairman in most government-owned organisations by the portfolio minister can place him or her in a special relationship with the key shareholder representative.

"It is important for the board to understand the



minister's desired policy outcomes and for there to be a relationship of mutual respect and trust," she says.

To facilitate understanding, she recommends periodic meetings between chairman and minister. However, she cautions that the board can be placed in a difficult position should such meetings be used to give "informal directions" to set strategy or to define standards of operation. She suggests chairmen and board members who perceive this as "undue influence" to re-establish the board-minister relationship on a more formal basis.

THE BALANCING GAME

Macek advises directors with experience on private-sector boards that balancing commercial objectives with other objectives is "critical to effectiveness" on government-sector boards.

Macek's considerable experience on private and public sector boards makes him well-versed in both arenas, Wesfarmers his most notable private sector role.

Government boards typically require directors to balance the interests of society with those of the shareholder. While this is a drawback to directors keen

to "contribute to building a better tomorrow", it can be a "dangerous place" to be if the organisation is not meeting its aims, says Garland McLellan.

"The personal costs could be far higher than you ever imagined possible ... risks that could, if not properly managed, cost you your house, your life savings and your reputation," she warns.

Factors increasing the risks for government directors include higher expectations that the government, as shareholder, has of its directors and labyrinthine government regulations and systems. Then there are shareholder mandates, which can appear contradictory, and the narrowly-defined organisation purpose, which can frustrate entrepreneurially-minded directors who want to broaden the organisation's scope of activities.

An example of the complexity and high expectations of governance expected by government is represented by the Department of Health and Ageing's governance publication "as thick as the weighty company directors manual", says Garland McLellan. To obtain funding for initiatives and health programs each guideline must be addressed. "It is hugely cumbersome," she says.

A TOE IN THE DIRECTOR POOL

Aspiring directors often seek a government board for their

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first director role. Certainly there are plenty of prospective roles given the vast number of state-owned entities and federal government organisations criss-crossing Australia.

- In New South Wales there are more than 600 boards, and several hundred trusts governing state land reserves. State-owned corporations and government trading enterprises have equity of nearly \$50 billion (the market capitalisation of the Commonwealth Bank is nearly \$50 billion)
- Victoria has more than 300 state organisations with \$30 billion in annual revenue supporting some 5000 organisations
- The Government of Western Australia lists about 150 entities
- The Federal Government lists a total of more than 200 councils, committees and boards – from the Australian Rail Track Corporation to the Takeovers Panel and Willandra Lakes Region World Heritage Property Community Management Council.

CHIEFS AND INFANTRY

Directors on government boards include prominent business figures such as Frank Lowy and Jillian Broadbent (members of the Reserve Bank Board) corporate law specialists, Ian Ramsay and Robert Seidler (members of the Corporations and Markets Advisory Committee) and accounting aficionado Bob Walker (chairman of Pillar, the NSW Government's superannuation administrator.)

Along with the "who's who" of business are battalions of proficient directors from backgrounds in academia, specialists in accounting and law through to generalists from the corporate and public sectors.

Garland McLellan says most government boards have between five and seven members who are appointed to serve between three and five years.

Combined Commonwealth, States and Territories director requirement arguably exceed the number of board directorships on listed company boards. There are some 1500 listed companies on the Australia Stock Exchange and the average board turnover is estimated at barely 16 percent

"That's fewer than 250 non-executive directorships a year," recently observed the *Australian Financial Review*.

AICD chief executive officer Ralph Evans told the *AFR* in April that an emerging path to listed boardrooms is via the government and non-profit sector boards.

THE DIVERSITY FACTOR

Garland McLellan says the changing regulatory environment encourages directors to choose government-owned boards over listed and private company boards.

The satisfaction of influencing or of precipitating regulatory change is a "potent motivator" for serving on government-owned boards.

Garland McLellan writes that governments and councils are selecting directors from sectors of the community

previously under-represented in boardrooms. This diversity is changing the nature and tenor of boardroom debate.

The key issue for government-sector boards is representing and understanding the community they serve. All Australian governments have recognised that this cannot be best achieved with a board entirely composed of white Anglo-Saxon males in their late fifties or early sixties with senior management experience, she says.

In pursuit of increasing female board director representation, the State Government in Victoria has set up the Victorian Women's Register. Women can register their interest in board appointments and government ministers, officials and other groups can search to find prospective woman for their boards. Garland McLellan was appointed to the board of the Victorian Energy Networks Corporation after putting up her details on the women's register in Victoria. (The AICD helps match companies and candidates seeking boards through its on-line Directors Register service)

LOOK BEFORE YOU LEAP

Garland McLellan advises prospective board candidates to check the exact nature of the appointment and the status of the organisation before accepting an appointment to a government-owned board.

"The differences between one organisation and another can be indicative of differences in the legal environment that create risks which, if not understood and managed, can prove career or organisation threatening." She counsels directors to select a board that has an aim they support believing that this assists the person to be an effective board member.

Directors drawn from a special community interest or a department representative must take care to avoid conflicts of interest. For example, directors representing special interest groups have a duty of confidentiality to the board that takes precedent over any loyalty towards his or her nominator, she says.

INSIGHTS INTO TOMORROW

"The Australia government-owned organisation has always been an early adopter or developer of innovations in corporate governance.

"The focus of innovation is driving new developments in stakeholder engagement and triple bottom line reporting. Transparency and openness are new ideals for organisations to incorporate into their ethos.

"Whatever the future holds it is likely that Australian government-owned organisations will be a powerful force in developing new ways to resolve the issues that arise in this exciting and challenging sector."

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