



MONITORING BOARD PERFORMANCE

Guidance Paper No. 5



Guidance Paper No. 5: Monitoring Board Performance Guidance
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Better Practice Guide

Public Sector
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Introduction

The purpose of this paper is to promote better performance of boards and committees in Commonwealth organisations by assisting them to clarify their governance arrangements and assess their own performance.

This paper should be read in conjunction with Guidance Papers Nos. 3 and 4.

Legal and policy framework

The functions and powers of a governing board in a Commonwealth statutory body can be found in its enabling legislation. However, there is no general legal requirement that Commonwealth boards work to an established charter, or review their performance against that charter.

The *Commonwealth Authorities and Companies Act 1997* (CAC Act) has extensive provisions concerning the responsibilities of directors and officers (especially Division 4 of Part 3, 'Conduct of Officers'), but not for the board as a whole. CAC authorities are required to prepare an annual report of operations¹ in accordance with finance ministers orders issued under s48 of the CAC Act. This report must include specific information on directors (for example, the number of board meetings held and the number attended by each member, (clause 14)) and a Statement on Governance (clause 15). The Statement of Governance may include information on such matters as 'whether there is any formal mechanism for reviewing the performance of directors', (clause 15 (3)(b)). Implicit in this provision is an expectation that CAC bodies will generally follow better practice by instituting regular, systematic assessments of directors' performance.

¹ CAC (Report of Operations) Orders 2002.

Some CAC authorities may have in their legislation provisions that require the board to operate under a charter or that specify the board's membership, purpose and/or mode of operation. Statutory authorities may also be required to prepare and submit a corporate plan to the relevant Minister. As a matter of good practice, the board should plan and review its own performance as an integral part of the organisation's planning and review process.

The *Financial Management and Accountability Act 1997* (FMA Act) does not specifically address board or executive committee arrangements. Annual reporting requirements explicitly call for information on governance matters. For departments and agencies subject to the FMA Act, the Requirements for Annual Reports² issued by the Department of the Prime Minister and Cabinet and approved by the Joint Committee of Public Accounts and Audit stipulate that 'the annual report must include a statement of the structures and processes that the department had in place during the year to implement the principles and objectives of corporate governance' (section 12(1)). The 'Requirements' go on to suggest a list of topics to be covered in this part of the annual report, including 'senior management committees and their roles' (section 12(1)(b)).

Elements of better practice

Issues and suggested procedures or protocols

It is a well-established part of good governance in the private sector that boards have a charter against which the performance of the board as a whole, and that of individual members, is regularly assessed. The content of the charter should be tailored to the circumstances of the organisation. Typically, a small organisation with a relatively narrow range of policy or operational concerns and little exposure to risks of conflicts of interest will have less need for a detailed board charter than a larger organisation with greater risk exposure. The former might also require less frequent and/or less intensive reviews of board performance than would be appropriate in larger, more complex organisations.

All boards or executive committees should have a charter or some other form of documentation that specifies such matters as:

- the functions, powers and membership of the board or committee;
- the role and responsibilities of members—for example, due diligence and good faith, commitment to acting in the best interests of the organisation as a whole, attendance, participation in discussions, to read and understand papers, to raise concerns, to deal with other members and staff with courtesy and respect, access to information, outside advice, confidentiality;
- the role of the chair—including: promoting full participation by all members; constructive questioning; strategic thinking; risk management; consideration of the right issues; decision-making and follow-up; adequate reporting; and relations with the organisation head, Minister and key stakeholders;

² Available via the Department of the Prime Minister and Cabinet's website, www.pmc.gov.au.

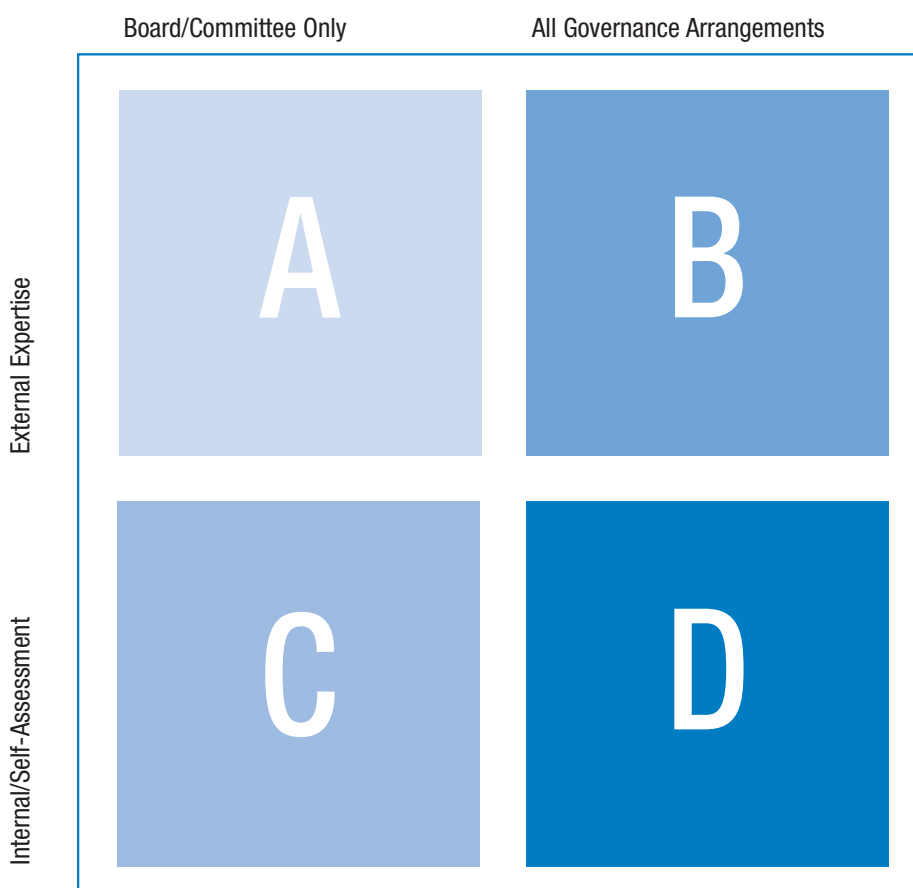
- processes for identifying and measuring conflict of interest;
- basic meeting procedures—for example, agenda, papers, minutes, declarations of interests and how these are to be handled, powers of the chair, voting procedures;
- policies on member remuneration (where relevant); and
- policies on board performance review.

As shown at Figure 5.1, there are four main types of governance review. The first (Box A) involves using an external, independent person or group to assess the performance of the governing board or committee. Such a review allows for an outside perspective that can reflect on some of the more subtle but crucial issues such as relationships between board members, balance in the board make-up, any tendencies towards group think, or an unwillingness to question more powerful individuals.

The second type of review (Box B), also uses external experts but canvasses the broader structural issues in governance, including the formal and informal relationships between boards and committees, documentation of and action in accordance with committee powers.

Reviews using external experts (Boxes A and B) will generally take place less frequently than those using internal, self-assessment mechanisms. These types of review (Boxes C and D) can be coordinated through the board or committee secretariat and consist of a relatively brief self-assessment of the board/committee performance over the course of a planning cycle, usually a year.

Figure 5.1: Reviewing governance arrangements



Which form of review or evaluation is best in a given circumstance is a matter for judgement. Externally facilitated reviews every three years can establish a benchmark for more frequent (annual) internal assessments.

The factors to be assessed in a board performance assessment include:

- **board impact:** does the board add value to the organisation? Does it provide effective leadership and guidance on key strategic and performance issues? Does it contribute effectively to the risk identification and management process?;
- **individual performance:** does the board operate well as a team? Do members question and debate issues when matters of concern are raised? Is the chair effective in fulfilling his or her role? Do members attend and actively participate in an adequate number of meetings?;
- **board charter:** is there one? Is it up to date and relevant? Does it establish standards and procedures in the relevant areas of policy and practice?;
- **regulatory requirements:** have the relevant legal requirements for the board and its members been identified and communicated to the board?;
- **governance framework:** does the board operate within a coherent and consistent governance framework that includes key elements such as an audit committee and relevant subcommittees responsible for significant policy and procedural issues (for example, appointments, remuneration, financial management, corporate and business planning)? Is there regular review of the governance framework to test its effectiveness?; and
- **board functions:** does the board acquit its responsibilities in relation to oversight of the organisation, including relevant factors such as assessment of the chief executive, review and approval of the corporate plan?

It is important that the findings of reviews of governance arrangements and of board performance are acted upon within a reasonable timeframe. Staff and management as well as board or committee members themselves can become cynical if areas for improvement are identified but not addressed.

Selected references and further information

Further information on assessing board performance can be obtained from the Australian Public Service Commission. The Australian Institute of Company Directors can also provide assistance and information.

Additional reference material includes the following.

- Public Policy Forum, *Checkup for boards of Crown Corporations and Government Agencies*, Ottawa. <http://www.pppforum.com/english/publications/publications/PPF10steps.pdf>
- Standards Australia, *Australian Standard: good governance principles*, forthcoming.
- NZ Ministry of Education, Tertiary Advisory Monitoring Unit, *Good practice assistance for councils, key review questions*, April 26 2002.
- International Federation of Accountants, *Governance in the public sector: a governing body perspective*, 2001, located at http://www.ifac.org/Members/DownLoads/Study_13_Governance.pdf
- Institute on Governance, Canada, *Governance self-assessment checklist*, at http://www.iog.ca/boardgovernance/html/ass_gsac.html
- Bosch, Henry, 'Improving corporate governance in public sector boards', *IIR Conference Handbook*, November 2002.
- UK Cabinet Office, Machinery of Government Secretariat, *Model Code of Practice for board members of advisory non-departmental public bodies*, at http://www.cabinet-office.gov.uk/central/1998/mcp_0998.htm

