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The Parliament of the Commonwealth of Australia

# **Report 372**

**Corporate Governance and Accountability Arrangements for  
Commonwealth Government Business Enterprises**

Joint Committee of Public Accounts and Audit

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Canberra

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## Chairman's Foreword

Effective corporate governance is an essential part of the modern corporate entity. Public and private sector corporate organisations will ultimately be judged by how well they direct, control and are held to account for delivering their corporate objectives.

Corporate failures during the 1980s and early 1990s, in particular, brought to the attention of the public the need for efficient, effective and responsible corporate governance.

The focus on corporate governance is not just driven by the corporate failures of the past but also by the corporate challenges of the future. Corporations, both public and private, face challenges relating to globalisation, technological change and sustainable development.

Commonwealth government business enterprises (GBEs) provide a range of services to the Australian community including communications, transport, employment and health services. In 1998-99, GBEs generated revenues of nearly \$25 billion, provided dividends of \$4.5 billion, and controlled assets of some \$40 billion. Given that GBEs are publicly controlled entities, the Parliament has a continuing interest in their governance, performance and accountability.

In 1997, the Commonwealth Government introduced new governance arrangements for its GBEs. These arrangements help form the framework for the accountability of GBEs and set out key responsibilities for both boards and Ministers. The broad objective of the inquiry was to assess the appropriateness and effectiveness of these arrangements.

The key findings and recommendations in the report include:

- all portfolio Ministers should be removed from their current GBE shareholder responsibilities, but remain as the responsible Minister under GBEs' enabling legislation; and

- 
- the Minister for Finance and Administration should:
    - ⇒ review the applicability of administrative law to current and future GBEs on a case by case basis;
    - ⇒ amend the 1997 Governance Arrangements to include a section that all Ministerial directions to GBE boards should be in writing and tabled in both Houses of Parliament within 15 sitting days;
    - ⇒ amend the 1997 Governance Arrangements to include a requirement that GBE boards ensure that there are appropriate and effective induction, education and training programs offered to new and existing board directors;
    - ⇒ amend the 1997 Governance Arrangements to include a section requiring confidential board and director performance appraisal; and
    - ⇒ develop draft guidelines for the scrutiny by Parliamentary Committees of commercially confidential issues relating to GBEs.

In conclusion, and on behalf of the JCPAA, I would like to thank all those who have contributed to this inquiry.

**Bob Charles, MP**  
**Chairman**

# Contents

Chairman's Foreword .....	iii
Membership of the Committee .....	x
Membership of the Sectional Committee.....	xi
Duties of the Committee .....	xii
Terms of reference .....	xiv
List of abbreviations.....	xv
Conclusions and recommendations .....	xviii

## THE REPORT

<b>1 INTRODUCTION .....</b>	<b>1</b>
<b>Background .....</b>	<b>1</b>
<b>Reasons for the inquiry .....</b>	<b>2</b>
<b>Objectives, scope and focus.....</b>	<b>4</b>
The governance framework.....	5
Shareholder Ministers .....	5
Boards .....	5
Reporting and accountability .....	6
Risk management .....	6
<b>Corporate governance .....</b>	<b>6</b>
Commonwealth GBEs .....	7
Commonwealth GBEs by company and authority status .....	7
<b>Conduct of the inquiry .....</b>	<b>10</b>
<b>Report structure .....</b>	<b>10</b>

---

<b>2</b>	<b>THE GOVERNANCE FRAMEWORK.....</b>	<b>13</b>
	Introduction.....	13
	The Legislative Framework.....	14
	The 1997 Governance Arrangements for Commonwealth GBEs.....	16
	The appropriateness of the <i>Commonwealth Authorities and Companies Act 1997</i> .....	20
	Conclusions .....	23
	<b>Authority or company? – the appropriate form for a GBE.....</b>	<b>24</b>
	Conclusions .....	25
	<b>Administrative Law .....</b>	<b>26</b>
	Conclusions .....	28
	Recommendation 1.....	29
<b>3</b>	<b>SHAREHOLDER MINISTERS .....</b>	<b>31</b>
	Introduction.....	31
	The existing model for shareholder control.....	32
	The appropriateness of the joint Ministerial shareholder arrangement.....	33
	Conclusions .....	37
	Recommendation 2.....	40
	<b>Ministers and Boards .....</b>	<b>40</b>
	Conclusions .....	45
	Recommendation 3.....	46
	<b>The Department of Finance and Administration and portfolio agencies .....</b>	<b>46</b>
	Communication .....	47
	Skills and expertise.....	47
	External financial advice and independent assessment of GBE corporate plans.....	49
	Conclusions .....	50
<b>4</b>	<b>GBE BOARDS .....</b>	<b>53</b>
	Introduction.....	53
	Board independence .....	54
	Selection and appointment of directors .....	55
	Induction, education and training for directors .....	58
	Performance appraisal .....	60
	Assessment of individual directors.....	63

---

Performance appraisal methodology.....	63
<b>Director remuneration .....</b>	<b>65</b>
<b>Conclusions.....</b>	<b>66</b>
Recommendation 4 .....	68
Recommendation 5 .....	68
<b>5 REPORTING AND ACCOUNTABILITY.....</b>	<b>69</b>
<b>Introduction .....</b>	<b>69</b>
<b>Background .....</b>	<b>70</b>
<b>Statement of Corporate Intent.....</b>	<b>70</b>
Conclusions.....	72
<b>Annual Report .....</b>	<b>72</b>
Corporations Law reporting requirements for company GBEs.....	73
Reporting requirements for authority GBEs – CAC Act and Finance Minister's Orders.....	75
Agency Comments on annual reporting requirements.....	76
Conclusions.....	77
<b>Additional requirements faced by GBEs .....</b>	<b>77</b>
The Senate Estimates process .....	78
Recommendation 6 .....	83
Competitive Neutrality .....	83
Conclusions.....	85
<b>6 RISK MANAGEMENT .....</b>	<b>87</b>
<b>Background .....</b>	<b>87</b>
<b>Current Arrangements.....</b>	<b>89</b>
<b>Audit Committees.....</b>	<b>91</b>
<b>External Risk Review .....</b>	<b>93</b>
<b>Conclusions.....</b>	<b>95</b>
Recommendation 7 .....	96



**APPENDICES**

**Appendix A – List of Submissions..... 97**  
**Appendix B – List of Exhibits ..... 99**  
**Appendix C – Witnesses appearing at public hearings ..... 101**

**OTHER**

**Index ..... 105**



## **Membership of the Committee**

**Chair** Mr Bob Charles MP

**Deputy Chair** Mr David Cox MP

<b>Members</b>	Senator Helen Coonan	Mr Kevin Andrews MP
	Senator the Hon John Faulkner	Mr Malcolm Brough MP
	Senator the Hon Brian Gibson	Mr Petro Georgiou MP
	Senator John Hogg	Ms Julia Gillard MP
	Senator Andrew Murray	Ms Tanya Plibersek MP
	Senator John Watson	Hon Alex Somlyay MP
		Mr Stuart St Clair MP
		Mr Lindsay Tanner MP



## **Membership of the Sectional Committee**

**Chair** Mr Bob Charles MP

**Deputy Chair** Mr David Cox MP

<b>Members</b>	Senator the Hon Brian Gibson	Ms Julia Gillard MP
	Senator John Hogg	Ms Tanya Plibersek MP
	Senator John Watson	Hon Alex Somlyay MP
		Mr Stuart St Clair MP

## **Committee Secretariat**

**Secretary** Dr Margot Kerley

**Inquiry Secretary** Mr Stephen Boyd

**Inquiry staff** Mr Gordon Carey  
Ms Rebecca Perkin  
Ms Tiana Gray



## Duties of the Committee

The Joint Committee of Public Accounts and Audit is a statutory committee of the Australian Parliament, established by the *Public Accounts and Audit Committee Act 1951*.

Section 8(1) of the Act describes the Committee's duties as being to:

- (a) examine the accounts of the receipts and expenditure of the Commonwealth, including the financial statements given to the Auditor-General under subsections 49(1) and 55(2) of the *Financial Management and Accountability Act 1997*;
- (b) examine the financial affairs of authorities of the Commonwealth to which this Act applies and of intergovernmental bodies to which this Act applies;
- (c) examine all reports of the Auditor-General (including reports of the results of performance audits) that are tabled in each House of the Parliament;
- (d) report to both Houses of the Parliament, with any comment it thinks fit, on any items or matters in those accounts, statements and reports, or any circumstances connected with them, that the Committee thinks should be drawn to the attention of the Parliament;
- (e) report to both Houses of the Parliament any alteration that the Committee thinks desirable in:
  - (i) the form of the public accounts or in the method of keeping them; or
  - (ii) the mode of receipt, control, issue or payment of public moneys;

- 
- (f) inquire into any question connected with the public accounts which is referred to the Committee by either House of the Parliament, and to report to that House on that question;
  - (g) consider:
    - (i) the operations of the Audit Office;
    - (ii) the resources of the Audit Office, including funding, staff and information technology;
    - (iii) reports of the Independent Auditor on operations of the Audit Office;
  - (h) report to both Houses of the Parliament on any matter arising out of the Committee's consideration of the matters listed in paragraph (g), or on any other matter relating to the Auditor-General's functions and powers, that the Committee considers should be drawn to the attention of the Parliament;
  - (i) report to both Houses of the Parliament on the performance of the Audit Office at any time;
  - (j) consider draft estimates for the Audit Office submitted under section 53 of the *Auditor-General Act 1997*;
  - (k) consider the level of fees determined by the Auditor-General under subsection 14(1) of the *Auditor-General Act 1997*;
  - (l) make recommendations to both Houses of Parliament, and to the Minister who administers the *Auditor-General Act 1997*, on draft estimates referred to in paragraph (j);
  - (m) determine the audit priorities of the Parliament and to advise the Auditor-General of those priorities;
  - (n) determine the audit priorities of the Parliament for audits of the Audit Office and to advise the Independent Auditor of those priorities; and
  - (o) undertake any other duties given to the Committee by this Act, by any other law or by Joint Standing Orders approved by both Houses of the Parliament.



## **Terms of reference**

The Joint Committee of Public Accounts and Audit (JCPAA) has resolved to conduct an inquiry into the corporate governance and accountability arrangements for Commonwealth Government Business Enterprises (GBEs). The JCPAA will explore the following matters:

- whether additional parts of current GBE governance arrangements should be the subject of legislation;
- whether more GBEs should be companies;
- whether governance arrangements are being reasonably applied to GBEs undergoing sale or restructuring;
- the form and content of GBE statements of corporate intent and the process of Parliamentary scrutiny including scrutiny of the financial affairs of GBEs;
- whether governance arrangements relating to GBEs' management of risk need to be strengthened;
- the adequacy of proposed annual reporting requirements for GBEs; and
- whether administrative law should apply to GBEs.



## List of abbreviations

AAOs	Administrative Arrangements Orders
APEC	Asia Pacific Economic Cooperation
AGS	Australian Government Solicitor
AICD	Australian Institute of Company Directors
ANAO	Australian National Audit Office
ASCPA	Australian Society of Certified Practising Accountants
ASIC	Australian Securities and Investment Commission
ASX	Australian Stock Exchange
BDW	Blake Dawson Waldron
CAC Act	Commonwealth Authorities and Companies Act
CEOs	Chief Executive Officers
CPA	Competition Principles Agreement
CSAU	Commonwealth Shareholder Advisory Unit
CSOs	Community Service Obligations
DHA	Defence Housing Authority
DHAC	Department of Health and Aged Care
DoCITA	Department of Communications, Information Technology and the Arts
DoF	Department of Finance
DoFA	Department of Finance and Administration
DTRS	Department of Transport and Regional Services

EN	Employment National
FMA Act	Financial Management and Accountability Act
FOI Act	Freedom of Information Act
GBEs	Government Business Enterprises
IC	Industry Commission
JCPA	Joint Committee of Public Accounts
JCPAA	Joint Committee of Public Accounts and Audit
NSW	New South Wales
PC	Productivity Commission
SACL	Sydney Airports Corporation Limited
SCI	Statement of Corporate Intent
SMHEA	Snowy Mountains Hydro-Electric Authority
USOs	Universal Service Obligations



# Conclusions and recommendations

## 1 INTRODUCTION

On 12 May 1999, the Joint Committee of Public Accounts and Audit (the Committee) resolved to conduct an inquiry into corporate governance and accountability arrangements for Commonwealth government business enterprises.

Effective corporate governance is an essential part of the modern corporate entity. Public and private sector organisations will ultimately be judged by how well they direct, control and deliver their corporate objectives. Public sector entities must also account to Parliament for their activities. Corporate failures during the 1980s and early 1990s, in particular, brought to the attention of the public the need for efficient, effective and responsible corporate governance. Shareholders and governments have had to pay dearly in cases where corporate entities have failed to apply effective corporate governance and accountability arrangements.

From the perspective of the Australian Government, Commonwealth GBEs accounted for approximately 24.5% of the Commonwealth's total assets of nearly \$165 billion in 1998-99. The Department of Finance and Administration (DoFA) reported that in 1998-99, GBEs generated revenues of nearly \$25 billion, provided dividends of \$4.5 billion, and controlled assets of some \$40 billion. Given that GBEs are publicly controlled entities, the Parliament has a continuing interest in their governance, performance and accountability.

The threat of corporate failure, an increasingly competitive environment, and the special responsibility and accountability arrangements applying to Commonwealth GBEs provide sufficient reasons to examine the corporate governance of Commonwealth GBEs.

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## 2 THE GOVERNANCE FRAMEWORK

### **The appropriateness of the Commonwealth Authorities and Companies Act 1997**

The *Commonwealth Authorities and Companies Act 1997* (the CAC Act) applies to company GBEs in addition to Corporations Law and the 1997 Governance Arrangements. The primary objective of the CAC Act is to standardise the reporting, notification and auditing requirements of CAC bodies. In addition, it helps to ensure appropriate accountability to Ministers and the Parliament.

The inquiry examined the appropriateness of the CAC Act and, in particular, its continued application to GBEs. Some groups suggested that it would be more effective for GBEs to be subject solely to Corporations Law. The Snowy Mountains Hydro-Electric Authority indicated that the CAC Act created additional compliance costs relative to private sector competitors and, therefore, was inconsistent with competitive neutrality provisions. Telstra echoed this view indicating that it should not be subject to more accountability arrangements than its competitors.

In contrast to these views, the Committee notes Employment National's comment that government will require additional information about its companies and authorities. The Australian National Audit Office (ANAO) indicated that the CAC Act strengthens Ministerial and Parliamentary oversight.

The Committee notes that there are cogent reasons why GBEs would, for market competition reasons, like to be on the same footing as their private sector competitors. At the same time, where public moneys are involved there is the need for additional accountability to Ministers and Parliament. For example, it should be noted that in 1998-99, GBEs generated revenues of nearly \$25 billion, provided dividends of \$4.5 billion and controlled assets of some \$40 billion. In view of the significant responsibility in managing these assets, the Committee is not prepared to recommend any relaxation of the accountability requirements applying to GBEs. The Committee agrees with the ANAO and DoFA that the governance arrangements provide a robust and flexible framework for the management and accountability of GBEs. Therefore, the Committee does not support removing GBEs from their responsibilities under the CAC Act.

## Authority or company? – the appropriate form for a GBE

The Committee acknowledges the reasons put forward regarding the advantages of company status as opposed to authority status. These issues were identified in the Humphry Report and this led to Humphry recommending that GBEs should be public companies limited by shares and incorporated under Corporations Law.

The Committee is pleased to note that of the 14 GBEs, 10 are already companies and there is the intention that Australia Post and the Snowy Mountain Hydro-Electric Authority will become companies. At the same time, the Committee notes that there are valid reasons why the Defence Housing Authority and the Australian Government Solicitor will remain as authority GBEs.

## Administrative Law

Government agencies that conduct administrative functions are subject to administrative law. The key administrative legislation includes the *Privacy Act 1988*, the *Freedom of Information Act 1982*, the *Ombudsman Act 1976*, the *Administrative Appeals Tribunal Act 1975* and the *Administrative Decisions (Judicial Review) Act 1977*.

The Humphry Report concluded that as GBEs generally trade goods and services in the market, their activities are not administrative. The Humphry Report recommended that GBEs be exempt from statutory administrative law. The Department of Finance and Administration (DoFA) confirmed that when the 1997 Governance Arrangements were developed, the government agreed that GBEs would be exempt from administrative law.

The Committee is not in a position to recommend that all GBEs now or in the future be exempt from statutory administrative law. Some aspects of administrative law should apply to GBEs depending on their responsibilities. For example, the Privacy Act applies to Employment National and its competitors because they are responsible for the security of client information. At the same time, it is not possible to determine now what aspects of administrative law should apply to government agencies that, in the future, may be corporatised. In view of this, each GBE should be examined on a case by case basis to determine what aspects of administrative law should apply. Therefore, the Committee recommends that the Minister for Finance and Administration review the applicability of administrative law to current and future GBEs on a case by case basis.

## Recommendation 1

**That the Minister for Finance and Administration review the applicability of administrative law to current and future GBEs on a case by case basis.**

### 3 SHAREHOLDER MINISTERS

#### The appropriateness of the joint Ministerial shareholder arrangement

In 1995 the then Industry Commission (IC) commented that the relationship between government and GBEs is one of the key factors influencing enterprise performance. The Committee agrees with this assessment and that is why the Ministerial oversight arrangements are being revisited in this inquiry.

In 1995 the Joint Committee of Public Accounts concluded that it was appropriate that portfolio Ministers should continue to have GBE shareholder responsibilities. While the *1993 Accountability and Ministerial Oversight Arrangements for Commonwealth GBEs* did not indicate that the Minister for Finance was a shareholder Minister, the role of the Minister for Finance was significant. The IC suggested that the Minister was, in effect, a shareholder Minister. The 1997 *Governance Arrangements for Commonwealth GBEs* formerly recognised the Minister for Finance and Administration as a shareholder Minister.

The Commonwealth's ownership interests in its GBEs is represented, in most cases, by two 'Shareholder Ministers', the portfolio Minister and the Minister for Finance and Administration. Three recently formed GBEs, Employment National, Sydney Airports Corporation and Essendon Airport have the Minister for Finance and Administration as their sole shareholder. This course was taken to address a perceived conflict of interest in the case that the portfolio Minister has regulatory functions and is a purchaser of services from the GBE.

A key consideration during the inquiry was the perceived conflict that exists with the continuation of portfolio Ministers as shareholder Ministers. While Telstra and Australia Post did not report any concerns with the joint shareholder model, both suggested that there were merits in a sole shareholder arrangement.

The Committee notes that the Humphry Report dealt with this issue and, after arguments raised by portfolio departments, took the position of including portfolio Ministers in the joint shareholder model. However, this is no reason to

ignore the persuasive reasons that prevail for removing portfolio Ministers from their current GBE shareholder responsibilities.

The potential for conflicts of interest relating to the different roles of portfolio Ministers continues to exist. The Government has recognised this very fact when it chose to have the Minister for Finance and Administration as the sole shareholder for Sydney Airports Corporation, Essendon Airport, and Employment National. In these cases, the Department of Finance and Administration justified the sole shareholder model on the grounds that it would allow portfolio Ministers to focus primarily on regulatory and industry policy issues and the Minister for Finance and Administration, as shareholder, to pursue the objective of value maximisation. On the grounds of consistency, these reasons could be applied to the other GBEs that continue to have their portfolio Minister as shareholder.

For example, there are persuasive reasons why the Minister for Employment Services, as the purchaser of employment services, is not a shareholder Minister for Employment National. On what grounds then does the Minister for Defence, as a consumer of services from the Defence Housing Authority, continue to remain as a shareholder Minister?

In addition, the Committee notes the concerns raised by Humphry relating to the incentive to deliver CSOs at the lowest cost yet also seeking to maximise the rate of return of the entity. The incentive to deliver implicit CSOs was also part of this discussion.

It is essential that the operational settings for GBEs are such that they maximise the efficiency and effectiveness of the entity and help generate appropriate rates of return. As suggested in the evidence, the influence of the portfolio Minister could compromise these objectives.

One of the arguments put to Humphry for the continued inclusion of the portfolio Minister in the shareholder arrangements was the expectations created by the Administrative Arrangement Orders (AAOs). Humphry reported that portfolio departments claimed that the existing AAOs gave rise to public and Parliamentary expectations that, for example, the Minister for Communications, Information Technology and the Arts is responsible for matters such as Telstra's universal service obligations (USOs). The Committee does not consider the AAOs to be an insurmountable obstacle to removing the portfolio Minister from GBE shareholder responsibilities. Again, an issue of consistency arises as the AAOs are not set in concrete and are often the subject of change with the creation of a new Ministry. At the same time, portfolio Ministers would continue to be responsible for policy and regulatory functions where relevant.

The Committee notes that there is a public perception that because GBEs are under government ownership, the portfolio Minister can direct GBEs separate from the board and management. For example, Members of Parliament and Senators receive constituency inquiries regarding Telstra services. As Telstra is still under majority government ownership, there is a public perception that the Government has the power to direct it on day to day operational matters. This is not the case and the continued involvement of the portfolio Minister as a shareholder Minister may be perpetuating these public perceptions.

In view of these issues, the Committee recommends that all portfolio Ministers be removed from their GBE shareholder responsibilities but remain as the responsible Minister under GBEs' enabling legislation. The Government's shareholder interests in GBEs should be represented by, and be the responsibility of, the Minister for Finance and Administration.

## Recommendation 2

**That all portfolio Ministers be removed from their government business enterprise shareholder responsibilities, but remain as the responsible Minister under GBEs' enabling legislation. The Government's shareholder interests in GBEs should be represented by, and be the responsibility of, the Minister for Finance and Administration.**

## Ministers and Boards

The public sector corporate governance framework is subject to more complexity than exists in the private sector. This is an outcome of the relationships that exist between Parliament, Ministers, boards and CEOs. In this section, the focus is on the relationship between Ministers and boards. A number of organisations have drawn attention to the fact that there are no principles to guide the relationship between Ministers and boards relating to GBE performance. The NSW Auditor-General suggested that, in NSW, there is still confusion over who is running government entities – Ministers or boards. In view of this, the NSW Auditor-General suggested that a framework should be created to define the separation of powers between Ministers and boards, and that this framework should be set down in legislation. In particular, the NSW Auditor-General proposed that any Ministerial directions to boards in regard to their activities should be in writing and publicly reported.

The Committee notes that in the event that the Minister gives written directions to the boards of Telstra or Australia Post, then these written directions must be tabled in both Houses of Parliament within 15 sitting days. The power of the Minister to provide written directions to the boards of Telstra and Australia Post and the need to report these directions to Parliament is set out in section 49 of the *Australian Postal Corporation Act 1989* and in section 9 of the *Telstra Corporation Act 1991*.

In the case that Ministers have the power to direct GBE boards, there is increased accountability and transparency if written directions are made public and subject to scrutiny. The Committee concludes that all GBE boards in their relationship with Ministers should be under a similar arrangement to Australia Post and Telstra. That is, all Ministerial directions to GBE boards should be in writing and publicly reported. Therefore, the Committee recommends that the Minister for Finance and Administration amend the 1997 Governance Arrangements for Commonwealth Government Business Enterprises to include a section that all Ministerial directions to GBE boards should be in writing and tabled in both Houses of Parliament within 15 sitting days.

The Committee emphasises the importance of the existing arrangements whereby Ministers have the power of Ministerial direction in relation to the strategic direction of GBEs and matters in the public interest. At the same time, the Committee supports the increased accountability and transparency that exists through the power of the Auditor-General to conduct performance audits of GBEs. While the Auditor-General, to date, has not been requested to conduct a performance audit of a GBE, this mechanism remains a powerful tool for government and Parliamentary scrutiny of GBEs.

### **Recommendation 3**

**That the Minister for Finance and Administration amend the 1997 Governance Arrangements for Commonwealth Government Business Enterprises to include a section that all Ministerial directions to GBE boards should be in writing and tabled in both Houses of Parliament within 15 sitting days.**

## The Department of Finance and Administration and portfolio agencies

Executive government has a challenging task in scrutinising GBE performance. Shareholder Ministers, with support from their departments, have the responsibility for protecting the Commonwealth's interest as shareholder.

In 1997 Humphry, in recognising the complexity of examining the financial performance of GBEs, recommended that a GBE unit should be established in the Finance Department. The Department of Finance and Administration (DoFA) acted on this advice and created the Commonwealth Shareholder Advisory Unit (CSAU). At September 1999, the CSAU consisted of approximately 16 staff with a range of experience in banking, finance, small business, information technology and the public sector. The Committee commends DoFA for establishing the unit and, based on advice, ensuring that it is staffed with qualified and experienced officers.

The Committee maintains that the CSAU should continue to strive for excellence and be adequately resourced to achieve its primary objective of assisting the Minister for Finance and Administration to protect the Commonwealth's interest as GBE shareholder. The Committee notes that the Australian National Audit Office will be conducting, during 1999–2000, a multi-agency performance audit of *Agencies Monitoring of the Performance of GBEs*. As part of this performance audit, the CSAU will be subject to scrutiny. The CSAU should consider this an opportunity to enhance its processes and confirm its credentials in GBE monitoring. The Committee supports the Auditor-General in initiating this audit, and may, depending on the findings, revisit the issue of agency monitoring of GBEs.

The final issue under consideration is the proposal that portfolio departments commission an independent assessment of GBE corporate plans. This was a recommendation in the Auditor-General's performance audit entitled *Government Business Enterprise Monitoring Practices*, Audit Report No. 2, 1997–98. While certain departments agreed with this recommendation, no department, to date, has sought an independent assessment of its GBEs' corporate plans. On the merits of the proposal, Telstra indicated that it was 'deeply disturbed' by the prospect that its corporate plan would be subject to independent assessment.

The merits of supplementing DoFA's financial scrutiny of corporate plans by seeking independent analysis is weighed against security and treatment of commercially sensitive information. In the case of Telstra, the additional task would be selecting an appropriate organisation that would have sufficient knowledge of the telecommunications industry to conduct a valid analysis.



In view of some of the concerns by GBEs about independent assessment of their corporate plans, the Committee considers this to be a non-obligatory tool for use by shareholder Ministers. The process for analysing GBE corporate plans should be at the discretion of the Minister for Finance and Administration. At the same time, it is clear that Ministers have a key responsibility to ensure that the Commonwealth's interests are protected while at the same time being held to account by the Parliament.

## **4 GBE BOARDS**

Corporate governance embodies processes and systems by which corporate enterprises are directed, controlled and held to account. Boards, therefore, are a central part of corporate governance. Boards of GBEs are responsible and accountable to shareholder Ministers and Parliament for delivering the government's policy objectives and ensuring that the enterprise is operating as efficiently and effectively as possible.

In view of the significant responsibility placed on boards of GBEs, the Committee has reviewed some of the key fundamentals that influence the capacity of boards to operate. First, is the independence of the board. Boards must be free of day-to-day involvement of shareholder Ministers in the operational affairs of the enterprise. In addition, actual or perceived conflicts of interest must be identified so as to allow boards to operate freely and, if necessary, challenge the activities of management. The Australian National Audit Office (ANAO) has drawn attention to aspects of selection and appointment which will help to ensure board independence. Most importantly, the majority of the board and board chairperson should be independent of management.

A second major issue for boards relates to selection and appointment criteria. It is essential that highly skilled, experienced and knowledgeable people are appointed. The 1997 Governance Arrangements indicate that boards should have a balance of relevant skills in areas such as commerce, finance, accounting, law, marketing, workplace relations and management. However, it is important that directors should not rest on their credentials when they were first selected. There is the need for continuous improvement. The Committee has noted that induction, education and training programs are increasingly being offered to board directors. GBE boards must ensure that there are appropriate and effective induction, education and training programs offered to new and existing board directors.

All of these factors ultimately lead to the issue of performance assessment of both the board and individual directors. Boards and individual directors must be held to account for their performance. Hilmer, Blake Dawson Waldron (BDW) and the

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ANAO have all discussed the need for greater attention to be given to scrutinising board and director performance. The Committee agrees with this focus and suggests that boards and directors should embrace opportunities that will strengthen performance appraisal. The Committee notes the positive work of the Australia Post board to introduce a self-assessment process involving a comprehensive questionnaire relating to aspects of board performance. From this process, the Australia Post board identifies its strengths and weaknesses and agrees on a course of action to deal with any weaknesses.

A rigorous performance appraisal system, in association with identified incentives, will help develop a competitive and performance oriented culture in GBE boards. Greater focus on board and individual director performance will help to enhance corporate governance and, consequently, the achievement of corporate objectives. Therefore, the Committee recommends that the Minister for Finance and Administration amend Part 3 of the *1997 Governance Arrangements for Commonwealth GBEs* to include a section requiring confidential board and director performance appraisal. All GBEs will be expected to comply with the new arrangements. The results of any performance appraisal should remain confidential between boards and their shareholder Minister(s).

The Committee acknowledges that developing an appropriate performance appraisal system for GBE boards and directors is complicated. GBE boards should develop their own performance appraisal systems which should be submitted to the Minister for Finance and Administration for approval.

The Committee, in proposing that GBE boards be subject to performance appraisal, acknowledges that there may be differences between private and public sector boards. BDW indicated that government enterprises may, but should not necessarily, measure performance in terms of financial return. For example, public sector boards are often concerned with maximising the generation of public benefit and meeting the political and bureaucratic expectations of Ministers. Therefore, the development of a performance appraisal system for GBE boards should take individual circumstances into account.

The Committee in recommending GBE board performance appraisal must deal with the view that this could lead to increased risk averse behaviour. First, GBE boards may become more risk averse. Second, the increased accountability placed on boards and individual directors may create a disincentive for applicants to stand for board selection. The Committee's intentions are completely the opposite. The Committee is seeking to create an environment in which GBE boards strive for above average performance taking account of risk.

The Committee acknowledges that there are differences between government and private boards and that this must be taken into account when developing suitable performance appraisal systems. At the same time, the Committee is taking a responsible position by proposing that GBE boards develop their own performance appraisal systems as they are in the best position to do so.

#### **Recommendation 4**

**That the Minister for Finance and Administration amend Part 3 of the *1997 Governance Arrangements for Commonwealth GBEs* to include a requirement that GBE boards ensure that there are appropriate and effective induction, education and training programs offered to new and existing board directors.**

#### **Recommendation 5**

**That the Minister for Finance and Administration amend Part 3 of the *1997 Governance Arrangements for Commonwealth GBEs* to include a section requiring confidential board and director performance appraisal. All GBEs will be expected to comply with the new arrangements.**

## **5 REPORTING AND ACCOUNTABILITY**

### **Statement of Corporate Intent**

Annual Reports of GBEs provide Parliament with ex-post information. Statements of Corporate Intent (SCIs) are tabled in Parliament early in the financial year and provide information on the overall strategic directions of GBEs.

The Committee notes that GBEs have responded positively to the requirement to prepare SCIs as set out in section 2.5 of the *1997 Governance Arrangements*. Several GBEs, however, did refer to the need to strike a balance in providing a clear picture of strategy without disclosing commercially sensitive information. It was suggested to the Committee that any widening of the scope and detail of SCIs should be approached with care, so that GBEs were not placed in a position of competitive disadvantage. The Committee supports this view.

## Annual Report

The CAC Act, Corporations Law and the 1997 Governance Arrangements set out the requirements for annual reporting by GBEs. Most GBEs indicated that the reporting requirements were appropriate. Some GBEs, however, indicated that the reporting requirements were excessive and went beyond what their competitors were required to do. The Committee notes the latter concerns but cautions against measures that may reduce the accountability of GBEs to Parliament. As stated previously in this report, GBEs control assets of some \$41 billion. The responsibility and accountability for these assets cannot be taken lightly. It seems fair to the Committee that shareholder Ministers and the Parliament may demand and require more information than what would be the norm in the private sector.

### The Senate Estimates process

A number of GBEs and portfolio departments made comments regarding the appropriateness of the Senate Estimates process as an additional accountability mechanism. Telstra, in particular, indicated that appearing at Senate Estimates hearings created an additional cost burden in terms of time and human resources devoted to this task. In addition, Telstra was concerned that questioning at Senate Estimates could lead to the release of commercially sensitive information which could disadvantage it against its competitors. In view of these concerns, Telstra advised that it should be exempt from the Senate Estimates process.

Other GBEs were less concerned about the Senate Estimates process. Employment National (EN) pointed out that while it was not Budget funded it has been required to attend Senate Estimates. EN indicated that where matters relating to commercially sensitive information have been raised, it has refused to make available that information. Medibank Private indicated that the burden of appearing at Senate Estimates has been minor. It suggested that the onus of appearing at Senate Estimates was probably no greater than appearing at an annual general meeting of a publicly listed company.

The Department of Transport and Regional Services (DTRS) proposed that, in view of GBE concerns about commercially sensitive information being released through Senate Estimates, scrutiny should be conducted in-camera by other Parliamentary Committees.

The Committee acknowledges some of the concerns that GBEs have about Senate Estimates. There is a cost involved in appearing and there is always the risk that commercially sensitive information could be released. While Telstra admitted that no commercially sensitive information has yet been released through Senate Estimates, the risk remains that Telstra and other GBEs could be seriously disadvantaged in the market place if this were to occur.

The Committee notes that the Senate Procedure Committee dealt with some of these issues in its first report of 1995. The Procedure Committee concluded that a 'body which receives no funding through appropriations and which does not affect the appropriations should be regarded as beyond the scope of the estimates hearings.' This statement suggests that large GBEs, such as Australia Post and Telstra, are obviously off-budget and should be exempt.

Senate Committees have autonomy, subject to Senate Standing Orders, to determine how they choose to scrutinise executive government. However, all Parliamentary Committees, including Senate Legislation Committees performing their estimates function, must take a responsible position when dealing with matters that are commercial-in-confidence. This is of particular concern during estimates hearings as these must be conducted in public and all material received must be published.

The Committee suggests that there is the need for greater clarity and coherence in the way Parliamentary Committees examine commercial matters of GBEs. Therefore, the Committee recommends that the Minister for Finance and Administration develop draft guidelines for the scrutiny by Parliamentary Committees of commercially confidential issues relating to GBEs. The draft guidelines should be submitted to the Joint Committee of Public Accounts and Audit for approval.

#### **Recommendation 6**

**That the Minister for Finance and Administration develop draft guidelines for the scrutiny by Parliamentary Committees of commercially confidential issues relating to GBEs. The draft guidelines should be submitted to the Joint Committee of Public Accounts and Audit for approval.**

### **Competitive Neutrality**

The issue of competitive neutrality is one which is referred to by a number of GBEs across the range of reporting and accountability requirements addressed in this inquiry. Broadly, these GBEs argue that while they satisfy requirements to ensure they do not enjoy competitive advantages over their private sector competitors, they themselves are disadvantaged by additional governance and accountability measures imposed by the Commonwealth.

The Committee understands the line of argument of these GBEs. However, the Committee also recognises, as do some GBEs, that the Commonwealth as majority shareholder is entitled to require GBEs to satisfy additional measures in the

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interests of public accountability. The Committee was not provided with definitive evidence demonstrating that some of the additional reporting requirements placed on GBEs was creating significant disadvantage. The Committee, however, is aware that any disadvantage placed on GBEs can impact on returns to the Commonwealth.

## 6 RISK MANAGEMENT

The Government is exposed to many risks through its ownership of GBEs, including financial, operational, political and reputational risks. Therefore, the Government considers it is essential to ensure that the risk management strategies of all Commonwealth GBEs are operating effectively. The board of a GBE is wholly responsible for identifying, monitoring and controlling all risk that may affect the operations of a GBE.

Risk management issues were discussed during the inquiry. GBEs and government departments demonstrated to the Committee that risk management strategies, as part of the governance arrangements are, at present, operating satisfactorily and effectively. The Committee was pleased to note that all GBEs, who appeared at the inquiry, recognised the importance of risk management.

Audit committees are playing an increasingly important role in corporate governance, and more specifically, in the area of risk management. The Committee notes that Telstra's internal audit function is conducting a risk management assessment function. The Australian National Audit Office, in its better practice guide, proposed that audit committees should have a role in risk management including approving and monitoring policies for reporting risk management and internal control.

The 1997 Governance Arrangements devote a section to managing risks although there is no mention of the role of audit committees in this process. The Committee, therefore, recommends that the risk management responsibilities of audit committees be included in the Governance Arrangements for Commonwealth GBEs, under Part 4, *Managing Risk*.

The Committee lastly touched upon the merits of external risk reviews. Such reviews involve an independent assessment of the organisation's risks. Australia Post and Medibank Private discussed the benefits of carrying out periodic external risk reviews. Both GBEs informed the Committee that an external risk review provided their management with assurance that they had suitable risk management strategies in place. Other GBEs, however, expressed concerns

regarding external risk reviews. They did not wish external risk reviews to become part of the governance arrangements as they believed it would be an additional requirement that the private sector did not have to adhere to. The Committee acknowledges the advantages of external risk reviews, however, it does not consider they should be obligatory for all Commonwealth GBEs.

#### **Recommendation 7**

**That the Minister for Finance and Administration amend Part 4, *Managing Risks*, of the 1997 *Governance Arrangements for Commonwealth GBEs* to include requirements setting out the risk management responsibilities of audit committees.**