

## Chapter 2

### Background to the proposed changes to ACIAR

2.1 ACIAR is one of many statutory authorities established by the Australian Parliament.

#### What is a statutory authority?

2.2 A statutory authority in the Commonwealth sphere is a generic term for a body established through legislation for a public purpose.<sup>1</sup> Such bodies undertake functions of government or provide services to the community on behalf of government. Enabling legislation enunciates the specific set of arrangements under which a statutory authority will operate.<sup>2</sup>

#### The Uhrig Review

2.3 In November 2002, the Government commissioned a review of the corporate governance of statutory authorities and office holders. The main objective in undertaking this review was to improve the performance of statutory authorities and office holders and their accountability frameworks.<sup>3</sup> Mr John Uhrig AO, a well-known business leader and former chairman of Rio Tinto and Westpac, was appointed to conduct the review. He was to analyse the existing governance arrangements for statutory authorities and office holders and to identify reforms that might assist in improving the performance of these bodies, without compromising their statutory status.<sup>4</sup> The review was to address the selection process for board members and office holders, the mix of experience and skills required by boards, and their development and relationship to government.<sup>5</sup>

2.4 The committee has previously considered other bills pursuant to the Uhrig recommendations. In May 2006, the committee inquired into and reported on the *Provisions of the Australian Trade Commission Legislation Amendment Bill* and later

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1 Department of Finance and Administration, *Governance Arrangements for Australian Government Bodies*, August 2005, p. 4.

2 See Commonwealth of Australia, *Review of the corporate governance of statutory authorities and office holders*, 2003, p. 16.

3 The Hon John Howard MP, Prime Minister of Australia, Media release, 'Review of corporate governance of statutory authorities and office holders', 14 November 2002.

4 The Hon John Howard MP, Prime Minister, 'Review of corporate governance of statutory authorities and office holders', *Media Release*, 14 November 2002; Senator the Hon Nick Minchin, Minister for Finance and Administration, 'Australian Government Response to Uhrig Report', *Media Release 57/04*, 12 August 2004.

5 The Hon John Howard MP, Prime Minister of Australia, 'Review of corporate governance of statutory authorities and office holders', *Media Release*, 14 November 2002.

that year, in September, it inquired into and reported on the *Export Finance and Insurance Corporation Amendment Bill*. Both reports discussed the Uhrig Review in detail. In this report, the committee has focused on the review's most relevant findings and recommendations.

2.5 Under the terms of reference, the Uhrig Review was to develop a broad template of governance principles and arrangements that the government might wish to extend to statutory authorities and office holders. In determining the most appropriate structure and governance arrangements, it was to have regard to the 'unique status of the Commonwealth as owner or shareholder, as the sovereign government and the source of regulatory authority'.<sup>6</sup>

2.6 The government wanted statutory authorities and office holders assessed against these principles and then to implement reforms that would be taken on a whole-of-government basis.<sup>7</sup>

2.7 The review produced two governance templates which clearly delineated between statutory authorities whose major activities were commercial and those undertaking regulatory and service provision operations—the board template and the executive management template.

### ***Board template***

2.8 The board template was judged to be better suited to operate under a management structure that requires powers akin to those of a publicly-listed company board.<sup>8</sup> The review recommended that governance boards be used in statutory authorities only where they can be given the full power to act.

2.9 In Mr Uhrig's view, a board did not provide the appropriate governance structure for statutory authorities operating as service providers or regulators.<sup>9</sup> He developed an executive management template to accommodate such statutory bodies.

### ***Executive management template***

2.10 The executive management template has a more limited governance structure headed by a Chief Executive Officer (CEO) who is directly responsible to the relevant minister. It recognises that the role of the minister in the governance of some statutory authorities may be considered to be equivalent to that of a single owner of an

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6 Uhrig Review, Appendix A, p. 105.

7 The Hon John Howard MP, Prime Minister of Australia, 'Review of corporate governance of statutory authorities and office holders', *Media Release*, 14 November 2002.

8 Commonwealth of Australia, *Review of the corporate governance of statutory authorities and office holders*, 2003, p. 54.

9 Commonwealth of Australia, *Review of the corporate governance of statutory authorities and office holders*, 2003, p. 54.

organisation who would retain the right to direct the management on critical success factors, making a board redundant.<sup>10</sup> It assumes that full delegation of power is not appropriate and that the executive management group will be governed by the minister with support and advice from the department. The CEO bears the full responsibility and accountability for the governance and management of his or her agency.

### ***Commonwealth Authorities and Companies Act 1997 and the Financial Management and Accountability Act 1997***

2.11 The Uhrig Review also looked at the financial framework governing statutory authorities and recommended that the financial frameworks generally be applied based on the governance characteristics of a statutory authority, that is:

- The *Commonwealth Authorities and Companies Act 1997* (CAC Act) be applied to statutory authorities where it is appropriate they be legally and financially separate from the Commonwealth and are best governed by a board. They fit the Board template.
- The *Financial Management and Accountability Act 1997* (FMA Act) be applied to statutory authorities where it is appropriate they be legally and financially part of the Commonwealth and do not need to own assets. (Typically, this would mean Budget-funded authorities.) They fit the executive management template.

### **Government response to the Uhrig Review**

2.12 The government supported the two templates developed by Mr Uhrig. According to the Minister for Finance and Administration, Senator the Hon Nick Minchin:

Both templates detail measures for ensuring the boundaries of responsibilities are better understood and that the relationship between Australian Government authorities, Ministers and portfolio departments is clear.<sup>11</sup>

2.13 He announced that the government would implement the governance templates recommended in the review. The aim was to establish 'effective governance arrangements for statutory authorities' and achieve 'clarity in roles and responsibilities'. Ministers were directed to assess the statutory authorities within their portfolios against the governance templates. Senator Minchin explained that the

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10 Commonwealth of Australia, *Review of the corporate governance of statutory authorities and office holders*, 2003, p. 35.

11 Senator the Hon Nick Minchin, Minister for Finance and Administration, 'Australia Government Response to Uhrig Review', *Media Release 57/04*, 12 August 2004.

selection of the appropriate template would depend on the degree to which the authority 'has been delegated full power to act'.<sup>12</sup>

2.14 The Department of Foreign Affairs and Trade assessed ACIAR against the principles and recommendations of the Uhrig Review. The assessment found that an executive management template would be the most suitable governance structure for ACIAR.<sup>13</sup>

2.15 The following chapter examines the specific provisions of the bill enabling that transition in light of the recommendations of the Uhrig Review.

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12 Senator the Hon Nick Minchin, Minister for Finance and Administration, 'Australia Government Response to Uhrig Review', *Media Release 57/04*, 12 August 2004.

13 *Submission 1*, p. 3.