

## Chapter 2

### The Uhrig Report and the proposed changes to EFIC

2.1 The Export Finance and Insurance Corporation is only one of many statutory authorities established by the Commonwealth Parliament.

2.2 In its previous report on proposed changes to Austrade, the committee provided a detailed discussion on Commonwealth statutory authorities and the Uhrig Report.<sup>1</sup> The following section contains a shortened account of this discussion in order to provide background to the proposed legislation.

#### What is a statutory authority?

2.3 A statutory authority in the Commonwealth sphere is a generic term for a body established through legislation for a public purpose.<sup>2</sup> Such bodies undertake functions of government or provide services to the community on behalf of government. There are over 160 Commonwealth statutory authorities, many of which do not share the same characteristics. Differences are found in their governance structures; their status as legal entities separate from the Commonwealth; the extent of their independence from political influence and departmental controls; their level of accountability to government and the Parliament; and the financial management legislation that applies to them.<sup>3</sup> Enabling legislation enunciates the specific set of arrangements under which a statutory authority will operate.<sup>4</sup>

2.4 In recent years concerns have been expressed about the proliferation of statutory authorities, the appropriateness of their structure for their given functions, and the selection process for board members and office holders. Questions have also been raised about their relationship with the relevant Commonwealth department and

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1 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Provisions of the Australian Trade Commission Legislation Amendment Bill 2006*, pp. 3–11.

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

3 *Review of the corporate governance of statutory authorities and office holders*, Commonwealth of Australia, 2003, p. 16. See also Shaun Gath, 'Good Governance and Whole of Government: The Challenge of Connecting Government', *Public Administration Today*, July–October 2005, p. 18; Christos Mantziaris, *Ministerial Directions to Statutory Corporations*, Parliament of Australia, Parliamentary Library, Research Paper 7 1998–99, 8 November 1998, p. 3. He wrote that statutory corporations possess governance structures which are idiosyncratic.

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

their minister and the financial framework and accountability regime governing such bodies.<sup>5</sup>

2.5 During the election campaign in October 2001, the Prime Minister, the Hon John Howard MP, acknowledged that the government had 'an obligation to ensure its dealings with Australian business are efficient, fair and transparent'. He announced that a re-elected Coalition government would 'focus on improving the structures and the governance practices of its Statutory Authorities and Office Holders, with particular attention being paid to those that impact on the business community'.<sup>6</sup>

### **The Uhrig Report**

2.6 Consistent with this undertaking, 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>7</sup> Mr John Uhrig, 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>8</sup> The review was to address the selection process for board members and office holders, the mix of experience and skills required by boards, their development and their relationship to government.<sup>9</sup>

2.7 The terms of reference asked the review to develop a broad template of governance principles and arrangements that the government may 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'.

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5 In general this concern accompanied similar concerns sparked by a number of high profile corporate failures in the private sector. See introduction to Parliamentary Joint Committee on Corporations and Financial Services, *CLERP (Audit Reform and Corporate Disclosure) Bill 2003, Part 1, Enforcement, executive remuneration, continuous disclosure, shareholder participation and related matters*, June 2004, pp. 1–3.

6 Prime Minister, 'Securing Australia's Prosperity', 15 October 2001.

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

8 Press release, the Prime Minister, the Hon. John Howard, 14 November 2002 and *Securing Australia's Prosperity*, 2001 and Media Release, Senator the Hon Nick Minchin, Minister for Finance and Administration, 'Australia Government Response to Uhrig Report', 12 August 2004.

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

2.8 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>10</sup>

2.9 The Uhrig report produced two governance templates which clearly delineated between statutory authorities whose major activities were commercial and those undertaking regulatory and service provision operations.

***Board template—for authorities undertaking commercial operations***

2.10 In considering whether boards would provide effective or appropriate governance for statutory authorities, the Uhrig Report found that for a board to perform effectively, the government must delegate to it the full power to act. It stated:

In addition to internal strategy setting, the board should be responsible for the supervision of management, the oversight of risk and the ability to appoint and terminate the CEO. In situations where it is feasible to delegate the full power to act, such as commercial operations, a board will provide an effective form of governance.<sup>11</sup>

2.11 Thus, 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>12</sup> In Mr Uhrig's view, a board did not provide the appropriate governance structure for statutory authorities operating as service providers or regulators.<sup>13</sup>

2.12 He noted that there were a number of circumstances in which Parliament and government may choose not to provide a wide-ranging power to act, instead, to establish a narrow set of outputs to be delivered by a statutory authority. He explained:

In these circumstances a parallel can be drawn to closely held companies where a limited delegation of power, and the influence of a limited number of parties controlling the entity, indicate that an independent board may not provide the best governance. In circumstances where government is not providing a broad delegation it is likely that holding either chief executives or commissioners directly accountable for performance will produce better governance.<sup>14</sup>

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

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

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

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

14 *Review of the corporate governance of statutory authorities and office holders*, Commonwealth of Australia, 2003, Executive Summary, p. 5.

2.13 The report recommended that governance boards should be used in statutory authorities only where they can be given the full power to act.

2.14 Mr Uhrig then sought to identify an alternative governance structure for statutory bodies where it was deemed not proper or possible for the minister to delegate full responsibility. The Uhrig Report developed an executive management template to accommodate such statutory bodies.

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

2.15 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 organisation who would retain the right to direct the management on critical success factors, making a board redundant.<sup>15</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.

## **Government response to the Uhrig Report**

2.16 The government approved of 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>16</sup>

2.17 He announced that the government would implement the governance templates recommended in the report. 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 selection of the appropriate template would depend on the degree to which the authority 'has been delegated full power to act'.<sup>17</sup>

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

16 Media Release, Senator the Hon Nick Minchin, Minister for Finance and Administration, 'Australia Government Response to Uhrig Report', 12 August 2004.

17 Media Release, Senator the Hon Nick Minchin, Minister for Finance and Administration, 'Australia Government Response to Uhrig Report', 12 August 2004.

2.18 EFIC was assessed as part of the implementation of the government's response to the Uhrig Report and the government's undertaking to ensure that Australia has 'the most effective accountability and governance structures across the whole of government'.<sup>18</sup>

2.19 The following chapter examines the specific provisions of the bill in light of the recommendations of the Uhrig Report and the government's intention to establish effective governance arrangements for its statutory authorities.

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18 Export Finance and Insurance Amendment Bill 2006, Second Reading, Senate *Hansard*, 16 August 2006, p. 1.

