

# on board

guide to better  
practice for  
public sector  
governing and  
advisory boards







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for public sector governing  
and advisory boards

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# introduction

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There are over 600 governing boards or advisory boards/committees in the NSW public sector. The Audit Office of NSW has estimated that they incur a cost in excess of \$73 million per annum. The public needs to be confident that these boards and committees are adding value.

The Audit Office of NSW has undertaken a performance audit of corporate governance in the NSW public sector. The audit included:

- a survey of the governance practices of boards and committees
- case studies to illustrate governance in practice.

The results of the audit were presented to the NSW Parliament in June 1997, in two reports:

*Volume One: Corporate Governance in Principle* examines governance models, legislation, policies, administrative arrangements and conventions.

*Volume Two: Corporate Governance in Practice* presents survey results and case studies of board and committee practices. A *Supplement to Volume Two: Survey Findings* details the survey results.

The Audit Office identified seven types of NSW public sector organisations which are governed or advised by a board or committee:

- universities
- budget sector companies
- statutory, regulatory authorities
- company State Owned Corporations (SOCs) (*these operate under Corporations Law*)
- statutory SOCs (*these operate under SOC legislation*)
- non-corporatised Government Trading Enterprises (GTEs)
- other statutory and non-statutory bodies and authorities.

The performance audit found that in most organisations with a board or committee, there was confusion about the respective roles, powers, responsibilities and accountabilities of the Minister/s, the board and the Chief Executive Officer (CEO). There are a wide variety of governance arrangements in operation across the spectrum of boards and committees. This is partly due to differing arrangements set out in relevant legislation and gaps in legislative detail which have been addressed in a variety of ways.



Under current arrangements, governing boards of SOCs have accountabilities to Shareholding Ministers and Portfolio Ministers, as well as to Ministers who are responsible for industry-wide regulation. Non-corporatised Government businesses have different accountability and control arrangements. The large number of statutory and non-statutory bodies and authorities have a wide array of governance arrangements. As a result of uncertainty and confusion on governance aspects, The Audit Office observed that many governing boards operate as high level advisory management committees.

The audit also found that board and committee practices fell short of standards expected in a professional boardroom culture.

## aim of this Guide

The aim of this Guide is to assist governing boards or advisory boards/committees (hereafter referred to as boards) to:

- review present corporate governance practices
- compare them with “better practice”
- develop strategies for continuous improvement.

This Guide does not set out compliance requirements or override any existing requirements to which boards and committees may be subject.

## what’s in it?

This Guide addresses ten key factors that impinge on board effectiveness and efficiency. These factors are:

1. the role of the board
2. the role of the Chair
3. the role of the CEO
4. board committees
5. appointments
6. induction and training
7. board meetings
8. standards
9. risk management and liability
10. reporting and evaluation.

The Guide is divided into two sections. The first section outlines the better practice principles of these ten factors and provides some of the findings of the performance audit to illustrate board practices.

The second section consists of ten checklists (one for each factor) which address better practice standards. Each checklist allows a board to:

- test whether it is meeting better practice (by using a list of questions)
- identify actions for improvement.



## who should use this Guide?

This Guide can be used by both governing and advisory boards and committees. However, particular issues which must be addressed by governing boards only are highlighted.

A board needs to decide who will review its governance practices. Options include:

- the Chair
- the Chair and one other member
- the board as a whole
- a governance committee
- the board/company secretary or equivalent
- external reviewer such as an auditor.

If the review is conducted by selected board members and/or external reviewers, results should be presented to the board for confirmation, evaluation and development of action plans.

Reviews of governance practices should be conducted periodically and should complement other board planning and evaluation processes.

## acknowledgments

The NSW Premier's Department has endorsed this Guide.

The NSW Audit Office would like to thank those boards/committees and individuals who provided input for this Guide.

Chris Wheeler, Deputy Ombudsman contributed many valuable thoughts and ideas which were particularly appreciated.

The NSW Audit Office staff responsible for both the performance audit and this Guide were: Stephen Horne, Director Performance Audit; Tania Sweeney, Senior Performance Audit Manager and Sonia Danzo, Senior Performance Audit Clerk. The original illustrations were created by Shane Collinge. Cover design was by Ruth Downes and Sally Robinson.



better practice principles

# 1. the role of the board

---

## all boards:

The purpose of having a board is to provide effective leadership, and/or advice to an organisation. A board should bring independent judgement to decisions affecting the organisation.

A board adds value to the decision-making process when its role, responsibilities and accountability are clear. Legislation should clarify whether it is a governing or an advisory board. Where legislation does not do this, a board should seek clarification with its Minister/s.

## governing boards:

Corporate governance refers to the control and direction, or stewardship, given to an organisation by a governing board.

In the public sector, corporate governance is also about how Parliament, Ministers and boards relate to one another in stewardship matters.

A governing board needs to understand that governance functions include:

- setting strategic direction
- liaising with stakeholders
- ensuring compliance with statutory requirements
- managing risk
- monitoring organisational performance.



The  
Performance  
Audit found



that most boards do not fully understand their governance role. The majority of surveyed boards (80%) perceived that their major function was ensuring proper resource management. This is the responsibility of the CEO. Only 57% of boards perceived establishing and communicating objectives, corporate strategy and vision as major functions for the board. Only 32% perceived monitoring management's performance as a major responsibility.

**FreightCorp has prepared an induction booklet for Board members, *Corporate Governance in FreightCorp*, which includes information on:**

- the concept and definition of corporate governance as it relates to FreightCorp
- relevant legislation
- the roles of key stakeholders
- the role, responsibilities and accountability of the Board
- Board structure and committees
- members' responsibilities under relevant legislation
- management's responsibilities
- corporate governance initiatives.



## 2. the role of the Chair

### all boards:

The Chair provides leadership to, and promotes cohesiveness, effectiveness and functioning of, a board. A major responsibility of the Chair is to ensure that individual members make an effective contribution.

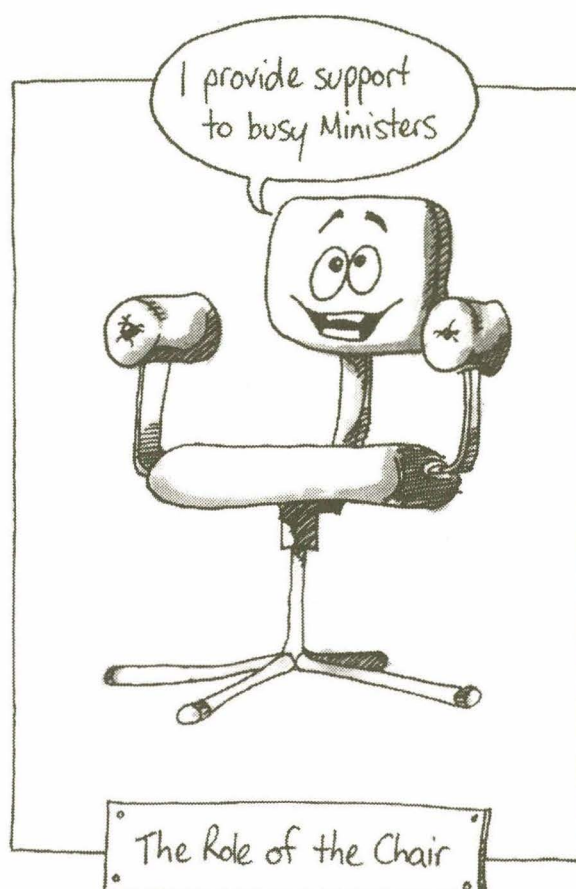
The Chair is pivotal in developing good relationships between the key stakeholders: the Minister/s, the board and the CEO.

The  
Performance  
Audit found



that a Minister was more likely to meet with the Chair or CEO than with the board. Survey results (where responses were not mutually exclusive) indicated that, over a 12 month period, a Minister had meetings with:

- a) the Chair (57%)
- b) the Chair and CEO (50%)
- c) the CEO (43%)
- d) the board (32%).



The Board of Hunter Water Corporation has developed a Memorandum of Understanding between the Portfolio Minister, the Board and the CEO to clarify roles and responsibilities. A five year action plan based on this Memorandum has been developed and is reviewed annually.

## 3. the role of the CEO

### all boards:

CEOs are not simply administrators. They are expected to provide leadership and strategic management to the organisation as well as policy advice to the relevant Minister.

The roles of the CEO and the board need to be differentiated if an organisation is to be efficient, effective and accountable.

The  
Performance  
Audit found



that the leadership and strategic management roles of the CEO are poorly differentiated from those of the board.

The confusion and tension is exacerbated when a governing board does not appoint its CEO and/or does not have a Performance Agreement with him/her. A governing board, rather than a Minister (or Ministers) should have powers and responsibilities to appoint its CEO if the board is to be fully accountable for its actions and decisions.





## 4. board committees

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### all boards:

Board committees can distribute the workload and enable detailed consideration to be given to important matters. An appropriately constituted committee can also offer advice on sensitive matters.

The effectiveness of a committee is enhanced when it has:

- an appropriate number of members
- a majority of non-executive members
- a clear charter
- procedures for reporting to the board.

### governing boards:

A governing board should at least have an audit committee and a governance committee.

The role of an audit committee is to assist the board to:

- review the organisation's financial statements
- ensure internal control systems are in place
- appoint or liaise with auditors
- oversight the audit process
- review and act on audit reports.

The role of a governance committee is to evaluate the board's strategy and performance.

The  
Performance  
Audit found



that 44% of boards had an audit committee and 4% had a governance committee. Of those boards with committees, 27% did not have any terms of reference or a charter to document their authority, duties and reporting procedures.



# 5. appointments

## all boards:

A majority of board members should be non-executive because they bring an independent view to decision-making. Appointments of these members need to take into account:

- the current and future needs of the board
- the current skill mix of the board
- the extent to which the board’s membership should reflect the demography and views of the general community.

## merit appointments

Appointments should be made on the basis of merit. This means that candidates must be able to demonstrate excellence in relevant skills and achievements.

It is possible under some circumstances that political affiliations would constitute an irreconcilable conflict with members’ duties. Therefore, candidates should be required to declare any significant political activity which they had undertaken in the previous five years. This might have included holding office or standing as a political candidate.

Members should not be chosen primarily on the basis that they represent a particular group of individuals or organisations, except where enabling legislation provides for this. In these instances, board positions are not advertised. Even so, organisations should be encouraged to nominate candidates who fulfil merit criteria. Similarly, a staff member elected to a board position should meet merit criteria.

## appointment processes

Appointment processes should be transparent. Position descriptions specifying the merit criteria should be advertised. The advertising costs and logistics of interviewing candidates need to be recognised as a cost of appointing members.

The  
Performance  
Audit found



that selection, appointments and re-appointments may not always be transparent. In most cases, criteria for appointments to boards were not open to public scrutiny. 35% of surveyed boards did not re-assess a position when a vacancy occurred.

*The following is an extract from an advertisement calling for Advisory Board members for the Home Care Service of NSW, 7 February 1998. The advertisement sets out selection criteria for board membership.*

**NSW GOVERNMENT  
HOME CARE SERVICE OF NSW  
VACANCIES FOR PART-TIME ADVISORY BOARD MEMBERS**

Expressions of interest are invited for the Home Care Service of NSW Advisory Board, in accordance with the Home Care Service Act, 1988, as amended.

The Home Care Service is a statutory corporation, with an Advisory Board chaired by the Director-General of the Department of Community Services and managed by a General Manager.

Services are provided to those who have difficulty in managing their own homes. The aim is to maintain the independence of customers and disadvantaged members of the community are given priority access to service.

Critical issues for Government include: efficiency and effectiveness, quality customer service, co-ordination of service delivery, contracting out and partnerships.

*The Home Care Service Act sets out the Advisory Board's role as:*

- ☐ *furnish reports to the Home Care Service on matters relating to domiciliary services;*
- ☐ *advise on matters which may be referred by the Director-General; and*
- ☐ *advise the Service on matters of concern in relation to the work of the Hostel & Care Program that are referred to it by the Director-General.*

Additional part-time members of the Advisory Board are to be appointed by the Governor. Members initially will be appointed for a term of up to three years.

Leadership experience, business/management experience and awareness of human services are essential. A high regard will be placed on experience in the management and provision of: Aboriginal services; NESB services; disability services; aged services; commercial practices in the human services industry; and quality customer service.

Prospective members should outline the contribution they expect to make to management performance on matters critical to the success of the Home Care Service in efficiently providing an effective range of services for the community.



## 6. induction and training

### all boards:

Members should be provided with thorough induction and training programs. These programs should cover:

- information about the public sector
- the impact of the agency's legislation on the role of the board (*see 1. the role of the board*)
- information about the organisation
- board procedures
- care, skill and diligence obligations
- the kind of environment in which the board operates (e.g. government policies, business context etc.).

The Performance Audit found that there was considerable variation in the forms of induction used by boards. Over half of the boards surveyed provided new members with a copy of the relevant legislation and briefings; one fifth provided briefings only; while 15% provided copies of the legislation only.



The Health Professionals' Registration Board has developed a two pronged strategy to assist board members understand their roles, responsibilities and liabilities.

First, the Board provides an orientation for members together with a comprehensive package of material including legislation, code of conduct, a list of current issues in the field and details of administrative arrangements for the Board.

Second, the Crown Solicitor's Office developed an education program for the Health Professionals' Registration Board on the roles and responsibilities of members. This program has been trialled and evaluated. Future programs targeted to particular professional groups will cover:

1. criminal law enforcement - the role of the health professionals registration boards
2. administering legislation
3. disciplinary proceedings against health professionals
4. practice and procedure in disciplinary proceedings.





## 7. board meetings

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### all boards:

Effective and accountable decision-making processes require:

- careful preparation of the agenda
- papers being circulated well in advance of meetings
- meetings being conducted in ways that allow frank and open discussion
- defining the parameters for the way in which the board conducts business
- recording decisions, discussion and dissent
- ensuring minutes are accurate
- having rules about access to information
- being able to seek independent and external professional advice at the organisation's expense.



The  
Performance  
Audit found



that:

- attendance at board meetings was high, with most boards reporting at least 90% member attendance
- meetings were frequent, usually once per month with the exception of the university councils which tended to meet once every two months
- there was considerable variation in the duration of board meetings, with two-thirds of boards meeting for three hours or less
- the pattern for distribution of agenda papers varied widely, with 65% of boards distributing their agenda papers five days or less before a scheduled meeting
- 26% of boards had minutes which sometimes or only seldom indicated the basis for decisions
- 61% of boards recorded dissent on an agenda item in the minutes
- 80% of boards obtained their information about the organisation from the CEO.

**Case S is a GTE where the Chair imposed a strict regime for Board meetings in order to increase efficiency. The Secretary of the Board produced a proposed agenda 10 days before a scheduled meeting. Once the Chair authorised the agenda, the Secretary prepared and distributed agenda papers one week before the meeting. Each agenda item was supported by a summary of the item which stated the purpose, issue, options and recommendations. This approach meant the paper was focused, meetings were efficient, effective and facilitated the writing of minutes.**



Broken Hill Water Board has drafted its own extensive procedures and standing orders as part of their quality assurance program. The procedures and standing orders include information on:

- the Board's constitution, purpose, charter
- induction materials
- roles, responsibilities and activities of key stakeholders
- reporting
- standards
- responsibilities of the Board to key stakeholders
- processes, methods and responsibilities of the Board for the management of the organisation
- processes, methods and responsibilities of managers for reporting to the Board
- record keeping.





# 8. standards

## all boards:

Professionalism requires that a board member acts with integrity, care, skill and diligence in the interests of the organisation. A board should establish appropriate standards of behaviour based on the principles of selflessness, objectivity and honesty.

A board should have:

- a code of conduct
- a register of related party transactions
- a register of pecuniary interests.

There should be a mechanism to allow for full disclosure of actual and perceived conflicts of interest. Opportunity for disclosures should occur on appointment, between meetings and during meetings.

In some cases, legislation may guide the board in developing policies and procedures. For example, under the NSW SOC Act, a board member is obliged to disclose his/her interests. The legislation requires that:

- the disclosure must be recorded in the board's minutes
- the member must not vote on the matter or a resolution in relation to the matter
- the member must not be present while the issue is being considered.

The Performance Audit found that:

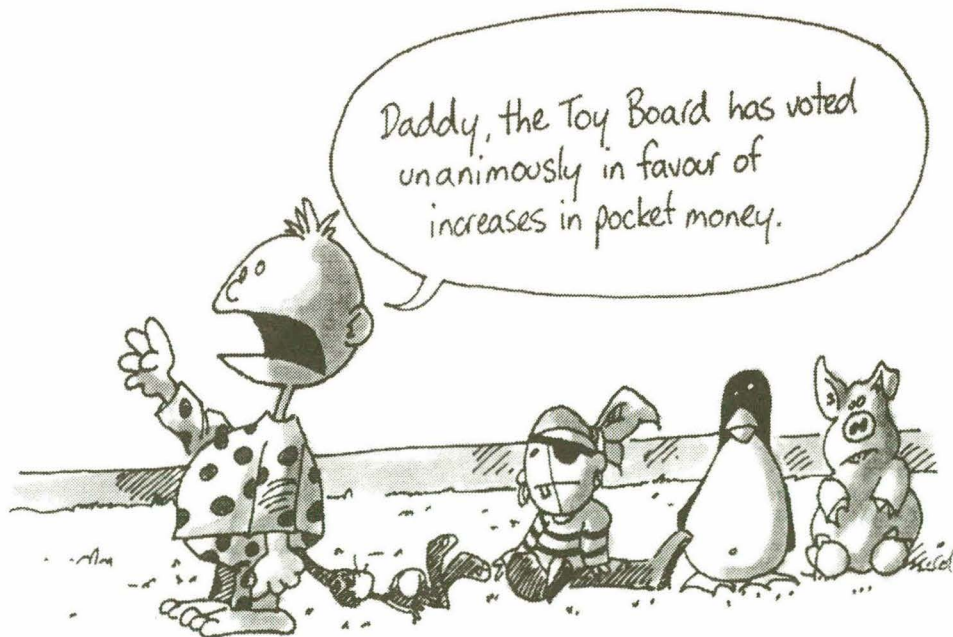


- 50% of boards had a register of conflicts of interest
- 37% had formal disclosure procedures for related party transactions
- 36% had adopted and endorsed a code of ethics.

**Harness Racing New South Wales has an extensive code of conduct for Board members. It covers matters such as:**

- the Board's role
- members' duties
- conflicts of interest
- notification of suspected corrupt conduct
- dissent
- confidentiality of information
- improper or undue influence.

**This code was developed with the assistance of the Independent Commission Against Corruption and is published in the Board's Annual Report.**



# 9. risk management and liability

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## all boards:

A board member needs to understand his/her risks and liabilities and needs to exercise a reasonable degree of care, skill and diligence in carrying out his/her role.

Boards need to have risk management strategies including appropriate internal controls. They should understand better practice guidelines and reporting obligations such as:

- *Fraud Control: Developing an Effective Strategy* (March 1994)
- *Statement of Best Practice for Internal Control and Internal Audit* (June 1995) and the sign-off of the *Statement of Responsibility*
- *Risk Management and Internal Control* (September 1997)
- annual reporting (including how they assess, manage and monitor risk)
- Corporations Law requirements, if applicable.

The  
Performance  
Audit found



that there was considerable confusion as to members' liabilities. Some boards had sought "expert" advice regarding liabilities, often at considerable cost. Agencies had also insured members, although the extent of their liabilities was uncertain.

**FreightCorp has introduced a risk management strategy to identify and manage operational and strategic risks. This includes the development of strategic and operational risk profiles. The process follows the Australian Risk Management Standard. The Board's Compliance Committee assists the Board in ensuring FreightCorp complies with its legal obligations, including trade practice law, occupational health and safety, rail safety and environmental law.**





# 10. reporting and evaluation

## reporting

### all boards:

Boards should report their corporate governance practices and achievements in an Annual Report.

The Australian Stock Exchange Listing Rule 3C(3)(j) provides for its members an indicative list of corporate governance practices on which they might report. These include:

- the non-executive composition of the board
- the nomination and selection processes
- terms and conditions related to the appointment of non-executive members
- access to information
- risk management strategies
- ethics.

The  
Performance  
Audit found



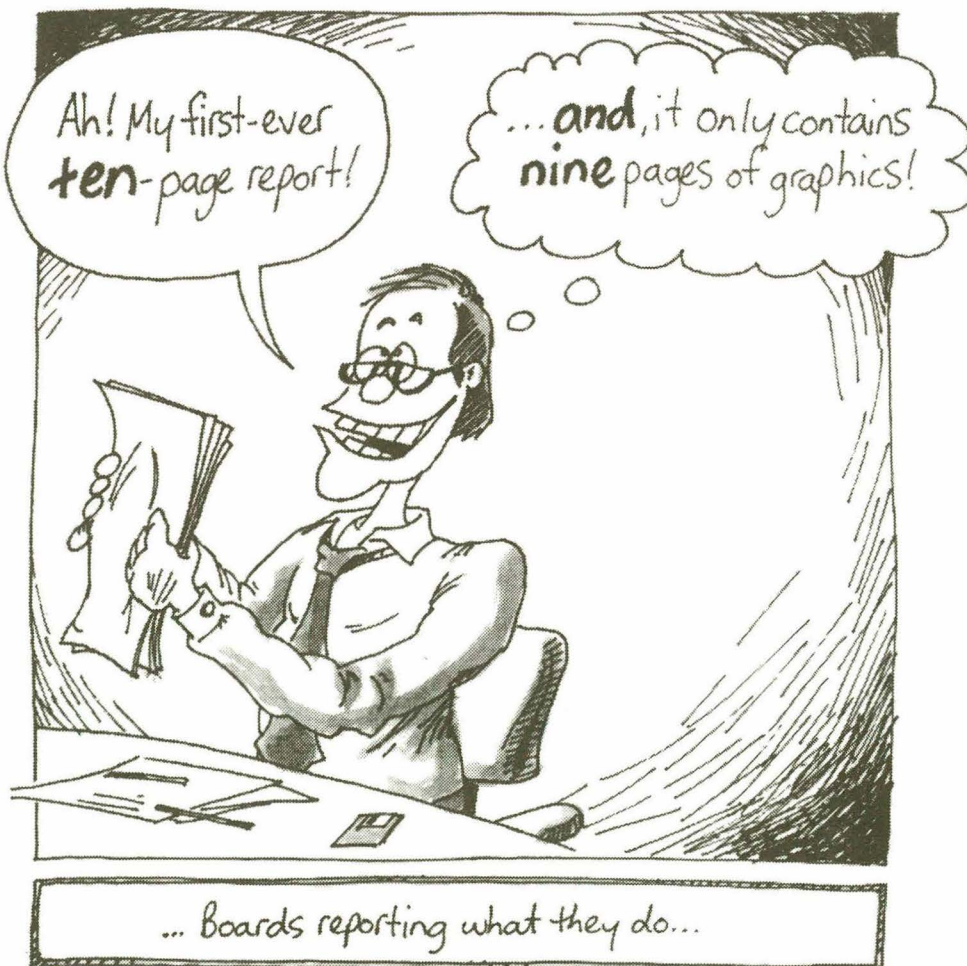
that 83% of boards stated that they reported governance practices in the Annual Report. Most (65%) reported the role and composition of committees; 42% reported ethical standards and practices adopted and 33% reported on internal controls.

**The FreightCorp Board reports its activities in the Annual Report of the organisation. In its latest report, the Board has explained its strategy to clarify roles and reporting arrangements of key stakeholders. It outlines the focus of the Board for the past year, activities of committees and its approach to risk management.**

The Credit Union Services Corporation (Australia) Limited (CUSCAL) includes a comprehensive *Governance Statement* in its Annual Report. The Statement covers:

- Board responsibilities
- membership of the Board
- special tasks allocated to Board members
- committee membership, responsibilities and duties, advisory committees and task forces
- principles underpinning governance practices
- ethical standards
- role of shareholders.

CUSCAL is not a public sector agency. It is a peak body providing business services to member credit unions. However, aspects of its governance practices have been cited because they illustrate better practice.





## evaluation

### all boards:

A board should monitor and evaluate its performance in order to determine the extent to which it is assisting the organisation achieve its purpose. This should involve evaluating:

- the performance of the board as a whole
- the workload of the board and the number of positions it needs (legislative provisions here may need to be reviewed)
- the contribution of individual members against pre-determined criteria.

The relevant Minister should also evaluate the performance of the board and have a Performance Agreement with it.

Benchmarking key performance indicators of the board should be considered.

#### The Performance Audit found



#### limited evaluation of board performance:

- 66% of boards had no Performance Agreement with the Minister
- 31% had no formal arrangements in place to assess the board's performance
- 35% reviewed the organisation's rather than the board's performance.



The Credit Union Services Corporation (Australia) Limited has introduced a rigorous assessment for both Board and individual member performance. Twice a year Board members are asked to assess processes and their understanding of procedures. Each Board member is asked to evaluate their understanding of:

1. processes
  - the requirements of members
  - goals and policies
  - use of members' expertise
  - committee structures
  - board papers
  - internal control
2. code of conduct
  - disclosure of members' interests
  - confidentiality
  - behaviour
3. conflict of interest
  - understanding of responsibilities
  - handling of declarations.

The performance of individual members is also evaluated. Each member assesses his/her own performance with an assessment being given by the Chair and an independent (elected) member. The Chair discusses the results and any need for training with the individual members. The Chair's performance is evaluated by the Deputy Chair and another member.

The Competency Assessment of members includes:

- strategy development
- risk management
- diligence
- leadership
- accountability
- judgement
- team performance
- networking
- mentoring.







checklists

# 1. the role of the board



## all boards:

1. Are the board's role, responsibilities and accountability:
  - clearly defined in legislation? \_\_\_\_\_
  - defined in other documents (e.g. the corporate plan)? \_\_\_\_\_
2. Are the board's role, responsibilities and accountability as defined in legislation relevant and appropriate to its:
  - current needs? \_\_\_\_\_
  - likely future needs? \_\_\_\_\_
3. Do the board's powers and accountability match its governing or advisory role? \_\_\_\_\_
4. Is there an understanding between the relevant Minister and the board on the:
  - role, responsibilities and accountability of the board?  
(see checklists 3 and 9) \_\_\_\_\_
  - role, responsibilities and accountability of the CEO?  
(see checklists 3 and 9) \_\_\_\_\_
  - strategic direction of the organisation? \_\_\_\_\_
  - goals of the board? \_\_\_\_\_
  - performance expectations of the board? \_\_\_\_\_
5. Is each board member given a written explanation regarding his/her role and responsibilities at the time of appointment?  
(see checklist 5) \_\_\_\_\_

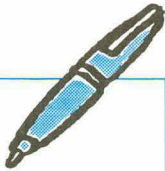


## **governing boards:**

6. Does the board:
  - set strategic direction? \_\_\_\_\_
  - manage risk? \_\_\_\_\_
  - monitor organisational performance? \_\_\_\_\_
  - ensure compliance with statutory requirements? \_\_\_\_\_
  - manage stakeholders? \_\_\_\_\_
7. Has the scope of governance functions undertaken by the board been approved by the relevant Minister? \_\_\_\_\_
8. Are the relevant Minister's powers to give directions to the board clearly defined in legislation? \_\_\_\_\_
9. Does the board understand under what circumstances the relevant Minister might exercise these statutory powers for giving directions? \_\_\_\_\_
10. Are Ministerial directions provided in writing? \_\_\_\_\_
11. Is there a clearly defined process for responding to, and reporting on, a Ministerial direction? \_\_\_\_\_
12. Does the board ensure that the organisation has an up-to-date:
  - corporate plan? \_\_\_\_\_
  - strategic plan? \_\_\_\_\_
  - business plan? \_\_\_\_\_
13. Do members know that:
  - they have an obligation to act in good faith and within their statutory powers? \_\_\_\_\_
  - they must exercise a reasonable degree of care, skill and diligence in carrying out their duties? \_\_\_\_\_



**action plan for improvement:**



## 2. the role of the Chair



### all boards:

1. Are the role and responsibilities of the Chair:
  - clearly defined in writing? \_\_\_\_\_
  - understood by the board? \_\_\_\_\_
  - approved by the relevant Minister? \_\_\_\_\_
  
2. Does the Chair assist team building within the board? For example do members:
  - receive briefings on their duties and responsibilities?  
(see checklists 5 and 6) \_\_\_\_\_
  - seek stakeholders' feedback? \_\_\_\_\_
  - share responsibility for presentations at board meetings? \_\_\_\_\_
  - prepare for the annual general meeting? \_\_\_\_\_
  - agree on the organisation's mission, goal, roles and objectives? \_\_\_\_\_
  - formulate indicators to measure the organisation's achievements? \_\_\_\_\_
  - prioritise key actions that need to be undertaken by the board? \_\_\_\_\_

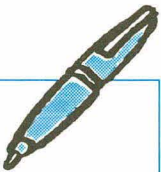
3. Does the Chair ensure that (*see checklist 7*):
- the board has a policy and procedures governing its meetings? \_\_\_\_\_
  - the policy and procedures are followed? \_\_\_\_\_
  - meetings are held regularly? \_\_\_\_\_
  - the agenda is prepared? \_\_\_\_\_
  - papers are distributed to members in advance of meetings? \_\_\_\_\_
  - sufficient time is allowed to discuss key issues? \_\_\_\_\_
  - members have the opportunity to make a contribution? \_\_\_\_\_
  - the board takes into account its statutory (and other) requirements when making a decision? \_\_\_\_\_
  - the minutes of meetings accurately record decisions? \_\_\_\_\_
  - the minutes of meetings reflect the views of individual members? \_\_\_\_\_
4. Has the Chair attempted to arrange with the relevant Minister adequate administrative support for the board? \_\_\_\_\_

## **governing boards:**

5. Does the legislation allow for the Chair to be appointed by the board? \_\_\_\_\_
6. Does the relevant Minister consult the board about the appointment of its Chair? \_\_\_\_\_
7. Is the Chair responsible for appraising the performance and contribution of board members? (*see checklist 10*) \_\_\_\_\_



**action plan for improvement:**



### 3. the role of the CEO



#### all boards:

1. Are the role and responsibilities of the CEO:
  - clearly defined in writing? \_\_\_\_\_
  - understood by the board? \_\_\_\_\_
  - approved by the relevant Minister? \_\_\_\_\_
  
2. Has the leadership role of the CEO, as distinct from that of the board, been clearly defined? (*see checklist 1*) \_\_\_\_\_
  
3. Is the relevant Minister's power in relation to the CEO's appointment, performance and termination defined in:
  - the relevant statute? \_\_\_\_\_
  - an employment contract? \_\_\_\_\_
  - a Performance Agreement? \_\_\_\_\_
  
4. Does the CEO:
  - assume responsibility for the day-to-day control of the organisation's operations? \_\_\_\_\_
  - ensure that there is an ethical working environment in the organisation? \_\_\_\_\_
  - provide balanced, adequate and relevant summaries of information to the board? \_\_\_\_\_
  - prepare adequate proposals and submissions to the board? \_\_\_\_\_
  - provide all relevant information to the board prior to its meeting to allow members sufficient time to study key issues? \_\_\_\_\_
  - prepare the budget? \_\_\_\_\_

- present the board with the organisation’s corporate, strategic and business plans for review and comment? \_\_\_\_\_
- present the board with these plans within an acceptable timeframe? \_\_\_\_\_
- establish proper internal controls, management information systems and accounting records? \_\_\_\_\_
- report to the board on the organisation’s compliance with all statutory requirements? \_\_\_\_\_
- assist board members in exercising their diligence obligations? \_\_\_\_\_

### governing boards:

5.

Does the legislation allow for the board to appoint the CEO?

\_\_\_\_\_
6.

Are there consultative arrangements between the relevant Minister and the board regarding the appointment of the CEO?

\_\_\_\_\_
7.

If there are consultative arrangements, is it clear under what circumstances the relevant Minister will consult the board?

\_\_\_\_\_
8.

Does the CEO:

■ implement the board’s policies? \_\_\_\_\_

■ communicate throughout the organisation the board’s policies and procedures? \_\_\_\_\_

■ have an employment contract with the board? \_\_\_\_\_

■ have a Performance Agreement with the board? \_\_\_\_\_

■ report to the board? \_\_\_\_\_
9.

Are the CEO’s reports to the board adequate?

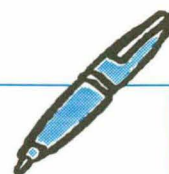
\_\_\_\_\_
10.

Does the board regularly review the CEO’s performance?

\_\_\_\_\_



**action plan for improvement:**



## 4. board committees



### all boards:

1. Does the board determine what committees it needs? \_\_\_\_\_
2. Is there a charter for each committee? \_\_\_\_\_
3. Does the charter define a committee's:
  - authority? \_\_\_\_\_
  - role and responsibilities? \_\_\_\_\_
  - activities? \_\_\_\_\_
4. For each committee, does the board evaluate:
  - the workload? \_\_\_\_\_
  - the time commitment? \_\_\_\_\_
  - the number of members required to fulfil these obligations? \_\_\_\_\_
5. Is each committee:
  - comprised of a majority of non-executive members? \_\_\_\_\_
  - chaired by a non-executive member? (for Local Government, the mayor and councillors would be regarded as non-executive members) \_\_\_\_\_

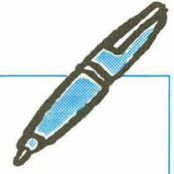
6. Does the board:
  - have procedures for committees to report to the board? \_\_\_\_\_
  - determine the frequency of reporting? \_\_\_\_\_
  - determine the format and quality of reports? \_\_\_\_\_
7. Has the board attempted to arrange with the relevant Minister adequate administrative support for the committees? \_\_\_\_\_

## **governing boards:**

8. Does the board have an audit committee? \_\_\_\_\_
9. Does the audit committee:
  - review the organisation's financial statements? \_\_\_\_\_
  - ensure internal control systems are in place? \_\_\_\_\_
  - appoint or liaise with the auditor? \_\_\_\_\_
  - oversight the audit process? \_\_\_\_\_
  - review and act on audit reports? \_\_\_\_\_
10. Does the board have a governance committee? \_\_\_\_\_
11. Are members aware of their diligence obligations?  
(see checklist 8) \_\_\_\_\_
12. Has the board considered establishing committees to address:
  - ethics? \_\_\_\_\_
  - quality management? \_\_\_\_\_
  - stakeholder liaison? \_\_\_\_\_



## action plan for improvement:



## 5. appointments



### all boards:

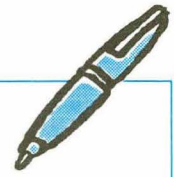
1. Does each board position have a job description? \_\_\_\_\_
2. Are positions advertised? \_\_\_\_\_
3. Are candidates interviewed? \_\_\_\_\_
4. Are interviews conducted by a panel? \_\_\_\_\_
5. Do successful candidates demonstrate that they meet the following merit criteria?
  - personal qualities such as judgement and diplomacy \_\_\_\_\_
  - awareness of the organisation's environment \_\_\_\_\_
  - a sense of accountability to stakeholders \_\_\_\_\_
  - a willingness to put responsibility to the organisation above self-interest \_\_\_\_\_
  - vision and a strategic perspective of the organisation's operation, situation and context \_\_\_\_\_
  - knowledge of relevant legal and financial issues and requirements \_\_\_\_\_
  - understanding of the structure and operation of the board and effective boardroom practice \_\_\_\_\_
  - decision-making skills \_\_\_\_\_
  - team work skills \_\_\_\_\_
  - experience relevant to the particular organisation (even where a statute requires a position to be filled by a member from a particular profession or industry) \_\_\_\_\_
  - ethical awareness \_\_\_\_\_
  - business acumen and sound commercial judgement (where relevant). \_\_\_\_\_

6. Are there additional and specific competency requirements that take into account:
  - the current needs of the board? \_\_\_\_\_
  - the likely future needs of the board? \_\_\_\_\_
  - the current skill mix of the board? \_\_\_\_\_
  - the extent to which the board's membership should reflect the demography and views of the general community? \_\_\_\_\_
7. Are candidates required to declare any significant political activity (including office holding and candidature for election) which they have undertaken in the last five years or which they intend to undertake? \_\_\_\_\_
8. Has the relevant Minister communicated (in a letter of appointment) to new members:
  - their roles and responsibilities? \_\_\_\_\_
  - expectations of performance including performance standards and the level of care, skill and diligence expected? \_\_\_\_\_
  - appraisal processes? \_\_\_\_\_
  - organisational standards? \_\_\_\_\_
9. Are appointments for fixed terms? \_\_\_\_\_
10. Does the relevant Minister consult the board:
  - about the appointment of new members? \_\_\_\_\_
  - about these appointments in accordance with legislative requirements? \_\_\_\_\_
11. Does the board regularly review how many positions it needs (whether a position is vacant or not)? (*see checklist 4*) \_\_\_\_\_



- |     |  |       |
|-----|--|-------|
| 12. | Are re-appointments subject to a formal appraisal against a set of specific objectives given on appointment? | _____ |
| 13. | Do re-appointments and filling of vacancies take into account the board's:                                   |       |
|     | ■ current needs?   | _____ |
|     | ■ likely future needs?   | _____ |
| 14. | Is the statutory number of board positions filled, where applicable?   | _____ |

**action plan for improvement:**



## 6. induction and training



### all boards:

1. Are new members expected to give a commitment to undertake induction and training? \_\_\_\_\_
2. Is an induction program provided? \_\_\_\_\_
3. If yes, does the induction program cover:
  - public sector values and ethics? \_\_\_\_\_
  - relevant legislation (including members' responsibilities)? \_\_\_\_\_
  - the roles of key stakeholders? \_\_\_\_\_
  - the role, responsibilities and accountability of the board? \_\_\_\_\_
  - the duty of care, skill and diligence? \_\_\_\_\_
  - board structure and committees? \_\_\_\_\_
  - board procedures? \_\_\_\_\_
  - standards of behaviour expected of members? \_\_\_\_\_
  - the board's code of conduct? \_\_\_\_\_
  - fraud control measures? \_\_\_\_\_
  - procedures for dealing with conflicts of interest? \_\_\_\_\_
  - procedures for dealing with related party transactions? \_\_\_\_\_
  - management's responsibilities? \_\_\_\_\_
4. Is a training program provided? \_\_\_\_\_



5.

If yes, does the training program cover:

■

changes to relevant legislation?

\_\_\_\_\_

■

updates on policy?

\_\_\_\_\_

■

changes in the environment within which the board operates?

\_\_\_\_\_
6.

Are members' training needs identified to:

■

improve their competence?

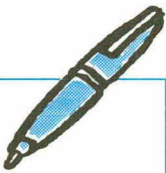
\_\_\_\_\_

■

meet the needs of the board?

\_\_\_\_\_

**action plan for improvement:**



## 7. board meetings



### all boards:

#### organising board meetings

1. Does the board:
  - have a policy and procedures for conducting meetings? \_\_\_\_\_
  - follow the policy and procedures? (*see checklist 2*) \_\_\_\_\_
  
2. Are board meetings:
  - known well in advance? \_\_\_\_\_
  - held regularly? \_\_\_\_\_
  - regularly attended by members? \_\_\_\_\_
  
3. Is attendance recorded? \_\_\_\_\_
  
4. Does the Chair oversight the organisation of:
  - board meetings? (*see checklist 2*) \_\_\_\_\_
  - additional meetings when business requires it? \_\_\_\_\_

#### agendas (*see checklist 2*)

5. Are meeting agendas set and distributed well in advance of meetings? \_\_\_\_\_
  
6. Is there a timetable for consideration of key issues and activities (e.g. budgeting and planning)? \_\_\_\_\_
  
7. Is there an opportunity for members to contribute to the agenda? \_\_\_\_\_



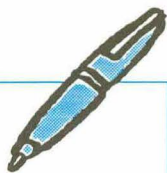
8. Is the agenda:
- focused to allow for discussion of critical, complex and/or strategic issues? \_\_\_\_\_
  - distributed to members in sufficient time to foster meaningful discussion at the board meeting? \_\_\_\_\_
9. Are agenda and papers manageable and easy to read (papers properly indexed etc.)? \_\_\_\_\_
10. Does the Chair oversight the preparation and distribution of agenda and papers to members? \_\_\_\_\_
11. Is there a procedure to monitor:
- progress made on agenda items which are carried over? \_\_\_\_\_
  - implementation of decisions? \_\_\_\_\_

### access to information and staff

12. Do board members have sufficient and appropriate information to fulfil their care, skill and diligence obligations? \_\_\_\_\_
13. Has the board reached agreement as to what information it requires to make decisions? \_\_\_\_\_
14. Does the board have:
- a policy on access to independent and external sources of advice? \_\_\_\_\_
  - a procedure which enables individual members to take independent, external professional advice at the organisation's expense? \_\_\_\_\_

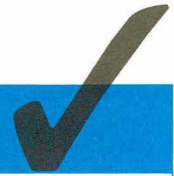
15.	Does the board have access to appropriate support and advice (e.g. the services of a board/company secretary or equivalent)?	_____
16.	Has the board adopted policies covering:	
	■ rights of access to information and staff (either generally or specifically)?	_____
	■ the purposes for which members can seek access?	_____
	■ the procedures to be followed in obtaining access?	_____
17.	Has specific consideration been given to whether board members can approach staff directly or whether information should be provided through the CEO or board secretary?	_____
<b>recording decisions</b>		
18.	Does the board vote formally on all significant issues?	_____
19.	Do the minutes:	
	■ accurately summarise the meeting?	_____
	■ record decisions?	_____
	■ record changes in decisions?	_____
	■ record dissent?	_____
20.	Are minutes:	
	■ distributed to all members and appropriate staff in the organisation?	_____
	■ distributed as soon as practicable?	_____
	■ stored in a secure place?	_____
21.	Is there a policy requiring that minutes not be altered?	_____

**action plan for improvement:**





## 8. standards

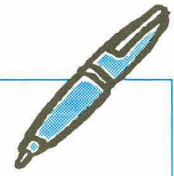


### all boards:

1. Is the board confident that each member acts in good faith and with care, skill and diligence? \_\_\_\_\_
2. Do members understand that they must act in the interests of the board as a whole and not in the interests of:
  - the group that nominated them, if relevant? \_\_\_\_\_
  - a group that they may represent, if relevant? \_\_\_\_\_
3. Are board members aware of their statutory obligations that they must not use inside information or their position improperly to:
  - gain an advantage, either directly or indirectly, for themselves or another person? \_\_\_\_\_
  - cause detriment to the organisation or another person? \_\_\_\_\_
4. Does the board have a code of conduct (deriving from ethical considerations, common law and statute) which covers such things as:
  - official misconduct? \_\_\_\_\_
  - neglect of duty? \_\_\_\_\_
  - breach of public trust? \_\_\_\_\_
  - improper use of information? \_\_\_\_\_
  - care, skill and diligence obligations? \_\_\_\_\_
5. Are members aware of the code of conduct? \_\_\_\_\_
6. Do members subscribe to the code of conduct (e.g. have they signed a copy which is kept on file)? \_\_\_\_\_

7. Are there policies and procedures for identifying and recording a member's disclosure of:
- an actual or perceived conflict of interest? \_\_\_\_\_
  - a pecuniary interest? \_\_\_\_\_
  - a non-pecuniary interest? \_\_\_\_\_
  - related party transactions? \_\_\_\_\_
8. Do these policies and procedures provide for:
- disclosure when the members are appointed? \_\_\_\_\_
  - disclosure at meetings? \_\_\_\_\_
  - disclosure between meetings? \_\_\_\_\_
9. Is there a register of:
- pecuniary interests which may give rise to an actual or perceived conflict of interest? \_\_\_\_\_
  - non-pecuniary interests which may give rise to an actual or perceived conflict of interest? \_\_\_\_\_
10. When there is an actual or perceived conflict of interest, is there a procedure for a board member:
- not to receive board papers? \_\_\_\_\_
  - to be excluded from discussion? \_\_\_\_\_
  - to be excluded from voting? \_\_\_\_\_

## action plan for improvement:





## 9. risk management and liability



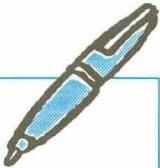
### all boards:

1. Have the risks that need to be managed been:
  - clearly identified? \_\_\_\_\_
  - assessed? \_\_\_\_\_
  
2. Do members know:
  - their liabilities? \_\_\_\_\_
  - the protections available under the relevant legislation or common law? \_\_\_\_\_
  - the circumstances under which the protections are available? \_\_\_\_\_
  - how to deal with a Ministerial direction? (*see checklist 1*) \_\_\_\_\_
  - the implications of a Ministerial direction for members' liabilities? \_\_\_\_\_
  
3. Has the CEO taken all reasonable steps to assist the board anticipate and avoid risks (e.g. occupational health and safety)? \_\_\_\_\_
  
4. Has the organisation developed a risk management strategy as outlined in the Treasury publication *Risk Management and Internal Control*? \_\_\_\_\_
  
5. Has the organisation addressed fraud control as outlined in The Audit Office publication *Fraud Control: Developing an Effective Strategy*? \_\_\_\_\_

### governing boards:

6. Has a compliance or assurance program been instituted to enable the board to be confident that relevant risks are being appropriately managed? \_\_\_\_\_

**action plan for improvement:**



# 10. reporting and evaluation



## reporting

### all boards:

1. Does the board report its own performance in an Annual Report (in addition to reporting the organisation's performance)? \_\_\_\_\_
  
2. Does the board publicly report its corporate governance practices in an Annual Report? \_\_\_\_\_
  
3. Does this report include a statement on:
  - a list of members? \_\_\_\_\_
  - other memberships? \_\_\_\_\_
  - remuneration? \_\_\_\_\_
  - role and composition of committees? \_\_\_\_\_
  - risk management and fraud control measures? \_\_\_\_\_
  - a code of conduct? \_\_\_\_\_
  - ethical practices? \_\_\_\_\_
  - conflicts of interest? \_\_\_\_\_
  - disclosure of related party transactions? \_\_\_\_\_
  - pecuniary interests? \_\_\_\_\_

### governing boards:

4. Is the board fully accountable for the operation of:
  - the organisation? \_\_\_\_\_
  - the organisation's subsidiaries? \_\_\_\_\_
  
5. Does the Annual Report include the board's sign-off on the Statement of Responsibility? \_\_\_\_\_

# evaluation

## all boards:

6.

Is there a procedure for evaluating the performance of members?

\_\_\_\_\_
7.

Is this evaluation made against predetermined standards?

\_\_\_\_\_
8.

Are there guidelines outlining steps to be taken in dealing with poor performance of individual board members?

\_\_\_\_\_
9.

Is it clear:

■ who is responsible for dismissing members?

\_\_\_\_\_

■ under what circumstances a member can be dismissed?

\_\_\_\_\_

■ to members the procedures to be followed for dismissal?

\_\_\_\_\_
10.

Does the board:

■ annually evaluate its own performance and the number of positions it needs?

\_\_\_\_\_

■ review its progress in meeting goals?

\_\_\_\_\_

■ have a regular and independent, external review of its performance?

\_\_\_\_\_

■ benchmark its performance against other boards?

\_\_\_\_\_
11.

Does the relevant Minister:

■ regularly evaluate the performance of the board?

\_\_\_\_\_

■ have a documented agreement with the board about their performance as a board (Performance Agreement)?

\_\_\_\_\_



**action plan for improvement:**



# glossary

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## advisory board/committee

An advisory board or committee is one which is subject to unlimited Ministerial direction and control. Its role is usually to provide policy advice to a Minister.

## code of conduct

A code of conduct is an ethical framework for decision-making, actions and behaviour. It sets down the principles covering appropriate conduct and outlines the minimum standard of behaviour expected.

## conflict of interest

A conflict of interest arises when a board member is influenced, or appears to be influenced, by personal interests. The perception of a conflict of interest can be as damaging as an actual conflict, because it undermines public confidence in the integrity of the organisation involved, its staff and its board.

## diligence

Diligence refers to board members exercising reasonable care and skill in giving sufficient time and attention in carrying out their board responsibilities.

## fraud

Fraud can be defined as a deliberate and premeditated turn of events which involves the use of deception to gain advantage from a position of trust and authority. The type of events includes: acts of omission, theft, the making of false statements, evasion and manipulation of information.

### governing board

A governing board:

- is created by statute
- has powers and duties which are not subject to day to day oversight by Government. Ministerial direction and control in the exercise of these powers and duties is generally limited.

### non-pecuniary interest

A non-pecuniary interest is a conflict of interest which does not have a financial component. It may arise from personal or family relationships, or involvement in sporting, social or cultural activities.

### pecuniary interest

A pecuniary interest is a conflict of interest which involves an actual or potential financial gain. It may result from a board member, or a member of his or her family, owning property, holding shares or a position in a company bidding for government work, accepting gifts or hospitality, or receiving income from a second job. Money does not have to change hands.

### related party transaction

A related party transaction (sometimes referred to as a third party transaction) occurs when a member or a close associate of a member, has a financial or other interest in an organisation with which the board does business. This relationship may compromise or appear to compromise the conditions under which the transaction takes place and cast aspersions on the legitimacy of the transaction. Additionally, related party transactions may cast doubt on the integrity and objectivity with which the organisation and its board conducts their affairs.

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The Audit Office of NSW (1994) *Fraud Control: Developing an Effective Strategy*.

The Audit Office of NSW (1997) *Corporate Governance in Principle*.

The Audit Office of NSW (1997) *Corporate Governance in Practice*.

The Audit Office of NSW (1997) *Supplement: Survey Findings*.

## further guidance

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Australian Quality  
Council  
(phone: 9901 9999)

*Board Performance and Governance Benchmarking Network, Sydney, Breakfast seminar papers, 1997.*

ICAC  
(phone: 9318 5999)

*Practical Guide to Corruption Prevention, 1996.*

NSW Premier's  
Department  
(phone: 9228 5510;  
9228 5559)

*Code of Conduct for NSW Public Agencies: Policy and Guidelines, 1996.*

*Code of Conduct and Ethics for Public Sector Executives, 1997.*

*Model Code of Conduct for NSW Public Agencies, 1997.*

NSW Treasury  
(phone: 9228 4021)

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St James Ethics Centre  
(phone: 9299 9566)

*Ethics in Management in the 1990s - Surviving in the Corporate Era, in conjunction with the Law Foundation of NSW and the Law Society of NSW, 1989.*

*In the Public Interest: Some Reflections on Corporate Regulation, by Anthony G. Hartnell, 1992.*

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(phone: 9285 0155)

*Corporate Governance in Principle*, 1997.

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(phone: 9286 1000)

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