Victorian Public Sector Governance – Key Aspects, Myths and Realities & Importance of Positive Org Culture

Gippsland Health System and Governance Induction March 2013

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SSA’s Key Functions

- Identify opportunities to improve the delivery and integration of government services and report on service delivery outcomes and standards
- Promote high standards of integrity and conduct in the public sector
- Strengthen the professionalism and adaptability of the public sector
- Promote high standards of governance, accountability and performance for public entities

S45 Public Administration Act (PAA)
Two main kinds of organisation in the Victorian public sector:

- public service
- public entities

Public entity functions warrant a degree of autonomy and distance from Govt to focus on defined functions or services.

Long history of public entities (rather than departments) delivering bulk of government services.

Most Public Entities are legally separate bodies governed by a board of directors, small number of single commissioner entities e.g. VicRoads.

3,700 public entities governed by 34,000 board members, bulk (>85%) unremunerated.

Overall 32% board members are women.

85% public sector workforce (that is, ~228,000 people) employed by ~300 public entities.

All board members of public entities are “public officials”, just as employees, under Public Administration Act.
The Victorian public sector as at 30 June 2012

**37 Public Service**
Employer Bodies
38,650 employees = 35,394 FTE

**1,779 Public Entity**
Employer Bodies
227,925 employees = 182,373 FTE

(plus approx 1,950 COM and cemeteries with nil or few employees)

**11 Departments**

**26 Authorities & Offices**

**1 Teaching Service**
1,543 Schools

**24 TAFEs & Other Education**

**90 Public Health Care**

**6 Police & Emergency Services**

**49 Water & Land Management**

**66 Arts, Finance, Transport & Other entities**
Vic Public Sector Governance

- Public Administration Act 2004 (PAA),
  - Part 5: Operation of Public Entities, especially Division 2 – “Governance Principles”

- Common Law – PAA largely reflect this
  - So whether or not PAA strictly applies, useful guide to common law governance “minima”

- Implicit & explicit powers of Ministers & Departments

- Specific Statutes that establish some entities – eg Health Services Act or entity specific legislation

- Whole of Government Legislation – eg Financial Management Act, Audit Act, Ombudsman Act, FOI etc

- Corporations Law & Association Incorporations Act 1981 (if applicable)

- SSA 30+ public sector reviews always have 3 dominant themes: Governance - Org Role clarity - Board & Organisation culture

*Following “Myths and Realities” reflect above*
Myth and Reality # 1

Public Entities and their Directors are “Independent” of Government

- No. Public entities are created by Government to carry out a public function, are accountable to a Minister & the Minister to Parliament.

- All public entities have operational autonomy - carry out their public function at arm’s length from central government.

- Some public entities have greater degrees of autonomy – often regulators and integrity bodies – usually specified in legislation.

- Public entities have a role implementing and complying with relevant government policies: Holding/Subsidiary Company: private sector equivalent ??

- Directors are “public officials”, & subject to mandatory Directors’ Code of Conduct (s63 PAA)
Vic Public Entity Director’s Code of Conduct - Mandatory

Public Sector Standards Commissioner’s mandatory Directors’ Code of Conduct (s63) based on S7 and 79. A Director of a Board of a Vic public entity must:

- act with integrity and honesty
- act in good faith in the best interests of the public entity
- act fairly and impartially
- use information appropriately
- use their position appropriately
- act in a financially responsible manner
- exercise due care, diligence and skill
- comply with existing legislation
- demonstrate leadership and stewardship

Code of conduct provides guidance notes on each of these
Public entities are only accountable to the Minister

- No. Departments are an extension of the Minister, providing advice on all aspects of portfolio, including operation and performance of public entities, as well as strategic and risk issues.

- Failure to keep the Department properly informed is risky and could affect decisions made.

- Board must inform both the Minister and Department head of “known major risks to the effective operation of the entity and of the risk management systems that it has in place to address those risks” (s61(b)). Also PAA (s95 (1)(b)) allows roles and relationship b/n entity, Dept and Minister to be specified by Minister or Department Head.
Myths and Reality  # 3

Boards and entities are responsible for their performance – Departments and public servants have no role

- No. The PAA clearly specifies various roles for Department, primarily via the Department Head
- More broadly, the Department is the “arms and legs” of very busy Ministers
- Departments provide advice and support on all aspects of Minister’s portfolio, including role, responsibilities and performance of public entities
- A sound relationship between an entity and the Department is critical to entity’s successful and efficient performance and risk management
Key accountabilities in the public sector

Parliament

Accountability

Portfolio Department

Secretary
Senior Staff and officers
Provide advice/support to Ministers and entities

Directions and delegations

Directions or Priorities

Minister

The monitoring and interactive relationship

Public Entity

Board
CEO
CFO and other senior staff

Stakeholders

• The public entity’s customers and clients
• The broader community
• Other Ministers, who are responsible for Government functions affected by the operations of the entity
• Other Departments and agencies which co-operated with the entity
• The entity’s business partners including companies, government organisations and Not-for-Profits
• Other stakeholders such as local government

Integrity Bodies

• Auditor General
• Ombudsman
• Specialist Commissioners (e.g. Health, Disability, Privacy, Environment)
• Independent Broad-based Anti Corruption Commission
Myths and Reality  # 4

Entity X is really just an agent of the Department

- No. Entities have legal rights and responsibilities under their establishing legislation.
- This must be understood, respected and acted upon by Departments and entities.
- Entities must be permitted & encouraged to exercise the scope of their responsibilities properly
- Therefore instructions from Departments (and “contract/service” negotiations) need to be consistent with legislation and good practice
- Where is ambiguity or overlap these should be discussed and resolved between a Department and the entity(s)
Myths and Reality  # 5

The Departments treats us as if we are a branch office, so we are just a “Claytons” Board

- No. Entities have legal rights and responsibilities under their establishing legislation and they should exercise these properly and diligently.

- Entity boards and management need to be clear as to scope of their role and responsibilities and the power they have to discharge these.

- Entity boards and management need to be clear who can issue them with lawful instructions & when & how.

- If Boards fail to properly exercise their powers and discharge their responsibilities, there is little point having them. This includes managing disagreements sensibly.
Myths and Reality  # 6

Boards and Directors are there to help Management

- No. Other way round!!!
- Management works under policies, delegations and roles approved or assigned by the board
- Boards rely heavily on management, which is full time, compared to the very part time nature of board and its directors – hence the need for trust, mutual respect and understanding of different, but complementary roles
- Boards should have a clear “Board Charter” that sets out how and what the Board will deal with and what is delegated to management and how these delegations will be monitored and reported
- Boards need to add value, as governors
Managers and Governors working together

- Managers need to understand the roles and responsibilities of governors
  - Governors responsible for the policies and performance of the organisation on P/T basis

- Governors need to understand the role of managers via the CEO
  - Management as the F/T arms & legs of the Board working under policies and priorities set by the Board

- Managers need to understand the needs of governors so they can govern - eg their need for clear, comprehensive & authoritative information & advice

- Managers need to understand working individually through the CEO and together as an Exec
Boards and Management

- Together, entity governance is the work of an entity board and its management
  - Different, but complementary roles

- Management exercises delegations assigned by the Board, NOT the other way

- Board Directors each typically spend around 40 to 80 hours per year (about 1 - 2 weeks over the year) in their Director role, compared to 48 weeks pa + for managers and staff in their roles

- Entity Performance relies on effective functioning of both board, management and staff
# Role of Boards - Tricker Model

DHS' Rural Health Boards of Management training and development program 2003-04 by Nous Group,

<table>
<thead>
<tr>
<th>External focus</th>
<th>Accountability (Conformance)</th>
<th>Leadership (Performance)</th>
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<tr>
<td>External accountability</td>
<td>Strategy</td>
<td>Approve and work with CEO</td>
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<tr>
<td>Internal focus</td>
<td>Monitoring and supervising</td>
<td>Policy making</td>
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<td>Past and present oriented</td>
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The board employs the CEO and works with and through the CEO as the primary relationship between the board and the entity.

SSA has resources that can assist you:
- Recruiting a CEO, if this arises, AND
- Assessing a CEO’s annual performance

I will not go into detail on these today. Copies of the documents are accessible on our website [www.ssa.vic.gov.au](http://www.ssa.vic.gov.au), Some printed copies are still available, AND Specific seminars can be arranged – contact SSA.
Recruiting a CEO
Assessing a CEO’s annual performance
I am a volunteer director and have only limited responsibility (particularly if the entity has no staff!)

- No. Neither the PAA or other laws (eg Corporations Law or Common Law) make any distinction between paid or unpaid directors or between executive or non-executive directors, NOR whether the entity employs staff.

- There is provision for declaration of “small entities” under PAA, which can change say reporting arrangements but not duties of directors - to date, SSA has no record of any entities declared to be “small entities”
No. How you got on a board is interesting but irrelevant to the operation of the board or your responsibilities as a Director

Public entity directors are appointed based on range of expertise criteria, but directors are not representatives.

Directors have to “act in good faith in the best interests of the public entity” *(s79(1)(b))*

All board members have to take an active and comprehensive view of board issues and the performance of the entity.

Directors are collectively responsible for the performance of the Board and the entity.

Boards need clear processes to manage Conflict of Interest and promote integrity in the Board.
Myths and Reality  # 9

All public entities are the same

- No. Public entities differ by the nature of their function, funding, their operational complexities and business context, which may affect their degree of operational autonomy eg regulatory or integrity of service delivery
- Directors’ duties remain the same regardless of the nature of the entity
## SSA’s Public Entity Categories

**Source:** “Legal Form and Governance Arrangements for Public Entities – guidelines” SSA Oct 2010

<table>
<thead>
<tr>
<th>Function</th>
<th>Description</th>
<th>Examples</th>
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<tr>
<td>Service delivery</td>
<td>Entities that directly undertake delivery of essential public services.</td>
<td>Health services</td>
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<td>Catchment management authorities</td>
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<td>Port of Melbourne Corporation</td>
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<td>Stewardship</td>
<td>Entities created to manage public assets such as Crown lands.</td>
<td>Shrine of Remembrance Trust</td>
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<td>Crown land committees of management</td>
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<td>Integrity</td>
<td>Entities that scrutinise the actions and decisions of public officials.</td>
<td>Disability Services Commissioner</td>
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<tr>
<td>Regulatory</td>
<td>Entities that administer regulation.</td>
<td>Essential Services Commission</td>
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<tr>
<td>Quasi judicial</td>
<td>Entities that exercise quasi judicial powers.</td>
<td>Victorian Civil and Administrative Tribunal (VCAT)</td>
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<tr>
<td>Advisory</td>
<td>Entities created to provide specialist advice on specific matters, usually directly to a Minister. Entities established to provide ongoing technical advice and/or undertake research.</td>
<td>Women in Primary Industries Advisory Panel</td>
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<td>Radiation Advisory Committee</td>
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*State Services Authority*
Myths and Reality # 10

We self fund, relying only on fees for our services, so we are independent of government

- No. How entities are funded does not alter their role, responsibilities or accountabilities as public entities
- Ability to charge fees (and in most cases their level) derives from state legislation
- Directors’ duties remain the same regardless of funding
Myths and Reality # 11

Governance is the same in public and private sectors

- Yes & No - Governance principles are the same, but emphasis can be different. Some unique aspects

- Transparency requirements - accountability, reporting, and integrity - and emphasis on behaviour – demonstrating public sector values – is generally greater in the public sector
  - Mandated Values & “Directors’ code of conduct” apply to all directors (similarly for staff)

- Stakeholder engagement can be more complex & critical

- Public entities are “subsidiaries” of the larger “public sector” created and maintained by Government => need to comply with government policy and requirements
There is less risk for Director on a public sector board

- Yes and No
- If you are on a Corporations Law board you are liable to monitoring and prosecution from regulators, e.g. ASIC
- Minister can dismiss boards quite quickly, so there remains reputation risk
- Legal action can be taken by Minister and entity for breaches of PAA (Pt 5, Div 2 (s87)) – none to date
- Diligent & reasonable behaviour & performance remains crucial
- Stakeholder engagement, integrity and accountability are critical in public sector governance and risk management
Yes, but be careful and diligent…!!!

Stakeholder management generally more complex in public sector

Entities use state power and funds, so citizens, media and integrity bodies are very interested in what entities do

Integrity bodies have wide ranging powers eg Auditor General can also does performance audits, not just financial audits, Ombudsman, sector specific commissioners (Health Services, Disability, Children, environment…)

Adverse findings/publicity affect director’s and entities reputations

Can also lead to removal by Minister – this may be quite quick!
Integrity Standards are set by the Board

- Yes and No.
- Government (& PAA) has made clear that Boards need clear policies or processes to manage Conflicts of Interest, Conflicts of Duty and promote integrity in the Board.

Integrity can cover many things such as:

- Acting with probity, due care and responsibility
- Proper use of information acquired in board operations
- Proper use of public resources and power – citizens, Minister, media, Auditor General and Ombudsman generally have a low tolerance for any perception of inappropriate behaviour, use of expenses or waste
- Adherence to government policy regarding provision AND receipt of Gifts and Hospitality

Note: AG criticisms Cemeteries or Ombudsman re Mr Overland…
PSSC’s (SSA) Policy Framework – a risk management tool
PSSC/SSA’s Gifts, Benefits and Hospitality Policy Framework

- Specifies minimum requirements for all public officials:
  - Accepting gifts, benefits and hospitality,
  - Providing gifts and hospitality, and

- Specifies minimum accountabilities for Heads of Public Sector Organisations

- Entities can have additional policies and procedures that build on the minimum requirements tailored to an entity’s role and circumstances
A Short hand guide re gifts and Hospitality

**take the HOST test**

The HOST test is a good reminder of what to think about when deciding whether to provide hospitality or gifts to staff or stakeholders. Take the HOST test and when in doubt ask your manager.

**HOST**

- **Hospitality**: To whom is the gift or hospitality being provided? Will residents be external business partners, or employee of the host organisation?
- **Objectives**: For what purpose will hospitality be provided? Is the hospitality being provided to further the context of official business?
- **Spend**: Will the hospitality be provided for the host or for the guest? Will it be a modest or expensive? Will alcohol be provided?
- **Will public funds be spent?**: Will the costs incurred be proportionate to and less than the benefits obtained?
- **Trust**: Will the hospitality be advanced or diminished? Could you publicly explain the rationale for providing the gift or hospitality? Will the event be conducted in a manner which upholds the reputation of the public sector? Have records in relation to the gift or hospitality been kept in accordance with reporting and recording procedures?

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**take the GIFT test**

The GIFT test is a good reminder of what to think about when deciding whether to accept or decline a gift, benefit or hospitality. Take the GIFT test and when in doubt ask your manager.

**GIFT**

- **Giver**: Who is providing the gift, benefit or hospitality and what is their relationship to me? Does my role require me to select contractors, grant or determine government policies? Could the person or organisation benefit from a decision I make?
- **Influence**: Are they seeking to influence my decisions or actions? Has the gift, benefit or hospitality been offered to me publicly or privately? Is it courteous, a token of appreciation or highly valuable? Does it seem coincidental with a decision I am about to make?
- **Favour**: Are they seeking a favour in return for the gift, benefit or hospitality? Has the gift, benefit or hospitality been offered honestly? Has the person or organisation made several offers over the last 12 months? Would accepting it create an obligation to return a favour?
- **Trust**: Would accepting the gift, benefit or hospitality diminish public trust? How would I feel if the gift, benefit or hospitality became public knowledge? Would my colleagues, family, friends or associates think?
PSSC’s (SSA) Conflict of Interest Policy Framework – a general framework
Myths and Reality # 15

Boards alone determine the CEO and other Executive salaries and other employment conditions

- Not in Victorian public sector
- Government requires all boards to have approval of GSERP (run by SSA) re employment terms for all Executives employed by entity & report annually
- Some scope for flexibility within bounds agreed by GSERP
- Boards must have REM committee
- More details on SSA website

Six reasons why good public sector governance matters

1. satisfaction of knowing you are doing the right thing
2. organisational performance is enhanced
3. community support for your decisions and actions
4. less likely to face over-regulation
5. reputation of Board Directors
6. maintaining and strengthening public trust in government
In relation to governance, are you clear about:

- Your functions and powers – now and into the future
- Who, if anyone, has the power to direct you and about what
- Which decisions you are empowered to make
- Who you are accountable to for those decisions
- Which decisions you have delegated, and to whom
- Whether your organisation is performing well – and how do you know

If you were unsure about any of these, what would you do?
“The theory of governance is pretty straightforward, it is the execution that’s difficult”

Trevor Carr, CEO, Victorian Healthcare Association
SSA’s governance Website could help

- Built around six key headings
- Detailed information about an entity’s annual governance cycle
- SSA website provides access to Chartered Secretaries Australia and SSA governance research, guidelines, toolkits & other publications - eg “Welcome to the Board”, conflict of interest, gifts and hospitality, governance templates
Entity Annual Governance Cycle

Lots of Detail on each of these on SSA Website
“In my 50-odd years in the business world, I have noticed that those people who were able to expand their enterprises were the ones who understood human nature and how to tap the best in people – they understood that the bottom line is ultimately the result of human endeavour.”

Don Argus, outgoing Chairman BHP Billiton, former CEO NAB (AFR Boss March 2010)
Workforce is the highest cost

- How well are you dealing with this?
- Does management and the Board actively manage and monitor your workforce trends and culture?
- SSA resources can help
  - Workforce Data Collection, annual census all public sector workers
  - People Matter Survey (PMS): a Whole of Gov. climate & opinion survey of employees, conducted annually, entities encouraged to do it at least one every 2 years.
  - SSA sends reports sent to CEOs and Chairs (ie Boards), for discussion & any necessary action. For instance:
    - Are values understood, and acted out at all levels?
    - How well do we manage conflict of interest?
    - What are our core people management practices: feedback, performance management, grievances, inappropriate behaviour...?
“Boards & Executives are the custodians and Shapers of an organisation’s culture”
SSA’s People Matter Survey can help

- **Bulk of services take part over 2 year cycle**
  - To generate a reliable and confidential report need at least 10% response rate

- **SSA encourages**
  - Boards & managements to promote PMS to staff; and
  - for boards & management to actively consider the results & communicate outcomes to staff

- **PMS reports have been improved substantially – sample report available**

- **Includes questions on staff perception of patient safety (from 2012), their well being, leadership, management, values, performance…**
“The most important thing that helps a company manage risk is its culture”

Harrison Young, Chair, NBN Ltd

Address to AICD, June 2011
mapping a safety culture in the victorian public health care sector

A research report into the relationship between culture and medical indemnity claims
Relationship b/n workplace culture & number and cost of medical indemnity claims in Vic. public hospitals? Used multiple data sets:

- People Matter Survey Management Indices - Leadership, management, workgroup, employer brand strength, client responsiveness
- VMIA medical indemnity claims data - cost & number of medical indemnity claims within the Victorian health sector for 6 specialities (=53% claims):
  - emergency medicine
  - obstetrics
  - orthopaedics
  - gynaecology
  - general medicine
  - general surgery
- Department of Health Victorian Admitted Episodes Dataset and Victorian Emergency Minimum Dataset - separations and emergency department presentations by public hospitals
In short, org culture & performance related

- Hospitals with better scores on PMS metrics less likely to have a medical indemnity claim
  - 50% of hospitals above median for ‘leadership’ had no claims cf 20% for those below median

- Hospitals with at least one claim, & have more +ve workplace culture, have fewer claims
  - Obstetrics, 24% of hospitals above median for ‘leadership’ had at least one claim cf 50% for hospitals below the median

- Av claims cost lower for hospitals with more +ve workplace culture
  - Obstetrics, av claims cost $43,306 hospitals above median for ‘workgroup’ cf $92,520 below median

- Results was consistent for most of six clinical specialties that made up >50% claims
Average cost per claim by PMS indices - Obstetrics
“Culture is the currency of service delivery”

Cheryl Batagol, Chair EPA

“Achieving organisational change in the real world”

SSA-ANZSOG seminar, 22 Feb 2010
Victorian Public Sector Governance – Key Aspects, Myths and Realities & Importance of Positive Org Culture

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