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# The Governance and Operation of Smaller Statutory Agencies

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# THE GOVERNANCE AND OPERATION OF SMALLER STATUTORY AGENCIES



## **Evidence Review Report**

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## Abstract

The Australia and New Zealand School of Government has partnered with the public sector commissions of Queensland and Western Australia to commission a research project investigating small statutory agencies, with the goal of producing best practice guidance for establishing, governing and operating these increasingly important and numerous government agencies.

This paper, the first product of the project, provides a review and analysis of some relevant scholarly and grey literature. It finds that while there has been significant consideration of governance issues in general, there have been fewer studies aimed at the interaction of these issues with the size of agencies. Of those that have treated this more specific question, some have focused on agencies within particular domains, while others have sought to analyse and define small statutory agencies as a type of agency within the broader machinery of government. That is, the literature has not directly addressed the key questions of how small statutory agencies ought to be constituted.

Nonetheless, the literature does assist the task of identifying the key issues facing small statutory agencies and their governance. First, the literature provides some discussion of how to define and identify small statutory agencies, noting that there is a range of ways to define smallness, and different understandings of the purposes for which small statutory agencies might be established. Secondly, it also suggests a set of challenges that small statutory agencies face, including risk governance and flexibility in governance frameworks, the interaction of these risks with agency size (in terms of staffing and other resources), recruitment and retention of staff, and accountability to the government and parliament. Moreover, this analysis also reveals critical gaps in the literature, which provide directions for this research projects and the field more broadly.

## Contents

Abstract.....	3
Introduction .....	5
Background and Motivation .....	5
Problem Statement: Risk-Based Analysis .....	6
Literature Review.....	9
Method .....	9
Overview of Key Literature .....	10
Key Issues Found in the Literature.....	13
Definitional issues .....	13
Operational challenges .....	16
Overall.....	20
Critical Gaps in the Literature .....	21
Conclusion.....	22
Bibliography .....	23

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## Introduction

### Background and Motivation

The Australia and New Zealand School of Government has partnered with the public sector commissions of Queensland and Western Australia to commission research into the governance and operation of small statutory agencies (SSAs). SSAs can be understood as agencies that are established to meet particular policies and/or objectives of the government – that is, an SSA is established for a *purpose*, and designed and sized to fulfil that purpose. The aim of the project is to provide guidance for best practice, which will inform the establishment and governance of SSAs. This paper provides an overview of literature relevant to this project, identifying key issues for SSAs and critical gaps in the literature that suggest directions for future research.

The creation, management, oversight and performance evaluation of SSAs continues to be an area of interest for practitioners, governments, parliaments and watchdogs (Bushnell 2022, Auditor-General 2012, Garcia 2008). This is not least because it is a structure of importance in a number of jurisdictions and problems, including unsatisfactory performance and inadequate accountability, have been reported – though some time ago now (McCrae & Aiken 1988, 191). Indeed, McCrae and Aiken (1988) posited that statutory authorities “constitute the main form of non-Departmental organisation in the public sector”. It is right that ongoing consideration should be given to these agency types— as with all Machinery of Government, SSAs must be effective, efficient, economical and ethical.

The pursuit of effectiveness, efficiency and economy can be said to commence with the nature of the structure established to implement a policy or operation. This is as true in the public sector as it is in the private sector (Bowrey 2008). However, there are questions as to how well SSAs make the distinction between efficiency and effectiveness and whether value-for-money drives require a trade-off with regard to outcomes achieved. In other words, just because an agency is designated small, it does not mean that the agency necessarily requires a simpler governance framework. Equally, not every SSA is the same and so the questions raised herein in relation to the appropriateness of governance frameworks are not uniformly answered for all SSAs. Therefore, the attributes of the governance framework imposed on an SSA is a critical consideration—the leading question being whether compliance with a uniform governance framework established by central agencies is appropriate or whether efficiency, effectiveness and economy can be/should be achieved by applying a simplified and/or varied governance framework.

Similarly, SSA personnel’s knowledge and experience are also crucial in achieving successful governance outcomes (De Vries 2013). While the governance structure must be fit-for-purpose in

order to ensure the greatest possible chance of efficiency, effectiveness and economy in the context of the objective pursued, governance is not just about creating and enforcing rules, but also about understanding complex social systems and working collaboratively with stakeholders, while also navigating the cultural norms of institutions. Successful governance requires strong leadership from individual board members that have knowledge, skills and experience to guide their organisations through complex challenges (Chait, Ryan et al. 2011)

Building on this theme, an ongoing problem faced by governments is that of maintaining economies of scale in operations while supporting specificity of policy and operational focus to ensure the myriad, complex and vast responsibilities of government are met effectively, efficiently and economically. Generally, there is an expectation that a small, focused agency is more likely to achieve a policy and/or operational outcome but that such an entity would likely also be less efficient primarily because infrastructure and key personnel would need to be replicated in each agency. On the other hand, it is thought that a larger agency cannot be as focused, potentially threatening the achievement of a policy and/or practice outcome but that it can achieve economies of scale in control processes, governance and finance. That is, larger agencies have more capacity to allow management to implement a broader portfolio but less time/resources to allocate to a specific objective(s). The overheads related to governance and accountability (amongst other elements) are likely to be less impactful on a specific policy area within a large, traditional agency context such as a department of state.

It is considerations like these that motivate this research project, and our interest in this paper is to understand what scholarly and grey literature evidence is telling us about smaller statutory agencies, within the context of these governance questions, to create a foundation for the next phase of the study.

## **Problem Statement: Risk-Based Analysis**

As noted, then, the purpose of this project is to develop an evidence-based and practical set of guidance that can be deployed in deciding whether to establish a smaller statutory agency and in assessing its ongoing effectiveness and efficiency.

Put differently, the guidance should balance the risks to efficient and effective operations with the cost of governance in time and money. This is the approach of Webbe and Weller (2008), who apply this kind of framework to their analysis of different types of government bodies, noting that the establishment of any statutory agency should pass a threshold public interest test that accounts for the risks entailed by this approach. More generally, risk-based framing is a process of decision-making and operation that takes into account the potential risks and benefits of various options. Risks are assessed based on their likelihood of occurring and the potential negative impact they could have if

they crystallise. Benefits are evaluated based on their potential or upside. Such a framework can play an important role when it comes to balancing risks of efficient and effective operations. For instance, risk assessment or cost-benefit analysis, can help identify the key risks and benefits associated with various options. The identified risks can then be prioritised, based on their likelihood and potential impact, which is critical information for decision makers and impacts their ability to understand trade-offs and make informed decisions Risk-based framing therefore is important to address and mitigate risks as well as maximise benefits of various options, such as risk management strategies.

There are many risks that governments can mitigate by bringing SSAs closer to the rest of the machinery of the government. For example, duplication of efforts or gaps in service provision can be avoided while enhancing collaboration and coordination between different parts of the government. Information and expertise can be shared to carry out their functions effectively. SSAs can also be insulated and protected from political interference by bringing them closer to the rest of the machinery of government. The challenge would be to ensure freedom of operational interference. Lastly, if located in remote or underserved areas, delays in service provision can be mitigated by bringing them closer to other agencies as it would facilitate access to necessary resources in a timely manner.

However, centralisation can also impose costs on the system (Webbe and Weller 2008). It has been observed that SSAs are often faced with the same governance and reporting requirements as any other agency within a public sector system, and this can be problematic because the SSA does not have the same resources as a large agency to management these requirements. But differentiation also impacts the central agencies (Treasury typically) as different systems have to be developed and monitored for different governance frameworks—the more variation, the greater the cost. Differentiation may create efficiencies at the SSA level but increase costs at the central government level.

At the same time, a smaller statutory agency may not require the governance and management resources required to be applied in larger agencies because the risk levels faced as compared to the purpose of the agency may mean that a reduction in governance requirements is appropriate.

So, it should be possible for the government system to “walk and chew gum at the same time”. That is, SSAs can have fit-for-purpose governance structures (which may be designed even on an organisation-by-organisation basis depending on purpose and the risks being faced) but also participate in system-wide elements where considered necessary: for instance, where government may wish to develop a culture response to a particular issue. The issue of balance, then, relates to the

extent that the usual governance frameworks and expectations should be applied for smaller statutory agencies as compared to a more efficient model in the context of the level of risk being faced.

Importantly, the size of the agency is often interpreted as a proxy for risk—the smaller the agency, the smaller the risk; the smaller the risk, the lesser the governance framework. However, an agency may meet the attributes of definition, but the risk posed by it may mean that a fuller governance framework is required in any case.

In order to develop this guidance, the research project established the following key questions based on two themes:

## **Theme 1: Operational Challenges and Practices of Smaller Statutory Agencies**

1. How is the mandate of smaller statutory agencies refined and managed in-practice over the time of their operation?
2. What are the particular challenges in the operation of smaller statutory agencies regarding ongoing stewardship in an area?
3. How do any governance variances manifest in accountability and responsibility between smaller statutory agencies and departments?
4. What are the comparative practices in the connection between smaller statutory agencies and the broader public service on an operational level, for example, in terms of workforce management, corporate service support etc?
5. How do central agency policies and/or system-wide policies impact the efficiency, effectiveness and economy of SSAs?
6. To what extent do the attributes of SSAs mean that they are more dependent on consultants or other external resources than other agency types?

## **Theme 2: Attributes and Designation of Smaller Statutory Agencies**

7. What are the attributes of an agency that cause it to be designated as “small”?
8. Do these attributes change with size of government by appropriation, population and geographic size?
9. Do these attributes change with the nature of the activity undertaken by the small agency in terms of central agencies and line agencies?
10. Do these attributes change with the nature of sovereignty in the context of states and territories?
11. Does the arbitrariness of the attributes mean that flexibility in defining the SSA category is required?



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12. To what extent do the variations found using the above distinctions affect how such agencies are viewed and governed?

In approaching our topic, it is important to consider the wider perspective. For instance, a key issue here is whether or not the “smallness” of smaller statutory agencies is a material cause of the issues faced by these organisations. Smallness might be a cause or merely an amplifier of certain challenges. That is, is the problem(s) materially different to any other agency in the public sphere? In fact, to some degree (and as explained further below) the problems experienced in relation to SSAs are not necessarily caused by these entities with central agencies and broader policy issues (such as 3% efficiency dividends—they impact smaller agencies as well as other agencies) impacting SSA effectiveness. This project is aimed at exploring these issues and creating a practical and efficient response that is implementable.

## Literature Review

### Method

In developing this paper, we examined both scholarly literature and grey literature made up of formal intra-government reports, watchdog reports and media reports published in trade journals as well as the broader media. We have also sought to identify the key findings/statements produced in these reports but not to replicate or unduly emphasise findings by including multiple documents dealing with the same material. In other words, we have identified and supported the key statements made in this document without exhaustively discussing all literature. Therefore, we do not purport to present a comprehensive literature review here, but we do believe we have captured the key elements relevant to confirming the importance of the questions posed in this project.

However, it is important to note that the literature is relatively small and that there is a preponderance of grey literature examining the opportunities for smaller statutory agencies rather than scholarly literature providing effective guidance.

In order to identify key literature, we used Boolean search terms and applied them via Google Scholar and in the UWA library data base. Additionally, we accessed known reports and sought information from contacts within the Academe and the public sector. We also refer to all sources as “studies” or “literature” in order to simplify the discussion. We recognise that there are a number of different sorts of material used—both grey literature and scholarly works; watchdog reports, intra-government reports etc—but we think that maintaining and emphasising the dichotomy will not add value. We have, however, ensured that we communicate deficiencies/restrictions in the use of certain literature.

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## Overview of Key Literature

The examination of smaller statutory agencies is complex, and the literature reflects this. At the top level, it is clear that broader academic and grey literature is relevant to this discussion with SSAs impacted by a number of issues that are of importance to the wider public sector, including in relation to the issue of maintaining independence, ensuring personnel stability, and increased transparency amongst others (Coaldrake 2022).

Maintaining an efficient, effective and economical government is also a complex idea and so the literature reflects two fundamental dichotomies underscoring studies that have been undertaken over time. These are that studies are usually focused on SSAs grouped in a specific policy area (that is, the issue of policy complexity is removed as other elements are prioritised for consideration) or they are undertaken at the highest level where the author is attempting to encompass the entire population of SSAs perhaps with less direct applicability resulting in terms of findings and recommendations.

For instance, many studies—published in grey literature and in scholarly journals—have examined specific-purpose smaller statutory agencies together with their efficiency and effectiveness. In Australia studies have been conducted relating to the efficiency and effectiveness of the Australian Law Reform Commission (2017) (finding, *inter alia*, that such bodies are vulnerable to influence via funding reductions), the Asbestos Safety and Eradication Agency (2019) (finding, *inter alia*, that clarification of the agency’s role was necessary and that the legislation was not fit -for-purpose in relation to its purpose) and the Human Rights and Equal Opportunities Commission (2008) (finding that its role as an independent agency was negatively impacted by its reliance on government for funding). These studies have focused on the impacts of broader government policies as well as the agencies themselves.

However, one significant body of work (Wettenhall 2005) relates to system-wide considerations of smaller agencies. These largely fall into three groups: (1) system-level typology descriptions of agency types; (2) watchdog reports; and (3) commentary.

In terms of the system-level typological descriptions, we have used the Australian Public Service Commission’s “APS Agencies—Size and Function (2020) and the Department of Finance (2021) “Types of Australian Government Bodies”. These resources set out the definitions used by that system to delineate between types of agency (including smaller statutory agencies) and when to apply those types and other information. Of course, the delineations established between agency types are a matter of government policy rather than necessarily of wider implications for other government systems. Further, the delineations have been established after the SSAs themselves though they are likely to be relevant as planning and analytical devices in relation to prospective SSAs.

A significant piece of work towards a typological breakdown of government agencies is Queensland's *Public Interest Map for Government Bodies* (Webbe and Weller 2008). While this document is not directed at small statutory agencies as such, it does lay out a clear framework for how to think through questions of "function, autonomy and form". It frames the discussion around three questions: "(1) why have a (non-departmental) government body? (2) if justified, what form should it take? (3) how should it be govern and be governed?". Importantly, the map establishes the purposive basis of statutory agencies – that is, that there should be an identifiable public interest that is best realised by the creation of a non-departmental body – and the desirability of flexible governance standards that recognise different types of government bodies and their purposes and needs.

Watchdog reports (e.g. those presented by auditors-general, information commissioners and ombudsmen et al) are concerned to convey to parliament findings relating to various aspects of efficiency and effectiveness of agencies, including the reporting of shortcomings and recommendations. In relation to smaller statutory agencies, often watchdog reports are focused on the broader system but may identify key issues of relevance. Therefore, not all relevant reports are focused solely on this genre of agency. For instance, the Commonwealth auditor-general (2012) examined the delivery of services in the context of fiscal constraints while the New South Wales Ombudsman examined the challenges faced by independent statutory officers (McMillan 2016).

In terms of commentary, these resources are often significant because they set out key problems faced in the governance of smaller statutory agencies both as part of a broader consideration of governance in the public sector and specific to this agency type. Goldring and Wettenhall (1980) considered the history and governance of Commonwealth statutory agencies with a particular emphasis on control and accountability. They identified the negative impact of political control on ability of these entities to achieve their purpose—a not uncommon finding as can be seen below. Further, McCrae and Aiken (1988) early identified that governments are trying to deal with fundamental efficiency issues of SSAs (our term) by seeking improvements to governance surrounding the creation of SSA s and their financial accountability processes.

The Department of Finance (2021) cites a key reason for establishing a statutory agency as being the need to attain independence from the minister. For instance, where a SSA is established to enforce decisions made by regulators. These commentary pieces also examine a broad range of relevant topics. For instance, governance legitimacy was discussed by Bowrey (2008) who found that, while governance structures are similar to those found in the private sector, the real power to set direction is not in the hands of the directors but those of the minister. Additionally, de Kruijf and van Thiel (2017) examined political control and governance confirmed that, in the Netherlands, political control

exercised over independent agencies was stronger than expected. Additionally, Garcia (2008), in the context of Victorian small agencies, identified opportunities available to smaller statutory agencies by demonstrating the longer-term value of investing in personnel in the short term.

Saunders and Lau (2022) considered the enforcement requirements relating to duties owed by public sector officials while Saunders (2022) placed the discussion in the context of the agency problem – the challenge of aligning the interests of parliament, government and the public sector in the context of policy objectives, efficiency, effectiveness and economy (Pilcher and Gilchrist 2018) - alighting on the complexity of the relationships between the public sector, the ministry and the parliament but sheeting the failure of adequate governance in support of the purpose of the agency to the role of the minister. Finally, Wettenhall (2005) examined the issue of performance evaluation essentially in considering the 2004 Uhrig Report into statutory authorities finding that governments should clarify their expectations of SSAs using a “Statement of Expectations” and establish a role of Inspector General of Regulation in order to oversee these entities and whose findings would feed into a central function that would advise on the appropriate governance and legislative structures.

Bushnell (2022) has undertaken a review of the demographics of smaller statutory agencies established in Australia and provided important commentary relating to their purpose and attributes, especially in regard to Western Australia and Queensland, the central jurisdictions of interest to this study. This commentary is of significance to our study and informs it greatly.

In terms of issues such as performance evaluation, the broader literature also applies. For instance, we have not considered such pieces as Al-Hedaithy (2000)’s approach to the development of performance measures for smaller organisations. However, this and similar literature may be important to inform our ongoing research because the prospects for applying commercially-focused processes and tools to public sector agencies (with or without tailoring) and the experience reported on in these studies will inform our approach and tool design for this project.

Overall, the literature indicates that there is cause for concern relating to the extent to which governance processes are effective where smaller statutory agencies deploy mandatory governance frameworks. The most frequent concerns identified include:

- The political influence of the government usually personalised in the role of the minister
- The lack of resourcing, especially in relation to the experience, knowledge and number of personnel
- The inconsistency of government policy
- The lack of clarity around purpose

Essentially, the governance framework is intended to facilitate the achievement of an agency's purpose (regardless of size) by reducing risks associated with its environment, purpose and operations. Generally, the designation of an SSA based on the number of personnel it deploys and/or the value of its appropriation is logical. As such, if risk is lower because of the size and nature of the work of the agency, it may be assumed that the application of the governance framework as applied in, say, departments of state, may be said to be excessive—inefficient but not necessarily damaging. However, Garcia (2008) indicates that the application of excessive governance frameworks may see agencies unable to meet their purpose due to administrative burden; what we may term “red tape”.

## Key Issues Found in the Literature

The discussion below, built on the literature review briefly discussed, examines the key issues that have been raised in relation to smaller statutory agencies and we seek to reconcile these findings with the research questions posed.

### Definitional issues

It is important to define a smaller statutory agency (SSA) in order to ensure the research program focuses on the appropriate issues and that the guidance is fit-for-purpose. An appropriate definition also helps to guide practitioners in terms of:

- When to establish an SSA;
- What risks need to be addressed; and
- What the governance framework should consist of.

The definition “ring-fences” the focus area.

Webbe and Weller (2008) note that government agencies can be analysed along the dimensions of function (or purpose, including advisory, policy, regulation among other things), independence (in terms of decision-making and enforcement authority), and structure (ranging from departments to government-owned corporations). These design choices all affect the level of risk in the establishment and operation of non-departmental agencies.

More narrowly and simply, in relation to SSAs, Bushnell (2022) has identified a number of attributes that help us to identify SSAs form amongst other types of entity established via Machinery of Government. Specifically, Bushnell establishes the following three criteria:

- These agencies are established to fulfil specific purposes and often have a degree of independence from the rest of government;
- They are created via legislation typically initiated by government; and

- They are public sector agencies “for which size interacts with questions of function and independence” (p. 2)

The first two attributes are relevant to statutory agencies regardless of size while the third establishes our focus area.

It is important to note that there are smaller entities established within public sector systems that do not meet the definition established here. For instance, the creation of Parliamentary Officers roles and offices (e.g. Ombudsman) are not part of the executive but do have attributes that mean the balance between size and efficiency needs to be maintained. Commercial concerns may also be established but are governed within systems that are more akin to commercial governance frameworks than government agencies in order that they can trade effectively (the Western Australian Treasury Corporation). Finally, judicial and other agencies can be small and established as part of non-executive public activities (for instance, a judiciary tribunal). Again, these can be small agencies created by statute but may be external to the executive according to the division of powers under the constitutional settlement.

Therefore, agency types that are not included in our study include:

- Departments of State
- Parliamentary Watchdogs (e.g. Auditor-General, Ombudsman)
- Government Trading Enterprises
- Judiciary Bodies
- Defunct agencies awaiting repealing legislation (e.g. decommissioned cemeteries)

When considering size, the governments in Australia use staff numbers as the proxy. This is generally based on the Commonwealth Public Service Commission’s (2020) definition where a statutory agency with a full-time equivalent staff of 250 or less meets the criteria of being “small”. Bushnell (2022) reports that the Western Australian and Queensland governments have established 98 and 102 SSAs respectively.

Bushnell (2022) segregated SSAs into four structure types by referring to attributes relating to the style of administrative resources afforded the agency. Specifically, he posits that SSAs can be structured as:

- Stand Alone: the agency has its own office, funding
- Integrated: the agency has its own key staff and funding but utilises another agency’s office and administrative resources
- Office-Secretariat: the SSA has an administrative function provided by another agency

- Board-Secretariat: the SSA has its own board but has an administrative function provided by another agency

The APSC further categorises SSAs by the function they undertake; specifically, it notes that they are specialist organisations, regulatory organisations, operational organisations (with a limited and specific remit) or policy organisations, while noting that a SSA can have more than one of these attributes.

The APSC also further categorises the SSAs into three further sub-categories being: “small” – fewer than 250 FTE; “extra small” - fewer than 200 FTE; “micro agency” – fewer than 20 FTE. This sub-categorisation may be read to be a proxy for risk—the smaller the agency, the less risk faced therefore the less substantial the governance framework needed. However, these attributes are arbitrary and the definition of size using full time equivalent staff may not always be appropriate:

- 1) The establishment of a size limit is arbitrary, and agents may game their agency size to ensure any reduction allowed to a SSA in terms of governance and accountability requirements continue to be applicable. On the other hand, the growth of a SSAs staff numbers to 251 (for instance) may not mean that the risk faced from a governance perspective has made a paradigm shift in terms of severity.
- 2) The agency may be staffed by a small number of personnel but the financial resources it oversees or the risks it encounters may mean that a reduction in governance requirements may increase risks faced by the government, parliament and/or people.
- 3) Size may also be a function of the overall size of the particular public sector system: a smaller system (say a territory in the Australian context) may require a re-shaping of the attributes of a SSA because of the relativities between the SSA and the whole of the public sector. Again, relative risk considerations are important here.

Finally, some SSAs may have attributes that set them apart from the other agencies within a public sector system, but their absence does not negate the agency meeting the definition of a SSA. For instance, they may:

- generate income from outside of the public sector (e.g. in the marketplace);
- they may closely engage with the community and/or special interest groups experiencing increased political pressure accordingly; and/or
- act in a role that interposes the SSA between the public and other agencies and/or between agencies.

Overall, the definition of a SSA is based on attributes that are identified and applied in an arbitrary fashion. The literature fails to answer the key questions that should be asked when:

- deciding whether to deploy this structure
- deciding whether or not an agency is small
- deciding the nature of the risks being faced
- determining the costs incurred by other agencies as a result of the establishment of an SSA

## Operational challenges

The deployment of SSAs as a method of public sector organisation is clearly a relevant issue given the numbers deployed in Western Australia and Queensland. However, the main challenges identified relating to these structures are discussed in this section and have been identified from the literature review and via anecdotal sources.

We have divided the problems into two types: risk issues and accountability and agency issues. While this separation assists in assessing and responding to this issue, it must be noted that these risks can be inter-related and omni-present.

### *Risk Issues*

The identification, evaluation and assessment of risk is a key issue for all public sector entities. Essentially, when we discuss risk, we are concerned to identify potential issues that may prevent the SSA from achieving its purpose or that may inflict harm of any sort on third parties or other agencies. The purpose of governance frameworks is to establish systems, procedures, expectations and review processes (simply) designed to identify and respond to risk in order to ensure the SSA achieves its purpose and does not harm others on the way to that goal. Risks include: financial, staffing, corruption, inefficiency and ineffectiveness amongst others.

Some of the key issues that have emerged in literature include risk governance: the process and structures used to manage risks in the public sector. These include risk communication, risk management and risk assessment. The literature also suggests the need for a more integrated and adaptive approach (Steelman 2022), taking in to account the importance of ongoing monitoring, evaluation and being aware of the interdependence of different risks (Bhimani 2009, Klinke and Renn 2012).

There also seems to be a drive to promote a positive risk culture within public sector organisations, valuing risk awareness, transparency and learning from experience so that a culture is created within the organisation that promotes positive values, beliefs and attitudes towards risk, transparency and how it is perceived (Sheedy and Griffin 2018). There is also a global movement towards collaborative



governance (Ansell and Gash 2008): structures that facilitate collaboration and cooperation between different stakeholders, especially where multiple actors are involved. Additionally, the concept of resilient organisations that are able to absorb and adapt to disruption is emerging where there is a drive to develop more flexible and adaptable strategies for managing risks in dynamic environments (Cheese 2016). (Interestingly, SSAs may be better placed to be flexible and reactive than larger traditional public sector agencies.) Taken together, it points to the need to have flexible and adaptive approaches to regulatory governance (Chaffin, Gosnell et al. 2014), using tools and frameworks to manage risks that take into account the changing nature of the risks themselves, the need for ongoing evaluations and for improvement of regulatory frameworks.

Notwithstanding this trend towards greater awareness and fluency within institutions, there remains another dimension that has received comparatively less attention. This is to do with the balancing of risk with resource, with the latter referring to the full range of resources that institutions (via their management) can devote to risk mitigation. These may include human and financial resources, skills and capabilities, know-how, proximity to expertise and access to others facing similar challenges.

Logically, the smaller the agency, the fewer resources able to be deployed to identify and respond to risk notwithstanding the key purpose of governance is to shepherd the entity through risk in order to achieve its purpose. The challenges associated with risk and its management include the impact of central agencies and government policy in broader terms. The capacity of a SSA to manage and monitor its risk profile can be detrimentally impacted by central and other agencies as the expectations of these agencies can be developed with a limited understanding of the purpose of the SSAs and its operations—this is especially so when central agencies have a very wide and complex remit and where other agencies may have a greater call on central agencies' time and resources.

For example, Maude and Beer (2000) examined the issue of funding arrangements applied in Western Australia and Queensland in relation to two SSAs with similar purposes. For one jurisdiction, the relevant central agency set funding policy that effectively reduced the SSAs capacity to pursue its purpose while, in the other, the central agency provided funding in a way that supported the SSAs purpose.

Constraints may also be felt where decision making structures are untenable in the context of the purpose of the SSA. By way of example, Robins and Dovers (2013) identified that there was a need for central government agencies to streamline administration and introduce greater clarity in order to ensure the best possible local decision making was undertaken by an SSA.

The Human Rights Commission (2008) also reported the unintended consequences of efficiency dividends applied to their appropriation. The Commission reported to the Australian parliament that there was no consideration applied by the central agencies as to the impact of efficiency dividends on the activities of small agencies, especially where those agencies were in turn impacted by increases in demand for their services.

Garcia (2008) has identified the inappropriateness of the reporting burden when risk faced by an SSA is lower. However, there is limited commentary on what the response should be when risk is actually higher due to the nature of the purpose of the SSA and its responsibilities. In determining “size”, staff numbers or quantum of appropriation are logical attributes on which to base the typology of an agency as a micro, extra small or small. However, the risks represented by the purpose of the agency and the potential impacts, should those risks be crystallised, may mean that the size of the agency bears little or no relevance to the governance that should be in place. For example, a micro agency might have responsibility for a policy area, the outcome of which can be detrimental to the society if not governed effectively.

Further, this paper expresses a need for a new compliance and government system to be employed to ensure a better fit between risk and reporting.

There may be more mundane and practical reasons for questioning the wisdom of creating a SSA. For instance, the 2021 annual report of the Office of the Information Commissioner cites their smallness and non-mainstream nature as a hurdle in recruiting and retaining appropriate staff (reinforcing findings of studies cited above). This may result in increased use of consultancies, contract personnel and other outside resources impacting efficiency, effectiveness and economy. Therefore, the risk to purpose experienced by a SSA may be enhanced because potential staff do not see such an agency as representing a good career move while the inability to recruit appropriate staff may place the purpose of the organisation at risk. Recruitment of personnel can be a challenge in SSAs. Literature suggests that individual’s knowledge and experience play a significant role in capacity building. There is also an important relationship between knowledge sharing and organizational innovation performance (Zhao, Jiang et al. 2021); innovation performances can be improved with knowledge outbound sharing and individual creativity. Researchers suggest that individuals with a high level of knowledge, skills, and experience become a source of new ideas for the company (Latifah, Setiawan et al. 2022), pointing to the need for multi-dimensional sets of individual and collective knowledge, abilities, skills and behaviour that emerge from practical experience and training. The structure of an organisation drives the capacity to apply knowledge and experience. There is evidence to suggest that an organisational structure and culture that promotes knowledge sharing, results in process improvement (Chi6n,

Charles et al. 2020). Therefore, structure and individual knowledge and experience foster and ensure a strategic perspective and orientation that integrates insights and lessons learnt (Folke, Hahn et al. 2005). This finding was also identified in the United States where the General Accounting Office (2001) identified that workforce challenges were also impacting the ability of the US Environmental Protection Agency and that a comprehensive human capital approach may be required.

### *Accountability and Agency Issues*

Golding and Wettenhall (1980) identified a “mechanism of control” and a “mechanism of answerability or accountability” in operation in statutory agencies. The discussion indicated that the controlling person or institution (mechanism of control) relies on the information provided (mechanism of answerability or accountability) in order to apply control mechanisms in a timely fashion. The institution may for example rely on a single senior individual to assess and respond to changes in the external control landscape and mechanism. Alternatively, it may be more diffuse or team-based to address this, or possibly refer such questions to their boards. In all cases, there is a job of collating the appropriate information and the research will identify the key person/ institution that undertakes the control process and the information they need to make this happen

However, the constitutional settlement in all Australian jurisdictions provides for a parliamentary process where the executive is responsible to the parliament, where the public sector is responsible to the executive and answerable to the parliament and where members of parliament are, ultimately, responsible to the people. This is a complex system, especially as the executive is part of the legislature and so the lines of responsibility are not clear cut. In the context of SSAs, once again the issues relates to the risk that the accountability and agency issues will prevent the SSA from achieving its purpose and/or cause harm to other agencies or third parties. It essentially relates to how decisions are made and how SSAs’ performance is evaluated.

For instance, the purpose of a regulatory agency may be to ensure that businesses operate in a fair and transparent manner. To fulfil its purpose, it needs adequate resourcing; including funding, staff, and technology so that it can carry out its functions and responsibilities and meet performance targets ensuring services are delivered efficiently. The structural position includes its relationship to other agencies and government departments, as well as the legal and administrative structure that have implications for its ability to fulfil its purpose. SSAs are accountable to the government and the public. Accountability methods may include reporting requirements, performance targets and audits. The structural position can affect its accountability in several ways; independent statutory authorities may have greater autonomy in their decision-making processes and may be more accountable to the public than if they were housed within a larger government department. The structural position, therefore,

is closely linked with the agency's ability to enact accountability. To be effective, efficient, economical and ethical, a statutory agency must have a clear purpose, adequate resources, a structural position that enables it to fulfil its functions and responsibilities and be accountable to the public and the government.

Importantly from an agency risk perspective, Saunders (2022) identified the minister as the key agent impacting the decision making around SSAs, even if there was a statutory board in place. This position was reinforced by Bowrey (2008) positing that the presence of the minister is a critical difference between the governance environment of commercial entities and SSAs. There is an important issue here where the minister seems likely to choose to exercise, or not to exercise, their power to the detriment of those who may be put in place to govern a SSA. Howard and Seth-Purdie (2005) identified similar issues but indicated that these boards needed to demonstrate improved accountability while problems with formal authority and safeguards for the public interest are lacking in these organisations. Further, it may be that the introduction of a board increases complexity by reducing clarity of purpose and responsibility (Bushnell et al 2022).

In terms of accountability, SSAs may be judged to experience the same challenges as the broader public sector. These relate to the paucity of appropriate data, lack of clarity in terms of purpose of the SSA and lack of knowledge and capacity in central agencies to adequately oversee the performance of SSAs themselves. For instance, SSAs may lack clarity in purpose if they have vague or broad mandates that do not clearly articulate their purpose or specific functions they carry out, creating confusion about the role and making it difficult to assess its performance. They may also have overlapping mandates with other SSAs or government departments leading to confusion about which agency is responsible resulting in duplication of effort. Sometimes, SSA may be relatively unknown and the public's lack of awareness of their existence or functions may make it difficult to hold them accountable. Lastly, SSAs that operate in a dynamic environment may have shifting priorities and mandates, creating confusion about their purpose and making it difficult to effectively plan and carry out their activities and as a result hold them accountable. These are some indicators that suggest there may be a problem in terms of accountability in some cases.

## Overall

Wettenhall (2005), when reviewing the dealings of government with statutory authorities (not just SSAs but all—we are applying to SSAs only here) considered all of these issues and made some concrete suggestions in response. Specifically, it was suggested that the government should:

- clarify their expectations of SSAs by issuing a Statement of Expectations
- utilise boards in SSAs only where they have the power to act

- establish an inspector general to investigate the systems and procedures used by SSAs
- create a centrally located group to advise on the application of appropriate governance and legislative structures when establishing or reviewing SSAs

These ideas are reinforced by Robins and Dovers (2013) who see clarity and consistency of the central government as being critical to the successful operation of SSAs. They also posited that consistent resources were critical for these organisations to achieve their purpose. Of course, these measures would add cost and complexity to the SSA system and so the ideas expressed above should be considered in the light of the overall impact on the public sector in terms of cost versus effectiveness.

## Critical Gaps in the Literature

The literature and commentary are a valuable resource for this study but also confirm that there remain significant gaps restricting the capacity of practitioners to develop effective policy in this area. For instance, the recognition of the arbitrary nature of the definitional attributes is almost universal while workable responses to this problem are not so prevalent. In this section, we finalise our discussion by confirming the key knowledge gaps that this project will seek to fill. Overall, we confirm that the questions raised initially in this paper remain relevant and their pursuit will be of value to the public sector in practical ways.

There key issues underpinned by risk are

1. The relationship between size and governance;
2. The oversight relationship between central agencies and small agencies;
3. How to best evaluate the effectiveness and efficiency of small agencies; and
4. The risk stemming from institutional agility

Therefore, the issues that require pursuit are:

- should “smallness” be measured using a multiple attributes schema?
- how should risk be identified and evaluated in order to determine the governance elements required?
- can the governance framework be disaggregated in order to apply elements that remain relevant based on the risk assessment?
- Should SSAs apply a reduced governance regime by discontinuing those components of the governance activities that are considered unnecessary, should they seek waiver and deferrals on reporting certain criteria (if available) or should SSAs deploy a different and specific-purpose governance framework based on their functional purpose?

- How should central agencies assess SSA efficiency, effectiveness, economy and ethical operations in the context of the applied governance framework? Do they oversee SSAs effectively?
- How can central agencies (and other departments of state) interact more effectively with SSAs in order to reduce the impact of their activities on the SSAs and vice versa?
- Should an independent SSA oversight agency be established to ensure governance outcomes?

## Conclusion

The general themes relating to this area are well known and articulated. While the literature is small and generally old, it is supporting these themes over time and clearly articulates a broad set of problems. However, it is the nature of an appropriate response to the problems that remains a conundrum. It is this conundrum that confirms the ongoing value and importance of this study.

The creation of guidance that can set out the problems effectively while providing practitioners with effective tools and commentary in order to create policy and effect sound governance in an efficient and effective manner is of great importance. It is also noted that the study will consider international best practice to see what can be learnt.

The primary needs relate to the identification of SSA risk, its assessment as to impact and likelihood, both in the context of whether or not to create a SSA and then in establishing a governance framework that will meet the cost/benefit calculus. As identified above, risk is not always related to finance and so the assessment of size may not be necessarily associated with full time equivalent staffing numbers.

Equally, the challenges faced by SSAs are not always generated just because an SSA is “small”. Central agencies can inadvertently impact the effectiveness of governance systems on SSAs and, in turn, can impact the efficiency and effectiveness of the structure as a result of their lack of resourcing, capacity and agility for building a close knowledge of the SSA and what it does.

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