Taking public sector governance from concepts to an implementable system.

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Beyond Fragmented Government: Governance in the Public Sector

Conference

Abstract

While public sector governance is being promoted, particularly by auditor-generals, this promotion is often limited to discussion on important concepts such as transparency, accountability and alignment with government directions. Important as these concepts are, what is lacking is guidance on what constitutes the more detailed components of “good governance” in the public sector and, more importantly, what management systems need to be in place to ensure that a public sector agency delivers good governance on an ongoing basis. This paper will discuss the components or issues that need to be taken into account by an agency to identify the risks that, if not managed, could undermine good governance outcomes for the agency and the structural, operational and maintenance systems that need to be set in place to ensure good governance outcomes.
Introduction

One of the difficulties associated with a public sector agency implementing a system to achieve good corporate governance is the fact that there is no agreed definition for good governance in this sector and those that are given are expressed in conceptual terms which leave a lot of scope for interpretation and, therefore, debate about how this is to be achieved. What is required is to take the issue from a conceptual discussion to a management system approach so that agencies then have a better idea how to set in place processes to deliver good governance outcomes.

The Uhrig Report\(^1\) acknowledged this lack of any agreed definition and limited itself to a vague definition. Its view was that:

*In general terms, corporate governance encompasses the arrangements by which the power of those who implement the strategy and direction of an organisation is both delegated and limited to ensure the organisation’s success, taking into account the environment in which the organisation is operating. While this description has been employed for the purposes of the review, it is not surprising that there is no universally agreed definition of corporate governance, just as there are no universally accepted structures and practices that constitute good governance. There are a number of structures employed, dependent on a range of variables, including the type of organisation, its ownership characteristics and the nature and breadth of the function.*

A similar conceptual approach is reflected in the Australian Auditor General’s description of corporate governance\(^2\) as:

*Corporation governance generally refers to the processes by which organizations are directed, controlled and held to account. It encompasses authority, accountability, stewardship, leadership, direction and control exercised in organizations.*

The Victorian Auditor General adds risk management to this list stating\(^3\):

*All organisations need an effective risk management system. In years gone by, we thought it was embraced by having effective internal control systems in place. We all know now that this does not go far enough.*

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\(^1\) REVIEW OF THE CORPORATE GOVERNANCE OF STATUTORY AUTHORITIES AND OFFICE HOLDERS, June 2003, P 17


This paper argues that the Australian Standard on Compliance Programs (AS 3806), which was published in 1998, could serve as a useful template for setting in place a management system approach for public sector agency good governance. This is the standard that is commonly used in the private sector to establish and maintain in-house regulatory compliance systems. As the standard itself says ⁴,

*"A compliance program is an important element in the corporate governance (emphasis added) and due diligence of an organization, and should -
(a) aim to prevent, and where necessary, identify and respond to, breaches of laws, regulations, codes or organisational standards occurring in the organization.
(b) promote a culture of compliance within the organization; and
(c) assist the organization in remaining or becoming a good corporate citizen."

The standard's framework covers:

- **Structural elements**: the necessary infrastructure required for any compliance system to operate effectively;
- **Operational elements**: the day-to-day operational requirement of a compliance system; and
- **Maintenance elements**: those requirements necessary to maintain the system in good working order.

It is submitted that using these elements as a basis of a governance system could form the foundation of setting in place a workable system but one that can achieve the outcomes set out in the above definitions.

**Structural elements**

Structural elements cover the necessary infrastructure or building blocks on which an effective compliance system can be built. The essential structural elements for a good governance system are discussed below.

**Commitment**

When AS 3806 talks about commitment, it refers to commitment to compliance throughout the whole organisation and suggests top-level systems and activities in place that demonstrates an ongoing active commitment to compliance and adequate resourcing of the process. Commitment to compliance as demonstrated both in the Australian Standard and in practice is normally demonstrated by the presence of such things as:

- Whether there is a top-level governance/audit/ethics committee of the agency, which is proactive in driving governance outcomes.
- Whether governance is a standing item on the governing body's agenda and it is receiving timely reports on the issues surrounding governance.
- Whether this body has a term of reference attuned to managing governance issues and whether it meets regularly to discuss these issues.
- Whether there is a senior executive with overall responsibility to governance in the organization.
- Whether there is a compliance program for governance issues based on Australian Standard Compliance Programs (AS 3806).
- Whether there is an organisational governance plan that is endorsed by top management, implemented, monitored and reported on.
• Whether there is a “Governance” Manager, i.e. someone who has the day-to-day responsibility of ensuring the smooth running of the program i.e. implementation and maintenance of the organisation’s governance plan.
• Whether there is a cross-functional middle management governance committee that oversights and pulls together for the relevant aspects of governance.
• Whether there are adequate resources to ensure governance outcomes.

An agreed governance plan means that a system can be implemented and maintained. For example, an effective governance plan should:

• Identify the structural, operational and maintenance requirement for the governance program, e.g. using the benchmarks set out in AS 3806.
• Assist in identifying governance obligations on an ongoing basis.
• Assist in developing or ensuring that effective compliance mechanisms/controls deal with these obligations.
• Detail when and how monitoring/auditing of the systems should take place.

Typically many agencies have in place systems for compliance with legislation such as EEO, FOI, OH&S and a risk management system for financial management. However an **overarching governance compliance program** based on AS 3806 can more likely deliver effective outcomes, not only for existing important requirements but also for the newly emerging governance issues. The standard reflects current best practice business procedures for compliance.

One of the most important means of demonstrating commitment to good corporate governance is through the creation of a top management governance committee. Such a body would not only demonstrate both
internally and externally that the organization was committed to management of governance issues but it would also demonstrate that it is ultimately accountable for these issues and has the necessarily interest and “clout” to ensure that all governance issues were being effectively dealt with on an ongoing basis.

Besides governance being driving from the top, it is important that a top management body has clear terms of reference as to its role in managing governance within the agency. Terms of reference could include, for instance:

- Ensuring that identification and management of governance issues is undertaken on an ongoing basis.
- Ensuring that the organization’s governance compliance system is adequately resourced and maintained and achieving compliance outcomes.
- Setting and promoting ethical values for the organization, e.g. through an active code of ethics and other initiatives.
- Ensuring systems for regular and timely reporting on all governance issues to top management.
- Ensuring that risk assessment and management of governance and other issues are conducted on a regular basis.

AS 3806 makes the point (and it is accepted private sector practice in large organizations these days) that active commitment to compliance can be demonstrated by the appointment of a compliance manager. Typically, this person has the overall responsibility for coordinating and ensuring the whole organization has set in place and maintains an effective compliance system.

In many agencies some governance issues are carried out within its various divisions but there is generally a lack of overall coordination of these
activities. The appointment of a “governance manager” could ensure that all governance issues are not only identified but also managed consistently. For example, such a manager could be responsible for:

- Ensuring that all the agencies governance risks are identified and prioritised,
- Ensuring that all such governance risks have adequate compliance procedures/controls developed and implemented by relevant line managers in relevant sections.
- Ensuring that the compliance systems/controls are regularly monitored/audited to ensure that they are functioning on an ongoing basis.
- Reporting to the senior manager responsible for compliance and the top management governance committee.
- Ensure that the agency embarks on a program of continuous improvement and maintain “best practice” in public sector governance.

It is important that such a person be someone with sufficient seniority to have the “clout” to ensure that governance compliance systems are followed.

**Compliance policy**

The next structural element in AS 3806 is a compliance policy. The standard suggests that a Board or top management compliance policy needs to be developed in consultation with all relevant internal stakeholders and should include clear statements about the requirement for its implementation, of how compliance will be achieved and the expected outcomes. Further it suggests that the policy must include a statement that compliance failures will not be tolerated and state possible consequences of such failures. It must include statements that ensure all staff, contractors, subcontractors, agents and distributors clearly
understand that they all have a vital role in and must be committed to ensuring compliance occurs throughout the organisation.

AS 3806 recommends that the policy should as a minimum:

a) describe what the program is, what it is intended to accomplish and how it works;

b) describe the top level commitment and state that they are binding on everyone (including agents, contractors and distributors);

c) state the structure of the program and the roles of any committee and senior manager with overall responsibility, and of other managers and staff;

d) set out the standard of conduct required of everyone and that they will receive no support if they breach that standard;

e) encourage reporting of compliance problems and that it should be regarded as a positive and non-threatening activity;

f) set out effective ‘whistleblower-protection’ provisions;

g) require that all breaches occurring be identified, reported and rectified promptly.

The policy may be in one or more documents, eg a governing body resolution with the personal endorsement of the Chief Executive Officer and a separate framework issue by the governing body or under its express authority setting out the other matters mentioned above.

The importance of this essential element is that it establishes a visible policy to staff and others of the agencies commitment to compliance with governance issues and ethical values.
**Management responsibility**

AS 3806 recognises the critical importance of management responsibility in achieving compliance outcomes in that all managers need to understand, promote and be responsible for making sure all staff under their control are aware of their compliance responsibilities.

While a compliance manager has overall responsibility for the compliance program all operational managers have responsibility for compliance within their areas of responsibility and have responsibility to ensure that all rules and regulations are embedded into day-to-day practices and procedures.

In terms of agencies’ governance issues tasks need to be specifically identified and allocated to relevant managers. It is important for the success of governance plan that each responsible line manager is identified as being responsible for an identified governance responsibility, and that this be done on an ongoing basis to ensure that responsibility, reporting and accountability for governance issues occurs.

**Resources**

While some issues that now fall under the umbrella of public sector governance have been in operation in agencies for some time, e.g. internal auditing, financial risk management, there may not have been a conscious allocation of resources to the newly defined governance functions of the agency. Given this redefining of the nature and the extent of public sector
governance, a review shall be taken of the adequacy of the resources to ensure effective governance outcomes. The list of governance issues identified as being relevant to agencies are set out below in the section covering identification of compliance issues.

**Continuous improvement**

There is recognition in AS 3806 that compliance management is an area where there are continuous developments and improvements taking place and that professionals involved in this area need to keep up-to-date on issues so that their knowledge does not become dated.

Currently there is an initiative across the Victorian Government called the Continuous Improvement Network that is run under the auspices of the Agency of Premier and Cabinet focussing on best practice framework including public sector governance.

However there is scope for more continuous improvement for governance within agencies. For example an ongoing commitment to best practices in governance could be obtained through research and application of best practices in Victoria, nationally and overseas.

An important element of continuous improvement is the professional development of the professionals that work in the area of governance including compliance, risk management, and ethics. In an environment of increasing compliance management responsibilities there is a need to train key managers on compliance management skills. Thinking and practices in these areas are quite dynamic and the knowledge of professionals who operate in these areas can quickly become dated.
Operational Elements

The operational elements cover the day-to-day running of the governance system.

Identification of governance issues

One of the essential elements recognised by AS 3806 is the need for systematic identification and addressing of regulatory issues impacting on and occurring in an organisation’s operations. This approach readily lends itself to a government agency governance system.

Besides one-off exercises such as a workshop to identify relevant issues the AS 3806 approach suggests that organisations need to have processes in place to ensure that they receive timely advice of changes in the external environment that impact on the organisation. Such advice could be obtained by—

(a) arrangements with legal advisors;
(b) being on relevant regulators’ mailing list;
(c) membership of relevant professional groups;
(d) regular reviews of relevant on matters of across-the-board interest;
(e) subscribing to relevant information services; and
(f) attending forums and seminars.

Internal governance failures can be identified by conducting regular reviews of operations, complaints and internal reports and may include:

- Auditing/monitoring of procedures
- Compliance/governance committee reviews
Hot Line calls to the Governance Manager

All governance failures should be classified and analysed so that any problems can be identified and rectified as soon, and as effectively, as possible.

Aggregated data that highlights systemic governance problems can be used to—

(a) redesign processes, products and services;
(b) change organisational practices and procedures;
(c) retraining staff;
(d) re-assessing information needs;
(e) assess service performance; and
(f) give early warning of potential problems.

Identifying governance risks involves asking, on a regular basis, what, why, when and how governance failures could arise. In the governance context, this may include listing the types of governance issues that have arisen in the past and the way in which they have been managed. Approaches used to identify governance issues may include systemic analysis, questionnaires, checklists, judgments based on experience and records, flow charts, brainstorming, feedback and scenario analysis. The aim is to create a comprehensive list of governance issues that can be analysed, evaluated and managed.

What are the governance issues that public sector agencies should consider?

Agency values

One of the principle mechanisms for embedding agency values throughout an organization can be through a code of conduct. For example, the Victorian public sector has a Code of Conduct for is supposed to bind all Victorian government agencies.
Codes, like any other set of rules including legislative and/or internal rules, need to be the subject of an active compliance program if they are to be effective and deliver the expected outcomes. Without this they are little more than window dressing.

There also needs to be ongoing ethical training in the use of Codes for decision-making. The Australian Standard on Organisational Codes of Conduct suggests that the governing body should consider the establishment of an Ethics Committee, chaired by an independent chair, and including an outside ethics adviser, whose terms of reference would include:

- Overseeing the development, promotion and maintenance of the Code of Conduct; and
- Adjudication on breaches.

Public Sector ethics are the basis of good governance. Ethics in the public sector is about fostering and maintaining the standards of behaviour that ensure public trust and the successful operation of the public sector.

While codes can be a means of promoting ethical values in an agency they are not the only means. Other means may include:

- A behavioural accountability framework which set out the agency's values and its expectations in terms of behaviours and which are embedded into performance plans against which staff are regularly assessed e.g. every 6 month.
- Organisational Staff Surveys that tests behaviours i.e. results test against behaviours so there is feedback of behaviours at group level. It can be built around such issues as morale, stress, attitudes to work, the employer and the organization, leadership, performance management, role clarities, integrity, professionalism, self management and supervisory support
- Behavioural-based interviews that applies to every person coming into the organization. This could include physiological testing, behavioural-based interviews and behavioural-based situational analysis groups i.e.
an assessment centre. Group level action plans can be developed as a result of this.

- Action planning is a structured process in the organization and personal improvement is part of this process.
- Specific leadership program based around the aspirational behaviours and as part of full 360-degree assessment and feedback of all the executives.

Another initiative designed to improve compliance with the aspirational/behavioural issues includes ongoing training for all staff and some FAQ’s placed on the website that give advice on issues that confront many public servants in the ordinary course of their duties and an alignment of appropriate code provisions.

**Acceptance of gifts and entertainment**

This issue is generally covered in the code of conduct. This needs to be supported by ongoing visibility of the issue and the provision of registers.

**Risk Management**

As with the private sector, good government entails recognising, understanding and, where appropriate, mitigating risks.

Many agencies now have in place a risk management system that examines financial risks for the agency. Other risks that may be checked are risks on capability issues (e.g. delivering on performance measures) loss of key staff and processes vulnerable to external factors.

While these practices manage a significant governance issues the same process needs to be employed in other areas under the governance umbrella. For example, there are other “risk” areas where no risk assessment is conducted and yet there could be a major risk, including, for example:

- Fraud and corruption risks
• Legal liability risks
• Business continuity risks
• Governance risks

While the likelihood of some incidents may be rare or unlikely, if the consequence was to be major or catastrophic cost effective compliance systems/risk management measures/controls need to be identified, put in place and maintained

**Fraud and corruption control**

While many existing systems in public sector agencies for fraud control are robust and have had the effect of preventing and detecting fraud and corruption, these system could benefit from being benchmarked against current fraud and corruption benchmarks. These can be found in sources such as the Australian Standard on Fraud and Corruption Control\(^5\).

**Audit**

Most, if not all agencies have an internal audit program, an audit schedule and audit committee which may include internal and external members. The audit committee can oversight the work undertaken by internal auditors. Internal auditing is done on an ongoing basis.

The Auditor-General undertakes external audit.

**Auditor-general guidelines**

Recent incidents in Queensland and South Australia have highlighted the need for systems in place to comply with Auditor-General’s guidelines. The Queensland incident involved the Board of Energex (a government owned

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\(^5\) Standards Australia. Australian Standard 8001-2003 Fraud and Corruption. Sydney, Standards Australia
corporation) approving a removal allowance for the CEO of Energex outside the Auditor-General’s guidelines.

The South Australian incident concerned an Auditor-general’s report that reported unspent agency funds from the Attorney- General’s Agency were transferred over two financial years to the Crown Solicitor’s Trust Account.

The report stated that this was motivated by an intention to avoid disclosure to Treasury and Finance of the underspending of funds appropriated to the agency.

**Oversight of contracting out of services**

This is required to ensure that grants, subsidies and other government funding to ensure that it is spent within government (e.g. auditor-general guidelines).

**Asset Management**

Systems need to be in place to ensure that a regular (e.g. quarterly) check/audit of all assets is conducted. Relocation of an employee should trigger a checking procedure to ensure that their assets are recorded in the appropriate cost centre.
**Contract tendering**

In Victoria, the Financial Management Act empowers the Victorian Government Purchasing Board not only to operate but also write policy on contract tendering. Part of its policy is that each agency must have an Accredited Purchasing Unit (APU) which has to go through a process of accreditation through which it has to meet certain training and operational requirements. This group’s role is to check that processes have been followed before a contract is signed.

Agencies could set in place a number of procedural mechanisms to ensure fair and effective tendering procedures, including:

- Before calls for tenders are made having them cleared by a contract resourcing unit and having contract managers briefed on requirements.
- Having a Probity Auditor/advisor for all contracts over a nominated amount e.g. $10 million. The Probity Auditor could ensure that appropriate procedures have been adopted and that the process is impartial. The Probity Auditor’s report could then be submitted to the top management governance body.
- The Accredited Purchasing Unit can be the formal unit independent from the tender process which ratifies major contracts i.e. anything over $100,000 (the public tender threshold). When the recommendation for awarding the tender is written up it can go through the APU before it goes to the financial delegate for sign-off. The APU interest could cover how many people put in for the tender, how the tenderers were scored by the evaluation committee, how they were evaluated, how the short list was achieved and the justification for awarding the tender. The APU can then sign off that due process
has been followed before the financial delegate, who has final veto, signs. When the delegate agrees it is only then that the contract manager can sign the contract with the service provider.

- Having a tender opening committee whose role it is to close the tenders in the tender box, certify the tenders and hand them over to the project manager. The tenders then go to an evaluation committee.
- Having a sign-off hierarchy as well.
- Having a selection panel of 3 suitable qualified and independent people to ratify the decision to purchase.
- Having a steering committees in major projects

_Contract management_

In relation to contract management a contract/project manager needs to:

- Monitoring the deliverables against the project scope or what has been agreed to;
- Manage milestones;
- Manage payments;
- Manage variations to the contract.

Things like cost blowouts need to be monitored on an ongoing basis i.e. actual expenditure against approved expenditure.

If there is any variation to a contract it is important that the appropriate paperwork is undertaken, signed, appropriate approval sought and filed.

_Public/ Private Partnerships_

Issues that can arise here is that standards may not be met and that problems may occur mid to long term in the term of the contract e.g. lack of maintenance.

What is needed is to ensure that the contract covers the issue of a mechanism for maintaining standards, and some form of ongoing auditing or assurance by the agency to ensure that these are being met.
Records management

This is an important area of governance where the potential for inadequate or lack of compliance with processes can result in missing files and correspondence not dealt with sometimes with serious consequences and/or embarrassment for an agency.

Systemic problems that can occur in agencies include:

- An attitude among some staff that ownership of records lies with them when the fact is that it lies with the agency i.e. staff making up their own rules as to how documents are to be treated: records guidelines are not being followed;
- Lack of “clout” of records staff resulting in a significant level of non-compliance with records management guidelines.
- No compulsion on people to put documents on file; keeping business records kept on individual drives that are not backed up on the agency system;
- Sub-optimal record keeping practices resulting in final signed versions of documents, that are understood to have been signed-off, being unable to be located or are difficult and therefore time consuming to locate (e.g. Ministerial Briefs, tender waiver request etc.);
- No spot checks/audits done to see that material is filed and filed correctly.

Best practice in records management as laid down in the International Standard on Records Management (AS ISO 15489) is to look at the functions, activities and processes of an organization and the documents that are developed. From this hierarchy is developed the classification system to accommodate their records and documents.
Typically the group responsible for document management in each agency needs:

- To be given more credibility,
- More “clout”,
- To be educated to a level where they can provide appropriate services and upskilled to a point where they can manage the EDM (e.g. training on the Australian Standard on Records Management).

Robust behavioural compliance mechanisms are required including:

- Penalising record practices set by officers themselves,
- clear compliance messages from the top,
- reinforcing compliance with guidelines;
- reporting;
- monitoring or spot checks undertaken.

The sort of issues that an agency should consider in this area include:

a) Implementing the International Standard on Records Management (AS ISO 15489) and the agency’s Record Management be reviewed against this standard on a regular basis;
b) Records management policy have, and be seen to have, top management’s support;
c) A training program about staff obligations under records management policy be mandatory for all staff
d) Records and knowledge management be part of each officers annual assessment;
e) Spot desk audits be conducted regularly and that file audits also be undertaken on a regular basis;
f) Professional development courses be designed and implemented for Records Management staff.
g) A policy on use of storage of agency work on personal drives be developed to ensure that work is accessible to others in the agency.

h) Regular reports be made to top management on compliance with the above

Knowledge management

An important project for all public sector agencies is to capture all of the soft copy data and have it in a central repository where it is accessible by all staff so that staff can learn and share from each others’ experiences presently and from the past without having to know who did something, or worse, who may have left the agency and taken that experience with them. Instead of having separate drives within the divisions of the agency staff should be able to tap into each other’s work.

Some agencies look at what are called Communities of Practice. The idea is to set up a framework and tools to encourage the sharing of information or tacit/soft knowledge. Communities of Practice work by setting up a network of like-minded or like skilled people or who work in the same project area or profession. When a project or subject crops up and there is a need to talk to someone about it then one can go to the network list of names and engage with them and even meet and talk with them on the relevant subject matter. This knowledge can be shared through Quickplace (an IT tool) where all the people in the Community are registered and if one has a comment to make about the subject then a notice is put on Quickplace and all the people registered can look at it. The Community may even go beyond the agency to those who have a good understanding and knowledge of a particular subject to seek guidance.

Knowledge sharing can result in saving money on time and efficiency by avoiding re-invention e.g. looking at the recorded processes of a previous project of a similar nature to avoid the pitfalls of the previous project. With
project management there needs to be more debrief documents put together upon completion of a project so that people who engage in a similar project can look at what happened to see what they did wrong, what difficulties were encountered so that they will know to bear those in mind and get a better outcome.

In relation to storage of policies, a portal can be used.

**Compliance with legislation**

Agencies need to determine the legislation that they are required to comply with. Typical legislation include:

*Freedom of Information*

*Occupational Health & Safety*

*Delegations*

Best practice would suggest an annual review of compliance systems for legislation be undertaken to ensure compliance with existing legislation and the development of systems as required in relation to new legislation. The compliance system should be benchmarked against the requirements of AS 3806.

**Physical security**

Agencies need to have systems in place to ensure the safety of staff and the public. These arrangements need to be checked regularly to ensure that procedures are being adhered to.

**IT Security**

A risk assessment needs to be undertaken on the major IT security risks and how these are to be managed. Typical risks can include virus, hacking, fire damage.
Audit of the security of the IT system should be undertaken regularly e.g. 2-4 times a year.

**Data integrity**

One of the emerging issues for both the public and private sector is identity fraud. Access to data when not authorised can have serious consequences for an organization. Fail-safe mechanisms with ongoing spot checks need to be established.

**Intellectual Property security**

Agencies need to have processes in place to ensure that any intellectual property developed by them is secure.

**E-business risk**

Some agencies use e-business particularly if they are a service organization. The main controls here can be through the auditing process.

There are financial reporting requirements e.g. cash management reporting processes, which can act as checks in this area.

**Communications**

In terms of what can go wrong in this area situations could arise, for example, whereby a staff member spoke to the media and gave them incorrect information, and inconsistency in the message the Agency is attempting to deliver.

Agency communications sections typically undertake project work, policy launches or announcements, preparation of publications and brochures,
arrangement of public consultation, event management, speeches for Ministers, press releases and developing communication strategies. All government agencies have their own website which need to be updated regularly.

**Whistleblowing systems**

It is now widely recognised that internal whistleblowing systems are needed to report fraud or unethical practices that don’t come through normal channels.

One of the essential elements of an internal whistleblowing system suggested in Australian Standard on Whistleblower Protection Program for Entities (AS 8004) is *Visibility and Communication*. In short the system needs to have a profile in the organization. The Standard advises that the entity’s commitment to and requirement for reporting of reportable conduct needs to be *continuously* (emphasis added) publicised to staff, agents, contractors and other relevant third parties. Details of the type of complaints the whistleblower policy seeks to deal with and where complaints can be directed need be prominently displayed (e.g. in internal newsletter, internal phone list) and reinforced on an ongoing basis.

Suggestions include:

- Placing easily accessible and readily identifiable material on the intranet.
- Short quarterly articles in the newsletter (e.g. profiling the whistleblowing protection officer, articles on incidents that could be reported based on actual reports, hypotheticals or incidents reported elsewhere).
- Included material in static material around the agency e.g. posters
- Mention of the system in ongoing training material.

The Australian Standard gives useful guidance to agencies to either benchmark their system against or to form the basis of establishing a system.
**Crisis Management**

This covers business continuity after a major crisis e.g. fire, explosion, electricity outages, failure in water supply and damage arising out of unauthorised access or security threats driven by terrorist concerns.

This would include the development of operational plans and their implementation and scope for auditing/testing the system when it becomes operational. A business continuity manager should oversee the development, implementation and maintenance of the strategy.

Again the Australian Standard on Business Continuity can serve as a tool to benchmark a strategy.

**Relationships with stakeholders**

To begin with agencies need to identify the relevant stakeholders and develop the relevant strategies needed to deal with such stakeholders.

For example, senior executives in an Agency may need to be charged with the management of certain relationships with the Minister's office.

Most, if not all, agencies have Departmental Liaison Officers who are physically located in the Minister's offices. These officers may come together weekly and report back on matters that happen in the Minister's office and consolidate a report about such issues, which goes to senior executives or the senior executive team.

Many agencies are now sharing services with other agencies in other areas such as IT and HR. This system could provide, for example, for a primary relationship person and a back-up person as well. Governance in a shared
service arrangement may be difficult. Each group has its own priorities, its own method of working, and its own focus. What is needed is recognition by both of the parties that there is value in using the common resource and what that value is. With the shared facilities approach there needs to be built in shared governance arrangements or mechanisms that allow parties to resolve differences. This could be done, for example, by representations by both parties to each other to understand each other’s points of view. This would need to be based on a commitment to resolve problems and priorities on an ongoing basis. Devices such as shared services steering committees i.e. a shared governance body can assist. This group could have terms of reference and meet on a regular e.g. fortnightly basis. The willingness to work together and work through their issues is a critical element of those governance bodies to work.

In terms of “whole of government’ arrangements similar issues to the shared services can apply. The potential for conflict can arise particularly in terms of the “proprietal” view of the world that agency employees sometimes develop. Apart from central agencies using the usual approach of bringing a whole of government perspective, consideration may need to be given to employing mediation type skills where the needs of all parties are recognised and attempts made to address such needs.

Another area of potential tension occurs when agency staff are asked to do something that may be party political in nature. While it is open to people like the Departmental Liaison Officer to raise any issues with their senior managers there needs to be visible or accessible rules, guidelines or training that govern this situation.

The media is also a stakeholder for the agency but direct dealings are generally done through the Ministers’ media office or the communications group.
Many agencies are using web sites to communicate to the public. It is important such information is public centred i.e. giving information that the public wants and not what the agency thinks they want, is kept up-to-date, in an accessible format and uses search engines.

**Performance indicators**

Most agencies have performance indicators on such things as quality, quantity and timeliness against which their performance is measured. Monitoring and reporting on these should be done on a regular basis. In terms of evaluation of performance measures this should also be done on a regular basis. Discussion could address whether the indicators are accurate and whether they are the right indicators. This information can then be used to determine how the agency is performing as a whole.

Pro forma quarterly reporting from managers can provide data around their performance measures, explanations for variance against targets and other information such as risk updates, progress on key projects and key achievements.

**Compliance with strategic directions and business plans**

Agencies should have a well documented planning process which could, for example, involve a session with the agency’s minister to tap into the government's thinking, and a session with all the executives where all that information is fed through and they undertake their business planning and budgets.
**Ministerial directions**

One area of concern can be the blurring of the roles of policy and management i.e. what are the appropriate roles of ministerial advisors and the Minister’s Department.

**Information privacy**

Agencies should have privacy policy and ensure awareness of that policy, for example, intranet based privacy training which is required of people as part of there induction training.

Regular privacy audits can ensure that the practices to implement privacy principle are up-to-date. External audits can assess the effectiveness of the processes and policies that had been put in place.

**Organisational structure**

This could accommodate two views. There is an “output” view. There are a number of outputs, each one with an output manager, who is responsible for delivery of the performance indicators that are in the budget papers. Every output manager could have an output business plan and the responsibility for delivery is in his or her individual performance plan with his or her executive manager.

There is also the “group” view of the organization which concerns people with responsibility for the organisation’s capability. The group view is based around skill sets. Each group should have its own group plan which is a future looking capability and resourcing plan.
Project management

Many agencies have a number of IT contracts. Good documentation needs to be kept around the project as well as records of issues such as scope, changes to scope, variations, contractual arrangements with providers, test and acceptance plans.

Operating procedures for compliance

Having identified the relevant governance issues as discussed above AS 3806 stipulates that practical procedures should be in place to ensure that all aspects of compliance are met.

The standard suggests that these should include the following:

(a) Roles and responsibilities of management and staff.

(b) Anticipating areas where compliance failures are likely to arise and putting procedures in place to prevent such failures.

(c) Action plans to deal with problems and faults that may arise.

(d) Ongoing monitoring, assessment and reporting (including management supervision) to ensure that staff comply with procedures.

(e) Facilities to record, analyse and store information. Ensuring that compliance standards are incorporated into—

   (i) computer systems;

   (ii) forms;

   (iii) contracts; and

   (iv) administrative procedures.

(g) Specific arrangements for reporting instances of compliance failure, such as hotlines.

(h) Details of educational and training requirements.
Much of the exercise concerning compliance systems for identified and relevant governance issues involves identifying existing behavioural and procedural compliance procedures and commenting on their adequacy.

**Implementation**

Implementation involves look at existing systems in place and commented on these and in some cases implementation of compliance procedures where none are in place.

**Complaints handling/reporting system**

AS 3806 suggests that a visible and accessible complaints handling (or reporting system) system can be a source where compliance failure may be reported. If the agency has in place appropriate categories for recording data that identifies compliance failure it can review such data so that it is in a position to rectify the causes of the identified compliance failure.

**Record Keeping**

AS 3806 suggests that accurate, up-to-date records of an organisation's compliance activities need to be maintained to assist in the monitoring and review process and needs to include and classify alleged compliance failure and the steps taken to resolve them.

Good record keeping of governance issues is also important for an agency to be able to readily demonstrate it is diligent in meeting current best practices in public sector governance.

**Reporting**

Having in place robust reporting systems can ensure accountability throughout the organization. In the context of compliance, reporting has two features. The first is that there is a visible and accessible system for reporting compliance failure so that such failures can be rectified on an ongoing basis.
For example, any identified compliance failure may require changes in practices, policies and procedures or retraining staff. The other aspect of reporting is to ensure that senior and top management are aware of the high-risk governance issues on an ongoing and timely basis so that their authority ensures an effective governance system operates on a day-to-day basis. As the Commonwealth Auditor-General said:

> The identification of key performance indicators, together with reporting of actual results against these performance indicators, is a key plank within this new accountability framework and a central element of supervision

The appointment of a Governance Manager could assist in ensuring that reporting systems to top management existed across-the-board on governance issues and also as a receptor of any compliance failures with governance issues.

**Management Supervision**

AS 3806 recognises that management supervision is an integral part of an effective compliance program, to ensure that staff fully understand the organization’s policy and operational procedures and how these apply to their jobs and that they carry out compliance procedures effectively.

The appointment of a governance manager could mean, amongst other things, that that person would identify appropriate managers for governance matters, assist in designing performance measures for their governance compliance responsibilities, help design appropriate compliance procedures for line managers, organise or assist in organising professional development for managers to assist with compliance with their governance responsibilities.

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6 Ibid, ANAO, p.9.
and assist with training programs for staff on matters related to governance issues.

**Maintenance**

Lastly, AS 3806 suggests some essential elements for maintaining a governance system effectively on an ongoing basis.

**Education and training**

Education in the compliance context means increasing awareness and understanding of governance issues and can be achieved through opportunities for appropriate learning through such things as mentoring, relevant courses, access to online materials, case studies and incident de-briefs.

Training of personnel in relation to a governance compliance program should be an ongoing part of an agency’s operations and linked to the corporate training system. It should be practical and readily understood by the target audience. Training can be achieved by the use of discussions, ‘real world’ examples, in-house publications, computer-based training and external trainers.

One aspect of a governance manager’s job would be to find out the gaps in governance compliance training and ensure that relevant staff receive adequate training on aspects of their governance responsibilities.

**Visibility and communication**

AS 3806 states that a compliance program’s existence and purpose, and staff obligations, should be publicised in such a way as to be widely understood and become a normal part of everyday organisational practice. In short,
governance compliance and what it is all about should have a profile in an agency and should be part of the lexicon.

The standard goes on to suggest that sufficient resources should be allocated to the promotion and dissemination of information about the compliance program. This might include distributing information sheets, holding workshops, and placing informative articles in corporate newsletters and bulletin boards.

Material exists that supports governance issues but staff need to know about so that there not too many “clicks” away for people to find the material. In short it needs visibility and accessibility. Another reason for having a governance manager is to ensure that governance has a profile within the organization and to co-ordinate and drives the process within the agency.

**Monitoring and assessment**

**Monitoring**

AS 3806 suggests that a compliance program should be regularly monitored and its performance evaluated. A strategy for continual monitoring should be established, setting out internal and external monitoring processes and outlining the schedule for the program, the resources required and the data to be collected.

Regular reports of the results and recommendations from monitoring should be made and connected to the system's reporting and continuous improvement processes.

Analysis of the monitoring reports should be made to identify potential problem areas and systemic issues, and the results of the analyses included in the reporting.
**Assessment**

AS 3806 goes on to suggest that the compliance program should be assessed and measured against predetermined, documented compliance objectives and assessment criteria which may include—

(i) evidence that compliance is being achieved;

(j) content and regularity of reporting to management;

(k) reassessing compliance risks;

(l) whether compliance procedures are being effectively implemented;

(m) nature, effect and extent of staff training and educational programs;

(n) number and details of alleged breaches of relevant laws, codes and organisational standards that have been identified, and the extent to which similar conduct may have subsequently occurred.

Monitoring and performance measures should be independently assessed and validated.

Objectives should be set for each element of the compliance system program and measurement or other assessment should be made in respect of both the system program’s structure and actual performance against achievement of those Objectives.

The use of effective Key Performance Indicators (‘KPIs) or similar indicators as part of assessment and measurement is encouraged in addition to other relevant methods. All indicators or other assessment or measurement methods should be directed at achieving the Objectives laid down for the system. The Commonwealth Auditor-General believes that indicators must be reliable, accurate, relevant, regular, comprehensible and timely.⁷

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⁷ Ibid, P26
Monitoring results can be used as part of assessment and/or part of the assessment can be done in the process of monitoring. Assessment results should be integrated into the system reporting and continuous improvement to ensure its effectiveness. Regular review should also aim to measure whether the compliance system is performing effectively, including whether a culture of compliance exists and whether the program/system is meeting the organisation’s commitment to continuous improvement.

Other than the internal auditing there needs to be ongoing systematic auditing/monitoring of all governance issues to ensure compliance with established compliance/risk management systems or controls. For example, a compliance system can break down when people leave organization and no one is appointed to take on the task of that person. Often people who leave the organization can take the institutional compliance memory with them. Procedures are sometimes inadequately applied or not applied at all. Regular monitoring can remedy this.

**Review**

One of the essential elements listed in AS 3806 is that the organizations compliance program should be fully reviewed at specified intervals to ensure that it is operating effectively and that it is still appropriate for the organization’s operations. Having regular reviews can assist an organization in assessing whether it meets current expectations and reflect current thinking and practice in compliance management.

**Liaison**

AS 3806 suggests that there should be ongoing and formal liaison by the organization and its compliance professionals with regulatory authorities and other bodies, so that the organization is aware of current problem areas and compliance methods.
Organisations that are relevant to professional development include the Australian Compliance Institute in relation to compliance management and the Centre for International Corporate Governance Research, the Institute of Public Administration Australia and Charters Secretaries Australia for public sector governance.

Agency professionals involved in governance should join organizations like those mentioned above to ensure that their knowledge on relevant issues is kept up-to-date.

**Accountability**

AS 3806 lists accountability as an essential element of an effective compliance program. It suggests that the performance of the compliance program should be reported as specified in compliance procedures including reporting to the board or governing body and the chief executive officer.

The need for reporting to top management has been discussed in both the sections on commitment and reporting and is seen as a critical component of accountability.

**Conclusion**

The amount of interest in public sector governance currently been demonstrated by conferences such as this, statements and papers by auditors-general and inquiries. However, guidance on how this should be achieved is limited to date by some conceptual signposts. What this paper suggests is that if public sector governance is to become a reality then the focus should be on the next step i.e. an implementable management system or framework. The paper argues that there is already a framework which could be used to set in place a governance system for public sector agencies.
and that this is provided by the Australian Standard on Compliance Programs (AS 3806) which has been successfully “road tested” by the private sector for setting in place regulatory compliance systems.

While many agencies have systems in place to deal with some governance issues they don’t represent a holistic or overview approach to governance. The paper has identified areas or issues that should be considered in an agency’s governance profile and the need to undertake a risk assessment as to the priority an agency gives to developing a compliance program/risk controls to deal with these issues.

It is suggested that if public sector agencies adopt this approach they will be more proactive in identifying and managing risks rather than trying to clean up the mess after a governance breakdown as is witnessed regularly in the media.