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RESEARCH INSIGHTS

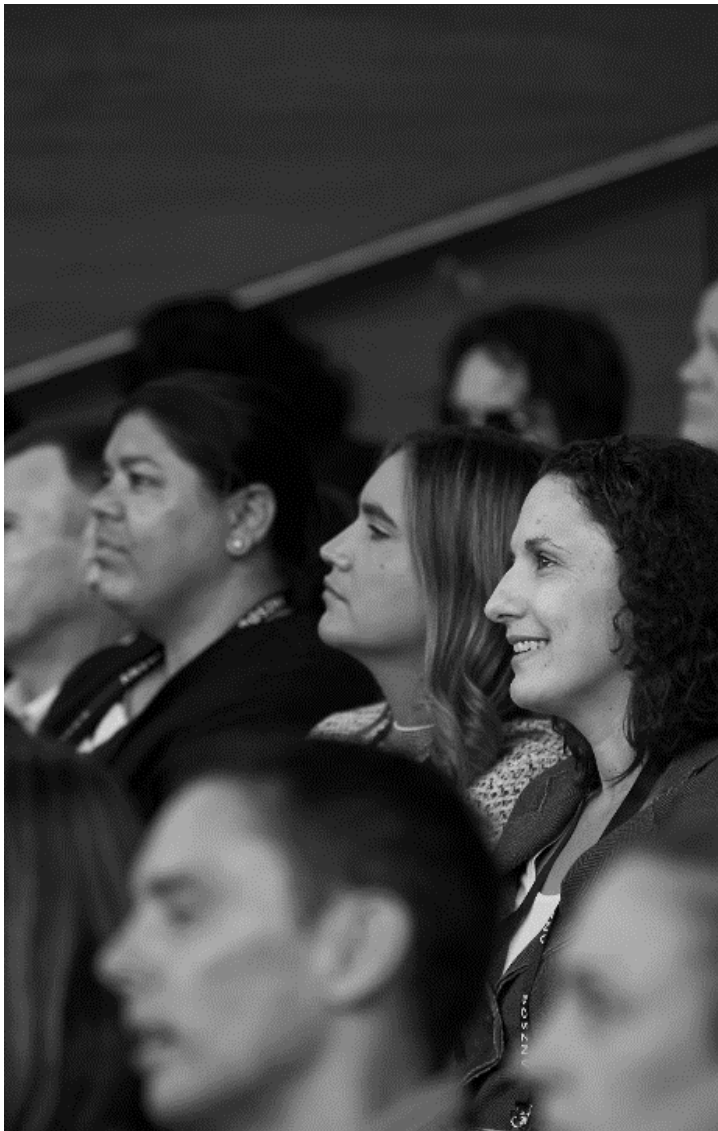# The Purpose of Small Statutory Agencies: Insights on their Functions, Form and Practices from Public Sector Leaders

Australia & New Zealand School Of Government

THE PURPOSE OF SMALL STATUTORY AGENCIES

Insights on their Functions, Form and Practices from Public Sector Leaders

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Acknowledgement

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Executive Summary

Statutory agencies are established with a particular purpose in mind. They address a specific set of interests or public need, usually with targeted powers to compel, enable, restrict, seek compensation, or advocate. They can be narrowly defined and specialised and therefore are often small, relative to government departments at least. They are established independent of a department and certain ministerial control, and instead self-governed by boards or other separate mechanisms. Nevertheless, they are accountable to the government and a minister as well as to the public they might regulate or represent.

A key question is if statutory authority necessarily includes independence, how does this manifest where small agencies have functional and operational dependences and relationships with various government services and systems and stakeholders?

Guidance frameworks exist in most jurisdictions to establish and operate these agencies, notably the Queensland Public Interest Map (PIM) derived from prior research (Webbe & Weller, 2008). And most jurisdictions hold to a version of the Commonwealth's '4Es' to determine the function and form, and performance of an agency – **effective, efficient, economical, and ethical**.[1] *Appendix A* provides guidance on application of the 4Es to small agencies.

Research supporting the governance and administration of small statutory agencies is very limited. This report is based largely on a set of interviews with leaders from 10 small statutory agencies across three jurisdictions.

Key insights in this report:

- Establishing and maintaining small statutory agencies should be purpose-led; being at arm's length is a vital rationale (to avoid conflict of interest, risk), but it is not a purpose of itself.
- 'Arm's length' independence is a vital criterion but needs to be sufficiently interpretable*;* Independence is on a spectrum of possibilities and interpreted differently with varying degrees of power invested - it is negotiated in practice.
- Independence of purpose is not strongly challenged by budget and resources that determine agency size; however, ability to carry out certain activities is adjusted relative to resources.
- Governance structures appear to be fit for purpose; some agencies prefer to use education over punitive powers suggesting the importance of relationships.
- Leadership in small agencies, relations with Boards and Ministers all vary and are partly shaped by the type of work the agency does, including the 'popularity' and perceived impact of the field. This relates to how small agencies' leaders explain that they and their agency can feel invisible or undervalued.
- Small statutory agencies have limited internal career opportunities and staff often multitask. Some agencies' degree of specialisation means they also offer narrow position descriptions, and require highly specialised professional skill sets, yet ironically can rely on the accumulated breadth of an individual's experience to cover various and myriad operational requirements and responsibilities.
- Many outward facing agencies often seek to attract non-public servants as CEOs with sectoral expertise, but the agencies' relative size, risk profile and area of specialisation (their smallness), can affect talent attraction to governance and leadership roles.
- Smallness has implications also for attracting talent to boards. Seeking the range and depth of experience required for Boards can be difficult in the case of small agencies. Knowledge

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[1] At the Commonwealth level, these principles are codified as the definition of the 'proper' use of public resources in the *Public Governance, Performance and Accountability Act 2013 (Cth)*, s 8.

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and training that might be required of all Board members is an understanding of Westminster government and public service missions.

Main Findings

Finding 1: The formal independence of small statutory agencies is enabled by legislative clarity of the purposes and powers of the agency and the roles of the CEO (or equivalent), Board, and Minister.

Finding 2: The functional independence of small statutory agencies is both supported and constrained by availability of resources, but at their best they are agile and efficient.

Finding 3: Accountability measures like ministerial oversight and governing boards are effective so long as risks to the independence of the agency are managed.

Finding 4: In practice, small statutory agencies' independence means that they have scope to define their own functions and role in the machinery of government, but this is a process of negotiation in which relationships across government and the domain are key.

Finding 5: As purposive bodies, small statutory agencies make a specialised contribution to government, and their narrowness corresponds with a reliance on external administrative and other supports.

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Introduction

Small statutory agencies are non-departmental public sector bodies created by parliaments to achieve specified ends through the performance of certain functions. They are a prominent part of the machinery of government. But they are also understudied, and there is increasing demand within government for a principled understanding of when these agencies should be established, how they should be designed and governed, and the contribution they make to public value.

As a contribution towards this need, the Australia and New Zealand School of Government (ANZSOG) has partnered with the Public Sector Commission of Queensland and the Public Sector Commission of Western Australia in a research project to examine small statutory agencies as a distinct class of public sector body and produce a fuller understanding of, and guidance for, their practices. The project's first phase, a literature review, identified challenges and risks for small statutory agencies, along with gaps in the relevant literature, including around the significance and impact of smallness for statutory agencies and how their contributions are best evaluated.[2] Building on this, the project's second phase aims to increase understanding of how the opportunities and risks that small statutory agencies encounter in practice, and to make some observations about the principled relationships between agency purposes, functions, structures, and sizes.

This document presents the findings of a qualitative study conducted in August 2023. The authors interviewed 10 senior executives from small statutory agencies across 3 Australian jurisdictions, gathering their insights and reflections into the governance and operational issues mostly identified in the earlier literature review. The study finds that small statutory agencies are characterised by their formal independence, or separateness, from departments of state – they are created to avoid real or perceived conflicts between their purposes and those of larger departments and other agencies. However, while they are formally independent agencies under law, functionally **small statutory agencies operate along a spectrum of independence**, with varying levels of reliance upon larger departments and overarching public sector standards and resources. This **operational reality** has implications for how their governance structures, including level of formal integration into departments, should be designed, as well as for how they interpret their mandates and functions, and the kinds of capabilities they – and especially their leaders – require.

Context

This project was established in the context of the 2022 Coaldrake Review in Queensland, which examined that state's public sector accountability and integrity framework. A key finding of the review was that integrity issues across the public sector had been created or exacerbated by an "identifiable loss of capacity in the public service". This loss was found to have been caused, in part, by machinery of government changes that have seen restructuring as an end in itself, rather than as part of a strategy for improving government performance, especially in the delivery of services. Coaldrake suggests that "Emphasis needs to be placed not on the boundaries demarcating agencies, but on approaches which

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[2] David Gilchrist, Shamit Saggar, and Sumayyah Ahmad, *The Governance and Operation of Smaller Statutory Agencies: ANZSOG Research Insights No. 27* (Melbourne: Australia and New Zealand School of Government, March 2023).

encourage different bodies to work together".[3] This recommendation for collaboration is addressed to concerns about overreliance on statutory agencies and other non-Departmental bodies leading to "fragmentation of public governance".[4]

For small statutory agencies, the question of how to balance coordination of the broader system, governance of public bodies from the centre, and the distinct purposes and functions of public bodies is especially apposite. These agencies are, by design, at least semi-autonomous but they rely upon, and influence, the rest of the public sector; they are also small and specific in their purposes, meaning that they are especially sensitive to the demands of external governance.

The potential trade-off between effectiveness and efficiency for small statutory agencies was identified in this project's earlier evidence review report. It identifies some governance and operational issues caused or exacerbated by smallness, which if not addressed, might frustrate the purposes of small statutory agencies. These issues include:

- the relatively higher cost of compliance with governance frameworks and reporting requirements
- the impact on effectiveness of whole-of-government efficiency dividends
- recruiting and retaining a capable workforce (and concomitant reliance on high-cost consulting and labour hire firms)
- the weight placed on leaders to achieve agency purposes
- the importance of ministerial engagement with the agency's mission; and
- the challenge of defining the agency's position within the broader system of government.[5]

Risk management, too, is a factor that compounds these challenges, in that smaller agencies may have less capacity or capability to accurately assess and manage risks to their operations. The purpose of small statutory agencies, then, needs to be managed within a framework that supports their functions and ensures that they operate in accordance with normal public sector standards.

An earlier report for the Queensland Government makes an important contribution to understanding this question. *A Public Interest Map: An Independent Review of Queensland Government Boards, Committees and Statutory Authorities*, by Simon Webbe and Professor Pat Weller, provides a framework for understanding non-departmental public bodies in terms of the desirability of ministerial control and, by extension, the primacy of departments of state within the machinery of government.

Webbe and Weller propose that it should be presumed a government action will be done by a department of state **unless there is a compelling public interest reason** that it cannot. Such reasons include a lack of departmental capability, the desirability of independence (to avoid conflicts of interest and other ethical risks), risk to the success of the function, and a need for greater public engagement or consultation.[6] The proper balance, then, between central governance and the autonomy of non-departmental public bodies is struck by adhering to a minimalist standard: such bodies should be created only where departments of state cannot undertake their proposed functions and should be empowered only to the degree necessary for those functions.

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[3] Peter Coaldrake, *Let the Sunshine In: Review of Culture and Accountability in the Queensland Public Sector* (Brisbane: Queensland Government, 2022), 2, 77.

[4] Rob Laking, "Agencies: Their Benefits and Risks" in *OECD Journal on Budgeting* 4, no. 4, 8.

[5] Gilchrist and Saggar, 16-20.

[6] Simone Webbe and Pat Weller, *A Public Interest Map: An Independent Review of Queensland Boards, Committees and Statutory Agencies* (Brisbane: Queensland Government, 2008), 51.

More recent work by the United Kingdom Government also supports this approach. The UK Cabinet Office advises that *arm's length bodies* (including statutory agencies) should be established "only as a last resort". This urgent language might also reflect the UK experience decades earlier where a disproportionate increase in agencies separate from government occurred, mainly in pursuit of ideological motives for small government. It led to fragmentation and other compromises to capability.[7] Like Webbe and Weller, the UK's new policy tests whether the body is needed because it requires some technical capability not available to departments or it is a function that needs to be, and seen to be, performed impartially. But it adds another test: whether the function is to establish some objective data independent of ministerial control.[8]

The characterisation of these bodies as operating at arm's length from government is apt and informs the discussion below. The key feature of this kind of body is that it exercises some measure of independence – but only as much as is necessary for certain specific functions.

The focus of this study is narrower than the work in Queensland and the United Kingdom and proceeds from a different starting point. Those frameworks contemplate various kinds of non-departmental public sector bodies. This study aims to better understand the challenges facing **small statutory agencies** as a specific type of public sector body by examining the work they do and how they do it, and derives some broad principles relevant to their establishment, design, and operations. The findings and observations here are aimed to inform governments about what choosing this option for specified functions means in practice, and to help inform central agencies and other parts of machinery of government about how best to engage with, support, and oversee this kind of agency.

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[7] Laking, 8.

[8] UK Cabinet Office, *Public Bodies Handbook – Part 2: The Approvals Process for the Creation of New Arm's Length Bodies: Guidance for Departments* (London: United Kingdom Government, 2016).

Methodology

To test the findings of the literature review and gain a fuller understanding of small statutory agencies and their practical realities, ANZSOG conducted a series of 10 interviews with senior leaders from a selection of such agencies across three jurisdictions.

Interview Format

The interviews were semi-structured, based on a set of open-ended questions. Participants were invited to respond as they liked to the prompts, with the interviewer returning to the list of questions as needed to steer the conversation through the different aspects of interest to the study. Participants were guaranteed anonymity and given the opportunity to review and revise transcripts of the interviews. Each interview took approximately 60 minutes.

Questions

The 19 questions were broken down into five categories related to different aspects of small statutory agencies:

- *Establishment and Rationale*: The reasons that governments have established their agencies as independent statutory bodies, whether this rationale has changed over time, and whether the legislated powers of the agencies are suited to purpose.
- *Operations*: Agencies' key functions and how they operate to fulfil them, including any challenges or resource constraints they encounter in doing so.
- *Internal Governance*: How agencies are structured to perform their functions and achieve their missions, including the relationships between ministers, boards, and executive staff, as well as agency dependencies, if any, on supporting departments.
- *External Governance*: The support and oversight that agencies receive from central agencies (including their jurisdictions' departments of premier and cabinet, treasury, and finance, and public sector commissions).
- *Authorising Environment*: The range of agencies' stakeholders, agencies' influence on them, and how that influence might be better supported.

Participant Selection

The interview participants are all senior leaders in small statutory agencies, equivalent to the CEO of their agencies. As discussed below, their titles vary based on the structures of their agencies. For those agencies that include boards and secretariats embedded in larger departments, we spoke to the secretariat director rather than board chairs so we could hear about day-to-day operations.

Demographic data revealed during the interviews includes: three participants described themselves as career public servants, with two others describing extensive experience in government; three participants reported private sector experience while three participants reported third sector experience. There is some overlap here as participants reported multiple professional experiences. Additionally, there was diversity in their experience in their current roles, with some having been in their roles for many years and some having been in their roles for a year or less. Six participants were men and four were women.

Participants were selected to represent the diversity of small statutory agencies identified in the literature review – a set of agencies spanning a range of sizes, functions, and governance structures. This diversity is summarised in Table 1, below. The table is explained in the following sub-section.

Table 1: Size, Function and Structure of Participants' Agencies

No.	Size (FTE)	Functions	Structure	Board (Y/N)
1	Branch	Regulatory	Secretariat	Y
2	≈ 250	Operational (Service)	Standalone	Y
3	60	Regulatory, Advocacy	Standalone	Y
4	115	Operational (Commercial)	Standalone	Y
5	40	Operational (Service), Advocacy	Integrated	Y
6	≈ 25	Operational (Service)	Standalone	N
7	Branch	Specialist Advice, Advocacy	Secretariat	Y
8	Branch	Policy	Secretariat	Y
9	≈ 135	Regulatory, Operational (Service)	Standalone	Y
10	≈ 14	Operational (Service), Advocacy	Standalone	N

Definitions

The following definitions were used in the selection process. It is also worth explaining these concepts in full as they inform the subsequent discussion.

Size: As noted in the literature review, the Australian Public Sector Commission (APSC) categorises agencies by size by the number of full-time equivalent (FTE) positions they have at their disposal. In selecting our participants, we used the APSC's cut-off of 250 FTE (the top of their *small* category). Some small statutory agencies are business units of departments that do not separately report their FTE. In these cases, we selected agencies that are listed as branches (or equivalent) on departmental organisation charts. Table 1 shows that our sample includes some agencies that are branches but also some that are considerably larger.

As discussed below, size can be understood in different ways – factors like budget, domain, and impact are also relevant to a comprehensive assessment of an agency's size, and there are no necessary links between these factors. For example, while not a factor used in selecting participants, the revenue of the agencies in this study ranges from as little as $4 million per annum to as much as $50 million per annum, and some have few or no assets, whereas others have considerable holdings. FTE was used to delimit the sample for this study, as it is a measure that is usually reported and is comparable across agencies. It is also directly relevant to how central agencies categorise and provide material support to statutory agencies.

It is important, then, to understand that size (by FTE) is the defining feature of the sample set of agencies – all agencies larger than this cut-off were excluded from consideration. The findings and observations of this study should be read with this limiting principle in mind.

Functions: The main functions of small statutory agencies are readily identified. In selecting participants and in the following discussion, we have used the following classification:

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- *Regulatory*: The agency has a role in developing and/or enforcing regulations in any sector of the economy.
- *Operational (service)*: The agency provides a service to either the public or another part of government.
- *Operational (commercial)*: The agency provides goods or services for a fee or commercial return.
- *Advocacy*: The agency seeks to raise the profile of interests within its domain and/or to educate its domain about government policy.
- *Policy*: The agency has a role in developing policy, i.e., decisions of the government.
- *Specialist*: The agency provides advice on specific topics, that may or may not inform or become policy.

This classification system is based on the analyses of the APSC and Webbe and Weller's work in 2008 for the Queensland Government. The APSC identifies 6 "functional clusters" for Commonwealth statutory agencies:

- policy (development)
- smaller operational (implementation of policy by bodies with fewer than 1000 employees)
- larger operational (implementation of policy by bodies with more than 1000 employees)
- regulatory (regulation and inspection)
- specialist (providing specialist support to government)
- national cultural institutions (that maintain collections relevant to national heritage).[9]

Webbe and Weller's Queensland categorisation includes: trading (engaged in commercial activities), governing (a board or other body providing oversight), policy/review/specialist (including coordination or research roles), regulatory/registration/appeal (regulators and tribunals), trustees (a board to manage monies quarantined from other operating funds), and advisory/consultative (enabling government decision-making through engagement and coordination).[10]

Structure: In selecting participants, we used a simplified version of the analyses in the earlier literature review and in Webbe and Weller.[11]

- *Standalone*: The agency is headed by a CEO who reports either to a board or direct to the relevant minister, employs its own staff, and reports independently.
- *Integrated*: The agency is established by statute, but its head and staff are part of a department of state, as shown on the departmental organisation chart.
- *Secretariat*: The agency comprises either a statutory office or board who operate independently but are supported by staff from a department of state.

We also aimed to have agencies both with and without boards. Here, we counted both those agencies that have governing boards and those that are constituted as boards (typically with names like 'commission', 'council', 'authority' and so on). Note: We were unable to secure the participation of an agency structured as a statutory office with secretariat. One agency is headed by a statutory officer with staff seconded from departments of state, but this is better characterised as a standalone agency.

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[9] APSC, "APS Agencies – Size and Function": https://www.apsc.gov.au/aps-agencies-size-and-function
[10] Webbe and Weller, 59-60.
[11] Webbe and Weller, 59-60 and Appendix E.

The secretariat-type structure is here represented by agencies that comprise a board invested with statutory powers and a supporting secretariat.

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Findings and Thematic Analysis

The research revealed a range of insights into the practical realities of running small statutory agencies. These insights are captured here in **five themes** from the interviews that each reveal opportunities and risks for small statutory agencies.

Formal Independence

A key theme throughout the interviews was the independence of small statutory agencies. A distinction can be made between agencies' *formal* and *functional* independence: on one hand, the fact of the statutory establishment of the agency and the powers given it by law; on the other hand, the practical reality of exercising that legal authority given the agency's various dependencies and constraints.

> *Finding 1: The formal independence of small statutory agencies is enabled by legislative clarity of the purposes and powers of the agency and the roles of the CEO (or equivalent), Board, and Minister.*

Establishment under statute has certain operational advantages, chiefly to do with *role clarity* for the key actors in the agency's governance: CEO, Board, and Minister. Establishment Acts define these roles and despite the size of an agency, its leaders are given authority that can include and enable questioning ministerial directions and offering frank and fearless advice. As one participant noted, following changes to the relevant Act, the independence of their advocacy function was increased.

Acts should not and do not attempt to define with precision what independence means for agency leadership and the boundaries for action. As the interviews made plain, **context shapes each agency including how its independence gains legitimacy.** Enabling legislation that states the powers and functions of the agency clearly, but in a way that allows the agency to adapt to changing circumstance is desirable – in the words of one, the legislation is "explicit, but it's not prescriptive".

While independence and authority to act is, to varying degrees, provided by agencies' establishing legislation, there are still means by which Ministers can gain assurance about agencies' limitations. For example, as our interviews highlighted, **some agency leaders are required to provide statements of intent to their ministers to clarify how they will exercise their powers**, further clarifying the relationship established by law. Despite what an Act says, evidently what counts for independence under the Act is not only negotiated in practice, but limited, in many cases, by Ministerial direction.

Overall, participants supported formal independence under law as providing clarity about their agency's mission and their role in it. The insight is that establishing Acts may not be definitive in the technocratic sense (perfect and complete), but this has not led to chaos and conflict. They should be clear but not necessarily "prescriptive'' about how independence applies in every situation.

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However, the *structure* of agencies in our sample was not always optimised for independence. Specifically, there is a question of how an agency should be set up if it is to be independent at all. This question tended to come up in discussions with participants from secretariat-type agencies. Contrary to the value of role clarity noted above, some said it is ambiguous as to whether the secretariat itself is part of the agency – one suggested that while their board is independent, the secretariat is not, simply because it is a business unit of a department. This had implications for information sharing across that internal divide, as much as for the locus of authority and what day-to-day relations mean for the independence of the secretariat.

There are other ways that independence can be hampered in the design of an agency's purpose and governance. Sometimes an enforcement power granted under the legislation if used could undermine cooperation with stakeholders. This is clearly an unintended consequence. It highlights how both the actual practice and context influence in ways that establishment logic does not anticipate.

Our research did reveal an instance where an agency leader denied being independent. This was a case of a statutory officer with their own staff. The agency did not operate with a governing Board in place. This gave no means to challenge ministerial direction *at arm's length*. It would depend instead on the interpersonal relations, confidence and skill of the agency leader. In the participant's view, counterpart agencies in other jurisdictions had been better set up for independence, **indicating that the function does not necessarily determine the structure**. Along with documenting experiences of existing agencies, **comparative cross-jurisdictional work should be a part of due diligence in establishing agencies**. However, examples in other jurisdictions likewise should not be taken at face value. Jurisdictional enabling legislation will be different in each case, departmental structures, economic and social context and stakeholders might also vary.

Overall, relations between individuals, and between their agencies and government departments affects independence – the authority to act. This relational, interpretive dimension manifests in different ways under agency establishing acts.

Functional Independence

The independence of small statutory agencies may differ in practice from how it looks on paper. Functionally, small statutory agencies are subject to a range of constraints on their independence, including, but not limited to, access to and control of resources. This practical reality presents opportunities and risks for this kind of agency.

> *Finding 2: The functional independence of small statutory agencies is both supported and constrained by availability of resources, but at their best they are agile and efficient.*

Overall, small statutory agencies often show *agility* in how they respond to developments in their domains and in government. Specifically, smallness has the advantage of providing clear and short lines of decision-making and enabling knowledge sharing within the organisation. This can be understood as a measure of efficiency, one of the considerations for governments in deciding to set up an agency. There is not a formula for the size to effectiveness ratio, but with regards to efficiency, a government setting up (or reviewing) an agency would need to compare across similar agencies as

best as can be found using a range of proxies (budget, stakeholder size and complexity, range of functions and powers, any actual effects of exercising such powers, etc).

Efficiency is also intended in the support provided by Departments and central agencies across core areas like human resources, finance and accounts, and ICT. These are dependencies but are offered as enablers to support the agency to focus on its core business. As one participant explained it was more important to have independence about the kinds of work the agency does, like the advice it provides, than control of resources. Though others noted that being self-funded, and even having a separate bank account, was an important bulwark for independence. This difference of thought highlights differing priorities and contexts and experiences of CEOs. Nonetheless, there was a general impression that **small statutory agencies are efficient and largely able to work effectively within their constraints**.

The support provided by departments and central agencies is also a matter of consistency and compliance management for those departments and central agencies. There is a risk to government in allowing agencies to determine services and then find themselves responsible for any conflict or failure. Industrial relations legislation is an obvious case but so are things like cyber security and privacy law. However, certain services are considered core, while other services (e.g., marketing and communications) seemed to be available to or taken up by some agencies but not others, depending upon the agency and jurisdiction.

Agility is also seen in how small agencies often exercise initiative to seek out certain supports that are not part of the backbone public service infrastructure. For example, co-located agencies shared resources and knowledge and did some community engagement together. An insight here is that jurisdictions should consider how they facilitate small agencies to share knowledge and experiences, including through co-location. **This can contribute to efficiency but also self-sufficiency and therefore a type of functional and operational independence**. Co-location might offer efficiencies in building space and the kinds of supportive environments and cultures that come with precincts. It is also relevant to small agencies in terms of visibility, especially with Ministers and Departments.

However, while many participants positively reported their agencies' agility and efficiency, almost all participants also reported that resource constraints shape how they set priorities and operate. They often suggested that their funding does not match demand for their functions – **small agencies cannot do everything that they might do, act on all the information that they have, or meet the needs of all their stakeholders.**

For this reason, some agencies expressed a desire for more freedom in their operations. That is, being able to use their knowledge of an external environment to operate according to demand (say, in setting prices for its services). CEO expertise and background is a factor in this issue, where in one case they had demonstrable private sector industry expertise. The principles for operation, including public interest, ought to be clearly mandated and understood to support any negotiation of these kinds of encounters and challenges.

This underscores how **the reality of practice is never fully known in advance**. It also suggests a need for reporting mechanisms that capture these kinds of service calibrations and compromises: first, to know if the service standard is appropriate – e.g., how many compliance inspections should be done in a given time period – and secondly, and relatedly, to understand the relative risk profile of all such services provided by the agency. In line with best practice reporting, a suggestion is that agency annual

reports apply multiple evidence assessments and approach reporting as an opportunity to share risk management.[13]

Similarly, global administrative and legal arrangements that are meant to apply across a public service can occasionally be blunt instruments for some small agencies. **While intended to offer efficiency and ethical standards, they can also increase complexity in governance**. Specifically, this occurs where a jurisdiction has staffing ratios or caps on certain hiring approaches: one agency reported the high cost of using consultancy arrangements to fill an urgent or temporary need. This was a far costlier solution impacting a limited budget. More flexibility in hiring staff, especially during work surges, was suggested as a remedy. In effect, these kinds of unintended consequences are also harmful to the intention of the central resourcing arrangement – public service employee standards do not apply in the case of temporary contractors. Short of a formal recommendation, jurisdictions should review under what circumstances contractors are engaged in small agencies and whether any discernible patterns are reported. Opportunities to fund employee roles should be reported by agencies to assist in gaining this understanding.

Resource constraints may also prevent desirable growth: one participant said they have a function that they have the "capability but not capacity" to perform, and another noted a legislated power that has never been used, though it could be. So, while small statutory agencies are often agile, the risk inherent in their operational leanness is a compromise - **some of their functions are calibrated towards a minimum requirement and some of their potential may be a missed opportunity**.

All of which is to say, circumstances change. And in many cases, everyday solutions are found unless there is real risk. For example, one participant noted that their legislation includes a requirement for the holder of a certain public service office to be on the board and this now seemed outmoded, but it was not worth changing the Act over. It was manageable and although possibly less efficient, larger change outside of a formal review cycle might have a greater cost.

A question here is how are lessons gleaned from changes to an agency's functions? How is the need for any expansion/contraction consistently identified and then negotiated, then implemented and with a mutual benefit in mind? Such knowledge should be available as part of guidance to assist governments with managing the dynamic nature of demand for statutory agency services. **One suggestion is for guidance frameworks (see [Appendices A, B](#)) to be augmented with case examples**, mainly because useful knowledge across Departments about their statutory agencies might not be visible.

Accountability and Ethics

The converse of independence is accountability. How agencies are governed and hold themselves accountable varies depending upon agency type, although governing Boards are fairly common. The size and composition of a Board is also a variable that can shape small statutory agency outcomes. Participants offered their insights on what accountability means for small statutory agencies, in terms of oversight and integrity measures.

> *Finding 3: Accountability measures like ministerial oversight and governing boards are effective so long as risks to the independence of the agency are managed.*

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Statutory agencies are public bodies, and many have remits or functions that are concerned with integrity, standards, and rules of operation. An assumption might be that they should be exemplars of good governance. Yet the research highlighted that for small statutory agencies, boards and governance are not without their problems, and dysfunctional governance might affect staff more keenly.

Many participants spoke positively about their agencies' accountability mechanisms. A key relationship here is that between the CEO (or equivalent) and the Minister. A direct relationship was not seen to be a compromise of independence, so long as the Minister understands the roles each plays. This can be formalised by statements of expectation and intent. Ultimately, ministerial oversight provides protection against a CEO or Board "going rogue" (in the words of one participant) and departing from the mandate and mission of the agency.

Similarly, there needs to be clarity in separation between Board and CEO, both in terms of relationships with the Minister and who has the responsibility to wield the powers given under an agency's Act.

But small statutory agencies present unique questions for Board structures. For example, for small agencies, servicing a Board might be just as resource intensive as it is for a larger agency. Should an agency with a staff of 12 require or be able to afford a Board of equal proportion to a small agency of 100 staff? While some efficiencies might be found in agreeing the minimum skill and experience requirements of a Board and 'doubling up' certain skills in the one Board member, an agency's remit might have specialised needs that mean a larger Board is inevitable. For example, First Nations representation is mandated for some agency Boards where Aboriginal and Torres Strait islander communities are key stakeholders as rights holders. There may be specific protocols and processes in such cases and **Boards and agencies that need First Nations guidance will have additional requirements (resources and time) that must be factored in.** This also has implications for other Board members in terms of selecting for skills and experience that include cultural awareness and intelligence, although this should be a minimum requirement across all Board member skill profiles. In Secretariat-type agencies, it was observed that getting the right capability mix was aided by the legislation not being too prescriptive about the board's composition.

Public sector employment standards that apply to agency staff are another form of external governance that is generally viewed as good for accountability. **These standards provide some protection for public expenditure and act as an assurance to agency boards of the professionalism of staff.** Public sector integration also means oversight from the Public Sector Commission and Ombudsman. This means that there is no need for another body to oversight small statutory agencies specifically. There are already good means available for underpinning small statutory agencies' independence with proper accountability.

Finally, reputation risk is another key risk that needs to be managed by accountability frameworks. There are reputation risks for all agencies (and the supporting department) where there is necessary engagement in matters of public debate. Staff, Board and CEO skill and experience are all component parts to minimising reputational risk. One participant suggested that – because of the nature of the agency's work – some *staff* had misunderstood their role as advocates who "want to save the world". Often, the management of these risks falls upon the CEO or equivalent, highlighting a need for specific leadership skills.

Statutory agencies are public bodies, and many have remits or functions that are concerned with integrity, standards, and rules of operation. An assumption might be that they should be exemplars of good governance. Yet the research highlighted that for small statutory agencies, boards and governance are not without their problems, and dysfunctional governance might affect staff more keenly.

Many participants spoke positively about their agencies' accountability mechanisms. A key relationship here is that between the CEO (or equivalent) and the Minister. A direct relationship was not seen to be a compromise of independence, so long as the Minister understands the roles each plays. This can be formalised by statements of expectation and intent. Ultimately, ministerial oversight provides protection against a CEO or Board "going rogue" (in the words of one participant) and departing from the mandate and mission of the agency.

Similarly, there needs to be clarity in separation between Board and CEO, both in terms of relationships with the Minister and who has the responsibility to wield the powers given under an agency's Act.

But small statutory agencies present unique questions for Board structures. For example, for small agencies, servicing a Board might be just as resource intensive as it is for a larger agency. Should an agency with a staff of 12 require or be able to afford a Board of equal proportion to a small agency of 100 staff? While some efficiencies might be found in agreeing the minimum skill and experience requirements of a Board and 'doubling up' certain skills in the one Board member, an agency's remit might have specialised needs that mean a larger Board is inevitable. For example, First Nations representation is mandated for some agency Boards where Aboriginal and Torres Strait islander communities are key stakeholders as rights holders. There may be specific protocols and processes in such cases and **Boards and agencies that need First Nations guidance will have additional requirements (resources and time) that must be factored in.** This also has implications for other Board members in terms of selecting for skills and experience that include cultural awareness and intelligence, although this should be a minimum requirement across all Board member skill profiles. In Secretariat-type agencies, it was observed that getting the right capability mix was aided by the legislation not being too prescriptive about the board's composition.

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Independence, the capabilities of agencies, their leaders, and staff, and their contribution to the broader machinery of government are key.

> *Finding 5: As purposive bodies, small statutory agencies make a specialised contribution to government, and their narrowness corresponds with a reliance on external administrative and other supports.*

In keeping with small statutory agencies' independence, many participants pointed to their unique and specialised contributions to government capability. For example, their reputation as trusted and credible representatives of interests within their domain rests on their expert knowledge, access to information, and/or demonstrated success – signs of a unique capability that others can rely upon. A strong reputation within the domain can be leveraged to get support from the domain (say, through access to experts and volunteers) as well as more time and resources for projects. Participants suggested that this opportunity for leveraging a distinct brand could be grasped, and scaled up, through increased and improved engagement with stakeholders.

But to the extent that small statutory agencies' reputation and performance are based on specialist skills, they also face distinct risks related to that capability. The interviews revealed that limited career pathways in small agencies can hamper the attraction and retention of staff. First, these agencies can invest a lot in training staff, only for them to take their transferable skills to other parts of the public sector. A related concern regarding retention was that a mismatch between the size of the domain (or the scope of the agency's functions) and resources could create burnout in staff. In the words of one participant, small statutory agencies risk, by being agile and efficient, being "punished" for their success, being overlooked for increased allocations for building capability and capacity. Secondly, the more narrowly specialised an agency is, then the information that is available and shared within the agency is likewise narrow, and the more it must rely on outside support for more general functions, like administration. There is a tension, then, between tailoring small statutory agencies to their domains, so that they are credible actors within their specialised fields, and the need to build the agency's overall capability and capacity and make sure that it is viable as an agency.

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Discussion

The interview findings provide an overview of the practical realities of small statutory agencies. We can identify some principles or considerations relevant to the establishment, design, and operations of such agencies. Building on the earlier work of Webbe and Weller but narrowing the focus to small statutory agencies specifically and following what we heard in the interviews, in this section we emphasise a **purpose-led approach** to small statutory agencies: understanding their rationale in terms of their independent powers, connections to the rest of the machinery of government, and their key enablers.

Establishment: Purpose and Independence

The study's findings support a purposive view of small statutory agencies. That is, these agencies are defined by the specific purposes for which they are established – purposes that parliaments have determined cannot, or should not, be achieved by departments of state.

Therefore, the **threshold test** for the establishment of a small statutory agency is that there should be a compelling reason that these purposes should be pursued by a **new and discrete** independent agency. While this independence exists on a spectrum, with various formal and functional dependencies built into different kinds of small statutory agencies, it is always the case that these agencies exercise some kind of freedom to act or decide matters: to make determinations, resolve conflicts, enforce standards, publish findings, advocate publicly, and partner with the private sector, among other things. However, being able to act independently is not a sufficient criterion for deciding to establish an agency. Rather, it must be shown that some **conflict** arises, or is seen to arise, between the proposed functions and the nature of departments of state as such – broadly, their political control, hierarchy, diverse mandates, and large size.

Based on our interviews, there are certain purposes of government that may create real or perceived conflicts of interest if pursued by departments of state:

- *Commercial purposes*: whether governments are regulating businesses, establishing public-private partnerships, or addressing a market failure through a government-owned enterprise, it is desirable to avoid actual or perceived partiality towards private actors – playing favourites or picking winners.
- *Good governance practices*: citizens and communities have various rights that government must uphold and a shared interest in good government – and so, where government is enforcing standards against itself, ensuring fair access to its services, or certain types of citizen engagement, there is a potential conflict of interest that instead can be managed or mitigated by an agency established at arm's length.
- *Environmental and social values*: parliaments may determine that certain values of the natural or social environments (like endangered places or species, heritage buildings, or underrepresented groups) ought to be more salient and present in policymaking – with an independent agency desirable for advocating for these values, providing expert advice about them, or controlling their management, without the appearance of political motivation or compromise.

These conflicts can be eliminated or managed by creating a (small) statutory agency.

An independence test is not only about impartiality. In some cases, independence is recommended to boost a specific interest that would (on Parliament's determination) otherwise be overlooked, like an underserved market, an underrepresented group, or an undervalued resource. What matters is that departmental or ministerial control will conflict with the actions (or functions) needed for government to recognise and represent the interests at stake.

This is a more specific rendering of the public interest test proposed by Webbe and Weller. Their criteria question asks *it is feasible* for a department to perform the functions.[12] Governments might want an agency that can, for example, pay market rates for executive staff or experts, or take on operational or reputation risk, or develop a brand and relationship with specific communities – but to say this is always also to say that they want an agency that has *a purpose* at arm's length from government.[13]

For small statutory agencies, independence, in this sense of formal authority for specific purposes, is worth emphasising. Given their size, resources, and reliance upon, and even integration into, departments of state, small statutory agencies' separate existence might seem ungrounded in principle or dubious in practice. But purposes and conflicts of interest provide a rationale for small statutory agencies and a test for their establishment and operations.

Designing for Independence: Matching Functions and Structure with Purpose

While small statutory agencies are established by law as independent bodies, what this means in both structural and practical terms varies widely. Nonetheless, it is possible to make some general observations about the relationships between functions and structures, and how they tend to play out in practice.

The Commonwealth describes four criteria, the '4Es', to determine agency structures and functions: they should be **effective, efficient, economical, and ethical**. The Queensland Public Interest Test (drawn from Webbe and Weller) emphasises public risk through five criteria similar to the 4Es, to determine firstly *if* an agency should be established: Accountability, Economy, Efficiency, Effectiveness, Relevance.

The **effectiveness** of an agency is a question of its functions – whether and how its actions successfully realise its purposes. To be effective a small statutory agency must have functional, as well as formal, independence. Not only the freedom to act, but the resources to act. Ultimately, this is a question of **expedience**. In practice, independence is a spectrum for small agencies – all have structural and informal dependencies on the rest of the machinery of government. In many cases, these dependencies enable the functions of the agency. For example, public sector standards and departmental human resources support were said to increase agency capability. But in other cases, dependency might constrain the agency. For example, certain public sector hiring rules, the budget process, and FTE allocations. Taking a purpose-led approach suggests that **it is not dependency as such that is the problem**. Instead, some kinds of functional dependency, or dependency beyond some point, conflicts with either independence of purpose (remit) and power of small statutory agencies.

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[12] Webbe and Weller, 51-9.

[13] Hence the UK Government's use of the term "arm's length bodies" for agencies like those we are discussing.

Our interviews indicated that the dynamics of the domain in which an agency operated and managed also determined whether dependency was **efficient**. *Functional* independence is contextually specific and so efficiency as a measure (as much as other of the 4Es) might not be apparent at point of establishment. Review of an established agency is an obvious way to address this. The Queensland Public Interest Map and the Commonwealth guidelines, for example, require that review and sunset clauses be included in the establishment acts.

Structurally, then, the question is what kinds of governance will be expedient for an agency's function. Our interviews reinforced the distinctness of different types of small statutory agency, with various levels of formal independence: standalone agencies, integrated agencies, and secretariat-type agencies. But, in terms of function, all remain connected to, and influenced by, the broader machinery of government through central oversight mechanisms, public sector employment conditions, and ministerial direction. Therefore, **the structural or formal question is not which structure is most independent, but whether and how these different agency types support the different kinds of functions for which small statutory agencies are established.** Here, the question expands from effectiveness to include the other considerations: economy, efficiency, and ethicality – how much resources to dedicate to the agency's purposes, how to use those resources, and how to oversee their use.

Operations: Self-Definition, Capability, and Leadership

How small statutory agencies operate is influenced by factors beyond their formal structures and functions. In practice, their independence is exercised within a complex authorising environment. But, again, this descriptive reality yields some insights as to principle.

To some extent, small statutory agencies define themselves, as they interpret their powers, determine their priorities, and establish links to the rest of government to gain influence and resources. As noted, they are highly relational. But this comes with responsibility. There is an onus on small statutory agencies to make themselves useful – to be proactive in achieving their purposes. This was reflected in participants' comments about the need to promote their services, including through the activities of board members, and by their cultivation of direct relationships with ministers, even where boards are present. Some participants noted the risk of their agencies being merged with others or folded back into departments, and others noted time spent raising awareness of their agencies' needs and bidding for resources. The point, then, is not that the relational and adaptive nature of small statutory agencies gives them free rein to do as they like, but rather that it is a condition of their independence, which is liminal and contingent.

Overall, the self-definition of small statutory agencies extends to their capability needs. The onus is on them to identify the capabilities they need and to obtain support for them – but this is not always possible. This presents a problem for those agencies that lack control of FTE allocations and attractive career paths for staff. Attraction and retention are also problems at the board level: governing boards require a range of capabilities, but agencies vary in their attractiveness, public profile, and remuneration. So, one kind of support that small statutory agencies – especially those that are integrated or secretariat-type agencies – may require is some means by which their self-assessed capability needs can be considered by departments and in the budget process. This might mean extending the ability to put in separate budget bids (as some already can do). In any event, a recurring

challenge for small statutory agencies is adapting their workforce to the changing needs of their functions and stakeholders.

Finally, the self-definition of small statutory agencies places some noteworthy demands upon their leaders. Based on our sample, small statutory leaders – whether CEOs, statutory officers, or secretariat directors – tend to have, and need to have, a range of institutional capabilities to complement their domain-specific knowledge. Their capabilities include the ability to manage up and win the confidence of boards and ministers, stakeholder management both within and outside government, political astuteness to build support for their agencies, and the ability to promote their agencies' services and successes. And, because they are operating on a budget and in complex domains, they need to be sound financial managers and project planners. Our interview participants had a mix of backgrounds – some participants suggested that their public service experience had been important, while others coming into government reported a learning curve. Regardless of professional background, participants tended to value their roles' mix of independent executive authority and position within government with the opportunities and constraints that presents. Overall, leadership of a small statutory agency is a highly demanding role that will attract, and require, an identifiable profile comprising a certain mix of capabilities and experiences, and much of the success of small statutory agencies rests on finding leaders who fit it.

Is smallness an argument for amalgamation?

Establishing legislation informed by best practice advice will include a sunset clause for agencies, triggering at least a review. A strategy to combine, for example, two or more small agencies that are of like function and possibly serving to regulate similar stakeholder interests to improve efficiency or effectiveness is an option for any government, including at sunset review. Any amalgamation should only be considered by reapplying the original test for establishment. In other words, ''bolting-on'' is not a recommended solution for resolving an issue with any one agency (e.g., inefficacy, poor direction, maladministration, or budgetary pressure) without proper review of the original rationale of agencies. In one case, there were smaller 'subsidiary' agencies, with their own Board and serving specific geographic area but said to be effectively the same as a larger agency. This case might be a credible example for an efficiency gain through an amalgamation. But stakeholders and context, along with purpose do shape unique working and professional cultures and relationships, internal and external in every organisation. Even 'like' agencies and subsidiaries will vary in how they function.

Bolting on or combining two or more small agencies would need to take into account professional cultures that can be specific to certain agency functions and domain. Agencies concerned with law and advocacy, for example, in our study highlighted that unique professional cultures exist and are important parts of the fabric and rationalities of organisations. This is not a surprising insight from the interviews. Nor was it a deliberate area of focus for the study. However, this social dimension will play out in the efficiency and effectiveness, the ethics and the economic aspects of how public agencies might be judged and valued. If we consider the importance of culture to specific professions, (law, health, education, commerce and investment etc), then a specialised technical function is also an equally strong reason for answering 'why' set up a specific agency: because its professional identity is part of how it will attract and retain the right kinds of specialists and deliver outcomes to a standard.

Conclusion

Statutory authority is an important part of Australia's system of government. A cursory glance at the number of statutory agencies illustrates their value. But the number of these agencies is not always attributable to specific needs. Political trends, like New Public Management, promulgated a technocratic argument for expanding or devolving administration to independent, that doing so would decrease the size of government and increase its efficiency.

An overreliance on statutory agencies could be viewed as abrogating responsibility, or an inherent conflict of interest in Westminster delegation, or a way to include political allies in government.[14] But it could also simply indicate a highly complex public policy landscape with constant change requiring regulatory support. As this research shows, the purposes and functions for which agencies are established are plausible and necessary. Except for one agency that had never exercised some of its powers, the Acts establishing the agencies included in this study were considered fit for purpose, and in a few cases revised to accommodate changed circumstances. What matters is that some need is legitimately determined, and some clear rationale exists for establishment and operation of a statutory agency.

The distinct feature of this study was a consideration of the 'size' of statutory agencies. Mainly, this stemmed from different jurisdictions' interests in the effectiveness and efficiency and independence of agencies that are less visible to either government or the public or other stakeholders. Other considerations that emerged in the field at the time the study was commissioned was the compliance burden that small statutory agencies themselves faced from central agency reporting requirements (e.g. auditing requirements that assumed a large staffing complement). Understanding whether smallness was marginalising or overwhelming small agencies is a genuine and reasonable problem for public administration research.

The findings focus on independence as a main concern. Independence means different things depending on context and leadership ability, type of statutory agency, and the degree of operational reliance upon parent Departments and central agencies. In some cases, a small agency can command significant respect from government, especially in technical professional areas such as legal review. Independence remains a vital concern for small agencies and is able to be exercised in the jurisdictions analysed in this study.

The reason to focus on independence is that it draws out the ambiguities inherent in establishing a small statutory agency that is also functionally dependent on other parts of government. We explain that even if a small statutory agency is clearly and formally separate in its authority, interpretation of remit, exercise of powers, and then capability, are all features that require time to know and validate.

Independence also carries risk, and this will inform the governance structure of a small statutory agency. In particular, the role of the CEO or equivalent was seen to be key – not only in the range of capabilities this individual must possess, but also in building the integrity and reputation of their agency. A good governance framework and a robust selection process for a CEO or equivalent will be

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[14] Laking, 19-20.

part of risk mitigation in establishing and operating small statutory agencies. These are features that should not be compromised to match the 'smallness' of an agency. Enabling legislation should determine the ideal governance and reporting structure, but this should also avoid being prescriptive, duplicative across central accountability systems, or assuming that context and issues never change.

The overarching claim of this study is that small statutory agencies are purposive and established at arm's length from the rest of government, yet nonetheless functionally dependent in various ways on departments of state, ministerial direction, and stakeholder relationships. They are not lean alternatives to departments but necessary adjuncts. The key test, then, is always whether small statutory agencies have the capabilities, resources, and governance they need to enable, rather than constrain, the exercise of the authority given them by parliaments.

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Appendix A: Assessing Agency types

The **standalone** agency has its own organisational structure, control of its own resources, and own administration and support staff.

– Effective: for regulatory and operational functions because it places fewer constraints on functional independence, allowing the agency make decisions, act in the market, meet client needs, etc.
– Economical: this is the highest-cost option because it means relying less upon the resources of supporting departments, and so it assumes the high value of the interests at stake.
– Efficiency: best-suited to complex domains in which there are diverse and/or high-value interests, because it is a structure that enables an agency to add capability and capacity as the needs of the domain change.
– Ethical: full governance in the form of a Board should be anticipated to meet its higher level of resourcing and complex domain.

The **integrated** agency is part of a department. Its head and staff are departmental employees, but it has distinct statutory powers.

– Effective: where it provides the agency with a direct line to policymakers in the department. It might also be effective for certain kinds of advocacy within government for the same reason.
– Economical: the agency's resources are part of the budget allocation for the department
– Efficiency: only where that lack of control of resources or visibility does not hinder the purposes of the agency otherwise it places a burden on the agency to educate departmental senior officers and ministers. This kind of agency (along with the secretariat-type) can operate more cheaply and deliver more value than many other business units. Is subject to normal departmental controls, and so may not need further oversight.
– Ethical: Is subject to normal departmental controls, and so may not need further oversight. However, governing boards might be used to assert the independence of the agency by setting direction and to raise awareness of the agency's purposes and needs within government.

The **secretariat-type** agency comprises either a statutory office or board with legislated powers, supported by staff who are public servants within a department. The difference between this kind of agency and the integrated agency is that in this case, the statutory power and independence lies outside the supporting secretariat – to the point that some secretariat directors in our interviews did not consider themselves to be part of the agency as such.

– Effective: for providing specialist advice, as the board is often constituted by experts, policy development as an independent input into that process, and public advocacy that is backed by the independence and prestige of the office or board. The Independent powers provides a bulwark against departmental direction.
– Economical: as a single office or part-time board is inexpensive, especially where the capability required to support the office or board exists within a department.
– Efficient: where the work of the office or board can be done within a department – noting that, as one of our participants said, this places a responsibility on the director to serve two mandates and navigate the departmental requirements.
– Ethical: probity where the secretariat is entrusted with confidential departmental information unavailable to the board or commission.

The kinds of structures available, then, can be matched to the kinds of functions that small statutory agencies perform. However, these are principles, not rules: regardless of the formal design of small statutory agencies, as small and independent parts of the machinery of government they are highly adaptable to their authorising environments.

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Their design should anticipate that their practical realities may be changeable and demanding, while also insisting that flexibility and pragmatism are not limitless and are guided by parliament's needs.

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Appendix B: Jurisdiction Guidance Frameworks

Summary of select frameworks for statutory agencies and other public entities

Jurisdiction	Document	Intent and Scope	Notes
Commonwealth	*Structure of the Australian Government Public Sector[i]*	Description of different types of public sector bodies with policies for creating, governing, and reviewing such bodies.	• Distinction between: *primary bodies* (departments of state and other parts of the Commonwealth, bodies corporate created by law, companies controlled by the Commonwealth) and *secondary bodies* (bodies established within primary bodies either by law or without legislation). • Reasons for establishing a corporate entity: commercial operations, accountability arrangements, independence of assets or policy. • 3 stage test: Does the Government have the constitutional power to undertake the activity? Is the Government best placed to undertake the activity? Can the activity be undertaken by an existing governing body? • Guiding principles: clarity of purpose; minimise the role of government; maximise efficiency by using existing structures, and accountability to the Parliament and public. • Approval through Finance Minister and Cabinet.
New South Wales	*Guide to the NSW Public Sector[ii]*	Description of the types and roles of all different NSW government entities – not legal advice.	• Distinction between *executive agencies* (under ministerial control, specific functions related to a department) and *separate agencies* (generally not subject to ministerial control, headed by a statutory officer). • Other distinct kinds of entity: *integrity agencies*, *state-owned corporations*, *companies*, *boards and committees* (with a distinction between governing and advisory boards).
Victoria	*Legal Form and Governance*	Guidelines for decisionmakers establishing or	• Process chart begins with distinction between *delivering services* and *providing independent advice* – the establishment of a statutory authority may be appropriate in either case, but the former may also suggest a state-owned

	Arrangements for Public Entities[iii]	reviewing a public entity of any kind. Proceeds from assumption of a prior determination that a proposed function is unsuited to a department.	enterprise (where commercial activity involved) and the latter may suggest a non-statutory advisory body (especially where need is time-limited). • Groups together non-departmental bodies as *public entities* and notes variety of forms but common features, including: specific functions, own governance arrangements, separate legal identity, operate at arm's length, limited ministerial direction. • Independence and efficiency of function are main reasons for establishment of a public entity. Functions categorised as: service delivery, stewardship, integrity, regulatory, quasi-judicial, advisory.
Queensland	*Public Interest Map[iv]*	Policy guiding establishment of non-departmental government bodies. Applies a *public interest* test and a framework that matched governance structures to proposed functions.	• Proceeds from the *threshold test*, which presumes that departments are the first choice for government actions, unless it can be shown that there is a compelling reason that departments and existing bodies cannot undertake the proposed action. Provides 4 criteria for meeting this test: organisational capability, independence, public interest risk, or public consultation. • The *Organisational Form Guide* matches structures to functions, guided by the principle that ministerial responsibility should be maximised and delegated power minimised. Hierarchy of forms: advisory committee, statutory authority (part of a dept.), statutory body (separate legal entity), trust, corporation sole, company. • The *Good Governance Framework* guides the establishment of clear roles for boards, executives, and ministers.
Western Australia	*Governance Manual for WA Government Boards and Committees[v]*	Advice for members of government boards – providing a description of the different kinds of boards.	• Typology: Trading Boards (commercial activities); Governing Boards (statutory bodies overseeing operations); Policy, Review, and Specialist Boards (policy and coordination); Regulatory, Registration, Appeal, and Quasi-Judicial Boards (independent decisionmakers); Stewardship Boards (assets and resources management); Advisory and Consultative Boards (independent or expert advice).

			• Provides principles of governance – including role clarity for members, and statements of expectations and intent. Boards are to ensure conformance to governance structures and performance of the entity.
New Zealand	*Guidance for Ministers: Statutory Crown entities[vi]*	Guidance for ministers overseeing Crown entities	• *Crown entity* is a New Zealand term of art for statutory bodies. Distinction made between *Crown agents* (mainly services), *autonomous Crown entities* (mainly operations), *independent Crown entities* (mainly commerce). "Establishing a Crown entity reflects a decision by Parliament that a function or functions should be carried out at 'arm's-length' from ministers." • Distinguished by level of ministerial control. Ministers are encouraged to think of Crown entities in terms of function and the efficient delivery of outcomes for the public. • *Role clarity*: Guidance provided for roles of ministers, boards, CEOs, and departments. Statements of expectations and intent are considered one option for managing this relationship, with guidance provided.
United Kingdom	*Classification of Public Bodies: Guidance for Departments[vii]* and *The Approvals Process for the Creation of New Arms's Length Bodies: Guidance for Departments[viii]*	Guidance for departments looking to establish a separate public entity. The documents provide a description of and policy for establishing such bodies.	• Arm's Length Body (ALB) is a UK term of art for a non-departmental body that is part of the machinery of government and not merely advisory. • Starting presumption: creation of non-departmental entity should be "last resort". There should be a "specific purpose" and "clear advantage" for establishing a new body. 3 tests given: technical function or expertise needed; political impartiality needed; or independent establishment of facts and figures needed. • 4 kinds of ALB: *executive agencies* (business units within departments); *non-departmental public bodies* (limited ministerial direction); *NDPBs with Advisory Functions* (independent and expert advice); *non-ministerial departments* (for policy matters inappropriate to ministerial control). Distinguished by level of ministerial control, control of resources, and appointment procedures. • Approvals process goes through Cabinet Office and Treasury.

Appendix C: Summary of enabling legislation for agencies represented in the study

Interview	Purpose	Powers	Functions	Independence	Other Structural Features
1	Not stated for agency specifically	• Power to create regulations • Power to investigate breaches	Listed for board and secretariat	Express independence from Ministerial direction	• Board established • Board composition requirements • Advisory commission mandated • PS director position established • PS staff
2	Stated	• Corporate personality	Listed	Written Ministerial direction permitted	• Body corporate established • Governing Board established • CEO role established • Staff employed by corporation
3	Stated	• Corporate personality • Power to make grants • Statutory office has all powers necessary for functions	Listed for corporation and statutory office	Written Ministerial direction permitted (some restrictions)	• Body corporate established • Governing board established • Statutory office established • Staff employed by corporation
4	Stated	• Corporate personality • Power to license	Distributed over several provisions	Gazetted by Governor, subject to Ministerial direction	• Body corporate established • Board members appointed by Minister • Staff employed by corporation
5	Stated	• Corporate personality • Power to make recommendations • Power to investigate breaches and enforce regulations	Listed	Separate reporting to Minister Minister determines policy conflicts between agency and department	• Body corporate established • Governing board established • Board composition requirements • PS director position established • PS staff
6	Not stated for agency specifically	• Power to investigate breaches and enforce regulations	Listed for statutory officer	Statutory officer appointed by Governor, but written Ministerial direction permitted	• Agent of the Crown • Statutory office established • PS staff (secondment)

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7	Not stated	• All powers necessary for functions	Listed	Board appointed on recommendation of Minister Departmental approval required for some actions	• Board and secretariat established • Board composition requirements • PS staff
8	Not stated	• Power to conduct inquiries as deemed necessary	Listed	Board appointed and removed by Governor-in-Council Minister sets direction and can alter/stop activities	• Board established • Board member qualifications • PS staff
9	Not stated	• Power to make determinations • Power to conduct investigations • Power to enforce regulations	Listed	Minister cannot direct determinations or any other function unless provided expressly in the Act	• Board established • Board member qualification • PS staff (but constituted as a standalone agency)
10	Stated	• Statutory office has all powers necessary for functions	Listed	Statutory officer appointed by Governor-in-Council on recommendation of Minister, removable only on certain conditions. Minister may direct statutory officer, who must comply and report on compliance	• Statutory office established • Statutory officer qualifications • Role of Minister and Ministerial direction established, including statement of expectations

[i] Department of Finance (Cth), "Structure of the Australian Government Public Sector": https://www.finance.gov.au/government/managing-commonwealth-resources/structure-australian-government-public-sector

[ii] Department of Premier and Cabinet (NSW), *Guide to the NSW Public Sector* (Sydney: New South Wales Government, 2022). Available here: https://www.nsw.gov.au/sites/default/files/noindex/2023-06/Guide-to-the-NSW-Public-Sector-July-2022.pdf

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