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## Framework 1 Governance

### Introduction

Australian governments in local, state and federal jurisdictions are elected through a democratic election system. As a result, the elected representatives to the various Parliaments are accountable to the electorate. A key component in this relationship is a responsibility on the electorate to be aware of and understand the political system.

The South Australian Parliament has two houses; the House of Assembly and the Legislative Council. The Lower House (House of Assembly) is the house of government. The Upper House (Legislative Council) is the house of review.

The government proposes legislation and the Parliament legislates. A duly elected government should reasonably expect its legislation to be passed by the Parliament. The government has a responsibility to the Parliament to translate its policies into legislation.

Political mandate provides the legitimacy for governments to promote legislation based on the policies on which the election was contested. The principle of mandate can only apply to the government and is only relevant in the house of government (Lower House). If a government fails to win a majority of votes and a clear majority of seats in the Lower House, its mandate is weakened.

Recent 'hung' parliaments have reduced the ability of governments to implement their agenda. The tendency for the Legislative Council to move beyond its role as a house of review has also made the expression of the government's mandate more problematic.

To encourage investment leading to economic growth and development, the business and wider community seeks consistency and transparency from governance models.

When modern governments are elected, they must balance various competing agenda, including economic, environmental, social and cultural imperatives, in a changing world and with limited resources.

The rapid change that comes with modern living means that governments must be flexible, responsive and highly collaborative.

Governments at all jurisdictions must ensure that their constituents develop and maintain their appropriate position in the regional, national and global economies and generate enough wealth to support the relevant social agenda.

Key areas for consideration in relation to the role of governments are:

- modern governments should be flexible, responsive and highly collaborative
- modern governments should be minimalist in character and focused on the provision of business infrastructure that supports the market economy
- modern governments should not intervene in markets unless there is clear evidence of market failure
- generally speaking, goods and services should be provided by the private sector
- where governments provide services through the public sector, the principles of competitive neutrality should be diligently applied to protect the market from distortions
- the regulatory regime should be objectives-based and, where possible, delivered through industry-based models involving industry and government partnerships
- overlap between government agencies in the same jurisdiction and across jurisdictions should be eliminated

This study is divided into three subsections:

- the political process
- the role of government
- the regulatory regime.

## Political Process

### Aim

The aim of this framework is to encourage reform in the South Australian political process that will facilitate responsible government and promote high levels of accountability of both the government and Parliament to the electorate.

### Principles

- 1 The elections for the South Australian Parliament should be free, fair and frequent and based on the 'one person, one vote, one value' principle.
- 2 The Parliament should be accountable to the citizens of the State.
- 3 Voters should have an interest in, a commitment to, and an understanding of, the democratic political system.
- 4 The operation and behaviour of the Parliament should be such that it leads to a building of confidence in the community in the political process.
- 5 The Parliament should recognise the principle of responsible government that determines the relationship between the government and the Parliament.
- 6 The Parliament should recognise the concept of mandate that relates to the Government claiming the right to put its legislation to the Parliament and expecting it will pass.
- 7 The House of Assembly should be the 'house of government'.
- 8 The Legislative Council should be the 'house of review'.

## Recommendations

**1 Introduce voluntary voting for elections to the South Australian Parliament.**

Turnout in most democratic nations where voting is voluntary is generally between 50% and 90% of those entitled to vote.

Compulsory voting in South Australia was introduced in 1944. It is not an entrenched feature of the democratic political system.

**2 Elect members of the Upper House (Legislative Council) for fixed four-year terms under the same conditions as the Lower House. Dissolve the whole Upper House, ie all seats vacated, at every House of Assembly election.**

There is now a fixed term for the Lower House (House of Assembly) in South Australia with elections held at four-year intervals. Early elections are only possible following the passing of a vote of no confidence in the House of Assembly.

New South Wales similarly has fixed terms for its Parliament.

Elections for both houses of Parliament should be held every four years. This would allow for a better reflection of the existing public opinion compared with the current system where the Upper House candidates are elected for eight-year terms.

**3 Reform the system of election of members to the Upper House (Legislative Council), reducing the number of Legislative Council members to 15, to be elected on the basis of proportional representation from three electorates of five members each.**

Any reform should provide a balance of three important principles:

- retaining the proportional representation system
- retaining the concept of 'wider' representation for the Upper House beyond the geographical constraints of the Lower House
- decreasing the opportunity for a 'hung' Parliament and therefore increasing the capacity for government to be able to govern.

4 **The role of the Upper House should be as a ‘house of review’.**

The power of the Upper House should be limited to a review and delay role only. The purpose of any delay should be to allow for public input into the debate.

A maximum period should be established, for example three months, to refer a Bill back to the House of Assembly with recommendations for amendments or further consultation. Based upon the subsequent vote of the House of Assembly, the Bill would:

- become law with or without amendments
- go out for further consultation or
- be referred back to the Legislative Council.

More urgent legislation such as money Bills should be subject to shorter time frames.

With the fundamental purpose of the Legislative Council being a ‘house of review’, there are implications in terms of independence. The practice of appointing Ministers from the Upper House has the potential to confuse its role as a house of review and delay only. This needs to be balanced against the advantages of upgrading the pool of Ministerial talent. A case can be made for appointing Ministers from the Lower House only.

5 **Develop a community ‘civics’ education program to increase awareness and understanding of the political system in South Australia.**

Educative programs in civics should be available to all citizens as part of lifelong learning programs. Access through the Internet and other media should be encouraged.

A special program should be introduced (perhaps through mainstream schooling or community education programs) aimed at providing an opportunity for young people, from the age of 15, to participate in the political process. Independently run and voluntary in nature, such a ‘youth vote’ would not count toward the election of politicians; however, it may be significant in the generation of youth policy.

**6 Introduce optional preferential voting in elections for the South Australian Parliament.**

The identification of full preferences is currently compulsory for a vote to be formal in elections for the South Australian Parliament.

This is not the case elsewhere. In Queensland, the identification of preferences by voters is optional. In Tasmania, preferences are required to equal the number of vacant seats after which the allocation of further preferences is optional.

**7 List the names of candidates on the ballot paper in random order.**

Concern has been expressed in the past about the prospect of elections being influenced by the so-called 'donkey vote', where the likelihood of a vote may be prejudiced by a candidate's position on the voting paper.

In Tasmania, voting papers are generated so as to produce a random order of candidate's names. It is recommended that a similar system be introduced into elections for the South Australian Parliament.

**8 Hold a by-election when a sitting member resigns from the party they represented at the time of election.**

Candidates to a state election traditionally represent their views on various issues through the filter of policies. Members of political parties represent the policies of the relevant Party. Members of Parliament are often elected on the basis of the policies they represent.

Occasionally, a rift develops between the sitting member and their Party and it is a given that a member should have the right to resign. However, in this event, the seat should go to by-election within a prescribed timeframe to enable the electorate to confirm their support for the candidate under a potential new set of policies, in recognition of the relationship between the member and the policies they represent.

9 **Appoint an independent Presiding Officer/Speaker from outside the Parliament.**

The Speaker carries a high status, considerable authority and a potential for significant political power.

The Speaker of the House of Assembly should be 'independent' and appointed from outside the Parliament.

A similar change could be made to the position of President of the Legislative Council.

10 **Set Parliamentary sessions for a minimum of 30 weeks per year and a minimum of four days per week, with daily sessions running from 10 am - 6.00 pm.**

One prime requirement of a legislator should be to involve themselves in matters related to legislating.

It is not necessarily an outcome of this recommendation that more legislation would be passed through the Parliament. In fact, it is recommended that dedicated time be given to reviewing existing legislation in terms of its capacity to deliver sustainable and responsible increases in productivity across the range of community and business activity. A likely outcome of such a review is a reduction of legislation through alignment, elimination of overlap and consistent application of principles such as competition principles.

11 **Introduce technology to allow for electronic voting by Parliamentarians in the course of their Parliamentary business.**

The capacity should be available for Members of Parliament to vote electronically on Parliamentary business.

Appropriate levels of security should be introduced including PIN, with the right to vote being available to members outside the chamber but within Parliament House.

12 **All questions for ‘Question Time’ should be ‘on notice’.**

The Westminster tradition governing question time dictates that questions are placed on notice to enable Ministers to prepare proper answers. Supplementary questions may be granted by the Presiding Officer up to the point where they are convinced the matter has been exhausted.

This model should be introduced into the South Australian Parliament to replace the current practice of accepting questions without notice, which often results in responses to Questions on Notice being delayed for long periods of time. To prevent this practice continuing, a maximum timeframe (eg one month) would apply.

## The role of governments

### Aim

The aim of this framework is to encourage collaboration between governments (at all jurisdictions), business and the wider community. Such collaboration is aimed at ensuring the necessary infrastructure (including regulation) is in place to support a vibrant market-based economy, limiting government intervention to addressing market failure and implementing an agreed and costed social agenda.

### Principles

- 1 Governments should focus on the provision of infrastructure rather than on the provision of consumer services that can be delivered by the private sector.
- 2 Governments should support the market economy through the provision of an appropriate regulatory framework.
- 3 Governments should intervene directly in economic matters only when there is clear evidence of market failure.
- 4 Governments should intervene with an agreed social agenda that is subject to the same budgetary rigour as economic development programs.
- 5 Governments should encourage private sector provision of services across all areas of the economy.
- 6 Governments should support the market economy by acting as advocate for the business community in areas such as government-to-government (inter and intra-jurisdictional) dialogue, cultural and political exchange and issues of sovereignty.
- 7 Governments should encourage the private sector to increase investment in business growth and development by providing a competitive business environment.

## Recommendations

- 1 **Governments at all levels should ensure they are minimalist in character, flexible, responsive and highly collaborative.**

A minimalist government is one that has a predisposition not to intervene in economic matters but, rather, allows market pressures and influences to deliver agreed economic outcomes.

- 2 **Governments' budgets should emphasise spending on capital (infrastructure) works and reduce recurrent expenditure.**
- 3 **The role of governments should be to provide or facilitate infrastructure that is capable of developing and maintaining the continually evolving competitive market economy.**

This infrastructure should include:

- A modern regulatory regime including:
  - Industry based (co-regulatory) objectives-based regulation.
  - Simple, clear policies (including industry policy, fiscal policy, education policy, labour policy, environmental policy and social policy) appropriate for their jurisdiction.
  - Hard infrastructure, such as transport, communications, water and energy.
  - Soft infrastructure, such as education and training and population initiatives.
  - Special programs in areas such as innovation (eg research and development and industry/business development).
- 4 **The private sector rather than governments should provide services where there is an economic imperative.**

Government service instrumentalities at local, state and federal levels should be assessed against an agreed set of criteria, to identify the appropriateness of outsourcing, corporatising or privatising some or all of their service provision.

Governments at all levels should introduce a fundamental framework that regularly asks, and reviews, the question: “What are the core functions of government that cannot or should not be outsourced, corporatised or privatised?”

Where privatisation is inappropriate for the organisation, service provision should be contracted out wherever possible through open, competitive tendering processes. These processes should be subjected to regular review to ensure continued competitiveness among the service providers and transparency in the process.

The private sector should be the preferred provider of services such as communications, energy and banking where there is an economic (market) imperative.

A partnership approach between the private sector and governments should be encouraged where it is important for government to maintain a management role in particular areas of social service delivery such as education and health.

- 5 **Governments should ensure that the community clearly understands the principles involved in establishing priorities for spending, including the use of cost-benefit analysis and the role of non-economic measures.**

Expectations of the community, including the business community, should be matched to the role of minimalist governments. It may be that in line with minimalist government principles, the community should expect less of government so that limited resources can be better allocated to agreed priorities.

Various cost-benefit approaches are applied to public sector policy making and decision making. These processes should be clearly understood across the community. Greater community understanding should be promoted in issues such as how benefits are measured and how non-economic measures are assessed.

**6 Regular checks should be made to ensure that governments' procurement processes remain transparent, accountable and fair.**

Reviews should ensure that procurement processes continue to display the following key features:

- Full and open access to tender information should be available for interested businesses.
- Tenders should reflect true costs.
- Principles of competitive neutrality should apply to governments' procurement processes.
- Winning tenders should be accountable for delivering on specification.
- Cost and other blow outs should attract appropriate consequences.
- Preferred supplier systems, where they apply, should be collaborative in nature, robust (transparent and fair), regularly reviewed and include appropriate dispute resolution mechanisms.

**7 Implement a consistent financial system, including a common chart of accounts, across each level of government.**

Greater interface between the public and private sector brings greater scrutiny; however, governments in all jurisdictions are still highly 'siloed', and operate in isolation.

Businesses doing business with governments should establish agreed performance measures and provide reports to track outcomes. It would benefit businesses if various government departments, agencies, instrumentalities or local bodies had similar financial systems (at least across each jurisdiction) to encourage comparison and precedent-based tendering.

A standard chart of accounts to complement governments' internal/external accounting systems coupled with an educative process to ensure clear and shared understanding, would add further value to agreed (and appropriate) procurement policy.

- 8 **In collaboration with the private sector, develop policies in the area of consumer education so that consumers can (wherever possible) be the drivers of the market through informed choice.**

In the past, consumers had few mechanisms to recognise and distinguish the relative quality of products. This is now beginning to change.

Education of consumers is a key plank in enabling competition and demand to provide 'natural' quality measures. There is a role for governments and the private sector in educating the public.

- 9 **Introduce periodic reviews of the interface between federal, state and local government powers.**

Recent reviews of federal and state powers have been conducted through the processes associated with the implementation of competition policy and also through discrete consultation on discussion papers, such as *The roles and responsibilities of the Commonwealth and State Jurisdictions* (1999).

Such reviews should be regular and routine.

Following review, powers should be transferred from one jurisdiction to another if necessary. This ensures that powers are appointed to the most appropriate jurisdiction, reducing duplication and avoiding inconsistency.

## The regulatory regime

### Aim

The aim of this framework is to promote a regulatory regime that enhances competition and minimises compliance costs for business, while meeting important social objectives.

### Principles

- 1 The regulatory regime should encourage partnerships and collaboration between stakeholders including industry (business) and government.
- 2 Regulation and its administration in each jurisdiction (federal, state and local government) should be consistent in character and free of overlap.
- 3 Specific classes of regulation, including development assessment, environmental approval and land-use planning, should be administered by the most appropriate government jurisdiction.
- 4 Industry (business) regulation should be seen as an integrated package and a whole-of-government(s) approach should be adopted to encourage consistency and reduce red/green tape.
- 5 Objectives-based regulation should be the preferred style of industry (business) regulation.
- 6 The regulatory apparatus and individual legislation/regulations should be regularly and routinely reviewed, to ensure continuing best practice.
- 7 The regulatory regime should encourage competition.
- 8 The regulatory regime should minimise compliance costs while promoting important social objectives, such as health and safety, environmental quality, and security of essential services.
- 9 A full range of strategies, including education, assistance, economic incentives, sanctions and prosecutions, should be applied to ensure compliance with regulation.

## Recommendations

**1 Apply internationally accepted principles to the review of regulation.**

A routine review process should be applied to all proposed and existing legislation/regulation. This review should be common across any level of government and based on the checklist of ten questions for good regulatory decision making that has been developed by the Organisation for Economic Co-operation and Development (see glossary).

Additional tools should be introduced where appropriate within the scope of the various OECD questions. For example, one question calls for the application of a full cost-benefit analysis of government regulation and comparative study of alternative action. International best practice should be used to benchmark regulatory audit models, with consideration given to models such as the regulatory impact statement (RIS) developed in New Zealand for this purpose.

Business is aware that a cost-benefit approach is applied to public-sector policy making, decision making and operation. The Department of Industry and Trade (DIT), for example, uses a net economic benefit assessment methodology. A common cost-benefit analysis model should be adopted across governments. The model should be well understood by stakeholders, including the business community. Processes under the model should be fully transparent and publicly reported (with adequate protection for proprietary information if necessary).

**2 Responsibility for particular aspects of the regulatory process should reside with the most appropriate individual agency at the most appropriate level of government.**

Government should determine the optimal way to allocate authority for regulation. This would include a consideration of the level at which policy decisions can best be made and implemented. This principle is a prerequisite to delivering a whole-of-government approach to regulation.

A whole-of-government model should be developed that clearly illustrates the relationships between various government departments, authorities, agencies, boards or other instrumentalities, using such devices as deeming provisions in legislation, memoranda of understanding (MOU) and service agreements as a

basis for formalising the arrangements. A map of these arrangements should be published and publicly available.

Overlap in the administration, compliance and enforcement of regulation should be avoided through the use of the following:

- single public entry points to government to obtain necessary information and forms
- single public entry points to government to obtain licences
- single integrated licences or, failing that, consistency between licences
- multi-purpose inspections being carried out wherever possible.

**3 Further develop objectives based (outcomes orientated) regulations and deliver these, where possible, through co-regulatory (industry based) models.**

**4 Encourage industry arrangements as an alternative to prescriptive regulation.**

Industry arrangements should be encouraged.

Industry wide arrangements have been discussed for Occupational Health and Safety (OHS) for example, where particular industry sectors identify their 'top 10' hazards and develop complementary risk management approaches and guidelines.

A similar approach could be adopted for environmental obligations, industrial relations or other regulatory responsibilities.

Issues such as national consistency can be dealt with through industry arrangements without compromising the role of governments in each jurisdiction.

**5 Separate the regulator's roles of enforcer and educator.**

Serious breaches of regulation should be subject to swift and effective enforcement action by the regulator. This action should include prosecution for serious breaches. Less serious non-compliance should be dealt with through punitive measures such as enforcement orders, clean-up orders or other measures available under specific regulations.

The regulator should be responsible for ensuring compliance using tools ranging from low supervision practices for suitably accredited and audited companies to high supervision practices for companies with fewer references.

The educative role should be outsourced to industry through industry/business associations, networks or clusters. The educative role should focus on the development of specific industry standards, codes of practice and/or assisting companies to obtain accreditation against appropriate international standards.

The regulator and industry should develop partnerships to ensure that their work is complementary.

## The framework in action

### 1 **Appoint a Minister for Adelaide and limit the Adelaide City Council's role to local government (municipal) services.**

Adelaide is much more than merely the gateway to South Australia. Adelaide is the seat of centralised State Government, the hub of the state's finance and commerce, and is the headquarters for key educational, artistic and business institutions. The significance of Adelaide to the economic, social, cultural and political fabric of the state is reflected in the term 'city state' which is sometimes applied to the relationship between Adelaide and South Australia.

The final report of the City of Adelaide Governance Review (January 1998) clearly identifies the capital city role for Adelaide. The governance models for Adelaide should be appropriate to meeting the responsibilities of 'both its own residents and ratepayers as well as (the) much broader constituency'.

The report identified a role for Adelaide in a diverse range of state development areas, including encouraging economic growth and vitality, promoting international trade and communication as well as a traditional local government role in areas such as managing city infrastructure. The current Adelaide City Council is based on a traditional model of local governance. This model should be assessed against its capacity to deliver the full range of services that emerge as a result of the complex role identified in the 1998 Governance Review.

Business interests in the central business district (CBD) cover all sectors, from finance to manufacturing. They represent all parts of the continuum of activity, from investment through to marketing. Gateway and tourism interests are critical to the state. More recently, residential interests are becoming more prominent in the CBD, as are the arts, and community and sporting events.

The most appropriate governance model for Adelaide is one that differentiates between the state development role ('city state' role) and the conventional local government (municipal) services role.

The responsibility for various aspects of the governance role should be placed at the most appropriate level or jurisdiction of government. The skills for managing

state development lie with the State Government; therefore, the 'city state' role should be handed over to the State Government. A dedicated role for a Minister for Adelaide should be developed to ensure that Adelaide, the city, is represented in Cabinet and appropriate recognition is given to the significance of the 'city state'.

Proper collaborative processes should be developed to ensure that there is dialogue between the 'city state' role and the local government role. Proposals that may achieve this are contained in the Governance Review, including the establishment of a Joint Advisory Committee or an Adelaide Task Force, but either of these initiatives should be implemented in an advisory capacity to the Minister.

The development of a Capital City policy (per City of Adelaide Governance Review final report, Jan 1998) appears appropriate as a strategic guide for future development as well as the day-to-day management of Adelaide. This document should be used to manage any potential clashes between the 'city state' and local government roles.

## 2 **Review the regulation of shop trading hours.**

Industry policy and the regulatory regime should encourage a highly competitive, deregulated marketplace. The outcome should be an equitable business environment that provides incentives for better performers.

With the emergence of trading on the Internet, the blurring of wholesale and retail through e-commerce, Internet auctions and other information technology (IT)-based marketing initiatives, retail 'stores' of all sizes and character are now open 24 hours a day, seven days a week.

Day and night are not as clearly defined for people as they were a decade ago. When someone shops on the Internet, it is irrelevant what time of day it is in the United States or Europe or anywhere in the world for that matter.

Customer demand patterns are changing with changing lifestyles. Customers are demanding access to local services when and where the market requires them. Zoning of traditional shopping districts to identify tourist districts for example, adds complexity to this issue.

A case can be made for fully deregulated trading hours to ensure that retailers are given the opportunity to respond to the new paradigm.

A review of the regulation of shopping hours should include representation from all sectors of the business community as well as consumers and government. A business-led forum may be an appropriate way to manage the review process.

### 3 **Review the time zone for south-eastern South Australia.**

Time zones are an arbitrary concept, currently aligned with various state and territory boundaries. In real time, the sun rises in Mount Gambier more than two hours before it rises in Eucla. Arbitrary arrangements such as time zones should be periodically reviewed for their relevance and impact on the business and the wider communities.

With the advent of IT, the information economy, e-commerce and globalisation, state boundaries are less relevant. On a global scale, Australia sits in the South-East Asia-Pacific region. The hub of Australian business and commerce is clearly the east-coast centres such as Sydney. It is in the interests of many South Australian businesses to develop close links with the east coast for all aspects of business including marketing, supply, and corporate services. Currently, there are up to five different standard and seasonal time zones that apply across Australia during the summer for example.

A case can be made for a greater alignment of the south-eastern section of South Australia with the time zones of the east coast of Australia. This section would include Adelaide and regional centres in the Upper Spencer Gulf and extend across to the Victorian-New South Wales border, making this section of the state free to track east-coast time zones.

A review of time zones should be conducted to consider these issues, with all stakeholders participating. A business-led forum may be appropriate to manage the review process.

Periodic reviews of this subject should be built into governance structures. For example, in the future it may be that the impact of the east coast of Australia as a regional hub may diminish as different-shaped marketplaces (perhaps virtual) are established. The state should be able to respond in a timely manner to changing circumstances of this type.