



## Australian Wine and Brandy Corporation Amendment Bill (No.1) 2007

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## Australian Wine and Brandy Corporation Amendment Bill (No.1) 2007

**Date introduced:** 29 March 2007

**House:** House of Representatives

**Portfolio:** Agriculture, Fisheries and Forestry

**Commencement:** The day it receives Royal Assent

### Purpose

The purpose of the Bill is to provide for a small number of amendments to the *Australian Wine and Brandy Corporation Act 1980* (AWBC Act), which implement conclusions reached by an assessment of the Australian Wine and Brandy Corporation (AWBC) against the Uhrig Review governance templates.

### Background

#### Basis of policy commitment

The Uhrig Review

As part of its 2001 election platform, the Coalition Government signalled its intention to examine the efficacy of governance arrangements of statutory authorities and office holders.

In November 2002 the Government announced a review of the governance practices of statutory authorities and office holders, with special focus on those agencies which impact on the business community. The Prime Minister, the Hon. John Howard, appointed Mr John Uhrig, AC, to head the review. The objective of the review was to examine and evaluate governance arrangements and practices and 'provide policy options for Government to get the best from statutory authorities and office holders and their accountability frameworks'.<sup>1</sup> In doing so, the Government noted the impact that the performance of statutory authorities and office holders has on business and the overall health of the Australian economy. In particular, the review was to focus on the areas where businesses have the right to expect the highest levels of efficiency, fairness and transparency in their dealings with government.

A key task was to develop a broad template of governance principles that, subject to consideration by government, might be extended to all statutory authorities and office holders. As part of the process of developing a broad template, the review was asked to consider the governance structures of a number of statutory authorities and office

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holders with critical relationships with business and to consider best practice corporate governance structures in both the public and private sectors.<sup>2</sup>

The Report recommended that two templates should apply to ensure good governance of statutory authorities: agencies should either be managed by a Chief Executive Officer (CEO) or by a board structure. Both templates detail measures for ensuring the boundaries of responsibilities are better understood and the relationship between Australian government authorities, Ministers and portfolio departments is made clear.<sup>3</sup> However, as Uhrig explained, the purpose of the template is 'to serve as a reference point' for the development of governance arrangements and so it is 'expressed as an ideal'.<sup>4</sup>

Uhrig recommended that the selection of the management template and financial frameworks to be applied should be based on the governance characteristics of a statutory authority.<sup>5</sup>

#### Responses to the Uhrig Review

For a summary of the responses and debate that followed the release of the review, please refer to Richard Grant '[The Uhrig Review and the future of statutory authorities](#)' *Research Note* no. 50 2004–05, Parliamentary Library, Australia.

#### The Commonwealth financial framework

Nearly all government bodies fall under the *Financial Management and Accountability Act 1997* (the FMA Act) or the *Commonwealth Authorities and Companies Act 1997* (the CAC Act).

The FMA Act focuses primarily on the obligations and responsibilities of Chief Executives and the way officials handle public money, public property and other resources of the Commonwealth. The FMA Act applies to budget-funded authorities managed by a CEO, and establishes various management and reporting responsibilities for the CEO (s. 44–46, 49 and 51), as well as allowing the Minister to give guidelines to the CEO (s. 64). Furthermore, the FMA Act provides an accountability framework for CEOs to manage agency resources.

The CAC Act, on the other hand, requires directors and officers to exercise their powers and duties in the best interests of the body and for a proper purpose. Directors' duties apply to help ensure that prudent decisions are made on the resources that, as a matter of law, the body holds in its own right. The CAC Act applies to authorities that are corporate entities managed by a board. It requires the head of the board to report to the responsible Minister (s. 15–16), and to ensure that the authority's activities comply with government policies (s. 28). A board structure is favoured if there is a strong commercial focus to the organisation, or if the agency is intergovernmental.

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As at 31 January 2007, there were 94 FMA Act agencies and 99 CAC Act agencies.<sup>6</sup> The Department of Finance and Administration publication [Governance Arrangements for Australian Government Bodies](#) (August 2005) provides further explanation on the FMA Act and CAC Act and a comparison between the two pieces of legislation.

On the basis of the findings of the Uhrig Review, Ministers and their Departments have been undertaking an assessment of their portfolio agencies against the governance templates.<sup>7</sup> The Minister for Finance and Administration has assumed a coordinating role in these reviews.<sup>8</sup> Thus, a number of similar Acts have been passed by Parliament incorporating Uhrig Review recommendations.

The Australian Wine and Brandy Corporation (AWBC)

The AWBC was established in 1981 replacing the Australian Wine Board. The AWBC plays a key role in supporting and promoting the development of Australia's \$5.5 billion dollar wine industry.<sup>9</sup>

The Corporation's specific services for the wine sector include strategic marketing, information and analysis, export and labelling regulation, advice on trade and market access issues, and the identification and protection of the nation's distinctive wine regions.<sup>10</sup>

In his Second Reading Speech, the Minister for Agriculture, Fisheries and Forestry stated that a recent assessment of the AWBC against the Uhrig Review findings revealed that the Board template (recommended by the Uhrig review) was 'the best and most appropriate management structure for the AWBC'.<sup>11</sup>

## Financial implications

The Explanatory Memorandum states that there is no financial impact.

## Main provisions

Schedule 1—Amendments to the *Australian Wine and Brandy Corporation Act 1980*

Composition of the Board—Removal of appointment of government member

One of the main objects of the Bill is to discontinue the appointment of a government member to the Board. Amendments made under the following items accordingly delete operational references to **government member: (items 5 and 6)**.

### **Item 2 – Proposed paragraph 13(1)(b)**

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This item **proposes** a repeal of the existing **paragraph** 13(1)(b). The effect is to abolish the position of government board member, and permit another Corporation board member position to be created (**Item 3**) whose appointment will be in step with a skills based approach. This also removes the potential for conflict of interest and is consistent with the approach to board membership recommended by the Uhrig Review.

**Item 4** - The Uhrig Review found that the performance of boards of statutory authorities was reduced by—among other factors—insufficient diversity among, and limitations in the skills and experience of board directors. Uhrig drew attention to the significance of and necessity for having board members with ‘appropriate characteristics, attributes and experience that would benefit the board’.<sup>12</sup> The amendment proposed by **Item 4** seeks to respond to this by adding knowledge of, or experience in ‘government policy processes and public administration’ to the list of criteria used to appoint a Board member.

### **Item 7 – 29TA Annual Report**

As a further measure to secure greater accountability and transparency, this item adds a requirement for the AWBC Selection Committee to prepare and give to the Minister an annual report of the operations of the Committee (if any).

This item also allows for the Selection Committee’s report to be included as a discrete part of the AWBC’s Annual Report to avoid the need for a separate tabling in Parliament.

## **Concluding comments**

As already noted, this Bill is one of series introduced by the government designed to make relevant and appropriate reforms in response to observations and conclusions made by the Uhrig Report. It also responds to a recent assessment of the AWBC and the specific amendments are designed to ‘strengthen the governance arrangements and transparency of the AWBC’s operations’.<sup>13</sup>

## **Endnotes**

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1. Senator the Hon. N. Minchin, [Australian Government Response to Uhrig Report](#), *Media Release*, 12 August 2004.
  2. J. A. Uhrig, AC, *Review of Corporate Governance of Statutory Authorities and Office Holders*, June 2003, p. 1.
  3. Senator the Hon. N. Minchin, *op. cit.*
  4. Uhrig, *op. cit.*, p. 83.

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5. *ibid*, p.12, point 6
6. Department of Finance and Administration, Chart of FMA Act and CAC Act agencies, [http://www.finance.gov.au/Publications/docs/FMA\\_CACFlipchart.pdf](http://www.finance.gov.au/Publications/docs/FMA_CACFlipchart.pdf), Accessed on 1 May 2007.
7. 'More than 160 Australian Government Agencies are being assessed against the Uhrig Report principles and templates'. Sussan Ley, MP, Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry, 'Second Reading Speech: Primary Industries and Energy Research and Development Amendment Bill 2007', House of Representatives, Debates, 1 March 2007.
8. *ibid*
9. AWBC Homepage < <http://www.wineaustralia.com/australia/> > Accessed 4 May 2007.
10. *ibid*
11. Hon. Peter McGauran, MP, Minister for Agriculture, Fisheries and Forestry, 'Second Reading Speech: Primary Industries and Energy Research and Development Amendment Bill 2007', House of Representatives, *Debates*, 29 March 2007.
12. Uhrig Report, *op. cit.*, p. 82.
13. Hon. Peter McGauran, MP, Minister for Agriculture, Fisheries and Forestry, 'Second Reading Speech, *op. cit.*

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