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## *REVIEWS*

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### **Regulating Government Enterprises**

*Michael Whincop (ed.), From Bureaucracy to Business Enterprise: Legal and Policy Issues in the Transformation of Government Services, Ashgate, Hampshire, UK, 2003*

*Review by Gary Johns*

Publishers will tell you that a book of conference papers is hard to sell, and editors will tell you that a book of conference papers is hard to review. The latter, even more so when three of the papers are comments on other papers. Publishers and editors are generally right — they have to be because they are paid to know their market. This is a useful starter for the review of an edited book about the regulation of Government Business Enterprises and Government Operated Corporations (GOCs). The contributors jump between the two terms, so for the purposes of the review the generic GOC will suffice. The issue for all of the contributors is to decide how public or private are GOCs, and having decided, to be satisfied that each is sufficiently accountable to the appropriate power, the government and/or the market.

The contributors appreciate the dangers of bureaucratic inefficiency and party-political manipulation in the governance of GOCs on the one hand, and the emulation of private sector management on the other. It is not difficult to be left with the impression however, that the complexities of designing accountability systems for GOC performance are such that, in the absence of overwhelming economic argument, like the presence of a natural monopoly, it is better to privatise than to corporatise. If a GOC cannot serve two masters, the private interest and the public interest, then best to sell and let government concentrate on regulating the market, not the GOC. I suspect that most of the authors in the volume would not be in the privatisation camp. In fact, at the outset while the editor claims to have no preference for state control over government control of economic enterprises, those in favour of market processes are described as ‘ideologues of the Right’ whereas the statist are assumed to be normal.

There are three classes of contribution; we will name them, reactionary, sceptical, and accepting. Only the latter seem to be aware that Australian GOCs have turned from being a net drain on government budgets to a net contributor in the space of two decades, that many of those privatised are making a significant contribution to the economy, and subsidies for public purposes once associated with GOC pricing are more explicit. The reactionary contributions begin with the presumption for continued public ownership and argue that privatisation is not a continuous evolution of economic policy, but that in the economies surveyed —

Australia, UK, US — despite the fact that there have been ‘slash and burn turn(s) of the cycle’ of ownership, there should be no presumption that government will vacate the field. The governments in the countries surveyed may have vacated the field of economic ownership, but there is no suggestion that they have vacated the regulation of the marketplace, nor (often at the behest of the electorate) most other aspects of life. A second contributor wants to start a ‘counter reformation’ and have the market well and truly subsumed by politics. He confuses the ability to charge a commercial price with a lack of public accountability. ‘Increases in profitability arise precisely because managers are not subject to constraints imposed through public accountability, and are therefore free to manage enterprises so as increase revenue and reduce costs’. It could be argued that price is a form of public accountability, and that to this author accountability really means hidden subsidy.

The sceptics have a problem specifying the ‘public interest’. One asks, ‘how can managers of GOCs be motivated to act in the broader interests of society? For example, ‘Governments may like the [GOC] to operate efficiently, in the sense of producing its relevant outputs at the lowest possible cost. However, governments may also be concerned about unemployment. If efficient operation of the [GOC] involves a significant reduction of the workforce and a rise in unemployment, these two objectives will conflict’. This is surely a confusion of the enterprise with the economy. If in the short run a government uses its own enterprises to bolster employment in an inefficient operation (or indeed in protecting a private one) it will in the long run the risk of leading to higher unemployment.

One of the important innovations of the corporatisation period has been not only the discipline of the market on enterprises, but also the discipline on politicians of specifying non-economic objectives, or economic objectives broader than the enterprise. One contribution produces a survey of members of various boards of Queensland GOCs, which indicates difficulties in Ministerial intervention in the affairs of the GOC. For example that the Minister-as-shareholder may promote electoral maximising rather than wealth-maximising behaviour. Quite so, but if the ‘public interest’ is to be achieved, it is difficult to state who else other than the Minister may be in a position to know the public’s interest. A useful suggestion may be to insulate a GOC from certain excesses of ministerial intervention, for example, when a Minister holds down insurance premiums for workers’ compensation until after an election, by ensuring the premium setting process is transparent. A high degree of specification of governance parameters — that is, setting out a thorough menu of performance on non-financial criteria, or community-service-obligations — is a desirable thing, but is unlikely to prevent a Minister from asserting that his interventions are in the public interest. However, one of the interlocutors advises, ‘A risk of inappropriate Ministerial intervention may be the price we pay for the opportunity for appropriate intervention’.

Another contributor criticises the perennial Productivity Commission critique that GOCs are not efficient, and supports Senator Stott Despoja’s suggestion of a Public Interest Commission! Why not just get rid of government altogether,

which I suspect is the entire purpose of the governance discourse that has crept into political-economy in the last decade. It is as if the underlying objectives of GOCs are only social. It may be more helpful to commence with the assumption that their objectives are economic, and then specify the non-economic objectives and preferably implement these available outside of the operation of the GOC.

Another discusses as a case study the Energy and Water Ombudsman Victoria, and questions whether the privately funded (by licence holders) structure can be part of the doctrine of responsible government. The assertion is that energy and water are public goods, which the state has chosen to deliver privately, but that the 'provision of essential services is properly situated in the public realm'. Surely, the issue is not what the state wants, but what the customers want, presumably a good service at best price. What were once deemed essential services are clearly no longer public goods.

There is a presumption that 'market governance' – governments letting go of economic entities (but not of regulation) – is tantamount to the 'fraying of Ministerial accountability'. The presumption is that the consumer, for the purposes of goods and services provided by a GOC, is also a citizen. Hence, the call for direct accountability of the scheme by 'consumer/citizens'. This would involve the election of consumer representatives by their relevant constituencies, which in practice usually means the funding of consumer advocacy groups and their pet projects.

In terms of the dispute resolution processes available for contracted parties and consumer/citizens, the contribution kindly presents an alternative view, in the form of a judge's remark. 'The courts have not taken the view that a privately founded, privately managed organisation ... is necessarily to be subject to control by the courts. That is certainly not to say that such an organisation may treat itself as above the law; it is merely to acknowledge that the courts will not discourage private organisations from ordering their own affairs within acceptable limits'. Quite so.

There are contributions that accept corporatisation and who wish to enhance its usefulness with suggested reforms that may help achieve some of the benefits of market-based governance without giving up governmental control. 'Sometimes these benefits are best achieved by replicating the governance of private firms'. One contributor addresses the problems of managerial agency costs and inappropriate Ministerial intervention with a number of innovative strategies.

The first is a contractual solution, to let parties resolve issues contractually without legislative intervention. In fact, the contract may be part of legislation, but a particular device such as an appropriately crafted Statement of Corporate Intent, may go a long way to solving the issue of the divergent interests of a Minister in the responsibility for a GOC. Another, quite intriguing gambit, is to create a class of private investors with a stake in the GOC by the issue of subordinated debt. The idea is to create an investor class that has an incentive to monitor and whose purchase and sale decisions provide a market signal about the GOC performance. Other contributors suggest ways to define those who should

have standing to sue a GOC in private actions, to mimic the environment of the private firm.

Such suggestions seem to be greatly advanced in the exercise of accepting the presence of government-owned corporations in the market place and creating the best opportunity for them to perform as economic entities, rather than the reluctant starters who would rather 'social' objectives be achieved by economic entities. The difficulty for the reluctant corporatisers is that, the more corporate responsibilities are loaded onto GOCs, the greater the reason to privatise. The desire to account for each potential adverse aspect of the market, by incorporating into the governance of every GOC, every conceivable fail-safe arrangement, rather defeats the purpose of the corporatisation. Those who want to broaden the scope of corporate governance by incorporating the political agendas subsumed under corporate social responsibility only serve to produce a strong argument to allow the GOC to escape the clutches of government, and at least then face merely the competition of its peers and the ordinary weight of regulation.

In essence, the dominant contributions in the book reflect the prevailing orthodoxy of the Griffith University Key Centre for Ethics, Law, Justice and Governance: that we live in a post-parliamentary, post-democratic, post-market age; that the combination of representative government and the regulated market are insufficient to deliver a just outcome for everyone. Rather than the liberty to make ones own way in the world, the dominant value is that every citizen has recourse to every forum to resolve his or her every problem, and that every problem is public and shared by every other citizen. I guess they know their market.

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