WATER GOVERNANCE REGIMES IN AUSTRALIA: IMPLEMENTING THE NATIONAL WATER INITIATIVE

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Abstract

Governance is the process of decision making in the community involving both formal and informal actors at all levels. Government is just one of the formal actors in governance. The institutions and organisations it creates by laws and regulations are the formal actors in the process of extracting, distributing and using water. There are of course many informal institutions as well such as customs of the society with respect to water use and allocation and in relation to enforcement of the law.

After the Council of Australian Government reforms in 1994 there are many laws creating many types of organisations to extract, distribute and use water in each State. This paper reports on work to examine the formal legal processes. The work established that there are now 14 different types of corporate organisations supplying water in Australia. These formal organisations and the informal institutions have different responses to the formal water law and policy changes. The responses of the formal organisations and informal institutions are instrumental to the success of the new water law and policy reforms under the National Water Initiative.

The paper reports on some results from a telephone interview with 183 of the Chief Executive Officers of the largest water supply businesses. The results presented here look at their responses to the new water policies in particular evaluating the effort put into ESD by the CEOs, the difficulty in pleasing the regulators(both environment and price), the amount of information they have about water policy and whether they trust the State government.

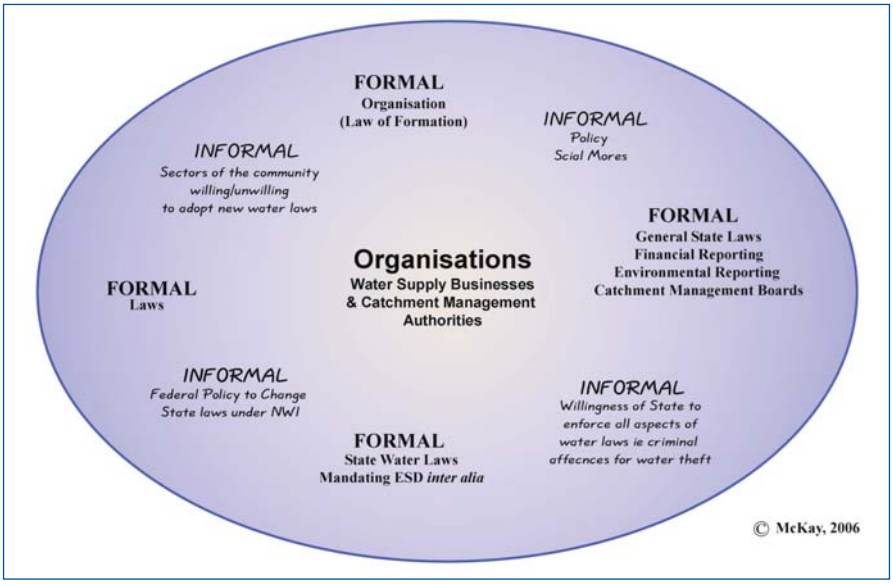

Figure 1. Representation of the institutions, formal and informal, impacting on water supply business organisations.

Only one-third of water supply chief executive officers surveyed across the nation are confident that their companies or enterprises can achieve sustainable water management.

Introduction

Governance, not a true scarcity of water, is the core of the world water crisis according to the UN 2nd World Water Development Report released in early 2006. The Australian Government has initiated the two waves of CoAG reforms to alter the governance structures to achieve efficient and more productive water use. This is seen as increasingly important over the coming decades as water issues impact upon the continued stability of Australia's rural sector, urban communities and the nation's economic well-being. The Government is determined to continue increasing efficiency in water use and implementing reforms to achieve this national objective. (DAFF, 2006.)

Water Governance in Australian - Institutions and Organisations

Governance always looks at how power is exercised in the management of economic and social resources for the society, also how to mediate disputes between members. Often governance is about creating the conditions for ordered rules and collective action.

International literature has eight characteristics in common for good governance -participatory, consensus orientated, accountable, transparent, responsive, effective and efficient, equitable and inclusive and following the rule of law. (UNDP 2001, Global Water Partnership) Australian Standard 8000 defines it …"as being concerned with improving the performance of companies for the benefit of shareholders, stakeholders and economic growth. It focuses on the conduct of and relationships between the board of the directors, managers and company shareholders."

Governance is considered in any society at any point of time as the sum of formal and informal and organisations. In a sector such

Table 1. Corporate Governance legal types of major Water supply businesses in each State.

	ACT	NSW[1]	NT	QLD	SA	TAS	VIC	WA	Total
Local Government Regional Council (LGRC)	0	2	0	0	0	0	0	0	2
Shire Council (LGSC)	0	46	0	92	0	17	0	14	169
City/Town Council (LGCC)[2]	0	0	0	15	0	5	0	0	20
Local Government Owned Corporations (LGOC)	0	14	0	4	0	0	0	0	18
Joint Local Government Organisation (JLGG)[3]	0	5	0	1	0	3	0	0	9
Water Boards {Includes Rural Water & Drainage Boards} (WB)	0	0	0	0	0	0	0	2	2
Government Departments Licenser (GD)	0	0	0	1	0	2	0	0	3
Government Owned Corporation (GOC)	1	5	1	1	1	0	6	1	16
Statutory Bodies (SB)	0	0	0	0	0	0	18	0	18
Corporations Law Companies (CLC)	0	3	0	1	2	0	0	1	7
Irrigation Trusts (IT)	0	2	0	0	4	0	0	0	6
Undetermined[4]	0	0	0	0	0	2	0	4	6
Hybrid – (SB/CLC)[5]	0	1	0	0	0	0	0	0	1
Hybrid – (IT/CLC)[6]	0	1	0	0	0	0	0	0	1
Total	**1**	**74 - 79[7]**	**1**	**115**	**7**	**29**	**24**	**22**	**278**

1. NSW councils that generate turnover of > $2m are classified by the National Competition Policy and Local Government Act 1993 (NSW) as category 1 businesses. If < $2m then category 2. Category 1 businesses are subject to more stringent reporting/auditing requirements and must be privatised corporations. In effect, category 1's are/may be semi autonomous subsidiaries or completely autonomous privatised corporations. Thus, the level of turnover is crucial to the character of the entity and its classification.

2. Includes Local Government Town Councils and Local Government City Councils.

3. Includes Organisations that are owned by a collective of LGAs and organisations owned by a collective of LGAs with State Government.

4. Typology has not been determined due to insufficient materials to make a definitive assessment.

5. West Corurgan Irrigation apparently exists as both a Statutory Body and a Corporations Law Company.

6. Western Murray Irrigation Ltd is identified as an Irrigation Trust within legislation but is structured and operating as a Corporations Law Company.

7. NSW had extensive council mergers and redrafting of Council boundaries during the period that this research examines. As such, the material collected reflects the rapidly shifting face of the NSW Water Industry. At the beginning of the researched period, there were 79 distinct WSBs, within the year; however, amalgamations had reduced this number to 74.

as water, governance allows different arrangements of the institutions and organisations to be mapped and examined. The formal coercive obligations imposed by the institution of the law in Australia require all organisations to achieve ESD. Originally this was done through a variety of State-based Acts because of section 100 and the paramountcy of State law over water for conservation (impounding) and irrigation (McKay 2005). The States then ceased to co-operate on water, devised introspective State policies and formed different institutions and organisations to distribute water for the sole purpose of economic development. Over time but especially since the early 1990s the aims of the State schemes broadened to encompass other goals and include environmental and social sustainability as parts of modern water policies. This was done by the adoption of ESD into the water laws and policies and by institutional and organisational adoption of ESD. In 1990 there were more than 100 statutes which required ESD in Australia at local State and federal level. (Stein 2000) but now there would be over 400. There are differences in the coverage of the ESD definitions both within statutes in each State and between the States. (McKay 2006, Table 2). Whilst the overarching goals are set federally in the NWI, the means to achieve them is left to the States which, as in all federations, chose to do things differently. This can create a laboratory of policy experiments which offer learning opportunities but also can create confusion. (Brandies 1932)

Previous international research has described how the form of organisation has a great influence on achievements of any policy (North 1990, Young 2000). The imposition of laws to achieve ESD is an outcome of societal pressures, bio-diversity catastrophes and drought. Laws have been imposed on the organisations in order for the organisations to maintain their legitimacy with some influential sectors of modern Australian society. (Di Maggio and Powell 1983). Thus the policy to achieve ESD is coercive on each organisation as it is part of the law of each State.

Governance derives from society and is made up of formal and informal institutions and organisations. Such actors reflect local political, cultural and administrative traditions and are represented in Figure 1 in relation to Water Supply businesses. There are institutions such as the general law which are coercive i.e. structures of property rights to water and informal aspects such as the willingness of person entrusted to enforce the law such as local police to actually use their powers. All of these have an impact on the eventual performance of the organisations

Figure 1 expresses the arrangements between the formal and informal institutions and the water supply business organisations and Catchment Management Boards (Natural Resources Management Boards in South Australia). There is interplay within and between all these organisations and the institutions.

Typology of Australian Water Supply Businesses

In the past in Australia, the main organisations were public sector but since the 1994 Council of Australian Government Reforms the organisations involve more private sector roles in all aspects and place government in a regulatory role on price and environmental impacts. Governance arrangements for water in Australia are complex with over 14 different types of legal forms of water

supply businesses (Table 1). The mosaic of different forms each have multiple reporting arrangements as determined by the relevant Acts. The different Acts also create an informal institution around what could be called 'reporting culture'. For example, the reporting cultures for organisations empowered under a Local Government Act are very different from those existing for a body reporting to the Australian Securities and Investment Commission (ASIC).

Table 2. Relative ranking of width of ESD definition in four Australian States and through MDBC template legislation in each State.

	Rank of ESD definition width
MDBC Template*	1 (Equal)
SA (downstream) 10% in MDB area	1 (Equal)
Qld (upstream) 25% in MDB area	2
NSW (upstream) 90% in MDBC area	3
Vic (midstream) 60% in MDB area	4

**Legislation inserted into State law of Queensland, New South Wales, Vic, SA.*

At the ground level, different legal forms for adjacent water supply businesses make co-operation and data sharing more difficult. Furthermore, the culture of the organisation guides its implementation of the NWI in a profound way and its understanding of sustainability and the procedures it can place in its strategic planning framework to implement Environmentally Sustainable Development (ESD). The fundamental premise of ESD is that economic development must be balanced against the protection of biological diversity, the promotion of equity within and between generations, and the maintenance of essential ecological processes The culture is often guided by the way the organisation is run, e.g. some water supply bodies are run by grower/users elected from regions in the area, yet others (most of the big urban and rural bodies) have board members appointed by the State Government (McKay 2005) Local governments which supply much water have elected officials and their region may cover urban and rural areas.

This typology was created from the Annual Reports of the bodies for 2003/4, classifying them according to legal type. The decision was made to look only at major water supply businesses i.e. those supplying more than 250 customers. There was very little other research to guide this process at the time and subsequent data confirms the Victorian figures and suggests that there are 125 bodies in Queensland and 120 in NSW in 2005 (Australian Government 2006). The forms of the bodies listed here exclude the small mining company or indigenous water supply schemes which exist under special acts.

Table 1 shows that Government at State and local level still has a major role in the water industry and the State-owned corporations contribute significant amounts to revenue of the State and the local governments in the forms of dividends. Hence these bodies have an important role at the macro state level financially but also a huge role with respect to the achievements of NWI. These State bodies and others such as Catchment Management Boards are the front line implementers of NWI.

The aim was to determine if the organisational type was a factor in attitudes to selected NWI reforms and hence whether implementation of selected NWI goals was more or less likely in different organisation types. This process has been defined as *Evaluation of law and policy by implementers* (McKay 2006) is a strategic way to conduct processes of law reform. In Australia, the processes of law reform rarely take this systematic approach often responding to acute crises (Opeskin 2001)

The goals selected were aimed at evaluating the effort put into ESD by the CEOs, their ability to please the regulators(environment and price), the amount of information they have about water policy and if they trust their State government.

An earlier part of this study assessed the content of annual reports for all water supply bodies under 10 themes including ESD actions. The results suggested that the 24 Victorian utilities (all single mission water suppliers) reported the most ESD actions. The vast majority of other water supply businesses are empowered by a Local Government Act, and have water as only one of **many** missions. (Gray and McKay 2006)

Evaluation of selected NWI policies by CEOs

The method was to identify the relevant policies and laws from State and federal instruments and from conversations with CEOs and others. After the issues were identified the next step was design an instrument to evaluate (on an eleven point scale) perceptions, understandings and attitudes to the policies and laws by the key actors. As the respondents were sophisticated, the interview schedule was long with 100 questions and respondents were contemporaneously emailed lists of items to rank order.

The CEOs were first contacted to make a time to have 30 minutes free to do the interview. The interviews took place between September 2005 and January 2006 and were conducted by 3 trained professional interviewers at Ehrenberg Bass Institute at University of South Australia. The respondents were all sent a project information sheet and advised that their responses were confidential. There were over 100 questions and the average time for interview was 27 minutes with no-one stopping the interview. Respondents reported that they liked the survey as they had a chance to explore issues and report on issues that concerned them. The results for all but the first questions are reported by State (as there is only a single authority in the ACT and NT, their responses will not be published to protect confidentiality) and corporate governance type.

The respondents were selected to represent the types of organisations listed in Table 2. The CEOs were distributed as such; 86 out of 115 from Queensland, 38 from 78 in NSW, 24 from 29 in Tasmania, 13 from 24 in Victoria, 20 from 22 in WA and the only one from each of the ACT and NT. The distribution by typology type reflected the proportions with local government predominating. In the charts below the results for the two single authorities in the Northern Territory and Australian Capital Territory have been omitted.

All the sample CEOs were male and all had been in the job for at least 6 months. Over 50% has been in the same organisation for 5 years or less, with 15% there for between 6 months and 1 year, 20 % for between 1 and 2 years and 14% for 5 years or less. Just over one third 34% had been CEO for between 5 and 11 years i.e. post CoAG 1994 and 22% for greater than eleven years which means pre and post CoAG 1994. However it was found that the time of service was not significantly related to the answers to the questions.

CEOs and ESD implementation

What does sustainable development really mean? Sustainable development as a concept is notable for its lack of consistency in its interpretation (Sharachchandra 1991). It dates from 1987 (Brundtland 1987) Whilst on the political level the fact that it is so broad is appealing but that is also its weakness as the problems of poverty, environmental degradation, economic growth and participation are not well

articulated. Such a lack of clarity may hamper the debate and certainly the implementation.

In Australia, Intergovernmental agreements on the environment imposed the 7 principles of ESD (National Strategy on Ecologically Sustainable Development 1992, 1993)

Despite the above, each State has defined ESD in a number of acts, totalling about 400 in the whole nation. These acts apply to all actions of the Water Supply businesses and other institutions and organisations. The definitions of each of these spans over many sections of each of the Acts/ The rules of interpretation of Acts (in each State) are also different. Table 2 ranks the width of the various definitions of ESD.

The fundamental premise of ESD is that economic development must be balanced against the protection of biological diversity, the promotion of equity within and between generations, and the maintenance of essential ecological processes. The Commonwealth Government working groups on ESD drafted these principles to guide ESD in 1992 (Hamilton and Throsby 1998). Namely:

Decision making processes should effectively integrate both long and short term economic, environmental,social and equity considerations, in seven principles:

1. Lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation (the Precautionary Principle),

2. The global dimension of environmental impacts of actions should be recognised and considered,

3. The need to develop a strong, growing and diversified economy which can enhance the capacity for environmental protection should be recognised,

4. The need to enhance and maintain international competitiveness in an environmentally sound manner should be recognised,

5. Decision making processes should effectively integrate both long and short term economic, environmental social and equity considerations,

6. Cost effective and flexible policy instruments should be adopted; and

7. Broad community involvement should be facilitated.

This statement has been accepted by CoAG and reflects that economic efficiency is not the main goal of water institutions but rather that there is a need to achieve ESD and balance between the social, economic, and the environmental needs. These seven principles have accordingly guided the

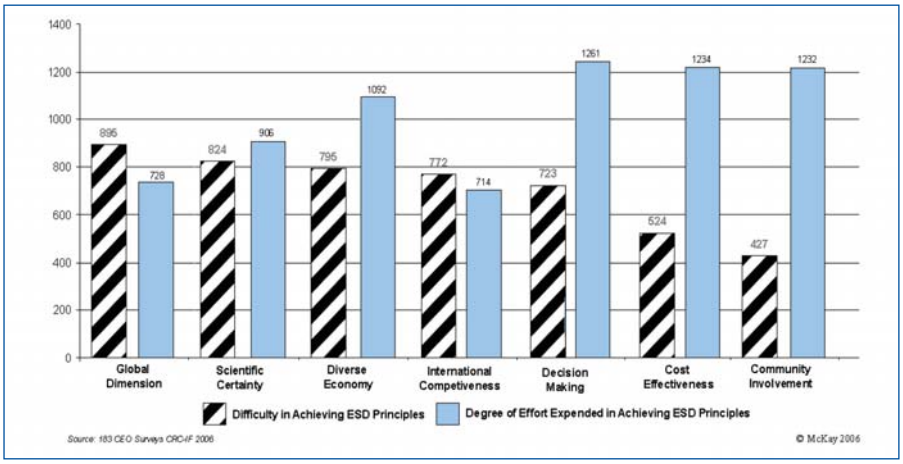

Figure 2. Effort and difficulty in achieving ESD.

collective thinking of governments in the formulation of contemporary water policy.

The first two questions reported here were emailed to the respondents so they could see the full text and they were asked to rate each one from *1 not at all difficult* to *10 extremely difficult.* In the second question, they were asked to rate them according to the effort they have put in from *1 least effort* to *10 most effort*. In all the questions #11 was 'don't know and refused' but there were very few of these. The votes were then tallied as shown in the figures.

Responses to the first question indicate that the CEOs thought that it was most difficult to achieve global dimensions and least difficult to achieve broad community involvement.

In relation to effort, most effort went into 3 dimensions broad community involvement, cost effective policies and integrated decision making processes.

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In relation to the transparency of the ESD process Figure 3 indicates that most organisations have a neutral view. All had heard of the process. Hence they were neutral at to whether the process in their State is transparent. The Water Boards perceive the process as transparent. Local government are clearly of the neutral view.

In relation to ability to achieve ESD, (Figure 4) the local governments were most likely to be neutral; Water Boards and Government Owned Corporations were more likely to agree that they could achieve it. In relation to work on local government and participation in Regional NRM Plan development it was reported that most councils were not active because of a lack of resources with 56 per cent of councils highlighting a lack of human or financial resources to effectively participate. Only 31 per cent of councils believe they have a good or comprehensive capacity to develop and implement the regional plans. (Australian Local Government Association 2005)

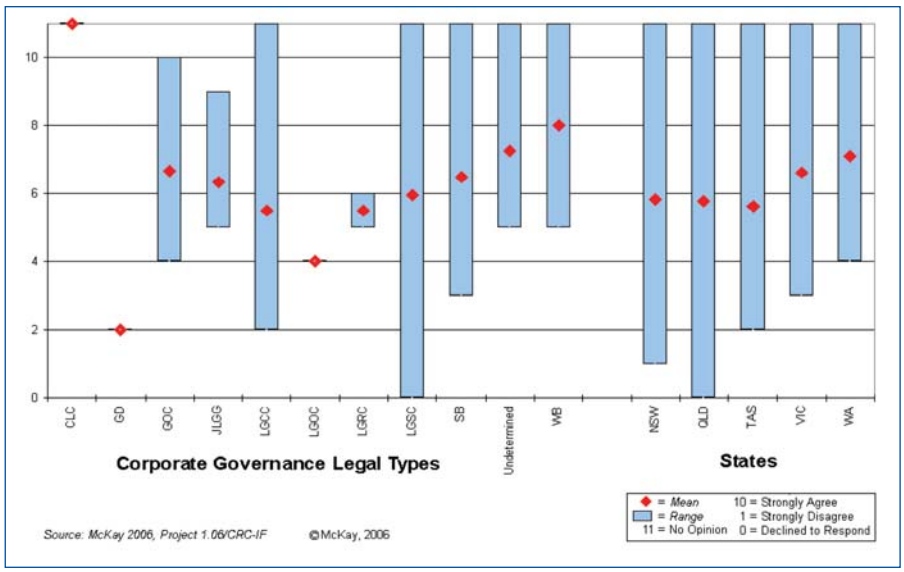

Figure 3. Is the ESD Process Transparent?

The Environmental and Price Regulators

Social capital theory in relation to environmental matters has often focussed on understanding how various actors interact with one another in relation to the water policy environment. By understanding the social capital of different environmental actors, for example water users and water policy implementers, we can understand why some policies end up being implemented and why noble aims often fail.

The questions asked aimed at finding which of the regulators was the more difficult to please. Figures 5 and 6 show that the environmental regulator is seen as harder to please in New South Wales and also for local governments. The price regulator is seen as hardest in Victoria and by Statutory Boards.

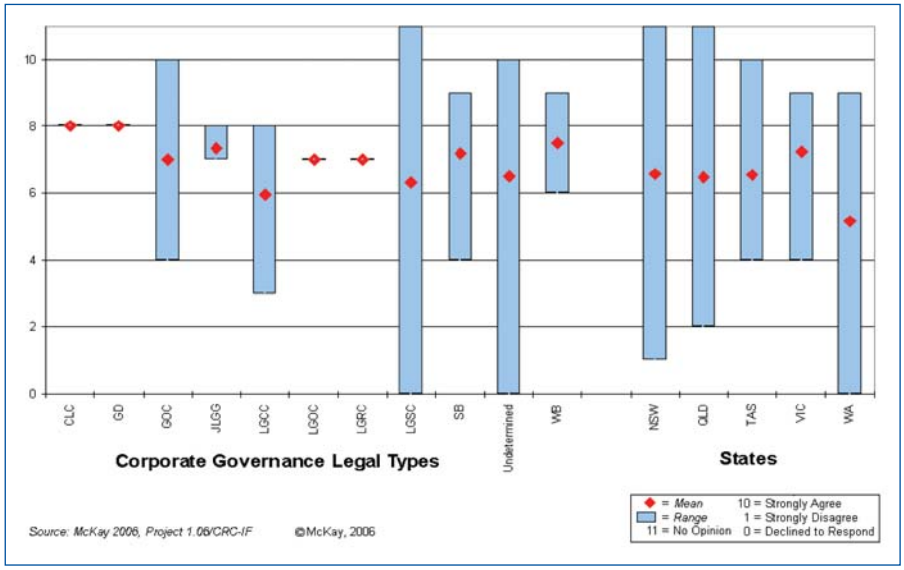

Figure 4. Ability to achieve ESD.

Relationship with Relevant State Government

Question 12 asked whether they felt they were kept informed by their State Government: the results are shown in Figure 7.

The results differed markedly between the States. Water supply businesses in Victoria were most likely to trust and the lowest trust level was found in the NSW A study in Queensland of stakeholders in small catchment found that there was little trust of the State government over NRM. (Rickson 2006)

The CEOs also reported low levels of trust in relation to the relevant State government. There was also a massive variation between

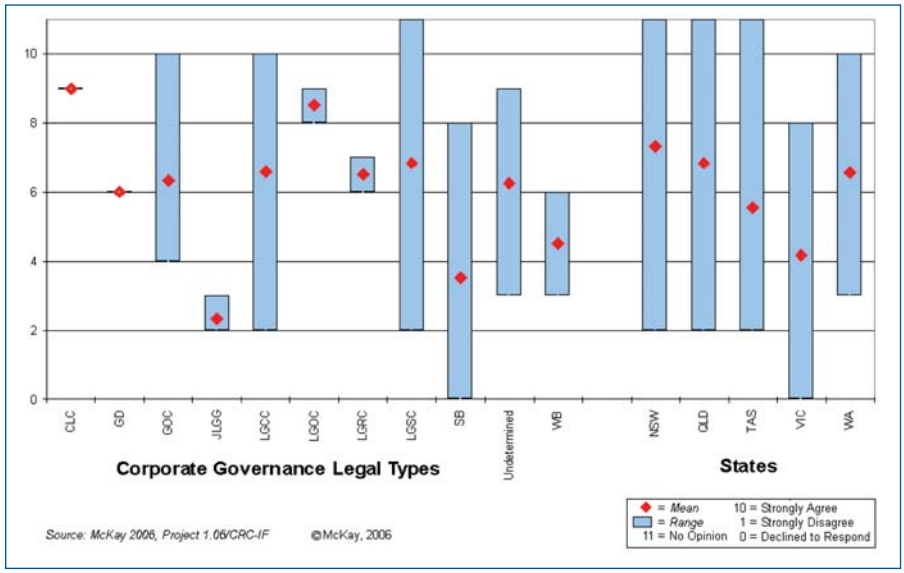

Figure 5. The Environmental Regulator.

Corporate governance types as well with Statutory Boards and Government-owned corporations most trusting and local government least.

In support of the above the CEOs also reported that they don't generally feel nested in a mutually supportive policy environment except in Victoria and this related directly to the corporate governance type of Government owned corporations, as shown in Figure 8.

Summary and Conclusions

There have been massive reforms of State water laws, policies, institutions and organisations in Australia over the last 12 years. These reforms have created many new bodies and completely restructured ownership of assets and management in all Water Supply businesses. The reforms aim to achieve ESD but each State defined it differently and has implemented it in different ways. There are 14 types of water supply businesses in Australia with NSW having 9 types spread over 79 major water supply businesses. The different types of legal organisation means that there are different organisational cultures processes and regimes to satisfy from coercive institutions such as the plethora of laws within and between States.

Most reforms require partnerships between Commonwealth and State agencies and also partnerships between different sectors of the community to achieve ESD implementation, as defined by the relevant acts. This paper has shown that the ESD policy implementers, the CEOs, have made considerable effort. However, the partnerships between sectors of the community and between them and State governments are impaired by a lack of trust and a perception that the water policies are not mutually supportive. Many of them are also puzzled as to how to achieve ESD and with acute differences between the States in definitions there is a limited scope for them to learn from each other. Notably the environmental regulator is seen as harder to please in New South Wales and also for local governments. The price regulator is seen as hardest in Victoria and by Statutory Boards.

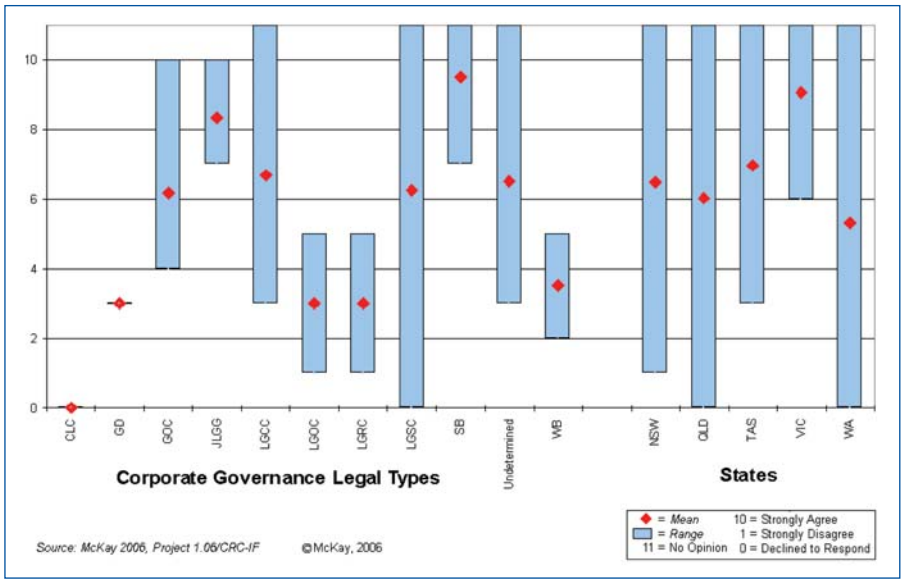

Figure 6. The Price Regulator.

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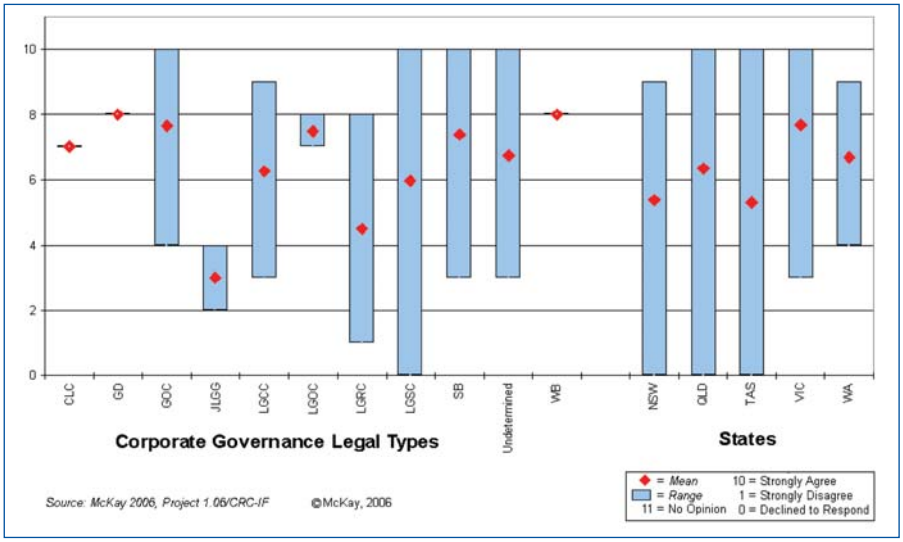

Figure 7. Relations with State Governments.

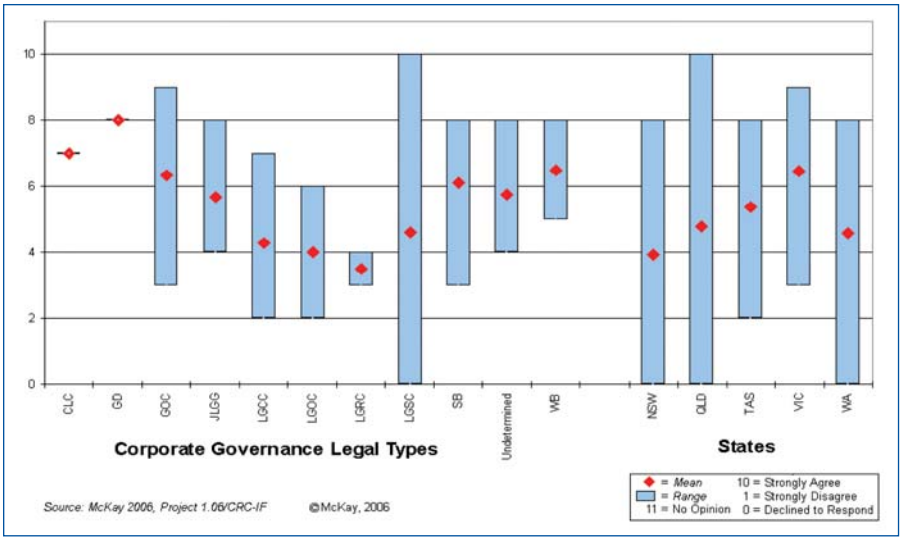

Figure 8. Mutually supportive policy environment.

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