Accountability for Performance in a more Contractually Oriented Public Sector

Speech
by
Mr P.J. Barrett (AM) Auditor-General for Australia
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I. Setting the Scene

The theme of this conference, ‘New Days, New Ways’ is very appropriate and timely given the nature of the challenges currently facing the Australian Public Service (APS). It could be argued that the APS has been steadily evolving towards a more private sector orientation over the last decade or so - more so recently as a consequence of the momentum of the National Competition Policy reforms. See Independent Committee of Inquiry into National Competition Policy, (1993); National Competition Policy, Report to Heads of Australian Governments, AGPS, Canberra. (See also Industry Commission [1995] The Growth and Revenue Implications of Hilmer and Related Reforms; A report by the Industry Commission to the Council of Australian Governments, AGPS; Canberra) and the Industry Commission inquiry into competitive tendering and contracting in 1995 Industry Commission (1996) Competitive Tendering and Contracting by Public Sector Agencies. January. Moreover, the Government has made it clear that the challenge of public sector reform remains both substantial and urgent. This was indicated in a discussion paper by the then Minister for Industrial Relations and Minister Assisting the Prime Minister for the Public Service. The Hon Peter Reith MP, (1996) Minister for Industrial Relations and Minister Assisting the Prime Minister for the Public Service; Towards a Best Practice Australian Public Service - A Discussion Paper; AGPS. The thrust was reinforced in the new Public Service Bill (1997) which looks as if it will be subject to robust Parliamentary debate. In his second reading speech, the Minister highlighted that the Bill:

‘...will promote higher performance in the APS by devolving management responsibility to individual agencies and, at the same time, ensure that public interest objectives are maintained through enhanced accountability. ...The framework within which the conditions of employment in the APS are set will be similar to that in the private sector, but accountability for the conduct of that employment will recognize the distinctive character and ethos of the public sector. ...Part 4 of the Bill makes it clear that Agency Heads, on behalf of the
The Government has indicated that the new Public Service Bill has been designed to achieve maximum flexibility while maintaining a high level of accountability. The new Public Service Bill will establish an interlocking system of powers and responsibilities, integrated within a genuinely devolved managerial environment. PSMPC (1997), Innovations Issue No. 5. August.

The Government’s acceptance of the basic principles set down by the National Commission of Audit for determining what activities should be undertaken within the public sector has led to an increased focus on privatisation and outsourcing of government services and activities. National Commission of Audit (1996) Report to the Commonwealth Government, AGPS, Canberra. However, it has also meant that even ‘core’ government services have become more contestable. In some instances the public service is being, or will be, put in a more directly competitive position with private sector providers.

The key message is that the APS is an important element of the government’s micro-economic reform agenda. One consequence is that it is no longer considered appropriate for the APS to have a monopoly even in traditional service delivery areas such as policy advice and in the determination of welfare entitlements. It must now prove that it can deliver government services as efficiently and effectively as the private or non-profit sectors. A new emphasis has been placed on the contestability of services, the outsourcing of functions which the private sector can undertake more efficiently and ensuring an APS orientation more towards outcomes than processes and continuous improvement to achieve better performances. To indicate its commitment, the Government has also recently required APS managers to review their responsibilities and assess the cost-effectiveness of activities to determine how the performance of government activities can be improved. Part of this approach involves the consideration of tools such as competitive tendering and contracting (CTC). The thrust of the changes were summed up in a recent speech by the Public Service Commissioner:

‘The task we face as a Service is to provide public services with the same efficiency and to the same quality standards as that provided by the private sector to consumers. Responsiveness to a competitive market is crucial to that objective. That is why we need to be contestable. That is why we should benchmark our performance against good practice and, if it is relatively poor, either lift our game or contract service delivery to a more efficient provider.’ Shergold Peter, Public Service Commissioner, (1997), A New Public Service Act: End of the Westminster Tradition? PSMPC Lunchtime Seminar Series, Canberra, 8 July.
Other elements of the emerging public sector environment which will impact on the responsibilities of managers is the replacement of the *Audit Act 1901* by three new Acts which is currently planned for commencement on 1 November 1997. The three proposed Acts are:

(a) The Auditor-General Bill which will provide for the appointment, independence, status, powers and responsibilities of the Auditor-General; the establishment of the ANAO, and for the audit of the ANAO by the Independent Auditor.

Financial Management and Accountability Bill (FMA) which will set down the financial regulatory/accountability/accounting (accrual based) framework for Commonwealth bodies that have no separate legal existence of their own (ie they are simply agents of the Commonwealth).

Commonwealth Authorities and Companies Bill (CAC) which will provide standardised accountability, ethical and reporting provisions for Commonwealth bodies that have a separate legal existence of their own (eg Commonwealth controlled companies and their subsidiaries and those statutory authorities whose enabling legislation gives them legal power to own money and assets); the introduction of whole of government financial reporting on an accrual basis to apply to 1997-98 and beyond; Whole of Government Financial reporting will be a mandatory requirement for all governments (Commonwealth and State) in the near future following the introduction of the new accounting standard AAS31 on financial reporting by governments.

The Governments planned Charter of Budget Honesty; The Charter is concerned with the enhancement of fiscal reporting and the requirement for the Government to observe certain principles of sound fiscal management, and the introduction of Service Delivery Charters. A booklet ‘Putting Service First - Principles for Developing a Service Charter’ was launched by the Minister for Small Business and Consumer Affairs in March 1997. The Minister indicated that ‘Service Charters will be a powerful tool for management, staff and customers to continuously improve services. The result should be a more accountable and responsive public service’.

These changes are also consistent with an international move towards a smaller public sector with greater privatisation and private sector involvement in the delivery of public services. The use of contracting has increased significantly in most OECD countries and is widespread, for example, in the United States (USA) and Canada. Within Australia, the total value of Commonwealth contracts has also been increasing. Between 1992-93 and 1994-5 the total value of contracts nearly doubled to around $8 billion - some 15 per cent of total current Federal expenditure at that time. OECD Public Management Service; (1996), As reported in MAB/MIAC Report No.21 ‘Before you sign the dotted line...Ensuring Contracts can be Managed’, AGPS; May 1997. During the same period the total value of state and territory contracts was $3.3 billion (4 per cent of their total expenditure) and local government was $2 billion (some 20 per cent of their total expenditure).

The nature of these administrative changes has significant implications for accountability within the public sector. I will now discuss various aspects of the latter under three headings. The first looks broadly at elements of competitive
DRAFT

tendering and contracting and their implications for accountability. The second examines accountability strategies and mechanisms of good corporate governance. The third indicates a number of initiatives the Australian National Audit Office (ANAO) is taking to promote the notion of accountability for performance as a means of adding value to public administration in this changing APS environment.
II. Some Performance and Accountability Implications of Contracting Out

Because CTC often involves introducing a new player in the accountability chain - the private sector service provider - it inevitably raises important questions about public accountability. Research on competitive tendering and contracting has resulted in mixed views as to the resulting changes in accountability. As noted by the Industry Commission, advocates of CTC point to increased flexibility in service delivery; greater focus on outputs and outcomes rather than inputs; allowing public sector management to focus on high priorities; encouraging suppliers to provide innovative solutions; and cost savings in providing services. Op.cit., ‘Competitive Tendering and Contracting by Public Sector Agencies’. MAB/MIAC has estimated that savings have ranged from 6-60 per cent but trend to between 10-20 percent within Australia, the United Kingdom (UK) and the USA. Management Advisory Board (MAB) & Management Improvement Advisory Committee (MIAC); (1997) ‘Before You Sign the Dotted Line...Ensuring Contracts can be Managed’, Canberra (page 64). (MAB is charged under the Public Service Act with advising the Commonwealth Government, through the Prime Minister, on significant issues on the management of the APS. In December 1989, MAB established MIAC as a broadly representative and senior public service body to discuss significant management issues and initiatives in the APS and to develop detailed advice for the Board. MAB’s constitution will change under the proposed new Public Service Act.) Hodge (May, 1997) was less optimistic with estimated savings at 6-7 per cent based on some 20,000 measurements in different countries. The Australian; 7 May 1997 (page 13). Within the Commonwealth, the Department of Defence Commercial Support Program, which was established in July 1991, indicated savings ranging from 6-60 per cent with average annual savings estimated at 30 per cent or $76 million per annum.

In 1992, the Department of Veteran’s Affairs outsourced its Information Technology Centre. Savings of the order of $10-12 million were recorded although, interestingly, the most frequently referred to benefits in this case were the improved communications, the more professional attitude of data centre staff and a greater focus on service delivery. In NSW, budget sector agencies also report average savings of 20 per cent from the outsourcing of services. The UK Audit Commission estimates gains of around 20 per cent as a rough figure across the board, but with considerable variation around this figure. In the United States gains of approximately 20 per cent are reported by the Office of Management and Budget. Edwards M, (1996) ‘Competition and the Public Sector’; Canberra Bulletin of Public Administration; No 81. October.

However, other commentators have questioned the extent of the above benefits. There is clear evidence that, if poorly managed, competitive tendering and
contracting can result in higher costs, wasted resources, impaired performance and considerable public concern about the waste of taxpayers’ funds. There is also a social cost in terms of the restructuring and job losses from outsourcing as well as additional management costs for establishing the contract in the first place and supervising the contractors. These costs need to be considered in the total cost estimates for CTC and are particularly important if the transparency and probity of the tendering process is to be assured. There has also been documented cases where no difference in costs can be substantiated whereas in others there were clear cost increases. Hodge Graeme; (1996) ‘Contracting Out Government Services’; A Review of International Evidence; Montech Pty Ltd. (page 27). Qualitative assessments present even more difficult judgements as to the balance of benefits and costs.

Part of the difficulty with calculating cost savings is the need to separate the CTC efficiencies from the gains achieved from ‘business processing re-engineering’ which should accompany the introduction of CTC. For example, in some instances a move to competitive tendering might precipitate clarifications of objectives and administrative processes that could equally be applied to, say, an ‘in-house’ service delivery option.

Another risk from CTC concerns the possible increased opportunities for fraud and corruption. Instances of corruption within the context of CTC have been documented in the USA - Donahue (1989) Finder (1993) Schneider (1992) and Kobrak (1995) and in the UK by the Centre for Public Services (1995) Ibid. The forgoing references are listed on page 30 and are fully outlined in the references section. (pages 59-68). Donahue (1989) in particular highlighted the formation of a ‘contracting cartel’ involving some 475 companies in the New York refuse collection and disposal market. Donahue J D (1989) ‘The Privatisation Decision: Public Ends, Private Means’, Basic Books, Harper Collins. Hodge (1996) and Field (1995) have noted eleven prominent Australian companies convicted of price fixing, misleading and deceptive misrepresentations or collusive tendering between 1994 and 1995. These instances raise questions about the robustness of fraud control plans and risk assessments in a somewhat different context to that which may have prevailed when decisions were made about the accountability framework in the past.

Privacy is also an issue. The Privacy Commissioner has noted that agencies will be held accountable for the way that any personal information is handled by contractors. Privacy Advisory Committee (1994) ‘Outsourcing and Privacy; Advice for Commonwealth Agencies Considering Contracting Out (Outsourcing) Information Technology and other functions’. In some cases, privacy considerations may be so significant that they lead an agency to decide against outsourcing. This has particular relevance for outsourcing information technology based systems incorporating personal data. In this case, agencies need to provide for the requirements of the Privacy Act through the due diligence process and contractual arrangements leading up to the outsourcing of computer operations. As a result, many of the obligations that a Commonwealth agency is subject to under the
Information Privacy Principles, such as reasonable security and the prevention of unauthorised use and disclosure, will consequently apply to contractors.

These risks underscore the importance of accountability in the implementation of CTC within the public sector. The key message is that savings and other benefits do not flow automatically from the introduction of CTC. New opportunities and new risks are introduced. While competition is the key ‘driver’ for administrative savings, the nature of the public sector environment requires strong accountability elements if performance overall is to be enhanced. As an illustration, the US Defense Contract Audit Agency (which provides contract audit services to the Defense Department) estimates to have returned some $3.8 billion in savings to the government through its audit activities. Examples of savings in relation to third party providers included:

- overcharging for tooling costs;
- overstatement of material, labour and overheads; and
- failure to pass on quantitative discounts.

Clearly, the emerging CTC environment requires the public sector to develop different approaches to those that have traditionally been put in place and which have been refined over many years. It also raises important questions as to the appropriate mix of skills and training relevant to the public service. However, it is also important to realise that CTC does not equate to contracting out the responsibility for the administration of the service or program. It is the responsibility of the agency to ensure that the service delivery is both cost-effective and acceptable to the service recipients and key stakeholder groups. This means that the agency must specify the level of service delivery and quantitative and qualitative service standards in the contract and also ensure that an adequate level of monitoring of the service delivery is undertaken as part of the agency’s contract administration responsibilities. The inclusion of access provisions within the contract for performance and financial auditing is also very important in maintaining the thread of accountability. This is a case of managerial prudence, not unduly restrictive bureaucratic processes.

In a submission to the current Senate Standing Committee on Finance and Public Administration Inquiry into contracting out of government services, the Commonwealth Ombudsman expressed concern about ensuring accountability for contracted services. Investigations into over 300 complaints in relation to contracted services in 1995-96 revealed concerns by suppliers and consumers about:

- the inability of consumers to recover losses from service providers;
- standoffs and lack of mechanisms for resolving disputes over contracted services;
buck-passing between different agencies - the department, contractor and insurer;
_ inadequate or ambiguous contractual arrangements;
_ oppressive behaviour of government departments towards small business;
_ favouritism or exclusion from the tender process. Deacons Graham & James; (1997); Australian Federal Reporter. April.

The Commonwealth Ombudsman’s submission made it clear that where contracts cannot be adequately enforced contracting out should not be used. Such concerns indicate the need for robust risk management and reliable monitoring processes.

It is important to understand that the introduction of new ways of delivering public services such as through CTC does not obviate or limit the need for accountability simply because of the market discipline induced by competition. To the contrary, less direct relationships and greater decision-making flexibility strengthen that need. In a recent paper dealing with accountability issues, Richard Mulgan from the Australian National University commented that:

‘Contracting out inevitably involves some reduction in accountability through the removal of direct departmental and Ministerial control over the day-to-day actions of contractors and their staff. Indeed, the removal of such control is essential to the rationale for contracting out because the main increases in efficiency come from the greater freedom allowed to contracting providers. Accountability is also likely to be reduced through the reduced availability of citizen redress under such instruments as the Ombudsman and FOI. At the same time, accountability may on occasion be increased through improved departmental and Ministerial control following from greater clarification of objectives and specification of standards. Providers may also become more responsive to public needs through the forces of market competition. Potential losses (and gains) in accountability need to be balanced against potential efficiency gains in each case.’ Mulgan Richard, (1997); ‘Contracting Out and Accountability’; Discussion Paper 51; Graduate Public Policy Program, Australian National University.

I agree with the last observation in particular and add that all such losses and gains need to be identified and assessed.

Recent Federal Court decisions have also had significant implications for the approach taken by agencies when implementing CTC. Probity in the tendering process was particularly important in the case of Hughes Aircraft Systems
International vs Air Services Australia (June 1997). In this case, the key message from Justice Finn is that all public bodies issuing a Request for Tenders (RFT) may be bound to comply with the terms of the RFT including matters going to the methodology, timetable, evaluation framework and evaluation criteria. Australian case law now incorporates a precedent that a ‘term should be implied as a matter of law in a tender process contract with a public body that it will deal fairly with a tenderer in the performance of the tender’. In this case, the Commonwealth body had breached that contract as it ‘failed to evaluate the tenders in accordance with the processes set out in the RFT, failed to ensure that confidentiality measures were maintained and accepted an out of time change to the proposal by one tenderer.’ Deacons Graham & James; (July 1997); ‘Current Topics - Public Sector Tendering Alert’; See also Australian Government Solicitor (2 July 1997) ‘Legal Briefing - Major Changes in Tendering Law’.

This case is illustrative of the more litigious environment for the public sector where contractors and unsuccessful bidders are less fearful of challenging government decisions in the courts and, perhaps, are more confident of success. Clearly, to operate effectively within this environment, agencies require, inter alia, careful attention to probity and an analysis of the risks involved in implementing CTC. Within this context, some degree of cost-benefit analysis as to the most appropriate mechanisms to achieve the stated outcomes is essential, even if difficult and subject to non-quantifiable assumptions. CTC should be no different from any other option in this regard. These matters also need to be considered within an ethical decision-making framework that can be provided through well designed corporate governance principles - addressing both relations with stakeholders and the accountability/performance requirements of the agency.

The importance of ethics is underscored by the recent case of J S McMillan Pty Ltd vs the Commonwealth (July 1997) which involved tenders for the old Australian Government Publishing Service site. Justice Emmett found that while the Commonwealth had breached the Trade Practices Act (1974), the Commonwealth is not bound by the Act in this case because it was not found to be carrying on a business. While this decision gives some protection to the Commonwealth in the courts in areas of government activity, the risk is that market perceptions of ‘sovereign risk’ could rebound on the Commonwealth in the future in terms of market cynicism and reduced competition for government business. No doubt such cases will be extensively debated and even appealed but they help focus our attention on the need to look at all the legal ramifications of the contract environment.
III. Accountability Mechanisms and Strategies as Part of Good Corporate Governance

Introduction

Corporate Governance is an important link in the accountability chain. This is because good corporate governance requires clear definitions of responsibility and a clear understanding of relationships between an organisation’s stakeholders and those entrusted to manage resources and deliver its outcomes. Risks can be reduced by ensuring participants in the governance process are aware of their roles, responsibilities and accountabilities. A well governed agency can provide assurance to its Chief Executive Officer (CEO) and all other stakeholders that, for example, performance targets are being met and the control environment is supportive of better performance.

Corporate governance has become a major issue internationally for the private sector in recent years because of the ‘excesses of the 1980s’ and the resulting financial collapses of financial institutions. These collapses raised questions concerning, inter alia, management and director responsibilities to shareholders. A recent report by McKinsey and Company found that investors would pay a 16 per cent premium for shares in companies with sound corporate governance practices. Humphry, Richard (July 1997) Speech by ASX Managing Director, as reported in ASX Journal. The Australian Stock Exchange has been strongly encouraging listed companies to include information in their annual reports on their corporate governance practice. Parallel work has also been undertaken to improve corporate governance in statutory authorities and Government corporations such as Telstra and Australia Post.

In July 1997 the ANAO circulated a discussion paper, ‘Principles for Core Public Sector Corporate Governance, Applying Principles and Practice of Corporate Governance in Budget Funded Agencies.’ ANAO (1997). ‘Principles for Core Public Sector Corporate Governance’. Discussion Paper, Canberra, June. This discussion paper was designed to fill the gap in core public service awareness of the opportunities provided for better management performance and accountability. The paper includes a checklist designed to assist CEOs to assess the strengths and weaknesses of their agencies’ current governance framework. While not meant to be a comprehensive model for each agency, CEOs should be able to identify those elements of a governance strategy that are most applicable and useful to their agency.

Principles and Practice of Good Corporate Governance
For core public service agencies, corporate governance is fundamentally about how we manage ourselves and our various relationships with those who have an interest or stake in the organisation and/or what it does. In particular, it is about providing assurances to stakeholders that we are keeping faith with the vision, role and values set out in the organisation’s Corporate Plan, as well as in any Code of Conduct that guides the behaviour of those involved. Corporate governance is also about the control and monitoring mechanisms that are put in place by organisations with the object of enhancing stakeholders’ value (broadly defined) and their confidence in the performance and integrity of the organisation. CTC arrangements do not mitigate these principles. In fact they become more pressing and important because of the separation between core business operations and the outsourced service delivery elements. Consequently, the open disclosure of performance and financial information is critical to effective corporate governance within this evolving environment.

The values, standards and practices which underpin corporate governance in public sector agencies flow from peak APS values, obligations and standards, which in turn are derived from legislation, policy and accepted public service conventions. In 1996 MAB/MIAC outlined these APS values, obligations and standards in its paper, Ethical Standards and Values in the APS MAB/MIAC (1996) ‘Ethical Standards and Values in the Australian Public Service’ Report No.19, AGPS, Canberra, May.. In launching the publication, the Prime Minister emphasised the need to maintain a federal public service with ‘an extremely high degree of integrity and honesty…free of corruption.’ Howard J (1996) ‘Ethical Standards and Values in the APS’; Address on launch of MAB/MIAC Report; AGPS Canberra. Under the proposed Public Service Act, the APS is acknowledged to be apolitical, fulfilling its functions in an impartial, non-partisan and professional manner. Agency CEOs will be explicitly required to uphold key values of the public service.

The alignment between these core APS values and those of the contractor are particularly important in any outsourcing or CTC arrangements. Failure to do so is likely to result in public criticism which will instantly rebound on the responsible agency and Minister involved.

Elements of good corporate governance should:

- demonstrate that required managerial disciplines are in place;
- assist with planning and decision making for management;
- complement any review and evaluation of program management;
- identify best private (and public) sector practices;
- establish credibility with external parties; and
- provide a defence against internal/external criticism.
Some of the elements of good governance have been put in place by many agencies over the last decade, such as corporate and business planning, performance information and standards, codes of conduct, the clear identification of stakeholders and program management and budgeting. However, too often, these elements are not linked or interrelated in any way so that people in the agency understand both their overall purpose and the ways the various elements are linked to achieve better performance. This is also necessary to ensure that a mutually supportive framework is produced that identifies outcomes for identified stakeholders. Concern has also been expressed that there has been more emphasis on the form rather than the substance of good corporate governance. However there are positive examples of where both elements are being achieved contributing to greater understanding and commitment at all levels of the organisation. The work that the ANAO has done with Government Business Enterprises (GBEs), particularly Telstra, and with the Australian Tax Office (ATO) over the last two years has clearly indicated the contribution that good corporate governance can make to an organisation’s performance and to the confidence of stakeholders. From the ANAO’s observation, the ATO’s governance framework has facilitated:

- achievement of corporate objectives;
- identification and management of risk (including determination of priorities);
- promotion of high ethical standards; and
- clarity of various management roles and accountabilities.

Effective governance of agencies can provide a more robust, pluralistic and adaptable decision-making framework. The challenge for public sector CEOs is not simply to ensure that all the elements of corporate governance are effectively in place but that its purposes are fully understood and integrated as a coherent and comprehensive organisational strategy focussed on being accountable for its conduct and results. The proposed replacement legislation for the Audit Act 1901 demands no less as a legal requirement.

**Risk Management as an Element of Corporate Governance**

Risk Management has been defined as: ‘the systematic application of management policies, procedures and practices to the tasks of identifying, analysing, assessing, treating and monitoring risk.’ Standards Australia, (1994) ‘Risk Management,’ Draft Australian/New Zealand Standards, October (para 1.2,26).’ It is widely accepted both in the private and public sectors that good corporate governance is an effective means of delivering sound risk management. Auditors are generally well versed in applying risk-based techniques to their business. Public Service managers are now coming to terms with risk management as an important and integral element of their
increased focus on outcomes as required by Government reforms. In recognition of the importance of the issue, central guidance has been provided to agencies on better practice in risk management. The Department of Finance published a useful outline of concepts, case studies and lessons learned in relation to contestability late last year with implications for managing risks in a contracting and outsourcing environment. Department of Finance (1995). ‘Examining Contestability within the APS: Initial Information’. Management Improvement Discussion Series Paper No.3. Resource Management Improvement Branch, Canberra, November (pages 1 and 2).

MAB/MIAC has recently released a report on contract management entitled ‘Before you sign the dotted line…’ which endeavours to provide key principles and practices for managers implementing CTC Op.cit., ‘Before you sign on the dotted line...Ensuring Contracts can be Managed’. The Department of Finance has subsequently established a CTC unit to ensure that advice on CTC is coordinated and cohesive. The unit will have a range of responsibilities including:

- coordinating the provision of CTC policy advice;
- providing agencies with a brokerage service to locate skills, tools and practitioners to implement CTC effectively; and
- facilitating access to high quality information on CTC. Op.cit., Innovations (page 2).

Risk management is not a discretionary activity. It is an integral part of good management, especially when we have limited resources and competing priorities. Against the background of the increasing use of a range of different service delivery arrangements risk management can only become more critical. As with any other aspect of public sector administration, risk management has to be considered in the context of the changing culture and environment of the public service. Within this context, the separation between purchasers and providers of services and between policy and program delivery has particular relevance. The Ombudsman has referred to a ‘no-man’s land’ of accountability and unpublicised transfer of risk. Harris Trudy. (1996). ‘Consumers exposed in shift to contractors: Ombudsman’. The Australian. 19 September (page H4). In response to a range of complaints being received the Ombudsman has observed that:

Where contractors provide core government services indirectly it is critical that the thread of accountability goes back to the principal agency. Agencies should not contract out responsibility at their clients’ expense. Commonwealth Ombudsman (1995), Annual Report for 1994-95. AGPS, Canberra. (page 13).

Consequently, behaviour or service that a contractor might consider acceptable when judged by ‘normal’ business standards may fall well short of the standards expected
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of the APS. The Commonwealth Ombudsman has indicated that she will not look kindly on ‘sharp business practice’ in the transference of risk to third parties. Vassarotti Colin (1997) ‘Managing Risk in the APS - Practical and Political Realities’; Canberra Bulletin of Public Administration. Again, I suggest it is a matter of striving for a sensible balance that is cost effective. Unfortunately, there is no ready reckoner in this respect.

In the situation with outsourced service delivery arrangements, as with all other APS activities, risk must be acknowledged and managed appropriately. In particular, there is a need to ensure that contracts and agreements are well designed to minimise the Commonwealth’s ‘risk profile’. A number of recent performance audits in particular have highlighted some of the different dimensions of the Commonwealth’s potential liabilities from the inadequate management of risk. For example:

- Audit Report No.6 1996-97 on Commonwealth Guarantees, Indemnities and Letters of Comfort found that the Commonwealth’s gross exposure to these instruments was at least $222 billion. However portfolio risk management was found to be deficient across the majority of departments. Only a small minority of agencies reported having a corporate risk strategy and fewer still claimed there was a link between this strategy and their management of contingent liabilities. The ANAO made 16 recommendations (which have been accepted by the agencies involved) to move the Commonwealth towards a more commercially oriented framework of risk management and control which will have particular applicability to outsourcing and privatisation;

- Audit Report No.37 1996-97 on Risk Management in the Australian Taxation Office examined the Tax Office’s formal risk management approach introduced as part of the agency’s strategic planning framework. The audit recognised the difficulty in introducing comprehensive risk management within a large, complex organisation. However the audit concluded that the potential benefits of introducing a formal risk management system were not fully achieved in the first two implementation rounds because adequate processes (such as performance information to monitor progress) had not been fully implemented. The report found that the adoption of a more structured, formal and systematic approach would assist the ATO to attain the most effective risk management outcomes. A further performance audit on Risk Management in Commercial Compliance is currently being completed in the Australian Customs Service. This audit has been designed to complement the risk management audit in the ATO with both organisations being ‘front runners’ in the introduction of risk management within the APS; and

- Audit Report No.28 1995-96 on Jindalee Operational Radar Network examined the performance of the Defence Department’s management of a contract with Telstra (the principal contractor) for the construction of a long-range sky-wave over-the-horizon radar network at an estimated overall project cost of $1.1 billion. The objective of the audit was to assess the performance
of the Department’s management of the project in the light of accepted project management techniques, including risk management. The audit found that progress payments had not been necessarily linked to the project’s earned value at each milestone and consequently, with 80 per cent of the prime contract target price spent and after 80 percent of the original elapsed time frame, less than 18 per cent of items had passed critical design reviews. A more systematic and disciplined monitoring of defined milestones coupled with close auditing and regular assessment would have aided better risk management. The simple lesson is skilled project and contract management.

These performance audit reports demonstrate the importance of the systematic treatment of risk. The first example highlights the value of a systematic approach that explicitly considers and treats risks from contingent liabilities on a ‘whole of government’ basis. This is particularly important within an environment of devolved responsibilities. The second report demonstrates the importance of performance information as an integral part of enhancing the consistency and transparency of risk management. In essence performance information provides a safety net both for informed decision making and an early warning system to make necessary corrections where judgements prove to be wrong or circumstances change from those initially apparent. The third example, illustrates the importance of managing risk by linking progress payments to milestones or indicators which correspond to the ‘earned value’ of the project. This has particular importance when dealing with innovative ‘high risk’ development projects as the systematic monitoring of performance indicators can provide early warning of potential/actual problems so that prompt remedial action can be taken.

A systematic approach to risk management also has special significance with the introduction of new ways of undertaking public sector activities and delivering services such as through purchaser/provider arrangements. The Department of Finance has noted that a purchaser/provider arrangement is the basis of most contractual and commercial arrangements operating in the public sector. Department of Finance (1995) ‘Clarifying the Exchange: A Review of Purchaser/Provider Arrangements’ Management Improvement Discussion Series Paper No.2. Resource Management Improvement Branch, November (pages I and 2). Particular risks that need to be acknowledged are:

in a contestable environment CEOs and Ministers have greater responsibilities than private sector CEOs, for example in relation to national security, parliamentary accountability and government policy objectives which have to be taken into account in the public sector environment, not just a question of profit and shareholder value. CEOs and Ministers also need to ensure that core and non-core business is appropriately defined so that the appropriate accountability mechanisms can be applied productively not counter-productively (or facilitative not inhibitive);
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- exposure to risk must be dealt with in the relevant agreements developed under purchaser/provider arrangements; and

- under any arrangement there is a need for appropriate performance clauses in contracts to minimise risks of not achieving outcomes with the requirement for the performance information to be auditable.

I have earlier touched on these imperatives but reiterate them here in the context of good risk management.

The ANAO has also conducted a series of performance audits that have examined the implementation of the purchaser/provider model in different Commonwealth agencies. While there have been many positive and well managed CTC initiatives within the Commonwealth, such as the Information Technology outsourcing in the Department Veteran’s Affairs, some of the common problem areas across agencies have included:

- vague or ambiguous objectives that make ex-ante evaluation difficult;
- high transaction and compliance costs;
- roles and responsibilities not sufficiently defined for parties to the contract;
- performance information inadequate to determine whether outcomes are being achieved;
- progress payments often made in advance of need and not linked to program/project milestones; and
- insufficient rigour in the assessment and management of financial risks for the Commonwealth.

Taken as a whole, these findings tends to suggest that the Commonwealth agencies may need to focus much more strongly on building contract management skills and expertise if CTC is to be successful and become the ‘main game’ in the APS.

Public Service Charters

A further issue in accountability within a CTC environment has been introduced with the progressive implementation of Government Service Charters.

The Government Service Charters should assist in bringing a more disciplined approach to practical accountability issues as well as more clearly defining commitments to recipients. The Government’s objectives for service charters include:
setting out the nature and level of service clients can expect to receive; and
- putting service quality alongside efficiency and effectiveness as a key evaluation criterion.

The Department of Industry, Science and Tourism has recently published, *Principles for Developing a Service Charter (1997)* which was developed by a task force of consumer, business and government representatives in conjunction with wide-ranging consultation with customers. These principles provide a guide for departments developing charters and include monitoring, review and accountability mechanisms. Department of Industry, Science and Tourism, 1997, *Putting Service First : Principles for Developing a Service Charter*, March (page iii). Most significantly, and ambitiously when considered in the light of overseas experience, the Government has taken the decision that charters would apply well beyond those services provided directly to the community by government. It has decided that key aspects of service charters should also apply to indirect service delivery functions, that is, through program grant arrangements and competitive tendering and contracting out. This has been introduced to ensure that efficiency gains will not be achieved at the expense of service standards. The Child Support Agency and the Australian Taxation Office have been leading the APS in the introduction of service charters. Service charters may assist in strengthening accountability by providing a clearer focus on activities against which agencies should report as part of their annual requirements. Higgins Russell, (1997), Address by Secretary, Department of Industry, Science and Tourism to the PSMPC Lunchtime Seminar, Canberra, 25 June. (Page 5).

Service charters have been designed to be streamlined and integrated with existing reporting mechanisms. This recognises that imposing excessive input controls can be to the detriment of innovations which might cost effectively contribute significantly to outcomes or results. The trade-offs are basically dependent on making judgements about appropriate balances. This places a heavy burden on information systems and assessment of probabilities of occurrences or events. Any systems should be primarily aimed at preventing problems, providing scope for detection and ensuring that decisive action is taken to deal quickly and firmly with unwanted outcomes. Information technology provides the means of extending a productive relationship between clients and service providers. We are witnessing innovative approaches in this respect, for example, from the social welfare agencies.

For example, these new arrangements include the establishment of the Centrelink Service Delivery Agency which is delivering a range of Department of Social Security (DSS), the Department of Employment, Education, Training and Youth Affairs (DEETYA) and Employment Placement Services, particularly to the unemployed. It is particularly important to note that in these arrangements the
customer/client is at least one step removed from the responsible Commonwealth department but that the department remains accountable for the service delivery. As well, in such arrangements policy advising and administration may well reside in different entities. In these cases special care needs to be taken to ensure that satisfactory links and feedback loops are maintained not only to maintain program efficiency and effectiveness but also its appropriateness in a changing world. Models that involve sharing, say, policy development between the department and service delivery agency may create some uncertainty about responsibility and accountability but could be quite effective if there is a genuine partnership and commitment to agreed performance measures.
Contractual Relationships

In this environment of a devolved and decentralised administration it is important to ensure that appropriate and ‘effective’ services continue to be supplied to the Australian public. In order to do this and to be able to assess outcomes in an arms-length relationship it is important that contractual relationships are clearly specified. These contractual relationships can take the form of service level agreements, memoranda of understanding or work-based protocols. These documents often articulate what results are expected, from whom, how results are to be evaluated and how differences are to be arbitrated. Contractual arrangements can involve a degree of imprecision because of the judgemental nature of the services being delivered but no-one would seriously be satisfied with continually changing contract arrangements to cope with ineffective or inadequate service provision as it may be contractually described.

It is particularly important that, whatever the contractual arrangement, early consideration be given to obtaining expert advice on developing the contract to later save the Commonwealth the time and expense of rectifying difficulties which arise, often long after the contract has been signed. Conflicts can arise with contracts that are either too broad or too restricted in their coverage. The actions of government often need to be flexible to respond quickly to changing circumstances. This puts some pressure on having appropriate contingency clauses or at least an agreed mechanism for addressing problems sooner rather than later. A complementary issue is that of assignment and acceptance of responsibility. This is an area where the trust and confidence needed in a genuine partnership to achieve the required results cannot be ‘captured’ in a contractual relationship. Nevertheless, there is sufficient evidence that performance clauses in contracts can be made to work effectively and not counter-productively where the relationship is sensibly managed.

Vague relationships do not assist either party nor lend confidence to the partnership arrangement. Clear definitions of the boundaries of a contract should assist in resolution of any disputes as to what is, or is not, covered including basic deliverables such as service levels and response times. As with any performance information, it is important to state clearly any expectations as a basis for regular evaluation as the lynch-pin of accountability for performance.

Moves to outsource service provision require good performance information to support, for example, the development of tenders, assessment of proposals and monitoring of contractual commitments including ongoing performance by third party service providers. For this reason it is important to require, as part of the contractual arrangement, the provider to supply the purchaser with outcome information against which the former’s performance can be assessed. In this way, even if the client is one or more steps removed from the responsible department, it
DRAFT

will still be possible to ensure that clients are receiving the appropriate level and quality of service.

It is also imperative that we have a sound appreciation of the commercial nature of such agreements in the interests of both parties. This has recently been emphasised with the reported decision by the large commercial personnel agency Manpower Australia not to tender for the new scheme for placing the unemployed in jobs. The main difficulties seemed to be that the numbers required for a potential commercial return did not ‘stack up for a payback period of nineteen months’ and a contract provision for cancellation with fourteen days’ notice without a reason being stated. The managing director was reported as saying that:

‘There’s no way we’d invest $5 million where the agreement can be cancelled with only 14 days’ notice’. Grattan Michelle 1997. ‘Key Agency rejects job scheme’. The Australian Financial Review, 5 September (page 3).

He also alluded to the uncertain political situation and a lack of bipartisan support.

The public sector has traditionally carried a high level of social and political responsibility and accountability in respect of procurement of the many services it needs to operate effectively. These responsibilities flow primarily from the fact that public interest demands value-for-money and fairness in the treatment of potential suppliers to government. These issues are formalised in the general requirements in the current Finance Regulations 43, 44A and 44B that officers procuring supplies (including services) must choose methods that will promote open and effective competition and must satisfy themselves that they are obtaining best value for the Commonwealth. It should be noted that this is a wider test than best value for their department or their particular project.

It has been suggested that the stricter the accountability requirements the greater the case against contracting-out. Government departments and agencies are more accountable than private sector enterprises, as their decisions are open to scrutiny by Parliament, the ANAO, the Ombudsman, the courts, the Administrative Appeals Tribunal (AAT), the media and the general public. Private sector enterprises are not open to the same scrutiny. Furthermore, directors and managers of private sector companies owe fiduciary obligations to the company and shareholders to act in the best interests of their company and not necessarily in the public interest. These interests could conceivably be in conflict from time to time. Of course private sector companies do like to be seen as good corporate citizens.

To achieve an adequate level of control and performance monitoring of a contract, the primary responsibility for ensuring sufficient access to relevant records and
information relevant to a contract is the responsibility of agency heads. From an accountability viewpoint, the ANAO considers it is critical that agencies look closely at the nature and level of information to be supplied under the contract and access to contractors’ records and premises as necessary to monitor adequately the performance of the contract.

As part of its statutory duty to the Parliament, the ANAO may require access to records and information relating to contractor performance. The ANAO considers its own access to contract related records and information would generally be similar to that which should be specified by the contracting agency in order to fulfil its responsibility for competent performance management and administration of the contract. Therefore, contracting agencies have to look closely at how they need to fulfil that responsibility in each case and to ensure the contract indicates the ANAO’s powers in these respects. In most cases suitable arrangements should be made for:

- sufficient access to records, information and premises of the contracting parties to allow them to ensure their own, and ultimately their Ministers’, accountability expectations are met; and

- the Auditor-General to have sufficient access to ensure the accountability requirements of the Parliament are met.

Access to relevant records and information could be met by standard contract clauses supplemented as necessary by particular clauses that reflect individual circumstances of each agency. The use of mainly standard contract clauses would enable all parties contracting to the Commonwealth to be aware of the Commonwealth’s expectations and their obligations in this regard for all contracts with third party service providers. This should include matters which could be classified as commercial-in-confidence. While confidentiality clauses in contractor agreements are important to the purchaser/contractor relationship, legal advice from the Attorney-General’s Department confirms that these clauses in no way restrict the ANAO pursuant to its statutory powers - including the furnishing of any associated report to the Parliament.

The issue of confidentiality clauses may give rise to some concerns by contractors, but law and practice within Australia and overseas already distinguishes between commercial information that may remain protected and information that should be released. The Australasian Council of Auditors-General has noted that this distinction reflects factors such as:

- the economic cost to the owner of commercial information if it is released vs community costs if it is not;
DRAFT

- the requirements of management to provide sufficient information to account for the exercise of their stewardship responsibilities;
- the requirements of management to obtain the consent of shareholders where proposed action is outside of the powers delegated to management;
- the voluntary or involuntary nature of the economic relationships to which the commercial information relates; and
- the capacity to keep the information secret. Australasian Council of Auditors-General; (1997); ‘Commercial Confidentiality and the Public Interest’, July. This is a discussion forum covering Auditors-General in the Commonwealth, States and Territories, New Zealand, Hong Kong, Papua/New Guinea and Fiji.

It is important to recognise that accountability requirements in the public sector can not be equated to those in the private sector. The public sector has the obligation to demonstrate that its use of public resources is effective, economical, efficient and that it complies with all laws and meets community standards of probity and propriety. When considering concerns about commercial confidentiality, it should be remembered that the private sector must itself disclose such information to the auditor and, in defined cases, to the public both within in Australia and overseas.

The Australian Archives is also currently developing advice to agencies about their responsibilities for record keeping in outsourcing arrangements. Pursuant to the Archives Act 1983, which binds Commonwealth agencies, the three key principles suggested in a recent discussion paper (July 1997) include:

- records relating to the functional responsibilities of an agency must be created, managed and disposed of in an accountable manner, even if an agency does not directly create them, store them or ultimately dispose of them;

- with existing Commonwealth records, agencies should only transfer the custody of those records [needed by a contractor] to ensure continuity of service;

- the Commonwealth should own all records that it needs to maintain accountability to the Parliament and to the people. Australian Archives; (1995) ‘Records Issues for Outsourcing including General Disposal Authority’. - (Draft Only) Advice to Agencies about their responsibilities for record keeping in outsourcing arrangements, July.

There is clearly going to be a closer focus on departments’ interface with tenderers and contractors. The Parliamentary Joint Committee of Public Accounts (JCPA) has indicated that this is an area of interest to them. The ANAO’s performance audit reports have drawn attention to this area and urged more care by officers when assessing value-for-money and negotiating, preparing, administering and amending
major contracts. Departments would do well to get expert advice at each of these important stages in procurement in order to protect the Commonwealth’s interests. It is not enough just to have a ‘good’ contract. The real test often comes after the contract has been signed. From the Commonwealth’s viewpoint major project management often comes down to firm and skilful contract management.

Partnership arrangements depend importantly on soundly based agreements which can literally be put in a bottom drawer for reference purposes only. The success of such arrangements depends considerably on establishing a solid basis of trust with scope for a ‘give and take’ relationship within the terms of any agreement. This does add an element of risk because judgement can be involved often at relatively short notice. This is the essence of good management. However, the Commonwealth’s exposure to any adverse implications must be clearly within the terms of the agreement. This not only assists WIN-WIN outcomes but also ensures transparency (accountability) of the decisions being taken.

A broader-based risk which should be considered is in the context of the increasing cross-entity and cross-program focus for development, evaluation and review purposes. This is identified by Finance as follows:

> Under purchaser/provider arrangements, there is a risk that the vertical relationships within a portfolio or organisation will be strengthened at the expense of horizontal ones. Managers may place less emphasis on coordinating programs and policies across portfolios. Op.cit., ‘Clarifying the Exchange : A Review of Purchaser/Provider Arrangements’ (page 1 and 2).

Whatever the partnership is under the contractual arrangements, there is a heightened need for sound risk management in relation to all phases of operation and for appropriate performance information. These are discussed under separate headings below.

**Performance Information**

Performance information is a critical tool in the overall management of programs, organisations and work units. It is important not as an end in itself, but in the part it plays in agencies’ managing effectively. Therefore, there is a need to reconsider just what performance information is needed in relation to the new ways of delivering public services, particularly to protect Commonwealth and public interests. Such information is a key component of good corporate governance. No-one thinks it is simple to design and use. On the positive side, it can be recognition of a job well done as well as a means of identifying where improvements can/need to be made in program performance.
Performance information is an element of the wider management framework that includes objectives, strategies for achieving objectives and mechanisms for collecting and using performance information. Performance information is documented and reported in corporate publications to the Parliament and other stakeholders and managed within the annual corporate cycle. In these respects it is crucial to public sector accountability. Put simply, it is the main means through which assurance is provided transparently to the Parliament and public that the Government’s objectives are being met efficiently and effectively.

While recognising the constraints on agencies such as inadequate baseline information, progress can and should be measured, otherwise there is no way that any program can indicate how it is achieving the Government’s stated objectives. I stress that performance information is evidence about performance that is collected and used systematically. Performance refers to the carrying out or achievement of a particular purpose, task or function. For a program, organisation or work unit, the key elements of the program or work structure include the resources used (inputs), what is done (processes), what is produced (outputs), and what impacts are achieved (outcomes). Performance information addresses the relationships between these elements. It should facilitate the identification of outcomes and the monitoring and evaluation of the efficiency and effectiveness of processes used to achieve them. That is, it should provide sufficient information to answer questions on key aspects of performance, such as:

- How effective is the program in achieving the desired outcomes?
- How efficient is it in using inputs to produce the required outputs?
- What is the quality of the program’s outputs and outcomes?
- Are clients receiving a satisfactory level of service?
- Is the program meeting access and equity requirements?

Performance information may be obtained in a number of ways. It may be specifically sought through client surveys, extracted from management information systems or be an outcome of evaluative activities. Program evaluations themselves can be a rich source of performance information.

Performance information can be used to monitor the ongoing performance of programs and organisations - to provide information which enables judgements in the short term about how they are performing. Performance information is also used to make periodic and more in-depth evaluations of performance over medium to longer-term time frames. Performance monitoring and evaluation both require performance information and are complementary approaches to assessing performance. ANAO/Department of Finance (1996). ‘Performance Information Principles’ A Better Practice Guide, Canberra, November (pages 3-4).
The current focus is very much on program outcomes but performance information must provide us not only with an understanding of the outcomes achieved but must tell us the full story, for example, about the use of inputs and production of outputs, whether the processes used are cost effective and whether the services provided are of the appropriate quality. In focussing mainly on outcomes we should not lose sight of the means of achieving the results which need to consider among other things, ethical, social and equity issues. Therefore we should be wary of pressures to take action where the ends simply justify the means.

The development of performance information can be both resource intensive and costly. Therefore we should focus on a suite of key indicators which measure something of importance rather than something easy. Audit Report No. 36 1996-97 Commonwealth Natural Resource Management and Environment Programs highlighted particular areas of administration where after some five to eight years since their inception, the Commonwealth was unable to indicate in any detail what outcomes had been achieved from a suite of key programs such as the National Landcare Program and Save the Bush. In this case, performance information was very important to substantiate the value of some $400 million in Commonwealth investment already made and some $1.25 billion projected for expenditure under the Natural Heritage Trust. ANAO Report No. 36 (1996-97) ‘Commonwealth Natural Resource Management and Environment Programs : Australia’s Land, Water and Vegetation Resources’, AGPS, Canberra, June. (page xii).

Having said performance information is not necessarily easy to develop, there are some characteristics which, if they are considered in its development will ensure that we develop good performance information. Each of these is discussed separately below.

- **Quantitative and qualitative performance information.** Performance information may be quantitative (has a numeric value) or qualitative (that is, characteristics are described). The latter are particularly useful because, as noted by the MAB/MIAC Report Performance Information and the Management Cycle MAB/MIAC (1993) ‘Performance Information and the Management Cycle’ Report No.10, AGPS, Canberra. February.. In many situations it is only with qualitative performance information that the objective and strategies can be directly linked and cause/effect (impact) relationships demonstrated. Nevertheless, every effort should be made to measure performance where it is feasible to do so.

- **Achieving an appropriate balance.** Historically, performance information tended to be concentrated on the measurement of inputs and outputs. However, balanced sets of performance information are important as they facilitate management and accountability, and enable the investigation of the interactions and inter-relationships between the factors which influence outcomes. If only one aspect of program performance is measured, it is likely
that this is what program managers will (generally) concentrate on. As a result, overall program performance could deteriorate.

- **Data: validity, reliability and accuracy.** The data used should be of a high quality. Therefore, it should be:

  - valid, in that it actually measures the characteristic it purports to measure;
  - reliable, in that, given set conditions, the information collected will not vary significantly; and
  - accurate and timely.

Where necessary, expert statistical advice should be sought to ensure that the information collection techniques are appropriate. In particular, it is important to ensure that the information is not biased because of, for example, poor survey design or sampling errors.

- **Number of items.** There is no ‘ideal’ number of items of performance information. Rather, the emphasis should be on balance, quality, usefulness and timeliness. A small set of key performance information is likely to be more manageable and consequently more useful. However, it may be necessary for people at different management levels, levels of Government, or in different geographic areas, to have information on different aspects of performance.

- **Cost/benefits.** The cost/benefit of collecting key data items or improving existing data collections is an important consideration. The benefits arising from the collection of additional or more accurate information should outweigh costs related to the collection, storage and use of the information. To assist in reducing costs and maximising benefits, key performance information relevant to each goal or objective should be identified.

- **Continuity of performance information.** An important aspect of performance information is continuity. If the information is stable over time it can be used to determine what trends exist and, for example, if performance is improving over time. It is, however, reasonable for performance information to change from time to time in order to ensure it remains credible, actually reflects performance achieved, and is relevant and useful for performance improvement.

Actual assessment of performance, whether for ongoing program monitoring or evaluation, is based on comparisons. Standards, targets, benchmarks and milestones all provide a basis for comparisons. A detailed discussion of these mechanisms and
the characteristics of good performance information can be found in the recently released, joint ANAO and Department of Finance better practice guide: ‘Performance Information Principles.’ ANAO/Department of Finance; (1996) ‘Performance Information Principles’ (pages 11-14).

Whether it is in the development of the performance information itself or the mechanisms which allow assessment of our achievement we need to be careful that we do not encourage inappropriate actions or behaviour. For example, in the setting of targets, care should be taken to ensure that the focus does not become the achievement of individual targets at the expense of overall performance. A particular case in point would be where departments receive enquiries from the public they need to ensure that process performance information and associated targets, such as time to answer telephone calls, are complemented by quality of service performance information.

Having developed the mechanisms to allow the assessment of performance, it is important that we use our performance information for ongoing monitoring as well as for point in time assessment and reporting. Ongoing monitoring at different levels in the organisation assists to identify at an early stage if there are problems. Prompt remedial action can then be taken to ensure that our program is on the right track and that we are using our resources in such a way so as to maximise outcomes. A recent survey of Chief Executives in Australia by Price Waterhouse Urwick indicated that monitoring and controlling performance was second in terms of time allocation for CEOs after leadership and communication. Price Waterhouse Urwick 1997. ‘The Business Menu of Change - CEO Perspective’. A Report based on a survey of Chief Executives in Australia. Melbourne, July (page 26). Interestingly, CEOs ranked customer service requirements, information systems integration and performance measurement as the key management initiatives they expect to face over the next three years. IBID., (page 27).

In reporting on outcomes, particularly to the Parliament, performance reports should be balanced and candid accounts of both successes and shortcomings. They should have sufficient information to allow Parliament and the public to make informed judgements on how well agencies are achieving their objectives. Reports should include information on performance trends and comparisons over time rather than just a snapshot at a point in time which may be misleading. Greater attention is being given to these aspects by Parliamentary Committees. This focus has been stressed by the Chairman of the JCPA over recent months in public forums. He recently reminded senior public servants of the JCPA’s ‘clear mandate which focuses on scrutinising the expenditure and performance of government agencies’. Somlyay, Alex. Chairman, Joint Committee of Public Accounts 1997. ‘Role of Parliamentary Committees and their capacity to constructively influence the development and administration of public policy’. Address to a SES Breakfast Seminar, Canberra, 28 August (page 11).
Australia is not alone in grappling with the development and use of sound performance information, particularly in the light of the new service delivery arrangements. Significant developments have been occurring in New Zealand, the United States of America, Canada, the United Kingdom and in a number of European countries such as France and Sweden. Many countries are now actively sharing experiences on deriving suitable performance information for accountability purposes. Moreover, we would do well to heed comments such as those recently made by the Clerk of the Privy Council and Secretary to Cabinet in her Annual Report to the Prime Minister on the Public Service of Canada:

‘Public servants want to meet citizens’ expectations and are ready to remove barriers to more effective service delivery, but it must be done in a manner that is true to the roles and values of the public sector’. Bourgon, Jocelyne 1997. ‘Fourth Annual Report to the Prime Minister on the Public Service of Canada’. Ottawa. 3 February (page 24).
IV. The ANAO’s Role in Promoting Accountability for Performance

Having outlined major aspects of the changing accountability framework, I would now like to address the role of the ANAO in assisting with the process of adjustment to the emerging public service environment with its emphasis on performance and accountability. The ANAO’s effectiveness is directly related to the extent to which we understand the environment in which we work. The ANAO does not stand outside the APS as some kind of interested on-looker or commentator. We are an integral part of the Service and of the changes and reforms which are occurring. We understand that we must not only take account of the changes to public sector operations in the conduct of our own work but we must also, as the agency with a key role in bringing about improvements to administration, work hard at promoting and facilitating required and desirable change.

Currently, the ANAO delivers its audit products through two business units, although both types of audits are viewed from the perspective of the overall framework of accountability for performance. We have been confronting directly the issue of private sector involvement in public audit in recent years. About 25 per cent of our running costs are now applied to contractors, much of which relates to the use of private firms that conduct financial statement audits as our agents. These latter audits remain our responsibility and we therefore retain a strong project management and overseeing role in relation to their conduct. For the most part we consider financial statement audits of this kind as non-core business. We regard financial statement audits of budget funded agencies and entities as our core business. We consider we have a significant comparative advantage in this area with our knowledge and understanding of the public sector and its relationship to the Parliament.

Performance auditing is also core business in the ANAO and, as such, these audits will be delivered primarily using ANAO resources. These audits tend to dominate the Parliament’s interest in our activities, particularly with the JCPA, where we have an almost day-to-day relationship. Importantly, it should be appreciated that ANAO resources are and will continue to be supplemented on a needs basis, by private sector people who have particular skills and experience. Over the years, the ANAO has engaged a wide range of expertise from the private sector, including medical practitioners, taxation specialists, construction industry consultants, statisticians and engineers, to assist in particular audits. As well, we will be looking for agency representation on our performance audits not only as a source of intelligence and understanding of an agency’s programs and structure but also as a means of personal development for all concerned. Knowledge and expertise can transfer both ways with mutual benefits.
The ANAO has a legislative mandate for its audit activities. Nevertheless we behave as if we were in a contestable environment. We fully cost all our audit products which is made transparent as part of our accountability. But we also have to ensure the relevance of those products with an eye to current and future changes in our environment. One area in which we can learn from the private sector is in being aware of the prime necessity of providing a quality service to client (or our various stakeholders). The ANAO’s primary client, as I have said, is the Parliament. We have a strong focus on providing quality services and products to the institution itself, its committees and to individual Members. As well, other stakeholders, including auditees, are also clients. The culture of further developing a client service orientation is something that we in the ANAO are working on steadily. As part of this more client focussed approach, we have come to the view that the ANAO must supply a broad range of audit and audit-related products to be considered really useful to the various entities and stakeholders with which we are involved.

**Developing an Appropriate Product Range**

Any influence the ANAO has on public administration, particularly on performance and accountability, will be largely through its individual products. It is important for our credibility and highly cost effective for us to gain the maximum advantage from the close working relationship and knowledge that we have with all public sector agencies and entities through the audit processes. The following is an indicative list of our range of products and services:

- financial statement audits;
- performance audits;
- financial control and administration audits (FCAs);
- assurance and control assessment audits (ACAs);
- direct assistance to the Parliament and its Committees;
- seminars on topics relevant to public sector entities;
- better practice guides and other guidance material on various topics, such as:
  - model financial statements (AMODEL Accounts) for different types of entities;
  - financial statement preparation;
  - audit committees;
  - the control environment, particularly as it impacts on financial reporting;
  - financial management;
  - paying accounts;
  - managing APS staff reduction;
  - performance information principles;
  - administration of grants; and
I would like to discuss briefly our major products, particularly how we plan to design our products to suit the CTC environment. Within this context, CTC has implications for how the ANAO conducts its business and as to how we influence APS-wide administrative reforms. The inter-related nature of the ANAO’s product range is recognised as a central element of our overall business strategy. Our strategic directions document for the next twelve to eighteen months will be released shortly.

**Financial Statement Audits**

In conducting financial statement audits the ANAO faces difficult decisions about how to cover particular audit clients such as Government Business Enterprises (GBEs). From a cost perspective, it would often be very expensive to maintain in-house the expertise needed to audit such entities, particularly where there is a strong identification and/or relationship with the private sector. That is, where the entities are not part of the recognised core of public sector activity. Perhaps more importantly, from an audit effectiveness viewpoint, it would be very difficult to obtain and maintain the necessary experience to conduct such audits well, with a full knowledge and understanding of the industry in which they operate. Private sector firms with the appropriate connections are often able to call on the necessary expertise and background knowledge nationally and internationally as well as being able to maintain that expertise because of their broader client base in particular areas.

Using the private sector in this way does, moreover, provide us with the opportunity to concentrate our own resources on what we see as our core business. Broadly, this is all entities wholly or mainly budget funded, as I indicated earlier. Here we have our own specialist skills, knowledge, understanding and experience of public sector functions and activities. At the same time, we are providing a better service with the assistance of private sector accounting firms to the more specialised entities, often with limited or no additional budget funding, than we could using solely our own resources. Such a strategic approach ensures that we are not only able to provide the Federal Parliament with the required assurance about overall public service accountability but we also have the necessary degree of audit involvement to do so credibly. The issue is basically about achieving the right balance of such involvement to be effective as the public sector auditor.

**Performance Auditing**
Performance auditing can probably be said to be an increasingly significant element of the audit mandate in most Western countries. Moreover, even in New Zealand, where a separate Audit Commission bids for financial statement audits in competition with accounting firms for business in both the public and private sectors, the performance audit function is conducted by the Office of Auditor-General. The public demands for governments to achieve better value for money, to ‘reinvent’ and improve service provision, combined with the time and resources being allocated to improving and reporting reliable performance information, increase the potential value added by an effective external (ANAO) performance or value-for-money audit function.

With the stronger focus on CTC now and for the foreseeable future, performance audits will continue to develop as tools for improving the operations of the APS. In particular, our audit strategy for the next two years will be addressing:

- the design and management of contracts under third party purchaser/provider arrangements;
- the management of risks from service delivery by the private sector;
- the management of large scale acquisitions in key Departments such as Defence;
- quality assurance for the Parliament and the Australian community on the probity of asset sales processes (eg for FAC Airports, Telstra, Australian National Rail and Department of Administrative Services Business Units); and
- privacy issues in data management across the APS.

Our experiences from earlier performance audits on contracting plus our access to performance audit reports and the experiences from State Auditors-General and the National Audit Office in the UK and the General Accounting Office in the USA in particular, have also enabled us to assist Parliamentary Committees such as the Senate Finance and Public Administration References Committee which is currently conducting an Inquiry into Contracting Out of Government Services.

**Audits of Financial Control and Administration (FCAs)**

FCA audits are concerned with improving the quality of the public sector administration by assisting and encouraging agencies to achieve better practices, in areas such as asset management, accounts processing, audit committees, the use of accrual information and debt management.

These audits are intended to assist public sector managers in meeting their responsibilities and to inform the Parliament about aspects of public administration which are not likely to be covered by the financial statement and performance audit products basically because they are not likely to be significant or ‘material’, or have
too narrow a focus, in a single entity context. On the other hand, they can have
service-wide ramifications which are of considerable interest.

FCA audits were introduced as a result of a review by the ANAO of the scope and
targeting of its audit activities. This review was done in the context of the changing
public sector environment, particularly with the increasing devolution of authority,
adoption of strategies for the management of risk, changes in financial reporting and
enhanced accountability.

However, the decision to undertake these audits was also based on an apparent
Parliamentary perception that devolution of management authority under the Public
Sector Reforms had not been matched by commensurate evidence of accountability
by public service managers. The FCA audit was designed to go some way in filling
this ‘expectation gap’.

Specifically, the objectives of FCA audits are to:

- provide independent assurance to the Parliament, the Executive Boards,
auditee management and to the public on aspects of public administration and
control of public funds; and

- identify, develop and report better practice.

Consistent with the objective of providing assurance, these audits adopt an
empathetic approach to improving public administration rather than simply
identifying shortcomings or minor matters dealing with administrative processes.
The latter is certainly not consistent with the risk management approach being urged
by MAB/MIAC MAB/MIAC (1996), ‘Guidelines for Managing Risk in the
Australian Public Service’. Report No.22, AGPS, Canberra, October. (see, for
example, pages 8 and 9). The concern is more about whether appropriate platforms
and mechanisms for control have been properly implemented.

As noted earlier, the types of activities this program addresses, while individually not
‘material’ in many agencies, collectively represent a significant element of public
sector administration and account for a significant level of expenditure each year.
Essentially, these audits focus on those core, or good housekeeping, activities that
are considered vital for good management. These include guidelines, instructions,
monitoring practices, systems development, integrity and ethical checklists and audit
trails.

These audits are usually undertaken across a selection of agencies, between twelve
and fifteen entities. The results form the basis for a view of the Commonwealth
Public Service. The results are therefore useful to all agencies: not just those
included in the audit. In keeping with this holistic approach, all reporting is generic
in nature. However, we do promote individual entity examples of ‘better practice’. The approach encourages entities, which might not be at the better practice end of the spectrum, to be involved so that a better appreciation can be gained of what might be involved in moving to that end and the associated benefits and costs. These aspects would be examined in subsequent audits of the individual entities.

While the results of these audits are reported in the normal way to Ministers, departments and agencies, reports to the Parliament are generic in nature in order to provide Members with a good perspective of areas of best or better practice, as well as areas where improvement is warranted. Reports mention by name only those organisations which have demonstrated approaches and practices that might be able to be applied elsewhere.

The tangible outputs at the end of a FCA audit are the publication of a report to the Parliament and a better practice guide. The approach provides a benchmark against which government agencies, service-wide, are able to compare their respective performances and to implement improvements, where considered necessary. Such an indicative benchmark is also useful in later audits to ascertain what, if any, action should have been taken in individual entities. Less than adequate performance could be reported in such audits in the normal way. Such follow-up also alleviates the Parliamentary concern expressed about the generic nature of the FCA audits.

Three FCA audits have been completed and reported including the concurrent release of a companion better practice guide with each audit report. The output of these audits has been enthusiastically received. They are:

- Payment of Accounts - Audit Report No 16 1996-97
- Audit Committees - Audit Report No 39 1996-97

The report on ‘Audit Committees’ follows a benchmarking survey of all types of Commonwealth Government agency except GBEs. The result of the benchmarking study was forwarded to all agencies in December 1996. Hopefully this will enable each agency to examine the function and operation of its audit committee in advance of the expected application of the package of legislation to replace the Audit Act 1901 from 1 November 1997. Under the Financial Management and Accountability legislation, agencies will be required to establish and monitor an audit committee. An audit committee is an important part of an agencies corporate governance framework. It can also contribute greatly to the integration of strategies and structures within the control environment (ie internal and external audit), financial reporting, risk management and ethical behaviour as well as the organisation’s code of conduct.
Two other FCA audits covering Financial Management/Use of Accrual Information and Management of Receivables are currently being undertaken.

**Assurance and Control Assessment Audits (ACAs)**

As noted earlier, we have also developed a related program of audits described as assurance and control assessment audits or, simply, ACA audits. The ACA audits will examine basic administrative processes to provide a positive assurance that agencies are meeting their obligations under the legislative framework. They will be concerned only with the financial framework established to support and assist in the delivery of the products and services provided by the public sector. These audits will not assess compliance with legislative provisions governing specific programs. However they will be focussed on the common or core activities of a corporate nature, for example personnel practices, travel and accommodation, minor expenditure, procurement and use of official vehicles. From time to time the coverage of FCA audits is likely to be highly complementary to ACA audits.

They are aimed at providing to the Parliament, and to the entities involved, an assessment of the level of control applied to a range of basic activities in public sector entities. Parliamentarians have regularly expressed concern on such “housekeeping” matters. But, in most instances, reporting on them does not sit well with reporting on the overall financial report of an entity, nor would most of the activities have a material effect (as conceived of by accountants and auditors generally) on the financial report.

The ACA audits are a direct reaction to the above concerns, since work of this type has increasingly been excluded from the scope of our basic financial statement audit. They are basically about providing assurance of key controls, not necessarily all controls, in individual entities rather than about identifying better practice across entities as do the FCA audits.

Reporting on these audits will be in association with my annual report to the Parliament on financial audits. The reporting style will be similar to that of FCA reports in that it will be at a generic level to provide a service-wide perspective. However, our management letters will advise entities of any specific matters which may need to be addressed. The concerns are most likely to be about whether the control environment is effective or not, rather than about any relative position against other entities, as is more likely to be the case with FCA audits.

**Better Practice Guides**

One audit related product where additional effort has produced widespread benefit is the series of Better Practice Guides. Performance audit reports have previously included better practice guides where lessons learned from an audit of a particular
entity have relevance to the wider public sector. Guides separate to the reports are now often produced arising from both financial and performance audits. An integral product of the Financial Control and Administration audit of Asset Management was the distribution of a better practice guide and accompanying ‘practical’ handbook to all entities. Other financial guides released were Financial Statement Preparation and Illustrative Financial Statements. I referred earlier to the guide on Performance Information recently prepared jointly with the Department of Finance. Two Better Practice Guides, one on Administration of Grants and one on Corporate Sponsorship were also released in 1996-97.

A better practice guide on Managing APS Staff Reductions was produced in advance of a performance audit as it was considered to be of more timely assistance in the current context and more recently we have jointly developed a better practice guide on the principles for good performance information. Other Better Practice Guides currently being developed include:

- Model Financial Accounts;
- Office of Government Information Technology - Major Acquisitions;
- Customer/Client Service;
- Information Technology Outsourcing and Contract Management;
- Protective Security;
- Accounts Receivable;
- Internet Security; and
- Travel Administration

Whole of Government Financial Reporting

A key initiative in public sector accounting is the Whole of Government reporting which has followed a recommendation from the Joint Committee of Public Accounts. In a paper I presented to the 1996 CPA Congress in Melbourne in October 1996, Barrett, Pat, (1996). ‘Evolution in the Public Sector : Auditing, Corporate Governance and Whole of Government Reporting’ ASCPA Congress ’96, 21 October-11 November, Melbourne. (pages 39-57). I went into some detail in discussing the development of accrual statements and their consolidation into whole of government statements. I also raised some conceptual issues and outlined some opportunities for the future. That paper is readily available for those interested in this subject.

Many of you would be aware that whole of government financial reporting involves preparation of general purpose financial reports consolidating the financial results of all departments, authorities and companies controlled by a government. In the late 1980s, government departments were first required to prepare cash-based financial
statements and to incorporate these into annual reports which were tabled in the Parliament. In the early 1990s, accrual reporting was first introduced in Commonwealth government departments and, by 1994-95, all departments had fully implemented accrual reporting even though this was only achieved by processing end of year accrual adjustments.


In line with recommendations of the JCPA, the Department of Finance and my Office prepared a trial set of financial statements based on 1994-95 financial information of Commonwealth entities. The emphasis of the trial was on determining an appropriate form for the financial statements and identifying the best means to obtain the information required for the financial statements from the 200 or so entities to be covered within the Commonwealth. My objective in participating in this, and in later trials, is to ensure that all issues which could result in an eventual qualification of the financial statements are resolved at the trial stage before audited statements are required to be produced.

The trial statements were published, together with an invitation to comment, by 30 September 1996 Minister for Finance (1996). ‘Trial and Unaudited Financial Statements of the Commonwealth Government of Australia for the Year Ended 30 June 1995’. AGPS, Canberra. 28 August. With slight amendment, they were also incorporated into the report prepared by the National Commission of Audit. The National Commission of Audit strongly supported whole of government reporting, recommending that fully audited statements be available for the 1996-97 financial year. A key finding of the Commission was that:

*A full accrual accounting framework is an essential complement to the structural and cultural change the Government is seeking by way of a more competitive, efficient public sector. It is also essential if the*

My Office has recently completed work with the Department of Finance on the preparation of a second trial set of whole of government financial statements. Department of Finance (1997), ‘Financial Statements of the Commonwealth Government of Australia for the Year Ended 30 June 1996 (Trial and Unaudited)’, July. The Government has agreed to a phased implementation of an integrated accrual budgeting, managing and financial reporting framework by the year 2000. The first phase will involve the tabling in Parliament of audited consolidated financial statements of the Commonwealth public sector for 1996-97 based on the two trials. This will be a major step forward in financial accountability. The 1995-96 financial statements are modelled on accounting standards AAS 31 Financial Reporting by Governments issued by the Public Sector Accounting Standards Board in December 1995 and, in effect, provide a trial of that standard.

I hope our involvement in assisting in the development and preparation of whole of government financial reporting is properly seen for what it is: - an obligation to assist in the reform processes in areas of our expertise.

V. Concluding Remarks

I would like to emphasise that, while the public sector is becoming more private sector oriented through the greater use of competitive tendering and contracting, it is important to realise that there will always remain clear distinctions between the two sectors. The public sector operates within a ‘political environment’ and is accountable simultaneously to the Executive (ie Ministers) the legislature (ie the Parliament) and the judiciary (ie the Courts). In the public sector we have particular concerns for national security, individual privacy, fairness, honesty and equity as public obligations. These are the realities in delivering public sector services which are central to considerations of any politically credible accountability framework. Different considerations may apply to the so-called ‘core’ and ‘non-core’ elements of the public sector, particularly where the latter is in the form of government business enterprises having characteristics more related to private sector corporations.

The private sector operates primarily within a much narrower accountability framework that is built around ‘the market’ and the interests of shareholders. It is important not to confuse this point when considering the changing nature of the public sector and the involvement of private firms in the delivery of public services. Devolution, managing for results and the wider adoption of competitive tendering and contracting are drawn from best practice within the private sector and can complicate the thread of accountability as new relationships and new players are
introduced. Importantly, as I mentioned earlier, CTC does not automatically equate to administrative savings and other benefits. New opportunities and new risks are introduced. These risks must be managed appropriately always bearing in mind that whatever the method of service delivery, government agencies remain accountable for the efficient performance of the functions delegated through the agency’s administrative orders.

Risk management must be pursued systematically with the thread of accountability being maintained through the service contractor to the Commonwealth ‘purchaser’ agency, the government and ultimately the Parliament. As noted by the Ombudsman, agencies should not endeavour to contract out responsibility at their client’s expense. The private sector can move rapidly into new markets without the enduring accountability for the functions currently being performed. The public sector cannot. Differences between the two sectors are also evident in the areas of values and ethics. The problem is one of attitude or culture not the difficulty of adequately expressing such requirements in a contractual form. This conundrum was eloquently addressed earlier this year by the well known author and academic Peter Hennessy as follows:

‘Pieces of paper are one thing, real belief systems quite another. It is very hard to export the public service ethic into the private contractor hinterland. Commercial contracts are not susceptible to a foolproof, public service ethical override’. Hennessy Peter 1997. ‘The Essence of Public Service’. The 1997 John L. Manion Lecture. Reprinted in the Canberra Bulletin of Public Administration. Volume No.85, August (page 5).

Performance information is also critical to the adequate management of risk and to public sector accountability. It is the main means through which assurance is provided transparently to the Parliament and public that the Government’s objectives are being met. But there needs to be a different focus to that traditionally taken by Parliament and its Committees on accountability for performance to one that recognises mistakes will be made and that program outcomes require greater attention than they have received in the past. The following observation is very apt in the more contestable environment being developed in the public sector and with the greater involvement of the private sector:

‘Experimentation and innovation need to be encouraged and supported. It is important to accept that there can be no experimentation without risk. Ministers and senior officials must accept some of the uncertainty implicit in giving up a degree of control. Not every experiment will be a success. Some honest mistakes will be made. This needs to be understood and accepted. Our commitment should be to learn from these situations’. Op.cit., ‘Fourth Annual Report to the Prime Minister on the Public Service of Canada’ (page 26).
While focussing on outcomes and results is most important, performance information should be used to tell the full story about the efficient use of inputs and production of outputs, including whether the processes used are cost effective and whether the service quality is satisfactory. The issue of service quality should be considerably enhanced through the progressive introduction of service charters by Commonwealth agencies over the next two to three years.

This greater environmental complexity does not suggest the following outcome is likely:

_The potential incompatibility of increased flexibility with parliamentary accountability ... provides agencies and departments with a rationale for attempting to limit the scope of the parliamentary watch-dogs._


At least the thrust of the new audit legislation would suggest otherwise. Nevertheless, it does point to the need to be vigilant in the seemingly inevitable confusion of means and ends and narrow interpretations of what results are required or, indeed, of just what risk management means in practice.

There is no doubt that the public service is currently facing considerable pressures, particularly against the background of a continually changing environment. Such demands leave us with no alternative but to enhance accountability and improve our performance if we are to maintain our reputation as a professional public service. One approach, which would assist, is to learn from and adapt the principles of private sector corporate governance to the public sector. Elements of that approach are being used to varying degrees by a number of departments and authorities but generally not as effectively as the more coordinated and integrated framework of overall management that has been developed by many private corporations particularly over the last five years or so. The interest shown recently by many public sector entities is indicative of their positive attitude towards such change.

I have outlined the approach the ANAO is taking to work cooperatively with our clients, while maintaining our independence, to assist in moving towards a best practice public service. These are not incompatible objectives as some have suggested. To the contrary, they are far more likely to lead to better audits. There is no question that the audit function lends itself to the criticism that it focuses on individual mistakes. This is simply because of the very nature of our work and the fact that our reports are made to the Parliament and are therefore in the public arena. Our intention is to concentrate on what we can learn from any mistakes or other failures or deficiencies. Therefore our emphasis will be on gain not blame. This should result in a WIN-WIN situation for all parties which is a substantial incentive to engage in positive dialogue and to provide required information.
The ANAO has and will continue to play a key role in providing assurance to the Parliament, Executive Government and entity management about appropriate accountability in the APS. That includes, importantly, achievement of program objectives in a cost effective manner including a greater client service orientation. The ANAO will therefore be placing even more emphasis on identifying areas of better practice, as well as noting where, in our opinion, improvements can be made to program service delivery and/or are necessary for good management. The breadth and depth of the audit mandate and products are essential to this role. Our credibility and effectiveness depend on the close relationship with, and understanding of the functions of, all Commonwealth entities and their operations. Often the ANAO is simply a conduit, and hopefully a catalyst, for better practice that is being demonstrated already within the public sectors in Australia or even overseas. In other circumstances, such as with the implementation of accrual accounting, reporting and budgeting, the Office relies more on its own professionalism and expertise.

Ultimately the ANAO, along with the rest of the APS and those affected by what it does, are strongly interested in ensuring a best practice public service. As Denis Desautels, the Canadian Auditor-General said: ‘For public servants, the challenge is to continue to innovate, to remain motivated and enthusiastic about serving the public interest...’. Auditor-General of Canada (1995), ‘Annual Report to the House of Commons’ Matters of Special Importance. Ministry of Supply and Services, Ottawa, 21 November (page 23). I can only agree with that statement. Unfortunately, recognition of performance and individual contributions has often not gone with the territory. Public service managers should be leading by example. I cannot think of a more effective way to encourage accountability for performance.