

Australia's Provision of Military Assistance to Ukraine

Department of Defence

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Canberra ACT
29 June 2023

Dear President
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in the Department of Defence. The report is titled *Australia's Provision of Military Assistance to Ukraine*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely



Grant Hehir
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

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Audit snapshot

Auditor-General Report No.45 2022–23

Australia's Provision of Military Assistance to Ukraine



Why did we do this audit?

- ▶ After Russia's invasion of Ukraine in February 2022, the Australian Government began to urgently provide financial, humanitarian and military assistance to the people and Government of Ukraine. About \$510 million has been committed as military assistance.
- ▶ Defence was required to quickly advise on, organise and deliver military assistance, while ensuring compliance with domestic and international requirements.
- ▶ This audit was undertaken to provide independent assurance to Parliament on Defence's development and implementation of Australian commitments of military assistance.



What did we find?

- ▶ Defence's development and implementation of Australia's approach to providing military assistance to the Government of Ukraine was largely effective. Defence delivered military assistance quickly and in line with Australian Government expectations, while assessing the risks and implications for Australian national interests and capability. However, not all legislative and administrative requirements were met in the context of this rapid implementation activity.



What did we recommend?

- ▶ Two opportunities for improvement were identified, relating to: resolving issues identified in Defence's administration of financial assistance grants; and reviewing or evaluating Defence's arrangements for the delivery of military assistance to the Government of Ukraine.
- ▶ Defence agreed with the opportunities for improvement.



Key facts

- ▶ As of February 2023, the Australian Government announced approximately \$688 million of support for the Government of Ukraine. Military assistance is one component.
- ▶ Australian military assistance has included gifts of equipment, and financial assistance provided through two grants to NATO and a grant to the UK Ministry of Defence (UK MOD).

\$510 million

military assistance announced
as at February 2023

\$42.4 million

grants to NATO and UK MOD as
part of military assistance package

40

flights of military assistance as at
mid-June 2023

Summary

Background

1. After the Russian Federation's invasion of Ukraine in February 2022, the Australian Government, like many other governments around the world, began to urgently provide financial, humanitarian and military assistance to the people and Government of Ukraine.¹ As of February 2023, the Australian Government had committed approximately \$688 million of support for the Government of Ukraine, including about \$510 million announced as lethal and non-lethal military assistance.²
2. The Australian Department of Defence (Defence) has been responsible for developing and providing advice to the Australian Government on what military assistance could be gifted to the Government of Ukraine without adversely affecting Australia's own military capability or preparedness. Once options were decided by the Australian Government, Defence was responsible for delivering the military assistance to a location in Europe for transport to Ukraine.
3. The majority of the military assistance provided by the Australian Government has been from Defence's own stock. Defence has also conducted procurements for items purchased from the Australian defence industry specifically for gifting to the Government of Ukraine. In addition to the gifting of materiel, Defence has provided military assistance through two financial contributions to a North Atlantic Treaty Organization (NATO) trust fund for Ukraine and a financial contribution to the United Kingdom's Ministry of Defence.
4. Australian Government announcements of military assistance to the Government of Ukraine are summarised in Table 1.1 (in Chapter 1) of this audit report.

Rationale for undertaking the audit

5. Defence was required to advise on, organise and deliver military assistance, including heavy weapons and large military vehicles, to Europe quickly while ensuring that a range of domestic and international legislative and administrative requirements were complied with. This audit was undertaken to provide independent assurance to the Parliament on Defence's development and implementation of the Australian Government's commitment to assisting the Government of Ukraine.

1 The Kiel Institute for the World Economy maintains a 'Ukraine support tracker'.

See: Kiel Institute, *Ukraine Support Tracker Data*, available from <https://www.ifw-kiel.de/publications/data-sets/ukraine-support-tracker-data-17410/> [accessed 27 March 2023].

It has reported that in the period 24 January 2022 to 24 January 2023, 41 countries (including Australia) had provided approximately AUD\$224.4 billion in assistance to Ukraine. Of this, 46.4 per cent was in the form of financial assistance, 8.7 per cent was in the form of humanitarian assistance and 44.9 per cent was in the form of military assistance.

2 The Australian Government has provided other forms of assistance or support to Ukraine. This has included: humanitarian assistance (through financial donations to non-government organisations), sanctions against Russian and Belarusian individuals and entities, tariffs and trade bans on certain Russian exports and imports, the provision of 70,000 tonnes of coal, and visa assistance to Ukrainian people. These forms of support are outside the scope of this audit.

For more detail, see: Department of Foreign Affairs and Trade, *Invasion of Ukraine by Russia – overview*, available from <https://www.dfat.gov.au/crisis-hub/invasion-ukraine-russia> [accessed 7 February 2023].

Audit objective and criteria

6. The audit objective was to examine the effectiveness of Defence's development and implementation of Australia's approach to providing military assistance to the Government of Ukraine.

7. To form a conclusion against the audit objective, the following high-level criteria were adopted.

- Was Defence's response development effective?
- Was Defence's implementation planning and delivery effective?
- Was Defence's monitoring and reporting effective?

8. The focus of the audit was on the provision of military assistance as the largest part of Australia's contribution. The ANAO did not examine other forms of assistance such as the imposition of financial sanctions and travel bans or the issuing of visas to Ukrainian nationals. The audit scope did not include validating the financial values attributed by Defence to specific items of military equipment.

Conclusion

9. Defence's development and implementation of Australia's approach to providing military assistance to the Government of Ukraine was largely effective. Defence delivered military assistance quickly and in line with Australian Government expectations, while assessing the risks and implications for Australian national interests and capability. However, not all legislative and administrative requirements were met in the context of this rapid implementation activity.

10. Defence was effective in supporting the development of an Australian Government response and moved quickly to identify options for providing military assistance to the Government of Ukraine. The department: engaged with relevant stakeholders to inform its thinking and advice; adopted established administrative and governance arrangements to identify and advise on options and implementation issues; and assessed risks to Australian national interests and preparedness. Defence provided timely, relevant and co-ordinated advice to its senior leaders and decision-makers. An exception was the completeness of its advice to decision-makers regarding financial assistance grants to NATO and the UK Ministry of Defence.

11. Defence's planning, implementation and delivery of the Australian Government's approved military assistance to the Government of Ukraine was largely effective. Defence delivered military assistance quickly to the Government of Ukraine, in accordance with Australian Government intentions. However, in the context of rapid implementation, some shortcomings were identified in respect to: demonstrating that policy approvals were secured for all items; resolving uncertainty around the legislative authority for grants of financial assistance; the completeness and quality of advice on aspects of Defence's grants administration; having Australian defence export permits for all items; securing authorisations for gifting certain items; lodging Australian Customs export declarations; and recording gifted assets.

12. Defence established effective arrangements for monitoring and reporting on the delivery of military assistance to the Government of Ukraine, and the physical control of materiel.

13. As at March 2023, Defence had not planned for or undertaken any post-implementation review activity.

Supporting findings

Response development

14. Defence effectively engaged with a range of relevant stakeholders, within Australia and internationally, in its support of the Australian Government response.

- Defence consistently participated in, and provided updates to, whole of Australian government coordination committees. (See paragraphs 2.4 and 2.5)
- Defence contributed personnel to the International Donor Coordination Centre in Europe, which coordinates the physical delivery of support to Ukraine. (See paragraph 2.8)
- Defence participated in the Ukraine Defense Contact Group established by the United States, which involves 50 countries providing support to Ukraine. (See paragraph 2.9)

15. Defence adopted business as usual administrative and governance arrangements for the purpose of identifying, preparing and delivering military assistance. This was initially a fit for purpose approach. As the scale, duration and scope of the Australian Government's commitment became clearer over time, there would have been merit in Defence assessing the continuing fitness for purpose of its arrangements. (See paragraphs 2.10 to 2.16)

16. From the outset, Defence appropriately assessed risks in the context of potential impacts of gifts of military assistance on Defence's capacity to effectively defend Australia and its national interests. Recommendations to decision-makers were informed by consideration of risks to Defence preparedness and capability. (See paragraphs 2.17 to 2.23)

17. Defence provided timely, relevant and co-ordinated advice to its senior leaders, the Minister for Defence and government in relation to:

- the developing situation in Ukraine;
- options for the provision of military assistance;
- the Defence inventory value of the proposed gifts;
- the potential risks of gifting in terms of Defence's own capability, preparedness, readiness, force generation or sustainment; and
- summaries of military assistance provided to date. (See paragraphs 2.24 to 2.31)

18. Defence's advice to decision-makers, in the context of its administration of financial assistance grants to the North Atlantic Treaty Organization (NATO) and the United Kingdom Ministry of Defence, was not complete and did not satisfy all mandatory requirements of the *Commonwealth Grants Rules and Guidelines*. (See paragraphs 2.32 and 2.33)

Implementation

19. Defence relied on its normal processes for tasking relevant business areas within Defence and for those areas to understand and fulfill any obligations within their usual areas of responsibility. In the context of urgent directions from the Australian Government to provide military assistance to the Government of Ukraine, Defence did not appoint a senior responsible

officer or establish a taskforce to undertake planning, or develop a bespoke implementation plan to guide the provision of military assistance to the Government of Ukraine. Defence has not revisited its general approach to planning. (See paragraphs 3.2 to 3.7)

20. Defence delivered military assistance quickly to the Government of Ukraine. However, Defence is not able to demonstrate that all Australian Government policy approvals were secured for 13.5 per cent of the military assistance despatched in 2022 (valued at \$36.4 million). Further, 58 items with a value of \$38.4 million were transferred to the Government of Ukraine without being included in an exchange of letters between the Governments of Australia and Ukraine. (See paragraphs 3.9 to 3.20)

21. Defence undertook procurement processes specifically for the purchase of items to be gifted to the Government of Ukraine. For these eight procurements, Defence relied on provisions for limited tender in the *Commonwealth Procurement Rules* (CPRs). Defence assessed value for money as required by the CPRs and documented that it was satisfied that the offerings represented value for money. (See paragraphs 3.21 to 3.33)

22. Defence acted quickly to facilitate grant funding approved by the Australian Government for the North Atlantic Treaty Organization (NATO) and the United Kingdom Ministry of Defence (UK MOD). Defence did not take steps to resolve uncertainty around the legislative authority for the payments, which had been identified while developing the first grant to NATO. Defence's advice to decision-makers, in the context of its administration of financial assistance grants to NATO and the UK MOD, was not complete and did not satisfy all mandatory requirements of the *Commonwealth Grants Rules and Guidelines* (CGRGs). (See paragraphs 3.34 to 3.70)

23. As at December 2022, Defence had partly complied with relevant legislative and other requirements for the export of military assistance to the Government of Ukraine. Certain items did not have, before their export to Ukraine: an Australian Defence export permit; gifting authorisations under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act); and lodged Australian Customs export declarations. (See paragraphs 3.72 to 3.108)

24. Defence has not effectively accounted for gifted assets by taking appropriate action to record the disposal of gifted equipment in its records. (See paragraphs 3.109 to 3.113)

Monitoring and reporting

25. Defence established appropriate arrangements for monitoring and reporting on the delivery of military assistance to the Government of Ukraine. These arrangements included physical controls for the transportation and security of military assistance and acquittals for international grants, with NATO and the UK MOD confirming that funding had been received and used in line with the agreed purpose. (See paragraphs 4.3 to 4.25)

26. While there were some discussions in the latter part of 2022 about improving aspects of Defence's processes, as at March 2023 Defence had not planned for or undertaken any 'lessons learnt' or post-implementation review activity for its delivery of military assistance to the Government of Ukraine. More than one year into this activity, there is scope for Defence to review or evaluate its arrangements, to inform its approach to and implementation of any further assistance initiatives. (See paragraphs 4.27 to 4.32)

Recommendations

27. The Auditor-General did not make any recommendations. Two opportunities for improvement were identified, relating to Defence:

- resolving, in consultation with the Department of Finance and the Department of Foreign Affairs and Trade, issues identified in its administration of financial assistance grants provided by the Australian Government to assist the Government of Ukraine; and
- reviewing or evaluating its arrangements for the delivery of military assistance to the Government of Ukraine, to inform its approach to and implementation of any further assistance initiatives.

Summary of entity responses

28. The proposed audit report was provided to the Department of Defence and an extract of the audit report was provided to the Department of Finance. The following are a summary of comments received. The full responses are at Appendix 1.

29. The improvements observed by the ANAO during the course of the audit are at Appendix 2.

Department of Defence

Defence acknowledges the ANAO's assessment that Defence moved quickly to identify appropriate options for providing military assistance to the Government of Ukraine for the Australian Government's consideration and effectively engaged with a range of relevant stakeholders within Australia and internationally, providing appropriate advice to senior leaders, Minister for Defence and the Australian Government.

Defence agrees with the opportunity for improvements and will review and evaluate all aspects of its delivery of military assistance to the Government of Ukraine. In mid-2022 Defence established a regular consultation process to discuss current and future gifting activities including identifying process, approvals and delivery.

Department of Finance

The Department of Finance notes the findings of the report in relation to the delegation of the Finance Minister's gifting powers under the *Public Governance, Performance and Accountability Act 2013*.

Key messages from this audit for all Australian Government entities

30. Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

Governance and risk management

- Rapid implementation may justify a higher risk tolerance than would normally be the case. When the urgency has abated, the circumstances that generated the risk should be reviewed with a view to identifying a treatment that will reduce or eliminate the risk, particularly if there is a likelihood that the same situation may occur again.

Program implementation

- In the context of rapid or novel implementation activity, it is necessary to maintain a focus on the threshold question of applicable legal and administrative frameworks.

Audit findings

1. Background

Introduction

1.1 On 24 February 2022, military forces of the Russian Federation entered Ukraine. On 28 February 2022, the Prime Minister of Australia and other Australian Ministers issued a joint media release in which they said:

Australia will work with NATO and our other partners to provide lethal as well as non-lethal military equipment, medical supplies, and financial assistance to support the people of Ukraine. As an immediate measure, Australia will contribute US\$3 million to NATO's Trust Fund for Ukraine to support non-lethal military equipment and medical supplies. Details of Australia's contribution of lethal military equipment are being worked through with our partners and will be announced soon.³

1.2 Between 28 February 2022 and 24 February 2023, the Australian Government made 11 public announcements regarding military and financial assistance that it had committed to gifting⁴ to the Government of Ukraine.⁵ These announcements are shown in Table 1.1.⁶ The total value of the Australian Government's commitment was publicly reported as being approximately \$510 million. This represents 74 per cent of the (approximately) \$688 million of support committed by the Australian Government as of February 2023.⁷

Table 1.1: Australian Government announcements of military assistance to the Government of Ukraine — February 2022 to February 2023

Date	Detail of military assistance within announcement	Announced value (\$m)
28 February 2022	US\$3 million (AUD\$4.2 million) to NATO's Trust Fund for Ukraine to support non-lethal military equipment and medical supplies.	4.2
1 March 2022	\$70 million in lethal military assistance to support the defence of Ukraine, including missiles and weapons and a range of non-lethal military equipment and medical supplies.	70.0
20 March 2022	Additional \$21 million support package of military assistance.	21.0

3 Prime Minister, Minister for Defence, Minister for Foreign Affairs and the Treasurer, *Economic measures against Russia and lethal military equipment for Ukraine*, joint statement, 28 February 2022. On 24 February 2022, the Prime Minister and the Minister for Foreign Affairs had issued a media statement condemning Russia's invasion of Ukraine.

4 The government has generally used the terms 'gift' and 'gifted' rather than 'donation' and 'donated'.

5 In this report, Ukraine is used to refer to the country of Ukraine. The Government of Ukraine is used to refer to the entity to which military assistance was gifted.

6 All government announcements to February 2023 are included in Table 1.1. However, the ANAO's detailed analysis covers the period from 1 February 2022 to 31 December 2022.

7 Other forms of assistance or support to Ukraine have included: humanitarian assistance (through financial donations to non-government organisations), sanctions against Russian and Belarusian individuals and entities, tariffs and trade bans on certain Russian exports and imports, the provision of 70,000 tonnes of coal, and visa assistance to Ukrainian people. These forms of support are outside the scope of this audit.

For more detail, see: Department of Foreign Affairs and Trade, *Invasion of Ukraine by Russia – overview*, available from <https://www.dfat.gov.au/crisis-hub/invasion-ukraine-russia> [accessed 7 February 2023].

Date	Detail of military assistance within announcement	Announced value (\$m)
31 March 2022	\$25 million package to be provided through the Australian defence industry for additional defensive military assistance including unmanned aerial and unmanned ground systems, rations and medical supplies.	25.0
8 April 2022	20 Bushmaster protected mobility vehicles.	49.0
8 April 2022	\$26.5 million package of anti-armour weapons and ammunition.	26.5
27 April 2022	Six M777 155mm lightweight towed howitzers and howitzer ammunition.	26.7
19 May 2022	14 M113AS4 armoured personnel carriers and 20 more Bushmaster protected mobility vehicles.	60.9
4 July 2022	Additional \$100 million including 20 more Bushmaster protected mobility vehicles, de-mining equipment, further \$20 million donation to NATO, and a further \$7 million to purchase technology and equipment from Australian suppliers.	100.0
27 October 2022	Additional 30 Bushmaster protected mobility vehicles and a contingent of 70 personnel deployed to United Kingdom to assist training of armed forces of Ukraine.	No individual value for announcement provided.
24 February 2023	Provision of uncrewed aerial systems as well as completion of training of first rotation of 200 Ukrainian recruits as part of Operation Kudu. ^a	No individual value for announcement provided.
Total^b		510.0

Note a: Operation Kudu is the Australian Defence Force's commitment to the training of armed forces of Ukraine recruits in the United Kingdom.

Note b: Column does not add to total because some announcements did not include a dollar value. The total value of the military assistance up to 23 February 2023 was publicly reported as being \$510 million.

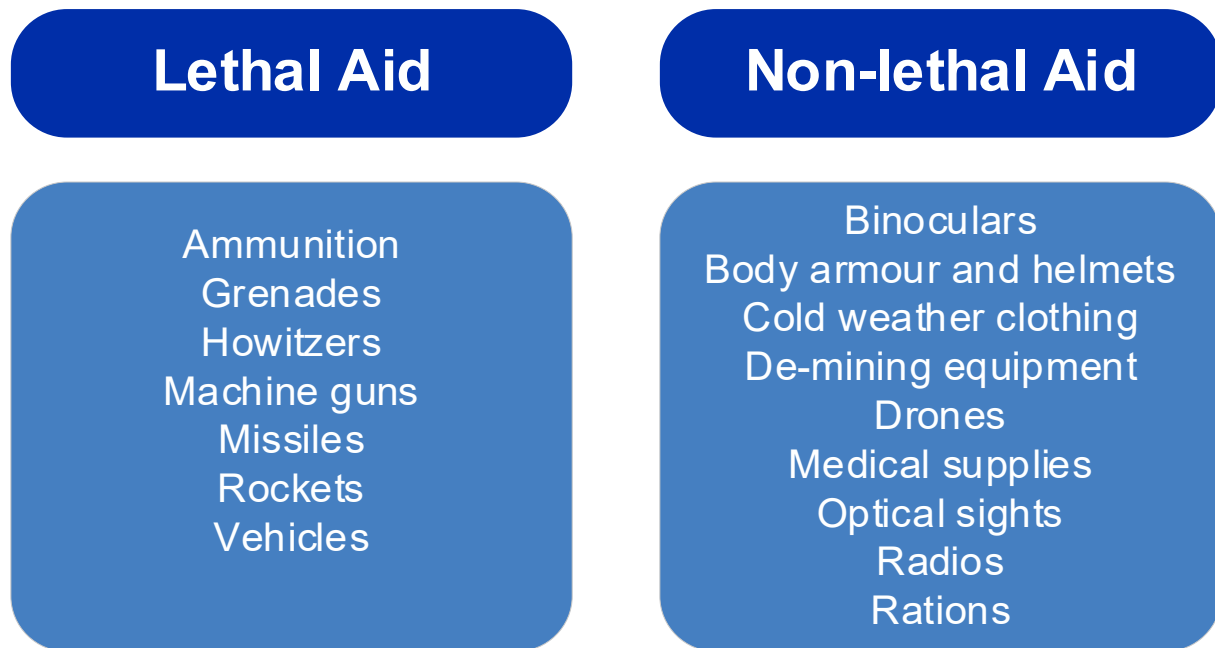
Note: In the context of the 2023–24 Budget, the Australian Government announced on 9 May 2023 that it 'will provide \$189.6 million over two years from 2022–23 to deliver additional assistance to Ukraine following the invasion by Russia. This includes the provision of Bushmaster Protected Mobility Vehicles and unmanned aerial vehicles, infantry training to the Ukrainian Armed Forces and 155-millimetre artillery ammunition to Ukraine as part of a joint initiative between France and Australia' (Budget 2023–24, Budget Measures, Budget Paper No.2, p. 91). This amount is not included in the total for Table 1.1.

Source: Australian Government announcements.

1.3 While the total publicly reported value of military assistance gifted by the Australian Government to 23 February 2023 was \$510 million, the exact details of some equipment has not been announced publicly.

1.4 Figure 1.1 shows examples of the types of military assistance provided by the Australian Government.

Figure 1.1: Examples of the types of military assistance gifted by Australia to the Government of Ukraine as at February 2023



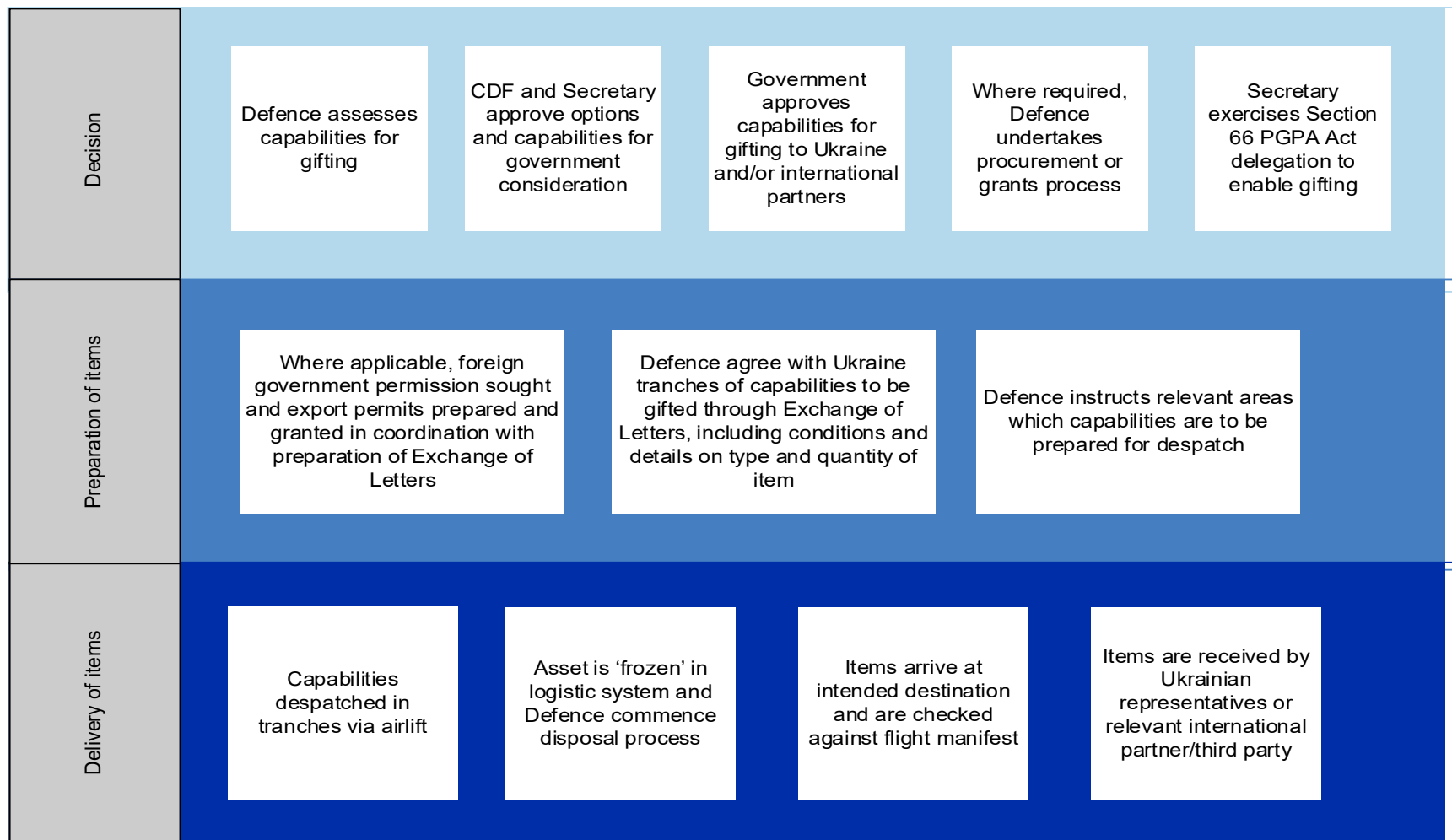
Source: ANAO from Defence information.

1.5 This audit has examined gifts of lethal and non-lethal military assistance and the provision of financial assistance between 1 February 2022 and 31 December 2022. The military assistance had a Department of Defence (Defence) inventory value of \$270.5 million.⁸

1.6 Figure 1.2 summarises key decision points and steps taken to prepare and deliver military assistance. As discussed in Chapter 3 of this audit report, assistance to the Government of Ukraine involved rapid planning and implementation activities, particularly in the early months of Defence's response. In this context, decisions were not always made in the same order as indicated in this figure, and not all steps were always taken.

⁸ Defence advised the ANAO in March 2023 that the difference between the amount announced by Australian Ministers and the \$270.5 million in Defence records is due to the former figure being the total value of the Australian Government's commitment as at February 2023, while the latter was the value of assistance actually delivered as at 31 December 2022.

Figure 1.2: Overview of processes undertaken for the development and delivery of Australian military assistance to Ukraine



Note: References to the PGPA Act relate to the *Public Governance, Performance and Accountability Act 2013*. 'Secretary' means the Secretary of the Department of Defence. CDF means the Chief of the Defence Force. The sequencing of relevant foreign government approvals (such as those relating to the United States International Traffic in Arms Regulations (ITAR) regime) is complex and is not illustrated in Figure 1.2.

Source: ANAO analysis of Defence records.

1.7 Australian military assistance to the Government of Ukraine has been transported by air. This has been predominantly by Royal Australian Air Force (RAAF) C-17A Globemaster aircraft. The RAAF has also chartered Antonov An-124 cargo aircraft on a number of occasions.⁹ The images in Figure 1.3, Figure 1.4 and Figure 1.5 show Australian military equipment being transported.

Figure 1.3: M113AS4 armoured personnel carriers waiting to be loaded onto an Antonov An-124 aircraft at RAAF Amberley



Source: Department of Defence.

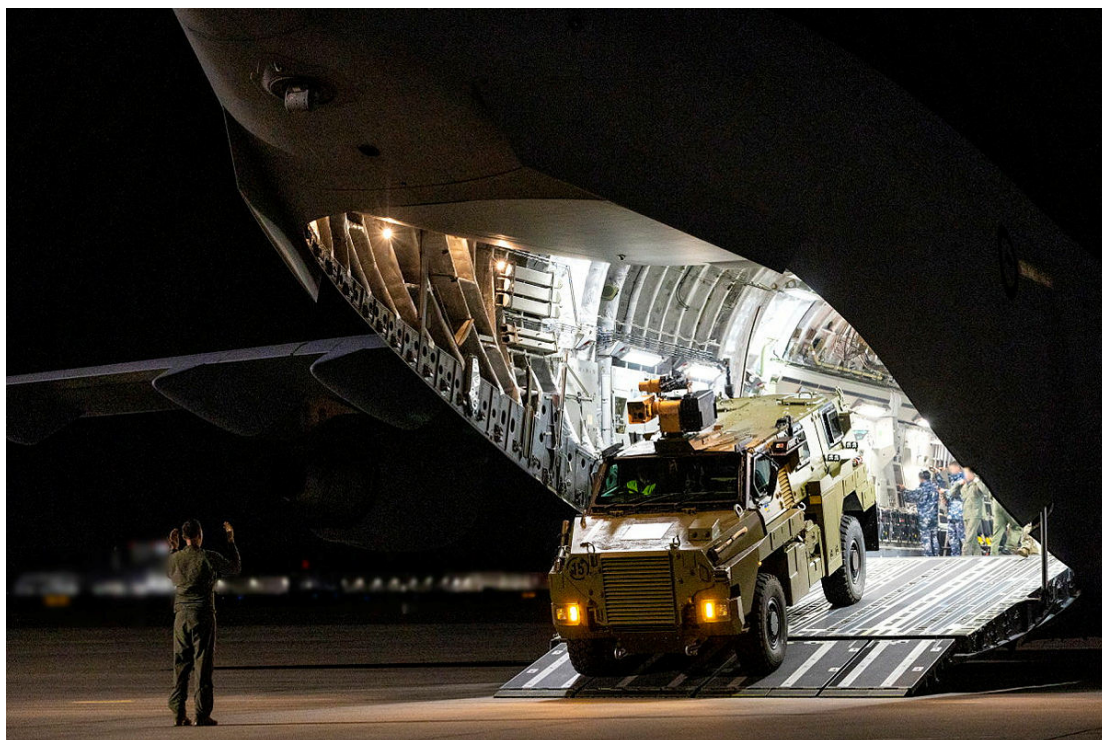
9 The Antonov An-124 is Ukrainian-designed and is the largest military transport aircraft in service.

Figure 1.4: Bushmaster protected mobility vehicles being loaded onto a C-17A Globemaster III aircraft at RAAF Amberley



Source: Department of Defence.

Figure 1.5: A Bushmaster protected mobility vehicle being unloaded from a C-17A Globemaster III aircraft in Europe



Source: Department of Defence.

1.8 There are a number of different requirements and approvals which have applied to gifts of military assistance to the Government of Ukraine. Some of these are applicable to any export of military equipment from Australia, while others were unique to gifts to the Government of Ukraine. These are summarised in Table 1.2.

Table 1.2: Requirements and approvals needed for gifting military assistance to the Government of Ukraine

Type of requirement or approval	Detail
Defence export permits	Permits are required under the <i>Customs Act 1901</i> for exports of certain kinds of military equipment.
Permission to gift Australian Government property	Approval to make a gift of Australian Government property is required under section 66 of the <i>Public Governance, Performance and Accountability Act 2013</i> .
Customs Export Declarations	Required for the export of all goods from Australia.
Government approval	All gifts of military assistance to the Government of Ukraine have required approval from the Australian Government or Prime Minister.
Exchanges of letters	All gifts of military assistance to the Government of Ukraine were intended to be included in government-to-government exchanges of letters.
Foreign permissions	Some military equipment manufactured overseas required the agreement of the originating government to be gifted.

Source: ANAO.

1.9 Chapter 3 of this audit report describes these requirements and approvals in more detail and reviews Defence's compliance with them.

Rationale for undertaking the audit

1.10 After Russia's invasion of Ukraine in February 2022, the Australian Government, like many other governments around the world, began to urgently provide financial, humanitarian and military assistance to the people and Government of Ukraine.¹⁰ Of approximately \$688 million in assistance announced by the Australian Government to February 2023, about \$510 million (74 per cent) has been in the form of military assistance.

1.11 Defence was required to advise on, organise and deliver military assistance, including heavy weapons and large military vehicles¹¹, to Europe quickly while ensuring that a range of domestic and international legislative and administrative requirements were complied with. This audit was undertaken to provide independent assurance to the Parliament on Defence's development and

10 The Kiel Institute for the World Economy maintains a 'Ukraine support tracker'. See: Kiel Institute, *Ukraine Support Tracker Data*, available from <https://www.ifw-kiel.de/publications/data-sets/ukraine-support-tracker-data-17410/> [accessed 27 March 2023]. It has reported that in the period 24 January 2022 to 24 January 2023, 41 countries (including Australia) had provided approximately AUD\$224.4 billion in assistance to Ukraine. Of this, 46.4 per cent was in the form of financial assistance, 8.7 per cent was in the form of humanitarian assistance and 44.9 per cent was in the form of military assistance.

11 Such as Bushmaster protected mobility vehicles and armoured personnel carriers.

implementation of the Australian Government's commitment to assisting the Government of Ukraine.

Audit approach

Audit objective, criteria and scope

1.12 The audit objective was to examine the effectiveness of Defence's development and implementation of Australia's approach to providing military assistance to the Government of Ukraine.

1.13 To form a conclusion against the audit objective, the following high-level criteria were adopted.

- Was Defence's response development effective?
- Was Defence's implementation planning and delivery effective?
- Was Defence's monitoring and reporting effective?

1.14 The focus of the audit was on the provision of military assistance as the largest part of Australia's contribution. The ANAO did not examine other forms of assistance such as the imposition of financial sanctions and travel bans or the issuing of visas to Ukrainian nationals. The audit scope did not include validating the financial value attributed by Defence to specific items of military equipment.

Audit methodology

1.15 The audit involved the Department of Defence. Some discussions were held with the Department of Foreign Affairs and Trade (DFAT).¹²

1.16 The audit involved:

- detailed review of Defence activity between 1 February 2022 and 31 December 2022;
- examining relevant records and documents; and
- discussions with relevant Defence and DFAT personnel.

1.17 The audit was open to online citizen contributions. No contributions were received.

1.18 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$545,000.

1.19 The team members for this audit were Julian Mallett, Megan Beven, Kelly Williamson, Katarina Ivanovic-Likic, Hugh Baggallie, Amita Robinson, Sally Ramsey and Amy Willmott.

12 In relation to DFAT's role as chair of an interdepartmental committee and the Interdepartmental Emergency Taskforce on Ukraine; and advice provided to Defence with respect to international agreements and treaties for which DFAT is responsible.

2. Response development

Areas examined

This chapter examines whether the Department of Defence (Defence) effectively supported the development of an Australian Government response for providing Australian military assistance to the Government of Ukraine.

Conclusion

Defence was effective in supporting the development of an Australian Government response and moved quickly to identify options for providing military assistance to the Government of Ukraine. The department: engaged with relevant stakeholders to inform its thinking and advice; adopted established administrative and governance arrangements to identify and advise on options and implementation issues; and assessed risks to Australian national interests and preparedness. Defence provided timely, relevant and co-ordinated advice to its senior leaders and decision-makers. An exception was the completeness of its advice to decision-makers regarding financial assistance grants to NATO and the UK Ministry of Defence.

2.1 The invasion of Ukraine by the Russian Federation is an ‘international crisis’ under the Australian Government Crisis Management Framework and triggered the standing up of intergovernmental coordination mechanisms (see paragraph 2.4).¹³ The Australian Government department with responsibility for preparing for, responding to and recovering from such crises is the Department of Foreign Affairs and Trade (DFAT).

2.2 Defence is a key supporting agency for international crises such as the invasion of Ukraine, where Australian Defence Force (ADF) assistance and/or cyber security incident management may be required. In developing an effective response, Defence can be expected to have engaged effectively with relevant stakeholders, established fit for purpose governance arrangements, assessed risks, and appropriately advised decision-makers.

2.3 In the context of rapid implementation, Defence would also be expected to: adopt a flexible and adaptive approach to planning; be ready to mobilise skills, resources and systems to high priority areas; and maintain a focus on risks and impacts to its existing operations.

13 Department of the Prime Minister and Cabinet, *Australian Government Crisis Management Framework*, November 2022, p. 6, available from <https://www.pmc.gov.au/sites/default/files/resource/download/australian-government-crisis-management-framework.pdf> [accessed 24 February 2023].

The framework sets out that an international crisis is an ‘international incident that requires an Australian Government response. This may include natural disasters, humanitarian crises, terrorist acts, major transport incidents, civil unrest, overseas health emergencies or outbreaks, kidnapping of Australians overseas and chemical, biological, radiological or nuclear incidents which impact or may impact Australians or Australia’s national interest.’ The framework outlines the Australian Government’s approach to preparing for, responding to and recovering from crises (both natural and human-induced).

Did Defence effectively engage with external stakeholders?

Defence effectively engaged with a range of relevant stakeholders, within Australia and internationally, in its support of the Australian Government response.

- Defence consistently participated in, and provided updates to, whole of Australian government coordination committees.
- Defence contributed personnel to the International Donor Coordination Centre in Europe, which coordinates the physical delivery of support to Ukraine.
- Defence participated in the Ukraine Defense Contact Group established by the United States, which involves 50 countries providing support to Ukraine.

Domestic engagement

Interdepartmental arrangements

2.4 In November 2021, the United States and Ukrainian governments reported a large and unusual build-up of Russian troops near the borders of Ukraine. In December 2021, DFAT convened an interdepartmental committee (IDC) on Ukraine of which Defence was a member. The IDC met nine times between December 2021 and mid-February 2022. These meetings primarily involved consular updates from DFAT, updates on the situation in Ukraine, and early responses from involved Commonwealth entities, such as DFAT, the Department of Industry, Science, Energy and Resources, the Department of the Prime Minister and Cabinet, the Australian Federal Police and the Department of Home Affairs. At that stage, Defence's involvement was limited to occasional updates, as the provision of Defence materiel assistance had not yet been considered by the Australian Government.

2.5 Consistent with standing arrangements under the Australian Government Crisis Management Framework, on 17 February 2022 DFAT stood up an Interdepartmental Emergency Taskforce (IDETF)¹⁴ to coordinate the Australian Government's response to the crisis in Ukraine.¹⁵ The first meeting of the IDETF was held a week prior to Russia's invasion of Ukraine. It met 25 times over the six-week period between 17 February and 31 March 2022.¹⁶ Defence attended all of the meetings and provided the IDETF with updates on the preparation and delivery of military assistance to the Government of Ukraine.

Other

2.6 In addition to its involvement in these interdepartmental arrangements, Defence has worked directly with other Australian Government entities in the course of arranging military

14 An IDETF is a key whole of government coordination mechanism and forms part of the crisis management framework. The IDETF manages the whole of government response to overseas incidents or crises that impact, or threaten to impact, Australians or Australia's interests overseas. It is chaired by a DFAT Deputy Secretary. The composition of an IDETF varies according to need.

15 Attendees included the Departments of: Foreign Affairs and Trade (chair); Defence; Finance; Prime Minister and Cabinet; Industry, Science, Energy and Resources; Infrastructure, Transport, Regional Development and Communications; Treasury; Home Affairs (including the Australian Border Force as necessary); and Health. Other entities represented included: the Office of National Intelligence, the Australian Security Intelligence Organisation, the Defence Intelligence Organisation, the Australian Federal Police, and the Australian Radiation Protection and Nuclear Safety Agency.

16 IDETF meetings were initially daily, moving to about twice per week in March 2022.

assistance. In particular, and as described in Chapter 3 of this audit report, legal advice from DFAT formed part of Defence's assessment of applications for export permits.

International engagement

Ukrainian Government

2.7 The Australian Minister for Defence began receiving correspondence from his Ukrainian counterpart in mid to late February 2022. Early letters included requests for non-lethal equipment such as body armour and helmets but as the conflict evolved, requests focussed increasingly on lethal equipment and battlefield support (such as Bushmaster protected mobility vehicles and armoured personnel carriers). Flowing from this ministerial correspondence, there was a considerable amount of contact between Defence officials and the Government of Ukraine's representatives in Australia (the Ukrainian ambassador and chargé d'affaires). There was also contact at the operational level between Australian Defence Force (ADF) personnel and members of the armed forces of Ukraine.

International Donor Coordination Centre

2.8 On 27 February 2022, the British army established the International Donor Coordination Centre (IDCC) in Europe. The IDCC's mission is to support the armed forces of Ukraine by coordinating military assistance requests from the Government of Ukraine with gifts made by the 26 countries which participate in the IDCC. Australia is among those countries, with a number of ADF personnel attached to the IDCC to assist with the delivery of Australia's assistance to Ukraine. The IDCC's role in coordinating the physical delivery of Australia's military assistance to Ukraine is discussed in Chapter 4 of this audit report at paragraph 4.8.

Ukraine Defense Contact Group

2.9 Australia is a member of the Ukraine Defense Contact Group. This is a group of approximately 50 countries convened by the United States Secretary of Defence. The group first met at Ramstein Air Base (a United States Air Force base in Germany) on 26 April 2022. Australia has been represented at each of the nine meetings convened as at 14 February 2023.

Were fit for purpose governance arrangements established?

Defence adopted business as usual administrative and governance arrangements for the purpose of identifying, preparing and delivering military assistance. This was initially a fit for purpose approach. As the scale, duration and scope of the Australian Government's commitment became clearer over time, there would have been merit in Defence assessing the continuing fitness for purpose of its arrangements.

2.10 Defence advised the ANAO that at first, the focus was on 'in stock' equipment (and potentially surplus to requirements), which could be provided immediately. In these circumstances, with an imperative to commence implementation as soon as possible, special administrative arrangements (such as a taskforce) were not put in place by Defence, nor was a senior responsible

officer appointed, with overall authority to direct specific line areas.¹⁷ Defence further advised the ANAO that the situation changed as the conflict in Ukraine evolved over several months and the Australian Government began receiving often very specific requests for equipment (such as lethal equipment and major items such as Bushmaster protected mobility vehicles).

2.11 A number of different areas within Defence were involved in the development of its advice to the Australian Government and the end-to-end process of identifying, preparing and delivering military assistance. The responsibilities of relevant Defence business areas are summarised in Table 2.1, and have not been represented hierarchically.

Table 2.1: Areas within Defence tasked with responsibilities for the delivery of military assistance to the Government of Ukraine^a

Area	Responsibilities
Military Strategic Commitments	Coordination of strategic aspects of the provision of military assistance.
International Policy Division	Coordinating policy advice to Ministers, managing international relationships, coordinating with other areas of government, finalising exchanges of letters.
Defence Export Controls Branch	Receiving and assessing applications for Defence export permits.
Australian Defence Export Office	Preparing applications for Defence export permits, seeking third country transfer permissions.
Defence Legal	Advice on legal aspects of gifting in consultation with Defence Finance Group, including clearing exchanges of letters.
Defence Finance Group	Provide technical and policy advice on financial requirements relating to grants, gifting, costing, accounting and international agreements.
Army, Air Force and Navy Capability Managers ^b	Assessing what equipment might be provided to the Government of Ukraine and potential impacts on preparedness.
Capability Acquisition and Sustainment Group	Provide advice to Capability Managers on gifting options and coordinating industry support to deliver materiel.
Joint Logistics Command	Acting on Capability Manager authorisation to prepare military assistance for delivery.
Joint Operations Command	Coordination of operational delivery and handover at delivery point.
Joint Movements Unit	Aircraft load planning in accordance with priority determined by CDF, and route planning.

Note a: Areas shaded blue are part of the civilian structure of the department; areas shaded grey are within the military services.

Note b: Capability Managers are the three military service chiefs.

Source: ANAO from Defence information and discussions.

2.12 While all areas are ultimately accountable to either the Chief of the Defence Force (CDF) or the Secretary of Defence, Defence adopted a largely business as usual approach and there was no taskforce or senior responsible officer with overall accountability for this set of activities. Military

¹⁷ A senior responsible officer is accountable for the success of an implementation. This person ensures that all relevant capabilities are applied appropriately, considers interdependencies and the need for sequencing effort, and is the person to whom the relevant minister and the entity's senior leaders turn for progress reports and information about delivery and emerging risks and issues.

Strategic Commitments (MSC), a division within Defence Force Headquarters, was assigned the role of 'coordination of strategic aspects of the provision of military assistance' by CDF in a task order (TASKORD) on 5 March 2022.¹⁸ What this meant in practical terms was not further clarified. In September 2022, Defence advised the ANAO that MSC's role was 'a link between enabling groups'.

2.13 As discussed, the delivery of military assistance was approached as a largely business as usual activity for many of the areas shown in Table 2.1. For example, the key task of receiving and assessing applications for Defence export permits is a regular activity for the Defence Export Controls Branch (DEC). However, in the following respects, this task was unusual in the circumstances.

- Applications for Defence export permits usually originate from a wide range of commercial and non-commercial entities, including defence industry, the mining sector, research organisations, and private individuals. For Ukraine, the applications for Defence export permits were prepared by the Australian Defence Export Office (ADEO).¹⁹
- Although Australia occasionally gifts military equipment to other countries, the urgency and volume on this occasion was unprecedented.
- There was a frequent need for legal advice on gifting and the application of international law.
- The procuring of military equipment for the specific purpose of gifting to the Government of Ukraine.
- For some items, modification of equipment was required before despatch to Ukraine.²⁰

2.14 Defence advised the ANAO in September 2022 that 'Defence has not undertaken this type of activity before.'

2.15 Defence has a number of senior 'enterprise committees' whose role is to 'support the Secretary, the Chief of the Defence Force, and other senior leaders to fulfil their corporate and governance responsibilities'.²¹ There was no evidence of any routine or systematic consideration by these committees of the progress of Defence's delivery of military assistance to the Government of Ukraine.

2.16 It would have been appropriate, as circumstances and the activity evolved, for Defence to reflect on the efficacy of its business as usual governance and administrative approach. This is consistent with a risk-based approach to rapid implementation.

18 A TASKORD is how the ADF disseminates orders or commands through the military hierarchy. A CDF TASKORD is of the highest priority.

19 ADEO's 'normal' role as described on Defence's website is to be 'the key focal point for coordinating whole-of-government defence export support for Australian defence industry.'

See: Australian Defence Export Office, *What we do*, available from <https://www.defence.gov.au/business-industry/export/australian-defence-export-office> [accessed 16 February 2023].

20 For example, this involved repainting Bushmaster protected mobility vehicles and the replacement of radio equipment.

21 Department of Defence, *Annual Report 2021-22*, p82. The six committees are: the Defence Committee, the Defence Audit and Risk Committee, the Strategic Policy Committee, the Chiefs of Services Committee, the Enterprise Business Committee and the Investment Committee.

Did Defence appropriately assess risks?

From the outset, Defence appropriately assessed risks in the context of potential impacts of gifts of military assistance on Defence's capacity to effectively defend Australia and its national interests. Recommendations to decision-makers were informed by consideration of risks to Defence preparedness and capability.

2.17 Under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the accountable authority must establish and maintain appropriate systems of risk oversight, management, and internal control for the entity.²² The *Commonwealth Risk Management Policy* sets out the principles and mandatory requirements for managing risk in undertaking the activities of government.²³

2.18 Risk tolerance is defined as 'the levels of risk taking that are acceptable in order to achieve a specific objective or manage a category of risk'.²⁴ Types of risks that entities may generally identify and take measures to mitigate include reputational, financial, legal, security and personnel risks. Risk tolerance may necessarily increase during an emergency or unforeseen event, to ensure the response is implemented rapidly. Articulating risk tolerance early in the implementation phase of new measures, and reviewing this throughout the implementation phase, provides a sound basis on which to support effective risk management, including the best use of entity resources in the circumstances. A particular risk to be managed, in the context of rapid implementation of a new activity, is the impact on existing activities and operations.

2.19 In the context of the delivery of military assistance to the Government of Ukraine, Defence gave attention to the potential risks to its ability to achieve its mission and purpose, which is 'to defend Australia and its national interests in order to advance Australia's security and prosperity'.²⁵ Having regard to the particular equipment involved, Defence assessed whether gifting to the Government of Ukraine would present risks on a number of dimensions. These are summarised in Table 2.2.²⁶

22 *Public Governance, Performance and Accountability Act 2013*, section 16, available from <https://www.legislation.gov.au/Details/C2017C00269> [accessed 2 February 2023].

23 In this context, risk is defined as the 'effect of uncertainty on objectives' and risk management as the 'coordinated activities to direct and control an organisation with regard to risk'. Issues are defined as 'a risk that has already eventuated – something that is currently being managed'.

24 Department of Finance, *Implementing the Commonwealth Risk Management Policy (RMG 211)*, Commonwealth of Australia, August 2020, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/implementing-commonwealth-risk-management-policy-rmg-211> [accessed 25 February 2023].

25 Department of Defence, *Defence mission and purpose*, available from <https://www.defence.gov.au/about/who-we-are/defence-mission> [accessed 5 February 2023].

26 As noted in Table 1.2, some types of military equipment required a Defence export permit. Assessment by the Defence Export Controls Branch (DEC) of applications for export permits involved an assessment of risk against 12 criteria specified in the Customs (Prohibited Exports) Regulations 1958. This process is examined further in Chapter 3 of this audit report.

Table 2.2: Types of risks considered by Defence in the context of its own mission and purpose

Risk	Definition
Capability	The power to achieve a desired operational effect in a nominated environment within a specified time, and to sustain that effect for a designated period.
Preparedness	The sustainable capacity to apply capabilities to accomplish government directed tasks.
Readiness	The ability of a capability to be applied to a specific activity within a nominated timeframe, for a specified period of time, to achieve a desired effect.
Force generation	The process of providing suitably trained and equipped forces, and their means of deployment, recovery and sustainment, to meet all current and potential future tasks within required readiness and preparation times.
Sustainment	The maintenance and support of military equipment.

Source: ANAO analysis of Defence documentation.

2.20 Risk assessment was a feature of Defence processes from the beginning of the activity. On 27 February 2022, the Director-General of Military Strategic Commitments wrote to senior colleagues seeking information about a range of military equipment which could be considered for gifting to the Government of Ukraine. In his request, he asked each person to advise on the level of risk that gifting the equipment might create.²⁷

2.21 Defence also considered the impact of providing military assistance on its capability prior to making decisions on the early tranches of assistance.²⁸ This process included two decision briefs to the Head of Land Capability, dated 22 February 2022 and 4 March 2022, which were informed by an internal assessment of risks. There is evidence that Defence internally considered risk for all lethal military equipment despatched as at 31 December 2022. Information was also provided in ministerial briefs on Defence's consideration of risks.

2.22 Defence has continued to monitor and report internally, through its business as usual mechanisms, on the cumulative impact of the provision of military assistance to the Government of Ukraine. This process included a briefing for the Chief of Army in July 2022, which set out the impact of gifting on Defence's preparedness and force generation, and provided information on the risk levels and impact of any future gifting. Defence Preparedness Assurance Reports submitted in May and December 2022 and Defence Preparedness Reports submitted in June, September and December 2022 also addressed impacts from the provision of military assistance to the Government of Ukraine. Preparedness Assurance Reports are provided to CDF twice a year and Defence Preparedness Reports are provided quarterly, as required by a CDF directive. These assessments also informed Defence's advice to ministers on risks relating to the gifting, including possible impacts on ADF capability.

2.23 Other briefs examined by the ANAO that proposed equipment for gifting — prepared for the Secretary, CDF and the Minister for Defence — demonstrated that Defence consistently considered risks in the terms described in Table 2.2 above. There were also instances where

²⁷ Defence Export Controls Branch also assessed risks to Australia's national interests in accordance with legislation.

²⁸ ANAO analysis has focused on lethal military equipment.

Defence recommended against gifting particular equipment because of the risks that it would present.

Did Defence appropriately advise senior leaders and government?

Defence provided timely, relevant and co-ordinated advice to its senior leaders, the Minister for Defence and government in relation to:

- the developing situation in Ukraine;
- options for the provision of military assistance;
- the Defence inventory value of the proposed gifts;
- the potential risks of gifting in terms of Defence's own capability, preparedness, readiness, force generation or sustainment; and
- summaries of military assistance provided to date.

Defence's advice to decision-makers, in the context of its administration of financial assistance grants to the North Atlantic Treaty Organization (NATO) and the United Kingdom Ministry of Defence, was not complete and did not satisfy all mandatory requirements of the *Commonwealth Grants Rules and Guidelines*.

2.24 In the context of rapid implementation, senior leaders have a responsibility to support informed decision-making by ensuring that ministers receive complete, accurate and timely advice on program design features and implementation progress, challenges and risks.

2.25 Defence has provided a flow of advice to its senior leaders and the Australian Government to inform their decision-making. This has included at least nine briefs to the Secretary and CDF and at least 41 briefs to the Minister for Defence, between 21 January and 10 November 2022. Briefs to the Minister for Defence have included the following.

- Requesting that action be taken, such as agreeing to Defence's approach to provide assistance and agreeing to sign letters to the Prime Minister requesting approval to provide military assistance.²⁹
- To inform the Minister's participation at meetings of the National Security Committee of Cabinet (NSC).
- For noting, which have provided updates on Defence's progress in delivering assistance.
- Information briefs, providing daily updates to the Minister on the evolving situation in Ukraine.

2.26 Initially, there was a high tempo of briefs which were largely informational, including the daily updates mentioned above. At this stage, the situation in Ukraine was evolving rapidly and the Australian Government was still considering its response, including the types of military assistance that could be provided. On 1 March 2022, the Australian Government agreed to and announced a package of lethal and non-lethal military assistance. After this time, advice focussed on additional

29 Some record keeping issues have been identified with these briefings. Six ministerial briefs were missing signatures, including two recommending that decisions be taken. In both cases there is evidence of subsequent related correspondence with the Prime Minister, indicating that a decision was made.

options for providing assistance (such as through procurements and grants), and on progress in delivering assistance that had already been agreed.

Gifting briefs

2.27 In accordance with an Australian Government decision on 7 March 2022, decisions on the gifting of military assistance were to be made by the government or Prime Minister.

2.28 Each of these decisions was informed by Defence advice to the Minister for Defence on proposals for potential gifts of military assistance to the Government of Ukraine.³⁰ Briefs to the Minister for Defence proposing gifts typically included advice on the following matters.

- The circumstances around the identification of the proposed gifts (for example, whether it was responding to a specific request from the Government of Ukraine).
- The Defence inventory value of the proposed gifts.
- The potential risks of gifting in terms of Defence's own capability, preparedness, readiness, force generation or sustainment (see Table 2.2).

Information briefs

2.29 In addition to gifting briefs, Defence provided the Minister for Defence with information briefs. As discussed in paragraph 2.25, these were provided regularly as the situation in Ukraine was developing in the period immediately before and after 24 February 2022.

2.30 Defence also provided the Minister for Defence with information briefs to support oral briefings that the Minister gave to the National Security Committee of Cabinet. These briefs often incorporated information from other sources such as DFAT and intelligence reports.

2.31 From time to time, after the despatch of military assistance to the Government of Ukraine had begun, Defence provided summary briefs outlining what had been provided to date, although there was not a regular system of progress reporting.

Briefs on financial assistance grants

2.32 The ANAO also reviewed Defence advice relating to:

- the payment of financial assistance to the United Kingdom Ministry of Defence (UK MOD) in May 2022; and
- two payments of financial assistance to NATO's Comprehensive Assistance Package Trust Fund (CAP) for Ukraine, made in March and August 2022.

2.33 As discussed in paragraphs 3.34 to 3.70, the ANAO identified issues relating to the completeness of Defence advice to decision-makers regarding those financial assistance grants, and compliance with all mandatory requirements of the *Commonwealth Grants Rules and Guidelines*.

30 The ANAO compared the records of Government approvals with Defence's records of military assistance actually despatched to Ukraine. The results of this examination are reported in Chapter 3.

3. Implementation

Areas examined

This chapter examines the effectiveness of the Department of Defence's (Defence's) planning, implementation and delivery of the Australian Government's approved military assistance to the Government of Ukraine.

Conclusion

Defence's planning, implementation and delivery of the Australian Government's approved military assistance to the Government of Ukraine was largely effective. Defence delivered military assistance quickly to the Government of Ukraine, in accordance with Australian Government intentions. However, in the context of rapid implementation, some shortcomings were identified in respect to: demonstrating that policy approvals were secured for all items; resolving uncertainty around the legislative authority for grants of financial assistance; the completeness and quality of advice on aspects of Defence's grants administration; having Australian defence export permits for all items; securing authorisations for gifting certain items; lodging Australian Customs export declarations; and recording gifted assets.

Area for improvement

The ANAO has suggested that there is scope for Defence to resolve, in consultation with the Department of Finance and the Department of Foreign Affairs and Trade, issues identified in its administration of financial assistance grants provided by the Australian Government to assist the Government of Ukraine.

3.1 Responding to a new and urgent requirement from government can be challenging for large entities such as Defence, especially where there is a need to involve a number of different parts of the organisation. In a rapidly evolving environment, there may not be time to develop detailed implementation plans. In such circumstances, effective coordination across the organisation is essential, and planning may need to occur quickly or in stages, prioritising critical foundations and building on them later. The ANAO examined how Defence ensured that military assistance was rapidly assembled and despatched while also meeting domestic and international legislative and other requirements.

Did Defence develop an appropriate implementation plan?

Defence relied on its normal processes for tasking relevant business areas within Defence and for those areas to understand and fulfill any obligations within their usual areas of responsibility. In the context of urgent directions from the Australian Government to provide military assistance to the Government of Ukraine, Defence did not appoint a senior responsible officer or establish a taskforce to undertake planning, or develop a bespoke implementation plan to guide the provision of military assistance to the Government of Ukraine. Defence has not revisited its general approach to planning.

3.2 In mid-February 2022, prior to the first request from the Government of Ukraine, Defence began to consider what assistance it might be able to provide should requests be received, and should the Australian Government decide to provide assistance.³¹

3.3 As it was not clear how long the conflict in Ukraine would last, Defence initially focused on considering what equipment might be able to be provided that was surplus to its needs. As noted in paragraph 2.10, Defence did not appoint a senior responsible officer or establish a taskforce to undertake planning, or develop a bespoke implementation plan to guide the provision of military assistance. Defence advised the ANAO in December 2022 that the process and requirements for gifting items³² were developed incrementally.

3.4 As each tranche of assistance was developed and agreed by the Australian Government (see Table 1.1), the planning for and implementation of the delivery of those items also occurred on a tranche-by-tranche basis. This detail was primarily recorded in Defence task orders (TASKORDS³³, discussed further from paragraph 3.12) and written briefs to the Secretary of Defence, the Chief of the Defence Force (CDF) and the Minister for Defence. The details recorded within those documents reflect that planning was taking place within Defence at the operational level and in parallel with implementation activities. These considerations included, but were not limited to:

- identification of military assistance which could be gifted;
- impacts of any gifted military assistance on Defence's own capability;
- procurement activities;
- timeliness and timeframes for the transport and delivery of the assistance;
- compliance with relevant requirements;
- training and sustainment considerations; and
- any conditions to be attached to the assistance.

3.5 Defence relied upon its relevant business areas to understand and fulfill any legal obligations within their usual areas of responsibility. Business areas involved in the identification, preparation and delivery of military assistance were discussed in Table 2.1 and paragraph 2.12.

3.6 Tasking of relevant business areas occurred via CDF TASKORDs from 28 February 2022. This included the Military Strategic Commitments Division (MSC), which on 5 March 2022 was tasked with coordinating the 'strategic aspects' of the provision of military assistance. MSC's role and responsibilities in this respect were not further defined.

3.7 Defence has not revisited its tranche-by-tranche approach to planning, notwithstanding the emergence of implementation risks since that approach was first adopted. An issue that has emerged (discussed from paragraph 3.8 below) is that Defence has not planned for or established

31 The Australian Government had previously gifted cold weather clothing to the Government of Ukraine in 2014 when the Russian Federation had invaded Crimea.

32 'Items' refers to line items on Defence spreadsheets of military assistance sent to the Government of Ukraine. Within a line item, 'item' may refer (for example) to a single vehicle, a group of guns, or a pallet of medical supplies.

33 As discussed in paragraph 2.12, a TASKORD is an order issued by a senior officer.

a mechanism to oversee and confirm that all legal obligations had been fulfilled prior to items being loaded on aircraft and provided to the Government of Ukraine.³⁴

Did Defence effectively implement the provision of assistance as agreed by government?

Defence delivered military assistance quickly to the Government of Ukraine. However, Defence is not able to demonstrate that all Australian Government policy approvals were secured for 13.5 per cent of the military assistance despatched in 2022 (valued at \$36.4 million). Further, 58 items with a value of \$38.4 million were transferred to the Government of Ukraine without being included in an exchange of letters between the Governments of Australia and Ukraine.

Defence undertook procurement processes specifically for the purchase of items to be gifted to the Government of Ukraine. For these eight procurements, Defence relied on provisions for limited tender in the *Commonwealth Procurement Rules* (CPRs). Defence assessed value for money as required by the CPRs and documented that it was satisfied that the offerings represented value for money.

Defence acted quickly to facilitate grant funding approved by the Australian Government for the North Atlantic Treaty Organization (NATO) and the United Kingdom Ministry of Defence (UK MOD). Defence did not take steps to resolve uncertainty around the legislative authority for the payments, which had been identified while developing the first grant to NATO. Defence's advice to decision-makers, in the context of its administration of financial assistance grants to NATO and the UK MOD, was not complete and did not satisfy all mandatory requirements of the *Commonwealth Grants Rules and Guidelines* (CGRGs).

3.8 As discussed in paragraph 3.4, Defence's planning occurred in response to each tranche of assistance agreed by the Australian Government. This section examines: Australian Government policy approvals of military assistance to be provided to the Government of Ukraine; Defence tasking orders (TASKORDs); exchanges of letters between the Australian Department of Defence and the Ministry of Defence of Ukraine; the procurement of items; and the provision of military equipment to the Government of Ukraine through grants via mechanisms established by the North Atlantic Treaty Organization (NATO) and the United Kingdom Government.

Australian Government approvals of assistance

3.9 The first tranche of military assistance to the Government of Ukraine was approved by the Australian Government on 1 March 2022 and announced by the Australian Prime Minister and Minister for Defence on the same day. On 7 March 2022, the Australian Government agreed that policy approval of any further assistance would be provided by an exchange of correspondence between the Minister for Defence and the Prime Minister, in consultation with the Treasurer, the Minister for Finance and the Minister for Foreign Affairs.

3.10 The ANAO examined whether all gifting sent as at 31 December 2022 had the necessary government policy approvals. This included \$270.5 million in military assistance sent to the

34 The ANAO identified issues relating to the following legal obligations: Defence export permits; gifting authorisations under the PGPA Act; and Customs export declarations. See paragraphs 3.72 to 3.103.

Government of Ukraine between 2 March and 7 December 2022. A summary of the ANAO's analysis relating to government policy approvals for military assistance is provided in Table 3.1.

Table 3.1: Government policy approval of military assistance to the Government of Ukraine

Details of approval	Value (\$)	Proportion of total value (%)
Approval obtained before the assistance was delivered to Ukraine	234,083,480	86.5
Unknown whether approval was obtained before or after the assistance was delivered to Ukraine ^a	16,970,588	6.3
No record of approval ^b	19,453,397	7.2
Total	270,507,465	100.0

Note a: The timing of approval could not be determined as correspondence was not dated.

Note b: This primarily relates to an instance where a batch of assistance was understood by Defence to be agreed by the Australian Government, but the approval was not documented. See paragraph 3.11 of this audit report.

Source: ANAO analysis.

3.11 Table 3.1 indicates that there were items for which Australian Government policy approvals could not be located by Defence. These relate to an instance where the CDF issued a TASKORD for the preparation for despatch of approximately \$19.5 million of military assistance, after recording in an email that the Minister for Defence's agreement had been received. However, Defence could not provide evidence of written approvals from either the Minister for Defence or the Prime Minister for these items.

Internal Defence taskings (TASKORDs)

3.12 Following the Australian Government's approval of tranches of military assistance, and consistent with Defence's business as usual processes, internal taskings were issued using CDF TASKORDs (task orders, discussed in paragraph 2.12).

3.13 As well as providing internal Defence authority, CDF TASKORDs included instructions on:

- roles and responsibilities;
- means of delivery;
- timeframes; and
- items to be delivered and their level of priority.

3.14 For the initial flights of military assistance scheduled, CDF TASKORDs were prescriptive about what was to be sent, and when. From 28 March 2022, CDF TASKORDs required divisions and branches within Defence, including MSC, Joint Logistics Command, and the Strategy, Policy and Industry Group to work with DFAT and other agencies to coordinate a cleared and prioritised list of military assistance. Since then, three levels of priorities (with 1 being the highest and 3 the lowest) have been communicated regularly through CDF TASKORDs.

3.15 Expected flight intervals were also communicated through CDF TASKORDs. There has been a regular flow of military assistance by air, largely in accordance with these timeframes. Flight

intervals have varied over time and are the subject of agreement between Defence and various international stakeholders, including the Government of Ukraine (see paragraph 4.8).

Exchanges of letters

3.16 While not a formal requirement, each tranche of military assistance was the subject of an exchange of letters between Defence officials and a representative of the Government of Ukraine. The purpose of the exchanges of letters was to provide the Government of Ukraine with a record of what had been gifted and to set out the arrangements and understandings between the Governments of Australia and Ukraine regarding the gifting of items. The letters included lists of what was agreed to be provided and any provisions associated with the assistance.³⁵ The list of provisions remained largely the same across all exchanges of letters. Provisions included:

- receipt on delivery;
- who is to be the sole user;
- responsibility for various costs;
- export control requirements;
- third party transfer; and
- intellectual property.

3.17 A number of the provisions were intended to protect Australian Government interests by demonstrating compliance with international obligations.

3.18 ANAO analysis indicates that 58 items with a value of \$38.4 million were not included in exchanges of letters.

Legal review and clearance of exchanges of letters

3.19 Defence's internal administrative policy requires Defence personnel to engage Defence's legal area (Defence Legal) in relation to 'the drafting, negotiation, or interpretation of an international government-to-government agreement or arrangement'.³⁶

3.20 Legal review and clearance was sought and provided for 13 of the 16 exchanges of letters. Defence advised the ANAO that Defence Legal was not consulted on three exchanges of letters. Defence records indicate this was drawn to the attention of relevant internal stakeholders.

35 Examples of such provisions included that the gift: did not include assignment, transfer or sublicensing of any intellectual property rights; and would be used in compliance with applicable international law, including the Law of Armed Conflict.

36 Defence Instruction Administrative Policy, July 2020

Procurements for items to be gifted

3.21 In addition to gifting military assistance from its existing stocks, Defence undertook procurement processes specifically for the purchase of items to be gifted to the Government of Ukraine.³⁷

3.22 At 31 December 2022, there had been eight procurements undertaken for non-lethal items at a total cost of \$22.5 million, as shown in Table 3.2.³⁸ The procurements occurred between late February and October 2022. Based on Defence records, the ANAO calculated that for the items purchased as part of these processes, \$7.46 million in value had been delivered to Ukraine as at 31 December 2022. Delivery was based on a prioritised list of military assistance.³⁹

Table 3.2: Value of procurements undertaken for items to be gifted

Month	Value ^a (\$)
February	2,898,120
April	12,074,614
May	121,469
July	297,000
October	7,143,978
Total	22,535,181

Note a: Value is based on the relevant purchase order issued to supplier. This excludes the one procurement where the purchase order is in US\$, so the value is based on the AusTender notification which is in AUD\$.

Source: ANAO analysis of Defence documentation and AusTender contract notifications.

3.23 Of the eight procurements, one was approved for gifting by the Australian Government on 1 March 2022 and the remaining seven formed part of an Australian defence industry package. The industry package consisted of two funding announcements.

- On 31 March 2022, the Prime Minister announced up to \$25 million to purchase items from Australian defence industry specifically for gifting to the Government of Ukraine. The items were to include, among other things, unmanned aerial and unmanned ground systems, rations and medical supplies.⁴⁰

37 Defence utilised existing contractual arrangements to source and/or replace items for gifting to the Government of Ukraine as well as to accommodate the required delivery timeframes and schedules. For example, Joint Logistics Command utilised existing contractual arrangements for warehousing, and Joint Movements Unit utilised existing standing offer arrangements for the transportation of gifted capabilities through Antonov flights. Procurements under pre-existing contractual arrangements have not been reviewed as part of this audit.

38 In addition to the eight procurements, Defence engaged with another potential supplier for the purchase of items for gifting to the Government of Ukraine. However, Defence did not proceed with the purchase due to risk considerations.

39 See paragraphs 3.14 to 3.15 for discussion on flight intervals and prioritisation of items to be sent.

40 Prime Minister and Minister for Defence, *Joint Media Statement — Additional military assistance to Ukraine*, 31 March 2022, available from <https://www.minister.defence.gov.au/statements/2022-03-31/additional-military-assistance-ukraine> [accessed 4 August 2022].

- On 29 June 2022, the Minister for Defence agreed to Defence's request for an additional \$7 million to purchase items from Australian defence industry. While the request was endorsed by the Prime Minister, the letter of endorsement was undated.⁴¹

3.24 In addition to the eight defence industry procurements, Defence advised the ANAO in March 2023 that it had used \$960,000 of funds from the Australian defence industry package to purchase replacements for the combat rations and medical kits it had gifted from its own stocks.

3.25 Due to the urgent timeframes, Defence did not call for open tenders. For each of the procurements, Defence engaged with the Australian defence industry to identify suitable suppliers with items it could gift to the Government of Ukraine. On 31 March 2022, Military Strategic Commitments Division (MSC) tasked areas within Defence with the relevant subject matter expertise to source information from potential suppliers and to undertake assessments of their offers.⁴² The key criteria for determining potential suppliers were that:

- items were suitable for gifting to the Government of Ukraine; and
- suppliers were able to meet tight delivery timeframes — this was especially the case for four of the initial procurements, where potential suppliers were required to deliver the items within two to three weeks.

Defence engagement with potential suppliers

3.26 Defence's engagement with suppliers consisted of the following processes.

- For one procurement — following the provision of unsolicited proposals by potential suppliers to Defence officials and the Minister for Defence, comparative assessments were conducted of three potential suppliers (all of which had provided unsolicited proposals to Defence and the Minister)⁴³ regarding their ability to meet the required delivery timeframes and were suitable as Australian defence industry participants.
- For one procurement — following discussions between a subnational government in Ukraine and a supplier it had approached, Defence engaged with the supplier to assess its ability to meet delivery timeframes and suitability as an Australian defence industry participant.
- For three procurements — Defence undertook a market survey to identify suitable suppliers. The results of that survey informed the development of options by Defence regarding what could be procured for gifting to the Government of Ukraine. Defence then approached selected suppliers with requests for information and undertook further assessments of their suitability.
- For two procurements — building on the market survey previously undertaken and the specific goals of the procurements, Defence reengaged a previously selected supplier based on its access to experts in the relevant field.

41 There were seven letters from the Prime Minister to the Minister for Defence between March and November 2022. Two of these, responding to letters from the Minister for Defence in June and October 2022, were undated.

42 As tasked by CDF on 18 March 2022, Defence Industry Policy Division also separately engaged with Australian defence industry to identify potential acquisitions.

43 Two other potential suppliers had been considered earlier by Defence. However they were not able to meet delivery timeframes and required specifications.

- For one procurement — also building on the market survey previously undertaken, Defence compared the ability of two suppliers to meet delivery timeframes and the suitability of their items.

Compliance with Commonwealth Procurement Rules

3.27 Procurement by Commonwealth entities is governed by the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Pursuant to subsection 105B(1) of the PGPA Act, the Minister for Finance has issued Commonwealth Procurement Rules (CPRs)⁴⁴ which set out mandatory rules for Commonwealth entities when planning or conducting a procurement.

3.28 Part 9 of the CPRs provides that Australian Government procurement is conducted by open tender or limited tender. Open tender involves publishing an open approach to market and inviting submissions. Limited tender involves an entity directly approaching one or more potential suppliers to make submissions. For procurements at or above a defined procurement threshold (for Defence, \$80,000 for procurements other than construction services) limited tender can only be conducted in the defined circumstances listed in paragraph 10.3 of the CPRs, or when a procurement can satisfy certain exemptions listed in Appendix A of the CPRs. In addition, paragraph 2.6 of the CPRs states that an accountable authority can decide that the CPRs do not apply in some circumstances.

3.29 As discussed in paragraph 3.25, Defence did not conduct open tender processes. Defence relied on exemption 5 in Appendix A of the CPRs, which relates to: ‘*procurement for the direct purpose of providing foreign assistance*’. Defence records also cited other applicable CPR provisions, which are included in Table 3.3.

Table 3.3: Procurements of military assistance for the Government of Ukraine: CPR provisions cited by Defence for limited tender

CPR reference ^a	CPR detail
Paragraph 2.6	The CPRs do not apply to the extent that an official applies measures determined by their accountable authority to be necessary for the maintenance or restoration of international peace and security, to protect human health, for the protection of essential security interests, or to protect national treasures of artistic, historic or archaeological value.
Paragraph 10.3.d.ii	When the goods and services can be supplied only by a particular business and there is no reasonable alternative or substitute for one of the following reasons ... to protect patents, copyrights, or other exclusive rights, or proprietary information ...
Appendix A, exemption 5	Procurement for the direct purpose of providing foreign assistance.

Note a: Defence’s records indicate that for two procurements, an exemption under exemption 5 of Appendix A was recorded, and for six procurements, actions were documented against all three provisions listed above.

Source: ANAO analysis of Defence documentation.

44 The CPRs are periodically revised and reissued. The versions that applied at the time of these procurements were issued on 14 December 2020 and 1 July 2022.

For the most recent version of the CPRs, see: Department of Finance, *Commonwealth Procurement Rules*, July 2022, available from <https://www.finance.gov.au/sites/default/files/2022-06/CPRs%20-%201%20July%202022.pdf> [accessed 11 May 2023].

Value for money

3.30 The core rule of the CPRs is achieving value for money. This applies irrespective of the procurement method adopted (whether open or limited tender). The CPRs state that:

4.4 Achieving value for money is the core rule of the CPRs. *Officials* responsible for a *procurement* **must** be satisfied, after reasonable enquiries, that the *procurement* achieves a value for money outcome [emphasis in original].⁴⁵

...

4.5 Price is not the sole factor when assessing value for money. When conducting a procurement, an *official* **must** consider the relevant financial and non-financial costs and benefits of each *submission* ... [emphasis in original].⁴⁶

3.31 In assessing the proposals from Australian defence industry, Defence officials were required to consider the relevant financial and non-financial costs and benefits in determining whether the procurement represented value for money, including but not limited to the following considerations set out in paragraph 4.5 of the CPRs:

- the quality of the goods and services;
- fitness for purpose of the proposal;
- the potential supplier's relevant experience and performance history;
- flexibility of the proposal (including innovation and adaptability over the lifecycle of the procurement);
- environmental sustainability of the proposed goods and services (such as energy efficiency, environmental impact and use of recycled products); and
- whole-of-life costs.⁴⁷

3.32 In the context of these requirements, the ANAO examined Defence's documentation that set out how value for money was assessed for each of the eight procurements. Defence records indicate that for the eight procurements, Defence conducted procurement processes which assessed value for money. Defence's documentation for the procurements demonstrated that Defence considered all but one of the areas listed in paragraph 4.5 of the CPRs⁴⁸ and was satisfied that the offerings represented value for money. Defence's consideration of value for money included, for example:

- assessment of the market;
- request for quote from several potential suppliers;
- fitness for purpose and capability benefits of gifting to the Government of Ukraine; and
- consideration of risk.

45 Department of Finance, *Commonwealth Procurement Rules*, July 2022, paragraph 4.4.

46 *ibid.*, paragraph 4.5.

47 Department of Finance, *Commonwealth Procurement Rules*, July 2022, paragraph 4.5. CPR paragraph 4.6 provides that whole-of-life costs could include: the initial purchase price of the goods and services; maintenance and operating costs; transition out costs; licensing costs (when applicable); the cost of additional features procured after the initial procurement; consumable costs; and disposal costs.

48 There is no evidence that Defence considered the environmental sustainability of the proposed goods and services.

3.33 Before proceeding with a procurement, relevant areas within Defence sought endorsement from the Military Strategic Commitments Division (MSC). A Defence official with the relevant PGPA section 23 delegation approved the procurements.⁴⁹ There was evidence that Defence chose not to proceed with one potential supplier due to potential risks associated with the transportation of the item.

Payments to NATO and United Kingdom Ministry of Defence

3.34 In addition to military assistance in the form of equipment, the Australian Government, through Defence, provided \$42.4 million internationally in grant funding as part of its military assistance package for the Government of Ukraine.

- Two grants were made to the North Atlantic Treaty Organization's Comprehensive Assistance Package Trust Fund for Ukraine (NATO CAP trust fund).
- One grant was made to the United Kingdom's Ministry of Defence (UK MOD).

3.35 Table 3.4 sets out: the amounts contributed by the Australian Government; when the funds received approval by Australian ministers; and when the funds were provided to the recipient.

Table 3.4: Defence grants to NATO and the United Kingdom Ministry of Defence

Date announced	Date approved by the Prime Minister	Date approved by the Minister for Defence	Date provided to recipient	Recipient	Amount (AUD\$ million)
28 February 2022	23 February 2022 ^a	25 February 2022	1 March 2022	NATO CAP Trust Fund	4.2
1 March 2022	31 March 2022	11 March 2022	4 May 2022	United Kingdom Ministry of Defence	18.0
4 July 2022	June 2022 ^b	11 August 2022	19 August 2022	NATO CAP Trust Fund	20.2
Total					42.4

Note a: The first grant was approved by the Australian Government, with subsequent approvals provided by the Prime Minister in accordance with the arrangements agreed by the Government on 7 March 2022.

Note b: While the Prime Minister's approval letter was undated, it was recorded in response to the Minister for Defence's letters of 27 and 29 June 2022.

Source: ANAO analysis of Defence documentation.

Legislative authority

3.36 The Australian Government Solicitor (AGS) has stated that:

In planning for a new grant opportunity or other grant activity, or reviewing an existing grant opportunity or grant activity, Commonwealth entities must consider their power to enter into a grant arrangement, particularly in light of the High Court's decisions in *Williams v Commonwealth (Williams No 1)* and *Williams v Commonwealth (No 2) (Williams No 2)*. These cases indicate that most grants require specific legislative authority in addition to an appropriation.

⁴⁹ In Defence, a section 23 commitment approval documents the exercise of delegated authority to commit relevant money (that is, public money) under subsection 23(3) of the *Public Governance, Performance and Accountability Act 2013*.

This means that, when planning a grant activity, one of the first issues that an entity should consider is whether it will require legislative authority in addition to an appropriation to support the grant activity. If it does, it should then consider whether any existing legislative authority can be relied on.

The CGRGs [Commonwealth Grants Rules and Guidelines] provide that, before entering into an arrangement for the proposed commitment of relevant money, there must be legal authority to support the arrangement (para 3.6). This authority will generally be derived from legislation.

Most grants are authorised by either specific legislation or by s 32B of the *Financial Framework (Supplementary Powers) Act 1997* (FF(SP) Act), which was enacted following the decision in *Williams No 1*.

...

Various items specified in Sch 1AA and Sch 1AB to the FF(SP) Regulations, together with s 32B of the FF(SP) Act, provide legislative authority for grant activities.⁵⁰

3.37 To facilitate the making of payments to NATO and the United Kingdom Ministry of Defence, Defence sought internal advice from its legal and finance areas, as well as AGS, on the legislative authority for the grants. Defence records indicate that AGS advice was sought urgently on 28 February 2022, with 'preliminary' oral advice received within three hours on the same day. A written summary of that advice was provided by AGS to Defence on 4 March 2022. The summary indicated that the preliminary advice had canvassed sources of legal authority supporting the payments, and assessed the legal risks relating to those sources of legal authority. The preliminary advice was not clear-cut, with the risks (relating to the identified sources of legal authority for the payments) ranging from 'at least medium risk' to 'high risk'. The summary also indicated that with more time and background information, AGS may have arrived at a different view.

NATO's Comprehensive Assistance Package Trust Fund (CAP) for Ukraine

First payment to NATO

3.38 NATO established the CAP trust fund for Ukraine in 2016 as part of its response to Russia's invasion of Crimea in 2014. In early 2022, the CAP was strengthened to 'provide the country [Ukraine] with immediate, short-term, non-lethal military assistance'.⁵¹

3.39 On 28 February 2022, the Australian Government publicly announced that Defence would contribute \$4.2 million (announced as US\$3 million) to the CAP for 'non-lethal military equipment and medical supplies' for Ukraine. The steps prior to this were as follows.

50 Australian Government Solicitor, *Legal briefing Number 112, Commonwealth grants: an overview of legal issues*, 12 February 2019, pp.3-4. Available from <https://www.ags.gov.au/publications/legal-briefing/br112> [accessed 11 June 2023]. Case citation footnotes appearing in the original text have not been included in this quote.

Paragraph 3.6 of the CGRGs states that: 'Before entering into an arrangement for the proposed commitment of relevant money there must be legal authority to support the arrangement.' Department of Finance, *Commonwealth Grants Rules and Guidelines 2017*. Available from <https://www.finance.gov.au/government/commonwealth-grants/commonwealth-grants-rules-and-guidelines> [accessed 11 June 2023].

Section 51 of the Australian Constitution specifies the legislative powers of the Commonwealth Parliament. These include external affairs and the naval and military defence of the Commonwealth.

51 NATO, *Relations with Ukraine*, 28 October 2022, available from https://www.nato.int/cps/en/natohq/topics_37750.htm [accessed 28 January 2022].

- 23 February 2022 — the Australian Government approved an unspecified amount of financial support for NATO's trust fund.
- 24 February 2022 — Defence provided advice to the Australian Minister for Defence;
- 25 February 2022 — the Australian Minister for Defence provided approval for \$4.2 million (US\$3 million) for the CAP trust fund.⁵²
- 27 February 2022 — the Ambassador to the Australian Mission to the European Union and NATO signed a pledge letter to NATO offering US\$3 million, on the understanding that NATO would use these funds to purchase and deliver specific non-lethal equipment requested by the Government of Ukraine.⁵³

3.40 Defence was responsible for preparing advice, obtaining the approvals required under Australian legislation and processing the payments. As discussed in paragraph 3.37, urgent legal advice was sought and obtained from AGS on 28 February 2022 and it therefore did not inform the development of Defence advice to the Minister for Defence, dated 24 February 2022. That Defence advice related to the Minister's approval of funds, which occurred on 25 February 2022.

3.41 The legal advice obtained by Defence on 28 February 2022 did inform subsequent departmental decisions. Defence records indicate that the acting Secretary of Defence was advised orally, on 28 February 2022, of the risks relating to the identified sources of legal authority for the payment (discussed in paragraph 3.37). Later that day the Assistant Secretary, Global Interests branch, International Policy Division, advised colleagues by email that:

FAS IP [First Assistant Secretary International Policy] has discussed with the acting Secretary who has indicated he can accept these risks, and that we should go ahead, while reporting our non-compliance.

3.42 The nature of the identified non-compliance was not documented in this email. The ANAO's review indicates that the reference was to non-compliance with requirements of the Commonwealth grants framework as set out in the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).⁵⁴

3.43 Defence records indicate that the invoice date for a US\$3 million payment to NATO Ukraine CAP TF (trust fund) was 28 February 2022. On 1 March 2022, the Defence delegate approved a

52 Prime Minister, Foreign Minister, Treasurer and Minister for Defence, *Joint Media Statement — Economic Measures against Russia and lethal military equipment for Ukraine*, 28 February 2022, available from <https://www.foreignminister.gov.au/minister/marise-payne/media-release/economic-measures-against-russia-and-lethal-military-equipment-ukraine> [accessed 5 September 2022].

53 The letter noted that the donation would comply with the laws and regulations of Australia and that provision of the donation was the most efficient means for Australia to make an immediate and effective contribution.

54 The CGRGs are a statutory instrument made by the Minister for Finance under subsection 105C(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Paragraph 2.10 of the CGRGs provides that 'Officials must comply with the CGRGs'. This provision applies to all entity officials, including the acting Secretary of Defence. Under paragraph 15(1)(a) of the PGPA Act, the acting Secretary, as the accountable authority of the entity, also has a duty to govern the entity in a way that promotes the proper use and management of public resources for which the authority is responsible. Under section 8 of the PGPA Act, the proper use or management of public resources means efficient, effective, economical and ethical use. While section 21 of the PGPA Act provides that the accountable authority must govern the entity in accordance with paragraph 15(1)(a) in a way that is 'not inconsistent with the policies of the Australian Government' — which in this case included rapid implementation — deliberate non-compliance with the grants framework raises issues of 'proper' and 'ethical' use of public resources under the PGPA Act.

US\$3 million payment to NATO under subsection 23(3) of the PGPA Act, with payment made the same day.

Second payment to NATO

3.44 A second Australian Government contribution, for a further \$20.2 million to the NATO CAP trust fund, was announced by the Minister for Defence on 4 July 2022.⁵⁵ Defence provided written policy advice to the Minister for Defence both before and after this announcement, and received ministerial approval for the grant on 11 August 2022.

3.45 The grant was implemented through a pledge letter. Pledge letters were exchanged in mid-August 2022. The Ambassador to the Australian Mission to the European Union and NATO signed a second letter on 16 August 2022 to NATO's Assistant Secretary General Operations and Financial Controller, pledging US\$14 million.⁵⁶ This was, again, on the understanding that the funds would be used to purchase and deliver non-lethal equipment.

3.46 On 31 August 2022, NATO advised Defence that the funds had been received and that Australia's donations had been used to purchase non-lethal aid.

Defence advice on NATO payments

3.47 The second payment to NATO's CAP trust fund was over four times the value of the first contribution of \$4.2 million, was provided for the same purpose, and delivered around five months later. In the intervening period, Defence had not taken steps to supplement the 'preliminary' legal advice it had received in early 2022⁵⁷, or resolve the issues raised in that advice regarding the sources of legal authority for these payments and the legal risks. As discussed in paragraph 3.37, the preliminary legal advice was not clear-cut, with the risks (relating to the identified sources of legal authority for the payments) ranging from 'at least medium risk' to 'high risk'. The legal advisor (AGS) had also indicated that with more time and background information, it may have arrived at a different view.

3.48 In March 2023, Defence advised the ANAO that:

This was the only written advice that Defence Legal is aware of having been provided to Defence in relation to the provision of funds/gifts to Ukraine. The advice lists legislative risk as high. While we take the issue of risk seriously we note that there was Government direction to provide assistance to Ukraine and high legislative risk in the area of funding is not unusual, especially where an existing schedule 1AA Financial Framework (Supplementary Powers) Act 1997 program description is relied upon for legislative authority. The risk of challenge to the legislative authority was seen as remote and so open for a decision maker to accept; the situation might be different if risk was assessed as 'extreme'. The information on risk was presented to the decision maker as one of the considerations relevant to the decision to approve funding in accordance with Government direction.

3.49 Defence further advised the ANAO that it:

55 Deputy Prime Minister and Minister for Defence, *Media Release — Australia Increases Support to Ukraine*, 4 July 2022, available from <https://www.minister.defence.gov.au/media-releases/2022-07-04/australia-increases-support-ukraine> [accessed 5 September 2022].

56 Equivalent to approximately AUD\$20.2 million.

57 As discussed in paragraph 3.37, Defence records indicate that AGS advice was sought urgently on 28 February 2022, with 'preliminary' oral advice received within three hours on the same day. A written summary of that advice was provided by AGS to Defence on 4 March 2022.

did not believe it was necessary to seek any subsequent/additional AGS advice. This is because the risk (medium legislative authority risk) would be substantially the same unless a new Schedule 1AB item or new legislation is created (which was not possible within the timeframe). It is noted that a medium risk is not exceptional and is unlikely to be realised.⁵⁸

3.50 In its 5 August 2022 written briefing to the Minister for Defence, Defence advised that: ‘It is possible to accept the [legal] risk, noting the unprecedented nature of the payments.’

3.51 In that briefing, Defence also advised the Minister for Defence of a risk relating to further non-compliance with the Commonwealth grants framework⁵⁹, as follows:

Commonwealth grants are required to be administered by the Government’s Grant Hub, however in this case we deem this mechanism not appropriate. The Grants Hub was designed primarily with a focus on grant opportunities for businesses awarded through large rounds with multiple applicants, and would not meet Defence’s requirement to quickly administer an ad-hoc grant to NATO. Accordingly, Defence will self-administer the grant with NATO. As with previous similar types of grants, self-administration would leave Defence technically non-compliant with whole-of-government grants administration arrangements.⁶⁰

3.52 The Minister for Defence noted, on this briefing, that Defence had drawn attention to being ‘technically non-compliant’ with whole of government grants administration arrangements.

3.53 Paragraph 4.6 of the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs) sets out the minimum content and format requirements for departmental advice to ministers when they perform the role of an approver for Commonwealth grants.⁶¹ Officials must provide Ministers with written advice that, among other things:

- explicitly states that the spending proposal being considered for approval is a ‘grant’;
- provides information on the applicable requirements of the PGPA Act and PGPA Rule and the CGRGs, including the legal authority for the grant; and
- includes the merits of the proposed grant or grants relative to the grant opportunity guidelines and the key principle of achieving value with relevant money.

3.54 Officials must develop grant opportunity guidelines for all new grant opportunities, and revised guidelines where significant changes have been made to a grant opportunity.⁶² While this includes one-off and ad hoc grants, the guidelines for those grants are not required to be published. Consistent with the key principle of ‘proportionality’ under the CGRGs, the format and complexity of guidelines may vary, depending on the activity. At a minimum, guidelines for one-off or ad hoc grant opportunities should include: the purpose or description of the grant; the objective; the selection process; any reporting and acquittal requirements; and the proposed evaluation mechanisms.⁶³ There was no evidence that any grant opportunity guidelines had been developed

58 ANAO comment: the reference to a ‘new Schedule 1AB item’ relates to a schedule of the *Financial Framework (Supplementary Powers) Act 1997* discussed in paragraph 3.36.

59 Earlier non-compliance identified by Defence is discussed in paragraphs 3.41 to 3.42 of this audit report.

60 Defence further advised that, at the time the grant was approved, the requirement for the Commonwealth grants to be administered by the Government’s Grant Hub was set out in *Estimates Memorandum 2017/40 Whole-of-Government Grants Administration arrangements*.

61 Department of Finance, *Commonwealth Grants Rules and Guidelines 2017*, Department of Finance, Canberra, 2017, paragraph 4.6, p. 11.

62 *ibid.*, paragraph 4.4, p. 11.

63 *ibid.*, paragraph 9.3, p. 23.

by Defence for the three grants it provided during 2022 to contribute towards assistance for the Government of Ukraine.

3.55 The departmental advice provided to the Minister for Defence for each NATO grant fell short of the mandatory requirements in the CGRGs, and on that basis was not complete. The brief for the second NATO grant met more of those requirements than the first, in that it stated that the payment was a grant and included advice on the legal authority for the grant.

3.56 Neither briefing included an outline as to how approving the grant would be a proper use of relevant money by the Minister for Defence.⁶⁴ The inclusion of this aspect in the advice is important for appropriately supporting ministers to meet their obligations under section 71 of the PGPA Act, which provides that: 'A Minister must not approve a proposed expenditure of relevant money unless the Minister is satisfied, after making reasonable inquiries, that the expenditure would be a proper use of relevant money'.⁶⁵ Defence did not request in its briefings that the Minister for Defence provide written approval of the grants as a 'proposed expenditure of relevant money' under subsection 71(1) of the PGPA Act.

3.57 The August 2022 brief referred to item 413.004 of Schedule 1AA of the FFSP Regulations⁶⁶ as a source of 'potential legislative authority' for the NATO grant. The briefing did not include, for the sake of completeness, the title of that item, which is 'Official Development Assistance – Emergency, Humanitarian and Refugee Program'. Further, Defence did not provide advice on whether it had reconciled its reliance on official development assistance as a source of authority with paragraph 2.6 (item I) of the CGRGs, which provides that:

2.6 For the purposes of the CGRGs, the following financial arrangements are taken not to be grants:

- I. a payment of assistance for the purposes of Australia's international development assistance programme, which is treated by the Commonwealth as official development assistance;¹⁹

...

[Footnote 19] The Commonwealth has regard to the definition of official development assistance that the OECD has set out, available on the OECD's website see <http://www.oecd.org>.

64 Paragraph 4.4 of the CGRGs states that officials must, among other things, 'advise the relevant Minister on the relevant requirements of the PGPA Act ... where a Minister is considering a proposed expenditure of relevant money for a grant'. Footnote 40 of the CGRGs identifies section 71 of the PGPA Act as the source of these requirements.

65 The PGPA Act defines 'proper' as efficient, effective, economical and ethical. As discussed in paragraph 3.70, Defence did provide advice to the Minister for Defence regarding section 71 requirements of the PGPA Act, in the context of the UK MOD grant.

66 As discussed in paragraph 3.36, the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) confers on the Commonwealth, in certain circumstances, powers to make arrangements under which money can be spent, or to make grants of financial assistance. The arrangements, grants, and programs (or classes of arrangements or grants in relation to which the powers are conferred) are specified in the Financial Framework (Supplementary Powers) Regulations 1997 (FFSP Regulations). The powers in the FF(SP) Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

3.58 The OECD definition for official development assistance (ODA) states that ‘military aid and promotion of donors’ security interests are not ODA’.⁶⁷

3.59 Paragraph 2.6 of the CGRGs raises two issues. First, the source of legislative authority on which the Australian Government could rely. There is evidence that Defence sought advice on this issue prior to payment of the first (NATO) grant.

3.60 Second, the threshold issue of whether the payments to NATO, which were considered by Defence to be ODA, were grants for the purposes of the CGRGs. Defence documentation indicates that this issue was contemplated by Defence on at least two occasions during the development of arrangements for the second (NATO) grant — in late March 2022, during the development of the pledge letter and on 1 August 2022, during the development of advice for the Minister for Defence.⁶⁸ This involved a Defence Legal official noting that item 413.004 of Schedule 1AA of the FFSP Regulations, which was relied on as the legislative basis for the first (NATO) grant, was ‘one that might normally bring the grant into the exclusion in 2.6.1 of the CGRGs’ and therefore may not need to be administered in accordance with the CGRGs. In response, Defence Finance Group informed Defence Legal on 2 August 2022 that:

we have taken the view that unless there is appetite for the business [International Policy Division] to confirm this with DFAT, that the safer option is to work within the CGRGs framework. We were also thinking that it may not meet the ‘promotion of the economic development and welfare of developing countries’ element for ODA. This is just our perspective however, we are not the experts on this ...

3.61 Defence Legal agreed to proceed on that basis and noted that ‘even if there is a technical possibility to avoid the CGRGs ... [Defence Finance Group is] right about anything of this nature being best consulted with DFAT’.

3.62 There would have been benefit in Defence working to resolve the issues that arose in respect to its grants administration, including in consultation with the Department of Finance (Finance), which has whole-of-government responsibility for the Commonwealth grants framework and issues guidance to entities on payment types.⁶⁹ Doing so within the four months between the first and second NATO payments would have provided Defence with a basis for providing more complete and accurate advice to decision-makers.

3.63 While it is not known whether the Australian Government may decide to provide additional grants or financial assistance to support the Government of Ukraine, it would be prudent for Defence to take steps to resolve the identified issues and uncertainties relating to such payments, in consultation with Finance and DFAT.

67 See: Organisation for Economic Co-operation and Development, *Official development assistance (ODA)*, available from <https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/official-development-assistance.htm> [accessed 28 March 2023].

68 This advice was in relation to the Minister for Defence’s approval for the second NATO trust fund payment. It was developed collaboratively over a period of almost two weeks commencing 25 July 2022 by a number of Defence officials from the International Policy; Defence Legal; and Defence Finance divisions.

69 The Department of Finance provides guidance to Commonwealth entities on the frameworks applying to different payment types. To view its guidance publication, see: Department of Finance, *Grants, Procurements and other financial arrangements (RMG 411)*, available from <https://www.finance.gov.au/publications/resource-management-guides/grants-procurements-and-other-financial-arrangements-rmg-411> [accessed 1 April 2023].

Opportunity for improvement

3.64 An opportunity remains for Defence to resolve, in consultation with the Department of Finance and the Department of Foreign Affairs and Trade, issues identified in its administration of financial assistance grants provided by the Australian Government to assist the Government of Ukraine.

United Kingdom Ministry of Defence

3.65 On 11 March 2022, the Australian Minister for Defence approved \$18 million⁷⁰ to be provided to the United Kingdom's Ministry of Defence (UK MOD). The Australian Prime Minister agreed in writing to the grant on 31 March 2022. Two sets of letters were exchanged between Defence and the UK MOD. One set of letters was exchanged before the Australian Prime Minister's approval was received and one set was exchanged after approval was received.

- On 17 March 2022, the Head of the Australian Defence Staff at the Australian High Commission in London signed a letter to the UK MOD offering a 'general, non-earmarked contribution' of \$18 million to fund the purchase and delivery of materiel through the UK MOD's existing mechanisms, aligned with the capability needs the Government of Ukraine had advised. The UK MOD responded on 17 March 2022 to confirm the arrangements proposed by Australia.
- On 11 April 2022, the Head of the Australian Defence Staff at the Australian High Commission in London signed an additional letter executing the contribution, following receipt of approval from the Australian Prime Minister. The UK MOD acknowledged the letter on 28 April 2022, noting that it brought into effect an agreement between Defence and the UK MOD.

3.66 In its 17 March 2022 letter to the UK MOD, Defence noted that Australian funding to the UK MOD supported the objectives of the 2014 *Treaty between the Government of Australia and the Government of the Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation* (the Defence Cooperation Treaty), specifically in relation to Article 1.⁷¹

3.67 On 4 May 2022, the Defence delegate signed the section 23 (PGPA Act) approval for GBP£10.13 million to be provided to the UK MOD. On 14 June 2022, the UK MOD advised Defence that the funding would be used to provide specialised military capabilities to the Government of Ukraine, to be delivered through the International Donor Coordination Centre. The UK MOD further advised Defence that steps would be taken to ensure that the military capabilities purchased and

70 As discussed in paragraphs 3.69 to 3.70, the Minister for Defence provided approval for a proposed expenditure under section 71 of the PGPA Act. The Secretary of Defence provided approval for the commitment of public money under section 23 of the PGPA Act.

71 Article 1 of the treaty states that its purpose is to promote: the mutual prioritisation of cooperation between the Parties in defence-related matters; the exchange of information and experiences regarding strategic defence and security issues, including those acquired in the field of operations, from use of military equipment and in connection with international peacekeeping operations; closer engagement on technology, equipment, and support matters; the achievement of value for money in defence and security areas; and consultation on threats to international peace and security. The treaty is available from the Department of Foreign Affairs and Trade website: <https://info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/66D03ACAE472A77CCA257AF9007F8646> [accessed 11 June 2023].

delivered to Ukraine with the funding would not be used to commit any internationally wrongful acts, including violations of international humanitarian law.

Defence advice on the UK MOD payment

3.68 Defence's advice to Australian decision-makers for the UK MOD grant was informed by the preliminary legal advice obtained from AGS on 28 February 2022 (discussed in paragraphs 3.37 and 3.47–3.59). The written summary of that advice provided to Defence on 4 March 2022 referred to Defence's request for advice about the constitutional and legislative authority risk in respect of two payments, being: to a NATO Trust Fund, for the purchase of non-lethal items to assist Ukraine; and through a specific NATO member nation, to purchase items for Ukraine. The AGS advice set out the same reasoning and recommended approach for both payments.

3.69 As discussed in paragraphs 3.53 to 3.54, the CGRGs set out the minimum content and format requirements for departmental advice to ministers when they perform the role of an approver for Commonwealth grants. Defence's advice provided to the Minister for Defence on 9 March 2022 for the UK MOD grant fell short of the mandatory requirements in the CGRGs, and on that basis was not complete. The advice informed the Minister: that the payment was considered to be a grant; of Defence's views on the legal authority for the grant; and that the legislative basis for the Minister approving the grant was section 71 of the PGPA Act. The advice did not discuss the merits of the proposed grant relative to grant opportunity guidelines, as there were none⁷², or the principle of achieving value with relevant money. Further, the advice did not advise the Minister on the specifics of the legal authority being relied upon to make the grant, or that there was uncertainty regarding the legal authority for the grant.

3.70 Defence had advised the Secretary of Defence on 8 March 2022 that the legislative authority for the payment of the funds from the Consolidated Revenue Fund was provided by subsection 23(3) of the PGPA Act and the *Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia for Defence and Security Cooperation* (the Treaty).⁷³ This information was not provided in Defence's 9 March 2022 advice to the Minister.

Did Defence comply with relevant legislative and other requirements for exporting military assistance to the Government of Ukraine?

As at December 2022, Defence had partly complied with relevant legislative and other requirements for the export of military assistance to the Government of Ukraine. Certain items did not have, before their export to Ukraine: an Australian Defence export permit; gifting authorisations under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act); and lodged Australian Customs export declarations.

3.71 The export of military goods from Australia requires consideration of relevant treaties and conventions, and applicable international and domestic legislation.

⁷² As discussed in paragraph 3.54, the CGRGs state that officials must develop grant opportunity guidelines for all new grant opportunities.

⁷³ Defence records indicate that the external affairs power in conjunction with legislative authority provided by 413.004 in Pt 4, Sch 1AA of the FFSP Regulations was relied upon for both NATO grants.

Australian Defence export permits

3.72 The principal piece of legislation governing the import and export of goods into and from Australia is the *Customs Act 1901*. In relation to exports, section 112 deals with prohibited exports and paragraph 112(2A) allows a Minister to publish a list of goods which may not be exported unless an export permit has been issued.

3.73 Regulation 13E of the Customs (Prohibited Exports) Regulations 1958 (PE regulations) provides for the publication of a Defence and Strategic Goods List (DSGL).⁷⁴ The PE regulations allow the Minister for Defence to issue a permit for the exportation of goods included in the DSGL only after 'having regard' to 12 criteria⁷⁵ which are shown in Table 3.5.

Table 3.5: Criteria to be considered for considering a permit for the export of goods on the Defence and Strategic Goods List

Item	Criterion
1	The risk that the goods or the DSGL technology may go to, or become available to, a country upon which the Security Council of the United Nations or Australia has imposed a sanction.
2	The risk that the goods or the DSGL technology may go to, or become available to, a country where they may be used in a way contrary to Australia's international obligations or commitments.
3	The risk that the goods or the DSGL technology may be used to commit or facilitate serious abuses of human rights.
4	Whether the export of the goods or the DSGL technology: <ul style="list-style-type: none"> a) may aggravate: <ul style="list-style-type: none"> i. an existing threat to international peace and security or to the peace and security of a region; or ii. a particular event or conflict of concern to Australia; or b) may otherwise contribute to political instability internationally or in a particular region.
5	Whether the goods or the DSGL technology may: <ul style="list-style-type: none"> a) be used for conflict within a country or for international conflict by a country; or b) further militarise conflict within a country.

74 The DSGL is a statutory instrument, and can be viewed at: Federal Register of Legislation, *Defence and Strategic Goods List 2021*, available from <https://www.legislation.gov.au/Details/F2021L01198> [accessed 21 December 2022].

The most recent DSGL was published on 25 August 2021 and has 344 pages. The DSGL is split into two parts: part 1 lists military items and part 2 lists 'dual-use' items. Defence describes dual-use items as 'items that may be used for commercial purposes, but may be used in military systems or for weapon of mass destruction purposes'.

See: Defence, *The Defence and Strategic Goods List*, available from <https://www.defence.gov.au/business-industry/export/controls/export-controls/defence-strategic-goods-list> [accessed 27 February 2023].

The DSGL describes dual-use goods as 'equipment and technologies developed to meet commercial needs but which may be used either as military components, or for the development or production of military systems or weapons of mass destruction'. There are ten categories of dual-use goods.

75 Customs (Prohibited Exports) Regulations 1958, regulation 13E(4), available from <https://www.legislation.gov.au/Details/F2022C00836> [accessed 28 February 2023].

The Minister (or delegate) may also have regard to any other matters considered appropriate.

Item	Criterion
6	Whether the export of the goods or the DSGL technology may compromise or adversely affect Australia's defence or security interests, its obligations to its allies or its international obligations and responsibilities.
7	Whether the goods or the DSGL technology may go to, or become available to, a country that has policies or strategic interests that are inconsistent with the policies and strategic interests of Australia or its allies.
8	The risk that the export of the goods or the DSGL technology may: <ul style="list-style-type: none"> a) adversely affect Australia's military capability; or b) substantially compromise an Australian defence operation; or c) increase the military capability of a country that is a potential adversary of Australia.
9	The risk that the goods or the DSGL technology may go to, or become available to, a country: <ul style="list-style-type: none"> a) that is developing, or is reasonably suspected of developing: <ul style="list-style-type: none"> i. weapons that may be capable of causing mass destruction; or ii. the means of delivering such weapons; or b) that supports, or is reasonably suspected of supporting, terrorism; or c) whose actions or foreign policies pose a risk of major disruption in global stability or the stability of a particular region.
10	Whether the export of the goods or the DSGL technology may lead to a reaction by another country that may damage Australia's interests or relations with the other country or with a particular region.
11	Whether the goods or the DSGL technology may be used for mercenary activities or a terrorist or other criminal activity.
12	Whether preventing the export of the goods or the DSGL technology may have an adverse effect on Australian industry, trade and economic prosperity to the extent that it may adversely affect the security, defence or international relations of Australia.

Note: There are penalties under the *Customs Act 1901* for breaches relating to export permits: the maximum penalty for exporting DSGL goods without a permit is imprisonment of up to 10 years or a fine not exceeding 2500 penalty units (or both).

Source: Customs (Prohibited Exports) Regulations 1958.

3.74 The Defence Exports Controls Branch (DEC) is described by Defence as 'Australia's military and dual-use goods and technology export regulator'.⁷⁶ DEC assesses all applications for export of the goods which are listed on the DSGL and where it considers that it is appropriate to do so, issues a permit. DEC officials exercise the Minister for Defence's powers to issue export permits under delegation.⁷⁷

⁷⁶ See: Defence, *About Defence Export Controls*, available from <https://www.defence.gov.au/business-industry/export/controls/about/defence-export-controls> [accessed 27 February 2023].

⁷⁷ The PE regulations do not permit the Minister for Defence to delegate ministerial powers to refuse or revoke a permit: only the Minister may refuse a permit.

Defence export permit application assessment process

3.75 Between 5 March 2022 and 20 December 2022, DEC received 25 applications for permits related to military assistance for the Government of Ukraine.⁷⁸ Of these:

- 18 had been finalised by 31 December 2022⁷⁹;
- six were still under assessment at 31 December 2022; and
- one did not require an assessment because it was a duplicate.

3.76 When DEC receives an export permit application⁸⁰, it undertakes two types of assessment:

- a technical assessment to establish what the goods in question are and which (if any) items included in the application are listed on the DSGL; and
- if the item is on the DSGL, a risk assessment against the 12 criteria shown in Table 3.5.

3.77 The ANAO examined the 18 applications finalised by 31 December 2022 to establish whether these technical and risk assessments had been undertaken.

3.78 There was evidence that technical assessments had been completed for each of the applications. Of the 18 finalised applications, 16 were assessed through DEC's technical assessment as including items on the DSGL. Two were assessed by DEC as not including items on the DSGL and were finalised without requiring further assessment.

3.79 There was also evidence that risk assessments had been completed for each of the applications assessed as having items on the DSGL. The risk assessments involved consideration against the criteria set out in Table 3.5. In some instances, DEC sought advice from other sources to assist its consideration, including the Defence Intelligence Organisation (DIO), the Australian Signals Directorate (ASD) and DFAT.⁸¹ DEC documented the reasons for its risk assessments against certain criteria set out in Table 3.5. Defence advised the ANAO on 20 January 2023 that:

even when each of the twelve criteria are not specifically referenced within a risk assessment, that does not mean they have not been considered. Risk assessors, as in most government decision making, may only reference those relevant criteria where specific risks and any related risk mitigating factors have been identified through their information gathering process. This approach is reflected in the risk assessments we have provided for this audit, where many assessments specifically reference criteria 1, 2, 5 and 8.

3.80 The ANAO also reviewed whether gifted items were exported with a Defence export permit. The ANAO's analysis indicates that as at 31 December 2022, 196 items with a combined Defence

78 A single application could include a variety of items. For example, one application included binoculars (which are not listed on the DSGL) and M72 anti-tank rocket launchers (which are).

79 The scope of this audit included applications processed as at 31 December 2022.

80 In the normal course, permit applications are received from companies in the private sector. In this case, where almost all military equipment being gifted was owned by Defence, it was decided that the Australian Defence Export Office (ADEO) would prepare the applications. ADEO's 'normal' role as described on Defence's website is to be 'the key focal point for coordinating whole-of-government defence export support for Australian defence industry.' DEC and ADEO are branches within the Defence Industry Policy division.

81 The advice provided by DFAT related to criterion 2 and 3 in Table 3.5 and related to the risk that the export might contravene provisions of the Arms Trade Treaty due to the possibility that weapons might fall into Russian hands or be used to commit or facilitate a serious violation of international humanitarian law or international human rights law.

inventory value⁸² of \$172.8 million required a Defence export permit. Table 3.6 shows the status of Defence export permits at the time the gifted items were exported from Australia.

Table 3.6: Defence export permit status for gifted items of military equipment — at the time items were exported from Australia^a

Detail	No. of items	Value of items (\$m)
Gifted items exported with a Defence export permit	125	153.4
Gifted items exported without a Defence export permit	60	14.0
Gifted items exported after Defence export permit expired	4	4.1
Gifted items exported before Defence export permit was issued	7	1.3
Total	196	172.8

Note a: For the purposes of this analysis, the ANAO used the export date shown in Defence's systems.

Source: ANAO analysis of Defence records.

3.81 In summary, of the 196 items identified in Table 3.6, 71 items (36 per cent) did not have a Defence export permit when the gifted items were exported from Australia. These items represented 11 per cent by value.

3.82 Defence publishes statistics about export permit processes on its website, as part of its normal performance reporting.⁸³ For 2021–22, Defence reported that it processed 78 per cent of complex export permit applications that it received within 35 business days. Information provided by Defence to the ANAO on 2 February 2023 indicated that that it processed all export permit applications for military assistance to the Government of Ukraine (all of which it considered to be complex) within 22 business days, with an average processing time of 5.4 business days. This information also indicated that Defence had received early advice for most of the export proposals and ten applications were finalised within one business day.

Export permissions from other countries

3.83 As a condition of sale of military equipment or technology to foreign countries, most governments require that there will be no further sale or transfer to a third country without the originating country's permission.

3.84 For Australia, a significant control regime is that of the United States of America, known as the International Traffic in Arms Regulations (ITAR). Defence considered, as necessary, any requirements under the ITAR regime. Box 1 describes the ITAR regime at a high level.

82 Figures have been calculated based on inventory values attributed to specific items by Defence. The ANAO has not assessed whether these values are accurate.

83 See: Defence, *Our performance*, <https://www.defence.gov.au/business-industry/export/controls/about/performance> [accessed 21 March 2023].

Box 1: International Traffic in Arms Regulations (ITAR)

The United States Government Department of State is responsible for the export (and temporary import) of defence articles and services governed by the relevant section of the United States Arms Export Control Act and Executive Order 13637. Export controls are implemented by the International Traffic in Arms Regulations (ITAR).

Section 123.1 of ITAR sets out that a person who intends to export or import temporarily a defence article must obtain approval prior to the export or temporary import taking place unless it qualifies for an exemption. This is done through the Directorate of Defense Trade Controls, located within the Department of State. ITAR requires that a certification be provided to the United States Congress prior to the granting of any approvals in certain circumstances. The circumstances include the following.

- A license for the export of major defense equipment sold under a contract in the amount of \$14,000,000 or more, or for defense articles and defense services sold under a contract in the amount of \$50,000,000 or more, to any country that is not a member of the North Atlantic Treaty Organization (NATO), or Australia, Israel, Japan, New Zealand, or the Republic of Korea that does not authorize a new sales territory.
- A license for export to a country that is a member country of NATO, or Australia, Israel, Japan, New Zealand, or the Republic of Korea, of major defense equipment sold under a contract in the amount of \$25,000,000 or more, or for defense articles and defense services sold under a contract in the amount of \$100,000,000 or more, and provided the transfer does not include any other countries.
- A license for export of defense articles controlled under certain categories of the United States Munitions List, in an amount of \$1,000,000 or more.

Source: United States Department of State, Directorate of Defense Trade Controls, The International Traffic in Arms Regulations (ITAR) [internet], available from <https://www.pmddtc.state.gov> [accessed 11 June 2023].

3.85 As at 31 December 2022, \$131.2 million⁸⁴ in value of military assistance sent by Australia to the Government of Ukraine has required transfer or re-export permission from other governments. For all items which required transfer or re-export permission from a foreign country, there was evidence that the relevant government had granted permission for that to happen. At the time of export, that permission had been obtained for \$118.9 million worth of items. With respect to the remaining \$12.3 million worth of items:

- permission was granted after export (\$10 million in value); and
- for items with a value of \$2.3 million, a foreign government gave permission for transfer or re-export of 200 items but Defence records show that 250 were actually exported.⁸⁵

84 Figures have been calculated based on inventory values attributed to specific items by Defence. The ANAO has not assessed whether these values are accurate.

85 Defence was not able to explain the discrepancy but could confirm that 250 items were actually exported.

Gifting authorisations

3.86 Gifting of Australian Government property is strictly controlled. Under section 66 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), a Minister or official must not make a gift of relevant property⁸⁶ unless:

- (a) the property was acquired or produced to use as a gift; or
- (b) the making of the gift:
 - (i) is expressly authorised by law; or
 - (ii) is authorised by the Finance Minister in writing; or
 - (iii) is made in accordance with any requirements prescribed by the rules.

3.87 The power of the Minister for Finance to authorise gifts under subsection 66(b)(ii) of the PGPA Act has been delegated to the accountable authorities of all non-corporate Commonwealth entities, including the Secretary of the Department of Defence. The standing delegation made in January 2021 is reproduced in Box 2.

Box 2: Minister for Finance’s 2021 standing delegation of section 66 power to authorise gifts under the *Public Governance, Performance and Accountability Act 2013*

Directions

10.1 No authorising the gifting of military firearms

A delegate must not authorise a gift of military firearms.

10.2 Overarching Principles

(1) When contemplating whether to authorise a gift of relevant property, a delegate must consider the overarching principles that, if appropriate to do so, the relevant property should be:

- (a) agreed to be transferred with or without payment to another government entity within Australia (including State or Territory governments); or
- (b) sold at market value, where it is economical to do so.

(2) A departure from the Commonwealth’s overarching principles, encompassing disposal by gift, is permitted if the relevant property in question is:

- (a) genuinely surplus to the entity’s requirements; and
- (b) is either:
 - i. of historical or symbolic significance in relation to the proposed recipient; or
 - ii. holds other special significance for the proposed recipient, and there are compelling reasons to justify its gifting to that recipient; or
 - iii. of low value and
 - a. otherwise uneconomical to dispose of; or

⁸⁶ Section 8 of the PGPA Act defines property as excluding money.

b. the gifting supports the achievement of an Australian Government policy objective.

(3) If a gift of relevant property is being contemplated, the delegate is to consider whether authorising in a particular case would create an onerous or undesirable precedent. If the gift would create that precedent, it must be refused.

Example: If it would be difficult, in equity, for the Commonwealth not to approve other requests for such gifts and which would in that way lead to significant losses of Commonwealth revenues.

(4) For this reason, the delegate would need publicly defensible and objective grounds to justify favouring the person or organisation with the gift, ahead of other potential recipients.

10.3 Reasonable estimate to be obtained

(1) A delegate must not exercise the power under section 66 of the Act before obtaining a reasonable estimate of the market value of the relevant property proposed to be gifted.

(2) If this is not possible, the delegate must use their discretion in assigning a notional value, and must record the basis for determining the value of the property.

3.88 The standing delegation shown in Box 2 specifically prohibits a delegate authorising ‘a gift of military firearms’. Defence advised the ANAO that given the nature of the military assistance being gifted to the Government of Ukraine, such a prohibition could be problematic. Defence further advised the ANAO in March 2023 that the requirement under paragraph 10.2(2)(a) of the standing delegation for property to be ‘genuinely surplus to the entity’s requirement’ also created a potential issue for military assistance to the Government of Ukraine. Defence therefore liaised with the Department of Finance between late February and early March 2022 and it was agreed that the Minister for Finance would be asked to sign a ‘special’ delegation to address the particular circumstances of the Australian Government’s gifting of military assistance (including military weapons) to the Government of Ukraine.

3.89 On 4 March 2022, the Minister for Finance wrote to the Minister for Defence on this matter. The correspondence included a conditional delegation of the Minister for Finance’s power to authorise gifts under subsection 66(b)(ii) of the PGPA Act, in the terms shown in Box 3.

Box 3: Minister for Finance’s 4 March 2022 special delegation of section 66 power to authorise gifts under the *Public Governance, Performance and Accountability Act 2013*

Under section 107 of the Public Governance, Performance and Accountability Act 2013 (PGPA Act), I, Minister for Finance, delegate the power to make a gift to the Government of Ukraine of relevant property held on behalf of the Commonwealth under paragraph 66(1)(b)(ii) of the PGPA Act. The delegation is made to the accountable authority of the Department of Defence and also allows the accountable authority to sub-delegate the power to any official of a non-corporate Commonwealth entity.

This delegation extends only to gifts to the Government of Ukraine of relevant property with the following directions:

(a) Gifts of relevant property, held on behalf of the Commonwealth, made by the Department of Defence and to gifts of relevant property, held on behalf of the

Commonwealth, that are within the administrative responsibility of other entities within the Defence portfolio; and

(b) The gifts are made to the Government of Ukraine; and

(c) Are for the use by the Government of Ukraine for the purposes of defence and the maintenance of national security within the internationally recognised borders of Ukraine; and

(d) The gifts are made during the period of any military invasion or incursion into Ukraine, or occupation of parts of Ukraine, by foreign powers or external military forces in 2022.

Any exercise of this power by the accountable authority of Defence, or any official of a non-corporate Commonwealth entity that the accountable authority sub-delegates this power to, must be in accordance with the directions at (a) to (d) above (sections 107 and 110 of the PGPA Act). This delegation also expects that when the accountable authority of Defence, or their sub-delegate, exercises this gifting power they do so in a manner that applies their own judgement about whether a particular gifting decision is appropriate in the circumstances.

To avoid doubt, this delegation of power encompasses the gifting of military equipment to be used in combat by the armed forces of the Government of Ukraine, including lethal material such as weapons, munitions, military vehicles and medical supplies. This includes property given for the purpose of response to the invasion by the Russian Federation commencing in February 2022.

3.90 The accountable authority of the Department of Defence is the Secretary of the department. Defence records indicate that the Secretary did not sub-delegate these powers to any other officials in the Department of Defence.

3.91 The ANAO examined whether military assistance gifted to the Government of Ukraine was authorised by the delegate pursuant to section 66 of the PGPA Act.

3.92 The first three tranches of military assistance included both lethal and non-lethal equipment. The assistance was sent from the United States⁸⁷ and Australia on three flights on 2, 4 and 7 March 2022. The Defence Secretary exercised the special delegation for authorising the gifting of those items retrospectively, on 18 March 2022. In seeking the Secretary's decision to exercise the special delegation retrospectively, Defence advised the Secretary that the three tranches had been despatched after being authorised under the standing delegation by the CDF, in TASKORDs on 28 February 2022 and 5 March 2022, 'in the exercise of his power for the purposes of section 66 of the PGPA Act'.

3.93 Table 3.7 summarises the ANAO's analysis of authorisations for the gifting of military assistance to the Government of Ukraine, as at 31 December 2022, for items that required authorisation under section 66 of the PGPA Act.

87 Some Australian-owned items were in store in the United States awaiting shipment to Australia. Defence reached agreement with the United States Air Force that it would transport these items to Ukraine on Defence's behalf.

Table 3.7: Section 66 PGPA Act authorisations for gifting military assistance to the Government of Ukraine

Detail	No of items	Value of items (\$m)
Gifted items exported with s66 authorisation	199	163.1
Gifted items exported before s66 authorisation was provided	22	49.5
Total	221	212.6

Note: The total does not include: items that were procured by Defence specifically for gifting to the Government of Ukraine (which do not require authorisation under paragraph 66(1)(a) of the PGPA Act, see paragraph 3.86); some items which were donated by third parties; and grants.

Source: ANAO analysis of Defence information.

Non-compliance issues

3.94 In December 2022, the ANAO brought to Defence's attention a list of items where the exercise of a section 66 delegation could not be located. Defence subsequently provided the Secretary of Defence with a brief, which the Secretary signed on 20 January 2023. In response to the brief, the Secretary approved a list of military assistance to be gifted, and noted that items had already been gifted where section 66 had not been explicitly exercised, resulting in non-compliance with the PGPA Act. The brief stated that 'all gifting to Ukraine has nevertheless been in accordance with Government directions'. The brief to the Secretary further stated that:

Not receiving Section 66 approval for the items at Attachment B represents a breach of the PGPA Act 2013. Under Defence policy, this would not be considered as significant non-compliance of the PGPA Act 2013 and as such, does not require any further reporting.

3.95 The Defence policy referred to in the brief to the Secretary states that: 'in determining a qualitative amount that would be considered significant, it is proposed that an impact of over 0.2 per cent of Defence's Annual Budget in a financial year (currently \$7.2 million) would be indicative of significant non-compliance.'⁸⁸ The value of items that Defence advised the Secretary had been delivered without section 66 approval was \$74.3 million⁸⁹, which would exceed the threshold for reporting 'significant' non-compliance.

3.96 In April 2023, Defence advised the ANAO that it no longer considered the absence of a section 66 authorisation to constitute a breach of the PGPA Act:

On reflection, Defence is of the view that the letter of 20 January 2023 was focused on technical compliance with internal financial delegations which while important, was not the full reflection

88 At the date of the brief to the Secretary (January 2023), the policy was dated August 2019. In May 2023, Defence advised the ANAO that:

This was a typographical error in the previous paper that should have been **0.02 per cent** [emphasis in original] of Defence's Annual Budget and the \$7.2 million figure refers to the year the paper was prepared, 2019. The paper also states that it is only indicative, meaning it does not mean an instance above the financial threshold is automatically significant non-compliance. Defence has updated its significant non-compliance with finance law position to address this error and provide further clarity on application. The updated position was endorsed by Chief Finance Officer and provided to the 11 May 2023 Defence Audit and Risk Committee ... These principles will be used for 2022-23 annual reporting of significant non-compliance with finance law.

The figure of \$7.2 million had also been updated to \$9.6 million.

89 Note that this differs from the amount of \$49.5 million that the ANAO assessed as having been exported before section 66 authorisation was given.

of the decision making that had already occurred at much higher levels of government. It should have indicated that the authority to gift under s66 was not in question, but rather that Defence could have taken steps to clarify who was exercising the authority to make the gift and who was authorising that making of a gift. This was challenging in the Ukraine context given the level of Ministerial involvement in decisions about gifting of property. It is unclear how a delegate in the Department could effectively tell a Minister that they were not to make a gift that they had announced; this would be a task for the Finance Minister ... Defence is of the view that it is unnecessary to consider if the s66 authorisation to gift is non-compliant or not, on the basis the gifts were authorised at ministerial levels.

3.97 Defence subsequently advised the ANAO in May 2023 that:

Defence acknowledges the need to ensure obligations under the PGPA Act are met. In the context of responding to the Ukraine crisis, Defence acted on the basis that the gifting decisions had been made at the higher levels of Government and that the Secretary was aware of the actions of his Department. However, Defence agrees that there are expectations Defence is expected to take steps to clarify and ensure written documentation of all s66 decisions.

3.98 These statements to the ANAO are at odds with the requirements of the PGPA Act discussed in paragraphs 3.86–3.87 and Department of Finance Guidance. The latter provides that:

A Minister or an official of a non-corporate Commonwealth entity **must not make a gift of relevant property unless:**

- the property was acquired or produced to use as a gift; or
- the making of the gift:
 - is expressly authorised by law; or
 - is authorised by the Finance Minister in writing; or
 - is made in accordance with any requirements prescribed by the rules (the rules currently do not contain any requirements for gifting relevant property).

The power of the Finance Minister to authorise gifts has been delegated to accountable authorities of all non-corporate Commonwealth entities ... [emphasis in original].⁹⁰

3.99 As discussed in paragraphs 3.86–3.87, under the PGPA Act a gift of relevant property may only be made in certain circumstances and by certain persons. Authorised persons for Defence are: the Minister for Finance; the Defence Secretary, relying on the standing or special delegation provided by the Minister for Finance pursuant to the PGPA Act; or a sub-delegate of the Defence Secretary such as the CDF, who had a sub-delegation to exercise the standing delegation.

90 Department of Finance, *Gifting relevant property*, 16 November 2022, [internet], available from <https://www.finance.gov.au/government/managing-commonwealth-resources/disposals-and-gifting-relevant-property-rmg-213/gifting-relevant-property> [accessed 30 April 2023].

3.100 The standing delegation is discussed at paragraphs 3.87 to 3.88. The special delegation provided by the Minister for Finance on 4 March 2022 (discussed at paragraphs 3.89 to 3.90) stated that:

This delegation also expects that when the accountable authority of Defence, or their sub-delegate⁹¹, exercises this gifting power they do so in a manner that applies their own judgement about whether a particular gifting decision is appropriate in the circumstances.

3.101 While the Defence Secretary would have been aware that gifting the items in question was consistent with the policy intentions of the Australian Government, this did not remove the need for the Secretary to give those policy intentions legal effect by authorising the gifting pursuant to the requirements of the PGPA Act. Those requirements included the standing and special delegations provided to the Secretary by the Minister for Finance.

3.102 The brief to the Defence Secretary discussed in paragraph 3.94 made it clear that the Secretary had not authorised (as the Minister for Finance's delegate) the gifting of the items listed in the brief, as required by the PGPA Act. The consequence of not doing so, as noted in the brief, was non-compliance with the Act.

Customs export declarations

3.103 Under the *Customs Act 1901*, all goods of any kind entering or leaving Australia must be reported to the Australian Border Force.⁹² In relation to exports, subsection 113(1)(a) states that 'The owner of goods intended for export must ensure that the goods are entered for export'. Section 113AA states that 'An entry of goods for export is made by making in respect of the goods an export declaration.'⁹³ There are a number of exemptions from this requirement: for example, an export declaration is not required for goods worth less than \$2,000. The Customs Regulation 2015⁹⁴ also provides for an exemption for military goods that are all of the following:

- the property of the Commonwealth; and
- for use overseas by the Defence Force or part of the Defence Force; and
- have not been entered for export.

3.104 The exemption for military goods recognises that members of the Australian Defence Force (ADF) are often required to depart Australia with military goods for the purposes of international deployment, training, peacekeeping or disaster relief. This exemption did not apply to Defence-owned goods being gifted to the Government of Ukraine.

3.105 Defence has a standing 2010 Memorandum of Understanding (MOU) with the Department of Home Affairs entitled 'Export Reporting of Defence Cargo' which states that 'defence and strategic goods requiring an export permit from the Defence Export Control Office (DECO) of the Department of Defence should be reported on a Customs Export Declaration.' While the ADF is exempt from this requirement when members are proceeding overseas for 'Defence Sanctioned

91 ANAO comment: while the special delegation permitted the Secretary to sub-delegate the power to authorise gifting, the Secretary did not do so.

92 The Australian Border Force is the operational enforcement unit within the Department of Home Affairs.

93 The majority of export (and import) declarations are made and lodged electronically using the Australian Border Force's Integrated Cargo System.

94 Schedule 4, item 9.

Operations and Exercises⁹⁵, that exemption did not apply in the case of Defence-owned goods being gifted to the Government of Ukraine.

3.106 On 18 November 2022, the ANAO sought details from Defence as to how it had complied with the requirement to lodge Customs export declarations for Defence-owned goods being gifted to the Government of Ukraine.⁹⁶ The ANAO made enquiries of four separate areas of Defence with involvement in the delivery of military assistance, none of which was aware of this requirement.⁹⁷ On 15 March 2023, Defence advised the ANAO that:

Defence has been unable to find evidence that customs export declarations were lodged for Defence-owned goods being gifted to the Government of Ukraine.

3.107 The ANAO also approached the Department of Home Affairs. On 17 March 2023, the Department of Home Affairs advised that:

The ABF have undertaken a search of the Integrated Cargo System (ICS) of any exports by the Department of Defence to the Government of Ukraine, based on the dates and place of export provided by the ANAO. The search did not yield any data.

3.108 Based on this evidence, the ANAO has concluded that the statutory requirement⁹⁸ for Defence to submit Customs export declarations for the goods it exported to Ukraine was not met.

Did Defence account for gifted assets?

Defence has not effectively accounted for gifted assets by taking appropriate action to record the disposal of gifted equipment in its records.

3.109 Asset management is an important aspect of Defence's control framework — allowing it to keep track of what assets it owns, where they are located, how old they are, how they are used and if and when they have been disposed of. Defence reported in its 2021–22 annual report that as at 30 June 2022, it had \$81.0 billion in 'specialist military equipment'.⁹⁹

3.110 As part of its annual financial statements audits of all Australian government entities, the ANAO examines records of the disposal of assets. Since 2018–19, these audits have included a Category C finding relating to Defence's disposal of assets.¹⁰⁰ The ANAO has continued to find examples of asset disposals recorded in Defence's IT system significantly after the physical disposal of the asset. As a result, this finding was upgraded to a Category B finding in 2021–22.¹⁰¹

95 The MOU defines 'Defence Sanctioned Operations and Exercises' as 'authorised movements of Defence Personnel for the purposes of international deployment training peacekeeping or disaster relief'. The Australian Border Force confirmed that the MOU is still current.

96 While Customs export declarations are normally lodged electronically, manual lodgement of hard copy forms is also permissible.

97 These were MSC, DEC, ADEO and the Joint Movements Unit.

98 The penalty for failing to make a Customs export declaration when one is required is 60 penalty units.

99 Specialist military equipment includes 'platform assets' (which includes fully assembled units such as planes, tanks and ships) and 'military support items' (which includes spares and components that support platform assets).

100 Category C findings are 'Issues that pose a low business or financial management risk to the entity; and Category B findings are 'Issues that pose moderate business or financial management risk to the entity'.

101 Auditor-General Report No.32 2021–22 Financial Statements Audit *Interim Report on Key Financial Controls of Major Entities*, paragraph 1.106 and paragraphs 3.3.1–3.3.39.

3.111 As part of the 2021–22 Audits of the Financial Statements of Australian Government Entities, the ANAO examined the Bushmaster protected mobility vehicles and M113 armoured personnel carriers gifted to the Government of Ukraine.¹⁰² The ANAO found that the gifted items had not been removed from Defence’s asset register, and that no disposals paperwork had been completed.¹⁰³

3.112 As part of this performance audit, in January 2023, the ANAO provided Defence with a sample of 38 items sent to Ukraine and requested disposals paperwork evidencing the financial delegate’s approval for the disposal of the asset, as well as evidence that the asset had been removed from Defence’s asset register. While finalised disposals directives were provided by Defence in March 2023 for six of these items, no evidence was provided that assets had been removed from the asset register. Disposals directives were signed by the delegate an average of 119 days after the item had been despatched. Defence has therefore not been able to demonstrate that items gifted to the Government of Ukraine were removed from the asset register in a timely manner, or that disposal directive paperwork was approved prior to the disposal of assets.

3.113 The findings from the last two audits of Defence’s financial statements, as well as this audit, indicate continuing weaknesses in Defence’s processes for the disposal of assets and inventory. The ANAO will continue to examine and report on these areas in its audit work.

102 Auditor-General Report No.8 2022–23 *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2022*, paragraphs 4.3.18–4.3.19.

103 The gifted assets had been ‘frozen’ in the register to stop the assets from further depreciating after the gifting.

4. Monitoring and reporting

Areas examined

This chapter examines whether the Department of Defence (Defence) effectively monitored and reported on the delivery of military assistance to the Government of Ukraine. It also considers evaluation activity.

Conclusion

Defence established effective arrangements for monitoring and reporting on the delivery of military assistance to the Government of Ukraine, and the physical control of materiel.

As at March 2023, Defence had not planned for or undertaken any post-implementation review activity.

Area for improvement

The ANAO has suggested that there is scope for Defence to review or evaluate its arrangements for the delivery of military assistance to the Government of Ukraine, to inform its approach to and implementation of any further assistance initiatives.

4.1 Effective monitoring and reporting on the delivery of military assistance to the Government of Ukraine was necessary due to the value, sensitivity and character of the assistance. Specialist military equipment and items of a lethal nature require appropriate security and physical controls, while assistance in the form of monetary grants requires appropriate financial controls.

4.2 Effective internal monitoring and reporting on the progress and effectiveness of the implementation effort informs the work of managers, leaders and decision-makers, and provides a basis for discharging accountability obligations to government and the Parliament.

Did Defence appropriately monitor and report on delivery?

Defence established appropriate arrangements for monitoring and reporting on the delivery of military assistance to the Government of Ukraine. These arrangements included physical controls for the transportation and security of military assistance and acquittals for international grants, with NATO and the UK MOD confirming that funding had been received and used in line with the agreed purpose.

Physical controls

4.3 Defence established arrangements for monitoring and reporting on the delivery of military assistance to the Government of Ukraine, which included the physical control and security aspects of transportation. Defence established arrangements designed to:

- ensure security and physical control of items during transport; and
- monitor any loss, destruction or capture of military assistance.

4.4 Defence has also sought to monitor the performance of military assistance.

4.5 As outlined in paragraphs 3.16 to 3.20, Australian Government military assistance to the Government of Ukraine was formalised through exchanges of letters which included lists of what

was agreed to be provided and the ‘provisions’ associated with the assistance. Examples of these provisions included that:

- Defence would deliver items on a date and at the location agreed in writing between Defence and the Government of Ukraine;
- a representative of the Government of Ukraine would sign a receipt upon delivery;
- the Government of Ukraine would not sell or transfer items to a third party, without prior written approval of Defence;
- the items would be used solely by the Government of Ukraine to deliver effects in the context of the current situation in Ukraine; and
- Ukraine’s Ministry of Defence was to inform the Australian Department of Defence of the loss, destruction or capture of the items, where feasible.

4.6 All 16 exchanges of letters between March 2022 and December 2022 included provisions intended to prevent the loss or diversion of military assistance.

Security and physical controls during transport

4.7 The Chief of the Defence Force (CDF) tasked Joint Operations Command and the Joint Movements Unit with responsibility for the transport of military assistance from Australia. Instructions from the CDF were for all items to be airlifted from Australia. Equipment has generally been sent from Royal Australian Air Force (RAAF) Base Amberley.

4.8 Defence delivers military assistance to a specified location in Europe, at a specified time and date. The delivery location is supported by the International Donor Coordination Centre (IDCC)¹⁰⁴, which has established processes and security arrangements for the delivery of military assistance from donor nations (see paragraph 2.8). Defence has personnel based in Europe who are tasked with supporting the work of the IDCC by accepting the delivery of military assistance; participating in a coalition forum which focuses on coordinating and integrating the delivery of Australia’s military assistance with that of other coalition nations; and assisting with the handover of items to the Government of Ukraine.

4.9 Once items are received at the delivery location in Europe and unloaded from the aircraft, Australian Defence personnel review the items delivered and conduct a ‘configuration and serviceability inspection’.

4.10 Defence records indicate that the military assistance handover to the armed forces of Ukraine is accounted for through IDCC processes for recording and reporting donated equipment from partner nations. The onward movement of equipment is managed by the Government of Ukraine.

4.11 Defence records indicate that once received in Europe, items are moved to intended recipients quickly, with items not stored and handled at the receiving location for long periods of time.

104 The IDCC is UK-led and comprises defence force personnel from multiple countries. It coordinates the Government of Ukraine’s requests for military assistance and the response of donor nations and supports the delivery of equipment to the Government of Ukraine.

Monitoring loss, destruction or capture of military assistance, and equipment performance

4.12 Defence seeks to gather information from a variety of sources to monitor and report internally on the items gifted to the Government of Ukraine, including on: the loss, destruction or capture of military assistance; and the performance of gifted items.

4.13 Defence advised the ANAO that it is not always possible nor reasonable to expect this type of reporting from the Government of Ukraine.¹⁰⁵ Defence records indicate that the armed forces of Ukraine have from time to time voluntarily provided information to Defence on gifted equipment, as well as information which has informed decisions on subsequent gifts of military assistance.

4.14 Defence advised the ANAO that it does not require the armed forces of Ukraine to provide information on battle damage to gifted items. Defence seeks to track battle damage and losses (including capture) involving Bushmaster protected mobility vehicles, M113AS4 armoured personnel carriers and M777 howitzers. To do this, Defence has used publicly reported information (for example, through social media and news articles), information from international partners and other intelligence sources.

Controls for financial assistance

4.15 As discussed in paragraphs 3.34 to 3.67, the Australian Government, through Defence, provided \$42.4 million internationally in funding as part of its military assistance package for the Government of Ukraine.

- Two payments were made to the North Atlantic Treaty Organization's (NATO's) Comprehensive Assistance Package Trust Fund for Ukraine (CAP trust fund).
- One payment was made to the United Kingdom Ministry of Defence.

4.16 Defence received acquittal of the payments in the form of acknowledgments of receipt of the funds from NATO and the United Kingdom Ministry of Defence.

Internal monitoring and reporting

4.17 Internal monitoring and reporting on the progress and effectiveness of the implementation effort is examined below.

Central monitoring

4.18 As outlined in paragraph 2.12, Defence's Military Strategic Commitments (MSC) Division had responsibility for the strategic coordination of the delivery of military assistance to the Government of Ukraine. In the context of that role, the ANAO reviewed whether MSC systematically or routinely monitored how government decisions to send military assistance were implemented.

4.19 Information on the delivery of military assistance was received by MSC through several sources. These included the following.

105 In August 2022 Defence did include a provision for reporting on the loss, destruction or capture of a gifted item to ensure Defence's compliance with an end user agreement with the United States Government. As at January 2023, the latest exchanges of letters have included a provision for the Government of Ukraine to provide information on the loss, destruction or capture of military assistance where feasible.

- Emails from relevant Defence Groups and Services stakeholders, including communications from Joint Operations Command and the Joint Movements Unit (for example, flight loads and departure dates, and progress updates on procurements).
- Regular situation reports from the Support and Response Team (discussed in paragraphs 4.21 to 4.23).
- ‘Common Operating Picture’ meetings (discussed in paragraph 4.20).

4.20 Following the initial tranches of military assistance to the Government of Ukraine in March 2022, and as it became clearer that military assistance was likely to continue for some time, in early April 2022 Defence established regular Common Operating Picture meetings. These meetings were not convened for decision-making but focused on identifying and resolving practical problems at the day-to-day operational level.¹⁰⁶ Defence advised the ANAO in December 2022 that:

The focus of these meetings is simply to be a pinch point to ensure all relevant stakeholders have a CoP [common operating picture] of what is happening following Government’s DMA [Defensive Military Assistance] announcements and the ADF [Australian Defence Force] tasks necessary to successfully provide this DMA to Ukraine. This way any issues can be flagged for the various stakeholders to resolve and/or escalate up if required.¹⁰⁷

Support and Response Team — Situation Reports

4.21 Since March 2022, a Support and Response Team (SRT) has been based in Europe supporting the delivery of military assistance.¹⁰⁸ The SRT consists of a small number of ADF personnel and has provided regular situation reports on Defence’s delivery of military assistance.¹⁰⁹ The team’s reports were initially provided daily and then became weekly from April 2022. Defence advised the ANAO that these reports are for the Chief of Joint Operations¹¹⁰ and the Headquarters Joint Operations Command staff, to inform their planning and engagement with MSC and the International Policy Division regarding the provision of military assistance to the Government of Ukraine.

4.22 The ANAO examined the 58 SRT reports produced for the period March 2022 to December 2022. The information included in the reports evolved over this period, reflecting changes in the conflict and the military assistance being provided by Australia and international partners. The reports routinely included the following:

- information updates on the conflict;
- engagement with and activities of international partners;
- armed forces of Ukraine military assistance priorities;

106 The Common Operating Picture meetings did not have terms of reference, agendas or action items or meeting minutes. Initially these meetings were held three times a week, reducing to once a week when the frequency of delivery of items reduced. Representatives from across Defence attended the meetings, including: Capability Acquisition Sustainment Group, MSC, Headquarters Joint Operations Command, Army Headquarters, Defence Industry Policy, Defence Export Controls, and the Joint Movement Unit.

107 The ANAO attended one of these meetings as an observer. That meeting operated as described.

108 SRT is described as a flexible ADF force that can be tailored to an operational situation and rapidly deployed to assist in shaping both Department of Foreign Affairs and Trade and ADF contingency planning. The decision to deploy the SRT was made by the CDF on the advice of Chief, Joint Operations.

109 Other ad hoc reports have also been provided, for example on the delivery of training by ADF personnel to the armed forces of Ukraine.

110 A three-star military officer equivalent to a Deputy Secretary.

- delivery of military assistance (both items and training) from Australia to designated locations in Europe and/or into service; and
- information on the status of military assistance as well as feedback from the armed forces of Ukraine on the military assistance provided.

4.23 The reports also noted, when required: evolution of IDCC governance and process arrangements; requests for information between the SRT and Defence personnel in Australia (for example, training and sustainment arrangements for the military equipment provided, and consideration of military assistance to be gifted); and support to non-military assistance activities (for example, visits to the region by Australian dignitaries and/or diplomats).

CASG Support to Operations — Monthly Situation Reports

4.24 Within Defence's Capability Acquisition and Sustainment Group (CASG)¹¹¹, the Support to Operations directorate produces monthly situation reports, which provide a summary of current issues and actions relating to CASG's support of ADF operations. Defence advised the ANAO that these reports are provided to CASG divisional operations staff and other select addressees to provide situational awareness.

4.25 The ANAO examined the ten reports produced between February and November 2022.¹¹² The reports regularly included updates on delivery of military assistance to the Government of Ukraine, including providing an overview of the key activities of the month and any requests for information. Reporting on the delivery of military assistance to the Government of Ukraine included the following considerations:

- governance and internal directions;
- items to be considered for gifting, including Government of Ukraine priorities and requests;
- legislative and other requirements (for example, exchanges of letters and export controls); and
- delivery of training and equipment in Europe.

Progress reporting

4.26 Defence did not establish a specific framework for reporting on the progress of its delivery of military assistance. Defence has reported on delivery to government stakeholders and decision-makers through business as usual channels, including:

- updates at all 25 Interdepartmental Emergency Taskforce meetings held between February and March 2022 (see paragraph 2.5);
- updates in Ministerial advice (see paragraphs 2.25 to 2.31); and
- updates in briefs to the Secretary of Defence and the CDF.

111 CASG's role is 'to meet the ADF's military equipment and supply requirements as identified by Defence and approved by Government'.

112 Defence advised the ANAO in January 2023 that it did not produce a report for December 2022.

Did Defence plan for and review its response?

While there were some discussions in the latter part of 2022 about improving aspects of Defence's processes, as at March 2023 Defence had not planned for or undertaken any 'lessons learnt' or post-implementation review activity for its delivery of military assistance to the Government of Ukraine. More than one year into this activity, there is scope for Defence to review or evaluate its arrangements, to inform its approach to and implementation of any further assistance initiatives.

4.27 Reviewing outcomes and identifying lessons learnt is an expectation within Defence, so as to adjust implementation approaches as appropriate and inform future activities.¹¹³

4.28 Defence's approach to providing military assistance to the Government of Ukraine has evolved over time, moving from an initial crisis response to an ongoing commitment with no specified end date, and the steady provision of military assistance.

4.29 On 24 February 2023, the first anniversary of the conflict, the Australian Prime Minister stated that Australia would continue to support the Government of Ukraine. On the same day, the Australian Minister for Defence announced that:

In response to requests, Australia is providing more Uncrewed Aerial Systems to the Ukrainian Government; this support will provide a battlefield intelligence, surveillance and reconnaissance capability to the Ukrainian Armed Forces as they continue to fight against the unwarranted aggression of Russia.

This announcement coincides with the first graduation of Australian-trained Ukrainian soldiers as part of a UK-led multinational training effort to the Ukrainian Armed Forces. They leave with skills and knowledge that will save lives when they take up the fight against Russia.¹¹⁴

4.30 In the initial weeks of the crisis, Defence was under pressure to quickly begin providing equipment and deliver it to the Government of Ukraine. Under these circumstances, Defence chose to rely on business as usual processes rather than adopt a taskforce approach, or develop other specific arrangements. As discussed in this audit, Defence has retained this business as usual approach to planning, governance, monitoring and reporting on the activity (for discussion on governance arrangements, see paragraphs 2.10 to 2.16, and for discussion on implementation planning, see paragraphs 3.2 to 3.7).

4.31 In November 2022, officials from various areas of Defence advised the ANAO that while improvements in processes had been made as time went on, there has not been a whole of Defence 'lessons learnt' process to date.¹¹⁵ In March 2023, Defence advised that there are 'a number of

113 A Defence Joint Directive directs all 'Groups and Services, as required, to establish and lead a whole-of-Defence Joint Lessons that provides centralised Lessons management and coordination'.

See: Auditor-General Report No.12 2022–23, *2021–22 Major Projects Report*, paragraph 1.96.

114 Prime Minister, Deputy Prime Minister and Minister for Defence, and Minister for Foreign Affairs, *Australia stands with Ukraine with additional military support and sanctions*, joint media release, 24 February 2023.

115 In May 2023, Defence provided additional information to the ANAO about some efforts at a working level to review certain internal processes. In September 2022, Defence Legal proposed a meeting with 'relevant Defence stakeholders' to discuss exchanges of letters but did not provide evidence that a meeting took place. In December 2022, a meeting took place between representatives of key areas and a draft 'run sheet' documenting the responsibilities of each area was produced. However, no evidence was provided that this effort was further progressed.

formal Lessons Boards across the organisation' but did not provide any information about when (or whether) its delivery of military assistance to the Government of Ukraine may be considered by these boards.

4.32 More than one year into this activity, there is scope for Defence to review or evaluate its arrangements for the delivery of military assistance to the Government of Ukraine, to inform its approach to and implementation of any further assistance initiatives.

Opportunity for improvement

4.33 An opportunity remains for Defence to review or evaluate its arrangements for the delivery of military assistance to the Government of Ukraine, to inform its approach to and implementation of any further assistance initiatives.



Grant Hehir
Auditor-General

Canberra ACT
29 June 2023

Appendices

Appendix 1 Entity responses

Department of Defence



Australian Government

Defence

PO Box 7900 CANBERRA BC ACT 2610

EC23-001780

Mr Grant Hehir
Auditor-General
PO BOX 707
CANBERRA ACT 2601

Dear Mr Hehir

Australian National Audit Office (ANAO) Section 19 Proposed Report – Australia's provision of military assistance to Ukraine.

Thank you for the opportunity to comment on the Proposed Report for the ANAO performance audit *Australia's provision of military assistance to Ukraine*.

Defence acknowledges the two opportunities for improvement identified by the ANAO. Defence will review and evaluate all aspects of its delivery of military assistance to the Government of Ukraine, as part of its usual lessons learned process. This will in turn inform Defence's approach to, and implementation of, future assistance initiatives.

Attached to this letter are Defence's Proposed Amendments, Editorials and Comments (**Annex A**) and Defence's Summary Response (**Annex B**). These constitute Defence's formal response to the Section 19 proposed report.

Our point of contact is the ANAO Liaison Officer who can be contacted via email at: anao.lo@defence.gov.au.

Yours sincerely

Greg Moriarty
Secretary

25 May 2023

Angus J Campbell, AO, DSC
General
Chief of the Defence Force

25 May 2023

Annexes:

- A) Defence's Proposed Amendments, Editorials and Comments
- B) Defence Summary Response

Department of Finance



Australian Government

Department of Finance

Jenny Wilkinson PSM
Secretary

Our Ref: EC23-000378

Mr Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Mr Hehir

I refer to your correspondence dated 9 May 2023 providing an extract of the proposed audit report on Australia's provision of military assistance to Ukraine by the Department of Defence. The extract was provided pursuant to section 19 of the *Auditor-General Act 1997* seeking a response from the Department of Finance (Finance).

Thank you for the opportunity to respond to the matters raised in the proposed report. Finance's response to the report is:

The Department of Finance notes the findings of the report in relation to the delegation of the Finance Minister's gifting powers under the *Public Governance, Performance and Accountability Act 2013*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Wilkinson'.

Jenny Wilkinson
Secretary

2 June 2023

One Canberra Avenue, Forrest ACT 2603 • Telephone 02 6215 3445
Internet www.finance.gov.au

Appendix 2 Improvements observed by the ANAO

1. The existence of independent external audit, and the accompanying potential for scrutiny improves performance. Improvements in administrative and management practices usually occur: in anticipation of ANAO audit activity; during an audit engagement; as interim findings are made; and/or after the audit has been completed and formal findings are communicated.
2. The Joint Committee of Public Accounts and Audit (JCPAA) has encouraged the ANAO to consider ways in which the ANAO could capture and describe some of these impacts. The ANAO's 2022–23 Corporate Plan states that the ANAO's annual performance statements will provide a narrative that will consider, amongst other matters, analysis of key improvements made by entities during a performance audit process based on information included in tabled performance audit reports.
3. Performance audits involve close engagement between the ANAO and the audited entity as well as other stakeholders involved in the program or activity being audited. Throughout the audit engagement, the ANAO outlines to the entity the preliminary audit findings, conclusions and potential audit recommendations. This ensures that final recommendations are appropriately targeted and encourages entities to take early remedial action on any identified matters during the course of an audit. Remedial actions entities may take during the audit include:
 - strengthening governance arrangements;
 - introducing or revising policies, strategies, guidelines or administrative processes; and
 - initiating reviews or investigations.
4. During the course of the audit, the ANAO did not observe changes in Defence's approach to delivering military assistance to the Government of Ukraine.