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External Scrutiny of Government Decisions – Trends and Lessons Learnt

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EXTERNAL SCRUTINY OF GOVERNMENT DECISIONS – TRENDS AND LESSONS LEARNT

I.   INTRODUCTION

> *I had …come to an entirely erroneous conclusion which shows, my dear Watson, how dangerous it always is to reason from insufficient data.* [1]
>
> **Arthur Conan Doyle, 1892**

Decision-making is central to human activity.   That is, basically we are all decision makers. On a daily basis managers tend to make many decisions. Some decisions are routine while others may have a significant impact on the operations of the organization. A good decision is unlikely to arise by accident, tossing a coin, asking an oracle or using an astrologer. Nevertheless, it may often ultimately depend on the judgement of the decision-maker.

Critical decisions, ideally, should not be wrong or have an adverse impact into the future. An example from the defence arena is 'force structure' decisions where sub-optimal decisions will not only place the defence of the nation at risk but are almost impossible to correct or overcome in the short to medium term. In our increasingly complex environment, the task of decision-makers is becoming more challenging with managers needing to respond quickly to events that seem to take place at an ever-increasing pace with a bewildering array of choices and consequences to consider.

The process of managerial decision-making is synonymous with the practice of management, that is, decision-making is at the core of all managerial functions. The complexity of today's environment has meant that it is no longer possible for one individual to be aware of all the issues nor to make all decisions regarding an organisation's operation – even with a relatively small span of control. The factors affecting decisions are often so numerous and their effects so pervasive that 'seat of the pants' decisions are no longer acceptable. Effective decision-making requires the availability of information, analysed and summarised in a timely fashion. We are now often required not only to defend our decisions, but also the basis on which they are made.

Following this theme, my colleague, Ron Richards, drew my attention to Paul Barry's book *'Rich Kids'* which provides an insight into some of the excesses of decision-making at the 'big end of town', as the following illustrates:

> *Despite the chaos, Jodee was not prepared to wait. His attitude had always been to get customers first and fix problems later….One senior manager described it as a suicidal decision, and says it [the launch of Next Gen] should have been delayed six months. But Jodee is adamant that he made the right decision, and does not recall anyone advising him against it….One.Tel had always been a thinly disguised autocracy in which Jodee made all the key decisions, and it was getting more like that as time went on .* [2]
>
> **Paul Barry, 2002**

Turning to my task for today, I have been asked to give a watchdog's perspective on government decision-making. Although Lord Justice Lopes referred to auditors as *'a watchdog and not a blood hound'* the former is not a term I particularly like. However, staying with the term, this particular watchdog relies significantly on the power of public disclosure. The ANAO operates mainly in the context of public opinion of which Parliament is arguably the most influential and the most vocal. Our central function is to report, that is, to make people aware of what is happening. Like a watchdog, it is our bark that alerts others to the existence of something wrong in public administration. However, I would also add that, for the most part, we provide assurance that all is well. To undertake this role, the independence of my Office is essential and critical.

In the public sector, external independent audit is a critical element in the accountability chain and the importance of the independence of my Office in that respect cannot be overstated. It is vital that Auditors-General have all the professional and functional freedom required to fulfil fearlessly, professionally and independently, the role required of them. This is particularly so in today's climate with the convergence of the public and private sectors, the management environment becoming inherently less open and riskier, and with the heightened concerns for public accountability. The latter reflects Senate action on commercial-in-confidence considerations in contracts[3] and the Joint Committee of Public Accounts and Audit's (JCPAA's) support for audit access to private sector information and premises, where warranted.[4]

Following the fallout from the HIH, Enron and other large corporate failures, the private-sector auditor independence debate still has a way to go in Australia with the recently released Australian Securities and Investments Commission (ASIC) survey results from 100 of Australia's largest companies and the Government's formal response to the Ramsay Report being keenly awaited.[5] For example, the ASIC survey noted that most companies lacked robust processes for ensuring that independence of audit was not prejudiced by the provision of non-audit services.[6]

The United States (US) Securities and Exchange Commission (SEC) has recognised the need to modernise the rules for determining whether an auditor is independent, as the following illustrates:

> *Yet increased economic pressure on the profession, coupled with greater competition and consolidation, mandated that we bring clarity and light to the necessarily subjective nature of independence.[7]*

In February 2001, the SEC released a final ruling on the requirements for auditor independence that sets out restrictions on financial, employment and business relationships between an accountant and an audit client and restrictions on an accountant providing certain non-audit services to an audit client. My counterpart in the US, the Comptroller General and head of the General Accounting Office (GAO), recently announced (25 January 2002) significant changes to the auditor independence requirements under Government Accounting Standards[8]. The new standards deal with a range of auditor independence issues with the most significant changes relating to the rules associated with non-audit, or consulting services.

Before leaving the independence theme, I will briefly canvass my role in providing independent assurance to Parliament on the <u>overall</u> performance and accountability of the public sector in delivering the Government's programs and services and implementing effectively a wide range of public sector reforms.

II. THE BOUNDARY TENSION BETWEEN POLICY AND ITS IMPLEMENTATION

Performance audits are the main vehicle by which my Office evaluates the economy, efficiency and effectiveness of the management of public sector entities. This entails: the examination and assessment of resource use; related information systems; outputs and outcomes, including performance targets, indicators, assessments and measures; monitoring systems; and legal compliance.

The four national audit agencies making up the Public Audit Forum in the United Kingdom believe that:

> *... there are three fundamental principles which underpin public audit:*
>
> ❑ *the independence of public sector auditors from the organisations being audited;*
>
> ❑ *the wide scope of public audit that is covering the audit of financial statements, legislatively (or legality), propriety (or probity) and value for money; and*
>
> ❑ *the ability of public auditors to make the results of these audits available to the public, and to democratically elected representatives. [9]*

The ANAO's performance audits can, and do, evaluate how effectively and efficiently government policy has been implemented. Sometimes there can be a perception of an audit commenting on policy, particularly where the implementation performance reflects a problem with the policy itself rather than with its delivery.

One particular challenge in the current environment of change is the increasing tension regarding the role of Auditors-General and the boundaries between government policy and its implementation. The issue was given some prominence in the following two performance audits my Office undertook recently - property sales and IT Outsourcing.[10]   The nub of the issue is summed up by Professor Richard Mulgan:

> *The principles of performance auditing allow the Auditor-General to assess whether government policy has been efficiently and effectively implemented but they require him to take government policy as given. Had the Auditor General crossed the line [in these two audits] which bars him from questioning government policy? Certainly the Opposition treated the report as providing ammunition not only against [the Department of] Finance but also against the Minister and government policy. On the other hand, the Auditor General was*

clearly aware of the potential difficulty and his report takes care to confine the audit to claim that his audit was confined to implementation and administration. Criticism is aimed exclusively at Finance and the substance of its advice to government...

and

On the whole, public opinion, as expressed in media comment, seems to side with the Auditor-General. He was exercising his time-honoured role as investigator of government inefficiency and guardian of the public purse. Pointing out that public funds would be wasted by a particular method chosen for selling governments properties could hardly be beyond the purview of the public's financial watchdog.[11]

I responded to Professor Mulgan's article, making the point that:

Policy advising is an output of Finance and it is clearly within the mandate of the Auditor-General to review how effectively the department delivered its output. That the government subsequently may have endorsed a policy based on such advice does not take away from the mandate of the Auditor-General to review the department's development of the advice nor its possible implications.[12]

Clearly, it is politicians not public servants who take responsibility for policy and it is for this reason that performance audits are restricted to the efficiency, effectiveness and propriety with which policy is implemented. As I noted earlier, they are not extended to cover the merits of the policy itself. However, problems can arise where policy is difficult to separate from implementation, for example as in the subject matter of the above comments:

What was the policy in this case [that is, property sales] ? To maximise long-term benefit to the Commonwealth by selling buildings only where it is profitable to do so? In this case, the Auditor General, had every right to indicate where financial losses were likely. Such losses would indicate that the policy was badly implemented. Alternatively, the policy may have been to divest the government of a large number of buildings within a stated time, even if the long-term effects on the Commonwealth were doubtful...In this case, the Auditor-General could be seen to be on more dangerous grounds in questioning the criteria for putting buildings on the market or suggesting that prospective sales should have been reconsidered if the price was inadequate.[13]

One 'positive' to come out of this tension is the recognition that government policy objectives need to be stated in less ambiguous terms with the lines between policy and implementation made reasonably clear.

Performance audit assumes a clear distinction between policy objectives (set by elected governments) and policy implementation

> *(carried out by servants or contractors). Auditors are assumed to leave the objectives to government and confine themselves to the efficiency, effectiveness and probity with which these objectives have been implemented. [14]*

That said, the performance audit mandate has become an essential element in the accountability process of any public jurisdiction, especially the new public management environment. It is not a static process and there will be a continuing emphasis on improving the service to Parliament. Conflict and controversy may be inevitable. However, as one senior Australian bureaucrat remarked:

> *The bulk of performance audits are good at working out what is happening in a field, giving a useful report on it and striking an appropriate balance in not dabbling in policy and seriously discussing how implementation is going. [15]*

With that observation, I will now move on to the decision-making trends and issues that the ANAO has highlighted during our performance audits over the last few years. I will then follow this up with a short discussion on some of the particular matters arising from these audits, that is, risk management, records management, ethics, privacy, and IT support systems. All these aspects bear directly on organisational decision-making and its external scrutiny. They reflect the wide-ranging nature of, and need for checks and balances in, the public sector environment.

III. AN OVERVIEW OF RECENT PERFORMANCE AUDITS

Performance audits generally reflect the complexity of administrative decision-making in the public sector. As such, there can be significant demands made on management which are further complicated by notions of cooperation, coordination and collaboration increasingly required by partnerships/joint activity being established across agencies, across levels of government and with the private sector as both service providers to, and for, the public sector. I was interested to read a recent observation by Dr Peter Shergold, Secretary of the Department of Education, Science and Training, that public servants should not simply see themselves as public administrators but as knowledge managers who:

> *turn vast amounts of information – research, evaluation, experience, skill – into knowledge that can inform in a robust way the deliberations of government. That requires of us not only to ensure that we can inform our Ministers to the highest standards of accuracy, but that we can anticipate the information that is required; that we can be creative in the policy options we provide; and that we show a bias for action in translating policy into well-administered programmes and services. [16]*

One of the more significant issues in performance audits in recent years has been the impact of the loss of corporate knowledge in public sector organisations. This has occurred mainly because of the age structure of public servants, downsizing or rightsizing, and the greater flexibility to move between the public and private sectors. Not surprisingly, the loss of corporate knowledge impacts markedly on administrative

processes, understanding of the environment and the related legislation and the links to decisions made, including the need for credible records which are increasingly electronically based.

MAGNETIC RESONANCE IMAGING (MRI) SERVICES

The MRI Audit Report [17] concerned the administrative processes involved in the negotiation and development of the MRI policy measure including allegations of improper behaviour. The report focussed on the processes that surrounded the decision to allow Medicare benefits to be paid for MRI services provided with equipment ordered up to the delivery of the budget speech on 12 May 1998. Accordingly, one of the key concerns arising in relation to this audit was whether there was a leak of Budget information that led to a pre-Budget rush of orders. The most significant interactions between the Commonwealth and the profession in connection with this matter occurred in the final stages of negotiations.

The major areas of weakness uncovered during the audit were: [18]

(a)   Risk management associated with budget sensitive information.

Risk management can no longer be seen as discretionary but must be an essential element of sound corporate governance and management practice. I will be addressing risk management more generally later in the paper but in this specific case, there was insufficient consideration given to risk identification and management for some aspects of the policy development process and the measure itself, particularly in regard to the decision to include machines ordered by Budget night. As a result, there were exposures on both these fronts, which could have been better managed. This is not just a judgement made in hindsight, but reflects the importance of risk identification and treatment as an integral part of management at all levels of an organisation. Clearly, there are challenges in managing budget sensitive information and its is essential that agencies develop suitable risk management strategies to preserve the integrity of this information to protect the interests of all concerned.

(b)   Probity and confidentiality arrangements for negotiations with radiologist representatives.

Negotiating new policy measures with professional and other organisations presents significant challenges in managing budget sensitive matters, particularly where those involved may gain knowledge or insights which could benefit them financially. The ANAO concluded that the Department's management of the probity arrangements surrounding the negotiations for the MRI measure was not adequate for the circumstances. The arrangements in place lacked structure and clarity. Specifically, the Department did not seek to agree with members of the Task Force what confidentiality arrangements would apply to certain information and procedures.

Similarly, there were no agreed procedures or arrangements for declarations of any conflict of interest. As a result, the Department did not achieve a shared understanding of, and commitment to, what was to be treated in confidence and what could reasonably be discussed more openly. This was primarily the responsibility of the Department as part of its accountability for the process. Once established, all parties would then have been bound by the agreed arrangements.

(c)   Lack of adequate documentation.

A key plank in sound administration and accountability is the adequate recording and documentation of the business of government – this is another issue I will revisit later. In the MRI case, there was a lack of adequate documentation by the Department of the negotiations with the College (the Royal Australian and New Zealand College of Radiologists).   No record was kept of meetings between the Department and the College and there was no record of what was agreed. The pressure on the department to progress sensitive consultations over a short time actually demand greater discipline in record keeping and accountability as part of sound corporate governance.

There was also a lack of adequate documentation in relation to the development of some elements of the policy on MRI, specifically about the merits, risks and alternative options in relation to the inclusion of machines on order. Official records were not taken or maintained of some significant briefings of, and decisions by, the Minister.   As a consequence, there is limited departmental documentation on the development of the key elements of the MRI supply measure. Such documentation also would have assisted in better informing senior departmental management of the progress with the development of the policy proposal in view of their functional and operational responsibilities.

(d)   The quality of the processes supporting advice to the Minister.

The policy measure itself provided for benefits to be paid for MRI services by registered providers on eligible machines in place, or ordered, before Budget night. The Department's processes for developing the proposal to include machines on order before Budget night in the Budget measure, and in providing advice to the Minister on this matter, could have usefully involved greater consideration and attention to all relevant options. As well, more consideration could have been given to attendant benefits and risks for delivering the key supply measure and to the provision of information relevant to the Minister's assessment of departmental advice.   This conclusion applies both to advice at Budget time and to subsequent advice concerning emerging problems with respect to machines on order. By way of illustration, in the weeks immediately preceding the Budget, the Department considered the most significant issue to be addressed in developing the policy measure was the risk of not achieving an agreement with the college.

(e)   Potential Conflicts of Interest

> *It is noteworthy that five of the eleven radiologists involved in the negotiations were associated with practices that allegedly ordered nine machines prior to the Budget. Whatever the basis for this purchase activity, it would be reasonable to conclude that, if this fact were known in the profession, it would also have had some influence on other radiologists considering purchasing MRI machines.[19]*

Agencies should have in place processes for bringing to attention, and dealing with, any real or potential conflict of interest by those involved in the negotiation process. All parties should be asked about, and should declare voluntarily, any such interests

prior to taking part in negotiations or as they arise. The negotiating group should have the opportunity to discuss all such declarations. These, and any decisions relating to them, should be recorded.

In situations where potential conflicts of interest cannot be avoided, agencies should engender an appreciation across all relevant staff and stakeholders regarding the higher risks likely to arise from the misuse of confidential information. Accordingly, agencies should carefully consider suitable strategies to protect the Commonwealth's interests.

ADMINISTRATION OF THE FEDERATION FUND

This performance audit [20] focused on the major projects of the Federation Fund using the better practice principles of rigor, transparency and equity that are applicable to the selection of projects under funding assistance programs. The Department of the Prime Minister and Cabinet (PM&C) established a Federation Fund Taskforce of officials which assessed the majority of Federation Fund proposals that were later considered by a Committee of Ministers.

The audit found that the initial assessment and short-listing process conducted by the Taskforce lacked rigor and there was an uneven treatment demonstrated by the absence of any clear relationship between proposals rated highly against the selection criteria and those listed for 'detailed assessment'. The quality of the Taskforce's detailed assessments, while more transparent, was not as comprehensive as it could have been because of the:

- ❑ limited proposal information from all proponents;

- ❑ limited documentation of consultations with Commonwealth agencies;

- ❑ lack of examination of the reliability of proponents' statements, as was originally planned; and

- ❑ lack of consultations on unsolicited proposals with the states and territories, as originally planned.

(a)   Tension between standards for public administration and Cabinet conventions.

While these transparency issues are more or less 'standard fare', I included this report in my paper because the Federation Fund Program is atypical in that it has elements of administrative decision-making by a Committee of Ministers while at the same time operating under normal Cabinet conventions. This report draws attention to the tension between the standards of documentation normally expected with administrative decision-making and conventions normally expected with Cabinet deliberations. The Prime Minister advised that, although the Federation Fund contained an element of administrative decision-making, the process also involved considerations of the national interest that Ministers are best able to determine. The Prime Minister also made the point that, unlike officials, elected governments are accountable directly for their decisions to the electorate.

For the purposes of this audit, a distinction was made between the policy decisions of government and administrative judgements made by government where projects are selected on merit against pre-determined objectives and criteria. Given that projects were to be selected on their merits, a more transparent process would have assisted in demonstrating that the greatest benefit was being obtained for the expenditure of public funds in excess of $900 million, as well as providing greater confidence in the decision-making process.

As you would be aware, the ANAO publishes a series of Better Practice Guides as part of our role of improving public administration. One of our most popular Guides has been *Administration of Grants*. As grants continue to be a significant feature of public sector administration, the ANAO, in consultation with a number of Commonwealth agencies involved in the administration of grant programs, has updated the guide to the Administration of Grants.

The new edition, just released, is now more closely aligned to the current public sector environment and incorporates lessons learned from audits of grant and other related programs that have been conducted since 1997. The main focus of the Guide is on the administration of discretionary grants to community organisations selected on the basis of merit.

Diagram 1 – Main Focus of the Guide
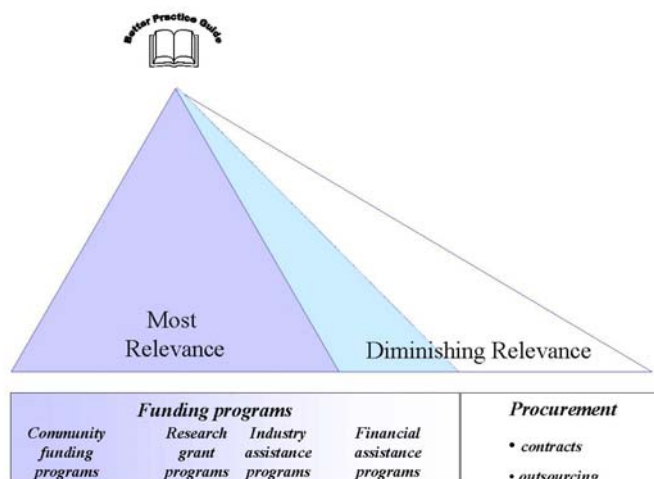
Source: Administration of Grants - Better Practice Guide, May 2002

However, the principles outlined in the Guide also apply to other types of grants made to individuals, private sector companies, or state, territory or local governments. I commend the guide to you and to your staff who may be engaged in administering grant programs.

COMMONWEALTH PROPERTY SALES

The audit of Commonwealth estate property sales[21], referred to earlier, involved reviewing the advice provided to Ministers that established the property sales program and the administration of the sales program, including consideration of whether it was in accordance with relevant policies and represented value for money.

While I do not wish to track over ground covered earlier, there are aspects of this audit that go to the heart of my remit – that is, policy advising as an output of agencies and how effectively it is delivered is an issue that effects decisions taken by governments. In this audit the following three matters are worthy of discussion.

(a)   The Value for Money Issue.

The ANAO analyses of the whole-of-lease-term costs for sale and long-term leaseback of property found that a potential negative financial return to the Commonwealth within the lease period was likely. In the transactions reviewed by ANAO, it was not apparent that a systematic process of inquiry, as required under the Financial Management and Accountability Regulations and the *Commonwealth Procurement Guidelines*, was conducted by the Department of Finance and Administration (Finance) prior to executing the sale contract and leasing arrangements with the purchasers. ANAO's legal advice is that if there is a conflict between the efficient and effective use of public money and the requirements of the Commonwealth Property Principles (CPPs) it would be prudent to seek guidance or reconsideration of the policy.   In circumstances where a proposed sale of Commonwealth property does not appear to represent value for money at the time of the final sale, it would be good administrative practice to inform Minister(s) of the inquiries undertaken and seek their consent before proceeding with the sale.

(b)   The Hurdle Rate Issue.

The ANAO queried the departmental advice, <u>not</u> the policy, concerning the hurdle rate of return threshold of 15%, questioning its level which, in effect, would force the sale of almost all Commonwealth properties that did not meet the public interest test. This would result in a sub-optimal investment outcome and financial loss to the Commonwealth when combined with long-term leaseback arrangements.   Our analysis indicated that, in contrast to applying the hurdle rate of <u>15%</u> resulting in divestment of virtually all of the property holding, or some 99% by value ($1 038 million), the application of a hurdle rate of:

- ❑ <u>10%</u> - only 8 of the 59 properties would have been scheduled for divestment, with a book value of $232 million; or

- ❑ <u>12%</u> - would have resulted in divestment of only 23 properties, with a book value of $326 million.

The consulting firm engaged by Finance during 2000 suggested *'a wide range for the property hurdle return is appropriate, with the upper bound at approximately 11%.'*[22]

In practice, all properties that exceeded the hurdle rate were recommended for divestment, except one property in the Parliamentary Triangle that was retained in the public interest. The documentation made available to ANAO did not allow for an effective review of the assumptions underpinning the rates of return identified by the Commonwealth Property Committee (CPC) for the properties recommended for divestment.

The risk measurement approach adopted by the consulting firm that reported to Finance in October 1999 and October 2000 is consistent with <u>project specific</u> risk

rates for property. This approach accords with that recommended by the then Department of Finance (Finance) in the 1991 *Handbook of Cost-Benefit Analysis* for the setting of discount rates. That publication advocated that the best option in choosing a discount rate is to develop a <u>project-specific</u> rate. A property with security of tenure to the Commonwealth in the form of a non-cancelable lease over a long period represents a low risk. Consequently, the criteria used for the hold/sell decision should reflect that risk profile.

(c)   Confusion of Roles.

Finance advised ANAO in April 2001 that its role was to implement a property divestment program endorsed by Ministers and that it was not charged with the role of protecting the overall interest of the Commonwealth. ANAO considers that, given the administrative division of responsibility and accountability, Finance is the only agency in a position to ensure that property divestment is consistent with the CPPs and to make an informed judgment as to whether a property sale and leaseback transaction represents efficient and effective use of Commonwealth resources at the time of the transaction.

GP HOUSE GRANT

The recently tabled Report [23] into the allocation of grant funding for the co-location of National General Practice organisations focussed on: whether due process was followed in making the decision to transfer funds between Outcomes; the procedures adopted by Health and Aged Care in developing the proposal; the advisory role played by Finance ; and specific advice provided to Ministers.

(a)   Lack of adequate documentation

For a significant period, the documentary evidence relating to the development of the proposal by Health and Aged Care was sketchy and this underscores the importance of ensuring that adequate records are maintained during the development of policy measures. The department is committed to bringing more discipline to documenting information, with a particular focus on practices around the creation of file notes and in formalising key advice to the Minister. This issue was also raised in the MRI example above.

(b)   The Adequacy of advice to Ministers

The ANAO took the view that there was uncertainty in the Cabinet endorsed guidelines regarding whether initiatives, proposed by the Minister for Health and Aged Care, should have been treated as a reallocation of administered expenses between outcomes or as a new policy measure. It is not unreasonable to come to a view that the issue was not clear cut. While both departments considered their actions were consistent with the guidelines, advice to Ministers did not address this particular matter specifically. An alternative view would have been that, because the 'fortuitous' nature of the savings offered as an offset and the effect of the entirely new initiative, it would have been prudent to treat the co-location proposal as a new policy measure.

In its advice to the Minister, Health and Aged Care did not give consideration to whether the proposal constituted a new policy and therefore required additional approval.

The Finance advice to its Minister did discuss the question as to whether the funding source represented 'fortuitous' savings, the proposal's inconsistency with the Government's rural and regional program, and the outcomes involved, recommending that the proposal be opposed. However, given its clear opposition to the proposal, the Finance advice did not address the process by which approval for the measure should be sought. The department did not normally consider that it was necessary to provide details of the process by which approval for the process should be sought, stating that it does not normally provide these details when advising against a proposal.[24]

(c)   Clarifying budgetary guidance

Given the uncertainly regarding the application of budgetary guidance in this case, the ANAO suggested that consideration be given by Finance to reviewing the relevant guidance and, as necessary, providing advice to Cabinet to clarify current guidance. In the ANAO's view, the areas that would benefit from review include: the merits of guidance in determining whether a proposal is consistent with previous Cabinet or Ministers' decisions; and whether current guidance on the reallocation of administered expenses which involve fortuitous savings might desirably be strengthened. While Finance has advised that operational guidelines have been consolidated for the 2002-03 Budget, the ANAO considers that there would be merit in a further review.

COMMONWEALTH IT OUTSOURCING INITIATIVE

The outsourcing of IT arose from a government decision known as the IT Initiative, which was to transfer around $A4 billion of IT in Federal agencies to the private sector. The then Office of Asset Sales and Information Technology Outsourcing (OASITO) managed the Initiative centrally for the government through a series of tenders dealing with groupings of agencies (clusters). The audit[25] examined the administrative and financial effectiveness of the implementation of the IT Initiative and was conducted against the background of the Prime Minister's letter of December 1998, advising Portfolio Ministers that *'as a general Government policy, outsourcing of IT infrastructure services should proceed unless there is a compelling business case on a whole-of-government basis for not doing so.'* [26]

(a)   Agencies' Roles under the IT Initiative

In examining the effectiveness of these 'clusters', experience suggests that, within the policy context, there were areas where the structure of the agency groupings could have been enhanced to better support agency business requirements (in terms of relative size, business focus, funding arrangements and security requirements). The audit report recommended an analysis of the existing groupings to identify opportunities to cost effectively optimize their composition considering the appropriateness and effectiveness of combining agencies of disparate size and business focus under a single arrangement. Additionally, as the Humphry Review noted, *'the clustering of contracts is felt by some members of the industry to limit their access to the government IT market.'* [27]

There was an uneven level of support for the way OASITO went about letting the tenders. Several Chief Executives had significant doubts about the ability of the Initiative to deliver the savings projected for it and/or to deliver the quality of service required. Being responsible for the results, it is not surprising that they wanted to assess the Initiative's implementation carefully. Unfortunately, this was later perceived as an unwillingness to change.

In particular, for those agencies where the IT requirement was predominantly scientific (for example the Bureau of Meteorology or the Commonwealth Scientific and Industrial Research Organisation) or otherwise related to the core activities of a particular agency (for example, the payment of pensions), the arrangement posed significant problems of corporate governance for them. The approach taken by OASITO was designed to implement the Government's policy agenda under centralised direction (and control) despite the perceived reluctance (buy-in) of some of the agency heads because they did not have the degree of control necessary to best manage transition risks, and because they were ultimately responsible for the agency outputs and outcomes and the budgets involved.[28]

(b)   The Savings Issue

Preliminary studies identified significant savings that would accrue from implementing the Initiative. Indeed, the projected savings from the implementation of the IT Initiative were removed, upfront, from the respective agency's forward estimates. What is significant is that the financial evaluation methodology applied in the tenders did not allow for two key factors that were material to the assessment of savings arising from outsourcing the services. The evaluations did not consider the service potential associated with agency assets expected to be on hand at the end of the evaluation period under the business-as-usual case, or the costs arising from the Commonwealth's guarantee of the external service provider's (ESP) asset values under the outsourcing case. Consequently, the financial savings realised by the agencies from outsourcing, as quantified in the tender evaluations, were overstated. This was disputed by OASITO and by the Minister concerned.

The central issue turned on interpretation of the accounting standard dealing with financial and operational leases. The different interpretations extended into the private sector that were later reviewed by the Joint Committee of Public Accounts and Audit (JCPAA). The JCPAA concluded that the correct treatment of accounting standards is fundamental to transparent reporting and budget honesty. Agencies should adopt consistent accounting standards which are also consistent with the proper management of risk to the Commonwealth.[29]

(d)   Management Issues

The ANAO identified a range of issues on which agencies should place particular focus in the management of IT outsourcing arrangements as follows:

- ❑   identification and management of 'whole of contract' issues including the retention of corporate knowledge, succession planning, and industrial relations and legal issues;

- the preparation for and management of, including expectations from, the initial transition to an outsourced arrangement, particularly when a number of agencies are grouped together under a single agreement;

- putting in place a management regime and strategy that encourages an effective long term working relationship with the ESP, while maintaining a focus on contract deliverables and transparency in the exercise of statutory accountability and resource management requirements;

- defining the service levels and other deliverables in the agreement so as to focus unambiguously on the management effort of both the ESP and agencies on the aspects of service delivery most relevant to agencies' business requirements; and

- the ESP's appreciation of, and ability to provide, the performance and invoicing information required by agencies in order to support effective contract management, as well as from both an agency performance and accountability point of view.

(d)   The Humphry Review

As a response to the audit, the Government commissioned a review of IT outsourcing conducted by Richard Humphry AO (Managing Director, Australian Stock Exchange). This independent review recognised the implicit management dilemma described above and recommended that, because Chief Executive Officers (CEOs) of agencies had the statutory responsibility, they should be responsible for the outsourcing decisions. In particular, decisions that impacted upon the core business of the agency needed to be taken at agency level. Mr Humphry remarked:

> *Priority has been given to executing outsourced contracts without adequate regard to the highly sensitive risk and complex processes of transition and the ongoing management of the outsourced business arrangement.*[30]

The review pointed out that there were several risk management lessons to be learned as follows:

- the most significant risk factors were the unwillingness to change and the failure to buy in the appropriate expertise;

- there was a lack of focus on the operational aspects of implementation;

- there was insufficient attention paid to the necessary process of understanding the agencies' business; and

- there was insufficient consultation with key stakeholders.[31]

The review drew heavily on the Standards Australia publication HB 240:2000, *Guidelines for Managing Risk in Outsourcing*.

(e)   The 'Wash-Up'

The Government agreed with the ten recommendations made by the Review, some with qualification.[32] This included that the responsibility for implementation of the IT Initiative be devolved to Commonwealth agencies in accordance with the culture of performance and accountability incorporated in the relevant financial management legislation. Agencies are required to obtain value for money (including savings) and maximise Australian industry development outcomes. Agency heads will be held directly accountable for achieving these objectives within a reasonable timeframe, as well as grouping with other agencies at their discretion, wherever possible, to establish the economies of scale required to maximise outcomes.

Agencies will also be responsible for addressing implementation risks. A separate body has been established within the Department of Finance and Administration to advise agencies, at their request and on a fee for service basis, on managing their transition. Audit experience indicates that the agency emphasis has to be on developing a robust analysis of business requirements at the initial stage, which would be the basis of a strong business case for whatever IT strategy is developed. Without OASITO's involvement, the industry can now deal directly, from the outset, with the people responsible for the function and related outputs and outcomes, as well as with those who will be managing the contract. The inability to have this relationship was the subject of criticism by the industry under the previous arrangements managed by OASITO. This is a significant lesson for all future outsourcing arrangements.

DEVELOPING POLICY ADVICE

The ANAO undertook a performance audit to determine whether departmental quality management systems for policy advising were appropriate and whether the advice provided met expected standards for policy outputs.[33] At the end of each chapter of the audit report, we included a section on better practice principles to assist with the improvement of management and quality assurance of policy advising across the APS.

Drawing on this report, the ANAO developed a Better Practice Guide – *Some Better Practice Principles for developing Policy Advice*[34] which I recommend for your consideration when undertaking policy development. While better practices and the checklist set out in the *Guide* are not exhaustive, nor applicable in every circumstance, they do provide a useful reference for agencies and should result in better policy advice that is both creditable and reliable.

IV   SOME COMMON THEMES

Having provided some examples of our audit coverage of the topic, I will now draw them together as management issues that need to be addressed in many public sector organisations to improve both decision-making and results being achieved.

PERFORMANCE MANAGEMENT

Under the Government's outcomes and outputs framework, all agencies are required to specify their outcomes and outputs and identify relevant performance measures. A

sound corporate governance framework provides the means for ensuring appropriate accountability for both performance and use of resources. This is necessary for the confidence and assurance of both internal and external stakeholders.

> *For Australia...The feature [of the development of its management framework] that mark it out include the emphasis on outputs, devolution, performance management, accountability, evaluation and values.*[35]

And

> *Managing through outcomes and outputs helps improve decision making and performance... It can also help improve the understanding and knowledge of those outside the agency who have an interest in its performance, including ministers, parliament and external accountability bodies such as the Auditor-General.* [36]

However, even though the focus of public sector reform is very much on results, it also matters how those results are achieved. Organisations that are successful in achieving a credible, trusted performance management framework, will earn the confidence and support of all their stakeholders, including those who work, and want to work, in the public sector. The following observation by the Comptroller General of the United States strikes an accord:

> *Performance management ensures accountability because it generates valid and reliable data on program impact on the allocation of resources and on the economy, efficiency, effectiveness and integrity with which the government's finances are run .*[37]

The validity and reliability of performance information is a key consideration in most ANAO performance audits and we have undertaken audits specifically considering performance information. Examples include: Reports No 46, *ATO Performance Reporting under the Outcomes and Outputs Framework,* and No. 43, *Performance Information for Commonwealth Financial Assistance under the Natural Heritage Trust*, both tabled in June 2001. In addition, the ANAO also conducted a cross-portfolio audit to assess performance information in the PBSs 2000-2001 and Annual Reports for 1999-2000. [38]

The cross- portfolio Report concluded that, overall, performance information in the PBS should be improved to enable agencies to establish and demonstrate the links between outcomes, outputs and performance indicators.

> *A common limitation in the performance information in all 10 audited agencies' PBS and annual reports related to effectiveness indicators which did not actually measure outcome performance.* [39]

And, overall, the Report also concluded that it would be difficult for Parliament and other stakeholders to assess agency performance with reasonable assurance as the performance information did not always include targets, or that the targets that were provided were often vague and or ambiguous. The requirement for an integrated

approach was also emphasised in a Management Advisory Committee's Report late last year on performance management.[40] Nevertheless, we should be aware of the so-called performance paradox which refers to a weak correlation between performance indicators and performance itself.[41] The question is what is the performance information really conveying about results being achieved. On the other hand, 'any significant experimentation with new forms of performance indicators may lead to discontinuities and monitoring issues.[42]

With the increasing emphasis on performance/results, considerable attention has been given to the audit of performance indicators, nationally and internationally. The Western Australia Auditor-General was the first Office required to audit such indicators by legislation. This practice has been followed in a number of other State Audit Offices over time. The Victorian Auditor-General recently set out some definitions for audit assessment of performance indicators.[43] He noted that definitions are not used consistently across, and within, jurisdictions. While Victorian departments have adequate arrangements in place, or are currently developing such arrangements, to measure and report their performance in relation to output measures for 2001-2002, there was an absence of agreed performance indicators for departmental objectives. This is a common shortcoming, often including a lack of adequately defined relationships between outputs and outcomes, thus reducing the value of external scrutiny.

RISK MANAGEMENT

Risk management is a theme that runs through many ANAO's audit reports. Recent ANAO audits have highlighted the need for:

❑ a strategic direction in setting the risk management focus and practices;

❑ transparency in the process; and

❑ effective management information systems.

Our goal over a number of years has been to encourage the embedding of a culture of risk management in agencies and Commonwealth organisations so that consideration of risks and risk mitigation strategies becomes second nature to managers at all levels. Importantly, a robust risk management framework is a useful means for management to able to defend their decision-making publicly.

The ANAO has continued to foster the view that risk management is an essential element of corporate governance underlying many of the reforms that are currently taking place in the public sector. To restate my point, it is not a separate activity within management but an integral part of good management process, particularly as an adjunct to the control environment, when we have limited resources and competing priorities. Against the background of the increasing use of a range of different service delivery arrangements; greater involvement of the private sector in the provision of public services; and with a more contestable/competitive market-oriented imperative risk management can only become more critical.

To be effective, the risk management process needs to be rigorous and systematic.[44] If organisations do not take a comprehensive approach to risk management, it is likely that directors and managers may not adequately identify or analyse risks.

Compounding the problem, inappropriate treatment regimes may be designed which do not appropriately mitigate the actual risks confronting their organisations and programs.

James Deloach, a partner in Arthur Andersen, highlights the criticality of managing business risk. His premise is that an enterprise-wide approach to business risk management improves the linkage of risk and opportunity and positions the business risk management as a competitive advantage. He offers the view that current approaches are too firmly entrenched in command and control and, thus rooted in the past. Such practices cannot adequately deal with an entity's continually evolving risks and opportunities. He proposed the Enterprise-wide Risk Management (EWRM) model which:

> *aligns strategy, processes, people, technology and knowledge with the purpose of evaluating and managing the uncertainties the enterprise faces as it creates value.* [45]

This approach minimises the influence of the management 'stove pipes'; leading to a more holistic, integrated, proactive and process oriented approach being taken to manage all key risks and opportunities.

This theme has been picked up in the CPA Australia's publication 'Enterprise-Wide Risk Management'. [46] In his article *'A check on risky business'* [47] Adam Awty, CPA Australia, sees effective risk management as *'being able to anticipate, prepare for and mitigate adverse outcomes, without eradicating, or un-necessarily hindering, beneficial risk-taking. Letting risks get out of hand, or being rendered powerless by not taking any risk, can destroy organizations'*. In relation to the survey, he observed:

> *It [risk management] is now becoming entrenched within the public sector and is resulting in better performance. CPA Australia's survey results show that the public sector has moved to address risk management and is now more accountable, better managed and a better service provider than it was in the mid-1990s... The challenge for the future is to develop mature methodologies such as risk-performance indicators and benchmarking. Public-sector agencies also need more sophisticated skills to monitor, communicate and link risks directly with corporate objectives.* [48]

Management of risk in the public sector involves making decisions that accord with statutory requirements and are consistent with public service values and ethics. This means that more, rather than less, attention should be devoted to ensuring that the best decision is made. This will require placing emphasis on making the 'right rather than quick decisions'. That said, with the increased convergence between the public and private sectors, there will be a need to consider a private sector point of view where the focus on cost, quality and financial performance is an important aspect of competing effectively.

RECORDS MANAGEMENT/RECORD-KEEPING

I think that it would be fair to say that record-keeping has not been seen by many public servants as a glamorous or exciting activity and consequently the standard of

record-keeping has been a recurring issue in ANAO audits over recent years. But clearly, it is an essential enabler in an organisation's corporate governance and critical to accountability and transparency, both within the organisation and externally. As the Public Record Office in the United Kingdom observes:

> *All organisations need to keep records of business decisions and transactions to meet the demands of corporate accountability.* [49]

Recently, the Public Service Commissioner was reported as observing that "the pace of activity has had an impact on the way we document matters and the service has yet to fully respond to that process".[50]

Records are consulted as proof of activity by senior managers, auditors, members of the public or by anyone inquiring into a decision, a process or the performance of an organisation or an individual. As such, they are an appropriate example of not only the importance of good process, but also how it often contributes importantly to the myriad of public sector outcomes or results. With the move to greater outsourcing to the private sector, there is increasing concern about organisations' ability to preserve those records that are needed to support the delivery of programs and services, and to meet their accountability, as well as archival, obligations.

Following the Australian Law Reform Commission's 1998 report on the Archives Act[51], the National Archives has been increasingly pro-active in the promulgation of guidance to Commonwealth bodies on record-keeping practices. Commonwealth record-keeping guidance culminated with release in March 2000 of an extensive range of record-keeping standards, policies, tools and guidelines for the Commonwealth on the National Archives web-site under its *e-permanence* logo. The *e-permanence* guidelines form the basis for a coherent framework for Commonwealth record-keeping. Some of the guidelines are formal requirements, for example, where they are linked to Government record-keeping requirements for web-based activity under the *Government On-Line* strategy.

Higher standards of accountability are expected in the public sector than is usual in the private sector and recognising this, Parliament has passed legislation relevant to record-keeping that applies to all Commonwealth agencies, such as the *Archives Act 1983*, the *Freedom of Information (FOI) Act 1982* and the *Privacy Act 1988*. These Acts deal with the overarching issues of maintenance, archiving and destruction of records, access to records by the public, and confidentiality of records. Also of relevance, particularly from a management viewpoint, are the *Public Service Act 1999*, the *Financial Management and Accountability (FMA) Act 1997* and the *Commonwealth Authorities and Companies (CAC) Act 1997*.

The FMA Act requires that Chief Executive Officers (CEOs) manage the affairs of their agencies in a way that promotes proper use (that is, efficient, effective and ethical use) of the Commonwealth resources for which the Chief Executive or Board is responsible. A CEO must ensure that the accounts and records of the agency are kept as required by the Finance Minister's Orders. Record-keeping is also covered by the CAC Act, which requires a Commonwealth authority to keep accounting records that properly record and explain its transactions and financial position. These records have to be kept in a way that enables the preparation of financial statements and that allows those statements to be audited appropriately and effectively.

In addition to legislative requirements, there are several other significant reasons for emphasising the importance of record-keeping in the public sector. Up-to-date, accessible, relevant and accurate records can ensure that decisions made by an agency are consistent, based on accurate information; are cost-effective; engender a sense of ownership of decisions throughout the agency; and place the agency in a considerably better position to justify to Parliament and the public any decisions made. I stress that it is often not just outputs and outcomes that are of concern to Parliament and the public, but also the *processes* of decision-making and the *reasons* for decisions made. Such transparency is achieved by ensuring that the decision-making process, and the reasons for decisions made, are adequately documented by the agency.

Transparency, through record-keeping, is an agency's first line of defence against accusations of bias, unfair treatment and other negative public perceptions. It also promotes confidence in the integrity of the Australian Public Service (APS) and provides assurance to stakeholders that the APS is making decisions in the 'public interest', particularly where procurement is concerned, as well as meeting any requirements for fairness, equity, privacy and freedom of information. Transparency also provides some guarantee of integrity of information, which improves the scope for governments to make constructive use of the internet in dealing with their citizens.

Countering the loss of corporate knowledge is another area that can be greatly assisted by a sound record-keeping culture. Corporate knowledge is largely the wealth of information and experience that is stored on paper, electronically or mentally. Of course, we are well aware that such knowledge is only useful when something is actually done with it. Loss of corporate knowledge has been a significant issue for the public sector in recent years where, due to the trend towards high turnover and increasing mobility of staff, in part the result of outsourcing activity and privatisation of public sector organisations and activities, we have seen an enormous drain on the retained knowledge of the APS through the departure of many experienced individuals. The creation and maintenance of suitable records can alleviate this problem to some extent, particularly in relation to decision-making.

The fact that formal systems cannot easily store or transfer 'tacit' knowledge is acknowledged[52]. Nevertheless, a relatively inexperienced manager, unable to gain a more experienced colleague's advice on a decision-making matter, would be greatly assisted by access to records of a similar decision someone else in the agency may have made in the past, particularly where other related information is also readily available. Information Technology (IT)-based expert systems may also address this problem to some extent. Although this technology is still in its infancy, such systems are being introduced into agencies such as Centrelink, Australian Taxation Office and the Department of Veterans' Affairs. This is a subject I will come to later.

Apart from mitigating the loss of corporate knowledge, record-keeping can assist the internal functioning of agencies by improving performance. Records of performance information are important in allowing an agency to monitor its performance and benchmark itself against other organisations, to ensure that performance is at optimum level. As well, fraud is less likely in a sound record-keeping environment that supports timely and accurate recording of data, with sufficient separation of duties. We are all aware that there is a cost associated with good record-keeping. In the main, it is a risk management judgement that should be made on the basis of a

systematic risk assessment with sound identification and prioritisation of both internal and external risks. This involves careful examination of what outcomes are really being required and, therefore, what record-keeping practices are necessary to achieve those outcomes. Any approach should also meet legislative requirements for record-keeping. In short, records should be fit for their purpose. This is particularly important in any outsourcing situation where such records are being wholly or partially maintained by the private sector.

It is apparent that there is an increasing tendency for policy and administrative decisions to be communicated and confirmed through e-mail communications. E-mail, electronic files and e-commerce are replacing traditional paper based records and transactions. This is a function of our changing expectations about the speed of communications, a growing emphasis on timely management of the 'political' dimensions of policy, and the appropriation by the public sector of a 'commercial paradigm' in which 'deals are done' (which is given added impetus by the involvement of private sector 'partners' in various aspects of government operations). Nevertheless, as better practice private sector firms demonstrate, good record-keeping is an integral part of a sound control environment and subject to a regularly reviewed risk management strategy which is integral to their required outcomes and accountability requirements.

As a particular instance of the task facing those of us who are required to oversight public sector operations and to provide important public accountability assurance, I note that the increasing use of e-mail poses significant challenges in terms of our traditional evidentiary standards (which customarily hinge on paper-based records) and the skills base of our auditors. As auditors, we are already confronting situations in which traditional forms of documentary evidence are not available. In such situations we are having to make links in the chain of decision-making in organisations which no longer keep paper records, or having to discover audit trails in electronic records, desktop office systems or archival data tapes. As communications between government agencies and outsourced service providers become increasingly electronic, it gives added urgency to making sure that the standards of accountability expected for the performance of government functions are understood and complied with by the relevant private sector partners. Particularly where there are still the hurdles of access and confidentiality to be overcome, the outcome is problematic.

Public policy has only begun to come to grips with the changing context. The time that policy makers need to process, structure and use knowledge so as to make informed decisions has become a scarce commodity, particularly as 24 hour media coverage of events around the world exerts unrelenting pressure to act, or perhaps react, quickly. Already we are witnessing what has been termed 'instant politics', where far-reaching decisions are often made on the first available information.[53] Taking a longer-term perspective, there is little doubt that technological change will radically transform the framework conditions within which policy is made. Nevertheless, as the OECD Public Management Service has observed, rapid policy change, higher standards of accountability and short deadlines are unavoidable governance facts. As well, it might be possible to raise awareness of the independency of policy and implementation issues when it comes to e-government[54].

The ANAO has recently completed an Assurance and Control Assessment (ACA) audit of record-keeping [55]. The audit assessed record-keeping policies, systems, and

processes in terms of good business practice, requirements under the Archives Act, relevant Government policies, and professional record-keeping principles. The audit found that, of the four agencies examined, most had just started to systematically assess their record-keeping needs and none had fully satisfied the criteria under the model used in the audit. Record-keeping in an organisation should be based on a systematic assessment of its business needs and that of its stakeholders for records, and a risk based analysis of the likelihood and consequences relating to meeting those needs. The Commonwealth has introduced a manual to guide the design and implementation of record-keeping systems titled DIRKS: *A Strategic Approach to Managing Business Information*. The DIRKS method is in line with professional record-keeping standards and is useful in managing all of an organisation's business information. The ANAO is planning to conduct future audits of record-keeping over the next two years.

ETHICAL DECISION-MAKING

It goes without saying that principled decision-making is based on a set of core ethical values. The values, standards and practices which underpin decision-making in public sector agencies flow from peak public service values, obligations and standards, which in turn are derived from legislation, policy and accepted public service conventions. The new public service values are a key element in the Government's public sector reform program and have been included in the new *Public Service Act 1999*. The following are some of the values that agency heads are required to uphold and promote within their organisations:

❑ the Australian Public Service is apolitical, performing its functions in an impartial and professional manner;

❑ the Australian Public Service has the highest ethical standards;

❑ the Australian Public Service is accountable for its actions, within the framework of Ministerial responsibility, to the Government, the Parliament and the Australian public;

❑ the Australian Public Service delivers services fairly, effectively, impartially and courteously to the Australian public; and

❑ the Australian Public Service focuses on achieving results and managing performance.

Regulations require agency heads to integrate these values into the culture of their agency. The Public Service and Merit Protection Commission (PSMPC), in last year's State of the Service Report, asked agencies to conduct surveys to test staff understanding of the Public Service Values and Code of Conduct.[56] The Public Service Commissioner recently indicated he was keen for the PSMPC to work with agencies to identify and promote better practice to ensure poor systems and processes are fixed, and to build widespread understanding of the Values and Code of Conduct across the Service.[57] He went on to say that:

> *we do need to exercise care and have clear procedures for identifying and addressing ethical dilemmas. Many a public*

> *investigation has its origins in the failure to identify an ethical dilemma at the time.*[58]

To take one example, the ANAO's key values and behaviours relate to respect, integrity and excellence. These values are guided by the ANAO Code of Conduct which has been developed within the framework of the new Australian Public Service values and the Australian Public Service Code of Conduct, together with the Codes of Ethics promulgated by the professional accounting bodies.

PRIVACY AND SECURITY

The increased involvement of the private sector in the provision of public services also raises concerns about the security of agency data and records, particularly in electronic form. Previously, the obligations that applied to Commonwealth agencies under the Privacy Act did not apply to private sector organisations. However, the Privacy Amendment (Private Sector) Act 2000 aims to provide privacy protection for personal records across the private sector, including those organisations providing outsourced services to the public sector. The Act enables a contract between a Commonwealth agency and the private sector supplier to be the primary source of the contractors' privacy obligations regarding personal records. The Act:

> *aims to control the way information is used and stored, and bring to justice those who abuse private information for their own ends. Placed in the insecure context of e-commerce and e-mail transmission of personal details, issues of privacy have become more significant.*[59]

A key provision of the Act is the inclusion of ten 'National Privacy Principles for the Fair Handling of Personal Information'. These Principles set standards about how business should collect, secure, store, use and disclose personal information. The Act makes a distinction between 'personal' and 'sensitive' information[60]. The latter includes information on a person's religious and political beliefs and health, where the private sector is more strictly limited in its collection and handling. This legislation is likely to have a marked impact on that sector's involvement in the delivery of public services.[61]

Section 95B of the *Privacy Amendment (Private Sector) Act 2000* requires agencies to consider their own obligations under the Act when entering into contracts and obliges them to take contractual measures to ensure that a contracted service provider does not do an act, or engage in a practice, that would breach an Information Privacy Principle if done by the agency. The obligation on the agency extends to ensuring that such an act or practice is not authorised by a subcontract. The Australian Government Solicitor recently published a Model Clause, *Protection of Personal Information*, to assist Commonwealth agencies in discharging their responsibilities under Section 95B of the Privacy Act[62]. Agencies were also reminded that changes to some elements of the Clause may be necessary to reflect particular situations.

Under the Privacy Act, privacy monitoring of outsourcing arrangements falls into two stages:

❑ assessing the privacy control environment, particularly by ensuring that outsourcing arrangements are governed by contracts that contain appropriate privacy clauses; and

❑ monitoring the actual implementation of the controls, particularly by monitoring compliance with the contractual clauses.[63]

In practice, available feedback from outsourcing agencies and contractors suggests that few, if any, complaints have arisen in relation to privacy breaches associated with outsourcing contracts.[64] The recent State of the Service Report indicates that:

> *The Privacy Commissioner remains apprehensive about the handling of personal information by outsourced providers and stresses that, with an increase in outsourcing across a range of services, APS employees must be confident that service providers are complying with the Information Privacy Principles (IPPs) and the Privacy Act 2000.* [65]

Clearly, contracts for outsourcing service delivery need to ensure that prospective service providers are aware of the standard of protection that comes from dealing with people on behalf of the government and that the mechanisms in place do provide effective privacy protection. A watchful citizenry will want to be certain that agencies and their contractors cannot evade their obligations.

To fully address such concerns, a Better Practice Guide, recently prepared by the ANAO,[66] suggests that agency Internet websites should incorporate a prominently displayed Privacy Statement that states what information is collected, for what purpose, and how this information is used, if it is disclosed and to whom. It should also address any other privacy issues.[67] According to Privacy Compliance Audits conducted by the Privacy Commissioner, of Commonwealth Government web sites in 2000 and 2001, about 20 per cent of larger agencies, and 38 per cent of smaller agencies, still need to include a privacy statement on their web sites.[68]

QUALITY AND TIMELY INFORMATION

An important element of any decision-making process is having ready, user-friendly access by managers and other agency staff to relevant and high quality information upon which they can base their decisions. It is of fundamental importance that the information used by managers in decision-making processes is relevant and reliable and available in a form, and at a time, that meets the needs of the particular situation. In short, 'information provides a basis for creative problem solving and decision-making activity'.[69]

If poor quality information is used by decision-makers, it is obvious that the probability of making poor decisions will considerably increase. Irrespective of the frameworks and processes installed by an agency, if the information upon which those decisions are based is flawed, the whole decision-making process will be undermined. Clearly, this is an unacceptable situation. Yet how many of us actually know whether we have the 'right' and/or 'sufficient' information? The problem is accentuated with, say, the departure of a considerable body of corporate knowledge, when there is even more dependence on our information systems. This is another

element of risk management that requires attention in a period of high staff turn-over and/or outsourcing of agency activities, including service delivery.

When an organisation collects information to be used by management in making decisions it is imperative that the information concerned has some relevance to the people who use it. Relevant information can dramatically influence the time taken to make informed decisions as well as obviously improving decision-making. This applies to information both from our internal and external environments, with the latter often requiring particular attention by management to ensure its relevance and availability.

The past decade has seen a radical transformation take place in the role of Information Technology (IT) in organisations worldwide. Technology has given us the ability to store and access enormous amounts of information and provides us the means to extract efficiently useful information for decision-making, particularly from the Internet. It is interesting to note that twenty years ago it would not have been possible to subject agencies to the level of scrutiny that we do today. With extra processing power comes the increased burden of expectation, as agency stakeholders now routinely require detailed information. The emphasis has increasingly been on sharing and collaboration.

The capabilities of modern technology, both in communications and computing, also broaden the horizons for the amount of information agencies can capture. Utilising tools, such as the Internet, has opened up an enormous pool of information from which agencies can draw and benefit. However, this increased ability to capture and store information in itself has created questions about the ability of organisations to sift, disseminate, interpret and use the information currently available. In particular:

> *Organisations with traditional bureaucratic-type structures have had limited benefits from introducing traditional information technologies such as management information systems and data-base management systems.*[70]

Internet technologies provide both an opportunity and a threat to public sector organisations. As such, they need to become an important element of our risk management plans.

Many agencies throughout the APS collect vast quantities information that can be used for decision-making processes. The amount of information collected by agencies such as the Department of Social Security and the Australian Taxation Office each year as part of their day-to-day activities is increasing at an exponential rate. Although the advent of sophisticated data storage and interrogation technology during recent years has made it easier, and cheaper, for managers to access the information necessary to make decisions, this technology has also significantly increased the amount of information which can be stored by agencies. This, in turn, has led to its own problems of information selection, 'weeding', disposal and archiving, particularly in collaborative or partnership arrangements. Appropriate training and skills development are essential elements of the changing culture associated with our greater dependence on information technology and new ways of working.

EXPERT/RULE BASED SYSTEMS

According to a recent Accenture report on eGovernment implementation[71], Australia may have met its goal to have all appropriate federal services online by December 2001 but its failure, in Accenture's view, to provide greater levels of interactivity has kept it from ranking alongside the world's e-government pace setters. Although the Government said there were now 1,665 services and information sources online, the Accenture report left Australia out of a group called the "Innovative Leaders". The report found that of the 115 services the Federal Government could deliver online, only two were developed to an interactive level and three to transactional level in 2001.[72]

This highlights one of the fundamental challenges in delivering government services, many of which are underpinned by complex policy and associated legislation. The challenge is that of enabling agency staff and their clients to understand and apply the legislation accurately in order to determine citizens' benefits, entitlements and obligations fairly and consistently. A further dimension to this challenge is for agencies to manage the impact of legislative change, as existing programs are refined and more closely targeted over time and new programs are introduced.

The accuracy and consistency of primary decision making by agencies, and their clients in a self-assessment environment, is the key issue to be addressed where complex policy is concerned. For example, in the social welfare domain, overpayment of benefits is at least as bad as, and possibly worse in some cases, than underpayment in terms of the impact on the client. In other domains, for example veterans' and workers' compensation, incorrect decisions can, if undetected, result in an enormous additional lifetime cost to government. The opportunity cost of incorrect decisions can also be significant where tax offsets are concerned. Claims by non-eligible people for tax offsets mean that potential revenue is foregone.

It has also been observed that e-government success hinges on changing how agencies work and deal with the legislation which they are responsible for administering, as well as on how agencies interact with the public. For example, in the United States, the Internal Revenue Service has explicitly stated that its electronic tax administration mission is *to revolutionise how taxpayers transact and communicate with the IRS.*[73]

Notwithstanding the complexity of the policy and legislative environment and the demands for easier, cheaper and more personalised service, agencies are still accountable to the Parliament for their management of public funds. With the more widespread application of technology, service delivery networks are fast evolving to cover multiple channels. Agencies also need to ensure that their decision-making on entitlements, benefits and obligations, is accurate, consistent and transparent, irrespective of the channel chosen by their customers. There is, consequently, a corresponding requirement for agencies to use technology to support the decision-making processes associated with complex policy and legislation.

In the face of continued budgetary pressures and the expectation to continually improve service levels, it is even more important that Australian public sector agencies continue to explore the potential benefits of such technology in implementing their electronic service delivery strategies.

Expert systems were one form of information technology-based decision-making tool which emerged during the 1980s. Expert systems use artificial intelligence technology and are encoded with human knowledge and experience to achieve expert levels of problem solving. This kind of technology presented some fundamental difficulties, particularly for government agencies, in adequately capturing and addressing the particular complexities presented by legislative rules. As a result, some of the early experiences with this sort of technology in the public sector were less than positive.

More recently, a number of larger Commonwealth agencies have deployed legislative rulebase technology systems to administer complex legislation. These systems support the administration of determinative legislation, regulations and policy rules to improve the accuracy, consistency and timeliness of decisions. Time does not permit a detailed treatment here. However, the following three examples of the deployment of legislative rulebase technology in Commonwealth agencies are indicative of what can be achieved.[74]

The first example of a legislative rulebase system is the Compensation Claims Processing System (CCPS) in the veterans' entitlements domain. CCPS was deployed by the Department of Veterans' Affairs (DVA) in 1994-95 to support its Disability Compensation program, which outlays over $2 billion per annum in disability compensation payments and war widows pensions. DVA claims that CCPS has resulted in:

❑ productivity improvements of around 80 per cent, since approximately 30 per cent fewer staff now finalise almost 30 per cent more decisions per annum than was the case before introduction of the system;

❑ 60 per cent reduction in average time taken to process claims and appeals (from 160 days to around 60 days);

❑ estimated reduction in running costs of $2–3 million per annum (excluding on-costs) or upwards of $6 million per annum (including on-costs such as State and National Office overheads);

❑ improvements in the consistency of decisions and therefore more equitable treatment of claimants;

❑ improved internal review of claims;

❑ better management information; and

❑ better support and acceptance by the veteran community.[75]

A second example of legislative rulebase technology is in the social welfare domain. Centrelink and the Department of Family and Community Services are well advanced in the development of a legislative processing system – know as the 'Edge' system - to determine their customers' potential entitlement to the range of family assistance benefits.[76]

Centrelink staff are currently responsible for administering around 30,000 rules which form the basis of our highly targeted social security system.[77] The Edge system captures around 8000 of those rules currently contained in around 1000 pages of family assistance legislation. This decision support tool forms a key element of Centrelink's 'Getting it Right' campaign, in which Centrelink aims to ensure that payments are in fact been made 'to the right person, at the right rate, on the right dates'. Centrelink's CEO recently noted that:

> *Edge means that our staff, and eventually our customers, will only need to answer the personalised questions on the screen and they will get an accurate assessment of their entitlement. In the future similar programs will be built for other customer groups.* [78]

The factors behind the decision to develop Edge system included:

❑ *the large number of often complex rules that staff need to remember when determining a person's entitlement to payments;*

❑ *Ombudsman and Ministerial criticism about inconsistent applications of the payment rules;*

❑ *the current business rule environment not being flexible as desired;*

❑ *the need to improve the speed with which system changes are made in response to legislative and policy change; and*

❑ *the need to increase the transparency of the implementation and interpretation of legislation for both customers and the social policy community.* [79]

According to agency representatives, the response from customers, staff and managers to the Edge pilot was very positive, as the following indicates:

> *Customers found that the system gave them an improved understanding of their entitlements and helped them to make financial/budgeting decisions. They were more confident about the accuracy of the information provided and commentated favourably on the letter advising of their possible entitlements.* [80]

I understand that the Edge system is due to 'go live' in July this year and will be subsequently expanded to cover other types of benefits and customer groups.

In the final example, the Australian Taxation Office (ATO) is currently developing a legislative processing technology system as part of implementation of the new 'Baby Bonus' tax offset which came into effect from 1 July 2001. The system will enable the decision-maker (whether they are an ATO officer providing telephone advice or a potential claimant using the internet for self service) to accurately and quickly determine eligibility for, and the amount of, the bonus which can be claimed.

The rulebase at the heart of the system precisely mirrors the structure and content of the underlying legislation. Because the system intelligently generates a series of

relevant questions from this rulebase, people who know nothing about that particular legislation are able, in the course of a short, computer-based interview, to make accurate and reliable determinations on eligibility and rate of offset. As well, the system provides a management trail or audit report showing precisely how the decision was made by explicitly relating all of the relevant provisions of the legislation to facts of the individual case. This also forms the basis of automated document generation (for example, a customised claim form). A later stage of the project is to consider how the system could be further integrated with ATO systems to allow electronic lodgement and payment of claims.[81] .

The ATO example is of particular interest as the project is proving the concept of using rulebase technology to underpin a more integrated approach to supporting the closely related functions of:

❑ policy development;

❑ development and drafting of the legislation giving effect to the policy;

❑ design of service delivery structures for administering the legislation; and

❑ administration of the legislation.

The following diagram illustrates the various activities that are part of these larger functions, and drives home the fact that they are all related to the agency's policy and legislation – that is, the core knowledge of the agency:

Diagram 1 – The Integrated Model
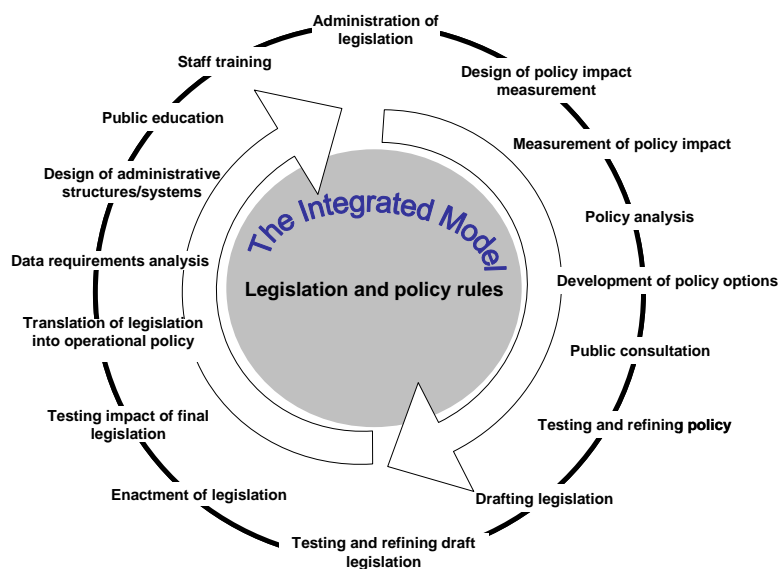
Source: Softlaw Corporation Limited [82]

I understand that, in the case of the Baby Bonus project, the ATO set out to prove the concept of applying rulebase technology and associated analytical methodologies in support of its new Integrated Tax Design project. [83] One of the key aims of integrated tax design is to preserve policy and legislative intent in administrative systems.

In the legislative drafting phase of the Baby Bonus project, rulebase technology was used to model draft legislation in order to identify potential flaws in the draft law. I understand that this proved to be a valuable quality assurance function which helped to deliver a high quality bill to the Parliament.

As well, rulebase technology was also applied in a policy analysis context by providing a policy option modelling capability. In this case, the technology was used to process client profile data through rulebase models of a number of different policy options to compare the outcomes. This demonstrated how the technology was able to precisely identify the actual impact of proposed policy changes in relation to different types of client. I understand that the ATO is currently considering deployment of a decision support system in its call centres and over the internet to answer potential claimants' queries on eligibility and rate of offset.

It is interesting to note that these systems offer an effective means of reducing an agency's reliance on the retained knowledge of individuals in the organization. As I noted earlier, this has been a significant issue for the public sector in recent years, where we have seen an enormous drain on the retained knowledge of the Service through the departure of many experienced individuals. Of particular interest is an observation by one agency head in the course of a JCPAA inquiry following the recent ANAO audit that *people who were considered experts in our organisation were not in fact experts. They were people who knew a lot but who had not necessarily kept themselves up to date*.[84] This emphasises one of the core problems I referred to earlier – that of maintaining a sufficient level of knowledge in a volatile policy and legislative environment.

This issue is even more important in the context of more "joined up" government which I have referred to in a previous speech.[85] The realisation of joined-up government services will require considerable cooperation across departments and across levels of government in order to deliver transparent, customer-focussed solutions. Where complex legislation is concerned, it is even more vital to have be able to ensure that all relevant agencies are 'singing off the same song sheet'.

Legislative rulebase technology offers a robust, electronic model of legislation which can be used to ensure an accurate, consistent and shared understanding of how the particular rules apply to particular kinds of customers. This offers a range of possibilities in cross-agency policy analysis, in order to, for example, better determine the interaction between the taxation and social welfare systems with regard to particular kinds of clients or customers. This kind of understanding is vital if real joined up government is to be achieved.

While improvements in information collection, maintenance and access technology will help to address the knowledge management issue to some extent, where legislation and other complex policy rules are concerned, rulebase systems have the potential to greatly reduce the reliance on retained staff knowledge. Nonetheless, I do not think there will be a total substitute for the perception and judgement of key people particularly for those decisions outside the narrow rule-based regime of the assessor. As a developer of an Australian legislative rulebase technology states:

> *A rulebase system cannot and should not attempt to automate the judgement of the quality of the evidence. On the contrary, we believe that this judgement should become the primary focus of assessment staff, rather being seen as a peripheral or secondary duty.* [86]

V.   CONCLUDING REMARKS

Many of our performance audits have recommended a more systematic approach to decision-making in agencies, notably where they have been subject to considerable changes in their structures, systems and the ways in which they undertake their functions and/or deliver their services. This is a reflection of the need to manage effectively a more risky environment, perhaps where the requisite skills and experience need to be improved, such as in contract management. As well, managers have been encouraged to take a risk management approach to their responsibilities to improve performance, as part of the public service reforms, which now focus <u>more</u> on achieving program outcomes efficiently and effectively.

I am aware of the practical difficulties associated with applying effective decision-making strategies and processes to particular problems, including at different levels of the agency, and to fostering a successful decision-making environment. In particular, I am very aware of the human element in effective decision-making. But it is axiomatic that an agency with a clear and strong client orientation and robust decision-making processes should deliver quality client service, as such decisions are likely to be more timely, consistent and appropriate to the purpose. Although this concept sounds simple enough, it is often difficult for APS agencies to put into practice because of the complex and often disparate requirements of clients (who are also citizens) and other stakeholders such as the Government and the relevant Ministers. It is particularly important to ensure that agencies have a very good understanding and appreciation of such requirements as a responsive and responsible public service.

At the end of the day we will all be held accountable for our decisions. That includes <u>how</u> they are made as well as <u>what</u> outcomes are achieved. This does not happen by accident. It is greatly helped by a systematic approach to decision-making that builds in the necessary management elements to cope with the range of risks involved, including regular monitoring and review. Often the latter will depend on the availability of timely and relevant information supported by sound record-keeping practices. Our focus has to be on both our internal and external environments while making best use of increasingly lower cost systems based on electronic technology with their attendant risks, not the least of which are in delivering quality (usefulness for purpose) and not just quantity of information. Particular attention has to be given to our various management systems to ensure that they provide required information in a timely and useful manner to managers at all levels.

Accountability will demand that we are always in a position to explain the basis of our decisions if requested. That accountability extends to ensuring we have taken effective action where the factors bearing on those decisions have changed or where we have simply made an error of judgment. Accountability means being under scrutiny. It is endemic to our democratic system. That is one of the challenges of

working in the public sector, including that we take decisions which can be shown to be effective and help to achieve the outputs and outcomes required of us as a highly performing public service.

Finally, I am sure that it would be generally agreed that a pro-active and anticipative public service would be seeking to provide suitable advice to Ministers for decision-making. It is important for a professional public service to contribute to the environment in which it operates. This is particularly important in a situation of devolved central authority where there are not the same 'corporate' information flows and support as in the past, which could create gaps in strategic knowledge, management approaches and accountability if no consideration is given to dealing with any such consequences by other means. The situation demands pro-active, not reactive, management attention which cannot simply be assumed will occur. This is a challenge for all of us, as we are all subject to external scrutiny in some form or another, not least by the Australian public whom we aim to serve.

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