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**Outsourcing and Partnerships in  
the Public Sector – Driving a  
Generic Brand Approach**

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## OUTSOURCING AND PARTNERSHIPS IN THE PUBLIC SECTOR – DRIVING A GENERIC BRAND APPROACH

### I Introductory Comments

*‘The battle between the private and public domains has been one of the defining features of modern political and administrative life in government. It has underpinned many of the government reforms upon the aggressive pursuit of greater efficiency and economy over the past two decades and has fuelled much of the ideology behind these reforms’<sup>1</sup>*

Over the last two decades the organisation of governmental activity has undergone a radical transformation that has been proclaimed to be a ‘global public management revolution’.<sup>2</sup> In Australia, New Zealand, the United Kingdom (UK) and some European countries the change has been called the ‘new public management’ (NPM). In the United States, the terminology of the previous administration was ‘reinventing government’. The terminology of ‘public management’ is comparatively new and perhaps the most definitive characteristic of the NPM is the greater salience that is given to what has been called the three ‘Es’ – economy, efficiency and effectiveness. For over a century, the conduct of governmental activities has been generally referred to as ‘public administration’, now the word ‘administration’ seems old fashioned and exceedingly passive.<sup>3</sup> However, ‘managerialism’ has also recently been getting a ‘bad press’.

The hallmark of Westminster style government has been the pronounced tendency for hierarchical, vertically organised administrative departments reporting to a responsible minister with the desirability of a single locus where ultimate responsibility resides. Indeed, the British government opted for departmentalism during and after its great expansion in the late 19th century with government divided into separate departments dealing with functions such as finance, education, defence, housing, colonies, trade and transport; often departments developed close relationships with particular professions - health with the doctors, education with teachers for example. Funds were voted by Parliament for specific ends, with tight monitoring to ensure that they were spent correctly.

While this hierarchy or ‘stove piping’ arrangement allowed an institution to respond to outside events in a coherent and consistent fashion, as well as having a reasonably strong accountability system linked to ministerial responsibility, over time, the weaknesses of this model became more apparent. The ‘tubes’ or ‘silos’ down which the money flows from government to people (and localities) has come to be seen as potentially skewing government efforts away from certain activities, such as prevention - where the benefits of preventive action often flowed to another department, thus making the management of ‘horizontal’ or ‘whole of government’ issues problematic.<sup>4</sup> As Geoff Mulgan, Head of the UK’s Strategy Unit Office has observed:

*'All large organisations - whether governments, city administrations, multinational companies or armies - face two common problems. One is a problem of coordination: how to cajole and encourage an often huge flotilla of agencies, departments, units and professions to point in broadly the same broad direction, and at the very least not to undermine each other's work. The other is a problem of organisation and integration: how to align incentives, cultures and structures of authority to fit critical tasks that cut across organisational boundaries. We coined the phrase 'joined up government' to refer to both sets of issues. Although some aspects of it are new - particularly the impact of the Internet - in other respects these are very old issues. They faced all the big imperial bureaucracies whether Roman, Ottoman or Chinese and every military command attempting to coordinate complex forces'.<sup>5</sup>*

In 1999, the British Prime Minister, Tony Blair, complained of having '*scars on my back*' from his attempts to get the Whitehall departments to improve public services – in his view they were too slow to provide initiatives or respond to ministerial promptings. Civil servants, he implied, were concentrating on operating in '*policy chimneys*', protecting their turf and their own interests rather than advancing government programs.<sup>6</sup> While the Blair government's interest in the modernisation of government and policy-making was built on many of the reforms of the Thatcher and Major initiatives (the thrust of these reforms was largely managerial, focussing on efficiency and economy), under Labour, the focus changed more to policy implementation. In particular, achieving effectiveness in service delivery became the mantra with the key elements set out in the *White Paper, Modernising Government* (March 1999).<sup>7</sup>

This New Public Management approach, by drawing attention to citizens as clients, forced organisations to focus on clienteles rather than functions.<sup>8</sup> The Blair government's view was that many issues such as health, education, crime and poverty did not fit within the functional divisions of departments but rather they were linked in complex ways and, therefore, cut across departmental responsibilities.<sup>9</sup>

To some extent, joined up government involves relations within and between departments and between departments and the centre and between departments and external agencies. It has horizontal elements, in terms of linking different bodies at a particular level of government, but it has vertical elements, particularly in the Australian context, in terms of improving the relationships between departments and agencies at the three levels of government. In addition, it has been extended to 'partnerships' with the private sector. It has been argued that service improvement may not occur unless whole service delivery systems including public, private and voluntary organisations get better.<sup>10</sup>

In the United States, the disturbing events that surrounded September 11 produced a tremor that also shook the metaphorical towers or 'silos' of the US governance system, with some asserting that the World Trade Centre assault was a defining moment and a new beginning for inter-government responsibility. The official response to September 11 has included a significant process of institution building –

the 43 federal agencies involved in the aftermath of September 11 (and a larger number of state and federal organisations) have since joined the national effort. The new Homeland Defence Organization has been charged with co-ordinating all these bodies. It seeks to achieve a type of network governance rather than the more usual hierarchical control over resources and people.<sup>11</sup>

Earlier this year the United States General Accounting Office (GAO) took a government wide perspective on major management challenges and program risks noting that:

*Some agencies have begun transformation efforts to fundamentally change their cultures to become more results-oriented, customer focussed, and collaborative in nature.*<sup>12</sup>

The report also noted that establishing the new Department of Homeland Security provided a unique challenge and opportunity to transform government. Transformation efforts build upon principles of effective management, including strategic planning, organisational alignment, human capital strategies, performance-based management and budgeting focussed on results. As well, there needed to be sound financial, information technology, acquisition, change, and knowledge management, practices. In particular, the report notes that:

*It is increasingly important that federal programs use tools to manage effectively across boundaries and work in conjunction with the priorities and needs of American citizens, international, federal, state and local governments; and the private and non-profit sectors.*<sup>13</sup>

Australian governments have also endeavoured to make the public sector less costly and better tailored to public needs while providing higher quality services to citizens. This has been reflected in a growing trend toward a range of organisations bringing their specialist skills to bear in order to achieve a common public sector goal in the most effective manner. In this regard the Prime Minister has commented that:

*‘Another challenge is the capacity of departments to successfully interact with each other in pursuit of whole of government goals and more broadly, for the entire Service to work in partnership with other bureaucracies, with business and with community groups as resources and responsibility are devolved closer to where problems or opportunities exist.*<sup>14</sup>

and,

*‘Whole of government approaches, collectively owned, by several Ministers, will increasingly become a common response.’<sup>15</sup>*

A recent paper by the Management Advisory Committee (MAC) flagged this trend in regard to the Australian Government’s use of information and communications technology, commenting:

*'In a devolved management system where the cost of enablers [like information and communications technology] is increasing, a 'federated' governance approach is desirable. A federated governance system is one in which independent agencies work together to achieve an optimal outcome for each other and government as a whole'.<sup>16</sup>*

The potential benefit of the move towards *joined-up* (across organisation, network, collaborative or integrated) government for the citizen, businesses and community organisations, is a reduced need to understand how government is structured in order to secure the services they need and/or are entitled to. Citizens should not necessarily have to deal with a range of government departments, perhaps at national, state and local levels, in order to progress a particular course of action. The genesis of this approach is already evident in the Australian Government Entry Point, [www.fed.gov.au](http://www.fed.gov.au), where the web site is structured along functional and user lines. This assists with achieving an important aim of joined-up government, that is, the integration of government services with the primary focus on the needs of the citizen and, ideally, delivered in a seamless manner.

The final trend I would like to highlight in my introductory comments (that has occurred as a direct consequence of the introduction of NPM) is the apparent increasing convergence of the public and private sectors in Australia and overseas. Of some significance with these reforms, in terms of their far-reaching effects on governance arrangements, has been the trend toward the greater outsourcing of public (increasingly, so-called traditional) functions and the greater focus on the contestability of services in the public sector. As two academic commentators have observed:

*'NPM reform in the APS has been consistently grounded in, and developed and applied, on the basis of institutional economic theory, inspired by the rhetoric of rationalising public sector activities...Broadly, the reform programme is based on key principles [of]...separation of the contracting of services from service delivery; funding based on results (outputs and outcomes) as opposed to inputs in an environment permitting private-sector suppliers to determine the most effective and innovative ways to produce the contracted services; and a commitment to reducing the role of government in the direct provision of services'.<sup>17</sup>*

These reforms were largely based on the premise that greater efficiency and lower costs could be achieved by applying private sector practices to public sector service delivery. In some cases, this means that private sector management models have overlaid traditional public sector activity. In others, the private sector has become fully incorporated in the delivery of public services through contract, cooperative and partnership arrangements. The Australian Public Service Commission has noted that public service values and code of conduct are robust enough to govern the behaviour of all public servants. However, the Commission also notes that relevant values should also be applied to outsourced service providers and partners, particularly those providing services to the public.<sup>18</sup> I understand some of the latter have volunteered to

do so but it does raise the question as to how this can be made a reality in any enforceable sense.

With these introductory comments as a backdrop, the paper itself is structured around the following issues:

- ***Joined Up Government*** – The changing approaches to public administration which have sought to join-up, both between agencies and with entities outside that tier of government, have sharpened our awareness particularly of the practicality of shared responsibility and accountability and the associated corporate governance issues that have been occurring through an increased focus on accountability for performance. The theme that I explore here is that whichever entity or agency that takes responsibility for public funds and outcomes under a joined-up arrangement, there is the need to have clearly defined lines of responsibility and accountability. Citizens are entitled to know whether public resources are being properly used, and what is being achieved with them. The issue is essentially who is accountable for what.
- ***Service Charters*** require an agency to account publicly for its operations by publishing information on an agency's purpose, its customer base and its services and service standards, its complaints mechanism and, importantly, information on its compliance with the Charter. I will briefly canvass the genesis of Service Charters and examine how they can ensure better accountability to citizens
- ***Public Private Partnerships (PPPs)*** are a means of using private finance and skills to deliver government programs, mainly capital investment projects. PPPs have been used 'as a global term to cover Outsourcing, BOO/BOOT [PFI type] schemes and partial privatisation'<sup>19</sup>. In this paper I intend to focus on PFI and outsourcing as well as drawing on some recent research undertaken by the UK Treasury which identified lessons learnt in the evolving role of the PFI investment strategy.
- ***E-government as an Enabler for Generic Government*** - Over the last decade, the deployment of IT in the APS has increased rapidly. Australian governments have been committed to modernising public administration, including through use of IT and the Internet. Potential benefits to citizens, businesses and community include greater, and more seamless, access to government and services. However, while the use of IT technology can markedly improve the effectiveness of generic government operations, it is important for agencies to ensure that its use does not reduce accountability and transparency.
- ***Success at Driving a Generic Brand of Government*** - while at the federal level there have not been any significant PFI initiatives, there are a number of examples where the Australian Government has achieved what could be described as a generic, or joined up result. In this section I will explore the successful elements of a number of these examples.

- **Audit Considerations under a Generic Brand of Government** – the Australian National Audit Office (ANAO) is an essential element of the accountability process, providing that unique blend of independence, objectivity and professionalism to the work it undertakes. Under the more generic brand of government, the management environment becomes inherently riskier and concerns for public accountability heighten. It is vital that the ANAO has the professional and functional freedom required to fulfil, fearlessly and independently, the role demanded of it. The audit coverage of services delivered by joined-up arrangements presents particular challenges which I briefly touch on in this section of the paper.

## II Joined-Up Government

Having dealt with the concept of ‘Joined-Up’ (or collaborative, integrated or network) government in broad terms in my introductory comments, I will now focus on two important related issues - accountability and governance - that arise from these joined-up arrangements. To set the scene, I make the point that there can be many arrangements under a joined-up government construct with the delivery of services requiring the cooperation of agencies within the same level of government (eg. between Australian Government agencies or between state government agencies) or, agencies from differing levels of government (eg. between federal, state, and local government agencies) and, indeed, they may introduce the additional complexity of including the private sector. With technology now making horizontal communication far easier, consumers and citizens now want services fitted to their needs rather than to administrative convenience – I will deal with e-government later. The two issues of accountability and governance are pervasive in the public sector but have an added piquancy in shared arrangements.

Delivering services under a collaborative, or ‘joined-up’, arrangement raises the corporate governance ‘bar’ considerably higher, particularly in terms of ‘joint’ performance and results to be achieved. Accountability for performance applies both within an agency and across agencies. A report of the United Kingdom Cabinet Office offered the following insight:

*‘Permanent Secretaries have an individual and a collective responsibility. An individual responsibility to serve their respective ministers, to oversee the performance and ongoing improvement of their department. They also have a collective responsibility to serve the government as a whole by supporting and moving forward the government agenda’.*<sup>20</sup>

Accountability in the areas of community service obligations, equity in service delivery and a high standard of ethics within a legislatively-based values system, are particularly critical to public sector agencies working in concert to deliver, effectively, joined-up services. The ‘heartland’ issue here is - are there practical ways of both delivering services and assessing the respective accountabilities and performance that apply to the various players involved in providing those services? The reality is that, under partnership, network or joined-up arrangements, conventional corporate governance is placed under stress. Board members, Chief Executive Officers (CEOs) or other senior executives cannot simply represent only

their own immediate areas of responsibility, but must also act in accordance with their cross-portfolio, or inter-agency responsibilities. This is an issue for joined-up arrangements and one that I consider revolves around effectively ‘lining up’ performance, outcomes, responsibilities and accountability. As I have commented previously:

*‘It is an issue of devolution of authority and the tensions associated with principles-based legislation, which makes it clear that individual agency heads are responsible for what happens in their agencies. While we have always recognised there has been coordination, the fact is that there are now tensions when you have shared responsibilities. Who is actually accountable? This is where the tension arises’.*

and

*‘In a purchaser/provider situation there is even more tension, and the notion of contracts or agreements between agencies in themselves are points of tension that are not being satisfactorily resolved. That is why you have this issue of horizontal management. I do not care what you call it, but the fact is we have a tension and that needs to be resolved. The private sector model focuses very much on the institution. You might ask, ‘What does corporate governance mean if you have shared responsibilities?’ It comes back to who is the coordinator and who is responsible and where is the shared responsibility’.<sup>21</sup>*

The Canadian experience signals a similar message:

*‘... clear program objectives, clear and focused accountability, clear roles and responsibilities of partners, clear and reliable results information, etc. The reality is that the objectives in partnerships, as they are in most government programs, are usually multiple, conflicting and vague. Accountabilities among partners are always multiple, inevitably complex and often fuzzy. The roles and responsibilities are often both contradictory and complementary at the same time. And the results information is rarely totally accurate and often incomplete’..<sup>22</sup>*

It is almost axiomatic that the processes of accountability are the most significant factor in the health of the public sector.<sup>23</sup> If the responsibility and accountability arrangements are not addressed ‘up front’ and fully integrated into the joined-up approach, then there are two likely outcomes: either the significance of accountability is diminished as it would be seen to out of touch with the new joined-up arrangements: or the effectiveness of the reforms could be undermined because the dimension of accountability had not been adequately addressed. Accountability should be seen as a key mechanism and part of the answer, not part of the problem. Accountability relates to both performance and results.



However, there are many dimensions to accountability and, unfortunately, there are also different perceptions, not surprisingly, at least between the public and private sectors if not within the public sector itself. There are, for example, differences between vertical and horizontal dimensions of accountability, as noted by Mark Considine (University of Melbourne):

*In making this distinction, it is argued that when founded on a concept of agency, rather than a theory of organisational structure, accountability necessarily becomes a core property of the systemic interactions between separated actors sharing responsibility for outcomes. In other words, the formal rules and agreements become embedded in sets of routines and conventions, which give the real meaning to accountability.*<sup>24</sup>

Mark also notes that the use of contracts and contracting is viewed as an efficient alternative to a dominant legal mandate under vertical accountability, value-based collaboration, and hierarchy. A chain of contracts actually unites aspects of both the legal and economic traditions where ‘the lawyers become the key agents in writing contracts and advising on their possible litigation. The economists provide the measures and output targets.’<sup>25</sup>

The accountability issue becomes more complex under horizontal relationships. Mark notes that interdependence in achieving shared outcomes should lead to a willingness to share accountability. However, he also states that the real question ‘becomes one of tailoring accountability arrangements to reflect a mix of vertical and horizontal imperatives depending on how much consensus and how much risk is to be accepted.’<sup>26</sup>

### **Sharing Accountability – the challenges**

In the public sector, accountability implies conformity with a system of administrative processes designed to provide authority for administrative actions and, at the same time, a framework for reporting and checking on actions taken.<sup>27</sup> In this way, accountability measures seek to ensure that public sector agencies and their staff are responsible for their collective and individual actions and the decisions leading to them. As well, in reporting on their actions and activities, they are required then to submit themselves to appropriate external review, checking and scrutiny. Or, as one commentator explains:

*‘Accountability, at its most general, is a means for principals to ensure that their agents or delegates pursue the principals’ interests rather than their own. Reporting and explaining are of little value unless they can lead ultimately to redress or improved performance. To be effective, accountability thus also requires the possibility of remedies and sanctions so that agents can be brought back on track and damage can be repaired’.*<sup>28</sup>

The traditional concepts of accountability assume clear definitions of the role of all parties involved. However, under joined-up arrangements, clarity about the types of relationships between organisations is required, noting of course, that the

relationships will be a product of the degree of integration involved. The range of possibilities is well articulated by Peter Wilkins (Auditor General's Office, WA):

*'Some of the options for accountability relationships and their implications can also be understood by adopting the perspective of how ministers might report to parliament for joined-up initiatives. Where each answers for their own part there exists one-to-one relationships but fragmented reporting; where an active participant takes the lead role there is the potential for integrated reporting but the role of other ministers is sidelined; where a non-participating minister takes on a coordinating role there is the potential of impartiality and the coordinating minister is answerable for all the results achieved without having direct responsibility for the services or resources; where ministers answer collectively as a group, there is the potential for integrated reporting but no apparent basis for traditional individual ministerial accountability; and lastly, where the prime minister/premier takes responsibility, the emphasis shifts to whole of government accountability'.<sup>29</sup>*

Peter also makes the point that, while the traditional focus on accountability for expenditure and compliance with legal requirements has reinforced the notion that accountability cannot be shared, the trend towards accountability for results over the past decade has, in effect, introduced the sharing of responsibility while leaving in place the traditional concepts of accountability. Challenge of accountability for outcomes he sees as being characterised as a *'cat's cradle of overlapping, competing and unclear lines of accountability'*.<sup>30</sup> New models need to emerge that take account of a wider context of relationships (than the traditional hierarchical model would suggest) as well as underlying principles to underpin joined-up arrangements. The key themes that are coming through in the literature are: *'a clearer articulation of the causal relationships regarding the sharing of outcomes, accountability through shared outcomes, a two-way perspective based on relationships between partners and a recognition of accountability to the community.'*<sup>31</sup> As Dr Watson, Deputy Chairman of the Queensland Public Accounts Committee, observed recently <sup>32</sup>, quoting Behn (2001)<sup>33</sup>:

*'Our expectations for the performance of public agencies cover more than keeping the customers happy. Accountability for performance ought to mean achieving standards that are set at a higher level than a seller-buyer, provider – customer exchange...Accountability for performance ought to cover the expectations of citizens; it ought to mean accountability to the entire [my emphasis] citizenry'<sup>34</sup>*

Notwithstanding the introduction of changed arrangements for the provision of many services to public sector clients, all public sector organisations are required still to be transparent, responsive and accountable for their activities. The introduction of client Service Charters (a topic I will discuss shortly) is a significant development towards ensuring more complete accountability to citizens on the operations of the public sector, particularly those that impact on them personally. Mark Considine suggests that vertical accountability would be enhanced by stronger roles for parliamentary

committees, ombudsmen and similar oversighting bodies. However, ‘tools for greater horizontal accountability will need to be different for competitive systems and for those using more collaborative methods’.<sup>35</sup>

### **Cross Agency Governance**

As governments seek to address increasingly complex and wide-ranging policy and operational issues through ‘*joined-up*’ government type approaches, the governance arrangements that will operate cross-agencies have become an increasingly important issue. Practice in this area of public administration is still developing and to some extent so is better practice – however, the specifics of any governance arrangements need to match the scale, nature and complexity of the task or activity. A key determinant of this is the extent to which the activity falls primarily within the province of one agency or falls more or less across two or more agencies. There are three main models that can be employed to provide effective governance of ‘*joined-up*’ or connected government arrangements, viz:

1. **Lead Agency model.** The main agency applies its corporate governance framework to the partnership, with overall responsibility for its constituent parts or elements.
2. **Committee model.** This occurs when a loose confederation of players come together and allocate corporate governance responsibility to discrete parts of the activity. In this way overall corporate governance equals the sum of the corporate governance contributions from each party.
3. **Board model.** A Board is established to govern and manage the partnership. This is a separate entity with clear and comprehensive responsibility for all aspects of the partnership but only for the partnership within its own governance framework.

Some examples of joined-up government or extensive interaction with other agencies in the APS include:

- ***Centrelink*** which provides delivery services for Family and Community Services and a significant number of other Commonwealth agencies plus all State Housing Authorities;
- ***Department of Employment and Workplace Relations*** which provides information and assistance to small business by acting as lead agency across the Commonwealth Government, State Governments and the private sector;
- ***AusIndustry*** (within Department of Industry, Science and Resources) which is the coordinating agency responsible for delivering the Government’s Business Information Service Program and interacts with all three levels of government; and
- ***Health and Ageing*** which promotes, develops and funds health and aged care services through partnerships involving the Commonwealth Government and State Governments.

In the federal context, many of these joined-up government arrangements favour the committee model. Centrelink is an example of this approach, whereby it typically enters into formal arrangements with other government entities (such as through Business Partnerships arrangements), often on a purchaser/provider basis. The responsibilities of Centrelink and the other party are clearly spelt out in these arrangements and then subsumed into their own governance arrangements.

As part of the ANAO's role in providing guidance on better practice in public administration, we recently published an updated Better Practice Guide on Public Sector Governance<sup>36</sup>. This new Better Practice Guide (BPG) varies from the previous two, which had more specific purposes. The first guide, published in 1997, dealt with the application of corporate governance in public sector agencies, and in particular made the case for the establishment of executive boards for agencies. The ANAO issued the second guide as a discussion paper in 1999, which was designed to assist members of the boards and senior managers of CAC Act bodies to evaluate their governance frameworks and make them more effective. With the publication of the third, and current guide, the scope has widened to provide an appropriate range of options covering public sector governance issues (Volume 1) as well as providing more detailed guidance on specific aspects of governance of particular concern to public sector organisations (Volume 2).

Importantly, Guidance Paper No. 7 of Volume 2 of the latest BPG sets out the forms of, and provides guidance on, cross-agency governance. The Guide makes the point that:

*'There is no documented general legal or policy framework for cross-agency governance arrangements in the Commonwealth. It is important, however, that such arrangements meet accepted standards of good governance and that they are initiated as soon as a cross-agency issue is identified. This is especially important during the policy development phase of the annual Budget package. All cross-agency arrangements should have clear lines of accountability and the responsibilities of the parties should be clearly identified and understood. It is also important that risks and opportunities are identified and shared in accordance with each agency's contribution and level of responsibility'.*

and,

*'.. joint activities need to clearly identify how such accountability requirements are to be met in the collaborative arrangements. Cross-agency policy development or operational arrangements should not inadvertently result in an accountability gap where responsibility for outcomes is unclear or ambiguous'.<sup>37</sup>*

Where formal mechanisms are contemplated (for example, service level agreements, contracts, joint boards or committees) the Guide makes the point that the associated documentation should clearly set out:

- the objectives of the arrangement, including desired outcomes, and timeframes;
- the roles and responsibilities of the parties, including their capacity to contribute, and positions on governing boards or committees;
- the details of the activity, including specifications of services or projects to be undertaken;
- resources to be applied by the parties and related budgetary issues;
- the approach to identifying and sharing the risks and opportunities involved;
- agreed modes of review and evaluation; and
- agreed dispute resolution arrangements.

The Guide includes a useful Figure (shown below) that sets out the types of activities juxtaposed with the main forms of cross-agency governance arrangements.

**FIGURE 1 – FORMS OF CROSS-AGENCY GOVERNANCE**

<b>Types of Activity</b>	<b>Main Forms of Cross-Agency Governance Arrangements</b>		
	<b>Lead Agency</b>	<b>Partnership</b>	<b>Joint Venture</b>
<p><b>Policy Development</b></p> <p>Formulation of major new policy position. Cross-agency governance appropriate where policy risks are high.</p>	<p>Appropriate where the policy issues are centred in one agency, with some involvement of others. Especially appropriate where delivery agencies are to be involved in policy development phase.</p>	<p>Appropriate where the core policy issues extend across two or more agencies. May also be useful where different agencies' perspectives need to be resolved.</p>	<p>Generally not necessary unless it is anticipated that the policy development process will lead to the establishment of a separate, ongoing entity with program design and/or implementation responsibilities.</p>
<p><b>Programme Design</b></p> <p>Detailed design phase after principal policy decisions have been taken. Cross-agency governance appropriate where the design phase is lengthy and detailed.</p>	<p>Appropriate where the program is primarily the concern of a single agency. Can be fairly informal.</p>	<p>Appropriate where the program is evenly shared across two or more agencies.</p>	<p>Generally not necessary.</p>
<p><b>Program Delivery</b></p> <p>Policy implementation, including direct delivery and/or contract management. Cross-agency governance appropriate where multiple policy objectives involved and/or major resource costs are involved.</p>	<p>Appropriate where one agency has prime carriage of most of the program. May also be appropriate in a purchaser/provider environment where the lead agency (usually the policy department) purchases implementation services from other agencies.</p>	<p>Appropriate where the program is evenly shared across two or more agencies. May involve partnership agreements sharing resources, responsibilities and risks.</p>	<p>Appropriate when involving a major new initiative that requires a separate entity for implementation. Can be governed by board with representatives of relevant agencies.</p>

Source: ANAO Better Practice Guide – Public Sector Governance – Guidance Paper No. 7 (Volume 2)

Expanding on this cross-agency governance theme, I thought it would be useful to comment briefly on the role of boards under these arrangements as the approach adds to the complexity for Boards in dealing with operational arrangements, as indeed it does for management. This, in turn, adds to the risk of management failure that can be ameliorated by improving co-ordination and cooperation between all concerned, reinforced by mutual trust and confidence.

### **Boards under Joined-Up Arrangements**

The appointment of a board to oversight a cross-agency arrangement imposes a distinct form of governance as it considerably lessens the direct control that a Minister has over a Secretary or CEO outside general managerial responsibilities. Governments will make decisions about the required degree of ministerial control over an agency based largely on political sensitivity, policy and the financial stakes involved as well as about the optimal form of intervention. In particular, the political sensitivity of the program and its delivery, and the relative importance of policy advising and service delivery aspects in relation to the particular groups involved, will be major determinants. However, it also follows that the governance processes must be able to provide assurance that the political and fiscal risks are well managed and in a transparent manner.

Dr Rosalky provided some valuable insights into the issue of governance in a joined-up environment with comments on his experiences at Centrelink.<sup>38</sup> I propose to draw on Dr Rosalky's paper in providing some vignettes from his views on the board and governance arrangements at Centrelink. His comments were provided against the backdrop of differing views about the appointment of the portfolio secretary to the Centrelink board.

### **Governance arrangements at Centrelink.**<sup>39</sup>

The Centrelink model is different in an important way to the normal executive boards found in FMA agencies. Its board is not advisory which is the usual arrangement for agencies under the FMA Act. The board's financial accountability is created by designating the chairman as the chief executive for FMA Act purposes. The other significant feature is that the Centrelink board has the Secretary of its largest purchasing agency, the Department of Family and Community Services (FaCS), as a member. According to Dr Rosalky, the focus of the FaCS secretary on the Centrelink board is to safeguard portfolio interests, embracing both program delivery and Centrelink success. The secretary is also a purchaser of Centrelink's products.

### **The Tensions in Partnership Arrangements**

Disputes can surface as issues for the board, as opposed to management, to resolve. Dr Rosalky indicates that the secretary has used the board processes to express dissatisfaction with Centrelink's performance vis-a-vis financial reporting. Centrelink has expressed dissatisfaction with FaCS' interference with management responsibility. Debate on the board can be helpful in resolving these disputes and

therefore to ensure effective policy delivery. Because the board sees FaCS as a key partner, not a predatory monopsonist, it is able to steer a middle path and to mediate between a purchaser and its own agency.<sup>40</sup>

Nevertheless the board has struggled to define the interests that underlie Centrelink's success. The CEO of Centrelink saw this as building the organisation's business, by delivering a sensitive and accurate service to its clients. Whereas the FaCS secretary's goal was to ensure that the programs are run effectively in terms of government's stated policy objectives. When the risk of conflict was high, FaCS and Centrelink, with their joint responsibility for the success of their shared portfolio and the interests of their shared Minister, coalesced their interests and their accountabilities.<sup>41</sup>

Does the presence of the FaCS secretary on the board involve a conflict of interest or a diminution of accountability? Dr Rosalky is very firm in his view that a model in which the secretary does not have a role in Centrelink's governance weakens accountability. The secretary's influence through his/her position on the board is critical.<sup>42</sup>

A recent audit of Defence Housing and Relocation Services recognised that the Defence Housing Authority (DHA) is a commercial body and that the Department of Defence is in most respects its client. Yet Defence had many representatives on the DHA board. The ANAO recommended, and Defence accepted, that:

*'Defence consider reviewing, and providing advice to the Government on, the provision in the Defence Housing Authority Act 1987 for Defence officers to be appointed to the DHA board, in view of the potential conflict of interest that such appointments create for those officers'.*<sup>43</sup>

The Better Practice Guide discusses the issue of 'nominee' or 'representative' board members. It supports the view that appointments to boards should be made on the basis of the best person to contribute to their operations, rather than on the basis of representation. It adds that Australian government organisations should review policies and legislation that require supplier or client representatives on boards, with a view to advising reconsideration of the requirement if potential or perceived conflicts of interest are evident.

An example of the need for cross-agency governance arrangements was highlighted in the ANAO's audit of the management of the administration of the Federation Fund Programme.<sup>44</sup> That audit found that no Commonwealth department had the responsibility for monitoring the collective performance of Federation Fund projects against the program's objectives. Consequently, up to the time of the audit, very little performance information on the achievement of the programme's overall objectives had been collected or reported to the Parliament.<sup>45</sup> The audit noted that, where more than one portfolio is responsible for delivering the Government's programme objectives, the concept of whole of government performance reporting through the identification of a 'lead agency' is an area of potential improvement in Commonwealth reporting and accountability.<sup>46</sup>

Clearly, managing conflicts of interest well is crucial for any organisation that wants to retain the confidence of the public and the Parliament. Central to this conundrum is the difference between public and private interest where private sector ‘partners’ are involved. The UK NAO has undertaken a comprehensive review of relationships,<sup>47</sup> particularly into private financing initiatives which I will discuss later, but which has more generic ramifications. The report notes that:

*Relationships have improved where both parties to the contract have understood what is required of them; have understood each other’s objectives; have taken a collaborative approach to the resolution of problems; trusted each other; and worked to a common goal.*<sup>48</sup>

### **The future of Joined-up Government – a UK view**

Geoff Mulgan asks the question - are we at the early stages of a fundamental transformation of government, or will joined-up government turn out to be just another fad? His assessment is that, although governments are necessarily quite conservative institutions, the pace of change is unlikely to let up – a view I share. It is unlikely that government will ever be predominantly organised in horizontal as opposed to vertical structures. Geoff notes, however, there would be as many boundary problems as there are today.<sup>49</sup>

Geoff believes the future shape of government is likely to involve a combination of vertical hierarchies, particularly for carrying out long-standing tasks with clear lines of management and accountability, and horizontal structures for determining strategy and carrying out shorter-term tasks. As well as determining strategy and overseeing performance, the role of the centre of government will continue to be that of allocating the key resources at its disposal - money, people, political capital, legislative time, and knowledge - to both vertical and horizontal parts of the system. In effect, that would mean government evolving further in the direction it is already taking. It would involve the following:

- More work becoming project based.
- More policy making being done in a cross-cutting way, but with the close involvement of practitioners.
- More of the budget being tied to outcomes - and then allocated across departments and agencies according to how much they can contribute to outcomes.
- More vertical functions being passed out to agencies, leaving behind slimmer, but more integrated central staffs.
- A much greater emphasis on shared knowledge management as the glue holding central government together.
- An expectation that civil service careers will move across and beyond government.



- Use of the integrative power of the Internet to organise access to services according to people's needs rather than producer convenience.
- A much more energetic approach to reshaping business processes that cut across departmental boundaries.
- A steadily growing role for local partnerships in integrating the work of both national and local agencies on the ground.
- A greater emphasis on professional formation across boundaries.<sup>50</sup>

### III e-government as an Enabler for Generic Government

Information technology (IT) provides opportunities to make the delivery of public services more accessible, quicker and available at times and in ways that are more convenient to citizens. As more individuals in the community gain access to Internet technology the demand for government services, including information, over the Internet can be expected to increase dramatically. Indeed, a strategic priority of government is to ensure that technology supports a more networked delivery of government services.

Most people associate 'e-government' with the use of the Internet as a vehicle to deliver government services to citizens and to interact with the business community. At its simplest, e-government could involve the electronic (Internet) delivery of a transaction traditionally accomplished by means of an exchange of paper-based correspondence or a physical visit to the office of a government department. More generally, e-government concerns providing electronic (Internet) access to sector-wide or integrated government services. The benefits of e-government are three-fold – the public can access information and advice on-line, the public can interact on-line with agencies to apply for and receive a range of services, and importantly there can be significant improvements in agencies' operational efficiency.<sup>51</sup> The focus on the citizen as service recipient is common to many countries' e-government strategy which rests on the premise that:

*'People should not need to understand how government is organised or to know which department or agency does what, or whether a function is exercised by central or local government'.<sup>52</sup>*

Many governments have set targets for electronic service delivery, and in particular for the delivery of government services online. For example, for Australia, Singapore and Ireland these targets were 2001; for Japan and the USA, by 2003; for Canada by 2004; and for the UK, Germany and China by 2005.<sup>53</sup> It has been said that:

*'One of the most strategic and consequential sets of decisions reshaping government today is the use of public-private partnerships in designing on-line strategies to provide information, deliver services, and interact with citizens and (other – my addition) stakeholders.'<sup>54</sup>*

In the author's opinion, e-government will be partnership driven.<sup>55</sup>

E-government is an important component of the United Kingdom Government's 'joined-up government' initiatives. This strategy recognises that planning for improved electronic service delivery offers the opportunity to break down departmental boundaries and alter the 'silo-based' delivery modes traditionally associated with government agencies acting independently. In promoting a more joined-up approach to e-government, the UK government cites four guiding principles:

- building services around citizens' choices;
- making government services more accessible;
- social inclusion; and
- using information better.

A fundamental principle of the UK strategy is that citizens interacting with government should be able to do so whenever they choose. They should not have to understand the way in which government is structured to secure the services they need. The aim is that the complexity of dealing with government disappears, while at the same time the UK's 'Government Gateway' provides security and benefits for government.<sup>56</sup> In Canada, 'true' one-stop access involves not only delivering services in a one-stop access format, such as an Internet site, but also providing them in an organised, easy-to-understand, clustered format.<sup>57</sup>

In Australia, the e-government strategy—'Government Online'—has similar aims. Australia's Government Online program, administered by the National Office for the Information Economy, recognises that:

*'Getting Government Online is a natural and important step in the development of government and community interaction... The Government must develop more and better services online – integrated services that break down the barriers of government structure and jurisdiction, and services that meet the real needs of individuals and business.'*<sup>58</sup>

In New South Wales a network of thirty-eight Government access centres will be supported by a further sixty Community Technology Centres in towns with populations of 3,000 or less.<sup>59</sup> The Centres are provided with computers, Internet access, printers, video and teleconferencing facilities and business equipment.

However these rapid advances in technology offer both opportunities and challenges in driving the generic government agenda forward. In my experience, a major risk inherent in the shift to electronic delivery and decision-making is that of security. In addition, there are accountability issues for agencies, and consequent evidentiary issues for their auditors, when traditional forms of record keeping are overtaken by the outputs of new technology. For example, we need to make links in the chain of decision-making in agencies which have largely, or totally, shifted out of paper records. One consequence is that audit trails have to be embedded in electronic records and/or archival data tapes. This is important in terms of agencies' capacity to demonstrate accountability to the Parliament and to promote greater public confidence. As the ANAO reported recently:

*'As Australia moves towards the era of e-government, ensuring the creation and maintenance of appropriate electronic records will be as important as ensuring security and privacy in electronic transactions between governments, citizens, and the business community. These are necessary for the confidence of all stakeholders, and particularly for assurance of the Parliament'.<sup>60</sup>*

While technology may support a more networked delivery of government services, matters of privacy, security, authentication and associated standards must be also addressed, along with accessibility and electronic publishing standards. Government Online recognises that consumers of online services must have confidence in the systems they use, that their privacy is protected, and that the security of their transactions with the government will be assured. Government agencies need to employ systems that are compatible and capable of supporting a greater sharing of information while preserving its security and confidentiality.<sup>61</sup> These are essential for successful collaboration or joint working.

For the ANAO, one implication of rapid incorporation of IT systems into key business and service delivery processes and practices of public service agencies is that an increasing number of audits examining other matters include some assessment of supporting IT processes. Even though IT has been a theme used for selection of our performance audits, it is quite likely that there will continue to be a marked increase in the number of audits where IT and telecommunications issues are centrally important to the audit.

The ANAO tabled an audit report this year which examined whether the Department of Education, Science and Training (DEST) had effective governance practices for its IT and e-Business, and whether it implemented and maintained appropriate quality standards for service delivery via IT and the Internet. This report provided insights into the effectiveness and efficiency of e-business. In this audit, *Management of e-Business in the Department of Education, Science and Training (DEST)*,<sup>62</sup> the ANAO examined two major applications, the Provider Registration and International Students Management System (PRISMS) and the Training and Youth Internet Management System (TYIMS). These two applications together assist the management of some \$550 million of administered funds and, importantly, support an export industry valued at around \$4.25 billion.<sup>63</sup>

Overall, the ANAO concluded that DEST's management of its Internet and e-Business presence was sound and governance arrangements were satisfactory. However, the ANAO made six recommendations concerning improvements in the areas of governance, record keeping, performance monitoring and review of IT and Internet service delivery. Importantly, we considered that DEST has developed a management culture that encourages a focus on quality in relation to its IT and e-business.<sup>64</sup>

As information systems are normally a key enabler for important business processes, IT governance is seen as integral to agency governance. Robust IT governance ensures that: the agency's IT strategy is part of, and fully supports, the agency business strategy; risks are identified and appropriately addressed; appropriate control

structures are implemented; IT resources are used responsibly; and IT performance is measured and appropriately managed. In summary, IT governance is a system of control that helps to ensure business objectives are achieved efficiently and effectively.<sup>65</sup>

In addition to assurance provided by the ANAO and other bodies, the Parliament itself conducts inquiries into e-government and technology issues. A current example is the wide-ranging inquiry underway in the JCPAA, the *Inquiry into Management and Integrity of Electronic Information in the Commonwealth*. The Committee will consider: the privacy, confidentiality and integrity of the Commonwealth's electronic data; the management and security of electronic information transmitted by Commonwealth agencies; the management and security of the Commonwealth's electronic information; and the adequacy of the current legislative and guidance framework.

In considering the benefits associated with re-thinking the structures and manner on how government services are delivered to citizens, there has been concern expressed about the issue of equity of access to government services through technology for those who do not have ready access to the facilities. Efforts have been made to provide such access by organisations such as Centrelink. However, continuation of more traditional service delivery methods as an option to ensure equity imposes costs that need to be balanced against the overall objectives to be served.

#### IV Service Charters

Earlier, I observed that point that Service Charters are a significant part of the initiatives taken to ensure better accountability to citizens. A Service Charter is a:

*'public document that sets out the standards of service that clients can expect from an organisation, as well as avenues for taking up complaints. It should be developed in consultation with clients, staff and other stakeholders. Service charters are intended to ensure that organisations:*

- *focus on service delivery*
- *measure and assess performance, and*
- *initiate performance improvement.*<sup>66</sup>

Service charters have been introduced for the public sector in many countries, not least in Australia.<sup>67</sup> Most follow the example provided by the UK's *Citizens' Charter* incorporating a number of principles that are aimed at making sure that:

*'clients, the users of public services, should be treated as valued customers, just as if they were paying customers of the best of our private sector organisations'.*<sup>68</sup>

Prior to 1997, some Australian government agencies had introduced forms of service charters, reflecting the increasing emphasis that had been given in a number of reports<sup>69</sup> through the 1980s and 1990s on meeting client needs and improving client service standards. For example, the Australian Taxation Office's *Taxpayers' Charter*

was available in draft format early in 1996. Particularly following two audit reports in late 1996,<sup>70 71</sup> the ANAO combined with the then Management Advisory Board to produce a “Better Practice Guide to Quality in Customer Service” which was released in November 1997.<sup>72</sup> In March 1997, the Prime Minister’s *More Time for Business* statement included the announcement that:

*‘The Government will require service charters to be progressively developed during 1997-98 by Commonwealth departments, agencies and enterprises dealing with the public’...<sup>73</sup>*

A series of publications has guided Commonwealth agencies in their development and refinement of service charters since 1997, most recently the comprehensive *Client Service Charter Principles* released by the Department of Finance and Administration (Finance) in 2000.<sup>74</sup> Details of these, and the present state of development with implementation of service charters within the APS, are available from the service charters area of the Australian Public Service Commission (APS Commission) web site ([www.apsc.gov.au/charters](http://www.apsc.gov.au/charters)).

There are some observations that can be made about service delivery mechanisms and performance, under the Commonwealth-level service charter regime, which might be of interest. I have grouped them under the following themes:

First, a service charter has to become part of the ‘culture’ of the organisation, with strong, ongoing support from the agency’s staff as to what the charter actually means on a day-to-day basis when dealing with clients. An important step is the adoption of systems and procedures within the agency that will allow the aims of the service charter to be achieved. Further, it is vital that the client service staff in the agency know, and accept, the service parameters and arrangements (such as for complaints) that are set out in the service charter. These requirements are well expressed in the following statement:

*‘Great service should be embedded into a behavioural routine, so it can be properly monitored, measured and managed. We can all provide superior service, time and again, providing we have fully defined what it is and we have trained our people to deliver it’<sup>75</sup>*

Second, complaint systems should be typically part of client service charters. For Australian Government agencies, the present *Client Service Charter Principles*, mentioned earlier, make it mandatory that agencies include client feedback and complaints systems within their charters, and that they report on client complaints and feedback.<sup>76</sup> Finance recommends that agencies, in their administration of complaints mechanisms, should comply with the Complaints Handling standard (Standards Australia AS 4269-1995—*Complaints Handling*).<sup>77</sup> Public sector agencies should also have regard to the excellent Good Practice Guide on complaints handling that has been developed by the Commonwealth Ombudsman.<sup>78</sup> This Guide covers the essential elements of an effective complaint handling system from the theoretical standpoint and then provides principles that can be put into practice in any agency. To be effective, as noted by the ANAO in its 1996 report on Client Service in the Australian Taxation Office:

*‘The complaints handling system needs to be adequately managed and resourced, and should be visible and accessible to clients and provide them with assistance in making their complaints’.*<sup>79</sup>

Third, where service delivery has been outsourced, service charters will clearly have a direct impact on the private sector contractor. It would seem desirable for outsourcing contracts to reflect the service charter commitments if the charters are to have any real meaning. It would also seem important to require the provider, as part of the contractual arrangement, to supply relevant outcome, output and input information against which the provider's performance can be assessed, including whether processes are efficient and the service quality is satisfactory. In this way, even if the client is somewhat removed from the responsible department or agency, it should still be possible to ensure clients are receiving the appropriate level and quality of service, consistent with the Service Charter.

The importance of Service Charters as an element of good governance and part of the accountability framework for performance achievement is being increasingly recognised. In particular, it is now well understood that they are not simply a process or an end in themselves. The notion of a seamless service to the citizen derives from the objective to design services around the customer or client, with minimal effort involved in having to find out, and access, for themselves. As my colleague, the UK Comptroller and Auditor General, has recommended:

*‘Agencies need to target their action...on the key drivers which have the most potential to achieve sustainable improvements on the quality of public services which are likely to be a real value to users.’*<sup>80</sup>

## **V Public/Private Partnerships**

Public/Private Partnerships usually involve government engaging the private sector in public service delivery. Their principal features include some (or all) of the following: the delivery of services normally provided by government, the creation of assets through private sector financing and ownership control, government support through say contribution of land, capital works, and risk sharing. There are a number of different kinds of PPPs. However, in this paper, I will restrict the discussion to the Private Finance Initiative (PFI) and Outsourcing. To conclude, I will draw on the experiences of the UK government regarding their PFI initiatives over more than a decade to highlight issues we in Australia still need to consider.

### **Private Financing Initiatives (PFI)**

Increasingly, governments here and overseas have been exploring the potential benefits that can flow from private sector involvement with the delivery of government outcomes. As the UK Prime Minister has said:

*‘most people don’t care who builds and services public projects, so long as they’re on cost, on budget and helping to deliver a better NHS [National Health Service] and schools’*<sup>81</sup>

Private financing represents a form of government procurement involving the use of private sector capital to fund an asset (to deliver program outcomes) that would otherwise have been purchased directly by the government. Private financing is generally an option to be considered for major asset and infrastructure procurements, recognising it can provide significant benefits to the public sector by way of specialist expertise, innovation, and the opportunity to transfer risk to those better able to manage it. My personal preference is to talk about risk allocation, or re-allocation, rather than transfer.

The Department of Finance and Administration has published principles for using private financing<sup>82</sup> and, in addition, established a Private Financing Branch to assist agencies considering private financing proposals.

While the Australian Government has yet to undertake a major procurement using private financing, the proposed joint operational Headquarters Australian Theatre (HQAST) for Defence is being examined as a possible private financing imitative. I understand that a recommendation will be going to Cabinet in the near future.<sup>83</sup> Private financing was seriously considered for an earlier Defence project when, in announcing the tender for the Patrol Boat Project in July 2001, the then Minister for Defence stated that the Government was keen to pursue the project under private financing arrangements, but that the Government must be satisfied it would receive the best outcome for the investment of taxpayer dollars.<sup>84</sup> However, in announcing the shortlist for the tender in June 2002, the current Minister for Defence stated that:

*'After evaluating two possible procurement options, the Government has decided to directly purchase the boats. The use of private financing to deliver the boats and associated through-life support was also considered. However, advice provided to the Government indicated that there was uncertainty about whether the requisite capability could be provided on a value for money basis while also ensuring that the transaction would be classified as an operating lease for accounting purposes'.<sup>85</sup>*

The assessment of the procurement method for the Navy's patrol boat project pointed up accounting and taxation concerns with the use of private financing in Commonwealth procurement.<sup>86</sup> The issues include the lack of an Australian Standard that specifically deals with the accounting treatment of private financing which gives rise to uncertainty as to whether private financing schemes should appear on or off the balance sheet. In this regard, a lease may be classified as either an operating lease or a finance lease. This classification has consequences for the way in which the transactions relating to that lease are accounted for and disclosed in agencies' financial statements.

The distinction between each type of lease is basically about where the risks and benefits of ownership of the assets involved lie, including risks associated with obsolescence, idle capacity, loss in realisable value and uninsured damage.<sup>87</sup> A lease is classified as an operating lease if the risks and benefits of ownership lie with the lessor. The Australian Accounting Standards require it to be treated by the lessee as an expense, like a rental payment for the use of the assets. Should the risks and benefits of ownership be transferred to the lessee, the lease is classified as a finance

lease and is treated in such a way as to show the financing nature of the transactions, reflecting the lease as both an asset and liability to the entity.

The crux of the issue is whether the agreement was written in such a way to allow the intention of the lease and the appropriate accounting for that lease to align. For instance, is the Government's intention in divesting itself of certain assets through sale and subsequent leaseback being reflected in financial statements that include these leases on the balance sheet? While the requirements of the accounting standard seem reasonably clear on this issue, diversity of interpretations and intricacies within the agreements themselves often result in the issue of classification being quite complex, where there should be simplicity.

The only jurisdiction I am aware of that has developed detailed guidance on how to account for the complex risk allocations that arise under private financing arrangements is the UK, which has made extensive use of such arrangements for the provision of public infrastructure and services. Application Note F to UK Accounting Standard Financial Reporting Standard FRS5 '*Reporting the Substance of Transaction: Private Financing Initiative and Similar Contracts*' was issued in response to a range of concerns about the reporting of private finance initiative arrangements. These UK government guidelines (FRS5) allow for private financing transactions to be excluded from government borrowings on the grounds that they involve sufficient risk transfer to warrant the project being viewed as 'off balance sheet'.<sup>88</sup> Any deficiencies or inadequacies in this respect have obvious transparency limitations.

The Australian Accounting Standards Board, with representatives from Treasury, has established a working group to determine how these PFI projects should be treated in the government's accounts. A Heads of Treasuries Accounting and Reporting Advisory Committee (HoTARAC) 'PPP' sub-committee has recently recommended that a standard similar to the UK's FRS5 be adopted for the PFI and other similar arrangements in Australia.<sup>89</sup>

Currently, there is no specific Australian Accounting Standard which deals with risk allocation issues associated with private financing. However, as transactions involving the delivery of infrastructure can have the characteristics of a lease agreement, governments have utilised Australian Accounting Standard 17 *Accounting for Leases* (AAS17) in accounting for PF-type transactions. Hence, AAS17 (leases) is relied upon to categorise PFI arrangements. This standard requires that leasing-type arrangements be classified as either operating or finance leases, with the degree to which ownership risk is transferred between the lessor and lessee being the critical variable.

However, as Australian Accounting Standard 17 is not designed for this purpose, its application can lead to PFI leases being characterised as finance leases (recognised on the lessee's balance sheet) rather than operating leases (which are treated as an expense) despite significant risk being transferred to the private sector. This is seen as a disincentive to both the private and public sectors to use private financing initiatives.<sup>90</sup> In this regard, it has been said that:



*‘Critics of PPPs [private funding initiatives] claim that governments can use PPPs to understate debt by not recording in the balance sheet the total value of payments payable to the private sector providers, that is, PPP obligations are ‘off balance sheet’.*<sup>91</sup>

This does not appear to be the UK experience, discussed later, where 60 per cent of PFI projects are ‘on the balance sheet’. Along similar lines, the NSW Treasury has said in respect to the recently released NSW and Victorian policies on the use of PFI:

*...the policies require that privately financed options demonstrate superior value-for-money to the Government and community compared to conventional, publicly funded approaches to infrastructure provision. This is the sole reason for considering private financing and delivery – with both States having low debt levels, off-balance sheet borrowing is not an attraction in its own right.*<sup>92</sup>

The South Australian guidelines on PFI note that, while the accounting standards attempt to create a clear distinction between operating and finance leases, for evaluation purposes most service contracts with the private sector under consideration by agencies will fall somewhere between the strict definitions of operating and finance leases. In this regard, the guidelines advise that:

*Agencies should keep in mind that there is a fundamental tension between meeting the requirements of [Australian Accounting Standard 17 Accounting for Leases (AAS17)] for operating leases and achieving value for money. The fundamental objective of the partnerships procurement process is to achieve an efficient allocation of risk, not simply to transfer as much risk as possible in order to achieve an operating lease classification.*<sup>93</sup>

It is worth noting that attempting to transfer inappropriate risk to the private sector will add unnecessary cost to a PFI agreement, thereby undermining value for money in determining the best procurement method. A recent article in The Public Sector Informant<sup>94</sup> examined some generic lessons to be learnt from the Australian and UK experience with PFI and public/private partnerships. The proper allocation of risk was a key feature - we await with interest the HCAST decision mentioned earlier.

While the use of PFI is limited in the federal sphere, state governments have undertaken a number of infrastructure projects using this facility. Similarly, in the UK, there has been much wider use of this approach – this is explained in part by the fact that the UK (unitary) government is involved with the delivery of services that equate to those of our state governments, for example, health, education, policing, and roads. The UK Treasury has recently published a report titled – ‘PFI: Meeting the Investment Challenge’<sup>95</sup> on the evolving role of delivering cost effective investment in public services. In thought it would be useful to summarise the main issues in the Report on which I will draw heavily in the later discussion on the UK experience. Firstly, however, I will make some comments on outsourcing.

## [Outsourcing](#)

The outsourcing of functions that the private sector can undertake more efficiently and cost-effectively (than the public sector) has been a feature of the NPM. Outsourcing advocates point to the opportunities offered in terms of increased flexibility in service delivery; greater focus on outputs and outcomes rather than inputs; the freeing of public sector management to focus on higher priority or 'core' activities; encouraging suppliers to provide innovative solutions; and cost savings in providing services. As Dr Shergold observed recently:

*'.. the monopoly which the Australian Public Service traditionally wielded over the delivery of government programmes has been broken by the growth of small businesses, community groups and religious organisations able and willing to provide publicly-funded services under contract. I headed a Department of Employment, Workplace Relations and Small Business, many of whose staff were understandably proud of the fact that they had worked previously in the Commonwealth Employment Service. By the time I arrived they were building their expertise as contract managers, oversighting the delivery of labour market programmes through a vigorously competitive network of public, private and community organisations. The CES, which enjoyed fifty years as a public service monopoly, is gone. It has been replaced by market competition'.<sup>96</sup>*

The Department of Defence was the first government agency to embark on the significant outsourcing of its 'non-core' (non-combat related services) activities – this was largely driven by budgetary pressures on defence outlays. The Defence Commercial Support Program, which has now been operating for around 11 years, has market tested the work of some 16,000 positions (civilian and military) in 119 separate activities with a total value of commercial and in-house work of more than \$5 billion. Recent announcements of activities under consideration include the Defence distribution system, provision of health services in Victoria and ADF recruitment.<sup>97</sup> I understand that, traditionally, Defence has aimed for a 30 per cent saving under a Commercial Support Program initiative.

There have been other successes, for example, the outsourcing of human resource management functions in the Department of Finance and Administration was judged to be positive for the agency's core business with the agency winning a worldwide outsourcing achievement award.<sup>98</sup> In addition, an audit of the management of Commonwealth national parks found benefits both in terms of savings to the Commonwealth and in increased employment opportunities in some rural and remote communities<sup>99</sup>. Also the ANAO, for many years, has successfully outsourced the audits of Government Business Enterprises and other commercial bodies. While the ANAO continues to oversight the audits and sign the accounts, we rely on the large international accounting/auditing firms to do the bulk of the auditing work required. This allows us to get the benefit of specialist industry expertise by utilising the world-wide industry knowledge of the firms.

However, outsourcing also brings risks. My Office's experience has been that a poorly managed outsourcing approach can result in higher costs, wasted resources,

impaired performance and considerable public concern. For example, an ANAO audit of the implementation of IT outsourcing across the public sector found that benefits realised by agencies were variable and that costs were well in excess of the amounts budgeted<sup>100</sup>. A subsequent inquiry into the issues raised by the ANAO noted that:

*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.*<sup>101</sup>

The inquiry went on to point out the following 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.<sup>102</sup>

The Government agreed with the ten recommendations made by the Review, some with qualification.<sup>103</sup> This included that the responsibility for implementation of the IT Initiative be devolved to agencies in accordance with the culture of performance and accountability incorporated in the relevant financial management legislation with agency heads being held directly accountable for achieving value for money (including savings). Agencies will also be responsible for addressing implementation risks. 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. 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 -this was a significant lesson for all future outsourcing arrangements.

The main message coming out of this experience is that savings and other benefits do not flow automatically from outsourcing. Indeed, the outsourcing process, like any other element of the business function, must be well managed to produce required outputs and outcomes and must be suitably transparent to protect public accountability. While it is important to have a sound contract that provides legal protection and remedies for both parties, this should not be the sole basis of the relationship. Unfortunately, this rather narrow focus has been seen as sound contract management. On the other hand, the taxpayer does not want to see results at any cost.

In a recent article by Paul Armarego and Julian Gyngell examining IT outsourcing – ‘Critical issues in 3<sup>rd</sup>-wave IT outsourcing’<sup>104</sup> the authors make the point that a key

reason it encountered difficulty in Australia and the UK relates to the perennial issue - the proper allocation of risk. They comment:

*‘On the one hand, when contracting out, there is a legitimate desire to transfer “performance” risk to the service provider. On the other hand, the financial institution lending the money will want to strip out as much risk as possible for the service provider so that there is no threat to the income stream. This issue alone can be a deal breaker or it can result in the public sector giving in to the financier’s demands.’<sup>105</sup>*

The other telling observation they make relates to the conduct of due diligence during the tendering period. The due diligence process is always difficult because bidders rarely have sufficient access to the relevant documents, physical locations and assets of the public sector agency to undertake effective due diligence. Armarego and Gyngeell make the observation that:

*‘Experience suggests that due diligence is often no more than a cursory inspection and that those carrying out the due diligence often do not fully understand the issues they are looking for when reviewing the software licences, employment and human-resource-related issues and other related contracts’<sup>106</sup>.*

#### Competitive tendering and contracting

The customer relationship with the business also changes following outsourcing. It is important that the ongoing customer relationship is subject to appropriate pricing arrangements and that private sector competitors are given a real opportunity to bid for government business. In the appropriate circumstances, the use of competitive tendering and contracting promotes open and effective competition by calling for offers that can be evaluated against clear and previously stated requirements to obtain value for money. Experience has shown that it is essential to be clear about what value for money actually means, including how intangible factors (benefits and costs) will be assessed. This, in turn, creates the necessary framework for a defensible and accountable method of selecting a service provider. In addition, it should facilitate the best outcome for clients/customers who, it should be noted, are also likely to be taxpayers and citizens.

In addition to the impact of outsourcing on public accountability, the transition to outsourcing arrangements has other significant effects over the longer term. For example, there is a particular risk that incumbency advantage may reduce the level of competition for subsequent contracts. Incumbents may have greater information and knowledge about the task than either potential alternative service providers or the Commonwealth agency directly involved. The risk becomes more pervasive when the outsourced activity has a significant impact on core business, or where competition in the market is limited. Nevertheless, if such risks are identified and treated, there can be useful net benefits to the agency which may not otherwise be available. The decisions usually boil down to a proper assessment of all the costs and benefits over an appropriate timeframe.

The imperative of ensuring that the contracting agency has appropriate contract management skills, including the capability to adequately oversight the service provider, has been stressed in recent years by both the ANAO and Parliamentary Committees. It has been recently observed that:

*whilst constructive ‘partnership’ relationships with providers are beneficial, if an agency defers to the provider for advice and direction, the nature of the business arrangement is likely to change and result in the provider using that to their commercial advantage (and to the financial detriment of the agency).<sup>107</sup>*

I can agree with the author that ‘prevention is always better than cure’. As well, contract management does require a greater focus on effective relationship-building, service monitoring and problem-solving skills than does procurement oversight.

The convergence of the public and private sectors will continue to introduce new levels of complexity and risk to public sector agencies. Managing any new, as well as current, risks is crucial to the achievement of value for money – the primary gain from involving the private sector in the first place. Convergence has many different dimensions and involves a wide range of stakeholders including both non-government and general community organisations. As discussed earlier in this paper, agreeing suitable governance structures and demonstrating accountability are particular challenges in the new business environment. Agencies can outsource functions - in full or in part. However, Parliament insists that they cannot outsource their responsibility or overall accountability. The Government recently reinforced this point in noting that:

*‘Agencies remain accountable for the delivery of services, even where the service delivery is provided by the private sector. Central to the accountability principle is the need to maintain awareness of client needs and how they are being met’.<sup>108</sup>*

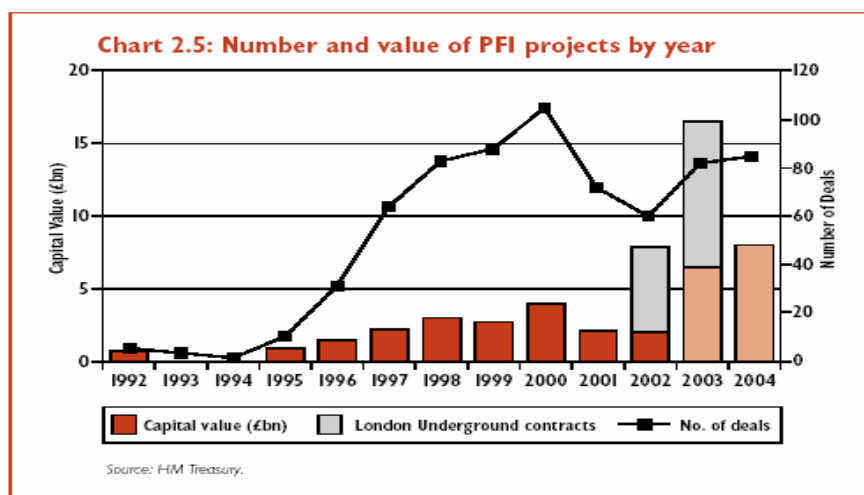
Yet, in practice, there is a question of just how accountable agencies can be, in the traditional meaning of the concept, if they have virtually no responsibility for the delivery of particular public services nor relevant information or experience. This issue has clear implications for the ability of the Government and Parliament to scrutinise the efficiency and effectiveness of outsourced operations. At the end of the day, it may be the courts that determine accountability for outsourced business activities. There have already been cases where the courts have ruled on the ultimate accountability of government agencies for outsourced activities. While it would be preferable for accountability issues to be settled in the context of sound public administration, there will nevertheless continue to be situations where court decisions will provide direction and guidance to a greater or less extent, depending on guidance provided by the Government and/or Parliament.

### [PFI - The UK experience](#)

The UK Government in its objective to deliver world-class public services has used the PFI approach as a not unimportant tool in delivering the investment plans for public services. The Treasury Report on PFI, referred to earlier, made the point that

the vast majority – over 85 per cent – of this increased investment is conventionally procured public investment, with the proportion of estimated private sector investment in public services through PFI remaining relatively constant over the period 1998-9 to 2003-4 at between 10 and 13.5 per cent of total investment. PFI investment in the UK has now delivered over 600 operational new public facilities, including 34 hospitals and over 200 new and refurbished schools. The growth in PFI projects in the UK is shown in the following figure.

FIGURE 2 – VALUE AND NUMBER OF UK PFI PROJECTS BY YEAR



Source: HM Treasury Report, PFI: meeting the Challenge, page 19

The Report makes the important observation that the decision to undertake PFI investment is taken on value for money grounds alone, and whether it is on, or off, balance sheet is a subsequent decision taken by independent auditors and is not relevant to the choice of procurement route. Almost 60 per cent of PFI projects by value are on balance sheet.<sup>109</sup> This runs counter to many commentators' view that :

*'Public-private partnerships have been devised to avoid treating financing arrangements as government "debt". Governments face incentives to avoid treating these arrangements as giving rise to liabilities. Both the Australian and UK standards have avoided a "substance over form" approach in order to accept that PPPs may be kept off-balance sheet.'*<sup>110</sup>

Indeed, the key message in the report is that PFI is only used where it is appropriate and where it expects it to deliver value for money. In assessing where PFI is appropriate, the UK Government's approach is based on its commitment to efficiency, equity and accountability and on the Prime Minister's principles of public service reform. PFI is only used where it offers value for money, where it can meet these requirements, and where the value for money it offers is not at the cost of the terms and conditions of staff.<sup>111</sup> Perhaps our colleagues in State and local governments may have different experiences and views. I certainly agreed with the principal enunciated. However, reference should also be made to an interesting piece of research work by Broadbent and Laughlin in the UK which looked at both the accounting treatment of PFI and the achievement of value-for-money and risk transfer.<sup>112</sup>

The Treasury Report concludes that the evidence to date suggests PFI is appropriate where there are major and complex capital projects with significant ongoing maintenance requirements. This is where the private sector can offer project management skills, more innovative design and risk management expertise that can bring substantial benefits. Where it is effective, PFI helps ensure standards are maintained, that new services start on time and budget, and that the assets built are of sufficient quality to remain of high standard their life.<sup>113</sup> The Report findings indicate that the PFI model is only likely to provide tangible benefits where<sup>114</sup>:

- the private sector has the expertise to deliver and there is good reason to think it will offer value for money;
- the structure of the service is appropriate, allowing the public sector to define its needs as service outputs that can be adequately contracted for in a way that ensures effective, equitable and accountable delivery of public services into the long term;
- it can be demonstrated that PFI offers greater value for money for the public sector compared with other forms of procurement; and
- the nature of the assets and services identified as part of the PFI scheme are capable of being costed on a whole-of-life, long-term basis. Investments with a time horizon of 5-10 years are unlikely to benefit from the PFI approach.

However, PFI is unlikely to deliver value for money in areas where:

- the pre-conditions of equity and accountability in public service delivery could not be met;
- the transaction costs of pursuing PFI were disproportionate compared to the value of the investment a project was delivering, impairing its value for money (dealt with later); or
- the fast pace of technological change in a particular sector made it too difficult to establish requirements in the long term, or high levels of integration make enforcing systems risk allocation difficult (again, dealt with later).

When PFI is used effectively, the Report highlights a number of advantages<sup>115</sup> that stem from the sharing of risk in public projects within a structure in which the private sector puts its own capital at risk for delivery and performance. In the right circumstances, PFI can help ensure:

- **desired service standards are maintained.** Since under PFI the private sector's capital, not just its profit, is at risk depending on private sector performance, there is a very strong incentive for the private sector to maintain high and reliable service standards throughout the life of the contract;
- **new services are more likely to start on time,** since the private sector contractor does not get paid until it delivers. The record of conventional

procurement is poor in this respect, with frequent delays before public assets become operational;

- **more efficient use of public money.** In the past, some conventional public procurements have gone heavily over budget, consuming funds which could otherwise have been invested in other public services. Under PFI, the public sector only pays for the service it has contracted for, at the price it has contracted for, and only when that service is available. Under conventional procurement the public sector is forced to fund cost overruns, and pays out whether or not the service it needs is actually available; and
- **contractors are incentivised to deliver the required service over the whole life of the asset.** The private sector partner only gets paid if it maintains standards throughout the length of the contract (for example 25 years in the case of new PFI hospitals). This means that in designing, building and maintaining a PFI hospital or school the private sector has a strong incentive to ensure high standards are built in and maintained across the building's whole life, as it would be forced to remedy defects and make repairs in the future.

Furthermore, when used properly, PFI offers other advantages to the public sector, over and above providing high quality, well-maintained assets over the life of the contract. In particular PFI helps the public sector by providing: <sup>116</sup>

- **a better understanding of the total costs of providing the required service.** In PFI procurement, the public sector client can clearly define at the start the service it requires, and the private sector partner gives a price for the total cost of that service – covering both the up front cost of new investment but also ongoing recurrent costs such as maintenance. This helps to avoid 'shorttermism' by focusing on the long-term needs of the public sector; and
- **new ways of working, and new approaches to the delivery of the service.** The public sector defines the service to be delivered, but it is for the private sector partner to decide how to deliver it, drawing on its own innovation and experience. This provides the private sector with an incentive to develop innovative ways to meet requirements, and allows the public sector to harness the efficiency that can come from contestability, helping improve standards across the public sector. To bring out these benefits from innovation, it is important that the public sector has available the skills to act as an effective client in PFI procurement.

The UK Treasury research shows that, to be effective, PFI needs to be managed as a mature relationship between the public and private sectors that recognises their mutual responsibilities. PFI relationships are very different from privatisation, in which the market and price mechanism defines the service provided. Equally there needs to be an optimal sharing of risks between the private and public sector. There are certain risks that are best managed by government and to seek to transfer these risks would either not be viable or not offer value for money for the public sector. Where allocation of risks is done appropriately and effectively, it is a key factor in ensuring that the value for money benefits in PFI projects are realised.

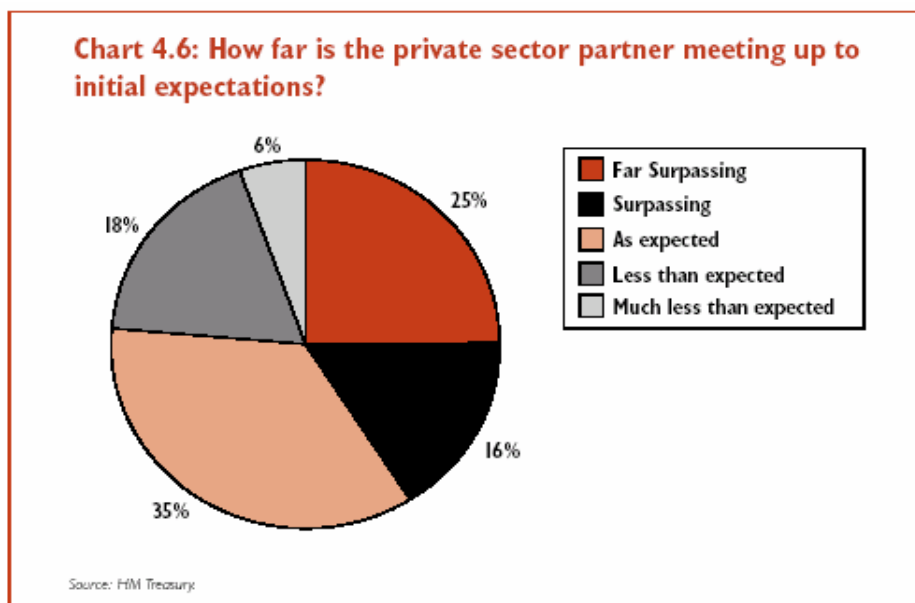


### The UK Report Card

Chapter 4<sup>117</sup> of the UK Treasury's Report provides details of its research of 61 PFI projects. The Report makes the point that the PFI program has progressed to a point where, with 451 projects operational, sufficient evidence is available to assess many aspects of the early performance of the program. The findings of UK Treasury research into completed major capital PFI projects and the findings of research into two particular areas of the PFI program: projects with a small capital value, and information technology (IT) projects, are as follows:

- PFI projects are being delivered on time and on budget. UK Treasury research into completed PFI projects showed 88 per cent coming in on time or early, and with no cost overruns on construction borne by the public sector. Previous research has shown that 70 per cent of non-PFI projects were delivered late and 73 per cent ran over budget;
- there is scope to reduce procurement times, although there is evidence that new initiatives to tackle this problem are having an impact. Procurement times averaged 22 months, but the first scheme signed under the NHS LIFT initiative, a new form of PFI joint venture designed to bring procurement expertise directly into primary healthcare projects, closed in just 14 months;
- the operational performance of PFI has met with approval from public sector clients. Over three quarters of clients surveyed reported their PFI projects performing as expected or better (refer to figure 3 below). However, further research into operational performance is required, to assess projects once they have had longer periods in operation. Moreover, it is still early for the expected long-term operational benefits of PFI procurement, in terms of whole-of-life costing and locked-in standards, to have become apparent; and
- that two previous independent reports by the NAO into aspects of the PFI program further support many of these findings, providing evidence of improved construction performance over non-PFI projects and of public sector client satisfaction.<sup>118</sup>

**FIGURE 3 – PFI Performance**



Source: HM Treasury Report, PFI: meeting the Challenge, page 51

The UK Treasury's research also focused on PFI projects with capital values below £20 million, the main findings were that while construction and operational performance were good (in line with larger projects) the procurement process for these small projects was of comparable length to that of major capital schemes - indicating that, in relation to the level of capital investment, procurement times were disproportionately long, and the procurement costs disproportionately high. For IT projects, the main findings of research were that:

- IT PFI projects were moderately successful, but the majority of more successful projects renegotiated their contracts after signature to achieve ongoing flexibility, moving away from the mainstream PFI focus on contractually defining outputs; and
- this finding was in line with qualitative research on IT PFI, which identified a number of important differences with PFI in other sectors, including a greater need for project flexibility, a higher level of integration with public sector business systems, and little or no market for third party finance.<sup>119</sup>

Drawing on some of the main lessons learnt, I have identified the following issues from the UK Treasury Report.

**(a) Risk Sharing**<sup>120</sup>

As I noted earlier, the appropriate sharing, or allocation, of risks is a key factor in ensuring value for money benefits in PFI projects are realised. The benefits flow from ensuring that the many different types of risks inherent in a major investment program (for example construction risk or the risk associated with the design) are borne by the party who is best placed to manage them. That is, the approach to risk in PFI projects does not seek to transfer risks to the private sector as an end in itself - where risks are transferred, it is done to create the correct disciplines and incentives on the private sector to achieve a better outcome.

In the UK context, the general principles behind the approach to risk-sharing in PFI are:

- the Government underwrites the continuity of public services, and the availability of the assets essential to their delivery; but
- that the private sector contractor is responsible, and at risk, for its ability to meet the service requirements it has signed up to. Where it proves unable to do so the contractor is at risk to the full value of the debt and equity in the project; and
- the full value of that debt incurred by the project, and the equity provided by contractors and third parties, is the cap on the risk assumed by the private sector.

On the other hand, the key risks that the Government does not seek to transfer in entering a PFI scheme are usually:

- **the need for the facility on the date given and the adequacy of its overall size to meet public service needs.** For example, if the NHS underestimates the number of beds required to meet demand, it must pay the costs of expanding the available facilities just as it would had it built a conventional hospital;
- **the possibility of a change in public sector requirements in the future.** If the needs of public services change, the Government retains the responsibility to make alterations in both conventionally built and PFI facilities. Provisions for flexibility to cover changing requirements in PFI are covered in more detail below;
- **whether the standards of delivery set by the public sector sufficiently meet public needs.** The public sector retains the risk involved in planning the provision of public services, and specifying a procurement of facilities that meets those requirements, in both PFI and conventional procurement;
- in most cases, **the extent to which the facility is used or not over the contract's life.** For example, if the demand for school places in an area drops significantly, the Government would continue to pay unitary charges for a PFI school, in the same way as it would continue to own and maintain a conventionally procured school; and
- **general inflation risk.**

On the other hand, the risks that Government usually seeks to transfer by contract to the private sector (over the term of the contract) would involve:

- meeting required standards of delivery;
- cost overrun risk during construction;
- timely completion of the facility;

- underlying costs to the operator of service delivery, and the future costs associated with the asset;
- risk of industrial action or physical damage to the asset; and
- in limited cases, certain market risks associated with the scheme (for example, in some road schemes, the actual traffic which uses the road).

As an aside, both the UK Treasury research and the NAO sample, mentioned earlier, suggest that PFI provides high levels of price certainty for the public sector, particularly in comparison to the budget overruns experienced in traditional procurement, demonstrating the effective transfer of construction risk to the private sector. Additionally, the UK Treasury research into private sector participants' experience showed that:

*'most were content that the risk sharing approach of Government set out in standardised contracts was a reasonable allocation of risks. Most also provided examples of where risks had materialised in practice, reducing their returns due to increasing costs which they had borne, and demonstrating that risk transfer has been effective'.*<sup>121</sup>

However, we are aware of some recent PFI initiatives where there was not proper risk allocation, or at least the private sector did not manage the risk well with the ensuing liability having to be subsequently borne by the Government.<sup>122</sup>

#### **(b) Comparing Costs of Finance**<sup>123</sup>

Any discussion on the role of private finance in PFI projects must take into account the benefits that it brings to PFI projects and ensure that the costs of securing finance from both public and private sources are assessed on a consistent basis. The cost of private sector finance in PFI is often cited as greater than the cost of funds available through public finance. A simple comparison of the combined returns on debt and equity earned by the private sector with the non-risk rate would show that the cost of public debt was lower.

However, this single cost comparison does not adequately capture the different methods of costing for risk in the public and private sector, nor does it reflect the value for money benefits which whole-life costing and appropriate risk-sharing in PFI bring to projects. With publicly financed procurement, the taxpayer underwrites the associated risk, and this is reflected in a lower price of capital to the public sector. The taxpayer takes on the risk attached to the project, and where it materialises, bears the cost as a result. To sum up:

*'It is therefore inappropriate to compare a "risk free" cost of finance with the cost of private finance: PFI projects provide value for money through the private sector taking on, pricing, and managing more effectively these project risks'.*<sup>124</sup>

There has usually been considerable debate about the appropriate discount and rate of return figures that should be used. That is a discussion that would constitute a session by itself.

**(c) Maintaining the Intelligent Buyer Capability**<sup>125</sup>

The Report recognised that strong procurement skills are at a particular premium in PFI procurement, because of its complexity, and the necessity therefore for high levels of expertise. As the report notes:

*‘It is important that the public sector is able to manage the procurement process efficiently, intelligently and in a timely manner in order to maximise the benefits of PFI and other sorts of public procurement, and to be consistent with the need to secure value for money. A lasting step-change in the quality of public services in the UK can only be achieved if the public sector has the skill set necessary to translate increased public investment and facilities fit for modern public services’.*<sup>126</sup>

Clearly, better procurement skills lead to lower transaction costs, better value for money in projects procured, and faster delivery of investment to public services. In the PFI context, improved procurement skills will:

- **enable the public sector to maximise the benefits available in the procurement process** by effectively conducting the long-term options appraisal necessary both to determine whether the PFI route is value for money, and to secure best value from PFI bidders;
- **improve value for money, by reducing delays and lowering procurement costs for the public sector** and actively managing the specialist advisers, such as technical, financial and legal advisers necessary for PFI;
- **secure value for money from contract negotiations** by achieving the Government’s aims in risk-sharing, and ensuring a smooth and timely procurement process; and
- **create an environment that encourages the private sector** to bid for PFI projects, improving competition and delivering a stronger PFI market.

As a new initiative, a ‘Gateway Process’ is being piloted in local government sector PFI projects (since April 2003). This process is aimed at ensuring that any potential problems are addressed early on in the procurement process – the process for each stage is listed below:<sup>127</sup>

- **Gate 0 - Strategic Assessment:** The evaluation is applied at the start of a project or program and is designed to consider the strategic assessment of the business need.
- **Gate 1 - Business Justification:** This evaluation occurs once there is an outline business case in place. Its aim is to confirm that the business case is robust and make recommendations for improvements where necessary.

- ❑ **Gate 2 - Procurement Strategy:** Prior to the invitation for tender, this gate considers the project's potential for success and its ability to proceed.
- ❑ **Gate 3 - Investment Decision:** This gate is intended to establish whether the recommended investment decision is appropriate prior to the contract being awarded. It also examines the processes in place to select the supplier.
- ❑ **Gate 4 - Readiness for Service:** the purpose of this gate is to examine how the organisation will implement business change associated with delivery and how robust the solution is. It should also assess whether there is a basis for evaluating the projects ongoing performance.
- ❑ **Gate 5 - Benefits Evaluation:** The focus here is ensuring the delivery of benefits and value for money as set out in the initial business case.

The final element that I wish to touch on under the intelligent buyer topic is *Standard Contracts*.<sup>128</sup> One of the key tools in the UK Government's approach to procurement of PFI projects has been the development of standardised commercial contracts following widespread consultation with both the public and private sectors. The main objectives of the standardised contracts are: to reduce the period and costs of negotiation; to promote a common understanding of the main risks encountered in a standard PFI project; and to allow a consistency of approach and pricing across a range of similar projects, without detracting from their ability to cater for specific needs.

The Report observes:

*'The process of standardising PFI contracts helps spread best practice, improving PFI procurements across the public sector, and reduces the length and cost of PFI procurement. At the same time, the standard contracts maintain flexibility for an individual project to set its needs and requirements, while providing standard terms for those elements of PFI that are common to all procurement processes'.*<sup>129</sup>

#### **(d) PFI in the UK IT Sector**

The use of PFI in IT was used to introduce third-party finance into IT projects to effect risk transfer, impose commercial discipline and ensure risk mitigation in the delivery of IT contracts. The UK experience has shown that PFI has not been able to deliver the step-change in required performance to the public sector IT sector due to the structural characteristics of that sector. In particular many aspects central to IT procurement do not fit well with the central requirements of PFI, particularly:

- ❑ the fast pace of change in the sector make it difficult for the public sector to effectively define the outputs it requires in a long-term contract;
- ❑ the high level of integration of IT infrastructure into the other business systems of the procurer makes it difficult to clearly delineate areas of responsibility to the client and the contractor, and so makes an appropriate sharing of risk more difficult to both discern and enforce;

- the lack of a market for third-party finance in IT PFI removes a powerful driver ensuring appropriate and effective risk allocation in a project;
- the nature of the capital investment, with costs in IT dominated not by large up-front investment but by running costs; and
- the duration and phasing of investment, where IT projects have a short life, and include significant asset refresh, makes defining and enforcing long-term service needs more problematic.

The research also showed that in those IT projects which were more successful, contracts had been negotiated to accommodate improved structures, suggesting a move in practice away from a PFI model. The policy response in the Treasury Report included the following:

*‘PFI in the IT sector will be replaced by a set of procurement options appropriate for different types of IT project. Over the course of summer 2003, OGC and HM Treasury will lead a project to draw up guidance on a range of models for government IT partnering projects, which will allow for joint consideration by customer and supplier of objectives plans, risk and problem resolution. This guidance will replace existing IT PFI guidance but will draw extensively on the innovations and improvements obtained as existing IT PFI contracts have been renegotiated’.*<sup>130</sup>

#### **(e) Final Thoughts**

I have devoted some time to the UK Report because it a very recent and through review of the implementation of PFI and while it has the UK focus it nevertheless has many sessions for the Australian environment. I recommend the Report to you. The Report has a number of annexures that deal with assessing value for money in the investment program assessment; reporting and accounting issues; and rate of return. Again there are some interesting observation that we all need to be aware of.

## **VI Success at driving a Generic Brand of Government**

Returning to the Australian context, I thought it would be useful to share with you some examples where generic government has succeeded at the federal level. The following are just some examples.

### **Centrelink**

Centrelink is a statutory authority within the Family and Community Services portfolio and operates under the *Commonwealth Services Delivery Agency Act 1997 (CSDA Act)*, which gives Centrelink responsibility for the provision of Commonwealth services in accordance with service agreements. As an Australian Public Service (APS) organisation, Centrelink is subject to the *Financial Management and Accountability Act 1997 (FMA Act)* and is staffed under the Public Service Act 1999.

Purchaser/provider arrangements

As previously discussed, Centrelink's outcome and output are the 'effective delivery of Commonwealth services to eligible customers' and the 'efficient delivery of Commonwealth services to eligible customers'. Centrelink's revenue is provided through Business Partnership Agreements (BPAs) or similar arrangements with client agencies. Funds are appropriated to the policy agencies and paid to Centrelink in return for specified services. Centrelink contributes to the social and economic outcomes set by Government by delivering services on behalf of 20 Commonwealth and State client agencies to about 6.3 million customers (citizens), involving expenditure of about \$55 billion in 2001-02.

Successful elements of these business arrangements

As previously mentioned, Centrelink is an example of the committee model with responsibilities of Centrelink and the other party clearly spelt out in formal arrangements with other partner entities and then incorporated into their respective governance arrangements. Dr Rosalky, the previous Secretary of FaCS, observed that an important complement to the Business Partnership Agreement was an assurance framework focussing on management criteria that are critical to the department's success. The assurance framework was considered necessary "because the establishment of Centrelink had split accountability for one of the government's largest and most sensitive programs".<sup>131</sup>

FaCS/ Centrelink Business Partnership Agreement (BPA) model

Centrelink is the primary agency delivering Family and Community Services' (FaCS) income support and related services. Centrelink delivered pensions, benefits and other services in the order of \$56 billion. The relationship between FaCS and Centrelink is governed by a BPA, which acknowledges joint responsibility for performance. The BPA outlines the roles and responsibilities of the two parties. FaCS is responsible for providing Centrelink with appropriate policy advice, direction and funds to enable effective service delivery, and Centrelink is responsible for implementing strategies for payment control as part of its approach to service delivery.

The BPA is anchored in legislation, particularly the CSDA Act, under which the Secretary of FaCS has delegated to the Chief Executive Officer of Centrelink the responsibility for administering specified FaCS programs, including the Age Pension. Also under the Act, the activities agreed to in the BPA are the functions of Centrelink, and the agency's board is responsible for ensuring that those functions are properly, efficiently and effectively performed. However, the Secretary of FaCS remains accountable under the FMA Act for the program expenditure. Centrelink is therefore required to provide assurance to FaCS that payments, and therefore program outlays, have been made in accordance with the Social Security Law.

***The Indigenous Communities Coordination Taskforce (ICCT)***



In late 2000, the Council of Australian Governments (COAG) agreed on a framework by which all levels of government could continue to advance reconciliation and address Indigenous disadvantage.

In recognition of the mixed success of substantial past efforts to address disadvantage, COAG committed all levels of government to an approach based on partnerships and shared responsibilities with Indigenous communities, programme flexibility and coordination between government agencies with the focus being on the delivery of outcomes for local communities.

The Council agreed to take a leading role in driving the necessary changes and a tiered structure was established comprising:

- a Ministers group;
- a group of key Commonwealth departmental secretaries<sup>132</sup> and the ATSIC CEO; and
- the Indigenous Communities Coordination taskforce.

#### *Successful elements of these arrangements*

While this particular initiative is at an early stage in its implementation, the early recognition of the partnership challenge, and the involvement of very senior officials from the participating agencies, have already provided indications of success. All levels of government and each of the participating Indigenous communities clearly identified their expectations and the outcomes they sought from working together. To measure performance, a performance management framework that provides for measuring and reporting on progress towards achieving those outcomes was developed. In each of the communities, the ICCT acts as a 'broker' and coordinates all levels of funding and service delivery and negotiates the performance measurement and evaluation framework with community members.

#### ***International Students Management System***

The *Educational Services for Overseas Students (ESOS) Act 2000* protects the education and training export industry, Australia's third largest service export industry earning some \$4.25 billion in exports. Under the *ESOS Act* the Secretary of DEST administers the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) with institutions registered on CRICOS on the advice from State/Territory authorities. Access to the information stored on CRICOS (course providers and courses of study) is available via the Internet to any interested person, overseas or in Australia.

An *ESOS Assurance Fund* was established to protect the interests of overseas students, and intending overseas students, of registered providers and is financed by contributions from, and levies on, registered education providers. The fund ensures that the students are provided with suitable alternative courses, or have their course money refunded, if the provider cannot provide the course(s) for which the students have paid. The current fund manager is PricewaterhouseCoopers.

In July 2000, as a result of a collaborative development between DEST and the Department of Immigration and Multicultural and Indigenous Affairs, an electronic Confirmation of Enrolment (eCoE) system was introduced. DIMIA now requires this form of evidence of confirmation of enrolment before issuing a student visa. DIMIA's overseas officers are able to access and check the existence of the eCoE before issuing a visa. DIMIA then electronically advises DEST of the issue of the visa, and of the arrival of the student in Australia.

Registered providers are required to notify DEST accessed over the Internet of any variations in the student's study. The information is used by DIMIA to identify any students who have breached the terms of their student visa.

#### *Successful elements of these arrangements*

Here we have a good example of a generic brand approach with collaboration between DEST, DIMIA, education providers, and state authorities that register education providers to provide a seamless service to students and institutions via the Internet. A major element of the system is the ability for an overseas student to register with an approved provider, and obtain a visa shortly after. A second significant feature is that education providers not approved by the State/Territory authorities cannot register students, and persons overseas cannot register as students with a 'suspect' provider and obtain a visa. This reduces, if not eliminates, the potential for the illegal use of student visas to bypass Australia's immigration processes. Indications are that the system is successful in reducing problems in the overseas student education sector.

#### *Fedlink*

The Prime Minister, in his *Investing for Growth* industry statement of 8 December 1997, announced the Government's intention to create a government-wide Intranet (later named FedLink) for secure online communications to facilitate a more timely exchange of information between government agencies, the Parliament and ministerial offices. The Intranet was expected to provide a full multimedia capability to agencies to communicate with and provide secure access to external telecommunications networks. It was the intention of the Government to work with industry to find innovative solutions for the network.

The interdepartmental committee advising the Prime Minister on this initiative considered that the telecommunications network would be used for all electronic intra-government communications. It would allow secure agency access from the Intranet to the Internet, and it would provide public access via the Internet and Intranet to appropriate agency information and transactions. Fedlink was to comprise two elements:

- a high capacity telecommunications infrastructure (phase 1); and
- information technology applications which supported Internet and Intranet communication and transactions in a secure environment (phase 2).

The then Office of Government Information Technology (OGIT) was the coordinating agency. OGIT sought the services of the ANAO to provide an opinion on the probity of the methodology and procedures applied in the evaluation process for Phase 1. The ANAO reported the results of this probity audit in Report No. 11 of 1998-99, *OGIT and Fedlink Infrastructure*.<sup>133</sup>

Given the importance of secure communications between government agencies, the Government decided that agency heads should, by March 2001, formally assess their existing external communication security arrangements and ensure that they provide safeguards at least the equivalent of those embodied in the FedLink infrastructure. If they did not, existing networks were to be migrated to FedLink, or to infrastructure providing and equivalent or higher stand, by December 2001. For new networks, this requirement was to apply from July 2001.<sup>134</sup>

In July 2001, the Government announced that a private company had signed an agreement with NOIE to deliver FedLink<sup>135</sup> and in March 2002, it was announced that the encrypted communications service, FedLink, was operational with seven Commonwealth agencies fully connected and another eight in the process of completing the formal requirements to implement the system.<sup>136</sup>

It would seem that the great majority of agencies and bodies subject to the *Financial Management and Accountability (FMA) Act* and the *Commonwealth Authorities and Corporations (CAC) Act* could derive potential benefits from Fedlink by providing a secure means of communicating Australian government information electronically.

#### Successful elements of these arrangements

While these benefits have been only partially realized to date, the aim of secure communications between Federal agencies is necessary to meet security and privacy requirements. The Fedlink has shown that secure communication between participating agencies is a reality and results to date reflect the level of collaboration being achieved.

## **VII Audit Considerations under Generic Government**

While NPM methodologies extend benefits to citizens in terms of access to better quality service, APS agencies must also ensure that their clients are still recognised as citizens who expect value and results from their tax dollars, and who expect to be able to participate in setting the agenda for government, and consequently for the agencies that support it. Consequently, networking or partnering is beginning to play a major role at the local, national and international levels and across all sectors of the economy for improved performance and effectiveness. However, unfocussed and uncoordinated programs waste scarce resources, confuse and frustrate recipients and limit overall program effectiveness. Hence, the development of effective working relationships with stakeholders is an key element in a well functioning public sector corporate governance framework and can help to identify, overcome and even avoid fragmentation and unnecessary overlaps in government programs.

As this trend toward 'networked' or cross agency approach continues and agencies take advantage of the opportunities offered by more responsive service delivery mechanisms, the ANAO has sought to add value through its audit activity in the area

of networked service delivery, particularly in promoting suitable governance arrangements – as I observed in my 2001-02 Annual Report:

*‘The ANAO has an important role to play in helping to promote appropriate governance frameworks and highlighting that governance issues need to be given greater prominence and consideration. It may, for example, be appropriate for governance arrangements to be set out in Cabinet submissions and subsequently approved by the executive where cross agency issues arise. This applies particularly to the vexed issue of accountability in the delivery of public services in an environment that is relying more on coordinated, integrated and partnership arrangements within the public sector and between it and the private sector’.*<sup>137</sup>

As the governance and accountability environment becomes more complex, the ANAO performs a crucial function in providing assurance on performance across the public sector. This is important as agencies increasingly find new methods to deal with common issues, and form alliances and partnerships, including with the private sector, to deliver government services. In any joint delivery of services there is always the risk that the differing priorities inherent in these types of arrangements will reduce the efficiency and effectiveness of the delivery of the service. Consideration of the corporate governance procedures underpinning these new more complex administrative arrangements, and promotion of better practice examples, is a key feature of many ANAO audit reports.

The audit coverage of services delivered by joined-up or generic government presents particular challenges. In this paper I intend to focus on just three.

#### First, jurisdictional issues

Cross-government service delivery may mean that part of the delivery process is outside my jurisdiction (and that of my state counterparts) meaning that accountability for the total delivery of the service is therefore at risk. There is an additional risk that separate audits of a joined-up government project conducted by the ANAO and say one or more of the state audit offices, where each audit is necessarily limited to one’s own area of responsibility, may result in differing conclusions about the project. A further risk is that part or all of a project may ‘fall between the cracks’ and not be considered for audit at all.

While these risks are not new – joint projects between Australian governments have been a reality since federation – the necessary closer links brought about by technology, and the immediacy demanded by the public for delivery of services irrespective of which government is responsible, bring into sharper focus the need for better project governance and accountability. Particular emphases are being placed on responsiveness of service delivery and overall performance of government.

Consequent to these needs for accountability of joined-up projects is the challenge for my state colleagues and I to consider joint responsibility for providing assurance to the various legislatures. While the current legislation that determines the mandate of each Audit Office may mean that joint audits may not be legally possible,

cooperation between the ANAO and State Audit Offices to conduct contemporaneous audits may often be possible. This approach was successfully adopted for an audit of the gun buy-back scheme, funded by the Commonwealth and operated by the States and Territories, in 1996-97.

Clearly this is a challenge that requires ongoing thought on auditing joined-up government, within each constituency, involving a number of agencies and the private sector in shared arrangements and between constituencies with the involvement of different levels of government. Audit offices have a very important role to play in terms of defining and strengthening acceptable accountability frameworks for the twenty-first century.

### *Second, access to information*

The current increasing trend towards contracting with the private sector for the provision of government services provides a challenge, not only for agencies' accountability, but also for auditors' actual ability to access the relevant records. Concern regarding audit access to contractors records and premises were reflected in a relatively recent report of the Joint Committee of Public Accounts and Audit (JCPAA).<sup>138</sup>

In the interest of securing access to premises and records, the ANAO has been encouraging the inclusion in contracts of model access clauses. In June 2001, I advised all agency heads of the revised standard clauses for use in appropriate Australian government contracts. These standard clauses were approved by the Minister for Finance as part of the Commonwealth Procurement Guidelines.<sup>139</sup> These clauses give the agency and the Auditor-General access to contractors' premises and the right to inspect and copy documentation and records directly related to the contract.

Although it is expected that the need for the ANAO access will be minimal, the presence of the access clauses facilitates agencies' execution of accountability. That is, the inclusion of access provisions within agency contracts to enable performance and financial auditing is particularly important in maintaining the thread of accountability with government agencies' growing reliance on partnering with the private sector and on contractors' quality assurance systems. In some cases, such accountability is necessary in relation to government assets, including records, located on private sector premises.

Nonetheless, in an early audit, the ANAO found that agencies have not fully embraced these opportunities. An examination of 35 contracts for business support processes across eight agencies<sup>140</sup> found only two contracts referring to possible access by the Auditor-General. None of the contracts reviewed, which had been entered into since the ANAO provided advice on standard access clauses, included the recommended provisions. Furthermore, the level of consideration given to the inclusion of such access provisions in those contracts by agencies was not apparent. A later audit of hospital services purchased from state governments<sup>141</sup> found that most, but not all, of the 'Arrangements' provided for such access.

### *Third, commercial in confidence issues*

This issue now largely solved however it was common practice for contracts entered into by an agency with the private sector for the provision of services to classify all, or significant parts, of the contract commercial-in-confidence. This practice had clear implications for transparency and accountability. The ANAO's watershed audit into the use of confidential provisions<sup>142</sup> developed criteria for agencies in determining whether contractual provisions should be treated as confidential.<sup>143</sup> These criteria are designed to assist agencies to make a decision on the inherent quality of the information before the information is accepted or handed over – rather than focusing on the circumstances surrounding the provision of the information. The report also gave examples of generally what would not be considered confidential<sup>144</sup> and examples of what would be considered confidential.<sup>145</sup>

In effect, there has been a reversal of the principle of onus of proof, requiring the party that argues for non-disclosure to show that it would be harmful to its commercial interests. It has been my view for some time that only relatively few contract provisions can be viewed as generally commercially sensitive and that the onus should be on the person claiming confidentiality to argue the merits of the case.

Our most recent audit, on this issue – *The Senate Order for Departmental and Agency Contracts (Autumn 2003)*<sup>146</sup> - regarding the appropriateness of the use of confidentiality provisions in government contracts found that the results from this and previous audits suggest that, 'although agencies have made changes to their policies and procedures to address the issue of protecting contractual information as confidential, all agencies must continue efforts to ensure that their policies are both regularly reviewed to accord with Government policy, and reflected in their practices.'<sup>147</sup>

## VIII Concluding Remarks

In putting together these concluding remarks, I recalled the following insightful observations by Dr Shergold:

*'The conventions which sustain the Constitution remain contested: that, I suspect, is why Commonwealth-State relations – and, indeed, State-State relations – are as often marked by duplication, competition and conflict as by cooperation and consensus.... Which government **does** fund public hospitals or schools or the construction of roads, and on what basis and in what proportions? To most Australians it is unclear. Political discourse on which government should take jurisdictional responsibility and/or provide public funding, often accompanied by mutual recriminations about 'cost-shifting', has become a regular ritual greeted with jaundiced cynicism by the community'.*<sup>148</sup>

and

*'One of the regular messages that I convey to Australian public servants is that we need to take a whole-of-government approach to public policy issues. On many of the issues we address, an effective whole-of-government approach cannot be limited to Commonwealth*

*agencies but necessarily includes their State and Territory counterpart..... Complexity often emerges as the ramifications of a policy evolve and, from my experience, only become fully visible when the Australian Government and the States work together to address the issues. We, naturally, will often focus on the demarcations. Yet the public isn't interested in identifying which level of Government is responsible for the delivery of which services: their goal, quite appropriately, is the seamless delivery of public policy. In that environment – in that untidy and ambiguous world of inter-governmental responsibilities political contest and public expectation – how should we set course?'.<sup>149</sup>*

Indeed, how do we set the course? The impact of globalisation will require all tiers of government to work together more effectively if Australia is to be competitive both internally and externally. On this theme, Dr Shergold also makes the point that the Australian Government currently directly funds crucial areas of health, education and social services (e.g. universities, medicare, social security) while also making significant indirect financial contributions to the State delivery of these services. In 2003-04, the Australian Government will pay \$16.6 billion in Special Purpose Payments (SPPs) to the States and Territories for health, education and other areas that are their prime constitutional responsibility. When debate and sometimes controversy arises on matters of community interest, the public generally expects that 'Canberra' will take on a leadership role. At the same time, the Australian Government has a responsibility to ensure that taxpayers' money allocated to the States and Territories is properly accounted for and that its effectiveness can be publicly evaluated and reported.<sup>150</sup>

The federal government is now paying much greater attention to accountability in the provision of SPP funding with an intention that there should be a clear statement of key outcome objectives and respective responsibilities, and that agreed performance information should be supplied. In some cases, the Australian Government now insists that a portion of funding will be contingent on the timely provision of data - as is the case with the recently signed Australian Health Care Agreements.<sup>151</sup>

As I mentioned earlier in my paper, there are many permutations and combinations for arrangements relating to joined-up government within Australia. Delivery of services may require the cooperation of agencies within the same level of government, agencies from differing, multi-government, levels, and may introduce the additional complexity of including the private sector.

At the state level we are seeing moves to establish better links between local and state governments. Councils in Victoria and Queensland are to take part in a pilot project aimed at providing greater links between different tiers of government. The Agora project is one of several under the banner of the Local Government Online Service (LGOS) delivery program run by the Municipal Association of Victoria. The LOGS program aims to develop municipalities' electronic capabilities, making them more accessible and responsive to ratepayers.<sup>152</sup>

In the federal arena there has been some lateral thinking. Defence's concept of networking soldiers, aircraft and battleships – the so-called *network-centric warfare* –

is being considered for e-government. As John Rimmer, the CEO of the National Office for the Information Economy, commented - efforts by Defence to use technology to improve information sharing in the military provide salient lessons for government. He observed that:

*'Network-centric warfare provides an easy-to-understand metaphor for people. It's really the principles of adaptive business networks that we're trying to apply to network-enabled government'. It's very relevant to the tasks that the Prime Minister set for the public service....need to minimise the silo effect in government*<sup>153</sup>

John has also pointed to a number of efforts currently underway that showed how the ideas behind network-centric warfare were at work and cited examples such as Centrelink's technology refresh project, the proposed national electronic health record (HealthConnect), and efforts to improve networking between the Australian Customs Service, Australian Taxation Office and DIMIA. He introduced the term *network-centric government*.<sup>154</sup>

Another feature of the generic or joined-up government push has been the convergence of the public and private sectors. This has occurred largely as a consequence of demands for more responsive service delivery and for improved efficiency in both sectors, for example, as part of the National Competition Policy, impacting on all levels of government and private sector firms. It provides the opportunity for public sector agencies to gain from specialist expertise and international better practice in complex and dynamic areas such as information technology and communications. However, convergence also brings into sharp focus the differences between the two sectors, which need to be managed responsively on a case-by-case basis. Public and private sector agencies have very different legal and accountability requirements. As well, we should not overlook the pervasive impact of big "P" politics with its attendant judgements and responsibilities to all citizens. I recently came across a different expression of this sentiment in relation to public service improvement:

*It is worth emphasizing to national policy makers that you can (temporarily) take improvement out of politics, but you can't take politics out of improvement.*<sup>155</sup>

For the Commonwealth public sector, legal responsibilities are defined by specific functional statutes as well as general requirements outlined in legislation such as the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997*. By contrast, private sector organisations have specific obligations under corporation's law<sup>156</sup> and trade practices legislation, as well as relevant State/Territory legislation. The legislature has further contributed to strengthening private sector accountability. For example, the amendments to the *Privacy Act 1988*, which came into effect on 21 December 2001, have exposed the private sector to similar privacy obligations to those that already existed in the public sector.

The convergence of the public and private sectors requires agencies to find the appropriate balance between efficiency and accountability with regard to their



particular business opportunities and risks. Whether this will result in a different kind of accountability will largely be a decision of the Parliament and/or the Government. However, the Prime Minister has made it clear that we need to find ways to minimise any limitations associated with what could be described as the ‘Silo effect’<sup>157</sup> largely as a result of devolved authority to individual agencies.

The evolution in breaking down the barriers to more integration of the delivery of government services is slowly occurring at a global level in response to a maturing constituency, better communication, and the spread of information technology, particularly through the use of the Internet and Intranets and the development of more secure systems. This evolution does not require wholesale systems change, for instance, there will always be a need for major government departments to concentrate on their areas of specialisation. I refer you again to the comments of Geoff Mulgan on the future of joined up government in the UK.<sup>158</sup> It will, however, require a rethink of transparency and accountability in government and the supporting governance frameworks to allow the meaningful inclusion of new players such as clients/consumers and the general community. Integrated accountability must include ‘shared’ accountability, difficult as that may be. It will also require cultural change, within and across organisations, incorporating rewards and recognition for the policy ‘entrepreneurs’ and managers at all levels, including acceptance of greater risk and dual responsibilities.

Recently, Professor Allan Rosenbaum pointed out that, in many countries, governments have been developing cross-sectoral relationships involving public-private collaboration in carrying out public initiatives and governmental service delivery. He went on to observe that ‘these relationships are numerous, complex and ever-growing’<sup>159</sup>. The concept of joined-up government has quickly been incorporated into notions of public-private partnerships with a sharing of common concerns and broad aims for more cost effective and responsive public services. Professor Rosenbaum opined that perhaps the single most important lesson learned in terms of collaborative service delivery arrangements is that:

*‘Such arrangements must be both in the best interests of the individuals receiving the services and consistent with the broad public interests for the providing of public services by the governmental organization (or organizations – my addition) involved’.*<sup>160</sup>

For public sector auditors, the greater complexity involved in the new joined-up arrangements presents particular auditing challenges. It is important that we ensure they are in a position to be able to both review the value-for-money assessment, as well as the appropriateness of the governance and accountability arrangements. This raises issues of ensuring commonality of views, and consistency of approaches, across audit functions. These risks and implications for the public sector auditing process will continue to gain in prominence as we continue along the procurement continuum from outsourcing and purchaser-provider arrangements to shared service delivery of public programs.

To deal successfully with these challenges, we have to learn from each other. This requires a continuing open dialogue, and sharing of experiences from both the private

and the public sector, in Australia and overseas. As the auditors for the Australian government, the ANAO will continue to play its part in contributing to broader debates over accounting and governance in all its facets. In addition, we will continue to assist agencies in dealing with the particular challenges facing them within our own resource constraints and without undermining our independence. This is important so that Parliament can be assured as to the effectiveness of agencies' governance and accountability arrangements under a networked, joined-up, collaborative or generic delivery of public services with primacy of the public interest. As in Canada, this might be enhanced by greater citizen participation which could bring its own particular challenges to government and the public service.

In so far as the Australian Public Service is concerned, the Australian Public Service Commission has concluded that, in future, there is likely to be more choice and variety in how customers receive services as technology facilitates individually crafted service packages, particularly through internet connections. It is also likely that there will be more commercial approaches to service delivery, not necessarily through privatisation or contracting out, but client-focussed, competitive service provider arrangements offering choice. Community expectations will continue to rise, commercial and financial disciplines will become ever more important, and there will be an increasing focus on finding policy and service delivery solutions through greater government integration, across agencies, across jurisdictions and across nations.<sup>161</sup>

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- ❑ performance and financial guarantees;
  - ❑ indemnities;
  - ❑ the price of an individual item, or groups of items of goods or services;
  - ❑ rebate, liquidated damages and service credit clauses;
  - ❑ clauses which describe how intellectual property rights are to be dealt with; and
  - ❑ payment arrangements.
- 145 Ibid. p.65 The following types of information may meet the criteria of being protected as confidential information:
- ❑ trade secrets;
  - ❑ proprietary information of contractors (this could be information about how a particular technical or business solution is to be provided);
  - ❑ a contractor's internal costing information or information about its profit margins;
  - ❑ pricing structures (where this information would reveal whether a contractor was making a profit or loss on the supply of a particular good or service); and
  - ❑ intellectual property matters where these relate to a contractor's competitive position.
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