Corporate Governance in the Public Sector Context

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Pat Barrett
Auditor-General for Australia
I. INTRODUCTION

This seminar provides us with an opportunity to identify and discuss some important, as well as emerging, issues associated with the management and operation of government agencies and businesses at a time of significant change in the public sector and, particularly transformation, in the delivery of public services. As such, we owe a debt of gratitude to Minter Ellison for taking the initiative and organising the event.

As in most countries, the past decade has been a period of marked change in public sector administration in Australia. This has been brought about by both a reassessment of the role of government together with emerging trends associated with globalisation and the information age, which have the potential to transform dramatically the way governments do business. At the same time, governments are facing increasing budgetary pressures, including having to deal with differing demands and rising expectations of citizens. Comments have been made about ‘declining’ and, more recently, ‘virtual’, government which raise questions about the nature, scope and contribution of public sector management or administration in the future. This has focussed attention on the role of governance, and consequently corporate governance, in developing a flexible and robust Australia for the 21st century.

The impact of globalisation perhaps serves to highlight some of the broader challenges faced by government and the bureaucracy as we enter the new millennium. It has been stated that the dynamics of globalisation in some ways challenge notions of sovereignty. For example, the power of transnational corporations, the limits imposed on government policy by currency markets, the transborder politics of Non-Government Organisations (NGOs) and the transfiguring power of global media could all be seen as reducing the autonomy of national governments.
It is now commonly accepted that, with increasing social and economic integration, the geographic scope of public goods (and bads) extends far beyond national borders. On the other hand, globalisation also extends the influence of national governments in areas such as human rights, the eradication of disease, global warming and minimising the impact of financial shocks. The defining characteristic is that increasingly globalisation is challenging the capacity of many nations to manage on their own. If we are to manage such an environment successfully, we may have to create new forms of cooperation by all sectors of the economy.

The focus of this presentation is on corporate governance in the public sector context and how effective governance arrangements can help the public sector meet the inherent challenges involved. In short, the following three major challenges confront public sector managers with major implications for governance and corporate governance, which include a much greater focus on risk management:

- striking a balance between conformance (process) and performance (results);
- determining just who is accountable for what in a situation where there is public/private sector delivery of public services; and
- creating virtual governance in an e-government environment

With these challenges in mind, I will aim to cover some issues that bear on our understanding of the changing public sector environment, the implications this may have for accountability, the focus on performance and outcomes, managing private sector involvement in public sector activities, and the impact of e-government initiatives on both agency governance and results required.

II. A DIFFERENT PUBLIC SECTOR

It is not possible, in the time available, to discuss in any depth the many factors currently impacting on the public and private sector environments, including their increasing interrelationships. Nevertheless, it is important to recognise a number of factors that indicate both the need for, and the importance of, a sound corporate governance framework in public sector organisations. In brief, the Australian Public Service (APS) has been steadily evolving towards a more private sector orientation with a particular emphasis now on:

- the contestability of services;
- the outsourcing of functions which the private sector can undertake more efficiently;
- adapting or adopting private sector methods and techniques;
- an accent on continuous improvement to achieve better performance in an environment of devolved authority and greater management flexibility;
- ensuring a greater orientation towards outcomes, rather than just on process; and
- direct participation by the private sector in providing public services, even so-called and traditionally regarded ‘core services’ such as policy advice and determination of citizen entitlements.

Such changes are often described as the ‘privatisation’ or ‘commercialisation’ of the public sector.
A major impetus for the changes we are seeing has been the fundamental questioning of what government does, or should do. The Australian Public Service (APS) must prove that it can deliver government services as well as the private or non-profit sectors. Put simply, a common view is that public services would be provided more efficiently and effectively, with greater client satisfaction, in a more market oriented environment which provided greater flexibility for management decision-making and the discipline of competition.²

These developments have raised questions about just what constitutes ‘core’ public services as opposed to non-core ones. The short answer is that any definition of core government seems to be constantly changing with privatisation of many public services over recent years, including even those that would be considered to be traditional public services such as policy, including legal, advising, corporate management and delivery of welfare services.

The Prime Minister has offered the following list of those activities that he considers can, and should, be performed and delivered only by government:

*Defence, justice, a social security net, the monitoring of outcomes of, and alternatives to, existing policies—all these will require public service output. And there will also be a real need for high quality economic, constitutional and other policy advice.*³

Within such definitional bounds, just how small the core public sector can become without jeopardising the public interest is still open to debate. A broader question is what is the sustainable critical mass necessary to retain a credible and effective public sector as part of sound democratic governance in the longer term. As well, another major consideration has been well articulated by my colleague, Ian McPhee, as follows:

*At the heart of public sector reform is the issue of how to provide the right framework and incentives to continue to derive improvements in overall public sector performance while preserving the values which, in the public interest, differentiate the APS from other organisations.*⁴

**Changed legal framework**

The changed nature of the Commonwealth’s financial legislation illustrates how significantly the APS management framework has altered in the last decade. Changes to financial legislation⁵ for the public sector adopted at the end of 1997 have seen ‘a shift from central agency control to a framework of devolved authority with enhanced responsibility and accountability being demanded of public sector agencies and statutory bodies.’⁶ Voluminous and detailed rules and prescriptions have been largely replaced by principles-based legislation which clearly places the responsibility for the efficient, effective and ethical management of public sector organisations in the hands of Chief Executive Officers (CEOs) and Directors of Boards.

The legislative changes have had significant impacts on the legal responsibilities of officers and directors of government organisations, especially Commonwealth Authorities and Companies (CAC bodies). At the same time, changes to Corporations law as a result of the Corporate Law Economic Reform Program (CLERP) also need to be taken into consideration when determining the bounds of legal responsibility applicable to officers of the different organisations.
Many of the CAC Act requirements “are modelled on comparable areas of the Corporations Law and, therefore, to the extent practicable, apply standards and principles applicable to private sector corporations”. Nevertheless, it has been argued that the CAC Act deals with the legal responsibilities of the officers of Commonwealth companies and authorities in slightly different ways, which in essence reflects the essential differences of public and private sector corporate governance. This is not the place to discuss legal responsibilities in any detail but it may be worth highlighting the type of concerns that have been raised.

The issue is primarily one concerning the proper purposes for which corporate power is to be exercised by officers/directors of CAC bodies as they do not normally have clearly stated objectives and their powers usually bridge both private and public sector objectives. As outlined in the ANAO publication, entitled Corporate Governance in Commonwealth Authorities and Companies:

“There will invariably be tensions between a director’s obligation to act in the best interests of the organisation and in the best interests of Government. ... There can be not hard and fast rules in this situation. Where a potential conflict arises the Board should inform the Minister of the potential conflict and seek appropriate advice (for example, legal, technical or financial) and document why it chose a particular course of action to resolve the issue”.

The introduction of the new business judgement rule further emphasises the importance of these considerations. For example, to what extent might proper business judgement include attention to community service obligations, quality control strategies when operating under a monopoly, as well as human resource and industrial relations strategies. There are also particular difficulties for directors and officers seeking to inform themselves properly about the subject matter of a business judgement. The South Australia State Bank case serves to highlight some of the difficulties associated with the governance of government organisations and companies in these and other respects. One question is whether the new business judgement rule covers an ‘omission or oversight’ as opposed to a decision to take, or not to take, action. I think we would all have sympathy for the view that it is necessary to exercise some rigour as well as caution in assessing:

the corporate governance procedures and approaches that are best adapted to maximising the chance that an individual director will gain the full benefit of the (CLERP Act) reforms.

Given the potential liabilities that may arise, consideration also needs to be given to adequate training both of the Board Members and management to ensure that there is full understanding of the governance requirements and obligations, legal and otherwise. Organisations should develop appropriate induction training to be provided to directors and managers upon appointment to give them a broad understanding of the operations of the business/agency. Access to continuing education and professional development programs should ensure those responsible remain abreast of any recent developments, including legislative changes, which can impact on their governance obligations. A number of consulting firms are currently providing such programs including, in some cases, the use of the ANAO’s publication quoted above.
The changing nature of accountability

All public sector organisations (whether statutory authorities, government agencies, corporations or local authorities) are required to be transparent, responsive and accountable for their activities. Citizens are entitled to know whether public resources are being properly used and what is being achieved with them. Consistent, clear reports of performance and publication of results, are important to record progress and exert pressure for improvement. Such transparency is essential to help ensure that public bodies are fully accountable and is central to good governance. What’s new in corporate governance is the changing nature of that accountability with the greater involvement of the private sector in the provision of services to, and in particular for, the public sector.

In a more privatised public sector, the question becomes what is a reasonable trade-off when, inevitably in a public sector environment, the perceived needs for accountability can impact adversely on economy and efficiency. A similar observation extends to effectiveness, particularly where that concept does not embrace accountability concerns such as transparency, equity of treatment and probity of public resources, including the application of public service values and codes of conduct.

The apparent trade-off has been extensively commented on by, for example, Professor Richard Mulgan of the Australian National University in many articles and presentations in recent years. The following is indicative:

‘Contracting out inevitably involves some reduction in accountability through the removal of direct departmental and Ministerial control over the day-to-day actions of contractors and their staff. Indeed, the removal of such control is essential to the rationale for contracting out because the main increases in efficiency come from the greater freedom allowed to contracting providers.’

A practical comment on the perceived trade-off has been provided by the Canadian Auditor General, Denis Desautels as follows:

‘The emphasis should not be solely on greater efficiency or on meeting accountability requirements.’

When commenting on the need to maintain scrutiny of government operations, Senator Hogg (a Member of the Joint Committee of Public Accounts and Audit (JCPAA)), for instance, has noted that:

Public funds are not for the private purse of the government nor the bureaucrats to do what they like with. They are public funds for public purposes and should stand the test of public scrutiny by the Parliament.

This is as it should be. I take the view that accountability of public sector operations depends to a great extent on providing the representatives of the Australian people—that is, Parliament— with full information on the operations of agencies and entities and on the functions performed therein. In some situations, because of the nature and complexity of public sector administration in an environment of ongoing reform:
Additional transparency provisions may be a cost that we have to meet to ensure an acceptable level of accountability.\textsuperscript{15}

There is no suggestion on the part of the Government or Parliament that accountability expectations will be downgraded; if anything, the reforms suggest that additional authority and flexibility require enhanced accountabilities even where there may be an additional cost involved.

Parliament’s confidence in the accountability of public sector organisations is an ongoing challenge to our corporate governance frameworks.

The role of Auditors-General

At this point I will say something about public audit in the current changing governance environment. While there are variations in the mandate, focus and operating arrangements across constituencies, the fundamental role of Auditors-General remains substantially the same. That role is to provide the elected representatives of the community (the Parliament) with an independent, apolitical and objective assessment of the way the government of the day is administering their electoral mandate and using resources approved by democratic processes, albeit in differing governance frameworks.

In my view, Auditors-General are an essential element in the accountability process by providing that unique blend of independence, objectivity and professionalism to the work they do. Indeed, the four national audit agencies making up the Public Audit Forum in the United Kingdom believe that:

\textit{... there are three fundamental principles which underpin public audit:}

- the independence of public sector auditors from the organisations being audited;
- the wide scope of public audit that is covering the audit of financial statements, legislatively (or legality), propriety (or probity) and value for money; and
- the ability of public auditors to make the results of these audits available to the public, and to democratically elected representatives.\textsuperscript{16}

Corresponding with the public sector changes over time, the role of the Auditor-General and the place of auditing in democratic government has also changed. In today’s environment, my role includes providing independent assurance on the overall performance and accountability of the public sector in delivering the Government’s programs and services and in implementing effectively a wide range of public sector reforms. And I cannot overstate the importance of the independence of the Auditor-General in those respects. As the public and private sectors converge; as the management environment becomes inherently riskier; and as concerns for public accountability heighten; it is vital that Auditors-General have the professional and functional freedom required to fulfil, fearlessly and independently, the role demanded of them.

I would argue, therefore, that the role of Auditors-General is more important to effective, accountable and democratic governance today than at any time in the past. As the Public Audit Forum in the United Kingdom has observed:
Public audit plays an essential role in maintaining confidence in the stewardship of public funds and in those to whom the responsibility of stewardship is entrusted. Public auditors are, of course, themselves accountable for their performance and are duty bound to undertake their work in a professional, objective and cost-effective manner and with due regard to the needs of the organisations they audit.\textsuperscript{17}

I would also suggest that, as we move into the future, and as the pace of change remains unabated, this trend will not decline, rather it is likely to increase as the roles and responsibilities of the public and private sectors converge and, perhaps, the differences between the two become more apparent than real.

The interests of the ANAO now go well beyond the efficient and effective stewardship of public finances which is said to be fundamental to good national governance.\textsuperscript{18} While I will refer to the importance of legislation as a central element of public sector management, I stress the Parliament’s concerns with the ‘rule of law’ as a fundamental element of governance. The ANAO is increasing its expenditure on legal advisings each year as a consequence.

From my Office’s perspective, reduced central oversight has meant a broadening of our approach to auditing which once focussed largely on compliance and conformance, to a more pro-active involvement with agencies and entities with the goal of making real-time contributions to enhancing public administration. For example, our better practice guides are designed to assist organisations test their own systems and where applicable, improve their practice and performance in line with recognised principles of better practice.

That said, we are nevertheless conscious of the ANAO’s responsibility, particularly to the Parliament as our major stakeholder, to report, for example, significant and/or material breaches of approved guidelines, standards and/or legislation. From my experience, agencies generally understand this obligation even where such breaches are inadvertent. My preferred position would be to work with agencies to implement effective processes which are preventative and not just detective, so avoiding such situations. This can be largely achieved through the operations of an Audit Committee which, is an essential element of any corporate governance framework. The Committee is both a forum for sharing information and for ensuring proper accountability within, and externally to, the organisation.

I see the relationship between internal and external audit and that with the Committee as being in the nature of an open partnership sharing common goals thus generating total confidence in the relationship. For most organisations, it is a maturing relationship which is still being tested as a major contributor to good corporate governance.

III. FOCUSSING ON AGENCY PERFORMANCE AND OUTCOMES

It has been increasingly recognised in both the private and public sectors that appropriate corporate governance arrangements are a key element in corporate success. They form the basis of a robust, credible and responsive framework necessary to deliver the required accountability and bottom line performance consistent with an organisation’s objectives. The bottom line may well be expressed in quite different terms between public sector agencies and private sector corporations.
Insofar as corporate governance is concerned, it provides a sensible and useful framework in which public sector managers can focus attention and necessary initiatives and action in relation to both performance and accountability as indicated in Figure 1 following.

**Figure 1: Responsibilities of the Governing Body**

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<td>Annual Reporting</td>
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In the last decade, Government agencies have put in place many of the elements of good corporate governance. These include corporate objectives and strategies; corporate business planning; audit committees; control structures, including risk management; agency values and codes of ethics; identification of stakeholders; performance information and standards; evaluation and review; and a focus on client service to name just a few. However, too often these elements are not linked or interrelated in such a way that people in the organisation can understand both their overall purpose and the various ways the various elements need to be coordinated in order to achieve better performance.

Therefore, the real challenge is not simply to define the elements of sound corporate governance but to ensure that all the elements of good corporate governance are effectively integrated into a coherent corporate approach by individual organisations and are well understood and applied throughout those organisations. If implemented appropriately, such an approach should provide the integrated strategic management framework necessary to achieve the output and outcome performance required to fulfil organisational goals and objectives. That framework also assists agencies to discharge their accountability obligations with greater confidence and both internal and external credibility. The latter is greatly assisted through independent scrutiny.

Looking at the Australian Securities and Investments Commission (AISC), for example, three full time Commissioners direct ASIC’s affairs, approve and review operational plans and performance, appoint and appraise the most senior executives and involve themselves in all major enforcement, regulatory, budgetary and staffing matters. They receive advice from staff as well as from independent legal and accounting experts on specific matters. The Commissioners meet regularly with the Treasurer and with the Minister for Financial Services and Regulation. They submit half-yearly reports on ASIC’s performance to State and Territory Ministers and attend the Ministerial Council on Corporations as an observer to answer questions.
It is important to recognise that the diversity of the public sector is likely to result in different models of corporate governance. That is, one size does not fit all, even though there will be common elements of any such models. This view has been supported by the U.S. Business Roundtable and more recently by the OECD, which has emphasised that, to meet new demands and grasp new opportunities, corporations will need flexible and adaptive governance practices.

However, as observed by the Chartered Institute of Public Finance and Accountancy in the United Kingdom:

... no system of corporate governance can provide total protection against management failure or fraudulent behaviour.

The performance/conformance debate

I think most would agree that, in the past, the tendency in the public sector has been to focus primarily on ensuring conformance with legal and procedural (including budgetary and financial) requirements, with attention to program outcomes and improved performance being a secondary consideration. Consequently, there have been reasonable administrative control processes put in place for the implementation of government policies and procedures over many years. In particular, as public servants, we have been particularly concerned to ensure that we have met the requirements of relevant legislation. And there has been a marked emphasis on fraud control and probity concerns.

On the other hand, we have not been as effective in constructing robust control structures aimed at assuring that we achieve defined outputs and outcomes, nor in providing efficient client-oriented services. Attention is now being given to addressing government programs/services directly to public sector clients, as citizens, and not the other way round.

Concern has been expressed, in both the public and private sectors, that there has been more emphasis on the form rather than the substance of good corporate governance. Most recently, a prominent Chairman of three major Australian corporate boards has challenged boards’ ‘obsession’ with conformance rather than performance and their predisposition to be risk averse. In his words:

‘... there’s just been too much concentration in recent times on the conformance, the governance, the ticking of the boxes, who comes to meetings and I think it’s far from clear that that adds value, improves the performance of companies, delivers benefits for shareholders. and

... having lots of due diligence and advisors around you when you’re making decisions doesn’t necessarily make the best decision.'

Such criticism needs to be addressed positively while recognising there is always an appropriate balance to be struck for maximum effectiveness, for example in relation to Board independence. A recent Australian survey suggests that independence itself is no guarantee of success. Moreover, many would agree with the following quote attributed to Ian Horton, Principal of Boardroom Partners, that:
Independence in itself is no substitute for quality on a board. There is no reason why you can’t have both, but you need quality more than independence.25

I agree that the critical issue for establishing a sound corporate governance framework is not just about creating appropriate Board and/or committee structures or determining the way in which they work. The challenge is also not simply to ensure that all the elements of corporate governance are effectively in place but that its purposes are fully understood and integrated as a coherent and comprehensive organisational strategy focussed on being accountable for agency and entity conduct and results.

Speaking at a public sector seminar last year, Mr Sitesh Bhojani (Commissioner, Australian Competition and Consumer Commission) responded to the question as to what are the objectives of good corporate governance by saying that the following are still apposite:

- enhance corporate performance;
- simplify and reduce directors’ duties and liabilities;
- protect reputation of directors and the enterprise;
- minimise government interventions; and
- enhance public acceptance of the corporate sector.

The question would realistically appear to be one of (achieving) balance.26

While I do not have to reinforce the advantages of legal compliance to this group, the language of a compliance program with its emphasis on – a culture of compliance, starting from the top, leadership, shared vision, ongoing commitment, effective mechanisms, continuous improvement, performance, transparency, and accountability, is also that of corporate governance. Indeed, as Professor Allan Fels has observed about the value of an effective compliance program:

*It is good corporate governance, reduces litigation risks and, if there is litigation, will help reduce penalties*.27

Justice Alan H Goldberg (Federal Court of Australia) suggested that:

*It (compliance) goes on to the agenda for every periodic board meeting and every periodic management meeting where the state of the organisation is overseen*.28

Justice Goldberg goes on to say that:

*Every director and every executive, indeed all staff, must be evaluating their conduct by reference to compliance principles*.29

Perhaps no less should be said of the public sector. It could be argued that compliance programs have been a feature of bureaucracies in the past as part of their close association with legislation. The question is however, whether public sector organisations are sufficiently aware, and equipped, to put such programs in place now,
having regard to the Australian Standard on Compliance AS3806. For those interested, the latest Australasian Risk Management publication (Vol. 11, No. 2, March 2001) includes a “compliance compendium” on ways to increase the effectiveness of compliance systems.

As in the private sector, there is undoubtedly greater interest in the performance of boards. At this time, any assessment is likely to be more at board, rather than at individual, level. Nevertheless, some board chairs are interested in developing a suitable appraisal mechanism for individual board members. I noted that, in the recent Annual Report of Chartered Secretaries Australia, the board stated that its corporate governance practices should be indicative of best practice for an organisation of its type, and, as far as possible, for corporations generally. This was under the heading of ‘Board Performance and Management Appraisal’. No doubt professional organisations of this kind will take leadership in establishing suitable board performance and management appraisal systems.

**Managing risk in a more contestable public sector**

An effective corporate governance framework incorporating sound values, cost structures and risk management processes can provide a solid foundation on which we can build a cost effective, transparent and accountable public sector. As one expert opinion puts it ‘corporate governance is the organisation’s strategic response to risk’.

My view of risk management is that it is an essential element of corporate governance underlying many of the reforms that are currently taking place in the public sector. It is not a separate activity within management but an integral part of good management process, particularly as an adjunct to the control environment, when we have limited resources and competing priorities. Risk management provides a means for assisting organisations to focus on cost, quality and financial performance in a contestable environment. The move to electronic commerce and the greater use of the internet for business purposes further encourages organisations to increase their focus on implementing effective risk management. I will expand on the impact of e-government later.

The effective implementation of risk management practices is a major challenge for public sector managers, particularly as the culture under which they have operated has traditionally been risk averse, primarily because:

> The public sector spends public monies, is accountable to representatives who themselves are risk averse given their need for periodic re-election or reappointment and public sector risks attract significant media attention.

Risk management is primarily the responsibility of the CEO and/or board but requires the active involvement of everyone in the organisation. Effective governance arrangements require directors to identify business risks, as well as potential opportunities, and ensure the establishment, by management. Of appropriate processes and practices to manage all risks associated with the organisation’s operations. As Robert Knapp, National Manager of Comcover has observed, while insurance products of his organisation are designed to reduce the exposure of the public sector to insurable risks:
The availability of this insurance does not remove the onus on agency management to properly manage risks.

In recent times there has been an increasing number of public sector agencies that have involved their Board and senior management in risk management at the organisational level and then required each program area or organisational unit, in turn, to prepare risk management plans. As indicated by Linda Nicolls, the Chair of Australia Post:

The challenge then for senior executives is to prioritise issues, understand risks across the spectrum of business and find the right solutions quickly.

The Telstra Audit Committee provides advice to the Board on the status of business risks confronting the Corporation through an integrated risk management and assurance function whereby it oversees:

- the establishment and management of risk limits and tolerances across the organisation;
- the progress of risk management within its business units; and
- the existence of an appropriate risk management culture.

The risk management and assurance function has promoted a common language and approach used by the business units in identifying, measuring and prioritising business risks.

Management of risk in the public sector involves making decisions that accord with statutory requirements and are consistent with public service values and ethics. This means that more, rather than less, attention should be devoted to ensuring that the best decision is made. This will require placing emphasis on making the ‘right rather than quick decisions’. It has been put to me that, broadly for these reasons, the Australian/New Zealand risk management standard AS/NZS 4360:1999 may be better applied in the private than in the public sector because of its generic nature. In my view, the standard outlines a useful set of principles and approaches which can be tailored to the needs of any individual organisation.

I should note that one result of the emerging convergence between the public and private sectors is that the intuitive, and often reactive, approach to managing risk that has characterised public sector management in the past will not be sufficient. A more strategic approach is required to stay contestable in such an environment. This is a significant management challenge, requiring heavy investment in up-front analysis, and then management, of risks as efficiently and effectively as possible. The key message is that CEOs and/or board should aim to ensure that decisions made using risk management are not based on ‘risky’ management practices. However, at the same time sound risk management can present real opportunities for improving performance, perhaps even taking new directions.

That said, with the increased convergence between the public and private sectors, there will be a need to consider a private sector point of view where the focus on cost, quality and financial performance is an important aspect of competing effectively. In carrying out risk assessment and management functions the public sector must adopt, or at least adapt, best practice from the private sector, and fill in the gaps where private sector
practice does not meet the totality of our requirements. Lack of expertise in risk management continues to be a constraint on the performance of the public sector.

**Control structures to manage risk**

Complementary to a sound risk management approach is a robust system of administrative control. Control structures are particularly relevant elements of an effective governance framework because of their importance in promoting effective performance and in ensuring accountability obligations are appropriately discharged.

The notion of a control environment has to start from the top of an agency, that is from the CEO and the board, together with senior management. To be effective it requires clear leadership and commitment. In carrying out its responsibilities, management should review the adequacy of internal controls on a regular basis to ensure that all key controls are operating effectively and are appropriate for achieving corporate goals and objectives. The entity’s executive board, audit committee and internal audit are fundamental to this exercise.

The key to developing an effective control framework lies in achieving the right balance so that the control environment is not unnecessarily restrictive or one that encourages risk averse behaviour and indeed can promote sound risk management and the systematic approach that goes with it.

**Performance measurement and/or assessment**

Despite the greater involvement of the private sector, performance assessment in the APS continues to be more than just about a financial bottom line. Assessments typically cover a range of measures, both quantitative and qualitative. For example, an agency or entity has to be accountable for the implementation of the Government’s requirements with respect to public sector reforms and for meeting relevant legislative, community service and international obligations; for equity in service delivery; and for high standards of ethical behaviour.

In order to accurately assess performance, we will need to identify both the financial and non-financial drivers of agency business. Within the Commonwealth sector, such assessment is underpinned by the introduction of the outcomes and outputs framework associated with the implementation of accrual budgeting. The outcomes and outputs framework is intended to assist management decision-making and performance by focussing attention on the Government’s goals and objectives (outcomes). The identification of appropriate performance indicators, together with reporting of actual results against these performance indicators, becomes a key plank within this new accountability framework. In the Commonwealth arena, a major difficulty is not only to define outcomes in a credible manner but also to relate organisational outputs in a meaningful (measurable) way to those outcomes. Assessing performance in the new environment will involve the use of techniques such as the balanced scorecard which:

*...complements the financial measures with operational measures on customer satisfaction, internal processes, and the organisation’s innovation and improvement activities - these operational measures are drivers of future financial performance.37*
The scorecard approach underlines the importance of the various linkages and their understanding and management such as between strategy and operations, budgets and performance. It also requires that attention be given to measuring performance where practicable and to articulating a credible basis for assessing qualitative or so-called ‘soft’ indicators of success. A parallel is the distinction between price and the value for money concept, with the latter often embracing many non-price factors. It is useful to bear in mind a recent observation as follows:

*The paradox of measurement holds for many public service functions. That is, the stronger the attempts to measure the inherently incommensurable, the more such quantification tends to become a substitute for judgement, experience, and commonsense in the governing process.*

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

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

**Triple bottom line reporting**

Demonstrating the growing convergence between the public and private sectors is the increasing focus by private companies on their wider responsibilities in order to secure their competitive advantage and ensure their long term viability. A good example is the so-called triple bottom line (TBL) reporting approach which, in addition to financial and economic factors, also takes account of the environmental and social consequences of business activity. In Australia, some private sector corporations, such as Rio Tinto, are leading the way in this kind of reporting. BP Australia is another example of a company embracing TBL in recognition of wider accountability requirements.

Such recognition in the private sector is not new. For example, General Robert E Wood, who led Sears. Roebuck & Company from 1924-1954 believed a large corporation was more than an economic institution; it was a social and political one as well. In the Sears Annual Report for 1936 he wrote:

*In the days of changing social, economic and political values, it seems worthwhile...to render an account of your management’s stewardship, not merely from the viewpoint of financial reports but also along the lines of those general broad social responsibilities which cannot be presented mathematically and yet are of prime importance.*

The Federal Minister for the Environment, Senator Hill, has advocated the use of triple bottom line accounting as a means of softening the harsh economic realities of government policies in order to accommodate social and environmental costs to balance financial gains. In this way:
...Australians would not lose sight of social implications of our pursuit of economic growth.41

Proponents of TBL consider that public and other stakeholders’ expectations in an increasingly globalised business and communications environment will provide the drivers for a shift away from the traditional input-output based model of accountability towards a focus on economic prosperity, environmental quality and social justice.42

As well, new corporate governance rules are challenging the traditional non-disclosure, or low disclosure, policies of companies and is slowly giving rise to new expectations and standards of transparency. However, a recent study indicates that there is general corporate resistance in Australia to the provision of environmental information to external stakeholders in satisfying accountability obligations, unless the information provided reflects positively on the organisation43.

The public sector may be inherently better positioned for the application of TBL given the focus on outcomes as a primary measure of performance in the absence of any profit concept to assess results. Even publicly owned commercial operations may be more amenable to TBL given the prevalence of community service obligations in their charters. I recognise that such reporting tends to be ‘after the event’, but point to the increasing tendency of agency Annual Reports to be more forward-looking and strategic, while identifying performance targets as well as reporting on results (outcomes/outputs) achieved. It was suggested recently that:

The real recognition will start when broader social issues are addressed in critical resource allocation decisions, for example fuel and utility pricing, education and research44.

Key barriers to the adoption of TBL reporting include the lack of standard methodologies; the lack of appropriate skills, knowledge and/or experience; the difficulties of identifying social and environmental costs; and the valuation of liabilities. However, some organisations are moving to develop comprehensive guidance for reporting environmental and social information. For example:

- there is an Exposure Draft before the Australian Accounting Research Foundation put out by the International Auditing Practices Committee (IPAC) for comment on Assurance Engagements on Environmental Reports;
- a social accounting standard was released in 1998 by the Council for Economic Priorities entitled SA8000;
- in November 1999, the Institute of Social and Ethical Accountability launched AA1000, which is concerned with the process of setting up social and ethical accounting and auditing systems; and
- the Global Reporting Initiative (GRI) has been convened by the Coalition for Environmentally Responsible Economies in partnership with the United Nations Environment program to develop and disseminate globally applicable sustainability reporting guidelines for voluntary use.

This is clearly a ‘greenfield’ area for research and development. Moreover, because of the transborder and global issues inherent in TBL, the development of appropriate methodologies and indicators would benefit from international input. Both the major
professional accounting bodies in Australia have been devoting increasing attention to TBL in their publications and conferences. This puts added pressure, in my view, on the public sector to have commensurate effort, if not to take a more leading role in such reporting as part of good corporate governance. A draft Code of Accounting Practice is being prepared through the Australian Bureau of Statistics and CPA Australia. The draft Code references a range of different methods proposed for environmental valuation; damage evaluation; avoidance or prevention costing; restoration costs; and market evaluation.45

IV. GOVERNING THE PUBLIC-PRIVATE SECTORS’ INTERRELATIONSHIPS

While convergence between the public and private sectors has drawn attention to sharing approaches and experiences in relation to corporate governance, particularly in managing the interrelationships, the main focus has been on managing contracts and outsourcing arrangements.

Managing the risks associated with the increased involvement of the private sector in the delivery of government services, particularly through contract arrangements, has required the development and/or enhancement of a range of commercial, negotiating, project and contract management skills across the public sector. We have quickly learnt that outsourcing places considerable focus and emphasis on project and contract management, including management of the underlying risks involved both within and outside the public sector. The problem has been to achieve both management understanding of, and action on, these imperatives in a reasonable time period.

Over recent years, reflecting the greater involvement of the private sector in providing a wide range of public services, there has been considerable focus through the audits of the ANAO on the necessity of having in place the ‘right’ contract, as well as appropriate contract management arrangements, to assist in meeting organisational objectives and strategies. One important lesson we have learnt, and is constantly being reinforced, is that:

... clear identification and articulation of contract requirements at the outset can save considerable time, cost and effort later in contract management.46

A common theme of these audit reports has been the deficiencies in the project management skills of agency decision makers. This is of concern given that some of these projects involve substantial resources and complexity. As well, reports have flagged a need for care in assessing value for money and negotiating, preparing, administering and amending major contracts.

The Parliament and the media have also paid particular attention to these issues during recent years with several agencies receiving significant adverse comments and publicity. I am not alone, therefore, in stating that this situation has to be addressed as a matter of urgency. The various elements of the public sector that are involved in contract administration have to reverse such concerns to win back the confidence of all stakeholders and future audit reports will closely examine relevant contracting issues to ensure that this happens.
Last year the ANAO conducted an audit of the Implementation of the Whole of Government Information Technology Infrastructure and Outsourcing Initiative that called into question the benefits claimed for the Initiative. As a response to the audit the Government commissioned the recent review of IT outsourcing conducted by Richard Humphry (Managing Director, Australian Stock Exchange). Mr Humphry remarked:

Priority has been given to executing outsourced contracts without adequate regard to the highly sensitive risk and complex processes of transition and the ongoing management of the outsourced business arrangement.48

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

- the most significant risk factors were the unwillingness to change and the failure to buy in the appropriate expertise;
- there was a lack of focus on the operational aspects of implementation;
- there was insufficient attention paid to the necessary process of understanding the agencies’ business; and
- there was insufficient consultation with key stakeholders.49


Of particular concern to contract managers is how to establish a sound contract and contracting environment. One area of expertise they seek in this process is legal advice. For example, there are legal risks in terms of determining who is liable for the service delivery deficiencies—these questions bear on the strength and completeness of the contract arrangements. Because outcomes can be difficult to specify (and indeed may even be the combined product of more than one agency) it can be difficult to specify the circumstances in which ‘non-performance’ has occurred, in order to press for successful contractor performance, given these complex linkages and, moreover, to specify enforceable responses.

Legal advice should be framed with reference not only to the contract but should also give consideration to the relationship between the contractor and Commonwealth organisation and the risks the Commonwealth is exposed to by contracting-out that particular service. Inevitably, so-called transactions costs associated with outsourcing arrangements seem to be overlooked and/or under-stated. Equally, unfortunately, is that experience to date has generally shown a risk averse approach to contracting and contract management which has led, in some cases, to an ineffective and inefficient provision of the services under contract. The issue is not simply about a process or rules-based culture of public service as opposed to being more responsive and results oriented. The concern is about achieving the ‘right’ balance of complementary behaviour and approach to meet both accountability and performance imperatives in sometimes widely varying situations. A robust corporate governance framework can help achieve such a balance.

Effective contract administration in the public sector goes beyond simply trying to hold contractors to account for each minute detail of the contract. To get the most from a
contract, the contract manager and contractor alike need to nurture a relationship supporting not only the objectives of both parties but also one which recognises their functional and business imperatives. It is a question of achieving a suitable balance between ensuring strict contract compliance and working with providers in a partnership context to achieve the required result. According to the OECD:

'A good contract is one that strikes, at a level which will be robust over time, a balance between specification and trust which is appropriate to the risks of non-performance but does not impose unnecessary transaction costs or inhibit the capacity or motivation of the agency to contribute anonymously and creatively to the enterprise in question.'

A recent innovation in public sector contracting has been the use of project alliancing, a relatively new method of contracting, for the construction of the National Museum of Australia (NMA) and the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). A project alliance is an agreement between two or more parties, the project owner and the contractor/s, who undertake work cooperatively, on the basis of sharing the risks and rewards of the project. Although project alliancing is a business relationship, the aim is to achieve agreed commercial outcomes based on the principles of good faith and trust. As such it offers potential benefits over traditional contracting but also raises new and different risks that have to be managed. Again it is important that staff required to manage the project have the appropriate skills and knowledge in order to ensure that the project results are effectively achieved. In a recent presentation to ANAO staff, Professor John Langford of the University of Victoria in Canada observed that the general consensus about managing alliances was that it was as difficult as ‘stirring concrete with eyelashes’, a mind-boggling thought.

The recently issued ANAO Better Practice Guide on Contract Management emphasises the importance of not only dealing effectively with risk in contracts but also in developing and maintaining a relationship with the contractor that supports the objectives of both parties and focuses on the agreed results to be achieved. However, as recently observed by the Senate Finance and Public Administration References Committee, there are also concerns that both parties do not understand, or are insufficiently aware of, the requirements for parliamentary accountability.

Access to information and premises

A particular issue facing my Office, and many others, is that of access to contractor records and other information relevant to public accountability. My Office has experienced problems in accessing contractor information both through audited agencies and in direct approaches to private sector providers. This matter is of concern not only to Auditors-General, but also to public agencies in their role as contract managers, to Ministers as decision-makers, and to the Parliament when scrutinising public sector activities.

In this context, I noted with some interest in a recent United Kingdom (UK) National Audit Office Report that the public authority concerned had faced great difficulty in getting timely information on the true extent of the private sector provider’s financial difficulties as, under the contract, no access to the latter’s underlying financial records. However, the Report also noted that greater rights of access to the private sector party’s financial records is now standard in that country.
As part of his/her statutory duty to the Parliament, the Auditor-General may require access to records and information relating to contractor performance. The Auditor-General’s legislative information-gathering powers are set out in Part 5 of the *Auditor-General Act 1997*. These powers are broad but they do not include access to contractors’ premises to obtain information.

In September 1997, my Office drafted model access clauses (reflecting the provisions of the *Auditor-General Act 1997*) which were circulated to agencies for the recommended insertion in appropriate contracts. These clauses give the agency and my Office access to contractors’ premises and the right to inspect and copy documentation and records associated with the contract.

The primary responsibility for ensuring there is sufficient access to relevant records and information pertaining to a contract lies with agency heads under section 44 of the *Financial Management and Accountability Act 1997* which states clearly that a Chief Executive must manage the affairs of the Agency in a way that promotes proper use (meaning efficient, effective and ethical use) of the Commonwealth resources.

For accountability measures to be effective, it is critical that agencies closely examine the nature and level of information to be supplied under the contract and the authority to access contractors’ records and premises as necessary to monitor adequately the performance of the contract. I stress ‘as necessary’ because we are not advocating carte blanche access. The ANAO considers its own access to contract related records and information would generally be equivalent to that which should reasonably be specified by the contracting agency in order to fulfil its responsibilities for competent performance management and administration of the contract.

The inclusion of access provisions within the contract for performance and financial auditing is particularly important in maintaining the thread of accountability with Commonwealth 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 Commonwealth assets, including records, located on private sector premises. Recently, a Parliamentary Committee drew attention to its right to access documents and information necessary for it to effectively conduct an inquiry into the government’s IT Outsourcing Initiative, where it opined that accountability had been undermined.

The Joint Committee of Public Accounts and Audit (JCPAA) subsequently recommended that the Minister for Finance make legislative provision for such access. The Government response to that report stated that:

> its preferred approach is not to mandate obligations, through legislative or other means, to provide the Auditor-General and automatic right of access to contractors’ premises.

and that

> the Government supports Commonwealth bodies including appropriate clauses in contracts as the best and most cost effective mechanism to facilitate access by the ANAO to a contractor’s premises in appropriate circumstances.
The response also stated that:

*the Commonwealth Procurement Guidelines would be amended to emphasise the importance of agencies ensuring they are able to satisfy all relevant accountability obligations, including ANAO access to records and premises.*\(^{61}\)

While noting the Government’s response, the ANAO continues to encourage the use of contractual provisions as the key mechanism for ensuring agency and ANAO access to contractor’s records for accountability purposes. The ANAO is currently in discussions with the Department of Finance and Administration to review the content of the standard access clauses and intend to write again to agencies recommending the use of the clauses once this consultation process is complete. This issue has implications for agencies’ security responsibilities particularly where direct control over Commonwealth assets and/or information reside with a private sector provider. Specific responsibility is set out in the Commonwealth Protective Security Manual 2000 (PSM 2000) as follows:

*The agency must be able to carry out an examination of the contractor’s security procedures when undertaking its regular audit or review of the contractor’s methods and procedures. Access must be permitted for a security risk review to evaluate the contractor’s security procedures.*\(^{62}\)

Interestingly, PSM 2000 indicates that a contract must include a general clause providing the agency with rights of access to the contractor’s premises and, where necessary, a clause specifying the contractor’s right of access to agency premises.

### Commercial-in-confidence information

Situations have arisen where performance data relevant to managing a contract is held exclusively by the private sector. Also, private sector providers have made, on many occasions, claims of commercial confidentiality that seek to limit or exclude data in agency hands from wider parliamentary scrutiny. Thus accountability can be impaired where outsourcing reduces openness and transparency in public administration.

The Australasian Council of Auditors-General has released a statement of Principles for Commercial Confidentiality and the Public Interest\(^ {63}\). Of particular concern to Auditors-General has been the insertion of confidentiality clauses in agreements/contracts which can impact adversely on Parliament’s ‘right to know’ even if they do not limit a legislatively protected capacity of an Auditor-General to report to Parliament. For example, the then Auditor-General of Victoria commented that:

*... the issue of commercial confidentiality and sensitivity should not override the fundamental obligation of government to be fully accountable at all times for all financial arrangements involving public moneys.*\(^ {64}\)

This view has been echoed in almost every audit jurisdiction, for example, as the then Chairman of the Tasmanian Public Accounts Committee stated:

*Maintaining secrecy by confidentiality clauses in contracts is adverse to the Parliament’s right to know. Confidentiality clauses should not,*
therefore, be used in contracts unless there are specific approvals for them by the Parliament itself.65

I am sensitive to the need to respect the confidentiality of genuine ‘commercial-in-confidence’ information. In my own experience, I have found that, almost without exception, the relevant issues of principle can be explored in an audit report without the need to disclose the precise information that could be regarded as commercial-in-confidence. In this way, the Parliament can be confident it is informed of the substance of the issues that impact on public administration. It is then up to the Parliament to decide the extent to which it requires additional information for its own purposes. This view is supported by the Victorian Public Accounts and Estimates Committee in a landmark report last year, as follows:

‘5.6 Commercial-in-Confidence should not prevent Auditor-General and Ombudsman from disclosing information where they assess its disclosure to be in the public interest.’66

The Chairman of that Committee recently reiterated that a variety of options exist for dealing with commercially sensitive material and that, where genuine reasons exist, it is possible to take a middle ground between unrestricted access or total confidentiality.67 The Chairman went on to note that the only Committee recommendations rejected outright related to the disclosure of information contained in tenders (as opposed to contracts) and the conferral of the Ombudsman of an extended oversight role in relation to commercial-in-confidence claims68.

Commercial confidentiality concerns have also been addressed by a number of Commonwealth Parliamentary inquiries.69 Recently, the Senate Finance and Public Administration References Committee, in its Inquiry into the Mechanism for Providing Accountability to the Senate in Relation to Government Contracts, addressed a motion that had been put before the Senate by Australian Democrat Senator Andrew Murray. Senator Murray’s motion sought to achieve greater transparency of government contracting through passage of a Senate Order that would require:

- the posting on agency web sites of lists of contracts entered into, indicating whether they contain confidentiality clauses and, if so, the reason for them;
- the independent verification by the Auditor-General of those confidentiality claims; and
- the requirement for Ministers to table letters in the Senate chamber on a six-monthly basis indicating compliance with the Order.

The Committee’s report noted that, at almost every estimates hearing, information is denied Senators on the grounds that it is commercially confidential.

Senator Murray’s motion can be taken as a further indication of Parliament’s frustration with insufficient accountability reporting associated with government contracting and a belief that commercial-in-confidence provisions are used excessively and unnecessarily in contracts. Most recently, the Senate Finance and Public Administration References Committee commented that:

The need for confidentiality should be interpreted as narrowly as possible to ensure that the maximum amount of information is in the public domain.70
My Office is currently undertaking a performance audit of the use of confidential provisions in the context of commercial contracts. The audit is seeking to:

- assess the extent of guidance on the use of confidentiality clauses in the context of commercial contracts at a government wide level or within selected agencies;
- develop criteria that could be used to determine whether information in a commercial contract is confidential, and what limits on disclosure should apply; and
- assess the appropriateness of agencies’ use of confidentiality clauses and the effectiveness of the existing accountability and disclosure arrangements for the transparency of contracts entered into by the Commonwealth.

Service standards and performance measurement

Any contract must clearly specify the service required; the relationship between the parties needs to be clearly defined, including identification of respective responsibilities; and appropriate arrangements for monitoring and reviewing contractors’ performance need to be put in place. These should all be addressed giving consideration to the identified risks the organisation is facing in relation to the specific contracted good or service and contract arrangement.

Performance based contracts can include sanctions for non-performance, such as a percentage fee for late completion or flat rate for substandard levels of performance. Any sanctions have to be seen to be ‘fair’. There should not be any equivocation about required performance nor about the obligations of both parties. I stress that this is as much about achieving the desired outcome as it is about meeting particular accountability requirements.

For example, the outsourcing contracts reviewed in the IT outsourcing audit placed certain obligations on the private sector service providers in regard to ensuring that agency data held on the outsourced IT infrastructure was protected to identified security and privacy standards. That audit, and a subsequent audit of fraud control in the Australian Taxation Office, found that agencies had not developed adequate strategies for monitoring the providers’ compliance with those obligations, and recommended improvements in this regard.

Sound contract management, and accountability for performance, are dependent on adequate and timely performance information. As noted above, it is important that agencies consider the level and nature of information to be supplied under the contract and the access they require to contractor records to monitor adequately the performance of the contractor. The more detailed the performance standards, the specific requirements for rigorous reporting and monitoring and the need for frequent renegotiation and renewal, the closer the contractual arrangements come to the degree of control and accountability exercised in the public sector. Once again, it is a matter of balancing any trade-offs in efficiency and/or accountability if optimal outcomes are to be secured. I should add that any such trade-off should be subject to Parliamentary and/or Executive Government guidance.

The main message from the public sector’s contracting experiences is that savings and other benefits do not flow automatically from their adoption. There is always the upfront cost of contracting out that needs to be taken into account, such as the initial legal costs involved in negotiating and drafting contracts. Other costs which also need to be taken into account in making a decision to contract out functions, include the cost
of monitoring the contractor’s performance and the need for legal advice as to how to interpret particular clauses in the contract. Indeed, the contracting out process, like any other element of the business function, must be well managed and analysed within an overall business case which includes an assessment of its effect, either positive or negative, on other elements of the business.

Private financing of government activities

A related topic is that of the use of private finance in areas of the public sector such as infrastructure, property, defence and information technology (IT) and the way in which this can lead to risk transfer. Again, the use of such a facility is a test of corporate governance arrangements, literally with shared responsibility, if not accountability. The key message in this context is the need for public sector managers to fully appreciate the nature of the commercial arrangements and attendant risks involved in private financing initiatives.

In the current budgetary environment, public sector entities in many countries have often found it difficult to provide dedicated funding for large projects out of annual budgets. The encouragement of private sector investment in public infrastructure by governments is one response to fiscal pressures. This gives rise to additional challenges and demands for public accountability and transparency because the parameters of risk are far different from those involved in traditional approaches to funding public infrastructure. Indeed, the potential liabilities accruing to governments may be significant.

Extensive use has been made of private financing in the United Kingdom (UK). The Private Finance Initiative (PFI) was introduced in 1992 to harness private sector management and expertise in the delivery of public services. By December 1999, agreements for more than 250 PFI projects had been signed by central and local government for procurement of services across a wide range of sectors, including roads, rail, hospitals, prisons, office accommodation and IT systems. The aggregate capital value of these projects was estimated to be some £Stg 16 billion.

The UK National Audit Office (NAO) has noted that the private finance approach is both new and more complicated than traditional methods of funding public infrastructure. It brings new risks to value for money and requires new skills on the part of the public sector. Since 1997, the NAO has published eight reports on such projects. These reports collectively suggest that for privately financed projects to represent value for money, the price must be in line with the market, the contract must provide a suitable framework for delivering the service or goods specified, and the cost of the privately financed option (taking into account risk) should be no more than that of a publicly funded alternative.

It is difficult to evaluate the overall benefits that accrue from PFIs. In financial terms, it has been recognised that it is difficult for the private sector to borrow as cheaply as governments can. This is because government borrowings are considered by markets to be risk-free because of governments’ capacity to raise taxes and because of the absence of default by most sovereign borrowers. Accordingly, delivering financial benefits from private financing requires cost savings in other aspects of the project and/or the effective transfer of risk.
It is undeniable that the PFI in the UK is being driven heavily by the objective to transfer risk.\textsuperscript{79} For example, in contracting the funding, design and management of IT and infrastructure projects to the private sector, the associated transfer of risk to private sector managers is being justified on the basis that they are better able to manage the risks involved. However, a report commissioned by the UK Treasury indicated that some invitations by public sector bodies to negotiate contract provisions included risks that could not realistically be best managed by the contractor.\textsuperscript{80} The report went on to advocate an approach involving the ‘optimum’ transfer of risk, which simply means allocating individual risks to those best placed to manage them. As usual, the devil is in the detail but experience is indicating some useful means of deciding on an appropriate allocation of such risks.

In Australia, most of the activity in private financing initiatives has occurred at the State Government level, particularly in relation to infrastructure projects such as roads. Prominent examples include the Sydney Harbour Tunnel and the M2 Motorway in Sydney\textsuperscript{81} and the City Link project in Melbourne. Of note is that these high profile projects have been the subject of external scrutiny that has raised concerns about the exact distribution of risk and financial benefits between the public and private sectors, for example as indicated by the following audit observations:

- The previous New South Wales Auditor-General consistently commented that, although private sector owners have been given long-term rights over important road networks, there has not been a proper comparison of the cost-effectiveness of private sector involvement and the traditional public sector approach. Accordingly, the Auditor-General was unable to conclude that the projects that have been undertaken were in the State’s best interests from a financial viewpoint.\textsuperscript{82} In particular, the opportunistic and ad hoc use of private finance was criticised as it was considered unlikely to improve the overall efficient use of the road network and reduce the total costs of road maintenance and management.\textsuperscript{83}

- The Melbourne City Link project is one of the largest infrastructure projects ever undertaken in Australia with an estimated total cost of around $2 billion. It involves around 22 kilometres of road, tunnel and bridge works linking three of the Melbourne’s most important freeways. A report by the State Auditor-General found that, while the users of the City Link via toll payments will, in substance, be the financiers of the project, the private sector has accepted substantial obligations associated with the delivery and operation of the City Link, including traffic and revenue risks. However, the auditors also found that the decision to establish the City Link as a toll road was not supported by a financial model which compared project costings on the basis of private sector financing versus government borrowings.\textsuperscript{84}

Significantly, there have also been concerns raised about public accountability for privately financed projects. These have stemmed from difficulties Parliaments have experienced in gaining access to contract documents. For example, in relation to the aforementioned M2 Motorway in New South Wales, the NSW Parliament was denied access to the contract deed between the public sector roads authority and the private sector counterpart.\textsuperscript{85}

At the national level there has been increasing interest in private financing initiatives, although to date there has been limited actual adoption.
Of note, the Department of Defence has committed itself to examining the merits of using private financing in the delivery of Defence services, with the aim of realising financial savings or improving effectiveness. Defence services included in this examination are to cover capital equipment as well as Defence facilities, logistical support and IT programs. The clear intention on the part of Defence in widening the use of private financing, reportedly for as many as 25 to 35 per cent of all future acquisition projects, is to achieve the best affordable operational capability.

As an aside, I note that, in rebutting some criticism that PFI in the Defence context has been seen as ‘simply putting Defence capital expenditure on the plastic’, Mick Roche, Under Secretary of the Defence Materiel Organisation, has made the point that PFI will link the provision of the capital item or capacity with its life-cycle cost, and hence provide Defence with one payment for availability.

An associated move that Defence is making in the area of private financing is to encourage increased participation in such financing methods by small to medium enterprises (SMEs), that may otherwise feel that the opportunities presented by such initiatives are only within the scope of larger, national and international defence industry players.

Of course, any such move towards private financing of Defence activities would need to consider what core business the Department needs to maintain in order to manage effectively the longer-term risks that are involved in any outsourcing. With this in mind, the Department has indicated in a Discussion Paper that private financing is to be considered for all capability proposals and tested as an acquisition method unless the capability:

- involves the direct delivery of lethal force (core Defence business); or
- is demonstrably inappropriate and uneconomic (that is, does not reflect best value for money).

The Defence Discussion Paper identified a number of lessons drawn from case studies arising from the UK Ministry of Defence’s experience as well as lessons from two State Governments—these may be of interest to other audiences, who are required to deal with similar private financing issues, albeit involving different subject matter.

In view of the growing interest in and use of private financing initiatives and the important financial, risk transfer and accountability issues raised, it can be expected that Auditors-General will increasingly focus their attention on examining such activities. It is hoped that such scrutiny can assist in optimising outcomes and providing assurance to the public and Parliaments about the processes adopted and outcomes achieved. In this context, I commend the work done by the UK NAO in examining privately financed projects and in providing sound guidance to auditors on how to examine value for money of privately financed deals.

V. THE IMPACT OF E-GOVERNMENT

Information technology is revolutionising the way the public sector actually operates. It has improved the ability of public organisations to communicate, to share critical information and to organise political and bureaucratic processes in a more efficient way.
Information technology has also enhanced productivity by providing new, more responsive and efficient ways of delivering public services and providing information to citizens. It potentially provides the vehicle to deliver better quality products to the public more quickly, cost effectively and conveniently. The result could be programs designed primarily around the needs of citizens, rather than just largely reflecting the organisational structure of the public sector. This will require the redesign of current governance systems.

Public policy has only begun to come to grips with the changing context. The time that policy makers need to process, structure and use knowledge so as to make informed decisions has become a scarce commodity, as 24 hour media coverage of events around the world exerts unrelenting pressure to act, or perhaps react, quickly. Already we are witnessing what has been termed ‘instant politics, where far-reaching decisions are often made on the first available information.\textsuperscript{92} Taking a longer term perspective, there is little doubt that technological change will radically transform the framework conditions within which policy is made.

As organisations embrace modern networked communications, such as the World Wide Web, they are creating a need for different styles of governance in the information age. Consequently, in many areas, consideration has to be given to the extent that information technology is core business. This is evident where it is difficult to actually separate the technology from the service being delivered. Nevertheless, there are complexities in the migration process itself in the public sector environment as the following observation notes:

\begin{quote}
Calls for government service delivery to migrate from in-line to online sooner rather than later often overlook the complex social, regulatory and legal issues governments face in changing their service delivery models.\textsuperscript{93}
\end{quote}

The connectivity and interdependence made possible through information technology also creates vulnerabilities. The proliferation of computer viruses and hackers seeking to manipulate critical computer systems poses serious risks to government agencies, and in private domain, and the threat will only grow in the future. Such issues also raise questions about adequate business continuity arrangements. The risks involved also raise issues associated with the privacy and confidentiality of records which are of considerable concern to the Parliament. Unless appropriately controlled, computerised operations can offer numerous opportunities for committing fraud, unauthorised tampering with data or disrupting vital operations. The recent release by the Attorney-General’s Department of the Protective Security Manual 2000 has also focussed greater attention on security issues as well as on related agency obligations. As with many other aspects of the move to e-government, it is often a lack of awareness from the top down that is a major barrier to implementing appropriate security measures as part of sound risk management.

As dependence on information technology grows and new high risk areas emerge, public sector agencies need to adopt modern practices to correct underlying management problems that impede effective system development and operations even where these are outsourced. Effectively managing these risks will, in many cases, have a major impact on achieving business objectives. Robust corporate governance processes that are pervasive throughout an organisation will both help to identify and deal with such problems. As a practical example of this, the Victorian Department of
Natural Resources and Environment decided that one of its first tasks in reforming its procurement processes to introduce a fully electronic procurement system was to:

*Rewrite its purchasing policies to more closely link purchasing with business plans and outputs and to de-emphasise price as the overriding consideration and emphasise value for money and accountability*\(^94\).

Another key element of the Department’s reform process was to re-align the delegation authorities of staff with their level of responsibility.

The delivery of services via the Internet introduces new risks and exposures that can result in a legal liability for government. Well-designed security and privacy policies can minimise risks and liabilities, while informing agencies’ clients of important aspects of the services they can expect to receive. Nevertheless, such policies need to be kept under close scrutiny particularly with the development of single portals\(^95\) which integrate the complete range of government services and provides a link to them that is based on function, or simply citizen demands, and not on an individual organisation. As such, a portal does offer the potential for complete coordination but, as Dr Jenny Stewart has observed:

*The challenge for policy and administration is to recap the potential efficiency and compliance advantages while, at the same time, safeguarding security and privacy*\(^96\).

I also note the recent release of Chapter 4 of the Model Criminal Code: Damage and Computer Offences with the latter directed at protecting the security, integrity and reliability of computer data and electronic communications. By addressing such threats as hacking, denial of service attacks and virus propagation, the offences proposed under the Code offer a suggested means for helping to ensure that the benefits of new technologies are not compromised by crime\(^97\).

**System controls**

Security issues, such as unauthorised access and entry of virus infected programs have raised the risks to agencies’ computing environments. These issues are being addressed through so-called ‘firewalls’ (which are basically software protection) and/or through physical separation. As well, data encryption systems have been, and continue to be, developed to provide a degree of assurance to managers and users. Initiatives have been taken to implement some kind of public key encryption arrangement for general protection and assurance in a number of countries.

Government agencies wishing to embark on initiatives that do more than just disseminate information need to come to terms quickly with the potential applications of Public Key Infrastructure (PKI) technologies to encrypt, decrypt and verify data. Key issues addressed by PKI are as follows:

- each person communicating electronically needs to ensure that the recipient is who he or she thinks it is, so that the sender cannot later deny having sent a particular electronic message or transaction; and
- the ability to encrypt data transmissions over an open or public network (such as is used by the Internet), so that those transmissions can be read only by the intended
recipient. It is also important to know that the content of any transaction has not been altered during transmission.

GATEKEEPER is the Commonwealth Government’s strategy for implementing a government PKI. An important element of on-line transactions with the Commonwealth is the ABN-DSC (Australian Business Number – Digital Signature Certificate) which will be used to verify electronic signatures. The ABN-DSC will initially be used for interactions between businesses and Commonwealth agencies, such as for the Goods and Services Tax administration. However, nothing in the design of this certificate will preclude its use in business-to-business applications. Australian Secure-Transaction Company, eSign, has become the first authorised firm to issue ABN – DSCs. eSign is accredited not only as a registration authority, but also as a certification authority for GATEKEEPER, meaning that it will be a “one-stop shop for government agencies and companies that want to deal with government on-line”.

Privacy considerations

For the public sector, the increased involvement of the private sector in the provision of public services, the security of agency data, and particularly electronic data, is another critical issue that needs to be effectively managed. Contracts negotiated between public service agencies and their private sector providers must include provisions which acknowledge Australian Federal Government IT security requirements. In addition to the technical issues associated with the protection of the data held by government agencies from unauthorised access or improper use, there are also issues associated with the security of, for example, personal information held by government agencies which falls within the scope of the Privacy Act 1988. A watchful citizenry will want to be certain that agencies and their contractors cannot evade their obligations under such legislation.

Of relevance to this particular issue is that the Privacy Amendment (Private Sector) Act 2000:

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

For many organisations, including health services, the new private sector provisions will commence on 21 December 2001. For small businesses to which the provisions will apply (except health services), the new provisions will commence one year later. The Act will apply to ‘organisations’ in the private sector. An organisation can be an individual, a body corporate, a partnership, an unincorporated association or a trust. It will cover:

- businesses, including not-for-profit organisations such as charitable organisations, sports clubs and unions, with a turnover of more than $3 million;
- federal government contractors;
- health service providers that hold health information (even if their turnover is less than $3 million);
- organisations that carry on a business that collects or discloses personal information for a benefit, service or advantage (even if their turnover is less than $3 million);
- small businesses with a turnover of less than $3 million that choose to opt-in;
• incorporated State Government business enterprises; and
• any organisation that regulations say are covered\textsuperscript{102}

A key provision of the Act is the inclusion of ten `National Privacy Principles for the Fair Handling of Personal Information`. These Principles set standards about how business should collect, secure, store, use and disclose personal information. The Act makes a distinction between `personal’ and `sensitive’ information\textsuperscript{103}. The latter includes information on a person’s religious and political beliefs and health, where the private sector is more strictly limited in its collection and handling. This legislation is likely to have a marked impact on that sector’s involvement in the delivery of public services.\textsuperscript{104}

For those organisations and industry sectors seeking to develop their own privacy codes, the Privacy Commissioner released for comment a draft set of Guidelines on 10 April which are available on the Commissioner’s web-site (www.privacy.gov.au). The Australian Information Industry Association (AIIA) will develop a comprehensive privacy toolkit and conduct seminars and workshops to prepare its members, particularly in small firms, for the introduction of the new legislation. As well, an Australian Privacy Seal developed by the Customer Service Institute of Australia (CISA) and administered by the certification authority, eTick, has been recently launched.\textsuperscript{105}

The ultimate outcome of the expanded private sector privacy legislation will remain of interest to those of us in the public sector who have embraced the provisions of the existing \textit{Privacy Act 1988} over many years.

\textbf{Knowledge management}

Effective governance of an organisation’s information and knowledge is an important consideration for decision-makers. Knowledge management is concerned with making the knowledge available to the right processors (human or computer) at the right times in the right presentations for the right cost.\textsuperscript{106}

The increased ability to capture and store information is valuable but also has a downside. Put plainly, organisations and individuals are significantly challenged in their capacity to effectively access, interpret, manage, apply and disseminate the volume, diversity and often uncertain origin of information enabled by IT (and the Internet in particular). For me, this raises the question how best to access and/or make available required information in a timely and cost effective manner.

For effective knowledge management organisations need to be able to identify their information requirements. Information overload is equally as non-productive as little or no information upon which to make decisions. It is important, therefore, to develop the capacity to identify information that is business critical and to be able to prioritise, filter and present information in manner which best meets the needs of individuals and decision-makers.

\textbf{Record-keeping}

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

As a particular instance of the task facing those of us who are required to oversight public sector operations and to provide important public accountability assurance, I note that the increasing use of e-mail poses significant challenges in terms of our traditional evidentiary standards (which customarily hinge on paper-based records) and the skills base of our auditors. As auditors, we are already confronting situations in which traditional forms of documentary evidence are not available. In such situations we are having to make links in the chain of decision-making in organisations which no longer keep paper records, or having to discover audit trails in electronic records, desktop office systems or archival data tapes.

Developments in the use of technology for the keeping of records are of particular concern for the management of Commonwealth records by the National Archives of Australia (NAA). The NAA has responded with the launch of an ‘e-permanence’ campaign and the development of a new Australian Standard (AS4390) for recordkeeping. The campaign is designed to remind Commonwealth agencies both that:

 Good government relies on good record keeping to be accountable and efficient, and Australians expect it.

and:

... even in this paperless age, records still need to be kept. ... we want to ensure that the right records are kept for the right amount of time.  

I consider that another risk issue has arisen in regard to recordkeeping and the use of IT in the workplace. This involves the need for the public sector as a whole to address and manage the ‘Pandora’s Box’ represented by the boundary between official and personal communications. Electronic records—especially e-mail records—are likely to contain both official records and personal communications. (A separate, but just as important, issue is the inappropriate use of e-mail.) Any position taken on personal communications on official systems should have regard to the organisation’s internal communications policy as well as any applicable legislative framework. In any event, it would seem prudent for an auditor to consult early with the organisation’s management to determine an appropriate protocol for extracting required electronic records which not only protects the auditor’s right to access such records but also provides protection against unnecessary infringement on personal records and personal privacy.

VI. OPERATING IN A MORE NETWORKED ENVIRONMENT
An interesting outcome of the recent public sector reform directions is that nearly all of the results the government strives to achieve require the coordinated efforts of two or more agencies/parties/levels of government. Unfocussed and uncoordinated programs waste scarce resources, confuse and frustrate customers (citizens) and limit overall program effectiveness. The development of effective working relationships with stakeholders is, therefore, an important element in a functioning corporate governance framework and can help to identify, overcome and even avoid fragmentation and overlaps in government programs. Market mechanisms may actually create ‘islands’ within agencies, particularly where activities are more commercially based and make coordination of services to citizens in a seamless manner that much more difficult.

In this respect, it is interesting to consider the United Kingdom (UK) ‘Modernising Government’ approach which stresses ‘partnership delivery’ by all parts of government as well as with the private sector. The UK National Audit Office subsequently reported on its response (and strategies) to that policy, including the notion of ‘joined-up’ government, with particular comments on risk management.

As governments rethink their roles in society they are being required to develop new approaches to policy making and service delivery which involve new partnership arrangements. As well, the new environment is drawing the private sector increasingly towards partnerships, mergers and alliances as a means of coordinating economic activity. Consequently, networking or partnering is beginning to play a major role at the local, national and international levels and across all sectors.

Such arrangements are likely also to be encouraged through the increased adoption and impact of e-commerce with its focus on coordination and collaboration in the business environment in particular and with shared databases as well as greater electronic integration in a virtual ‘one-stop’ service delivery environment. Between agencies, these arrangements are quasi-contractual and tend to be based on ‘relational’ rather than 'legal' agreements. Nevertheless, as discussed later, there are compelling reasons in a number of areas for considering the extension of the relational/partnering approach involving the private sector in a more networked environment. As usual, a balance has to be struck in particular cases between the various demands on managers which can change depending on circumstances and the environment.

In Australia, there do appear to be indications that partnering is gaining favour as a means of delivering more responsive public services to citizens. For example, a recent ANAO report discussed how three welfare agencies were defining their particular outcomes and outputs and how the outputs of one of these agencies were directly related to the outcomes of the purchasing departments. These arrangements have been managed through a strategic partnering process rather than a legal contractual framework. These arrangements have subsequently expanded such that the particular Commonwealth agency, Centrelink, now delivers services on behalf of a total of four agencies under formal purchaser-provider arrangements. Centrelink's partnership agreement with the now Department of Family and Community Services reflects their emphasis on building trust; maintaining productive relationships and legal limitations.

A further indication of a possible move towards network bureaucracies is the renewed focus on the needs of clients. This is, at least partly, a consequence of a Government decision in March 1997 to introduce Service Charters in order to promote a more open and customer-focused Commonwealth Public Service. All Commonwealth
Departments, agencies and Government Business Enterprises that have an impact on the public must develop a Service Charter. These Charters are to represent a public commitment by each agency to deliver high quality services to their customers.

Where service delivery has been outsourced, Service Charters will clearly have a direct impact on the private sector contractor. In particular, it is to be expected that outsourcing contracts will need to reflect the Service Charter commitments if the Charters are to have any meaning. It will also be important to require, as part of the contractual arrangement, the provider to supply 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 one or more steps removed from the responsible department, it should still be possible to ensure clients are receiving the appropriate level and quality of service, consistent with the Service Charter. Such an approach may also be expected to reinforce the notion of both the private sector provider and the contracting agency being dependent on one-another for delivering a satisfactory level of performance and accounting for their performance – in effect trading-off control for agreement.

It has been recognised that more networked approaches to service delivery that envisage more sophisticated and cooperative approaches to cross-cutting issues will stress the importance of partnerships, coordination and joint working. This is increasingly occurring at the inter-agency level and networking can be expected to evolve to include strategic arrangements and structures between public organisations, private operators and voluntary associations as well as individual clients and the community generally. Such interaction should in turn generate new forms of service delivery and redefine the relationship between government and the community.

The aim should be to deliver services that appear seamless to the recipient. In such arrangements, where there is joint responsibility for overseeing and implementing programs across a number of bodies, involving public and/or private sector organisations, a clear governance framework and accountability and reporting arrangements, which clearly define roles and responsibilities of the various participants, may be required. Increasingly, relevant governance arrangements will need to cross organisational boundaries to better align activities and reduce barriers to effective cooperation and coordination. Of note, in this respect, is the fact that globalisation has resulted in an increasing number of business networks operating across national borders. Networks do not necessarily require formal organisational structures.

More networked or partnered arrangements can also overcome the inflexibility of a contract. Such networked arrangements are seen to enable a greater exchange of ideas and information and allow partners to gain access to knowledge and resources of the other parties.

Realising the benefits of networking in a cross-cutting mode requires further cultural transformation in government agencies. For example, hierarchical management approaches may need to yield to more ‘partnering-type’ approaches. Process oriented ways of doing business will need to be supplanted by results-oriented ones. This is consistent with the Federal Government’s outputs/outcomes approach to public administration and budgeting. ‘Siloed’ organisations, highlighted by overlapping functions and inefficiencies, will not only have to become integrated organisations but will also have to become more externally focussed if they are to meet the needs of their
ultimate clients. What is needed is a positive and encouraging framework for building relationships, dialogue and negotiation that can lead to:

- clearer and more realistic performance measurements;
- more buy-in on both sides to the results;
- a basis for ongoing dialogue throughout the year to improve the likelihood of achieving results; and
- capacity for learning and improvement.\textsuperscript{114}

Another important aspect of developing networked solutions is the availability of information to clients. Information technology is providing significant opportunities for government to ensure that existing and potential clients have access to the information they require. Information technology provides both the basis to facilitate partnerships and a compelling justification for partnering. It has been suggested that one effect upon businesses of the electronic era, with its emphasis on e-commerce and related technology based service delivery, is that they are going to work more closely together. To fully exploit opportunities created by the Internet will require organisations to develop closer working relationships with stakeholders.\textsuperscript{115} Indeed, rapid advances in information and communication technologies are likely to demand the establishment of effective partnering and networking to ensure a responsive, efficient and cost-effective public sector providing seamless information and other services to all stakeholders.

\textbf{VII. CONCLUDING REMARKS}

Sound corporate governance frameworks will enhance the development of suitable networks and partnerships and facilitate risk management so that opportunities can be taken to be more responsive and improve performance while minimising risk. Fundamentally, good governance arrangements increase participation; strengthen accountability mechanisms; and open channels of communication within, and across, organisations. In this way, the public sector can be more confident about delivering defined outcomes and being accountable for the way in which our results are achieved. These requirements are integral to the more market-oriented approach being taken to public administration in recent years. The disciplines involved have focussed greater attention on performance management and accountability for that performance.

While public sector organisations have to recognise performance obligations to stakeholders and the negative aspects of being risk averse, we also have to be aware of the need for leadership and control and the confidence and assurance that the latter engenders for all stakeholders and the reputation of the organisation involved, particularly in any networked arrangement. In some situations, this may require shared strategic planning and management where all stakeholders have to contribute. For example, the Strategic Partnership Agreement between the Health Insurance Commission and the Department of Health and Aged Care provides a mechanism for defining the roles and responsibilities of each organisation and lists the principles that underpin the working relationship.

New technology should facilitate the sharing of information within whatever constraints of privacy and security and/or need to know that might apply. As well, technology can assist in the delivery systems reflecting ‘seamless’ government and greater
responsiveness to citizens. Some writers have radically extended the possibilities of information technologies toward a vision of the automated state in which government would establish and manage contracts for project or service delivery largely through information technology. The suggestion is that the imperatives of technology are creating the conditions for the state to become ‘virtual government’.

It is unlikely that such ‘sharing’ could be definitively covered in present day ‘legally based’ contracts. This suggests some other forms of agreement and disciplines to ensure that both the parts and the whole are held responsible for their overall performance; and that accountability for the results is absolutely clear both to the immediate parties and to other stakeholders. It seems like a tall order. It has been said that:

*Studies of accountability also tend to neglect the requirements of managing an interdependent program with independent organizational units* [16].

But the pressures are only likely to increase, even in so-called ‘core’ areas of government, for more ‘cross-cutting’ approaches to better deliver program outcomes, with commensurate accountability for achievement of required results.

Managers might be interested in exploring the notion of ‘relational contracts’ in particular environments to test their effectiveness both in terms of performance and accountability. These so-called ‘soft’ contracts focus on cooperation as the guiding principle of contracts. It is, perhaps, another example of the exercise of management flexibility to achieve required outcomes where real partnerships and full cooperation of a range of service suppliers are required to be citizen ‘centric’. On the other hand, is an inability to define adequately performance and accountability requirements or, indeed, lack of private sector acceptance particularly of the latter, sufficient reasons to reject contracting-out? Going further, is this a ‘back-door’ way of defining core government?

We should be able to explore different partnership arrangements within the public sector to ascertain what will work in a cohesive and sensible fashion in particular situations. Moreover, it may also be possible to test arrangements within the private sector, where it is involved in the provision of public services, in a way that can accommodate both private and public interests. The future challenge to partnering in the public sector may be to go beyond strategic partnerships with particular contractors and to develop in association with other agencies, community and private sector organisations, public sector ecosystems as described in the private sector.

Strategic combinations of public interest and private profit could generate new forms of service delivery and redefine the relationship between governments and the community. Whatever is attempted needs the support and endorsement of the Government and Parliament if it is to succeed. These are likely to be considerable challenges, not least in terms of the current views about public accountability.

In short, the on-going challenge for the public sector will continue to be meeting performance and accountability expectations, whatever the approach taken to our changing environment. This will increasingly involve establishing agreed modes of network governance to ensure proper integration and coordination of networking activities essential to the effective operation of strategic alliances. Such governance arrangements have to be well understood and accepted by all concerned. In my view, any arrangements have to be dynamic and flexible to meet the needs of all participants.
including, importantly, those of citizens. And is that not what governance, and corporate governance in the public sector, are basically all about when all is said and done?
NOTES AND REFERENCES


5 From 1 January 1998, the former Audit Act 1901 was replaced by three Acts which together provide a robust framework for the financial management of the Commonwealth public sector as follows:

(a) the Auditor-General Act 1997 provides for the appointment, independence, status, powers and responsibilities of the Auditor-General, the establishment of the ANAO and for the audit of the ANAO by the Independent Auditor;

(b) the Financial Management and Accountability Act 1997 sets down the financial regulatory, accountability and accounting framework for Commonwealth bodies such as departments that have no separate legal financial existence of their own (ie they are simply agents of the Commonwealth); and

(c) the Commonwealth Authorities and Companies Act 1997 provides standardised accountability, ethical and reporting provisions for Commonwealth bodies that have a separate legal existence of their own (eg Commonwealth-controlled companies and their subsidiaries and those statutory authorities whose enabling legislation gives them legal power to own money and assets).

6 Other legislative changes include the replacement of the Public Service Act 1922 in 1999 by updated and more user friendly legislation, as well as the more principles-based legislation relating to workplace arrangements (which has deregulated and decentralised the APS people management framework).


8 Nicoll, Geoffrey. 2000, Corporate Governance: New developments and their implications for the private and public sectors, Unpublished. (Permission given to quote)


15 Senate Finance and Public Administration References Committee 2000, *Inquiry into the Mechanism for Providing Accountability to the Senate in Relation to Government Contracts*, SFPARC, Canberra, June, p. 35.


23 Wallis, S. 2000, *Interview with Sally Neighbour: Company Chairman of AMP and Coles-Myer discusses over-emphasis on Corporate Governance*, Lateline, ABC TV, 3 July.


25 Ibid, p.55


28 Goldberg, Alan H Justice, 2000. *At the Cutting Edge of Compliance*. Opening address to the Fourth Annual Conference of the Association for Compliance Professionals. 23 November (Transcript of speech included in ACCC Journal, Issue 31, February 2001, p.8)

29 Ibid, p.8


32 Department of Finance and Administration 1999, Submission to the JCPAA Inquiry into Corporate Governance and Accountability Arrangements for Commonwealth GBEs. Submission No. 4, 2 July.


35 Laing, R. 2001, Private correspondence from Griffith City Council, 4 April.


49 Ibid p. 11.


The South Australian Auditor-General noted in his report for the year ended 30 June 2000 to the House of Assembly, fourth session, forty-ninth Parliament (Part A Audit Overview p. 205) tabled on 4 October 2000 that:

It is essential that the private sector provides considering projects involving the storage, processing and security of government information and systems, be advised at an early stage of both government agency and Auditor-General rights in regard to access and audit. This matter requires due contractual and legal consideration by the Government and its agencies to ensure the adequacy of safeguards over the security, integrity and control of government information and processes, and to accommodate the Auditor-General’s statutory audit responsibilities.


‘Recommendation 5: The Committee recommends that the Minister for Finance make legislative provision, either through amendment of the Auditor-General Act or the Finance Minister’s Orders, to enable the Auditor-General to access the premises of a contractor for the purpose of inspecting and copying documentation and records directly related to a Commonwealth contract, and to inspect any Commonwealth assets held on the premises of the contractor, where such access is, in the opinion of the Auditor-General, required to assist in the performance of an Auditor-General function. (paragraph 6.20).’


Ibid., p. 7.


UK NAO 1999, op. cit., p. 52.


ibid.

These were the subjects of two Reports by the Audit Office of New South Wales: *Private Participation in the Provision of Public Infrastructure–The Roads and Traffic Authority*, 1994, and *Roads and Traffic Authority: the M2 Motorway*, 1995.


ibid., p. 25.


La Franchi, P. 2000, op. cit.


41
The Discussion Paper identified the following lessons, reflecting a large degree of consistency, from case studies:

- **Know what you want, but avoid over prescription.** Specify outcomes and standards rather than process.
- **Long term contracts, defined as at least 7 years, but usually in the 15 to 35 year range, are needed for the private sector to recoup investment.**
- **Assessment of projects should be based on the private sector’s cost of capital rate, which in turn is based on the project risk.**
- **Projects need to be aggregated to an economic size, rather than a number of small ‘packets’, taking into account the benefits of proposals over the life of the asset and the benefits to the organisation as a whole.**
- **Private financing involves higher initial transaction costs, and higher cost of finance, than traditional procurement, which need to be offset by whole of life savings and benefits. For this reason, private finance and traditional tendering processes should not normally be carried out in parallel.**
- **Contracts have generally led to improvements, either through savings or through an improved level of service.**
- **Risk assessment and management is critical to success.**
- **A centre of expertise is necessary in private financial policy and practice, as is ready access to external financial expertise, to effectively manage and assess privately financed projects.**
- **Competition needs to be retained in the marketplace as much as is practicable.**

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90  ibid., p. 4. The Discussion Paper identified the following lessons, reflecting a large degree of consistency, from case studies:

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- **A centre of expertise is necessary in private financial policy and practice, as is ready access to external financial expertise, to effectively manage and assess privately financed projects.**
- **Competition needs to be retained in the marketplace as much as is practicable.**

91  UK NAO 1999, Examining the value for money of deals under the Private Finance Initiative, op. cit.


93  Accenture 2001, E-Government Leadership: Rhetoric Vs Reality – Closing the Gap, April, p.6


95  A Portal is generally an interface to another system or mainframe; the term is also used to describe links between intranet and internet sources. Importantly it described one of the customer focussed interfaces forming part of the Commonwealth Government’s initiative to improve accessibility to on-line resources.

96  Stewart, Jenny. 2001, Horizontal Coordination – how far have we gone and how far can we go? The Australian View. Paper presented to a National Institute for Governance Canadian/Australian Symposium, ANU. Canberra 5 April. P.5.


Ibid. Personal information is information or an opinion that can identify a person. Sensitive information is information about an individual’s racial or ethnic origin, political opinions, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual preferences or practices, criminal record, or health information.


Foreshaw, Jennifer. 2001. *AIIA Privacy Toolkit*. The Australian (Computer Section) 17 April, p.33


National Archives of Australia 2000, *Archives heralds the new stone age*, Memento, Number 14, May, pp. 1, 10.


