

University of Technology Sydney

Doctor of Philosophy

Thesis

**A study into the dissonance in the
Governance Principle of Accountability in
the Australian Public Service Department
of Defence**

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I certify that the work in this thesis has not previously been submitted for a degree nor has it been submitted as part of requirements for a degree except as fully acknowledged within the text.

I also certify that the thesis has been written by me, and that any help that I received in my research work and the preparation of the thesis has been acknowledged. I also certify that all information sources and literature used are indicated in the thesis.

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PUBLICATIONS

The following joint papers were developed during 2012-13 for publication:

- *The Importance of the Role of the Australian Defence Industry* by Gary Waters and Tony Ablong, in Defence Industry News and Senate Estimate Hearing
- *When Australian Defence Procurement Goes Wrong: Improving Outcomes in a Troubled Contractual Environment*, Jenny Stewart and Tony Ablong, in UKSAGE, The Economic and Labour Relations Review Volume 24 No 2, June 2013
- *A Question of Trust*, Tony Ablong in CEO Online

ACKNOWLEDGEMENTS

In my engaging journey to seek and acquire knowledge, I acknowledge the following:

- My principal supervisor Associate Professor Shankar Sankaran for his inspiration, guidance, patience and encouragement.
- My co-supervisor Dr Julien Pollack for his astuteness on matters of academic relevance.
- My ADF colleagues who served with me during times of hostility and in peace keeping missions. Without the shared experiences and their strong views on the shortcomings of the Australian Defence Force acquisition and procurement practices, this study would not have started.
- My wife, for her encouragement to complete this independent study and make an original and distinct contribution to knowledge and professional practice on corporate governance in the Australian public sector.

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Abstract

Over the past four decades, public commentary, independent reports and Australian Government enquiries have claimed and shown that the Department of Defence (Defence), the largest and most complex Commonwealth agency, has not managed the use of public monies in its acquisition and procurement activities at an acceptable level, and as a consequence there has been a corresponding loss of public confidence in its conduct. In the period 2000 to 2010, the Defence spent about \$26.8 billion (i.e., 2 percent of Australia's national income) a year of public money. During this period, progress albeit questionable had been achieved in some areas: in military operations, in defence policy, and in initiatives that were reflected in a range of public sector reforms that include the Kinnaird Review, the Mortimer Review, the Strategic Reform Program 2009 Delivering Force 2030, and other more recent Commonwealth Government commissioned Reviews such as the Black Review.

Despite these initiatives, the public evidence of the agency's performance continued to indicate its inability to deliver much needed lifesaving outcomes and outputs to the Australian Defence Force (ADF) and that there was a need to restore public confidence in the acquisition and procurement procedures and processes: raising questions about governmentality that focused on accountability, transparency, integrity and stewardship, four of the Principles of the Australian Public Service Governance Principles.

The research investigated three major capital acquisition and procurement cases identified in government documents using content analysis to determine whether the theme of accountability had been compromised. The evidence reflected instances of the agency's failure to adhere to and comply with the Australian Government legislation and APS regulations and rules to implement the programs: the outcomes of which were significant waste of public money and unacceptable reputational costs to the agency, the Commonwealth and the Australian community.

This study expected to find that as a traditional organisation, the Department of Defence's application of the large-scale authoritarian form of the Taylorism governance model to control, police, litigate and arbitrate would ensure adherence and compliance to the APS corporate governance principle of accountability in its acquisition and procurement activities.

However, in applying the key research question:

- How was accountability balanced against decision control in acquisition and procurement programs?

And the corresponding questions include:

- Were other APS Governance Principles affected?
- What were the impacts on the agency, its stakeholders and the APS by the dissonance?

the study uncovered evidence of dissonance in accountability and failure in the rational approach to public sector management activity whereby governmentality practices were taken out of the program and project management activities.

The significance of this qualitative study is that the theoretical elaboration of governmentality emerged to build on the sparse library of studies that links to the emerging Foucauldian Governmentalities themes and practices that show the nature of the shift in governance for collaboration, control and surveillance. The findings also contribute to knowledge in the practice fields of public sector administration and management, ethics, corporate social responsibility, public value, supply management and military studies.

Keywords: Governmentality, Public Sector Administration and Management, Ethics, Accountability, Public Sector Governance Best Practice, Corporate Social Responsibility, Auditor-General Assurance Reports, Australian Defence Acquisition and Procurement.

Chapter 1

Introduction

Introduction

On the 17th February 2000, Dr Allan Hawke, then Head of the Department of Defence also known as Defence¹, stated in response at the National Press Club in Canberra to the Government's independent auditor's² refusal to qualify and certify the agency's financial statements for the tenth year that

The reality (of the Department of Defence) today, however, is that there is widespread dissatisfaction with Defence's performance in Canberra - from ministers, central agencies within the public service, industry, and even from within the Defence organisation itself. In essence, we have a credibility problem. ... my "road test" of a sample of Defence's people about our mission, vision and values demonstrates that they are not well understood - even at senior levels within the Organisation. Nor are all in Defence sufficiently seized with the importance of serving the nation through its ministers and the government of the day. It is far too inwardly focussed. A major focus for myself and other leaders in Defence must therefore be to restore confidence - both externally and internally. Improving our performance will be fundamental to this. ...

The Auditor General and his senior staff have left me in no doubt that Defence's financial statements are at risk of being qualified next year in relation to the valuation of Defence assets. This tends to focus the mind a bit! ... The current state of Defence's financial situation against the Forward Estimates might best be described as parlous. I don't make that statement lightly – considerable pain will be required to get us back on track. The plain fact is that Defence has not been able to match the ends it is trying to achieve with the means it has been given to do so. ... This goes to the fiduciary duty of a Secretary – something which is sometimes overlooked in the

¹ The Defence Materiel Organization (DMO) was part of the Department of Defence and referred to as the Defence Acquisition Organization (DAO) prior to June 2000.

² The independent auditor is the ANAO appointed by the Federal Government by the Australian Parliament and enacted legislation.

public sector. Defence's leadership is seen as lacking coherence, as failing to accept responsibility and as reactive. Issues such as visibility and caring arise.

Far too often, it seems that wherever one sits in the hierarchy, all the problems besetting the organisation in terms of its management and leadership come from higher up the ladder. There are certainly elements of what I would call a culture of learned helplessness among some Defence senior managers – both military and civilian. Their perspective is one of disempowerment. This may, of course, reflect the inadequacy of our performance framework.

Putting the budget/financial situation to one side, the most significant organisational issue we face relates to leadership. Not to put too fine a point on it, too many of our people lack confidence in many of Defence's senior leaders. Justified or not, Defence's leadership is seen as lacking coherence, as failing to accept responsibility and as reactive. Issues such as visibility and caring arise.

Far too often, it seems that wherever one sits in the hierarchy, all the problems besetting the organisation in terms of its management and leadership come from higher up the ladder.

There are certainly elements of what I would call a culture of learned helplessness among some Defence senior managers – both military and civilian. Their perspective is one of disempowerment. This may, of course, reflect the inadequacy of our performance framework. (2000 p.1-4)

Eleven years later, in a very similar public forum, Dr Ian Watt, the most recent past Secretary of Defence, stated that

... it is essential that, as the spender of public monies, the Government and its agencies, such as the Department of Defence, are seen to be transparent and accountable.

I have said this before but it is worth repeating at the beginning of the new year; to effectively support the Government of the day, accountability is a value that must be embedded in our organisational culture. It is fundamental to building productive working environments, and staff at all levels must be aware of this. We have more to do in this area.

While some accountability and governance-related issues are addressed as part of specific Strategic Reform Program streams, accountability also needs to be considered from a whole-of-Defence perspective. The Chief of Defence Force and I are determined that Defence become more transparent and accountable in the management of Defence business. ...

Defence, simply can not achieve what it needs to without improving accountability across the organisation. This applies not just to the SRP, but to many of our activities. (2011 p.16) (Defence Magazine Issue 1 May 2011)

These views were again publicly supported by Duncan Lewis, retired Major General, former ADF Special Forces Commander and National Security Adviser to Australia's Prime Minister and Cabinet, when he took over the agency Head position from Dr Watt in late 2011. Lewis was expected to bring to the position, extensive years of military and public service experience. In his first public statement to Management Today (2012) as the first professional soldier albeit retired to be appointed to the position of Head of Defence, Lewis strongly supported the findings and recommendations identified in the internal Black Review (2011) related to serious accountability and confusion over responsibility for on-budget, timely, fit for purpose delivery of military assets. In so doing, he restated his concerns harnessed over repeated disappointments over untimely, over-cost and not fit for purpose delivery of essential military assets to the front-line soldier during his many years of military experience.

Lewis admitted that he faced a huge task in tackling the bureaucracy and ingrained culture that surrounds Defence as a whole. His support of the Black Review undertaken in 2011 is reflected in his statement that

It brings home to us a few things – firstly how densely thatched our committee processes are within the department ... the committee processes within Defence are famous, perhaps infamous, but we do need to de-thatch that process and put decision-making squarely into the hands of the responsible officers that should be making those decisions.

We get a lot of criticism for the slowness in the delivery of projects and the fact that projects go off the rails. I am not an apologist; we have had some very bad failures ... it is matters of public record ... some of them (failures) are spectacular. (Management Today 2012 pp.13-14)

Lewis also pointed out that there were structural alignment issues with senior officers, and there was an urgent need for horizontal integration in reporting, decision making and accountability. These manifestations were causing others to view the agency as moribund. Regrettably, Lewis was unable to implement his intentions, because he resigned from his position in September 2012 – amid considerable conjecture and speculation by the Australian media³ and the defence industry⁴ about his early departure.

The views of Lewis and other past agency heads are transcribed verbatim to point out strongly the intention of the most senior and respected officers in the Australian Public Service (APS).⁵ The views show their sense of concern and ‘cultural tone’ of the Australian Defence environment, and the personnel they manage, as well as implicitly acknowledging the issues and difficulties encountered by the agency in the management of publicly funded procurement projects. More seriously, however, is that their views established markers of corporate mismanagement which was perceived by defence commentators and the wider Australian community as an absence of corporate accountability.

This approach is seen by Bryman and Bell (2007) as a means of enhancing confidence in the research and to demonstrate reflexivity. In their support in the use of direct quotes, Bryman and Bell cite Angharad

A direct quote from a research participant can help to convey the views of people being studied in a way that is engaging and interesting. Direct quotes can also enhance the perceived trustworthiness of the research project by enabling the researcher to provide an example from the data that illustrates the theoretical point that they are trying to make. They can also help to convince the reader that a methodical and thorough approach to data collection and analysis had been adopted.

³ The tone of the media commentary over the years is reflected by this news item in the *The Weekend Australian*, (2006), “Problems at Defence”, 26-27 May 2006. See also Commonwealth Parliamentary Debates (2006), Senate Foreign Affairs, Defence and Trade Committee, Budget estimates 2006-2007, 1 June, pp. 101-102., the *Canberra Times* (2012) “Call to avoid more Defence bungles”, *Defence News*, 17 September 2012, p.2

⁴ Details of company-by-company description of the sector are listed and described at *Australian Defence Magazine (ADM) Top-40 Defence Contractors*.

⁵ Bryman and Bell (2007 p.714) states that “*Using direct quotes (is) as a means of enhancing confidence in research and demonstrating reflexivity.*” See also Angharad at www.oxfordtextbooks.co.uk/orc/brymanbrm2e/

Direct quotes can also help the researcher to demonstrate reflexivity and awareness of researcher-subject relationships, by showing they have been aware of the power relations between the researcher and the people being studied, and that they have sought to deal with this by ‘giving voice’ to participants in a way that is not mediated by their own interpretations.” (p.714)

Despite the fact that more than a decade separates the above statements, and that Australia experienced two Federal governments with Defence administered by four ministers and seven secretaries (all of whom publicly expressed their desire to improve the agency’s culture and performance)⁶, the public evidence continues to show otherwise. Furthermore, the contributing factors are attributed to culture and management practices, particularly in capital-funded procurement, which continues to be underperforming. This embarrasses government and is rigorously questioned by parliament, the media and the wider community, including the defence industry.

The substance of the evidence is publicly reflected in detailed internal Management Advisory Board (MAB) Review Reports, Australian National Audit Office (ANAO) Performance Audit Reports and Hansard transcripts, and incumbent federal ministers’ views (listed in the Reference section of this thesis). However, these documents have tended to provide overviews of the issues, and offered only rhetorical and quick-fix solutions. One of these is that the Defence Materiel Organisation (DMO) should exercise stronger control of procurement processes, based on the comprehensive application of business management methods⁷.

Not only is the wider Australian community seeking meaningful and methodological research on the absence of accountability, given the long-running series of management issues commented upon by the Australian media, there is a knowledge demand for such a study from an academic and industry perspective. The historical evidence captured by ANAO demonstrates that Defence has a case to answer. This qualitative-based study into the accountability of the agency would benefit the APS, the Australian Defence industry and the Australian community – whose money is used to sponsor and fund procurement programs. It

⁶ The tone of these views are similar to those by Hawke, A (2000) see <http://www.defence.gov.au/media/2000/sec1.html> and Lewis, D. (2012)

⁷ Commonwealth of Australia. (2012), *Procurement Procedures for Defence capital projects*, August, The Senate, Foreign Affairs, Defence and Trade References Committee, Canberra, Australia

would also bridge the gap in the growing body of knowledge of corporate governance and program management.

As a past serving member of the ADF, who had engaged in the management of a number of these programs, the study presented me with the opportunity to provide a methodical, practical and balanced study that is evidence-based and structured. The study purposely avoids traducing on the professionalism of individual APS and military personnel, because the research method analyses only publicly available judgemental views articulated by ministers, Defence secretaries, the ANAO audit and performance reports, Hansard transcripts, and commissioned reviews, reports and media comment: all of which enable reliable triangulation of the data . All of this evidence points to incidences of poor administration and poor management practices that reflected breaches against the APS corporate governance principles, such as accountability, transparency, integrity, stewardship, efficiency and leadership, as well as Defence values and code of conduct.

This study employs a case study methodology using content analysis of public domain documents related to a specific context: namely, the Australian Defence agency. The context provides the overtones of the characteristics of the different actors – and the differences and relationships between them – while managing three major acquisition and procurement programs. Such case studies fall well within the context of the theoretical and industry literature. The study makes use of the reforms clearly articulated in the new public sector management environment, which inculcate openness, responsible business practices and corporate social responsibility. The reforms focus primarily on the theme of accountability, which is generally underpinned by ethical behaviour (refer to footnote 3 below) and is discussed more fully later in the thesis.

Accountability and its meanings are inculcated in the Australian Standard AS 8001–2007 as part of their suite of governance standards. The definition of this standard continues to be endorsed by the Australasian Study of Parliament Group and accepted by Australian industry, the APS and the wider community as

Accountability: being obliged to answer for one's acts or omissions, and those of others, to an authority.⁸(AS8001–2007) (ASPG, 2007)

⁸ It is important to this study to note that Standards Australia and the Australian Institute of Corporate Directors add a further dimension to accountability, by defining that there are two types that influence an organisation and

By association, a number of terms imply similar meaning and intent, being conjoined in a meaningful sense that indicate

Answerability: being obliged to answer for one's acts or omissions, and those of others, to an authority.

Culpability: being blameworthy.

Responsibility: the sphere or extent of the duty or charge which has been entrusted or assigned to one. (AS8001–2007) (ASPG, 2007)

The Research Questions

Strong political and community views continue to publicly raise questions seeking a better understanding of the role and function of the Department of Defence particularly its accountability in the management and use of public monies over the past three decades. In recent years there have also been questions related to other relational factors that compromised the principles of the APS corporate governance and our society's standard of behaviour in relation to respect of individual rights, bullying and harassment.

The richness of the study results from the application of content analysis to words, phrases and sentences in the evidential documents in order to 'tease out' the implicit values expressed within the words, phrases and sentences that relate to degrees of schedule slippage, cost overruns and not fit for purpose deliverables. In so doing, culture, decision making, and trust may come forward from such implicit values to show a shift in governance.

A relational perspective to the multi-case comparative analysis is applied to draw practice-oriented lessons extracted from the Department of Defence's performance audits of three major procurement programs over the period 2000-2010 to answer the key research question:

- How was accountability balanced against decision control in acquisition and procurement programs?

The corresponding questions include:

contribute to the good corporate governance and corporate social responsibility: namely, legal and moral accountability. The rationale is that in the case of legal accountability, all organisations and individuals have to comply with the law, and will be held accountable if they fail to do so. Moral accountability, however, enters the realm of discretion, conscience and varying perspectives; that is, an organisation may focus upon matters and activities that do not or may not be the same as those matters defined by legislation or charter.

- Were other APS Governance Principles affected?
- What were the impacts on the agency, its stakeholders and the APS by the dissonance?

Structure of the Thesis

The structure of the thesis is aligned to the format and guidelines of the University of Technology, Sydney. The academic rationale for pursuing answers to the questions is discussed in the subsequent chapters.

Chapter 2

Literature Review

Background

Wilson (1989) in his study on bureaucracies, claimed that

All complex organizations display bureaucratic problems of confusion, red tape, and the avoidance of responsibility. Those problems are much greater in government bureaucracies because government itself is the institutionalization of confusion (arising out of the need to moderate competing demands); of red tape (arising out of the need to satisfy demands that cannot be moderated); and of avoided responsibility (arising out of the desire to retain power by minimising criticism). (p.375)

It is therefore not surprising that difficulties arise in the managing of costly and complex acquisition and procurement programs and projects in the Australian Defence Force (ADF) that have over the past three decades been widely publicised in Australian Government Hansard Reports and the Australian media. In response to these difficulties, a number of Australian Government and Defence studies and independent reports⁹ have recommended that the Department, particularly the Defence Materiel Organisation (DMO) should demonstrate its adherence and compliance to the principles of corporate governance particularly related to accountability in its management practices and control of the acquisition and procurement processes.

Introduction

Wilson (1989) postulates that there are two ways to look at government agencies: from the top down and from the bottom up. Wilson also observed that the academic perspective (much influenced by Weber in particular) typically concentrates on the structure, purposes, and resources of the organisation. He also claims that the administrative world however is viewed more generally as a political world and not a scientific laboratory, and that public sector management is not an arena in which to find theoretical answers. His view is that

⁹ Independent reports are shown in the Bibliography and include Australian Strategic Policy Institute (2002, 2003, 2004, and 2011), Kincaid (2008), Mortimer (2008), Black (2012), Bushell, E. (2011).

It is a world of settled institutions designed to allow imperfect people to use flawed procedures to cope with insoluble problems. (p.375)

Wilson's views would suggest that researchers interested in organisation management practice, behaviour and performance would therefore need to come to terms with that fact, and where reasonable terms of understanding can be matched, it is possible to learn more from what works and what does not work, and why and how functions are performed and achieved than the espoused theories and untutored experience can reveal in relation to management practice, behaviour and performance.

This study adopts Wilson's approach¹⁰ to scrutinise one aspect of management practice and focuses on the performance reports of the ANAO of Defence. Hansard transcripts, independent reviews and the media commentaries are used to confirm events and interpretations of decisions. It is anticipated that the results of this specific study will contribute to the academic understanding of public sector governance and management practices where academic knowledge over the years has been drawn from research on the theoretical aspects of bureaucratic organizations from authors such as Weber, Simon, Galbraith, Drucker and Barnard¹¹.

In so doing this study employs content and multi-case comparative analysis of selected cases identified in the context of the Department of Defence's acquisition and procurement activities. The public documents are used to draw relational perspectives from the practice-oriented evidence reported by the ANAO to the Australian Parliament on the Department of Defence selected major defence acquisition and procurement programs over the period 2000-2010.

The key research question to be answered in this context is:

- How was accountability balanced against decision control in acquisition and procurement programs?

¹⁰ Wilson's approach emphasises the need for collaboration, collective ownership of projects and the conduct of rigorous reviews of performance.

¹¹ A sample of the work examined related to this thesis is shown in the Bibliography.

The corresponding questions include:

- Were other APS Governance Principles affected?
- What were the impacts on the agency, its stakeholders and the APS by the dissonance in accountability?

Rationale for the Study

The results of the literature review strongly suggests that researchers on bureaucracies, public sector management and administrative behaviour have over the past decades examined government agencies from either the top down¹² or from the bottom up¹³. The academic perspective, much influenced by Weber centred on the structure, purposes, and resources of the organization, and the political perspective drew attention to the identity, beliefs, and decision of top officials of the agencies.

While significant for the knowledge gathering and accumulation process, the emphasis given by these two perspectives has caused researchers in general to overlook the need to study the ‘what and how’ of government agencies, that is, the day-to-day doing and how the doing of it is related to the achievement of goals such as program outcomes representing contextual goals and the satisfaction of stakeholders. Studying an agency from the bottom up, however, enables the assessment of the extent of the performance of the management systems and administrative arrangements and their suitability to the tasks that agency actually perform to assist in understanding behaviour that otherwise seems inconsistent or non-compliant against accepted public and private sector governance practices.

Finding answers to the questions in a specific theme therefore, does present challenges because issues of corporate governance in the wider context have attracted an enormous amount of attention and debate particularly over the past two decades. This means that less attention is given to the narrower context, particularly when there is a gap in the literature related to the Australian public sector particularly the Department of Defence where for interests of national security has been purposely constrained and sparse.

¹² Reflected in the work by Barnard (1938), Drucker (1980), Simon (1981), Mintzberg (1990), Weber & Khademian (2008) in the context of this thesis.

¹³ See previous footnote. .

Nevertheless, at the more general level, the compulsion to address issues of corporate governance has been attributed to the number of high-profile public and private sector corporate debacles across the world, for example:

- the Global Financial Crisis, the collapse of Enron, WorldCom, Tyco, Lehmann Brothers, Washington Mutual and many other high profile public and private sector organisations such as ‘Fanny Mae and Freddie Mac’ in the US;
- Parmalat and Kirch, Ahold and a reciprocal number of large financial institutions in Europe; and
- in Australia by the collapse of HIH, the Australian Wheat Board (AWB), James Hardie, OneTel, Centro Properties Group and more recently Securency and Note Printing Australia (NPA) in the private sector.

In the case of this study, the driving force to address issues of accountability stems from the authoritative reports and statements by the Commonwealth’s appointed independent auditor together with streams of political and public comment of maladministration, financial blunders, uncontrolled spending resulting in waste and disingenuous behaviour by senior managers in Defence acquisition and procurement programs.

Against this backcloth, Clarke’s publication *International Corporate Governance: A Comparative Approach* (2007) revealed some common elements in management behaviour that helped explain the nexus between management behaviour at the global environment and management behaviour in the specific environment.

In his investigations for the failure of Enron, WorldCom, Tyco, Parmalat and other major international corporations, Clarke (2007) provided descriptive and sometimes prescriptive explorations into the continuing cultural diversity in corporate and institutional forms in the United States and UK, Europe and Asia Pacific. His study identified characteristics and instances that were not conducive to good governance and senior management behaviour that were not unlike the characteristics identified in the evidence collected from the ANAO

reports at Defence. In fact, his findings established the theoretical base-line that assisted in answering the research questions in this study.

These underpinnings from Clarke (2007) study, acting not only as triggers to pursue the study into the specifics of accountability, were impacted upon by the growing public evidence in Australia attributing ‘blunders and breaches’ to highly questionable executive management behaviour and the breakdown of the systems of internal controls and corporate governance that led to operational risk (among other management practices) being compromised. These public manifestations in turn contributed to capital erosion of agency fiscal policy, collapse in accountability, transparency and integrity and the loss of public confidence in institutional stewardship by Government and the community.¹⁴

It would be fair to say, therefore, that in as much as the events examined in this thesis contributed to the need to scrutinise the factors for the breaches against corporate governance as a whole, the more prevailing driver has been the need to not only contribute to the sparse theoretical knowledge but also influence behaviour in the APS, Defence and industry.

For these reasons, the literature review is selective and structured according to:

- the analysis of selected theoretical and practice based literature that addresses the theory, relationship and status of corporate governance and new public sector management including corporate social responsibility;
- the scrutiny and discussion of the specific government and agency related documents that describe the salient features of the machinery of government, the legislation and regulations that support and expected to enforce the APS Governance Principles; and

¹⁴ The Weekend Australian, (2006), “Problems at Defence”, 26-27 May 2006, The Weekend Australian, (2011), “ADF Procurement Problems”, 19-20 February 201, and the Canberra Times (2012). These articles are a sample that focused on the underperformance of Defence. Similar media coverage provided daily on the collapse of HIH, the Australian Wheat Board (AWB), James Hardie, OneTel, Centro Properties Group and legal proceedings of the senior executives in the respective organisations.

- the analysis and scrutiny of ANAO Major Project Reports that identify non-compliance and non-conformance against the themes of accountability by Defence during the period 2000 to 2010.

The advantage for focusing the literature review on theory, corporate principles and practices and key APS and Defence documents in a stepwise manner is to establish a deeper and clearer understanding of the prevailing theoretical and corporate status on governance matters particularly the policy expressions enforcing legislation, regulations, orders and directives.

Additionally, because the APS environment differs from the private sector in its business objectives, sources of funding, lines of responsibility and stakeholder accountability,, the literature review should provide learned colleagues with deeper insights into the machinery of the Australian Government, and standards such as Best Practices in the operating environment that underpins the capture and use of evidence by ANAO and reported to Government.

The Theoretical Influence

While corporate governance has attracted considerable interest in practitioner’s literature over the past two decades, and much has been claimed that corporate governance is a recent management manifestation and ‘buzz word’, the literature on the history of governance reviewed at the Cass Business School web-site¹⁵ in London indicates that the concept of corporate governance evolved around 3,500 years ago from the ancient Greek word *kubernetes*: the person giving steerage and direction to a ship. From that time, the word itself moved through human history, evolving through the Latin *gubernare* and the Old French *gouvernance* and flowing into Middle English in writings by authors such as Geoffrey Chaucer in his *Canterbury Tales*, and the philosopher Michel Foucault¹⁶ in his themes on governmentality particularly related to management practices in program and project control and surveillance in organisations.

¹⁵ www.cass.city.ac.uk/

¹⁶ Foucault introduced the term governmentality in a series of lectures he gave at the College de France on the *Birth of Biopolitics* during the period 1978 to 1979. The term governmentality has since been refined by many theorists including those in new public sector administration and management and program management.

The notion of single all-powerful direction-givers, whether regal or military, fitted well into medieval hierarchical society and created a long-lasting mindset that corporate organisations willingly adopted as they saw the benefits to be gained by having a person or a small group to be competent at seeing the way ahead and directing spare resources effectively and efficiently to achieve a distant goal. The view of corporate governance held today therefore derives from these series of events and has been endorsed by governments and industry and stood the test of time.

Within the context of this study, the global response to the earlier dot com company crashes followed by the more recent global financial crisis by the Organisation for Economic Co-operation and Development (OECD) and governments was to scramble to introduce legislation designed to impose minimum standards of internal controls and corporate governance that were above any existing financial reporting requirements. The most well-known was the Sarbanes-Oxley Act of 2002¹⁷ in the US in which Section 404 specifically requires the auditor of a public company to identify any material internal-control weakness when it attests management's ability to produce reliable and compliant financial reports.

The internal controls environment was also influenced by the Commonwealth's Corporate Law Economic Reform Programme (CLERP 9) introduced in 2002 in which the relationship between an auditor, its client, and the non-audit services that an auditor may provide a client was formally defined.

The significance of these initiatives from the organisational and institutional theory perspectives is that it reinforced the need for appropriately established corporate governance in an organisation as one of the most important strategic key pillars to sustain and advance the enterprise. Scott (2008) in his book *Institutions and Organisations: Issues and Interests* consolidated the current modernist approaches in institutional theory, quoting Scott, Mendel and Pollack (forthcoming) that

Governance systems are those 'arrangements which support the regularised control – whether by regimes created by mutual agreement, by legitimate hierarchical authority

¹⁷ This Act was only one of the drivers that demanded greater accountability and transparency in organizations that operate in regulatory environments. The other two drivers were the Combined Code of Corporate Governance 2006 (UK), and Basel II Accord 2004 (Bank of International Settlements, Switzerland).

or by non-legitimate coercive means – of the actions of one set of actors by another.
(pp.185:186)

In a later discourse on institutional processes, Moe (1990a) put forward the view that organisations as entities are self-regulating and primarily the governance systems. In his paper he argued strongly about the regulatory elements inherent in these organisations and pointed out that government structures differ from those in the private sector in that, unlike the world of voluntary exchange people can be forced to give up resources involuntarily by whoever controls public authority¹⁸ (p.221)

Also cited by Scott in his book was Williamson's (1975) arguments that organisational managers attempt to devise governance structures that will economise on transaction costs, This view strongly suggests that senior management could, if so desired, align structure with organisational strategies to meet an agency's interpretation of "whole of government" corporate governance.

Scott, Moe and Williamson's views are reflected in four studies on institutional field structuration/destructuration (Scott 2008 pp.200-208) in which senior managers align their organisation structure for appropriate and inappropriate reasons that impact on the corporate culture which many organisational researchers consider is still a vague concept.

Nevertheless, though now much in vogue, the study of the impact of culture on corporate health, performance and behaviour is over a half century old. The literature review shows that every organisation has a culture, that is, a persistent, patterned way of thinking about the central tasks of and human relationships within an organisation. Wilson (1989) observed that culture is to an organisation what personality is to an individual person and that like human culture, it is passed on from one generation to the next, with changes being slow if at all.

The same review also shows that as early as 1938, Barnard wrote about the "moral element" in organisations and the "moral factor" to leadership.(pp.167, 201) His views were interpreted by Wilson (op. cit.) that corporations and managers did not merely have to obey

¹⁸ This view implies that the legitimate use of coercive power distinguishes public from private authorities.

the law of the land or follow the corporation rules, but “the process of inculcating points of view, fundamental attitudes, loyalties, to the organisation... that will result in subordinating individual interests ... to the good of the cooperative whole.”

Two decades later Selznick (1957) likened the creation of “organisational character” to character formation in an individual with his view that “a viable organisation is not merely a technical system of cooperation (any more than an individual is merely a mechanism processing food and sensations); it is an institution that has been infused with value so that it displays a distinctive competence (or a distinctive incompetence ... an organisation acquires a distinctive competence or sense of mission when it has only answered the question ‘what shall we do?’ but also the question of ‘what shall we be?’¹⁹

In pursuing this theme, Professor Naomi Stanford in her book on *Organisation Culture: Getting it right (2008)* added to the views of Scott, Moe and Williamson by stating that

From a technical perspective corporate governance is a field hedged with legislation, regulation, and compliance requirements which require specialist expertise to cut through and explain adequately. I don’t have that knowledge. However, I do think that good governance is an outcome of a ‘healthy’ corporate culture. If organizations have a clear purpose, values that they adhere to, - and all the other attributes I mention in the book then, more than likely, their governance structure will align. In fact, it’s somewhat ‘chicken and egg’ – a good corporate culture results in good governance structures, but good governance structures are the result of a healthy corporate culture. (p.48)

Organizational culture therefore plays an important part in determining the approach to its corporate governance and has a significant impact on the manner in which the senior managers behave and perform irrespective of higher level direction. Of further interest is the view put forward by Hatch and Cunliffe in their discussions on the core concepts and theories of organization particularly related to organizational culture and organizational power, control and conflict in their publication *Organization Theory: Modern, Symbolic, and Postmodern perspectives (2006)* concluded that

¹⁹ Selznick. (1957), *Leadership in Administration*, Evanston, Ill.: Row. Peterson, Chap.2 (pp.38. 42-45, 62)

Both designed and the undersigned features (of organizations), and intended and unintended meanings of an organization's physical structure offer useful clues to the culture of an organization and can help you to visualize organizational identity (e.g. status symbols, group boundaries, and corporate image) as well as provide insight into many features of organizational social structure (e.g. the relative placement of people and status symbols provides insight into hierarchy and the distribution of power) and technology (e.g. the layout of equipment and machines provide insight into work flows). (p.246)

From the views of the authors discussed above it would be difficult to argue against the importance of culture and the collateral affects it could have in any organization. Organizations like Defence that are impacted by four different cultures: navy, army, air force and the public service and with different sense of mission and sets of tasks are according to Wilson (1989) more severely impacted as reflected in his observations that

First, tasks that are not part of the culture will not be attended to with the same energy and resources as are devoted to tasks that are part of it (the culture). Second, organizations in which two or more cultures struggle for supremacy will experience serious conflict as defenders of one seek to dominate representatives of the others. Third, organizations will resist taking on new tasks that seem incompatible with its dominant culture. The stronger and more uniform the culture – that is, the more the culture approximates a sense of mission – the more obvious these consequences. (p.101)

Wilson's observations not only confirm the findings of studies on the effects of multiple cultures in organizations but also add weight to the conclusions drawn in this study that multiple cultures have can create management malpractices and disharmony to cause dissonance against operating governance amongst the actors in the Defence environment.

Other theoretical views particularly on the impacts of corporate governance are also thought provoking particularly those by Vaughn (1996) who explored the dark side of organizations and how senior management involved in the American National Aeronautical Space Administration (NASA) program directly manipulated culture values that caused mistakes,

misconduct, and disaster. Vaughn's views were not dissimilar to those of ex-Senator Andrew Murray²⁰ who in his public lecture at Parliament House in Canberra on 10 June 2011 explored the cause of fiscal transparency, efficiency and integrity in Government and the Parliament. In his address he quoted Professor Wanna from the Australian National University who in discussing the integrity of senior officers in the APS in 2007 stated that

The executive (of the APS) likes to keep the legislature guessing, at arm's length and one or two steps behind. There are problems with the alignment of data and activities, figures and results; it is hard to identify or distinguish old money from new money, offsets from new programs, and how changed preferences for reporting activities vary from previous years. (p.2)

On the matter of accountability, transparency, stewardship and leadership Murray concluded that

The combination of partisan politics, executive judgment and discretion, authority, power, and money, has always posed dangers. If you want high standards, accountability and good governance, you cannot rely on particular individuals in a particular role at a particular time – you have to institutionalize and legislate those standards, so they are there whoever is in charge. (p.2)

Drucker (1980) proposed similar ideas and also warned the public sector against inertia and the lack of ability to learn, to adapt and to change. This view is mirrored by Mintzberg (1990) reckoning with the “design school” approach to corporate governance and strategic management in both public and private sector that

Strategy formation must above all emphasize learning, notably in circumstances of considerable uncertainty and predictability, or ones of complexity in which much power over strategy making has to be granted to a variety of actors deep inside the organization. We also reject the model where it tends to be applied with superficial understanding of the (governance) issues in question. (p.88)

²⁰ Murray, A 2011, *Budgets and Finance: Sunlight and the Dark Arts*, Australian Senate Occasional Lecture Series Parliament House Canberra

In accepting this approach, it could be assumed that governance and strategic management should not differ between public and private sector organizations, but rather emphasizes the utility of the approach in professional bureaucracies: on organizational form, which at least used to be quite characteristic for most agencies in the APS.

Miller (2010) claims that Coase (1937) in his book on the *Nature of the Firm*, contributed to the management theories by arguing that sound corporate governance was an essential component to ensure a successful organisation. Coase's work was taken by the United States corporate environment and expanded in subsequent research by recognised university business schools such as Stanford, Harvard, Cornell and Columbia that related to the antitrust practices and policies that prevailed during the middle of the 20th century.

Coase's approach was considered to be seminal work in the establishment of a number of theoretical aspects related to corporate governance and more widely recognised as the springboard for further development of complementary theories such as transaction cost economics (TCE) by Williamson (1975, 1985) and agency theory by Jensen and Meckling (1976) and Jensen (2000).

These fundamental theories stimulated streams of research as they added the structural perspective and addressed the link and information imbalance between the owner and the manager of a governed organisation as well as the governed organisation and its context with Miller (2010) claiming that

... subsequently, organisational theorists, such as Ouchi and others developed theories on the link between structure, governance and the related control mechanism in organisations, thereby providing a perspective internal to the governed organisation.
(p.2)

This theoretical position was augmented by Williamson (1999a) who posited that these perspectives constituted the most popular theoretical based of governance through the rationalism of the economic perspective of TCE, complemented by opportunism and human's subjectivity described through agency theory. These perspectives complemented each other in a way that makes them the most relevant governance perspectives for the study of not only

corporate governance but its subset project governance by balancing the level of governance rationality through objective (outcome/output) and subjective (behaviour) controls to ensure organisational control.

On closer examination, it was shown that the collectiveness of these theories provided the theoretical substantiation for this study with agency theory (as extrapolated by Ouchi) (1978) showing greater relevance and applicability. TCE theory sees the transaction as the unit of analysis of choice for research and leans more toward economic systems with contracts as the governance structure of a relationship (Williamson 1985, 1999a). These characteristics in particular were opposed by Williamson in his 1985 paper with his conclusion that TCE theory possessed flaws attributed to its crudeness in the form of primitive models, underdeveloped trade-offs, severe measurement problems and too many degrees of freedom.

Agency theory, on the other hand, uses the program/project of an organisation as the unit of analysis for research and focuses on the potential for conflict of interest that arises between the manager and owner of a firm, stemming from the fact that only owner-managed firms are effectively managed economically implying that non-owned firms such as public sector agencies are not effectively managed. Of more relevance to this study was the body of work by Ouchi (1978) who focused on the understanding of control in organisations. In his study that started in 1977 on the conditions that govern the use of output control or behaviour control by managers, he concluded that while output control steadily increases when going up the corporate hierarchy, behaviour control decreases. Ouchi (op. cit.) stated that

The transmission of control is a central problem in the study of hierarchical organisations because the problems of miscommunication and distortion are so rich.
(p.173)

Ouchi (op. cit.) clarified this position with relevance to this study by suggesting that output control is applied by managers in large organisations with specialised departments where legitimate evidence of performance is asked for, and where behaviour control is preferred by managers when the means-ends relationship between tasks are well understood.

In addressing the question of whether behaviour and output control pervades the organisation in similar ways to the 1977 study, Ouchi's paper in 1978 found that behaviour control diminishes through the hierarchy, while output control stays and that

... high performers are distinguished by the fact that the use of behaviour control is influenced by task interdependence, which can be reasonably assumed to affect the need for control, and it is influenced by the expertise of the manager, with more knowledgeable managers applying more behaviour control, while less knowledgeable managers apparently leave well enough alone and apply little behaviour control. In low performing departments, however, those considerations are unimportant, and the use of behaviour control is tied to the manager's free time and his freedom from control from above. In such lower performers, the manager with more time on his hands and greater autonomy will apply more behaviour control, a condition which suggests the creation of feudal despots within the organisation. (p.189)

Also of relevance to this study was the work by Ouchi and Price (1978) that reinforced views on clans and their role in the control of organisations, based on Ouchi's 1977 position also stated

... supervisors can rationally achieve control by watching and guiding the behaviour of their subordinates ... (1977 p.97)

In 1978, Ouchi and Price redefined a clan as

... a culturally homogeneous organisation, with a shared set of values or objectives, together with beliefs about how to coordinate the organisation's effort in order to reach common objectives albeit for good or bad by socialising the organisation's members to the extent that the individual's and organisation's goals merge, so that selfish behaviour increasingly supports organisational goals. (p.36)

In the same publication, they also concluded that output and behaviour measures of control were incomplete and had to be complemented by psychological ways of control such as harassment and intimidation. This view is also supported by Peter W. G. Morris, Jeffrey K.

Pinto, Jonas Söderlund in their publication *The Oxford Handbook of Project Management* (2011 p.304).

The relevance of these findings was further strengthened in studies by Eisenhardt (1989), Jensen and Meckling (1976) and Jensen (2000) who subscribed to Ouchi's position by suggesting that ownership from management of the firm (as in the case of shareholder owned companies) will cause inefficiencies because managers (as agents) will not act in the interests of others (their principals or owners) to the exclusion of their own preferences as could be in the case of public sector organisations.

Miller (2010) claims that Barney and Hesterly (1996), Jensen (2000), and Moe and Williamson (1993) added to this debate by claiming that relationships between principal and agent can be problematic and divergent to result in the questions related to whether the principal has chosen the right agent to manage its affairs and the moral hazard problem, i.e. will the agent act in the best interest of the owner or the manager's self-interest, opportunistic behaviour, or bounded rationality?

Miller (op. cit.) also provided a number of succinct and prescriptive views on governance theory that identified the boundaries and issues of specific governance models albeit project related. In so doing, he made clear that in the context of organisational control; corporate governance sets the boundaries for project governance which is a subset of the organisation's governance with delimited boundaries and dependent-related issues that could stem from the organisation's management style and culture albeit good or bad.

Miller's conclusion is significant as it captures a major stem of the rationale of this study because it suggests a pathway in which flawed corporate governance practices and aberrant behaviour at the senior management level can contribute to flawed management practices and aberrant behaviour at the project level. Seo and Creed in their study on institutional theory titled *Institutional Contradictions, Praxis and Institutional Change: A Dialectical Perspective*, provided important insights into the processes of the rationale for management behaviour that caused institutional dysfunction, instability, non-conformance and non-compliance to rules, norms and routines (see 2002 pp.222-247).

Many other researchers also attempt to address the dilemmas that arise from institutional behaviour by tempering the theoretical dilemmas with notions of institutional determinism, discretionary behaviour and strategic compliance rooted in management self-interests and intentional misalignment. For example, Oliver (1991) suggests that organisations are not always passive but, instead respond to institutional pressures according to their existing culture (albeit acceptable or not acceptable to existing corporate norms) as well as resource dependencies.

Edelman (1992) states that organisations create departments and professional roles responsible for constructing the meaning of compliance with ambiguous institutional prescriptions, such as value statements, codes of conduct, equal opportunity and performance appraisal procedures, in ways that accommodate the managerial interests. This is important from a dialectical perspective as the seed of institutional change grows out of the core sources of institutional contradictions to cause fundamental misalignment between existing social arrangements and the interest and needs of participants who constitute and inhabit those very arrangements (Seo and Creed 2002). This form of behaviour sets the stage for the emergence of potential challengers from the population of participants whose interests and ideas are not adequately served by the existing order.

Greenwood and Hinings (1996) also take this view and suggest that one potential pressure for institutional change is the extent to which groups are dissatisfied with how their interests are accommodated with an organisation to such an extent that these actors will generate misalignment and dysfunctional behaviour. Lelebici and his colleagues (1991) also argued that institutional change is likely to be initiated by less powerful participants or parties from the periphery of an inter organisational field, because they pay a lower cost for changing the existing order and they are also less likely to be sanctioned by more central, powerful players.

Empirical examples show in studies by Brint and Karabel (1991), Davis and Thompson (1994) and Holm (1995) attest to both the idea that misaligned interests provide a fundamental impetus for institutional change and that alternative practices and structures are likely to emerge from the margins or interstices.

Another example that also presents relevance to the proposed work is the study of corporate ethics programs in the defence industry by Scully and Meyerson (1996) who found that

various interests influenced both the content and the mechanisms of legitimation, in a process marked by ambiguity, before more or less isomorphic practices emerged. A number of cases studies in organisational theory add weight to Scully and Meyerson's work by suggesting that power and self-interests play important roles in the evolution and/or change of organisational fields (DiMaggio, 1991, Leblebici, Salancik, Copay and King 1991).

Meyer and Rowan added to the body of work and postulated a different direction in their paper on *Institutionalized Organizations: Formal Structure as Myth and Ceremony* (1977) that

... Institutionalised products, services, techniques, policies, and programs function as powerful myths, and many organisations adopt them ceremonially. But conformity to institutionalised rules often conflicts sharply with efficiency criteria and, conversely, to coordinate and control activity in order to promote efficiency undermines an organisation's ceremonial conformity, organisations that reflect institutionalised rules tend to buffer their formal structures from the uncertainties of technical activities by becoming loosely coupled, building gaps between their formal structures and actual work activities... (pp.340-341)

These views underpin one of the main considerations for the proposed study that Defence's aberrant behaviour relating to conformance to APS Governance is that formal structures and formal rules in post-industrial society reflect the myths of their institutional environments instead of the demands of their work activities and the community in which the organisations operate. In this same vein, and as a matter of contest, organisations would seek to avoid constraint in order to maintain (as they see it) an efficient approach to business rules and practices. This view is clearly put by Heath and Palenchar (2009) observed that

... Some business and government agencies continue to prefer to be indifferent to the interests and preferences of others. They often believe that steady as she goes is the best motto and that well-turned phrases and deep pockets of political influence are sufficient to protect their planning and management from external influences... (p. x)

The arguments by Heath and Palenchar (2009), Lemke, (2001), Coase (1937) and Bushell (2011)²¹ could subscribe to a view that as an organisation, Defence's extant position toward compliance with the APS Governance Principles over the years may not be considered accepted business practice and Australia's new public sector management that shape 'conduct of conduct in APS organisations' inculcating ethical behaviour and corporate social responsibilities which pivot on the Sarbanes-Oxley Act (2002) and the Organisation for Economic Co-operation and Development (OECD, 2004) that

Corporate governance involves a set of relationships between company's management, its board, its shareholders and other shareholders (per se stakeholders). Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. (p.1)

In his paper, Lemke (op. cit.) based his views on the Foucauldian governmentality model to the management of programs/projects as a mode of organization theory. He related Foucault's definitions to the design of program/project governance specifically related to the management practices of surveillance and control: characteristics that are typically associated with governance of programs/projects as an activity irrespective of the mode of governance in any particular sector or organisation.

Foucault's concept of "*governmentality*" developed a new understanding of power. His perspective of power was not only in terms of hierarchical, top-down power of the state but included forms of social control in disciplinary institutions (schools, hospitals, psychiatric institutions, etc.), as well as the forms of knowledge. While it is generally acknowledged that power can manifest itself positively by producing knowledge, Foucault observed that 'certain discourses (that) get internalized by individuals and guide the behaviour of populations'. An interesting application in the use of governmentality was by Clegg et al. (2002) in the practice of project management.

²¹ Bushell claimed that "Within both bureaucracies (Defence and DMO) there are far too many levels and areas of executive involvement that overlap, fulfil no real function, and cannot be held accountable for either their action or their inaction. The result has been a proliferation of interfaces requiring an even greater proliferation of processes that need to be integrated, and come together completely and effectively in time and space, generally in the face of changing circumstances, for any function to have any chance of being managed seamlessly. A similar diffusion of functional interfaces, each with its need for seamlessly integrating processes, exists throughout the Services" (2011 p.2)

Notwithstanding the above, underlying the OECD definition of governance above and the one used in the Sarbanes-Oxley Act 2002 (to be discussed later) is that the integration of corporate self-regulation is mandatory in the organisation's business model albeit public or private sector. Prior to this period of time, Wood in his paper on *Corporate Social Performance Revisited* (1991) had built on Freeman's influential work *Strategic management: A Stakeholder Approach* (1984) which brought together a common view that had sprung back to life in the corporate world during the 1960s and 1970s that corporations should have a corporate conscience that behoves corporate citizenship, social performance and sustainable responsible business practices to the community in which they operate.

Corporate social responsibility (CSR) became the catch phrase for organisations to embed policy functions as built-in, self-regulating mechanisms that served to ensure active compliance with the spirit of the law, ethical standards, and international norms. The fundamental theory was that organisations embraced CSR as the their business manifesto to demonstrate responsibility for the company's actions and to encourage a positive impact through its activities on the environment, consumers, employees, communities, stakeholders and all other members of the wider community in which it operates.

Of particular importance to this study, is that subsequent (new) public sector management initiatives in Australia that began in the mid-1990s adopted the theoretical position with the APS embedding CSR policy as mandatory elements in its strategic reform programs in the belief that CSR-focused businesses would proactively promote the public interest by encouraging community participation in decision making and eliminating business practices that could be seen as unethical and harmful to the public sphere, regardless of legality.

Contrary positions to the CSR debate have been championed by the advocates of the free market system and especially by Friedman (1970) argued that although corporations should obey the laws of the countries within which they operate, a corporations purpose is to maximise returns to its shareholders and not to society as a whole. Friedman's supporters facilitated a range of arguments that ranged from CSR being merely window-dressing, or an attempt to pre-empt the role of governments as a watchdog over powerful multinational

corporations, and that corporations have no obligation to society except to obey the laws of the land.

Over the years, the proponents now outweigh the critics as reflected in influential works published by Freeman (1984), and more recent selected contributors expanding CSR into areas that included:

- corporate conscience, corporate citizenship, social performance and sustainable responsible business practice (Wood 1991);
- ethical consumerism and organisational behaviour (Grace and Cohen 2005);
- business strategy, competitive advantage, shared values and compliance (Porter and Kramer (2006); and
- new public sector management Kemp (1998), Pollitt and Bouckaert (2000), (Beresford (2000).

While the theories and management practices espoused by the authors interweave with one another, each one provides some degree of relevance and applicability to this study with the works of Kemp (1998), Pollitt and Bouckaert (2000) and Beresford (2000) showing predominant elements as related to Australia's new public sector management approach.

Beresford in his publication on *Governments, Markets and Globalisation*, (2000) posited that for much of the first half of the twentieth century, the Australian public sector drew upon the principles of public administration based on the bureaucratic model as the best method for providing public services. Under this model, which was based on Weberian administrative theory, the bureaucratic organisation was capable of attaining the highest degree of efficiency.

In a further elaboration on the principles of public administration in Australia of the time, Lane (1993) argued that as long as the public sector was small, there was more-or-less practical adherence to the Weberian theory which focused on administration, adherence to

rules, political consensus, self-interest and patterns of service provision prevailing in the decades following World War II. It certainly did not include corporate social responsibility, accountability and openness to public participation and scrutiny amongst any of its mainstay principles.

The challenges to the Weberian approach in Australia was eventually stimulated during the late 1980s by a growing interest in industry and government as a direct consequence of the debates and initiatives on competitiveness, corporate consciousness and the need for corporate governance that were taking place in the Organisation for Economic Co-operation and Development (OECD) countries and the United States. The arguments put forward by politicians and academics was the public organisations needed management, not administration – where public management was defined as the fulfilment of goals, outcomes and outputs rather than careful observation of procedures.

According to Lane (1993), Hood (1991) and Hughes (1998) there were calls for a focus on ends not means, the establishment of semi-autonomous public sector agencies where managers were given greater freedom to manage as a consequence of the clear emergence of “*new public management*” (NPM) that was being shaped by both private sector management techniques and ideas from public choice theory.

The attractiveness of NPM to the APS was the focus on results and performance, devolution of responsibilities, evaluation and accountability. Laffin and Painter (1995) advanced the views of the Australian Parliament that the attractiveness certainly represented a significant shift away from the traditional model of the government as a set of monolithic bureaucracies, largely professionally driven, towards a conception of government as a pattern of small politically tightly controlled, policy-focused “core” agencies supervising decentralised mission-centred organisations, inside and outside the public service.

While some of the principles of the NPM were adopted by the APS and led to significant public sector reform as described in the Commonwealth’s report *Ahead of the Game: Blueprint for the Reform of Australian Government Administration (2010)*, the publication indicated that many regarded it as a set of loosely connected ideas that did not reflect a coherent theory about organisations and managements of public sector agencies and were discarded by many other national governments.

From this publication, the characteristics of the traditional model and the NPM as adopted by the APS and which govern this study are reflected in Figure 1 below.

Characteristics	Traditional public bureaucracy	New Public Management (NPM)
Dominant values	Administration	Management
Management focus	Process and inputs	Results, outcomes and outputs
Role of government	Provider	Provider
Structure	Centralised and hierarchical	Decentralised
State fiscal policy	Broad	Focused

Figure 1: Comparison of the NPM against the Traditional Model

A decomposition of the NPM characteristics includes:

- a shift from input controls and rules to a reliance on quantifiable outcomes/output measures and performance targets;
- separation of policy making from service delivery;
- disaggregation of large bureaucratic structures from quasi-autonomous and specific purpose agencies;
- contractual relationship between decentralised service providers and central service purchasers;
- preference for private ownership, contracting out and contestability in public service provision;
- the pursuit of greater efficiency in the use of public funds by:
 - greater publication of performance information;

- targets for efficiency savings;
- the introduction of competition where possible;
- strengthened audit arrangements; and
- more commercial style of management practice, including:
 - human resource management policies;
 - strategic and business planning;
 - internal trading arrangements;
 - flatter organisational hierarchies;
 - greater customer orientation; and
 - revised corporate governance arrangements.

The significance of the focus of NPM particularly in the Australian public sector context on the elements of corporate governance, results and performance, devolution of responsibilities, evaluation and accountability would carry superficial meaning by themselves. The next stage of the literature review is to determine the relationship and influence of these theories on the APS and to examine the manner in which the Australian government works so as to appreciate the “rules” that exist to ensure agency conformance and compliance.

Before doing that however, it was necessary to determine whether the phenomenon being studied is unique to the Australian environment. As pointed out on separate occasions, the theoretical literature relating to Defence organizational activities that include management practices and culture is sparse: more so in the area of acquisition and procurement activities where political, practitioner and industry influences predominate in the form of government reports, independent commissioned reviews and articles in professional journals, and whose

value to this study has been confirmatory and supportive particularly related to Defence acquisition and procurement activities conducted by Australia's coalition partners, namely the UK and US.

From the material collected in this review, it was observed while the estimated quantum of public monies expended annually by both the UK and US in the acquisition and procurement of military programs were in excess of ten times the amount Australia spends, the breaches, non-compliance and non-conformance to legislation, regulations, directives and orders and the waste of public monies by Defence senior managers at MoD were akin to the situation experienced in Australia. In the UK situation it was reported by the Royal United Services Institute (RUSI) annual reports in 2011 and 2012 that

... this (MoD) poor performance are legion ... and this has led to a level of dysfunctional behavior that threatens to defeat any successful change. (p.18)

This view is strongly supported by the Levene Report (2011) which highlighted a number of critical management deficiencies in behavior, responsibility and accountability not unlike the series of reports in Australia, namely the Kinnaird (2003), Mortimer (2008) and Black (2011) Reviews.

Barton, an experienced MoD analysts summarized the situation at MoD in RUSI 2012 that

... If change is to really stick in the MoD, it has to be relentlessly and consistently driven from the top – nothing is more important. While it is right and proper to ensure that the MoD operating model, its culture and behaviours all change as part of Defence reform, the impact of the external environment needs to be addressed first and a more informed set of government demands drawn up as a result.

If culture is to change, the aforementioned perverse incentives (employed by MoD employees) that abound need to be stripped away and more degrees of freedom given, with more positive and negative consequences being articulated to encourage people to use them wisely.

After all this time, it is surely obvious that there is something systematically wrong with the way MoD operates. Maybe concentrating on the systemic issues would deliver better results – if those causing them to be sustained would wake up to the fact. Change starts with your own behavior (at MoD). (p.21)

Barton's views are aligned to those of Michael Codner²², a senior research fellow and director of Military Sciences at RUSI, who added that

... the MoD acquisition process fell foul of problems with legacy programmes and lack of cultural change in management... (p.23)

Pre dating this period by over ten years, similar views had been strongly presented to the UK government by the Hadden Cave Enquiry on MoD accountability in 2009, Gray in his report *A Review of Acquisition for the Secretary of State for Defence (2009)* and Lord Drayson in his report the Defence Industrial Strategy (2005) when discussing the poor performance by MoD who stated

Once again, the problem presented itself as one of reluctance to change management cultures in the MoD. (p.71)

More acrimonious views on MoD's ability to manage its continuing under performance and waste of public monies in acquisition and procurement programs are stated in Kincaid's publications *Dinosaur in Permafrost (2002)* and *Changing the Dinosaur's Spots (2008)*.

The situation that has continued to prevail on acquisition and procurement breaches and waste of public monies at the US Department of Defence has been no less different. This conclusion has been initially derived from the material identified in Gansler (former Under Secretary of Defense Acquisition) in his publication *Affording Defense (1989)* and Fox (former Assistant Secretary of US Army) *Arming America (1980)*. These two authors point out that the US Defense acquisition process has been 'broken for years' and cost billions of taxpayer dollars each year. These huge investments have been publicly criticized by the US

²² Cordner's view was quoted in the Levene Report (2011).

Congress, the media and the wider community as wasteful caused by the legion of US senior managers at the agency.

In the zeal to achieve improved management performance, the US Congress has added thousands of laws and procedures to the acquisition process, burdened the Pentagon with literally hundreds of thousands of requests for information, mandated layer upon layer of new bureaucracy, overseers, watchdogs, and safeguards to the extent that weapons programs must now run a gauntlet of paperwork so burdensome and devious as to add more to their cost that is ever saved by the safeguards and demotivating staff in the process. This situation sadly is not akin to the situation that currently exists at DMO in Australia.

The fact that these steps have been taken in addition to the continuing drive for reform are evidence that improvement by the US Defence Department continues to be elusive. This conclusion is argued persuasively and cited in Rendon and Snider *Management of Defense Acquisition Projects* (2008) by Howard Lasswell in his publication *Politics – Who gets what, when, how* (1958) and summed up accordingly

... It would be a mistake to see all of acquisition policy (US) as forming a rational, coherent, stable, or comprehensive architecture for decisions and actions. Rather, policy is guided largely by politics; therefore, public policy necessarily has a political component... (n.p.n)

Snider in his paper on *Defense Acquisition's Public Policy Imprint* (2008) expands on Lasswell's view by stating that

Politics necessarily involves conflict and uses of power, and those in power adopt policies to accomplish some political purpose. Because political purposes often shift and because people and parties move in and out of power, it is not surprising that acquisition policies are not more rationally aligned and structured. (p.18)

Relationships and Influence on the APS

The theoretical and practice based body of evidence so far collected on corporate behaviour in organisations and breaches against legislation, regulations, directives and orders by

Defence in the UK and US are not dissimilar to the situation in Australia. In the Australian context, these breaches as documented in the Senate Standing Committee on Foreign Affairs (SSCFA), Senate Standing Committee on Foreign Affairs, Defence and Trade (SSCFADT), the Joint Committee of Public Accounts (JCPA), the ANAO Reports and other publications and commentary, strongly suggests that the corporate reality would be more consistent with the view offered by Professors Nonaka and Takeuchi when discussing corporate governance matters in Takeuchi's paper on *The Knowledge-Creating Company* (1995) in the *Harvard Business Review* May 2011 pp.59:67) that

The gulf between the theory and practice of ethics exists in business for several reasons: There is a big difference between what top management preaches and what frontline people do. There's a philosophical tendency in the West, following Plato, to conclude that if a theory isn't working, there must be something wrong with reality. People behave less ethically when they are part of organizations or groups. Individuals who may do the right thing in normal situations behave differently under stress. And common rationalizations, such as that you are acting in the company's best interest, or justifications, such as that you will never be found out, lead to misconduct. (p.59)

Given the body of theoretical views harnessed so far on institutional structure and processes, it was useful to explore the views of Frederick and Keith Lipman who state in their book *Corporate Governance Best Practices: Strategies for Public, Private, and Not-for-Profit Organizations* (2006) that:

Good corporate governance helps to prevent corporate scandals, fraud, and potential civil and criminal liability of the organization. It is also good business. A good corporate governance image enhances the reputation of the organization and makes it more attractive to customers, investors, suppliers and, in the case of non-profit organizations, contributors. (p.3)

In refining my thinking on the cultural significance of corporate governance to Australian industry, over 100 public submissions submitted to the Australian Stock Exchange (ASX) were reviewed dating back to 2000. It became clear from the submissions from the

contributors that while there was some disagreement for the imposition of a centrally controlled corporate governance regime, almost 90 per cent of the submissions supported the need for practical corporate governance particularly related to risk assessment and internal control.

The significance and conclusion from these findings were clearly described by the Chair of the ASX Corporate Council in the Foreword to the publication *Corporate Governance Principles and Recommendations with 2010 Amendments, 2nd Edn.* That

A decade ago, the term ‘corporate governance’ was barely heard. Today, like climate change and private equity, corporate governance is a staple of everyday business language and capital markets are better for it.... Corporate governance is a dynamic force that keeps evolving... We are all – the Council, ASX and Australian market participants generally – in the business of preserving stakeholder confidence. That is the thread that runs through each of the Principles and Recommendations contained in this document. The wording may change, as necessary, from time to time, but that underlining theme will remain. (p.2)

Professor David Fishel added to the views above in his publication *The Book of the Board: Effective governance for non-profit organisations, 2nd Edition* (2008), has encapsulated the Principles and Best Practices prescribed in the ASX contribution. While the lead on the subject was provided by the ASX for the private sector, this publication stressed the importance of good corporate governance across the Australian industry sectors including the public sector as

The framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations. It encompasses the mechanisms by which companies, and those in control, are held to account. Corporate governance influences how the objectives of the company are set and achieved, how risk is monitored and assessed, and how performance is optimised. (p.10)

Fishel’s publication continues to be used extensively by the Australian Institute of Company Directors (AICD), other professional bodies such as the Australian Institute of Management (AIM), the Australian Institute of Engineers (AIE) and APS agency Heads because it provides invaluable assistance for those contemplating board appointments in not-for-profit –

and indeed for those already sitting on such boards. The definition also provides the main theme of this research focusing on determining factors that have compromised management accountability in the APS particularly at Defence.

Although the Sarbanes-Oxley Act highlighted to the international corporate world the need for good governance, it did contain a small number of impractical provisions in relation to control, process and implementation²³. Nevertheless, the intent and substance of the Act, Section 404 and CLERP9 were subsequently incorporated with amendments by the Commonwealth Government and the APS in 2003. The inclusion consolidated the role of the independent auditor, focused on specific organisational risks, mandated on cost-benefit analysis and re-established internal controls into the APS Governance Framework, Policies, Principles and Guidelines. (Commonwealth of Australia, 2003 and 2005)

These documents were subsequently issued under the imprimatur of the Australian Parliament to all Commonwealth agencies to ensure compliance and conformance. In doing this, the Australian Government implemented reforms in the governance, financial, public service and workplace relations fields with the aim of achieving a performance culture that would reflect the highest level of integrity and ethical behaviour responsive to the needs of Government and the Australian community.

The reforms built upon existing Commonwealth legislation and reforms that included:

- governance standards, principles, policies and practices²⁴;
- new financial management legislation;

²³ The provisions that needed improvement were Section 404 to establish internal controls and procedures for financial reporting, legally charging and the “clawback” provisions requiring CEOs and CFOs to return ill-gotten gains to their employer, the implementation of higher standards for financial experts on audit committees (which would eventually become Section 407 of the law), companies ensuring senior management to sign a code of ethical conduct (the eventual Section 406), acknowledging their financial reporting obligations and agency duty while overseeing the corporation’s assets, disclose corporate governance practices, and reduce the implementation cost.

²⁴ Appendix C describes the Defence Values and Appendix D describes the APS Code of Conduct.

- the implementation of an outcomes and outputs framework, that built on earlier work on program budgeting; and
- the introduction of a whole-of-government financial reporting on an accrual basis and with budgeting on an accrual basis across the general government sector.

These Governance initiatives not only provided the much needed “*single authoritative statements*” to establish an environment of accountability, transparency (openness), integrity, stewardship and leadership as prescribed in the *Foundations of Governance in the Australian Public Service* (2005) and *Public Sector Governance Better Practice Guide Framework, Processes and Practices* (2003), they were also underpinned by the financial management reforms enacted in the mid-1900s that founded on the principles of greater flexibility²⁵, devolution and empowerment with clearer accountability for results complimented by a robust performance monitoring and evaluation regime.

Taken together with other legislation such as the Public Service Act 1999 and foundation statements such as the APS Governance Framework, Principles, Practices and Guidelines and Regulations and mutually enforcing extant agency policies such as Chief Executive Instructions (CEIs), and procedures such as Codes of Conduct, Ethics, Probity and Fraud, these reforms modernised the APS through four pieces of specific legislation²⁶ designed to improve the quality and clarity of understanding of the ‘whole of government’ management framework that included:

- the Financial Management and Accountability Act 1997;
- the Commonwealth Authorities and Companies Act 1997;
- the Charter of Budget Honesty Act 1998; and

²⁵ In the context of the ADF, the term flexibility refers to the capacity to adapt plans to take unforeseen circumstances into account to ensure success in the face of friction, unexpected resistance or setbacks, or to capitalize on unexpected opportunities. (ADDP-D 2012 p.6A-4)

²⁶ The details of these Acts, directives and orders are reviewed under the section on the Machinery of Government.

- the Auditor-General Act 1997.

The Australian National Audit Office and the Australian Department of the Prime Minister and Cabinet (2006) defined the APS corporate governance as

A set of responsibilities and practices, policies and procedures, exercised by an agency's executive, to provide strategic direction, ensure objectives are achieved, manage risks and use resources responsibly and with accountability. (p.13)

Although good governance principles were reemphasized by government and articulated by the ANAO (2003), there has been a continuing demand by the Australian community on agencies to provide relevant and reliable information on their governance arrangements and related outcomes.

Ian McPhee in his role as Auditor-General of Australia pointedly emphasized community concerns in his public address in 2011 that

To include in their annual reports a self-assessment of the effectiveness and any 'lessons learned' in this context during the year, as a complement to existing requirements relating to structures and processes. (p.18)

Ryan and Ng (2000) and Stewart et al. (2013) suggest that empirical evidence on the access, clarity, and transparency of governance arrangements of public sector agencies (in Australia) is scant. Furthermore, in their research on governance disclosures, Stewart et al (2013) found considerable variability in the level of disclosure and accessibility of the information, the need for greater transparency and stakeholder accessibility with respect to governance disclosures, and improvements to achieve a more structured and comprehensive approach to an understanding of what governance is and what it comprises in state departments across Australia.

The Australian Public Service Commission in 2007 restated Barrett's (2001) view that

Further, sound governance in the public sector involves finding an appropriate balance between performance (in terms of delivering services and programs) and conformance with legal and procedural requirements. (p.16)

These views provided the Government of the day and subsequent Governments to implement ongoing reforms as the mechanism to sharpen accountability in APS agencies through value for money outcomes and outputs based budgeting and reporting, and to emphasise performance and propriety to provide a better understanding of the true cost of government.

Nevertheless, as a personal reflection and a participant observer of Defence business and attendee at the Australian Parliamentary Senate Hearings in public sector expenditure and governance activities,, relatively little attention has ever been focused on developing organizational capacity for adaptation to changing environments, and almost no attention has been given to the rationale and measurement of an inter organizational system's capacity to function or not function under severe stress and strain in Australia. While this anomaly is seen by many a major shortcoming, the Australian government is still of the view that the APS machinery and supporting structure, legislation, regulations, directives and orders are adequate to enforce compliance and conformance.

The Machinery of Government

The APS Commission's publications *Foundations of Governance in the Australian Public Service* (2005) and the Department of Finance and Administration *Guidelines on the Implementation of Administrative Arrangements Orders and other Machinery of Government Changes* (Finance Circular 2003/94 and Financial Management Guidance No. 5 (2003) are two key documents that define and describes the financial management requirements and highlighting mandatory work practices. The two documents establish inter alia, the baseline procedures, control measures, and legislative instruments by which agencies are compelled to adhere to and be measured against involving processes of comparative analysis of conformance, compliance and assessment of performance against Best Practice standards.

Reforms of the 1980s and 1990s

The APS budgeting and reporting requirements and systems have undergone significant changes over the past two decades. Prior to the 1980s, funds were appropriated primarily through annual Appropriation Acts with detailed specification of individual items of expenditure. In 1983 a Government White Paper, titled *Reforming the Australian Public*

Service, noted the need for a complete overhaul of public sector practice that fundamentally meant a shift in management emphasis from ‘compliance’ to a greater degree of performance control.

Amongst the many changes that followed, the key ones included:

- the publication of the forward estimates, approved and endorsed by the Department of Finance and Administration (DoFA), and the requirement of transparency for any adjustment to the estimates whether through policy decisions or parameter changes;
- the introduction of program budgeting, requiring the specification of program objectives and targets, and the certification of all appropriations related to that program objective. This process became the basis for the preparation of all portfolio budgets by the Government, and for subsequent annual reporting by agencies the introduction of the ‘running costs’ system applying to non-program expenditure, where detailed line items for agency administration costs were replaced by aggregate appropriations allowing agencies the flexibility to move funds between, for example, salaries and administrative purchases the introduction of annual efficiency dividends based on annual potential for productivity gains from running costs appropriations ‘carry-over’ arrangements for running costs items, allowing agencies to carry forward unspent moneys, or to borrow from future appropriations, within agreed limits common services reforms, involving a sequence of changes in arrangements for common services such as property, cars and publishing, starting with user pays, and the choice of provider, then commercialisation of the Government provider (including accrual accounting); and
- privatisation as the need arises.

In partnership with increased flexibility came additional discipline. Apart from aggregate controls, such as efficiency dividends, planning and reporting reforms were introduced. These included identifying and reporting against efficiency and effectiveness indicators, and for a period, a formal process of evaluation was introduced to cover all programs.

The Budgetary Process

Soon after Federation, when the APS was established to support Government business, a forward estimates system which projects ministerially agreed estimates of expenditure patterns for three years ahead of the current Budget year, based on existing policy was formulated. The system has since provided a sound basis for Governments to consider incremental changes to the amount of funding appropriated to agencies in each Budget.

Each APS agency including the Department of Defence has to estimate the funding it needs to carry out the role assigned to it by Government, and these estimates are drawn together on a portfolio basis. Portfolio Ministers then put forward new proposals and estimates of funding required, provide information on how the proposals will contribute to a planned outcome, and identify any offsets in terms of savings that might be required to make funding available for such initiatives.

These Portfolio Budget submissions go to an Expenditure Review Committee, the medium through which the Government considers budgetary changes. The Committee, comprising the Prime Minister and senior Cabinet Ministers, also takes into account advice from the Department of Finance and Administration, which consults with the Departments of Prime Minister and Cabinet, and the Treasury. This advice draws on central agency perceptions of value for money and relative priorities.

Based on the Committee's recommendations, Cabinet makes the final decision on levels of funding that will be appropriated against each outcome, and the funding split that will be made between departmental outputs (goods and services produced by agencies), and outputs related to administered items (for example, unemployment and other benefit payments, program moneys, grants, and transfers to other levels of government).

The Outcomes and Outputs Framework

In 1999 the Commonwealth moved from reporting performance on its programs to an accruals-based outcomes and outputs reporting framework. An integrated framework of accrual budgeting, accounting and reporting, and specifying outcomes and outputs, was first implemented for the 1999–2000 Federal Budget.

This process built on the program budgeting arrangements established in the 1980s. Reporting on programs tended to identify what had been done and what services had been delivered. Reporting on outcomes identifies what results have been achieved by delivering those services within the context of the approved program.

The essential purpose of the Framework was designed to answer three questions:

- what does government want to achieve (i.e., the outcomes);
- how does it want to reach those achievements (i.e., the outputs); and
- how does it know if it is succeeding? (i.e., the indicators).

Outcomes are the key results the government-of-the-day seeks to achieve, and define for each agency the purpose of their business. Typically, they are at a higher (more aggregated) level than programs under the former program budgeting system. Outputs are discrete activities or set of activities, a product or a service, performed by an agency as part of achieving its outcomes.

Agencies are required to specify and cost their outputs against planned outcomes and identify performance indicators and targets. Importantly, appropriations are now made at the outcomes level. Outcomes, and the supporting administered and departmental outputs, therefore form the basis of an agency's operating budget and external reporting framework.

The framework focuses on the outputs the public sector is producing and their contribution to the outcomes set by government, and is aimed at assisting the tracking of results and progress towards targets. The output component of the framework also facilitates tracking and benchmarking of process, and hence is an important aid to improved efficiency.

The financial management framework is centred on underpinning the effectiveness of policies and programs and the quality of service delivery. Accountability to Parliament is also seen as vital, as discussed later in the chapter. The federal Parliament has a well-developed

scrutiny process with an extensive range of committees, some specialising in the estimates, performance forecasts and achievements of particular portfolios, while others take an overall interest in the maintenance of an appropriate accountability regime. The former type of committee can, where their concern is the Finance or Treasury portfolio, also take an interest in broader budget strategy.

While DoFA and the Department of Treasury produce the main Budget papers, a devolved approach applies to agency-based budget-related documents (the Portfolio Budget Statements). In the latter case, DoFA provides principles-based guidance, with the onus on agencies to produce documentation both meeting their Minister's requirement, and satisfying any particular needs advised by and agreed with parliamentary committees scrutinising the portfolio.

As mentioned earlier, Budget appropriations are made for outcomes, and the Portfolio Budget Statements identify these together with the associated outputs and administered items. At Budget time, performance indicators are also published, often accompanied by targets for planned performance, with the onus on agencies to report publicly (in annual reports) within four months of the end of the relevant financial year on actual performance against these indicators. Any changes made during the year to the suite of indicators must be explained, together with material performance variations between predictions and results. Both at Budget time and following the end of each year, Ministers, agency heads and their agencies are subject to a well-developed process of parliamentary scrutiny.

This consistency in reporting at year-end against the same outcomes, outputs, administered items and associated indicators identified earlier at Budget time, is valuable in clarifying accountability. This performance management regime has been reinforced by other initiatives, such as market testing, outsourcing, purchaser-provider and business partnership arrangements, and privatisation. In situations where agencies deliver services directly to the public, they are also expected to implement and report against service charters.

Oversight and Enforcing Measures

Australia's system of Government rests on a fundamental belief in the rule of law in which individuals are not subject to any arbitrary or capricious exercise of power by public sector

officers. Under the rule of law, APS officers cannot act contrary to Acts or Regulations, unless the Act or Regulation allows that officer to do so, nor can an officer exercise coercive powers against an individual without statutory authority.

The salient measures of relevance to this study have been extracted from Aitken and Orr's work in Sawyer's *The Australian Constitution (2002)* in the discourse that follows.

The Independent Auditor: On the matter of accountability, the Australian Constitution and supporting literature, legislation and regulations clearly define the role of the Auditor-General (AG) employing the capabilities of the ANAO as the means of ensuring agencies comply and conform. In so doing, AG and the ANAO play a key role in monitoring and reporting on the performance and accountability of all Commonwealth public sector agencies in their use of public resources. That role extends to providing guidance and leadership in relation to some elements of good government, i.e. the adherence to the APS Governance Principles.

As the independent officer of the Parliament, the Auditor-General is appointed for a term of 10 years. He/she is not subject to control or direction by any individual Minister or other Member or Senator of Parliament, and has the ultimate responsibility for setting the scope of her activities. The position of independence is reinforced by the application of parliamentary privilege to performance and financial statement audit reports tabled in the Parliament. This privilege can operate to protect the Auditor-General and ANAO staff from being held liable for statements contained in audit reports. This allows the Auditor-General to report freely, openly and responsibly on matters examined in the course of audits.

Financial Statement Audits: The preparation of financial statements by Commonwealth agencies to report on their financial position and financial performance has become a universally established part of normal financial management in the last decade. These annual financial statements are subjected to external audit by the Auditor-General.

The auditor's report provides the independent examination of the financial statement in order to express an opinion as to whether the statement is prepared in accordance with auditing standards, and other mandatory professional reporting requirements. The audit report is included in the agency's annual report, which becomes a public document when it is tabled in Parliament, providing assurance to the Parliament and other stakeholders of the financial

position of the organisation. It also provides an appropriate level of transparency and accountability in the management of the Commonwealth's financial affairs.

Financial auditing has evolved from a narrowly based procedure, which concentrated on the examination of individual transactions, to a risk based business approach, which is practised today. This methodology focuses on the examination of key elements of financial statements, coupled with the practice of bringing issues of concern to the attention of management early in the process to facilitate timely corrective action.

This approach provides the assurance required by Parliament and at the same time adds value by assisting management in improving their operations.

Performance Audits: Performance audits involve assessing the management and operational performance of Commonwealth agencies and consider questions of economy, efficiency and administrative effectiveness of the operations for which management is responsible.

These audits are wider in scope than the well-defined boundaries of financial statements audits and provide Parliament and the public with critical evaluations of a wide range of public sector activity in all Commonwealth organisations.

The audits are designed not only to report on performance, but also to add value to public sector administration with constructive criticism and recommendations for improvement. These audits are also tabled in Parliament, are subject to scrutiny by the JCPAA, and become public documents.

The audits do not, as a matter of political expediency, comment on government policy. However, they often deal with current and controversial issues about the implementation of policy, which can attract considerable attention in Parliament and by the media in general. Performance audits are an important source of independent and objective assessment of public sector performance. They are a valuable source of information to assist Parliament in its role of holding the government-of-the-day to account.

The ANAO also claims that performance audits have been instrumental in achieving considerable savings in public money through improved administration, (Commonwealth of

Australia 2003) A related activity by the Auditor-General has been the issue of APS Better Practice Guides, which aim to improve public administration by ensuring that better practices are recognised and promulgated to the whole of the APS. This can involve examining practices in both the public and private sectors in Australia and overseas.

The documents that have gained prominence over the years are as follows:

- Managing Parliamentary workflow, 2003
- Internal budgeting, 2003
- Administration of grants, 2002
- Performance information in Portfolio Budget Statements, 2002
- Life cycle costing, 2001
- Some better practice principles for developing policy advice, 2001
- Internet delivery decisions, 2001
- Planning for the workforce of the future, 2001
- Contract management, 2001
- Building better financial management support, 1999.

Risk Management: Since the early 1990s there has been an increasing focus on managing risk in the APS. This reflects a shift in the prevailing culture which many regarded as risk averse and process-driven, to a more strategic approach for identifying and managing risk.

In 1996, the Management Advisory Committee's (MAC) predecessor (the Management Advisory Board) produced the *Guidelines on managing risk in the Australian Public Service*. These Guidelines were broadly based on the information contained in the Standards Australia publication, *Australian/New Zealand standard for risk management*, and are an integral part of APS reform.

The Guidelines provide a broad overview of risk management, and Commonwealth agencies generally interpret the guidelines in the context of their own environments. The Guidelines

also aid in the development of specific risk management approaches, and encourage managers and staff to manage risk in a systematic and comprehensive way.

The objectives of the APS Guidelines aim to:

- provide a generic framework for managing risk; and
- establish the reference point for managers and staff when developing processes, systems, and techniques for managing risk, which are appropriate to the functional organisational context of their agency.

The Guidelines are a significant educational tool by most agencies as they outline how to develop a risk policy or program and specify the responsibilities of agencies at all levels. They particularly include the need for each agency to be able to satisfy scrutiny through the principal APS accountability mechanisms, which include Parliamentary committees, the Administration Appeals Tribunal (AAT), the ANAO, the Commonwealth Ombudsman, and the Australian Public Service Commissioner.

In 1998 these Guidelines were strongly reinforced by the Charter of Budget Honesty Act which required half-yearly disclosure of fiscal risks and contingent liabilities which may affect the Budget balances. The Finance Minister's Orders require disclosure of contingent liabilities in agency annual financial statements.

Parliamentary Scrutiny: The APS Governance Principles and Code of Conduct require the Service to be accountable, within the framework of Ministerial responsibility, to the Government, the Parliament, and the Australian public.

For its part the Parliament established a committee structure, comprising members of one or both Houses of Parliament, for purposes of scrutinising the activities of Ministers, their departments and other agencies coming within the particular portfolio responsibilities of individual Ministers.

Parliamentary committees are empowered to conduct inquiries into matters related to their specific charters, or as otherwise assigned to them by Parliament. Committee processes

include taking written submissions on the subject matter, hearing witnesses and reporting to Parliament their conclusions with any related recommendations.

Committees may direct their attention to policy issues, scrutiny of legislation and the conduct of public administration by government agencies. Their inquiries may involve overseeing the expenditure of public money, and may be directed to calling on the government or the public service to account for their actions and to explain or justify administrative decisions.

In that general accountability context, a number of the committees have particular significance for the administration of APS agencies. In the context of this study, the role and functions of the two prominent Committees are discussed.

The Joint Committee of Public Accounts and Audit (JCPAA): This importance of this Committee is that it has a statutory base in the *Public Accounts and Audit Committee Act 1951* which in broad terms, is to scrutinise, usually by means of public inquiry, the performance of all Commonwealth agencies in spending the funds appropriated to them by the Parliament. In this way it is the Parliament's watchdog, helping ensure that Commonwealth agencies are held to account for their use of public money.

The authority to consider and report on any circumstances connected with reports of the Auditor-General, or with the financial accounts and statements of Commonwealth, is one of the main sources of the JCPAA's authority. It gives the Committee the capacity to initiate its own references and, to a large extent, to determine its own work priorities. This power is unique among parliamentary committees and gives it a significant degree of independence from the executive arm of government.

Its duties are described in its Act as being to:

- examine the accounts of the receipts and expenditure of the Commonwealth including the financial statements transmitted to the Auditor-General;
- examine the financial affairs of authorities of the Commonwealth to which the Act applies and of inter-governmental bodies to which the Act applies;

- examine all reports of the Auditor-General (including reports of the results of audits) copies of which have been laid before the Parliament;
- report to both Houses of the Parliament, with such comment as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed;
- report to both Houses of the Parliament, any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them, or in the mode of receipt, control, issue or payment of public moneys; and
- inquire into any question in connexion with the public accounts which is referred to it by either House of the Parliament, and to report to the House upon that question.

While the Committee also sets the guidelines for agency annual reporting, it is important to note that the Public Service Act also requires each agency to report to its Minister at the end of each financial year on the agency's activities during the preceding year. Those reports must be prepared in accordance with guidelines approved, on behalf of the Parliament, by the JCPAA.

Outside its responsibilities to monitoring expenditure of public moneys, the Committee conducts inquiries which assess APS resource management frameworks, standards and practices, and reviews relevant Bills, as and when they are referred by the Parliament.

In the last few years, its activities have included the following reports:

- Review of the accrual Budget documentation;
- Contract management in the APS;

- Corporate governance and accountability arrangements for Commonwealth business Enterprises;
- Provision of an advisory report on the Public Service Bill 1997 which was ultimately to become the 1999 Public Service Act;
- Accrual accounting that involved significant cultural change;
- Public business in the public interest which was an inquiry into commercialisation in the Commonwealth public sector;
- Managing people in the APS which address issues of dilemmas of devolution and diversity; and
- Review of the independent auditor to ensure independence, probity and conflict of interest is legislatively protected.

The Senate Committees: In 1970, a comprehensive system of legislative and general purpose standing committees, which would stand ready to inquire into any matters referred by the Senate, was introduced.

Estimates committees were also established at this time to scrutinise the particulars of proposed government expenditure and providing a further avenue for achieving greater accountability to Parliament.

In October 1994, the Senate restructured its committee system by establishing eight standing committees each of which covers a particular range of subjects. Each committee continues to operate as both a Legislation committee and a References committee in its area of responsibility.

Legislation committees are responsible for inquiring into and reporting upon matters referred to them by the Senate relating to estimates of expenditure, Bills or draft Bills, annual reports, and the performance of the particular departments and agencies allocated to them. The annual

reports of all government departments and agencies are automatically referred to one of these eight committees for consideration.

References committees inquire into, and report upon, any other matters referred to them by the Senate, whereas Legislation committees provide an opportunity for the Parliament to examine 'line by line' the government's expenditure proposals.

These estimates are contained in the main appropriation Bills introduced into Parliament as part of the Budget, usually in May, and in the additional appropriation Bills, usually introduced in November to January.

Committee consideration typically involves the following process:

- hearings are held twice a year. The process for most portfolios is an extended one: at least a full day (i.e., ten to twelve hours) on each occasion; and
- the Minister, or Senator representing the Minister, also attends, but most questions are answered by the senior managers of each agency while questions are ostensibly focussed on the appropriation Bills. It has become accepted practice that questions will range broadly, including any matters of interest to the Committee in the agency's annual report.

The practice of referring more Bills to one of the Committees at an early stage has integrated the Committees' work more closely into the legislative process itself. Through their consideration of annual reports the Committees are given a mandate to monitor the performance of departments and agencies.

The Senate Finance and Public Administration Committee (F&PA): This Committee is one of the eight standing committees. It has a particular responsibility for public administration issues.

The F&PA Legislation Committee has particular responsibility for overseeing the Parliamentary Departments and those agencies in the Prime Minister's portfolio and the

Finance and Administration Minister's portfolio. These include the APS Commission and the Australian National Audit Office.

When operating as a References Committee, the scope of interest of issues referred to the F&PA by the Senate has been broad, as illustrated by the list below:

- recruitment and training in the APS;
- the necessity for public accountability of all government services provided by government contractors;
- re-booting the IT agenda in the APS;
- APS employment matters with its first report on the Australian Workplace Agreements in 2000;
- consideration of legislation referred to the Committee such as the Provisions of the Public Service Bill 1997;
- contracting out of government services related to information technology in 1997;
- service delivery by the APS;
- inquiry into the implementation of performance based pay in the APS; and
- development of the Senior Executive Service.

The Regulatory Controls: The management and business literature constantly state that standardised, effective and efficient regulations facilitate the achievement of a range of community objectives. This is clearly defined in the framework for overseeing Commonwealth agencies *Governance arrangements for Commonwealth government business enterprises* (1997). The literature review also indicates that according to the recent APS Newsletter (2011), around 60 Federal departments and agencies and 40 national standard-

setting organisations and Ministerial Councils have had powers to prepare or administer regulations since 1997.

This has significance for this study, as it is a major element of the Commonwealth Government's strategy for ensuring that existing legislation and regulations are fair and effective, reviewing and reforming the legislation and regulations that affects business or restricts competition as well as balance a wide range of economic, social, environmental and technological issues and impacts in the consideration of policy options. All revised and new legislation and regulation are expected to be pro-competitive and outcome focused.

To assist agencies through any difficulties that may arise, the Office of Regulation Review, within the Productivity Commission, provides advice on whether legislation and regulations meet the Government's requirements, including whether an adequate level of analysis has been undertaken.

The Commission, which is the Government's principal review and advisory body on microeconomic policy and regulation, also has an obligation to report annually on compliance with these requirements across Federal departments and agencies.

In its 2001–02 Report Notes, the Commission singled out the Department of Defence by stating that

... while some agencies have integrated consideration of regulatory issues into their broader policy development processes, others (including Defence) have yet to do so...
(p.38)

In the same Review, the Productivity Commission also reviewed cost recovery arrangements across the government's regulatory, administrative and information agencies, and the findings initiated a new cost recovery policy to improve the consistency, transparency and accountability of cost recovery arrangements and to promote the efficient allocation of Commonwealth resources.

These Guidelines were issued to all agencies including Defence to assist in the development of the policy, and to ensure that the policy was applied immediately to all new and significantly amended cost recovery arrangements. To assist underperforming agencies, the

policy was to be phased in over five years, in line with an agreed review schedule, in respect of existing agency arrangements on performance management, and the management of staff as well as finances.

The Financial Management and Accountability Act (FMA) 1997: The purpose of the FMA Act is to provide the framework for the proper use and management of public money, public property and other Commonwealth resources and provide a governance framework for organisations that do not have a separate legal identity.

The Act deals with departments of State (such as the Department of Foreign Affairs and Trade, or the Department of the Environment), parliamentary departments (such as the Department of the Senate) and prescribed agencies that deliver a government program under the financial umbrella of the Commonwealth. These organisations range from Defence to the Australian Taxation Office.

Compared to its predecessor legislation that assumed a prescriptive and centralised approach to financial management, the FMA was based on a more devolved, principles-based approach, with agency Chief Executives being given significant responsibility in defining detailed financial management procedures for their agencies.

The FMA sets out the rules for how public money is dealt with and the accountability mechanisms for this process. Under the Act, the agency Head (referred to in the legislation as the Chief Executive) is responsible for the use and management of public money. This usage must be efficient, effective and ethical.

To assist the chief executive, the *Financial Management and Accountability Regulations 1997* (FMA Regulations), made under the authority of the FMA Act, provided for more specific matters, such as to give the agency head powers to issue Chief Executive Instruction's (CEIs) on how the agency's resources are to be used.

These instructions specifically deal with handling, spending and accounting for public money, making commitments to spend public money, and recovering amounts owing to the Commonwealth. Another major area regulated by the FMA is commitments to spend public

money. This means that any officer entering into some form of legally binding arrangement that involves the spending, or likelihood of spending, public money is required to comply with the FMA Regulations.

The Act also covers the collection and custody of public money which means that any public money collected by the Commonwealth must be placed into an approved official bank account.

An important limit on spending public money is the need for a drawing right before making a payment of public money. A drawing right is an authority from the Finance Minister to make a payment of public money for a specified purpose. In turn, it must be supported by an appropriation, in accordance with the Constitution.

While this Act provides agency Heads with a higher level of flexibility and autonomy that existed prior to 1997 in their financial management activities, it requires them to promote the efficient, effective and ethical use of Commonwealth resources. Furthermore, it imposes various accountability requirements on them to:

- institute a fraud control plan;
- convene an audit committee;
- pursue debts owed to the Commonwealth;
- ensure adequate accounts and records are kept in line with the Finance Minister's Orders and
- provide the Auditor-General with financial statements in the required form.

Defence as a Commonwealth agency is legally bound by the FMA and its associated regulation.

The Commonwealth Authorities and Companies Act (CAC) 1997: The CAC replaced the former disparate accountability, financial and auditing requirements relating to various Commonwealth authorities and companies with a clearer set of core reporting and auditing requirements for their directors.

The CAC is loosely modelled on the governance framework incorporated in Corporation law that applies to private sector bodies in Australia, although there are specific clauses supporting ministerial accountability and reporting in the general government sector and whole-of-government sector reporting contexts.

Agencies that are bound by the CAC are separate from the Commonwealth both legally and for financial purposes. They are accountable for receipts and uses of their own money.

In the case of Commonwealth authorities, high levels of public accountability are achieved through comprehensive financial reporting requirements. The Directors are required to prepare an annual report audited by the Auditor-General, and provide it to the responsible Minister. It is useful to note that the full obligations of authorities depend on any requirements specified in their enabling legislation. It is also interesting to note that the CAC imposes on the authorities a range of other restrictions and obligations such as, restrictions on banking and investment and a range of care, diligence, good faith and conflict of interest obligations.

The rules applying to authorities and their Directors and officers largely mirror those applying to companies although specific exceptions may be stated in the authority's enabling legislation, which sets their specific governance regimes. In the case of Commonwealth companies that are wholly owned, or in which the Commonwealth has a controlling interest, they must comply with obligations as companies under both the *Corporations Act 2001* and the CAC.

The additional requirements imposed on companies by the CAC include:

- the Auditor-General must either be the company's auditor or provide a report on the company's financial statements;

- where the company has subsidiaries, the Auditor-General must audit each subsidiary's financial statements;
- if the company is wholly owned by the Commonwealth a particular sort of audit committee must be established;
- all companies must provide annual reports with the reporting requirements being outlined in the Finance Minister's Orders and budget estimates; and
- strategic control must be exercised by the relevant shareholder Minister.

Commonwealth authorities and companies which are designated government business enterprises (GBEs), such as the Medibank Private Limited, the Australian Postal Corporation, and Telstra, have additional obligations. In particular, they must develop corporate plans.

The Charter of Budget Honesty Act (CBH) 1998: The Government's disclosure requirements and principles of sound fiscal management are enshrined in this Act which provides the Government Financial Services (GFS) framework for the conduct of government fiscal policy, requiring fiscal policy to be based on principles of sound fiscal management.

By facilitating public scrutiny of fiscal policy and performance, it requires government to adhere to principles of sound fiscal management and to:

- manage financial risks faced by the Commonwealth prudently. This means requiring the Budget economic and fiscal outlook report to have a statement of risks that includes contingent liabilities, publicly announced government commitments (not already in the estimates);
- release publicly and table half yearly fiscal strategy statements;
- use external standards (GFS and AAS standards);

- prepare a 5-yearly inter-generational report which assess sustainability of current government policies over a 40 year period, including taking into account the financial implications of demographic change;
- provide a pre-election economic and fiscal outlook report within 10 days of the issue of a writ for a general election; and
- define processes for costing election commitments.

The Auditor-General Act 1997: This Act is discussed more fully than previously by setting out the main responsibilities and information gathering powers of the Auditor-General, as well as establishing the ANAO.

In contrast to the *Audit Act 1901*, which it replaced, this Act focuses on audit goals rather than processes and better defines the status of the Auditor-General and the role of the ANAO. The Act establishes the Auditor-General as an independent officer of the Parliament, with an auditing mandate extending to all Commonwealth departments, agencies, authorities, companies and subsidiaries. That mandate extends to Government Business Enterprises (GBEs) to the extent outlined in the previous paragraphs.

Additionally, the Auditor-General may undertake performance audits of wholly owned GBEs at the request of the responsible Minister, the Minister of Finance, or Parliament's Joint Committee of Public Accounts and Audit.

Through the ANAO, the Auditor-General provides an independent review of the performance and accountability of the Commonwealth public sector in its use of public resources. The significance of that role in this study is discussed in more detail later.

While the discourses in the foregoing are by necessity brief, they establish the machinery of the Australian Government and the APS operating environment that binds all agencies including Defence.

Effects of the New Public Sector Management Approach

In reviewing the literature on Australia's new public sector management and corporate social responsibility, it was found that (governance) principles of accountability, transparency, integrity, trust, confidence and comparability are re-emerging as key themes in the new economic climate. There continues to be a growing 'body of evidence' which underpins the business case for responsible business practice. This is based on a fundamental premise that business is not divorced from the rest of society. Companies are an integral part of the societies and communities in which they operate. And business cannot continue to generate wealth if it or the society around it fails.

My analysis of the literature leads me to deduce that a coherent 'CSR' strategy based on integrity, sound values and a long-term approach offers clear business benefits. These cover a better alignment of corporate goals with those of society; maintaining the company's reputation; securing its continued license to operate; and reducing its exposure to liabilities, risks and associated costs. *Björn Stigson, President, World Business Council for Sustainable Development (WBCSD) www.wbcsd.org*

At the 12th National Business Leaders Forum on Sustainable Development at Parliament House in Canberra on 16 June 2011, Ms Rosemary Sainty Head of Responsible Governance and Ethics of the St James Ethics Centre stated that

The obligations of businesses and other organizations are no longer seen in isolation from the communities in which they operate, the employees they depend upon, the environment from which they draw their resources and the marketplace in which they participate.... Responsible business practice is the recognition of, and response to the interconnectedness and interdependence of business within our world of which the global financial crisis and climate change are consequences. (p.1)

Aligned to the principles enunciated in the Sarbanes-Oxley Act and the APS Governance Principles is according to the Beaton Consulting and St James Ethics Centre (2009) that responsible business practice advocates that the true costs and obligations of business and organizational activity are accounted for - both financial and non-financial and require a process of accountability, transparency and comparability through:

- Reflection on actual business impacts, risks and opportunities;
- Responsible business practices through integrated and inclusive management processes;
- Reporting on these practices in the public domain via a multi-stakeholder approach to management, measurement and monitoring; and
- Resilience through transparency, trust, adaptability and innovation. (pp.4-6).

The business case for responsible business practice therefore, is underpinned by the fundamental premise that business is not divorced from the rest of society. Businesses are an integral part of the communities, the environment and the marketplaces in which they operate. And business cannot continue to generate wealth if the society around it fails.

The business case also relies on a genuine intention and a well-informed course of action. An approach which sees only business advantage and fails to engage in the underlying ethical purpose will be unlikely to reap the full benefits of responsible business practice - and is more likely to fail when challenges emerge, such as the global financial crisis, where risk is positioned against opportunity.

The literature on corporate ethical behaviour and the public statements above provide a call to action in support of responsible business practice and any organisation that abrogates their corporate social responsibility should be held accountable. This observed conclusion supports the need for this study with the findings contributing in some way as a response to the call to action.

Effects of the OECD Principles of Corporate Governance and the Sarbanes-Oxley Act

The *OECD Principles of Corporate Governance*, endorsed by OECD Ministers in 1999, have become the international benchmark for policy makers, investors and corporations. These Principles advanced the corporate governance agenda and provided specific guidance for

legislative and regulatory initiatives in both OECD and non OECD countries. Not only were the Principles endorsed as one of the 12 key standards for sound financial systems, they also provided the basis for an extensive programme of cooperation between OECD and non-OECD countries and underpinned the corporate governance component of World Bank/IMF Reports on the Observance of Standards and Codes (ROSC).

Its significance to global industry was encapsulated by Donald J. Johnston, OECD Secretary-General at the time the Principles were formally launched in 2004 that

... Importantly, our efforts will also help develop a culture of values for professional and ethical behaviour on which well-functioning markets depend. Trust and integrity play an essential role in economic life and for the sake of business and future prosperity we have to make sure that they are properly rewarded... (p.4)

The Sarbanes-Oxley Act 2002, enacted in the United States of America, established the framework for Best Practice Governance with the objective of preventing corporate scandals, fraud, and potential civil and criminal liability of corporate bodies. Although the Act applied almost exclusively to publicly listed companies in the USA, the corporate scandals that gave rise to that legislation increased pressure on all organisations throughout the world (including family-owned business and not-for-profit organisation) to have better corporate governance.

Australia was no exception with all sectors of industry adopting all or some of the elements of the Sarbanes-Oxley Framework and Principles in order to ensure Best Practice. The flow-on from this decision was that Governance in Australian industry applies to all laws, regulations, policies and standards of good practice that are used to ensure that business decisions are performed and managed according to Best Practice standards and that the outcomes produced are continually of high quality.

More broadly speaking, the Framework and Principles also govern auxiliary services and issues that are part of the framework of every day work practices, including financial management, risk management, decision making, training, human resource management, information technology and health and safety requirements.

While these two initiatives can be seen as building on the theoretical work, common elements and the different models of Coase and others that took place preceding their formal endorsement, their real significance was in putting substance into the rules and regulations

that would need to be accordingly adopted into ethical policy in the corporate world: demanding higher levels of contribution and commitment from national government and institutions for collective efforts to shore up the weakening fabric of corporate governance that existed at the time. Of relevance to this study are:

- ensuring the basis for an effective corporate governance framework;
- disclosure and transparency; and
- responsibilities, integrity and stewardship of the senior management.

Effects on the Foundations of Governance in the Australian Public Service

This document was launched in 2003 under the auspices of the Commonwealth Attorney-General's Department and endorsed by the Australian Parliament as the "*single authoritative statement of agency head responsibilities.*" Its introduction into the public arena was seen as politically timely serving the intended purpose to justify a specific course of action "*designed to assist agency heads to meet their obligations and responsibilities.*"

The document provided concise information about key elements of the legislative and policy framework within which the APS and State Public Services operate including accountability requirements, the financial management framework, the employment and workplace-relations framework, and the management of Government information.

The document consists of 15 chapters and 147 pages of concise information that act as the yardstick for compliance and to measure conformance and operational performance. Over the years, its cannon has remained undisputed and uncontested with agencies either publishing derivative copies of the document as Standard Operating Procedure (SOP)²⁷ and/or including sections of the document to inculcate the Principles in their governance policies and guides on best practice.

Despite the fact that the document engendered public perception that the APS has an authoritative statement on governance, it's more important benefits was that it is regarded as

²⁷ SOPs establish standards and are used by all Commonwealth agencies to represent an internally defined equilibrium that reconciles the situational imperatives, professional norms, bureaucratic ideologies, peer-group expectations, and leadership demands unique to that agency. It is used to ensure compliance and conformance when measuring outcomes.

a seminal body of work, and its significance to this study is demonstrated by the chronology of events below:

Event 1: The Australian Constitution took effect from 1 January 1901 and in doing so established the first governance blueprint and model (with amendments over time) by which Australia continues to be governed.

The establishment of the APS was endorsed in Part V – Powers of the Parliament. Clause 51 states

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the commonwealth with respect to matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth. (p.xxxix)

and

Clause 52 states

- a) The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to:
- b) The seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes;
- c) Matters relating to any department of the public service the control of which is by this Constitution transferred to the Executive Government of the Commonwealth;
- d) Other matters declared by this Constitution to be within the exclusive power of the Parliament. (p.xxxix)

Event 2: The Public Service Act enacted in 1999 provided for the establishment and operation of, and employment in, the APS. The Public Service Regulations enacted in the

same year made necessary and appropriate provisions in relation to a range of matters for the purpose of giving effect to the provisions of the Act, one of which was the establishment of the APS Commissioner and the issue of Governance Principles.

Effects on the APS Governance Principles

The APS Commissioner in conjunction with the Auditor-General reinforced the APS Governance Principles enacted in the early 1900s in the updated publication Foundations of Governance (2005) as:

- Accountability – being answerable for decisions and having meaningful mechanisms in place to ensure adherence to all applicable standards;
- Transparency – clear roles and responsibilities and clear procedures for decision making and the exercise of power;
- Integrity – acting impartially, ethically and in the interests of the agency, and not misusing information acquired through a position of trust;
- Stewardship – using every opportunity to enhance the value of the public assets and institutions that have been entrusted to care;
- Efficiency – the best use of resources to further the aims of the organisation with a commitment to evidence-based strategies for improvement; and
- Leadership – leadership from the top is critical to achieving an agency-wide commitment to good governance.” (p.3)

These Principles were followed by a series of Better Practice Guides being promulgated by the ANAO. Subsequently a large number of Commonwealth agencies including Defence promulgated and included the material in a number of internal documents such as Codes of Conduct, Mission and Value statements, SOPs and Chief Executive Instructions (CEIs).

Effects of the Public Sector Governance Volume 1 Better Practice Guide: Framework, Processes and Practices 8 August 2003

This Guide is the second cornerstone document on matters related to APS governance and performance. It has a long history as the primary reference Guide for the conduct of assurance reviews on Public Sector Governance in agencies, and updates two previous ANAO Guides published in 1997 and 1999, namely:

- *Applying Principles and Practice of Corporate Governance in Budget Funded Agencies*, Discussion Paper, July 1997; and
- *Corporate Governance in Commonwealth Authorities and Companies*, Discussion Paper, May 1999.

As a Better Practice Guide, the material highlights the work practices used in comparative analysis of conformance, compliance and assessment of performance against Best Practice standards by rigidly exercising the definitive control rules and information by which agencies are required to conform to and comply with in their work practices. In principle, the Guide demonstrates:

- truth as an authoritative body of work;
- purpose as a single authoritative statement;
- context is specific to the APS and its agencies;
- emphasis is on the standards of good governance in the APS work environment;
- approach is inductive;
- relationship is between rules, events, conformance, compliance and performance; and
- rigor is soundly substantiated as well as being assigned by the Commonwealth of Australia.

The Guide also provides guidance relevant to all public sector organisations – covering those subject to the FMA and the CAC Acts. Additional elements in the Guide are reflected in discovery and description of standards and expectations that are prescriptive of Governance Best Practice activities. The verification of the document's content is clearly visible, traceable and consistent to other public and private sector standards and, as such, the ANAO recognized that the importance and responsibilities of internal audit vary considerably across public sector entities on governance matters, as do internal audit organizational arrangements and the way internal audit services are delivered.

To achieve these objectives, the Guide also includes:

- relevant issues and considerations that APS entities should take into account in determining the roles and responsibilities of internal audit as well as setting its future directions and work plans;
- a model internal audit charter;
- a Governance Toolkit; and
- a number of example forms, checklists and other tools that entities are encouraged to customize and use to assist in reviewing and managing the internal audit functions.

1.The Auditor-General Report No. 9 2008–09 Assurance Report Defence Materiel Organisation Major Projects Report 2007–08, 27 November 2008.

Report No.9 2008–09 Assurance Report Defence Materiel Organization Major Projects Report 2007–08 is presented for the most part as a narrative format and included detailed quantitative analysis of financial information to demonstrate breaches of accountability.

It is the first consolidated Assurance Report ever provided for the Department of Defence that succinctly demonstrated compulsive evidence on the status of selected Defence Equipment and Acquisition Projects. According to the Hansard transcripts at the time the report was tabled, the Report was looked upon by the Government of the day as a major step towards

improving transparency and public accountability in major Defence projects that had been “botched” since the early 1900.

The Report’s value to this research is that it was the first of two other DMO Major Projects Report that addressed problems related to cost, schedule and capability progresses associated with nine of the twenty five programs/projects that cost the Australian tax payer the budgeted amount of \$13.535 billion as at 30 June 2009.

The Report is organized into three parts that include:

- Part 1: ANAO Overview and Auditor-General’s Foreword;
- Part 2: the Major Project Report including an overview reflecting DMO’s perspective on its businesses and on the nine projects in the Report; and
- Part 3: the Auditor-General’s Review Report, the statement by the CEO DMO, and the information prepared by DMO in the form of a standardized Project Data Summary Sheets (PDSS) covering each of the 9 projects of which 5 projects will be used as Case Study material in my investigation.

2. The Auditor-General Report No. 13 2009–10 Assurance Report Defence Materiel Organisation Major Projects Report 2008–09, 24 November 2009.

The material contained in this Report provides further evidence of particular events and incidents previously documented in Report No. 9 above. The evidence also strengthens my response to the questions raised in my study by validating and confirming Government Senate information and data.

The Report also builds on the criticism by the ANAO of the Department of Defence’s reluctance and inability to improve it’s under performance in accountability on the management of major programs/projects. The evidence specifically addresses issues of cost, schedule and progress achieved by another fifteen of the twenty five projects that had an approved budget totaling \$37.8 billion as at 30 June 2009.

Similar to Report No.9, this Report is organized into three parts that includes:

- Part 1: ANAO Overview and Auditor-General's Foreword;
- Part 2: the Major Project Report including lessons from the previous Report, an Overview reflecting DMO's perspective on its businesses and on fifteen additional projects; and
- Part 3: the Auditor-General's Review Report, the statement by the CEO DMO, and the information prepared by DMO in the form of a standardized Project Data Summary Sheets (PDSS) covering each of the fifteen projects.

3. The Auditor-General Report No.17 2009–10 Assurance Report Defence Materiel Organisation Major Projects Report 2009–20, 30 November 2009.

The thrust of this Report was to provide:

- comprehensive information on the status of projects as reflected in the Project Data Summary Sheets (PDSSs) prepared by DMO, and a review by the ANAO (the Auditor-General's formal conclusion on the review of the PDSSs is contained in Part 3 this report);
- ANAO's analysis, in particular longitudinal analysis of projects over time; and
- further insights by the DMO on issues highlighted during the year (not included in the scope of the review by the ANAO).

The ANAO's review of the Program/Project Definition Specification Statement (DFSS) was conducted under an agreement with the DMO to retain confidentiality of any breaches. The audit was performed in accordance with the Australian Standard on Assurance Engagements (ASAE) 3000.

The agreement also excluded from the scope of ANAO's review PDSS data on the achievement of future dates or events (including forecasts on delivering key capabilities, also called Measures of Effectiveness), and major risks and issues.

By its nature, this information related to events and depended on circumstances that have not yet occurred or may not occur, or have occurred but have not yet been identified. This means that the conclusion of the review did not provide any assurance in relation to this status of the programs/projects.

While the Report provided a review report in accordance with ASAE 3000, it was not as extensive as individual project performance audits conducted by the ANAO, in terms of the nature and scope of project issues covered, and the extent to which evidence is required by the ANAO. Consequently, the level of assurance provided by this review in relation to the twenty five Major Projects is not less than that typically provided by our performance audits.

Mapping the Relevance and Impact²⁸

In measuring the relevance of the evidence contained in the ANAO Major Projects Reports against the enforcing measures outlined in Machinery of Government and the APS, the statement by the APS Commissioner in his opening statement in the *Foundations of Governance in the APS* (2005) sums up Parliament and the community's expectations on accountability and agency management as

The legislative and policy framework provides a basis for agency head decision making, accountability and agency management and underpins the way in which agency heads must meet Government objectives and implement decisions. (p.iii)

These policies and the standards clearly apply to all staff in the APS, and every agency is obliged to make sure that it has a system in place that ensures that the systems and frameworks of Governance are firmly embedded. Furthermore, most Commonwealth agencies are known to have well-established Governance Principles with their own Codes of Conduct and Value statements. Those agencies that do not; do so at their own risk and there should be no excuse for breaches, non-compliance and non-conformance.

Framework to detect breaches in APS Governance Principles

²⁸ The use of cartographic mapping has historically been a key strategy of governmentality to show the extension and to reinforce the legal statutes, territorial imperatives, and values stemming from the exercise of political power.

Within the context of the elements of the Sarbannes-Oxley Framework and the APS Governance Principles, the evidence found in the three ANAO documents are mapped against a framework purposely developed to provide the map of the evidence collected. In so doing, the framework enables traceability of the incidents that have taken place against the themes related in the Governance Principles.

This fit for purpose framework as configured as shown in Figure 2 below will also be used to enable the comparative analysis of the three case studies selected for the longitudinal study.

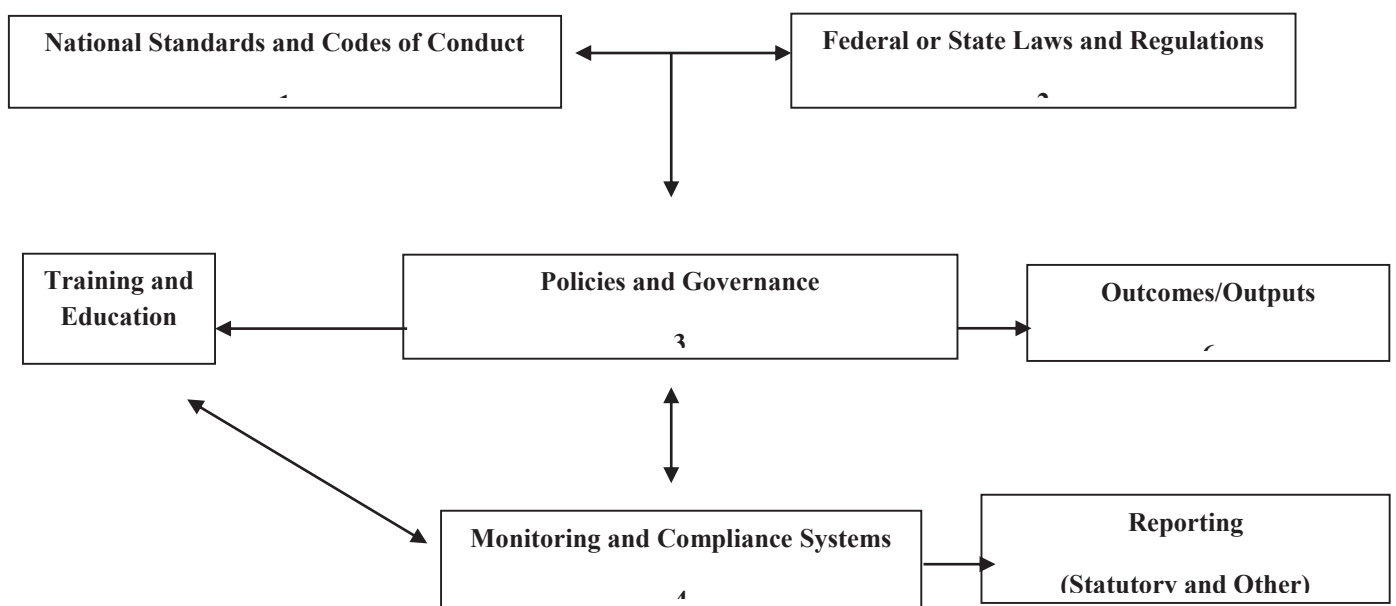


Figure 2: The Key Elements of the Governance Framework to detect dissonance

The key elements shown in Figure 2 represent five of the common areas that are codified by APS laws, regulations, policies and codes of conduct and best practice management.

These Key elements are in turn mapped against the themes of accountability, transparency, integrity and stewardship subject to the evidence found in the three ANAO Reports on the Department of Defence Major Projects and other relevant Government documentation. In addition, the relationship of the characteristics of purpose, trustfulness and credibility²⁹ are

²⁹ The characteristics of Purpose, Trustfulness and Credibility are addressed by the Australian Constitution confers the legislative, executive and judicial powers of the Commonwealth of Australia on three different branches of Government, one of which is the APS and its agencies.

also added and mapped against key characteristics described in the accounts of each of the three ANAO Major Program/Project Reports to reflect attributes as shown in Appendix A namely:

- the endorsed single statement of authority on the Commonwealth Governance framework and principles;
- the Best Practice Guidelines in which the standards, rules and consequences are clearly defined by the Commonwealth's auditor, and that have been accepted by and applied to all agencies;
- the authorship and authenticity of all the documents that will be used in the study;
- the trustworthiness (in all its manifestations) of the findings reported by the Commonwealth's auditor; and
- major incidents where dissonance as a result of non-conformance, non-compliance or mismanagement has been identified audited and accepted by the agency as fair and true and to analyse, assess and measure any variances and comments against the statement of authority and Best Practice standards and rules.

Conclusion

The literature review has been explored a wide area from the general global environment to the narrow spectrum of the APS and the Department of Defence. The review examined theoretical and professional themes in the areas of corporate governance, ethical behaviour, public sector management, corporate social responsibility, APS legislation, regulations, directives and orders, and ANAO performance reports on defence acquisition and procurement programs.

The review concludes that a serious gap exists in the theoretical literature in relation to the APS and Defence acquisition and procurement activities particularly related to

accountability, and a study of that focuses on this topic offers a contribution to knowledge particularly in the areas of corporate social responsibility, public sector administration and management, public value, supply management and military studies.

While the review also shows that while theories do exist to support the propositions raised in this study, the three research questions will find answers to fill the gaps and contribute to knowledge and practice.

Chapter 3

Methodology

Introduction

This Chapter justifies the methodology used to answer the research questions from case studies derived from the scrutiny of government audited documents, Senate hearing transcripts, independent reports and media commentary of three major acquisition and procurement programs that were conducted during the period 2000 to 2010.

The material is accordingly structured to explain:

- the justification of the methodology; and
- the framework and the development of the design that reflects relevance and mastery of the body of knowledge being studied. In so doing, demonstrate the steps followed by the evidence linking the research issue, the proposition and the instrument to show consideration for research characteristics of appropriateness, validity, reliability and ethics.

The Methodology and its Justification

The frame of reference or paradigm underpinning this research engages the ontological thesis that there is an objective reality to which this study addresses itself, more or less adequately and no doubt imperfectly. The analysis itself adopts the basic thesis that has the epistemic status of a presuppositional postulate interpreted and validated in the first instance by the actual functional performance of the Cases and ultimately retro-validated by the independent evidentiary results of their implementation (in both practical and theoretical respects) as documented by the ANAO reports.

Although realism is the functional postulate, the literature suggests that reality often does not conform to scholarly theories or popular prejudices. In the first instance by the practical utility in the context of my aims and purposes which take into account my experience which

serves as the translator of sound insights and nuances reflected in the evidence to provide the necessary validation.

From this prospective, realism is not constrained by the push of evidence but by the pull of purpose which according to Creswell (2011 p.45) is “an integration of a realist ontology (there being a real world that exists independently of our perceptions, theories and constructions) with a constructivist epistemology in which the understanding of this world is inevitably a construction from our own perspectives and standpoint. “

Insofar as the ontological realism rests on such a pragmatic paradigm, the study however, is not based solely on interpretation of the considerations of the independent substantiating evidence about how things actually stand in the world at the time of the audit but rather on a matter of practical reasoning and the consideration other relevant literature and documentation on the subject. This means, interpreting and thinking ontologically about the world within the context of the ADF environment and the Cases (programs). In doing this, develop a praxis of scrutiny that proves effective throughout the thesis.

Furthermore, my practical knowledge and experience draws on an ADF and APS career that included practical and theoretical research and the preparation of submissions that addressed business cases, ministerial submissions and internal and external papers on a diversity of management activities including acquisition and procurement programs at Defence and DMO. In some cases the submissions were the outcome of shared engagements with co-workers. This means that while observations on particular matters in this body of work could be seen by others as unattributed statements about the workings of Defence and DMO, these derive (unless stated otherwise) from my personal knowledge and experience, and that any person who studies the organization and the Australian Defence industry will soon be aware of the same observations.

After all, it would make no sense to try to compare the putative truth with the real truth, since when something does not represent the best-available estimate of the real truth it just would not be truth as commonly regarded by a reasonable person. This means that the best-available and most realistically practicable verification that can be done is that the research conclusions become relevant in applicative practice. This pragmatic approach, based on experience, is the powerful instrumentality required for a cognitive transit from the realm of

experiential phenomenology into that of a realistic ontology that rebuts issues of validation. It also means that the grounding of the research conclusions, based on independent evidentiary claims in which their endorsement can be seen as cogent and correct, accordingly are rooted in pragmatic considerations that include:

- personal and direct perceptive experience via the internal or external senses (seeing, hearing, feeling queasy, being hungry); and
- personal participation in similar defence program activities and programs over a period of three decades in which this thesis claims that the “experience teaches,” “the experience of many years indicates” and “a long course of experience shows”.

In arriving at the above strategies, the researcher took into account the influence, limitations and pitfalls that can occur when applying personal experience and subjective observation of the data. The counter possible criticism, the researcher is confident that the findings and conclusions from the study:

- bridges the gap between researchers and practitioners as it offers relevance and interest to practitioners and academic audiences in the disciplines of public sector administration and management as well as the program and project management;
- possesses academic rigour and is repeatable;
- provides a richness of insight that cannot be gained in other ways;
- the theory generated is grounded in action thereby overcoming difficulties of relying on talk as a source of data, instead of action or overt behaviour; and
- most importantly, establishes the element of ‘experiential authority’ as defined by Bryman and Bell (2007 p.717).

The decision to use the case study approach for this type of study is supported because it is quite extensively used across a number of different disciplines (Swanson and Holton, 2005), and because the case study method is an attempt to systematically investigate an

event or a set of related events with the specific aim of describing and explaining this phenomenon (see, e.g., Bromley, 1990).

The definition by Bogdan and Biklen (2003, p. 54) that a case study is "a detailed examination of one setting, or a single subject, a single depository of documents, or one particular event" (see also Gomm, Hammersley, & Foster, 2000; Yin, 2003a), and Yin's (2009) view that case-based research has a long and useful history in governance-related research in a largely empirical (and qualitative) field to enable a rich and detailed study of a particular phenomenon, issue or problem to be carried out where 'the boundaries between phenomenon and context are not clearly evident' (p.18) added favourable weight to my decision as well as Stake's (2003) view that case studies offer insights because of their intrinsic value, and not because they are representative in any sense of a broader set of concepts or issues (p.136).

All of these views fit well with this study which is concerned with what Stake terms 'instrumental case studies', that is, research approaches where a case is investigated precisely because it is an example or instance of a problem that has emerged, or is emerging from the relevant governance literature.

Stake (1995) also makes a distinction between instrumental and collective case studies where a collective case study (Stake 2005) are (also known as multi case studies) can be seen as an extensive study of instrumental cases to achieve a better understanding in order to theorize about a broader context (Berg 2009). This study falls within the parameters of a collective case study.

Additional support for the case study approach is highlighted by Patton (1990 p.14) in which he advocates the case selection process as being "Purposeful sampling (which) is a recognised qualitative research technique that involves selecting information-rich cases from which a great deal can be learnt about the issues of central importance to the research. By contrast, statistically-based and quantitative research typically involve probability, or random, sampling, to enable results to be generalised to a wider population."

Consistent with this purpose, the study addresses a broad range of program activities and different actors associated with each Case. In doing so, the factors that influenced the selection of a Case include:

- it is on the Government/Department's list as a Project of Concern;
- it is long term i.e. the program is conducted over a period of ten years;
- it involves a significant level of difficulty and complexity;
- the Prime Contractor(s) is Australian-based to allow for the confirmation of the evidence;
and
- the data is readily available in the public domain on the ANAO web site.

Also the selection of cases from Commonwealth archival, historical and contemporary documents is consistent with the essential characteristics of Yin's categorization of suitability for case study is shown in Figure 3.

CATEGORY	FORM OF RESEARCH QUESTION	REQUIRES CONTROL OVER BEHAVIOUR OF EVENTS	FOCUSES ON CONTEMPORARY EVENTS
Experimental	How	why?	what if? Yes
Survey	Who, what, where, how	many, how much?	Yes/No
Archival analysis	Who, what, where,	how many, how much?	Yes/No
Historical	How	why? No	How
Case Study	How	why? No	How

Figure 3: The Common Categories of Case Research by Yin

Source: Yin (1994 p.6)

Finally, Berg (2009 pp. 317-318) cites Gall, Borg, and Gall, (1995, 1998).in his claim that the case study method tends to focus on holistic description and explanation, and that, as a general statement, any phenomenon can be studied by case study methods. He also opined that the case study is an approach capable of examining simple or complex phenomenon, with units of analysis varying from single individuals to large corporations and businesses that can meaningfully contribute to the application of theory.

Review of the Methodological Framework

Bryman and Bell (2007) provided the views of reputable case study researchers like Stake and Yin in their publication *Business Research Methods (2nd Edn)*. The views strongly reflected the virtues of qualitative research, the single case and the multi case for comparative analysis as being widely applied in academic and corporate research.

While the literature on two of these virtues cautioned researchers about the methods, the material also stressed that the data collected should be reasonably representative and should not be used unwisely for unwarranted conclusions. These cautions are, of course accepted and are avoided given that the paramount value to this study is that qualitative research through the use of purposely selected case studies must be representative in order to enable clearer understanding by capturing the points of view of other people without any predetermination of those points of view. Also of importance is that the techniques offer

flexibility in research, and scope for further exploration of concepts and issues throughout the fieldwork, all of which are subsequently discussed.

Single case study versus multi-case

While there is no firm view on a specific number of cases to constitute a research study, the literature on research methodologies convincingly observes that many factors such as the depth of the study determine the choice between a single case and a multi-case study (Eisenhardt 1989 pp. 546-547). The literature also suggests that no research method is intrinsically better than any other as the worth of the study always depends upon the appropriateness of the method to the problem at hand, and the skill of the researchers in applying it. Nevertheless, there is a significant potential difference between a single case and multi-cases, in terms of the range and reach of the multi-case study.

Unlike the single-case study, all multi-case studies tend to be in a comparative approach. This would suggest that cases with similarities would be more suitable examples of the phenomenon under study. Nevertheless, it is understood that while contradictory case studies are sometimes used to disconfirm hypothesis testing, the approach used in this study was influenced to a great extent by the ability to only gain access to documents in the public domain about the details of the Projects of Concern as they were classified under Defence restricted material and not available because the details could compromise Australia's national interest. This prohibition prevented comparing a project with good accountability against a project that demonstrated poor accountability.

This reasoning fits well with this typical multi-case study, in which a number of contrasting instances of a particular problem (or phenomenon) are brought together, in order to investigate, as well as identify key factors that seem to have some bearing on the outcomes of interest.

It therefore follows that the multi case approach provides the means to not only test particular propositions, but also to use inductive methods to investigate the relative effectiveness of particular management approaches. This capacity to feature variance on the dependant variable, while searching for factors that seem to explain (or at least to illuminate) those differences is a significant practical strength of the multi-case method. Although not directly

relevant to this research, educational research also adds weight to the choice to use the multi case method as the method constitutes a type of evaluative strategy (Pereira and Vallance 2006).

The Multi-case Method

‘The multi-case (also known as the collective) study is a special effort to examine something having lots of cases, parts or members.’ (Stake 2006, vi). Yin, distinguishes between single case studies that have multi components (described as embedded cases) and true multi-case studies, which he saw as separate experiments, having a replication logic across a number of separate instances (Yin 2009, p.53). Yin (2003a) also argues that multiple cases may be selected in order to try replicating insights found in individual cases or to represent contrasting situations. In his 2003a paper, Yin indicates that multiple-case studies are frequently

... considered more compelling, and the overall study is therefore regarded as more robust. (p.46)

Berg (2009 p.326) also points out that collective case studies according to Stake, (1994, 2000, 2005b) are also known as multiple-case studies, cross-case studies, comparative case studies, and contrasting case studies (Gerring, 2006; Merriam, 2001). In its application, a collective case study there can (as is in this study) involve extensive study of several instrumental cases, intended to allow better understanding, insight, or perhaps improved ability to theorize about a broader or narrower context such as governance³⁰, public policy³¹ and project management³².

Stake (2006) also pointed out that the case does not have any objective existence but is, rather, determined by the purposes of the study under consideration. Since this study is concerned with governance-related research, Stake’s approach is adopted as the study is

³⁰ Salet, WGM. Thornley, A. Kreukels, A. (2003), Metropolitan governance and spatial planning. Comparative case studies of European city-regions, see www.dare.uva.nl

³¹ Lowi, T.J. (1964), American business public policy case-studies and political theory, World politics, Cambridge University Press.

³² Pryke, S. S Pearson, S. (2006), Project governance: case studies on financial incentives, Building Research & Information, Taylor & Francis

investigating a particular phenomenon that arises in a number of different programs. This does not preclude a multi-case study from being conducted within the one organisation (for example, a number of contracts let by the one organisation (Defence) could constitute a multi-case study.). However, in practice, in governance-related research, researchers are usually trying to understand patterns across organisational boundaries.

Multi-case studies also offer advantages over single-case studies that include:

- choosing cases with maximum variance on the dependant variable provides an excellent way of avoiding selection bias.; and
- case selection enables some controls to be applied when testing specific propositions. For example, controls may be based on the selection of the cases themselves (as in ‘most similar’ comparative technique).

But controls based on the research design can have limitations. For example, it does not allow for every kind of contextual variable that could be at work. And (unlike the statistically-based study) there is no capacity for identifying a range of variables, measuring their effects and correcting for problems (such as multicollinearity, or endogeneity). Moreover, the multi-case researcher, working in a quasi-experimental world with factors that are often difficult to measure, does not have the statistically-based analyst’s tests of validity, reliability and significance to draw upon. When compared to the statistically-based study, there is a price to pay in terms of generally-accepted quality-assurance techniques.

Nevertheless, the literature does show that the multi-case method is a valuable means for undertaking explanatory studies in administrative processes (Miles and Huberman 1994; Yin 2009). Following the case selection based on accepted criteria, the multi-case study allows for a degree of causal inference-drawing, while retaining the holistic advantages of the case study (King, Keohane and Verba 1994).

As a research approach, Berg (2009) claims that the fields of medicine and psychology require physicians and psychologists to examine patients on a case by case basis. In business, information systems, marketing and legal studies, case studies help to bridge the

gap between foundational studies and practice. Besse-Biber and Yaiser (2004) Reinharz, (1992) claim that ethno biography research make use of diaries and biographies as an acceptable case study method.

In education, case studies abound and include studies of unique people and programs, as well as special programming (Herreid, 2006; McLeod, 1994; Stake, 1995). In fact, case studies by certain social scientists represent classical research efforts in sociology and criminology such as Edward Sutherland's (1937) *The Professional Thief*, Clifford R. Shaw's (1930) *The Jack Roller*; Robert Bogdan's (1974) lengthy life history/autobiography, *Being Different: The Autobiography of Jane Fry*; Rettig, Torres, and Garrett's (1977) *Manny: A Criminal Addict's Story*, and *All the President's Men* by Woodward and Bernstein (1976).

The Contextual Protocol

As part of the methodology, a sound understanding the contextual protocol of the APS and the Department of Defence is provided. This is deemed a necessary step given the high-risk and long-term nature of the major acquisition and procurement programs, the complex situation of defence-related industry worldwide, and the particular circumstances of technology-based industry in Australia. For example, on discussing procurement practices in Australia, Transparency International (TI) Australia (2012:3) states that ‘..... procurement processes are highly vulnerable to breaches of integrity – even corruption, collusion and fraud.’ This view is also recognised by governments and corporations, and is highlighted in the Australian Standard 8000 as an aspect of governance (referred to as Assuring Probity in decision-making).

While analytical frameworks such as principal-agent theory and value-chain analysis have been used to characterise general problems in corporate management practice including acquisition and procurement practices, there has been little work done on APS Governance and on anyone particular APS agency such as the Department of Defence from a relational contracting perspective, using multi-case methods³³.

³³ Earnshaw, P. (1998), *Billion Dollar Business* discussed 3 cases from the 1980s and 1990s that used the project management approach.

Nevertheless, apart from the government documents, two practice-based studies of relevance were conducted on the application of rational comprehensive solutions to problems of defence management behaviour and procurement by Kinnaird (2003) and Mortimer (2008) reviews. Notwithstanding, their recommendations were not based on empirical research into actual procurement episodes but, rather, on ‘best practice’ ideas obtained by analogy from the business sector.

A significant aspect of the Kinnaird and Mortimer Reports and the ANAO documents is that in most cases of Defence acquisition and procurement activities, the individual programs are underwritten by relational contracts. Put simply, a relational contract is one whose conduct and outcomes depend upon the establishment and maintenance of a degree of behaviours between the executive management, the program/project team and the service providers. Relational contracts are often identified with partnering (see Sanderson 2009), but in this study, the term is viewed more broadly.

For example, relational contracts in the Commonwealth are characteristically long-term, and govern complex high-risk programs/projects. The reason that accountability, transparency, integrity and stewardship are so important in this type of engagement is fundamentally transactional. It would be difficult, if not impossible, to manage the relationship through conventional forms of performance management, because neither the purchaser (that is, the project team) nor the provider can know enough about the program/project in advance (that is, uncertainty/ambiguity), nor the purchaser know enough about the provider (that is, information asymmetry), to make this possible.

The literature on this form of engagement is also far from abundant and less so in studies based on public sector examples, particularly where public-private partnerships have been employed as is widely the case in Defence. Nevertheless, the literature on methodologies suggest that a useful heuristic device is to contrast the ‘ideal-type’ relational contract with the ‘ideal type’ transactional engagement whose conduct is short-term and in which control and integration are achieved through the implementation of contract specifications and the discipline of market (or quasi-market) forces. The ideal-type relational contract, on the other hand, is based on long-term exchange between the parties and the development of mutual trust.

In practice, very few engagements, even those with relatively low levels of risk, and low asset specificity, are entirely transactional. There will invariably be relational elements in the actual delivery of the project, even if the result is delivered on time and on budget, and all milestones are met. Careful empirical work in the UK local government field has shown that factors of relationality, flexibility and performativity are of key importance in explaining effectiveness (Davis et al 2007).

In this study however, many factors contribute to program/project complexity: relationships within Defence, relationships between Defence and the DMO; relationships within the program/project teams, relationship between the DMO and contractors; and between contractors and sub-contractors.

When the program/project strikes trouble, and relational elements turn sour, protracted periods of uncertainty and even stasis have been known to ensue. In these contexts, longer-term investment in partnering may seem attractive (as reflected in Case 1 using the alliance contracting method), but achieving outcomes against the APS Governance Principles may still prove elusive. In addition, the budgetary and reporting requirements of public accountability, transparency and integrity may militate against longer-term relationships, as there is an expectation that the purchaser will be sufficiently at 'arms-length' to maintain the necessary probity discipline over contract performance.

This study therefore is seen to be the first to investigate the influence of factors that focus on accountability that could also affect transparency, integrity, leadership, stewardship and efficiency in the Australian Defence context. In doing so, the study identifies the causal factors of dissonance and provides the basis for understanding relationships between ethical corporate management practices and control in the APS including Defence.

However, it is not expected that the specifics of the procurement contracts themselves will be examined. Rather, ANAO reported relationships and decisions within Defence, and between Defence, the DMO and contractors, and the ways in which these decisions and relationships influenced project outcomes, are the foci.

It is therefore expected that this study could be a precursor to longitudinal or cohort studies as it is a study that follows the behaviour of a specific group (i.e. program teams) of people over

a period of time (2000-2010) to fill the gap in knowledge about the Australian Defence acquisition and procurement activity.

Data Collection

The data collected is sourced from government documents, and consequently is used as secondary data for analysis for this study. The three selected cases used in this study satisfied the criteria previously discussed in the Methodology and Justification section above as well as having the potential to reflect the issues under investigation as being relevant and representative of the other 25 programs that were scrutinised.

Since, the guiding research questions focused on determining the factors causing the dissonance in the Governance Principles on the values of flexibility and control in decision making in each of the cases, the use of the multi-case methodology helps to identify those factors and establish how they played out across the three selected cases taken from ANAO performance audits of Defence acquisition and procurement programs during the period 2000 to 2010.

The Sample

The sample of cases is seen as purposeful, being drawn from the specific selection criteria, and with the unit of measurement having characteristics that are representative, meaningful, authentic, credible, procedurally sound and ethical as follows:

- **Representative:** The cases are typical of their kind on Defence acquisition and procurement activities. The ANAO documents describe each case and establish the principles to substantiate and manifest the performance of the acquisition and procurement program: invoking Best Practices audits and monitoring conformance and compliance related to Department of Defence's operations.

The analysis of the cases during the selection process confirmed that:

- solid foundations are established for standards and Best Practice management and oversight with recognition of the Australian Government and the Australian

community through accountability, integrity, stewardship, disclosure, transparency, risk management and auditability;

- professionalism in the work practices of agencies is enhanced through conformance, risk and audit programs and encouraging best practice in all work activities;
 - ethical and responsible decision-making is promoted;
 - integrity in financial reporting is safeguarded by having a structure of assurance committees and task forces to independently verify and safeguard the integrity of agency financial operations and reporting;
 - regular, timely and balanced disclosures of all material matters concerning the agency is ensured;
 - the management of risk is not only recognized but firmly established by a sound system of risk oversight and management, audit programs and internal controls;
 - agency performance is encouraged by establishing Codes of Conduct and Values to encourage staff value add performance and fairness when conducting staff performance reviews;
 - remuneration strategies are established fairly and responsibly by ensuring that the level and composition of remuneration would be sufficient and reasonable and that its relationship to agency and individual performance targets are clearly defined; and
 - the rights and legitimate interest of all employees are respected and protected.
- **Meaningful:** In the APS all authoritative statements, such as the Foundations of Governance, Best Practice Guidelines and agency Assurance Reports are subjected to scrutiny by Parliament and the wider community, are vetted extensively and undergo

critical reviews by a large number of influential and learned people within Government agencies and the Parliament before approval, authorization and distribution.

The documents representing the cases therefore satisfy their desired purpose in regard to the Australian legislative and policy framework as they articulate the essential Principles and practices on public sector governance. In this manner, the documents provide advice to Parliament on agency heads in decision making, accountability and management. It also underpins the way in which agency heads must meet Government objectives and implement Government decisions in accordance with:

- accountability – being answerable for decisions and having meaningful mechanism in place to ensure adherence to all applicable standards;
 - transparency – clear roles and responsibilities and clear procedures for decision making and the exercise of power;
 - integrity – acting impartially, ethically and in the interests of the agency, and not misusing information acquired through a position of trust;
 - stewardship – using every opportunity to enhance the value of the public assets and institutions that have been entrusted to care;
 - efficiency – the best use of resources to further the aims of the organizations with a commitment to evidence-based strategies for improvement; and
 - leadership – leadership from the top is critical to achieving an agency-wide commitment to good governance. (Foundations of Governance, 2003:11)
-
- ***Authentic***: The trustworthiness of the cases reflected by the documents satisfactorily meets the criteria for authenticity;
 - ***Credible***: Each of the cases is based on the rigor of the body of work including plausibility and integrity under the following:

- Documentation: The documentation and content was structured to directly correlate to information contained in government legislation, regulations, directives and orders as well as:
 - The OECD Principles and Sarbanes-Oxley Act;
 - APS ASX Corporate Governance Principles;
 - Corporate Governance Standards AS8000/AS8004;
 - The Australian Governance System;
 - The Australian Constitution 1901;
 - The Australian Public Service Act 1999;
 - The Defence Act No.20 1903;
 - The Auditor-General Act 1997;
 - the Australian Public Service Regulations 1999;
 - The Financial Management and Accountability Act 1997;
 - The Financial Framework Legislation Act 2008; and
 - The Australian National Audit Office (ANAO) Corporate Governance Framework.

- **Procedural:** The documents are endorsed and accepted as authoritative statements on APS Governance, Best Practice Guidelines and agency performance reporting. In all cases, the documents articulated the Principles aligned to the key elements of the

Commonwealth's legislative and policy framework within which agency heads operate with the expectation that all APS staff conform to and comply on matters that include:

- responsibilities;
 - accountability;
 - financial management;
 - employment and workplace relations; and
 - the management of Government information.
- *Ethical:* The cases reflect the agency's ability to achieve both performance and conformance objectives on the key elements related to advice and guidance procedures to integrate risk management and rigorous audit programs. In the each case, the ANAO Reports provide authorised and certified assurances that (where evidence exists) the Governance Principles are breached by non-conformance and non-compliance.

The Instrumentation

The analytic techniques are predominantly aligned to the analytic strategy presented by Yin (1984) as well as the Miles and Huberman (1984) analytical techniques such as placing the evidence in a matrix of categories also known as a relational database, tabulating the frequency of different events and examining the relationships between the variables in order to lead to conclusions, namely:

- to rely on theoretical propositions of the study, and then to analyse the evidence based on those propositions; and
- to develop a case description that would be the framework for organizing the case studies.

A similar strategy has been successfully used by Lynd (1929) when he conducted a widely cited "Middletown" study in which he used a formal chapter construct to guide the development of the analysis. Lynd also suggested that existing methodologies point to other situations in which the original objective of the case study helped to identify causal links that was analysed.

Yin (year) and Stake's (year) pattern-matching approach adopted for this study is also used. Their logic compares the empirical pattern, i.e., Defence behaviour, with the predicted one, i.e. the selected APS Governance Principles, to identify the dissonance and the level (strength) of the dissonance. In so doing, the internal validity will be enhanced when the patterns coincide.

Since the case studies are explanatory in nature, the patterns should be related to the dependent variables. Should independent variables be involved, Yin (1994) recommended using rival explanations as pattern-matching. In such a case, this would require the development of rival theoretical propositions. In all cases, the outcome is to ensure a high degree to which a pattern matches the predicted one.

Yin (1994) also encouraged every effort should be taken to produce an analysis of the highest quality. This objective will be accomplished in this study by the adoption of his four principles that include:

- demonstrating that the analysis relied on all the relevant evidence;
- including rival interpretations in the analysis (if such interpretations exist);
- addressing the most significant aspect of the case study; and
- applying the researcher's prior expert knowledge to add strength in the analysis.

Stake's (1995) recommended categorical aggregation as the means of analysis, is also used to develop the protocol to enhance the quality of the study by coding the data and identifying the issues more clearly during the analysis stage, Also applied are Stake (1995) and Yin's (1994) pattern-matching ideas, Runkel's (1990) aggregated measures to obtain the relative frequencies as this is a multi-case comparative study; and Eisner and Peshkin's (1990)

approach that imposes priority on the direct interpretation of events, and lowers the priority on the interpretation of measurement data.

The content analysis approach that is applied is advocated by Bryman and Bell (2007) Berelson (1952 p.18), Holsti (1969 p.14), Kabanoff, Waldersee and Cohen (1995) and Barley, Meyer and Gash (1988).

The documents targeted for analysis are scrutinized in an objective, systematic and replicable manner in terms of predetermined categories described in the specially designed case coding dictionary that was derived from the material.

The coding dictionary (aligned to the Yin and Miles Huberman matrix approach) defines the rules for categorization of the events, decisions and actions taken from the case chronology that has been redacted from the research material. In this manner, objectivity is demonstrated in the analysis process by the transparency used in assigning the data to the relevant category in the matrices shown in the case and comparative analysis. In doing this, any personal bias that may arise is mitigated, and further mitigated by the consistent application of the rules in a consistent manner to satisfy the research criterion to be systematic so that other researchers can arrive at the same conclusions.

The choice to use content analysis is based on the conviction that it offers certain unique advantages for this study that include:

- the foci of the analysis are the APS and the ADF. In the case of the latter, military program management activities employ specific language, words and terms possessing ‘manifest content’ and ‘specified characteristics’ not reflected in other public and industry sector activities (Berelson (1952) and Holsti (1969)) This means that the analysis of the content and specific characteristics in the researched material provides the means to uncover ‘evidence in question’ to confirm or deny the existence of dissonance in accountability; and
- the role of the researcher is emphasized through the interpretation of the meaning in the texts to recognize the significance in the context in which a word, a term and a sentence appears. This process is cited by Bryman and Bell (2007 p.304) as being acceptable and was used by Altheide (1996) as ethnographic content analysis.

The process discussed directly above is also known as qualitative content analysis, and widely used by ethnographic and critical theory researchers as claimed by Bereston and Holsti who argued that such a strategy essentially allows access to other related reports and material in terms of latent content. In the same vein, Bryman and Bell (2007 p.303) suggest that the process is a reliable way to uncover meanings of the content by interpreting meanings in the language, words and terms that lie beneath the surface of the documents, such as whether the impression given by the authors construe more than non-compliance and non-conformance to an issue or a series of issues.

These strategies are significant as they seek answers to issues not only in accountability but other determining criteria such as the APS and agency's Code of Conduct, values, standards, principles and administrative practices, as well as being mindful of the broader set of implications for professional business practices and corporate governance standards in industry and the wider community.

The Determining Factors

The case for the inclusion and application of relevant analytical factors to the protocol to ensure the best quality outcomes and enable cross case comparison is convincingly argued by Berelson (1952), Holsti (1969), Bryman, Stephens and Campo (1996), Hodson (1996), Bettman and Weitz (1983) and Barley, Meyer and Gash (1988). Accordingly, this study establishes the following relevant analytical discerning factors:

- **Sample:** The justification for the sample of cases is discussed above. Yet to enhance research coverage, the material used is expanded beyond the ANAO and Senate material to include other material documents, such as Ministerial statements, independent reviews and media reports for their explicit relevance.

These documents are more than suitable candidates as they provide related literature coverage albeit of adverse practices of the ADF acquisition and procurement activity through consensual views of the Australian Defence industry and the Australian community on the performance of the Department of Defence particularly related to the use of public money in the acquisition and procurement activity. Additionally, themes

such as the quality of the decision, risk management, honesty and trust between the actors become evident in the material. Harris (2001) argued in his paper on management courage and managerial decision making that a strategy of expanding the research material to other sources assists in the confirmation of the theoretical definition of the construct which in this study is accountability;

- **Dates:** The importance of dates is dictated by the time window and the actuality of the events and occurrences of dissonance in accountability in each case. The dates define the timing of representation of the three cases that generally fell between 2000 and 2010. However, some preliminary activity and decisions were taken by Defence staff and Government that had a significant bearing on the case during the 1900s.

In defining the sequence of the events, decisions and consequences for better or for worse, the effects-based evaluation becomes less problematical and more assured bearing in mind that the base-line assessment for each case is adverse arising from the action by Defence to place the three projects on the Projects of Concern list supported by the ANAO findings of malpractice and maladministration. The adverse-based effects-based process is subsequently enhanced through the provision of a chronology for each case: crafted and redacted from the ANAO reports and Hansard transcripts that identified the trends in the performance audit as well as the ebbs and flows of activities that contributed to the categorization of the data.

Barley, Meyer and Gash (1988) used a similar approach in their study on organizational culture, and on which they argued that the approach is an appropriate method for studying the way the concepts of organizational culture changed over time because the journal articles that were used are preserved at the point in time when they were written: making the articles less prone to retrospective construction than other interviewing and observational methods;

- **Words, terms, phrases and sentences:** Critical theorists such as Wittgenstein argued the importance of language to research and that the “linguistic turn” in a body of research work was marked as a moment in history in which researchers could better see reality of the research situation through interactive construction through language. In this study, the APS and ADF constructs are firmly based on the use language that is known to be

bureaucratic and militarily specialized (as in the case of this study) to make it difficult for other researchers and citizens with limited or no exposure to either environment and/or activities to interpret and understand.

Wittgenstein's position is also supported by the critical theorists who postulated that a researcher with the ability to interpret and understand the language content and specific characteristics would therefore be in an appropriately better position to determine the causal reasoning behind a decision and the consequential effect-based outcome. Furthermore, they argue that the use of some words rather than others is of significance because they provide the potential to reveal the interpretative framework used by the different type of decision-makers i.e. public servant, private sector employee or ADF member. These approaches are also supported and used by Kabanoff, Waldersee and Cohen (1995), Gephart (1993), Bettman and Weitz (1983) and Barley, Meyer and Gash (1988) in their studies; and

The Case (Coding) Dictionary

The case dictionary is briefly discussed as follows:

- **Project of Concern (PoC):** Projects of Concern are those Defence acquisition projects or sustainment activities identified by Defence on behalf of the Minister for adverse performance and assessed as having very significant risks and issues relating to schedule, cost and capability. The process was established by the Government in 2008 to focus the attention of the highest levels of Government, Defence and Industry senior executives on the need to remediate problem projects that repeatedly suffered from severe under-performance. (Department of Defence, DPP1 14/2011)
- **Accountability:** It is one of the six core elements of the APS Governance Principles that dominates in the assessment of public sector performance. A review of APS and corporate literature suggests that accountability can best be paraphrased as being

... answerable for decisions and having meaningful mechanisms in place to ensure adherence to all applicable standards. (p.2)

It is generally associated with corporate governance principles and is not seen as being mutually exclusive but used interchangeably by all sectors of industry and the wider community to include the following characteristics to reflect:

- Transparency – clear roles and responsibilities and clear procedures for decision making and the exercise of power;
 - Integrity – acting impartially, ethically and in the interests of the agency, and not misusing information acquired through a position of trust;
 - Stewardship – using every opportunity to enhance the value of the public assets and institutions that have been entrusted to care;
 - Efficiency – the best use of resources to further the aims of the organisation with a commitment to evidence-based strategies for improvement; and
 - Leadership – leadership from the top is critical to achieving an agency-wide commitment to good governance. (Commonwealth of Australia 2003 reprinted 2005, TI Australia 2010, Accountability Australia 2007, The Chartered Institute of Public Finance and Accountability 1995)
-
- **Contract Management:** In all sectors of industry including the APS, the management of a contract for an outcome (whether service or product) is mandatory because it legally specifies the contracted requirement, the consideration and relationship between the parties; the identification of respective responsibilities; and the mechanisms for monitoring performance that normally include penalties and incentives. Such a framework also embodies important legal and commercial principles such as value for money, open and effective competition, ethical and fair behaviour and dealing.

Effective contract management also requires as a pre-requisite: sound, systematic and informed risk management that recognize managing risk is more than a matter of matching risk-reducing mechanisms to identified contract risks. The process

involves the assessment of the engagement prior to and throughout the duration of the contracted period.

- **Risk Management:** The project risk paradigm emphasises that the process involves not only carrying out an extensive and detailed risk assessment of the agency activities but also managing the risks associated with increased engagement of the private sector in the delivery of the specified government services. In the case of this study, this means that the delivery of the outcomes (services and equipment) through respective contract arrangements requires the demonstration of rigorous risk assessment and the development and/or enhancement of a range of skills across the agency. The astute performance of risk management is one of the key accountability principles of public sector managers. (Commonwealth of Australia 2003 reprinted 2005)
- **Compliance:** The analysis is based on the APS rules and Codes of Conduct that enforces the understanding that the Head of a Commonwealth agency has a legal and corporate responsibility to ensure all level of employees comply with the provision of relevant Government legislation, procedures and processes.

Compliance at this level demonstrates accountability and performing it astutely achieves more than mere protection against legal action. It reinforces the organisation's commitment to a highly regarded code of ethics as well as standards of business conduct in the APS.

The evaluation of these adverse-based cases focused therefore, on the decision processes and the subsequent actions in each case in accordance with the values defined in the APS Code of Conduct as to their consequences, capacity, and coherence.

Construction of the Cases

The development and writing of the three cases that had their genesis in the mid-1990 from documents consisting of ANAO major project performance reports, Parliamentary transcripts, internal reports and correspondence intermingled with media commentary over more than a

decade³⁴ consumed a large amount of time as the environment in which the research topic centred upon is complex. This research commitment called upon the researcher's extensive ADF management and acquisition and procurement experience to translate and transform the source material written in a military and public sector vernacular some of which had been redacted into a format that satisfied the tone suitable for academic research purposes as well as for other non-academic audiences such as the APS, professional associations and the practitioners.

To meet these primary objectives, the following steps were taken to ensure that the writing flowed smoothly in each case as well as ensuring the delivery of a uniform approach to allow for analysis and comparison to answer the research questions, and prove the evidence to arrive at the conclusion by:

- Conducting a systematic exploration and assessment of the vast array of selected documents (referred to above) to isolate those related to acquisition and procurement programs conducted over the research period. The aim was to determine the relationships among performance management factors and incidents of non-compliance against the principle of accountability that occurred from mid-1990 to 2010 and later extended to 2013.
- The findings from the documents and correspondence produced the data to map and design the research to develop the questions "how" and "why" of events, procedures and decisions and enable the analysis and reporting.
- Being familiar with the context assisted in the selection and gathering of the data on each case and its context. This step of "soaking and poking," led to the iterative construction over the decade of a chronological narrative on each case. The narratives helped both the researcher gain valuable insights and with the transformation, would enable subsequent readers to understand the basic outlines of the case but identified different turning points in the causal chain as well as identify the independent variable(s) to explain each step in the causal chain.

³⁴ The number of public domain documents related to the topic that was reviewed over the period 1998 to 2013 was 250. This number does not include internal agency reports, and other correspondence such as Minutes and notes.

- Mapping and transforming protocol, strategy or structure for each case into specific explanations and then into general theoretical terms was a major body of work taking a large amount of time to ensure each case study was informative, credible, transferable, verifiable and dependable.³⁵ To achieve this outcome required repeated attendance at the ANAO library and Senate hearings at Parliament to validate statements in reports and transcripts and to seek out any undisclosed working papers. The outcome of this effort captured the major elements of the historical context and information on unique qualities of each case so that they were not lost to reduce the likelihood of jeopardizing the validity of the conclusions drawn from the cases for the theory and the utility of that theory. The aim of these tasks was to ensure that the set of independent and any intervening variables had to be adequate to capture and record the essentials of a causal account of the outcome in each case. This was important to determine if the causal process in a case was decisively affected by the fact that one of the key participants in the decision process was in attendance to affect the decision and/or outcomes, findings and conclusion³⁶ properly balanced against the evidentiary significance of the documents to ensure academic rigor.

Chapter 4 describes the Cases, and Appendices F (1) to F (3) chronologically describes each case by an event calendar.

The Data Analysis

The strategy used in the analysis rests on the establishment of the evaluative effects-based process to deduce the impact on risk, schedule and capability in each case. The process involves scrutinising and evaluating the ANAO judgements described in the relevant ANAO adverse reports to arrive at justified conclusions in defined steps to ensure that the analysis process satisfied the research criteria of reliability, replicability and validity by:

³⁵ Cartographic mapping of data has historically been a key strategy of the Foucauldian governmentality model and practice. According to Hannah (2000) this was the blueprint for disciplinary power from a Foucauldian vantage point. Harley (1989) saw mapping as a means "... extend and reinforce the legal statutes, territorial imperatives, and values stemming from the exercise of political power." (pp.1-21)

³⁶ This step involved significant travel to the libraries at the ANAO and Parliament to read and reread the documents.

- establishing the context of each case through an event calendar that falls within the time window of 2000 to 2010;
- evaluating the decisions, actions and consequences of each case;
- comparing the cases; and
- conclusion.

The technique is based on the approaches and models used by case researchers such as Hofstede (1984), Usunier (1988), Collins and Wickham (2004), McDonald (2000) and Marshall (1984), and Rousseau (1985) in their study of phenomena associated with cross-culture and inter-cultural issues in different countries, women employment and career prospects in the information society and behaviour at different levels of an organisation. Furthermore, the technique inherits the hallmarks of critical theory which has been claimed by these researchers to enhance the logical framework for the investigation process.

Where the data was not bound by national security requirements, triangulation of the data was also conducted to add robustness by reference to ‘expert’s review annual reports’ provided by the Australian Strategic Policy Institute who were appointed as the agency’s independent advisor on Defence matters, and the open domain with reports from the US Department of Defence and the British Ministry of Defence on similar activities. The findings and conclusions from these reports showed consistency with the findings and conclusions of this study. The most recent ANAO Report (2013) to the Australian Senate on the Department of Defence’s performance stated that in May 2011, the then Secretary of the department observed that:

We have struggled to match our capability aspirations with our capacity to deliver. There are numerous reasons for this, but broadly they fall into three categories. First, we need to identify problems in the development and acquisition of major capabilities earlier ... Second, Defence has expressed difficulty in attracting and retaining an appropriate number of skilled staff to progress our projects ... Third, major Defence projects are technically complex, and some have taken more time than was originally anticipated in order to mitigate technical risks ahead of government consideration.

(p.21)

Nevertheless, many attempts were also made to contact past actors engaged on these projects but these attempts proved to be unsuccessful particularly with the few remaining actors that could be found and still active. These actors were unwilling to participate as they are still bound by the Australian Defence Act and the Australian Secrets Act that prohibit discussion on these matters.

The justified conclusions therefore, are deduced through the scrutiny of the key elements of evidence derived from the ANAO adverse-based judgments reported to Parliament and accepted by Defence. Such evidence is categorised against the context which is described by the case chronology of events, decisions, actions and outcomes that impact (i.e. effects-based) on the three dominant factors: risk, schedule and capability of each case.

The effects-based evaluative process, based on the widely accepted risk management evaluation approach³⁷, then deduces the likelihood and consequences associated with a particular context in the time window in which the activities took place. The rating scale³⁸ includes:

Code 1 = dramatic;

Code 2 = substantial;

Code 3 = moderate;

Code 4 = slight; and

Code 5 = negligible.

For example, assessments are applied within the context of the explanatory notes extracted from a speech by Mr P. Barrett at the National Council of the Institute of Public Administration Australia in 1999 and republished in the Institute's journal in 2000. These explanatory statements are within the context of APS Corporate Governance and reflect the understanding and standard measurement of APS accountability, performance accountability, roles and responsibilities.

³⁷ Risk Management Standard, AS/NZS4360:2004 has been superseded by AS/NZS ISO 31000:2009, Risk Management: Principles and Guidelines.

³⁸ The base-line is based on the Defence and ANAO adverse findings. Discrimination of the rating is enhanced using the modifiers > (greater than) and < (less than) between close assessments. For example, >2 rating means that the impact (effects-based) is substantially more adverse on the Determining Factor, and a <4 rating means that the impact is slightly less adverse on the Determining Factor.

These definitions were designed to fill the gap in core public sector awareness of the opportunities provided for improved management performance and accountability through better integration of the various elements of the corporate governance framework within agencies.

The base-line of the rating scale is based on the Defence and ANAO adverse findings. Discrimination of the rating is enhanced using the modifiers > (greater than) and < (less than) between close assessments. For example, >2 rating means that the impact (effects-based) is substantially more adverse on the Determining Factor, and a <4 rating means that the impact is slightly less adverse on the Determining Factor.

In terms of the evaluative code of ‘dramatic’: its evaluation is on the circumstances that are suitable to or characteristic of the word, phrase, sentence, event or incident that reflects a striking in appearance or effect. The word, phrase or sentence applies to situations that stir the imagination and emotions deeply.

Examples: Words, phrases or sentences that indicate significant schedule slippage, budget blowouts, or delivery of not fit for purpose asset as well as underperformance include:

- The tender was won by a substantial margin.
- The project team reflected a change in their behaviour.
- The events reflected the absence of due diligence by the project team.
- The project had to be base-lined on two separate occasions.
- There was an increase in the base-line prices.
- The events in the audit tell of the under performance and/or slow progress on the project.
- The project team spent a considerable amount of time on the problem.
- The contractor went to considerable trouble to resolve the issues.

The definitions³⁹ and examples below show the use of the codes of assessment as applied within the context of the explanatory notes on which the standard measurement of APS accountability is applicable as shown in Appendix E.

Code 1 - Dramatic: suitable to or characteristic of the word, phrase, sentence, event or incident that reflects a striking in appearance or effect. The word, phrase or sentence applies to situations that stir the imagination and emotions deeply.

Examples: Words, phrases or sentences that indicate significant schedule slippage, budget blowouts, or delivery of not fit for purpose asset as well as underperformance.

- The tender was won by a substantial margin. In contract management SOPs, tender evaluation teams are required to highlight and calculate the margin of difference and report to the Tender Evaluation Board. The government guidelines on program management cost control indicate that if the difference is greater or less than 15 per cent then either scope and system boundaries have not been defined explicitly and areas of ambiguity and uncertainty exist in the definition of the key deliverables or exclusions to the scope of the project have not been defined or are ambiguous in the RFT. The FMA and ASDEFCON require the quantum of the difference to be investigated and explained.
- The project team reflected a change in their behaviour. Changes in behaviour by team members from highly motivated to adversarial or uncooperative within a short period or during the life of a project indicate that issues have arisen and the situation has become problematic requiring immediate attention.
- The events reflected the absence of due diligence by the project team.
- The project had to be base-lined on two separate occasions.
- There was an increase in the base-line (i.e., accepted cost estimate used as a benchmark for tracking contract changes) prices.

³⁹ The stem of the words are from the *Collins English Dictionary – Complete and Unabridged* © HarperCollins Publishers 1991, 1994, 1998, 2000, 2003. Additional information on the rating/assessment process is discussed in Appendix E.

- The events in the audit tell of the under performance and/or slow progress on the project.
- The project team spent a considerable amount of time on the problem.
- The contractor went to considerable trouble to resolve the issues.

Code 2 - Substantial: relating to, or having substance; having substance or capable of being treated as fact; not imaginary, material.

Examples: Words, phrases or sentences that indicate unacceptable schedule slippage, budget blowouts, or delivery of not fit for purpose asset as well as underperformance.

- The slippage in the schedule and increase in cost was of considerable (in) importance, value, degree, amount, or extent.
- The requirement was of a considerable size or value or substantial funds.
- The modifications to the original specifications while worthwhile (important) required substantial reform.
- The events (real, actual, true) showed the evidence to be substantial.
- The events revealed fundamental flaws or aspects of a decision, action.

Code 3 - Moderate: being within reasonable limits; not excessive or extreme. Not violent or subject to extremes; mild or calm; temperate. To make less extreme or intense.

Examples: Words, phrases or sentences that indicate moderate levels of schedule slippage, budget blowouts, or delivery of not fit for purpose asset as well as underperformance.

- Progress/quality of documents reported by team members was of medium or average quantity or extent.

- Performance by project teams was of limited or average quality; mediocre.
- The Project Office was opposed to radical or extreme views or measures.

Code 4 - Slight: Small in size, degree, or amount. Lacking strength, substance, or solidity; frail.

Examples: Words, phrases or sentences that indicate minor discrepancies in schedule slippage, budget blowouts, or delivery of not fit for purpose asset as well as underperformance.

- The project budget reflected a slight surplus.
- The reported incidence was of small importance or consideration.
- The reported errors in the specifications were trifling.
- A tenuous argument was submitted by one of the parties.

Code 5 - Negligible: not significant or important enough to be worth considering, meaningless.

Examples: Words, phrases or sentences that indicate discrepancies of no consequence in schedule slippage, budget blowouts, or delivery of not fit for purpose asset as well as underperformance.

Since the study focuses on the delivery of ‘fit for purpose’ military outcomes (i.e. assets that include ships, armoured personnel vehicles and torpedoes) within the contracted time and financial budget, three discrete implicit guidelines (described below) also prevail in the evaluation process. These guidelines are additional to being mindful of the mandatory explicit Government legislation and APS financial, contract and governance requirements particularly related to accountability that:

- the justification for any major acquisition and procurement program should be based on the clear understanding that a need exists and that delivery of the asset could virtually eliminate the extant risks that includes reduction in the potential loss of life in the area of operations;
- delivery of the asset must be within the cost budget, schedule and be ‘fit for purpose’ according to the specifications in the business case used to justify funding by Government; and
- the loss of life of the force-in-being caused by the non-delivery of the asset as scheduled is more significant than the saving or loss of a dollar.

The basic framework which is unpopulated is shown in the Figure 4.

	Determining			Factors	
Case Context	PoC	Accountability	Contract Management	Risk Management	Compliance
Risk					
Schedule					
Capability					

Figure 4: Model of the Effects-based impact basic Framework for Case Analysis⁴⁰

Underpinning the strength of this effects-based evaluation method is the requirement for evaluators to be impartial and unbiased in their assessments of the subject-matter. This requirement was achieved by the researcher applying a balanced approach employing fairness and objectivity in the use of secondary documents that have been disseminated in the public domain where any reader or researcher can undertake secondary analysis without obtaining any consents, and where the material had already been judged by others such as the ANAO, the Australian Senate Committees, independent authors and media commentary.

⁴⁰ The framework aligns with the current version of the Department of Defence Planning Guidance (DPG) and the Defence Capability Strategy (DCS) documents. These documents were established as a result of the Defence Procurement Review 2003, known as the Kinnaird Review.

Nevertheless, being cognisant that researchers are bound to meet the guidelines of the *Australian Code for the Responsible Conduct of Research*⁴¹, and because my methodology involves making judgements about others that could not be given an opportunity to explain the circumstances in which they took decisions, the ethical approach included:

- ensuring that all the documents that were the source of the secondary data had met their ethical and legal obligations and complied with the Privacy Act 1988 (Cth) (and state equivalents), the Human Rights Act 2004 (Cth) (and state equivalents) and the *Freedom of Information Act 1982 (Cth) and amendments in the Freedom of Information Amendment (Reform) Act 2010 (Cth) (and state FOI and Right to Information (RTI) equivalents)*;
- removing any personal and confidential information of individuals engaged in the activities from the relevant documents and subsequent case studies;
- anonymizing data where needed to protect the identity of individuals by ensuring that there were no statements or comments made in the thesis that could reasonably identify an individual; and
- despite best efforts to contact individuals to obtain consent or to be interviewed, being assured that all the participants were no longer engaged by the agency. There were also practical problems to trace participants as some had moved or were untraceable as the agency does not provide such information.

⁴¹ http://www.nhmrc.gov.au/_files_nhmrc/publications/attachments/r39.pdf

Conclusion

This research project is concerned with determining the occurrence of dissonance in the APS governance principle of accountability at the Department of Defence in its acquisition and procurement activities.

The study applied content analysis on selected documents from the ANAO, the Australian Senate Committees, independent authors and media commentary. Literature describing case studies was purposely discussed as it helped in identifying the salient points of the case study methodology that was to be used to create three cases from the ANAO audit performance reports. An evaluating instrument was redeveloped with terminology, guidelines and assessment criteria to assess the chronology-driven decision making processes that took place in each case.

In this chapter therefor, I presented a detailed account of the research context, strategy and methodology that identified and detailed procedures for data collection and analysis as a suitable research approach to answer the three questions in this study.

The next chapter describes the three cases.

Chapter 4

The Case Studies

Introduction

Three Cases where major Defence acquisition and procurement programs failed to meet their targets were carefully chosen to facilitate in-depth scrutiny using document content analysis. The justification for their selection from twenty-eight programs of problematic purchasing examined by the ANAO from 2000 to 2010 is fully described in Chapter 3.

While selecting on the dependent factor for investigation (i.e. program failure caused by non-compliance with the principles of accountability as enunciated in government legislation, regulations, and agency directives, and SOPs) has its risks, these were counteracted by detailed analysis of the rich data from ANAO reports and Hansard transcripts. The ANAO reports in particular provided not only extensive data that enabled a chronology to be created, but also contained a rich source of ‘judgmental and relational’ data that enabled content analysis to demonstrate its true potential and richness as a growing research approach.

For example, each case represented a different acquisition team approach, contractual model and delivery mode for the specified military asset. The detailed analysis of the evidence reflected by the words and phrases used by the independent auditor enabled certain examples of behavioral characteristics of the decision makers, the decisions and the work practices that existed in the agency’s environment at the time. This ‘power of understanding from content analysis’ can be shown from the contractual view: each case began as notionally fixed-price based on the standard DMO contract (rather than cost-plus), but with some variations. The contract in Case 1 involved incentive payments, while the second was used an earned-value method. Both case studies involved a single (prime) contractor. The third case, although initially awarded to a prime contractor, was reconfigured into an alliance (partnership-based) contract with multiple parties involved⁴².

⁴² The alliance contract is defined by Defence as ‘a legally enforceable contractual arrangement aimed at sharing risk between Alliance participants and creating mutually beneficial relationships’. *Defence Procurement Policy Manual*, 1 October 2009 edition, Definitions – 1. See paragraphs 2.61 to 2.63 for a further overview of alliance contracting in Defence. ¹⁰ The alliance for this Case is referred to as the Djimindi Alliance which comprised the Commonwealth of Australia, Thomson Marconi Sonar Pty Ltd (Later Thales Underwater Systems) and EuroTorp GEIE.

Background to the Case studies

The period from the mid-1990s was one of rapid change in both the environment and the organization of Australian defence procurement. Internationally, there was considerable change, as in the wake of the end of the cold war, the number of defence industry firms⁴³ plummeted from 80 to 5 (Defence Almanac 2010). In the Australian context, governments became concerned to privatise government-owned enterprises. The Government Aircraft Factory, the dockyards and other assets were sold during the 1990s and early 2000s. Within Australia, indigenous firms virtually disappeared.

Nevertheless, as Hughes (1998) stated in his publications *Public Management and Administration - An Introduction*,

The privatisation of the public sector requires proper accountability for the stewardship of public resources, as it is accountability that is fundamental to a democratic system. Importantly, the privatisation of the public sector does not obviate or limit the need for accountability to stakeholders. Instead, less direct relationships such as the introduction of a new player in the accountability chain -the private sector service provider -and greater decision- making flexibility strengthen that need. These changes also have important implications for the management and implementation approaches where management and accounting techniques have much in common with those in the private sector. (1998 p.225)

While the private sector has long been engaged in providing supplies and capital items for the defence forces, defence contracting has a number of unique characteristics, foremost of which is that Defence is a monopsonist in a market place where the defence industrial base is not fundamentally integrated into the broader Australian manufacturing base.

There are also a number of unique Defence-DMO-Contractor including prime and sub-prime contractor relationships involved, with overlapping and often ambiguous roles. The end-users of the assets are not public servants or members of the public, but members of the armed

⁴³ Details of company-by-company description of the sector at Australian Defence Magazine (ADM) Top-40 Defence Contractors.

forces. While in the formal sense, governments are the purchasers, the military are also heavily involved in the identification of the requirements to be purchased, and play a continuing role in the implementation process.

Thus the military play many roles – they are at different times and in different parts of the system, purchasers, clients and regulators. At the same time, civilian oversight of the military is one of the key principles of governance in all democratic states.

While part of the broader public service, Defence enjoys special status as an agency. Responsibilities and accountabilities under Financial Management Acts (FMA) and Regulations must be observed. However, Defence enjoys a degree of freedom from the detailed oversight by the Department of Finance that characterizes the policy proposals of other agencies (in Australia the Treasury manages economic policy while Finance manages the budget).

Defence procurement differs in important ways from public-private partnerships in the infrastructure field. This is because Defence assets, at least traditionally, are always financed by the purchaser (i.e. government). However, this leaves substantial problems in priority setting and risk allocation. According to standard defence purchasing practice, the supplier is meant to shoulder all the risk. While the increasingly business-like approach of the public sector seen in recent years is a step in the right direction, it is important to recognize that the provision of public services involves rather more than simply achieving the lowest price or concepts of profit or shareholder value. Public service agencies must strive to maximize overall 'value for money' for citizens which requires consideration of issues other than production costs, such as client satisfaction, the public interest, fair play, honesty, justice and equity. It also requires proper accountability for the stewardship of public resources, including asset management and use of techniques such as activity-based and lifecycle costing, as in the private sector.

However, as McGuffog (2011) pointed out that the zero risk approach adopted by organizations is “absurd” in relation to projects that are highly uncertain and in which there are substantial technological risks. Most if not all APS manuals repeatedly emphasize the necessity for risk allocation to be concretely discussed. But there are few models in UK and Australian defence procurement covering risk allocation between government and

industry. This situation therefore begs the question: Can Defence abide by the APS expectation of risk taking given the need for flexibility in decision making? Furthermore, the cyclic and often bespoke nature of the work, budget reductions, national security implications, and large expenditure on major capital acquisitions come together under Defence policy to mean that only large prime contractors can be considered for major projects with zero risk implications.

From an efficiency perspective, Bittleston (1990) argues for governments to do more to harness the cleansing power of competition in defence procurement. The Royal United Services Institute, in a recent paper, stresses the willingness of British participants to undertake partnering, while also noting that, from the MoD viewpoint, 'governance' must necessarily be about MoD control (RUSI 2009).

Political factors are also of enormous importance, in a number of ways. Political leaders are not typically technically knowledgeable and are often swayed by arguments that are not built on solid business foundations. Additionally, political considerations may translate into a desire to buy from a particular country (or vendor) and pre-empt proper appraisal. Whatever their origins, shortcomings in defence procurement are useful fodder for Oppositions. Moreover, the political drive to locate manufacturing, and/or maintenance facilities in particular locations remains strong.

Finally, defence industries internationally consist of large, multi-national firms with both civilian and military operations. All are to some degree dependent upon government contracts. The stance of foreign governments towards 'their' technology is also critical. For example, buying from the US necessitates dealing with the US government, which maintains stringent control over strategic and commercial aspects of contracts.

At the same time, the scale and complexity of defence equipment requires a degree of inter-governmental collaboration from the purchasing side. The interdependence and interpenetration of government and industry in the defence field renders the notion of 'classical' competition problematic for all but the simple items. The public sector changes to financial public service and industrial legislation 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. These changes are intended

to allow the Australian public service to better manage and respond to new challenges brought about by the changing environment. The legislation provides opportunities for enhanced performance and accountability in the Australian public service but can also involve greater management risks, particularly in an environment of devolved authority. It has also undoubtedly heightened the Australian public service's awareness of good corporate governance.

Organisation of Defence purchasing

The Department of Defence has a formal, purchaser-provider relationship with the DMO. Technically the purchaser-provider relationship is between elements of Defence such as Services Support and DMO as stated

In 2000, the Defence Materiel Organisation (DMO) was formed, replacing separate purchasing organizations for capital equipment and sustainment (that is, one for each Service) with a single organization led by a Chief Executive Officer. The formation of this organization while intended to improve purchasing, and to concentrate purchasing power created a complex monopsony which caused significant management and contract problems according to the leading Australian Defence industry companies (Defence Industry News 2005, p.3).

Over a period of ten years, the DMO's budget has been substantial (e.g. \$8 billion in 2009-2010) and it has employed over 7,000 people at its peak, of whom roughly a quarter represent serving military personnel, working at locations throughout Australia (Department of Defence 2012, p118).

The Department of Defence has a formal, purchaser-provider relationship with the DMO. These performance-based arrangements include Materiel Acquisition Agreements (MAAs), and Materiel Sustainment Agreements (MSAs) (Wylie and Markowski 2010). The MAAs are used for major capital acquisitions, and involve the Chief of the Capability Development Group and the Chief Executive of the DMO. MSAs involve the Capability Managers (the Service Chiefs) and the CEO (Department of Defence 2010 vol. 2 chapter 6 pp.110-112)

Specific projects are drawn from the Defence Capability Plan, which is drawn up by the Defence Capability Group, part of the Department of Defence. Projects move from the planning to the acquisition phase following a multi-stage Cabinet-approval process. Within DMO itself, as part of implementation management, Gate Reviews are used as an assurance process, focusing on the identification and resolution of issues (Department of Defence 2010 vol. 2 p126). In addition, projects that have failed to reach their performance targets are placed (by the Minister for Defence) on a public Projects of Concern⁴⁴ list in which

Requisitioned programs move from the planning to the acquisition phase following a multi-stage Cabinet-approval process. Within DMO itself, as part of implementation management, Gate Reviews are used as an assurance process, focusing on the identification and resolution of issues (Defence, 2011 p126). In keeping with political and bureaucratic sensitivities, the DMO is kept on a fairly short leash. While Mortimer recommended that it become an executive agency with a Secretary-level Chief Executive, the decision was taken by Government and supported by the service chiefs to retain the DMO within the Defence Portfolio as a prescribed agency. This means that while it has some financial autonomy, it remains under the control of the Department of Defence (Department of Defence 2011 vol2, p.10)

The DMO Organisation

DMO has three major internal groups: commercial, systems and programs. The systems group has primary carriage of acquisitions and sustainment projects, and contains sub-groups corresponding to the main arena or character of the system being developed (e.g. aerospace; electronic systems).

Within each sub-group, project-based teams carry out the detailed work of managing tender processes, and ensuring the contract is adhered to. Project management expertise is highlighted in these teams. Matrix management is also employed, so that supporting services may be shared across project teams, while still under the supervision of supporting services. The link between industry and the DMO is handled by System Project Offices

⁴⁴ The criteria and standards required for Projects of Concern and Department of Defence and DMO's response to the MPR's recommendations following the ANAO review and Senate Estimates hearing are shown in Appendix B1 and B2.

which are business units within the DMO that provide acquisition and sustainment services to the ADF ((Department of Defence 2011v2 p. 113).

The Acquisition and Procurement Framework, Tendering and contracts

It is notable that the official ‘purchaser-provider’ interface is between the DMO and Defence. The DMO is therefore a purchasing agent for the Commonwealth, rather than a purchaser in its own right. It is also responsible for the management of maintenance of purchased systems.

On its web site⁴⁵, the DMO advises that it uses a variety of contractual arrangements according to the CPG and FMA to deliver the required capabilities to defence, and has adopted a standard, functionally-based internal hierarchy using program based matrix management to carry out its tasks. The DMO also has contractual agreements such as the MAA and MSA and understandings with its customers (that is the three Services) and specific, project specific contracts are with industry. In agency-theory terms, this gives the DMO a somewhat unusual hybrid character, in that it is simultaneously a provider (to the Department of Defence); a purchaser in relation to industry; and a provider in relation to its customers (end-users).

⁴⁵ <http://www.defence.gov.au/dmo/>

The Cases

The Cases that follow have been constructed chronologically from the public domain documents as shown in Figure 5 below, and listed by event in Appendices F (1) to F (3) inclusive.

Figure 5: Case Documentation

Case	Documentation Reference
FFG Upgrade Project	<ul style="list-style-type: none"> • ANAO (2005) <i>Management of Selected Defence Systems Program Offices</i> ANAO Audit Report No 45 2004-2005. Canberra: Commonwealth of Australia • ANAO (2008) <i>Management of the FFG Capability Upgrade</i> Audit report No 11 2007-2008 • ANAO (2008) Report No.9 2008–09 Assurance Report Major Projects Report 2007–08 • ANAO (2009) Report No.13 2008-2009 Assurance Report Major Projects Report 2008-2009 • ANAO (2010) Report No.17 2010-11 Assurance Report 2009–10 Major Projects Report • Additional material from Hansard transcripts, independent review reports and media commentary.
The Light Weight Torpedo Project	<ul style="list-style-type: none"> • ANAO (2010) <i>Lightweight torpedo replacement project</i>. Audit Report no. 37 2009-2010. ANAO (2008) Report No.9 2008–09 Assurance Report Major Projects Report 2007–08 • ANAO (2009) Report No.13 2008-2009 Assurance Report Major Projects Report 2008-2009 • ANAO (2010) Report No.17 2010-11 Assurance Report Major Projects Report 2009-2010 • Additional material from Hansard transcripts, independent review reports and media commentary.
The M113 Armoured Personnel Upgrade Project	<ul style="list-style-type: none"> • ANAO (2006) <i>Management of the M113 Armoured Personnel Carrier Upgrade Project</i> Audit Report No.3 2005–06. Canberra: Commonwealth of Australia. • ANAO (2008) Report No.9 2008–09 Assurance Report Major Projects Report 2007–08 ANAO (2009) • <i>Management of the M113 Armoured Personnel Carrier Upgrade Project</i>. Audit Report No.27 2008–09 Canberra: Commonwealth of Australia • ANAO (2009) Report No.13 2008-2009 Assurance Report Major Projects Report 2008-2009 • ANAO (2010) Report No.17 2010-11 Assurance Report Major Projects Report 2009-2010 • Senate Committee on Foreign Affairs, Defence and Trade, Budget estimates 2007–2008, W31 questions I and O on Department of Defence (2007) responses to Questions on Notice. • Additional material from Hansard transcripts, independent review reports and media commentary.

Case 1: The FFG (Guided Missile Destroyer) upgrades SEA1390 (ANAO Report No.11 2007-08 Performance Audit)

This Navy project concerned a replacement light weight torpedo that was to be fitted to and integrated with existing and emerging complex electronic systems on two classes of naval vessels, as well as two naval helicopter platforms and one air force platform. While the project was perceived by the Department of Defence to be low risk, based on the notion that the capability was an ‘off the shelf’ solution and in service by two other navies, in reality the development, integration and delivery of the torpedo on the intended platforms proved more complex than originally envisaged: demonstrated characteristics of the lack of due diligence that should have been taken place in determining the actual status of the torpedo prior to the development and submission of the business case to government.

This complexity was both reflected in and partly exacerbated by the contractual arrangements that were chosen. Initially, the project was to be managed through a standard Defence acquisition and procurement contract with a prime contractor. However, one month after the standard contract was signed by the prime contractor and DMO, an alliance contract was introduced. This new model reflected the fact that the project represented a ‘to be developed capability’ and was one of DMOs first attempts at conducting a major capital equipment acquisition on the basis of a partnership between Department of Defence and the contractors involved.

The partnership was based on the understanding that that there would be a sharing of risks and rewards; a no-fault/no-blame arrangement to resolve most issues; a joint leadership arrangement; and a payment arrangement where a contractor receives reimbursement of direct project costs and a fee for overheads and profit combined with a pain/gain share arrangement based on project performance

In theory, the partnership should have provided the kinds of relational factors – that is, problem-solving incentives and opportunities for communication- that the standard contracts did not encourage. However, despite the efforts made by all parties to share risk, progress on the project was severely hampered by a number of factors. These included inadequate initial technical and risk assessment. In the absence of a structured procurement process, the

alliance arrangements were difficult to operationalise and once in operation, were (according to the ANAO) not adequately supported. .

A fundamental issue was that the Commonwealth was unable fully to commit to the risk-sharing arrangements of the alliance model, because the autonomy of its representatives on the Alliance Board was inevitably constrained by the requirements of departmental management. In this environment of uncertainty, mutual consideration, trust and respect proved difficult to develop. As a consequence of these uncertainties, additional unforeseen risks, costs and contract management overheads were imposed in the establishment, initial management phases and subsequent phases of the project. At this date, the torpedo is yet to be delivered.

Case 2: The Light Weight Torpedo Replacement Project JP2070 (ANAO Audit Report No.37 2009–10 Performance Audit)

This is also a Navy project and involved a number of guided missile frigates (known as FFGs) were to be fitted with a range of new weapons systems, including missile equipment for integration onto a replacement combat and control system that was itself to be developed through another project. From the outset the project experienced extensive delays in meeting the contracted requirements, which were originally specified in the late 1990s.

The original project schedule was re-based in 2004 and 2006, with a further major change in 2006 when the number of ships to be upgraded was reduced from six to four. Soon after this, the original prime contractor was privatised.

According to ANAO assessments, the delays came from a number of sources, including a lack of clarity in the initial specifications, the questionable quality of the supposed due diligence carried out by DMO and the assessment of the initial state of the FFGs. In addition, major conflict developed between the prime contractor and the client (Navy) regarding acceptance of work that had been done. In turn, these delays were aggravated by uncertainty in the direction of the project and by changes to project staff.

Test and evaluation procedures (and the relationship between these and the DMOs control of payments) were held to be unsatisfactory by the Audit Office. Milestone (earned value)

payments were difficult to administer when large sums had been expended in the initial phases of the contract. However, from the industry side, it was clear that the engineering problems had been under-estimated. The ‘conspiracy of optimism’⁴⁶ (by which costs are routinely under-estimated by both governments and suppliers) was in evidence.

The Projects of Concern process provided DMO with the opportunity to improve and should have proved effective in giving concerned individuals a warrant to implement appropriate strategies. This did not occur and a key factor that did turn the situation around was that the prime contractor was able to get sub-contractors to set aside their grievances in order to set up a platform from which the technical issues could be resolved. Knowing what was needed from the technical point of view was crucial. Addressing the impasse over acceptance issues by talking directly to the customer was also important.

Ultimately, it was only through the direct intervention of the contractor that sub-contractors set aside their grievances and set up working parties from which the technical issues could be collaboratively resolved. Knowing what was needed from the technical point of view was crucial. Addressing the impasse over acceptance issues by talking directly to the ‘customer’ was also important.

As with all three Cases, there was significant change on the industry side, reflecting the privatisation of government-owned defence companies. The original prime contractor was taken-over by a European-based transnational. Getting the right people in the right place was critical to moving the project forward. Again, however, investment in relational processes came from industry rather than government. At this date (early 2012), one FFG remains to be upgraded.

Case 3: The Management of the M113 Armoured Personnel Carrier Upgrade Project LAND106 (ANAO Audit Report No.3 2005-2006 and ANAO Report No. 27 2008-2009 Performance Audit

This Army project concerned the upgrade to lightly-armoured, fully-tracked personnel carriers used for transporting infantry troops and their equipment in a battlefield environment.

⁴⁶ Flyvbjerg, B & Cowi (2004) 2004), *Procedures for Dealing with Optimism Bias in Transport Planning: Guidance Document*, London, UK Department for Transport <http://flyvbjerg.plan.aau.dk/0406DfT-UK%20OptBiasASPUBL.pdf>

The project commenced in 1992, when a major capability submission was endorsed by the Defence chiefs. The first two phases of the contract (1993-1997) were intended to cover upgrading of 537 vehicles (including 355 full upgrades) at a cost of less than \$100 million.

In 2002, after many contract changes, there was a significant increase in the scope of the contract, when Cabinet approved a further upgrade of 350 vehicles at a cost of \$552 million. A global settlement with the original contractor occurred in 2007. By 2009, Army had received 42 of the 350 vehicles to be upgraded, with the balance yet to be delivered in accordance with the last round of specifications issued in 2008. By 2011, the project was substantially completed and was removed from the Projects of Concern list, with the removal backdated to 2008.

Major difficulties emerged early in the life of the project because the scope of the original contract changed dramatically. Originally a low-key upgrade of Vietnam-era Armoured Personnel Carriers, it grew more complex as the military commitment and battle conditions changed. The changing requirements added to the vehicle's weight, interior space, visual window, ventilation and cooling systems.

In 2008, as the result of a major restructure, the original prime contractor sold its interest in the project to another firm. This resulted in a range of inherited problems that included the lack of production capability to do the work. There were also technical problems in fitting the required enhancements to the 'stretched' versions of the original vehicle bodies. Despite the opening of additional production facilities, increasing costs and schedule slippages continued. A difficult period was eventually surmounted only when the basis for a team-based approach was forged.

A shared objective to 'get it done' drove the collaboration (from 2008) between the Project Office and industry. Some relational elements were evident on the industry side of the project, as the contractor and many of its suppliers had worked together over many years. However, relations between the contractor and government were not of this character. Individuals worked hard to secure the outcome – but the relationship was contract-governed and purely project-based.

In this case, we see the problems of balancing flexibility and control in a changing environment. Changing business and strategic conditions required flexibility (necessitating scope changes in the contract). On the other hand, throughout the long years of the project, payments had been authorised to keep the project moving, contributing to a reduction in overall control. Defence's attempts to recover liquidated damages were frustrated by the complexities of the contract itself, which had evolved to deal with unforeseen practical difficulties as they emerged.

Analysis and Evaluation of the Cases

The analysis and evaluation of each case followed by a comparative analysis will be carried out in the next chapter in which each case is marshalled in a chronological event calendar⁴⁷ used to explicitly link the suitability criteria⁴⁸ and the evidence. This approach delivers the points that are explored and evaluates the strength of the facts extracted and described in the documents beyond a reasonable doubt⁴⁹ as to how well the evidence supports each element and the consequences based on the 'balance of probabilities' on risk, schedule and capability that caused dissonance in accountability.

The cases also satisfied the three tenets of the qualitative research methodology, namely to describe, understand, and explain. Within this set of characteristics, each case had to deal with a particular kind of ADF activity in acquisition and procurement to highlight links between contractual arrangement, the organization concerned, and governance factors that existed at the time of the engagement. The common link is the provision of specific ADF capability with one case study under an alliance contract; the second under a fixed-price contract, and the third under a cost-plus (earned-value) contract.

⁴⁷ An event calendar is used in the legal discipline and known as an Agenda for the evidence. (Selby 2009 pp.88-89)

⁴⁸ Criteria factors are that each case is on the Department's list as a Project of Concern in which each case is long term, i.e. taking over 10 years s[SS17]; each case involved a significant level of difficulty and complexity; and the Prime Contractor(s) was Australian-based.

⁴⁹ The weight of the evidence has to be sufficient to meet the accepted standard of proof based on a reasonableness test. (Selby 2009 pp.3,67) Discussion and definitions for reasonableness test can be found at http://en.wikipedia.org/wiki/Reasonable_person.

Appendices F (1) to F (3) described the event calendar highlighting the salient characteristics of each case, namely:

- Appendix F(1) the FFG (Guided Missile Destroyer) Upgrade;
- Appendix F2 the Lightweight Torpedo Replacement Project; and
- Appendix F3 the M113 Armoured Personnel Upgrade project.

Conclusion

This chapter presented a brief description of the cases as gathered from the ANAO documents that is detailed in the events calendar for each case Appendices F(1) to F(3). Each case will undergo an analysed, evaluation and comparative analysis in the next chapter.

Chapter 5

Data Analysis

Introduction

The concept of accountability is not exclusive to the public sector particularly the APS. In the Australian corporate world, it would be difficult to conceive that doubts could arise that the boards of private sector corporations are accountable to their shareholders who want a return on their investment. Nevertheless, it would be in the nature and extent of that accountability which public sector commentators would contend distinguishes the two sectors.

With the increasing business-like approach of the public sector resulting from the new public sector management (NPM) reforms that include social responsibility and ethical behaviour which began in the early 1900s, it is engagingly important to recognise that the provision of public services particularly associated with the delivery of military outcomes and services involve rather more than simply achieving the lowest price or concepts of profit or shareholder value. Indeed, it is strongly contended that with the embedded APS governance and financial and contract management legislation, procedures and processes, public sector agencies should be striving to maximise overall 'return on investment and value for money' for the community whenever public funds are expended.

These factors and more such as client satisfaction, the public interest, fair play, honesty and justice contribute to proper accountability to ensure the stewardship and custodianship of public resources. The compelling need for these factors to be embedded in an organization and explicitly demonstrated in the integrated nature of effective management practices to prevent dissonance in accountability caused by capricious management behaviour is shown through ANAO's judgemental evidence that is analysed in the following steps:

- case analysis and evaluation;

- comparative analysis and evaluation;

- discussion; and

- conclusion.

Chapter 3 Research Methodology described the analysis process that would be used to scrutinise and evaluate ANAO judgements in the relevant program performance reports. Redacted agency and Senate transcripts were also to be used to confirm the ANAO findings. These documents form the basis to chronicle each case as advocated by case study researchers such as Yin (2003, 2009), Stake (1993, 2005 and 2006), Miles and Huberman (1994) to assist in understanding, confirming and arriving at conclusions to answer the research questions raised in this thesis and postulated in Chapter 2 p.18.

Chapter 4 provided the background and context of the acquisition and procurement environment with a description of the selected cases that includes an event calendar shown in Appendices F (1) to F(3) to help with the analysis presented in this chapter.

Analysis and Evaluation of the Cases

Case 1 Chronology: The Management of the Guided Missile Frigate (FFG) Upgrade Project.⁵⁰

The Request for Tender (RFT) which closed in March 1998 for the Project's Phase 2 was issued as early as November 1997, and Thales Australia (previously the Australian Defence Industry)⁵¹ was selected as the preferred tenderer in November 1998, with contract clarifying discussions commencing soon after.

Formal negotiations began in March 1999 with the Project's Implementation Phase commencing in June 1999 at which time the Prime Contract was signed. The contract required Thales to have total contract performance responsibility in the role of the Systems Program Office (SPO for each FFG on the technical aspects of the upgrade. Thales' role was also limited to reviewing and commenting upon the activities proposed by the prime contractor. On this matter, the ANAO in its Audit Report No.11 2007–08 stated that

⁵⁰ References cited in Chapter 4.footnote, Appendix F (1) and in the Bibliography.

⁵¹ Details of company-by-company description of the sector at Australian Defence Magazine (ADM) Top-40 Defence Contractors.

It (the contract) provides for the Prime Contractor to have Total Contract Performance Responsibility. Consistent with that responsibility, the Contract is structured in such a way that the Prime Contractor effectively has sole responsibility for the upgrade of each FFG from the time of each FFG's 'Handover' until the Prime Contractor offers the FFG for Provisional Acceptance by DMO. During that period, the role of the Project Authority (FFGSPO Director) in relation to the technical aspects of the upgrade is generally limited to reviewing and commenting upon activities proposed to be conducted by the contractor. (p.13)

The Audit Report (op. cit.) also pointed out clearly that

This has created difficulties for the Project Authority in maintaining a sufficient degree of technical involvement, control and understanding of what is being done by the contractor so as to be satisfied, on an ongoing basis, that the FFGs and software are being upgraded in accordance with the Contract's provisions and so as to meet the Contract requirements and Navy's technical regulations. (pp.13-14)

Interpretation of the evidence by the ANAO suggested that the expected control was fraught with relationship problems such as trust and respect between the contracted parties. This potentially capricious behaviour by the Project Authority from the start of the Project, showed failure to maintain scheduled activities became evident, and the project was re-baselined in April 2004 and again in May 2006.

On this matter, ANAO in its Report (op. cit.) stated that

The Prime Contractor advised the ANAO in October 2007 that both parties have experienced great difficulty reconciling the Contract's 'Total Contract Performance Responsibility' provisions with the Project Authority's interest in maintaining a sufficient degree of technical involvement, control and understanding. The contractor advised that the full meaning of both phrases has eluded many working on the project. The Prime Contractor (Thales) also advised that it is important to note that Navy's Technical Regulations (and other regulatory frameworks) were not in existence at the time of Contract signature in 1999, and despite the Prime Contractor raising concerns over the lack of Technical Regulatory requirements in the contract (Problem

Identification Report 143, November 2004 refers), the Project Authority has chosen not to incorporate requirements for Technical Regulation into the Contract. The Prime Contractor believes this has led to a dichotomy between compliant contract deliverables (form and content) and the requirements of the current Regulators. ... (causing) The contractor took substantially longer than the original schedule, which was rebased lined in April 2004 and May 2006. (p.14, p.16)

The impact was that as a direct consequence of the re-baselining, the delivery of all FFGs was deferred with the delivery of the last ship being deferred by four and a half years.

As reported in by ANAO (op. cit.) in November 2003 the Government determined that the FFG fleet would be reduced from six to four ships with the two oldest removed from service prior to their planned upgrade and life extension.

It was not until mid-2006 that the Prime Contract was formally amended to reduce from six to four ships (oldest Guided Missile Frigates, HMA Ships *Adelaide* and *Canberra* not upgraded).

On activities that took place from 2003 to 2006, interpretation of the evidence in the ANAO in its Audit Report No.11 2007–2008 particularly related to the narrative contained in pp.13 – 34, clearly showed that there were delays in the settlement of payment/penalty claims, changes to the master schedule and milestones, and changes to provisional acceptance processes of upgraded ships from the prime contractor: all of these factors contributed to the delays as well as suggesting that a capricious attitude prevailed amongst members of the DMO project office.

More significantly, while the financial impact of the “*global settlement*” was reflected by a reduction in prime contract price of \$40 million (base date prices), the settlement failed to recognize the engineering development investment by Defence and the six ship sets of equipment affected by the reduction in the number of the contracted for upgraded ships from six to four.

In the same time period, there were also difficulties with compliance to evaluation and testing by the contractor that caused DMO to refuse approval of contractors test procedures, and as

reported by ANAO in April 2005, Thales saw this as the only feasible approach to completing the project by electing to proceed with a test and trial regime outside of the contractual terms 'at its own risk'. On this decision, ANAO (op. cit.) stated that

In October 2007 the Prime Contractor advised the ANAO that it had elected to proceed 'at his own risk' because the Project Authority representatives were urging cessation of all activities until 100 per cent compliance was achieved across all aspects of what is a complex and confusing contract. The Prime Contractor further advised that it should be recognised for opting for such an onerous approach as the alternate would not have delivered any capability to the ADF within a reasonable timeframe. It is the Prime Contractor's opinion that its 'pragmatic' proceed at own risk approach, was the only feasible approach in order for the Project to proceed and be completed. (p.16)

Even at this date, the evidence from the ANAO report (op.cit.) strongly suggested that the complexity of the program was underestimated from the start. This became more evident, when ANAO Report (op. cit.) stated that

..... the performance specifications were not formalized and agreed before contract signature and this impacted the delivery and agreement of the offered capability and development of the test program. (p.18)

Even with these failures, it is worth noting that achievements did occur in December 2006, October 2007 and November 2007, Provisional Acceptance was achieved for HMA Ships *Sydney*, *Melbourne* and the Team Trainer (located at *Watson*). Nevertheless, while *Darwin* was on schedule for Provisional Acceptance in August 2008, it was again delayed for technical reasons at that date with no advice as to when the work would be completed.

During the ANAO review in 2007-2008, *Sydney* and *Melbourne* operated under Navy control and it continued to work towards the achievement of Initial Operational Release (IOR). However, the completion of work to conduct the IOR was delayed by further performance deficiencies in the underwater warfare systems and electronic support systems. On this matter and contractually, the Prime Contractor was obliged to rectify these deficiencies although contractual acceptance for the work was scheduled for November 2008. The

combat system Operator and Team Trainers were delivered late by approximately 12 months and is now used for Navy training.

In October 2007, *Sydney* conducted Evolved Sea Sparrow Missiles firings to confirm the upgrade capability against hostile air threats on a United States Navy range off Hawaii. This test was to demonstrate several key capability components of the upgrade that included:

- the Evolved Sea Sparrow Missile System;
- the Vertical Launching System Mk41; and
- the Australian Distributed Architecture Combat System and software.

ANAO claimed in its report (op. cit.) that the test was not accepted by Navy as the components failed to meet all of its requirements.

In October 2007, *Newcastle* (the last FFG to be upgraded) started its upgrade with the docking phase of the upgrade completed in April 2008. At the same time, Thales undertook combat system installation and production work, with the '*set to work*' and initial harbor acceptance trials of the platform systems scheduled for delivery in August 2008. On this task, Thales achieved the revised schedule milestones that were approved in June 2006. It was also on target to meet the Provisional Acceptance date of June 2009 for completion of the upgrade to *Newcastle*.

At the time of this study the Project was retrospectively removed from the PoC list as at January 2010. It still had not delivered against the initial and revised contracted deliverable and should it have been allowed to continue, the schedule slippage would have exceeded 84 months (with corresponding increases in cost): this outcome would have been well after the FFGs had been decommissioned in 2013.

Evaluation

The overall result of the effects-based evaluation is shown in Figure 6, and followed by discussion.

Case 1 Context	Determining			Factors	
	PoC	Accountability	Contract Mgt	Risk Mgt	Compliance
Risk	>2	>2	2	>2	>2
Schedule	>2	>2	2	>2	>2
Capability	>2	>2	>2	>2	>2

Figure 6: Case 1 Effects-base impact on the Determining Factors
(Median of Evaluation is >2)

Risk

In terms of Australian industry projects, personal observations (based on over six decades of program management experience working on national and international public including military and private sector complex programs) are that this major costly acquisition Project presented far more challenges than could be expected from any other ADF project. This observation is also supported by the Kinnaird (2003) and Mortimer (2008) reviews, the Office of Government Commerce UK (1999), and the Oxford Handbook of Project Management (2010) and more recently stated in the ANAO Report (2013) to the Australian Senate on the Department of Defence's performance stated that in May 2011, the then Secretary of the department observed that:

We have struggled to match our capability aspirations with our capacity to deliver. There are numerous reasons for this, but broadly they fall into three categories. First, we need to identify problems in the development and acquisition of major capabilities earlier ... Second, Defence has expressed difficulty in attracting and retaining an appropriate number of skilled staff to progress our projects ... Third, major Defence projects are technically complex, and some have taken more time than was originally

anticipated in order to mitigate technical risks ahead of government consideration.
(p.21)

The Department of Defence's expected deliverables ranged from the development of complex and extensive weapon, sensor, combat, and command and control systems not used or planned to be used by any known military organization. These systems were to be integrated into an Australian 'yet to be developed' combat data system architecture. Both the systems and the integration work were to be the world's first FFG installation of a Vertical Launching System (VLS) for firing Evolved Sea Sparrow Missiles (ESSMs) and Fire Control System (FCS) Mk 92 Mod 12 into the Royal Australian Navy (RAN) *Adelaide* class FFG.

Not only did the development of unknown command and control systems present the highest level of risk and uncertainty, but the development of a new Australian Distributed Architecture Combat System (ADAC) on which these systems were to operate in an optimistic time frame were highly ambitious. Adding to the complexity?, the specifications of the command and control systems were questionable as far as their reliability and stated utility, and the development of the ADAC software, estimated by industry sources to contain over one million source lines of newly developed computer code. This package of software was to be developed and tested in conjunction with electronic system hardware development and the integration process yet to be implemented.

The dilemma was compounded by another uncertainty in the form of the operational requirement that ADAC was to process and display radar, sonar and electronic support system data captured by another project that was on contract with Australian industry to develop a Radar Integrated Automatic Detection and Tracking (RIADaT) system.

The evidence from the ANAO Report (op. cit.) clearly identified the string of uncertainties that contributed to unacceptably high levels of risk against each of the Determining Factor as shown by the evaluation is shown in Figure 7.

	Determining			Factors	
Case 1 Context	PoC	Accountability	Contract Mgt	Risk Mgt	Compliance
Risk	>2	>2	2	>2	>2

Figure 7: Case1 Risk impact on the Determining Factors

The evidence from the ANAO audit (op. cit.) to support the evaluation is as follows:

- Defence’s failure to update the Combat System Upgrade’s risk profile that should have ranged from low–risk installations of Military off the Shelf (MOTS) equipment modification kits; and mid–range risks involving the installation of standard United States Navy (USN) equipment, such as the Mark 41 VLS, combat system operator consoles, Radar Data Distribution System (RDDS) and the Link 16 data communications system; and
- the project had high risk at the conceptual stage that stemmed from the uncertainties associated with the development and integration of new systems such as the ADAC system, the Underwater Warfare System (UWS), and the Electronic Support System (ESS). The evidence contained in the ANAO Report (op. cit.) showed that the consideration associated with these systems contributed to most of the project delays in delivery of specified capability within the specified schedule that included:
 - the absence of clear and precise communication between the contract parties and in the supporting requirements documentation that led to the initial underestimation of the command and control software design and the integration complexity; underestimating the systems integration and test and trials efforts needed to verify contractual requirements achievement; coupled with the need to develop a new command and control system software solution; and the late identification of emergent work resulting from the concurrent maintenance refit for the retained systems and equipment.

- deficiencies in Australian defence industry's knowledge and performance about underwater warfare systems and electronic support system that were known to exist by Defence. These risks remained during the time of the study and it is anticipated that the contractor's ability to meet the contracted requirements and Measures of Effectiveness (MoE) for these systems.
- unacceptable accounting practice particularly where gross savings were claimed in the proposal to Government for increase in funds. ANAO's examination showed that the costs continued to increase in many areas where substantial savings were claimed. For example, net savings of \$288m were claimed in non-equipment procurement despite the fact that costs actually grew by \$73m. The explanation offered by Defence to ANAO and the Senate was that the claimed savings were relative to a business as usual estimate of what the costs would have been without reform.

Schedule

The evidence from a range of internal documents confirmed that the Project was underestimated from the outset. The major failures are attributed to the level of uncertainty about the requirements, the complexity of the requirements, questionable quality in the specification documents and the absence of adequate management control at every stage of the Project as evidenced by ANAO's (*op. cit.*) statement that

... the Contract did not adequately provide for the Project Authority to exercise control over the contractor's inability to meet the schedule. Other than via milestone payments, the only schedule control mechanisms available are claiming liquidated damages or terminating the Contract. DMO's legal advice was that in the circumstances that have prevailed since major delays on the part of the contractor first became apparent, neither option has really been feasible for the Project Authority. (p.16)

The results of the effects-based evaluation of these failures (acknowledged by Defence and placed on the Projects of Concern list) also compromised the APS Governance Principles, FMA, CPG and industry project management practices as shown in Figure 8.

	Determining Factors				
Case 1 Context	PoC	Accountability	Contract Mgt	Risk Mgt	Compliance
Schedule	>2	>2	2	>2	>2

Figure 8: Case1 Schedule impact on the Determining Factors

The evidence to support the evaluation is attributed to the two schedule re-baseline activities that had to be invoked as a result of under-performance to achieve scheduled timelines and deliverables. Contract Change Proposal (CCP) 255 is extracted as evidence at the time of the ANAO audit (op. cit.) as it addressed some of the issues that contributed to the slippages:

- the Commonwealth partial termination for convenience of the Upgrade of Adelaide and Canberra;
- settlement of a costly delay claim from Thales associated with the Sydney work;
- a revised viable contract master schedule with a Contract Final Acceptance of December 2009 but within the variable fixed price as reported at the time of the ANAO audit;
- improved payment terms going forward;
- more certainty in the processes and criteria for contract Provisional Acceptance whilst maintaining Australian Defence Industry Ltd trading as Thales Australia; and
- more clarity in the capability upgrade contract obligations for the remaining program. (pp.15-17)

Capability

The Department of Defence’s internal review of the Project in 2007–2008 underestimated the prime contractor’s potential for achievement of some outstanding and programmed milestones to deliver the capability. This major failure resulted in only two of the four FFGs receiving their upgraded equipment which proved to be less than desired capability for use by Navy while undergoing operational tests and evaluations that demonstrated limited functionality and is evaluated as shown in Figure 9.

Case 1 Context	Determining Factors				
	PoC	Accountability	Contract Mgt	Risk Mgt	Compliance
Capability	>2	>2	>2	>2	>2

Figure 9: Case 1 Capability impact on the Determining Factors

The evidence to support the evaluation is based on ANAO’s (op. cit.) judgments that as at 30 June 2008:

- Sydney was Provisionally Accepted by DMO in December 2006, but did not achieve Initial Operational Release by Navy;
- Melbourne was Provisionally Accepted by DMO in October 2007, and was offered by DMO to Navy for Initial Operational Release. The ship completed an operational deployment in the period December 2007 to January 2008;
- Darwin’s Provisional Acceptance by DMO for August 2008, was cancelled and did not take place; and
- Newcastle failed in its combat system installation and production work having commenced the set to work, and initial harbor acceptance trials of the platform systems scheduled for August 2008.

Note: HMAS Sydney and Melbourne conducted operational exercises where they completed additional trials on and off the Australian station. Navy Operations continued to work towards the achievement of Initial Operational Release (IOR) which slipped by 36 months. (p.29, pp.54-55)

Although Thales elected to deliver three incremental combat system software builds, known as Baseline Builds 1, 2 and 3⁵² as a risk mitigation strategy allowed by the contract, the IOR of the first upgraded FFG *Sydney* was not achieved, in part due to performance deficiencies in the C–Pearl Electronic Support System. This limited Navy’s ability to deploy the FFG to an area of conflict at the time.

The situation was aggravated as at June 2008, when the electronic support, torpedo defence and combat systems showed performance deficiencies. This resulted in cooperative strategies being put in place to address these deficiencies in order to achieve planned contractual acceptance of the first three upgraded FFGs, complete with the combat system software in November 2008.

At the time, the software acceptance by Defence required satisfaction of contracted software Problem Report metrics, subject to Commonwealth risk assessments of impacts, and as reported by ANAO Report (op. cit.) that Navy agreed

The Contract did not adequately provide for the Project Authority to exercise the necessary degree of control required andthere remained a medium risk that these metrics will not be compliant at acceptance. (p.15)

However, ANAO (op. cit.) conclusion is that

The FFG Upgrade Project has experienced extensive time and material delays in meeting the contracted capability upgrade requirements specified in the late 1990s. The number of FFGs to be upgraded has been reduced from six to four, and the scheduled acceptance of the fourth and final ship has been delayed by four and a half years to June 2009. Since the last ANAO audit in 2005, the project delays are attributable to a range of Underwater Warfare System and Electronic Support System performance deficiencies. Considerable risk remains to the delivery of contractually compliant capability to Navy, given the maturity of these systems. (p.18)

⁵² ASPI (2013 p.202) states that “A re-baseline strategy appears to be a case of making a virtue out of necessity by putting a positive gloss on a project in trouble.” However, baseline Build 1 delivered in December 2006 and Baseline Build 2 demonstrated Evolved Sea Sparrow Missile capability on HMAS Sydney in October 2007. Baseline Build 3 commenced contractor sea trials in HMAS Darwin in August 2008. Conformance to Standard Testing of the Baseline Build 3 Link 16 software was also scheduled for August 2008.

ANAO (op. cit.) highlight statement on the conduct of this program is that

This audit highlights some of the challenges Defence faces in acquiring advanced capabilities for the Australian Defence Force (ADF). DMO relies on industry to deliver Defence's major capital equipment acquisition programme outcomes. If industry and DMO fail to deliver the specified capability to schedule, then invariably the ADF experiences delays in achieving the anticipated capability. In the FFG Upgrade Project's case, there is a four and a half year delay in the delivery of the final upgraded ship and an over five year delay in the delivery of the upgraded Combat Team Training facility. Project delays also result in DMO, the ADF and DMO's Technical Support Agencies carrying additional costs associated with maintaining and supporting DMO's project teams for longer, and at greater skill levels, than originally anticipated⁵³.

This audit also pointed out the need for DMO to establish contractual frameworks that encourage and require contractor performance through appropriate contractual performance management and progress payment regimes. In the case of the FFG Upgrade Project, the contract did not provide DMO with sufficient contractual leverage over the contractor, in terms of approval rights over the project's test and evaluation programme, nor did its liquidated damage provisions effectively discourage variations to contracted delivery schedules. The FFG Upgrade Project demonstrates that once major Defence capital equipment contracts are entered into, the prospects for DMO overcoming inadequate provisions are fairly limited. Since the FFG Upgrade Prime Contract was signed in June 1999, DMO has taken steps to achieve better contract provisions for test and evaluation and requirements verification. (pp.20-21)

⁵³ The Prime Contractor advised the ANAO in October 2007 that the reference to the DMO requiring 'greater skill levels than originally anticipated' is a reflection of the fact that the complexity of the contract was not well understood at the outset. This was exacerbated by the necessity to expend additional effort to comply with operational, technical and training regulatory frameworks introduced after contract signature. (ANAO Report (op.cit.) p.20)

Case 2: Replacement The MU90 Light Weight Torpedo Project⁵⁴

ANAO's Audit Report No.37 2009–10 stated that between 1995 and 1996, a Navy Defence study concluded that the lightweight torpedo was required and that it

... was the most cost and operationally effective anti-submarine warfare weapon in all situations. (p.11)

In July 1997, the Defence Capability Forum also concluded that there was a need to acquire a new torpedo because the existing Mark 463 lightweight torpedo had significant limitations and was not adequate for the ADF's future needs.

In the same ANAO report (op. cit.) it was reported that in March 1998, the Government in its 1998-1999 Budget gave approval for Phase 1 of the Project to proceed based on the submitted Business Case from Defence with terms of reference that included:

- select and procure through subsequent phases, a replacement lightweight torpedo, procure associated support systems, and integrate the torpedo onto the following ADF platforms:
 - Adelaide Class Guided Missile Frigates (FFGs);
 - ANZAC Class Frigates (ANZAC ships);
 - AP-3C Orion Maritime Patrol aircraft (Orion);
 - S-70B-2 Seahawk helicopters (Seahawk); and
 - SH-2G (A) Super Seasprite helicopters (Super Seasprite). (p.11-12)

⁵⁴ References cited in Chapter 4.footnote, Appendix F (2) and in the Bibliography.

Following Phase 1, a Project Definition Study (PDS) recommended the lightweight torpedo on the justification that it was to reduce integration and schedule risk, refine costs, and provide Defence with a sufficient understanding of the options for the acquisition in Phase 2 and 3.

In March 1999, Phase 1 started with the release of a Request for Proposal (RFP) to only those companies that had responded to an earlier invitation to register their interest that was issued in mid-1996.

In July 1999 the RFP closed with four proposals from Australian industry. Their responses were reviewed by three Proposal Evaluation Working Groups (PEWGs) that prepared reports for the Proposal Evaluation Board (PEB). The PEB reviewed the reports and endorsed the Source Evaluation Report (SER) that ranked the offer from Thomson Marconi Sonar Pty Ltd as the preferred option.

In October 1999, the SEB recommended the sole-source contract to Thomson Marconi Sonar Pty Ltd to do the PDS. On this recommendation, the relevant Defence delegate gave approval to proceed. In this decision, Defence effectively removed all competition from consideration in the subsequent acquisition Phases 2 and 3.

At the same time, the Minister was informed⁵⁵ that

... the MU90 had been selected and that it was the only 'in-service' weapon offered.
(ANAO op. cit., p.16)

This advice was later found to be untrue based on the evidence that no national navy had developed such a torpedo or had it in-service as a weapon as it was only being developed by France and Italy. (ANAO op. cit., p14, p.112)

⁵⁵ The documentation provided by Defence to the ANAO to indicate how the decision makers at the time formed the view that the weapon was in-service with other navies did not say that the torpedo was in-service with other navies. DMO was informed that the torpedo was not in-service with any other navy in March 2004 but did not inform the then Minister of this until 12 months later in March 2005.

In November 1999, the SEB decided that an innovative contracting approach (i.e. the alliance agreement) would be used for Phase 1 work. This decision was one month after the contract had been awarded and signed in October 1999.

In December 1999, the Director Undersea Weapons Group in DMO sought approval to adopt the alliance arrangement for Phase 1. The ANAO (op. cit.) reported that

This decision was as a result of legal advice, and was two months after the decision had been made to sole-source the work. (pp.24-25)

The implication of this decision is that the alliance mode of contracting had not been considered by the PEWGs in its evaluation process nor had it been included in the RFP. This meant that the responses from industry to the RFP in early 1999 would have been ‘penalized’ because not one of the companies that responded had any knowledge of the alliance arrangement and the requirements for suitability of a potential contractor as an alliance partner.

In April 2000, the alliance agreement was executed for Phase 1, and was the first Defence project to pilot alliance contracting.

In April 2001, the PDS was completed and accepted by Defence.

In May 2001, the Government approved the budget acquisition of MU90 through Phases 2 and 3 based on the Defence recommendation. Phase 2 was planned to commence immediately for completion by 2008. However, six months after this approval, the Defence Capability Investment Committee (DCIC) decided on a reduced statement of work that included:

- acquisition of an initial batch of war-shot, exercise and dummy torpedoes;
- integration of the torpedo onto the Anti-Submarine Warfare (ASW) platforms; and
- acquisition of the logistic elements necessary to support the torpedo.

In October 2001, DMO considered bringing forward the decision with a submission to the Vice Chief of the Defence Force (VCDF) to start Phase 3.

In June 2002, the VCDF agreed to bring forward the request for Government approval of Phase 3 in order to realize the two per cent saving associated with the costs of the manufacturing component of the Project as advised by DMO.

In November 2003, the Government approved the acquisition of the torpedo through Phase 2 and Phase 3 based on Defence's advice to bring forward the decision on Phase 3 from an originally planned year of decision of 2005-2006.

At this time of Government's approval, DMO classified the Project as a 'Project of Concern' because it was encountering significant capability, schedule and cost difficulties. On this outcome, ANAO (op. cit.) reported that Defence had sought approval from Government for Phase 2 long before it was ready, and that at the time Government approved Phase 3:

... no torpedoes had been delivered under Phase 2, and the integration of the torpedo onto the FFGs and the three air platforms had made limited or no progress. (p.114)

In June 2004, Phase 2 was formally listed as a Project of Concern because of the ongoing concerns surrounding schedule, uncertainty surrounding capability requirements and the cost risk for the integration of the torpedo onto the air platforms.

In the same year, an DMO special review commented as a result of the deteriorating situation that

... the Project had not followed the Project Management 101 Rulebook and that there was no excuse for not implementing sound project management and engineering principles. (DMO Due Diligence Report 2004 p.176)

The review also expressed its concern surrounding the apparent rush to lock in Phase 3, rather than address the outstanding deliverables within Phase 2. The review suggested that the

Commonwealth should delay Phase 3 until all Phase 2 issues surrounding Intellectual Property, acceptance, scope and platform integration were resolved.

In early 2005, ANAO (op. cit.) reported that the Project's Management Stakeholders Group (PMSG) also noted that

... even the capability development documentation that would have normally been required to be produced under the less stringent pre-Kinnaird capability development process had not been produced. (p.177)

In March 2005 (some 12 months later), the Minister was advised by DMO that the torpedo was not in-service with any other navy. On this transgression, the ANAO reported that DMO had known about the situation since March 2004 although the fact was published in Jane's Naval Ships Data Catalogue⁵⁶ as early as 1996.

In June 2005, DMO engaged and signed with Defence's Capability Development Group (CDG) the Materiel Acquisition Agreement (MAA) that stated in concise terms:

- the services and products that DMO would deliver; and
- the Measures of Effectiveness⁵⁷ of the Acquisition for Phase 2.

ANAO (op. cit.) reported that when this event took place

... the costing of the platform integration work had still not been resolved. (p.23)

Furthermore, the due diligence analysis⁵⁸ conducted by Defence at the time stated that

⁵⁶ <http://libguides.gatech.edu/content.php?pid=89511&sid=674354>
<https://portal.library.gatech.edu/vufind/Record/333070>,
http://en.wikipedia.org/wiki/Jane's_Fighting_Ships

⁵⁷ The eight Measures of Effectiveness included in the June 2005 agreement fell into three broad categories, two of which were fundamental indicators of the success of Phase 2. The Project did not succeed against these two Measures of Effectiveness for the three air platforms originally in the scope of Phase 2. All air platforms were eventually removed from the scope of Phase 2 by early 2009.

⁵⁸ The due diligence review was part of DMO's preparation to become a prescribed agency under the Financial Management and Accountability (FMA) Act 1997.

... DMO was not in a position to sign a Materiel Acquisition Agreement due to un-costed work for platform integration. (ANAO op. cit., p.23)

... as leverage to improve Defence's poor overall contractual position. (p. 18)

In August 2005, the contract for Phase 3 was signed by the Minister although all of the significant issues surrounding Phase 2 were still unresolved. On this decision, the ANAO (op. cit.) reported that

The primary basis for the DMO committing to Phase 3, notwithstanding the known issues surrounding Phase 2, was that the Phase 2 contract (had) placed the DMO in a weak negotiating position that, in DMO's commercial assessment, it was necessary to use Defence's commitment to Phase 3 work.

In February 2008, the Explosive Ordnance Division (EOD) was established at DMO to manage the Project. This decision was made eleven years after the concept documents were issued to initiate the Project.

In March 2008, the Super Seasprite requirement was removed from Project scope when the Government took the decision to cancel that body of work because of the continuing adverse reports and unattended issues.

In the same month, DMO provided ANAO with a security classification document which indicated that the number of MU90 torpedoes being acquired and the total inventory holdings to be held. This data was national security classified information and should have been imposed from the outset. Therefore, this belated national security advice was a major breach as it was provided 11 years late and certainly after the issue of the RFP to industry to do the work.

In February 2009, the Orion and the Seahawk requirements were also removed from the scope of the Project because of complexity and unclear specifications. This decision meant that the remaining work now involved the integration of the replacement lightweight torpedo

on only two surface platforms, i.e. the FFG and ANZAC ships, instead of five as originally proposed by Defence, and approved and funded by Government.

The revised MAA for both Phase 2 and Phase 3 was signed by DMO and Defence with milestone dates proposed by Defence. It was subsequently agreed to by the National Security Committee of the Cabinet (NSCC) in April 2009.

In March 2010, the interim Defence Capability Development Handbook (2010) stated that

... military or commercial off-the-shelf options should be used as a benchmark for considering acquisition options. (p.54)

In doing so, the Handbook pointed out in no uncertain terms that that any option that moves beyond the requirements of an off-the-shelf solution must include a rigorous cost-benefit analysis of the additional capability sought so that the full resource risks and other impacts are understood.

In this same month, the DMO informed the ANAO that the requirement to execute the MAA in June 2005 arose because it was to become a Prescribed Agency in July 2005. This formal advice was provided five years late.

In April 2010, Defence informed the ANAO that it aimed to achieve an initial operational capability in mid-2011, with the torpedo to be fully in service with all equipment delivered in late 2013. It was also interesting to note that at the same time, Defence informed the ANAO that Government was considering cancelling the Project.

On the matter of applying the appropriate national security classification relating to the technical information and specifications about the torpedo, Defence informed the ANAO two years after the event that any unclassified documentation, where this issue appeared, should be appropriately classified as addressed earlier in March 2008. This advice meant that all key external and internal documents released by DMO and sighted by industry and the ANAO were in breach of the national security classification requirements.

In May 2010, the Auditor-General submitted the ANAO Audit Report No.37 2009–10 on this Project to the President of the Senate where it was passed to the Standing Committee on Defence and the Speaker of the House of Representatives for their consideration.

In February 2011, the Project was removed from the Project of Concern and retrospectively listed as being with effect from January 2008. In doing this, the Senate Standing Committee on Defence (2011) reflected that

... while it acknowledged the complexity, it was concerned at the growing cost and rate of progress. (p.89, ANAO op. cit. p.18)

Evaluation

The result of the effects-based evaluation is shown in Figure 10.

Case Context	Determining Factors				
	PoC	Accountability	Contract Mgt	Risk Mgt	Compliance
Risk	>2	1	>2	1	1
Schedule	>2	>2	>2	>2	>2
Capability	>2	1	>2	>2	>2

Figure 10: Case 2 Effects-based impact on the Determining Factors
(Median of Evaluation is >2)

Risk

The assessment of risk in an acquisition and procurement activity is a mandatory task for all Commonwealth agencies under the FMA, CPG and related legislation. In project management, the performance and conduct of risk management is identified as one of the key elements and an essential tool to ensure the successful achievement of a project as it

... increases the probability and impact of positive events, and decreases the probability and impact of events adverse to the project. (PMBOK 2004, p.237)

The evidence contained in the ANAO Reports (op. cit.) clearly identified a litany of questionable decisions caused by practices that compromised the APS and agency’s Code of Conduct and contributed to unacceptably high levels of risk against each of the Determining Factor as shown by the evaluation is shown in Figure 11.

Case Context	Determining			Factors	
	PoC	Accountability	Contract Mgt	Risk Mgt	Compliance
Risk	>2	1	>2	1	1

Figure 11: Case 2 Risk impact on the Determining Factors

As in Case 1, this Case involves the acquisition of a new weapon and the integration of the weapon onto multiple platforms. The Project was an extremely ambitious, high risk and complex activity that would present untold risks that demand the highest level of probity and management’s constant attention from the outset because of the uncertainties.

Not only would such requirements engender the highest level of uncertainty, the number of platforms (originally five and subsequently reduced to two platforms), there were also significant interdependencies between this Project and other projects that used the platforms onto which the new lightweight torpedo was to be integrated.

Based on the adverse findings by both Department of Defence internal reviews and the ANAO itself, the ANAO reported to Parliament that DMO

... to have failed to have in place from the outset appropriate risk management processes to identify, monitor and address risks to the project. (ANAO op. cit. p.15, p.90)

ANAO’s assessment of the decisions and their impact is that

... there have been significant weaknesses in the Defence's risk management of JP 2070 (the Project). Several key areas of risk that have emerged or gained increasing significance over the life of the project include:

- Initial costing of Phase 2 of the JP 2070 was not sufficiently rigorous or subject to adequate scrutiny. This has had ongoing implications for project progress, and ultimately was a factor that contributed to a significant reduction in the capability to be delivered by Phase 2, particularly through the removal of all air platforms from the approved phases of JP 2070.
- Project planning and management was inadequate, and in some instances key project documents were either not developed, or were not developed on a timely basis. This has inhibited the orderly conduct of the procurement and, ultimately, the delivery of the capability.
- The decision to use alliance contracting arrangements for JP 2070 was not based on structured analysis of contractual options, and once implemented was not adequately supported. The alliance arrangement for this project has generated additional risk to this acquisition, did not mitigate risks it was intended to address, and shifted management focus away from project deliverables without demonstrating measurable benefits to project outcomes.
- An inadequate understanding of the weapon and its development status over the period 1999 to 2004 contributed to an underestimation of project risk. At the conclusion of Phase 1 of JP 2070, Defence and DMO believed the MU90 to be an off-the-shelf acquisition of a torpedo that was already in-service with the other navies. This was not the case⁵⁹. Subsequently, issues identified through production testing of the torpedo contributed to schedule slippage and invalidated planning assumptions with ongoing implications for testing and evaluation.

⁵⁹ The ANAO reported that in the documentation provided by Defence to the ANAO to indicate how the decision makers at the time formed the view that the weapon was in-service with other navies did not say that the torpedo was in-service with other navies. DMO was informed that the torpedo was not in-service with any other navy in March 2004 but did not inform the then Minister of this until 12 months later in March 2005. This action by Defence reflects a serious breach in not only accountability but also in integrity, stewardship, leadership and the APS Code of Conduct.

- The risk involved in integrating the weapon onto multiple platforms was acknowledged, but not fully appreciated at the outset, and was compounded by a range of factors as JP 2070 progressed. These included a significant underestimation of the full cost to integrate the weapon onto the various platforms, the absence of defined and developed integration solutions for the air platforms during the time they were in JP 2070's scope, and delays and difficulties being encountered by other projects that were upgrading the platforms with which the torpedo was to be integrated.
- The planning of testing and acceptance, and the resolution of testing and acceptance issues for JP 2070, by the DMO has been inadequate. This has impeded the transition of the torpedo, and associated surface platform modifications, into Navy Operational Test and Evaluation. (ANAO op. cit. p.74, pp.126-132)

Schedule

Schedule delays in this Case are not dissimilar to the previous Case study. The delays were caused by the failure to apply management control and the absence of precise documentation about the requirements. This dilemma caused further uncertainty by having the complexity of the requirements being underestimated from the outset because of the creation of falsehoods about the status of the torpedo. In so doing, compromised the integrity of the whole APS as well as the agency's Codes of Conduct, SOPs and measures of effectiveness.

All these adverse factors contributed to the perception that issues needed to be resolved in order to meet the fundamental purpose of this major capital acquisition project to provide the ADF with a new and enhanced capability, to schedule and within the approved budget. Therefore, the breaches in risk, schedule achievement, contract management and cost control represent key indicators of how ineffectively the DMO conducted this major capital acquisition to deliver the high cost capability.

The result of the schedule effects-based evaluation is shown in Figure 12.

Case Context	Determining Factors				
	PoC	Accountability	Contract Mgt	Risk Mgt	Compliance
Schedule	>2	>2	>2	>2	>2

Figure 12: Case 2 Schedule impact on the Determining Factors

ANAO's Reports No. 13 Major Projects Report 2008-2009 and No. 37 (op. cit.) assessed all Defence Projects against similar key indicators, and judged DMO's acquisition of the replacement lightweight torpedo as not managed effectively on its evidence that showed:

- will not deliver the capability originally sought by the ADF, with uncertainty surrounding what will be delivered;
- has not achieved schedule, with the successful completion of a range of ongoing activities essential to providing certainty regarding when the capability will be released into Navy service; and
- remains within budget, but this has been achieved by removing three of the five platforms⁶⁰ that were originally intended to be integrated with the torpedo from the scope of Phase 2 in 2008 and 2009, with ongoing uncertainty surrounding the likely cost of those elements that remain within scope of JP 2070. (ANAO op. cit. p. 83)

⁶⁰ JCPAA reported that all three air platforms were removed from the scope of JP 2070 with only the two surface platforms (the FFGs and the ANZAC Ships) now remaining in scope. The Super Seasprite helicopter was removed from the scope of JP 2070 in March 2008 when the project to acquire the Super Seasprite was cancelled by the Government. The Government agreed to the remaining two air platforms (the Orions and the Seahawks) being removed from scope of the project in February 2009.

It was reported by the Defence industry at the time (Defence News 2003 p.7), that the situation was becoming extremely serious and that similar issues had previously been identified in relation to a range of Defence major capital acquisition projects that included the Upgrade of the FFG (Case 1) and the M113 Armoured Vehicle Upgrade (Case 3). These projects and more necessitated the significant reforms to be introduced in order to address the continuing stream of failures and public criticism on the misuse of public monies. Indeed it was the 2003 Defence Procurement Review (the Kinnaird Review, 2003) that stated

Cost overruns have led to pressure on the financial resources available for Defence. In some instances major capital equipment has been delivered to the Services many years after its planned introduction. Budgets have been balanced by reducing capability. It would be unfair to suggest that Defence has ignored these issues. On the contrary, problems have been recognized; their causes identified and important reforms have been implemented. (p.27)

Capability

The timeframe for the Navy achieving an operational capability as defined in the original business case submitted to Government was mid-2000. This date was revised a number of times and defined in an MAA in 2005 as April 2010 although the transition into and out of Navy OT&E continued to be an ongoing risk to the Project at the time.

Based on the evidence contained in the ANAO reports (op. cit.) and Hansard JCPAA transcripts on these matters, the capability effects-based evaluation is reflected in Figure 13.

Case Context	Determining			Factors	
	PoC	Accountability	Contract Mgt	Risk Mgt	Compliance
Capability	>2	1	>2	>2	>2

Figure 13: Case 2 Capability impact on the Determining Factors

At the time of this study, the capability had not been delivered.

In April 2010, the Department of Defence informed the ANAO that it aimed to achieve an initial operational capability in mid-2011, with the torpedo to be fully in service with all equipment delivered in late 2013. This was 13 years after the Defence Capability Forum concluded that the existing lightweight torpedo needed to be replaced, 12 years after the Project commenced, and nine years after Government approved Phase 2⁶¹.

The Project was on the Project of Concern list at the time of this study.

Case 3: Management of the M113 Armoured Personnel Carrier Upgrade⁶²

The Australian Army introduced the M113 into service as a light armoured aluminum bodied personnel carrier, fully tracked vehicle to carry troops and their equipment into a battle-zone. It's value as well as it's vulnerabilities were demonstrated when it first saw service during the Vietnam War in which its operational deficiencies were first identified through a number of Army reviews that resulted in proposals for upgrades of the existing fleet and the procurement of a new fleet by Government. However, the fleet of vehicles remained in their original standard (i.e. M113A1) to the present time.

In July 1992, the Army proposed a minimum upgrade of the fleet to improve firepower, night vision, fighting, habitability and survivability capabilities. The upgrade was to take place in phases that included:

- Phase 1 to upgrade 537 vehicles to an A2³ standard for delivery from 1996 to 1998 at an approved cost of \$39.9 million (April 1993 prices); and
- Phase 2 to upgrade the remaining vehicles to the same standard with final delivery to be in late 2000.

⁶¹ The Australian Strategic Policy Institute report (2013) *The Cost of Defence: ASPI Defence Budget Brief 2013-2014* stated that "The overall FFG upgrade project is a good illustration of the pitfalls inherent in midlife upgrades. With a significant overrun in schedule and (effectively) a 50% cost overrun, if the FFGs retire as planned between 2016 and 2022, the return on investment will be much less than was initially anticipated." (p.230)

⁶² References cited in Chapter 4 footnote, Appendix F (3) and Bibliography.

In 1995 Defence reduced the scope of Phase 1 to modify 364 vehicles (reduced from 537) with a total approved budget of \$49.99 million representing a significant increase from Army's 1992 proposal.

In early 1995, Defence released the Request for Tender (RFT) for the Phase 1(a) Prime Contract to nine Australian companies: eight companies responded by late June 1995.

The Tenix (the contractor) bid was assessed by Defence as being the most compliant with the Phase 1(a) Prime Contract requirements. The contract was signed on 5 May 1997 for \$29.19 million that included an advance payment of \$4.21 million (14.4 per cent of the contracted price) to:

- procure new or modified T50 turrets: an American design fitted in the 1960s that became the standard turret;
- procure new or modify the cooled drinking water systems; and
- install other components known as Government Furnished Equipment (GFE) that were to be procured by Defence under separate Phase 1 contracts.

On the status of these contracted requirements, ANAO Audit Report No.3 2005–06 reported that

... After the acquisition of most of the Phase 1 contract, the turret and cooled drinking water systems were yet to be delivered (as scheduled). (p. 12)

In May 1997 separate contracts for the Phase 1 component parts were signed⁶³.

Sometime between late 1997 to early 1998, Tenix provided Defence with an unsolicited proposal to combine Phases 1 and 2, and to upgrade 360 vehicles to an M113AS3 standard⁶⁴.

⁶³ The study found that all of the Phase 1 contracts were not closed by mid-2000 with the exception of Phase 1(a).

⁶⁴ This is a major upgrade to an A2 standard plus power pack and drive train.

In this document, Tenix claimed that the option would provide \$30 million in savings for Defence.

In June 1999, Defence decided to sole source the combined upgrade to Tenix. By doing so, Defence suspended the Phase 1(a) Prime Contract causing Tenix to develop a number of Contract Change Proposals (CCPs) for a new contract that was to represent the second stage of the Project.

In July 2002, the Major Upgrade Contract was signed with Tenix for the supply of 350 vehicles at an AS3 standard and AS4 standard (i.e. an AS3 with stretch technology) at a cost of \$388 million. The Upgrade was to include the assembly of components with the M113A1 hulls.

This outcome meant that the vehicles would be substantially different from the requirements specified in Phase 1. Furthermore, the specified delivery date of December 2010 was now extended to include an additional 81 upgraded vehicles which were to become part of the Enhanced Land Force (ELF) arrangement to be established in December 2008.

On this matter, the ANAO (op. cit.) reported at the time that

... the M113A1 vehicles had a written down value of \$73 million which equated to a carrying value for each vehicle of some \$98,000. (p. 12)

This meant that the 350 upgraded vehicles would cost around \$1 million each subject to any variants that were identified and applied at the time the work was done. Furthermore, the amount of \$1 million did not include the additional expenditure that was being contributed to the Project under the M113 Fleet budget and the Commercial Support Program Contract.⁶⁵

In July 2005, ANAO (op. cit.) reported to Parliament that

⁶⁵ The M113 Fleet budget and activities performed under the Commercial Support Program Contract was generally used for the purposes of maintenance and repair of the in service M113 Fleet.

... the initial minimum upgrade phase of the Project suffered from poor project management practices; ineffective project planning; inadequately defined project objectives; and technical problems. (p.14)

In early 2006, the Government purchased the additional vehicles that were part of the ELF package.

In May 2007, Defence advised Parliament that

Defence has reviewed the capability requirement and confirmed the continued suitability and need for this family of vehicles. The option of cancelling the [M113 upgrade] project would leave a significant gap in the ADF's capability and is not being considered at this stage. (ANAO Report No.27 2008-2009, p.18)

In October 2007, Defence negotiated a Global Settlement with Tenix to overcome a range of technical, production and contract issues. The Settlement also enabled final production to commence. However, the negotiations to arrive at the Settlement were triggered by the ongoing delays in delivery, by the uncertainty as to the responsibilities of the parties, and by the perceived underperformance by Tenix.

The Audit Report No.27 2008–2009 also indicated that at the time of these negotiations

... Defence was considering alternatives to the M113 although it had confirmed that the upgraded vehicles remained the best solution in May 2007. (pp.41-44)

During the course of the negotiations, Defence and Tenix continued work to remedy the major technical defects in the design and construction of the upgraded armoured personnel carrier (APC), the armoured fitter (AF) and the armoured recovery vehicle (ARVL). At the conclusion of negotiations, it would appear that Defence should have been in a better position to authorize the start of the final production of these variants.

The same negotiations also settled other important matters that included:

- a commitment by Tenix to deliver the first 350 upgraded vehicles by December 2010 under a compressed delivery schedule;
- a process for designing and building the remaining four variants of the upgraded M113s;
- compensation to the Commonwealth for shortfalls in vehicle performance; and
- the recovery of liquidated damages, to be taken in the form of work-in-kind.

It is suggested by the researcher that given the state of the Major Upgrade Contract and Tenix's position at this time, the negotiated outcome was probably a reasonable solution for both parties in the circumstances although one other alternative could have been to cancel the Project and recover the loss from Tenix.

In December 2007, Defence advised that the upgraded vehicles had achieved a limited Initial Operational Capability (IOC) and could, if circumstances required, be deployed. However at this date, Defence was yet to complete the Operational Testing and Evaluation (OT&E) on the upgraded vehicles to achieve Operational Release (OR).

Furthermore, in light of increasing damage against these vehicles and the life terminating casualties on Army personnel on active service by improvised explosive devices (IEDs),⁶⁶ Defence considered the need for additional protection at an additional cost of up to \$0.2 million per vehicle, in case they continued to be deployed on similar hazardous missions experienced by Army personnel.

⁶⁶ It is also known as a roadside homemade bomb constructed and deployed in ways other than in conventional military action. It may be constructed of conventional military explosives, such as an artillery round, attached to a detonating mechanism. In the second Iraq war IEDs were used extensively against coalition forces and by the end of 2007 they had become responsible for approximately 63% of coalition deaths in Iraq. They are also used in Afghanistan by insurgent groups, and have caused over 66% of the coalition casualties in the present Afghanistan war.

In March 2008, Defence's assessment of the situation confirmed that there were no viable alternatives to the additional upgrade.

In the same month, Government purchased additional vehicles that were part of the ELF initiative⁶⁷ announced in 2006 at a total approximate cost of \$4.1 billion.

In July 2008, Tenix informed Defence that the existing production facilities at Bandiana (Victoria) were not adequate to undertake the contract tasks.

In the same month, Defence's General Counsel advised DMO (subsequent to the report from ANAO (op. cit.) on contract and financial mismanagement by Project staff) that

... the Commonwealth's standard position on the remediation of non-delivery according to contracted requirement was to allow 90 days grace to rectify a default, after which liquidated damages would be calculated from day 1, rather than from day 91 as was the case for this Project. (p.18)

In September 2008, the ANAO reported that only 16 upgraded vehicles were delivered to 7 Royal Australian Regiment (RAR) and that they had only travelled less than 1,000 kilometers. This mileage was considerably less than stated in the initial business case to justify the acquisition and Government approval. These vehicles were subsequently used in a training exercise in November 2008 and, by December 2008, had travelled almost 9,000 kilometers which is significantly less than would be expected for in-service vehicles.

In October 2008, the Minister for Defence announced that additional production would occur at Williamstown (Victoria), and Wingfield (South Australia), and on the same day, the Minister approved an additional tranche of APCs as shown in the Media Release 148/2008 dated 28 October.

On the expected benefits that these additional production sites would provide, the ANAO (op. cit.) reported that

⁶⁷ ELF was intended to provide Army with a range of additional equipment, among which were the additional upgraded M113s.

recovering the production schedule will be challenging although Defence was working with the Prime Contractor on measures to improve and expand the M113 production facilities and recover the anticipated production shortfall. (pp.105-106)

In December 2008, Defence advised ANAO that, notwithstanding the delays in the delivery of the upgraded vehicles, the demands on capability had been manageable. Defence claimed that this was due, in part, to its ability to use alternative armoured troop transports, and that troops, who would otherwise have been assigned to these vehicles, would be deployed elsewhere on operations as stated

The development of the upgraded M113 capability is adversely impacted by support to operations. This cost has been assessed and accepted by Chief of Army as Capability Manager. Indeed, the cost is manageable within Army's wider priorities and strategic guidance. Until it receives all its upgraded vehicles, Defence will continue to operate its fleet of original M113s, many of which are over 35 years old. (cited in ANAO Report No.27 2008-2009 p.115)

In the same month, Defence retrospectively advised ANAO that a limited Initial Operating Capability (IOC) for the upgraded vehicles was achieved late in 2007, and that the vehicles could be deployed if circumstances required. ANAO's subsequent review to confirm this advice found that Operational Testing and Evaluation (OT&E) of the upgraded vehicles was yet to occur and that there was still some way to go before Operational Release (OR) could be achieved.

Although Defence's claim that the delays in delivery of the vehicles to be manageable, it became obvious to the researcher that the prolonged delays in achieving full development of the upgraded capability had raised other issues that included logistical problems associated with running mixed fleets of old vehicles alongside the upgraded vehicles. Despite the fact that they shared few common parts, there were additional costs to cover the need for different crew training. According to the ANAO report (op.cit.), these costs had not been addressed in any of the submissions.

In March 2009, the ANAO Audit Report No.27 2008-2009 also stated that

..... 431 upgraded vehicles were on order for delivery by the end of 2011 under the renamed Project Land 106 Upgrade of M113 Armoured Vehicles with an estimated cost of \$100 million for the additional ELF vehicles.⁶⁸ (pp.13, 116)

Expressed in January 2009 prices, this cost comprised the approved budget of \$648 million for the first 350 vehicles, an additional \$241 million for the 81 ELF vehicles, along with estimates of additional costs for preparing and extending the vehicle hulls prior to upgrade, and to cover the Defence Project staff.

The 81 additional ELF vehicles allowed these two mechanized battalions (established under the Hardened and Networked Army initiative announced in 2005 at a cost of approximately \$1.5 billion) to operate M113s exclusively rather than mixed fleets of M113s and Bushmasters⁶⁹

In December 2010, Tenix informed Defence that it could not deliver as contracted and there was a potential shortfall of around 100 upgraded vehicles.

In February 2011, the Senate Standing Committee on Defence (2011) retrospectively listed the Project on the Project of Concern list to May 2008. At the same time, the Committee reflected that while it acknowledged the complexity of the work, it was concerned at the growing cost and rate of progress.

⁶⁸ Department of Defence (2008), Portfolio Budget Statements 2008–09, p. 166. The initial purchase in July 2002 of 350 upgraded vehicles for delivery by December 2010 was extended in December 2008 to include an additional 81 upgraded M113s as part of the Enhanced Land Force (ELF) initiative. With total anticipated expenditure in the order of \$1 billion, the upgrade was one of Defence's top 30 projects by forecast 2008–09 expenditure, with some \$100 million in expenditure under Project Land 106 forecasted for that financial year.

⁶⁹Department of Defence (2007), Australia's National Security: A Defence Update 2007, p. 51

Evaluation

The outcome of the effects-based analysis is shown Figure 14.

Case Context	Determining			Factors	
	PoC	Accountability	Contract Mgt	Risk Mgt	Compliance
Risk	>2	1	>2	>2	>2
Schedule	2	2	2	2	>2
Capability	>2	>2	>2	>2	>2

Figure 14: Case 3 Effects-based impact on the Determining Factors
(Median of Evaluation is >2)

Risk

The assessment of risk in an acquisition and procurement activity is a mandatory task for all Commonwealth agencies under the FMA, CPG and related legislation. On this matter, Barrat (2000) argued that

Key components of corporate governance in both the private and public sectors are business planning, risk management, performance monitoring and accountability. The framework requires clear identification and articulation of responsibility and a real understanding and appreciation of the various relationships between the organisation's stakeholders and those who are entrusted to manage resources and deliver required outcomes. (p.4)

In project management, the performance and conduct of risk management is identified as one of the key elements and an essential tool to ensure the successful achievement of a project as it

... increases the probability and impact of positive events, and decreases the probability and impact of events adverse to the project... (PMBOK 2004, p.237)

The general view by most military program managers is that the acquisition of a new weapon and the integration of the weapon onto multiple platforms would, in any environment albeit Defence, be an extremely complex project that would present untold risks that demand the highest level of probity and management attention from the outset⁷⁰. Not only would this requirement engender the highest level of uncertainty, the number of platforms (originally identified in the Business Case submitted to Government for funding as five and subsequently reduced to two platforms), there are also significant interdependencies between this project and other projects related to the platforms onto which the new lightweight torpedo was and is yet to be integrated.

In the first report, Defence was reported by ANAO and the JCPAA transcripts to have failed to have in place from the outset appropriate risk management processes to identify the risks and to monitor and address the risks at the outset and as they arose during the project. ANAO's concern at the level of risk exposed by Defence was unusually high as it took the unusual step to conduct 2 audits because of Defence's failure to implement the recommendations from the first audit of which it had agreed to do within the acceptable time and the continuing significance of this Project remaining on the Project of Concern list subsequent to the first audit report.

The outcome of the effects-based analysis is shown Figure 15.

	Determining			Factors	
Case Context	PoC	Accountability	Contract Mgt	Risk Mgt	Compliance
Risk	>2	1	>2	>2	>2

Figure 15: Case 3 Risk impact on the Determining Factors

⁷⁰ http://www.cdef.terre.defense.gouv.fr/publications/doctrine/doctrine01/version_us/etudes/art16.pdf

Schedule

On schedule under-achievement, ANAO's second Audit Report No.27 2008-2009 restated the situation that

... the M113 Major Upgrade Project which had commenced in July 2002 (and) had suffered a series of delays. (p.14)

An added significant risk arose in July 2008 when Tenix informed the Department of Defence that the existing production facilities at Bandiana⁷¹ (Victoria) were not adequate for the contracted tasks. Although this advice was responded to some 4 months later on 28 October 2008 when the Minister for Defence announced that additional production would occur at Williamstown (Victoria), and Wingfield (South Australia), and on the same day, the Minister approved additional armoured personnel carrier as documented in Media Release 148/2008 dated 28 October.

Following ANAO's visit to Bandiana in August 2008 when it observed a backlog of work (indicating that schedule slippage and resulting risks previously identified had been realised), ANAO (op. cit.) reported that the backlog was caused chiefly by delays in extending the vehicle hulls which proved to be more complex than anticipated, and taking longer than expected.

... recovering the production schedule will be challenging although Defence was working with the Prime Contractor on measures to improve and expand the M113 production facilities and recover the anticipated production shortfall. (p.15)

⁷¹ Defence and the Prime Contractor did establish the M113 production facilities at Bandiana, Victoria. At these facilities, original M113s were stripped, cut and extended under a separate maintenance contract held by the Prime Contractor for the M113 upgrade.

The outcome of the effects-based analysis is shown Figure 16.

Case Context	Determining Factors				
	PoC	Accountability	Contract Mgt	Risk Mgt	Compliance
Schedule	2	2	2	2	>2

Figure 16: Case 3 Schedule impact on the Determining Factors

Capability

While the Department of Defence did provide evidence of its effective oversight of technical issues to ensure the timely delivery of the capability during the second audit: it did not occur in full and resulted in the effects-based evaluation shown in Figure 17.

Case Context	Determining Factors				
	PoC	Accountability	Contract Mgt	Risk Mgt	Compliance
Capability	>2	>2	>2	>2	>2

Figure 17: Case 3 Capability impact on the Determining Factors

Even with the establishment of additional production facilities at Bandiana (Victoria), a backlog of work still existed. Furthermore, the Department of Defence's advice that the upgraded vehicles had achieved a limited Initial Operational Capability (IOC) as of December 2007 and could, if circumstances required, be deployed, can only be considered as cavalier particularly when Defence had not yet completed the Operational Testing and Evaluation (OT&E) of the upgraded vehicles which was necessary to achieve Operational Release.

In light of the increasing risks that arose with the difficulties in production, Defence's added requirement to provide more secure protection for the occupants of its vehicles at a potential

additional cost of up to \$0.2 million per vehicle, became a production complication to an already complicated arrangement.

Notwithstanding the mounting delays in the delivery of the upgraded vehicles and the advice that Bandiana could not deliver as required, the demands on capability had been far from manageable despite Defence's advice that it had the ability to use alternative armoured troop transports, and that troops who would otherwise have been assigned to these vehicle could be deployed elsewhere on operations.

Despite Defence's advice to ANAO in December 2008 that the development of the upgraded capability did adversely impact support to operations, the cost for maintenance and repairs was not fully understood and assessed by Army's Capability Manager to operate its fleet of original M113s as many were over 35 years old.

As at late 2009, Army had received only 42 of the 350 vehicles to be upgraded. Of these, 16 are still in service with 7 RAR, five are awaiting issue to units and the remaining 21 are allocated primarily to driver and crew training units.

Therefore capability delivery in full was not achieved, being dependent on the successful management of risk, schedule achievement and effective cost control: key indicators that show how ineffective DMO conducted this major capital acquisition.

The Comparative Analysis Process

The design and structure for ensuring cross-case comparability was discussed in Chapter 3 Research Methodology and expanded in the discussion on the approach for single case analysis when discussing the analysis protocol and framework. The intensive content analysis of the documents of each Case provided the base-line structure for capturing the distinguishing characteristics of the primary unit of analysis which is a Defence major acquisition and procurement project.

The characteristics from a common level of analysis are compared and matched against the other cases to become meaningful to enable the establishment of common patterns of events, actions and consequences on the effects-based factors of risk, schedule and capability that effectively compromised the Determining Factors that include accountability. In doing so, cross-level misattribution is mitigated to provide reliability and validity in the comparison of the evaluation outcomes of the three Cases.

The resulting purity of the findings from this comparative analysis will provide data with integrity to enable not only existing theories in management, and decision-making to be improved and some existing theories to be challenged (Yin 1984, Eisenhardt 1989, Rousseau (1985) and Marshall 1984), but also provide a major step towards ensuring greater transparency into one aspect of Defence's public funded activities thereby satisfying public interest.

In the literature review, one of the few empirical studies in the field was by Sanderson (2009). In his study, he examined the rhetoric-reality gap in relation to partnering in British defence procurement. Sanderson concluded that in the case he examined, the power relationships were so much in favour of the purchaser i.e. the Ministry of Defence (MoD), that the interdependence needed for the generation of partnership was missing. While the MoD used the phrase 'partnering within competition' in effect, the public sector purchaser retained its primacy at all times. Sanderson styled relations between the MoD and a typical prime contractor confirms the findings of this study as 'adversarial collaborative' (Sanderson 2009).

Evaluation

The evaluation of the effects-based impact on the Determining Factors for all the Cases is shown in Figure 18.

Case Context	Effects-based Factors	Discerning				Factors
		PoC	Accountability	Contract Mgt	Risk Mgt	Compliance
Case 1	Risk	>2	>2	2	>2	>2
Case 2		>2	1	2	1	1
Case 3		>2	1	>2	>2	>2
Case 1	Schedule	>2	>2	2	>2	>2
Case 2		>2	>2	>2	>2	>2
Case 3		2	2	2	2	>2
Case 1	Capability	>2	>2	>2	>2	>2
Case 2		>2	1	>2	>2	>2
Case 3		>2	>2	>2	>2	>2

Figure 18: Comparative analysis of the three Cases
(Median of Evaluation is >2)

The comparative analysis confirmed the ANAO's judgements that transgressions caused by questionable behaviour did take place: resulting in breaches and non-compliance to Governance Principles, the FMA, CPGs, Codes of Conduct and supporting legislations and regulations in all three Cases that reflected a median evaluation rating of >2 i.e. significantly more adverse.

The comparison of each Determining Factor consistently showed evaluations of 2, >2 and 1 with no significant deviations: falling within the impact range of significantly more adverse to dramatically adverse deducted from the effects-based factors of risk, schedule and capability.

Discussion

While all three Cases showed common breaches and non-compliance, Case 1 offered some characteristics that were uniquely caused by the sparse and imprecise documentation indicated that inadequate consideration was given by the agency to industry practice that when undertaking an upgrade of an existing capability, it is incumbent on the agency to account for every aspect by detailed planning and careful consideration of the requirement, the schedule and the cost: all of which required specific supporting contract clauses and contract consideration.

In this Case as well as the other two Cases, there was a clear lack of due diligence on the part of the Department of Defence and the contractors particularly related to the specifications for the requirements that were found to be inadequately and inappropriately defined and not agreed before contract signature to impact not only on accountability but other APS Governance Principles. On these matters, ANAO stated in its series of reports on Management of Defence Projects between 1999-2011 that

Where detailed specifications cannot be defined fully prior to contract signature, such as when systems definition and new design work must be undertaken within a developmental project phase, then the end capability requirements and priorities must be well defined and agreed. (Management of Defence Projects 2010, p.13)

The ANAO reports (op. cit.) also stated that

... they (contract specifications) should be clear on configuration management requirements of Integrated Logistics Support products in an incremental delivery software development project. This should align to milestones and remedies in the contract. (p.14)

One of the paramount issues required under Government's legislation and regulation that was overlooked and not considered by Defence at any stage was that at the time of capability and project definition, the method of acquisition should be clearly defined as to how the capability should be acquired. The ANAO reports (op. cit.) also restated advice in the FMA and CPGs that

If the project is developmental, then consideration should be given to methods other than a fixed price contract for achieving the capability. Contracts should include appropriate clauses that recognize the complexities of verifying and validating a software development project. Multi-platform upgrades should allow for implementation and testing/acceptance of the first platform without committing to a full class upgrade of all platforms. (p.23)

Furthermore, ANAO (op.cit.) reported that at the time of the audit, Defence stated that

... it is believed that concerns of probity would be raised where a contractor was selected to undertake \$220 million [the cost capped amount of Phase 2] worth of work on the basis of a \$30 million contract' (ANAO (op. cit.) (f24 p.35)

The Office of Government Commerce (UK) (1999) and Caldwell and Howard (2011) reinforced the view held by the practitioners in the information technology and defence industries that procurements that present themselves with high levels of uncertainty particularly as a consequence of significant change to software-intensive systems and complex system integration processes have inherently high-risk activities⁷². It was clear from the conceptual stage that inadequate analysis and appropriate risk mitigation processes were not applied. Furthermore, if it was done then the risks were under-estimated in the planning phase as a consequence of poor communication.

The evidence analyzed showed that the contract schedules were not accepted by all parties as realistic and achievable from the outset. On this matter, the ANAO (op. cit.) stated

Each party must be committed to achievement of the schedule and aware of the consequences of non-achievement, plus any provisions for delay outside the contractor's control. (p.33)

While delivery milestones were identified in the schedule, ANAO (op. cit.) stated on this matter that

⁷² http://www.cdef.terre.defense.gouv.fr/publications/doctrine/doctrine01/version_us/etudes/art16.pdf and <http://www.best-management-practice.com/>, and Subramanian, L.N. 2003

... they must be structured so that the contractor is not tempted to focus on equipment deliverables only. Payment for equipment milestones should be conditional on achievement of related Integrated Logistics Support milestones. (p.35)

The evidence showed that the acceptance criteria for scheduled deliveries were not readily available and caused dispute. This is attributed to the fact that the requirements specifications were far from clear. This lack of defined knowledge of the requirements and the deliverables contributed to the acceptance criteria being developed during the course of the Project. On this matter, ANAO (op. cit.) stated that

Objective acceptance criteria are required to ensure there is no scope for dispute as to whether the criteria have been met. Criteria for determining contractual achievement should support those criteria used by Defence for determining achievement by DMO of the measures of effectiveness in the Materiel Acquisition Agreement. (p.42)

ANAO's (op. cit.) evidence also identified significant breaches to the CPGs in that an agency contract should contain:

- milestones which enable the Commonwealth to unambiguously assess Contractor performance from the outset of the Contract;
- with the exception of non-recurring engineering effort, payment of all or a substantial part of the contract price should be subject to achievement of clear project milestones;
- milestones should reflect delivery of contracted requirements to the Commonwealth, not just reaching intermediate points on the timeline;
- milestones which enable use of the equipment and supplies (such as integrated logistics support and training) should be given similar weight as delivery of the equipment itself;

- payment on achievement of milestones should be conditional on achievement of previously scheduled milestones;
- payment of milestones should also be tied to remedies under the contract to allow the Commonwealth to seek redress; and
- clear entitlements of the Commonwealth to access all contractor project data (including internal workforce planning data) so as to be able to make informed assessments if a milestone is not achieved. (pp.55-56)

In relation to supporting documentation and channels of communication between the contracted parties throughout the Projects: apart from being reported in unpublished Defence internal documents as *troublesome and of a low standard*, the ANAO (op. cit.) stated that

For very large developmental contracts, project managers must ensure that the contractor maintains sufficient focus and resourcing on documenting what is being delivered and how to use it (through Integrated Logistics Support, configuration management and training. (p.15)

ANAO (op. cit.) also stated that

... there are issues with the accuracy and completeness of information in the current DMO systems for reporting on project status to senior management. (p.17)

This serious breach of conduct was seen to prevail in all three Cases and also reported in other ANAO Major Projects Reports from 2005 to 2010 where a number of monthly project status reports were expected to be examined for the period during which it was experiencing a major issue. The ANAO found little in the way of this type of reporting.

Finally, ANAO's 2009–10 Major Projects Review of 28 acquisition projects, reported the lack of consistency in the application of various policies, practices and systems at the project level that were relevant to the provision of assurance over the information contained in the PDSS for these 3 cases as well as other projects. This observation extended to areas such as financial management, where the project adopted varied financial management policies and

plans; and to risk management, where either no risk was done or a diversity of approaches at a project level impacted on a consistent and strategic risk management approach throughout DMO.

The unique characteristics of Case 2 are reflected in ANAO's statement that

In 2003, Defence requested the then Government to bring forward the decision on Phase 3 from an originally planned year of decision of 2005-2006, with the Government subsequently approving Phase 3 in November 2003. However, the contract for Phase 3 of JP 2070 was not actually executed until August 2005. By the time the contract for Phase 3 was signed, Phase 2 had already been identified by the DMO as a 'Project of Concern' and was known to be encountering capability, schedule and cost difficulties. (ANAO Report No.37, p.12)

Some of these issues, particularly related to the integration of the torpedo onto the air platforms, were not overcome before the Government agreed to reduce the scope of JP 2070 and to exclude all air platforms in February 2009.

This decision has been difficult to reconcile as it was reported in the ANAO Report, JCPAA transcripts and redacted agency documents that in April 2010, Defence informed the ANAO that Government also considered cancelling the Project at this time, and the Super Seasprite had already been removed from the scope in March 2008 when the Government did in fact cancel the Super Seasprite Project. This cancellation was followed up in February 2009, when Government removed the Orion and the Seahawk from scope. Other issues prevailed, primarily related to test and evaluation tasks that were necessary for operational release of the torpedo and the ship borne lightweight torpedo systems. These issues continued to present ongoing risks to capability delivery nearly 3 years after the completion of the ANAO audit carried out in 2009.

While ANAO reported that all of the significant issues surrounding Phase 2 were known at the time the contract for Phase 3 was signed in August 2005, the analysis shows that under this contract the Commonwealth was committed to an additional \$263.86 million (December 2005 prices) in expenditure to purchase additional war stock quantities of the torpedo over the \$179.56 million (December 2005 prices) committed under Phase 2.

This decision is certainly questionable as the commitment to Phase 2 had previously been \$268.71 million under the Revised Alliance Agreement, which was the initial contract for Phase 2. But, at the time the Further Revised Alliance Agreement covering both Phase 2 and Phase 3 was signed in August 2005, the total commitment for Phase 2 was reduced to \$179.56 million due to the removal of the air platforms from the contract scope. The Further Revised Alliance Agreement was signed two years before the Super Seasprite Project was cancelled and three years before the Government agreed to the removal of the Orion and Seahawk from the scope. Furthermore, the Phase 2 contract (i.e. the Revised Alliance Agreement) that DMO negotiated did not include the contractual protections generally included in DMO contracts to breach the FMA and CPGs. For example there was no clause in the contract that permitted termination for default.

On this matter, the ANAO Report No. 37 stated

In this context, the DMO noted that, following an exchange of correspondence in March 2005, it became apparent to DMO that the Industrial Participants were not prepared to re-negotiate the Revised Alliance Agreement for Phase 2 without an agreed course of action for implementing Phase 3 under the alliance agreement.

The primary basis for the DMO committing to Phase 3 in August 2005, notwithstanding the known issues surrounding Phase 2, was that the Phase 2 contract placed the DMO in a such a weak negotiating position that it was DMO's commercial assessment that it was necessary to use Defence's commitment to Phase 3 work as leverage to improve the Defence's poor overall contractual position. (p.81)

Another adverse factor that contributed to a breach in accountability is that while the Defence Procurement Review (2003) and the Defence Procurement and Sustainment Review (2008), advocated the increased use of off-the-shelf acquisitions to reduce project risk, and the Defence White Paper (2009) confirmed the Government's decision that Military-off-the-Shelf (MOTS) and Commercial-off-the-Shelf (COTS) solutions to Defence's capability

requirements will be the benchmark going forward,⁷³ both the ANAO (op. cit.) and the supporting JCPAA transcripts⁷⁴ reported that

... the experience of this project identifies that claims by DMO surrounding the development status of a product offered (as MOTS or COTS) required verification to confirm that what is being offered is actually off-the-shelf. Additionally, where claims about the development status are verified, the method of integration also requires close consideration as this may introduce developmental risk to a project. (JCPAA 422, p.18)

These actions were not performed and misleading information on the use and status of the torpedo was submitted to Government for project funding. On this matter, the ANAO Report No, 37 also stated that

The Defence Procurement Review 2003 and the Defence Procurement and Sustainment Review 2008 both also recommend the use of alternative contracting methods such as alliance contracting. This project demonstrates that alliance-style contracts cannot assure project success by and of themselves. Careful consideration is required at the outset of a project to determine the most appropriate procurement approach for each project, including the suitability of the acquisition to an alliance arrangement. Where an alliance contracting approach is adopted, appropriate governance arrangements need to be in place.” (p.82)

At the conclusion of its audit, the ANAO (op. cit.) reported that

... the full cost of the approved phases of JP 2070 could not be reliably identified as the JP 2070 budget and scope was subject to further revision, with Defence intending to seek approval from the Government to release additional funding to complete

⁷³ The Defence Capability Development Handbook 2010, which was released in interim form in March 2010, indicates that military or commercial off-the-shelf options should be used as a benchmark for considering acquisition options. The handbook indicates that any option that moves beyond the requirements of an off-the-shelf solution must include a rigorous cost-benefit analysis of the additional capability sought so that the full resource risks and other impacts are understood.

⁷⁴ Commonwealth Parliamentary Debates (2005), Senate Foreign Affairs, Defence and Trade committee, *Budget supplementary estimates 2005-2006*, 2 November, (pp. 111-119), Commonwealth Parliamentary Debates (2007), House of Representatives (Main Committee), *Appropriation Bill (No. 1) 2007-08 consideration in detail*, 13 June, p. 249.

integration of the weapon onto surface ships and undertake other activities. A range of important deliverables under Phases 2 and 3 are yet to be completed including completing integration with the surface platforms, acquiring equipment for test and evaluation, conducting test and evaluation and torpedo delivery. (p.23)

It is interesting to note that in Her Majesty's Treasury, the *Green Book* (2003) identified that for large public procurement

There is a demonstrated, systematic, tendency for project appraisers to be overly optimistic. To redress this tendency appraisers should make explicit, empirically based adjustments to the estimates of a project's costs, benefits, and duration . . . [I]t is recommended that these adjustments be based on data from past projects or similar projects elsewhere. (HM Treasury, 2003b, p. 1)

Nevertheless, such optimism has always been seen by the Australian Government as an impediment to prudent fiscal planning, for the Government as a whole and for individual agencies within government. (Barrett 2008)

To redress this tendency, the Australian Government recommended to all its agencies through the FMA, CPG and other reform instructions that planners involved in large public procurement should make explicit, empirically based adjustments to the estimates of a project's costs, benefits, and duration. Furthermore, that these adjustments be based on data from past projects or similar projects elsewhere, and adjusted for the unique characteristics of the project at hand.

Given such direction, the public view of the history of similar incidents at Defence has shown that it is not uncommon for major capital acquisitions to encounter cost, schedule and capability difficulties. When this occurred in each of these Cases, it would have been in Defence's interest to evaluate these difficulties from the perspective of earlier decisions and approaches as part of the Lessons Learnt process in which procedures for documenting lessons learned on all major projects are accessible, consistent in their format, and communicated effectively.

On this matter, Terry Williams (2007) states that

A key component of successful project management is the ability to glean key learnings from the experience throughout the lifecycle of the project, as well as at its conclusion. However, in practice, the lessons learned from a specific project are rarely incorporated into an organization's overall policies and procedures. Without a concerted effort to reflect on specific project learning's and a designated process to implement them across the organization, lessons are lost, mistakes are repeated and opportunities for operational efficiency are missed.⁷⁵

In doing this, it is conjectured that in all likelihood it would have provided useful insights into how similar circumstances might be avoided in the future. Whatever the case, it still remains the ongoing responsibility of the procuring agency to deliver the best possible project outcomes to the Commonwealth.

In the situation where a Defence project languishes between acquisition and capability delivery, the ADF is denied the capability being sought, resources may be tied up for extended periods, and future planning decisions involving significant expenditure may be impacted due to the interrelationship with other projects. Where circumstances that impact on project performance arise, they should be readily detectable through the ongoing performance monitoring mechanisms in place. However, this project demonstrates that, in respect of Defence major capital equipment acquisition projects, it strengthens the case that further enhancement of these reporting and monitoring mechanisms is required to properly inform decision making in Defence, Government and the wider Australian community.

In as much as Case 1 and 2 provide the evidence to confirm that dissonance in accountability existed, Case 3 provides additional characteristics that reflect adverse work practices that contributed to breaches and non-compliance.

In May 1998 the then Minister for Defence noted Defence's decision to sole source Phase 2 to Tenix. However, some months later, Defence staff decided to combine the phases through firstly suspending the Phase 1(a) Contract through Contract Change Proposals (CCPs) and to

⁷⁵<http://www.pmi.org/Knowledge-Center/Research-Completed-Research/Post-Project-Reviews-to-Gain-Effective-Lessons-Learned.aspx>

have the Contractor develop a series of them for the Major Upgrade Contract. These actions are questionable against the APS Codes of Conduct shown in Appendix D.

Nevertheless, rather than follow the normal procedures of developing a detailed operating requirement, statement of requirement and top level specifications, Defence compromised the procedures and put the Commonwealth at risk by relying on the Contractor's involvement in the integrated product team.

During the evaluation of the second CCP, it was found that the level of visibility into the evaluation process had been compromised because the decision to combine the Project phases was more expensive than expected and the offer from Tenix had a number of administrative problems.

The CCP from Tenix for a Project Definition Study and Mockup Vehicle Phase provided to Defence in November 2000 was flawed. ANAO's scrutiny reported that the scope of the CCP did not follow the normal process of a formal request then subsequent evaluation. In its defence, Defence stated that the reason for not following the normal process was that the CCP was to reduce the risk of the Project and was therefore low risk itself.

However, the course of events that followed showed that this defence was invalid and the cost to the Commonwealth amounted to a total cost of \$9.71 million. The ANAO considered this is a real variation to the Contract that should have had the concurrence of both the Minister for Defence and the Minister for Finance and Administration. While the Minister for Defence was asked to and did note the change, neither Minister was asked for or gave their concurrence for this expenditure. Defence advised the ANAO in its report No.27 2008-2009 in July 2005 that:

... contrary to the opinion expressed in the audit report, the change in contract scope referred to was within the broad revised project scope that had been endorsed by Cabinet in the Defence White Paper and Defence Capability Plan. The contract change was for an activity that was necessary to deliver the revised capability endorsed by Government vide these documents and was well within the project funding approved at that time. Hence the contract change did not require a further approval by the two Ministers. (p.56)

On this matter, the ANAO (op. cit.) reported to Parliament that

... in accordance with Defence policy any change (whether within the broad revised project scope or not) over \$8 million required the concurrence of both the Minister for Defence and Minister for Finance and Administration. (p.57)

In relation to functionality, the prototype turret sights provided for testing in late 1999 (some five months late) did not meet specification and were not accepted by Defence.⁷⁶ An alternative sight was provided by Tenix, who subsequently advised Defence that although the prototype day/night sight was leading edge electronic camera technology (electro-optical sight), its life cycle was immature.

This advice was later found to be wrong it was certainly a contract breach as full disclosure was not done as required under the APS regulations and agency procedures and SOPs. Furthermore, no liquidated damages were sought by Defence relating to the late delivery of the prototype sight. Trials conducted by Army also determined that the cooled drinking water system was not adequate to the specification and further work should be discontinued.

The Phase 1(a) Prime Contract, signed in 1997 for a turret and the installation of GFE, was not achieved but Defence decided to sole sourced the new Major Upgrade to the same Prime Contractor, i.e. Tenix. In so doing, it showed questionable decision making.

The approach by Tenix six months after the Phase 1(a) Contract was signed to combine Phases 1 and 2 together with a Commercial Support Program Contract which they already held with Defence is questionable. Defence's consideration of this proposal was in breach of the CPGs and FMA.

⁷⁶ ANAO (op.cit.) reported that in December 1999, the then Defence Acquisition Organisation initiated a review to determine the most efficient and effective way to progress the M113 Upgrade Project in terms of value for money. This Review submitted its report in January 2000. The review found that (among other issues): 'there is no suitable 'off the shelf' turret that will meet all requirements. Unless the Contractor completes a detailed concept design, continuation of the Contractor's turret option is unacceptable.' (f30 p.41); in its Report 3 2005-2006 audit, the ANAO noted that throughout the course of the Project, the turret solution has changed. At the time of (its) audit, the turret was not yet complete (f25 p.17)

Although the proposal stated that through a sole source acquisition strategy Defence could achieve a number of efficiencies (including meeting an in-service date some two to three years earlier than planned) as well as achieve savings of approximately \$30 million, ANAO's reported (op. cit.) to Government was that

..... no such saving occurred with the schedule slipping further than accepted. (pp.56-27, 78)

Finally, Defence's internal documentation reviewed by ANAO (op. cit.) showed that the four prototype vehicles that were to be delivered did not include all Phase 1 components as stipulated in the Phase 1(a) Contract. This was a breach of the specification as the prototype vehicles should have included all component parts and appropriate integration. Furthermore, the major components of the Phase 1 Minimum Upgrade, namely Phase 1(a) costing \$29.19 million were largely incomplete at the time of the second audit with no turrets produced and the drinking water system removed from the scope of the Contract with no formal approval from Defence.⁷⁷

The incidents identified in this analysis are reflective of poor management and governance support for the study and to raise questions about dissonance in accountability particularly related to major acquisition and procurement programs delivering the best possible project outcomes to the Commonwealth.

Since the ANAO Reports (op. cit.) related to the three Cases were submitted to Government and made available in the public domain, Defence has publicly stated that it would implement improvements to address the issues. However, ANAO's 2009–10 Major Projects Review tabled to Government in late 2011 reported a continuing lack of consistency in the application of various policies, practices and systems at the project level which were relevant to the provision of assurance over the information contained in the respective PDSS in major acquisition projects.

⁷⁷ The latest ANAO Audit Report dated May 2012 reported that "... the upgraded M113 does represent an improvement on the older, unextended vehicle. However, a vehicle that was considered fit-for purpose when the minor upgrade was first proposed 20 years ago no lags behind armoured infantry vehicles in use with other armed forces, and is vulnerable in many current threat environments, leaving Defence with an acknowledged capability gap." (p.7)

During the 2009–10 MPR review, the ANAO continued to observe a lack of consistency in the application of various policies, practices and systems at a project level which were relevant to the provision of assurance over the information contained in the PDSSs. This extends to areas such as financial management, where some projects adopted varied financial management policies and plans; and to risk management, where a diversity of approaches at a project level impact on a consistent and strategic risk management approach at the whole of DMO level. The ANAO also noted that, for some projects, there are issues with the accuracy and completeness of information in the current DMO systems for reporting on project status to senior management. This was highlighted in the case of one Major Project during the ANAO's review, where a number of monthly project status reports were examined for the period during which it was experiencing a major issue. The ANAO found little in the way of report metrics and narrative to adequately alert the reader to the impact of the issue on the project's position (2010 pp.23-24)

These findings extended to areas such as financial management, where projects continue to adopt varied financial management policies and plans; and to risk management, where either no risk was done or a diversity of approaches at a project level impacted on a consistent and strategic risk management approach to clearly demonstrate that dissonance continues to exist against the APS Governance Principle of Accountability.

Bushell (2011) summarised the situation at the Senate Hearing session on Defence procurement in April 2011 as follows

The root cause behind Defence/DMO failures in capability acquisition and sustainment has been emerging clearly from the DMO Major Projects Reports raised over the past three years and reviewed by the Joint Committee Public Accounts and Audit (JCPAA), but ignored by both Defence and Government. Briefly, projects are failing continually for the same elemental reasons, especially:

- Basic operational and technical requirements are incorrect and/or incomplete.
- The technology is not understood, so becomes unmanageable in capability, schedule and cost, especially where system performance and integration tasks are

encountered as reported at the Senate Inquiry submission on 12 October 2011 into DMO Procurement Procedures under “*DMO’s Terribly Complex Projects*”⁷⁸.

- An inability to determine whether the system delivered and accepted actually meets the requirements (Test and Acceptance problems).
- A complete lack of ability to identify, procure and establish in-service support requirements.

The major reason behind these generic failures is the continued focus upon commercial, contract management processes on projects that demand robust project and systems engineering management systems, driven by people having a sound knowledge of the technology involved. In this, Defence and the DMO have always had the cart before the horse. In a nutshell, doing more of what has been done without success over the past several decades will not fix the serious problems that are now maturing – especially when those things are being done by people who do not have the management or technological skills and competencies required for the job. (p.7)

The analysis of all the evidence indicates that Australian defence procurement manifests difficulties in managing multi-stakeholders, networked systems using traditional contract management processes and procedures. The three Cases encountered significant challenging circumstances, many of them could have been resolved had they been worked through to solutions through collaborative processes that emerged in response to concern ‘from the top’. However, it was evident that partnering, in the sense of shared responsibility and relational approaches to difficulties, was not encouraged by the DMO contractual environment.

DMO’s approach is a contradiction particularly when it put projects not only at high risk but in breach of Commonwealth contract guidelines and financial management legislation (as shown in the preceding) by engaging in an alliance agreement which according to the Australian Strategic Policy Institute (2013) is based on CGP principles that state

⁷⁸ <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=6f00b73a-772a-429c-8017-...>

The alliance contract is predicated upon an ‘equitable sharing of risks and rewards’ between the contract parties with the important point that the risks and rewards are pooled for the members of the alliance – it is the bottom line for the alliance as a whole that matters, not the individual performance of the participants. High productivity by one participant (or its subcontractors) benefits all participants proportionately; low productivity by one participant (or its subcontractors) imposes costs on all participants proportionately. Thus the alliance encourages not only cooperation, but close monitoring of performance among participants. There are also potential additional payments and liquidated damages associated with project schedule milestones. These incentives and sanctions prevent alliance participants from sacrificing schedule to achieve the Target Cost Estimate (TCE). As a practical measure, the participants are able to progressively claim part of the prospective fee provided that progress meets planned cost and schedule targets. If this proves not to be the case at a later time, there is provision for a claw-back of the fee. (pp.190-191)

Nevertheless, the need for flexibility as espoused in ADF doctrine is evident with the need to make this productive rather than last resort flexibility. This achievement involves processes that encourage, rather than discourage, accountability, ethical behaviour, risk taking, transparency in communication and trust.

Response to the Research Questions

The detailed analysis of the Department of Defence three major capital acquisition and procurement Cases followed by the comparative analysis consolidated prima facie evidence identified by ANAO and Government in its respective reports and transcripts that significant transgressions occurred bordering on serious shortcomings against the principles of accountability, transparency, integrity, stewardship, leadership and efficiency.

The evidence clearly pointed to an inordinate number of activities and consequent actions that demonstrated non-compliance to the FMA and CPGs that resulted in costly consequences, diminished capacity and incoherent strategic direction. In two of the Cases there was clear evidence to support the view that there was malfeasance when measured against the APS and Defence Codes of Conduct leaving itself vulnerable on the issues with

its over-promising and under-delivery of military capability in which the gulf between the stakeholder expectations raised in each activity could hardly be starker.

In its interests, Defence agreed to the ANAO findings and recommendations in each of the Cases, and since then it has shown improvement to the key elements of Project Management that address risks, schedule slippage and capability delivery. On cost control, Defence agreed to the introduction of a new approval process for controlling scope changes in capital acquisition projects; successful recovery of prepayments against outstanding deliverables; and the introduction of a suite of guidance and instructions for administering liquidated damages.

Nevertheless, the conclusion from the analysis of the three Cases clearly shows that dissonance in accountability did in fact take place on a number of time events and at decision points during the course of each Project. This conclusion is consistent with the findings of the Australian Parliament Senate Enquiry (2011) into procurement procedures for Defence Capital Projects that is summarised in the Executive Summary issued by Senator Eggleston (Chair) (2011)

In his 2003 report, Malcolm Kinnaird commented on the numerous reviews undertaken into Defence procurement, observing that 'too often implementation has not been given the priority necessary to ensure that there is sustainable momentum for change and reform. Eight years on and having witnessed an endless merry-go-round of reviews and implementation programs, the committee is convinced that the Australian Defence Organisation (Defence) is caught in a cycle of reforms that is adding further complexity to an already complicated and confused procurement process. The committee believes that the government and Defence must start to look beyond Defence's procurement processes to the root causes of its capability development woes. They must stop heralding reviews as a solution and accept them as a symptom of deep seated problems. Today's projects of concern list and the recent disintegration of Navy's amphibious capability (includes the FFG and LWT) stand as stark reminders of the magnitude of the problems before Defence.' (p.xiii)

Therefore, the answers to the questions raised in this thesis are:

- How was accountability balanced against decision control in acquisition and procurement programs?

The wider issue of the politics and social practices have manifested themselves in all three Cases particularly related to the existence of governance failure. In submissions requiring the expenditure of public money, full disclosure of the requirement is required under the APS regulations and agency procedures and SOPs, and in new public sector management theories, misrepresentation of information to Government by any Commonwealth agency is not only unethical and against the APS Codes of Conduct but the act of doing so i.e. malfeasance, compromises the APS Governance Principles that includes accountability. (Aulich 2001) (Painter, M and Peters 2010) and (Wood 1991).

Nevertheless, Flyvbjerg et al. (2003) and (2005) argue that in practical policy and planning, it is realistic to expect such co-existence in forecasting in large and complex ventures and organizations such as Defence.

Notwithstanding the theories, the defined evidence in the three cases shows clearly that accountability was compromised on a number of events and at decision points. The values of flexibility and control were also compromised by the underperformance of the Project Office personnel.

The evidence in the Department of Defence acquisition and procurement Cases strongly suggests that the essential preconditions for ensuring accountability, flexibility and control were unsatisfactorily performed or absent at several points in the lifecycle of the project caused by the absence of:

- clearly defined roles, functions and responsibilities;
- correct alignment between function and responsibility;
- accountability for decisions, agreements and commitments as laid out in the relevant

Commonwealth legislation, instructions and Codes of Conduct;

- overarching responsibility and vision to enable early and appropriate responses to emerging issues;
- adherence to capability management principles and practices across the whole capability continuum;
- understanding and managing shared responsibility; and
- providing for contestability and independent verification of estimates, assumptions and risks.

The corresponding questions include:

- Were other APS Governance Principles affected?

The Principles of transparency, integrity and stewardship were directly affected as well as leadership and agency efficiency. The effects-based impact from such adverse performance reflects the existence of a major organisational structural problem that points clearly to the decision making, business systems and processes being dysfunctional.

Barrat's view on this matter was stated at the Government-in-Excellence Summit in 2000 that

Corporate governance is largely about organisational and management performance. Simply put, corporate governance is about how an organisation is managed, its corporate and other structures, its culture, its policies and the ways in which it deals with its various stakeholders.

Key components of corporate governance in both the private and public sectors are business planning, risk management, performance monitoring and accountability. The framework requires clear identification and articulation of responsibility and a real understanding and appreciation of the various relationships between the organisation's

stakeholders and those who are entrusted to manage resources and deliver required outcomes. (p.3)

- What were the impacts on the agency, its stakeholders and the APS by the dissonance in accountability?

The late and incomplete delivery of the vehicles could have contributed to unnecessary Army casualties in Afghanistan, but there were certainly significant adverse effects-based impacts on the Navy where the anticipated benefits were exceeded by the final cost to get delivery of the assets. In all three cases, the promised benefits did not materialise because of the non-delivery of expected assets on time, fit for purpose and within the approved budget.

The image of the APS including the Department of Defence has been significantly tarnished by incidents such as those shown in these three cases.

Conclusion

Ignoring the principles of accountability in a major procurement program can have negative impacts on an agency's governance, business practices and operational systems to cause loss of efficiency in the agency's business.

The view by the Australian community is best reflected in the previously quoted article on Defence purchasing by David Ellery, a prominent Defence reporter in which he stated in the Canberra Times

Entrenched structural impediments to efficient and effective leadership within Defence could be at the source of Defence's procurement problems. The current management matrix model may need overhauling or even dismantling.

Evidence before the Committee (i.e. the Foreign Affairs, Defence and Trade Committee) suggested the convoluted process, lack of clarity and lack of compliance all point to failures in governance structure within the broader Defence organisation.

The governance structures within the broader Defence organisation would not be tolerated in any successful business. (*Canberra Times Defence News* 2011: p.8)

The conclusion drawn from the analysis were affirmed by the Senators sitting at the Standing Committee of the Foreign Affairs, Defence and Trade References Committee at their hearings held in late 2011 and 2012⁷⁹ when discussing the five ANAO's reports on DMO's underperformance management of Defence Major Capital Projects since 2000. Their concluding comments are best reflected following ANAO's most recent enquiry for the Senate into *Procurement procedures for Defence capital projects* (2012) that followed this study some four years later to identify a total cost blowout of almost \$8 billion and an accumulated schedule slippage of 119 years for 28 projects that included the 3 case studies used in this study.

Their views included in the ANAO report (op. cit.) were consistent with the conclusions of this study. Furthermore, the report was highly critical of the way the 28 programs were managed and conducted: attributing the major problem areas to poor risk assessment and a lack of communication between DMO and the three services in such a manner that

Governance of the Australian Defence Organisation is dysfunctional (resulting in) entrenched cultural indifference or even antagonism with Government and Defence. (*Canberra Times* 2012: p.2)

... the current services delivery model that has characterised Defence over the past two decades or more. Over that period, however, this approach has led directly to a bloated bureaucracy with a marked lack of awareness of major capability problems, inflexibility, and a lack of responsiveness, all leading to a serious decline in the management of the Services, as well as the acquisition and sustainment of Australia's military capabilities. While much has been made of these changes, the root cause

⁷⁹ The Senate hearings were attended with attention focused on the language, nuances and the tone of the dialogues between Senators and Defence representatives at Hearing (224) (224[1]) and (233[1]) in August 2011, (354[1]) in October 2011, and (1141) (1150) in October 2012. The insights gained from the dialogues refined the researchers analytical skills particularly related to the interpretation of ANAO judgment statements by the assembly on the respective ANAO reports and the words, sentences and phrases reflected in the questions and answers. This process not only validated the findings and judgment assessments but also provided a balanced conclusion to the researcher's interpretations. The transcripts of these and other relevant Senate hearings are listed in the Reference section.

behind the problems that continue to arise within Defence and the DMO have been neither acknowledged nor remedied. As a result, Australia must look forward to a continuation of late, inadequate and failed capability and sustainment projects, with a further erosion of military capabilities. (Bushell 2011 p.1)

Chapter 6

General Discussion

Introduction

In the previous chapter, the analysis of the Department of Defence three major acquisition and procurement cases drew attention to individual projects that experienced difficulties in accountability in order to identify the causes of the dissonance. The analysis also compared the projects collectively to determine the common problems that could indicate deep seated or persistent problems in the organization. The results of the evaluation of the effects-based impact on the Determining Factors for all the Cases are restated in Figure 19 below to help the discussions on its implications.

Case Context	Effects-based Factors	Discerning				Factors
		PoC	Accountability	Contract Mgt	Risk Mgt	Compliance
Case 1	Risk	>2	>2	2	>2	>2
Case 2		>2	1	2	1	1
Case 3		>2	1	>2	>2	>2
Case 1	Schedule	>2	>2	2	>2	>2
Case 2		>2	>2	>2	>2	>2
Case 3		2	2	2	2	>2
Case 1	Capability	>2	>2	>2	>2	>2
Case 2		>2	1	>2	>2	>2
Case 3		>2	>2	>2	>2	>2

Figure 19: Comparative analysis of the three Cases
(Median of Evaluation is >2)

The analysis found breaches in compliance in each case against the Discerning Factors that addressed government and agency legislation, regulations, directives and SOPs. In so doing, the breaches contributed to:

- a shift in governance in which there was dissonance in accountability that adversely affected performance of the program teams in decision control;
- transparency, integrity and stewardship that contributed to poor leadership and agency inefficiency that reflected the existence of a major organisational structural problems which in turn pointed to deficits of trust, the lack of flexibility in decision making, dysfunctional business systems and processes⁸⁰; and
- the Navy being exposed to unwelcome penalties through the non-delivery of anticipated benefits that were exceeded by the cost of the promised benefits and the non-delivery of the assets on time, fit for purpose and within the approved budget. More significant, the image of the APS including Defence had been significantly tarnished by publicly showing its lack of ability to manage and account for the use of public monies as required by the APS Governance Principles and FMA respectively.

The analysis while proving the incidents of breaches in compliance and conformance, also provided insights to other contributing factors that had unintended consequences that added weight to the conclusion of agency underperformance particularly in the areas of program surveillance and control. These insights are discussed under:

- governance accountability in the APS;
- performance accountability in the APS;
- governance in Defence; and
- governmentality.

⁸⁰ These matters were highlighted in the independent Final Report to the Australian Senate Foreign Affairs, Defence and Trade References Committee, *Procurement procedures for Defence capital projects*, August 2012 as well as the Minister of Defence as reported in the Australian 16Feb11 and Weekend Australian 19-20Feb11.

In addition, a review of accountability in the US and UK defence is discussed.

The study has uncovered evidence of dissonance in accountability and failure in the rational approach to public sector management activity whereby governmentality practices were taken out of the program and project management activities. The chapter concludes with a recommendation for a way forward in which the emerging Foucauldian concept and practices of governmentality being adopted in program and project management could be applied to reduce dissonance in governance in public sector acquisition and procurement activities.

Governance Accountability in the APS

Notwithstanding the continuing initiatives to substantiate the driving need for corporate governance, the privatisation of the public sector has also required proper accountability for the stewardship of public resources, as accountability is fundamental to our system of government and the supporting democratic systems⁸¹. In fact, APS directives govern and take precedence to override all agency directives on these and other policy matters.

Importantly, the privatisation of the public sector should not obviate or limit the need for accountability to stakeholders under any circumstance. Instead, less direct relationships such as the introduction of a new player in the accountability chain, i.e. the private sector service provider and, greater decision making flexibility should help to strengthen that need. These changes also have important implications for auditing approaches where management and accounting techniques have much in common with those in the private sector.

Nevertheless in the context of government acquisition and procurement practices, views from researchers such as Wilson (1989), are consistent with and confirm the findings of the study in that

..... the military procurement bureaucracy push its members to overstate benefits, understate costs, make frequent and detailed changes to specifications, and enforce a

⁸¹ Hughes, O. (1998) *Public Management and Administration: An Introduction*, 2nd edn. Macmillan, Melbourne, p.225.

bewildering array of rules designed to minimize criticism and stay out of trouble. There are hardly any incentives pushing officials to leave details to manufacturers or delegate authority to strong program managers whose career prospects will depend on their ability to produce good weapons at a reasonable cost. (p.375)

The characteristics of Wilson's observations were demonstrated in all three cases particularly:

- In Case 1 where the initial specification and funding was to upgrade six FFGs in 1999. As a direct consequence of significant delays, the specification was reduced to four FFGs following a re-baseline in 2004 and 2006 (some 5 and 7 years into the projects respectively). The ANAO reports attributes the delays to underestimation of the complexity involved and performance specifications not being formalised and agreed before contract signature⁸². The evidence in fact shows that

The Operational Release for the four ships project was successfully completed in July 2011, representing delays of between 67 and 84 months⁸³.

- In Case 2 the Lightweight Torpedo Replacement Project was originally intended to acquire a replacement lightweight torpedo and support systems, and integrate the torpedo onto the Adelaide and ANZAC Class Frigates, AP-3C Orion Maritime Patrol Aircraft, Seahawk helicopters and Super Seasprite helicopters.

As the project encountered difficulties, the scope was reduced to exclude the Super Seasprite, and then later to exclude the Orion and the Seahawk, leaving just the two surface platforms. At the conclusion of Phase 1, Defence “effectively removed all competition to the MU90 torpedo because Defence and DMO believed the MU90 to be an off-the-shelf acquisition already in service with other navies”⁸⁴. In fact, the MU90 was a developmental project not yet in service.

The Senate Final Report (2012) stated that

⁸² ANAO Report No. 20 2011–12, *2010-11 Major Projects Report*, p. 319.

⁸³ ANAO Report No. 20 2011-12, *2010-11 Major Projects Report*, p. 323.

⁸⁴ ANAO Audit Report No. 37 2009–10, *Lightweight Torpedo Replacement Project*, p. 21.

According to the ANAO, the Lightweight Torpedo project provides yet another example of where an inadequate description of risk during the capability definition and planning phase of a project contributed to problems with delivering the required capability. Other difficulties experienced by the project included issues similar to those experienced by other troubled projects:

- insufficiently rigorous cost estimates;
- inadequate project planning and management;
- failure to appreciate the risks involved with integrating the weapon onto multiple platforms—inadequate understanding of the weapon and its developmental status; and
- inadequate planning of testing and acceptance. (p.29)

In fact, the then Minister for Defence Materiel and Science stated in May 2010 that the project should have been 'better defined, costed and managed'⁸⁵, and at the final acceptance test and evaluation firings in November 2010 which were not a success Mr King Acting CEO DMO in 2012 explained that the project was 'a disappointment'⁸⁶

- In Case 3 the M113 Upgrade Program was initially specified to stretch and upgrade the ADF's existing M113A1 vehicle fleet that included seven different variants⁸⁷. The original cost was \$850 million but because of the loose specification, the cost increased to over \$1 billion which included the addition of another 81 vehicles under the Enhanced Land Force initiative years after the initial specification.

⁸⁵ Senator the Hon John Faulkner, Minister for Defence, media release, 'ANAO Audit of Lightweight Torpedo Replacement Project', MIN52/2010, 19 May 2010.

<http://www.defence.gov.au/minister/90tpl.cfm?CurrentId=10322> (accessed 1 March 2012).

⁸⁶ Senate Foreign Affairs, Defence and Trade Legislation Committee, Estimates, *Committee Hansard*, 31 May 2011, p. 62.

⁸⁷ ANAO Audit Report No. 34 2011–12, *Upgrade of the M113 Fleet of Armoured Vehicles*,

In fact, the Minister had been misled at the time because this information and the delivery date subsequently turned out not to be the case with the final delivery date for the vehicles being pushed back several times to well beyond the December 2010 date. The Senate Final Report (2012) stated that

The project was placed on the projects of concern list in December 2007 and removed in May 2008. According to the Senate Final Report (2012) it was taken off this list on the basis of Defence advice that included 'incorrect information regarding production rates and assurances that schedule delay would be recovered'. It found:

Subsequent advice to government in support of the 2008 proposal to acquire a further 81 upgraded APCs and the proposal to extend the AM variant also contained incorrect and unrealistic advice relating to schedule production rates and projections. There have been several such instances of incorrect and/or unrealistic reporting on project status, and issues affecting this, over the life of this project.⁸⁸

According to Wilson (1989) and the Office of Government Commerce (UK) (1999), it is essential that to get the most from an acquisition and procurement contract: the single common thread that binds and highlights the failures of the Cases examined, the contract manager and contractor alike need to nurture relationships that support not only the objectives of both parties but which also recognises their functional and business imperatives. As found from this study and particularly in the analysis of the three cases, the success in an acquisition and procurement program 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 'fit for purpose' deliverable within budget and schedule.

The inability of DMO to achieve these success characteristics was evident:

⁸⁸ ANAO Audit Report No. 34 2011–12, *Upgrade of the M113 Fleet of Armoured Vehicles*, paragraph 31

- in Case 1 where it was placed on the Projects of Concern List in 2008 some 10 years later, and finally reported to the Senate in June 2012 by Mr John O’Claghan (representing the Australian Industry Group) that

... clearly there was a failure on the part of the industry project team and the Defence project team to 'actually work together to get the appropriate outcome' for this project⁸⁹.

According to the Final Report to the Senate Foreign Affairs, Defence and Trade References Committee in August 2012

Evidence provided to the committee shows that this was a gross understatement of what was in fact a complete calamity. (2012 p.22)

- In Case 2 the project risks were not managed from the earliest stages (1997) and this major failure set the project on a troubled course. The Senate Final Report (2012) stated

Most particularly, it would seem that the advice on risk by domain experts was not communicated to, or appreciated by, others in the chain. Thus both projects indicate that somewhere in this management structure sound technical advice from subject matter experts was misinterpreted, reinterpreted or disregarded by non-experts. (pp.30-31)

As a Project of Concern for at least a decade, the ANAO (op. cit..) undertook performance audits of the Lightweight Torpedo project, and one of its findings was that there was no evidence that subsequent recommendations and lessons learnt that addressed the issues above and from the audits had been implemented. This conclusion is drawn because of the continuing difficulties experienced in delivering the required capability based on a fundamental misunderstanding of the scale of the engineering task involved that had survived for so long and the fact that capability had not been delivered as planned or had been delayed by more than a decade, with significant associated costs. The Senate committee considered ten years delay as scandalous. (2012 p.30)

⁸⁹ *Committee Hansard*, 12 June 2012, p. 28.

- In Case 3, relationships and communication between parties on all matters were compromised causing continuous schedule delays, the consequence was that it was placed on the Projects of Concern List in 2007. While many causes were attributed to the situation, one of the many issues that was reported by ANAO to the Senate was that

Indeed, the audit report noted that 'accurate information about the status of the project and the full implications of key issues was not always communicated to senior Defence decision-makers and the Government⁹⁰.

The discussion makes it clear that despite the privatisation of the public sector⁹¹, proper accountability for the stewardship of public resources including the use of public monies is an imperative in the APS because accountability is fundamental to our system of government irrespective of the task, mode and manner in which agencies do their business. In addition, the success in any acquisition and procurement program would be better placed by achieving a suitable balance between ensuring strict contract compliance and working with providers in partnership to manage risk at all stages and to achieve the required fit for purpose result within budget and schedule.

Performance Accountability in the APS

Although the public sector may contract out service delivery, this should not equate to contracting out the responsibility for the delivery of the service or program: an observed view that prevails amongst program teams during my tenure with DMO as the cause of the many Department of Defence failures. It is the responsibility of the agency and agency management to ensure that the government's objectives are delivered in a cost-effective manner. In the three Cases, it became evident that the agency failed to specify in the contract the requirements, the necessary level of service delivery and the required quantitative and qualitative service standards and measures.

However, it has been suggested by Department of Defence staff in more than the three Cases that

⁹⁰ ANAO Audit Report No. 34 2011–12, *Upgrade of the M113 Fleet of Armoured Vehicles*, paragraph 47

⁹¹ Privatisation in the APS is extracted from APS contract management policy documents and defined as the use of the private sector in the provision of a good or service, the components of which include financing, operations (supplying, production, delivery), and quality control.

Contracts should be framed for performance rather than detailing how to achieve this performance. (FMA, CPG and ANAO Defence Major Project Reports quote repeated regularly in the documents from 2007 to 2010)

Put another way, it is often more about cost-effective ways to seek solutions to defined problems or requirements in the marketplace than about attempting to specify those solutions which essentially means an implicit shared responsibility for results between the purchaser and provider. Worse still, there may be a commensurate lack of commitment where there is no real 'ownership' by the provider: the evidence showed that this approach was a significant factor that contributed to the failures in all three Cases.

- In Case 1, this was highlighted by ANAO reporting⁹² and the Final Report to Senate in 2012 that
 - ... The problems experienced by the FFG upgrade go to matters including Defence having no informed appreciation of the complexity of the project, especially that the systems-of-systems risk was high, inadequate specifications and consequent misunderstandings between Defence and the contractors. (p.23)
- In Case 2, the ANAO report noted that 'accurate information about the status of the project and the full implications of key issues was not always communicated to senior Defence decision-makers and the Government'⁹³.
- In Case 3, the development and delivery of the vehicles occurred in isolation from the development of some of the fundamental inputs to capability⁹⁴.

While it cannot be ignored, contracting, while providing the benefits of cost efficiency and enhanced service delivery, can expose the public sector to increased risk. The public service is, in many cases, no longer directly responsible for program outputs, instead being

⁹² ANAO Report No. 20 2011-12, *2010-11 Major Projects Report*, p. 328.

⁹³ ANAO Audit Report No. 34 2011-12, *Upgrade of the M113 Fleet of Armoured Vehicles*, paragraph 47.

⁹⁴ ANAO Audit Report No. 34 2011-12, *Upgrade of the M113 Fleet of Armoured Vehicles*, paragraph 35.

reliant on a private sector contractor for the provision of particular services or products to achieve a successful outcome.

Nevertheless, the relevant agency is still accountable for those outputs and outcomes under current accountability requirements. Accordingly, the agency must also ensure that an adequate level of monitoring of service delivery under the contract is undertaken as part of the agency's contract administration and in line with its broader service delivery responsibilities, such as might be set out in a client service charter. Particularly with large and complex projects there should be provision for:

Contract milestone reviews in the progress of the project, with tests wherever appropriate that prove the progress, and provisions for relief in the event of default. (FMA, CPG and ANAO Defence Major Project Reports quoted repeated regularly from 2007 to 2010)

The competent management of the contract is often the Commonwealth's key means of control over its outputs and their contribution to outcomes. This became glaringly evident by the repeated failures in compliance on legal matters and management practices in the review and analysis of the three Cases. The evidence overwhelmingly drove home the point that it is essential for staff at all levels of the organisation to have the capability and capacities to manage contracts effectively if the expected results are to be achieved. It is not just skills in relation to contracting that are important; there is still a high premium on knowledge and understanding of the functions/business that are being managed.

While such risks may have been accentuated by greater involvement of the private sector in contractual arrangements on public sector projects, the evidence shows that the breaches and failures could be attributed to the absence of management planning and sound management practices that:

- would have prevented the loss of corporate memory in the agency when downsizing of the public sector took place;

- the greater use of computing technology with attendant control, particularly whenever outsourced arrangements for the delivery of outcomes within cost and budget eventuated;
- the noticeable lack of required skills in project and contract management in the public sector; and
- the insufficient experience not only managing on an accrual accounting and budgeting basis but also in relation to matters related to managing staff performance engendering trust, and transparency.

Inconsistencies on these matters were evident in:

- Case 1 when it was also reported to Senate by ANAO in 2012 that
 - ... The ANAO reports highlighted a concern that is repeated throughout this report, i.e. the agency's non-compliance with policy, guidelines or manuals and capability managers left out of the loop.
 - With regard to the FFG project, the committee suspects that the full story of incompetence on this project, including that of the contractor, will never be discovered... (p.23)
- In Case 2 ANAO (op. cit.) reported that
 - "... Subsequent advice to government in support of the 2008 proposal to acquire a further 81 upgraded APCs and the proposal to extend the AM variant also contained incorrect and unrealistic advice relating to schedule production rates and projections. There have been several such instances of incorrect and/or unrealistic reporting on project status, and issues affecting this, over the life of this project"⁹⁵
- In Case 3 the Lightweight Torpedo project demonstrated that, from the earliest stages of this project, risk was not managed, which then set it on a troubled course. Most particularly, it would seem that the advice on risk by domain experts was not

⁹⁵ ANAO Audit Report No. 34 2011–12, *Upgrade of the M113 Fleet of Armoured Vehicles*, paragraph 31.

communicated to, or appreciated by, others in the chain. Thus (both) projects indicate that somewhere in this management structure sound technical advice from subject matter experts was misinterpreted, reinterpreted or disregarded by non-experts.⁹⁶

Finally, the Defence Teaming Centre stated in its submission to the Senate Hearings in 2011 that in relation to accountability

... the DMO 'appears to lack any capacity to learn from failings in previous projects'. It suggested that there does 'not appear to be any drive or motivation within the DMO to capture lessons learned and pass them on internally and to industry'.⁹⁷

In expressing these views, it could be deduced that contracting out service delivery should not equate to contracting out an agency's responsibility for the delivery of the service or program at any level. Competent management of the contract, commitment and ownership and learning from past mistakes are key means of control to manage and mitigate the risks over outputs and contributions to achieve outcomes in order to demonstrate accountability.

Governance in the Department of Defence

The following points of discussion should be seen as an adjunct to the discussion section in the previous chapter and above. These points are considered to be particularly poignant explaining possible causes that could contribute to the dissonance in accountability and assist in the development of measures to improve accountability.

Defining Individual Roles and Responsibilities: In all three Cases, the evidence cited above showed that the underpinning common cause to the breakdowns in documentation within the Department of Defence itself and the subsequent communication aspects between the Department of Defence and the contractor were due to failures in understanding and appreciation of the roles and responsibilities of the relevant participants in the APS governance framework, importantly, of the responsible minister(s), the executive boards, committees and the senior executive staff including the CEO: most important components of robust accountability. The absence of clearly designated roles in each Case weakened

⁹⁶ ANAO Report No. 20 2011–12, *2010–11 Major Projects Report*, paragraphs 27–28 and 2.48

⁹⁷ *Submission 16*, p. 2

accountability and threatened the achievement of organisational objectives and program achievement.

The Department of Defence takes great pride in providing volumes of documentation and technical information on nearly every aspect of its activities. However, the breakdown in communication is not attributed to the quantity of the material but to the quality and the exponential use of acronyms that even its own employees fail to comprehend. Therefore, it would be reasonable to accept the conversational and anecdotal complaints by the private companies and contractors engaged on these Cases that the documentation specifying the requirements was difficult to understand and translate into a fit for purpose asset.

For example, the business requirement for the Lightweight Torpedo was more than 1000 pages not including administration and technical information. Almost 80 per cent of the content contained bureaucratic and legal jargon of caveats to reduce risk to the agency that made it difficult for a reasonably educated person to understand, decouple and to translate into a meaningful fit for purpose military asset. The specifications are not reprinted in this discussion as the material on the specification continues to be classified by Defence.

Nevertheless, a journal article by Markus Mannheim in Forum (March 2012) on *Russell's War on accountability* when referring to the PACMAN document (the agency's pay manual more than 2000 pages and another 500 pages of explanatory notes). His example of the poor quality of the documentation extracted from a report on accountability is shown as

... Defence can improve its capability outcomes by progressively tightening the boundary conditions around the capability development process, improving top-down incentives for better capability delivery in an environment of capped budgets and extension of the current use of integrated project teams across the end-to-end capability development process... (p.54)

This example of fuzziness is embedded in many of the major complex acquisition and procurement programs, making it difficult for a reasonably educated person to understand the material and derive intelligible solutions for a specified asset. The lack of conciseness and clarity in Defence documents was stressed by the JCPAA Committee in its recent report (JCP422 2 April 2012) previously reported in the report on *Progress on equipment*

acquisition and financial reporting in Defence (2008) on the written presentation of the MPRs and Defence acquisition specifications issued to industry that:

- ... more could be done to address transparency and accountability across the Defence portfolio.
- procedures and processes for documenting lessons learned on all major projects should be accessible, consistent in their format, and communicated effectively.
- procurement-related terminology should be standardised.
- that Projects included in the MPR [should] continue to be reported on until full operating capability is achieved... (pp. xvii-xviii)

Wilson (1989) adds other dimensions to this discussion when discussing military organisation and procurement with his views that

... a government agency cannot afford to allow its operators to exercise discretion when the outcome of the exercise is in doubt or likely to be controversial. Public management is constraint driven. In short, because it is constraint driven, management becomes means oriented how the operators go about their jobs is more important than whether doing those jobs produce the desired outcomes. the general bureaucratic tendency to manage on the basis of process rather than outcome is much magnified because processes can be observed and outcomes cannot... (p. 164 and 174)

Additionally, the components for clearly defined roles and responsibilities are mandatory and any discussion of corporate governance within the private sector and, indeed, for public authorities and companies should begin with a discussion of the role of the board of directors, who have a central role in corporate governance. This was clearly indicated as follows by Sir Ronald Hampel's Committee on Corporate Governance (1998) that has been extensively quoted in governance papers and discussions:

“... It is the Board's responsibility to ensure good governance and to account to shareholders for their record in this regard...”⁹⁸

In the Australian private sector there is a clearly defined relationship between the main parties, the generic private sector governing structure consists of a board of directors, including the chairperson of the board, and a CEO responsible for the ongoing management of the agency. However, because of the different roles and relationships between the responsible minister(s), the CEO and (possibly) the executive boards and committees on decision making, the Australian citizens (stakeholders) have no voice on the use of public monies in military investment decisions.

On this point, it is important to recognise that the APS Foundations of Governance Principles (2003 2005), FMA legislation and CPG regulations repeatedly draw attention that there a distinction between agencies that are governed by the CEO, possibly with the assistance of a board of management in an advisory capacity, and those organisations that have a governing board to which the CEO should preferably be accountable, such as Commonwealth authorities and companies. The latter, of course, have more in common with the private sector. They also have added complexities as a result of the additional party in the accountability chain, and agencies should tailor their governance practices to take account of such differences.

This is a significant factor as these documents, legislation and regulations are the sources from which the SOPs are derived and by which the agency's compliance, results and program outcomes are judged.

Another apparent difference that is particularly related to the Cases between the public and private sectors is reflected in agency's relationship to its stakeholders. Private sector approaches tend to focus primarily on share-holders, while recognising other stakeholders such as employees, customers, suppliers, creditors and the community.

⁹⁸ Hampel, Sir Ronald (1998) *Final Report, Committee on Corporate Governance*, January, 14, UK.

While it is generally agreed that a board's primary responsibility should be to its share-holders, my observations of business activities in Australia suggest that concepts of greater social and community responsibility are increasingly being embraced by the private sector, as a matter of course⁹⁹. Boards are beginning to recognise that being seen as 'good corporate citizens' is integral to the long-term viability of an organisation and, therefore, in the interests of shareholders.

The Rationale for Good Corporate Governance Practices and Principles: Barrett (1999) emphasised that the driving need for attention by corporations to the principles of corporate governance requires an operating environment that ensures

... those involved to identify and articulate their responsibilities and their relationships; consider who is responsible for what, to whom and by when; acknowledge the relationship that exists between stakeholders and those who are entrusted to manage resources and deliver outcomes... (p.35)

This maxim provides a way forward to those, whether in the public or private sectors, who find themselves in somewhat different relationships from what they have experienced before: a constant argument position put forward by Defence senior management at Senate hearings on Defence acquisition and procurement activities. Based on the evidence, it is suggested that Defence senior management need to look beyond what have become their expectations over time particularly in view of the recent changes that have occurred in both sectors over the past ten years in relation to public disclosure of corporate activities¹⁰⁰.

In my mind, the real challenge is not to define the elements of effective corporate governance *per se* but to ensure that all the elements of good corporate governance and

⁹⁹ Townsend, D. (2007), "Engaging the Board of Directors on Strategy", *Strategy & Leadership*, Vol.35. No.5, January 2007 and IIEEE's *Management Digest*, December, 2007.

¹⁰⁰ The passage of the Public Interest Disclosure Act 2013 by the Australian Government was the highlight achievement as shown by a TIA media release that called on all members of Federal Parliament to support the Bill, and a media release by TIA Director, Dr A J Brown, Griffith University, who said, 'Today's passage of the *Public Interest Disclosure Act*, Australia's first national whistleblower protection law, is the biggest single reform to the federal public integrity system in 25 years'. The Attorney-General for Australia, Mark Dreyfus, also commented. http://transparency.org.au/wp-content/uploads/2013/06/13_6_19_Press-Release_Disclosure-Bill.pdf, <http://www.attorneygeneral.gov.au/Mediareleases/Pages/2013/Second%20quarter/26June2013-Whistleblowerlawpassed.aspx>

management practice are effectively integrated into a coherent corporate approach by individual organisations and well understood and applied throughout those organisations.

Implemented effectively, corporate governance and management practice should provide the integrated strategic management framework necessary to achieve the output and outcome performance required to fulfil organisational goals and objectives. Obviously, corporate governance also assists agencies to discharge their accountability obligations.

The challenge for the public sector and Defence in particular is not simply to ensure that all the elements of corporate governance are effectively in place but that its purposes are fully understood and integrated as a coherent and comprehensive organisational strategy focused on being accountable for its conduct and results. This message has been consistently emphasised in each Government commissioned report on Defence performance over the past thirty years and more recently by the release of the Review of the Defence Accountability Framework by Professor Black on 9 August 2011 by the Minister for Defence and the Minister for Defence Science and Personnel and the Minister for Defence Material.

The significance of the Black Review (2011) identified the lack of accountability due to the DMO matrix structure with the notable exception of the operational chain of command where clear lines of devolved accountability and responsibility are central to the military command chain.) This observation followed previous reviews, such as Kinnaird Review (2003) that strengthened the two-pass approval process and the Mortimer review (2008) on the procurement process is its comprehensiveness and forthrightness. There have also been observations by Defence analysis that previous reviews “were soft and white washed the performance of Defence”¹⁰¹. Given the disparity the Black Review continues to be recognised in the Australian Defence industry¹⁰² as being the first review that performed a deep dive scrutiny of the personal and institutional accountability in Defence as a whole over a period of ten years. While no officers were publicly named or charged, the Review found that

¹⁰¹ Bushell, E. (2011) <https://senate.aph.gov.au/submissions/.../viewdocument.aspx?id>, and Australian Strategic Policy Institute (2006) *Special Issue 41 – Serving Australia: control and administration of the Department of Defence*

¹⁰² Details of company-by-company description of the sector are shown at Australian Defence Magazine (ADM) Top-40 Defence Contractors.

significant problems with performance are embedded in many parts of the Defence, and that much of this goes to Defence management and the quality of its management systems.

Fundamentally, the Review challenged Defence to enhance individual and collective accountability. It also placed on the public record Defence's advice to the Minister for Defence on these issues that included instances of inappropriate executive management behaviour – being a part of that accountability, and questionable decision making capability.

To ensure that the recommendations from this Review become reality and not overlooked or ignored by Defence as previously done, the Minister for Defence legislatively established two independent Associate Secretary executive appointments that reported directly to him thereby strengthening Defence's capacity to implement the recommendations of the Review that would ensure

- ... the strengthening of personal and institutional accountability, particularly in the areas of capability development and acquisition;
- increasing rigour and contestability within capability development, including the establishment of a new process for the inclusion of projects into the Defence Capability Plan;
- improving project management skills, implementing three year postings for Australian Defence Force (ADF) personnel into capability projects, and developing employment incentives to retain key civilian staff in the capability area;
- reforming decision-making processes and performance management; and
- substantially reducing the number of Committees in Defence... (Ministerial Press Release 9 August 2011)

The Absence of and Significance Of Corporate Social Responsibility: In as much as the APS social reforms programs, legislation and regulations initiated in the early 1900s claim 'corporate social responsibility' as one of its important pillars to guide and ensure improved

performance and accountability, the reality is that APS agencies continue to underperform and breach the FMA and its regulations, each of the Principles of Governance, Best Practice Principles and Codes of Conduct with impunity despite the existence of the legal processes and instruments to prosecute officers that are found guilty of misconduct.

This continuing state of affairs has been repeated by the Australian Parliament and the Australian community over the past three decades that was best reflected by the Commonwealth Treasurer, Mr Peter Costello in 2005 that

... as far from acceptable and below the standards of private sector organisations and community expectations ... (n.p.n)

The seriousness of the situation tends to be overlooked by the fact that the activities of Australian public sector agencies affect almost all enterprises in some way or another within Australia and known to account for a significant percentage of defence business worldwide. In some Australian states the APS is responsible for 50 to 60 percentage of employment. As such, the APS play a fundamental role in society and has a huge impact on social welfare.

Since the APS and its programs rely solely on public funding, the behaviour and performance of its officers in agencies have the interest of a wide range of stakeholders and an impact on society, the concept of CSR remains valid for the APS as well as for the other sectors of industry.

Dr Lance Moir, former Senior Lecturer in Finance & Accounting, Cranfield School of Management, and now CFO of WIN Pty Ltd summed up the significance of CSR stated in a public lecture in Canberra in 2010 and published on <http://www.ceonline.com> that

... Corporate responsibility can no longer be viewed as a discretionary activity. Ethical behaviour goes hand in hand with reputation and to ignore its strategic implications is, at best, short-sighted.

It is not so much whether corporate responsibility should be incorporated into organisational life - but how. Corporate responsibility should be approached like any

other area of business decision making, with a systematic approach to priority assessment and benefits analysis.

Corporate responsibility is a key issue for modern businesses; from questions about ethical sourcing, pollution and greenhouse gases, to responsible hiring and marketing practices... (p.12)

While a range of academic and corporate definitions exist to describe CSR, the most appropriate description of the characteristics that underpin good governance and best practice particularly related to management accountability are best reflected and extracted from Ethics Australia, Transparency International Australia and the Australian Centre for Corporate Social Responsibility that define *corporate social responsibility* as

the practices and processes that businesses use to:

- respond appropriately to stakeholder expectations;
- minimise any social or environmental harm that may flow from the products, processes and behaviour of companies; and
- leverage companies' unique competencies for positive social and environmental impacts. (p.1)

While it could be conjectured that the majority of APS agencies may be 'doing' CSR in some way or form, by providing excellent goods and services; by being great employers, engaging with their employees and other stakeholders; being alert to health and safety issues in the workplace and for customers, or attempting to operate sustainably and minimise their use of natural resources: all examples of socially responsible behaviour, the evidence from the deep analysis of the three Cases showed very clearly that Defence has demonstrated a public history of non-compliance and breaches, failed a number of critical elements in its management of its major acquisition and procurement programs.

Adding to the program management failures evident in the Cases, a common contributor that pervaded was that the Defence employees were harnessed in the performance of their roles and subjected to ‘an atmosphere of executive micro management, deceit, distrust, disrespect and disloyalty’ (Bushell 2011 p.1-7)¹⁰³. The absence and abuse of such critical human elements in the most important resource needed to ensure the success of the programs and the overall ‘prosperity’ of the agency. A work environment with such characteristics could only be considered less than effective¹⁰⁴ and lacking in leadership which in most organisations would place emphasis on increasing employee skills and work on motivating and building staff morale driven by, or focused on employee engagement and development.

The consistent manifestations of unacceptable behaviour and perceived misconduct that resulted in the waste of public money have attracted considerable attention from the Australian community. As pointed out in Chapter 5, Ethics and Transparency International Australia have been pursuing the inequality in penalty that exists between the public and private sector in relation to corporate misconduct. One of the arguments that have been put forward by Ethics and Transparency International Australia is that senior executives found guilty of misconduct in the private sector have been publicly named and severely punished with jail time whereas similar or worse acts of misconduct by senior executives have been whitewashed and not proceeded with in the public sector.

To emphasise the serious imbalance, according to the AICD (2010) company directors are subject to 697 federal and state provisions that impose legal liabilities on company directors. This is expected to increase with the soon to be released Federal government’s Personal Liability for Corporate Fault Reform Bill with penalties in which company directors face increased jail terms for everyday business decisions under new Federal laws enacted in early 2012 in which the jail term is doubled for company directors that miss the deadline to lodge their annual reports with the corporate regulator, taking the penalty to one year in custody. The law also imposes one year in jail for directors who do not tell the regulator about the appointment of directors or company secretaries within 21 days of the decision. This is four times the previous sentence for the same fault.

¹⁰³ Bushell et al (2010-2012) submissions to Senate Hearings <http://www.ausairpower.net/APA-Briefings.html>

¹⁰⁴ In the Australian Military Doctrine, the Defence Value of Teamwork demands working together with respect, trust and a sense of collective purpose (ADDP-D 2012 p.6-6). This means that trust plays a significant role to ensure the successful achievement of a mission and if trust is eroded the team is compromised and the mission fails.

More serious is the fact that although the Public Service Act require public servants to disclose and avoid conflicts of interest, the senior executives at Defence need only to make such disclosures privately to their agency Chief Executive Officer.¹⁰⁵ This means that the people best placed to actually discover a hidden conflict – such as those defence companies that are not selected for a program contract – are unable to scrutinise effectively the purchasing decisions.

On this matter, a convincing case was made to the JCPAA in 2011 by the Chairman of TIA Roger Gyles AO QC. While acceptance of his arguments is still under consideration with the JCPAA, there are still some important questions about whether the full range of misconduct activities in the public sector need to be recognized and tackled effectively, and whether the Commonwealth's systems against highly questionable administrative and financial management practices are sufficiently coherent and robust to do so. Nevertheless, it was encouraging to see the release of the National Anti-Corruption Plan (NACP) Discussion Paper by the Commonwealth Attorney-General, Nicola Roxon in February 2012 particularly to address public commentary such as the following

"Smith (Minister for Defence) slams Navy over seaworthiness issues".

"Mr Smith said a report by defence chief Angus Houston and department Secretary Ian Watt into reasons for the maintenance failure made grim reading. Their advice which I am releasing today, was a frank appraisal¹⁰⁶ which identifies systemic and cultural problems in the maintenance of our ship fleet for a decade or more. It outlines the side-effects of a 'can-do and make-do' culture and a lack of sufficient adherence to verification, certification and assurance processes". In short, the

¹⁰⁵ Public disclosure of documents see Australian Defence Act No.20 of 1903 Sub Division E 51SO Power to require person to answer questions or produce documents <http://www.comlaw.gov.au/Details/C2009C00447>

¹⁰⁶ It is also important to note here that the "*frank appraisal*" provided to the Minister by the CDF and Secretary (the Diarchy) found Navy responsible for the failure to keep the fleet seaworthy and ready for action, and that this finding was accepted by the Minister, seemingly without question. While there was no suggestion that the Department or DMO were in any way accountable, and only a carefully tailored mention was made of the findings of the November 2009 Strategic Review of Naval Engineering conducted by Chief of Navy, who seemed to be focussed more upon identifying the root causes than attributing blame.

Minister felt that the Navy had "effectively failed to keep the fleet seaworthy and ready for action." (The Australian, 16th February 2011)¹⁰⁷

The internal report of the Navy review that included the two Navy cases, which was suggested to have been 'leaked' to *The Australian*, highlighted:

- A critical shortage of engineers.
- 'Cancerous' morale problems, including a negative attitude.
- A massive shortfall in Navy numbers.
- A broken management system.
- A poor state of engineering policy.
- Two decades of multiple 'reforms' and efficiency and cost-savings initiatives that have diluted and fragmented Navy engineering resources. (*The Weekend Australian*, 19-20 February 2011)

The merit of the NACP to this study is that its key objective is to strengthen Australia's existing governance arrangements by developing a Commonwealth policy on highly questionable administrative and financial management practices. Importantly, it brings all relevant Commonwealth agencies together under a cohesive framework and strengthens the government's capacity to identify and address risks that arise from questionable management practices. To achieve its primary purpose to develop a cohesive framework to coordinate and guide such activities in Australia particularly the public sector, the NACP is to be structured in three parts, namely:

- ... a comprehensive outline of existing Commonwealth arrangements to combat misconduct;

¹⁰⁷ Some national newspapers, without further thought, even called for the head of the Chief of Navy as a result of the inaction to address the waste of public monies caused by program failures over the years.

- the results of a risk analysis of current and emerging management and financial risks; and
- a framework to ensure the plan is able to effectively address these risks into the future... (p.4)

This approach will comprehensively outline the existing multi-jurisdictional approach to misconduct in administrative and financial management practices which currently is performed by a number of different agencies that have specific responsibilities for tackling highly questionable behaviour (but not misconduct) in different levels of government, and in relation to specific types of administrative and financial management activities.

As pointed out in the Literature Review, many states and territories have independent corporate governance bodies or are considering their establishment. At the Commonwealth level, a number of agencies or office holders have specific roles in relation to questionable administrative and financial management practices. For example, the Australian Commission for Law Enforcement Integrity (ACLEI) provides independent assurance to government about the integrity of the Australian Federal Police, the Australian Customs and Border Protection Service and the Australian Crime Commission.

The Australian Public Service Commissioner (APSC) is responsible for promoting the APS Values and Code of Conduct and evaluating the extent to which agencies uphold the APS Values and the adequacy of compliance with the Code of Conduct. Among other things, the Code of Conduct states that agency heads and APS employees must ensure that governance principles are embedded in the Codes of Conduct and that employees must not use their employment improperly for personal gain.

The NACP takes a further step, by ensuring that powers are embedded to examine the Commonwealth's current governance arrangements and to assess their adequacy in light of existing and emerging questionable administrative and financial management practice risks. This assessment of such risks will be informed by public submissions and risk-profiling activities. It is expected that this evaluation will result in the development of an 'action plan' with proposals to ensure the Commonwealth can effectively tackle such risks in the future.

According to the NACP, it will also meet a number of other important objectives, including:

- improving Australia's compliance with the United Nations Convention against Corruption (UNCAC) and assisting with the review currently underway of Australia's compliance with the Convention;
- providing guidance to government stakeholders and members of the public on Australia's approach to questionable administrative and financial management practices that border on anti-corruption, including the roles and responsibilities of relevant agencies, and mechanisms for coordination across sectors;
- identifying national priorities in the fight against corruption itself; and
- addressing the range of administrative and financial management risks identified in the Commonwealth Organised Crime Strategic Framework and other relevant government reports such as those produced by the Australian Crime Commission and the Auditor-General. (p.6)

Other significant steps forward that are embedded in the NACP are the categorisations and definitions of questionable administrative and financial management practices as extracted from the document that states

... While definitions of (questionable administrative and financial management practices) abound, a commonly agreed definition is the misuse of entrusted power for private gain. It can take many forms and vary depending on local culture and context. For these reasons, the primary international instrument in this field, the UNCAC, does not offer an agreed international definition.

Maladministration refers to the making of an official decision in a manner which is inefficient, incompetent, contrary to law, arbitrary, unreasonable, without proper justification, lacking in procedural fairness, or made without due consideration of the merits of the matter. Maladministration may breach the APS Code of Conduct.

Improper behaviour can include inappropriate personal behaviour, misuse of government systems or misuse of government resources. Improper behaviour may also breach the APS Code of Conduct.

Corruption could be viewed as one end of a continuum of other undesirable behaviours, including maladministration and improper conduct. Identifying maladministration and improper behaviour is important as these types of behaviour may indicate an increased risk of corruption, or may lead to the development of a corrupt culture. At the other end of the continuum is the highest standard of ethical behaviour... (p.6)

Figures 20 and 21 below are indicative of how particular types of behaviour might be classified and categorised but these are not intended to be definitive as the NACP is still in its infancy.

NACP
Highest standards of ethical behaviour
Acting with honesty
Managing resources appropriately
Using powers responsibly
Explaining reasons for decisions
Striving to do things in the best possible way

Figure 21: NACP Highest Standards of Ethical Behaviour
(Source NACP p.5)

Maladministration	Improper Behaviour¹⁰⁸	Corruption¹⁰⁹
Managing badly	Inappropriate personal behaviour	Misuse of entrusted power or office for private gain
Inefficiency	Misuse of government systems	
Bad judgment and decisions	Misuse of government resources (could also be corruption)	
Incompetence		
Lack of due process		

Figure 22: NACP Categorisation of maladministration, improper behaviour and corruption

(Source: NACP p.7)

Notwithstanding the arguments that have been presented to strengthen the need for Government to take direct action and to support the initiatives of CSR in the APS particularly Defence, acknowledgement has to be made for the counter arguments that have arisen in some sectors of industry and the APS based on perceived barriers for becoming too engaged in the philosophy of CSR and they include:

- the cost of implementing CSR activities when survival is often the greatest economic imperative;
- time and resource constraints which may mean a lack of affordable external support and resources;
- a lack of awareness of the business benefits with no/little understanding of the business case for small and medium-sized enterprises;
- the fact that existing CSR tools and guidelines are mainly geared towards large business;

¹⁰⁸ Some forms of behavior could be administrative misconduct and criminal.

¹⁰⁹ Some forms of malpractice bordering on fraud or corruption could be criminal.

- no systematic incentives or frameworks for SMEs to engage with this concept; and
- the fear of additional regulatory and bureaucratic burdens.

While some of the points could be seen to be of merit on a case by case basis, the wider management and industry literature strongly suggest that more benefits can be gained through the encouragement and application of CSR in all sectors of industry some of which include:

- the ability to attract and retain valued employees. A characteristic that ensures the organisations' success is largely dependent on its employees;
- the prevention of rapid turnover of staff. A characteristic of the APS and particularly Defence. Long-term retention of staff has been known to be a strong incentive for responsible labour practices; and
- the ability to develop unique selling propositions and competitive benefits through their products and services; cost and efficiency savings and enhanced reputation.

On personal reflection, one of the problems that arise when seeking to address CSR issues at Defence is that many of the tools are inappropriate being designed for commercial interests. This reflection is substantiated by Bushell in his submissions to the Australian Senate in 2009, 2010 and 2011 and encapsulated in the most recent ANAO Report (2013) that

Defence systems cannot readily provide consistent, reliable or complete information of the operating cost of current capabilities. Incomplete cost information about current capabilities prevents Defence from making reliable fact-based estimates of future operating costs, and means estimates of those costs are based on general assumptions rather than reliable historical data on cost drivers. (p.20)

The Importance of Effective Leadership: Of all the factors that contributed to breaches in accountability and non-compliance against the FMA, CPG and supporting legislation, the critical factor that gets overlooked time and again, and in fact actually underpin the incidences is directly the result of the absence of effective leadership by the senior management team at Defence throughout the acquisition and procurement process. This

serious deficiency was revealed during the analysis of the evidence of the three Cases, and also regularly reported to Parliament and the Australian community since the early 2000s by the Australian Strategic Policy Institute (ASPI)¹¹⁰.

The empirical evidence particularly from the three cases reflected a workforce that suffered from a crisis mentality, flitting from one program failure to the next rarely planning to avoid the pitfalls. Bushell (2009 2011) and the ANAO Performance Audit Reports cited cases and reported to Senate that the culture is heavily risk averse, with basic decisions routinely escalated because of the culture of excessive reliance on the perceived and unjustified risk scanning intuition of a small number of senior executives although there was a clear lack of clarity regarding accountabilities and responsibilities in many of these executives.

It was also observed that one significant consequence of having a heavily risk averse culture, is that it creates an overly self-protective and defensive environment in which employees become largely unwilling to challenge organizational norms or to engage in genuine self-criticism or analysis for fear of being further disenfranchised by senior managers. The outcome is that quality staff with motivation and with the capabilities to achieve success become enfeebled and demoralised and leave the agency.

Such oversights in management policy and practice become difficult to accept particularly when extensive academic, defence industry and public sector management literature, business schools and professional organisations repeatedly emphasize that all organisations, their products, services, reputation, potential and performance are defined by their people and the opportunities they have to perform, contribute and grow.

This view in modern time is best reflected in the words of Agilent's Electronic Measurement Group President Ron Nersesian, one of the talent leaders featured in Bill Conaty and Ram Charan's book, *The Talent Masters: Why smart leaders put people before numbers* (2008). His experience and commitment to developing people is one of a number of individual and organisational stories described by the authors as they make their case for focusing on talent.

¹¹⁰ Australian Strategic Policy Institute, 2006, *Special Issue 41 – Serving Australia: control and administration of the Department of Defence*

Developing other people's talent is the whole company at the end of the day. ... if business managed their money as carelessly as they manage their people, most would be bankrupt. ... The great majority of companies that control their finances masterfully don't have any comparable processes for developing their leaders or even pinpointing which ones to develop. How did this come to be? After all, it's clear enough that people make the decisions and take the actions that produce the numbers. Talent is the leading indicator of whether a business is headed up or down. Everyone agrees it's the company's most important resource. But a spreadsheet full of numbers is a lot easier to parse than the characteristics unique to a human being. (p.1)

The authors also argued that

..... talent is the one competitive advantage that can be relied upon to differentiate companies. Our products are all time-perishable. The only thing that stays is the institutional learning and the development of the skills and the capabilities we have of our people, and commitment to ongoing learning and development relies upon a commitment to providing and creating opportunities that allow and enable people to develop of healthy working relationships based on trust, loyalty and respect for each other unlocking capability the effective leadership, the team and the organisation who all benefit. (p.2)

Even with the introduction of improved staff professional development and performance programs, the identification of the strengths of staff capability was always seen as a major shortcoming at Defence as reported in the publicly available Defence Annual Reports from 2000 to 2012¹¹¹. The 'situation' continues to be manifested in the high staff turnover rates, and increased claims of harassment and bullying not only in the military but also in the civilian component in Defence and DMO. The situation was highlighted by the DLA Piper Report of the Review of Allegations of Sexual and other forms of abuse in Defence (2012) carried out after the Minister had received over 1000 allegations currently being further investigated by the Defence Abuse Response Taskforce (DART) set up by the Minister at the time.

¹¹¹ <http://www.defence.gov.au/header/publications.htm>

In referring to the existing management and behavioural science literature, DLA Piper observed that

... working in our areas of strength, and being given opportunities to develop them, energises, satisfies and rewards us. Growing into our strengths sustains a sense of personal mission and authenticity... (p.3)

This management strategy was recently reflected in the public statement in *Management Today* (2011) by former Gallup researcher Marcus Buckingham that

... a manager's responsibility is to discover what is unique about each person and capitalise on it... (p.3)

The reason for this approach, he claimed, is because when you capitalise on what is unique about each person you stimulate individual excellence. In the same way as development needs can be observed, so too can strengths. In fact, observing, acknowledging and developing someone's strengths is a practical and productive way of leveraging resources and tapping into discretionary effort - all the while providing positive enforcement.

On reflection, in a personal conversation discussing a similar study on the strength-based approach with Professor Stewart, Australian Defence Force Academy (ADFA), University of New South Wales during the crafting a joint paper on organisational culture in 2012, it was jointly observed that focusing on strengths can also sound like complacency, i.e. just settling into a comfort zone of operation. This is a fair concern that has been repeatedly used as a response from senior Defence staff in a number of Senate Estimates Hearings for some years whenever the matter of staff improvement matters were raised as a possible cause for the agency's underperformance and non-compliance to the FMA or CPG.

While there could be some validity in the Defence staff response, it fails the reasonableness tests as it is not what working in areas of strength is about, and the response would certainly have been rejected outright by Mihaly Csikszentmihalyi¹¹² a former Harvard psychology and sociology professor whose work on happiness and creativity led to the concept of 'flow' -

¹¹² http://www.goodreads.com/author/quotes/27446.Mihaly_Csikszentmihalyi

that optimal state of productivity through immersion and engagement in an activity. To achieve a flow state, Csikszentmihalyi said

... a balance must be struck between the challenge of the task and the skill of the performer. If the task is too easy or too difficult, flow cannot occur. Both skill level and challenge level must be matched - and high... (n.p.n)

In other words, employees need to be given the opportunity to work in their areas of strength and they need the opportunity to have those skills stretched and challenged so that they increase their skills base. According to Dr Moir, organisational growth occurs at the edges, and any reasonably motivated employee would not want to be left 'spinning their wheels' in unchallenging work and in an unhealthy and unhelpful work atmosphere environment. According to Dr Aubrey Warren (2011), University of NSW

... Stretch opportunities generally create a desire to learn, as well as communicating a practical sense of reward and recognition. The challenges of stretch situations tend to stimulate rather than stress us. And again, when stretch opportunities align individual strengths and organisational needs, the benefits can be compounded... (p.1)

While specially substantiated arguments have been made for the 'business' benefits that flow from being accountable, compliant and ethically responsible, other more relative benefits that could be achieved by public sector agencies like Defence include:

- improved management and program performance;
- better reputation with stakeholders;
- enhanced employee relations, resulting in improved recruitment and retention of talent;
- reduced operating costs;
- improved management of public funds;

- reduction is waste; and
- lower business risk to the organisation and the Australian community.

Yet many of these benefits continue to be overlooked as clearly shown in the evidence in the three Cases. Nevertheless, even if Defence senior management think about ethical behaviour, sound management practice and corporate responsibility as being nothing more than any other business activity, then it still comes down to a case of the agency's inability to prioritise its resources, and to perform routine decision-making.

Given the views of its military leaders, its publicly declared Mission and Values statements and Codes of Conduct and the more recent *Pathway to Change: Evolving Defence Culture* (2009), then there should be little doubt that it has long established ways of making complex and business value decisions particularly related to the effective use of public funds - so why are these skills not used in the context of APS accountability with the values of flexibility and control balanced in the implementation of complex contracts? Why were the Principles of transparency, integrity, stewardship leadership and agency efficiency adversely affected? Why were the negative impacts on the agency, its stakeholders and the APS allowed to continue from such behaviour?

Some answers to these questions have been found in this study, other answers are dichotomised in the public domain by the recently released government commissioned reports such as the Kirkham Report on the Management of ADFA Skype scandal (2011), Black Report on Defence accountability (2011) and Broderick Report on discrimination and harassment at Defence (2011) and many more to follow as the public becomes more aware of its rights to seek answers for the justification and rationale for its money to be expended in major acquisition and procurement programs.

Despite the vast array of government legislation and regulations and APS driven rules, guidelines, standard operating procedures and processes at this lead agency to ensure adherence and compliance to workplace management and practices, it is clear from the comprehensive and detailed discussion above that good management practices have been

over-ridden and contributed to dissonance in accountability as shown in the analysis of the three cases, and confirmed by Bushell (2011) that

... The DMO continues to demonstrate a systemic inability to manage projects which are in any way 'complex', particularly those that include any degree of system development or integration. It also demonstrates difficulties in providing in-service support on time. These congenital problems stem directly from an entrenched, process-driven, contract centric approach to project management, rather than employing sound Project, Systems and Equipment Engineering management systems and procedures developed especially for controlling technology projects.

The situation that has persisted for more than a decade is an inevitable consequence of the 'not thought through' de-skilling and downsizing of the Services and the structural changes imposed by the Defence Reform Program (DRP) and Commercial Support Program (CSP).

The problems being encountered have been institutionalised firstly by the fundamental models used in the management and governance of the acquisition bureaucracy, and secondly by the practice of replacing technologically skilled engineering professionals with technologically unskilled generalists. That is, the imposition of administrative process over project and systems engineering management. For more than a decade, the approaches adopted have been shown not to work, and can not be made to work... (March 2011 p.3)

And Bushell, Green and Graf (2011) that

... A review of the various submissions made to Defence Reform Reviews, Parliamentary Committees and successive Defence Ministers, covering the full gamut of Defence Matters, shows this to be the case. The result has been to erode the professional development and management of Australia's Military Services, to place Australia's Defence Industry, particularly the Aerospace Industry, in jeopardy, and to impact adversely the National security. The problems that Defence and DMO have been allowed to create and perpetuate over time will now make Australia largely

irrelevant, both on the regional and international stages, for the next three or more decades, since it will be:

- unable to muster or project any significant and demonstrable deterrent military power;
- unable to contribute as a leading nation to regional security arrangements;
- unable to pull its full weight in concert with international forces or in support of bi-lateral security treaties and arrangements;
- made wholly dependent upon foreign companies for the availability and sustainability of its major military capabilities; and
- lack any real measure of self-reliance... (pp.1-2)

The discussion above has been purposely directed at much needed specific characteristics such as the roles and responsibilities of the individual, good governance and a strong sense of corporate social responsibility and effective leadership as counter-measure to mitigate against work practice amnesia that may have contributed to the functional paralysis that has become imbedded in this agency.

Accountability in US and UK Defence

The material scrutinised in the literature review on accountability in the US and UK defence industry pointed to and argued that global and organizational governance is a heterogeneous phenomenon and that different relationship management strategies are appropriate under different conditions irrespective of the industry type. At the global level, the phenomenon, reported by the media, appeared to be incited by failures in corporate governance caused by organizational management misconduct and dubious and challengeable practices against best practices that lead to corporate collapses of financial institutions and multinational corporates which galloped through all countries.

In as much as the ideology of global governance is the prevailing intellectual orthodoxy of this study particularly related to public sector military acquisition and procurement activities, a school of opinion skeptically argues that there is no driving imperative for such corporate direction. John Fonte in his publication *Sovereignty or Submission: Will Americans Rule themselves or be Ruled by others?* (2011) puts the view that

... Global governance is another political system or regime. It seeks to take ultimate political power (sovereignty) from the democratic parliaments and congresses accountable to national electorates in sovereign states and vests it in courts, bureaucratic agencies, non-government organizations (NGOs) and transnational bodies that are accountable only to themselves or to other transnational bodies. In short, global governance is yet another attempt (the third major one since 1917 by my counting) to sell elite rule in democratic guise – in this case, very light disguise... (p.11)

Vigorous debate continues about the disparity of scholarship and the adequacy of the analysis and the relevance of the some of the management practices and corporate solutions as many analysts argued that some of the solutions and countermeasures should not be seen as means to an end, and certainly not an end in itself i.e. that is the theoretical framework used for the solutions and countermeasures were based on traditional management practices and the behavioral sciences that addressed known corporate issues.

The approach was seen as presenting serious limitations to my research as organizational behavior differed significantly particularly related to a specific country and a specific industry such as the public sector and Defence activities such as acquisition and procurement. Apart from a precious few classics published by University of Maryland and former Under Secretary of US Defense Acquisition Jacques Gansler's *Affording Defense* and Harvard Business School and former Assistant Secretary of the US Army J. Ronald Fox's (Year) *Arming America* and Harvard University lecturer and author Steve Kelman (Year) *Unleashing Change: A study of Organizational Renewal in Government* that taught military personnel about acquisition, the literature that addressed these characteristics was sparse.

Nevertheless, sound corporate governance supported by legislation, remains the basis of government decisions and corporate transactions. This was confirmed during the literature search that the key research proposition does have suitable theoretical frameworks not only in the management and behavioural sciences but also in public sector management and policy, defence, ethics, law particularly contract management, financial management, earned value management, strategic purchasing, project management, systems engineering, logistics and sustainment, test and evaluation management, risk management, manufacturing and quality and organisational decision making and management practice to enable reasoned composite and related propositions to be developed to focus the data collection and content analysis on national and international defence acquisition and procurement activities.¹¹³

Both the US and UK Defence acquisition and procurement activity have suffered from and continue to face similar problems in which the respective national agency was found to be significantly deficient in accountability, performance, leadership and ethical behaviour resulting in the waste of public monies as found in this study. Subramanian (2003)¹¹⁴ and Sleigh and Mike Goodfellow (2009)¹¹⁵ opined that it is important to get commitment and active engagement of stakeholders as modern military and national security are supported by complex system-of-systems through life acquisitions that involve systems engineering technical difficulties generally brought about by ambiguity and the uncertainty of the requirements.

In his paper on *Defense Acquisition's Public Policy Imprint*, Keith F. Snider (AIAA 2008) argued that

... It would be a mistake, however, to see all of acquisition policy as forming a rational, coherent, stable, or comprehensive architecture for decisions and actions.

¹¹³ Commonwealth of Australia (1983) *White Paper: Reforming the Australian Public Service*. Commonwealth of Australia (1997) *Governance arrangements for Commonwealth government business enterprises*, Commonwealth of Australia (1999) *Corporate Governance in Commonwealth Authorities and Companies: Discussion Paper*, Commonwealth of Australia (1999) *Discussion Paper: Governance Practices in the Australian Public Service*, Commonwealth of Australia, (2003) *Public Sector Governance Volume 1: Better Practice Guide*, Commonwealth of Australia (2003) *Guidelines on the Implementation of Administrative Arrangements Orders and other Machinery of Government Changes* (Finance Circular 2003/94 and Financial Management Guidance No.5.

¹¹⁴ L. N. Subramanian (2003) The Challenges of Introducing New Weapons Systems, Know your armed forces, Bharat Rakshak Monitor - Volume 6(2) September-October 2003

¹¹⁵ A. Sleigh and M. Goodfellow, *Trends in Complex Systems Acquisition*, RUSI, 2009 pp.1-2.

Rather, policy is guided by politics; therefore, public policy necessarily has a political component... (p.18)

Snider quotes H. Lasswell's definition in the title of his book, *Politics – Who Gets What, When and How* (1958) as

... necessarily involves conflict and uses of power, and those in power adopt policies to accomplish some political purpose. Because political purposes often shift and because people and parties move in and out of power, it is not surprising that acquisition policies are not more nationally aligned and structured (that in many programs result in the lack of accountability, trust and misuse of public money... (p.9)

The root causes of these US acquisition problems was best described by Senator Carl M. Levin of Michigan at a hearing of the US Senate Armed Services Committee in 2010 that

... far too many weapons acquisitions had been plagued by cost increases, late deliveries to the war fighters and performance shortfalls ... 25 of the Pentagon's major defense acquisition programs had overruns of at least 50 per cent ... the alarming lack of acquisition planning across the department ... The root cause of these and other problems in the defense acquisition system (including accountability and trust) is our failure to maintain an acquisition work force with the resources and skills needed to manage the department's acquisition system. .. (n.p.n)

The situation in the UK MoD reflects similar patterns and was best described by Rt Hon Lord Robertson of Port Ellen KT GCMG HonFRSE PC in the Foreword to Bill Kincaid's publication *Changing the Dinosaur's Sports: The Battle to Reform UK Defense Acquisition*

... Right from the start (as Secretary of State for Defense in 1997) I was outraged to find that in many ways we were dealing with the same equipment problems that Labor defence ministers had been dealing with when they were last in power eighteen years before. Moreover, there appeared to be no one to blame. ... Defense acquisition is a critical subject, not just because it takes a high proportion of the defence budget, but also because it must provide equipment that, in the necessary quantity and quality,

gives the servicemen the best protection possible ... We have to remember that lives are at stake, so will have to be absolutely definite about our priorities and spend our acquisition funds wisely, effectively and efficiently... (2008 pp. x-xi)

The UK MoD underperformance and lack of accountability is paraphrased from a small sample of statements from Bill Kincaid's two publications *Dinosaur in Permafrost* (2002) and *Changing the Dinosaur's Spots: The Battle to Reform UK Defense Acquisition* (2008). Kincaid claims that the MoD is still unable to forecast and schedule to account for risk despite past recommendations from numerous reviews, the Smart Acquisition initiatives in July 1998 and the Enabling Change Report in 2006. Furthermore, he claimed that

... Late delivery and shortages of equipment were blamed yesterday for the deaths of British soldiers in Iraq and Afghanistan as two coroners in separate inquests made withering attacks on the Ministry of Defense ... (Furthermore that) ... The inescapable conclusion is that acquisition performance has been and continues to be poor ... Much of the money supplied for the fighting people's support- that, for instance used to purchase their equipment – tends to be squandered outright. The priority is not to obtain good equipment, or even to get value-for-money. It is, always, to provide well paid civilian jobs ... Many existing units are set up and equipped to fight enemies which do not and will not exist, or which could be dealt with by other means ... Yet, time and again, MoD fiddles with the processes and mandates a 'one size fits all' approach which has proved to be a serious hindrance to those in charge ...

In addressing questions on the absence of leadership at MoD, Kincaid claimed that

...The answer is because middle managers are not able to exercise it ... Because MoD culture is antipathetic to true accountability – the combination of responsibility and authority – and what is known as Mission Command. There is very little power that IPT leaders can wield: they drown in process as their decisions are constantly neutered by others in the system, often by those without any responsibility for the outcome ...

Not unlike the evidence identified by ANAO at DMO, Kincaid also claimed that

... The National Audit Office (NAO) reports on MoD major projects have repeatedly shown huge cost overruns and long delays on many programmes. One reason for cost overruns is the so-called Conspiracy of Optimism in which procurement costs are initially underestimated (often deliberately) thereby making it easier to get the programme into the Equipment programme. Inevitably the costs rise substantially during the procurement cycle as reality is established. NAO attributes the main problems at MoD to:

- A lack of personal accountability, with responsibility and authority badly matched.
- A lack of professionalism.
- A consensus committee culture, leading to weak decision-making.
- Convoluted procedures.
- Stifling but ineffective scrutiny...” (2008 pp.1-32)

According to the Chief of Defense Procurement

... Poor performance was endemic... (May 2004 quoted by Kincaid 2008 p.40)

Sleigh and Goodfellow (2009) in their paper *Trends in Complex Systems* add to Kincaid's views that

... The recent history of acquisition contains numerous examples of all these issues, often with profound impact on programme affordability, delays to entering service and costly obstacles to agility. With the increasing pace of change in security context, technology and financial environment, sound ways of mitigating these effects are of the greatest importance... (p.76)

The two environments differ little from the environment that prevails in Australia, and in a policy sense it sets acquisition and procurement policy, business culture and management practices in Defence apart from the procurement in the private sector. As a general observation the private sector is typically concerned about acquisition and procurement's effect only on bottom-line profitability whereas Defence officials likewise concerned with issues of cost effectiveness as a general rule, are more likely obliged to serve a variety of policy objectives, some of which are identified in this study, actually work against not only the 'bottom-line' but also breach governance principles of accountability, ethics and the respective national Codes of Conduct to find a sound way forward to counteract claims from Bushell (2011) and others that

... finalising a further analysis that more clearly identifies the root cause behind Australia's failing Defence structure, as well as DMO's failed capability and sustainment management. This identifies systemic failure of the management and governance models developed within Defence and the DMO as being the root cause behind the progressive decay in Australia's defence capabilities, and the repeated failures in capability definition, acquisition and sustainment within Defence and the DMO. ... In a nutshell, doing more of what has been done without success over the past decade or more will not fix the serious problems that are now maturing - especially when those things are being done by people who do not have the management or technological skills and competencies required for the job. Finally, the real question is not whether the DMO is effective - that has largely been answered. The critical question is how the capability acquisition and sustainment function should best be organised, resourced and managed... (p.1)

Governmentality

Traditional organisations such as those discussed in this thesis reflect authoritative structure and design. The findings of this study have revealed deviations from the expected authoritative order relating to the governance principle of accountability that form the established framework in one of these organisations in the Australian Public Service namely the Australian Department of Defence. Each Case examined in the study was under-written

by an implicit acquisition and procurement contract as a means of surveillance and control for a large scale program and project management activity.

According to Clegg et al (2002), the elements of contract, surveillance and control in a project management activity are characteristics of the Foucauldian '*governmentality*' model. To support their position, Clegg et al (op. cit.) cited works from Dandeker (1990), Marks (2000), Sewell and Wilkinson (1992), Knights and Vurdubakis (1993), Sewell (1998) and Cvaeski et al (1998) stating that

... Foucault was initially assimilated into 'critical organization theory through an emphasis on close surveillance and control of individuals. ... Recently this has been enriched by organizational works on surveillance as well as form of language. (p.318)

In the earlier discussion on governance in section on theoretical influences in the Literature Review in this thesis, Lemke (2001) referred to Foucault's definition of *governmentality* to connect project governance themes. Foucault's definition, theoretical concepts and themes were expanded by Hunt and Wickham (1994) in their legal study on the increase in scope of government jurisdiction and jurisprudence in relation to the creation and growth of the modern bureaucracies. Kerr (1999) used Foucault's term to support his argument as a way of thinking about government and the practices of government. To Kerr, governmentality was a means of asserting some form of government (and power) to achieve control and constitute society, that is, a way of thinking about the government and the practices of the government. By redefining the term, Kerr expanded the term to include the process of '*government rationality*' (1999 p.74).

Finally, Dean (1999) contribution to the definition of the term means that the concept of governmentality is not just a tool for thinking about government and governing but that it also incorporates how and what people who are governed think about the way they are governed. In his paper, Dean defined the term as a "*collective activity*" (1999 p.16), that is, the sum of the knowledge, beliefs and opinions held by those who are governed. Dean highlighted another important feature of the concept of governmentality, that is, its reflexivity. He explained his view as

... On the one hand, we govern others and ourselves according to what we take to be true about who we are, what aspects of our existence should be worked upon, how, with what means, and to what ends. On the other hand, the ways in which we govern and conduct ourselves give rise to different ways of producing truth... (1999:18)

This is important to this study which fundamentally links control and supervision through governance Codes of Conduct, procedures and processes exercised by senior executives in the acquisition and procurement process. By drawing attention to the 'how and why', Dean connected 'technologies of power' (Lemke 2001 p.191) to the concept of governmentality. According to Dean any definition of governmentality should incorporate all of Foucault's intended ideas. A complete definition of the term governmentality must include not only government in terms of the state, but government in terms of any 'conduct of conduct' (Dean 1999 p.10).

Since this study focused on corporate governance as well as agency self-governance by those made subject to the overriding collective organizational governance of the APS, the concept of governmentality as considered in this study captures the new approaches to public sector management, ethics and corporate social responsibility. Therefore, the findings from this research should provide practical value to public policy makers as well as professional practice managers and ethicists.

The scholarly importance to the study and its contribution to the fields of public sector administration and management that includes governance of which accountability is one of its principles adds knowledge to fill the gap in the theory of governmentality as espoused by Foucault in his lectures and refined to assimilate into organisational theory by Hunt and Wickham (1994), Kerr (1999), and Dean (1999).

The thesis also found that the traditional concepts of governance, as manifested in the Defence context, are not suitable to manage and control large complex acquisition and control programs. The findings from the three cases show that architecturally and contractually, Defence procurement is based on hierarchical and top-down control which is the governance model of large-scale Taylorism based on directives, procedures and processes of conception/execution dynamics to ensure the success of a mission, program or project outcome.

The desired shift as espoused in this thesis and discussed below is to move to a coherence model of rationality that is stakeholder driven, and agreed governmentally between the parties to the requirements design and final specification in order to improve governance practices at the corporate and program management levels. This governmentality model provides an alternative to authoritative governance structures that is premised on micro-management, policing, litigation and arbitration. It is also practical, rather than epistemological, philosophy particularly in situations where there are multiple actors and interests.

A Way Forward

The Department of Defence is a traditional organization and like most APS agencies, is well endowed with regulations, guidelines, policies and SOPs. These documents provide the practical guidance on many functions and tasks particularly on acquisition and procurement, contracts and risk management designed to improve governance per se accountability. In relation to program management it has the in-built review structures. On the matters addressed in this thesis, it would therefore be reasonable to assume that their successful application are prominent and essential elements of the Department of Defence's procurement culture, and if implemented properly should work effectively to ensure the achievement of programs to deliver fit-for-purpose capability on schedule, and within budgeted cost. The evidence in this thesis suggests otherwise.

While much of this research has focused on the evidence identified by the ANAO, the impact on agency stakeholders was overlooked as the objective of the reports were directed to improving DMO management and acquisition practices. This oversight is particularly important as earnest stakeholder engagement would ensure ownership of the program. This outcome would play a significant part to reduce the negative aspects of issues that arise from capability specification, program costing, risk, communication, leadership and trust. On countless occasions throughout its reports, the ANAO noted repeated failure to identify or acknowledge these factors and attributed this as a manifestation of bad management in an unaccountable system.

For example, the evidence from the analysis suggested there was little consideration as to when and what Defence managers thought about the program stakeholders; and what the stakeholders wanted from the program and the business, i.e. often for the business to stop doing something or to give them the assets and/or the funds.

On these matters it is therefore important to refer again to the finding of the Helmsman Institute that some of the complexity in Defence's acquisition projects was 'self-inflicted'. It cited factors such as embarking on highly developmental projects; level of customisation; limited clarity on the key drivers of the project; lack of clear plans to achieve target dates and results; and tension between the needs of the military chain of command and the requirement to deliver against defined contracts and commitments.¹¹⁶ The causes of poor project performance identified by Defence and the Institute's observation about 'self-inflicted' complexity indicate that although Defence has a wide array of practical guidance documents on management policy, in practice they are not working to full effect.

In fact, the ANAO noted in many of its reports that the poor implementation and apparent non-compliance with the DCP, Defence Procurement Policy Manual, Project Management Manual and the Defence Capability Manual schedules and processes adversely affected the acquisition and sustainment of ADF capability on a regular basis, and that Defence was not consistently adhering to its 'administrative framework for implementing the process'¹¹⁷. Furthermore, the reports indicated a lack of consistency in the application of policies, practices and systems relevant to risk management.

This qualitative study has found that a new concept and theory has emerged in lieu of the traditional concepts of governance at the program and project level, as manifested in the Defence context. The findings from the three cases showed that architecturally and contractually, the Department of Defence acquisition and procurement activity is not suitable to manage and control large complex acquisition and control programs to achieve desired outcomes. The recommended way forward is to move to the new governmentality approach as discussed in p.239 as a new perspective in the management of programs and projects.

¹¹⁶ Helmsman Institute, *A Comparison of Project Complexity between Defence and other Sectors*, public release version, p.11–13

¹¹⁷ ANAO Audit Report No. 48 2008–09, *Planning and Approval of Defence Major Capital Equipment Projects*, 2009, paragraph 11

The way forward therefore is not to propose new reforms and innovative approaches (as Defence has produced an unending amount of both over the past two decades) but to reinforce an existing accepted project management approach advocated by Dr Lance Moir in his public lecture in 2011 in Canberra¹¹⁸ that could improve the processes of accountability. The governmentality approach is a means of avoiding adverse consequences in major acquisition and procurement programs by ensuring genuine commitment, mobilising the intelligence of all stakeholders in the capability specification, scheduling, cost and risk scanning processes.

While the need for innovation with the collaboration of industry could be seen as attractive, its implementation has not been supported by management although attempted on many occasions. The statement below in the Senate Final Report (2012) succinctly reflects DMO's view on innovation

... ADO (predominantly DMO) personnel frequently express the view that industry is just out to make a profit and should not be trusted. Executive Government appears to regard defence industry through the prism of jobs creation rather than as a part of Australia's national security capability. The Defence Materiel Organisation (DMO) appears to regard industry as having an unending capacity to absorb risk without cost, to respond at short notice despite indefinite delay to procurement decisions, and to be willing to create and retain advanced manufacturing capability without the cash flow arising from steady contracted work. Despite a rich history of world leading innovation in technology, manufacturing and programming, there remains a strong bias against contracting directly with Australian based companies... (p.280)

Figure 23 below shows a generic approach to identifying stakeholder impact on agency value, by focusing on the drivers of shareholder value - most often delivery of fit for purpose assets, within cost and time.

¹¹⁸ http://www.theqca.com/information-centre/corporate-governance/page_2/

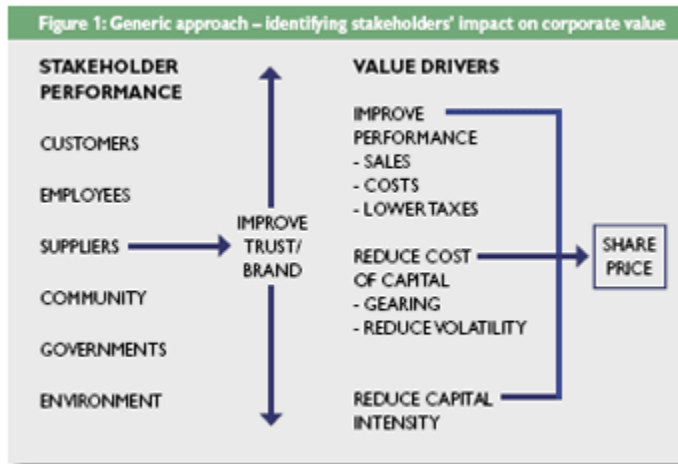


Figure 23: Generic approach to identifying stakeholder impact on agency value
Source: Moir 2011

But if it's all so simple then why is the Department of Defence faced with so many problems being reported?

Some of the answers are identified in this study through the scrutiny of the audited performance reports and the supporting processes involved in making the trade offs, and Figure 24 sets out these steps.

- Figure 2: Steps in the process
1. Define the project scope
 2. Establish a base case with classic finance tools and key performance indicators
 3. Identify the stakeholders
 4. Identify what the stakeholders want from the project and what the project wants from them
 5. Consolidate the stakeholders around stakes
 6. Identify KPIs for the stakes
 7. Prioritize the stakeholders
 8. Identify the sources of conflict between stakes
 9. Identify the impact of the activity on the operations of the firm and quantify these – both potential benefits and potential costs
 10. Where there is no conflict undertake the activity
 11. Where there is conflict:
 - i. Identify alternative solutions
 - ii. Map the impacts on the financial value drivers
 - iii. Plot the impact of these on the financial results, using net present value
 - iv. Decide on a course of action
 - v. Identify KPIs for such actions and monitor

Figure 24: Process to engage stakeholders
Source: Moir 2011

The evidence from the analysis showed clearly that two key steps caused problems by the sheer number of ADF stakeholders and their competing issues within the Department of Defence. This degree of complexity can be reduced by looking at the stakes, rather than the

stakeholders. The other key problem is prioritising stakes and stakeholders. Different firms go about this in different ways, often mixing issues such as ability to work with the stakeholder, degree of impact and the urgency of the issue. But this, in the end, becomes the key step with managers developing a systematic way to assess priorities and to rank these among competing interests.

The approach suggested by Dr Moir is shown in Figure 25 where ADF stakeholders are assessed along two dimensions i.e. stakeholder interest in the Defence activity or combat issue, and then impact of the survivability of the stakeholder i.e. soldier in the field. What is different in looking at corporate responsibility is that the managers need to look at the long-term impacts of their behaviours towards these special interest stakeholders and thus how those stakeholders might, or might not be, involved with the achievement of the military mission, task and business in the future.

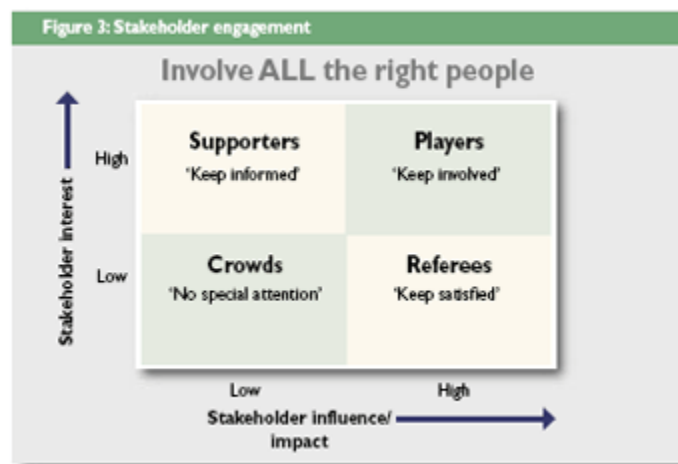


Figure 25: Stakeholder engagement matrix

Source: Moir 2011

Although the stakeholders can be prioritised by more or less subjective measures, in the end the financial case has to be made using traditional financial tools. Many firms and managers might think there is little new in this approach and on many levels they could be correct as the practice has been in existence for decades. However, this view does not explain why businesses often fail to take corporate responsibility into account and why executive managers with corporate responsibility continue to seek for metrics to assess their business's corporate social performance.

The answer could simply be that senior managers have too limited a perspective on the strategic implications of corporate responsibility and so they fail to see the many benefits that arise from engaged corporate responsibility.

In general, like all managers, those working in the field of corporate responsibility are short of time and money, so putting some discipline into decision-making will help them and help make a robust business case. There is a driving need for senior level and program managers to implement such an approach to ensure its managerial components are operating effectively: ensuring sufficient and appropriate resources are available and appropriately deployed, including the financial and human resources, legislative underpinnings, and political will to support coherence in the agency's accountability system, to ensure the agency's accountability and statutory guarantees work in unison, cooperatively or otherwise, and that the results are integrated and mutually supportive as armoury safeguards to protect the interests of the Government, the APS, the agency and the nation.

Failing these measures, it is time for senior management at Defence particularly DMO to consider the possibility that there are systemic mismatches between the agency goals, mission, tasks, processes and capacity to achieve the desired outcomes.

As the NACP (2012) clearly points out

The respect for the rule of law, accountability and having the highest ethical standards are the foundations of any democracy and provide the grounding for a society that is resilient to corruption. Indeed, the Australian public rightly expects high standards of behaviour and a high level of performance from their government, public institutions and the business sector. (p.9)

Alternatively, it could be concluded that dissonance in accountability in defence acquisition and procurement activities, while seen as an uncomfortable truth by many in the wider community, should be accepted according to Wilson (1989) who stated that

All complex organizations display bureaucratic problems of confusion, red tape, and the avoidance of responsibility. Those problems are much greater in government bureaucracies because government itself is the institutionalization of confusion

(arising out of the need to moderate competing demands); of red tape (arising out of the need to satisfy demands that cannot be moderated); and of avoided responsibility (arising out of the desire to retain power by minimizing criticism). (p.375)

Nevertheless, while Wilson's view provides a rationale for bureaucratic behaviour, there is demand by the community for good governance practice to exist and maintained particularly in accountability where large amounts of public monies are expended on a range of activities by all levels of government and the APS. The demand for greater enforcement of measures to ensure compliance has been driven by the Law Council of Australia, the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (ACLEI) and Transparency International Australia (TIA) based on the results of the Australian Public Service Code of Conduct (APS CoC) investigations of APS agencies in 2012. In its submission in 2012 to the Senate for the establishment of a federal integrity commission to oversight APS activities, TIA referred to the APS CoC report which indicated and uncovered evidence in the APS that included:

- a significant increase of serious misbehaviour (including misrepresentation and misleading activities) since 2010-2011 (a rise of 41 per cent);
- 83 cases of fraud (a rise of 36 per cent);
- 64 cases of theft (a rise of 36 per cent);
- 50 cases of improper use of position (a rise of 67 per cent); and
- 71 cases of unauthorised disclosure of information.

The relevance of the data to this study is that corporate misbehaviour not only erodes public confidence but also provides a sound case for ensuring public sector employees comply with the relevant legislation, regulations, directives and SOPS at the agency level.

The approach discussed above advocates a 'do with' instead of a 'do to' stakeholder work ethic that is consistent with recent literature in procurement and supply chains as reflected in the

observations of the authors cited in *Procuring Complex Performance* (2011) edited by Caldwell and Howard. In the series of papers, specific cases particularly by Lewis and Roehrich (Year) on *Contracts, Relationships, and Integration*, Howard and Miemczk on *Supply Management in Naval Defence* and Bessant, Howard and Caldwell on *Product-Service Innovation: Reframing the Buyer-Customer Landscape* are used to present insights and benefits of the need to build business-to-business collaboration and trust in order to achieve successful outcomes irrespective of the complexity of the program and project. At the operational level in project management Chang et al (2012) opine that the approach is a value creation process that creates new knowledge, processes, and systems for suppliers and customers. The authors argued that stakeholder involvement is important as it balances competing needs of stakeholders in mega projects, a major challenge in managing the value co-creation process which has regained support in the emerging literature on value co-creation in the project context.¹¹⁹

In support of their paper, the authors emphasized that ‘value created and captured during and post projects are the key to true success.’ Their view is based on findings that

... suggest that the management of future mega projects should actively engage stakeholders throughout the project life. This is critical not only in identifying and solving problems but also in managing their expectations. This need to engage stakeholders throughout project life may pose new challenges to different project participants ranging from senior executives in the organization, project managers, teams and stakeholders. New sets of skills and knowledge mindsets will be required... (p.15)

Nevertheless, Chang's et al. paper lends support to this study's approach although it suffered from a need for subtle understanding of political dynamics, accountability and institutional details that go beyond the scope of their paper. While the approach re-advocated by Chang et al is in practice on the specific projects discussed in their paper, empirical evidence suggest that it has been overlooked by senior executives and project managers on many other projects.

The reasons for the levels of questionable performance identified in this study could be due to

¹¹⁹ The Office of Government Commerce (UK) in 1999 identified adding value, benefits realization and stakeholder engagement as essential governance principles amongst nine others for managing successful programmes.

the high level of confusion and misinterpretation about the meaning of ‘value’ particularly related to its creation in the context of APS agencies. Moore’s (1995) seminal work on *Creating Public Value* caused continuing debate amongst practicing public servants. The reaction was encapsulated in papers by Rhodes and Wanna (2007) and (2009) who claimed that Moore’s concept of the proposition that public managers ought to work to promote and achieve public value public actually encouraged public sector managers into inappropriate roles.

Prebble (2013) added to Rhodes and Wanna’s views by claiming that Moore’s position introduced the concept of an “ideal state” where roles are clear and public value is optimized by the senior executives, project managers, teams and stakeholders which in practice could be problematic in any particular situation. Furthermore, personal observations have identified issues that undermine the ideal state arising from the zeal that participants put into their commitment and their ability to manage upwards and downwards, the vigor with which managers and stakeholders pursue their idea of the value to be achieved, and individual self-interest.

Also observed was the lack of trust between and amongst all the parties: a most important characteristic which according to the series of articles on *Rebuilding Trust* in the Harvard Business Review (June 2009 pp.53-99) is required to enable organizations to achieve and function successfully.

Companies can’t innovate, respond to changing stakeholder needs, or function efficiently unless people have access to relevant, timely, and valid information. It’s thus the leader’s job to create systems and norms that lead to a culture of candor... Trust is a symbiotic relationship: Leaders first must trust others before others will trust them. (pp.56, 58)

Some Personal Reflections

In his study on qualitative research approaches, Ellis et al (2011)¹²⁰ observed that

¹²⁰ <http://www.qualitative-research.net/index.php/fqs/article/view/1589/3095>

... personal reflection adds context and layers to the story being told about participants (and the environment being researched) ... (and that) ... Layered accounts often focus on the author's experience alongside data, abstract analysis, and relevant literature. This form emphasizes the procedural nature of research... (p.18, 2004 version)

Pender (2004)¹²¹ in his study of humane warfare observed that

... Thought is a construct of influence, instinct and experience. The way an individual or an organisation thinks and rationalises is dependent on these three qualities. Instinct is born from centuries of unconscious development, based on primordial survival. Influence is the impact of external forces, manipulating the thought process both consciously and unconsciously. Experience creates an internal blueprint of events that transpire, to be used for future considerations. The way an individual or organisation thinks directly affects the manner in which they will conduct their actions. This realisation is the key to regulating individual or organisational actions... (p.1)

Ellis and Pender's views are particularly useful with reliance placed upon them in framing these personal reflections that are précised in Appendix F(4) showing the failures in accountability and management performance identified from the ANAO evidence and corroborated by comments from the Senate, media and other interested parties. The base points substantiate the probative value to the answers raised by the research questions, however based on personal reflection only a handful of contentious matters¹²² underpinned the failures that took place and these will be expanded upon in the discussion that follows.

This postulation is particularly significant because this lead agency is recognised for its professionalism in administering ADF matters: the agency has established value and mission statements, codes of conduct, policies, processes and instructions on a range of matters and specifically in governance, contract management, financial management and program

¹²¹ Pender, GM. (2004), *Humane Warfare: The practice of military ethics: an aerospace perspective*, Air Power Development Centre, Commonwealth of Australia

¹²² The Macquarie Concise Dictionary (1988) defines 'contentious matters' as points contended for or affirmed in controversy. (p.196). These contentious matters had a compound influence on the essential tasks and functions of each project.

management practices. Nevertheless, failures in administration and management practices were identified, and the quantum of these failures followed by the public commentary did indicate that the Australian community was not served well by the agency in accordance with the terms of accountability. The findings from this study are therefore disturbing particularly when Pender (2004) observed that

... It is the military professional's responsibility to the state to ensure that this is the case, as any 'perceived unethical behaviour of military (professionals) not only erodes civilian control but also denigrates professionalism'¹²³. ... ethical behaviour is fundamental to the military's cohesiveness and professional status... (p.17)

While my work experience is not the main focus of the study, adding 'another layer' about the agency's performance in administrative and management practices in the acquisition and procurement process can only be seen to add balance and provide more value to the study. This approach is seen as being particularly important especially when this lead agency also has a history of professionalism when managing, controlling and deploying large amounts of public funds to ensure that the ADF is adequately equipped to serve and protect the Australian community. With this in mind, isolating contentious matters¹²⁴ from the base points of evidence in each case should go some way to explaining the underlying causes.

Gourevitch and Shinn (2013) observed in their publication¹²⁵ that most corporations, irrespective of which sector in which they operate, argue that one of the major contributors to non-compliance of established governance principles is due to the 'prevailing circumstances' that exist at the time of the event. While this rationale explained the precursors to some of the failures, it ignored the fact that control measures (inherent in corporate governance principles) could have been invoked by the organization's senior managers to prevent and to reverse the decisions that caused the failures.

This oversight is particularly significant especially when Gourevitch and Shinn (op. cit.) claim that

¹²³ Sarkesian & Gannon, 'Professionalism: Problems and Challenges', pp, 128, 138-139

¹²⁴ Shown in Appendix F (4) Personal Reflections: Contentious Matters.

¹²⁵ Political Power and Corporate Control: The New Global Politics of Corporate Governance, Princeton University Press

... corporate governance – the authority structure of a firm – lays at the heart of the most important issues of society (and the corporation) ... It is no wonder then that corporate governance provokes conflict... (p.13)

Using statistical evidence from thirty-nine countries of Europe, Asia, Africa, and North and South America and detailed narratives of country cases, Gourevitch and Shinn (op. cit.) lay blame for non-compliance to governance as due to organisational politics which shapes corporate governance, and that managers, shareholders (stakeholders), and workers jockey for advantage in setting or ignoring the rules (corporate governance) by which companies are run, and for whom they are run. In doing this, the authors combined a clear theoretical model on the political interaction related to similar situations that, in the view of the researcher, reflected the following characteristics¹²⁶, namely:

- Inept performance in due diligence, requirement specification, contract management and risk management;
- indifference to the needs of the stakeholders;
- the lack of direct ownership of the program/project management processes;
- executive management failing to understand the crucial role of program managers and the intermediaries in shaping political preferences for different interpretation of the rules of program governance and control; and
- executive managers failing to identify the emergence of political coalitions that were forming among or across management, stakeholders, and program team members, some of whose actions could be interpreted to encourage policies promoting diffused interests that influenced the probability of one coalition defeating another in decision control and achievement of a successful outcome.

¹²⁶ Manifestations of these characteristics in the form of public sector waste, management underperformance and general management malaise to signify the lack of accountability have been presented to the public for over a decade by media commentary.

On these matters, Sir Adrian Cadbury (2002)¹²⁷ provided a succinct description of the forces in play at the top levels of an enterprise when he stated

... The basic governance issues are those of power and accountability. Nowhere are the issues of power and accountability more clearly in evidence than in the working out of a strategy for an organization. A firm's strategy determines the course it will try to pursue over several years; strategy guides the allocation of resources... financial, physical, and human. And strategy often determines how well or poorly a company fares and what its return to shareholders will be. Clearly, strategy must be a subject that engages the interests of all the members of a firm's strategic apex—top management and the board of directors and, of course, the pivot point between the board and management, the Chief Executive Officer... (p.3)

The characteristics introduced above also add support to the views of Meyer and Rowan (1977)¹²⁸ who argued that

... organizations are driven to adopt practices or routines in order to achieve increased legitimacy, and to increase their survival prospects and that their adoption of these practices, are not immediately connected to any immediate or direct increase in efficiency...

and

... Proposition 4: Because attempts to control and coordinate activities in institutionalized organizations lead to conflicts and loss of legitimacy, elements of structure are decoupled from activities and from each other. Integration is avoided, program implementation is neglected, and inspection and evaluation is ceremonialized...

Proposition 6: Institutionalized organizations seek to minimize inspection and evaluation by both internal managers and external constituents...¹²⁹

¹²⁷ Adrian Cadbury, *Corporate Governance and Chairmanship* (Oxford: Oxford University Press, 2002), p. 3.

¹²⁸ In relation to Theoretical and practical relevance, Meyer and Rowan are frequently cited as the seminal, and one of the core, of the neo-institutionalism perspective in sociology.

Note: Propositions 1 to 3 and 5 are excluded as they have no relevance to this discussion.

Conclusion

By adding another layer through personal reflections, the conclusion should be read in the light in which other causes are expressed to assist in providing answers within the context of dissonance in accountability in the Department of Defence acquisition and procurement programs. The three cases demonstrated problem projects that generated a substantial body of knowledge and experience from which the Department of Defence should have learnt lessons which if they had been applied could have gone some way to prevent dissonance.

So far as is now material, the findings from this study uphold the hypothesis to provide a modest and distinct contribution to the academic and public sector management theories particularly as there could be conclusions and implications from differing perspectives. Some uncomfortable truths are also offered for APS and Defence policy makers as the existing culture and management practices have been shown to be constraining and the cause of dissonance in accountability with negative exemplars of behavior in transparency, integrity, stewardship, leadership and efficiency as well.

While this study focused on public sector administration program and project governance particularly accountability, the findings will contribute to the emerging concepts and practices of Governmentality which is a new perspective for both program and project governance. Finally, this study has opened the window a little wider for significant research as there can be little doubt that further investigations into Defence behavior, culture and management practices would be beneficial to the academic community, the corporate world and the Defence industry as the existing literature is sparse and suffers from limitations of scope and national relevance.

The next chapter summarily concludes the study.

¹²⁹ John W. Meyer, Brian Rowan (1977) *Institutionalized organizations: Formal structure as myth and ceremony*. *The American Journal of Sociology* (RSS)

Chapter 7

Conclusion and Recommendations

Introduction

This conclusion integrates the material in this thesis that has argued the need for good corporate governance and taken a practice management stance while investigating the research questions within the context of theory and practice management in the public sector on acquisition and procurement practices that include:

- revisiting the rationale for the study;
- integrating the findings from the analysis and discussion chapters;
- emphasizing the contributions and implications for theory, for policy and practice;
- listing the limitations discovered;
- recommendations; and
- identifying future research areas.

Background

The rationale for undertaking this study goes beyond the need to satisfy curiosity. Atop of curiosity are motivational factors driven by the need to seek rational answers to questions raised by an astute citizen deeply embedded with personal meaning in the context of individual experience with over five decades of experience gained in the ADF, private enterprise and the public sector engaged in program management.

These characteristics are overlaid by the concern over the past two decades at the continuing questionable practices of corporate officers in the private and public sectors. Such practices have gone beyond excusable oversight and negligence as evidenced by the number

of corporate failures attributed non-compliance when measured against corporate governance principles, codes of conduct and professional standards.

Within this context, the scope and boundaries of this study were established by the influence created from the unceasing public claims of ‘defence scandals and waste of public monies’. The claims were in most cases based on arguments of questionable practices by executive managers engaged in the management of costly and complex procurement programs performed under the responsibility of DMO, the procurement arm of the Defence department. In particular, the evidence attributed the waste of public monies to both unacceptable program management practices that caused late or non-delivery of questionable quality over-costed military capability. Such claims embarrassed the government, tarnished the reputation of the agency, and placed military personnel requiring the capability at risk.

While personal experience supports the general project management view that major capital acquisition programs in the public sector are challenging and could cause difficulties, it is also recognised that such programs can be successful and achieve specified outcomes when professionally managed to meet agreed standards in schedule, delivery quality and cost.¹³⁰ Therefore, the claims of poor management practices and waste of public monies against a public sector agency¹³¹ appears paradoxical. As a long standing astute observer of ADF activities, the researcher felt a need for such claims to be studied to determine their validity against the APS governance principles particularly accountability¹³². In so doing, to identify the key factors raised in the public evidence that contributed to these failures and non-compliance.

Main Research Concern

It is generally recognised by those in the Defence industry¹³³ that the Department of Defence's programs for acquiring major capital equipment face an array of internal and

¹³⁰ The Office of Government Commerce (UK) in 1999 claimed that value, and benefits can be realized through stakeholder engagement and the application of governance principles in managing successful programmes.

¹³¹ Such claims are seen as inconsistent particularly at the Department of Defence although one of the lead APS agencies that has the largest financial budget and capital acquisition and procurement program, is bound by legislation, regulations, directives that include governance, codes of conduct and SOPs to obligate and ensure staff at all levels achieve and maintain a work culture of compliance.

¹³² The term is a standard and endorsed by Government as the main governance principle in the APS (refer to Chapter 2). It is also generally used in the wider community as one of the measures that ensures legal and moral standards of performance and codes of conduct are satisfied.

¹³³ Details of company-by-company description of the sector are shown at Australian Defence Magazine (ADM)

external forces and influences that create significant difficulties for the organisation. Indeed, some of the programs are of a scale and complexity that they present ever-increasing challenges. However, the most recent view reflected in the Senate Report dated August 2012 emphasised that the problems identified in defence acquisition and procurement, are largely a function of the organisation's own making - unintentionally self-inflicted. (ANAO Report 2011, Senate Report, 2012)

This Senate Report together with the public evidence used in this thesis and documented in the ANAO documents, Hansard transcripts and the defence industry media show that Defence has a flawed management structure that stymies the work of dedicated, professional and in many cases highly skilled personnel. These serious deficiencies would without doubt overflow to cause a deleterious effect on the work culture of any organisation, including Defence. The impact would negatively affect compliance against the application of essential governance principles and codes of conduct to reflect dissonance in accountability: the main research concern.

The Research Questions

The research questions were applied against the range of documents associated with the sample of three cases that were selected from twenty-eight programs of problematic purchasing¹³⁴ examined by the ANAO from 2000 to 2010 is fully described in Chapter 3 Research Methodology. While a variety of questions can be raised seeking answers to questions of accountability in organisations, the specific context of this study identified three questions designed to identify clearly the key factors raised in the public evidence related to the Department of Defence acquisition and procurement activities.

- The key research question is: How was accountability balanced against decision control in acquisition and procurement programs?

The corresponding questions include:

- Were other APS Governance Principles affected?

Top-40 Defence Contractors.

¹³⁴ The 28 programs including the case studies are identified in the Projects of Concern list dated 2011.

- What were the impacts on the agency, its stakeholders and the APS by the dissonance?

The Findings

The application of a rigorous effects-based evaluative analysis¹³⁵ against selective Discriminating Factors provided answers to each research question. Figure 26 links key points with reference to the relevant sections of Chapters 5 and 6 and corroborated by the details of Appendices F(1) to F(3) as shown below.

Research Question	Key Points	Evidence Reference
How was accountability balanced against decision control in acquisition and procurement programs?	<p>Wrong doings and non-compliance against requirements of:</p> <ul style="list-style-type: none"> • PoC; • Breaches to APS and Department of Defence SOPs on contract management (ASDEFCON), and risk management. <p>Serious implications to:</p> <ul style="list-style-type: none"> • accountability; and • compliance. 	<p>Chapter 5 Case 1, Case 2 and Case 3 Sections on:</p> <ul style="list-style-type: none"> • case analysis; and • evaluation of: <ul style="list-style-type: none"> • Risk • Schedule; and • Capability. • comparative analysis; • evaluation; • discussion; and • response to research questions. <p>Chapter 6 General Discussion</p>
Were other APS Governance Principles affected?	<ul style="list-style-type: none"> • Transparency • Integrity • Stewardship • Leadership • Agency efficiency. 	<p>Chapter 5:</p> <ul style="list-style-type: none"> • comparative analysis; • evaluation; • discussion; and • response to research questions. <p>Chapter 6 General Discussion</p>
What were the impacts on the agency, its stakeholders and the APS by the dissonance?	<ul style="list-style-type: none"> • Delays in delivery of capability • Increased risk to ADF personnel serving in war zones • Increased cost • Deterioration in staff morale • Loss of professional reputation • Tarnished image of Government, APS and ADF 	<p>Chapter 5:</p> <ul style="list-style-type: none"> • comparative analysis; • evaluation; • discussion; and • response to research questions. <p>Chapter 6 General Discussion</p>

Figure 26: Map linking Research Question, Key Points and Reference

¹³⁵ The effects-based evaluation approach was based on the approach endorsed by the Australian Standard on Assurance Engagements (ASAE) 3000 *Assurance Engagements other than Audits or Reviews of Historical Financial Information*, issued by the Australian Auditing and Assurance Standards Board

The main body of evidence is contained with Chapter 5 Data Analysis. The analysis found breaches in compliance in each case against Government and agency legislation, regulations, directives that included corporate governance, SOPs and measures of effectiveness. In so doing, the breaches added to the general view that the dissonance in accountability contributed to the underperformance of the program teams as well as the senior managers. The overflow activities from this breach, also affected the Principles of transparency, integrity and stewardship,

From these issues, it is not inconsistent to conclude that Defence is an organisation where lessons learned have not been utilized as the ANAO reports and Senate Hearing transcripts had repeatedly reported. This inability to learn from earlier program failures is particularly salient as the seemingly complacency and disinterest demonstrated by non-implementation of lessons from previous programs to current and future ones strongly suggests that the failures are likely to be repeated. It could also be concluded that organisational structural problems contributed to deficits of trust, the lack of flexibility in decision making, dysfunctional business systems and processes.

These conclusions are not inconsistent with the findings of the ANAO and observations of contractors in the defence industry where the public evidence showed:

- non-performance in due diligence of the capability caused unclear requirements specifications or misrepresentation of the capability with negative impacts on government decision-making and capability risk, schedule, quality and cost;
- failure in management, oversight and leadership which established an unhealthy work environment affecting project performance monitoring, trust and respect between the contracted parties;
- failure to remediate a troubled project identified in PoC; and
- failure to exercise the rights of the Commonwealth in contract and financial management.

These unacceptable failures are not conducive to accountability which by definition requires continuous quality performance by all staff and, if not appropriately performed would affect other APS Governance Principles to cause negative impacts to the agency that included:

- Direct impacts: The late and incomplete delivery of the vehicles could have contributed to unnecessary Army casualties in Afghanistan, but there were certainly significant adverse effects-based impacts on the Navy where the anticipated benefits were exceeded by the final cost to get delivery of the assets. In the three cases that were examined, the promised benefits did not materialise because of the non-delivery of expected assets on time, fit for purpose and within the approved budget. More significant, military personnel requiring the capability were put at risk; and
- Indirect impacts: The image of the APS including Defence has been significantly tarnished.

Chapter 6 General Discussion added further material to the earlier discussion in Chapter 5 with observations that the absence of accountability was caused by entrenched attitudes of executive managers engaged in the acquisition and procurement activities. The causes derived from the documentary evidence are discussed in the context of an organisation that is complacent, lacks a robust risk management regime: an organisation where its personnel are insensitive or unresponsive to risk, where no one owns the program risk.

Key contributions from the research

The key contributions derived from the evidence are to knowledge per se, academic knowledge and theories, the public sector of Australian industry and the wider Australian community who have been seeking meaningful and methodological research on the topic in order to understand the reasons for the absence of accountability at the Department of Defence, given the long running series of reported lower than average performance that results in waste of public monies and the imposition of unnecessary risk on the ADF.

Specifically, the historical evidence shows beyond doubt that there was a case for the Department of Defence to answer in relation to its acquisition and procurement capability. It seems appropriate therefore, that the findings from this qualitative-based study would be

beneficial to the APS, the Australian Defence industry and the Australian community (whose money is used to sponsor and fund procurement programs) as well as bridge the gap in the growing body of knowledge on corporate social responsibility, public sector administration and management, public value, supply management and military studies.

The findings from this research should provide practical value to public policy makers as well as professional practice managers and ethicists. The scholarly importance to the study and its contribution to the fields of public sector administration and management that includes governance of which accountability is one of its principles adds knowledge to fill the gap in the literature on the emerging theories of Governmentality as espoused by Foucault (1991) in his lectures and refined by Hunt and Wickham (1994), Kerr (1999), and Dean (1999) to assimilate into organisational theory.

Key contributions to knowledge

This practice-led research started in the mid-1990s when the researcher was engaged in ADF activities. Following careful selection of my topic after a lengthy period of consideration during practice, the design of the research study was undertaken in relatively close discussions with my supervisor and other reputable practitioners and researchers in the work environment, the various disciplines in which some aspect of the study would touch. Subsequently, the research questions that focused on the theme of governance, namely accountability in the Australian Defence acquisition and procurement field were selected.

This conscious decision was taken initially to provide answers in disciplines such as project management, and program management and supply chain management in which a systematic literature review was unable to find anything directly related to governance in military acquisition and procurement management and only partial information in disciplines such as public sector management and administration, and public value although the concept appeared to be established in the disciplines of accounting and financial management. This information landscape clearly indicated that research was not as evident in those practice fields that have been identified despite a reasonable amount of knowledge in other disciplines. More significant is that there is only a small amount to the Australian Defence aspect of governance in the acquisition and procurement topic making this body of work a

contribution to knowledge in the practice fields of corporate social responsibility, public sector administration and management, public value, supply management and military studies.

These purposeful considerations were to ensure that the body of work would meet the set requirements and standards of the University, academia and the contemporary international standards of the professional fields by showing the evidence in order to substantiate the conclusion by uncovering new facts, and identifying evidence that suggest relationships in corporate governance that were previously unrecognized to suggest new interpretations of behaviour that would alter our perception of the work environment and performance.

Added to these characterisations, the design of a methodology through the selection and creation of case studies from over twenty five evidential documents that consisted of performance reports and government transcripts, the analysis of the contents of these documents followed by the comparative analysis of the three selected cases provided a useful approach for identifying the factors facilitating and impeding performance and decision making. Although each step in the methodology was valuable in its own right, the collective use as a paradigm would offer researchers the opportunity to enrich more traditional approaches to evaluating events, help to explain why some events are less or more successful, or the potential impact in one context instead of another context.

Not only will this paradigm provide a robust means to guide implementation of effective practices and add to knowledge, the concept and practices of the Governmentality model is a new perspective in program and project governance that should be explored for use in public sector administration literature which has little more to offer on these matters.

Key contributions to theory

The academic literature of the theme within the specific context of this study was extensively researched and found to be lacking in regard to Australian military acquisition and management activities. This study, with the central theme about accountability in the conduct of Defence acquisition and procurement activities, is therefore a distinct contribution to the theoretical literature. Of composite value to theoretical literature would be

contributions of new knowledge to new public sector management particularly related to corporate social responsibility and public value.

The study found that the traditional concepts of governance, as manifested in the Defence context, are not suitable to manage and control large complex acquisition and control programs, and that the Foucauldian concept and practices of governmentality could provide a better alternative in conception/execution dynamics to ensure the success of a mission, program or project outcome.

Key contributions to practice

Based on my interpretation of the evidence and supported by the literature, the key contributions include the following recommendations:

- change an organisational structure with entrenched attitudes that despite repeated reforms has a growing disconnect between strategic guidance and capability development; despite several changes over the years problem, the evidence indicates that the problem remains and to be resolved;
- realign responsibility caused by an excessive number of groups and agency functions, which gives rise to unhealthy management and organisational relationship (for example capability managers and program managers sidelined from active participation in the acquisition- personal observation);
- improve understanding or appreciation of the importance of contestability;
- establish a 'One Defence' view to produce an integrated enterprise because Defence is and will remain an organisation composed of separate groups working to their own agendas;
- create a healthy work environment to remove the difficulties associated with attracting and retaining people with the required level of skill and experience to support acquisition and procurement activities, particularly engineering, which over the past 15 years or more has atrophied most notably with the hollowing out of technical skills throughout the agency; and

- engage actively with industry as a collaborative partner in all phases of capability specification and development, and acquisition and procurement to achieve the status of intelligent customer.

The desired shift as espoused in this thesis is to move to a coherence model of rationality that is stakeholder driven, and agreed governmentally between the parties to the requirements design and final specification. This governmentality model provides an alternative to authoritative governance structures that are premised on micro-management, policing, litigation and arbitration. It is also practical, rather than epistemological, philosophy particularly in situations where there are multiple actors and interests engaged in program and project management activities.

Key contributions to policy

My interpretation of the evidence shows that despite many reforms and structural changes that have resulted in the establishment of policies to improve accountability and redress the failures that arise in the acquisition and procurement process, similar failures continue to occur. Consequently, some of the contributions that are recommended include policies that exist and in these cases their purpose and implementation need to be reinforced as the objective of policy formulation is to improve the acquisition and procurement processes in accordance with the agenda of the government and the agency through the following:

- reinforce to all staff the legal and regulatory requirements in existing policies to improve the ownership of responsibility and accountability in all their tasks;
- rebuild organisational structures particularly related to the management matrix to achieve higher levels of performance and productivity;
- reinforce risk management requirements and approaches;
- improve the culture of compliance with, and awareness of, procurement policy and guidelines;

- improve communication, integration, and collaboration amongst staff at all levels in the organisation;
- adopt positive approaches to the implementation of contestability and use of independent advice;
- encourage professional development for staff at all levels in relation to improving the skills and experience of staff involved in major defence acquisition; and
- develop practical approaches in collaboration with industry for the implementation of programs, projects and the quality of analysis.

The limitations of the research in terms of methodology

This study used the widely established and accepted content analysis/case study of documented evidence approach used over the many decades by an extensive number of researchers to achieve its objectives. It was a controlled study of the matters of concern in a realistic environment. Nevertheless, this study was subject to some limitations that include:

- the fixed time impost to complete the study that possessed unique characteristics requiring more substantial process-tracing evidence to document the complex interactions of the military stakeholders, public servants at DMO and the private sector contractors;
- the sample of cases could produce generalizations that are narrower or more contingent making it difficult to generalise the findings to respective populations, i.e. the external validity goal. This limitation is attributed to the unavailability of documents because of their high level security classifications;
- the cases share a particular outcome being listed as Projects of Concern, and this could result in case selection bias caused by the investigation of real-world phenomena that could result in inferences suffering from systematic error;

- the inability to interview the participants that were engaged in each case to clarify and identify data that not reported in the documents, and to clarify why decisions were made that resulted in dissonance;
- the inability to include a comparative study with similar military capital acquisition programs operating in the UK and US; and
- being unable to compare with detailed analysis of successful projects carried out by defence that could have shed light on how to improve overall project performance by learning from success.

Further research to follow

The contributions from this study establishes the base on which further research can be built upon to add to the sparse body of knowledge on military acquisition and procurement and public sector corporate governance in Australia. In so doing, the research bridges the gap in the growing body of knowledge on corporate governance, management and program management practices in all sectors of Australian industry and the APS. The research linked Foucauldian governmentality theory as an approach to improve program and project management.

However, it may be possible that this study could be seen by some as having low external validity because it lacks the realism of the wider global environment and in an academic environment. This challenge is defended on the grounds that the study focused on a corporate entity performing a normal organisation task undertaken by typical project teams with members having a mix of different business background, experiences and skills. The decision to use this organisation and type of task is discussed at length in the earlier chapters (i.e. Chapters 1, 2 and 3).

Nevertheless, it is conceded that this view could be sufficient reason to challenge the implicit assumptions of the researcher although the study is designed according to accepted practice management and academic models and theories. Further questions therefore need to be asked and continuing studies should be carried out to resolve the issues identified.

Furthermore, while it may not be seen as the first known academic study of the matters of concern, the study should at least be seen as the beginning and not the final answer as the findings are important not only to researchers of organisation and management theories but also to practitioners. Some ideas for future research include:

- other sectors of industry;
- other types of major acquisition and procurement programs such as the provision of infrastructure or foreign aid;
- larger sample of cases;
- wider array of documentary evidence;
- comparison with other types of research design;
- application of other types of discriminating factors;
- other affects-based evaluation techniques; and
- conduct a quantitative study using interview data from the participants.

Final Conclusion

This thesis is brought to a close with a final conclusion of a meaningful study that has provided significant insights into the ways in which the Department of Defence acquisition and procurement activities can influence the governance principle of accountability, both in relation to the specific case studies, and more generally. It has also, through comparison of three cases structured against factors of risk, schedule and capability, highlighted factors that can contribute to the success or failure of the acquisition and procurement process.

In achieving these outcomes, the study has not only addressed the questions asked but confirmed that it is critical for an organisation to be consistent with its prevailing corporate governance principles, codes of conduct, policies and directives to ensure compliance with internal and external initiatives such as contracts with third parties, reporting to stakeholders including Government, the Australian community and cost control, program performance management such as controls, corporate behaviour, operations and compliance, and risk management. For the lead public sector agency of some significance to lose sight of the imperative measures that ensure compliance and control particularly in the management and accountability of large amounts of public funds has been perceived by the wider community as a sense of recklessness that continues to raise questions about accepted corporate behaviour and performance because as Sarkesian and Gannon¹³⁶ (1982) state

(Maintaining) ethical behaviour by military professionals as perceived by society is a basic ingredient to the legitimacy and credibility of the military institution. (p. 128)

While the downside for lack of consistency has contributed to a confused and disjointed organisation in which objectives, necessity, focus, direction and compliance become compromised; there is also a growing commitment by the Government, the APS and the agency to implement positive measures to mitigate the situation. One of the measures to improve governance practices as well as assist in restoring public confidence in the Department of Defence acquisition and procurement process is to apply the concepts of the Foucauldian governmentality concept and practices to both program and project management governance to achieve control and surveillance.

¹³⁶ Sarkesian, SC. & Gannon, TM. (1982), Professionalism: Problems and Challenges, in Malham M. Wakin (ed.) War, Morality, and the Military Profession, Westview Press, Colorado, p.128

Appendices

- Appendix A: Relationship of selected documents to Key Governance Elements
- Appendix B (1): Department of Defence Departmental Procurement Policy Instruction No.14/2011
- Appendix B (2): Joint Committee of Public Accounts and Audit Report 422: Review of the 2009-10 Defence Materiel Organisation Major Projects Report
- Appendix C: The Defence Values
- Appendix D: Australian Public Service Commission APS Code of Conduct
- Appendix E: The Assessment Criteria
- Appendix F (1) The Management of the Guided Missile Frigate (FFG) Upgrade Project Event Calendar
- Appendix F (2) Replacement The MU90 Light Weight Torpedo Project Event Calendar
- Appendix F (3) Management of the M113 Armoured Personnel Carrier Upgrade Event Calendar

Appendix A

Relationship of selected documents to Key Governance Elements

Document	Key Element	Purpose	Trustfulness Authenticity; Credibility; Representative ness; Meaning	Credibility Documentation; Procedural; Ethics
<p>1. Foundations of Governance in the Australian Public Service, (reprint 2005 and 2009).</p> <p>This is a cornerstone single authoritative document for the APS.</p>	<p>National Standards and Codes of Conduct Federal or State Laws and Regulations Policies and Governance Frameworks Training and Education</p>	<p>Policies and Governance Frameworks Standards and Codes of Conduct Training and Education</p> <p>Establishes the governance standards to assess and measure agency conformance and compliance.</p>	<p>Endorsed by: Commonwealth of Australia; and Attorney-General’s Department, Canberra Australia Australian National Audit Office</p> <p>Accepted by all APS agencies</p>	<p>Satisfies the APS standards and demonstrated in each critique to be aligned to the academic approaches for research literature</p>
<p>2. Public Sector Governance Volume 1 Better Practice</p>	<p>National Standards and Codes of Conduct Federal or State Laws and</p>	<p>Standards and Codes of Conduct Training and Education</p>	<p>Endorsed by: Commonwealth of Australia; and Attorney-General’s Department,</p>	<p>Satisfies the APS standards and demonstrated in each critique to be aligned to the academic approaches for research</p>

<p>Guide: Framework, Processes and Practices.</p> <p>This is a cornerstone authoritative Best Practice Guide on Governance in the APS.</p>	<p>Regulations Policies and Governance Frameworks Training and Education</p>	<p>Establishes the governance standards and work programs to assess and measure agency conformance and compliance.</p>	<p>Canberra Australia Australian National Audit Office</p> <p>Accepted by all APS agencies</p>	<p>literature</p>
<p>3. The Auditor-General Report No.9 2008–09 Assurance Report Defence Materiel Organization Major Projects Report 2007–08, 27 November 2008.</p>	<p>Monitoring and Compliance Systems Reporting (Statutory and Other) Source of evidence on breaches.</p>	<p>Outcomes/Output Reporting Training and Education</p> <p>Assurance Report subjected to conformance and compliance audits and reviews.</p>	<p>Australian National Audit Office</p> <p>Accepted by: Australian Parliament Department of Defence</p>	<p>Satisfies the APS standards and demonstrated in each critique to be aligned to the academic approaches for research literature.</p>
<p>4. The Auditor-General Report No.13 2009–10 Assurance Report Defence Materiel Organization Major Projects Report 2008–09, 24 November 2009.</p>	<p>Monitoring and Compliance Systems Reporting (Statutory and Other) Source of evidence on breaches.</p>	<p>Outcomes/Output Reporting Training and Education</p> <p>Assurance Report subjected to conformance and compliance audits and reviews.</p>	<p>Australian National Audit Office</p> <p>Accepted by: Australian Parliament Department of Defence</p>	<p>Satisfies the APS standards and demonstrated in each critique to be aligned to the academic approaches for research literature</p>

<p>5. The Auditor-General Report No, 17 2009- 10 Assurance Report Defence Materiel Organization Major Projects Report 2009-2010, 30 November 2010</p>	<p>Monitoring and Compliance Systems Reporting (Statutory and Other) Source of evidence on breaches</p>	<p>Outcomes/Output Reporting Training and Education Assurance Report subjected to conformance and compliance audits and reviews.</p>	<p>Australian National Audit Office Accepted by: Australian Parliament Department of Defence</p>	<p>Satisfies the APS standards and demonstrated in each critique to be aligned to the academic approaches for research literature</p>
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Department of Defence

Departmental Procurement Policy Instruction No: 14/2011

Source: Department of Defence Canberra ACT
Redacted 23 August 2011

PROJECTS OF CONCERN: RELEASE OF AMENDED CONDITIONS OF TENDER FOR ASDEFCON (STRATEGIC MATERIEL) VERSION 2.3, ASDEFCON (COMPLEX MATERIEL) VOLUME 2 VERSION 2.1 AND ASDEFCON (SUPPORT) VERSION 3.0

Purpose

1. The purpose of this Departmental Procurement Policy Instruction (DPPI) is to advise all Defence and Defence Materiel Organisation (DMO) procurement staff of changes to the conditions of tender of ASDEFCON (Strategic Materiel) V2.3, ASDEFCON (Complex Materiel) Volume 2 V2.1 and ASDEFCON (Support) V3.0. These updates form part of recent ongoing reforms to Defence and DMO management of Projects of Concern.
2. This DPPI is to take effect seven days after publication and will remain effective until the DPPI is cancelled.

Background

3. Projects of Concern are those acquisition projects or sustainment activities identified as having very significant risks or issues relating to schedule, cost and capability. Where a project has been identified through the Early Indicators and Warnings framework and has undergone a diagnostic Gate Review, a submission may be made to Government recommending that the project be listed as a Project of Concern. The decision to identify an acquisition project or sustainment activity as a Project of Concern is a decision made by Government.
4. Projects of Concern receive a higher level of oversight and management and undertake monthly reporting to Government. The principal goal of Projects of Concern is the remediation of troubled projects; however, a project may be cancelled by the Government if there is insufficient confidence in prospects for recovery.
5. Projects of Concern engage in regular face-to-face reviews to facilitate continuous improvement of the management process and to measure effectiveness of remediation. These reviews include biannual Project of Concern summits held with Defence Ministers and senior Industry representatives.
6. As part of broader ongoing reforms to Defence and DMO's management of Projects of Concern, Defence and DMO are seeking to strengthen the consequences for companies that significantly under perform on prior or current Defence or DMO contracts. To this end, and to complement existing evaluation provisions (which include criteria relating to past performance and

utilise Company Score Card data, the conditions of tender for the 'high level' ASDEFCON templates have been amended to expressly consider Projects of Concern status in procurement decisions. This amendment is intended to highlight to Industry partners the critical importance to Government, Defence and DMO of remediation of Projects of Concern.

Express discretionary right to exclude

7. The amendments to the template conditions of tender set out in this DPPI provide the Commonwealth with an express discretionary right to exclude a tender from further consideration during a tender process if that 'tenderer' was, or is, materially involved with a contract that is, or becomes at any stage during the tender process, a Project of Concern. 'Tenderer' for this purpose also encompasses any Related Body Corporate, proposed Subcontractor or their Related Body Corporate, or special purpose vehicle (in which any of these entities have been involved).

8. The key factors the Commonwealth will consider in exercising this right will be the level or degree of responsibility the company has for the Project of Concern status and the company's attitude and endeavours to remediate the Project of Concern.

9. This right of exclusion is consistent with paragraph 8.55 of the Mandatory Procurement Procedures of the Commonwealth Procurement Guidelines which states:

'An agency may exclude a potential supplier on grounds such as ... significant deficiencies in performance of any substantive requirement or obligation under a prior contract.'

10. Any project considering exercising this right must first consult with the Independent Project Performance Office (IPPO) and their Division or Group Head. IPPO will advise what further high level consultation and clearance is required and projects must not exercise the express discretionary right to exclude a tender without obtaining that clearance.

Past performance evaluation criterion

11. The past performance evaluation provisions of the high level ASDEFCON templates have also been amended to emphasise that previous involvement by a 'tenderer' (as defined in paragraph 7 above) in a Project of Concern is a relevant consideration, including in circumstances where the relevant contract is no longer a Project of Concern.

12. Note, that the Commonwealth's express discretionary right to exclude a tender from further consideration discussed above in paragraph 7 only applies while a contract remains a Project of Concern, while the past performance evaluation criterion takes into account performance on both past and present contracts that are, and once were, Projects of Concern.

Implications for ASDEFCON templates

13. Drafters are to note that the clauses provided in annexes A to C of this DPPI must be considered 'Core' clauses for the applicable templates in accordance with the ASDEFCON Contract Template Selection and Tailoring Guide.

14. Other than the amendments listed in annexes A to C, no further action in relation to the ASDEFCON suite of templates is required.

Further queries

15. Any questions relating to this DPPI should be directed to the Commercial Innovation and Practice Help Desk: commercial.innovationandpractice@defence.gov.au.

16. The IPPO website is at the following intranet link
<http://intranet.defence.gov.au/dmoweb/sites/MajorProgramControl/comweb.asp?page=81557&Title=Welcome>.

Production Note:
Signature removed prior to publication.

HARRY DUNSTALL

Acting Deputy Chief Executive Officer and General Manager Commercial
Defence Materiel Organisation

Annexes:

- A. ASDEFCON (Strategic Materiel) V2.3
- B. ASDEFCON (Complex Materiel) Volume 2 V2.1
- C. ASDEFCON (Support) V3.0

Distribution: SDL 1, 2, 3, 4, 5, 6, 9A, 12, 14

Contact Officer: Commercial Innovation and Practice Help Desk

Email: commercial.innovationandpractice@defence.gov.au

Earlier Departmental Procurement Policy Instruction Cancelled: Nil

Production Note:
Signature removed prior to publication.

ASDEFCON (STRATEGIC MATERIEL) V2.3

Amend clause 1.6.1(d) of the conditions of tender ('Other Commonwealth Rights') to read:

'd. terminate further participation in the RFT process by any tenderer for any reason, including if the tenderer is, or was, the contractor or an approved subcontractor under a contract that is, or becomes at any stage during the RFT process, a Project of Concern, and regardless of whether the tender submitted conforms to the requirements of the RFT. For the purposes of this paragraph 1.6.1d, tenderer also encompasses any Related Body Corporate, proposed Subcontractor or their Related Body Corporate, or special purpose vehicle (in which any of these entities have been involved);'

Amend clause 6.1.1a of the conditions of tender ('Tender Evaluation Criteria') to read:

'a. past performance of contractual obligations by the tenderer, including involvement in any contract that is or has been listed as a Project of Concern. For the purposes of this paragraph 6.1.1a, tenderer also encompasses any Related Body Corporate, proposed Subcontractor or their Related Body Corporate, or special purpose vehicle (in which any of these entities have been involved).'

Insert the following new definition in Attachment M to the draft conditions of contract, 'Glossary' ('Definitions—Conditions of Tender'):

Project of Concern (Core) means any project or sustainment activity identified by the Minister for Defence and/or the Minister for Defence Materiel as a Project of Concern on the list held by Defence known as the Projects of Concern list.

ASDEFCON (COMPLEX MATERIEL) VOLUME 2 V2.1

Amend clause 1.6.1(c) of the conditions of tender ('Other Commonwealth Rights') to read:

'c. terminate further participation in the RFT process by any tenderer for any reason, including if the tenderer is, or was, the contractor or an approved subcontractor under a contract that is, or becomes at any stage during the RFT process, a Project of Concern, and regardless of whether the tender submitted conforms to the requirements of the RFT. For the purposes of this paragraph 1.6.1c, tenderer also encompasses any Related Body Corporate, proposed Subcontractor or their Related Body Corporate, or special purpose vehicle (in which any of these entities have been involved);'

Insert new clause 1.6.1(n) of the conditions of tender ('Other Commonwealth Rights') as follows:

'n. terminate further participation in the RFT process by any tenderer if the tenderer is, or was, the contractor or an approved subcontractor under a contract that is, or becomes at any stage during the RFT process, a Project of Concern, and regardless of whether the tender submitted conforms to the requirements of the RFT. For the purposes of this paragraph 1.6.1n, tenderer also encompasses any Related Body Corporate, proposed Subcontractor or their Related Body Corporate, or special purpose vehicle (in which any of these entities have been involved).'

Amend clause 6.1.1a of the conditions of tender ('Tender Evaluation Criteria') to read:

'a. past performance of contractual obligations by the tenderer, including involvement in any contract that is or has been listed as a Project of Concern. For the purposes of this paragraph 6.1.1a, tenderer also encompasses any Related Body Corporate, proposed Subcontractor or their Related Body Corporate, or special purpose vehicle (in which any of these entities have been involved);'

Insert the following new definition in Attachment M to the draft conditions of contract, Glossary ('Definitions—Conditions of Tender'):

Project of Concern (Core) means any project or sustainment activity identified by the Minister for Defence and/or the Minister for Defence Materiel as a Project of Concern on the list held by Defence known as the Projects of Concern list.

ASDEFCON (SUPPORT) V3.0

Amend clause 1.6.1(d) of the conditions of tender ('Other Commonwealth Rights') to read:

'd. terminate further participation in the RFT process by any tenderer for any reason, including if the tenderer is, or was, the contractor or an approved subcontractor under a contract that is, or becomes at any stage during the RFT process, a Project of Concern, and regardless of whether the tender submitted conforms to the requirements of the RFT. For the purposes of this paragraph 1.6.1d, tenderer also encompasses any Related Body Corporate, proposed Subcontractor or their Related Body Corporate, or special purpose vehicle (in which any of these entities have been involved);'

Amend clause 6.1.1a of the conditions of tender ('Tender Evaluation Criteria') to read:

'a. past performance of contractual obligations by the tenderer, including involvement in any contract that is or has been listed as a Project of Concern. For the purposes of this paragraph 6.1.1a, tenderer also encompasses any Related Body Corporate, proposed Subcontractor or their Related Body Corporate, or special purpose vehicle (in which any of these entities have been involved);'

Insert the following new definition in Attachment M to the draft conditions of contract, 'Glossary' ('Definitions—Conditions of Tender'):

Project of Concern (Core) means any project or sustainment activity identified by the Minister for Defence and/or the Minister for Defence Materiel as a Project of Concern on the list held by Defence known as the Projects of Concern list.

**Joint Committee of Public Accounts and Audit
Report 422: Review of the 2009-10 Defence Materiel Organisation Major
Projects Report
Recommendations for Defence**

Source: Department of Defence Canberra ACT

Major Projects Report Work Program

Recommendation 1

That the Major Projects Report (MPR) Work Plan (which contains the MPR Guidelines) be provided to the Joint Committee of Public Accounts and Audit (JCPAA) concurrently with the list of proposed projects for inclusion and exclusion in the following year's MPR, not later than 31 August each year.

Response: Agree (administrative)

The JCPAA's requirement that it be consulted by no later than 31 August each year provides sufficient lead time to: undertake preparations for the following year's MPR Program; develop the proposed list of DMO projects for MPR inclusion in the follow on year (in accordance with the JCPAA endorsed project entry criteria); and provide a draft 'DMO MPR Work Plan' that will detail key management aspects planned for the following year's MPR Program.

After Parliamentary Tabling of the DMO MPR each November, the DMO and ANAO will be able to review the previous year's MPR Program and incorporate identified improvements into a redrafted DMO MPR Work Plan. The DMO and ANAO would then seek JCPAA endorsement of the revised DMO MPR Work Plan at the JCPAA Committee Hearing in February/March of the next year.

Recommendation 2

That Projects of Concern (PoC) not be specifically included in the selection criteria for projects to be reported on in the MPR, but where projects reported on in the MPR are also PoC, that they continue to be identified as such.

Response: Agree (administrative)

The DMO MPR places a strong emphasis on longitudinal analysis on all projects selected as per the endorsed JCPAA selection criteria. The DMO believes that the current JCPAA endorsed selection criteria provide a robust mechanism for project selection that ensures an appropriate level of transparency and reporting over the DMO's largest acquisition projects.

Projects reported in the DMO MPR that are also a PoC will continue to be identified as such.

Recommendation 3

That the exit criteria for projects reported on in the Major Projects Report be the point at which both Final Materiel Release and Final Operational Capability (as currently defined by the Defence Materiel Organisation and Department of Defence respectively) is achieved.

Response: Agree in Principle (administrative)

In January 2010, the Defence Committee endorsed the concept of Initial Materiel Release (IMR) and Final Materiel Release (FMR) milestones. The IMR-FMR construct is designed to clearly define the points at which the DMO is to meet its responsibilities for the acquisition of materiel supplies – the materiel element of capability. The materiel element of capability is but one element of a number of Fundamental Inputs to Capability (FIC). The Capability Manager is responsible for integrating the FICs to achieve a capability state that can be operationally deployed by the Capability Manager.

Other FICs that are managed by various Defence Agencies would typically include, but are not limited to, operator training (Capability Manager), facilities and infrastructure (Defence Support Group), IT infrastructure (Chief Information Officer Group) - achievement of all FICs would then provide the trigger point for Capability Manager endorsement of either an Initial Operational Capability (IOC) state or Final Operational Capability (FOC) state.

The DMO MPR provides a valuable insight to the DMO's management performance on the materiel element of capability from Government Second Pass Approval to achievement of FMR. The DMO considers achievement of FMR (the point in time at which the DMO has satisfied its responsibility for acquisition of the materiel element of capability) as the logical end point to trigger the removal of a project from the MPR.

Recommendation 4

That in determining whether the exit criteria is appropriate for future Major Projects Reports (MPRs), that the Defence Materiel Organisation's assessment of the difference in scale, size and incidence of requirements to be completed between Final Materiel Release and Final Operational Capability be provided to the Joint Committee of Public Accounts and Audit as soon as possible to allow for the implementation of any changes to occur for the 2011-12 MPR. In conducting its analysis, the DMO should consult with the three services, the Department of Defence, the Australian National Audit Office and industry representatives.

Response: Agree (administrative)

To formally establish the IMR and FMR milestones, all DMO projects are required to transition to a new Materiel Acquisition Agreement (MAA) for joint signature by Chief Capability Development Group, Chief Executive Officer Defence Materiel Organisation and the relevant Capability Manager by December 2011. Notwithstanding, the 28 DMO projects involved in the 2010-11 MPR Program have, as a priority, transitioned to the new MAA.

Consequently, for the 2010-11 MPR, DMO will be in a position to introduce additional analysis which will aim to identify the schedule lead-times, and scale, size and incidence of requirements between DMO project achievement of FMR (delivery of the materiel element of capability) and the Capability Manager's planned endorsement of FOC (upon successful delivery of all FIC).

For the 2011-12 MPR Program, the DMO will seek to engage with Capability Development Group and Capability Managers to analyse post FMR delivery of FIC requirements needed to achieve an endorsed FOC state.

Recommendation 5

That once projects have met the exit criteria, they be removed from the Major Projects Report (MPR) and for each project which has been removed, the lessons learned at both the project level and the whole-of-organisation level are included as a separate section in the following MPR.

Response: Agree (administrative)

The DMO introduced analysis of project lessons learned in the 2008-09 MPR and further strengthened this analysis in the 2009-10 MPR. Project lessons learned are analysed to identify systemic issues and the measures being taken by DMO to address these systemic issues to foster ongoing business improvement. For future DMO MPRs, as projects are removed from the MPR Program, the project and enterprise level lessons learned will continue to be reported in an annex to the DMO MPR.

Auditor-General's Review

Recommendation 6

That the Defence Materiel Organisation include in the format of a comparison table, for the listed eleven projects included in the Major Projects Report, columns appearing side by side showing base date dollars, out-turned dollars and current dollars for expenditure information.

Response: Agree (administrative)

The Project Data Summary Sheet (PDSS) template, endorsed by the JCPAA (at the 28 February 2011 Hearing) for the 2010-11 DMO MPR Program, provides the structure to inform a comparison between base date dollar, out-turned dollar and current day dollar expenditures for the eleven projects identified in the 2010-11 MPR Work Plan.

Recommendation 7

That the Defence Materiel Organisation present the findings of its examination of the presentation of financial data on all possible methods for project expenditure information (base date dollars, out-turned dollars and current dollars) to the Joint Committee of Public Accounts and Audit (JCPAA) as soon as it is completed and no later than 31 August 2011.

This examination should include a: (1) preferred method, and (2) comprehensive proposal for transition towards the proposed new arrangement. In addition, the proposed examination should be reviewed by the Australian National Audit Office before it is submitted to the JCPAA for consideration and recommendation prior to inclusion in the MPR.

Response: Agree (administrative)

The DMO has developed a proposal which details the revised methodology for Financial Performance Reporting, in the construct of the PDSS, for implementation in the 2011-12 DMO MPR Program. The DMO proposal will be circulated for consultation with the ANAO and will be ready for JCPAA consideration prior to the next JCPAA Hearing.

In order to effectively establish and maintain a sustainable approach to reporting project financial performance (via the revised PDSS Financial Performance Reporting methodology), the DMO proposal will address the following key considerations:

- Consistency with other published documents, including: Portfolio Budget Statements; Portfolio Additional Estimates Statements; and the Defence Annual Report.
- Consistency with the accepted method for managing project budgets in accordance with the Commonwealth's budgeting framework.
- Ensuring all financial data produced in the PDSS at the transactional level is verifiable with Defence and DMO's existing financial management systems.

In addressing the above considerations, the DMO proposal will present at least three financial performance reporting methodologies and will advise the preferred methodology for implementation in the 2011-12 DMO MPR Program.

Recommendation 8

That the way that Measures of Effectiveness data is presented in the Major Projects Report not be changed until a thorough analysis outlining the reasons for and implications of the change has been undertaken and presented to the Joint Committee of Public Accounts and Audit for consideration and endorsement.

Response: Agree in Principle (administrative)

Since the DMO Prescription in July 2005, acquisition and sustainment support to capability has been managed through the DMO agreements framework. The principal agreement for all DMO acquisition projects is the MAA, signed between the DMO and Capability Development Group (CDG). The MAA defines the acquisition services to be delivered by DMO to Defence for all major and minor equipment acquisition projects and defines each DMO project in terms of budget, scope and schedule. The former Measures of Effectiveness (MOEs) construct under the original MAA framework assessed the likelihood of delivering the defined materiel element of the capability.

As part of the Mortimer reforms, the MAA framework has been further developed and strengthened by two key initiatives: including the relevant Capability Manager as a signatory to the MAA, along with the DMO and CDG; and introducing the new milestones of IMR and FMR as replacements for MOEs. The introduction of IMR and FMR milestones has a threefold effect: it provides greater clarity of responsibilities between the DMO, CDG and Capability Managers; sets the two key milestones for delivering the materiel elements of capability to the Capability Manager; and provides for a very direct and more effective measurement of DMO performance.

In accordance with the direction provided by the Defence Committee on 21 January 2010, all DMO projects are to transition to the new MAA framework by December 2011. As at 30 June 2011, all 28 DMO MPR projects had transitioned to the new MAA template. Consequently, these projects have ceased to formally report against the former MOE construct and have commenced reporting on their performance in delivering the materiel element of capability to Capability Managers to the required scope approved by Government in order to satisfy achievement of IMR and FMR.

Consequently, for the 2010-11 MPR, DMO will provide additional analysis which will aim to explain the introduction of IMR and FMR milestones under the strengthened MAA framework.

Recommendation 9

In line with the previous Committee's recommendation, that the Defence Materiel Organisation in conjunction with the Australian National Audit Office develop a standardised graphical representation of each project's cost and schedule variance for inclusion in the Project Data Summary Sheets for the 2011-12 Major Projects Report Guidelines.

Response: Agree (administrative)

Fundamental to the achievement of the DMO business is the use of standardised financial management and schedule management systems. These systems already produce data metrics to track the progress and performance of projects (which underpins DMO's monthly reporting process), and will readily provide the data required to produce a graphical representation of project performance against cost and schedule, and variances between planned and actual performance.

DMO believes that this additional disclosure will add significant value to future DMO MPRs by providing the reader with an easy to understand and consolidated reference point detailing each project's cost and schedule performance.

The Defence Values

Source: Department of Defence Canberra ACT



Professionalism is striving for excellence in everything we do.

We work hard to deliver high quality results, do our job to the best of our ability and take pride in our achievements. We are sensitive to changes in our working environment and are ready to respond. We provide impartial, comprehensive, timely and accurate advice. We constantly seek to improve our work performance.



Loyalty is being committed to each other and to Defence.

We serve the government of the day and support our leaders and colleagues to undertake tasks and achieve results in line with government direction. We treat everyone at all levels with respect, care and compassion. We work to uphold the best interests of the Australian people.



Integrity is doing what is right.

We behave honestly and ethically, and demonstrate the highest standards of probity in our personal conduct. We act fairly and accept personal responsibility for our decisions and actions. We build trust through productive working relationships. We do not allow mateship to be misused to cover up bad behaviour or bring the organisation into disrepute. Our actions clearly match our words.



Courage is the strength of character to honour our convictions (moral courage) and bravery in the face of personal harm (physical courage). In Defence we stand up for what we believe is right and we speak out robustly and openly against what is wrong. We have the courage to accept valid criticism, admit to errors, learn lessons and improve. We give honest feedback on work performance.



Innovation is actively looking for better ways of doing our business. In Defence we are open to new ideas and strive to identify and implement better ways of doing business. We are clever and make best use of the resources that we have to do our job. We encourage sensible risk taking, and strive to identify opportunities to eliminate inefficiency and waste.



Teamwork is working together with respect, trust and a sense of collective purpose. Teamwork is cultivated through strong, positive leadership and attention to the needs of team members. In Defence teamwork is integral to everything we do, and characterises our working relationships inside Defence and across the whole of Government. We foster collaborative workplaces, communicate openly and solve problems in a collegiate manner, share ideas and take advantage of the diversity of our knowledge and experience.

Australian Public Service Commission

APS Code of Conduct

Source: Australian Public Service Commission Office, Canberra ACT

APS employees are required, under the Code of Conduct, to behave at all times in a way which upholds the APS Values

The Code

The Code of Conduct requires that an employee must:

- behave honestly and with integrity in the course of APS employment;
- act with care and diligence in the course of APS employment;
- when acting in the course of APS employment, treat everyone with respect and courtesy, and without harassment;
- when acting in the course of APS employment, comply with all applicable Australian laws;
- comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction;
- maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff;
- disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment;
- use Commonwealth resources in a proper manner;
- not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment;
- not make improper use of:
 - inside information, or
 - the employee's duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person;
- at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS;

- while on duty overseas, at all times behave in a way that upholds the good reputation of Australia; and
- comply with any other conduct requirement that is prescribed by the regulations (regulations available here)

The following books help APS employees to understand the practical application of the Values and Code. They can also help Agency Heads to establish policies and procedures that promote the Values and ensure compliance with the Code:

- *APS Values and Code of Conduct In Practice: A guide to official conduct for APS employees and agency heads*
- *Handling Misconduct - A human resources practitioner's guide to the reporting and handling of suspected and determined breaches of the APS Code of Conduct.* A summary guide is also available in PDF.
- *In whose interest? : Preventing and managing conflicts of interest in the APS.* Extract from Public Service Commissioner's Directions 1999
- *Embedding APS Values: Framework and checklist.* The Merit Protection Commissioner and Ethical Decision Making
- *How to use the APS Values and Code to make ethical decisions in the APS.*
- *Respect: Promoting a Culture Free from Harassment and Bullying in the APS*
- *Being Professional in the APS—Values Resources for Facilitators.* The kit is the first comprehensive package of materials to address situations specific to the APS.

Circulars and advices

- **Circular No 2008/3:** Providing information on Code of Conduct investigation outcomes to complainants
- **Circular No 2007/5:** Involvement of public servants in public information and awareness initiatives
- **Circular No 2007/2:** The Privacy Act and employee information concerning Code of Conduct matters
- **Circular No 2007/1:** Declarations of personal interest: revised policy guidelines
- **Circular No 2002/5:** Breaches of the Code of Conduct - reduction in salary for a specified period
- **Circular No 2001/3:** Supplementary information for APS employees contesting elections

The Assessment Criteria

The effects-based evaluative process is based on the widely accepted global risk management evaluation approach. It deduces the likelihood and consequences associated with a particular context in the time window in which the activities took place. The rating scale includes:

Code 1 = dramatic;
Code 2 = substantial;
Code 3 = moderate;
Code 4 = slight; and
Code 5 = negligible.

Note: Assessments are applied against the Compliance and Conformance Criteria derived from the Chartered Institute of Public Finance and Accountability *Corporate Governance: A Framework for Public Service Bodies (1995)* shown below and within the context of the explanatory notes extracted from a speech by Mr P. Barrett at the National Council of the Institute of Public Administration Australia in 1999 and republished in 2000. These explanatory statements are within the context of APS Corporate Governance and reflect the understanding and standard measurement of APS accountability, performance accountability, roles and responsibilities.

These definitions were designed to fill the gap in core public sector awareness of the opportunities provided for improved management performance and accountability through better integration of the various elements of the corporate governance framework within agencies.

Rating Scale: The base-line is based on the Defence and ANAO adverse findings. Discrimination of the rating is enhanced using the modifiers > (greater than) and < (less than) between close assessments. For example, >2 rating means that the impact (effects-based) is substantially more adverse on the Determining Factor, and a <4 rating means that the impact is slightly less adverse on the Determining Factor.

Compliance Criteria

- Consequences refer to how well the Defence accountability system and its components are operating.
- Capacity deals with the effectiveness of each component – whether, for example, sufficient and appropriate resources were available and appropriately deployed, including the financial and human resources, legislative underpinnings, and political will in support.
- Coherence refers to the overall coherence of a Commonwealth agency’s accountability system: how well the agency’s accountability and statutory guarantees work in unison, cooperatively or otherwise, and whether the result was an integrated and mutually supportive armoury of safeguards.

Conformance Criteria

The conformance criteria require two aspects to be satisfied, namely:

- Ensuring accountability through clear demonstration of conformance to legislation, regulation, stakeholder rights and wishes, and audits.
- Clear demonstration of supervision of management duties through conformance to key performance indicators, standard operating procedures, cash flows, budgets, projects and organizational capability. Executive management duties involve day-to-day management, policy formulation and foresights and strategic thinking to drive the organization.

Definition and context of APS Accountability

Source: Extracted from a speech by Mr P. Barrett at the National Council of the Institute of Public Administration Australia in 1999 and republished in 2000.

On accountability: “(APS) public servants, at least, must understand the pervasive and often decisive influence of 'politics', as opposed to 'markets', both on public policy and administration. This means that public sector agencies must balance complex political, social and economic objectives, which subject them to a different set of external constraints and influences from those experienced in the private sector.

Consequently, there is an added criteria of trade-offs between the nature and level of accountability and private sector cost efficiency, particularly in the delivery of public services and in the accountability regime itself.

Public sector managers, at all levels, also have to deal with a different nature and level of risks in the more contestable environment confronting most of them than they have had to do in the past. Managing the risks associated with the increased involvement of the private sector in the delivery of government services, in particular the delivery of services through contract arrangements will require the development and/or enhancement of a range of skills across the public sector and will be a key accountability requirement of public sector managers. The identification, assessment, prioritization, monitoring/review and treatment of risks have to be an integral part of an effective, operational and strategic management approach at all levels of an organization.

Additionally, the recent changes to financial, public service and industrial legislation 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. These changes are intended to allow the Australian public service to better manage and respond to new challenges brought about by the changing environment.

The legislation provides opportunities for enhanced performance and accountability in the Australian public service but can also involve greater management risks, particularly in an environment of devolved authority. It has also undoubtedly heightened the Australian public service's awareness of good corporate governance.

Any coordination of activities or sharing of experiences is matters for individual agencies to arrange between themselves. Further reduced central oversight and coordination is problematical as agencies recognize that some interrelationships, such as 'shared outcomes', are indicative of the need for broader corporate governance arrangements across agencies. Realistically, the latter will obviously take some time to accomplish. This is something I address later in relation to the suggestion that we may be moving, to some extent at least, from market-based bureaucracies to more networked bureaucracies which include private sector providers of public services.

According to Barret (1999) and Hughes (1998) the privatization of the public sector also requires proper accountability for the stewardship of public resources, as it is accountability that is fundamental to a democratic system. Importantly, the privatization of the public sector does not obviate or limit the need for accountability to stakeholders. Instead, less direct relationships such as the introduction of a new player in the accountability chain, i.e. the private sector service provider with greater decision-making flexibility strengthen that need. These changes also have important implications for auditing approaches where management and accounting techniques have much in common with those in the private sector.

There is a wide body of administrative case law and procedural guidance applying to government procurement in Australia. The resulting framework embodies important principles such as value for money, open and effective competition, ethics and fair dealing and accountability. The salient point is that the level of procedures required in the selection process should be in direct proportion to the extent and complexity of the services to be provided.

The contract must clearly specify the service required; the relationship between the parties needs to be clearly defined, including identification of respective responsibilities; and mechanisms for monitoring performance, including penalties and incentives, set in place. There should not be any equivocation about required performance or 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. Both require sound, systematic and informed risk management which recognizes that managing contract risk is more than a matter of matching risk-reducing mechanisms to identified contract risks; it involves an assessment of the outsourcing situation.

To get the most from a contract, the contract manager and contractor alike need to nurture a relationships support not only the objectives of both parties but which also recognizes their functional and business imperatives. As stated previously, 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.

Performance Accountability: Although the public sector may contract out service delivery, this does not equate to contracting out the responsibility for the delivery of the service or program. It is the responsibility of the agency and agency management to ensure that the government's objectives are delivered in a cost-effective manner. The agency must therefore specify in the contract the necessary level of service delivery and required quantitative and qualitative service standards and measures. However, it has also been suggested that contracts should be framed for performance rather than detailing how to achieve this performance.

Put another way, it is often more about cost-effective ways to seek solutions to defined problems or requirements in the marketplace than about attempting to specify those solutions which essentially means an implicit shared responsibility for results between

the purchaser and provider. Worse still, there may be a commensurate lack of commitment where there is no real 'ownership' by the provider.

Contracting, while providing the benefits of cost efficiency and enhanced service delivery, can expose the public sector to increased risk. The public service is, in many cases, no longer directly responsible for program outputs, instead being reliant on a private sector contractor for the provision of particular services or products. Nevertheless, the relevant agency is still accountable for those outputs under current accountability requirements.

Accordingly, an agency must also ensure that an adequate level of monitoring of service delivery under the contract is undertaken as part of the agency's contract administration and in line with its broader service delivery responsibilities, such as might be set out in a client service charter. Particularly with large and complex projects there should be provision for contract milestone reviews in the progress of the project, with tests wherever appropriate that prove the progress, and provisions for relief in the event of default.

The competent management of the contract is often the Commonwealth's key means of control over its outputs and their contribution to outcomes. This is why it is essential that we ensure our staff have the capability and capacities to manage contracts effectively if we are to achieve the results required of us. It is not just skills in relation to contracting that are important; there is still a high premium on knowledge and understanding of the functions/business that we are managing.

It is during the transition period, as these accountability arrangements and changed organizational structures are bedded down, that the greatest risk to effective decision-making arises. In my view, such risk is accentuated with greater involvement of the private sector in contractual arrangements; loss of corporate memory in agencies with downsizing of the public sector; the greater use of computing technology with attendant control and fraud-related issues, particularly when outsourced; a lack of required skills in project and contract management in the public sector; and insufficient experience generally in managing on an accrual accounting and budgeting basis.

Corporate Governance: This brings me to the issue of corporate governance and agency controls, which is particularly important in relation to privatization of the public sector in its broadest sense. Corporate governance is largely about organizational and management performance. Simply put,

corporate governance is about how an organization is managed, its corporate and other structures, its culture, its policies and the ways in which it deals with its various stakeholders.

Key components of corporate governance in both the private and public sectors are business planning, risk management, performance monitoring and accountability. The framework requires clear identification and articulation of responsibility and a real understanding and appreciation of the various relationships between the organization's stakeholders and those who are entrusted to manage resources and deliver required outcomes.

As well as the similarities, it is important to recognize the basic differences between the administrative/management structures of private and public sector entities and between their respective accountability frameworks. The political environment, with its focus on checks and balances and value systems that emphasize issues of ethics and codes of conduct, implies somewhat different corporate governance frameworks from those of a commercially oriented private sector. It is equally important to recognize that the diversity of the public sector requires different models of corporate governance. That is, one size does not fit all even though there will be common elements of these models.

Individual Roles and Responsibilities: One of the most important components of robust accountability is to ensure that there is a clear understanding and appreciation of the roles and responsibilities of the relevant participants in the governance framework, importantly, of the responsible minister(s), a board and a CEO. Furthermore, the absence of clearly designated roles weakens accountability and threatens the achievement of organizational objectives.

Any discussion of corporate governance within the private sector and, indeed, for public authorities and companies usually begins with a discussion of the role of the board of directors, who have a central role in corporate governance. This was clearly indicated as follows by Sir Ronald Hampel's Committee on Corporate Governance that has been extensively quoted in governance papers and discussions:

“It is the Board's responsibility to ensure good governance and to account to shareholders for their record in this regard.”

In the private sector there is a clearly defined relationship structure between the main parties. That is, the generic private sector governing structure consists of a board of directors, including the chairperson of the board, and a CEO responsible for the ongoing management of the agency. However, this model is not readily transferable to the public sector, even with GBEs,

because of the different roles and relationships between the responsible minister(s), the CEO and (possibly) the board. As well, Australian citizens (stakeholders) have no choice as to their investment

It is important to recognize the distinction between agencies that are governed by the CEO, possibly with the assistance of a board of management in an advisory capacity, and those organizations that have a governing board to which the CEO should preferably be accountable, such as Commonwealth authorities and companies. The latter, of course, have more in common with the private sector. They also have added complexities as a result of the additional party in the accountability chain. Organizations will need to tailor their governance practices to take account of such differences.

I should mention here another apparent difference between the public and private sectors which is reflected in a public sector organization's relationship to its stakeholders. Private sector approaches tend to focus primarily on share-holders, while recognizing other stakeholders such as employees, customers, suppliers, creditors and the community. While I agree that a board's primary responsibility should be to its share-holders, I would suggest that concepts of greater social and community responsibility are increasingly being embraced by the private sector, as a matter of course. Boards are beginning to recognize that being seen as 'good corporate citizens' is integral to the long-term viability of an organization and, therefore, in the interests of shareholders.

The recently released ANAO discussion paper entitled *Corporate Governance in Commonwealth Authorities and Companies* suggests that there may be opportunities to formalize relationships between the board, the CEO, including management, and responsible minister(s), perhaps through the development of a board charter. Alternatively, a written agreement or memorandum of understanding could be prepared outlining roles and responsibilities as is done, say, in New Zealand.

Principles and Practice of Good Corporate Governance: Attention to the principles of corporate governance requires those involved to identify and articulate their responsibilities and their relationships; consider who is responsible for what, to whom and by when; acknowledge the relationship that exists between stakeholders and those who are entrusted to manage resources and deliver outcomes. It provides a way forward to those, whether in the public or private sectors, who find themselves in somewhat different relationships from what they have experienced before. Therefore they need to look beyond

what have become their expectations over time particularly in view of the recent changes that have occurred in both sectors.

The real challenge is not to define the elements of effective corporate governance *per se* but to ensure that all the elements of good corporate governance are effectively integrated into a coherent corporate approach by individual organizations and well understood and applied throughout those organizations. If implemented effectively, corporate governance should provide the integrated strategic management framework necessary to achieve the output and outcome performance required to fulfill organizational goals and objectives. Corporate governance also assists agencies to discharge their accountability obligations.

The challenge for public sector CEOs is not simply to ensure that all the elements of corporate governance are effectively in place but that its purposes are fully understood and integrated as a coherent and comprehensive organizational strategy focused on being accountable for its conduct and results.

Case 1: Management of the Guided Missile Destroyer (FFG) Capability Upgrade Project

Event Calendar

TIMELINE	EVENT
1994	Phase 2.1 of SEA 1390 (the FFG Upgrade Project) commenced with a two-year \$13.5 million (December 1995 prices) Project Definition Study.
November 1997	The Request for Tender of Phase 2 was issued and was based on the then Defence Acquisition Organisation’s standard contract template known as DEFPUR 101 series. It was developed by the Project Office with assistance from the Defence Acquisition Organisation s contracts organisation, with external legal support.
March 1998	The Request for Tender closed.
November 1998	Australian Defence Industries selected as preferred tenderer for Phase 2.
March 1999	Contract clarification discussions commenced immediately and formal negotiations began.
June 1999	<p>Prime Contract was signed by ADI Limited with ADI commencing trading as Thales Australia in October 2006. Both ADI and Thales Australia are referred to as the Prime Contractor.</p> <p>Phase 2.1 commenced with a signed variable priced Prime Contract to design, develop and integrate the FFGs’ upgraded systems, and extension to their service life that included Phase 4B.</p> <ul style="list-style-type: none"> • SEA 1390 is divided into four approved phases: • SEA 1390 Phase 1 – Project Definition Study, which provided Defence with upgrade options and documentation needed to initiate the project’s implementation phase; • SEA 1390 Phase 2.1 – FFG Upgrade Implementation. This phase to commence in June 1999 at a cost of \$1.266 billion (February 1998 prices). That amount to consist of the Prime Contract price of \$944 million and \$322 million for work conducted outside the Prime Contract. Phase 2.1’s cost was reduced by \$153 million in November 1998 as a result of a project scope reduction involving the purchase of the FFG’s Evolved Sea Sparrow Missiles through another DMO project. This brings Phase 2.1’s cost to \$1.497 billion (July 2007 prices). DMO had agreed to a series of schedule changes, which resulted to Phase 2.1’s Prime Contract Final Acceptance originally scheduled for September 2006 being extended to 31 December 2009; • SEA 1390 Phase 3 – Standard Missile-1 (SM-1) Replacement Integration Study; and

	<ul style="list-style-type: none"> • SEA 1390 Phase 4B – SM-1 Replacement Project is to replace the FFGs’ SM-1 missile system, with the next generation SM-2 surface-to-air Block IIIA ‘standard’ missile system. This phase commenced in July 2004 at an approved cost of \$553 million (December 2004 prices). <p>Phase 4B included:</p> <ul style="list-style-type: none"> • Combat Data System • Surveillance • Above Water Warfare • Underwater Warfare • On-Board Training • Shore Facilities • Life-of-type Extension <p>Phase 4B had an approved budget of \$600 million.</p> <p>Phase 2.1 had the Prime Contractor was to have Total Contract Performance Responsibility for all systems integration tasks whereas Phase 4B’s systems integration was to be managed by DMO’s FFG System Program Office (FFGSPO) with DMO’s Guided Weapons Acquisition Branch responsible for acquiring the SM-2 missiles.</p> <p>Consistent with the Prime’s responsibility, the Contract was structured in such a way that the Prime Contractor effectively had sole responsibility for the upgrade of each FFG from the time of each FFG’s ‘Handover’ until the Prime Contractor offers the FFG for Provisional Acceptance by DMO. During that period, the role of the Project Authority (FFGSPO Director) in relation to the technical aspects of the upgrade is generally limited to reviewing and commenting upon activities proposed to be conducted by the contractor</p> <p>Note: Phase 4B is linked to Phase 2.1, and in some respects Phase 2.1 is a precursor to the system integration and software development necessary for the delivery of Phase 4B. In addition, with the acceptance regime under the Contract, DMO was also required to manage the contractor s performance against the Contracted schedule and this became problematic as the schedule slipped.</p>
November 2001	Integrated Baseline Review conducted on the FFG Upgrade Contract Master Schedule.
June 2002	<p>The then Secretary of Defence and the then Chief of the Defence Force jointly issued an instruction that established the ADF’s Technical Regulatory Framework (TRF). In accordance with that instruction, Navy developed a technical regulatory framework to meet its specific requirements.</p> <p>Navy’s TRF requires Defence organisations that undertake or accept designs, construction and or maintenance of ADF maritime materiel, to be authorised to perform their tasks through Authorised Engineering Organisation (AEO) certification. Once these organisations achieve AEO certification they are subject to recurrent appraisals to determine the degree of compliance of the AEO engineering systems and processes within Navy’s technical regulatory system and to determine the</p>

	<p>degree of technical risk associated with the continuation of the full AEO status. These requirements were not flowed into the FFG Upgrade Contract by DMO.</p>
November 2003	<p>Placed on the Projects of Concern list.</p> <p>The Government's decides to withdraw from service the oldest two FFGs prior to their planned upgrade and life extension on recommendation from the Defence Capability Review recommended that the two oldest FFGs should be retired from service and that only four FFGs should be upgraded. The Government agreed to that recommendation and a global settlement resulting in a Deed of Settlement and Release between the DMO and the Prime Contractor was to be signed on 29 May 2006.</p>
December 2003	<p>FFGSPO's QMS underwent a third party certification audit. This resulted in a recommendation for certification to ISO 9001:2000, subject to the rectification of non-conformances related to data management, configuration management and the FFGSPO personnel's understanding of the SPO's QMS.</p>
April 2004	<p>The schedule re-baselined to defer the delivery of all FFGs to be upgraded, with the delivery of the last ship to be upgraded delayed by a 24 month extension to the project's duration.</p> <p>QMS issues were resolved and FFGSPO was awarded certification to ISO 9001:2000.</p>
September 2004	<p>Government approves Phase 4B.</p>
May 2006	<p>A repeated Integrated Baseline Review became a specific contract requirement and the schedule re-baselined to defer the delivery of all FFGs by four and a half years.</p> <p>The contract parties agreed to amend the contract (CCP255) to incorporate an improved test and acceptance process known as the B-TAP process (see paragraph 3.32). The B-TAP process aimed to address issues of concern and provide confidence that correct processes had delivered the contracted outcome. This process allowed the Project Authority to address issues where it was not satisfied with the sufficiency of test procedures to produce results that demonstrate compliance.</p> <p>Deed of Settlement and Release between the DMO and the Prime Contractor was signed for only four FFGs to be upgraded, and on Achieving Provisional Acceptance. ANAO (op. cit.) reported to Senate that</p> <p>“The May 2006 Deed released both parties from all legal claims including liquidated damages prior to that date. DMO's election not to exercise its preserved right to seek remedies for the Prime Contractor's inability to achieve Provisional Acceptance of HMAS Sydney by 27 August 2005, has resulted in no liquidated damages being claimed by DMO as at September 2007.</p> <p>The FFG Upgrade Project's Earned Value Management System (EVMS), which controlled some 70 per cent of payments, has been subjected to 10 revisions of the project's Contract Master Schedule by the Prime Contractor.¹¹ The May 2006 Deed required a new Integrated Baseline Review to be undertaken by DMO to validate the most recent Contract Master Schedule change. DMO expects the Integrated Baseline Review to be completed in October 2007.</p> <p>The magnitude of the schedule slippage has led to DMO experiencing difficulty in determining if earned value payments</p>

	<p>were accurately tracking work performed on the project. By October 2006, the Prime Contractor had received earned value payments that exceeded actual value earned by \$24 million. DMO progressively recovered these overpayments.</p> <p>In the FFG Upgrade Project's case, there is a four and a half year delay in the delivery of the final upgraded ship and an over five year delay in the delivery of the upgraded Combat Team Training facility. Project delays also result in DMO, the ADF and DMO's Technical Support Agencies carrying additional costs associated with maintaining and supporting DMO's project teams for longer, and at greater skill levels, than originally anticipated" (2007 pp.19-20)</p>
Mid 2006	<p>A Prime Contract Change included a six ship to four ship scope reduction flowing from the Government's decision in November 2003. This contract change also included:</p> <ul style="list-style-type: none"> • the settlement of Prime Contractor delay claims; and • changes to the Project's Contract Master Schedule and milestones, and changes to the Upgraded FFGs' Provisional Acceptance from the Prime Contractor by DMO. <p>The overall financial impact was a \$54.4 million (2006 prices) reduction in the Prime Contract price.</p> <p>At this time, disagreements between the parties as to the degree of testing required to demonstrate contractual compliance and a lack of design disclosure on the part of the contractor had led to the DMO refusing to approve or agree upon test procedures. Rather than these disputes being resolved through the dispute resolution mechanism provided in the Contract at that time, the contractor elected to proceed (at its own risk) with a test and trial regime outside of the Contract. This decision led to the situation where the upgrade of HMAS Sydney was substantially complete, and both parties required return of HMAS Sydney to the DMO, but there was a material lack of contractually compliant test data to demonstrate that Contract requirements and Navy technical regulations had been met. Instead, the DMO was being requested by the contractor to assess Contract compliance on the basis of the test results derived by the contractor by its testing outside of the Contract provisions. Furthermore, ANAO (op. cit.) reported to Senate that</p> <p>"the Upgrade Project experienced an average schedule extension of 22 months for each ship and this represents an in-year schedule slippage of 85 per cent. Overall, the schedule extensions have delayed the delivery of the last ship to be upgraded by four and a half years. The ANAO has calculated that as a result of schedule extensions the availability of Upgraded FFGs for Navy tasking has been reduced by an average of 20 per cent, assuming the Contract Master Schedule of mid 2006 is maintained. This Contract Master Schedule had not been verified by DMO through an Integrated Baseline Review."(2007 p.21)</p>
October 2006	ADI commences trading as Thales Australia.
December 2006	DMO exercised discretion in Provisionally Accepting HMAS Sydney in accordance with the contract as amended by the May 2006 Deed of Settlement and Release that states Achieving Provisional Acceptance does not relieve the Prime Contractor of any obligations in regard to rectifying contractual non-conformance prior to the Acceptance of each Upgraded FFG and the Contract Final Acceptance.

	At this time, HMAS Sydney had not achieved important Provisional Acceptance milestone precursors, which were required to be resolved before the ship's Acceptance scheduled for November 2008. DMO's Acceptance was made although HMAS Sydney was still experiencing continuing delays in obtaining Initial Operational Release by Navy. This is attributed to limitations in the maturity of Underwater Warfare and Electronic Support Systems and supporting documentation required to satisfy Navy's revised technical regulations introduced after the Prime Contract was signed in June 1999.
January 2007	DMO conducted an internal review of Phase 4B. This review identified a series of project management risks, stemming from FFGSPO lacking a range of project management plans required to supplement Phase 4B's Acquisition Strategy. QMS recertification audit resulted in no corrective action requests and a continuation of FFGSPO's QMS certification.
February 2007	The Department of Defence advised the Joint Committee of Public Accounts and Audit (JCPAA) that the effects of the upgrade delays on capability have been mitigated to an extent by the extension of HMAS Adelaide to the end of 2007 (originally planned to decommission in September 2006). Furthermore, some operational tasking that might have been undertaken by FFGs has been transferred to other classes of ship.
June 2007	Cumulative expenditure reached \$1.064 billion, of that amount \$1.005 billion was for a variable priced Prime Contract signed on 1 June 1999. Phase 4B's expenditure reached \$85.45 million or 14 per cent of its approved budget, and was 18 months behind schedule on some milestones. FFGSPO finally developed a project management plan framework, a Risk Management Plan, a Quality Management Plan, a Schedule Management Plan and a Communication Management Plan. However, as at this date Phase 4B still lacked a Project Certification Plan, an Integrated Logistics Support Plan, and many systems engineering plans. ANAO (op. cit.) reported that "Timely application of approved plans is now necessary to reduce project management risks to acceptable levels, given that FFGSPO is acting as Phase 4B's systems integrator, and that this phase was entering its implementation stage." (2007 p.41) The Prime Contractor provided FFGSPO with the 10th revision of its Contract Master Schedule. \$14 million of combat system software development remained incomplete, and FFGSPO was awaiting revised EVM data, which it expected would provide a more accurate indication of the schedule slippage in EVM terms.
July 2007	Phase 2.1's overall approved budget has increased by \$191 million as a result of annual labour and materials price indexation and by a further \$194 million as a result of foreign exchange adjustments.
August 2007	Navy reported to Defence that the performance of the upgraded systems had varied. The Australian Distributed Architecture Combat System (ADACS) had shown gradual improvement, which culminated in a successful Evolved Sea Sparrow (ESSM) firing with Baseline Build 2 software. Performance of the C-PEARL Electronic Support System and the Underwater Warfare System trial results had been disappointing where the deficiencies are the most significant barrier to Navy using HMAS Sydney in an operational

	environment.
September 2007	<p>The Commander of Navy's Surface Combatant Force Element Group advised the ANAO in September 2007 that HMAS Sydney was handed back to Navy in April 2006.</p> <p>HMAS Sydney was experiencing continuing delays in obtaining Initial Operational Release by Navy. This was attributed to limitations in the maturity of Underwater Warfare and Electronic Support Systems and supporting documentation required to satisfy Navy's technical regulations.</p>
October 2007	<p>The Prime Contractor advised the ANAO that that Initial Operational Release was not a concept in existence at the time of contract signature, and that both parties had experienced great difficulty reconciling the Contract's 'Total Contract Performance Responsibility' provisions with the Project Authority's interest in maintaining a sufficient degree of technical involvement, control and understanding. The contractor advised that the full meaning of both phrases has eluded many working on the project.</p> <p>The Prime Contractor also advised that it is important to note that Navy's Technical Regulations (and other regulatory frameworks) were not in existence at the time of Contract signature in 1999, and despite the Prime Contractor raising concerns over the lack of Technical Regulatory requirements in the contract (Problem Identification Report 143, November 2004 refers), the Project Authority had chosen not to incorporate requirements for Technical Regulation into the Contract. The Prime Contractor believed this lead to a dichotomy between compliant contract deliverables (form and content) and the requirements of the current Regulators. This in turn resulted in re-work within the FFGSPO's own organisation to convert or generate regulatory framework compliant products.</p> <p>The Prime Contractor also advised the ANAO that it had elected to proceed 'at his own risk' because the Project Authority representatives were urging cessation of all activities until 100 per cent compliance was achieved across all aspects of what is a complex and confusing contract.</p> <p>The Prime Contractor further advised that it should be recognised for opting for such an onerous approach as the alternate would not have delivered any capability to the ADF within a reasonable timeframe. It is the Prime Contractor's opinion that its 'pragmatic' proceed at own risk approach, was the only feasible approach in order for the Project to proceed and be completed.</p> <p>The Prime Contractor also advised that the entire upgraded Underwater Warfare System was deemed functionally compliant within the TI-338 for the delivery of HMAS Melbourne at Provisional Acceptance [8 October 2007], and accordingly, all underwater system trials on HMAS Melbourne achieved a Pass .</p> <p>Note: The absence of any provisions in the Contract allowing the Project Authority to stop the contractor from proceeding down this route was at the centre of the difficulties now being faced with the return of HMAS Sydney to Initial Operational Release.⁵ The Contract did not adequately provide for the Project Authority to exercise the necessary degree of control required. Furthermore, the lack of alignment of the Phase 2.1 contract with Navy regulatory framework was, in part, one of</p>

	<p>the difficulties the Project Authority has regarding HMAS Sydney’s Initial Operational Release. In its report submitted to Senate, the ANAO stated that</p> <p>“The ANAO (op. cit.) reported in 2005 that the FFGSPO’s records management system was inadequate for the size and complexity of the FFG programme. In 2005 Defence agreed to the ANAO recommendation that Defence establish a timetable for all groups to migrate to the Defence Records Management System (DRMS). The FFGSPO engaged Defence’s Records Management Solutions Directorate in August 2005 to conduct a scoping study with the aim of implementing the IT-based DRMS. FFGSPO implemented its DRMS by October 2006, and this involved a rationalisation of electronic records and personnel training and support. (p.44)</p> <p>The ANAO also reported that the FFGSPO’s records for 1999 to mid-2003 did not provide a basis for orderly, efficient and accountable measurement of the use of Defence resources. Since then FFGSPO has assembled many additional FFG Upgrade Project payment records, and reconciled these records with payment records held in Defence’s centralised financial management systems. The SPO has also updated its financial management spreadsheets and from March 2006 separated all monthly payments related to the FFG upgrade (capital expenditure) from those payments related to FFG maintenance (operating expenses).</p> <p>DMO’s Maritime Systems Division engaged an accounting firm to assist the SPO with technical advice and with redeveloping the SPO’s financial management policy and work instructions. This resulted in the production of two handbooks covering the financial management aspects of capital equipment acquisition and sustainment as applied to the FFG fleet. Indications are that this led to cost effective improvements in the SPO financial management practice.</p> <p>The FFG Upgrade Project has experienced extensive delays in meeting the contracted capability upgrade requirements specified in the late 1990s. The number of FFGs to be upgraded has been reduced from six to four, and the scheduled acceptance of the fourth and final ship has been delayed by four and a half years to June 2009. Since the last ANAO audit in 2005, the project delays are attributable to a range of Underwater Warfare System and Electronic Support System performance deficiencies. Considerable risk remains to the delivery of contractually compliant capability to Navy, given the maturity of these systems.</p> <p>The FFG Upgrade Prime Contract is less robust than more recent Defence contracts in terms of providing DMO with adequate opportunity to exercise suitable management authority over the project’s acceptance test and evaluation programme... But the overall result has been long-running design review, test programme and requirements completion verification difficulties.” (2007 p.18)</p> <p>The Prime Contractor advised the ANAO that FFGSPO personnel resource issues have caused a considerable lag in FFGSPO’s review, comment and acceptance of contractor supplies.</p>
2011	Government and Defence advise that the FFGs are being replaced by the Air Warfare Destroyer with Adelaide and Canberra already decommissioned from service.

Source Reference material for this case study and the event calendar is sourced from:

- ANAO (2005) Management of Selected Defence Systems Program Offices ANAO Audit Report No 45 2004-2005. Canberra: Commonwealth of Australia
- ANAO (2008) Management of the FFG Capability Upgrade Audit report No 11 2007-2008
- ANAO (2008) Report No.9 2008–09 Assurance Report Major Projects Report 2007–08
- ANAO (2009) Report No.13 2008-2009 Assurance Report Major Projects Report 2008-2009
- ANAO (2010) Report No.17 2010-11 Assurance Report 2009–10 Major Projects Report

Case 2: Replacement of the MU90 Light Weight Torpedo Project

Event Calendar

TIMELINE	EVENT
Mid-1990	Defence study concluded in mid-1990, that the lightweight torpedo was the most cost and operationally effective anti submarine warfare weapon in all situations and in use by 2 other navies. Drafting business case for submission.
July 1997	Defence Capability Forum concluded that there was a need to acquire a new torpedo because the ADF's existing Mark 463 lightweight torpedo had significant limitations and was not adequate for the ADF's needs. Finalized business case for submission.
February 1998	Defence established JP 2070 Lightweight Torpedo Replacement Project to acquire a replacement lightweight torpedo.
Mach 1998	<p>Business case submitted to Government that included 3 phases:</p> <ul style="list-style-type: none"> • <i>Phase 1</i>, which focused on selection capability analysis and costing; • <i>Phase 2</i>, which involves the initial acquisition of torpedoes and integration of the torpedo onto the ADF platforms; and • <i>Phase 3</i>, which primarily involves the acquisition of a larger quantity of torpedoes referred to as war stock. <p>Phase 1 approved by Government to select and procure through subsequent phases, a replacement lightweight torpedo, procure associated support systems, and integrate the torpedo onto the following ADF platforms:</p> <ul style="list-style-type: none"> • Adelaide Class Guided Missile Frigates (FFGs). • ANZAC Class Frigates (ANZAC ships). • AP3C Orion Maritime Patrol aircraft (Orion). • S-70B-2 Seahawk helicopters (Seahawk)7; and • SH-2G (A) Super Seasprite helicopters (Super Seasprite). <p>This approval occurred within the context of the Department's 1998-99 Budget. The total approved budget for all three approved phases was \$4.96 billion of which \$665.48 million was allocated.</p>
February 1999	Defence released an Invitation to Register Interest
April 1999	Defence released a Request for Proposal (RFP) inviting proposals for a suitable lightweight torpedo. The RFP comprised of two parts. Part One – 'Conditions of the RFP' and Part Two – Statement of Requirements (SOR).
October 1999	Sole-source selection to Thomson Marconi Sonar's (now Thales Underwater Systems) proposal for the MU90 lightweight torpedo for Phase 1 (Project Definition Study). Source Evaluation Report ranked Thomson Marconi Sonar's offer for the

	<p>MU90 torpedo as the preferred offer on the basis that it best met the RFP requirements with the lowest risk and strongly recommended for selection.</p> <p>The Defence Source Selection Board (DSSB) which agreed to the sole sourcing of the Project Definition Study noted that the MU90 was the only in-service weapon offered. The decision of the DSSB was based on the content of a Source Evaluation Report which stated that the MU90 was an off-the-shelf weapon and was entering service with other navies.</p> <p>The Source Evaluation Report was based on the report of three proposal evaluation working groups. Two of these reports used differing terminology with respect to the development status of the MU90, with one saying it was in-service while the other stated the torpedo was being purchased by other navies. In-service is significantly further down the development path than being purchased, as an item that is being purchased has not necessarily undergone Operational Test and Evaluation.</p> <p>Notwithstanding the inconsistencies in the evaluation documentation for the Project Definition Study, the view that the torpedo was in-service and off-the-shelf was maintained by Defence and the DMO for several years. A 2000 Defence internal audit stated that the MU90 was a proven torpedo and a brief to the September 2002 Project Governance Board stated that the torpedo was fully developed and in-service with other navies.</p>
November 1999	The Defence Source Selection Board decided that an innovative contracting approach would be used for the Phase 1 Project Definition Study. Following receipt of legal advice, the Director Undersea Weapons Group in the then Defence Acquisition Organisation.
December 1999	Approval sought and approval given by the Head of System Acquisition (Maritime and Ground) in the Defence Acquisition Organisation for the alliance contracting approach for Phase 1 to adopt an alliance approach for the Project Definition Study. This was two months after the decision had been made to sole-source the Project Definition Study, meaning that suitability as an alliance partner was not considered as part of the evaluation of the proposals entities had submitted in response to the RFP. Note: It is generally accepted that an assessment of the suitability of an entity to perform in an alliance arrangement is an important factor to be considered prior to entering into this style of contract. A number of internal Defence and DMO audits and reviews of the Project conducted between 2000 and 2003 reaffirmed this view.
2000	A Defence internal audit stated that the MU90 was a proven torpedo.
April 2000	An alliance agreement was executed for the Phase 1 Project Definition Study, with JP 2070 becoming the first Defence project to pilot alliance contracting. This alliance is known as the Djimindi Alliance and is comprised of the Commonwealth of Australia, Thomson Marconi Sonar Pty Ltd (later Thales Underwater Systems) and Euro Torp GEIE. At the time the decision was taken to adopt an alliance approach for JP 2070, it was acknowledged in Defence that this would result in additional costs for the project, particularly in the absence of a Defence alliance contract template.
Early 2001	An alliance facilitator to the Alliance Board advised that there were also a range of significant cultural issues impacting on the alliance arrangements. These were summarised to the Board who acknowledged that these observations were of great

	concern and that there was a need to take action to address the issues. Consistent with the observations of the facilitator which indicated a degree of uncertainty surrounding the alliance arrangements. The Board raised concerns surrounding the interaction and integration across five platforms. Given that this Board was to provide external oversight of JP 2070, these statements suggest a high level of uncertainty surrounding the alliance at an important juncture for JP 2070 particularly when five months later, in December 2002; the Phase 2 Revised Alliance Agreement was signed committing the Commonwealth to significant additional expenditure.
April 2001	Phase 1 partly completed in April 2001. At this time, Defence and DMO believed the MU90 to be an off-the- shelf acquisition of a torpedo that was already in-service with the other navies and informed the Minister accordingly. This was incorrect advice.
July 2002	The Weapons Project Governance Board noted it had trouble understanding the alliance. Government approves Phase 2.
September 2002	A brief from DMO to the Project Governance Board stated that the torpedo was fully developed and in-service with other navies.
December 2002	The Phase 2 Alliance Agreement, referred to as the Revised Alliance Agreement, was signed and is an extension of the Phase 1 Alliance Agreement. The Revised Alliance Agreement took more than twelve months to negotiate. This extended negotiation period was inconsistent with advice provided to the delegate at the time of approving the Phase 1 Alliance Agreement that indicated the Phase 1 agreement could be seamlessly amended to include the Phase 2 acquisition, if and when required.
January 2003	The then Minister was informed that the risk of Project failure was very low as the weapon was already in-service with other nations.
Early 2003	Defence requested the Government to bring forward the decision on Phase 3 from an originally planned year of decision of 2005-06. ANAO reported that a 2003 Defence internal audit commented that the measures of success against certain KPIs on this project were very subjective, and that the assessed standard of achievement against the Integration Planning KPI was not supported. Also that the costing of integration of the torpedo onto ADF air platforms developed under Phase 1 was later identified as inadequate, with significant implications for JP 2070 and the achievement of the desired capability. The Revised Alliance Agreement only included a high-level Scope of Work, with the 2003 Defence internal audit commenting that this could lead to significant changes in agreed baselines, cost schedule and technical requirements. At the time of the 2003 audit, six months after the Revised Alliance Agreement was signed, Measures of Success for the Phase 2 KPIs had not been agreed. That audit report also found that many of the Phase 2 activities had not been achieved, and that redrafting the agreement for Phase 3 could be complex.
Mid 2003	Defence commissioned an external review of the alliance contracting approaches that the DMO had adopted for this project,

	and for the ANZAC Ship Project. The review found that DMO rushed into the alliance arrangements for both projects without due consideration of the issues involved. The review identified that many of the problems experienced could have been avoided, or mitigated, if the projects had resulted from a structured procurement process. The review found that Defence's procurement guidelines for alliance contracting had not been followed in relation to JP 2070. Defence commented to the ANAO that the alliance for JP 2070 was established before these guidelines were available. The ANAO notes that this is correct in regard to Phase 1, but that the guidance was available at the time the Revised Alliance Agreement for Phase 2 was executed.
June 2003	Government approved Phase 2, which was to buy an initial batch of torpedoes and integrate the torpedo onto five ADF platforms with a budget of \$346.71 million (January 2010 prices). Phase 3 proposal budget was \$313.82 million (January 2010 prices). Identified by DMO as a 'Project of Concern' and was known to be encountering capability, schedule and cost difficulties. Some of these issues, relating to the integration of the torpedo onto the air platforms, were not overcome before the Government agreed to reduce the scope in February 2009 to exclude all air platforms.
November 2003	Government approves Phase 3. DMO entered into an agreement with Thales Underwater Systems to take over from the Commonwealth in providing banking, associated cash management activities and purchasing for work performed by the Alliance Participants under the Alliance Agreement. This was implemented by issuing a purchasing card to the Djimindi Alliance and establishing two interest-bearing Trust Bank Accounts, one in Australian Dollars and the other in Euros. Under this agreement, the Commonwealth was required to make an initial payment into the Trust Accounts and then make subsequent payments upon request from the Djimindi Alliance Business and Finance Manager. Note: In September 2004, DMO received advice that the Trust Account arrangements breached provisions of the <i>Financial Management Accountability Act 1997</i>
March 2004	Defence were informed that the MU90 was not in-service with any other nation and that there had been technical and production issues. This was more than four years after the decision to sole-source the Project Definition Study and 15 months after the Revised Alliance Agreement for Phase 2 was signed. It is not clear how, under an alliance arrangement, the Defence personnel within the Alliance Management Team did not ascertain sooner that the torpedo was not in-service elsewhere
June 2004	The Alliance Management Team prepared a business case outlining the acquisition options for Phase following Government approval of Phase 3. This business case provided three options, two of which represented a more traditional contracting approach. The preferred option outlined in the business case was an extension of the Phase 2 Revised Alliance Agreement, which was seen as providing advantages over the other options. These advantages included that it was estimated to be the lowest price option and was assessed as the lowest risk option. Defence Business Due Diligence report indicated that the main areas of concern for JP 2070 were inter-project dependencies

	and made no reference to misunderstandings surrounding the development status of the torpedo, and how this might change the risk profile of JP 2070.
December 2004	Brief to the Defence Committee indicated the MU90 torpedo was not off-the-shelf and had not been introduced into service elsewhere.
July 2004	DMO accepted the Alliance Management Team's recommendation.
August 2004	ANAO (op. cit.) reported that the minutes of an August 2004 meeting of the Weapons Project Governance Board questioned how JP 2070 obtained Government approval without cost estimates. The JP 2070 Project Office advised that it had obtained ballpark figures, which had since been found to be completely inaccurate.
September 2004	DMO received advice that the Trust Account arrangements breached provisions of the Financial Management Accountability Act 1997 namely, Section 11 of the Financial Management Accountability Act 1997-Public Money not to be paid into non-official account and Section 48-Accounts and records.
December 2004	The report of a DMO Red Team review of JP 2070 stated that the Commonwealth may have lost direct control of the acquisition due to the nature of the alliance, and that this was a factor behind many of the issues affecting JP 2070. Delays in achieving Phase 2 work resulted in the DMO deciding that the Further Revised Alliance Agreement, to be developed to encompass Phase 3 as well as remaining Phase 2 activities, should include more commercial-style conditions and that aircraft integration should be removed from contract scope. Factors that contributed to this decision included a lack of clarity surrounding the scope of work; a lack of clarity surrounding the Alliance Participants' respective responsibilities; a lack of clarity surrounding the price basis for Phases 2 and 3; and an inability for the Commonwealth to claim damages under the extant alliance agreement. ANAO (op. cit.) claims that a 2004 review of JP 2070 noted that key capability documents had either never been developed or not progressed beyond draft. Included amongst these documents was the Functional Performance Specifications. This review was conducted two years after the contract was signed for Phase 2.
March 2005	Some 12 months after Defence became aware the torpedo was not in-service elsewhere, the then Minister was informed that the torpedo was not in-service with European navies as previously advised. That brief indicated that there were issues with trials conducted by the torpedo manufacturer in 2004, but that Defence had been advised that these issues had been resolved and a test program had recommenced. The then Minister was informed that the budget for JP 2070 might not be adequate for the required level of integration across all platforms.
April 2005	Negotiations for the Further Revised Alliance Agreement (FRAA) commenced in April 2005.
August 2005	Negotiations for the Further Revised Alliance Agreement (FRAA) nearly two years after the Government approved Phase 3. The FRAA was signed, prior to any torpedoes having been delivered under Phase 2. At the time, Defence advised the Government that it had misunderstood the French and Italian acceptance processes and, contrary to previous advice, the

	torpedo had not been accepted by these services and remained subject to trials. This means that in addition to having achieved limited progress towards integrating the MU90 with the air platforms, there were ongoing and unresolved issues surrounding the torpedoes being acquired under Phase 2 at the time the DMO committed the Commonwealth to acquiring a much larger quantity of torpedoes under Phase 3.
August 2005	<p>Phase 3 actually executed given all of the significant issues surrounding Phase 2 being known at the time the contract was signed. Under this contract the Commonwealth was committed to an additional \$263.86 million (December 2005 prices) in expenditure to purchase additional war stock quantities of the torpedo over the \$179.56 million (December 2005 prices) committed under Phase 2.</p> <p>ANAO (op. cit.) claimed that the primary basis for the DMO committing to Phase 3 at this date, notwithstanding the known issues surrounding Phase 2, was that the Phase 2 contract placed the DMO in a weak negotiating position and that it was DMO's commercial assessment that it was necessary to use Defence's commitment to Phase 3 work as leverage to improve the Defence's poor overall contractual position.</p> <p>ANAO (op. cit.) also reports that Defence documentation indicates that Phase 3 was used as leverage to negotiate improved contractual arrangements for Phase 2. However, the DMO was unable to provide the ANAO with either a business case or specific legal advice to underpin the decision to use the Commonwealth agreeing to enter into Phase 3 (and so commit to more than \$263 million in 2005 prices of additional expenditure) as leverage to obtain the required improvements to the Phase 2 contract.</p> <p>DMO informed the ANAO that DMO processes do not require a separate business case to be developed in these circumstances, but rather the decision was based on consideration by the relevant DMO decision-maker of a series of documents, the status of the project at the time and available options (albeit that this consideration was not documented at the time). The ANAO notes that the majority of these documents were developed after the decision had been taken to use Phase 3 as leverage to address contractual issues associated with Phase 2 and that none of them included consideration of any alternative options. Unlike the suite of documents provided to the ANAO by DMO, a business case, in these circumstances, would generally include consideration of the various options taking into account relevant issues to inform decisions on the most appropriate course of action.</p>
April 2006	DMO issued a Notice of Default under the FRAA in which the TIAP trial was subsequently suspended by the French and Italian Steering Group in May 2006, pending a technical investigation by the torpedo manufacturer as the trials demonstrated poor performance, which was attributed to industrial and quality issues with the production torpedo.
December 2006	DMO informed the Chief of Navy that the last TIAP firing had occurred in October 2006 and, following a result of eight successful firings out of 10, the French/Italian Steering Group had declared the program a success.
March 2007	The then Minister was informed that the TIAP had been declared a success but that further trials had identified a fault introduced by a design change.

April 2007	The then Minister was informed that detailed cost estimates were being developed for integration of the torpedo onto the Orion, Seahawk and Super Seasprite. This indicates limited progress had been made in developing cost estimates in the three years following the advice to the Weapons Project Governance Board that the budget for integration onto the air platforms was likely to be insufficient. Contrary to the FMA, during that period the FRAA was signed committing Defence to the acquisition of a much larger quantity of torpedoes under Phase 3.
July 2007	Defence's acceptance of the torpedoes under Phase 2 was completed which was more than two years behind the original schedule. ANAO (op. cit.) reported that an obsolescence review was conducted by the manufacturer that identified the need to modify the components of the torpedo. A new version of the torpedo, the MU90 Mark II, was developed to address the issues identified in the obsolescence review. The torpedoes being acquired under Phase 2 are the original Mark I version of the torpedo. The Mark II version was to be acquired under Phase 3. Australia was the first country to enter a contract to acquire the Mark II. The Chief Capability Development Group informed several senior Defence Personnel that the integration of the torpedo onto the Orion would cost in the order of \$106 million and \$80 million for the Seahawk. It was recommended that integration onto the Super Seasprite not proceed. ⁵⁵ Yet, in July 2008, the then Minister was informed that integration onto the Seahawk and Orion would cost \$220 million, more than double the available budget.
2008	ANAO (op. cit.) reports that the Djimindi Alliance Board was informed that the Project Office was reviewing Critical Operational Issues (COIs) from the Detailed Operational Requirements to confirm that acceptance test and evaluation has been achieved. The Test Concept Document and the Operational Concept Document should list the required COIs for a capability. At the time the Board was informed of this activity, the Test Concept Document was not finalised and was not approved until some 12 months later.
January 2008	Placed on the Projects of Concern list.
February 2008	The Guided Weapons Acquisition Branch within the Explosive Ordnance Division of the DMO was established to manage the Project,
March 2008	The Super Seasprite removed from Project's scope when the Government took the decision to cancel that project.
March 2008	The procurement approach adopted for the Project was one of the DMO's first attempts at conducting a major capital equipment acquisition using an alliance contracting model.
July 2008	The then Minister was informed that integration onto the Seahawk and Orion would cost \$220 million, more than double the available budget. According to the original project schedule, integration was intended to be complete for the Orion and the Seahawk by the time this brief was provided to the Minister.
2009	ANAO (op. cit.) claims that a 2009 draft Materiel Acquisition Agreement defined the project risks at that time. That draft

	<p>agreement noted that the capability requirements for JP 2070 were defined through a Detailed Operational Requirements and not in a contemporary Operational Concept Document, and as a result JP 2070 did not have a clear concept of testing to meet requirements. The draft agreement stated that JP 2070 needed to define the torpedo capability based on poor quality capability requirement documentation and also indicated that significant unknowns existed that had the potential to cause schedule delays.</p> <p>Defence sought approval from the Government to access funds previously allocated in the JP 2070 budget to air platform integration for the acquisition of a mobile target.</p>
February 2009	<p>Orion and the Seahawk removed from the scope of the approved phases leaving the integration of the replacement lightweight torpedo with only the two surface platforms, the FFG and ANZAC ships.</p>
February 2010	<p>A fourth phase to the Project was proposed in the <i>Defence Capability Plan: Public Version</i> (2009) but was later deleted. The three approved phases remained. DMO had spent \$397.51 million of the combined approved budget.</p> <p>Defence informed the ANAO that funding of \$9.4 million had been approved for this acquisition and it was scheduled for completion in early 2012. The ANAO notes that this was inconsistent with a briefing prepared by the DMO for a meeting in early 2010 that indicated that ‘the target procurement had not progressed.’</p>
April 2010	<p>DMO informed the ANAO that the recommendation made in June 2004 was only partly implemented as Phase 3 was only included in the Further Revised Alliance Agreement for Phase 2 and Phase 3 following the inclusion of improvements in this contract compared to the existing contract.</p> <p>DMO also informed ANAO and Defence of breach to security classification of Tender and requirement specification documentation, and that this issue has now been addressed. The timeframe for the Navy achieving an operational capability was defined in Materiel Acquisition Agreement.</p> <p>DMO noted that before Defence committed to Phase 3 in August 2005 the then Government had been fully informed of the status of the torpedo and progress of integration work.</p> <p>In April 2010, DMO acknowledged that progress to acquire the mobile target is behind schedule. Defence advised that discussions have been held with stakeholders to recover schedule, which will involve the commercial lease of a target in early 2011, while the acquisition of a target will proceed in accordance with the February 2009 Government approval.</p>
December 2012	<p>Removed from the Project of Concern list some 12 years after the Project started, and nine years after Phase 2 approval. The Project did not deliver an operational capability and will be transitioned to close in 2013-14.</p>
Early 2013	<p>A range of important deliverables under Phases 2 and 3 are yet to be completed. Although the timeframe for the Navy achieving an operational capability was defined in April 2010 (Materiel Acquisition Agreement), the transition into and out of Navy Operational Test and Evaluation continued is an ongoing risk. This was 13 years after the Defence Capability Forum concluded that the existing lightweight torpedo needed to be replaced, 12 years after the Project commenced, and nine years</p>

	after Government approved Phase 2.
At research time	JP 2070 is yet to deliver an operational capability, over 12 years after it commenced. Phase 1 of JP 2070 has been completed. Phase 2 has experienced schedule slippage and there have been significant scope reductions to this phase, including the removal of all air platforms from JP 2070 scope. Phase 3 primarily involves the acquisition of a war stock quantity of MU90 torpedoes. Both Phases 2 and 3 were ongoing at the time of audit fieldwork. The Project is to be transitioned into the Heavy Weight Torpedo Project

Source Reference material for this case study and the event calendar is sourced from:

- ANAO (2010) *Lightweight torpedo replacement project*. Audit Report no. 37 2009-2010.
- ANAO (2008) Report No.9 2008–09 Assurance Report Major Projects Report 2007–08
- ANAO (2009) Report No.13 2008-2009 Assurance Report Major Projects Report 2008-2009
- ANAO (2010) Report No.17 2010-11 Assurance Report Major Projects Report 2009-2010

Case 3: Management of the M113 Armoured Personnel Carrier Upgrade Project

Event Calendar

TIMELINE	EVENT
1960-1990	The M113A1 family of vehicles was introduced into service in Australia in the mid 1960s with additional vehicle variants added into the fleet until 1979.
Early 1990	Defence Review considered that the life of the vehicle could be extended until 2010 if the vehicles were upgraded to address operational deficiencies and support costs were reduced through maintenance upgrades. While generally supported within Army, however, there was some question as to whether retaining the M113A1 family of vehicles out to 2010 would be economic. It was also suggested that it would be prudent for Army to examine replacement options earlier than 2010. To this end, in July 1992, Army prepared a Major Capability Submission proposing a minimum upgrade of the M113 fleet to improve firepower, night vision fighting, habitability and survivability capabilities.
July 1992	The first of two stages of the upgrade project for the M113s started. Army proposed a minimum upgrade of the M113 fleet to improve firepower, night vision, fighting, habitability and survivability capabilities. Phase 1 was to consist of upgrading 537 vehicles to an A2 standard ³ to be delivered from 1996 to 1998 at an approved cost of \$39.9 million (April 1993 prices). Phase 2 of the Project was to upgrade the remaining vehicles to the same standard with final delivery to be in late 2000.
October 1992	Defence agreed to conduct a limited upgrade of 537 M113A1 vehicles, (including 355 Armoured Personnel Carriers) and to include an upgraded turret with day/night sights and a new 12.7mm weapon, night vision goggles, cooled drinking water systems and spall curtains.
Late 1993	An Invitation to Register Interest was released to industry with nine companies registering interest as prime contractors and nineteen as subcontractors. According to the ANAO report (op.cit.) the Invitation to Register Interest did not ask for sufficient information to readily allow for a short list; only two criteria lent themselves to any form of comparative evaluation. All nine prime tenderers therefore, met the selection criteria and subsequently received the Request for Tender. The first Equipment Acquisition Strategy for the M113 Minimum Upgrade Project outlined the strategy for upgrading the M113 fleet in two separate phases. Phase 1 vehicles were to be delivered in 1996 to 1998. Phase 2 was to consist of the upgrade of the remainder of the fleet to the same standard, at an estimated cost of \$10.18 million, with final deliveries to be in October 2000. It was also proposed that the upgrade would consist of the development of two prototype vehicles incorporating an upgraded turret (including the turret itself, a weapon and a day/night sight); the installation of a cooled drinking water system; and the

	installation of spall curtains. Following the successful evaluation of the prototypes, Defence was to then exercise an option to proceed with the Phase 1 Contract to upgrade an initial 537 vehicles. This strategy was not followed by Defence.
November 1993	The Government approved a \$39.90 million budget for the Phase 1 Minimum Upgrade of 537 vehicles.
December 1994	Price variations had increased Phase 1 from \$39.87 million (April 1993 prices) to \$42.69 million (Dec 1994 prices) and responses to the Invitation to Register Interest for the Prime Contract had shown a potential cost increase to the Project of over \$20 million. Subsequently, it was decided that the number of vehicles to be upgraded should be reduced.
1995	Defence reduced the planned scope of Phase 1 of the Project to modify 364 vehicles (reduced from 537) with a total approved budget of \$49.99 million. In early 1995, Defence released a Request for Tender for the Phase 1(a) Prime Contract to nine Australian companies and eight responses were received by late June 1995. The Tenix bid was assessed as being the most compliant and the Phase 1(a) Prime Contract was signed on 5 May 1997 for \$29.19 million (Dec 1996 prices) including an advance payment of \$4.21 million (14.40 per cent).
March 1995	The Request for Tender for Phase 1(a) was released to the nine Invitation to Register Interest respondents (all Australian tenderers).
April 1995	Ministers approved a real cost increase of \$7.3 million to fund the procurement of suspension kits, bringing the total approved budget to \$49.99 million.
June 1995	The acquisition strategy was revised and stated that Phase 1 of the Project now involved the modification of 364 vehicles (down from 537) and that Phase 2 could involve modifying 154 vehicles with a budget decision date of 1996–97. Phase 1 was now to include six sub phases. The Request for Tender closed. Eight companies submitted responses. Initial screening of tenders was undertaken in order to identify those tendered solutions which did not meet certain requirements of the Request for Tender. Subsequently, five offers were retained for further evaluation. Two tenderers offered new turrets based on existing designs (with one of these designs in production), whilst the other tenderers offered a redesigned T50 turret based on the Engineering Development Establishment concept demonstrator turret.
1996-1997	A series of contracts were signed by Defence to purchase Government furnished equipment to be provided to the Prime Contractor as part of the upgrade of the M113. These items included: <ul style="list-style-type: none"> • 12.7mm quick change barrel machine guns; • off-the-shelf A2 suspension kits; • spall curtains; and • Off-the-shelf engine cooling kits.
July 1996	The Source Evaluation Report was considered, and it was decided that the Tenix bid was the most compliant against the functional/technical criteria, in addition to offering the best value for money and having the most potential in terms of local content. Tenix was subsequently invited to negotiate a contract for Phase 1(a).

October 1996 – January 1997	<p>Contract negotiations were conducted. Whilst Defence wanted to negotiate a contract making the prime contractor responsible for the integration of all upgrade activities including schedule, development and testing, the Contractor was reluctant to take on this additional responsibility without a significant cost increase. Therefore the risk associated with the provision of capability enhancement kits, the scheduling of Government furnished equipment and the integration of all elements of the Project remained with Defence.</p> <p>Each contract under Phase 1 showed the original components, the quantity originally to be procured, the Contract amount and the actual amount spent.</p>
May 1997	<p>Contracts for each of the component parts had been signed. All of Phase 1 component contracts were complete by mid-2000, with the exception of Phase 1(a).for the upgrade of 364 vehicles, including the purchase and installation of 230 upgraded turrets and cooled drinking water systems and installation of Government furnished equipment was signed with Transfield for \$29.19 million (Dec 1996 prices). This included an advance payment of \$4.21 million (14.4 per cent of the Contract price).</p>
May/June 1997	<p>Contract announced by Defence and in announcing Defence expected the upgraded vehicles to be delivered ‘between mid-next year and late 1999—early 2000’.</p>
Mid 1997	<p>Tenix awarded contract for the work that started in 1992 for a minimum vehicle upgrade which was to procure upgraded turrets (based on an existing design) with weapons and day/night sights; cooled drinking water systems; quick change barrel machine guns; A2 standard suspension kits; spall curtains;4 and engine cooling kits.</p> <p>The Prime Contract for Phase 1(a) was signed with Tenix to procure new or modified T50 turrets, cooled drinking water systems and for the installation of the other components. The other components were to be installed by the Prime Contractor, but were procured by Defence under separate Phase 1 contracts.</p> <p>Also separate contracts for the Phase 1 component parts to be provided to the Phase 1(a) Prime Contractor as Government furnished equipment had been signed.</p>
October 1997	<p>Defence commenced discussions on upgrading 347 vehicles to an A3 standard. In addition, it was proposed that armour protection for the Armoured Personnel Carrier turrets, a climate control system, an inertial navigation system and two simulators also be procured. The cost of the proposal was \$226 million with each vehicle to cost about \$600 000. It was Defence’s intention to operate only M113AS3s in service to ensure a single fleet of vehicles.</p>
November 1997	<p>Six months after contract signature, the Phase 1(a) Prime Contractor (Tenix) provided Defence with an unsolicited proposal based on its advice that there would be a savings of \$30 million to combine Phase 1 and 2 and upgrade 360 vehicles to an M113AS3 standard. This action was done after the acquisition of most of the Phase 1 component parts (the turret and cooled drinking water systems being provided under the Phase 1(a) contract were yet to be delivered). The ANAO informed DMO that no such saving would occur.</p>
January 1998	<p>The unsolicited proposal was formally sent to Defence.</p>

<p>May 1998</p>	<p>The then Minister for Defence noted Defence's decision to sole source Phase 2 to Tenix. It was subsequently decided to combine the phases through firstly suspending the Phase 1(a) Contract through CCP One and then have Tenix develop a series of CCPs to develop the Major Upgrade Contract.</p> <p>Contrary to APS Contract Guidelines and the FMA, the CCPs were developed by Tenix and Defence as part of an integrated product team. Rather than follow the normal procedures of developing a detailed operating requirement, statement of requirement and top level specification, Defence relied on the Contractor's involvement in the integrated product team. During the evaluation of CCP Two, it became apparent that the integrated product team had not provided the level of visibility into the process as had been expected. CCP Two showed that combining the project phases would be more expensive than expected and the offer itself had a number of problems. CCP Two and Three were subsequently declined. A further CCP for a Project Definition Study and Mockup Vehicle Phase was provided to Defence in November 2000. The ANAO noted that the scope of the CCP was the result of joint exploration by Defence and the Contractor and did not follow the normal process of a formal request then subsequent evaluation.</p> <p>On these matters, the ANAO considered that this is a real variation to the Contract and should have had the concurrence of both the Minister for Defence and the Minister for Finance and Administration. While the Minister for Defence was asked to and did note the change, neither Minister was asked for or gave their concurrence for this expenditure. This decision was in breach and not in accordance with APS, FMA and Defence policy where any change (whether within the broad revised project scope or not) over \$8 million requires the concurrence of both the Minister for Defence and Minister for Finance and Administration.</p> <p>The Phase 2 Project value was estimated by the Contractor to be \$150 million with vehicle delivery to be during 2001 to 2004. The Contractor advised the ANAO that: 'this amount did not include items to be provided as GFE [Government Furnished Equipment].'</p>
<p>June 1998</p>	<p>The Minister for Defence publicly announced the decision that he had noted Defence's intention to progress Phase 2 as a sole source acquisition through the existing Contractor.</p>
<p>1998</p>	<p>The relationship between M113 fleet management and the Upgrade Project was established under a memorandum of understanding. A draft Materiel Sustainment Agreement had been developed concerning the delivery of supplies and services by the Defence Materiel Organisation for the sustainment of the M113 Fleet. A draft Acquisition Agreement had also been developed between Defence Materiel Organisation and the Defence Capability Development Group outlining the deliverables of the Upgrade Project. However, Defence advised the ANAO in June 2005 that both documents are expected to be ready for implementation by July 2005.</p>

September 1998	<p>The Equipment Acquisition Strategy was amended to combine the upgrade phases by amending the Phase 1 Upgrade Contract to include the scope of Phase 2. This was to be achieved through two CCPs to delay Phase 1 production (CCP One), and then combine the two phases (CCP Two).</p> <p>CCP One was to be issued by the end of the month to maximise savings through the timely conclusion of the Phase 1 activities. Defence planned to evaluate the CCP Two offer around November 1999 to confirm that it satisfied the technical requirements and offered value for money. This stage was to conclude with contract negotiations and amendment of the Phase 1 Contract to reflect the CCP Two offer which lapsed at the time.</p>
Early 1999	Cabinet gave approval for Phase 2 in early 1999 at a cost of \$250 million (Dec 1998 prices).
June 1999	Defence decided to sole source the combined upgrade to Tenix. To do this, Defence suspended the Phase 1(a) Prime Contract and Tenix developed a number of Contract Change Proposals (CCPs) to develop a new contract which represented the second stage of the project although the first stage had not been completed. The M113 Major Upgrade Project was approved at a cost of \$552 million.
December 1999	The Contractor advised Defence that they were incurring costs due to maintaining the Project Team they had formed in anticipation of undertaking the work contained in CCP Two.
Early March 2000	The Contractor wrote to Defence advising that they intended to claim costs. The Contractor proposed to submit an invoice each month, commencing in March 2000 for approximately \$333 500. The Contractor stated that this claim did not address the issue of costs incurred before 15 March 2000 as they felt this was a separate matter for resolution once the project was finalised.
May 2000	Defence redefined the scope of the M113 Upgrade Project agreeing that the life of the M113 fleet would be around 2020. A mixed fleet would now be necessary as only approximately 160 vehicles could be upgraded to an AS3 standard within the cost cap. The balance of approximately 190 vehicles would be upgraded to the A2 standard. It was still acknowledged that most of the upgrade kits for the A2 standard, already purchased as Government furnished equipment, could be fitted to vehicles through the Bandiana rebuild line and there would be a further delay of up to two years in the introduction into service of the vehicles.
August 2000	The Equipment Acquisition Strategy was amended to reflect the change in project scope and new contracting strategy. The ANAO reported that this was the fourth major change from the original acquisition strategy set in 1993 for the Minimum Upgrade of 537 vehicles.
October 2000	Defence formally declines CCPs Two and Three.

November 2000	<p>Minister was informed of the outcomes of a Defence conducted roundtable meeting of M113 Upgrade stakeholders in late October 2000 to identify capability performance issues, cost impacts and risks involved in upgrading up to 350 M113A1 Armoured Personnel Carriers to an AS3 standard or limiting it to an A2 standard.</p> <p>It was decided that there was no reason to believe that there were better value for money replacement vehicle options and that upgrading the M113s was feasible as current hull integrity issues were manageable.³³ However, the upgraded M113s would no longer be amphibious due to increased weight, but would be transportable by C130H/J aircraft and rail. Army's existing eight tonne Mack trucks would no longer be able to transport the upgraded M113s.</p> <p>It was also identified that the original decision to accept the sole source option was based on savings that may not accrue to the Australian Government given the changes to the project cost and acquisition strategy.</p> <p>CCP 13, a proposal for the Project Definition Study and Mockup Phase, was sent to Defence by the Contractor in November 2000. This offer was structured as a series of short-term work packages aimed at further developing the requirements for both the redesigned turret and the AS3 vehicle standard.</p>
December 2000	<p>The December 2000 Defence White Paper endorsed the requirement for a 'major upgrade of our M113 Armoured Personnel Carrier fleet with the vehicles planned to enter service from around 2005.' The Defence Capability Plan 2001–10 included the M113 Major Upgrade Project with funding of \$500 million.</p>
December 2001	<p>The Minister for Defence noted that the Contractor had been directed to proceed with work on the first part of the Project Definition Study phase which was not to exceed \$2 million. A brief to the Minister noted that the Project Definition Study was likely to cost a total of \$10 million and that a submission would be provided to the Minister early in the new year.</p>
July 2002	<p>In accordance with the 2000 Defence White Paper, a second stage of the project commenced for a major upgrade of the M113 fleet of vehicles</p> <p>The Major Upgrade Contract was signed for the supply of 350 vehicles at an AS3 and AS48 standard at a cost of \$388 million (Dec 2001 prices). The upgrade to include the assembly of components with the M113A1 hulls. The vehicles contracted for were substantially different to that envisaged and specified in Phase 1 of the Project.</p> <p>In its first audit, ANAO reported that the M113A1 vehicles have a written down value of \$73 million which equates to a carrying value for each vehicle of some \$98 000. The 350 vehicles to be upgraded by the M113 Upgrade Project will cost (under the Major Upgrade Contract) around \$1 million each depending on the variant. More significant was that this amount did not include the additional expenditure being contributed to the M113 Upgrade Project under the M113 Fleet budget and the Commercial Support Program Contract. The M113 Fleet budget and activities performed under the Commercial Support Program Contract are generally used for the purposes of maintenance and repair of the in-service M113 Fleet.</p>
2003	<p>Placed on the Project of Concern list.</p>

November 2004	<p>Defence advised the ANAO that some items have been issued to units for use with the existing M113A1 fleet, whilst others have been placed in storage at Bandiana as they were re-catalogued as kits and recorded on the Standard Defence Supply System.</p> <p>Prototype turret sights provided for testing in late 1999 (some five months late) did not meet specification and were not accepted by Defence. An alternative sight was subsequently provided by the Contractor. The Contractor advised the ANAO that ‘The prototype day/night sight was leading edge electronic camera technology (electro-optical sight) that at that time in its life cycle was immature.’ On this matter no liquidated damages were subsequently sought relating to the late delivery of the prototype sight. The trials also determined that the cooled drinking water system should not be continued with further. The Phase 1(a) Prime Contract, signed in 1997 for a turret and the installation of Government furnished equipment, was not achieved and Defence subsequently sole sourced the new Major Upgrade to the same Prime Contractor.</p>
Early 2005	<p>The Contractor was late in providing a revised schedule to the Project Office against which the Contractor’s performance could be assessed.</p>
July 2005	<p>All of the Phase 1 Contracts were closed with the exception of Phase 1(a).</p> <p>ANAO submitted its first audit report to the Department and Senate that stated ‘the Project has undergone extensive scope changes and chronic schedule delays since its inception. The M113 family of vehicles was originally to undergo a minimum upgrade to improve firepower, night vision, fighting, habitability and survivability capabilities. The Project changed and is now to perform a major upgrade of 350 M113 vehicles comprising about two thirds of the current in-service fleet. The ADF is yet to receive any upgraded vehicles. The upgraded vehicles will not start to enter into service until late 2006 with the last vehicle to be delivered in late 2010. The vehicle has a planned end of life of 2020. The new contracted vehicle, while consistent with the currently approved project scope, is substantially different to the vehicle originally envisaged by the Army.</p> <p>The Minimum Upgrade Phase of the Project suffered from poor project management practices; ineffective project planning; inadequately defined project objectives; and suffered technical problems with the T50 turret. Combined with an inability to successfully integrate the components of the vehicle, this resulted in a failure to deliver capability to the ADF.</p> <p>The ANAO found that the three year delay between the approval to combine the phases in June 1999 and entering into a contract for the major upgrade of 350 M113 vehicles was characterised by an inability of Defence to successfully manage changes in requirements. By February 1999, before Contract suspension, some \$9.7 million had been spent from the Minimum Upgrade Prime Contract. After the decision to sole source, some \$27.8 million was paid for tasks performed by the Contractor towards developing an acceptable combined upgrade proposal and for postponement costs.</p> <p>The ANAO considers that the new Major Upgrade Contract, executed in July 2002, has provided an improved framework for Defence to advance the Project. The System Program Office¹⁰ is taking an active role in managing the Project. Nevertheless,</p>

	<p>there is still some doubt as to whether the upgraded vehicles will meet their in-service date of late 2006. The Contractor is now putting in place a process of fast tracking production whereby they commence producing vehicles at their own risk before they have passed Defence formal testing. The ANAO considers that this approach involves a high level of risk for the delivery of Army capability. Notwithstanding the Contractor's liability for this risk, it will require close management by both the Contractor and Defence.</p> <p>ANAO concluded to Parliament on the management of the M113 upgrade project.⁴⁴ ANAO concluded that the initial minimum upgrade phase of the Project suffered from poor project management practices; ineffective project planning; inadequately defined project objectives; and technical problems.' (ANAO 2005 pp.13-14)</p>
Late 2005	<p>ANAO (op.cit.) reports that "Defence documentation shows that the four prototype vehicles did not include all Phase 1 components (see Table 1) as stipulated in the Phase 1(a) Contract. The ANAO considers that it would have been prudent for the prototype vehicles to include all component parts and appropriate integration.</p> <p>As outlined in the (requirements) Table 1, the major components of the Phase 1 Minimum Upgrade, namely Phase 1(a) costing \$29.19 million was largely incomplete at the time of the audit with no turrets produced and the drinking water system removed from the scope of the Contract.</p>
November 2005	<p>DMO advised a Senate Estimates Committee of the Parliament that delivery of the first upgraded vehicles would be delayed due to technical problems with the initial production vehicles, notably overheating, vibration, and braking problems. At that time, Defence advised the Committee that 'project expenditure is \$187 million to date' of the \$587 million project cost.</p>
October 2007	<p>Defence successfully negotiated a Global Settlement with the Prime Contractor to overcome a range of technical, production and contractual issues and to enable final production to commence. The negotiations were triggered by substantial delays in delivery, by uncertainty as to the responsibilities of the parties, and by the perceived underperformance of the Prime Contractor.</p>
May 2008	<p>The Parliamentary Secretary for Defence Procurement announced that technical problems with the project had been resolved and the project 'was back on track and estimated to meet its original schedule and specifications within budget.'</p>
July 2008	<p>The Prime Contractor informed Defence that the existing production facilities at Bandiana Victoria were not adequate to the task and, at December 2008, there was a potential shortfall of around 100 upgraded vehicles by December 2010.</p>
October 2008	<p>The Minister for Defence announced that additional production will occur at Williamstown, Victoria, and Wingfield, South Australia. ANAO noted that recovering the production schedule will be challenging.</p>

December 2008	<p>Tenix and Defence agree to extend delivery because of problems at its production sites. Defence advised ANAO that a limited Initial Operating Capability for the upgraded M113s was achieved late in 2007 and that the vehicles could be deployed if circumstances required.</p> <p>ANAO found that Operational Testing and Evaluation of the upgraded vehicles was yet to occur and there was still some way to go before Operational Release would be achieved.</p>
March 2009	<p>ANAO's second report claims the initial purchase in July 2002 of 350 upgraded vehicles for delivery by December 2010 was extended in December 2008 to include an additional 81 upgraded M113s as part of the Enhanced Land Force (ELF) initiative, and 431 upgraded M113s are on order for delivery by the end of 2011. Furthermore that the M113 Major Upgrade Project commenced in July 2002 had suffered a series of delays. Army had so far received 42 of the vehicles to be upgraded. Of these, 16 are in service with 7 RAR, five are awaiting issue to units and the remaining 21 are allocated primarily to driver and crew training units.</p> <p>Many of the initial technical difficulties with the Project were resolved by the end of 2007 at which time extensive negotiations with the Prime Contractor were successfully concluded. Those negotiations enabled final production to get underway and reaffirmed the December 2010 delivery date.</p> <p>ANAO's examinations in the course of its second audit extended to DMO's administration of liquidated damages under the M113 Major Upgrade Contract. ANAO observed that effective administration was hindered by complexity and uncertainty in the relevant contract provisions, to the extent that Defence had not been able to apply the Commonwealth's standard position, i.e. settling the amount of liquidated damages was central to Defence's 2007 contract negotiations with the Prime Contractor.</p>
2011-2012	<p>129 upgraded vehicles were delivered, with 389 of 431 vehicles delivered. Production of applique armour packs was completed. The project also delivered the second tranche of repair parts to support the in-service fleet.</p> <p>ANAO reported in May 2012 that</p> <p>"... the upgraded M113 does represent an improvement on the older, unextended vehicle. However, a vehicle that was considered fit-for purpose when the minor upgrade was first proposed 20 years ago no lags behind armoured infantry vehicles in use with other armed forces, and is vulnerable in many current threat environments, leaving Defence with an acknowledged capability gap." (p.7)</p>
At research time	Removed from the Project of Concern List

Source Reference material for this case study and the event calendar is sourced from:

- ANAO (2006) Management of the M113 Armoured Personnel Carrier Upgrade Project Audit Report No.3 2005–06. Canberra: Commonwealth of Australia

- ANAO (2008) Report No.9 2008–09 Assurance Report Major Projects Report 2007–08 ANAO (2009) Management of the M113 Armoured Personnel Carrier Upgrade Project. Audit Report No.27 2008–09 Canberra: Commonwealth of Australia
- ANAO (2009) Report No.13 2008-2009 Assurance Report Major Projects Report 2008-2009
- ANAO (2010) Report No.17 2010-11 Assurance Report Major Projects Report 2009-2010
- Senate Committee on Foreign Affairs, Defence and Trade, Budget estimates 2007–2008, W31 questions I and O on Department of Defence (2007) responses to Questions on Notice.

Personal Reflections

Contentious Matters¹³⁷

Contentious Matters	Case Affected	Consequences	Observation
<p>a. Inadequate or lack of due diligence from the start of each project that:</p> <ul style="list-style-type: none"> reflected indifference to the needs of the stakeholders; and executive managers failing to understand the crucial role of program managers and the intermediaries in shaping political preferences for different interpretation of the rules of program governance and control. 	<p>FFG Upgrade Light Weight Torpedo M113 Upgrade</p>	<p>Business Case Requirements Specification Risk Management Financial Management Project Schedule Project Cost Project progress Quality of deliverable Executive and Project Team performance in:</p> <ul style="list-style-type: none"> Accountability Transparency Leadership Supervision Decision control Ownership Commitment Contract management knowledge Technical knowledge 	<p>In not carrying out due diligence, the requirements of each Project could not be specified accurately, and this failure caused under-estimation of the complexity of the requirements and inter-dependencies that compounded negatively on subsequent program management steps, tasks, functions and processes, and the management aspects to achieve the missions.</p> <p>The most serious was the Light Weight Torpedo project where the ‘real status’ of the torpedo was not accurately determined. This major oversight resulted in incorrectly specifying the requirements and this in turn impacted on the determination of the quality of the deliverable, the cost, and the schedule throughout the life of the project. The (mis)understanding of the weapon and its ‘status’ from mid-1990 to 2004 would have contributed to subsequent issues that arose through production testing of the torpedo and in turn to schedule slippage which would have invalidated planning assumptions with implications for all stages of testing and evaluation;</p> <p>The other two projects were subsequently exposed to repeated changes to requirements, re-baselines, re-costing, slow progress and overall underperformance performance by all parties.</p>
<p>b. Inadequate Project and Contract Management</p>	<p>FFG Upgrade Light Weight Torpedo</p>	<p>Executive and Project Team performance in:</p>	<p>The three cases suffered from a significant lack of financial and contract management experience and skills.</p>

¹³⁷ The Contentious matters are isolated from the evidence that were extracted from the ANAO reports, and corroborated by Senate Transcripts, independent reviews and media commentary, Chapter 5 and the detailed chronology in the Events Calendar of each case shown in Appendix F(1) to F(3) provided data for the base points of evidence.

<p>knowledge that contributed to:</p> <ul style="list-style-type: none"> • serious lack of knowledge and performance in the due diligence process, that flowed onto requirement specifications, contract management and risk management; • the lack of direct ownership of the program/project management processes; • failure to resolve similar issues that were identified in the Lessons Learnt library, and failure to inform executive management immediately of issues as they arose. This contributed to failures understanding the crucial role of program managers and the intermediaries in shaping political preferences for different interpretation of the rules of program governance and control; and • project and executive managers failing to identify the emergence of political coalitions that were forming among or across management, stakeholders, and 	<p>M113 Upgrade</p>	<p>Financial Management Risk Management Project Schedule Project Cost Project progress Quality of deliverable Project Team performance:</p> <ul style="list-style-type: none"> • Accountability • Transparency • Leadership • Supervision • Decision control • Ownership • Commitment • Contract management knowledge • Technical knowledge 	<p>The most serious was in the Light Weight Torpedo project with the introduction of the alliance procurement arrangement with no training provided to project staff sometime after the project had started under a DMO standard acquisition and procurement contract with a single prime contractor. It was DMO's first attempts at conducting a major capital equipment acquisition using the alliance contracting model. As a prototype alliance, the Project added further project and contract management overheads such as training in contract management as well as introducing higher risks in its establishment and initial management phases especially when the alliance approach required close collaboration and cooperation amongst team members.</p>
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<p>program team members, some of whose actions could be interpreted to encourage policies promoting diffused interests that influenced the probability of one coalition defeating another in decision control and achievement of a successful outcome.</p>			
<p>c. Inadequate risk management and risk control that directly affected:</p> <ul style="list-style-type: none"> • indifference and performance by project teams in the due diligence, requirement specification, contract management and risk management; • indifference to the needs of the stakeholders; • the lack of direct ownership of the program/project management processes; • failure by executive management to understand the crucial role of risk management and the counter-measures to apply in addressing issues with requirements, schedule and cost. This major oversight shaped 	<p>FFG Upgrade Light Weight Torpedo M113 Upgrade</p>	<p>Executive and Project Team performance in:</p> <ul style="list-style-type: none"> Financial Management Risk Management Project Schedule Project Cost Project progress Quality of deliverable <p>Project Team performance:</p> <ul style="list-style-type: none"> • Accountability • Transparency • Leadership • Supervision • Decision control • Ownership • Commitment • Contract management knowledge • Technical knowledge 	<p>The three cases failed to identify, manage and control the risks from the initiation stage of the project to impose high levels of uncertainty.</p> <p>The key areas of risk that emerged over the life of the projects included:</p> <ul style="list-style-type: none"> • The schedule, cost and quality of the deliverable were based on questionable specifications, and led to ongoing implications for progress, and which ultimately contributed to repeated changes and significant reductions in the requirements. In the case of the: <ul style="list-style-type: none"> • FFG Upgrade: reduction in the work-load and vessels; • Light Weight Torpedo: removal of the air platforms; • M113 Upgrade: reduction in the number of vehicles and establishment of additional ‘factories’ to support the work required. • project planning and management were less than rigorous in all cases resulting in instances where key project documents were not developed, or were not developed on a timely basis. These failures inhibited the orderly conduct of the procurement process, project progress and ultimately on the expected delivery of the capability. • the (undocumented) decision to use alliance contracting arrangements was not based on structured analysis of contractual options, and once implemented was not adequately supported. The alliance arrangement for this project generated additional risk to the process and its conduct, did not mitigate the project risks that it was intended to address, and shifted management focus away from project deliverables without demonstrating measurable benefits to project outcomes;

<p>political preferences for different interpretation of the rules of program governance and control; and</p> <ul style="list-style-type: none"> the emergence of political coalitions that were forming among or across management, stakeholders, and program team members, some of whose actions could be interpreted to encourage policies promoting diffused interests that influenced the probability of one coalition defeating another in decision control and achievement of a successful outcome. 			<ul style="list-style-type: none"> in the case of the Light Weight Torpedo, the complexity of integrating the weapon onto multiple platforms was not fully understood or appreciated from the outset, and this major failure was compounded by a range of other factors as work progressed. One of these factors included a significant underestimation of the full cost to integrate the weapon onto the various platforms, the absence of defined and developed integration solutions for the air platforms during the time they were in scope, and delays and difficulties being encountered by other projects that were upgrading the platforms with which the torpedo was to be integrated; and In all cases, the planning of testing and acceptance, and the resolution of testing and acceptance issues by the DMO was inadequate: impeding the transition of the deliverable(s), and/or associated surface platform modifications, into Operational Test and Evaluation.
<p>d. Inferior Project Documentation that directly impacted on:</p> <ul style="list-style-type: none"> project performance and estimation of cost, schedule and deliverable. this failure added to team management problems and risk management; made it difficult to identify direct ownership of the program/project management processes: indirectly caused executive management to fail in applying the rules of program governance 	<p>FFG Upgrade Light Weight Torpedo M113 Upgrade</p>	<p>Executive and Project Team performance in: Financial Management Risk Management Project Schedule Project Cost Project progress Quality of deliverable Project Team performance:</p> <ul style="list-style-type: none"> Accountability Transparency Leadership Supervision Decision control Ownership Commitment Contract management 	<p>The three cases suffered from inferior project documentation.</p> <p>The most serious in terms of National Security was with the Light Weight Torpedo project. ANAO reported that some ten years after the start of the project and as late as 2010, Defence through DMO informed the ANAO in April 2010 that some key internal documents sighted by the ANAO during its audit were in breach of the National Security Classification Requirements. This breach led DMO to inform Defence and the ANAO that any unclassified documentation, where this issue appeared, should have been appropriately classified and that this issue had subsequently been addressed.</p>

<p>and control; and</p> <ul style="list-style-type: none"> to identify the emergence of political coalitions that were forming among or across management, stakeholders, and program team members, some of whose actions encouraged policies promoting diffused interests that influenced the probability of one coalition defeating another in decision control and achievement of a successful outcome. 		<p>knowledge</p> <ul style="list-style-type: none"> Technical knowledge 	
<p>e. Uncontrolled costs initially caused by the inept performance in due diligence, requirement specification, contract management and risk management;</p> <ul style="list-style-type: none"> executive management failing to understand the crucial role of program management to enforce the rules of program governance and control; and executive managers failing to address issues that arose from the emergence of political coalitions that were forming among or across 	<p>FFG Upgrade Light Weight Torpedo M113 Upgrade</p>	<p>Executive and Project Management performance in:</p> <ul style="list-style-type: none"> Financial Management Risk Management Project Schedule Project Cost Project progress Quality of deliverable Project Team performance: <ul style="list-style-type: none"> Accountability Transparency Leadership Supervision Decision control Ownership Commitment Contract management knowledge Technical knowledge 	<p>The three cases suffered from a series of cost escalation and cost reduction as a direct consequence of unclear specifications, and underperformance by managers in control and decision making. Requirements had to be regularly respecified with negative impacts on the teams, schedules and expected dates of delivery.</p>

management, stakeholders, and program team members.			
<p>f. Government required to place the three cases on the Project of Concern list in accordance with ASDEFCON DPPI 14/2001 shown in Appendix B(1). This was the direct connection to having executive management attention in:</p> <ul style="list-style-type: none"> • providing a higher level of oversight and management, and the submission of monthly reports to Government; and • engaging in regular face-to-face reviews to facilitate continuous improvement of the management process and to measure effectiveness of remediation. 	<p>FFG Upgrade Light Weight Torpedo M113 Upgrade</p>	<p>Agency unable to remediate the issues associated with project slippage, cost and overall performance.</p>	<p>The failure of each project to meet its performance criteria¹³⁸ was identified by both Defence and DMO as having very significant risks and issues relating to schedule, cost and capability. The issues were identified sufficiently early in the life of each project through the Early Indicators and Warnings framework and the internal subsequent agency diagnostic Gate Reviews. Extended slippage and increasing cost finally obliged the agency to make submissions to Government recommending that each project be listed as a Project of Concern. The subsequent decisions to identify an acquisition project or sustainment activity as a Project of Concern were decisions made by Government after making judgements on the evidence.</p> <p>Contrary to ASDEFCON DPPI 14/2001, the agency’s management failed to take appropriate action to address the principal goal of Projects of Concern which “is the remediation of troubled projects; however, a project may be cancelled by the Government if there is insufficient confidence in prospects for recovery”. Apart from the internal Gateway Reviews, the ANAO audits and Senate Hearing provided adequate feedback for the agency’s management to take appropriate action to save public money based on the evidence that pointed to ‘insufficient confidence in prospects for recovery’. The outcomes are reflected in the increased in cost, non-delivery of assets as specified and unfinished for each project at July 2013.</p>

¹³⁸ Performance criteria and standards are clearly defined in SOPs that have a relationship to Defence’s Mission Statement, Codes of Conduct and related Instructions. The function of the SOP is limited to prescribing the standard of performance based on best practice related to that activity.

Glossary

List of Abbreviations

AAS	Australian Administrative Standards
AAT	Administrative Appeals Tribunal
ACLEI	Australian Commission for Law Enforcement Integrity
ADF	Australian Defence Force
ADFA	Australian Defence Force Academy
A-G	Auditor-General
A-G ACT	Auditor-General Act 1997
Agency Head	Chief Executive Officer of the agency
Agency Secretary	Chief Executive Officer of the agency
AICD	Australian Institute of Company Directors
AIE	Australian Institute of Engineers
AIM	Australian Institute of Management
ALR	Australian Law Reform
ANAO	Australian National Audit Office
APC	Armoured Personnel Carrier
APS	Australian Public Service
ASPI	Australian Strategic Policy Institute
APSC	Australian Public Service Commission(er)
ASSET (asset)	Military hardware and software and systems
ASX	Australian Stock Exchange
AUC	Assets Under Construction
CAC	Commonwealth Authorities and Companies Act 1997
CBH	Charter of Budget Honesty Act 1998
CDF	Chief of the Defence Force
CDG	Capability Development Group
CEI	Chief Executive Instructions
CLERP	Corporate Law Economic Reform Programme
CPG	Commonwealth Procurement Guidelines
CSR	Corporate Social Responsibility

Cwlth (Cth)	Commonwealth of Australia
DCP	Defence Capability Plan
Defence	Department of Defence aka DoD
DMO	Defence Materiel Organisation
DoD	Department of Defence
DoFA	Department of Finance and Administration
ECU	Edith Cowan University Western Australia
EVMS	Earned Value Management Systems
FFG	Guided Missile Frigate
FMA	Financial Management and Accountability Act 1997
FMR	Final Materiel Release
FOC	Final Operational Capability
GBE	Government Business Enterprise
GFC	Global Financial Crisis
GFS	Government Financial Services
Government	Commonwealth/Federal Government
Governmentality	The "art of government" in a wide sense (Foucault)
GRAB	Gate Review Assurance Boards
IMR	Initial Materiel Release
IOC	Initial Operational Capability
JCPA	Joint Committee of Public Accounts
JCPAA	Joint Committee of Public Accounts and Audit
LWT	Light Weight Torpedo
MAA	Materiel Acquisition Agreement
MGT	Management
MAB	Management Advisory Board
MAC	Management Advisory Committee
MoD	Ministry of Defence
MOE	Measures of Effectiveness
MPR	Major Projects Report
MSA	Materiel Sustainment Agreements
NACP	National Anti-Corruption Plan
NASA	National Aeronautical Space Administration
NPM	New Public Sector Management

n.p.n.	No page number
OECD	Organisation for Economic Co-operation and Development
PDSS	Project Data Summary Sheets
Program	Major defence capital acquisition and procurement activity that may consist of one or many projects
Project	Major defence capital acquisition and procurement activity that may consist of many sub-projects
PoC	Projects of Concern
PoI	Projects of Interest
RAN	Royal Australian Navy
ROSC	Reports on the Observance of Standards and Code
RUSI	Royal United Services Institute
SFPA	Senate Finance and Public Administration Committee
SSCFA	Senate Standing Committee on Foreign Affairs
SSCFADT	Senate Standing Committee on Foreign Affairs, Defence and Trade
TCE	Transaction Cost Economics
UK	United Kingdom of Great Britain
UNSW	University of New South Wales
US	United States of America

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