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**Governing Corporately – Working
Cooperatively, Creating a more
Efficient and Effective Public
Service in the 21st Century**

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I. INTRODUCTION

I am pleased to be invited to present at this Breakfast Seminar. I would like to take this opportunity to explore and discuss some important and emerging issues associated with the management and operation of government agencies and businesses at a time of significant transformation of the public sector and the delivery of public services.

The past decade has been a period of quite marked change in public sector administration in most countries. Some are suggesting that this is simply the forerunner to even greater change – only time will tell of course. Suffice to say that the emerging trends associated with globalisation and the information age have the potential to markedly transform the way government does business, and in particular the way that it delivers services to the public. The public sector strategy must be flexible enough to be able to adjust quickly and credibly in order to take advantage of such developments.

The title of the breakfast seminar address reflects two management imperatives that are currently facing public service managers. These are examined in the context of a growing market-based delivery of public services with increasing private sector participation. The latter involvement has created tensions between demands for greater cost efficiency and the broadly-based accountability requirements of the Parliament and citizens. Any trade-off between these tensions is basically a decision for the Parliament and/or the Government.

In a public sector reform environment, such as most of us are facing today, the emphasis is very much on accountability for performance. The imperative is to achieve required results within constrained budgets. In the private sector, the equivalent imperative is largely to achieve shareholder value. The major trade-off to be managed is whether that value is reflected more in the size of the dividend cheque (immediate return) or more in the capital value of the corporation (the longer term 'wealth' view). While obtaining value for money is a major focus of a public sector manager the objectives at which that responsibility is aimed are not always as clear-cut as those confronting the private sector manager, such as just mentioned.

A value for money requirement might include promoting and/or assisting the development of local industry as well as getting the best price. Procurement may be impacted by unilateral or multilateral country agreements and/or alliances. The multi-faceted relationships with citizens and their general lack of choice in relation to public programs contrasts with that of a client or customer whose 'rights' are largely to buy or not to buy and/or go somewhere else. And so the list of complexity and uncertainty in the public sector can go on with issues of ethics, equity, openness, probity and fair play; including personal privacy and natural justice concerns. The contrast is often simply put in terms of the differences between public and private interests with the former being difficult to define, particularly in an operational sense.

In this world of apparent public sector complexity often involving contradiction and inconsistency, we are now confronted with the increasing 'privatisation' of that sector.

Even the latter notion is multifaceted with quite diverse management challenges. At one extreme, we see sales of government enterprises to the private sector often with accompanying regulatory measures notably in the areas of community services such as electricity, gas and water. We see public services being delivered by the private sector often in competition with public sector organisations. We see increasing provision of goods and services from the private sector with the move to greater outsourcing. At the very least, there is often a requirement to 'market test' public sector activities and be 'contestable'. The implicit 'threat' is that, if you do not perform, someone else will. The latter is increasingly involving a global dimension going well beyond country borders with implications for governance more generally.

In an operational sense, there is a move to adopt and/or adapt private sector practices, such as in delivery of client service, as a means of improving the 'efficiency' of the public sector. Increasingly, we are required to pay government duties and taxes, insurance charges and interest on borrowings and capital. The emphasis is mainly on cost and prices. It is therefore not surprising that we have seen the adoption of accrual accounting and budgeting by most governments in Australia as well as in an increasing number of overseas countries. It contrasts with the traditional cash accounting approach used by government where, for example, capital was accounted for only in the first year in which it was acquired and virtually regarded by managers as costless. As well, we are now being asked to actively manage risk, both insurable and non-insurable. Agencies are required to publish their financial information in profit and loss (operational statements) and balance sheet formats. In short, the public sector is 'looking' more like the private sector and more of the former's activities are being conducted by the latter.

While recognising Parliament's admonition that accountability cannot be outsourced, there is a growing realisation that greater networking is necessary to ensure that a predominantly outcomes approach to budgeting and performance management is effective, particularly where relevant outputs are produced by more than one agency and by other levels of government as well as by the private sector. The greater focus on networking is accentuated by the rapid developments in information technology and communications, such as the Internet and the move to electronic commerce. This realisation encompasses both strategic and operational issues which are similar to those being addressed by the United Kingdom's concept of 'cross cutting'¹ or 'joined-up government'². Is this heralding a need to explore new notions of partnership, involving shared accountabilities, responsibilities and systems, for greater effectiveness, including responsiveness of the public sector?

With these directions in mind, I would like to focus on a number of issues which are important to strengthening the performance and accountability of the public sector in this time of rapid and significant change.

In order to improve our performance we need to have a good understanding of the environment in which our organisations are working if we are to find new and better ways of delivering public services, while meeting the various expectations of citizens, including adherence to ethical and professional standards. Consequently, in the first part of my address "*Understanding our Changing Environment*" I examine several issues that have had, and will continue to have, significant implications for the management of public sector organisations. These include the effect that government reforms, notably devolution of authority, as well as globalisation and technological

innovation are having on the public sector accountability framework and on the perceived accountability/efficiency trade-offs in what is seen as a more risky management environment.

The notion of “efficiency” used in this presentation is mainly related to the level of a ‘market price’, however defined, which does not include any provision for public sector accountability requirements. However, the latter usually involves a cost which cannot be ignored.³ That cost might broadly be encapsulated in the often difficult to define notion of ‘public interest’, as I earlier indicated. A particular challenge of such an environment is to effectively manage risk as an opportunity and not just as a threat.

After examining the changing public sector operating environment, I will go on to discuss how corporate governance can be used as a tool to assist us to both improve our performance and to be more accountable for that performance in the changing strategic and operational framework that is developing with greater privatisation and commercialisation of the public sector involving private sector provision of public services (sometimes in competition with the public sector). A sound corporate governance framework can help to provide the essential discipline and structures, as well as a level of assurance to management and staff that not only are performance requirements of stakeholders being addressed but also that effective action is being taken to achieve expected results. It is not just an issue about shifting the goal posts but is also about playing on a different surface with different rules.

Corporate governance has been seen as relevant to the public, as well as to the private, sector in recent years. The greater involvement of the private sector in public sector activities, including in service delivery, also means that we need to understand better the similarities and differences between the sectors, including in risk identification, assessment, treatment and monitoring/review as the basis for corporate and operational strategic planning and build this into the established public sector governance context. This is central to our performance on which we will be judged and, indeed, to our organisational survival in a period of considerable change.

Risk management is a central element of any corporate governance framework, whether in the private or public sectors. Systematic risk management is not just an option for organisations. Moreover, it requires considerable commitment, ownership and particularly investment, by senior management and generally at all levels of the organisation. Therefore, risk management forms a key focus of my presentation relating to governance as any discussion of high level performance can not be complete without a real understanding of the contribution a systematic approach to risk management can make to achieving required results.

With the greater participation of the private sector in the delivery of public services, one question is to what extent can, or should, both sectors share responsibility and accountability in at least some of these latter respects as well as for the risks that go with them? Of note is that the adoption, or adaptation, of private sector approaches, methods and techniques in public service delivery, has highlighted trade-offs between the nature and level of accountability and private sector cost efficiency. Therefore, the fourth part of my presentation examines tensions associated with the broadly-based accountability requirements of the Parliament and citizens and demands for greater cost efficiency in the context of various outsourcing arrangements.

Increasingly, citizens are demanding high-quality public services that are responsive to their needs. To deliver such services the public sector will need to develop new and innovative strategies and use modern techniques to match the level of service provided by the private sector. This will include, among other things, one stop shops and electronic service delivery. It will also require that public sector organisations work in a more integrated manner, including with the private sector, to deliver the outcomes that citizens want. Therefore, in the final section I discuss the concepts of market and network bureaucracy and also canvass overseas developments such as the United Kingdom's concept of 'Joined-up Government'. I will then make some concluding remarks.

II. OUR CHANGING ENVIRONMENT

It is not possible to do justice to the many factors currently impacting on the public and private sector environments, including their increasing interrelationships, as part of this background material. Nevertheless, it is important to recognise a number of factors that indicate both the need for, and the importance of, a sound corporate governance framework to help deal with them.

Reforming the public sector

As with many other democracies, Australian governments at both the Commonwealth and State levels have been focussing increasingly on achieving a better performing public sector and less costly, more tailored - or better directed - and higher quality services to citizens. A major imperative has been the successful management of change.

Governments have reacted to budgetary pressures on expenditure and, at the same time, strong demand from the community for the maintenance and even extension of government services, by seeking to make the administrative elements and structures that provide public services more efficient and effective. The Commonwealth Government's aim for the Australian Public Service (APS) has been outlined by the then Minister Assisting the Prime Minister on Public Service Matters as follows:

The Government is looking at more effective ways of serving the Australian public. It is no longer appropriate for the APS to have a monopoly. It must prove that it can deliver government services as well as the private or non-profit sectors. This will require a new emphasis on contestability of services, outsourcing those functions which the private or non-profit sector can undertake better and ensuring APS commitment to the process of performance benchmarking and continuous improvement.⁴

Accordingly, the APS has been steadily evolving towards a more private sector orientation with a particular emphasis now on:

- the contestability of services;
- the outsourcing of functions which the private sector can undertake more efficiently;

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

Such changes are often described as the ‘privatisation’ or ‘commercialisation’ of the public sector. Privatisation and/or commercialisation of public services is occurring in Australia on a significant scale. Privatisation at the federal level in Australia has involved three principal contexts:

- the opening up to competition of areas previously reserved to government, such as telecommunications;
- contracting out by public sector entities to private sector suppliers of goods and services in areas such as employment services and information technology; and
- the transfer of some A\$50 billion in Commonwealth assets or business to private sector owners.

Australia is not alone in adopting this new policy direction. The changes which we are experiencing are consistent with an international move towards a smaller public sector, greater privatisation⁵ and commercialisation of the public sector and an increasing involvement of the private sector in the provision of public services (sometimes in competition with the public sector). The use of contracting has increased significantly in most OECD countries and is widespread, for example, in the United Kingdom (UK), the United States (USA) and Canada.

A major impetus for the changes we are seeing has been the fundamental questioning of what government does, or should do, allied with a perception of inefficient (costly) and ineffective (lacking client focus) delivery of public services due to its monopoly provision and/or other constraints of public sector administration. Implementation of the reform agenda has involved organisational restructuring, business re-engineering, outsourcing, commercialisation, privatisation and/or the transfer or abandonment of functions and services.

Put simply, it is considered that public services would be provided more efficiently and effectively, with greater client satisfaction, in a more market oriented environment which provided greater flexibility for management decision-making and the discipline of competition.⁶ Indeed, history shows varying support for such a view but with reservations, for example, about market imperfections and public goods arguments – using economic terminology. Nevertheless, some have a quite pragmatic view about notions of clients and markets as the following indicates:

*'The privileges of governance and the political consequences of disappointing sufficient citizens, therefore, require that governments be more than disinterested facilitators of market exchanges. ... the limits of a government's responsibilities to its citizens are far more extensive than that of delivery performance.'*⁷

Concerns have been expressed about the maintenance of public service values and ethics, as well as issues such as probity, privacy, security, equity and transparency. The New Zealand Auditor-General recently observed that:

*'There is a special relationship between the user of a public service and the provider of that service – dependency, the force of law, and a lack of choice are all factors that distinguish public from private services.'*⁸

These developments have given rise to a focus by many politicians, public servants and academics on what constitutes 'core' public sector activities as opposed to 'non-core' ones. The Minister Assisting the Prime Minister for the Public Service has stated that the Government's objective:

*'has been to focus the APS on its core activities of policy development, legislative implementation and the contracting and oversight of service delivery.'*⁹

That is, what are those functions which can, and should, only be performed and delivered by Government. The Prime Minister has offered the following list of those activities that he considers fall within this realm:

*Defence, justice, a social security net, the monitoring of outcomes of, and alternatives to, existing policies—all these will require public service output. And there will also be a real need for high quality economic, constitutional and other policy advice.'*¹⁰

Within such definitional bounds, just how small the core public sector can become without jeopardising the public interest is still open to debate. If we talk in terms of the outright limits on the extent of the public sector we should take note of the Prime Minister's observation that:

*... no matter how radical anyone's view is about the role of government in the twenty-first century, I believe there will always be an irreducible minimum of public service functions.'*¹¹

The dichotomy between 'core' and 'non-core' Government activities is an issue that will continue to receive considerable attention as the APS strives to maximise efficiency and effectiveness of service delivery. Clearly, the size of the core is shrinking as evidenced by outsourcing and privatising in areas which, hitherto, were considered traditional public sector activities. Just how small the core can become is very much open to debate. But even areas where the public sector has traditionally held a monopoly, such as the provision of policy advice, are becoming increasingly open to competition from the private sector. This action has literally meant the creation of a

market for public sector service delivery, such as employment services, resulting in greater choice and more competition with adverse consequences, more recently, for the sole public sector provider. The implications of the latter depend largely on why a public sector provider is retained in a competitive environment. A broader question is what is the sustainable critical mass necessary to retain a credible and effective public sector as part of sound democratic governance in the longer term. Just how small the core can become without jeopardising the public interest is, therefore, still open to debate.

In the spirit of reform that flows from the core/non-core dichotomy, within the context of seeking to maximise efficiency and effectiveness of the public sector, recent changes to financial¹², public service and industrial legislation at the federal level illustrate how significantly the APS management framework has changed in the last decade. These changes 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. They are intended to allow the APS to better manage and respond to new challenges brought about by the changing environment. Taken together, the legislation, which is principles, rather than process, based, provides opportunities for enhanced performance and accountability in the APS but can also involve greater management risks, particularly in an environment of devolved authority. It has also helped to heighten public service managers' awareness of the need for good corporate governance.

The legislative changes are also intended to provide managers with increased flexibility, including the elimination of unnecessary bureaucratic processes, to better manage and respond to new challenges brought about by the changing environment and improve the performance of their organisations. The emphasis is now very much on personal responsibility starting at the level of the Chief Executive Officer (CEO).¹³ Greater management flexibility and commensurate increases in personal accountability are the hallmarks of the ongoing public sector reform movement.

One important aspect of Australia's new public sector financial management legislation is that it broadly reflects a basic distinction between core agencies of government and non-core bodies controlled by government. The split reflects, *inter alia*, a general acceptance that some activities should only be performed under the close and direct control of the Executive Government, whereas others by their very nature require a degree of independence from the Executive.

From my perspective, greater responsibility and flexibility in decision-making needs to be matched by at least a commensurate focus on strengthening the associated accountability arrangements to ensure that decisions are appropriately made and that those people making decisions can be properly called to account should the question arise. To provide such assurance, public sector entities need to have robust corporate governance arrangements including sound financial management and other suitable control structures in place, as well as meaningful performance information. These are issues I will address in detail later.

Not surprisingly, the increased emphasis on personal responsibilities and accountabilities has focussed attention on personal sign-offs to the CEO, and so on to other organisation levels often as part of the normal hierarchical delegations for

particular areas of responsibility by particular individuals, including for financial performance. But, I would like to point out, it is not the action of personal sign-off that creates the assurance. It is what underlines (or what underpins) the sign-off that is important, including endorsement of that framework and its acceptance by those who rely on it. Instructions (such as Chief Executive Instructions), operational guidance and user-friendly information systems are essential in this respect and part of good corporate governance. Therefore the exercise of responsibility and associated sign-offs, in relation to an organisation's stakeholders, are seen as central to good corporate governance with its agreed objectives, strategies and performance measures.

To date, there has not generally been clarity on the extent of a public sector employee's, officer's, CEO's, Chairman's or board member's accountability for implicit or explicit action that can affect the citizen. However, the onset of reforms is increasingly raising awareness of, say, legal accountabilities, just as in the private sector. But there is also recognition of the innate complexities of public accountability with its multi-faceted approach that have to be managed at all levels of an organisation.

In the United States, the push for greater accountability of public servants received a sharp impetus in late 1997 when the Chairman of the Ways and Means Committee, William Archer, put forward a proposal giving citizens the right to sue the Internal Revenue Service (IRS). He declared that:

'we will make it easier for taxpayers who are wrongly accused by the IRS to recover their legal costs...'

and that too often

*'the defenseless and the weak become targets for the IRS audits.'*¹⁴

Such a step is rather dramatic public recognition that not only are regulators and individual public servants accountable in theory, but that damages caused by them should be quantified and reclaimed in practice. It is certainly food for thought both in terms of risk management and insurable risk. However, what it does reflect is a more general concern for real accountability.

Devolution of authority has also increased the emphasis on the individual organisation (whether this is a government agency, an authority or a corporation) with less central control being provided by central agencies such as the Departments of the Treasury and/or Finance and Administration (DOFA). This means that a variety of tasks with traditional corporate governance attributes which were previously undertaken by central agencies and particular specialist groups, are now the responsibility of individual entities.

I should note here that the responsibilities of individual agencies are, in some instances, not always entirely clear, not least because they may not have been determined or tested until a specific matter arises. However, a recent matter that eventually went to the High Court¹⁵, has highlighted the need for public sector agencies to take the widest possible view of just what their overall responsibilities may be. That is, given the functions that they are required to carry out, including under legislation, agencies must take care to be

comprehensive in their determination of what could be considered to be, in an accounting sense, the 'liabilities' of the organisation.

The considerable diminution of central controls and direction has also undoubtedly reinforced the need for good corporate governance in individual agencies and entities. Corporate governance provides the vehicle to integrate conformance and performance imperatives. Organisations are now responsible for their own oversight and need to develop and implement appropriate accountability and performance structures to assist them measure their achievement against strategic objectives. Any coordination of activities or sharing of experiences are matters for individual agencies to arrange between themselves. Further reduced central oversight and coordination is problematical as agencies recognise that some interrelationships, such as 'shared outcomes', are indicative of the need for broader corporate governance arrangements across agencies. Realistically, such arrangements would take some effort to accomplish within a reform environment of devolved authority and 'personal' accountability.

It is important to understand that the introduction of new approaches to delivering public services does not obviate or limit the need for accountability simply because of the market discipline induced by competition. To the contrary, in a more contestable environment which is highlighted by less direct relationships and greater decision-making flexibility, it is essential that we maintain and enhance our accountability, improve our performance, and find new and better ways of delivering public services while meeting ethical and professional standards. Increasingly, those ways are dependent on private sector participation, as well as on information technology and communication systems which bring their own control problems, in addition to significant opportunities, to provide a more responsive and efficient public services.

People and continuity in the public sector

A major outcome from the reform process in the public sector has been the downsizing of the APS. From the 30 June 1989 to 30 June 1999 total APS staff declined from approximately 166,000 to just over 113,000 – a net decrease of about 53,000, or almost 32 percent. Nearly half of this decrease has resulted from reduced coverage of staff employed under the Public Service Act.

This reduction in staff numbers has also been accompanied by changes in the demographics of the APS workforce, mainly in terms of us getting older. The proportion of staff aged 40 years and over increased from 36 percent in June 1989 to 54 percent in June 1999 while the under 40 group declined correspondingly. This means that the 'baby boomers' with their valuable skills and experience are coming close to retirement. There have also been corresponding declines in the number of temporary staff employed in the APS as well as actual appointments. In addition, new staff in the APS are faced with different employment options and career expectations from the previous generation of public servants.

These changes have major implications for human resource and succession planning which need to be managed by agencies. Agencies need to utilise the new flexibilities that have been introduced in the industrial legislation to attract, hire, retain and reward good performers. Such planning is essential if the public sector is to efficiently and

effectively deliver products and services to the public. This is an important aspect of business continuity which should not be overlooked.

Business continuity is at the core of effective corporate governance. When it comes to the crunch, there is little point in establishing a best practice governance framework, with all the associated discipline, if, at the end of the day, the business becomes impaired for some foreseeable reason or, worse still, ceases to operate for any length of time. In much of the public service this comes down to people and information and the technology involved.

With this in mind, my Office has recently prepared a *Business Continuity Management Guide*.¹⁶ The Guide includes two major features: the first part deals with business continuity management concepts in a risk management context; the second part identifies the processes and procedures required to be undertaken to produce a business continuity plan. (An accompanying Workbook provides a number of pro-forma schedules, working papers and questionnaires to facilitate the business continuity implementation process within agencies).

As I said when I launched the Guide in February this year:

*The Guide ... recommends that the business continuity plan be developed in conjunction with the risk management plan for the organisation. There are no short cuts in this area and no substitutes for systematic risk identification, assessment, prioritisation, treatment, monitoring and review, including systems testing. As an aside, I was very pleased to see the prominence given in the Guide to our most critical resource, our people and their interdependence with facilities, telecommunications, information systems and business processes.*¹⁷

To cope with the changing APS environment, APS agencies will need to give issues relating to human resources a high priority, including assessment of their staff requirements through workforce planning and staff analysis. The Guide makes the point that organisations, through a structured, systematic process, must attempt to manage all significant business risks, pro-actively, including workforce planning, by implementing appropriate preventative controls and other risk treatments. This is a message I will be reiterating more than once in this presentation.

The impact of globalisation

Over the past three decades, globalisation, which can be defined as the rapid progress towards creating a single world market, has changed the economic landscape of the world. The movement towards a single market has been accompanied by dramatic government reforms, with the view to improving the international competitiveness of the private sector. Examples of the type of reforms are the deregulation of financial sectors, floating of exchange rates, pursuit of free trade, and reform of tax systems. Australia has been one of the countries to largely embrace these changes. The public sector has also been subject to a range of reforms, as already indicated, partly to reduce the costs to private business of government requirements.¹⁸

Throughout the move to globalisation, rapid advances in technology have been revolutionising, among other things, the telecommunications sector thus dramatically

increasing the speed of communication. As well, new and innovative networks have been developed for the rapid transfer of all types of information. These changes have made distances between, for example, buyers and sellers virtually irrelevant. Consequently, the economies and activities of nations have become increasingly interdependent. This is illustrated by figures provided by the World Bank which show that from 1960 to 1997, world exports increased from about 12 to 24 percent of world gross domestic product (GDP).¹⁹

Multinationals are an important part of the trend towards globalisation. In Australia, multinational companies have been an important part of the economy over the past 50 years. They have invested heavily in capital and technology as well as providing valuable experience, as shown by the mining and automobile sectors.²⁰ There is also the associated increase in employment and wages (though there are exceptions) that accompany these investments.²¹ However, an editorial of *The Economist* pointed out that:

*the ten biggest industrial multinationals each has annual sales larger than their [Australian] government's tax revenue.*²²

The movement towards a single market, dominated by large multinational companies, will pose significant regulatory issues for governments. On one hand, globalisation creates new opportunities, wider markets for trade, greater capital flows, and improved access to technology. However, it also has the potential to weaken the power of the state to manage its domestic affairs, as it is much harder to control the flow of information, money and goods. As a result, international trade, including the effectiveness of regional and global trade arrangements in achieving their desired outcomes, is growing in importance as a foreign policy issue.

The transition to a global economy has the potential to greatly increase trade and commerce, particularly through the Internet. However there is the possibility at least some proportion of this business will not be captured by tax authorities via, for example, the Goods and Services Tax (GST) being implemented from 1 July 2000. The apparent ease with which multinational companies can shift profits between entities in different countries and structure their legal operations to take advantages of tax havens, generally causes the most concern. This alone could have a significant effect on government taxation revenue. There is also the possibility that governments may wish to attract these types of companies, leading to a *'race to the bottom' in which governments slash taxes and services to lure global business.*²³ Any such loss of government revenue could be very significant for a government's ability to fund programs.

Without even taking into account the trend towards greater globalisation, tax administrations face great difficulties in enforcing tax laws when dealing with international, compared to domestic, transactions. The myriad of different taxation laws can have a detrimental effect on tax assessments when attempting to obtain the necessary documentation or information. This is because taxation laws may provide different rights of access to necessary documentation. In tax havens, this potential problem can be particularly pronounced, as it can be almost impossible to determine the ownership of offshore entities or shareholders or beneficiaries where such exist. When this is coupled with a jurisdiction's bank and company laws to protect commercial

secrecy, many tax administrations can find it difficult to pursue satisfactory investigations.²⁴

The move towards greater utilisation of the Internet also has the potential to pose a real threat to government tax revenues. The reason why this could occur is that *the World Wide Web is an entirely new channel for moving goods and services from producers to customers.*²⁵ The Internet may make it hard to identify or locate the people who are carrying out potentially taxable transactions. The ability of governments to collect taxes is contingent upon knowing who is liable to pay the tax, or even being aware that a taxable transaction has occurred. Identifying taxpayers may become increasingly harder as 'anonymous' electronic money and robust encryption technology are developed and utilised. Reports of the ATO Task Force on Electronic Commerce have demonstrated that the issues surrounding the growth and regulation of Internet commerce are significant.

In Australia, the Tax Commissioner has recognised that transfer pricing is a major issue because of increasing globalisation and the emerging impact of the Internet. The Commissioner has the power to adjust the taxable income of a taxpayer engaged in international dealings on the basis of the consideration that might reasonably have been expected to have passed between independent parties dealing at arm's length. A major program by the Australian Taxation Office (ATO) aims at improving the level of taxpayer understanding and compliance in order to ensure Australia receives its fair share of tax.²⁶

Economic and financial interdependence are not the only global trends with implications for Australia. Increased globalisation of information technology has the potential to result in significant new security and privacy threats to Australia's information networks. Similarly, the spread of diseases around the world and the global nature of environmental problems affect us and also call for a coordinated international response. Thus, in the future, federal responses to problems will increasingly have to consider international as well as national dimensions.²⁷

Technological innovation

The public sector is heavily dependent on information technology and telecommunications to implement and deliver vital public services. Information technology is now integral to nearly every aspect of government operations and spending. For example, the use of Internet facilities has increased considerably across the APS. Several agencies that currently use private or proprietary government networks for electronic service delivery, are considering using the Internet as an alternative. This brings challenges in relation to data access, security, privacy, storage and retrieval. The recent development of the standard, e-permanence, by National Archives is a useful initiative that will greatly assist in electronic record-keeping.

Not surprisingly, information technology is revolutionising the way the public sector actually operates. It has enhanced productivity by providing new, more responsive and efficient ways of delivering public services and providing information to citizens. As organisations embrace modern networked communications, such as the World Wide Web, they are creating the foundations for governance in the information age. Consequently, in many areas, consideration has to be given to the extent that

information technology is core business. This is evident where it is difficult to actually separate the technology from the service being delivered.

Government service delivery through the Internet presents both significant opportunities and challenges in the delivery of on-line services. Depending on the level of sophistication of the application, the Internet allows government agencies to publish information, interact with clients in the exchange of information, and/or transact business electronically. For most agencies, the Internet has the potential to:

- improve public access to a wide range of government services, especially by people who live in regional and remote areas;
- provide access to certain government services 24 hours a day, seven days a week;
- reduce the cost of delivery of some government services; and
- improve the quality of certain government services.

In 1997, the Australian Government outlined new measures designed to enhance prospects of growth and strengthen Australian industries' capacity by, among other things, helping to ensure that business, the community and all tiers of government maximised opportunities to add to and benefit from the global information age. These measures included a plan to establish the Australian Federal Government as a leading-edge user of technology, including establishing a Government Information Centre and committing to all appropriate services being Internet-deliverable by 2001. Internet services were to complement - not replace - existing written, telephone, fax and counter services, and to greatly improve the quality, user-friendliness and consistency of those services.

The connectivity and interdependence created through information technology also creates vulnerabilities. Computer security risks associated with the widespread use of information creates the potential for disruptions to government agencies and to the private sector as evidenced again recently with the latest 'virus' attacks reputedly costing billions of dollars. Such issues also raise questions about adequate business continuity arrangements. The risks involved also raise issues associated with the privacy and confidentiality of records which are of considerable concern to the Parliament. Unless appropriately controlled computerised operations can offer numerous opportunities for committing fraud, tampering with data or disrupting vital operations.

As dependence on information technology grows and new high risk areas emerge, public sector agencies need to adopt modern practices to correct underlying management problems that impede effective system development and operations even where these are outsourced. Robust corporate governance processes that are pervasive throughout an organisation will both help to identify and deal with such problems.

The role of Auditors-General

No doubt you would expect me to say something about audit in this changing environment. While there are variations in the mandate, focus and operating arrangements across countries, the fundamental role of Auditors-General or their equivalents in democratic systems of government remains substantially the same. That role is to provide the elected representatives of the community (the Parliament) with an independent, apolitical and objective assessment of the way the government of the day is administering their electoral mandate and using resources approved by democratic processes, albeit in differing governance frameworks.

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

... there are three fundamental principles which underpin public audit:

- *the independence of public sector auditors from the organisations being audited;*
- *the wide scope of public audit that is covering the audit of financial statements, legislatively (or legality), propriety (or probity) and value for money; and*
- *the ability of public auditors to make the results of these audits available to the public, and to democratically elected representatives.*²⁸

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

I would argue that the role of Auditors-General is more important to effective, accountable and democratic governance today than at any time in the past. I would also suggest that, as we move into the future, and as the pace of change remains unabated, this trend will not decline, rather it is likely to increase as the roles and responsibilities of the public and private sectors converge and, perhaps, the differences between the two become more apparent than real. As the British Prime Minister, Tony Blair, has observed in relation to the current environment:

Distinctions between services delivered by the public and private sectors are breaking down in many areas, opening the way to new ideas,

*partnerships and opportunities for devising and delivering what the public wants.*²⁹

and

*People want effective government.*³⁰

The ANAO can contribute to such an outcome while providing the necessary assurance of public sector achievements in this respect. As the Public Audit Forum in the United Kingdom has observed:

*'Public audit plays an essential role in maintaining confidence in the stewardship of public funds and in those to whom the responsibility of stewardship is entrusted. Public auditors are, of course, themselves accountable for their performance and are duty bound to undertake their work in a professional, objective and cost-effective manner and with due regard to the needs of the organisations they audit.'*³¹

I referred earlier to the reduction in central control in the APS, within the changing governance framework. From my Office's perspective, reduced central oversight has meant a broadening of our approach to auditing which once focussed largely on compliance and conformance, to a more pro-active involvement with agencies and entities with the goal of making real-time contributions to enhancing public administration. In this regard we have moved from a traditional 'gotcha' mentality, usually associated with auditors, to one where we seek to assist organisations to better manage their functions (business), thereby improving their performance as well as providing the necessary assurance to stakeholders. That is, we seek WIN-WIN outcomes or results. For example, our better practice guides are designed to assist organisations test their own systems and where applicable, improve their practice and performance in line with recognised principles of better practice.

I would like to stress that we are not trying to supplant the role of central agencies or fill a perceived gap as a business strategy. Indeed, on a number of our better practice guides, we have worked positively with other interested central and line agencies. Nevertheless, it needs to be recognised that, in a devolved authority environment and with the vacation of the traditional monitoring review and oversighting roles by central agencies, gaps have emerged in the information available to managers to help them to make sound and informed decisions. Given our 'across-the-Service' perspective, we are well placed to fill at least some of those gaps as part of our contribution to improving public administration. I have recently released a Discussion Paper which examines these and other issues in the context of 'Developing an Effective Approach to Public Auditing'.³²

III. CREATING A SOUND GOVERNANCE FRAMEWORK

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. It is concerned with structures and processes for decision-making and with the controls and behaviour that support effective accountability for performance outcomes/results. 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.

Corporate governance, including agency controls, is particularly important in relation to the changing, increasingly privatised and internationalised public sector. Certainly, the demand by citizens and other stakeholders for openness and transparency of all aspects (not only financial status) of public sector agency governance exceeds that required of private organisations. Accountability in the areas of community service obligations, equity in service delivery and a high standard of ethics are particularly critical to public sector agencies. Accordingly, one of the fundamental ways to ensure that we can meet our performance and accountability requirements is through a robust corporate governance framework.

Good corporate governance in both the public and private sectors requires clear definitions of responsibility and a real understanding of relationships between the organisation's stakeholders and those entrusted to manage its resources and deliver its outcomes. In a complex operating environment, such as is evident in the APS, these requirements become that much more important for both accountability to, and performance for, a range of stakeholders. Good corporate governance is based on a clear code of ethical behaviour and integrity which is binding on management and staff and communicated to stakeholders. Such a culture of integrity and disclosure (accountability) is also essential for the establishment of sound risk management approaches and the confidence it can give to stakeholders in both the organisation and in what it does. Moreover, there is a mutually supportive relationship between corporate governance, risk management and performance orientation. A robust accountability approach which encourages better performance through sound risk management is integral to any corporate governance framework.³³

As well as the similarities, it is important to recognise 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 emphasise issues of ethics and codes of conduct, implies quite different corporate governance frameworks from those of a commercially-oriented private sector. It is equally important to recognise that the diversity of the public sector is also likely to result in different models of corporate governance. That is, one size does not fit all, even though there will be common elements of any such models.

The issues of openness and transparency have to be accepted as essential elements of public sector accountability. The public sector has to act both in the public interest and, in common with the private sector, avoid conflicts of interest. These will be particular challenges for agency managers in establishing credible corporate governance frameworks within public sector agencies that are increasingly being asked to act in a more private-sector manner. However, as with the latter sector, greater emphasis has to be placed on performance rather than mainly on conformance (accountability), although the question is again one of balance according to the circumstances of the agency.

The values, standards and practices which underpin corporate governance in public sector agencies flow from peak public service values, obligations and standards, which in turn are derived from legislation, policy and accepted public service conventions. In Australia, the new public service values are a key element in the Government's public sector reform program and have been included in the new Public Service Regulations. The following are some of the values that agency heads are required to uphold and promote within their organisations:

- the APS is apolitical, performing its functions in an impartial and professional manner;
- the APS has the highest ethical standards;
- the APS is accountable for its actions, within the framework of Ministerial responsibility, to the Government, the Parliament and the Australian public;
- the APS delivers services fairly, effectively, impartially and courteously to the Australian public; and
- the APS focuses on achieving results and managing performance.

Regulations require agency heads to embed these values within the culture of their agencies. The Public Service Commissioner has to report annually under the *Public Service Act 1999* on how successfully this had been achieved. My own agency, to take one example, has as its key values independence, objectivity, professionalism, and knowledge and understanding of the public sector environment. These values are guided by the ANAO Code of Conduct which has been developed within the framework of the new APS values and the APS Code of Conduct, together with the Codes of Ethics promulgated by the professional accounting bodies.

Corporate governance as a tool for maximising organisational performance

It has been increasingly recognised in both the private and public sectors that appropriate corporate governance arrangements are a key element in corporate success. They form the basis of a robust, credible and responsive framework necessary to deliver the required accountability and bottom line performance consistent with the organisation's objectives.³⁴

According to the findings of a survey conducted of over 100 major US investors good governance practice makes a difference that investors are prepared to pay for. Results

indicated that US investors would be prepared to pay an eleven (11) to sixteen (16) percent premium for shares in a company that was well governed.³⁵ These findings would appear to imply that, unless particular corporate governance practices promote improved performance and the achievement of the objectives of an organisation, they are not worth pursuing. The amount that should be paid for corporate governance will depend on the additional 'value' that it creates.

An indication of value comes again from a United States example where the Californian Public Employee's Retirement System (CalPERS) undertook corporate governance efforts targeted at underperformers in their investment portfolio. A study of the improvements in returns from these efforts showed that sixty-two companies added \$US150 million annually to their performance at a cost to CalPERS to run the program of less than \$US500,000 per annum. The following observation was made by a Senior Board Member:

*'Good governance is now something that is being institutionalised and valued.'*³⁶

Airservices Australia, in its recent submission to the JCPAA inquiry into corporate governance and accountability arrangements for GBEs, summed up the essence of a performance based corporate governance approach as requiring:

*'... the Board to focus on both performance and conformance issues and to have in place a mechanism for assessing its own effectiveness as a Board and for assessing the contribution of individual directors. The Board's focus shifts to a more strategic role, with more involvement in strategic planning and performance monitoring and less on day-to-day tactical issues.'*³⁷

A key message of the Government's reform agenda, as noted in my opening remarks, is that it is no longer considered appropriate for the APS to have a monopoly even in traditional service delivery areas such as policy advice and in the determination of welfare entitlements. It must now prove that it can deliver government services as efficiently and effectively as the private or non-profit sectors. This is reflected in the increasing emphasis being placed on the contestability of services; the outsourcing of functions which can be undertaken more efficiently by the private sector; and ensuring an orientation more towards outcomes, rather than processes, and to continuous improvement, to achieve required performance/results.

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

On the other hand, we have not been as effective in constructing robust control structures aimed at assuring that we achieve defined outputs and outcomes, nor in

providing efficient client-oriented services. Attention is now being given to addressing government programs/services directly to public sector clients, as citizens, and not the other way round. This focus is being reinforced by the requirement for Public Service Charters which should clearly signal to all concerned just what various client groups can expect of an agency and its staff. While the program management and budgeting framework has required us to address such issues over the last decade or so, it is likely that the move to accrual-based budgeting for outputs and outcomes will be the catalyst that ensures we have the necessary information links in place. And that is also how we will be judged at the end of the day.

The changed budgeting arrangements are going to put further pressure on managers to define more clearly measurable, or at least assessable, performance outputs and outcomes. This will require greater attention to costing and pricing methodologies including the rediscovery, for many of us, of management and cost accounting. Importantly, it will mean that managers generally at all levels will have to become at least familiar with such concepts, methods and techniques. As has already occurred, there will be a greater focus on financial reporting on an accrual basis and the links with the costing structures both for internal and external information. The challenge is more for managers than accountants in coming to grips with this environment. Nevertheless, the latter have an important training and facilitating role to help the former do so.

As the APS continues to move to a more private sector orientation we are increasingly seeing a growing adoption or adaptation of private sector approaches, methods and techniques in public service delivery. Consequently, there is an issue 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. A sound corporate governance framework, with its focus on control and monitoring mechanisms that are put in place by an organisation, can assist in enhancing stakeholders' value of, and confidence in, the performance, credibility, viability and future prospects of that organisation in a rapidly transforming public sector.

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;
- to consider who is responsible for what, to whom, and by when; and
- to acknowledge the relationship that exists between stakeholders and those who are entrusted to manage resources and deliver outcomes.

A sound corporate governance framework can also provide a way forward to those, whether in the public or private sectors, who find themselves in somewhat different relationships than either have experienced before.

In the last decade, APS agencies have put in place many of the elements of good corporate governance. These include corporate objectives and strategies; corporate

business planning; audit committees; control structures, including risk management; agency values and codes of ethics; identification of stakeholders; performance information and standards; evaluation and review; and a focus on client service to name just a few. However, too often these elements are not linked or interrelated in such a way that people in the organisation can understand both their overall purpose and the various ways the various elements need to be coordinated in order to achieve better performance. This is also necessary to ensure that a mutually supportive framework is produced that identifies outcomes for identified stakeholders.

Therefore, the real challenge is not to define the elements of effective corporate governance but to ensure that all the elements of good corporate governance are effectively integrated into a coherent corporate approach by individual organisations and are well understood and applied throughout those organisations. As Trevor Sykes of the Australian Financial Review stated in an interview with the Chartered Institute of Company Secretaries in Australia:

*‘Expressing the sentiments of corporate governance is dead easy ... What is going to be harder is making it work, putting flesh on the bones’.*³⁸

If implemented effectively, corporate governance frameworks should provide the integrated strategic management framework necessary to achieve the output and outcome performance required to fulfil organisational goals and objectives. Corporate governance also assists agencies discharge their accountability obligations.

Effective public sector governance requires leadership from the Board (where applicable), the CEO and executive management of organisations and a strong commitment to quality control and client service throughout the agency. Public sector executives leading by example is perhaps the most effective way to encourage accountability and improve performance.

Concern has been expressed that there has been more emphasis on the form rather than the substance of good corporate governance. I want to stress that effective corporate governance is more than just putting in place structures, such as committees and reporting mechanisms, to achieve desired results. Such structures are only a means for developing a more credible corporate governance framework and are not ends in themselves.

However, there are positive examples where both form and substance are being achieved contributing to greater understanding and commitment at all levels of the organisation. The work that the ANAO has done with APS agencies has highlighted clearly the contribution that good corporate governance can make to an organisation’s performance and to the confidence of stakeholders. For example, from the ANAO’s observation, the ATO’s governance framework has facilitated:

- achievement of corporate objectives;
- identification and management of risk (including determination of priorities);
- promotion of high ethical standards; and

- clarity of various management roles and accountabilities.

This example demonstrates that effective governance of agencies can provide a more robust, pluralistic and adaptable decision-making framework for agencies. 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 organisational strategy focussed on being accountable for its conduct and results. Corporate governance is largely about leadership which is also not confined to the top of the organisation.

Defining 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. Furthermore, the absence of clearly designated roles weakens accountability and threatens the achievement of organisational objectives.

Any discussion of corporate governance within the private sector and, indeed, for public authorities and companies as well, 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 (relating again to the UK) which 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.³⁹

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.⁴⁰ However, this model is not readily transferable to the public sector, even with Government Business Enterprises (GBEs), because of the different roles and relationships between the responsible Minister(s), the Chief Executive Officer (CEO) and (possibly) the Board. As well, Australian citizens (stakeholders) have no choice as to their investment.

It is important to recognise 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 organisations that have a governing board to which the CEO should preferably be accountable, such as Commonwealth authorities and companies. The latter categories of agency, of course, have more in common with the private sector. They also have added complexities as a result of the additional party (the governing board) in the accountability chain. Organisations 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 organisation's relationship to its stakeholders. Private sector approaches tend to focus primarily on shareholders, while

recognising other stakeholders such as employees, customers, suppliers, creditors and the community. This can be illustrated by the US Business Roundtable's view that:

*... the paramount duty of management and of boards of directors is to the corporation's stockholders; the interests of other stakeholders are relevant as a derivative [my underlining] of the duty to stockholders.*⁴¹

Richard Humphry, Managing Director and CEO of the Australian Stock Exchange, expressed a similar view last year.⁴² In his view, a private sector board would be abrogating its fundamental responsibility to its shareholders if it responded to issues in a manner that went beyond the traditional internal focus on shareholders.

While I agree that a board's primary responsibility should be to its shareholders, 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 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 shake-up of the AMP Board in April 2000, precipitated perhaps by shareholder/investor criticism about the company's business performance and share price, seems to me to involve the corporate governance context in which that organisation was involved. It could be seen as an example of an organisation responding to public concern in order to regain an appropriate level of community and shareholder confidence in both the business and ethical nature of the company's activities.

In the public sector, although we can identify citizens in a similar role to shareholders, in practical terms boards, CEOs and management have to be very aware of their responsibilities to the government (as owners or custodians, and regulators), to the Parliament (as representatives of citizens, and legislators) and to citizens (as ultimate owners as well as in their particular roles as clients).

The ANAO discussion paper entitled *Corporate Governance in Commonwealth Authorities and Companies*⁴³ suggests, *inter alia*, that there may be opportunities to formalise 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. Consideration also needs to be given to adequate training both of the Board Members and management to ensure that there is full understanding of the requirements and obligations, legal and otherwise. A case in point is the new 'Business Judgement Rule' under Sections 180(1) and (2) of the *Corporate Law Economic Reform Program (CLERP) Act 1999*. This is a discrete area of liability and:

*'... the introduction of the business judgement rule does not affect directors' liability under other areas of the Corporations Law (eg, insolvent trading, personal director and officer liability under the trade practices, environmental and occupational health and safety regimes).'*⁴⁴

In Commonwealth authorities and companies, even though the Board is responsible for directing and controlling the organisation on behalf of the stakeholders and is ultimately

accountable for its own performance as well as that of the organisation, it is important to note that maximising performance within an organisation requires an effective 'partnership' between the Board and management in guiding organisation strategy and performance. Similarly, CEOs of government departments and agencies will need to ensure effective partnerships with senior management if they are to effectively govern their organisations.

Thus, the threshold requirement of sound governance must be agreement between the key parties, whether this is the board and management (including the CEO) or the CEO and management, on the broader corporate objectives. These parties should jointly develop the corporate objectives which the CEO is responsible for achieving.

The question of corporate governance in the public sector has been taken up more recently during an inquiry conducted by the Commonwealth Parliamentary Joint Committee on Public Accounts (JCPAA). As I mentioned earlier, the Commonwealth introduced revised financial legislation for public sector entities, with effect from 1 January 1998. The new *Commonwealth Authorities and Companies Act 1997* (the CAC Act) introduced new governance arrangements for GBEs, providing a framework for the accountability of GBEs and setting out key responsibilities for both boards and Ministers. The broad objective of the Joint Committee of Public Accounts and Audit (JCPAA) inquiry was to assess the appropriateness and effectiveness of these arrangements, given that as GBEs are publicly controlled entities, the Parliament has a continuing interest in their governance, performance and accountability.

The JCPAA's report⁴⁵ has, in my view, added much to the consideration of appropriate accountability and corporate governance arrangements for the public sector, in this case GBEs.⁴⁶ Among other things, the JCPAA examined the appropriateness of the CAC Act and, in particular, its continued application to GBEs. It recorded the view that:

... where public moneys are involved, there is a need for additional accountability to Ministers and Parliament ...

and concluded that

... the Committee does not support removing GBEs from their responsibilities under the CAC Act.⁴⁷

I must say that this conclusion supports my own view that present governance arrangements provide a robust and flexible framework for the management and accountability of GBEs. This is not to say that further improvements are not possible, both for GBEs and for other elements of the public sector such as departments and statutory authorities. I cover some such possibilities elsewhere in this presentation.

Managing risk as part of an integrated corporate governance framework

Corporate governance provides the integrated strategic management framework necessary to achieve the outputs and outcomes required to fulfil organisational goals and objectives. I have already shown that clearly defined roles and responsibilities are essential if we are to be realistically held accountable for our performance. Control structures, incorporating sound risk management, are also a particularly relevant element of an effective governance framework because of their importance in promoting effective performance and ensuring accountability obligations are appropriately discharged.

An effective corporate governance framework assists an organisation to identify and manage risks in a more systematic and effective manner. A corporate governance framework, incorporating sound values, cost structures and risk management processes can provide a solid foundation on which we can build a cost effective, transparent and accountable public sector. As one expert opinion puts it:

‘Corporate governance is the organisation’s strategic response to risk.’⁴⁸

The devolution of authority and accountability to agency heads, from various public sector reforms over the last fifteen years and particularly the recent changes to financial and industrial legislation, together with contracting out and contestability, has significantly increased the risk profile of agencies as I pointed out earlier.

The public sector must manage the risks inherent in this new ‘market oriented’ environment if it is to achieve the levels of performance required and satisfy whatever accountability requirements have been determined. More than ever, this situation will require a formal, systematic approach to identifying, managing and monitoring risk. The intuitive, and often reactive, approach to managing risk that has characterised public sector management in the past will not be sufficient. We all know that reacting ‘after the horse has bolted’ is often quite costly and damaging to the credibility of agencies and Ministers. A more strategic approach is required to stay contestable in such an environment. This is a significant management challenge.

The growing recognition and acceptance of risk management as a central element of good corporate governance and as a legitimate management tool to assist in strategic and operational planning has many potential benefits in the context of the changing public sector operating environment. Such an approach encourages a more outward looking examination of the role of the organisation, thereby increasing customer/client focus, including a greater emphasis on outcomes, as well as concentrating on resource priorities and performance assessment as part of management decision-making. The risk management framework is also a useful means for management to be assured of this approach, including being able to defend their decision-making publicly.

In the past, risk has often been related to the possible loss of assets or the emergence of a liability. As a result, risk management has focused on matters that can be covered as insurable losses. However the more contemporary definition of risk is far broader, reflecting the increasing complexity of our corporate and economic environment and

incorporating corporate governance, operational and strategic objectives. Risk management can more properly be defined as:

*'... the term applied to a logical and systematic method of identifying, analysing, assessing, treating, monitoring and communicating risks associated with any activity, function or process in a way that will enable organisations to minimise losses and maximise opportunities.'*⁴⁹

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

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

*Parliament itself, and its Committees, are still coming to grips with the implications of managing risks instead of minimising them, almost without regard to the costs involved.*⁵⁰

An important principle underpinning an effective risk management framework is the transparency of decision-making processes. Transparency is achieved by ensuring that the decision-making process and the reasons for decisions made are adequately documented and communicated to stakeholders. I note that one of the most significant recent additions to the risk management standard (AS/NZS 4360:1999) is the requirement to identify stakeholders and communicate and consult with them regarding their perceptions of risk at each stage of the risk management process. The results of such communication should, of course, feed into any decision-making process. It is important to understand that risk and risk-taking are relative concepts. Therefore perceptions are vital because differences can arise simply from different understandings of what constitutes risk.⁵¹

From an ANAO perspective, documentation of key risk management principles and management decisions is an essential element of the public sector accountability framework. As the ANAO is a central element of this framework, we have a particular need to understand the reasons behind agency decisions. As well, documenting and communicating key processes and decisions:

- improves the transparency and consistency of decisions made by the agency over time;
- throughout their organisation contribute to the cost-effective achievement of stated outcomes;
- promotes a shared ownership of decisions throughout the agency; and

- places the agency in a considerably stronger position to defend to the Parliament and clients any decisions made.

Risk management is primarily the responsibility of the CEO and/or board. Effective governance arrangements require directors to identify business risks, as well as potential opportunities, and ensure the establishment, by management, of appropriate processes and practices to manage all risks associated with the organisation's operations.⁵² As Robert Knapp, National Manager of Comcover has observed that, while insurance products of his organisation are designed to reduce the exposure of the Commonwealth to insurable risks:

*'The availability of this insurance does not remove the onus on agency management to properly manage risks.'*⁵³

He went on to say it has been estimated that uninsurable costs can represent between three and six times the insurable cost.

To be effective, the risk management process needs to be rigorous and systematic.⁵⁴ If organisations do not take a comprehensive approach to risk management then directors and managers may not adequately identify or analyse risks. Compounding the problem, inappropriate treatment regimes may be designed which do not appropriately mitigate the actual risks confronting their organisations and programs. Recent ANAO audits have highlighted the need for:

- a strategic direction in setting the risk management focus and practices;
- transparency in the process; and
- effective management information systems.

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

The key message from the above discussion is that CEOs and/or board should aim to ensure that decisions made using risk management are not based on 'risky' management practices. We need to be conscious that mistakes will be made and look to ensure that management learns from such mistakes and implements effective processes to minimise the impact of errors in the future as well as reducing the likelihood of their recurrence. The following observation is apt given the more contestable environment in which the public sector is operating:

*'Experimentation and innovation need to be encouraged and supported. It is important to accept that there can be no experimentation without risk. Ministers and senior officials must accept some of the uncertainty implicit in giving up a degree of control. Not every experiment will be a success. Some honest mistakes will be made. This needs to be understood and accepted. Our commitment should be to learn from these situations.'*⁵⁵

While such a view is encouraging for the public sector, concerns remain, and have been expressed across Australian jurisdictions, that contracting has developed so quickly that it outstrips the capacity of government to monitor what is happening and so learn from mistakes.⁵⁶

There is no doubt that the more 'market-oriented' environment being created is inherently more risky from both performance and accountability viewpoints. To good managers, it is an opportunity to perform better, particularly when the focus is more on outcomes and results and less on administrative processes and the inevitable frustration that comes from a narrow pre-occupation with the latter. Having said that, it is important for us all to remember that the Public Service is just as accountable to the Parliament for the processes it uses as for the outcomes it produces. That is inevitable and proper. In my experience, however, some agencies, faced with the prospect of adverse comment in an audit report about the transparency and accountability of their risk management or other processes, have argued that the report should place greater emphasis on the outputs and/or outcomes achieved by the agency.

This brings me to another element of corporate governance that I wish to address - agency controls. In an environment that promulgates the notions of contestability, outsourcing and greater efficiency, the way that agencies implement their corporate governance framework, and particularly how they conduct their risk management, including the control of those risks, will be critical in determining how well the public sector can continue to meet its accountability obligations as well as its performance measures. The private sector needs to do the same to remain viable.

Control structures to manage risk

Complementary to a sound risk management approach is a robust system of administrative control. Control structures are particularly relevant elements of an effective governance framework because of their importance in promoting effective performance and in ensuring accountability obligations are appropriately discharged. Late in 1997, the ANAO released a publication entitled '*Control Structures in the Commonwealth Public Sector - Controlling Performance and Outcomes : A Better Practice Guide to Effective Control*'.⁵⁷ Control was broadly defined as 'a process effected by the governing body of an agency, senior management and other employees, designed to provide reasonable assurance that risks are managed to ensure the achievement of the agency's objectives.' The emphasis should be on a more systematic approach to decision-making to manage, rather than avoid, risk.

The Internal Control Working Party (the Turnbull Committee), and its 1999 report *Internal Control—Guidance for Directors on the Combined Code*⁵⁸ has, in my view,

provided an effective lead towards the introduction of internal control arrangements for the private sector—and, by extension, for commercial elements of the public sector. The Committee’s report provides guidance to assist United Kingdom (UK) listed companies implement the requirements in the revised Combined Code of the Committee on Corporate Governance, as the Code applies to internal control. The importance of this report, as with the 1992 Cadbury Report⁵⁹, is that ‘an Australian equivalent of the Turnbull Rules will arrive here soon’.⁶⁰

Interestingly, while the Cadbury Report dealt with financial risks only:

*‘The Turnbull Rules now require companies’ boards to ensure that processes are in place to manage not just financial, but all [my underlining] the organisation’s risks’.*⁶¹

In effect the Turnbull Committee has sought to reflect some of the best practices available in designing and operating systems of control, and in incorporating a risk-based approach to corporate governance arrangements. I note in particular, and support, the Committee’s comprehensive statement that:

An internal control system encompasses the policies, processes, tasks, behaviours and other aspects of a company that, taken together:

- *facilitate its effective and efficient operation by enabling it to respond appropriately to significant business, operational, financial, compliance and other risks to achieving the company’s objectives. This includes the safeguarding of assets from inappropriate use or from loss and fraud, and ensuring that liabilities are identified and managed;*
- *help ensure the quality of internal and external reporting. This requires the maintenance of proper records and processes that generate a flow of timely, relevant and reliable information from within and outside the organisation; and*
- *help ensure compliance with applicable laws and regulations, and also with internal policies with respect to the conduct of business.*⁶²

In the case of the UK, the task then remains to implement revised arrangements that satisfy the new Code, using the guidance provided by the Turnbull Committee. I note that, while the Code is not mandatory, the Listing Rules of the London Stock Exchange require listed companies to state whether they have complied with the provisions, and to describe how they have applied the principles, of the Code. Given the best practice nature of the Code and of the Turnbull Committee’s report itself, I would suggest, as one source of implementation advice provided for UK private companies puts it, that:

*Non-compliance with the Turnbull guidelines, given their wide support, is likely to be viewed unfavourably by the market.*⁶³

In the Australian public sector situation, I consider that we can learn from, and apply where applicable, the principles enunciated for private sector arrangements by key

authorities such as the Turnbull Committee. It is axiomatic that effective control structures within a corporate governance framework are a vital part of providing assurance to clients and the Parliament that an agency is operating in the public interest, and that it has established clear lines of responsibility and accountability for its performance. This is reinforced by the interrelationship of risk management strategies with the various elements of the control culture. In contrast, weak internal controls provide an environment which increases the risk of fraud.⁶⁴

One area where agencies need to ensure robust processes relates to their fraud control systems. Notwithstanding the focus on outcomes and outputs it is important that agencies have in place appropriate frameworks to protect public funds from loss and fraudulent misappropriation. Against this background, my Office has undertaken work on a series of fraud control audits in selected agencies as well as a survey of some 150 agencies to provide assurance to Parliament on the preparedness of agencies to prevent and/or deal with fraud effectively.

This work is highlighting the importance of integrating fraud risk management within the organisations corporate governance framework. In particular, agencies should be reviewing their approach to dealing with fraud because of the changing nature of the risk of loss of public funds resulting from, among other things, new service delivery methods such as outsourcing and electronic service delivery and the growing use of the Internet. In many instances it may no longer be appropriate to rely solely on established systems to prevent and detect fraud in the current public sector environment.

The management challenge is to put in place an appropriate corporate governance framework (embracing, of course, the various fraud control strategies and measures) to manage the risk as effectively as possible – to reduce its incidence and/or mitigate its effect. On this point, I note that the revised Fraud Control Policy of the Commonwealth encourages agencies to take an holistic approach to managing the risks they face in line with modern corporate governance principles. That is, the revised Policy enables agencies to manage fraud alongside the other risks faced by the agency.

The notion of a control environment has to start from the top of an agency. To be effective it requires clear leadership and commitment. This imperative is reinforced by the interrelationship of risk management strategies with the various elements of the control culture. The adoption of a sound and robust control environment at the top of an agency will strongly influence the design and operation of control processes and procedures to mitigate risks and achieve the agency's objectives. The clear intent and message to staff should be that such processes and procedures should be designed to facilitate rather than to inhibit performance. This approach should be promoted as good management. In short, the control environment is a reflection of management's attitude and commitment to ensuring well controlled business operations that can demonstrate accountability for performance.

It is useful to point out here that audit committees provide a complementary vehicle for implementing relevant control systems incorporating sound risk management plans. This view is shared by the private sector where corporate representatives have agreed that effective audit committees and risk management plans are an indication of best practice and markedly improve company performance, including decision making. The

internal auditing function of an organisation plays an important role in this respect by examining and reporting on control structures and risk exposures and the agency's risk management efforts to the agency governance team.

An effective audit committee can improve communication and coordination between management and internal and well as external audit, and strengthen internal control frameworks and structures to assist CEOs and boards meet their statutory and fiduciary duties. The Committee's strength is its demonstrated independence and power to seek explanations and information, as well as its understanding of the various accountability relationships and their impact, particularly on financial performance.

The CEO or the board of an organisation, together with senior management, are responsible for devising and maintaining the control structure. In carrying out this responsibility management should review the adequacy of internal controls on a regular basis to ensure that all key controls are operating effectively and are appropriate for achieving corporate goals and objectives. The entity's executive board, audit committee and internal audit are fundamental to this exercise. Management's attitude towards risk and enforcement of control procedures strongly influences the control environment.

I cannot overstate the importance of the need to integrate the agency's approach to control with its overall risk management approach in order to determine and prioritise the agency functions and activities that need to be controlled. Both require similar disciplines and an emphasis on a systematic approach involving identification, analysis, assessment and monitoring of risks. Control activities to mitigate risk need to be designed and implemented and relevant information regularly collected and communicated through the organisation. Management also needs to establish ongoing monitoring of performance to ensure that objectives are being achieved and that control activities are operating effectively.⁶⁵

The key to developing an effective control framework lies in achieving the right balance so that the control environment is not unnecessarily restrictive nor encourages risk averse behaviour and indeed can promote sound risk management and the systematic approach that goes with it. It must be kept in mind though that controls provide reasonable assurance, not absolute assurance that organisational objectives are being achieved. Control is a process, a means to an end, and not an end in itself. It impacts on the whole agency, it is the responsibility of everyone in the agency and is effected by staff at all levels.

The control structure will provide a linkage between the agency's strategic objectives and the functions and tasks undertaken to achieve those objectives. A good governance model will include a control and reporting regime which is geared to the achievement of the organisation's objectives and which adds value by focusing control efforts on the 'big picture'. Public sector organisations will need to concentrate on the potential of an effective control framework to enhance their operations in the context of the more contestable environment that is being created as part of government reform policy.

Performance assessment

Under the current public sector reforms, the public sector is subject to increased levels of scrutiny of its performance and effectiveness. The focus is now very much on achievement of outcomes as well as outputs. A culture of ongoing performance assessment is therefore important to maintain Parliamentary and public confidence in the public sector.⁶⁶ The establishment of a performance culture supported by clear lines of accountability is an essential part of the government's approach to reform in the APS. Such a culture will provide the discipline and integrity required to undertake credible benchmarking, market-testing and pricing reviews for agency and entity outputs in the budget context as part of resource and performance assessment.

Performance information is a critical tool in the overall management of programs, organisations and work units. It is important not as an end in itself, but in the part it plays in managing effectively and has an expanded role in the new ways of delivering public services as a means of protecting Commonwealth and public interests. It is therefore a key component of good corporate governance. Performance information fits within the wider management framework that includes objectives, strategies for achieving objectives and mechanisms for collecting and using such information. The latter is essential for assessing the impact of identified risks as well as to assist management to take timely action to deal pro-actively with identified risk whether by turning it to advantage or implementing credible preventative measures. In a recent report the Western Australian Auditor-General noted that:

*'In a rapidly changing environment, public sector managers will face challenges of simultaneously complying with policies designed to achieve fairness and value for money and providing effective performance.'*⁶⁷

One initiative that has been introduced for Government Business Enterprises (GBEs) to strengthen the management framework and parliamentary oversight in terms of performance is the requirement for GBEs to prepare and table in Parliament, annually, Statements of Corporate Intent (SCIs). SCIs are brief, high level, forward looking documents, expressed in terms of outputs or outcomes. They normally contain a statement of accountability (including reporting obligations), business descriptions, objectives and broad expectations of financial and non-financial performance. They do not, however, contain commercial-in-confidence information. SCIs are intended to provide greater clarity for Parliament, the responsible Minister(s), the board and management as to the framework within which a GBE is to operate, and about its operating activities. As such, SCIs complement the usual ex-post performance information provided in say, annual reports.⁶⁸ Similar statements have been included, or could be considered for inclusion, in other agency and entity reports for similar reasons.

Having developed the mechanisms to allow the assessment of performance, it is important that we use our performance information for ongoing monitoring as well as for 'point in time' assessment and reporting. Ongoing monitoring at different levels in the organisation assists to ensure that our program is on the right track and that we are using our resources in such a way so as to maximise outputs and related outcomes. Such checks also provide assurance to top management as well as allowing them to take timely, strategic action if performance is not satisfactory.

In reporting on outputs and outcomes, say to the CEO/Board or to the Parliament, performance reports should be balanced and candid accounts of both successes and shortcomings. They should have sufficient information to allow the Board or the Parliament (and even the public) to make informed judgements on how well an organisation is achieving its objectives. Reports should include information on performance trends and comparisons over time rather than just a snapshot at a point in time which may be misleading.

I see the move towards both accrual budgeting and reporting as an important element in assisting departments and agencies to develop useful performance information systems. It will help agencies to become more outcome-focussed in reporting, providing improved information to both agency management and the Parliament and encouraging an effective Corporate Governance framework.⁶⁹ As well, it should assist agency management to judge between alternative advice delivery modes. This heralds the need for management to develop more sophisticated information systems that will incorporate improved forecasting and decision-support tools.

Despite the greater involvement of the private sector, performance assessment in the APS continues to be more than just about a financial bottom line. Assessments typically cover a range of measures, both quantitative and qualitative. For example, an agency or entity has to be accountable for the implementation of the Government's requirements with respect to public sector reforms and for meeting relevant legislative, community service and international obligations; for equity in service delivery; and for high standards of ethical behaviour. This point has been recently emphasised by Max Moore-Wilton, Secretary, Department of the Prime Minister and Cabinet, as follows:

*'Ministers and Departments do have an obligation not just to achieve the bottom line that is often the key outcome sought by private companies. We owe it to the community to establish public trust that we work with integrity and put public interest ahead of personal gain. Ensuring the transparency of our processes can focus our minds on the need for each individual decision we take to be justifiable in terms of strict propriety.'*⁷⁰

In order to accurately assess performance, we will need to identify both the financial and non-financial drivers of agency business. This will involve the use of techniques such as the balanced scorecard approach promoted in the then Management Advisory Board's (MAB) publication '*Beyond Bean Counting*'. In MAB's words:

*'The scorecard...complements the financial measures with operational measures on customer satisfaction, internal processes, and the organisation's innovation and improvement activities - these operational measures are drivers of future financial performance.'*⁷¹

The scorecard approach underlines the importance of the various linkages and their understanding and management such as between strategy and operations, budgets and performance. It also requires that attention be given to measuring performance where practicable and to articulating a credible basis for assessing qualitative or so-called 'soft' indicators of success. A parallel is the distinction between price and value for money.

Australia is not alone in grappling with the development and use of sound performance information, particularly in the light of the rapidly changing operating environment. Significant developments have been occurring in New Zealand, the United States of America, Canada, the United Kingdom and in a number of European countries such as France and Sweden. Many countries are now actively sharing experiences on deriving suitable performance information for accountability purposes. Moreover, we would do well to heed comments such as those made by the Clerk of the Privy Council and Secretary to Cabinet in her Annual Report to the Prime Minister on the Public Service of Canada:

'Public servants want to meet citizens' expectations and are ready to remove barriers to more effective service delivery, but it must be done in a manner that is true to the roles and values of the public sector'.⁷²

The focus of public sector reform is very much on results but it also matters how those results are achieved. A major challenge for the public sector in the future, including for Audit Offices, is performance management. If we are successful in achieving a credible, trusted performance management framework, we will earn the confidence and support of all our stakeholders, including those who work, and want to work, in the public sector. From an accountability viewpoint, which is also a major on-going audit concern, the following observation by the Comptroller General of the United States is apposite:

'Performance management ensures accountability because it generates valid and reliable data on program impact on the allocation of resources and on the economy, efficiency, effectiveness and integrity with which the government's finances are run.'⁷³

Of interest is the observation made by the Victorian Public Accounts and Estimates Committee on the implementation of a performance monitoring and management system, based on lessons learned from 7,500 outsourcing situations, that the quality of service improved by 38 per cent after the system was implemented.⁷⁴

With the greater convergence of the public and private sectors there will be a need to focus more systematically on risk management practices in decision-making that will increasingly put demands on suitable cost, quality and financial performance. Similar pressures will come with the advent of the move to electronic commerce and the greater use of the internet for business purposes. In turn, these will put increasing pressure on management of our information systems and systems controls. Good corporate governance should ensure that not only are the needs of the individual managers for useful information met effectively, but also that timely and relevant corporate information is provided to allow an assessment as to whether results are

consistent with agreed corporate requirements and add to overall corporate performance.

Maintaining sound corporate governance in a more contestable environment

As many of you would know, there have been concerns expressed by Parliamentary Committees and by individual parliamentarians in debates about appropriate accountability mechanisms in an era of devolved authority. But this is not simply about administrative processes. It is primarily about attitudes of mind and a different public service culture. That is the underlying concern. It is necessary to ensure that the various elements of corporate governance can be drawn together in a way that the people involved understand and therefore support the need for a more cohesive approach to corporate governance.

The critical issue for establishing a sound corporate governance framework is not simply about creation of appropriate committee structures or the way in which they work. The requirement is to promote understanding and commitment and more disciplined systems which assist better communication and provide greater confidence and assurance across the organisation.

An effective governance 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. It should be based on a set of values including a clearly specified code of ethical and professional behaviour which is binding on management and staff and communicated to stakeholders. Such a culture is essential for the establishment of sound risk management approaches and the confidence it can give to stakeholders in the organisation and what it does. Public sector executives leading by example is perhaps the most effective way to encourage accountability and improve performance.

I have established that the concept of corporate governance is representative of a cohesive framework of interrelated elements. If implemented effectively it should provide the integrated strategic management framework necessary to achieve the output and outcome performance required to fulfil organisational goals and objectives.

I again stress that good corporate governance is not a one size fits all proposition. This view has been supported by the U.S. Business Roundtable⁷⁵ and more recently by the OECD in its "*Principles of Corporate Governance*". The OECD has emphasised that, to meet new demands and grasp new opportunities, corporations will need flexible and adaptive governance practices⁷⁶. Therefore, good public sector corporate governance requires more than the prescription of particular corporate structures or compliance with a set of accepted rules.

Real benefits to an organisation come about as a result of the integration of the various elements of corporate governance in an holistic manner. Such an approach generates expectations of those whose responsibilities are made clear; creates reliance and demands that cannot be ignored; and promotes shared values and commitment to the objectives and required results (outcomes) of the organisation. As observed earlier, the test for each organisation is to achieve the appropriate balance in its overall

conformance (assurance) and performance (results) as required by its various stakeholders and the environment in which it has to operate.

In my view, corporate governance becomes more pressing in a contestable 'market-oriented' environment. This is because a sound corporate governance framework assists business planning, the management of risk, monitoring of performance and the exercise of accountability. While we can, and should, learn from private sector experience in such areas, public sector managers would do well to be mindful of the need for transparency and the interests of a broader range of stakeholders particularly when assessing and treating risk. We may not always be responsible for delivering public services but inevitably we will be held accountable for results.

The alignment between these core public service values and those of a contractor are particularly important in any outsourcing arrangement. Such alignment is essential if there is to be a genuine partnership arrangement in place, particularly where an organisation's core business is involved. However, as observed by the well known author and academic Peter Hennessy:

Pieces of paper are one thing, real belief systems quite another. It is very hard to export the public service ethic into the private contractor hinterland. Commercial contracts are not susceptible to a foolproof, public service ethical override.⁷⁷

The issues of openness and transparency have to be accepted as essential elements of public sector accountability. The public sector has to act both in the public interest and, in common with the private sector, to avoid apparent personal conflicts of interest to the maximum extent possible. These will be particular challenges for agency managers in establishing credible corporate governance frameworks within public sector agencies that are increasingly being asked to act in a more private-sector manner while maintaining public accountability.

It has been suggested that good corporate governance is based on the premise that corporate officers operate best when they are held to account for what they do.⁷⁸ Accountable individuals know that they must be prepared to defend their decisions—that they have accepted responsibility for the decisions that they make. In short, accountability provides a way of measuring or assessing performance in a practical operational manner that makes sense to those involved.

However, repeating an earlier observation, there must be due and continuing recognition given to the innate complexities of public administration with its multi-faceted approach towards accountability that has to be managed at all levels of an organisation. It is clearly advantageous if the private sector provider not only understands that imperative but is also prepared to complement and support both the organisational structures and agency action to ensure it is met. In some situations this may involve additional cost to achieve greater overall value or, simply, better performance.

IV. BALANCING ACCOUNTABILITY AND EFFICIENCY

While the increasingly business-like approach of the public sector has undoubtedly improved performance, it is important to recognise that the provision of public services involves rather more than achieving the lowest price or concepts of profit or shareholder value. Public service agencies must strive to maximise overall 'value for money' for citizens which requires consideration of issues other than production costs and prices. Such issues include client satisfaction, the public interest, fair play, honesty, justice, security and equity, as I noted earlier. The privatisation of the public sector also requires the transparent demonstration of accountability for the stewardship of public resources, as it is accountability which is fundamental to a democratic system.⁷⁹

With the greater participation of the private sector in the delivery of public services, one question is to what extent can, or should, both sectors share responsibility and accountability in at least some of these latter respects as well as for the risks that go with them? The latter is a particularly sensitive area in the public sector environment. That sensitivity can be contrasted with the private sector's notion of risk which is well described by a former Canadian Auditor-General in relation to the greater stringency required of good financial administration in government because:

*'taxpayers' money labelled by government was tantamount to trust funds [my underlining], whereas private investors frequently put up money in the knowledge that they were taking a risk.'*⁸⁰

The adoption, or adaptation, of private sector approaches, methods and techniques in public service delivery, has also highlighted the issue of trade-offs between the nature and level of accountability and private sector cost efficiency and, perhaps, pricing.

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. The question is, who is accountable for what and to whom? How we answer that question will largely determine the success or otherwise of an increasingly results-oriented public sector and the public confidence that engenders. There is a need to strike a balance between the appropriate nature, and level, of accountability and the imperative to achieve cost-effective outcomes. Such a balance is the decision-making prerogative of the Government and Parliament or Legislature. It is not an issue to be determined by agencies or entities, particularly by default where no guidance has been provided by any of the foregoing authorities.

I contend that public sector managers, at all levels, have to deal with a different nature and level of risks in the more contestable environment confronting most of us than they have had to do in the past. Market-testing, competitive tendering and contracting out all present opportunities for, as well as risks to, a public service that has traditionally been said to be risk averse. These new elements are central to improved business performance and accountability in the current program of reforms to the public sector.

The recent past has been typified by revised accountability arrangements and changed organisational structures.⁸¹ Such times present a major risk to effective decision-making. In my view, such risk is accentuated as a result of:

- inadequate controls and other accountability mechanisms in an environment of devolved authority and minimal coordination and oversight by central agencies;
- 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 and communications technology with attendant implementation and control problems as well as fraud-related issues (particularly when outsourced);
- a lack of project and contract management skills in the public sector; and
- insufficient experience generally in managing on an accrual accounting/budgeting and full costing basis.

Public sector managers must achieve a sensible balance at any point in time, and over time, across the various demands being placed on them in a more contestable market-oriented environment, if they are to achieve the levels of performance required and satisfy whatever accountability requirements have been determined. It is not just a matter of understanding the environment in which your organisation operates, important as that clearly is, but it is also essential to understand how the various elements of that environment affect your own activities and responsibilities and their subsequent impact on the organisation's effectiveness, reputation and results achieved.

The Government is accountable to its citizens for the provision of public services, in at least two interrelated ways. First, it has to ensure that the public sector provides high quality services that are appropriate, effective and equitable, at minimum cost to the taxpayer. This is a major driver behind the Government's policy of 'market testing' public services to improve their effectiveness. However, the Government also has to ensure that the accountability, and therefore transparency, of the public sector in the delivery of these services is maintained, and, indeed I would argue, enhanced over time. It is the balance between these responsibilities that is difficult to achieve. My Office's role is to provide assurance to the Parliament and the people on these two aspects, that is, public sector performance and accountability for that performance.

While the public sector reforms demand a greater focus on achieving efficient and effective outcomes for citizens, we also need to recognise that such outcomes also depend importantly on robust and credible administrative and management processes. 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.

I would suggest that devolution of authority and accountability to agency heads, together with contracting out and contestability, has significantly increased the risk profile of agencies. As agencies increasingly have recourse to contractors, some of whom in turn employ sub-contractors, to perform what were once considered core public sector activities, the 'golden thread' of accountability that binds the public sector does become strained. At the very least it engenders a higher level of uncertainty for managers.

The public sector must manage the different risks inherent in this new environment if it is to achieve the levels of performance required and satisfy whatever accountability requirements have been determined. It is not just a matter of understanding the environment in which your organisation operates, important as that clearly is, but it is also essential to understand how the various elements of that environment affect your own activities and responsibilities and their subsequent impact on the organisation's effectiveness, reputation and results achieved.

More than ever, this situation will require a formal, systematic approach to identifying, managing and monitoring risk. While this might sound overly process bound, there is no real alternative to making the effort and resource commitment involved if we are to fulfil our business plans and organisational objectives efficiently and effectively. No doubt the demands for greater accountability for performance, including the use of personal contracts, have made many of us more risk aware or, indeed, risk conscious. But the latter has not necessarily made us better risk managers. Nor may we be any less risk averse. Nevertheless, we have to be better risk managers. We may not actually take greater risks but it is important that we do not inadvertently do so because we simply do not make the effort to identify them.

The concept of accountability is not exclusive to the public sector. No one doubts, for example, that the boards of private sector corporations are accountable to their shareholders who want a return on their investment. It is the nature and extent of that accountability which public sector commentators would contend distinguishes the two sectors. Interestingly, many private sector boards are adopting 'good corporate citizen' approaches on issues, such as the environment, privacy and consumer protection, which are narrowing that gap.

At the risk of stating the obvious, the public sector operates, first and foremost, in a political climate which is values-oriented, as witnessed by constant references to the 'public interest'. This term has always been difficult to define or measure in any generally agreed fashion, except that it is very real to the Parliament and public servants as well as to the ordinary citizen. In short, everyone seems to know when the public interest is not being followed, at least from their individual point of view.

Our public service values, which have a relationship to the need for public servants to pursue the public interest, are contained in the *Public Service Act 1999* (s. 10). As well, a Code of Conduct, based on these values, is set out in s. 13, with provisions to deal with breaches in s. 15. These are our collective touchstone and are one of the major factors which distinguish us from the private sector. However, questions have been raised as to whether public administration needs a new set of principles reflecting 'entrepreneurial values' in a more private sector oriented environment.⁸² On the other hand, some have argued that such an environment makes it more vital to underpin

public interest with enduring ethical standards *grounded in law and constitutional democracy*.⁸³ The tension is similar to that with the question of any accountability trade-off which, as already indicated, is one largely for Parliament and/or Government to resolve.

Public servants, at least, must understand the pervasive and often decisive influence of ‘politics’, as opposed to ‘markets’, both on public policy and administration. It 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.⁸⁴ This is a reality public servants, meaning all who are employed in the public sector, should never ignore. The essential differences are clearly articulated by Professor Richard Mulgan of the Australian National University as follows:

‘The private sector has no equivalent of parliament as an institution of public accountability nor are private sector companies subject to continuous public scrutiny from a political opposition competing for public support as an alternative management team.’⁸⁵

Consequently, the issue 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 is a reality public servants, meaning all who are employed in the public sector, should never ignore. However, decisions about such trade-offs are basically ones for the Parliament and/or government to make—to provide guidance to decision-makers, whether in the public or private sector, and not to leave resolution to those decision-makers by default; or, is this yet another risk that has to be addressed by public sector managers?

While having regard to the apparent increasing convergence between the private and public sectors, it is nevertheless possible to identify where the two sectors differ in terms of accountability, for example, in the following observation:

Ethical behaviour is one of the principal means by which accountability is maintained in the public sector. Indeed, political and administrative accountability depend on the observance of ethical standards and ethical relations between individuals or between institutions.’⁸⁶

This is not the place to examine the wide range of risk and accountability issues that any convergence of the sectors may involve. I did this, to a degree, last year.⁸⁷ However, one issue worth mentioning here as part of recent reform background is that of risk transfer through the use of private finance in areas such as infrastructure, property, defence and information technology (IT). This is raising a range of issues of both management and audit interest.

The Private Finance Initiative (PFI) in the United Kingdom⁸⁸ is being driven heavily by the objective to transfer risk. (PFI is discussed in more detail later in this presentation.) For example, in contracting the funding, design and management of IT and infrastructure projects to the private sector, the associated transfer of risk to private sector managers is being justified on the basis that they are better able to manage the risks involved. Mr Le Marechal CB, Deputy Controller and Auditor General of the

United Kingdom (UK) National Audit Office, noted in correspondence with me on an early draft of this paper that:

'In practice, on IT projects in particular, we have seen considerable naivety on the part of government departments as to the extent to which they can actually transfer risk'.⁸⁹

Mr Marechal pointed out that departments have found out too late that it is their job to sort out problems and get results if essential public systems do not work properly. He went on to observe that:

'Under heavy public and political pressure to get systems working properly, departments are then reluctant to take a hard line on their contractual rights and so sour relationships with the very contractors whose cooperation is essential'.⁹⁰

This point was emphasised by a Report commissioned by the UK Treasury which indicated that some invitations to negotiate by public sector bodies included risks that could not realistically be best managed by the contractor.⁹¹ I will have more to say on PFI later in an outsourcing context.

In the area of fiscal decision-making, the Government introduced a new framework in 1996 called the 'Charter of Budget Honesty'. The Charter set out principles for the conduct of sound fiscal policy and put in place institutional arrangements designed to improve discipline, transparency and accountability in the formulation of fiscal policy. The Charter was introduced in part to address the perceived lack of transparency in the reporting of a government's fiscal position. This provides an indication on the value that is placed on accountability in the public sector.

Managing trade-offs in an outsourcing environment

A feature of the changing public sector environment has been the outsourcing of functions which, it is judged, the private sector can undertake more efficiently. Outsourcing advocates point to the opportunities offered:

- increased flexibility in service delivery;
- greater focus on outputs and outcomes rather than inputs;
- freeing public sector management to focus on higher priorities;
- encouraging suppliers to provide innovative solutions; and
- cost savings in providing services.⁹²

However, outsourcing also brings risks. As a number of the ANAO's recent performance audits have identified, a poorly managed outsourcing approach can result in higher costs, wasted resources, impaired performance and associated public concern.⁹³ The main message from this experience is that savings and other benefits do

not flow automatically from outsourcing. Indeed, that process, like any other element of the business function, must be well managed. Another lesson that can be drawn from such experience is that:

*'... understanding the conditions that create unhealthy levels of risk can go a long way toward preventing failure.'*⁹⁴

Before deciding to contract out it is important to assess the overall cost before and after and the expected outcomes from using the contract. The overall cost must include the one-off cost and the continuing transaction costs such as the cost of administering the contract. Experience suggests that this is often not the case. It has been commented that:

*'Consideration of public policy and public interest tend to be marginalised by commercial and competitive considerations.'*⁹⁵

In the same vein, the then Commonwealth Ombudsman remarked that:

*'In the public sector the imperative of reducing costs has not translated itself into cost competitiveness or better services. Rather it has resulted in various ways to ration services.'*⁹⁶

The inflexibility of contract in the sense of being a relatively fixed set of terms is one intangible cost that needs to be taking into account before deciding to contract out. As well, the move from traditional public administration to contract increases legal risk, that is, the risk of litigation and associated financial penalties such as damages which are not generally exacted under public law remedies. While there are measures, which can be taken to overcome these issues, they add to transaction costs. Failure to take into account the overall cost can undermine the very purpose of contracting which is to increase the efficiency of public administration.

Concern has been expressed in New Zealand that the push to specify everything in contract form may have gone too far. It is argued that the time spent in identifying the required outputs and the need to adjust and monitor the contracts as circumstances change may be more expensive than older ways based on trust and hierarchy. In Australia there is a concern that the emphasis on distinct purchasers and providers may distance the makers of policy from the provision of services and hence make the policy advice to Ministers less sensitive to the problems being met on the ground.⁹⁷

In a more contestable environment, failure does not simply relate to errors of commission which, in the past, have been asserted as the main pre-occupation of the public sector but also to errors of omission which are often less visible but can have a greater impact on performance or results. Such observations have been linked to 'inherent differences' in the ownership of organisations in the public and private sectors.⁹⁸

The growth of outsourcing, and other new ways of delivering public services, do not obviate or limit the need for accountability to stakeholders. Less direct relationships through the introduction of a new player in the accountability chain - the private sector service provider - and greater decision-making flexibility strengthen that need.

The recent and continuing adoption, or adaptation, of private sector approaches, methods and techniques in public service delivery has highlighted issues involving gains and losses between the nature and level of accountability on the one hand and private sector cost efficiency on the other. On this issue, it has been noted by Professor Richard Mulgan of the Australian National University (ANU), who has contributed significantly to the debate over public sector accountability within a climate of significant reform, that:

‘Contracting out inevitably involves some reduction in accountability through the removal of direct departmental and Ministerial control over the day-to-day actions of contractors and their staff. Indeed, the removal of such control is essential to the rationale for contracting out because the main increases in efficiency come from the greater freedom allowed to contracting providers. Accountability is also likely to be reduced through the reduced availability of citizen redress... At the same time, accountability may on occasion be increased through improved departmental and Ministerial control following from greater clarification of objectives and specification of standards. Providers may also become more responsive to public needs through the forces of market competition. Potential losses (and gains) in accountability need to be balanced against potential efficiency gains in each case.’⁹⁹

Optimising the trade-off between accountability and a lower market-oriented price requires senior public service managers to ensure they are not risking the efficiency and effectiveness of their core functions by ill considered, *ad hoc*, outsourcing, the effects of which may not be confined to the particular services or activities being outsourced. To do this, *ex-ante* strategic examination of which activities should continue to be provided by the public sector (core business) and which to outsource (non-core business) is essential. This is consistent with the generally held view in the public and private sectors that outsourcing is a cost-effective way to make better strategic use of non-core business functions.¹⁰⁰

To maximise overall value for money, it is important that the above assessment take place in the context of the total business of the organisation in order to manage the risk that, by considering outsourcing individual activities in isolation, counter-productive and costly outcomes may result from outsourcing in the medium to longer term. In this respect, attention should also be given to the effect of outsourcing on related activities which may be delivered through another public sector agency. That is, it might sometimes be necessary to examine an outsourcing decision from an across-agency perspective to get the best public sector outcome.

A further important consideration is how this trade-off between accountability and efficiency might change in relation to core and non-core Government activities. For example, a greater level of accountability may be demanded for certain activities, as they are determined to be more important to the public interest and/or politically sensitive. Indeed, this consideration may well provide the case for maintaining current agency arrangements, rather than contracting out their delivery to the private sector.

The essential issue, as it often is in public administration, is to achieve an appropriate balance which can vary in differing circumstances. Achieving such a balance becomes even more of an imperative when the converging, or reconverging, private and public sectors not only focus on the similarities of issues and even responses that confront managers, but more sharply contrasts differences between the two sectors. Nowhere is this more evident, for example, than in workplace relations where the greater flexibility being provided by legislation has made public sector managers more conscious not only of constraints in public employment but also of their responsibilities to their staff in outsourcing situations. In short, the risk profile - including any possible trade-offs - is far more confronting in the more contestable environment.

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. It 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. A recent KPMG survey of private and public organisations in Australia and New Zealand involved in more than \$500 million a year of outsourcing contracts indicated that:

*'... performance problems were overshadowed by customers' own failure to properly define outsourcing goals and service level agreements.'*¹⁰¹

More than half the survey respondents indicated they would pay more attention to defining and monitoring service level agreements in the future. The inclusion of access provisions within the contract for performance and financial auditing, as well as for sound management, is also very important in maintaining the necessary thread of accountability.

In relation to the Australian Public Service (APS), I have drawn attention to the need for standard contracts negotiated with suppliers to the Commonwealth to make provision for access to the suppliers' records both by the purchasing agency and my office. The ANAO has drafted model access clauses (reflecting the provisions of the *Auditor-General's Act 1997*) which have been circulated to agencies for insertion in contracts; these clauses give the agency and ANAO access to contractors' premises and the right to inspect and copy documentation and records associated with the contract which I will discuss in more detail later.

The challenge remains, as Professor Mulgan suggests, to maintain an appropriate level of accountability for the effective delivery of public services, whilst maximising the potential efficiency gains available through such arrangements. The Canadian Auditor-General has recently expressed the point succinctly as follows:

*'The emphasis should not be solely on greater efficiency or on meeting accountability requirements.'*¹⁰²

Again, it is the simply stated, but difficult, requirement to achieve an appropriate balance in the various situations confronting us.

Commercial confidentiality

Virtually all traditional accountability mechanisms rely on the availability of reliable and timely information. As a result of contracting out to the private sector, the flow of information available to assess performance and satisfy accountability requirements has, on the whole, been reduced. This situation has arisen where performance data is held exclusively by the private sector or through claims of commercial confidentiality that seek to limit or exclude data in agency hands from wider parliamentary scrutiny. Thus accountability can be impaired where outsourcing reduces openness and transparency in public administration. For this reason, the issue of commercial confidentiality is an area that has been the subject of considerable parliamentary concern and comment in many constituencies both in Australia and overseas. Furthermore, it is likely to be of increasing importance as the extent and scope of outsourcing grows. Dr John Uhr of the ANU, who has written extensively on the question of ethics in public policy, captured the concern as follows:

*The test case is the accountability challenge posed by alternative service providers and their claims that their contracts with government lessen their liabilities of public accountability because of the 'commercial-in-confidence' nature of their performance information.*¹⁰³

In a recent joint article the Professor of Law, Flinders University and the Auditor-General for South Australia noted that:

*'Four principles are in play when assessing claims of confidentiality: the right of the people to know, the accountability of parliament to the people, the responsibility of the executive branch of government to the parliament and the rights of individuals or groups to assert confidentiality claims.'*¹⁰⁴

I consider that the question as to whether or not commercial-in-confidence information should be disclosed to the Parliament should start from the general principle that information should be made public unless there is a good reason for it not to be. In other words, there should be, in effect, a reversal of the principle of onus of proof, which would require the party that argues for non-disclosure to substantiate that disclosure would be harmful to its commercial interests. However, I also appreciate that outsourcing agreements have to accommodate the differing interests of public and private law that are brought together in such agreements. This has been simply stated as follows:

*'The public and private law interests served by outsourcing agreements are a blend of the public interest in efficient and cost effective provision of public infrastructure and services, the politician's interest in furthering a particular political or budgetary philosophy and the private interests of individuals seeking to profit from doing business with government.'*¹⁰⁵

Nevertheless, in the context of the Auditor-General's responsibilities, I am sensitive to the need to respect the confidentiality of genuine 'commercial-in-confidence'

information. In our experience, we have found that, almost without exception, the relevant issues of principle can be explored in an audit report without the need to disclose the precise information that could be regarded as commercial-in-confidence. In this way, the Parliament can be confident it is informed of the substance of the issues which impact on public administration. It is then up to the Parliament to decide the extent to which it requires additional information for its own purposes. I am also sensitive to the following responsibilities of Auditors-General:

‘The first is to ensure that adequate safeguards are in place to protect the confidential information from disclosure. The second is to manage the audit risk that follows from the non-disclosure.’¹⁰⁶

The message here is that external scrutiny (through, for example, the activities of Parliamentary Committees and Auditors-General) is an essential element in ensuring that public accountability is not eroded, by default, through contracting out. Just as it is incumbent upon public sector agencies to ensure they have a sound understanding of the commercial nature of any contract, private sector entities need to recognise that there are overlaying public accountability issues, not present in purely private sector transactions, that need to be addressed. The latter need not unnecessarily deter private sector participation if handled appropriately. Nevertheless, should some degree of confidentiality be considered appropriate in either, or both, the Commonwealth’s or private sector provider’s interests, there is a good case for the Commonwealth, as a matter of course, seeking to include a provision in contracts which provides an exemption with respect to disclosure to a Parliamentary Committee, if only on a confidential basis.

Contractors can expect to have their performance scrutinised both by purchasing agencies and by review bodies such as the ANAO, Ombudsman and Privacy Commissioner. Recent audit reports suggest that many contractors have yet to fully appreciate this aspect of working for government or to embrace the higher and/or different standards of accountability that are required when public money is involved. Any trade-off would possibly be more about the nature and level of accountability rather than about efficiency per se. However, it is not difficult to envisage at least some cost for accountability over a purely market-oriented transaction.

I do not mean to suggest that agencies should have unfettered access to contractors’ records but contractual arrangements must enable agencies to have sufficient information to enable their managerial and accountability responsibilities and obligations to be fully met. This issue is particularly important to me because the ANAO needs to have access to records and information relating to contractor performance in order to fulfil its statutory duty to the Parliament.

As the reform of government service delivery continues to evolve, so has the focus of the debate on these accountability issues, with commercial confidentiality and public interest issues (particularly involving ‘sensitive’ information) becoming of increasing concern. The debate has not been limited to Parliamentarians and Parliamentary Committees, Auditors-General, and academics. For example, an editorial in *the Australian*, commenting on the High Court’s judgement in relation to the tabling of documents before a State Parliament, stated that:

*This defence (that papers were commercially sensitive and should not be released) is over-used by governments trying to avoid scrutiny and embarrassment and often represents arrogance of the first order; a democracy elects its representatives to act on behalf of the electorate as a whole, not of vested interests. The system requires the utmost transparency and direct accountability from its Parliamentary representatives. Lack of transparency and limiting the capacity of Parliament to review government decisions weakens our democracy.*¹⁰⁷

The Australasian Council of Auditors-General has put out a statement of Principles for Commercial Confidentiality and the Public Interest. As an example, one of the Principles concludes that:

*Some private and public sector bodies are instinctively apprehensive and protective about the disclosure of any commercial information. But such views often overstate the implied risks to an entity that might be occasioned by the release of commercial data. After-the-event commercial information has significantly less value than commercial information concerning events that have yet to occur. But even where commercial information might have commercial value to others, there are often overriding obligations that require it to be released. This is so for commercial information held in the private sector and, a fortiori, it applies to the public sector.*¹⁰⁸

The issues indicated in the above conclusion reflect a number of considerations which have exercised Auditors-General in addressing commercial in confidence material. A particular concern has been the insertion of confidentiality clauses in agreements/contracts which can impact adversely on Parliament's 'right to know' even if they do not limit a legislatively protected capacity of an Auditor-General to report to Parliament. For example, the then Auditor-General of New South Wales observed that:

*... it appears to me that governments just don't want to be accountable and are using private sector participation and so are reducing the amount of information that's available.*¹⁰⁹

More recently the Victorian Public Accounts and Estimates Committee stated that it:

*'... believes that the use of confidentiality clauses should be kept to an absolute minimum and that contracts should instead contain specific terms stating that their contents are prima facie public.'*¹¹⁰

At the heart of this debate is the on-going problem of clearly defining the 'public interest'. The public interest is, of course, fundamental to democratic governance and is an issue that public officials, including auditors, continually grapple with. Again, the challenge is about striking the right balance between public and private interests. Legislation precludes publication by my Office of information whose disclosure would, among other things, be contrary to the public interest for reasons including unfair prejudicing of commercial interests of any body or person. Those reasons are more fully described in section 37(2) of the *Auditor-General Act 1997*.¹¹¹

The risk to accountability associated with claims of commercial confidentiality in relation to government contracts has been commented on by the South Australian Auditor-General:

In situations where government contracting results in a long term transfer of material government responsibility to the private sector, the right of the people to know the extent and terms of that transfer must take precedence over less persuasive arguments in favour of confidentiality. Not only is the public affected by the transfer of what is government responsibility but it is further affected by the creation of a new relationship (often long term) between government and a private entity. (sic) A relationship about which the public is entitled to advise, consent to or object to through both their Parliamentary representatives and other forums.¹¹²

This issue was addressed also by the Senate Finance and Public Administration References Committee in a 1997 report following its Inquiry into Contracting Out of Government Services.¹¹³ My submission to that Inquiry noted that:

For agencies to be in a position to support the accountability obligations of their Minister and ensure adequate performance monitoring of contracted services, it is essential there be, at least, specified minimum levels of performance information to be supplied by the contractor to the agency, and agreed arrangements which provide for access by the agency to contract-related records and information.¹¹⁴

In making further recommendations to the Committee, we suggested, as did the Commonwealth Ombudsman, that in relation to commercial confidentiality claims by private sector contractors, a reverse onus of proof test should be applied, that is:

In our view, the question of whether or not commercial-in-confidence information should be disclosed to the Parliament should start from the general principle that the information should be made public unless there is a good reason for it not to be. In other words, what we are saying is there should be a reversal of the principle of onus of proof which would require that the party arguing for non-disclosure should substantiate that disclosure would be harmful to its commercial interests and to the public interest.¹¹⁵

The Committee agreed and in addressing matters of commercial confidentiality concluded that:

The Committee is firmly of the view that only relatively small parts of contractual arrangements will be genuinely commercially confidential and the onus should be on the person claiming confidentiality to argue the case for it. A great deal of heat could be taken out of the issue if agencies entering into contracts adopted the practice of making contracts available with any genuinely sensitive parts blacked out. The committee accepts that some matters are legitimately commercially confidential. If Parliament insists on a 'right to know' such legitimately commercially confidential

*matters, the most appropriate course to achieve this would be the appointment of an independent arbiter such as the Auditor-General to look on its behalf and, as a corollary, to ensure that he has the staff and resources to do it properly.*¹¹⁶

One of the difficulties in addressing commercial confidentiality issues is that of precise definition as to just what is being covered. While there is broad understanding of the kinds of information which contractors might regard as commercially confidential, the question is how to ensure adequate accountability for the use of public funds while ameliorating any justifiable ‘confidentiality’ concerns. Such concerns were evident in a recent recommendation for draft guidelines to be prepared for the scrutiny by Parliamentary Committees of commercially confidential issues relating to Government Business Enterprises.¹¹⁷

Recent legal decisions have reiterated the importance of maintaining ‘proper confidentiality’ of tendering proposals.¹¹⁸ With the growing convergence between the private and public sectors referred to earlier, and the considerable increase in contracting, the issue has become a matter of practical importance and some urgency. A particular concern is that agencies may too readily agree to treat contractors’ documents as confidential, notwithstanding the wide access powers that may be provided to the Auditor-General.

A related, but separate matter has been brought to my attention following a recent audit undertaken by the ANAO into the use of electronic commerce or business in Australian federal agencies.¹¹⁹ This relates to the finding that agencies surveyed by the ANAO expected that information about their contracts with the private or community sectors would remain as commercial-in-confidence. Individuals’ concerns were expressed about the broader concept of an individual’s rights to influence the way personal information was collected and used. Of relevance to this issue is that a key provision of the Privacy Amendment (Private Sector) Bill, which has now been introduced into the Commonwealth Parliament, is the inclusion of new ‘National Privacy Principles for the Fair Handling of Personal Information’. These Principles set standards about how business should collect, secure, store, use and disclose personal information. The Bill makes a distinction between ‘personal’ and ‘sensitive’ information. The latter includes information on a person’s religious and political beliefs and health where the private sector is more strictly limited in its collection and handling. This legislation could have a marked impact on that sector’s involvement in the delivery of public services.¹²⁰

Another challenge for Auditors-General in the move to increased contracting with the private sector for the provision of government services is our actual ability to access the relevant records. At present I do not have a legislative provision similar to that which I understand applies in the United States that guarantees access by government auditors to the private sector service providers’ premises. Mr Le Marechal, in correspondence referred to earlier, also observed that, in the UK, whatever their motivation, Ministers and senior civil servants have shown little enthusiasm for modernising the access rights of the National Audit Office to reflect the different ways in which public business is done.¹²¹

My Office is currently encouraging the inclusion of a suitable access to premises clause in contracts with the private sector. Such a clause is not necessary to enable me to seek

access to information as that access is available under Section 32 of the *Auditor-General's Act 1997*. However, it is seen as important to indicate to contractors that they must give full access to the Auditor-General for proper accountability. In my view, it is a matter of educating both parties, whether in the public or private sector, to the requirements of a successful relationship or contract and the audit assurance that can go with it. In reality, the latter is an important 'protection' for all parties.

The lesson here is that external scrutiny (through public reporting and the activities of Auditors-General) is an essential element in ensuring that public accountability is not eroded, by default, through contracting-out. Just as it is incumbent upon public sector agencies to ensure they have a sound understanding of the commercial nature of any contract, private sector entities need to recognise that there are overlaying public accountability issues, not present in purely private sector transactions, that need to be addressed, particularly if there is any apparent conflict.

Performance accountability under contracting out

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.*¹²²

Put another way, it is often more cost effective to seek solutions to defined problems or requirements in the market-place rather than to attempt 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.

Contractors can expect to have their performance scrutinised both by purchasing agencies and by review bodies such as my office. Some of my recent audit reports suggest that many contractors have yet to fully appreciate this aspect of working for government or to embrace the higher and/or different standards of accountability that are required when public money is involved. The latter is essentially the issue being covered by this address with any trade-off possibly being more about the nature and level of accountability rather than about efficiency per se. However, it is not difficult to envisage at least some cost for accountability over a purely market-oriented transaction.

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.*¹²³

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. But I stress that 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. Put simply, we have to be in a position to know what we are actually getting under a contract and whether it is meeting the objectives we set. If we do not, we are virtually risking the success of our agency and its very reason for being.

There is no doubt that the more 'market-oriented' environment being created is inherently more risky from both performance and accountability viewpoints. To good managers, it is an opportunity to perform better, particularly when the focus is more on outcomes and results and less on administrative processes and the inevitable frustration that comes from a narrow pre-occupation with the latter. Having said this, it is important for us all to remember that the Public Service is just as accountable to the Parliament for the processes it uses as for the outcomes it produces. That is inevitable and proper. In my experience, however, some agencies, faced with the prospect of adverse comment in an audit report about the transparency and accountability of their risk management or other processes, have argued for a greater emphasis on the outcomes achieved by the agency. The following observation made by the then Chairman of the Australian Senate's Standing Committee on Finance and Public Administration, reflects well my response to such arguments:

*[Risk management] does not mean that managers can expect to be judged only on the efficiency and effectiveness of their results and be able to claim that the mix of inputs chosen, how they are applied and the selection of who is to supply them is outside the reviewer's area of concern. The fundamental principles of accountability have not changed: information still needs to be readily available to allow reviewers to make their own assessments about the legal and proper use of inputs and the ethical behaviour of the people involved in the processes. Managers cannot simply claim that the ends justify the means.*¹²⁴

Sound contract management, and accountability for performance, are dependent on adequate and timely information. Therefore it is important that agencies consider the level and nature of information to be supplied under the contract and access to contractors records they require to monitor adequately the performance of the contractor. However, the more detailed the performance standards, the specific requirements for rigorous reporting and monitoring and the need for frequent renegotiation and renewal, the closer the contractual arrangements come to the degree of control and accountability exercised in the public sector.¹²⁵ Once again, it is a matter

of balancing any trade-offs in efficiency and/or accountability if optimal outcomes are to be secured.

At present my Office does not have a legislative provision similar to that which applies in the United States that guarantees access by government auditors to the private sector service providers records. Under United States Code Title 41, Public Contracts, the Comptroller General and his representatives are authorised to examine any records of the contractor, or any of its sub-contractors, that directly pertain to, the contract or sub-contract. The term 'records' includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. We have been encouraging the inclusion of a suitable access clause in contracts. I referred earlier to a set of model standard access clauses we have developed.

While the need for the external auditor to have access to the premises of third party service providers is likely, in practice, to be required in very few situations, such access, where necessary, would contribute to an audit being undertaken in an efficient and cooperative manner. As well, it is important for both management performance and accountability. In the main, audit and management's interests in access are likely to coincide. In my view it is a matter of educating both parties, whether public or private sector, to the requirements of a successful relationship or contract. Vague relationships do not assist either party; nor do they lend confidence to the partnership or use of contractual arrangements. Such accountability is an aspect of the public sector environment with which the private sector is becoming more familiar as outsourcing develops further.

My Office's experience has shown that agencies have not fully embraced these opportunities. For example, an examination of 35 contracts business support process across eight agencies¹²⁶ found that only two of those contracts referred to possible access by the Auditor-General. None of the contracts reviewed, entered into since my Office provided advice concerning standard access clauses, contained the recommended provisions. Furthermore, the level of consideration given to the inclusion of such access provisions in those contracts by agencies was not apparent. Such an approach is unlikely to foster optimum performance nor contribute to appropriate accountability.

Private financing of government activities

In the current budgetary environment, public sector entities in many countries have often found it difficult to provide dedicated funding for large projects out of annual budgets, thus resulting in lengthy delays before projects can proceed, or projects proceeding only incrementally over a number of years. Delayed access to needed infrastructure can be costly to the community while budget constraints can lead to sub-optimal project outcomes. The encouragement of private sector investment in public infrastructure by governments is one response to these fiscal pressures. It has also given rise to additional challenges and demands for public accountability and transparency because the parameters of risk are far different from those involved in traditional approaches to funding public infrastructure. Indeed, the potential liabilities accruing to governments may be significant.

Extensive use has been made of private financing in the United Kingdom, as I noted earlier in the discussion of risk transfer. The Private Finance Initiative was introduced in 1992 to harness private sector management and expertise in the delivery of public services.¹²⁷ By December 1999, agreements for more than 250 Private Finance Initiative projects had been signed by central and local government for procurement of services across a wide range of sectors, including roads, rail, hospitals, prisons, office accommodation and IT systems. The aggregate capital value of these projects was estimated to be some £Stg 16 billion.¹²⁸ However, one downside was the frequently protracted negotiations which resulted in substantial legal costs to both sides.

The United Kingdom National Audit Office has noted that the private finance approach is both new and more complicated than traditional methods.¹²⁹ This brings with it new risks to value for money and requires new skills on the part of the public sector. Since 1997, the National Audit Office has published eight reports on such projects. These reports collectively suggest that for privately financed projects to represent value for money, the price must be in line with the market, the contract must provide a suitable framework for delivering the service or goods specified, and the cost of the privately financed option (taking into account risk) should be no more than that of a publicly funded alternative.¹³⁰ The UK National Audit Office concluded that:

*Appropriate risk allocation between the public and private sectors is the key to achieving value for money on PFI projects.*¹³¹

The Report went on to advocate an approach involving the ‘optimum’ transfer of risk, which simply means allocating individual risks to those best placed to manage them. As usual, the devil is in the detail but experience is indicating some useful means of deciding on an appropriate allocation of such risks.

It is difficult to evaluate the overall benefits that accrue from private financing initiatives. In financial terms, it has been recognised that it is difficult for the private sector to borrow as cheaply as governments can. This is because government borrowings are considered by markets to be risk-free because of governments’ capacity to raise taxes and because of the absence of default by most sovereign borrowers. Accordingly, delivering financial benefits from private financing requires cost savings in other aspects of the project and/or the effective transfer of risk. Clearly, any savings

that are assessed from these aspects are sensitive to the benchmarks and assumptions used as the following indicate:

- The initial benchmark for comparison purposes is often the incumbent public service provision of similar goods or services. However, it is not uncommon for such benchmarks to be adjusted to improve comparability. This introduces further assumptions and subjectivity to the evaluation process.
- Unless risk is transferred to the private sector, private financing may achieve little other than provide the private sector with the benefit of a very secure income stream, similar to a government debt security, but with the private sector able to earn returns above those available from investing in government debt securities. However, the transfer of risk to the private sector is only really cost-effective where the private sector is better able to manage and price these risks. Even where the risk has been transferred, there can remain a residual risk that the public sector may have to step-in in the event the private sector contractor experiences difficulties in meeting its obligations. This is because, where the provision of public services or goods is involved, private financing does not equate to contracting out ultimate responsibility.

In relation to the transfer of risk, the United Kingdom National Audit Office has also observed that:

*If the private sector are asked to accept responsibility for a risk that is within their control, they will be able to charge a price for this part of the deal which is economically appropriate. However, if the Department seeks to transfer a risk which the private sector cannot manage, then the private sector will seek to charge a premium for accepting such a risk, thereby reducing value for money. The Department should therefore have sought to achieve not the maximum but rather the optimum transfer of risk, which allocated individual risks to those best placed to manage them.*¹³²

In Australia, most of the activity in private financing initiatives has occurred at the State government level, particularly in relation to infrastructure projects such as roads. Prominent examples include the Sydney Harbour Tunnel and the M2 Motorway in Sydney¹³³ and the City Link project in Melbourne. Of note is that these high profile projects have been the subject of external scrutiny that has raised concerns about the exact distribution of risk and financial benefits between the public and private sectors, for example as indicated by the following audit observations:

- The New South Wales Auditor-General has consistently commented that, although private sector owners have been given long-term rights over important road networks, there has not been a proper comparison of the cost-effectiveness of private sector involvement and the traditional public sector approach. Accordingly, the Auditor-General was unable to conclude that the projects that have been undertaken were in the State's best interests from a financial viewpoint.¹³⁴ In particular, the opportunistic and ad hoc use of private finance was criticised as it

was considered unlikely to improve the overall efficient use of the road network and reduce the total costs of road maintenance and management.¹³⁵

- The Melbourne City Link project is one of the largest infrastructure projects ever undertaken in Australia with an estimated total cost of around \$2 billion. It involves around 22 kilometres of road, tunnel and bridge works linking three of the Melbourne's most important freeways. A report by the State Auditor-General found that, while the users of the City Link via toll payments will, in substance, be the financiers of the project, the private sector has accepted substantial obligations associated with the delivery and operation of the City Link, including traffic and revenue risks. However, the auditors also found that the decision to establish the City Link as a toll road was not supported by a financial model which compared project costings on the basis of private sector financing versus government borrowings.¹³⁶

Significantly, there have also been concerns raised about public accountability for privately financed projects. This has stemmed around difficulties Parliaments have experienced in gaining access to contract documents. For example, in relation to the aforementioned M2 Motorway in New South Wales, the Parliament was denied access to the contract deed between the public sector roads authority and the private sector counterpart.¹³⁷

At the national level, the 1996 National Commission of Audit observed that the private sector has a significant capacity for a greater role in infrastructure services. The Commission also concluded that the role for government could be reduced and suggested that the identification of good opportunities for private sector investment in infrastructure could assist the goal of increased national saving.¹³⁸ Accordingly, there has been increasing interest in private financing initiatives in Australia at the federal level, although to date there has been limited actual adoption.

One example where it has been adopted involves the agency responsible for funding and managing the development of Australian government office and diplomatic properties. That agency adopted private financing for a number of projects but has since discontinued private financing arrangements. My Office is currently examining one of these projects, within the context of risk management on foreign exchange dealings.¹³⁹ The key message here is the need for public sector managers to fully appreciate the nature of the commercial arrangements and attendant risks involved in private financing initiatives.

The Department of Defence also is examining the merits of using private financing to realise financial savings or improve effectiveness in the delivery of Defence services. This is to include capital equipment as well as Defence facilities, logistical support and IT programs. The clear intention on the part of Defence in widening the use of private financing is to achieve the best affordable operational capability. Of course, any such move towards private financing of Defence activities would need to consider what core business the Department needs to maintain in order to manage effectively the longer-term risks that are involved in any outsourcing. With this in mind, the Department has indicated in a recent Discussion Paper that private financing is to be considered for all capability proposals and tested as an acquisition method unless the capability:

- involves the direct delivery of lethal force (core Defence business); or
- is demonstrably inappropriate and uneconomic (that is, does not reflect best value for money).¹⁴⁰

The Defence Discussion Paper identified a number of lessons drawn from case studies arising from the UK Ministry of Defence's experience as well as that of two State Governments¹⁴¹—these may be of interest to other public servants, who are required to deal with similar private financing issues, albeit involving different subject matter.

In view of the growing interest in and use of private financing initiatives and the important financial, risk transfer and accountability issues raised, it can be expected that Auditors-General will increasingly focus their attention on examining such activities. It is hoped that such scrutiny can assist in optimising outcomes and providing assurance to the public and Parliaments about the processes adopted and outcomes achieved. In this context, I commend the work done by the United Kingdom National Audit Office in examining privately financed projects and in providing sound guidance to auditors on how to examine value for money of privately financed deals.¹⁴² This is a useful basis on which to move to a discussion of a more networked approach to public administration not only with the private sector to achieve better accountability and efficiency but also within the public sector itself.

V. MOVING TO A MORE NETWORKED APPROACH

Virtually all of the results the government strives to achieve require the coordinated efforts of two or more agencies/parties/levels of government. Unfocussed and uncoordinated programs waste scarce resources, confuse and frustrate customers (citizens) and limit overall program effectiveness. An emerging issue is the need to identify and overcome fragmentation and overlaps in a number of government programs. Market mechanisms may actually create 'islands' within agencies, particularly where activities are more commercially based and make coordination of services to citizens in a seamless manner that much more difficult.

In an increasingly global environment, the question of competitiveness and/or contestability of the public sector against similar elements in the private sector would seem to be likely to focus greater attention on the need to be more outwardly than inwardly focused in the future at least. External pressures may require the development of 'real' partnerships between the public and private sectors in the interests of maintaining national sovereignty and global competitiveness. The imperative would then be to develop a highly performing public sector to complement the private sector rather than just compete with it. In this respect, it is interesting to consider the United Kingdom (UK) 'Modernising Government' approach which stresses 'partnership delivery' by all parts of government as well as with the private sector.¹⁴³ The UK National Audit Office subsequently reported on its response (and strategies) to that policy, including the notion of 'joined-up' government which I mentioned in my introductory comments.¹⁴⁴

In a similar context, an academic paper published in 1999 by Professor Mark Considine and Jenny Lewis of the Melbourne University noted the emerging image of ‘network bureaucracy’ stressing co-production of results as against ‘market bureaucracy’ with its emphasis on contracting-in and introduction of quasi-markets.¹⁴⁵ The move to an output/outcomes framework for managing resources and measuring performance at the Federal Government level has engendered discussion about ‘shared outcomes’ and the strategic and other relationships between outputs that contribute to those outcomes and those organisations responsible for both. Nevertheless, while recognising there are debates, for example, about transactions costs issues associated with contracts and markets, academic writers have also pointed out the limitations of trust-based relationships, longer-term instability of inter-organisational networks, unintended consequences such as fraud and corruption and resistance to innovation and protection for under-performing organisations¹⁴⁶. The issues are not simple and require wide-ranging debate but many might support the view that:

*... the choice between markets, hierarchies and networks should be a matter of ‘practicality’ instead of ‘ideological’ conviction.*¹⁴⁷

The theoretical framework of the market bureaucracy,¹⁴⁸ sometimes referred to as ‘entrepreneurial governance’ or ‘contractualism’, represents the current prevalent type of public organisation management, in which the internal elements of such agencies are structured around markets, and real or hypothetical tests of consumer demand. Market-type bureaucracies in Australia have taken shape in the rapid increase in recent years of the use of contracting in and between organisations, combined with the proliferation of a range of ‘quasi-markets’ for certain public service provisions as health, welfare and educational services.

Market competition provides a potential economic advantage by reducing some of the costs associated with the process of rational choice by allowing the market to determine available means to a defined end. The various solutions offered by potential contractors are considered to represent the feasible range of available strategies, combining both cost and quality considerations. Consequently, the contracting out of services simply requires selection from a known menu of public and private contractors. Academic research¹⁴⁹ indicates that, typically, the market bureaucracy is divided into a strategic core of senior managers responsible for policy and shielded from competition, and a series of separate operational units run as quasi-businesses. These developed their own business plans, devised quotes, and decided work practices according to the real or potential threat faced from other contractors. The development of a contractual rather than employer-employee relationship thus provides senior management with the means to restructure their organisations without the costs of detailed negotiation and without previous forms of industrial dispute.

There are many examples of recent Australian Public Service initiatives that can be regarded as indicative of market bureaucracy at work in public organisations. As discussed briefly earlier in this paper, in 1998-99 my Office completed a performance audit of the Department of Defence’s Commercial Support Program,¹⁵⁰ or CSP, which provides a clear example of a large-scale market bureaucracy where service provision is dominated by competitive tendering and contracting. The objective of CSP is to achieve best value for money in the acquisition of support services for Defence and to give the private sector an opportunity to participate in the provision of those services.

The process involves requesting offers from the private sector to perform support services and comparing those offers with the proposal put forward by any in-house option, where such a proposal may be feasible. The option assessed as providing the best value for money is then selected and a contract is negotiated or, if the in-house option is selected, an agreement for the provision of services is prepared.

At the time of report tabling, 94 Defence activities had been market-tested under CSP with a total value of over \$1.5 billion. The audit found that the program had heightened Defence's awareness of the need for economy and contributed to greater cost-effectiveness of supplying support services. Furthermore, the private sector benefited immensely from CSP, winning 70 per cent of the market testing offers available. This proportion is substantially higher than similar programs operating in the US and the UK. While it is not easy to quantify the exact savings accumulated through programs like CSP, Defence projected recurring annual savings of \$155 million. Market testing can clearly have its advantages for large public service agencies responsible for the provision of a wide range of services to a large client base. Its proponents argue that the real strengths of the market bureaucracy lie in its suitability for certain types of cost containment and means of terminating old programs.

What is not certain, however, is that the market form of organisation is effective in developing new systems of quality service delivery and creating functional institutional linkages within policy sectors. As such, there are several potential problems that can result through market bureaucracies.

First, there is scope for increased distortion and goal displacement through the declining use of internal rules and an increase in entrepreneurial behaviour by bureaucrats. There is also the potential for the corruption of central policy goals by contractors seeking to maximise short-term profits and other immediate material payoffs.¹⁵¹ For example, the extensive use of contracted service providers in some public sector agencies can have important implications for the agency's ability to maintain its surge capacity in times of high demand, as the need for high level of service provision may be incongruent with the contractors' profit motive. Again, Defence is one agency in particular where there is a need to ensure that the overall impact of support service outsourcing does not adversely affect core business and does not erode core capability by default.

An additional concern for Defence's CSP program, which can be extended to similar programs used throughout the rest of the public sector, relates to the long-term cost-effectiveness of contracted service providers. Increased outsourcing by the APS in the last decade has largely been conducted in parallel with the downsizing of the public service. Consequently, private contractors have been able to offer commercially attractive initial prices for support services simply by employing ex-agency employees made redundant through the course of the agency's downsizing, which has eliminated the contractors' needs for staff training. This may become disadvantageous to the agency when the successful tenderer becomes the monopoly supplier of the service, and the agency must subsequently renegotiate the contract from a position of weakness, having eliminated its own in-house capability to perform the particular service. This is an issue that is going to require increasing attention by public sector managers, as has been recognised by the Australian Parliament's Joint Standing Committee on Foreign Affairs and Trade in relation to the Commercial Support Program:

*Frequently, the successful tenderer for the support contract relies on recruiting the trained Defence personnel who have been made redundant in the ADF because of the function's transfer to the commercial sector. Through employing these already-trained personnel, the successful civilian tenderer is able to provide a commercially attractive initial price for a support capability because there is no need to factor in staff training costs in the contract. This process becomes disadvantageous to Defence where the successful tenderer becomes the monopoly supplier of the support service, and Defence must subsequently renegotiate that contract from a position of weakness, having eliminated its own in-house capability to perform the particular function.*¹⁵²

Financial and performance risks associated with market bureaucracies have also become apparent in Australia as part of the outsourcing of employment services previously provided by the public sector that I mentioned earlier. Under the outsourced arrangements, payment structures and incentives for service providers are linked to the placement of job seekers in work. The publicly owned provider fared poorly in the most recent round of tender, losing most of its contracted work to provide intensive assistance services,¹⁵³ which are considered to be the most lucrative for service providers. However, there was public concern that the loss of these contracts could render the public service provider not financially viable and that it may not be financially viable for commercial entities to provide employment services in some areas, particular rural and regional areas. The Government has committed to fund the public service provider for three years in order to ensure rural and regional access to employment services.¹⁵⁴

Weaker levels of public accountability can also be characteristic of the market bureaucracy. Services that become market tested are subsequently subject to claims of commercial confidentiality, which restricts the public's access to knowledge of how public funds are being spent. As outlined earlier, I consider that the question as to whether or not commercial-in-confidence information should be disclosed to the Parliament should start from the general principle that information should be made public unless there is a good reason for it not to be.

The weaknesses in market-based bureaucracies have seen the development of a concept of network bureaucracies. For example, it has been commented that:

*While the market form of organisation is thought by its proponents to excel at certain types of cost containment, and is a favoured means for terminating old programs, it is less certain that it is able to build new systems of quality service delivery and to create effective institutional linkages within policy sectors. Network advocates have begun to suggest that the competitive market bureaucracy may not mobilise support, share information successfully, invest in new technologies, create common service standards, and focus upon the individual needs of suppliers and clients. Furthermore, it is suggested, markets may undervalue the rights of individual clients when the cost of difficult clients is higher than the benefit to be gained from "creaming" only the better priced customers.*¹⁵⁵

In comparison, the network bureaucracy concept proposes interdependence as a binding characteristic where services are tailored to individual or small batch clients and costs are shared across an inter-organisational web of co-producers. Network agents are the local officials who take direct responsibility for establishing effective links between suppliers, co-producers and customers. In the UK, it has been observed that a key difference between the Compulsory Competitive Tendering (CCT) regime and achieving best value is the emphasis which the latter places on promoting partnership, particularly joint ventures between local authorities and the private sector.¹⁵⁶

The adoption of a market-based approach to public administration has been reflected in Australia, for example, through the wide adoption of purchaser-provider relationships. Such arrangements are likely also to be encouraged through the increased adoption and impact of e-commerce with its focus on coordination and collaboration in the business environment in particular and with shared databases as well as greater electronic integration in a virtual 'one-stop' service delivery environment.

However, there do appear to be indications that the network bureaucracy concept is gaining favour as a means of delivering more responsive public services to citizens. For example, one recent ANAO report¹⁵⁷ discussed how three welfare agencies were defining their particular outcomes and outputs and how the outputs of one of these agencies were directly related to the outcomes of the purchasing departments. These arrangements have subsequently expanded such that the particular Commonwealth agency, Centrelink, now delivers services on behalf of a total of four agencies under formal purchaser-provider arrangements.¹⁵⁸

A further indication of a possible move towards network bureaucracies is the renewed focus on the needs of clients. This is, at least partly, a consequence of a Government decision in March 1997 to introduce Service Charters in order to promote a more open and customer-focused Commonwealth Public Service. All Commonwealth Departments, agencies and Government Business Enterprises that have an impact on the public must develop a Service Charter. These Charters are to represent a public commitment by each agency to deliver high quality services to their customers. Where relevant, the charters will guarantee specific standards for service delivery. The importance of such performance has been stressed by the Senate Finance and Public Administration Legislation Committee, in the context of agency Annual Reports, as follows:

*The Committee will continue to monitor the results of implementation of charters to ascertain the extent to which identified customer needs and quality of services are being met and that any problem areas are addressed.*¹⁵⁹

Again, the notion is to make the public sector more accountable to the general Australian community and more outcomes-focused. The New Zealand Auditor-General has published recently a comprehensive report on service delivery including best practice criteria and a discussion of what distinguishes public from private services.¹⁶⁰ As well, the report included an analysis of service delivery over the Internet.¹⁶¹

Where service delivery has been outsourced, Service Charters will clearly have a direct impact on the private sector contractor. In particular, it is to be expected that

outsourcing contracts will need to reflect the Service Charter commitments if the Charters are to have any meaning. It will also be important to require, as part of the contractual arrangement, the provider to supply outcome, output and input information against which the provider's performance can be assessed, including whether processes are efficient and the service quality is satisfactory. In this way, even if the client is one or more steps removed from the responsible department, it should still be possible to ensure clients are receiving the appropriate level and quality of service, consistent with the Service Charter. Such an approach may also be expected to reinforce the notion of both the private sector provider and the contracting agency being dependent on one-another for delivering a satisfactory level of performance and accounting for this performance.

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

The aim should be to deliver services which appear seamless to the recipient.¹⁶² In such arrangements, where there is joint responsibility for overseeing and implementing programs across a number of bodies, involving public and/or private sector organisations, a clear governance framework and accountability and reporting arrangements, which clearly define roles and responsibilities of the various participants, may be required. Increasingly, relevant governance arrangements will need to cross organisational boundaries to better align activities and reduce barriers to effective cooperation and coordination. Of note is the fact that globalisation has resulted in an increasing number of business networks operating across national borders. Networks do not necessarily require formal organisational structures.

More networked or partnered arrangements can also overcome the inflexibility of a contract. Partnering and strategic alliancing are increasingly being adopted in the private sector as a means of coordinating economic activity. Such networked arrangements are seen to enable a greater exchange of ideas and information and allow partners to gain access to knowledge and resources of the other parties. The Victorian Public Accounts and Estimates Committee, quoted earlier, observed that a partnering approach could be warranted where:

- *service providers are encouraged to be innovative in the delivery of services;*
- *the nature of the services is highly variable or evolving, leading to poor predictability of demand and service content; and*
- *the services will be using leading edge practices/technology in which a high degree of flexibility on the part of both parties will be required to make it work.*¹⁶³

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

Another important aspect of developing networked solutions is the availability of information to clients. Information technology is providing significant opportunities for government to ensure that existing and potential clients have access to the information they require. Information technology can also be an effective tool for improving the cost-effectiveness and quality of services provided to citizens. It is also central to improving accountability. It is not unrealistic to suggest that the effective networking of information technology systems will be crucial to implementing integrated public services. On this issue I have noted that the Central IT Unit in the UK is establishing common standards and infrastructure to enable interoperability across government departments and the wider public sector.¹⁶⁴

VI. CONCLUDING REMARKS

Public sector reforms are now well underway in many countries, including Australia. These reforms require public servants to be more responsive and meet changing client needs; to be more efficient, effective and ethical; to be more flexible in responding to internal and external change; and to support national economic and other imperatives. Often the preferred policy responses have embraced strategies of public sector downsizing, privatisation, commercialisation and corporatisation. They bring with them new challenges such as market-testing and competitive tendering and contracting out, all of which may be considered to present opportunities for, as well as risks to, public services that have traditionally said to be risk averse. These new elements are central to improved business performance and accountability in the current program of reforms to the public sector.

In effect, we are witnessing a convergence between the public and private sectors. Convergence represents a major challenge for public service managers to establish an appropriate balance between achieving cost effective outcomes and accountability for the manner in which public sector resources are used. While the public sector reforms demand a greater focus on achieving efficient and effective outcomes for citizens, we also need to recognise that such outcomes also depend importantly on robust and credible administrative and management processes. In short, good processes should ensure good outcomes. They are complements not alternatives.

As experience has proven, savings and other benefits do not flow automatically from privatisation and commercialisation. Accordingly, the convergence of the public and private sectors raises a number of important questions for public sector managers, their private sector partners and accountability institutions such as Auditors-General.

Public sector managers will be held accountable still for the outcomes and/or results achieved. In a more contestable and performance-oriented environment, increasingly involving the private sector, a major issue for those managers is just what being accountable actually means in practice. I would hope that on-going guidance would come from the Parliament and/or the Government in this respect. I note that a key Senate Committee has served notice that it will:

*... continue to question, in estimates and in annual report or other agency operating processes, such matters as the delivery of services when contractors go to the wall, legal costs, the immediate and longer term costs and benefits of the use of contractors, the probity of tender processes, et cetera.*¹⁶⁵

At the very least, we will need to be in a position to respond in a timely and effective manner to such questions as part of our accountability to Parliament.

The privatisation of the public sector does not obviate the need for proper accountability for the stewardship of public resources, as it is accountability that is fundamental to a democratic system. Furthermore, it is my view that accountability can assist to improve performance.

Accountability and improved performance stem from integrated, effective corporate governance frameworks. The public sector does have something to learn from the private sector in this respect, while recognising the public interest factor and associated wide-ranging accountability requirements of the public sector. On the other hand, if privatisation of public services is to work effectively, private sector providers have to recognise the rights of citizens not just as customers or clients, and the associated accountability that goes with that recognition.

The growing convergence between the public and private sectors gives focus to the distinctions between the two, while also offering opportunities for greater partnership and synergy between them. Further, the convergence raises issues about whether there should be a change in the nature of accountability. There are a number of realities to recognise, such as the following observation:

*The private sector has no real equivalent to political accountability, for which precise measures are never likely to be found.*¹⁶⁶

In a similar vein Professor Richard Mulgan of the ANU has observed that:

*... as long as management in the public sector continues to be assessed by private sector standards, and as long as the private sector continues to be increasingly entrusted with public purposes, both political and social as well as economic, we can expect further pressure on the distinction between the two sectors in matters of accountability.*¹⁶⁷

Private sector providers clearly feel under pressure from the openness and transparency required by the public sector accountability relationship with the Parliament and the community. Public sector purchasers for their part are under pressure to recognise the

commercial 'realities' of operating in the marketplace. A recent paper has drawn attention also to differences in legal responsibilities, particularly in the context of the *Corporate Law Economic Reform Program (CLERP) Act* and the *Commonwealth Authorities and Companies (CAC) Act 1997*.¹⁶⁸

Corporate governance provides the integrated strategic management framework necessary to achieve the output and outcome performance required to fulfil organisational goals and objectives. Risk and control management are integrated elements of that framework. There is really no point in considering each in isolation. A sound corporate governance framework offers some worthwhile protection against risk. More particularly, the framework offers a chance to improve agency performance.

The growing recognition and acceptance of risk management as a central element of good corporate governance and as a legitimate management tool to assist in strategic and operational planning has many potential benefits for the public sector. However, the effective implementation of risk management practices is a major challenge for public sector managers, particularly given the public sector culture. Parliament itself, and its Committees, are still coming to grips with the implications of managing risks instead of minimising them, almost without regard to the costs involved. It is a reflection of the notion of taxpayers' funds held in trust.

In the past, risk has been related to the possible loss of assets or the emergence of a liability. As a result, risk management has focused on matters that can be covered as insurable losses. However the more contemporary definition of risk is far broader, reflecting the increasing complexity of our corporate and economic environment and incorporating corporate governance, operational and strategic objectives. I earlier noted a Comcover comment that uninsurable costs can represent between three and six times the insurable cost. But it is not just the protection of public moneys (resources) that is at issue. It is also the way in which we use those resources including, importantly, the results we obtain.

I see risk management as an essential, underlying element of the reforms that are currently taking place in the public sector. Management of risk in the public sector involves making decisions that accord with statutory requirements and are consistent with public sector values and ethics. Such an approach encourages a more outward-looking examination of the role of the agency or entity, thereby increasing customer/client focus including a greater emphasis on outcomes, as well as concentrating on resource priorities and performance assessment as part of management decision-making. As well, with the increased emphasis on contestability and the greater convergence of the public and private sectors, there will be a need to focus more systematically on risk management practices in decision-making that will increasingly address issues of cost, quality and financial performance.

There is no doubt that the more 'market-oriented' environment being created is inherently more risky from both performance and accountability viewpoints. As I have noted earlier, contracting out, project management and new technology, both computing and communications, make for a new environment which is inherently more risky from both performance and accountability viewpoints than in the past.

Within the APS, old paradigms are being replaced; the new paradigms require us to make substantial adjustments to what were, for some of us, the practices of many years. We are all, my agency included, on a steep learning curve in this new environment. Public servants who may have helped deliver an acquisitions or maintenance program, or perhaps were responsible for an agency's IT requirements now find that their responsibilities have been delegated to a private sector operator. New skills and new mechanisms are demanded as agencies divest themselves of particular responsibilities but not, they come to realise, of their accountability obligations.

Agency heads undoubtedly feel that the accountability expected of them is greater than in previous years, as not only do they have to manage their own activities but they must also oversee the contractors now performing increasingly what were previously core public sector functions. Although their goal in employing contractors is greater efficiency, this objective, as they very quickly discover, may be confronting in relation to their obligation to adhere to expectations of accountability. The accountability/efficiency trade-off goes to the very core of their heightened risk profile.

To good managers, the new environment is an opportunity to perform better, particularly when the focus is more on outcomes and results and less on administrative processes and the inevitable frustration that comes from a narrow pre-occupation with the latter. Having said that, it is important for us all to remember that the Public Service is just as accountable to the Government and to the Parliament for the processes it uses as for the outcomes it produces. That is inevitable and proper. As experience shows, good processes contribute to good outcomes.

From an audit viewpoint, we need to have full access to information and government assets, including on private sector premises as necessary. We need to be able to assure Parliaments and Executive Governments about legal compliance, probity, security, privacy and ethical behaviour as well as providing an opinion on financial reporting and the systems and controls on which such reporting is based. We also need to be able to put in place a sound basis on which to assess the performance of private sector providers as well as of the 'purchasing' agencies. In most respects we should not need any more information and/or evidence than the accountable public servants would require to discharge their management obligations. Such accountability cannot be outsourced to the private sector. Nor can auditors fail to contribute to the development of a suitable accountability framework to the changing environment of the public sector with a greater focus on the market and the involvement of the private sector.

I would argue that corporate governance provides the mechanism to bring all of this together - not simply to manage the risks but to transcend them. I said earlier that corporate governance becomes more pressing in a contestable environment because of the separation of core business operations and the outsourced service delivery elements. This is because a sound corporate governance framework assists business planning, the management of risk, monitoring of performance and the exercise of accountability. While we can, and should, learn from private sector experience in such areas, public sector managers would do well to be mindful of the need for transparency and the interests of a broader range of stakeholders particularly when assessing and treating risk. We may not always be responsible for delivering public services but inevitably we will be held accountable for results achieved.

Good corporate governance should result in good performance. Whatever framework is put in place by organisations, it is important to ensure that it will facilitate the achievement of desired outputs and outcomes. Good processes are required to achieve good results. They are not alternatives. And they do not occur by accident. In relation to a 1997 survey of the United States Government's *Performance and Results Act*, the General Accounting Office (GAO) stated that:

*'Significant performance improvements are possible when an agency adopted a disciplined approach to results-oriented goals, measuring its performance, and using performance information to improve effectiveness.'*¹⁶⁹

A well governed organisation will provide to its CEO, its Board, its responsible Minister(s) and other stakeholders, reliable and well founded assurances that it is meeting its performance targets. Above all, a well governed organisation can achieve better performance and it will have a robustness, as well as the internal cohesion and direction essential to successfully drive the organisation forward and to respond quickly and coherently to changing external conditions. The latter may demand better networking and development of 'real' partnerships, both internally and externally, with other public sector entities and, increasingly, with the private sector.

Sound corporate governance frameworks will enhance the development of such networks and partnerships and facilitate risk management so that opportunities can be taken to be more responsive and improve performance while minimising risk. This is not the responsibility of a few. It involves all of us working cooperatively and sharing experiences and information. In this way we can be more confident about delivering defined outcomes and being accountable for the way in which our results are achieved. These requirements are integral to the more market-oriented approach being taken to public administration in recent years, often under the heading of New Public Management. The disciplines involved have focussed greater attention on performance management and accountability for that performance. Devolution of authority has likewise focused similar attention on individuals.

In the light of the rapidly changing global environment, accentuated by developments in information technology and communications, one question is how can we turn a more privatised public sector to Australia's advantage. There will undoubtedly be increasing pressure on skilled resources and demands for greater innovation as well as competitiveness. Simply put, we want to improve our performance without diffusing responsibility and accountability to the point where:

*'Individuals feel no longer solely responsible for the outcomes of decisions.'*¹⁷⁰

At the very least, we need to have shared strategic planning and management in some situations where all stakeholders have to contribute. The technology will facilitate the sharing of information within whatever constraints of privacy and security and/or need to know that might apply. As well, technology can assist in the delivery systems reflecting 'seamless' government and greater responsiveness to citizens.

It is unlikely that such 'sharing' could be definitively covered in present day 'legally based' contracts. This suggests some other forms of agreement and disciplines to ensure that both the parts and the whole are held responsible for their overall performance; and that accountability for the results is absolutely clear both to the immediate parties and to other stakeholders. It seems like a tall order. But the pressures are only likely to increase, even in so-called 'core' areas of government, for more 'cross-cutting' approaches to better deliver program outcomes. Participants might be interested in exploring the notion of 'relational contracts' in particular environments to test their effectiveness. These so-called 'soft' contracts focus on cooperation as the guiding principle of contracts.¹⁷¹ It is, perhaps, another example of the exercise of management flexibility to achieve required outcomes where real partnerships and full cooperation of a range of service suppliers are required to be citizen 'centric'.

We should be able to explore different partnership arrangements within the public sector to ascertain what will work in a cohesive and sensible fashion in particular situations such as the Coastwatch Program. Moreover, it may also be possible to test similar arrangements within the private sector, where it is involved in the provision of public services, in a way that can accommodate both private and public interests. Nevertheless, whatever is attempted needs the support and endorsement of the Government and Parliament if it is to succeed. These are likely to be considerable challenges.

The on-going challenge for the public sector will continue to be meeting performance and accountability expectations, whatever the approach taken to our changing environment. My expectation is that we should contribute to any such approach as well as understand and implement it. This would also involve establishing modes of network governance to ensure proper integration and coordination of networking activities essential to the effective operation of strategic alliances. Such governance arrangements have to be well understood and accepted by all concerned. In my view, any arrangements have to be dynamic and flexible to meet the needs of all participants including, importantly, those of citizens within the democratic, political and administrative, framework determined by the Government and Parliament. And is that not what public service is basically all about?

NOTES AND REFERENCES

- ¹ 'Cross Cutting', as used in the United Kingdom Modernising Government Agenda, refers to issues that cut across departmental boundaries, such as tackling social exclusion, fostering small businesses or protecting the environment. It is not a new concept but the challenge is how does the public service promote and manage effective cross-cutting in practice.
- ² 'Joined-up Government' is a similar expression to 'cross-cutting' and means that different parts of Government should work more closely together and across departmental and institutional boundaries than they have in the past. It has similar connotations for the use of computing and communications facilities in government for service delivery and the notion of one-stop-shops.
- ³ Pearson Des 1999, '*The Cost of Accountability - Getting the Balance Right*', Presentation to the Australasian Council of Public Accounts Committees, Fremantle, 21-23 February.
- ⁴ Reith, P. The Hon. 1996, '*Towards a Best Practice Australian Public Service: Discussion Paper*', AGPS, Canberra, (page x).
- ⁵ In 1995 the estimated amount raised globally from privatisation was some \$62 billion, down from \$69 billion in 1994. Privatisation offerings by OECD countries amounted to \$46.8 billion in 1995, compared to \$51.6 billion in 1994, with the largest amount raised in 1995 being in Australia (\$9.4 billion). [OECD, 1996, '*Privatisation Trends in OECD Countries* {online}. Available: <http://www.oecd.org/>. [24 August 1999].
- ⁶ National Commission of Audit, 1996. '*Report to the Commonwealth Government*', June.
- ⁷ Funnell Warwick, and Cooper Kathie, 1998. '*Public Sector Accounting and Accountability in Australia*'. UNSW Press (page 295).
- ⁸ Controller and Auditor-General of New Zealand. 1999. '*Towards Service Excellence : The Responsiveness of Government Agencies to Their Clients*'. Wellington, August (page 3)
- ⁹ Kemp Dr David The Hon. MP 1998. '*Building the Momentum of APS Reform*'. Address to PSMPC Lunchtime Seminar, Canberra 3 August (page 3)
- ¹⁰ Howard J The Hon. 1997, '*The Sir Robert Garran Oration*', presented to the National Conference of the Institute of Public Administration Australia, Canberra, September, as cited in Davis, G. and Wood, T. 1998, '*Is there a Future for Contracting in the Australian Public Sector*', Australia Journal of Public Administration, Vol. 57, No. 4, December, (page 95).
- ¹¹ Howard J The Hon. 1997, '*The Sir Robert Garran Oration*', presented to the National Conference of the Institute of Public Administration Australia, Canberra, September, (page 6).
- ¹² From 1 January 1998, the former *Audit Act 1901* was replaced with three Acts which together provide a robust framework for the financial management of the Commonwealth public sector as follows:
 - (a) the *Auditor-General Act 1997* provides for the appointment, independence, status, powers and responsibilities of the Auditor-General, the establishment of the ANAO and for the audit of the ANAO by the Independent Auditor;
 - (b) the *Financial Management and Accountability Act 1997* sets down the financial regulatory, accountability and accounting framework for Commonwealth bodies such as departments that have no separate legal financial existence of their own (ie they are simply agents of the Commonwealth); and
 - (c) the *Commonwealth Authorities and Companies Act 1997* provides standardised accountability, ethical and reporting provisions for Commonwealth bodies that have a separate legal existence of their own (eg Commonwealth-controlled companies and their subsidiaries and those statutory authorities whose enabling legislation gives them legal power to own money and assets).
- ¹³ Barrett P. 1998, *Corporate Governance*, address by the Auditor-General for Australia to the Defence Audit and Program Evaluation Committee (DAPEC), Canberra, 28 July, (page 4).
- ¹⁴ Reuters, 1997. "*Let Taxpayers sue IRS – House tax chief.*" 11 October.
- ¹⁵ Attorney-General's Department 1999, '*High Court Ruling – duty of care in relation to workforce in an industry regulated by a statutory authority*' (reporting on *Crimmins v. Stevedoring Industry*)

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- Finance Committee: High Court of Australia, 10 November 1999), AGS Casenotes, No. 23, 12 November.
- ¹⁶ ANAO 2000, *Business Continuity Management—Keeping the Wheels in Motion*, Better Practice Guide, Canberra, January.
- ¹⁷ Barrett, P. 2000, *Business Continuity Management: Opening remarks at a launch of a Better Practice Guide*, Canberra, 23 February.
- ¹⁸ Catley B. 1996, '*Globalising Australian Capitalism*', Cambridge University Press, (pages 107-8).
- ¹⁹ World Bank (unsourced).
- ²⁰ Fagan R, & Webber M, 1994, '*Global Restructuring – The Australian Experience*', Oxford University Press, (pages 63-4).
- ²¹ Economist 2000. '*The world's view of multinationals*', 29 January, (page 19).
- ²² Ibid.
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- While their findings for New Zealand have not been tested for the Australian situation, I think that it is of interest that in New Zealand there was found to be a variable degree of success in maintaining financial and service performance during organisational change.
- The Auditor-General made the point also that the purpose of organisational change should be clearly articulated to those involved, and that there were practicalities to be considered such as setting realistic time limits for change, ensuring that during change there was clear delineation of roles and responsibilities in the revised structure and ensuring that new skills were available to handle revised functions such as contracting out.
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- (a) *it would prejudice the security, defence or international relations of the Commonwealth;*
 - (b) *it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet;*
 - (c) *it would prejudice relations between the Commonwealth and a State;*
 - (d) *it would divulge any information or matter that was communicated in confidence by the Commonwealth to a State, or by a State to the Commonwealth;*
 - (e) *it would unfairly prejudice the commercial interests of any body or person;*
 - (f) *any other reason that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the information should not be disclosed.*
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- *Know what you want, but avoid over prescription. Specify outcomes and standards rather than process.*
 - *Long term contracts, defined as at least 7 years, but usually in the 15 to 35 year range, are needed for the private sector to recoup investment.*
 - *Assessment of projects should be based on the private sector's cost of capital rate, which in turn is based on the project risk.*
 - *Projects need to be aggregated to an economic size, rather than a number of small 'packets', taking into account the benefits of proposals over the life of the asset and the benefits to the organisation as a whole.*
 - *Private financing involves higher initial transaction costs, and higher cost of finance, than traditional procurement, which need to be offset by whole of life savings and benefits. For this reason, private finance and traditional tendering processes should not normally be carried out in parallel.*
 - *Contracts have generally led to improvements, either through savings or through an improved level of service.*
 - *Risk assessment and management is critical to success.*
 - *A centre of expertise is necessary in private financial policy and practice, as is ready access to external financial expertise, to effectively manage and assess privately financed projects.*
 - *Competition needs to be retained in the marketplace as much as is practicable.*
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