

Public Service and Merit Protection
Commission Senior Executive Service
(SES) Breakfast Seminar Series

**Some Current Issues in
Accountability**

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Pat Barrett
Auditor-General for Australia

1. INTRODUCTION

The simplest explanation of accountability is the requirement to answer to somebody for something. And therein lie the seeds of confusion, conflict and recrimination. As the then Management Advisory Board and its Management Improvement Advisory Committee (MAB-MIAC) observed in 1993:

In describing the accountability mechanisms within the public service, care has been taken to clarify the basic relationship between the complementary concepts of authority, responsibility and accountability. A mismatch between the first two elements can weaken the accountability relationship.¹

It is this relationship that I want to address today, mainly in the context of the greater involvement of the private sector in the Australian Public Service (APS), not only as a supplier to, but also particularly as a direct provider of, that service. In that context, it is useful, as MAB-MIAC pointed out, to see:

accountability as existing where there is a direct authority relationship within which one party accounts to a person or body for the performance of tasks or functions conferred, or able to be conferred, by that person or body.²

Put simply, the challenge becomes to identify who is accountable for what. I accept that there is a continuum of accountability relationships between the electorate, the Parliament, the Government and the public service.³ However, the ongoing difficulty is to define such relationships in a credible manner that is acceptable to all those parties. This difficulty continues to be exacerbated by successive governments not having control of the Senate, which puts greater pressure particularly on the accountability relationship between the Parliament and the Government. That, in turn, raises issues for the accountability relationships of the public service with each of those parties. I will also discuss illustrative examples of such issues within the timeframe available.

However, I think it would be useful first to do some more scene-setting and discuss what I think is the major on-going challenge for public service managers in this changing environment. The clearest accountability imperative is adherence to the rule of law. Conversely, the greatest uncertainties and conflicts are created by the administrative, particularly political, environment and its demands that are not clearly related to the legal framework applying to the public service, including any guidelines derived from particular statutes. Sometimes this is simply described as an area of discretion or judgement. While public servants have always had to deal extensively in such an area, not least of all because of differing political philosophies and expectations, as well as the demands of value systems and codes of conduct, the accountability equation has been made more difficult with recent public service reforms.

On the one hand, there is now a clear legal requirement for Chief Executive Officers (CEOs) to be accountable for the efficient, effective and ethical use of their resources under the *Financial Management and Accountability (FMA) Act 1997* (Section 44)

and for Secretaries and Heads of Executive Agencies to be accountable to the Government, the Parliament and the public under the *Public Service Act 1999* (Sections 57 and 66). However, on the other, all the major legislation dealing with the public sector, including the foregoing Acts as well as the *Commonwealth Authorities and Companies (CAC) Act 1997* and the *Workplace Relations Act 1996*, is now principles based. This means that, in large part, the Chief Executive's Instructions (CEIs) have to determine the detail of accountability requirements and/or the extent of discretion available. The lack of attention, including ongoing oversight and review, of CEIs by a number of agencies is therefore somewhat perplexing.

That said, Secretaries and Heads of Agencies have been faced with a conundrum given their legal accountabilities, in a reform environment of devolved authority, and the demands made by whole-of-government (centralised) approaches and initiatives. While having to achieve an appropriate balance between government policy, serving a range of different objectives, and accountability for securing value for money outcomes has long been a challenge for CEOs, the legal imperative has changed that balance. In my view, this requires the need for clear recognition of the accountability imperative in any policy statement which has a significant impact on public administration. This would remove any uncertainty, or equivocation, about the accountability obligations. An example is the government's outsourcing policies in relation to information technology (IT) and corporate services. In a number of IT outsourcing situations, there was concern about the impact of decisions on CEOs' accountability obligations and, in particular, on the responsibilities of Boards covered by the CAC Act.

This conundrum was specifically addressed in the review of the "Whole of Government Information Technology Outsourcing Initiative"⁴ conducted by Richard Humphry AO, Managing Director of the Australian Stock Exchange. Mr Humphry noted that:

*While it is the prerogative of the Government to set overall direction, the introduction of the FMA and CAC Acts places responsibility for implementation of policies with Chief Executives and Boards.*⁵

He went on to recommend:

*Accordingly, future responsibility for implementing the Initiative should be fully devolved to agency Chief Executives or Boards.*⁶

Other recommendations also focussed on the latter's ongoing responsibilities and discretion. The Government accepted all the Review's recommendations.

The above issue is basically about who is accountable for what, particularly in an era where CEO accountability is very much tied to the primacy of the rule of law. In other situations which are emerging in a more collaborative public service, internally and externally, the challenge for CEOs, and other levels of the public service, will be to ensure they have the appropriate information, and robust risk assessment, on which to base decisions about the appropriate balance to be struck in relation to performance, and accountability for that performance, including the processes and methods used in achieving the results required. While the notion of shared responsibility is hardly

novel, the concept of shared accountability is a different matter, particularly where the private sector is concerned and Parliament's view that 'accountability cannot be outsourced'. More about that later.

The remainder of the address is in two parts, as indicated earlier. The first part deals with some issues, such as Parliamentary access to information for accountability purposes including that classified as commercial-in-confidence and the apparently changing nature of accountability with greater private sector (including the non-profit segment) participation in governance. The second part examines the notion of accountability in the more collaborative environment being created in the APS with its emphasis on greater networking both between, and across, agencies and with the private sector. In particular, it raises questions about contract management and memorandums of understanding, risk sharing, shared objectives as well as shared understanding of the various business and functional imperatives of the collaborating organisations and the practicality of shared accountability arising from joint responsibilities. I thought it might also be useful in this context to comment briefly on the possible wider adoption of private financing which has been the subject of a recent government decision.

I do not attempt to provide answers to these questions, but raise them for consideration. Not surprisingly, I do have views on them as a former program manager who has worked in collaborative arrangements with the private sector. My simple position can be summed up by the old expression 'horses for courses', which comes back to management and their ability to manage, and be accountable, in the flexible environment provided by the Government's various public service reforms. It is difficult to divorce the concepts of accountability and responsibility, as Dr John Uhr of the Australian National University points out.⁷ He notes that:

*Responsibility refers to a delegation conferred on someone, or a power given to someone, to exercise their judgement about what constitutes an appropriate course of action.*⁸

He goes on to observe that:

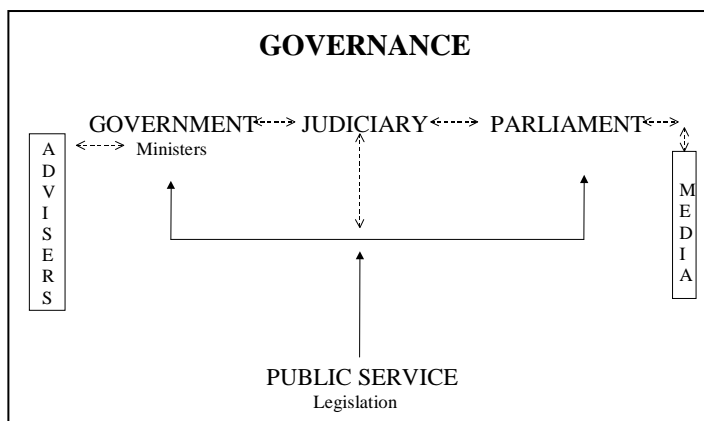
*Accountability and responsibility are two parts of a larger whole : whoever is 'responsible for' a policy or program is also 'accountable to' some authority for their performance within their sphere of responsibility.*⁹

And therein lies the conundrum in the public/private sector dichotomy.

2. ACCOUNTABILITY TO THE PARLIAMENT

Public sector managers have a particular responsibility, to the Government and to the Parliament, to help ensure that accepted notions of responsibility, accountability and performance, including results, are being properly implemented by the public sector. This is a recognition of the supremacy of the Government and the Parliament in the governance framework (see Figure 1).

Figure 1



But it is also a reflection of apparent changing accountability relationships between public servants and Ministers on the one hand and Parliament on the other. There has also been a change in the Westminster notion of the overall responsibility of Ministers for both policy and administration in their portfolios. Guidance indicates that where Ministers neither knew, nor should have known, about matters of departmental administration which come under scrutiny, it is not unreasonable to expect that the Secretary or some other senior Officer will take the responsibility.¹⁰ However, Ministerial responsibility is not an issue I will be covering directly here. Nevertheless, I noted with some interest the suggestions made by the ACT Auditor General in his recent report on *Enhancing Professionalism and Accountability*¹¹ that:

*the Legislative Assembly should consider and determine the extent to which Ministers are to be held accountable for the operation of public sector administrative units. As well, if the Legislative Assembly decides that Ministers should not be held fully accountable for the operation of public sector administrative units, then the Legislative Assembly should consider other means by which clear and full accountability to the public for the use of the public's resources is to be achieved.*¹²

Tensions have arisen, particularly in the context of Australian Parliamentary Committees, about the unfulfilled expectations arising from the trade-offs between providing greater management flexibility and the accountability for improved performance. In part, this perceived 'failure' can be explained by an inevitable time gap between the two events. There would also seem to be scope for agencies to not only take more initiatives to better inform the Parliament and its Committees about what they are doing, particularly in promoting greater accountability and performance management, but also to ensure that they are more attuned to the views and concerns being expressed by those stakeholders. As a result, public sector agencies and bodies should be better equipped to know just how Parliamentary expectations can be met, thus building up a more productive relationship.

In a recent interim report by the Senate Finance and Public Administration References Committee¹³, concern was expressed, by the majority opinion, about the right of the Committee to access documents and information necessary for it to effectively conduct an inquiry into a matter of public concern.¹⁴ The Committee considered that it was

one aspect of accountability that had been undermined in its inquiry. The purpose of the interim report was:

*to highlight the apparent lack of understanding in the Australian Public Service about parliamentary accountability, as illustrated by the arguments put forward during this inquiry, and to draw attention to what is clearly a wider problem.*¹⁵

The Government's Guidelines for Official Witnesses before Parliamentary Committees are aimed at encouraging the freest possible flow of information, about the factual and technical background to policies and their administration, between the public service, the Parliament and the public.

The Senate Committee also sought to facilitate an improved awareness of parliamentary accountability in the private sector in order for it to understand the rules of accountability. In its further, but not final, report the Committee reiterated its concerns, as well as those of a number of other Parliamentary Committees, with the 'lack of accountability' and noted that 'Parliamentary accountability is the corner stone of modern democracy.'¹⁶ In relation to one case, the Health Group tendering process, the Committee's (majority opinion's) concern at not being able to obtain unfettered access to all the documents necessary to reach an informed conclusion has led it to requesting me to undertake an examination of the case. I have agreed to a limited scope audit relating to the particular issue of concern to the Committee and, as noted, to other Parliamentary Committees, such as the Joint Committee of Public Accounts and Audit (JCPAA) and Senate Finance and Public Administration Legislation Committee.

While Parliamentary access issues are not new, the current concerns are reflective of the increasing involvement of the private sector. As I will discuss later, this has raised questions about 'new frameworks of accountability'.¹⁷ Quoting Dr John Uhr again:

*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'*¹⁸

The latter is of particular interest, which is worthy of separate comment.

Such observations are a particular illustration of the need to meet Parliamentary expectations in the area of contract management. Another related issue that has arisen is that of access to contractor records and other information relevant to public accountability. My Office has experienced problems in accessing contractor information both through audited agencies and in direct approaches to private sector providers. This matter should be of concern to public agencies in their role as contract managers, to executive government as decision-makers, and to the Parliament when scrutinising public sector activities. In particular, public service managers need to have a level of access sufficient to ensure they can meet their own accountability obligations.

In this context, I noted with some interest in a recent United Kingdom (UK) National Audit Office Report¹⁹ that a public authority had faced great difficulty in getting timely information on the true extent of the private sector provider's financial difficulties. This was because, under the contract, it had no access to the contractor's underlying financial records.²⁰ However, the Report also noted that greater rights of access to the private sector party's financial records are now standard in that country.²¹

As part of performing a statutory duty to the Parliament, the Auditor-General may require access to records and information relating to contractor performance. My legislative information-gathering powers²² are broad but they do not include a statutory right of access to contractors' premises to obtain information.

In September 1997, my Office circulated draft model access clauses to agencies and recommended their insertion in appropriate contracts. These clauses give the agency and the ANAO access to contractors' premises and the right to inspect and copy documentation and records associated with the contract.

The primary responsibility for ensuring there is sufficient access to relevant records and information pertaining to a contract lies with agency heads. A Chief Executive must manage the affairs of the Agency in a way that promotes proper use (meaning efficient, effective and ethical use) of the taxpayers' resources, as noted earlier. Such an arrangement reflects the principles of good governance accepted internationally.

For accountability measures to be effective, it is critical that agencies closely examine the nature and level of information to be supplied under the contract and the authority to access contractors' records and premises as necessary to monitor adequately the performance of the contract. I stress 'as necessary' because I am not advocating carte blanche access. I consider that access to contract related records and information should generally be equivalent to that which should reasonably be specified by the contracting agency in order to fulfil its responsibilities for competent performance management and administration of the contract. Access to premises would not normally be necessary for 'products' or 'commodity type' services, such as cleaning, which are provided in the normal course of business. It would be a different matter where government information or other significant assets were located on private sector premises.

The inclusion of access provisions within the contract for performance and financial auditing is particularly important in maintaining the thread of accountability with government agencies' growing reliance on partnering with the private sector and on contractors' quality assurance systems. In some cases, such accountability is necessary in relation to government assets, including records, located on private sector premises. This is important both for agency management and audit assurance to other stakeholders, including the Government and the Parliament.

The JCPAA has recommended that the Minister for Finance and administration make legislative provision for such access.²³ The Government response to that report stated that:

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

and that

the Government supports Commonwealth bodies including appropriate clauses in contracts as the best and most cost effective mechanism to facilitate access by the ANAO to a contractor's premises in appropriate circumstances.²⁴

The response also stated that:

the Commonwealth Procurement Guidelines would be amended to emphasise the importance of agencies ensuring they are able to satisfy all relevant accountability obligations, including ANAO access to records and premises.²⁵

While noting the Government's response, the ANAO continues to encourage the use of contractual provisions as the key mechanism for ensuring agency and ANAO access to contractor's records for accountability purposes. A good example of the requirements of such access are the clauses included in the Department of Transport and Regional Services' Property Services contract applying to both the service provider and its subcontractors.

The ANAO has recently completed discussions with the Department of Finance and Administration to review the content of the standard access clauses. The Minister for Finance and Administration has now approved the standard clauses. This issue also has implications for agencies' security responsibilities particularly where direct control over Commonwealth assets and/or information reside with a private sector provider. Specific responsibility is set out in the Commonwealth Protective Security Manual 2000 (PSM 2000) as follows:

The agency must be able to carry out an examination of the contractor's security procedures when undertaking its regular audit or review of the contractor's methods and procedures. Access must be permitted for a security risk review to evaluate the contractor's security procedures.²⁶

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

Finally, I should mention, in relation to the issue of accountability to the Parliament, the opinion expressed by the Clerk of the Senate, Mr Harry Evans, in response to a comment made in a Senate Estimates briefing on 23 February last, that 'any clause in a contract, however worded, simply cannot affect the parliamentary power of inquiry.'²⁷

Commercial-in-confidence information

Situations have arisen where performance data relevant to managing a contract is held exclusively by the private sector. Also, private sector providers have made, on many

occasions, claims of commercial confidentiality that seek to limit or exclude data in agency hands from wider parliamentary scrutiny. Thus accountability can be impaired where outsourcing reduces openness and transparency in public administration.

The Australasian Council of Auditors-General has released a statement of Principles for Commercial Confidentiality and the Public Interest²⁸. Of particular concern to Council members has been the insertion of confidentiality clauses in agreements/contracts that can impact adversely on Parliament's 'right to know' even if they do not limit a legislatively protected capacity of an Auditor-General to report to Parliament. For example, the then Auditor-General of Victoria commented that:

*... the issue of commercial confidentiality and sensitivity should not override the fundamental obligation of government to be fully accountable at all times for all financial arrangements involving public moneys.*²⁹

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

*Maintaining secrecy by confidentiality clauses in contracts is adverse to the Parliament's right to know. Confidentiality clauses should not, therefore, be used in contracts unless there are specific approvals for them by the Parliament itself.*³⁰

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

*'Commercial-in-Confidence should not prevent the Auditor-General and Ombudsman from disclosing information where they assess its disclosure to be in the public interest'*³¹

The Chairman of that Committee recently reiterated that a variety of options exist for dealing with commercially sensitive material and that, where genuine reasons exist, it is possible to take a middle ground between unrestricted access or total confidentiality.³² The Chairman went on to note that the only Committee recommendations rejected outright related to the disclosure of information contained in tenders (as opposed to contracts) and the conferral on the Ombudsman of an extended oversight role in relation to commercial-in-confidence claims³³.

Commercial confidentiality concerns have also been addressed by a number of Commonwealth Parliamentary inquiries.³⁴ Recently, the Senate Finance and Public Administration References Committee, in its *Inquiry into the Mechanism for Providing Accountability to the Senate in Relation to Government Contracts*,

addressed a motion that had been put before the Senate by Senator Andrew Murray. Senator Murray's motion sought to achieve greater transparency of government contracting through passage of a Senate Order that would require:

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

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

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

*The need for confidentiality should be interpreted as narrowly as possible to ensure that the maximum amount of information is in the public domain.*³⁵

My Office last month completed a performance audit of the use of confidential provisions, in the context of commercial contracts, in response to a commitment taken at the inquiry addressing Senator Murray's motion. The audit sought to:

- assess the extent of guidance on the use of confidentiality clauses in the context of contracts at a government wide level or within selected agencies;
- develop criteria that could be used to determine whether information in (or in relation to) a contract is confidential, and what limits should apply;
- assess the appropriateness of agencies' use of confidentiality clauses in the context of contracts to cover information relating to contracted provisions of goods and services, and the implications of existing practices of applying the criteria that have been developed; and
- assess the effectiveness of the existing accountability and disclosure arrangements for the transparency of contracts entered into by the Commonwealth, and whether agencies are complying with the arrangements³⁶.

The audit approach was to work cooperatively with several agencies to distil their experience and so provide a sound framework for wider applicability across the Australian public/private sector interface. The report noted several weaknesses in how agencies generally deal with the inclusion of confidentiality provisions in contracts as follows:

- consideration of what information should be confidential is generally not addressed in a rigorous manner in the development of contracts;

- where there are confidentiality provisions in contracts, there is usually no indication of what specific contractual information in the contract is confidential; and
- there is uncertainty among officers working with contracts over what information should properly be classified as confidential.³⁷

The audit report made three recommendations which were generally agreed by the agencies concerned. As well, the ANAO developed some criteria for agencies in determining whether contractual provisions should be treated as confidential.³⁸ These criteria are designed to assist agencies to make a decision on the inherent quality of the information before the information is accepted or handed over – rather than focusing on the circumstances surrounding the provision of the information. The report also gave examples of what would not be considered confidential³⁹ and examples of what would be considered confidential.⁴⁰ The Senate agreed a resolution reflecting Senator Murray’s motion on 20 June last.⁴¹ On the tabling of Ministers’ returns, the ANAO intends to evaluate a sample of the contracts listed for the appropriate use of confidentiality provisions. A report on the finding of such evaluation would then be tabled in Parliament.

Information and records are a big element of the authority, responsibility and accountability continuum, if only because they provide a clear evidential trail for managers and other stakeholders. Being pro-active in this respect reduces the risk of unnecessary speculation, confrontation and conflict, particularly where the parties concerned are asserting quite contrary views and/or perceptions. Unfortunately, the adequacy of information and records is often not addressed until an issue is contested.

The changing nature of accountability in a more private sector oriented environment

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

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

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

*'Contracting out inevitably involves some reduction in accountability through the removal of direct departmental and Ministerial control over the day-to-day actions of contractors and their staff. Indeed, the removal of such control is essential to the rationale for contracting out because the main increases in efficiency come from the greater freedom allowed to contracting providers.'*⁴²

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

*'The emphasis should not be solely on greater efficiency or on meeting accountability requirements.'*⁴³

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

*'Public funds are not for the private purse of the government nor the bureaucrats to do what they like with. They are public funds for public purposes and should stand the test of public scrutiny by the Parliament.'*⁴⁴

This is as it should be. I take the view that accountability of public sector operations depends to a great extent on providing the representatives of the Australian people — that is, Parliament — with full information on the operations of agencies and entities and on the functions performed therein. In some situations, because of the nature and complexity of public sector administration in an environment of ongoing reform:

*'Additional transparency provisions may be a cost that we have to meet to ensure an acceptable level of accountability.'*⁴⁵

There is no suggestion on the part of the Government or Parliament that accountability expectations will be downgraded; if anything, the reforms suggest that additional authority and flexibility require enhanced accountabilities even where there may be an additional cost involved. Parliament's confidence in the accountability of public sector organisations is an on-going challenge to our corporate governance frameworks.

3. ACCOUNTABILITY IN A MORE COLLABORATIVE ENVIRONMENT

Another interesting outcome of the recent public sector reform directions in Australia is that nearly all of the results the government strives to achieve require the collaborative efforts of two or more agencies/parties/levels of government.

In his recent Garran Oration, the Prime Minister noted a particular challenge for the public service:

*is the capacity of departments to successfully interact with each other in pursuit of whole of government goals and more broadly, for the entire Service to work in partnership with other bureaucracies, with business and with community groups as resources and responsibility are devolved closer to where problems or opportunities exist.*⁴⁶

Unfocussed and uncoordinated programs waste scarce resources, confuse and frustrate customers or clients (citizens) and limit overall program effectiveness. The development of effective working relationships with stakeholders is, therefore, an important element in a well functioning corporate governance framework and can help to identify, overcome and even avoid fragmentation and overlaps in government programs. Market mechanisms may actually create 'islands' or 'silos' within agencies, particularly where activities are more commercially based and make coordination of services to citizens in a seamless manner that much more difficult for providers, whether in the public or private sectors.

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.⁴⁷ The UK National Audit Office subsequently reported on its response (and strategies) to that policy, including the notion of 'joined-up' government,⁴⁸ with particular comments on risk management. The changes that are occurring at least reflect different risks, perhaps even additional risks, that need to be managed. A particular issue was whether the audit approach would be consistent with the need to manage those risks to achieve the required results. Auditors, generally, have continued to stress the basic differences between risk and risky management.

The Sharman Review of Audit and Accountability in the UK noted that improvements in risk management arrangements will only come when risk aversion is treated as a cultural, rather than a structural or technical issue.⁴⁹ Lord Sharman went on to observe that:

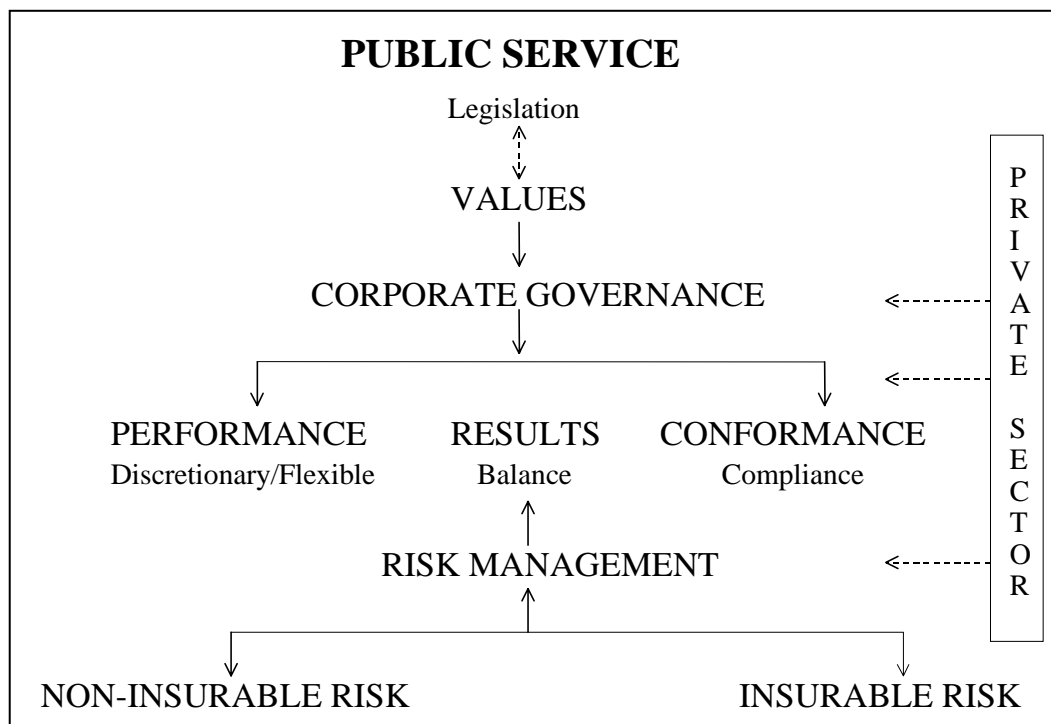
*Accountability mechanisms are perceived by some in government as a discouragement to innovate and change, but this appears to be only one of a number of complex factors, including a lack of incentives to manage risks, and a lack of commercial decision making skills within departments.*⁵⁰

The Review conceded that partnership working undoubtedly adds to the complexity of accountability arrangements. Without clarity of responsibility, as well as about aims and objectives, 'the possibilities for confused accountability increase considerably'.⁵¹

As governments rethink their roles in society they are being required to develop new approaches to policymaking and service delivery that are increasingly involving new partnership arrangements. As well, the evolving environment is drawing the private

sector, itself, increasingly into partnerships, mergers and alliances as a means of better coordinating economic activity and generating greater returns. Consequently, networking or partnering is beginning to play a major role at the local, national and international levels and across all sectors of the economy for improved performance and effectiveness. However, if the public and private sectors continue to operate in their own environments, where is the interaction to occur and on what basis? The following figure suggests that at least some relationship in the corporate governance framework, bearing directly on conformance (say, with legislation) and performance, both in responsiveness and results, and in identifying and allocating risks would seem necessary.

Figure 2



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

...the move to collaborative outsourcing agreements is an admission that the most successful outsourcing organisations are the ones that have a clear idea what they want the outcomes to be, rather than trying to manage (my underlining) the outsourcer.⁵²

In Australia, there do appear to be indications that greater coordination, collaboration, or networking, across agencies is gaining favour as a means of delivering more responsive public services to citizens. For example, a recent ANAO report⁵³ discussed how three welfare agencies were defining their particular outcomes and outputs and how the outputs of one of these agencies were directly related to the outcomes of the purchasing departments. These arrangements have been managed through a strategic partnering process rather than a legal contractual framework. These arrangements have subsequently expanded such that the particular Commonwealth agency, Centrelink, now delivers services on behalf of a total of four large, and nine other, agencies under formal purchaser-provider arrangements. Centrelink's partnership agreement with the now Department of Family and Community Services reflects their emphasis on building trust; maintaining productive relationships; and dealing positively with legal limitations.⁵⁴

A further indication of a possible move towards network bureaucracies is the renewed focus on the needs of citizens as clients or customers. 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. Two whole-of-government reports have been presented to Parliament reporting, among other things, performance against the 'principles for developing a Service Charter' launched in 1997. The second report concluded that:

*Service Charters are proving to be key instruments for innovation and for driving effective service delivery in the 21st Century.*⁵⁵

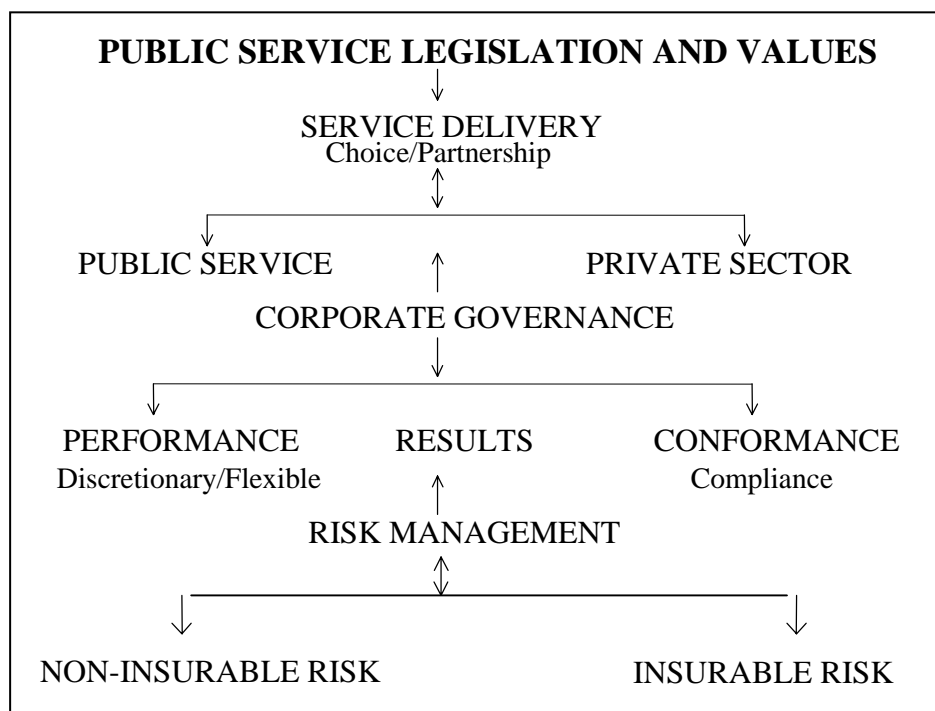
Where service delivery has been outsourced, Service Charters will clearly have a direct impact on the private sector contractor. In particular, it is to be expected that outsourcing contracts will need to reflect the Service Charter commitments if the Charters are to have any real meaning. It will also 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. The latter may also include behaviours consistent with APS Values. In this way, even if the client is one or more steps removed from the responsible department, it should still be possible to ensure clients are receiving the appropriate level and quality of service, consistent with the Service Charter. Such an approach may also be expected to reinforce the notion of both the private sector provider and the contracting agency being dependent on one-another for delivering a satisfactory level of performance and accounting for their performance – in effect trading-off some degree of their individual control for agreement about their joint performance and results to be achieved.

It has been generally recognised that networked arrangements for service delivery, which envisage more sophisticated and cooperative approaches to cross-cutting issues, are likely to focus on the importance of partnerships, coordination and joint working agreements. This is increasingly occurring at the inter-agency level. As well, 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 probably redefine the various relationships between government and the community over time. As well, they erode differences between the public and private sectors.

These moves have important ramifications for both responsibility and accountability and raise the question, again, as to ‘who is accountable for what?’ Are we looking at a more integrated model? Is it feasible to apply such a model to a more networked environment involving ‘real’ partnerships as well as direct competition on the basis of genuine competitive neutrality? Figure 3 reflects a more integrated arrangement which directly begs the question as to what trade-offs in approaches are possible and in what situations, not least in the nature and level of accountability and results that can be agreed. Probity, trust and confidence would seem immutable. Some see the creation of a ‘level playing field’ as levelling down rather than up.⁵⁶ Others talk about the ‘basic differences’ between the public and private sectors.⁵⁷ My focus here is on the possible greater integration of both sectors generally, or for selected functions, and not on the creation of two public services reflecting, for example, core and quasi government operations. The latter might be a subject for another day. Nevertheless, you may be interested in a recent article dealing with management and accountability issues in relation to quasi government.⁵⁸

Figure 3



A major aim has been to deliver services that appear seamless to the recipient.⁵⁹ 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 robust governance framework and accountability and reporting arrangements, which clearly define roles and responsibilities of the various participants, may be required. Perhaps a more controversial aspect is the notion of sharing values with the private sector.⁶⁰ This may be less of a problem with the not for profit segment. Increasingly, relevant governance arrangements will need to cross

organisational boundaries to better align activities and reduce barriers to effective cooperation and coordination. Of note, in this respect, is the fact that globalisation has resulted in an increasing number of business networks operating across national borders. Networks do not necessarily require formal organisational structures to be effective but any arrangements for networking, or coordination, of activities have to be at least transparent in the public sector.

More networked or partnering arrangements can also help overcome any apparent inflexibilities of a contract. Such networked arrangements are seen to enable a greater exchange of ideas and information and to allow partners to gain access to knowledge and resources of the other parties which contribute to their joint performance and results. They may also facilitate contract re-negotiations and variations which are often more likely to involve WIN-LOSE than WIN-WIN perceptions, including a greater propensity to resort to contract clauses to resolve any problems in working arrangements. A focus on cooperation to overcome any identified problems and/or to deal positively with any issue of collaboration, coupled with a genuine commitment to mutual understanding, can lead to a more productive relationship and better results for all parties. Without such cooperation, it would seem difficult for public sector managers to exert a great deal of influence, or accountability, on private sector providers.

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 at least complemented, if not largely replaced, by results-oriented ones. Organisations operating as virtual 'silos or islands' of activity under devolved authority arrangements will not only need to become more integrated with their partners, but will also have to become more externally focussed if they are to meet the needs of their ultimate clients cost-effectively. What is needed is a positive and encouraging framework for building relationships, dialogue and cooperation that can lead to:

- *clearer and more realistic performance measurements;*
- *more buy-in on both sides to achieve the results;*
- *a basis for ongoing dialogue throughout the year to improve the likelihood of achieving results; and*
- *capacity for learning and improvement.*⁶¹

Another important aspect of developing networked solutions is the greater availability of information and access to citizens as clients or customers. Information technology is providing significant opportunities for government to ensure that existing and potential clients have access to the information they require. Information technology provides both the basis to facilitate partnerships and a compelling justification for partnering. It has been suggested that one effect upon businesses of the electronic era, with its emphasis on e-commerce and related technology based service delivery, is that they will need to work more closely together. To fully exploit opportunities created by the Internet will require organisations to develop closer working

relationships with stakeholders.⁶² Indeed, rapid advances in information and communication technologies are likely to demand the establishment of effective partnering and networking to ensure a responsive, efficient and cost-effective public sector providing seamless availability of information and other services to all stakeholders.

Private financing of government activities

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

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

Extensive use has been made of private financing in the United Kingdom (UK). The Private Finance Initiative (PFI) was introduced in 1992 to harness private sector management and expertise in the delivery of public services.⁶³ By December 1999, agreements for more than 250 PFI projects had been signed by central and local government for procurement of services across a wide range of sectors, including roads, rail, hospitals, prisons, office accommodation and IT systems. The aggregate capital value of these projects was estimated to be some £Stg 16 billion.⁶⁴

The UK National Audit Office (NAO) has noted that the private finance approach is both new and more complicated than traditional methods of funding public infrastructure.⁶⁵ It brings new risks to value for money and requires new skills on the part of the public sector. Since 1997, the NAO has published eight reports on such projects. These reports collectively suggest that for privately financed projects to represent value for money, the price must be in line with the market, the contract must provide a suitable framework for delivering the service or goods specified, and the cost of the privately financed option (taking into account risk) should be no more than that of a publicly funded alternative.⁶⁶

It is not easy to evaluate the overall benefits that accrue from PFIs. In financial terms, it has been recognised that it is difficult for the private sector to borrow as cheaply as governments can. This is because government borrowings are considered by markets to be risk-free relating to governments' capacity to raise taxes and because of the absence of default by most sovereign borrowers. Accordingly, delivering financial benefits from private financing requires cost savings in other aspects of the project and/or the effective transfer of risk.

It is apparent that the PFI in the UK is being driven heavily by the objective to transfer risk.⁶⁷ For example, in contracting the funding, design and management of IT and infrastructure projects to the private sector, the associated transfer of risk to private sector managers is being justified on the basis that they are better able to manage the risks involved. However, a report commissioned by the UK Treasury indicated that some invitations by public sector bodies to negotiate contract provisions included risks that could not realistically be best managed by the contractor.⁶⁸ 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. There would be general agreement that the issue is more about risk allocation than risk transfer. Nevertheless, there is always concern that the ultimate risk often rests with the public sector.

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 Sydney⁶⁹ and the City Link project in Melbourne. Of note is that these high profile projects have been the subject of external scrutiny that has raised concerns about the exact distribution of risk and financial benefits between the public and private sectors, for example as indicated by the following audit observations:

- The previous New South Wales Auditor-General consistently commented that, although private sector owners have been given long-term rights over important road networks, there has not been a proper comparison of the cost-effectiveness of private sector involvement and the traditional public sector approach. Accordingly, the Auditor-General was unable to conclude that the projects that have been undertaken were in the State’s best interests from a financial viewpoint.⁷⁰ 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.⁷¹
- 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 that compared project costings on the basis of private sector financing versus government borrowings.⁷²

Significantly, there have also been concerns raised about public accountability for privately financed projects. These have stemmed from difficulties Parliaments have experienced in gaining access to contract documents, as I also noted earlier. For example, in relation to the aforementioned M2 Motorway in New South Wales, the NSW Parliament was denied access to the contract deed between the public sector roads authority and the private sector counterpart.⁷³ These experiences reinforce the

need to have such contractual arrangements clearly specified and agreed at the outset rather than when difficulties arise and funding commitments have clearly been made.

At the national level, there has been increasing interest in private financing initiatives, although to date there has been limited actual adoption, notably in the property and defence projects areas. The Department of Defence has recently committed itself to examining the merits of using private financing in the delivery of Defence services, with the aim of realising financial savings or improving effectiveness. Defence services included in this examination are to cover capital equipment as well as Defence facilities, logistical support and IT programs. The clear intention on the part of Defence in widening the use of private financing, reportedly for as much as 25 to 35 per cent of all future acquisition projects,⁷⁴ is to achieve the best affordable operational capability. This approach, as well as the now mature Commercial Support Program (CSP), are also referred to as the Public-Private Partnership (PPP) Concept.

As an aside, I note that, in rebutting some criticism that PFI in the Defence context has been seen as ‘simply putting Defence capital expenditure on the plastic’, the Under Secretary of the Defence Materiel Organisation has made the point that PFI will link the provision of the capital item or capacity with its life-cycle cost, and hence provide Defence with one *payment for availability*.⁷⁵ The Minister for Defence recently noted that the best commercial practice has shifted from competing for every purchase on a price basis to establishing longer term partnership arrangements which also focus on quality and delivery. He went on to observe that:

*We will see more alliance contracting based on an ‘open book’ approach, not a return to the days of ‘cost plus’, but an approach based on benchmarks and properly structured incentives, for both the contractor and Defence.*⁷⁶

An associated move that Defence is making in the area of private financing is to encourage increased participation in such financing methods by small to medium enterprises (SMEs). There are strong indications that SMEs presently feel that the opportunities presented by such initiatives are only within the scope of larger, national and international defence industry players.⁷⁷ Interestingly, the Leader of the Opposition in the Federal Parliament recently indicated that a Labor Government would:

- *increase the target value of government purchases from SMEs from 10 to 20 percent;*
- *move to reduce the size of individual government contracts where appropriate in order to ensure that SMEs have more opportunities to tender; and*
- *develop and include in the tender evaluation process a points system for agencies that rewards the inclusion of local SMEs in preferred tenders.*⁷⁸

Of course, any substantial move towards private financing of Defence activities would need to consider what core business the Department needs to maintain in order to manage effectively the longer-term risks that are involved in any outsourcing. With this in mind, the Department has indicated in a Discussion Paper that private financing

is to be considered for all capability proposals and tested as an acquisition method unless the capability:

- involves the direct delivery of lethal force (core Defence business); or
- is demonstrably inappropriate and uneconomic (that is, does not reflect best value for money).⁷⁹

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 agencies 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. The particular challenge for agency management will be to determine what is meant as value for money in terms of the government purchasing policy of the day.

In testing value for money, specific attention, including considerations of accountability, will need to be given by agencies to ensuring that an adequate assessment (pricing) of risk to be transferred between the public and private sectors occurs before such transfer takes place. In that respect, there should be an appropriate public sector comparator, including an assessment being made on a whole-of-government basis. In the latter respect, consideration needs to be given to, for example, the level of expenditure involved and the nature and extent of regulatory arrangements. No doubt these will be considerations undertaken by the new specialist Private Financing Unit (PFU) within the Department of Finance and Administration (Finance) with funding of \$2 million per annum. The PFU is to provide a concentrated level of expertise and apply a whole-of-government perspective to potential proposals. The Government expects to issue guidelines in the near future to assist agencies to evaluate private financing proposals. Any savings determined are sensitive to the underlying assumptions used for any comparator as well as consistency of treatment between both the public and private sectors. A perceived lack of consistency has been an issue raised by the private sector in the context of the Government's policy to market test corporate services in all public sector agencies.

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. For example, we have a requirement to ensure 'competitive neutrality' with potential private sector providers. This introduces further assumptions and subjectivity to the evaluation process which has been viewed with some concern by the Senate Finance and Public Administration References Committee in a recent hearing on IT Outsourcing⁸⁰. Unless risk is substantially 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 where 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 and accountability for the outputs and/or outcomes concerned. In this context, I commend the work done by the UK NAO in examining privately financed projects and in providing sound guidance to auditors on how to examine value for money of privately financed deals,⁸¹ as well as identifying better practice in a 'partnership-type' relationship.

4. CONCLUDING REMARKS

In the time available, I have focussed on some significant current accountability issues, even concerns, that arise from the increasing involvement of the private sector both as a supplier to the public sector and a provider of services direct to Australian citizens, in association and/or in competition with public sector organisations. The issues revolve largely about the enduring question of 'who is accountable for what?'. However, they also involve questions of transparency and availability of information to all stakeholders, notably the Parliament, because of explicit concerns expressed about such matters in recent months.

Comments have been made in the parliamentary context on many occasions that 'accountability cannot be outsourced'. At the same time, it would seem appropriate to observe that public servants should not be determining the nature and extent of accountability to the Government and the Parliament virtually by default. Yet, in the absence of any direction or guidance in a significantly changing public service environment, there has to be a real risk that such will occur if for no other reason than decisions are required on a day by day basis and services have to be delivered.

Parliamentary and audit inquiries have shown that there has been, and continues to be, a loss of corporate knowledge in the public service. Not only do a number of program managers appear to have only a limited knowledge of the business operations for which they have at least some degree of responsibility, they often do not seem to have the information necessary for accountability purposes. In many cases, knowledge and information resides with the private sector provider. It has been recommended that contracts should include the requirement for provision of appropriate and sufficient performance information for accountability purposes. Yet, there are also indications that agency personnel do not really know what questions to ask, let alone identify such information. This particularly applies where the agency has little or no direct responsibility for provision of the service. Yet, as noted above, it is expected to be accountable.

If authority and responsibility have been largely delegated to a private sector supplier, there would seem to be at least an argument about whether the supplier should also be able to be held accountable. The situation becomes more problematic when private sector sub-contractors are involved or where one or more contractors report to a private sector provider that has been given overall responsibility for the service. If the public service is to be accountable in such situations, agencies must have the necessary information and access rights, including the skills and understanding, to ensure they can fulfil such an obligation. This can be a significant cost, particularly where there is duplication of effort between the parties. Such cost might be ameliorated if the private sector provider was prepared to share some part of the accountability, as well

as meet the contractual responsibilities at the service provision, or task, level. The advantage of clarity in any accountability arrangement has to be looked at in terms of the ability of the parties involved to deliver in a practical manner.

Any discussion of accountability should relate to the ‘how’ as well as to the ‘what’. In some circumstances a sharing of accountability might, for example, include Parliamentary inquiry, as well as investigation by various external review bodies, and providing right of access under the Freedom of Information Act. Many would argue that such requirements are appropriate in functional areas most impacting on citizens, such as human services. This wider ranging accountability would have to be accepted as part of the cost of doing business with government. However, perhaps more difficult issues could arise in any relationship with Ministers and in the administrative arrangements supporting their accountability to the Parliament. Nevertheless, it is difficult to see any fundamental change in the relationships and responsibilities of an agency head or Minister.

In this context, I will borrow on someone else’s analysis of the notion of accountability, which splits the latter into four parts as follows:

- *giving an explanation* – through the main stakeholders (for example Parliament) are advised about what is happening, perhaps through an annual report, outlining performance and activity;
- *providing further information* – where those accountable may be asked to account further, perhaps by providing information (eg to a select committee) on performance, beyond accounts already given;
- *reviewing and, if necessary, revising* – where those accountable respond by examining performance, systems or practices, and if necessary, making changes to meet the expectations of stakeholders; and
- *granting redress or imposing sanctions* – if a mechanism to impose sanctions exists, stakeholders might enforce their rights on those accountable to effect changes.⁸²

Perhaps these accountability elements could be shared between the purchasing agency and the private sector provider. However, this is a matter for the Government and the Parliament to decide. The basis issue continues to be determining what is in the public interest, including the application of public service values in dealing with citizens, and any trade-offs between both public and private interests that are possible in a more contestable public sector environment where greater emphasis is being given to choice and responsiveness. This issue goes beyond those I have discussed this morning but which I contend are illustrative of general public interest concerns and the notion of associated accountability in an era where the private sector is much more directly involved in both public policy and administration, as well as being an alternative provider (of choice) of community services, such as health and education. The Prime Minister has noted Australia’s success in balancing public and private resources in such key areas which “has contributed a great deal to our social stability”⁸³

My intention has been to talk about some current ‘practical’ issues and their implications for a much broader question that is reflected in the following observation by Dr John Uhr:

Some protagonists worry that traditional forms of accountability are being dismantled. Others worry that too little is being done to devise new forms to respond to unprecedented forms of undue delegation and misplaced trust.⁸⁴

The Minister for Defence in a recent presentation, quoted earlier, stated that there will have to be a new approach to transparency and accountability:

if we are to progress down this bold new path of a closer relationship between the Department and the Defence industry. We will have to define this very carefully.⁸⁵

While public servants generally are prepared to act in the public interest, within the framework of the APS Values⁸⁶, it is easy to understand their concern to have greater clarity about who is responsible/accountable for what. It seems worthwhile to generate such a discussion more widely in the public service, as indeed is happening in the academic environment. As in the private sector, and perhaps more so, it is largely when something goes wrong that such issues tend to be raised and public concerns are expressed, including the search for scapegoats. That is obviously too late, too negative, and perhaps counter productive, if genuine and sustained change is required, including ‘buy-in’ from those directly involved. The emphasis should be on correction, including some form of compensation as necessary, and ensuring that the situation does not happen again. Of course, that does not necessarily mean that those concerned are absolved from blame.

The issues are central to good corporate governance and to the overall governance framework and should be addressed openly and pro-actively in those contexts if there is to be real, and sustained, ownership by those responsible and accountable. The required currency for a successful outcome is information and cooperation. We need to encourage open and productive debate while bearing in mind that:

Responsibility is a slippery and ambiguous concept, and accountability is scarcely less so. All too often, when abstract ideas are permitted to dance exclusively with each other, they have a tendency to levitate into the stratosphere and there expire from oxygen deprivation.⁸⁷

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- ¹⁵ Senate Finance and Public Administration References Committee 2001. Op.cit. p.2
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- ¹⁷ Uhr, John 1999. Op.cit. p.100
- ¹⁸ Ibid. p.100
- ¹⁹ UK National Audit Office (NAO) 2001. *The Re-negotiation of the PFI-type deal for the Royal Armouries Museum in Leeds*. Report, London, 18 January.
- ²⁰ Ibid., p. 5.
- ²¹ Ibid., p. 7.
- ²² Set out in Part 5 of the *Auditor-General Act 1997*

²³ Joint Committee of Public Accounts and Audit 1999, *Review of Audit Report No. 34, 1997-98, New Submarine Project Department of Defence*. Report 368, June, p. xiv:

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

²⁴ Government response to Recommendation 5 of the 368th Report of the Joint Committee of Public Accounts and Audit : Review of Audit Report No. 34 1997-98, New Submarine Project Department of Defence. Letter from the Prime Minister to the Minister for Finance and Administration dated 12 August 2000.

²⁵ Ibid.

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²⁷ Evans Harry. 2001. Letter to the Secretary of the Senate Finance and Public Administration Legislation Committee in relation to the ‘Estimates Hearing – OASITO’ on 23 February. 26 February. p.2.

²⁸ Australasian Council of Auditors-General 1997, *Statement of Principles: Commercial Confidentiality and the Public Interest*, Canberra, November.

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³⁰ Schulze, Peter. MLC, Chairman, Tasmanian Public Accounts Committee, 1999. *Commercial Confidentiality – Striking the Balance – A Contributing Paper*, 1999 Australasian Council of Public Accounts Committees, 5th Biennial Conference, Perth, WA, 21-23 February.

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³⁴ See Joint Committee of Public Accounts and Audit (JCPAA) 2000, *Contract Management in the Australian Public Service*, Canberra: Parliament of the Commonwealth of Australia, [October 2000]; Senate Finance and Public Administration References Committee (SFPARC) 2000, *Inquiry into the mechanism for providing accountability to the Senate in relation to Government contracts*, Canberra [Online] Available: http://www.aph.gov.au/senate/committee/fapa_ctte/acnt_contract/contract.pdf, [7 December 2000]; JCPAA 1999, *Corporate Governance and Accountability Arrangements for Commonwealth Government Business Enterprises* (R.E. Charles, Chairman), Report 372, JCPAA, Canberra, December, p.67; SFPARC, 1998, *Inquiry into Contracting Out of Government Services-Second report*; and SFPARC 1997, *Contracting Out of Government Services—First Report: Information Technology*, Canberra, November.

³⁵ Senate Finance and Public Administration References Committee 2001. Op.cit. p.xii

³⁶ ANAO Report No 38 2000-2001. *The Use of Confidentiality Provisions in Commonwealth Contracts*. Canberra, 24 May. p.13

³⁷ Ibid. p.15

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³⁹ Ibid. p.64. The following types of information in, or in relation to, contracts would generally not be considered to be confidential:

- performance and financial guarantees;

- indemnities;
- the price of an individual item, or groups of items of goods or services;
- rebate, liquidated damages and service credit clauses;
- clauses which describe how intellectual property rights are to be dealt with; and
- payment arrangements.

⁴⁰ Ibid. p.65. The following types of information may meet the criteria of being protected as confidential information:

- trade secrets;
- proprietary information of contractors (this could be information about how a particular technical or business solution is to be provided);
- a contractor's internal costing information or information about its profit margins;
- pricing structures (where this information would reveal whether a contractor was making a profit or loss on the supply of a particular good or service); and
- intellectual property matters where these relate to a contractor's competitive position.

⁴¹ Senate resolution, agreed 20 June 2001, that:

- (1) There be laid on the table, by each minister in the Senate, in respect of each agency administered by that minister, or by a minister in the House of Representatives represented by that minister, by not later than the tenth day of the spring and autumn sittings, a letter of advice that a list of contracts in accordance with paragraph (2) has been placed on the Internet, with access to the list through the department's or agency's home page.
- (2) The list of contracts referred to in paragraph (1) indicate:
 - (a) each contract entered into by the agency which has not been fully performed or which has been entered into during the previous 12 months, and which provides for a consideration to the value of \$100 000 or more;
 - (b) the contractor and the subject matter of each such contract;
 - (c) whether each such contract contains provisions requiring the parties to maintain confidentiality of any of its provisions, or whether any provisions of the contract are regarded by the parties as confidential, and a statement of the reasons for confidentiality; and
 - (d) an estimate of the cost of complying with this order.
- (3) In respect of contracts identified as containing provisions of the kind referred to in paragraph (2)(c), the Auditor-General be requested to provide to the Senate, within 6 months after each day mentioned in paragraph (1), a report indicating that the Auditor-General has examined a number of such contracts selected by the Auditor-General, and indicating whether any inappropriate use of such provisions was detected in that examination.
- (4) The Finance and Public Administration References Committee consider and report on the first year of operation of this order.
- (5) This order has effect on and after 1 July 2001.
- (6) In this order:

“**agency**” means an agency within the meaning of the *Financial Management and Accountability Act 1997*;

“**autumn sittings**” means the period of sittings of the Senate first commencing on a day after 1 January in any year; and

“**spring sittings**” means the period of sittings of the Senate first commencing on a day after 31 July in any year.

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- ⁵⁷ Haque, M. Shamsul. 2001. *The Diminishing Publicness of Public Service under the Current Mode of Governance*. Public Administration Review. Vol 61 No 1. January/February. p.67
- ⁵⁸ Moe, Ronald C. 2001. *The Emerging Federal Quasi Government: Issues of Management and Accountability*. Public Administration Review Vol 61 No 3. May/June. pp. 290-312. [The author concludes that market principles, emphasising competition, risk-taking, outsourcing, cooperative agreements, and management autonomy, are encouraging the growth in the quasi government.]
- ⁵⁹ Public Audit Forum 1999, *Implications for Audit of the Modernising Government Agenda*, 22 April, p. 8.
- ⁶⁰ Zifcak Spencer 2001. *Op.cit.* p.91
- “...given their different arenas and callings, the transposition of public sector ethics and values into the private sector or the introduction of private sector ethics and values into the public sector will create difficulties and tensions”
- ⁶¹ Public Management Committee 1999, *op.cit.*, p. 10.
- ⁶² Braganza, Dr Ashley and Lambert, Rob, 2000, *Dynamic partnerships*, in *Knowledge and Process Management: The Journal of Corporate Transformation – Special Issue into the ‘E’ era*, Braganza, Dr Ashley and Lambert, Rob (eds), Vol. 7 No. 3, July-September, p.131.
- ⁶³ United Kingdom National Audit Office (NAO) 1999, *Examining the Value for Money of Deals Under the Private Finance Initiative*, Appendix 2: ‘Risk Allocation’, London, 13 August, p. 64.
- ⁶⁴ Arthur Andersen and Enterprise LSE 2000, *Value for Money Drivers in the Private Finance Initiative*, report commissioned by The Treasury Task Force, London, 15 January.
- ⁶⁵ UK NAO 1999, *op. cit.*, Preface.
- ⁶⁶ UK NAO 1999, *op. cit.*, p. 52.

- ⁶⁷ Arthur Andersen and Enterprise LSE 2000, op. cit., pp. 21–3.
- ⁶⁸ *ibid.*
- ⁶⁹ These were the subjects of two Reports by the Audit Office of New South Wales: *Private Participation in the Provision of Public Infrastructure—The Roads and Traffic Authority*, 1994, and *Roads and Traffic Authority: the M2 Motorway*, 1995.
- ⁷⁰ Audit Office of New South Wales 1997, *Review of Eastern Distributor*, July, p. 18.
- ⁷¹ *ibid.*, p. 25.
- ⁷² Auditor-General’s Office Victoria 1999, *Report on Ministerial Portfolios*, May, pp. 123–4.
- ⁷³ Audit Office of New South Wales 1995, *Roads and Traffic Authority: The M2 Motorway*, op. cit., p. 3.
- ⁷⁴ La Franchi, P. 2000, *Marching to private financing beat*, Australian Financial Review, 2 May, p.40.
- ⁷⁵ Roche, M. 2000, *Roche rebuts criticism of PFIs*, Australian Defence Report, 17 August, p. 8.
- ⁷⁶ Reith Peter The Hon. 2001. *Australia Needs a Strategic Approach to Defence Industry Policy*. A paper presented and spoken to by the Minister of Defence to the Defence National Procurement Conference, Canberra 26 June. pp. 12 and 13.
- ⁷⁷ La Franchi, P. 2000, op. cit.
- ⁷⁸ Beazley, Kim C. The Hon, and Lawrence, Carmen MP, and Tanner, Lindsay MP, 2001. *Labor’s Plan for Strategic Government Purchasing*, Joint Statement. Brisbane 2 May, p.4
- ⁷⁹ Department of Defence and Australian Industry Group Defence Council 2000, *Private Financing of Defence Capability*, Discussion Paper for a Private Financing Industry Workshop, Canberra, 14 March, p. 1.
- ⁸⁰ Senate Finance and Public Administration References Committee. 2001. *Inquiry into the Government’s Information Technology Outsourcing Initiative*, Public Hearing. Canberra. 17 May.
- ⁸¹ UK NAO 1999, *Examining the value for money of deals under the Private Finance Initiative*, op.cit.
- ⁸² Barbaris P. 1998. *The New Public Management and a New Accountability in Public Administration*. Autumn. Also Neale A and Anderson B. 2000. *Performance Reporting for Accountability Purposes – Lessons, Issues, Futures* paper at International Public Management Workshop, Wellington, New Zealand. Quoted also in ‘Holding to Account’, *The Review of Audit and Accountability for Central Government*. Report by Lord Sharman of Redlynch. London. February 2001.
- ⁸³ Howard, The Hon. John MP, 2001. Op.cit. p.7
- ⁸⁴ Uhr, John, 1999. Op.cit. p.101
- ⁸⁵ Reith Peter The Hon. 2001. Op.cit. p.14.
- ⁸⁶ Mulgan, Richard 2000. *Public Servants and the Public Interest*. Department of the Senate Occasional Lecture Series at Parliament House, 11 August. Included in Papers on Parliament No 36, Department of the Senate, Parliament House. Canberra (see particularly pp. 54-59)
- ⁸⁷ Schafer, Arthur 1999. *A wink and a nod: a conceptual map of responsibility and accountability in bureaucratic organizations*. Canadian Public Administration Vol 42 No 1 (Spring) p.5.