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**The Convergence of the Public
and Private Sectors –
Accountability versus Efficiency**

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**THE CONVERGENCE OF THE PUBLIC AND PRIVATE SECTORS -
ACCOUNTABILITY VERSUS EFFICIENCY**

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I. INTRODUCTION

I want to commence this address with two pertinent quotes from Owen Hughes:

'The business of government is embedded in politics'. Hughes Owen E. 1998, *'Public Management and Administration - An Introduction'*. Second Edition, Macmillan Education Australia, Melbourne (page 225).

While I will be referring to the convergence of the public and private sectors and the way in which that focuses the mind on what actually distinguishes activities and approaches between the two sectors, public servants, at least, understand the pervasive and often decisive influence of politics both on public policy and administration. That is a reality we should never ignore.

The second quote also bears directly on the theme and thrust of this address:

'It is accountability which is fundamental to a democratic system'. Ibid, (page 225).

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. It is the nature and extent of that accountability that most public sector commentators would contend distinguishes the two sectors. Nevertheless, even traditional elements of what might be termed 'public accountability', such as values and ethics, fair and equitable treatment, the environment and community welfare, are being addressed by private sector boards and executives as part of their business strategy to be seen, and accepted, as 'good corporate citizens' For

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example, the giant US corporation General Electric (GE) as part of its management reporting, states that:

'GE is dedicated to the highest standards of integrity, ethics, and social responsibility. This dedication is reflected in written policy statements covering, among other subjects, environmental protection, potentially conflicting outside interests of employees, compliance with antitrust laws, proper business practices and adherence to the highest standards of conduct and practices in transactions with the U.S. government'.

Quoted in Root Steven J. 1998. *'Beyond COSO - Internal Control to Enhance Corporate Governance'*. John Wiley & Sons, Inc. New York, (page 294).. But there are trade-offs. Put bluntly, what is the price of such accountability and what impact does it have on the 'bottom line'? The commitment referred to here is more than simply creating 'image' or 'marketing' the corporation.

That brings me to the nub of this address which is about being accountable for our performance in an environment where there is fundamental questioning of what government does, or should do, allied with a perception of inefficient (more costly) and ineffective (lacking client focus) delivery of public services due to its monopoly provision and/or other constraints of public sector administration. Put simply, the prevailing view would seem to be 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. Indeed, history shows varying support for such a view but with reservations, for example, about market imperfections and public goods arguments - using economic (rationalist) terms.

But, interesting as such a discussion might be, my focus today is on the changing accountability 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, and the adoption or adaptation of private sector approaches, methods and techniques in public service delivery.

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The genesis of this address commenced with the debate about accountability issues latterly canvassed in the then Management Advisory Board/Management Improvement Advisory Committee (MAB/MIAC) Report No.5 of June 1991. MAB/MIAC 1991. *'Accountability in the Commonwealth Public Sector - An Exposure Draft'*. AGPS, Canberra, June. This was subsequently followed up by what has become the definitive text on 'Accountability in the Commonwealth Public Sector' in MAB/MIAC's report No.11 of June 1993. MAB/MIAC 1993. *'Accountability in the Commonwealth Public Sector'*. AGPS, Canberra, June. However, the real catalyst was Richard Mulgan's article 'Contracting Out and Accountability' in December 1997 Mulgan Richard 1997. *'Contracting Out and Accountability'*. Australian Journal of Public Administration, Vol.56, No.4, December, (pages 106-116). building on an article entitled 'The Processes of Public Accountability' Mulgan Richard 1997. *'The Processes of Public Accountability'*. Australian Journal of Public Administration, Vol.56, No.1, March, (pages 25-36).. The particular phrases that focussed my thinking and the title for this address are as follows:

'... some aspects of accountability are inevitably reduced under contracting out ... contracting out, at best involves a trade-off between efficiency and accountability [my underlining]. Denials of such a trade-off are fallacious rhetoric'. Op.cit., Mulgan Richard 1997, 'Contracting Out and Accountability'. (page 106).

Not surprisingly therefore, I will start with some of the issues bearing on the perceived accountability/efficiency trade-offs and particular accountability elements which might require change of either or both the public/private sectors. The notion of efficiency used here is about market price which does not include any provision for public sector accountability requirements. But the latter is a cost which cannot be ignored Pearson Des 1999, *'The Cost of Accountability - Getting the Balance Right'*. Presentation to the Australasian Council of Public Accounts Committees, Fremantle, 21-23 February.'

Trenorden Max MLA 1999. *'The Cost of Accountability - Getting the Balance Right'*. Presentation to the Australasian Council of Public Accounts Committees, Fremantle, 21-23 February.. I will focus mainly on budget dependent agencies and statutory bodies but observe that the general

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argument also applies to a degree to Government Business Enterprises (GBEs) that generate their own revenue, even where partially privatised. My perspective will be from the Federal level of government, although I contend that we are increasingly sharing similar challenges to those at State and local government levels.

I will then address how we can be more accountable for our performance in this converging public/private sector environment. The tone and direction of any organisation are set within its corporate governance framework. What we do; how we do it; how we manage ourselves; how we control our environment; how we deliver our services; the values/ethics we set; our relationships and commitments to our clients and other stakeholders; our performance assessment and evaluations; and our monitoring, review and reporting approaches; are all part of the way we govern ourselves. Therefore any discussion of accountability has to start within that framework. Particularly relevant elements are our control structures with sound risk management being an increasingly important aspect of our performance and accountability.

The penultimate section relates to how we deliver our services and focuses particularly on project and contract management and service delivery charters including issues of quality of services and tailoring programs to clients (citizens) rather than the reverse, which has largely been the case in the past. The final segment discusses performance assessment and related accountability requirements. In particular, the discussion is in the context of the new outputs/outcomes focus both in budgeting and accounting. Some observations will also be made about management and data systems and the impact of technology on the way we manage in an accrual accounting environment with an increasing focus on costs and prices. I will then make some concluding remarks.

II. ACCOUNTABILITY versus EFFICIENCY

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The Australian Public Service (APS) has been steadily evolving towards a more private sector orientation over the last decade, influenced by the momentum of the National Competition Policy reforms Independent Commission of Inquiry Into National Competition Policy 1993. *'National Competition Policy - Report to Heads of Australian Governments'* AGPS, Canberra. and the Industry Commission inquiry into competitive tendering and contracting. Industry Commission 1996. *'Competitive Tendering and Contracting By Public Sector Agencies'*, January. More recently, the Government's acceptance of the basic principles set down by the National Commission of Audit for determining what activities should be undertaken within the public sector has led to an increased focus on privatisation and outsourcing of government services and activities.

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The Commission has adopted a framework of principles, cognisant of the broad economic and social goals of government to guide its analysis and recommendations for improvements. This framework includes the following decision sequence:

Assess whether or not there is a role for government.

Where there is, decide which level of government, and assess whether or not government objectives are clearly specified and effectively provided.

Assess whether or not effective activities are being conducted on a 'best practice' basis. (page vii)

In relation to the last mentioned issue, the Committee found that service delivery systems should be market tested against other systems to fully test their efficiency. This involves public sector managers benchmarking their service delivery methods against best practice, re-engineering the way they do their business and contracting-out functions where it is cost effective to do so. (page 83).

The Committee recommended that agencies should be required to market test all activities over the next 3 to 5 years unless there is a good reason not to do so (page 84). This is now government policy. The Government has made it clear that the challenge of public sector reform, including contestability with the private sector, remains both substantial and urgent.

While the increasingly business-like approach of the public sector is welcome, it is important to recognise that the provision of public services is not just about the lowest price or concepts of profit or shareholder value. It is about maximising overall 'value for money' for the taxpayer. This requires consideration of issues other than production costs, such as client satisfaction, the public interest, fair play, honesty, justice and equity. It also requires proper

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accountability for the stewardship of public resources, including asset management and use of techniques such as life-cycle costing as is witnessed in the private sector.

The Growth of Outsourcing

A feature of the changing public sector environment has been the increased emphasis placed on the contestability of service delivery and outsourcing of functions which it is judged the private sector can undertake more efficiently. Outsourcing advocates point to advantages such as: 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. Industry Commission 1996, *'Competitive Tendering and Contracting by Public Sector Agencies'*. However, as a number of my recent performance audits have identified, a poorly managed outsourcing approach can result in higher costs, wasted resources, impaired performance and considerable public concern. For example, in October 1998 I tabled Audit Report No. 10 1998-99, *'Sale of One-third of Telstra'*. The audit concluded that, as an essential element of the outsourcing of project management for future Commonwealth public share offers, overall value for money could be improved by giving greater emphasis to financial issues when tendering for advisers; encouraging more competitive pressure on selling commissions and fees; paying fees only for services actually provided; and instituting a more effective and commercial approach to administering payment for shares by investors. The main message from this experience is that savings and other benefits do not flow automatically from outsourcing - the process, like any other, must be well managed.

The growth of outsourcing and other new ways of delivering public services does 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-

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making flexibility strengthen that need. On this issue, the following observation by Richard Mulgan continues the theme of an earlier quote:

'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 under such instruments as the Ombudsman and FOI. 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.'

Mulgan Richard, (1997); *'Contracting Out and Accountability'*. Discussion Paper 51, Graduate Public Policy Program, Australian National University. (see Abstract).

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 are not 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 broad framework of principles canvassed by the National Audit Commission referred to earlier. To maximise overall value for money, it is important that this 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.

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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 to ensure that the service delivery is both cost-effective and acceptable to recipients and key stakeholder groups. To achieve this, the agency must specify in the contract the necessary level of service delivery and 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 responsibilities.

Commercial Confidentiality

Accountability can also be impaired where outsourcing reduces openness and transparency in public administration. For this reason, the issue of commercial confidentiality is likely to be of increasing importance as the extent and scope of outsourcing grows. The risk to accountability associated with claims of commercial confidentiality in relation to government contracts has recently 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. A relationship about which the public is entitled to advise, consent to or object to through both their Parliamentary representatives and other forums.' Report of the Auditor-General for the year ended 30 June 1998, *Government Contracts: A Specific Matter Raised Pursuant to Subsections 36(1)(a)(iii) and 36(1)(b) of the Public Finance and Audit Act 1987.*

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The Parliament's ongoing interest in commercial-in-confidence matters was evident during the passage of the new financial legislation to replace the Commonwealth *Audit Act 1901*. This was reflected by the request of the Senate, as part of the motion to adopt the report of the committee with respect to the package of legislation as follows:

'... that the Auditor-General include in the annual report on the operations of the Australian National Audit Office for the financial year 1997-98 a report on the appropriateness of commercial-in-confidence practices with recommendations on legislative regulation of such practices.' Senate Hansard, 29 September 1997, (page 7148).

In addressing the Senate's request, I had one such matter to report to Parliament in 1997-98. An audit of Contracting Arrangements for Agencies' Air Travel ANAO Audit Report No. 28 1997-98 *'Contracting Arrangements for Agencies' Air Travel'*, Canberra. (page 20). identified some of the risks to the Commonwealth from use of commercial-in-confidence clauses. The ANAO recommended that, to facilitate the exchange of information within the Commonwealth, the Department of Finance and Administration (DoFA) amend the standard confidentiality clause that it promulgates in the standing offer for air travel. The Department agreed with the recommendation but has withdrawn from managing a whole-of-government travel contract. Guidelines now include standard contract clauses, developed by Attorney-General's Legal Practice, that deal with accessing Commonwealth records. I canvassed such issues more broadly in a presentation to the recent Australasian Council of Public Accounts Committees in Fremantle. Barrett Pat 1999. *'Commercial Confidentiality - A Matter of Public Interest'*. Presentation to the 1999 ACPAC Biennial Conference, 21-23 February, Fremantle.

The message 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

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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. For this reason, outsourcing contracts should include access provisions for performance and financial statement auditing. The ANAO has developed and disseminated to all Commonwealth agencies and bodies standard contract clauses concerning access by those organisations and the ANAO to relevant records and premises of all service providers. These are available from the Executive Director, Corporate Management Branch in the ANAO. Contractors can increasingly expect to have their performance, and perhaps a number of their other activities, scrutinised both by the agencies involved 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. The latter is essentially the issue being covered by this address with any trade-off being about the nature and level of accountability rather than about efficiency per se.

Longer-term Impacts of Outsourcing

In addition to the immediate impact of outsourcing on public accountability, the transition to an outsourcing arrangement can have long-term impacts. There is a particular risk that incumbency advantages may reduce the level of competition for later contracts as a result of the existing supplier having greater information and knowledge about the task than either the Commonwealth agency or potential alternative service providers. This risk becomes more pervasive when the outsourced activity has a significant impact on core business, or competition in the market is limited. This is an issue that is going to require increasing attention by public sector managers, as has been recognised by the Joint Standing Committee on Foreign Affairs and Trade in relation to the Defence Department's Commercial Support Program:

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'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.' Joint Standing Committee on Foreign Affairs, Defence and Trade 1998, *'Funding Australia's Defence'* (page 35).

III. ENHANCING OUR accountability through sound corporate governance practices

One of the fundamental ways in which to ensure that we can meet our accountability requirements is through a robust corporate governance framework. The major elements of corporate governance have been in place in the APS for most of the last decade or so. As the terminology suggests, the concept is basically about how we 'govern' our organisations to achieve required performance and satisfy our stakeholders. It is also about the control and monitoring mechanisms that are put in place by organisations with the object of enhancing stakeholders' value and confidence in the performance and integrity of the organisation.

Principles and Practice of Good Corporate Governance

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

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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. The need for effective interrelationships among relevant corporate participants was emphasised in a recent report of a high level committee established by the New York Stock Exchange and U.S. National Association of Securities Dealers. The Blue Ribbon October 1998. New York, February.

The Blue Ribbon

In July 1997, the ANAO circulated a discussion paper, *'Principles for Core Public Sector Corporate Governance, Applying Principles and Practice of Corporate Governance in Budget Funded Agencies'*. ANAO 1997. *'Principles for Core Public Sector Corporate Governance'*. Discussion Paper, Canberra, June. This discussion paper was designed to fill the gap in core public service awareness of the opportunities provided for improved management performance and accountability through better integration of the various elements of the corporate governance framework within agencies. As well, the paper included a checklist designed to assist Chief Executive Officers (CEOs) to assess the strengths and weaknesses of their agencies' current governance framework. While not meant to be a comprehensive model for each agency, CEOs should have been able to identify those elements of a governance strategy that were most applicable and useful to their particular agency. Those principles were applied in two recent ANAO audits:

— *Aspects of Corporate Governance in the Australian Tourist Commission (ATC)* which suggested a corporate governance checklist for the Board

ANAO Report N

and

— *Corporate Governance Framework - Australian Electoral Commission*

ANAO Report N

The ANAO is also in the process of developing another discussion paper which outlines a methodology for developing robust corporate governance frameworks for bodies covered by the *Commonwealth Authorities and Companies (CAC) Act 1997*. As well, it will broadly canvass the legal responsibilities of CAC boards including some comparison with similar

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responsibilities of budget dependent agencies and private sector firms. It is expected that the paper will be available later this month.

I have established that the concept of corporate governance is representative of a cohesive framework of interrelated elements. However, for the purposes of this discussion, I would like to focus in particular on the risk management practices that underpin agency control structures in the context of their relevance to public sector accountability.

Risk and Control as part of an Integrated Corporate Governance Framework

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 discussing each in isolation. As one expert puts it:

'Essentially, control assessment and risk assessment are part of the same thing, the strategic management process.' Ibid (page 4).

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 APS. Risk management can 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

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and maximise opportunities.' Standards Australia 1995, '*Risk Management: Australia/New Zealand Standard 4360:1995*', Homebush, Sydney.

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 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 focus on 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.

Therefore, CEOs 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 so as not to repeat any errors. Moreover, 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. This brings me to the other 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

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well as its performance requirements. The private sector needs to do the same to remain viable.

In a recent ANAO publication entitled '*Control Structures in the Commonwealth Public Sector - Controlling Performance and Outcomes : A Better Practice Guide to Effective Control*' ANAO 1997. '*Control Structures in the Commonwealth Public Sector - Controlling Performance and Outcomes*', A Better Practice Guide to Effective Control, Canberra, December., control is 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.' Ibid., (page 5).

I cannot over-stress the importance of the need to directly integrate the agency's approach to control with its overall risk management plan in order to determine and prioritise the agency functions and activities that need to be controlled. Both require similar disciplines and emphasis on a systematic approach involving identification, analysis, assessment and monitoring. 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. The achievement of the right balance is important 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.

IV. PROJECT AND CONTRACT MANAGEMENT

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Outsourcing represents a fundamental change to an agency's operating environment. It brings with it new opportunities and risks, requiring managers to develop new approaches and skills. In particular, outsourcing places considerable focus and emphasis on project and contract management, including management of the underlying risks involved. The thrust of this change is reflected in the Senate Finance and Public Administration Committee's recently released second report on Contracting Out of Government Services:

'Despite the volumes of advice on best practice which emphasise the need to approach contracting out cautiously, to invest heavily in all aspects of the process and to prepare carefully for the actual implementation, and the substantial body of comment in reports from the Auditor-General indicating that Commonwealth agencies have a very mixed record as project and contract managers, the prevailing ethos still seems to promote contracting out as a management option that will yield inevitable benefits. Resources must be made available to ensure that contract managers have the skills to carry out the task.' Senate Finance and Public Administration References Committee 1998. *'Contracting Out of Government Services'*. Second Report. The Parliament of the Commonwealth of Australia, May.

It is important to recognise that managing an outsourcing contract starts before any decision has been taken on the selection process, let alone the service provider. For this reason, proper project planning is essential to a successful outsourcing partnership. Indeed, the Australian Government Solicitor has observed that:

'There is often an inverse relationship between the amount of time spent in preparing tender and contract conditions and the resources required to deal with problems in contract administration and disputes after the contract has been formed.' Australian

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Government Solicitor 1997, Legal Briefing Number 35, '*Competitive Tendering and Contracting - Strategic and Legal Issues*', (page 2).

There is a wide body of administrative case law and procedural guidance applying to Commonwealth procurement. The resulting framework embodies important principles such as value for money, open and effective competition, ethics and fair dealing, and accountability. The salient point is that the level of procedures required in the selection process should be in direct proportion to the extent and complexity of the services to be provided.

In the appropriate circumstances, the use of competitive tendering and contracting promotes open and effective competition by calling for offers which can be evaluated against clear and previously stated requirements to obtain value for money. This in turn creates the necessary framework for a defensible, accountable method of selecting a service provider. Significantly, a sound tendering process and effective management of the resulting contract are also critical for the efficient, effective and sustainable delivery of programs. This has been highlighted in a number of recent audit reports, for example:

- One department selected a service provider and provided advanced funding of 80 per cent of the contract fee to a contractor without undertaking any financial viability checks on the contractor. The contractor later abandoned the project before it was fully completed because of the withdrawal of its financial backers. As a result the department terminated the contract and has taken legal action in an endeavour to protect any remaining Commonwealth funds held by the contractor. ANAO Report No. 24 1997-98, '*Matters Relevant to a Contract with South Pacific Cruise Lines Ltd*', Canberra.
- Similarly, the audit of the \$5 billion project for six new submarines found that, although only two submarines had been provisionally accepted by the Navy, the department had paid over 95 per cent of the construction contract funds. This was compounded by the finding that the contract only provides modest recourse by the Commonwealth by way of financial guarantees and liquidated damages for late delivery and under-

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performance. ANAO Report No. 34 1997-98, *'New Submarine Project'*, Canberra.

- In conducting the initial sale of Telstra shares, advisers were appointed without having regard to the fees quoted by the tenderers because the Commonwealth agency considered the expected outcome in sale proceeds to be more important than sale costs. The contract fees, amounting to some \$91 million, are the highest ever paid in a Commonwealth public share offer and were significantly above those indicated by other tenderers. Furthermore, the contractual arrangements required fees to be paid for services that were not provided and other fee payments departed from the terms of the relevant contract, which the agency said did not fully capture the commercial understanding of the parties as to the basis on which fees would be calculated and paid. ANAO Report No. 10 1998-99, *'Sale of One-Third of Telstra'*, Canberra.

The clear message here is that, while the Commonwealth should aim to work in partnership with the private sector, any successful outsourcing arrangement must be based on sound tendering processes and an enforceable contract. To be enforceable, the contract must specify the service required; the relationship between the parties needs to be clearly defined, including identification of respective responsibilities; and mechanisms for monitoring performance, including penalties and incentives, set in place. There should not be any equivocation about required performance nor about the obligations of both parties. This is as much about achieving the desired outcome as it is about meeting accountability requirements. Both require sound, systematic and informed risk management which recognise that:

'... managing contract risk is more than a matter of matching risk-reducing mechanisms to identified contract risks; it involves an assessment of the outsourcing situation'. O'Looney John A 1998. *'Outsourcing State and Local Government Services - Decision-Making Strategies and Management Methods'*. Quorum Books, London (page 147).

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Sound contract management, and accountability for performance, is 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, as Richard Mulgan also suggests, 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 Op.cit., Mulgan Richard 1997. *'The Processes of Public Accountability'* (page 8).. Once again, it is a matter of balancing the trade-off between efficiency and accountability if optimal outcomes are to be secured.

Service Charters

In addition to introducing different models for the delivery of public services, the Government in March 1997 also announced its decision to introduce Service Charters to promote a more open and customer-focused Commonwealth Public Service. All Commonwealth agencies, authorities and GBEs which have an impact on the public will need to develop a Service Charter. These Charters will represent a public commitment by each organisation to deliver high quality services to their customers. Where relevant, the charters will guarantee specific standards for service delivery. They will also fairly typically include a review facility. The foregoing arrangements have recently been described by the Ombudsman as follows:

'The aim of client service charters and internal review is to create a more open and responsible public service and provide the community with an effective and easily accessible problem resolution mechanism.' Commonwealth Ombudsman 1999. *'Annual Report on activities, 1997-98'*. Canberra, February, (page 2).

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Again, the notion is to make the public sector more accountable to the general Australian community and more outcomes focused.

Where service delivery has been outsourced, these 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.

V. performance assessment and accountability in the context of the new outputs/outcomes focus

In November 1996, the ANAO, in conjunction with the Department of Finance and Administration (DoFA), published the better practice guide on '*Performance Information Principles*'. It is important to note that the fundamental principles on which the guide was based, such as performance information needing to be accurate, balanced, reliable and measurable, have not changed. However, since that time the significant developments in key government policy mean that some updating is required. I propose to put out an updated guide later in 1999 that incorporates the recent public sector reforms to ensure that the guide continues to be relevant and practical.

The Impact of the new Accrual Budgeting Framework

As you know, in April 1997 the Government decided to implement an accrual-based outcomes and outputs framework for managing resources in the public

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sector. According to DoFADoFA 1998, '*Specifying Outcomes and Outputs*', Canberra., the core of the changes is very clear. The accrual framework focuses on:

- _ what agencies are producing (outputs);
- _ the resources they are administering on behalf of the Commonwealth (administered items);
- _ the purposes of outputs and administered items (outcomes); and
- _ the cost (accrual measurement).

The changed budgeting arrangements, with the first accrual budget due in 1999-2000, has put further pressure on managers to define more clearly measurable performance outputs and outcomes. This requires greater attention to costing and pricing methodologies including the rediscovery, for many of us, of management and cost accounting. Importantly, it means that managers generally at all levels are having to become familiar with such 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.

The Commonwealth's Accrual-based Outcomes and Outputs Framework

A key component of the accrual budgeting framework is the definition and measurement of outcomes and outputs. We should have learnt a lot about the definitions of, and relationship between, inputs, outputs and outcomes over the last decade or so under Program Managing and Budgeting (PMB). We are all well aware of the problems of appropriately assigning responsibilities for control, accountability and performance across the different stakeholders. Measurement has clearly been easier in assessing efficiency and administrative effectiveness in relation to individual inputs and outputs. There will be even more focus on those areas, as well as on their relationship to outcomes, for resource justification in the budget context in the future.

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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.

Not surprisingly, assignment of responsibility for, and assessment of, program outcomes has proved difficult and contentious. A major problem has been a general failure to properly link identified outputs with required outcomes. DoFA has advised that the Appropriation Bill will include clauses clarifying how outcomes are to be interpreted. One aspect of these clauses will allow agencies' Portfolio Budget Statements, which are meant to assist Parliament to understand Appropriation Bills, to be used to interpret outcomes.

A recent ANAO report ANAO Report No. 30 1998-99, *'Performance Information in the Service Level Agreements'*, Canberra. discussed how Centrelink and the former departments of Social Security and Employment, Education, Training and Youth Affairs were defining their particular outcomes and outputs and how the outputs of Centrelink were directly related to the outcomes of the purchasing departments. In purchaser/provider environments, it is critical to define clearly how the services delivered by the provider contribute to the outcomes (and in some cases, outputs, where the services are intermediate) of the purchaser.

The Impact of Technology on Performance Information

Accountability for performance, both internal and external, is dependent on adequate information systems, reporting on the performance of agencies and their managers. Information systems capable of providing accrual based management and financial information and reports are a vital link in the move to improved accountability. The greater use of electronic commerce will significantly enhance agencies' and authorities' capacity in this particular regard as well as facilitating better performance.

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Particularly over the last decade or so the APS has exhibited commendable strengths in various systems development, particularly expert systems, many of which have been acknowledged as better practice internationally. However, we have not done so well in management information systems, particularly those oriented to the way we use our resources to produce program outputs and outcomes. Put simply, they have generally not been user-friendly nor supportive of good management. The move to managing on an accrual basis has emphasised the need for good data management; security of corporate data; ready access to required data throughout the organisation; data sharing; and data that is informative and tailored to particular management tasks and responsibilities, for example by exception reporting.

Some systems can be quite expensive and require careful planning, development and implementation. The problems facing managers, including the issue of outsourcing, vary across agencies, not least in relation to their nature and size. An immediate and significant challenge is to deal effectively with the so-called Year 2000 (Y2K) problem which is fundamentally a management issue. I should point out that the latter involves much wider complications than simply providing a computing 'fix'. ANAO Report No. 22 1998-99, *'Getting Over the Line - Selected Commonwealth bodies' Management of the Year 2000 Problem'*, Canberra. A major concern is about what we do not know. There is really no alternative but to apply the appropriate resources, as quickly as possible, including outside expert assistance as necessary. At this stage the real imperative is to ensure that we have practical and effective contingency planning in place to deal with any emerging Y2K problem particularly in business critical areas if our performance is not to be impaired.

VI. CONCLUDING REMARKS

The provision of government services by contractors is one of the most significant issues in contemporary public sector administration. There is a new emphasis on the contestability of services, the outsourcing of functions which

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the private sector can undertake more efficiently and on ensuring a greater APS orientation towards outcomes rather than just on processes and an accent on continuous improvement to achieve better performance. In effect, we are witnessing a convergence between the public and private sectors.

Convergence offers opportunities for greater partnership and shared concepts but also gives focus to the distinctions between the two sectors. In my view the latter are mainly about accountability and the public interest and have come into prominence at the same time as the volume of information held and the technological means of its access (and of unlawful access) and use are expanding rapidly.

Convergence also raises issues about whether there should be a change in the nature of accountability. 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 are under pressure to recognise the commercial 'realities' of operating in the marketplace. In my view, there needs to be some movement towards striking a balance on the appropriate nature and level of accountability and the need to achieve cost-effective outcomes. Clearly 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.' Op.cit., Hughes Owen E. *'Public Management and Administration - An Introduction'*. (page 229).

However, are these necessarily roadblocks to consideration of a different kind of public accountability? Can they be resolved in a more generic concept of management applying to both sectors? If not, are we looking at different kinds of accountability that relate to different kinds and/or levels of public sector activity. It is difficult to avoid providing a simple answer to the question as to 'who is accountable for what?' if we want to retain the confidence and

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credibility of both the body politic and citizens. But no-one is going to be held accountable for activities over which they have no control. It is possible to contemplate some kind of shared accountability, within the discipline of the marketplace, provided that any financial ramifications are also suitably shared. Many would doubt that both sectors could credibly deliver the level of trust and confidence necessary to ensure such an approach would work in practice under 'traditional' accountability requirements. The issue then becomes what is the price of accountability and is it a price which all those concerned are willing to pay. I will leave the final observations on the topic to one Australian and one overseas source as follows:

*'Demands for a client focus, more responsiveness from the bureaucracy and the personal responsibility of managers are changing the system of accountability of the public service and, indeed, the relationship between government and citizen'.
Ibid., (page 226).*

and

*'Without a reinvention of accountability to accompany the reinvention of government, the current wave of delegation by government at all levels to agents outside the state [my underlining] will almost certainly engender a reformist response from affected systems and their representatives not unlike that which followed wholesale grants of congressional power to agency administration within government during the last era of reform'.
and 256).*

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Does this reflect a swinging back of the pendulum? Perhaps partially, but it may well be a different kind of clock.

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NOTES AND REFERENCES