

Department of Broadband, Communications and the Digital Economy (DBCDE)  
*Submission to the Advisory Group on*  
**Reform of Australian Government Administration:**  
***Building the world's best public service***

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Executive Summary

In this Submission, DBCDE makes the following proposals:

- the APS needs to allow for greater innovative behaviour by participants in our major procurement processes, particularly but not solely, infrastructure and large capital procurement, if greatest advantage is to be taken of recent shifts in skills in major infrastructure and finance businesses globally
- one of the most important contributions to such a process shift is to support APS culture change - away from a first preference for minimising risk and specifying detailed design up front, towards an embrace of greater risk of failure in return for greater opportunity to receive innovative solutions

This will be a vital element of public policy improvement in coming years.

Public-Private Partnership processes have embraced this model. Experience overseas eg in the UK offers relevant guidance as well. While not all experiences have been positive, a significant favourable balance has been built up – particularly by using a variety of competing designs for solutions – in large infrastructure projects in roads, housing and water. “Permission” to the APS to offer significant flexibility to tenderers and to alter preferences in exchange with tenderers during a procurement process is needed from both those institutions involved in setting APS approaches to procurement and those evaluating them, in order to induce this culture change.

The APS has the skilled personnel to manage risks, although with infrastructure investment now a very high priority it could always do with more. What is missing is a more strategic risk management approach to policy, procurement and governance arrangements – an approach to risk which is more related to acknowledging, valuing and negotiating risk allocation than to eliminating it. It may even involve clear compromise of original objectives, if a better proposition emerges from market advice.

DBCDE believes that promotion across the APS of this culture shift will be valuable in areas well beyond its own role. Infrastructure, Transport, Regional Development and Local Government and the Defence Materiel Organisation are likely to be obvious beneficiaries, but the benefits are actually recorded most at the level of key oversight agencies such as Finance and Treasury.

Training is not the primary focus of this submission. For example, risk modelling is now a business practice in its own right for the public sector and for those businesses that intend to work with public investment capital. Again, this has emerged out of PPP arrangements. Training such as this will enable

the APS to continue to develop the relevant skills but permission to apply them is not clearly in evidence. An analysis of what it will take to achieve permission and the related culture shift can and should be undertaken in this APS review process.

This submission does not address the specific questions posed throughout the discussion paper, but will focus on two key areas in which the APS could capitalise on a strategic risk management approach to foster innovation and achieve better outcomes and long term efficiencies by:

- Providing agencies with greater flexibility or scope to engage in innovative, collaborative procurement arrangements.
- Establishing creative cross-sector policy development hubs.

### Context

The Department is operating in an environment which will significantly shape Australia's future economic prosperity and the capacity of its citizens to participate economically and socially.

The Department's strategic priorities over the next decade include the development and implementation of policy in areas that will establish key enablers and constraints for the Australian economy, the way Australian's access goods and services, entertain themselves and communicate with each other and the world. Key priorities include the National Broadband Network; the switchover to digital television; convergence of broadcasting and communications technology, platforms and services; the realisation and management of the digital dividend and Australia's spectrum assets more generally.

To develop and deliver a vibrant, sustainable and internationally competitive broadband, broadcasting and communications sector necessitates the development of world-class innovative solutions.

The challenge for the Department is to align the Government's reform visions for all aspects of the communications, broadcasting and digital economy sectors and to deliver these outputs in the current governance environment. In the absence of change, the Department (and quite probably other Departments in similar fields) is likely to continue to run the risk of failing to satisfy all parties if it is not able to adopt greater flexibility into its procurement processes. And a key element of doing this will be acceptance by relevant rule-setting and evaluating bodies that such flexibility is both higher risk and higher reward.

### Environmental influences

There is good support for change in this area. Former Secretary of the Department of Defence, Ric Smith in his valedictory lecture<sup>1</sup> in late 2006 commented on the proliferation of compliance requirements, ranging from legislated requirements to directives, guidelines and procedural directives.

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<sup>1</sup> *Thirty-eight years in the vineyard*, A valedictory lecture by Mr Ric Smith AO PSM, Secretary, Department of Defence 29 November 2006

Mr Smith noted that these compliance requirements 'often substitute for, and indeed limit the scope for, common sense, values-based judgements. And in minimising the scope for reasonable risk taking behaviour ... they limit Public Service creativity and effectiveness.'

As recently noted by the Auditor-General in his speech<sup>2</sup> *Different Perspectives of Public Sector Governance Asia and Australia*, 'public sector organisations need effective methods for evaluating uncertainty and risk'. Mr McPhee also notes that the current environment of budgetary constraints and a substantial APS reform agenda 'places a premium on the governance arrangements of public sector entities to manage the new priorities, existing programs, and the uncertainties required to be dealt with by government.'

Mark Matthews<sup>3</sup> of the ANU Centre for Policy Innovation argues that governments place too great an emphasis on the 'management of risk' and not enough emphasis on the 'management of uncertainty'. Where 'risk' applies to matters in which a probability of occurrence can be assigned; 'uncertainty' refers to situation in which it is not possible to assign such probabilities. Opportunities to boost innovation are linked to our approach to managing risk and uncertainty.

Catherine Livingstone AO, a member of the Government's 2008 Innovation Review committee spoke to this Department following the release of the final report and defined innovation as solving a problem in order to create value—whether in terms of financial benefit or public good outcomes.

Ms Livingstone emphasised the work of the innovation review committee relating to:

- the need to review risk tolerance within the public sector to facilitate innovation
- the impact the public sector can have on innovation by being a demanding customer in focusing in on the particular service or problem to solve, and
- the benefits of the public sector facilitating a problem solving approach to business deliverables and not over-specifying the required solution.

The pace of change and interaction of issues requires a new framework for the APS to manage uncertainty and risk, actively seek innovative approaches and to deliver outcomes that are timely and suited to our future needs. A significant cultural change is called for.

#### Reforms in procurement

DBCDE is not arguing that procurement policy has failed to adapt. The question is whether it has adapted only in one primary direction, towards more detailed examination of risk and with it a perception of failure if all risks are not

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<sup>2</sup> Ian McPhee, Auditor-General for Australia, *Different Perspectives of Public Sector Governance Asia and Australia*, 14 October 2009

<sup>3</sup> Matthews, Mark, *Fostering creativity and innovation in cooperative federalism – the uncertainty and risk dimensions; Critical Reflections on Australian Public Policy* – selected essays.

substantially mitigated or eliminated well in advance of market exchanges. Some risks cannot be managed by strategies designed in advance. Moreover, contemporary practice in major procurement outside the public sector now clearly involves a shift to flexible arrangements such as alliances and co-operative design, sharing the benefits and cost associated with that. The Department's contemporary experience with larger, strategic and complex procurements, particularly those associated with the National Broadband Network and the switchover to digital television, prompt an interest in further reform of the way agencies are required to engage with the procurement framework. The Department seeks reforms that:

- enhance our capability to procure innovative solutions to progress our policy outcomes
- optimise opportunities for key participants to leverage government investment through our procurement activity and optimise the economic and social benefit to Australians from government expenditure.

The Department agrees with the findings of the *Review of the National Innovation System* and also supports key elements of Recommendation 10.6 of the final report, quoted in part below:

‘The Australian Government should recognise its role as an active participant in facilitating innovation through procurement practices. In this context the Government should:

- Actively manage its ability to engage and demand innovation in procured services and products, given its significant presence as a major purchaser;
- In procurement, be open to participating in risk sharing in relation to innovation demanded;
- Explore the use of forward purchase commitments as a means of more innovating approaches to government procurement...’

As a facilitator of innovation, the Government must permit agencies to accept or share a level of innovation risk, including where appropriate the risk of failure, and to develop improved procurement methodologies and guidance aimed at facilitating collaborative and innovative engagement of stakeholders across government and business.

The Department considers the following reforms would be beneficial:

- A contemporary set of endorsed procurement methodologies that support greater collaboration with stakeholders at key stages of the procurement process and enable Government to engage the views of the market more efficiently and effectively. Methodologies should enable agencies to collaborate with potential parties on innovative solutions to achieving outcomes. Current practice within government is to highly specify the good or service required and thereby constrain the market from delivering innovative solutions to government.

Broad international research revealed that the UK procurement methodologies are the most comprehensively documented and are perhaps the most adaptable to the Australian Government environment.

Three methodologies the Department considers should be examined further are shown below.

- Under **Competitive Dialog**, procuring agencies undertake a pre-qualification process and then invite short listed candidates to participate in a dialogue process during which any aspects of the project may be discussed and solutions developed. The procuring agency can continue the dialogue until it identifies one or more solutions that are capable of satisfying its requirements. It then closes the dialogue and invites final tenders. Only limited discussion and clarification is permitted once the dialogue stage has closed (which does not amount to negotiation).

Competitive Dialog is a well documented procedure<sup>4</sup> governed by the Office of Government Commerce (OGC) in the United Kingdom. It offers opportunities for Government to collaborate in a structured manner on the development of innovative solutions to complex policy requirements.

The procedure is used where contracting authorities are not objectively able to define the technical means capable of satisfying their needs or objectives and are not readily able to specify the legal and/or financial make-of the project. Case studies of the procedure being applied are available online, including one involving the BBC's Digital Switchover Help Scheme<sup>5</sup>.

*A key advantage to this approach is the added flexibility and increased engagement of the market in defining the best approach to achieve key outcomes before work commences.*

- **Collaborative Framework Agreements**  
Collaborative Framework Agreements are contracts let competitively for a fixed period, typically three to five years. The contracts provide for the procuring agency and the service provider to benefit from a longer term relationship.

The benefit to the procuring agency may include:

- agreed arrangements for continuous improvement of goods and services,
- developing a permanent capability within the organisation, or
- enabling the contracting of a more comprehensive service such as including supply chain and storage logistics for the targeted good or service.

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<sup>4</sup> See [http://www.ogc.gov.uk/documents/guide\\_competitive\\_dialogue.pdf](http://www.ogc.gov.uk/documents/guide_competitive_dialogue.pdf)

<sup>5</sup> See [http://www.ogc.gov.uk/documents/OGC\\_Case\\_Study\\_BBC\\_Competitive\\_Dialogue.pdf](http://www.ogc.gov.uk/documents/OGC_Case_Study_BBC_Competitive_Dialogue.pdf)

For the service provider or supplier, the contracts provide longer term security and the opportunity to invest in the improvement of goods and services with a customer partner.

While these agreements were initially created within the UK Government to support the supply of consumables, they have evolved to cover a broader range of more strategic partnerships including consultancies for quality assurance services and the development of electronic learning tools.

*A key advantage to this type of activity is that firms and Government's are investing effort into continuous improvement rather than shorter term arrangements which require considerable investment in bureaucratic bidding processes.*

- **Forward Commitment Procurement**

Forward Commitment Procurement is a procurement model developed in the United Kingdom to promote innovation in the development of a low carbon economy. Under the model the procuring authority specifies the outcome it wants to achieve, contributes to the cost of research and development and commits to purchasing a good or service that will innovatively deliver the outcome.

*Key advantages of this type of activity are that Government agencies specify, through the contribution to research and development, their exposure to innovation risk while initiating the development of goods and services that may otherwise have not occurred, and if successful may significantly contribute to the achievement of outcomes and or efficiency of government.*

- These, or similar, models target the means to support innovation through additional flexibility at key stages, improved guidance on the evaluation of proposals, the setting of boundaries on the types of value propositions and the level of risk that agencies are permitted to accept on behalf of Government.

An innovative solution may enable the procuring agency to achieve:

- savings beyond the initial scope of the procurement
- savings to be achieved across Government through broader application of a solution than originally sought, or
- value to be created within the broader economy.

Guidelines around these approaches would effectively provide the public with a clearer view of the Government's procurement innovation policy and willingness to invest in innovation.

## Improving the efficiency of procurement processes

The paper, *Australian Government Procurement – a Time for Reform?* by John W. H. Denton, Partner & CEO and Trevor Danos, Partner, Corrs Chambers Westgarth, caution against the trend for probity advice to become an industry in its own right:

‘At a time when Government wants to simplify red tape and facilitate business engagement with government, we ironically find ourselves with an excessive focus on the rules and procedures surrounding probity. This results in cumbersome, inflexible and prolonged procurement processes and many principles that fail the test of commonsense, almost to the point of prejudicing the procurement itself or its timetable....For the tenderer, it just adds to the cost and length of the process.’<sup>6</sup>

The paper advocates that ‘a common sense probity culture should be fostered so government employees understand the principles and are able to apply them in a useful and consistent way on a day to day basis....Probity has become a runaway train. At the start of any procurement process, the relevant government should take a common sense approach in determining the level of probity rules that need to be applied, including whether complex probity requirements generate real and tangible benefits and whether the procurement would be materially jeopardised without them.’

In theory, the devolved procurement approach provides agencies with the opportunity to manage procurement in a manner that best meets their needs. In practice, the benefits of tailored arrangements may be outweighed by the administrative overheads for agencies associated with maintaining CPG compliant policy, procedures, systems and sufficient in-house workforce expertise. The overarching objective of competition may also be undermined by the cost of participation, particularly when considering the imposts that our frameworks place on small to medium businesses engaging with government procurement activities.

Opportunities exist for enhancement of the role of the recently announced Procurement Coordinator in the Department of Finance and Deregulation in line with the roles played by agencies such as the Office of Government Commerce (OGC) in the UK or the Victorian Government Purchasing Board.

Key opportunities for shifting further toward centralised procurement services for agencies include:

- **Advice.** Provision of expert procurement advisory services particularly for strategic or complex procurements. The services offered would include procurement strategy and methodological advice aimed at supporting agencies to achieve the best possible procurement outcomes. Advice should include guidance on applying efficient probity requirements

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<sup>6</sup> John W.H. Denton, CEO and Partner and Trevor Danos, Partner, Corrs Chambers Westgarth, *Australian Government Procurement—a Time for Reform?*

commensurate with the risks associated with specific procurement exercises.

- **Skills.** Strategic deployment of accredited procurement expertise to support critical Government policy priorities. This service would overcome a key skills shortage across agencies, develop a career structure for procurement professionals and guarantee allocation of the best procurement experts to the most important procurement exercises.
- **Panels.** Broaden the scope of Government's current coordinated procurement processes to establish a clearing-house aimed at improving agencies knowledge about procurement opportunities. For example in addition to the mandated coordinated procurement panels which are targeting travel, telecommunications and information technology, provide central information regarding voluntary supply panels (e.g. this Department's governance panel, the APSC Capability Development panel) and other innovative procurement processes:
  - voluntary supply panels are increasingly being developed to include 'piggyback' options enabling use by other Commonwealth agencies
  - opportunities exist for voluntary panels to operate across the scope of the Commonwealth in more general service areas such as research, marketing, strategic and governance services etc.

For agencies, panels provide an alternative to individual scoping studies for the assessment of markets around mandated procurements. For businesses offering quite generic services, particularly small businesses, panels potentially provide more efficient access to Government contracts by enabling a tender once approach. For agencies, panels offer more efficient access to generic service providers without constraining the procurement strategies they wish to employ for specific service requirements, strategic or complex procurements.

#### Policy development hubs

Whilst the APS serves the government of the day, it is a perpetual source of advice and expertise to successive governments and as such, it needs to also focus on longer-term strategic issues. Agencies need to be ahead of or at least on pace with politicians in their areas of policy and program responsibility.

Strategic policy development can be severely limited by the constraints of current APS practices, specifically those created by the lack of:

- authority to engage in independently directed policy analysis
- capacity to devote time and space
- capability to define policy outcomes and requirements
- the pace of Government
- limitations defined by election commitments and cycles, and
- Cabinet and Budget confidentiality protocols.

The keys to success in strategic policy development are permission | space | time | resources | data. To achieve success, the APS needs the time and

latitude to scan the environment; to consider the uncertainties of the future directions; analyse relevant data and experiment with flexible policy approaches.

As a way forward, the Department would support the establishment of policy hubs:

- as time limited, project based, amorphous groups
- which operate through partnerships between the APS | broader public sector | industry | academia | citizenry
- are centrally funded and apolitical
- have latitude to consider broad and far reaching issues, and
- have access to high quality data.

The Department's policy and program priorities in broadband, telecommunications and the digital economy are currently engaging with these issues in a dynamic and innovative environment. Leveraging the National Broadband Network and convergence are critical innovation issues, which would suit further consideration by a strategic policy hub in the type of framework noted above.

Various models for the establishment of policy hubs should be considered. Mark Matthews suggests explicitly experimental partnership-based projects. Alternatively, models could be similar to:

- the COAG National Partnership program whereby, COAG will fund specific projects and/or reward States that deliver on nationally-significant reforms, or
- the ARC Centres of Excellence research models.

As an initial step, it would be useful to trial placement of the policy hubs in a range of settings including academia; industry; a state or federal agency.

#### Policy framework issues

If policy development hubs are not progressed, consideration will need to be given to the empowerment and resourcing of individual agencies to undertake strategic policy development. Specifically, agencies require more explicit authority and associated resources:

- to maintain contemporary policy intelligence across the full scope of the agency's policy responsibilities
- to explore policy options in areas where Government has announced they have an interest or have determined they wish to achieve specific outcomes
- to consider implications of non-Government policies in order to properly brief the Government, and
- to consider future issues that may be beyond the agenda of the government of the day.