



Australian Government

**Australian Government response to the
Joint Standing Committee on Foreign Affairs,
Defence and Trade**

Defence Sub-Committee inquiry report

Review of the Defence Annual Report 2012-13

June 2015

Recommendation 1

Asset management and capital investment program

The Committee recommends that the Department of Defence review contract templates and procurement processes to ensure that, to the extent possible, payments flow to small and medium sized enterprises subcontracted by primes in a timely manner.

Government response

Agree

The Suite of Defence Construction Contracts contain provisions that require any payments made by the Commonwealth in respect of construction work, to be made in accordance with the relevant building and construction industry security of payment legislation in the state, or territory, where the construction work is being delivered.

The legislation requires that payments to construction contractors are made within specified timeframes (10 business days in all states and territories except Queensland, where five business days is specified). As a condition precedent to payment, a construction contractor must provide a statutory declaration (or any other such documentary evidence) that confirms that all workers and sub-contractors employed by the contractor (in connection with the contractor's activities) have, at the date of the payment claim, been paid all monies due and payable to them in respect of their employment.

The Governments in New South Wales and Western Australia are conducting pilot studies into the use of dedicated project bank accounts for construction projects as a measure to improve flow of payments to both workers and sub-contractors. Defence will monitor the outcomes of the pilot studies and, if effective, may consider using this process to ensure payment is made to sub-contractors.

Defence established 10 base services contracts in 2014, collectively worth about \$10 billion over a 10 year period. The contracts are with industry specialists in the services they provide to Defence. These contracts are in transition to replace the comprehensive maintenance services and base services contracts referred to in paragraph 2.46 of the report, where it was noted that Defence had advised that it was not aware of any outstanding payments to sub-contractors under these contracts.

In the newly established base services contracts, Defence has included clauses that cover requirements in relation to security of payment and gain share. The clauses define a sub-contractor as a person engaged by the contractor, its sub-contractor or any other person to carry out work which forms part of the services.

The security of payment provisions address obligations to promote the flow of payments to sub-contractors relating to the carrying out of work, and supply of related goods and services.

Defence will continue to work with relevant stakeholders to review templates and processes to ensure that business is conducted in a compliant, ethical, efficient and effective manner.

Recommendation 2

Asset management and capital investment program

The Committee recommends that Government review the process by which Defence properties are placed on the Commonwealth Heritage List and ensure that, where properties are listed, they are suitably funded either by a specific appropriation or through a public private partnership.

Government response

2 (a) Disagree

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) sets out the process for establishing the Commonwealth Heritage List. The Environment Minister has responsibility for the list, and deciding whether nominated places should be listed or not, following advice from the Australian Heritage Council.

Defence has in excess of 130 places on the list. Following heritage amendments to the EPBC Act in 2004, which established the list, the majority of these places were transferred from the former Register of the National Estate that was established by the *Australian Heritage Commission Act 1975*.

The Department of the Environment is responsible for administering the EPBC Act on behalf of the Environment Minister. The EPBC Act was independently reviewed in 2008 by Dr Allan Hawke. The EPBC Review recommendations report was released in 2009, with a subsequent government response in 2011.

The Commonwealth Heritage List (CHL) provisions of the EPBC Act were included in the review, with no proposed changes to the listing process that would affect the way that Defence properties are placed on the list. The Department of the Environment has advised that it is not planning to conduct a review of this process.

Defence works closely with the Department of the Environment in managing CHL nominations related to its estate.

2 (b) Disagree

The Defence estate is managed and maintained to meet current and future Defence capability and Government priorities. The day-to-day maintenance of the Defence estate is funded from the Estate Maintenance Program. This includes costs associated with the maintenance and management of heritage buildings across the Defence estate.

The Government does not agree to partitioning part of the existing Defence estate maintenance budget allocation to specifically manage heritage values. Defence's current practice for funding maintenance works ensures that key factors, including heritage value, work health and safety risks and contribution to capability, are considered when allocating funds. This process ensures that the budget is allocated on a risk-based method, with funding going to the highest priority works to support Defence capability and manage Defence's highest heritage values.

The Government considers the management of heritage values on the Defence estate does not meet the principles of a private financing arrangement. Delivery through a public private partnership would not present a viable option for the private sector as opportunities to apply whole-of-life innovation and efficiencies (for example, in the design and construction phase) are limited. As such,

no further consideration has been undertaken in relation to potential financing through a public private partnership.

Recommendation 3

Navy combat capability

The Committee recommends that the Department of Defence consider utilising independent subject matter experts in a system of Gate reviews, starting with project conception in the Capability Development Group and continuing through life of type, as part of the seaworthiness system.

Government response

Agree in principle

The Defence seaworthiness system has facilitated significant improvements to the seaworthiness of Naval capability, with initial effort focused on the in-service phase of the capability lifecycle. The focus of the Defence seaworthiness system is being expanded to include the earlier phases of the capability lifecycle to provide a risk-based, whole-of-life, assurance program. These assurance activities will be aligned to existing capability development milestones with the desired outcome being to provide the capability managers (Chief of Navy and Chief of Army) with justified confidence in the seaworthiness of maritime capabilities.

The Government agrees that higher risk activities and considerations may usefully engage independent subject matter experts in a system of Gate reviews to individual risks and issues. However, the utilisation of subject matter experts as part of the seaworthiness system for lower risk activities can be managed effectively, without the time and resource implications of independent review.

While the seaworthiness system allows for tailoring the level of controls and assurance based on risk to any particular project, the derivation of capability needs flows from direct consideration of Government policy/direction, strategy and strategic risk – a process that precedes project conception.

Recommendation 4

Navy combat capability

The Committee recommends that the Department of Defence provide the Committee with a specific update on the implementation of each Coles review recommendations prior to the tabling of the Department's next annual report.

Government response

Agree

The Government will provide the Committee with an unclassified update on the implementation of the Coles review recommendations.

Recommendation 5

Defence Materiel Organisation and Capability Development Group

The Committee recommends that the Department of Defence increase the use of private sector expertise, particularly in the areas of test and evaluation, risk management, review and business case development, in order to enhance the capability development process and new capability proposals.

Government response

Agree

Capability Development Group's industry partnership with Nova was replaced by a new commercial support arrangement with multiple private sector suppliers in November 2013. The new arrangement serves to expedite and streamline the Group's access to industry expertise, capability and capacity, in support of key capability development activities. Throughout 2014, the Group has increased its use of private sector expertise to progress Defence Capability Plan projects, particularly in the areas of project definition and development, project scheduling, test and evaluation and risk management. Further, the Group is investigating the feasibility of securing increased specialist commercial support in the areas of systems engineering and cost estimation.

Recommendation 6

Defence Materiel Organisation and Capability Development Group

The Committee recommends that the Vice Chief of the Defence Force own a process that harnesses and coordinates the oversight and review functions currently exercised by the Capability Development Group, the Defence Materiel Organisation and the Services in order to integrate a whole of life approach to capability assurance.

Government response

Agree in principle

The Government agrees with the intent of the recommendation. The First Principles Review was released on 1 April 2015. The report has made 21 recommendations that involve establishing a single end-to-end capability development function within the Department to maximise the efficient, effective and professional delivery of military capability. Twenty of these recommendations have been agreed by Government and will be implemented in the next two years.

The emphasis of the recommendations is to create a more integrated and holistic process with greater and more transparent alignment to future and joint force requirements, supported by an integrated capability delivery function and subject to stronger direction setting and contestability.

Recommendation 7

Defence Materiel Organisation and Capability Development Group

The Committee recommends that the Department of Defence continue to build on the capabilities and processes that have been developed within the SEA 1000 industry Integrated Project Team (IPT) and ensure that the views of the IPT are transparently communicated to the National Security Committee of Cabinet as part of procurement decisions.

Government response

Agree in principle

The Government acknowledges the work being undertaken by the Integrated Project Team is a critical component to the development of Australia's submarine capabilities as they have, and will continue to provide, in-house specialist technical and engineering advice to the Government via the appropriate mechanism.

Recommendation 8

Other issues

The Committee recommends that Defence Annual Reports include appropriately detailed information on the direction and development of the Department's cyber security capabilities.

Government response

Agree in principle

Detailed information about the direction and development of the Department's cyber security capabilities would give potential adversaries information that would actually enable them to effect successful compromises of the Department. The Government agrees with the intent of the recommendation and will, in the unclassified Defence Annual Report, ensure Defence report high-level detail of what is planned at an unclassified level.

The Defence Information and Communication Technology (ICT) environment is larger and more complex than other departments – in fact it is one of the largest ICT environments in the country, supporting a wide range of specialist military, general administrative and management functions. Defence is currently embarked on a wide-ranging ICT infrastructure transformation program that is making substantial improvements to technologies, sustainability, security and currency of the Defence ICT environment.

Defence takes the protection of information, capabilities and cyber security obligations very seriously. Defence has dedicated teams of highly specialised, well trained operators who monitor Defence's cyber environment, conduct vulnerability scanning and assessments, and provide advice and assistance to capability delivery areas to ensure that security is an essential element of everything Defence does. Defence is ensuring that attention is directed to areas of highest need to ensure the protection of its ICT environments.

Defence has also centralised its ICT security elements within one area, the Defence ICT Security Branch, enabling increased governance of cyber security measures and providing Defence, and Government, decision makers with a coordinated capability to understand risks and prioritise actions accordingly.

Defence ICT Security Branch continues to work closely with other areas of Defence and government such as the Australian Signal's Directorate and the Australian Cyber Security Centre, and is focused on building deeper and more strategic relationships with Defence Industry, in order to deliver greater national security outcomes within a framework of more timely and commercially viable engagement.