

Other issues

- 5.1 In addition to an examination of major projects, Defence operations and personnel, the committee also inquired into a range of other current issues.

Defence Capability Plan

- 5.2 The *Defence Annual Report 2008-09* defines the Defence Capability Plan (DCP) as:
- ...a costed, detailed development plan for Australia's military capabilities over a ten-year period. The plan is reviewed regularly to take account of changing strategic circumstances, new technologies and changed priorities, in the context of the overall Defence budget.¹
- 5.3 At the public hearing the committee sought Defence's views on the 2009 DCP which covered the 2009-2013 forward estimates period.²
- 5.4 Defence noted that in the previous year the Government made a decision for the 2009 DCP to cover four-years. Defence also noted that:
- ...government made a decision to have people look at the amount of public information that is disclosed. It received a report. It has considered that report, amongst other considerations, and it has

1 Department of Defence, *Defence Annual Report 2008-09 Volume One*, p. 370.

2 Department of Defence, *Defence Capability Plan 2009*, p. 1.

now decided that it is in the public interest that we go beyond the four years.³

- 5.5 Defence highlighted that, in response to the review of the public DCP, the Minister for Defence Personnel, Materiel and Science announced that future public DCPs will return to a 10 year forward estimates period. Defence stated:

The government has made a decision on its review of the public DCP. The minister has already said that they would extend the length of the forecast if you like, the horizon of the DCP, to 10 years. They view it as giving an appropriate level of forecast, horizon, visibility, to the audience of the public DCP – that is, taxpayers, obviously, and industry, importantly, on the sorts of plans that are out there, with a varying degree of fidelity in that information, depending on how far away the horizon is. The further you go out, there have to be broader indications because it can be up to 10 years away in that sort of planning.⁴

- 5.6 Defence added:

The whole point of the long-term DCP is to allow industry to engage with us, to give us ideas about what might be the best way to progress and what is the best balance for them between cost and opportunity and time to make a decision and so on.⁵

Progress of the reform agenda

- 5.7 The committee noted that prior to February 2004, 12 per cent of projects were over budget and 74 per cent were under budget. The committee also pointed out that after February 2004 the number of projects over budget increased to 25 per cent while the number of projects under budget slipped to 51 per cent.⁶
- 5.8 The committee sought Defence's opinion on why its budget appeared to shift significantly within the last five years.
- 5.9 Defence pointed out that typical Defence Materiel Organisation (DMO) projects take 5-25 years to complete, stating:

3 Dr Gumley, Department of Defence, *Transcript*, 30 March 2010, p. 30.

4 Vice Adm. Tripovich, Department of Defence, *Transcript*, 30 March 2010, p. 30.

5 Mr King, Department of Defence, *Transcript*, 30 March 2010, p. 35.

6 House of Representatives, Questions in Writing, Question 1064, 3 February 2010, p. 365.

Specialised military equipment projects have lengthy lifecycles and varying stages of maturity across those cycles... Depending on where projects sit in their lifecycles determines their susceptibility to either budget over-runs or budget savings.⁷

- 5.10 Defence pointed out that 'there is not always a correlation between a driver for cost change and the year that the financial impact materialises.'⁸ Defence highlighted the financial impact of two troubled projects, the cancelled Seasprite helicopter and the Airborne Early Warning and Control platform, noting that:
- the cancelled Seasprite helicopter had its root causes of failure from events in the late 1990s, but the financial impacts were not fully seen until 2005; and
 - additional cost pressures as a result of over ambitious technical specifications set in 2001 for the Airborne Early Warning and Control platform showed up as a real cost increase in 2006-2007.⁹
- 5.11 Defence was of the view that it would be reasonable to undertake a proper assessment of budget performance in 2018-2020 due to the significant length of projects.¹⁰

Outstanding litigation matters

- 5.12 The committee sought Defence's views on the progress Defence had made in settling any outstanding litigation issues.
- 5.13 Noting that discussions of the settlements were confidential, Defence advised:

Thirty-one former deseal-reseal maintenance workers and three of their spouses lodged writs with the Supreme Court of Queensland, seeking damages. We have attempted to resolve the claims without the need to proceed to full litigation. Twenty one of those have been mediated since November 2008 and 17 of those claims have now been settled.¹¹

7 Department of Defence, *Submission no. 2*, p. 3.

8 Department of Defence, *Submission no. 2*, p. 3.

9 Department of Defence, *Submission no. 2*, p. 3.

10 Department of Defence, *Submission no. 2*, p. 4.

11 Air Chief Marshal Houston, Department of Defence, *Transcript*, 30 March 2010, p. 87.

5.14 The committee also questioned the legal costs associated with the High Court of Australia case *Brian George Lane v Colonel Peter John Morrison*.

5.15 Defence stated:

First of all, with regard to the professional solicitors' fees Mr Lane's costs there was an amount of \$30,191.64 paid to the plaintiff on 15 February 2010. There was an additional amount of money: a certificate of taxation for the total amount of \$38,250 for the counsel's fees component of the cost was issued by the High Court on 1 February 2010 and received by AGS on 18 February 2010. These were paid on 22 February. The full amount paid to the plaintiff under the costs order was \$68,441.64.¹²

5.16 The committee sought some additional information from Defence on the actual costs Defence incurred for its legal representation in the High Court.

5.17 Defence advised:

A total of \$446,042.23 was incurred by Defence for its legal representation in the High Court proceedings in *Lane v Morrison*. \$65,257.94 was paid to Counsel, \$364,758.49 to the Australian Government Solicitor and \$16,025.80 was incurred for Counsel's travel and other general disbursements. No costs are payable for the services provided by the Solicitor-General.¹³

5.18 **Defence has previously advised the committee that it seeks to behave as a model litigant. Although the Question on Notice provided to Defence sought Defence's view as to whether they believe they have behaved as a model litigant in this case, Defence has failed to respond to this question.**

5.19 **The committee is concerned that Defence's conduct in settling Mr Lane's legal costs rely more on a strict adherence to the minimum required by the law than to the standard of a model litigant.**

5.20 **Financially punishing Mr Lane and/or his legal representatives is not the actions of a model litigant.**

5.21 **The committee expects that Defence will seek to resolve this matter with a payment more in keeping with actual market legal costs that would reasonably have been incurred by Mr Lane. A simple comparison of Defence's legal costs and the taxed assessment illustrates the point.**

12 Air Chief Marshal Houston, Department of Defence, *Transcript*, 30 March 2010, p. 88.

13 Department of Defence, *Submission no. 2*, p. 8.

Role of the Defence Materiel Organisation

- 5.22 As a result of recommendations made in the Defence Procurement Review,¹⁴ on 1 July 2005 the DMO became a prescribed agency under the *Financial Management and Accountability Act 1997* (FMA Act).¹⁵
- 5.23 As set out in the Chief Executive Officer (CEO) of the DMO Ministerial Directive and under the agreed business model for DMO as a prescribed agency, the CEO of the DMO is directly accountable to the Minister of Defence under the FMA Act for DMO's performance and finances but remains accountable to the Secretary of the Department of Defence (the Secretary), under the *Public Service Act 1999* (PS Act), and the Chief of the Defence Force (CDF).¹⁶
- 5.24 The DMO has separate accounts and performance targets, but in all other policy and administrative aspects is part of the Defence portfolio.¹⁷
- 5.25 The committee asked for the DMO's view on where it sits within the larger Defence structure and whether it should continue as a prescribed agency.
- 5.26 The DMO stated that it was comfortable with its status as a prescribed agency noting that the Secretary had delegated a number of human resources responsibilities 'which gives a reasonable control over elements of workforce management that are necessary to have a project management purchasing culture'.¹⁸
- 5.27 The DMO provided an overview of its running costs noting that about '93 [cents] in the dollar of what we spend goes to the private sector; about seven per cent is kept for internal staff, running costs, project management, purchasing, auditing and assurance.'¹⁹

14 Department of Prime Minister and Cabinet, *Defence Procurement Review 2003*, 15 August 2003, pp. 37-38; Led by Malcolm Kinnaird and known as the 'Kinnaird report'.

15 Department of Defence, *Inside the Defence Materiel Organisation*, June 2008, p. 12.

16 Department of Defence, *Defence Portfolio Budget Statements 2009-10, Figure 2: Organisational Chart*, 9 May 2009, p. 14; Department of Defence, *Inside the Defence Materiel Organisation*, June 2008, p. 12.

17 Department of Defence, *Inside the Defence Materiel Organisation*, June 2008, p. 12.

18 Dr Gumley, Department of Defence, *Transcript*, 30 March 2010, p. 61.

19 Dr Gumley, Department of Defence, *Transcript*, 30 March 2010, p. 61.

5.28 While the DMO acknowledged that it could be working more efficiently but that it was 'reasonably comfortable with the level of resources being applied to deliver these very complex projects and the sustainment of fleets.'²⁰

5.29 In responding to the question of where the DMO sits within the larger Defence structure, it stated:

In terms of where we fit with the Secretary and the CDF, I am very comfortable with the relationship at the moment. It is professional and constructive. We also have a good relationship with Matt Tripovich, who is running the Capability Development Group [CDG]...as the delivery organisation, it is very useful for CDG to work through their specifications and interpret what the military want for operational deployment and through that mostly military determination to tell the DMO what it needs to acquire.²¹

5.30 The committee also sought confirmation from the DMO that, as a prescribed agency, it was governed by the PS Act.

5.31 The DMO acknowledged that it was a part of the Australian Public Service and as such has responsibilities under the FMA Act and is audited by the Australian National Audit Office (ANAO).²² The DMO added:

All of our employment and other conditions are under the PS Act other than for the quarter of the staff in DMO who are military people that are effectively outsourced to us by the military organisations – they are hired under the Australian Defence Act.²³

Defence assistance to the civil community

5.32 From time to time Defence provides counter disaster, emergency or non-emergency assistance to the civil community and civilian authorities.

5.33 According to the Defence Instruction General (Operations) 05-1, *Defence Assistance to the Civil Community Policy and Procedures*, requests for

20 Dr Gumley, Department of Defence, *Transcript*, 30 March 2010, p. 61.

21 Dr Gumley, Department of Defence, *Transcript*, 30 March 2010, p. 61.

22 Dr Gumley, Department of Defence, *Transcript*, 30 March 2010, p. 61.

23 Dr Gumley, Department of Defence, *Transcript*, 30 March 2010, pp. 61-62.

non-emergency assistance can be received at any level of Defence or made through the Minister.²⁴

5.34 The committee noted that a local council put forward an application for non-emergency assistance in order to access a number of outdated line-of-communication bridges sitting in a disposal store and asked Defence why the application was turned down.

5.35 Defence provided some background on the councils application, noting that:

Army personnel from the School of Military Engineering were requested by the Greater Taree City Council to provide technical advice to support their consideration for the “acquisition or hire of line of communication bridges” ...Army personnel supported the site survey based on it being a preliminary investigation. The purpose of the survey was to assist the Council’s deliberation by determining whether the site suited the use of line of communication bridging.²⁵

5.36 Defence acknowledged that the ‘Army personnel involved in the site survey did not have an authority to provide any support beyond the technical advice of the site survey.’²⁶

5.37 Defence advised that the council’s application was not approved because:

The use of Defence assets and personnel to provide this type of support would normally be restricted to civil emergency situations, to provide immediate short term relief pending a longer term civil solution.²⁷

Tender process

5.38 The committee questioned Defence about its current tender process.

5.39 Defence advised that a manufacturer will fill in a detailed tender specification and based on the paperwork Defence will make an

24 Department of Defence, *Defence Instruction General (Operations) 05-1, Defence Assistance to the Civil Community Policy and Procedures*, 16 March 2004, p. AL9.

25 Department of Defence, *Submission no. 2*, p. 4.

26 Department of Defence, *Submission no. 2*, p. 5.

27 Department of Defence, *Submission no. 2*, p. 5.

assessment of which is the preferred tenderer to go through to the next phase – the exact technical trials.²⁸

- 5.40 Defence pointed out that it relies on a manufacturer's submission to present a product, stating:

We are also very challenged and listen to the industry comment. It always works two ways. Industry says, 'Don't put me to too much expense.' So you try and balance those up and you rely on submissions by the companies to present their product to us with veracity.²⁹

- 5.41 Defence also noted that every tender lists a process for a manufacturer to follow³⁰ but that the tender process differs depending on whether the product has been developed or not, stating:

It depends very much what you are acquiring. Sometimes it has never been developed, so you have to rely on a submission from a company that they can meet a certain specification with a product they have never developed. On other occasions when it is a smaller, less expensive item, we will test those items – fabric strengths or whatever, we will test it. It depends very much on what the acquisition is and what cost you are putting industry to demonstrate its compliance with the requirements.³¹

- 5.42 In response to the committee's question on who assesses the tender specification, Defence stated that a combination of the Defence Science and Technology Organisation (DSTO), Defence and the DMO capability manager make an assessment during the evaluation period:

We are also involved in the Defence Science and Technology Organisation, who do the technical risks of the proposals being provided by the companies... Sometimes prototyping is a valid acquisition strategy to take; to get someone to bring a prototype – for example, the vehicle fleets. Where it is well proven, well understood and the companies are able back up their claims with hard data – something that may be already in service, for example – a combination of the DMO capability people and Defence Science and Technology Organisation make an assessment during the evaluation process of how valid the claims are, the basis of the claims and what facts underpin it. At the end

28 Dr Gumley, Department of Defence, *Transcript*, 30 March 2010, p. 33.

29 Mr King, Department of Defence, *Transcript*, 30 March 2010, p. 33.

30 Dr Gumley, Department of Defence, *Transcript*, 30 March 2010, p. 34.

31 Mr King, Department of Defence, *Transcript*, 30 March 2010, p. 33.

of the day, you make an assessment about whether you need to go to the cost of prototyping or you proceed with the contract and carry some risk which you have assessed as being manageable, for which you have either time or money set aside to deal with it.³²

- 5.43 Defence also pointed out that it engaged with industry extensively in the tender process running:

...a pre-tender industry briefing where we talk about what the steps of the process are most likely to be – whether it is going to be preferred tenderer and then test, or whether we are going to test multiple vehicles before we go to preferred tender, or whatever the particular thing.³³

Sea King accident

- 5.44 On 2 April 2005, nine Navy and Air Force members tragically perished when their Navy Sea King helicopter crashed on the island of Nias, Indonesia. The flight crew and medical personnel were providing humanitarian aid as part of Operation Sumatra Assist II following the Nias earthquake.³⁴
- 5.45 On 6 September 2005, a Board of Inquiry established to examine the accident started its proceedings.³⁵ The Board of Inquiry report into the Sea King accident was publicly released on 21 June 2007 and the Chief of Navy announced that all 256 recommendations from the report had been implemented on 18 March 2009.³⁶
- 5.46 Defence advised the committee that the Chiefs of Service Committee were monitoring progress of implementing the Board of Inquiry's recommendations across Defence and was of the view that:

Implementing all of the Sea King Board's recommendations was a significant step to embedding a 'can do safely' attitude into Navy's aviation activities.³⁷

32 Vice Adm. Tripovich, Department of Defence, *Transcript*, 30 March 2010, p. 34.

33 Mr King, Department of Defence, *Transcript*, 30 March 2010, p. 35.

34 Department of Defence, 'Sea King Board of Inquiry', viewed on 5 May 2010, <http://www.defence.gov.au/sea_king_boi/>

35 Senate Standing Committee on Foreign Affairs, Defence and Trade, *Estimates (Supplementary Budget Estimates)*, Wednesday, 2 November 2005, p. 7.

36 Department of Defence, *Submission no. 2*, p. 7.

37 Department of Defence, *Submission no. 2*, p. 7.

5.47 In response to a question on whether any disciplinary action had been taken against those who were found to be responsible, Defence stated:

The Board made adverse findings against a number of individuals who appeared before it. Careful consideration was given to whether administrative or disciplinary action should be commenced against those individuals. After having regard to all the relevant information, adverse administrative action was commenced against eleven individuals. Action against one individual remains outstanding.³⁸

5.48 Defence pointed out that the Navy had appointed a Family Advocate to act as the central point of contact to ensure that all relevant information is available to the survivors and family members of the deceased.³⁹

Allegations of phantom contracts

5.49 At the public hearing, the committee examined news reports alleging that Defence had awarded 'phantom contracts' to companies for goods or services that were never supplied and asked Defence to provide an explanation.⁴⁰

5.50 Defence advised that it had taken the allegations very seriously and engaged its chief audit executive to undertake a review of the contracts. Defence advised that it had resolved all of the alleged 'phantom contracts' satisfactorily and provided an overview on six cases, stating:

- the payment for Q20 Standard Aero, a contract to maintain the engines and propellers for the C130 Hercules, was confirmed;
- the contract with Pel-Air, who have supplied Learjets that used to test equipment, was terminated and no money spent;
- the payment to the Hyatt Regency for a workshop was confirmed noting that the workshop participants were charged \$9,000 each for accommodation;
- the payment to the Bentley Suites for six Melbourne based DMO staff, staying there while in Canberra, was confirmed;

38 Department of Defence, *Submission no. 2*, p. 7.

39 Department of Defence, *Submission no. 2*, p. 7.

40 Besser L, 'The Wrong Stuff', *The Sydney Morning Herald*, 9 March 2010.

- Blazing Saddles also confirmed that it had received payment for ‘the provision of six horses to test up with NORFORCE in Northern Australia as a means of having our Indigenous members of the ADF move into a territory that cannot be accessed by motor vehicle’;⁴¹ and
 - the Royal Australian Navy’s purchase of branded marketing items used at public events and activities as part of the Navy’s community engagement program, valued over \$30,000, was appropriate and correctly approved, and the contract was executed properly.⁴²
- 5.51 Defence was of the opinion that its contracts were executed properly but acknowledged that it had not paid enough attention to the descriptors in AusTender.⁴³
- 5.52 Defence advised that it is ‘re-educating all staff involved in procurement processes on correct and appropriate data to be entered into systems to ensure transparency and accuracy of procurement activities.’⁴⁴

Capital Investment Program

- 5.53 At the public hearing, the committee examined Defence’s budget estimate that proceeds from the sale of Defence land and buildings would total \$229.6 million for the 2009-10 financial year and \$102.2 million for the 2010-11 financial year.⁴⁵ The committee asked Defence to provide an indication of what the forward estimates were based on and what Defence land and buildings had been sold up to 30 March 2010.
- 5.54 Defence initially provided some background on how estimates in the Portfolio Budget Statement (PBS) are made, stating:

The PBS is put together primarily by our CFO [Chief Financial Officer]...The estimate is put together roughly like this. In each budget process, we are asked by the government for an estimate of sales of Defence property likely to be made during the coming year. The numbers that go into the PBS are based on that estimate.

41 Mr Brown, Department of Defence, *Transcript*, 30 March 2010, pp. 91-92; Air Vice Marshal Harvey, Department of Defence, *Transcript*, 30 March 2010, p. 92.

42 Department of Defence, *Submission no. 2*, p. 8.

43 Dr Watt, Department of Defence, *Transcript*, 30 March 2010, p. 93; AusTender provides centralised publication of Australian Government business opportunities, annual procurement plans, multi-use lists and contracts awarded.

44 Department of Defence, *Submission no. 2*, p. 8.

45 Department of Defence, *Defence Portfolio Budget Statements 2009-10*, 9 May 2009, p. 31.

They are usually only tentative because there is always an element of conjecture in what is projected to be sold and what is projected to not be sold.⁴⁶

- 5.55 Defence advised that the 2009-2010 budget estimate of \$229.6 million and the 2010-2011 budget estimate of \$102.2 million related to 'the budgeted proceeds from the planned sale of the properties identified through the Property Disposal Program agreed by government.'⁴⁷
- 5.56 Defence added:
- Estimated proceeds over the forward estimates are based on independent property valuations where available. Otherwise, estimate proceeds reflect property values on the asset register which is based on market value.⁴⁸
- 5.57 Defence highlighted that it had revised its additional estimate of \$229.6 million to \$85.5 million noting that:
- during 2009-10 it had sold eight properties with receipts totalling \$7.6 million; and
 - four properties were sold in previous years with receipts received in 2009-2010 totalling \$3.9 million.⁴⁹
- 5.58 Defence estimated that the proceeds from the remaining planned sales, before the end of the 2009-2010 financial year, would total \$74 million.⁵⁰
- 5.59 At the public hearing, the committee also examined Defence's budget estimate that proceeds from sale of infrastructure, plant and equipment would total \$37.3 million for the 2009-10 financial year and \$38.5 million for the following financial year.⁵¹ The committee also asked Defence to provide an indication of what the forward estimates were based on.
- 5.60 Defence advised that the figures above were for the sale of assets under the Commercial Vehicle disposal program noting that 'vehicles under this program have a useful life of five years and are sold at the end of this period.'⁵²

46 Dr Watt, Department of Defence, *Transcript*, 30 March 2010, p. 93.

47 Department of Defence, *Submission no. 2*, p. 8.

48 Department of Defence, *Submission no. 2*, pp. 8-9.

49 Department of Defence, *Submission no. 2*, p. 9.

50 Department of Defence, *Submission no. 2*, p. 9.

51 Department of Defence, *Defence Portfolio Budget Statements 2009-10*, 9 May 2009, p. 31.

52 Department of Defence, *Submission no. 2*, p. 9.

Submarines

- 5.61 During the course of the committee's review into the *Defence Annual Report 2007-08*, the committee examined the submarine escape training facility at HMAS Stirling, which was not in use at that time, and the submarine rescue vehicle Remora, which was out-of-service at that time.⁵³
- 5.62 In its report on the review of the *Defence Annual Report 2007-08* the committee recommended that:
- Defence ensure the provision of submarine escape training at HMAS Stirling be re-established; and
 - the deployability issues governing the Australian Submarine Rescue Vehicle Remora be resolved without delay.⁵⁴
- 5.63 At the public hearing into the *Defence Annual Report 2008-09* the committee revisited this issue and asked Defence to provide an update on the status of the submarine escape training facility and the Australian submarine rescue vehicle.

Escape Training Facility

- 5.64 Defence advised that a contract had been awarded to a submarine escape training provider, stating:
- A tender was released in February 2009 to establish a training provider for Submarine Escape Training Facility (SETF) in-water training services. The Underwater Centre Fremantle (TUCF) was the successful tenderer and the contract was awarded in July 2009.⁵⁵
- 5.65 Defence added that the training provider, TUCF, had commenced staff training at the SETF but that training was put on hold due to:
- the detection of non volatile residue contamination in SETF life support systems; and

53 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Review of the Defence Annual Report 2007-2008*, October 2009, Commonwealth of Australia, pp. 91-97.

54 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Review of the Defence Annual Report 2007-2008*, October 2009, Commonwealth of Australia, p. 97.

55 Department of Defence, *Submission no. 2*, p. 10.

- replacing the obsolete components in the recompression chamber systems.⁵⁶
- 5.66 Defence acknowledged that these delays prevented TUCF from completing its full staff training program.⁵⁷
- 5.67 Defence advised that:
- final "safe to dive" certification is expected to be achieved in June; and
 - training of submariners in Australia is expected to commence at the end of October once the training of the TUCF workforce is complete.⁵⁸

Submarine rescue vehicle

- 5.68 Defence acknowledged that the Australian submarine rescue vehicle is still out-of-service, stating:

The Australian Submarine Rescue Vehicle ('Remora') remains in storage in Western Australia having been repaired, upgraded and re-certified for Harbour Acceptance Trials...

- 5.69 More specifically, Defence advised that the Remora's Launch and Recovery System (LARS) faced significant design re-certification issues but that it was considering alternate options, stating:

In December 2008 the DMO was advised by the marine classification society Det Norske Veritas (DNV) that the Remora's Launch and Recovery System (LARS) faced significant design re-certification issues. The designer of the LARS, Caley Ocean Systems, subsequently developed a design for modifications to the system. The DMO is reviewing this design to determine whether it presents a basis for a practical and cost effective launch and recovery capability that could support operational deployments. The DMO is concurrently considering alternate options for launching and recovering the Remora for sea trials.⁵⁹

56 Department of Defence, *Submission no. 2*, p. 10.

57 Department of Defence, *Submission no. 2*, p. 10.

58 Department of Defence, *Submission no. 2*, p. 10.

59 Department of Defence, *Submission no. 2*, p. 10.

5.70 While the Remora remains out-of-service, Defence has contracted 'James Fisher Defence UK for the provision of the LR5 submarine rescue system.'⁶⁰

Senator Michael Forshaw

Chair

Joint Standing Committee on Foreign Affairs, Defence and Trade

⁶⁰ Department of Defence, *Submission no. 2*, p. 10.

