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Auditor-General for Australia



24 March 2023

Mr Julian Hill MP
Chair
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA ACT 2600

Dear Mr Hill

Commonwealth Procurement: Inquiry into Auditor-General Reports 6, 15, 30, 42 (2021-22) and 5 (2022-23) (Procurement inquiry)

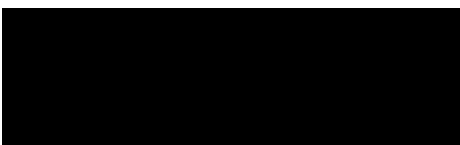
During the public hearing of 3 March 2023 in the Procurement inquiry, the Australian National Audit Office (ANAO) agreed to provide an additional submission taking account of evidence and testimony presented through the inquiry.

In reviewing the Official Committee Hansard from the Procurement inquiry hearings, there is no substantive issue that has arisen that would cause the ANAO to change any of the observations presented in its original submission. However, there are matters that the ANAO would like to expand on or clarify in response to evidence presented to the JCPAA. The matters relate to:

- Role of the Policy Owner in a devolved framework
- Role of Audit Committees; and
- Matters arising from public hearings: Auditor-General Report No. 42 2021-22 *Procurement of Delivery Partners for the Entrepreneurs' Programme* and Auditor-General Report No. 6 2021-22 *Management of the Civil Maritime Surveillance Services Contract*.

An additional submission as agreed is attached for the Committee's consideration.

Yours sincerely



Grant Hehir

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Joint Committee of Public Accounts and Audit

Commonwealth procurement: Inquiry into Auditor-General Reports
6, 15, 30, 42 (2021-22) and 5 (2022-23)

Additional submission by the Australian National Audit Office

Role of the Policy Owner in a Devolved Framework

Background

1. During the public hearing on 2 February 2023 there was discussion concerning effective stewardship of the Commonwealth Procurement Framework.
2. Finance is the policy owner of the Commonwealth Procurement Framework. It has responsibility for the Commonwealth Procurement Rules (CPRs) and for maintaining the framework.¹ At the public hearing Finance indicated that “- as steward of the Commonwealth procurement framework – [it] is committed to ensuring that the framework is fit for purpose and meets the diverse and complex requirements of procuring entities across the Commonwealth”.²

Discussion

3. A common theme running through many of the public sector management reforms implemented by successive Australian Governments since the 1980s has been the view that program efficiency and effectiveness can be improved if government entities and managers have greater responsibility in deciding administrative processes and resource allocation, while being fully accountable for results.
4. Consistent with this approach, governments have progressively shifted to a devolved resource management framework where Commonwealth entities have a high degree of autonomy, including with respect to procurement. This increased autonomy has been offset by a desire for a higher degree of accountability for implementing and achieving the policy objectives. The PGPA Act reflects both the shift to devolved resource management practices and the desire for a higher degree of accountability. At an entity level, accountable authorities are responsible for implementing processes, practices, and internal controls within their entities to ensure compliance with the CPRs, including achieving value for money.
5. Much of the benefit of the shift to a devolved approach to managing resources (as opposed to controlling inputs from the centre) is dependent on Government and other interested stakeholders having access to timely and meaningful information on which to judge whether programs and policies are achieving their intended outcomes. That is, a key element of accountability is scrutiny – the ability to assess and evaluate information required to hold decision-makers to account.
6. In a devolved environment, effective monitoring and evaluation of whole-of-government policies and programs, such as procurement, can only be the responsibility of the policy owner. Policy owners should have processes in place to obtain reliable evidence on the performance of the framework to be able to accurately advise Government on whether the framework is achieving its intended policy objectives. They should also ensure that information is available for individual accountable authorities to be held to account. In relation to procurement, this could include whether value for money objectives in the traditional sense of price and quality are being met as well as broader social and economic outcomes such as a competitive local supply market, including objectives relating

¹ In its submission, Finance notes that it “is responsible for policy stewardship of the Commonwealth Procurement Framework, which forms part of the wider Resource Management Framework”. (Finance submission p4 of 21)

² Department of Finance opening statement, Official Committee Hansard, Thursday 2 February 2023, Opening statement, p.1

to Indigenous enterprises and small and medium enterprises (SME), and the Future Made in Australia Office initiative.

7. Finance notes in its supplementary submission that it is difficult to draw conclusions relating to systemic or broader cultural issues across the APS as the ANAO audits only scrutinise a small proportion of the procurement activity of the Commonwealth.³ Importantly, this is not the role, or intention, of ANAO audits. Notwithstanding, consistent themes do emerge from ANAO audits (such as in relation to the use of panels), suggesting potential failures in self-regulation by entities against the Government's procurement framework, that warrant further consideration.⁴ With ANAO evidence indicating there may be a systemic problem, broader evidence would be necessary to disprove that this was the case.

8. Finance's submission to the Inquiry identifies initiatives that the department has implemented to support Commonwealth entities and improve procurement practices across the sector. However, there is no discussion concerning the measurement and assessment of performance or the evaluation of policy outcomes.

9. It could be reasonably expected that Finance, as policy owner of both the procurement and evaluation frameworks would have processes in place to monitor and evaluate the performance of the Commonwealth Procurement Framework to be able to provide evidence-based advice to government. This could include performance measures in its annual performance statements to reflect targets and accountable outcomes that are agreed to across government, such as performance information relating to participation by Indigenous enterprises and SMEs in Commonwealth procurement.

10. The Commonwealth Procurement Framework is a significant whole-of-government policy. RMG 130 – *Evaluation in the Commonwealth*, notes that along with other evidence-generating activities, evaluation supports Commonwealth entities and companies to meet their obligations under the PGPA Act. Evaluation can complement, or enhance, an entity's performance monitoring and reporting activities by providing a robust evidence-base to track the delivery of government priorities, assess the extent to which expected benefits are being achieved, risks are being managed and identify when initiatives are off track.⁵

11. The new Australian Government Guide to Policy Impact Analysis (the new Guide)⁶ came into effect from 1 March 2023. The Guide provides a useful frame for policy makers responsible for whole-of-government policies to understand the impact of policies and whether the intended outcomes are being achieved, and to support evidence-based decision making.

³ Department of Finance, Submission 11.1, Response to Question on Notice, Hearing of 2 February 2023, Question 5.

⁴ The Auditor-General's mid-term report (2020) noted that "... there is strong evidence, from both performance and financial audits, that the public sector's approach to procurement regularly falls short of expectations set out in the regulatory frameworks. ... In many cases it is difficult for entities to be able to demonstrate that they have provided value in the use of public resources. It is also particularly concerning that we regularly see entities complying with the letter of the procurement rules but not with their intent."

[Auditor-General's mid-term report | Australian National Audit Office \(ANAO\)](#)

⁸ [Why evaluate? | Department of Finance](#) accessed 18 March 2023.

⁶ [Australian Government Guide to Policy Impact Analysis \(pmc.gov.au\)](#)

12. Similarly, policy stewardship of the Commonwealth Procurement Framework, and other whole-of-government policies, could be informed by RMG 128 – *Regulator Performance*⁷, which identifies three principles of best practice:

- Continuous improvement and building trust;
- Risk based and data driven; and
- Collaboration and engagement.

13. Having an effective regulatory environment encourages entities to operate more efficiently and act in a manner consistent with the spirit as well as the letter of the law. The ANAO noted in its original submission to the JCPAA Inquiry that:⁸

ANAO audits in this space have identified cases where entities seek to comply with the letter of the procurement rules without considering how this achieves the intent of the rules. ... While examples of good practice can be found, there are also many instances where implementation of procurement arrangements falls short of reasonable standards and are primarily an exercise in ‘form over substance’. As shown in Auditor-General Report No. 42 2021-22 *Procurement of Delivery Partners for the Entrepreneurs’ Programme*, an entity may expend significant effort on a procurement that is divorced from the intent of the CPRs.⁹

14. As steward of the Commonwealth Procurement Framework, Finance has an important educative and support role to encourage best practice procurements, but also a responsibility to ensure that information is available to ensure that accountable authorities can be subject to the scrutiny necessary for them to be held to account.

15. Effective monitoring and oversight of Commonwealth procurement would not necessarily require Finance to run an audit program across the top of the framework¹⁰, although some consideration of how compliance is assessed may be appropriate. Whether you describe it as a stewardship or a regulatory framework, the policy owner has a responsibility for understanding if Commonwealth procurement policy outcomes are being achieved. Without evidence to the contrary, ANAO audits suggest there is opportunity to improve value for money outcomes and economic and social benefits from Commonwealth procurement activities.

Role of Audit Committees

16. Audit committees are integral to good corporate governance. They play a vital part in overseeing financial and performance reporting and related internal controls, risk (including cyber risk), and ethics and compliance for all Commonwealth entities. The minimum functions of an audit committee of a Commonwealth entity are outlined in section 17 of the [Public Governance, Performance and Accountability Rule 2014](#) (PGPA Rule).

17. An audit committee has no managerial responsibilities. It is intended to provide independent advice to the accountable authority, assisting them to meet their duties under the PGPA Act and supporting the development of key practice and capacity within Commonwealth entities.¹¹

⁷ [Regulator Performance \(RMG 128\) | Department of Finance](#)

¹¹ Refer paragraphs 18 and 19.

⁹ Auditor-General Report No. 42 2021–22 *Procurement of Delivery Partners for the Entrepreneurs’ Programme*, Chapter 2.

¹⁰ Official Committee Hansard, Thursday 2 February 2023, p. 3.

¹¹ [How to set-up and manage an audit committee | Department of Finance](#) accessed 18 March 2023.

18. There is no specific requirement for an audit committee to advise the entity on procurement processes. However, in reviewing key risks and the appropriateness of internal controls, including the effectiveness of systems for monitoring the entity's compliance with laws, regulations, and associated government policies with which the entity must comply, it may be appropriate for the audit committee to consider procurement processes, particularly given the scale of procurement in government activity.

19. Evidence provided during the inquiry hearings on 2 February 2023 indicated that audit committees have a limited role in overseeing procurement processes in entities. At the hearing, audit committee chairs emphasised that the main role of audit committees is to look at enterprise level strategic risks. They noted that an audit committee may review a procurement framework to provide suggestions and improvements, but that the framework was created by management of the entity. Audit committees can also put procurement on the internal audit work plan, then review the outcomes of the internal audit report and request to receive updates regularly about changes that the entity is making to their procurement processes.¹²

20. Under subsection 17(1) of the PGPA Rule, the accountable authority of a Commonwealth entity must determine the functions of the entity's audit committee by written charter (the charter). The charter is the accountable authority's blueprint for the audit committee's operations and should be developed to meet the needs of the entity.¹³ RMG 202 – *Audit Committees* indicates that an audit committee could undertake activities that determine whether key risks have been managed appropriately, and this could be outlined in the audit committee charter.¹⁴

21. Procurement is a major spend by entities across the Commonwealth and could warrant monitoring and oversight by audit committees, especially in entities with substantial procurement activities or where ANAO audit reports have identified risks.¹⁵

Matters arising from public hearings

Auditor-General Report No. 42 2021-22 Procurement of Delivery Partners for the Entrepreneurs' Programme

22. The JCPAA was advised by the Department of Industry, Science, Energy and Resources (the department) that 'as indications through the audit were coming through, [the department] took immediate action in relation to the things that were being provided as part of those early stages of the audit and was concerned'.¹⁶

23. Given the significance of the findings that were emerging from the audit work, the ANAO commenced raising matters with the department at a senior level in November 2021, and continued to raise matters in discussions and in correspondence over the following months. The department's March 2022 response to the first draft of the audit report (the Report Preparation Paper) rejected many of the key audit findings (and this is reflected in the tabled audit report such as at footnote 11,

¹² Official Committee Hansard, Thursday 2 February 2023.

¹³ Department of Finance, A guide for non-corporate Commonwealth entities on the role of audit committees, March 2020, p.9

¹⁴ Department of Finance, [Resource Management Guide 202](#)

¹⁵ The ANAO has observed that oversight of controls and risks related to human resource functions is included in an entity's internal audit program more frequently than oversight of procurement controls and risks. For several Commonwealth entities expenditure on personnel and suppliers is on a similar scale.

¹⁶ Official Committee Hansard, 14 December 2022, p.44.

paragraph 2.6, paragraph 2.32, and paragraph 2.49). The tenor of the department's response to the audit findings changed at the proposed report stage (April/May 2022).

24. In its advice to the Committee, the department suggested that the audit findings were largely about record keeping.¹⁷ The value for money findings are not record keeping findings. For example:

a. While a tender evaluation report was prepared, finalised, and signed off by the procurement delegate, that report included incorrect or misleading statements (as set out in paragraph 2.102) as well as a series of errors (see Appendix 4 of the Report).¹⁸

b. As set out in the audit report (paragraphs 2.56 - 2.58), for the Commercialisation stream the successful tenderer was not the first ranking tenderer and it had also offered a higher price but 'the analysis presented in the tender evaluation report in favour of selecting i4 Connect did not satisfactorily address the significant price difference and there was bias evident in the analysis to support the decision to recommend i4 Connect over Respondent 53.'

c. Value for money was also not evident in the outcome for the Growth stream (see paragraphs 2.61 - 2.67) including the use of 'unreliable' pricing information and an incumbent provider being selected to provide services in Queensland despite not being assessed by the department as the best candidate in any region.

Auditor-General Report No. 6 2021-22 Management of the Civil Maritime Surveillance Services Contract

25. At the public hearing relating to the above audit there were comments by the Department of Home Affairs (Home Affairs) suggesting that the audit included 'templated commentary' and the ANAO had a 'predilection to cut and paste'.¹⁹

26. For entities, such as Home Affairs, that are subject to the Commonwealth Procurement Rules (CPRs), ANAO audits of procurements base the audit objective and criteria on the CPRs, tailored to the particular procurement and scope of the audit. In accordance with the auditing standards, the audit conclusion and findings against the objective and criteria reflect the evidence. This is evident from comparing the results of Auditor-General Report No. 6 2021-22 *Management of the Civil Maritime Surveillance Services Contract* (of Home Affairs) and Auditor-General Report No. 27 2020-21 *Management of the Search and Rescue Aircraft Contract* (of Australian Maritime Safety Authority (AMSA)).

a. The two audits had a similar objective of assessing the effectiveness of the management of the particular contract. The differing conclusions reflect the different performance of the two entities with AMSA's contract management found to be 'fully effective' whereas Home Affairs' found to have 'not been effective'.

b. The first criterion was the same in each audit. Whereas the evidence showed that the contract with AMSA was 'being delivered in accordance with the planned cost, scope and

¹⁷ Official Committee Hansard, 14 December 2022, p.49

¹⁸ Paragraph 2.58 of the audit report also highlights that there was bias evident in the analysis supporting a recommendation in the tender evaluation report and it included statements recycled from an earlier 2014-15 procurement's tender evaluation report in regard to a different tenderer, indicating it was not a complete and genuine attempt to support the recommendation.

¹⁹ Official Committee Hansard, Friday, 10 February 2023, p.10.

delivery timeframe’, for Home Affairs the evidence was that the ‘contract has not been managed to secure delivery in line with the planned cost, scope and delivery timeframe’.

c. The second criterion was also the same in each audit. For AMSA, the evidence was that ‘following initial delays, search and rescue assets have been provided and accepted into service’ with AMSA addressing the initial delays through the contractual framework so they did not persist. For Home Affairs, the evidence was that ‘there were shortfalls and delays in the provision of the contracted surveillance assets’ and that ‘the department did not effectively apply the contractual framework to manage the shortfalls and delays’.

d. The third criterion was also the same in each audit. For AMSA, the evidence was that the ‘contracted search and rescue services are being provided’ with positive findings made in respect to the contractual framework AMSA put in place, and its management of that framework. For Home Affairs, the evidence was that the department ‘has not received the required quantum of surveillance services and the aircrew requirements have not been met’.

27. There was also commentary about ANAO audit work being limited to examining documents.²⁰ Those comments do not acknowledge that, in addition to comprehensive examination of records, the audit team also conducted a site visit to the Cairns Base in December 2020.

28. In its advice to the Committee at the 10 February 2023 hearing, Home Affairs made reference to its need for a integrated investment plan.²¹ The civil maritime services contract is for surveillance services and so incorporates a service level agreement. The key contractual obligation is the delivery of a specified quantum of surveillance flying hours, being the annual Rate of Effort (RoE, see paragraphs 4.5 and 4.6 and Table 4.1). As this is a services contract, the surveillance aircraft are owned and operated by the contractor. Consequently, the relevance of a integrated investment plan is not evident.

29. The JCPAA was advised that the contract was a close inshore contract and needs to be rebased for the department to obtain longer duration surveillance missions.²² The existing contract includes a requirement for long range missions that has not been fully used. Specifically, while the contract provides for surveillance missions of up to 13 hours, the longest recorded mission duration over the contract term at the time of the audit was 10 hours and 43 minutes (see paragraphs 4.18 to 4.21). In addition, Figure 4.6 shows that, while Home Affairs pays higher fees for longer range aircraft to be available (the Dash–8 315 aircraft) these aircraft are not flying longer missions than the ‘standard’ Dash–8 202 aircraft.

30. The department advised the Committee that ‘the majority of concerns raised by the ANAO, which we do acknowledge, are historical in nature and related to the period between 2008 and 2017’.²³ The contracted annual RoE was not achieved in any year of the contract examined by the ANAO, and performance has not improved since 2017 (see Figure 4.1).²⁴

²⁰ Official Committee Hansard, Friday 10 February 2023, pages 10 and 18.

²¹ Official Committee Hansard, Friday 10 February 2023, pages 1, 2, 4, 7 and 22.

²² Official Committee Hansard, Friday, 10 February 2023, p.27.

²³ Official Committee Hansard, Friday 10 February 2023, p.1.

²⁴ In addition:

- the lowest RoE achieved was in 2017-18 (13,561 hours), which was below the original contracted RoE of 13,613 hours and significantly below then applicable RoE of 15,000 hours (paragraph 4.10);
- since 2018–19, planning for night missions has reduced significantly and since September 2018, only two ‘late night’ missions have been flown (paragraph 4.15);

31. The Committee was also advised that the audit report 'does not adequately consider the outcomes based nature of the contract'.²⁵ The contract is not an 'outcomes' based contract. The contract specifies a certain number of aircraft and equipment, and number of aircrew to be provided to meet a specific annual planned rate effort. The contract includes a service level agreement with a requirement that the 'service provider shall deliver the Annual Planned Rate of Effort' (paragraph 4.6). As described above, the contracted annual RoE was not achieved in any year of the contract examined by the ANAO.

32. The Committee was advised that 'between January 2008 and 2022, the contract target performance or performance target was met 159 times [and] it was below only 21 times..., [and] when you look in terms of the overall contract performance metrics, by and large it's been met'.²⁶ The audit found that the contracted performance management framework, in particular the calculation of Overall Contract Performance (OCP), is not fit for purpose. A significant limitation in the operation of the contract is that the number of aircrew is not linked to the measurement of performance (see paragraph 4.39). There are also a number of ways for the OCP score to be increased (see paragraph 4.48 - 4.51).

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- the contracted number of qualified aircrew has at no stage been provided to meet the RoE over the life of the contract (including since 2017) (paragraph 4.33); and
 - the shortfall of missions monitored by Maritime Aviation Specialist Officers against the target rate has increased since 2014-15 (where the shortfall against the target rate was 14 per cent) to its highest level in 2020-21 where there was an 86 per cent shortfall against the target rate (see Appendix 7, Table A.6)

²⁵ Official Committee Hansard, Friday, 10 February 2023, p.1.

²⁶ Official Committee Hansard, Friday 10 February 2023, p.16.