

Defence Portfolio

INQUIRY QUESTION

(Question No. 1)

Senator the Hon Linda Reynolds asked the Department of Defence the following question, upon notice, on 13 November 2024:

1. Minister Conroy delivered a speech in October relating to the ANAO findings of unethical conduct, the Secretary's referral of the findings to the National Anticorruption Commission (NAC), and the Department's investigation. Looking at broad themes across the Department, and a history of similar findings;
 - a. what due process was followed?
 - b. what are the lessons learned that the Minister spoke about?
 - c. what process is the Department actively following to implement and learn the lessons in terms of how to move forward?
 - d. how is the Department ensuring this does not happen again?
 - e. provide a summary of the Conflict of Interest process which has been developed
 - f. the Minister said that all organisations involved had been investigated internally, does that include Scotwork?
 - g. relating to the new Thales contract – what lessons were learned and implemented to ensure that the same mistakes were not made in this new contract?
 - h. in response to the ANAO Report findings, what changes to the procurement processes have been made by the Department?
2. Provide a list of projects underway, detailing where they are up to and provide advice on how Defence is wrapping the new processes in to these projects.
3. Defence knew of the probity risks from 2016, however they were not actioned appropriately in a probity plan. They were then realised and continued on all the way through – Defence developed a heightened negotiation position, rather than systematically addressing the 199 non-tender compliances that were identified. The Defence internal SmartBuyer process was designed to ensure the Department was a well-informed buyer, but mandatory risk workshops were not conducted in time to inform a sole source contract, which is one of the main concerns with this process being adopted now.

The ANAO found the Investment Committee made the decision to sole source, however the information provided to the Minister in 2017 did not make the risks clear. The Minister asked for other viable options, but was not provided with these, as Defence had made up its mind through the Investment Committee to proceed with sole source.

Defence didn't understand the facility operations correctly, and continued to advise the Minister that Thales was the only viable option, which was not true. More work could have been done to mitigate risks.

There were deficient processes on every level; Defence failed – either turned a blind eye, or the processes failed. The Department's own report after the Investment Committee made the decision, advised that the Thales proposal was designed to ensure they maintained control. In Oct 2019, Defence itself assessed the proposal against all 5 criteria and identified the Thales proposal was not value for money; that it was deficient significant with a high risk.

Have another look at the report – it's either systemic failure from beginning to end that no one has picked up, including the investment committee, or it is something much more than that, in the close relationship. Provide the Committee with advice on;

- a. if Defence is still continuing the open investigation, what are you actually investigating and what will you report?
- b. who conducted the investigation?
- c. what were the lessons learned in terms of problems and probity relating to the ANAO report, specifically chapter 4?
- d. why was the Minister not advised of the risks?
- e. was the Investment Committee advised of the risks in their decision?
- f. in terms of the Smart Buyer mandatory risk workshops, how was the Department able to circumnavigate these and how did procurement proceed when people hadn't completed the mandatory programs? Were there any consequences?

Defence provides the following answer:

Defence accepts the findings and recommendations of the audit report. The identified issues are not of the standard expected and Defence is committed to their remediation through the continual education and training of staff. Defence is focused on ensuring staff undertaking procurements apply the Defence Commercial Framework and the Commonwealth Procurement Framework. This is supported through:

- Building commercial acumen using a newly developed Delegate Toolkit and Delegate Awareness and Accountability Campaign to ensure delegates are aware of their obligations under the legislation.
- Building a capability matrix across the procurement lifecycle to help upskill all officials from foundation level to expert practitioner, regardless of job family.
- Reviewing the effectiveness of procurement and contract management training, including options to mandate certain components.
- Promoting and supporting the establishment of the Procurement and Contract Management Profession to uplift the capability of the Australian Public Service and build an enduring professional workforce by establishing professional networks and communities, supporting specialist career development.

Defence has strengthened the Conflict of Interest Policy, process and training over the past 12 months by:

- Mandating in policy the declaration of conflicts of interest (including positive affirmations that no conflicts exist) for participants in all procurement and recruitment activities.
- The release of an improved Conflict of Interest Declaration smart form for all conflict of interests.
- The delivery of conflict of interest masterclasses to 1,602 Defence personnel focused on the identification, reporting and management of conflicts of interest, and risks associated with the acceptance of gifts and benefits.

Conflict of Interest declarations must be endorsed by a relevant Decision Maker and management strategies must be developed, agreed and documented when an actual, potential or perceived conflict is identified. Conflict of Interest Declarations are centrally stored in the Defence Integrity Division.

On 1 July 2023, Defence released a revised Gifts and Benefits Receiving Policy, which includes hospitality. The policy states that Defence personnel must not – either by action or inaction – solicit gifts and benefits in the course of their official duties and must not accept a gift or benefit if the acceptance would create an inappropriate impression, create the perception or expectation of preferential treatment, or result in an actual, potential or perceived conflict of interest. The Gifts and Benefits Receiving Policy requires the recording of gifts and benefits accepted (valued at \$100 or greater for the Secretary, Chief of the Defence Force and SES Band 3/3-star officers, or gifts valued at \$300 for all other Defence officials) in the Defence Gifts and Benefits Register within 28 calendar days of accepting the gift or benefit.

The *Defence and the Private Sector: Working with Integrity* document was released in July 2023 and affirms that Defence expects its suppliers and contractors will not make offers of financial or other gifts or benefits to Defence personnel.

The Secretary confirmed in a statement on 27 June 2024 that Defence had referred an allegation that a Defence official had solicited a bottle of champagne from a Thales Australia contractor to the National Anti-Corruption Commission. Defence completed its internal investigation into this allegation in August 2024 and was unable to substantiate the allegation. The investigation was completed by Defence Integrity Division. Defence has advised the National Anti-Corruption Commission of the outcome of its investigation.

Defence did not investigate Scotwork Australia noting probity advice was previously sought at the time of the company’s declaration on 29 November 2019 and mitigations proposed were accepted by Defence at the time.

Defence Legal Division also completed an internal review of relevant records that confirmed Defence should consider opportunities to strengthen its approach to managing probity in procurements. In relation to probity policy and management Defence is:

- Making the appointment of external probity advisors mandatory for all complex procurements with high probity risks, such as procurements with high levels of tenderer interaction.
- Updating the Probity Toolkit within the Defence Commercial Framework to align with policy changes.
- Reviewing all probity training requirements as part of its broader professionalisation uplift initiatives.

The Guided Weapons and Explosive Ordnance (GWEO) Group is applying the lessons identified in the ANAO audit to the following programs currently in progress:

Project	Status
Naval Strike Missile/Joint Strike Missile	Defence is currently in contract negotiations with Kongsberg Defence Australia to manufacture the Naval Strike Missile and Joint Strike Missile in Australia. A new purpose-built facility will be constructed at the Newcastle Airport Precinct in New South Wales.

Project	Status
Manufacture of Guided Multiple Launch Rocket System (GMLRS)	On 1 December 2023, Defence signed a \$37.4 million contract with Lockheed Martin Australia to manufacture an initial batch of Guided Multiple Launch Rocket Systems missiles in Australia. This activity is scheduled to occur in 2025 followed by a live-fire demonstration. This contract will facilitate the transfer of technical data from the United States, establish processes for engineering certification, and begin to build the technical skills of an Australian workforce.
Australian Weapons Manufacturing Complex	Defence will invest in the establishment of an Australian Weapons Manufacturing Complex in partnership with Lockheed Martin Australia. The Government has identified potential sites in New South Wales and Victoria which are being assessed to inform a decision in 2025.
155mm M795 artillery ammunition	Thales Australia was selected as the preferred tenderer subject to establishing a domestic Large Calibre Ammunition Manufacturing capability, focussed on the domestic forging of 155mm M795 artillery projectiles certified to United States standards.
Sovereign Rocket Motor Manufacturing	On 16 September 2024, Defence released a limited Request for Information to select industry providers to obtain feedback on capability options, viability and details for the establishment of a rocket motor manufacturing complex. The selection of participants was conducted through market analysis and limited to providers with established and demonstrated experience in design, construction, commissioning, managing and operation of rocket motor manufacturing or related GWEO manufacturing.
Uplifting Government Explosives Factories	Ongoing investments at the Government-owned, contractor-operated munitions factories to support uplift of industrial capability including, infrastructure development at the sites and specialised manufacturing and test equipment.

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INQUIRY QUESTION

(Question No. 2)

The Hon Linda Burney MP asked the Department of Defence the following question, in writing, on 13 November 2024:

1. The audit identified issues regarding Defence's policy and guidance framework to support its procurement personnel when undertaking collaborative contracting and establishing strategic partnerships — including risk management and probity considerations.
 - a. Can the department elaborate on the probity issues that arose from entering into the strategic partnership and sole source procurement with Thales?
2. What is the probity plan going forward in relation to this arrangement?
3. To what extent has your management of these contracts adhered to the Australian Government Contract Management Guide and what were the reasons if you departed from these guidelines?
4. Has the department developed a different way to deal with tender non-compliances when contracting through a sole source arrangement?
5. The extent to which the contract has been varied is the subject of the upcoming second audit report covering whether Defence's management of the Strategic Domestic Munitions Manufacturing (SDMM) contract has achieved value for money and the effective delivery of the contracted arrangements.
6. What were Defence's arrangements for ordering munitions under the contract and when these arrangements were established?
7. Can you please explain the processes for work undertaken through survey and quote categories under the contract?
 - a. Weaknesses in Defence's knowledge and understanding of the facilities' operations were exhibited throughout the audit.
 - b. Does the department have any arrangements in place to rebuild the expertise of its personnel in munitions manufacturing facilities?

Defence provides the following answer:

1-2. Defence policy and guidance documents enable probity advisors to develop procurement-specific advice relating to complex procurements, involving high levels of tenderer interaction and engagement risks, in establishing long-term strategic partnership arrangements.

Within the Guided Weapons and Explosive Ordnance (GWEO) Group, a dedicated team has been established to oversee probity and conflict of interest requirements across the entire Group's activities to ensure alignment with Defence policy. This includes the establishment of a central register to track probity and conflict of interest plans and briefings to ensure issues are captured and managed appropriately. The GWEO Group has also mandated the appointment of external probity advisers for all complex procurements with high probity risks.

3-4. The Australian Government Contract Management Guide, published by the Department of Finance, provides general advice only to Commonwealth entities. Defence uses a framework of instructions, policies and guidance to manage contracts including the Contract Management Framework, Defence Procurement Manual and Accountable Authority Instructions in accordance with the Commonwealth Procurement Rules (CPRs). Defence is strengthening guidance documents for complex procurements to ensure there is traceability between request for tender requirements, the risks and issues identified during the tender assessment process and the negotiated outcomes. These requirements apply for all complex procurements.

5-6-7. The Strategic Domestic Munitions Manufacturing contract came into effect 1 July 2020 and sets out the requirements and process for ordering of munitions. The Commonwealth is obligated to place orders annually to a contracted minimum value for Australian Defence Force munitions. Survey and quotes cover a number of categories including munitions and supply services, asset and maintenance management services, engineering services and general services.

Defence Portfolio

INQUIRY QUESTION

(Question No. Q1)

The Hon Linda Burney, MP asked the Department of Defence the following question, upon notice, on 26 November 2024:

1. Is the department taking any actions to improve the fitness for purpose of its governance and delivery framework for ICT projects?
 - a. Did you depart from the Australian Government Contract Management Guide to any extent during these contracts and what were the reasons for this?
2. Given the variations that have occurred, what is the current status of Defence's contracts with the key service providers for the myClearance system?
3. What is the department's approach to ensuring value for money is achieved when entering into contract variations?
4. In November 2023, Defence advised government that the project would not be able to deliver the full capability of the system as advised in December 2020 and recommended de-scoping the continuous assessment, automated risk sharing, use of artificial intelligence, and enhanced interface functionalities of the myClearance system.
 - a. Why could the business outcomes and system requirements for myClearance not be delivered in the advised timeframe? Are there budgetary and non-budgetary reasons for this?
 - b. Could the department please comment on the relatively lengthy duration of the planning activities for the myClearance system in comparison with the delivery outcomes achieved?
5. Have any actions been taken since the audit to build the procurement and contract management expertise of Defence personnel and professionalise contracting and procurement skills?
6. What is the current ICT expertise of Defence personnel responsible for designing procurement and contracting processes?
7. Defence largely relied on contractors to manage project performance and the performance of other contractors. The performance measures in the contract with the systems integrator prioritised delivery of the system to the agreed schedule over the delivery of a system that would meet the requirements and deliver the capability uplift needed.
 - a. What are your arrangements for selecting contract performance measures to encourage desired behaviours and minimise risks?
 - b. Following on from the myClearance system audit, have any actions been taken by the department to provide a stronger performance management framework for ICT projects?

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Defence provides the following answer:

1. In alignment with the recommendations from the Defence Strategic Review and recent audits, the Department of Defence is implementing substantial measures to improve its governance and delivery framework for ICT projects. These measures are part of a broader effort to uplift Defence's commercial skills, which includes a comprehensive training needs analysis, additional training programs, and a delegate awareness campaign. In collaboration with the Department of Finance, Defence is also rolling out refreshed Commonwealth-wide procurement and contract management training.

Over the past year the Defence Digital Group (DDG) has undergone significant restructuring to align with the Defence Strategic Review's recommendations. This restructuring has led to:

- Establishment of a new Portfolio and Program Management Offices dedicated to refining the ICT project delivery framework. The goal is to enhance project governance while maintaining alignment with the One Defence Capability system.
- Centralisation of all personnel, commercial, procurement and contracting functions into a single entity – the DDG Commercial Branch – to enable consistent information dissemination both to APS and ADF personnel and adherence to evolving Defence policies and best practices, particularly regarding the *Commonwealth Procurement Rules* and the *Public Governance, Performance and Accountability Act 2013*.
- Alignment of the directorates of the new DDG Commercial Branch, and development of a service offering, to strengthen its procurement and contracting activities. This new alignment will better support the APS and ADF workforce to coordinate their work on DDG's projects and enable technical elements to be considered and appropriately addressed.

Separately, as part of the uplift in DDG's workforce capability, a skills audit and internally delivered training model will support continued skill development for both APS and ADF personnel, providing in-house and external training opportunities to gain nationally recognised qualifications.

The changes and new measures implemented by Defence to improve its governance and delivery framework for ICT projects also respond to the challenges recently encountered with the myClearance project.

a. In considering Defence's approach to contract management for capability procurement, it is important to understand the relationship between Defence policy and broader Commonwealth policy and guidance. In this context, the Australian Government Contract Management Guide provides general advice, but does not constitute Commonwealth policy.

Defence's contract management practices are guided by a comprehensive system that includes the *Contract Management Framework*, *Defence Procurement Manual*, and *Accountable Authority Instructions*. Defence's procurement and contract management policies emphasise value for money, ensuring that contract variations or extensions are executed only in accordance with the contract's terms and conditions and when they demonstrate appropriate value.

Similarly, the mandated *My Procurements System* facilitates compliance with the *Commonwealth Procurement Framework*. It incorporates automatic workflows that require value for money justifications for contract variations. During contract assessments and ongoing contract management, Defence evaluates the viability of a market approach versus amending the existing contract, considering both financial and non-financial aspects such as fitness for purpose, the nature

of the change, the incumbent's experience and performance, sustainability of the change implementation, whole-of-life costs, and disposal considerations.

2. The myClearance project has closed, and only the sustainment support contract for the system remains active. The myClearance system is enabling the Australian Government Security Vetting Agency to meet its processing times. The system meets most of the capability effects outlined in the business case, and ongoing enhancements are planned to ensure the system remains at the forefront of technology.

As the owner of procurement and contracting policy, the Defence Commercial Division within the Capability Acquisition and Sustainment Group regularly advises new strategies for performance management. The new DDG Commercial Branch has applied lessons from the myClearance system audit to optimise contract performance measures, ensuring the selection of measures that generate desired behaviours and outputs from industry. For example, in late 2023, DDG established the Strategic Engagement Framework, which includes Account Review Forums held three times a year. These forums focus on contract performance, overall vendor performance and behaviours, 360-degree feedback reporting, and accountability for both Defence and industry in achieving strategic partner goals.

3. Please see the response provided to question 1a.

4.

a. Defence acknowledges the technical and governance challenges experienced in delivering the project within required timelines. Defence has now provided policy and guidance for future projects.. Planning is underway for a new ICT project to replace the legacy interface solution. As provided in the response to question 1, 1a and 2, the changes and new measures implemented by Defence improve its governance and delivery framework for ICT projects.

b. Please see the response to question 2 and 4a.

5. Please see the response to question 1 and question 1a.

6. Please see the response to question 1 and question 1a.

7.

a. Please see the responses to questions 1, 1a, 2 and 4a.