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**Attachment A: Joint Committee of Public Accounts and Audit (JPCAA)
REPORT No. 498 ‘Commitment issues’ – An inquiry into Commonwealth
procurement**

**Department of Home Affairs’ (the Department’s) response to Recommendation 15
(September 2023)**

The Department welcomes the opportunity to respond to recommendation 15 of the Joint Committee of Public Accounts and Audit Report No. 498 ‘Commitment issues’ – An inquiry into Commonwealth procurement (the Report).

Recommendation No. 15

The Committee recommends that the Department of Home Affairs report back to the Committee, commencing in September 2023 and then six monthly until the current contract expires, on its progress in tendering and procuring a new surveillance services contract, given that it will have been 21 years since the contract was competitively procured if it runs to its current expiry date.

The Department supports this recommendation.

The Department will report to the JPCAA every six months, from September 2023 until the current contract expires on 31 December 2027, on its progress in tendering and procuring new civil maritime surveillance services (CMSS). This reporting will be in accordance with the Commonwealth Procurement Rules (CPR), and consistent with probity protocols covering active procurement processes. The reporting will cover what is in the public domain, for example indicative timelines of tender processes, status and/or key milestones as they are achieved.

Civil maritime security context

Australia’s Exclusive Economic Zone (EEZ) covers around 10 million square kilometres and is the third largest in the world, behind only France and the United States. Effective civil maritime security ensures Australia’s ongoing ability to exercise its sovereign rights and obligations across all activities that occur within or affect our maritime domain.

The Department protects and advances Australia’s interests by countering eight maritime security threats. These threats include unauthorised maritime arrivals, which is the remit of Operation Sovereign Borders (OSB); illegal activity in protected areas; illegal exploitation of natural resources; marine pollution; prohibited imports and exports; compromise to biosecurity; piracy, robbery or violence at sea; and maritime terrorism.

Through Maritime Border Command (MBC) in the Australian Border Force (ABF), the Department leads the Australian Government’s operational response to maintaining secure maritime boundaries and enforcing Australia’s jurisdiction. MBC delivers operations that are critically important to protecting our sovereign rights, economic prosperity and national interests including through facilitating legitimate trade, travel and industry.

Maritime border security efforts are supported by the Department of Defence, including the Australian Defence Force (ADF), through Operation Resolute. The ADF support with patrol aircraft, patrol boats, large hull vessels and personnel. These personnel may be on Operation Resolute, either at sea, in the air or on land. The ADF personnel work alongside personnel from ABF and other agencies.

Threat drivers affecting Australia's border security and maritime supply chains are projected to intensify. The *Defence Strategic Review 2023* notes that Australia has faced significant security risks since the Second World War, but that our current strategic circumstances are now radically different.

The Department will ensure continuity of operations, as it continues countering these threats in an evolving border security environment where geopolitical tensions are growing and with accelerated shifts in advancement of technologies and as the attractiveness of Australia and its markets continue to drive illegal behaviour.

The Department will need to be able to disrupt criminal groups that will continue to diversify the means by which they seek to exploit Australia's border systems to import and export prohibited, restricted or regulated goods. Attempts to import illicit drugs, weapons, wildlife, and tobacco and child-abuse material into the Australian community will continue to challenge detection, intervention and deterrence capabilities.

OSB will continue to deny any irregular maritime pathway to settlement in Australia and deter potential irregular migrants from engaging with criminal people smugglers, in order to protect the integrity of the Australian border, and prevent the loss of lives at sea.

CPR

The CPRs provide the necessary framework for Accountable Authorities when issuing Accountable Authority Instructions (AAIs) and operational requirements in relation to procurement. The CPRs specifically require that funds availability is required to be signed off prior to approaching the market/suppliers. This critical procurement step cannot take place until the necessary funding is secured, either through the annual process, or in some cases, by way of supplementary specific capability proposals to government. The procurement sign-off occurs within the Department, with officers legally bound to ensure there is funds availability.

The Department's AAIs, in line with the CPRs, specify that there are two types of funds availability assessments:

- funds availability check – performed prior to approaching the market/suppliers. The check allows for preliminary funding limitations to be raised and addressed prior to putting tenderers/industry to unnecessary expense.
- funds availability sign-off – provided prior to the approval of the spending proposal by the s23(3)/FF(SP)s32B delegate. Sign-off ensures the Department can meet its resource management framework requirements.

A short-term funding view, and strict compliance with the CPRs, limits the Department's ability to plan for longer-term capability requirements as the Department has a zero appetite for failure to comply with statutory obligations. Assets and services are generally procured beyond the forward estimates, hence specific funding measures to a suitable scale are required to provide funding certainty.

Further, short-term funding structures in Commonwealth procurements have strategic impacts, including limiting the Department's ability to negotiate favourable terms with suppliers leading to increased costs. These 'productivity premiums' are paid in the absence of viable market alternatives.

Short-term funding can also affect the Department's ability to invest in long-term supplier relationships and can reduce the pool of companies willing to invest in the niche capabilities the Department may require over the longer term.

This in turn intensifies scrutiny as a result of reduced 'competition' in the market, leading to preferred suppliers able to charge a 'premium' for services and or capabilities. The Department agrees this is delivering sub-optimal outcomes.

The Department's current funding model and capability for civil maritime security

The Committee invited the Department to make a supplementary submission explaining its views on the Department's funding model and its relevance to the existing CMSS contract in more detail.

Australia's maritime border capabilities, outside of drawdowns on ADF assets, have been reliant on ad-hoc, short-medium term investment decisions.

For the Department, direction of resources and assets to intervene are tasked under MBC. These maritime border capabilities include (but are not limited to) three classes of marine vessels—small, medium and large hulls—and both fixed and rotary wing aerial assets. These are supported by radars integrated through a maritime domain awareness information and communications technology system.

The Department considers that the year on year funding approach for civil maritime security capabilities does not maximise Government's investment, and limits the ability to respond to known threats most effectively. It reduces the availability of the Department's maritime border capabilities, which impacts operations. This requires high-cost specialist Defence assets to be used to augment or cover for civil maritime border operations. Concurrently, regular planned maintenance of the Department's systems does not receive adequate funding. As a result, longer-term maintenance costs, and the operational impact of maintenance, increases. Many immediate civil maritime capability needs remain underfunded. This limits the scope for innovation, technology trials and transition to alternatives.

The level of funding the Department has received, coupled with the fact that each year we are only able to secure a large portion of our civil maritime baseline funding for the following year, through the Budget in May, has only enabled strictly managed and prioritised sustainment and maintenance of current capabilities and assets. For financial year 2023–24, of the \$446 million available for civil maritime capability, \$170 million was only secured and available in May 2023. For the last decade, the combination of these factors has led to the degradation of the major air and marine assets and gaps. This has also not catered to the growing capital requirements of an ageing fleet and impacted operations on a daily basis, increasing pressure on MBC and the ABF more broadly. A check of our publically available Portfolio Budget Statements (PBS) evidence bases our concerns – Program 3.4 Border Enforcement (PBS Page 53) demonstrates the substantial annual drop off in this funding – reducing by \$173 million between 2023–24 to 2024–25, and continuing across the forward estimates. Historical analysis of our Departmental Capital Budget (DCB) reflects a static budget. The DCB coverage of annual depreciation and amortisation expenses (excluding right of use assets) has reduced from 112 per cent in 2010–11 to 43 per cent in 2023–24.

Where services are provided on a leased basis, as is the case for aerial surveillance, the Department is only able to enter into contracts (or extensions) for the short-medium term, limiting the Department's options, typically with cost premiums. It also restricts service providers' ability to effectively maintain, and / or upgrade their assets and provide effective services to the Department. Unlike service providers to wide markets, service providers to MBC are providing specialised services for niche purposes.

The case for an integrated investment plan and capital budget for civil maritime security

At the public hearing on 10 February 2023, the Committee heard that the Department's options had been limited because it did not have an integrated investment plan with an ongoing capital budget like Defence to recapitalise the fleet as needed.

An integrated investment plan provides long, or longer, term planning certainty for both the Commonwealth and industry.

The Department would be able to make effective prioritisation, sequencing and trade-off capability investment decisions across the full force enabling more strategic decisions about capability transfer. This includes the significant internal operational change required to support such a transfer. Current short-term funding promotes like-for-like procurements that have low to no impacts on internal operating processes.

Industry would have more notice, be able to provide better proposals, and deliver more effective, and more cost effective capabilities.

The Department would be able to better plan and undertake complex procurements with the required time. It can take a minimum of 1.5 years to undertake a complex procurement in a way that delivers best outcomes. Current ad-hoc year on year funding arrangements do not enable the Department to undertake these procurements without seeking specific, additional funding from Government each time.

Prior market sweeps

Since 2018, the Department has previously conducted three formal industry engagements for long term fixed wing civil maritime surveillance capabilities. The Department has continued ongoing informal industry engagements, in line with standard Commonwealth procurement practices. With all market sweeps undertaken, key findings have highlighted the requirement for significant operating and sustainment resources and funding, often extending beyond funds availability.

Market sweeps increase transparency in future procurement considerations, assist in developing a more robust understanding of industry capabilities and in the refinement of the Department's capability requirements and future planning. The inability to consider longer-term sustained funding continues to impact market availability and, in turn, fails to create a demand for capabilities. This unfortunately results in the continuation of mobilisation payments to the private sector.

Without the ongoing funding certainty required to adequately plan and prepare for anything beyond the near term, the Department is forced to operate in a state of reactivity. This adds risk to procurement tender processes. The ramifications of the short-term nature of this arrangement creates an inability for the Department to provide industry with long-term investment certainty, resulting in the Department having to enter the market late, pay price premiums to ensure service continuity, an inability to build trusted partnerships with suppliers over the long-term, and further limits the opportunity to fully test new suppliers.

The Department's first six monthly report to the JCPAA on its progress in tendering and procuring a CMSS contract

Progress

Within the constrained funding and specialist skillset environment, the Department has undertaken capability planning and development work ahead of its procurement for the new CMSS contract, which is underway.

Governance

The CPO has determined that the new CMSS procurement is to be conducted with the Department's High Risk High Value (HRHV) Procedural Instruction. This procurement is being led by the CPO through a specialist procurement function, the Specialist Procurement Branch (SPB). The Department and the ABF are working to ensure a fit for purpose and value for money contract is in place prior to the expiry of the current contract on 31 December 2027. Following the completion of these procurements, the CPO will transition ownership of the contracts back to the ABF for ongoing management.

Given new procurement is following the Department's HRHV governance process, external probity and legal advisors have been appointed. A HRHV Steering Committee has been established and led by the Chair, an ABF Officer at the SES Band 2 level, comprised with the following non-delegable members:

- Chief Risk Officer
- Chief Finance Officer
- Chief Procurement Officer (CPO)
- First Assistant Secretary, Dispute and Corporate Law Division (in an advisory role).

The HRHV Steering Committee must endorse all relevant procurement documents, including (but not limited to): procurement plan, approach to market documentation, evaluation report and contract, including its performance framework.

Following each HRHV Steering Committee endorsement, Financial Delegate approval is required. The Financial Delegate must approve each stage of the procurement process and related documents prior to the procurement proceeding.

HRHV Steering Committee endorsement provides confirmation to the Delegate that each stage of the procurement is consistent with legal principle and practice and the Department's Accountable Authority Instructions (AAI's) and Financial Management Guidelines and Risk Management Framework.

Next steps

Led by SPB, a two stage tender process which is compliant with the CPRs will be undertaken with a Request for Expression of Interest (REOI) seeking information from industry as to how they propose to deliver a CMSS solution.

Following the REOI and information gathered from Industry, the Request for Tender (RFT) requirements will be developed which will include information from lessons learnt workshops, recommendations from the Australian Maritime Safety Authority audit and other relevant recommendations, as well as industry expertise from advisors engaged throughout the process. The Department will be in an informed position to develop a statement of requirements that will meet

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the ABF's operational requirements. These requirements and other tender documentation will be approved from an operational perspective through the ABF.

The Department looks forward to updating the JPCAA on outcomes from the REOI, as appropriate. Furthermore, the Department is actively managing the procurement process to ensure new CMSS are in place before the expiration of the existing contract and to ensure that there is no capability gap.

Signed by



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