



PARLIAMENT OF AUSTRALIA

Eighty Seventh Annual Report

Parliamentary Standing Committee on Public Works

March 2024

CANBERRA

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This Committee is supported by staff of the Department of the House of Representatives.

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List of recommendations

Recommendation 1

- 2.69** The Committee recommends that the government conduct a thorough and consultative review of the *Public Works Committee Act 1969*, with a view to repealing and replacing the legislation. The review should consider the issues raised in this report.



1. Eighty Seventh Annual Report

- 1.1 Under section 16 of the *Public Works Committee Act 1969* (the Act), the Parliamentary Standing Committee on Public Works must table in each House of the Parliament a report of its proceedings from 1 January to 31 December for the preceding year.
- 1.2 The Act requires that the Committee consider and report on each referred public work ‘as expeditiously as practicable’.¹ Public works cannot commence until the Committee has reported on the works to Parliament and the House of Representatives resolves that it is expedient to carry out the work.
- 1.3 The Act states that in considering and reporting on a public work, the Committee shall have regard to:
 - the stated purpose of the work and its suitability for that purpose
 - the necessity for, or the advisability of, carrying out the work
 - the most effective use that can be made, in the carrying out of the work, of the monies to be expended on the work
 - where the work purports to be of a revenue-producing character, the amount of revenue that it may reasonably be expected to provide, and
 - the present and prospective public value of the work.²
- 1.4 The standard inquiry process allows time for public comment on proposed works and opportunities for the Committee to inspect the proposed work site(s) prior to holding public and in-camera hearings. The Committee’s website provides information on all past and current projects referred to it for inquiry.
- 1.5 The Committee’s website also has a copy of the Act and the *Public Works Committee Procedure Manual*. The Procedure Manual provides guidance for Australian Government entities involved in delivering public works. It presents information to help entities understand:
 - their obligations to the Committee
 - the information that must be provided to the Committee, and
 - the Committee inquiry process.
- 1.6 In 2023 the Committee tabled nine inquiry reports and one annual report, and held 38 meetings including private meetings, site inspections, and public and in-camera

¹ The Act, Part III, Section 17(1).

² The Act, Part III, Section 17(3).

hearings. Appendix A contains a list of all Committee meetings and hearings held during 2023.

Inquiries and Reports

- 1.7 The Minister for Finance refers all public works with an estimated cost of over \$15 million to the Committee. This threshold cost has been revised over time, reflecting increases to construction costs. Since 2006 all major capital works³ proposed by Commonwealth departments and statutory authorities with an estimated cost in excess of \$15 million, or in excess of \$75 million⁴ for the Department of Defence (Defence), must be referred to the Committee for consideration.
- 1.8 Since the Act was created, the threshold has been:
- in excess of \$2 million (until 1989)
 - in excess of \$6 million (1989 - 2006)
 - in excess of \$15 million (from 2006 onwards)
 - in excess of \$75 million (from 2019, for Defence only).
- 1.9 During 2023 the Committee scrutinised 16 referrals with a combined cost of approximately \$2.379 billion. In comparison the Committee scrutinised 10 referrals in 2022 and 15 in 2021.
- 1.10 Appendix B contains a list of all major works reported on by the Committee in 2023 and their individual costs.
- 1.11 For referrals made after 2010, the Committee requires post-implementation reports on completed projects. These reports indicate whether projects have been delivered within the advised scope, cost, and timeframe. Appendix C contains a list of all post-implementation reports received by the Committee in 2023.
- 1.12 When planning inquiry timetables, the Committee and proponent entities must consider the parliamentary sitting calendar. Generally, referrals are initiated only during weeks where both houses of Parliament are sitting, and reports are tabled in both houses of the Parliament. Expediency motions can only be made once reports are tabled in both houses of the Parliament and can only be passed when the House of Representatives is sitting.

Medium Works

- 1.13 The Committee also considers works below the threshold of \$15 million. Entities directly notify the Committee of proposed public works projects with an estimated

³ Also referred to as major works, inquiries or referrals.

⁴ The threshold amount for a public work for Defence purposes is \$75 million as per *Public Works Committee Regulation 2016*, Part II, Section 7(a).

cost between \$5 million⁵ and \$15 million for all purposes including defence, and between \$15 million and \$75 million for defence purposes (excluding GST, unless GST is not recoverable). These projects are referred to as 'medium works'.

- 1.14 Medium works are not a statutory requirement. The government agreed to this practice after the first major works threshold increase from \$2 million to \$6 million, to discourage entities from splitting larger projects into smaller components, allowing them to avoid parliamentary scrutiny.
- 1.15 The Committee reviews medium works notifications to determine whether it has any concerns or objections to works proceeding. This is a longstanding practice of the Committee which enables entities to obtain project approval for lower value projects in a shorter timeframe than required for major works. Medium works must not proceed to tender until the Committee has given its approval.
- 1.16 In January 2023 the medium works threshold was increased from \$2 million to \$5 million due to sharply rising construction costs from 2021.
- 1.17 The following provides an overview of the increases of medium works since the practice was established:
- \$2 million - \$6 million (1989 – 2006)
 - \$2 million - \$15 million (2006 – 2023)
 - \$15 million - \$75 million (2019 onwards, for Defence only)
 - \$5 million - \$15 million (2023 onwards)
- 1.18 The Committee's oversight is most effective when the Committee examines proposals which present the greatest potential for risk in a thorough and intensive manner. The adjustment of the medium works notification thresholds allows the Committee to focus on a smaller number of higher-value proposals.
- 1.19 In 2023, the Committee considered 63 medium works notifications with a combined value of \$905.05 million. In 2022 - when the lower medium works threshold remained at \$2 million - the Committee reviewed 290 medium works with a combined value of \$1.818 billion. Similarly, in 2021 the Committee was notified of 289 medium works with a combined value of \$2.176 billion.
- 1.20 Under the Public Works Committee Regulation 2016 projects valued between \$5 million and \$75 million for defence purposes only are considered as medium works.⁶ In 2023 there were 15 Department of Defence medium works projects between \$15 and \$75 million with a total value of \$463.12 million dollars. In 2022 there were 19 Department of Defence medium works projects between \$15 and \$75 million with a total value of \$419.3 million dollars.

⁵ The lower threshold was raised from \$2 million to \$5 million on 1 January 2023.

⁶ Public Works Committee Regulation 2016, Part II, Section 7(a).

1.21 Appendix D contains a list of medium works approved by the Committee in 2023.⁷

The EPBC Act and the Commonwealth Heritage List

- 1.22 *The Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and regulations apply to all public works (both major and medium). Project approval by the Parliamentary Standing Committee on Public Works does not mitigate an entity's responsibility to conduct a self-assessment and, if required, submit a project to the Department of Climate Change, Energy, the Environment and Water if the project has potential impacts on protected animals, plants, habitats or places.
- 1.23 In 2023 the Committee experienced an increase in projects referred to it prior to the conclusion of EPBC assessments. One project was referred and remains on hold until the EPBC process has been concluded due to the significant impact of the EPBC assessment on the scope of the works. Additionally, the Committee visited the site of another work prior to PWC referral which, due to heritage considerations, has yet to be referred almost 12 months later.
- 1.24 Future projects referred to the Committee should have finalised any EPBC assessments prior to referral. Where projects are referred to the Committee prior to the conclusion of any required EPBC assessments, final PWC approval may be delayed until the assessment has concluded and any resulting changes to cost and scope have been provided to the Committee.

⁷ Due to national security implications some projects do not appear on the list in Appendix B.



2. Need for reform

- 2.1 The Parliamentary Standing Committee on Public Works (PWC) was established in 1913 and is responsible for the scrutiny of all public works undertaken by the Commonwealth over a threshold amount. The *Public Works Committee Act 1969* (the Act) states that the PWC shall have regard to:
- the stated purpose of the proposed work and its suitability for that purpose
 - the need for the work
 - the cost-effectiveness of the proposal
 - the amount of revenue it will produce if the work is revenue producing, and
 - the current and prospective value of the work.¹
- 2.2 The PWC's oversight of government expenditure for public works has been credited with a significant contribution to project and building design standards. However government procurement and construction environment has evolved significantly since 1913. Areas where the PWC traditionally paid close interest – such as occupational health and safety, provision of childcare, accessibility and environmental standards – are now covered by legislation, and design briefs now address these issues as a matter of course.
- 2.3 It is timely to consider how the PWC can be most effective in the current government procurement and construction environment. The volume, type and expenditure of public works has evolved alongside Australian society, which can be seen in snapshots of PWC approved works:
- The first annual report presented by the PWC in 1915 states 16 public works were referred to the PWC in that year with a total value of £2,429,824. Works included railway facilities and extensions, sewers, water reservoirs, a naval base, an arms factory, office accommodation and automatic telephone exchanges.
 - In 1993, the PWC examined 21 Commonwealth public works including defence facilities, overseas embassy complexes, office buildings, CSIRO scientific facilities and airport facilities to a total value of approximately \$1.486 billion.
 - In 2023, the PWC reported on 16 major works with a total approved value of approximately \$2.379 billion and approved an additional 63 medium works with a total value of approximately \$905.05 million. Works included defence facilities, government department office fit-outs, overseas embassy complexes, airport facilities, road and bridge repairs and upgrades and PFAS management and remediation and combustible cladding replacement.

¹ *Public Works Committee Act 1969*, section 17(3).

- 2.4 In addition to the changing nature of construction, the Act predates government procurement policies and does not address all contracting practices (for example where agencies have an option to re-engage a design contractor for the construction phase without testing the market).
- 2.5 This chapter outlines the need for reform of the Act to ensure the PWC remains an effective and efficient oversight body. The PWC has refined the recommendations made in this chapter in consultation with interested stakeholders.

Legislative history

- 2.6 The *Commonwealth Public Works Committee Act 1913* received assent in December 1913. Public Works Committees already existed in the states of both Victoria and New South Wales and their function in overseeing public works and saving public expenditure was seen as desirable. In the parliamentary debate the then Prime Minister Joseph Cook stated:

Huge sums are being, and have been, spent for years past, without proper inquiries and without that information to which the House is entitled. No big public work ought to be undertaken until this House has passed judgement upon it. That is one of the prime functions of a legislative assembly anywhere and always; indeed, this proposition goes to the very root and basis of our system of responsible government and parliamentary control.²

- 2.7 At the time of introduction, the main concerns were the abrogation of ministerial responsibility through giving Parliament the ability to veto specific government acts, and whether the Government's refusal to put in place a public work that the Committee has approved would amount to a loss of confidence in the government of the day. The original proposal was that all defence works would be automatically excluded, however that was softened to the ability to exclude defence works if needed.
- 2.8 There were several amendments made during the following decades, including allowing a work to be referred while Parliament was not in session (1951), allowing a chairman to be appointed by the members whenever a vacancy arises (1953) and allowing the PWC to review its own report on a public work that has not yet commenced and make a further report to the House (1960). The thresholds for referral and allowances were also increased.
- 2.9 On 25 September 1969 the Act was repealed and replaced after the Chairman of the Committee submitted a list of proposed amendments to the government to modernise the Act, particularly in relation to defining the scope of the Committee's inquiries and the works to be referred to it. Despite the repeal, the changes were not major and included:
- Widening the provisions for the appointment for temporary Chairmen.
 - Adding the power for the House of Representatives to call for a further report by the Committee at the expediency point if it chose to do so.

² Hansard 11 September 1913

- Raising the referral threshold from \$500,000 to \$750,000.
- Setting out the factors the committee should have regard to in its inquiry.
- Allowing the Senate to refer a matter to the Committee and ensure that a report of the Committee is required to go to both houses.
- Clarifying that the Committee could only physically inspect works within Australia.

2.10 Minor amendments were made to the Act in 1989³ including:

- definition of the terms “work” and “public work”
- referral of works financed by deferred payment or similar arrangements
- a provision for certain types of works to be declared as “public works” under the regulations following consultation with the Committee
- provision to allow for works to be referred at the most appropriate stage of planning.

2.11 In 2006 further minor amendments were made:⁴

- The threshold value for works was raised from \$6 million to \$15 million.
- The definition of a ‘public work’ was changed to clarify that works funded through Public Private Partnerships (PPPs) or similar arrangements must be referred to the PWC.
- Works funded through leasing or similar arrangements were also included in the definition of a public.
-

³ *Administrative Services Legislation Amendment Act 1989*

⁴ *Public Works Committee Amendment Act 2006*

Overview of other Public Works Committees

Jurisdiction	Name	Governing legislation	Referral threshold	Members
Tasmania	Public Works Committee, Parliament of Tasmania	<i>Public Works Committee Act 1914</i>	\$8 or \$15 million	5 (3=quorum)
New South Wales	Public Works Committee, Parliament of New South Wales	<i>Public Works Act 1912</i>	\$10 million	7 (3=quorum)
South Australia	Public Works Committee, Parliament of South Australia	<i>Parliamentary Committees Act 1991</i>	\$4 million	6 (4=quorum)
Queensland	Transport and Resources Committee, Queensland Parliament	<i>State Development and Public Works Organisation Act 1971</i>	N/A	6
Australian Capital Territory	Standing Committee on Planning, Transport and City Services, Legislative Assembly for the Australian Capital Territory	Resolution of establishment for the committee	N/A	3
New Zealand	Transport and Infrastructure Committee, New Zealand Parliament	The Committee section of the <i>Public Works Act 1981</i> has been repealed	N/A	8
United States of America	Committee on Environment and the Public Works, US Senate	<i>Public Buildings Act of 1959</i>	N/A	19 (7=quorum)

Areas for reform

- 2.12 This section sets out the main suggested areas for reform of the public works process. It includes both broad policy issues and narrower technical changes. Suggestions for reform are included throughout the chapter in text boxes.

Effective oversight

- 2.13 The purpose of the PWC is to provide parliamentary scrutiny of government expenditure for public works. This section discusses how to improve the effectiveness of that oversight.

Identifying how the PWC adds value

- 2.14 Any suggested reform should start with identifying how the PWC adds value to the public works process. Public works go through multiple approval stages before reaching the PWC. This routinely involves several stages of cabinet approval, inter- and intra-departmental forums, environmental approvals and input from third parties such as local planning authorities. Despite these mechanisms, committee scrutiny provides benefits that cannot be substituted by other approval paths.
- 2.15 Unique ways in which the PWC adds value to the approval process are:
- The ability of the Committee to assess projects across all Commonwealth authorities, including those delivered on behalf of the Commonwealth. The PWC can compare similar projects, reduce duplication, and identify common challenges and innovations.
 - The ability to assess projects using a broader 'public interest' parliamentary lens separate from the priorities and commitments of the government of the day.
 - The ability to look at projects in a less technical way, using real world approaches.
 - The ability to conduct inquiries in public, allowing for contribution and input (submissions and hearing attendance) from the public about community and/or specialised priorities and concerns, as well as publishing a report made available to the public.
- 2.16 Identification of the PWC's value-add is important in determining when the PWC should assess a public work. If the most important value of the PWC is to determine the project in its entirety, then the proposal must be in a largely complete state before the PWC makes its inquiry. Further discussion on this is in the 'Timing' section below.

The context of the PWC's oversight

- 2.17 The effectiveness of PWC oversight is least successful in relation to its second term of reference (the need for a work) due to the limited provision of strategic planning and the focus on design detail. Referral submissions typically focus narrowly on describing the proposed work rather than situate it in the broader policy framework. Generally the submissions use less than four paragraphs of a submission to discuss which options may have been considered in the development of the proposal. Proposals are often presented as the only possible option.

- 2.18 The PWC has tended to focus more on the suitability of proposals to meet their purpose than assessing the need for the proposal. The PWC's interest in technical specifications in turn appears to have driven the high level of design detail in proposals.
- 2.19 The project-based model also limits the PWC's ability to assess multiple projects at a single site, for example a defence base, that may take place over several years. The PWC is not usually involved in—or even aware of—the strategic planning for the whole of an entity's capital assets. This limits the PWC's ability to effectively assess need and value for money for each project.

Closing the feedback loop

- 2.20 It is difficult for the PWC to ascertain whether value for money was achieved in the delivery of a project. In 2009 the Australian National Audit Office (ANAO) undertook a performance audit of the approval of funding for public works and recommended a more effective feedback loop to aid the delivery of project outcomes to a consistently high standard.⁵
- 2.21 The ANAO recommended the use of post-implementation reviews to assess:
- a. The extent to which expected business benefits have been achieved or are expected to be achieved.
 - b. User and/or client satisfaction with the delivered project.
 - c. Whether there are lessons that could usefully be applied either within the agency or more broadly across the Commonwealth.⁶
- 2.22 As a result of the ANAO report, the committee now requests post-implementation reviews as part of its report back to Parliament. They are received at the end of the project and contain useful information for the PWC. The Secretariat maintains a database of received reports and sends annual reminders to complete outstanding reports.
- 2.23 Entities are also required to advise the PWC when the cost or scope changes during a project. However the PWC has no legislative authority to take any action in relation to a public work that has already commenced.
- 2.24 For particularly high-risk or problematic projects, the PWC may request reviews during the project, as well as at completion. This allows the PWC to maintain a watching brief over projects prior to the formal post-implementation report.

Suggestions for reform

Box 2.1 Strategic scrutiny

⁵ Australian National Audit Office, *Approval of Funding for Public Works*, Audit Report No. 20 2008-09, Feb 2009, Canberra.

⁶ Australian National Audit Office, *Approval of Funding for Public Works*, Audit Report No. 20 2008-09, Feb 2009, Canberra, Recommendation No. 3 p 30.

The role of the PWC as a strategic scrutiny body should be expressly defined in the Act.

Box 2.2 Feedback mechanism

A feedback mechanism should be included in the Act, ensuring post-implementation reports are made publicly available. The Act should also include formal repercussions for entities who do not provide a post-implementation report within a statutory timeframe.

Box 2.3 Re-inquiry

It should be considered whether the PWC should be able to re-investigate or re-inquire into issues identified as a result of a post-implementation report.

Box 2.4 Entities with consistent cost overruns

It should be considered whether ongoing oversight (rather than solely project-based) would be more appropriate for entities that consistently have cost over-runs. For example, the PWC could be given the authority to re-investigate and/or to request summary reporting from a particular entity.

Definition of a public work

- 2.25 The definition of a public work in the Act is largely unchanged since 1913. Although some modifications have been made to address specific issues, the nature of construction has changed substantially during the life of the PWC. Applying the definition to current works can cause ambiguity and confusion.
- 2.26 To be within the definition of a public work under the Act, it has to fall under both 1 and 2 below:
- 1 It must be a 'work'. This includes architectural or engineering works, including fit-outs, demolitions and earthworks. Under the regulations it also includes demountable or temporary buildings.⁷ A 'work' does not include intangible things, or things done in relation to moveable property.
 - 2 It must be a 'public work'. A simplified explanation is that this means any one of:
 - carried out by or for the Commonwealth or an authority of the Commonwealth
 - expending money appropriated by Parliament, or
 - the Commonwealth will become the owner.

⁷ Public Works Committee Regulation 2016, Regulation 6.

2.27 The following is a non-exhaustive list of areas that could be clarified:

- Fit-outs of leased premises. The PWC has no oversight of leases, however it does look at fit-outs of leased premises. Given that the costs of fit-outs are often interwoven with landlord incentives and shared responsibilities for some amenities, this can cause ambiguity around whether some works are included. It also means that the PWC does not assess the need for the work in relation to additional (or reduced) office space and location.⁸
- Fit-outs and moveable property. Although fit-outs are expressly included, it is not clear under the Act if that extends to all fixtures and furniture. It is also difficult to determine whether ICT infrastructure is a ‘public work’.
- Work that is adjacent to an exempt project or entity. As the financial arrangements for delivering large infrastructure projects become more complex, the definitions in the Act become more difficult to apply. For example, WSA Co are exempt under the Regulations for the delivery of the Western Sydney International Airport, however Commonwealth agencies building facilities on the site are not.
- Work funded through public-private partnerships. The Act was amended in 2006 to clarify that works funded this way would be included. However the National Public Private Partnership policy framework emphasises innovative models with the private sector taking on a greater proportion of the risk, which does not always align with the timing and nature of PWC oversight.
- Design and construct contracts. Design work—as work related to ‘intangible things’—is excluded from the definition of a work. Therefore contracts to both design and construct a work are only partially subject to PWC oversight.

2.28 There are two other exemptions from the definition of a public work in the Act and Regulations:

- Any works that take place within the Parliamentary Zone.
- Works for the purposes of overseas development assistance.

At this time the PWC considers that the exempt works listed above have sufficient alternative oversight and should not fall within the jurisdiction of the PWC.

Suggestions for reform

Box 2.5 Definition of a public work

The definition of a public work should be clarified to include the Commonwealth’s current approaches to construction and occupation of premises. In particular, the role of the PWC in the following areas should be considered:

- Entering into leases
- Contracts that include both design and construction work
- Fitting-out of leased premises

⁸ The Act was amended in 2006 to ensure that fit-outs funded through lease incentives were covered by allowing for indirect funding of the work, and allowing for works that would not be owned by the Commonwealth.

- Inclusion of furniture, fittings and ICT infrastructure in fit-outs
- The role of the PWC in more complex procurement models such as public-private partnerships.

Authorities to which the Act applies

- 2.29 The Act applies to an 'authority of the Commonwealth' which includes departments, statutory bodies, and Commonwealth-controlled companies. As discussed above, it can also apply to other entities when the work will be owned by the Commonwealth.
- 2.30 The Act expressly does not apply to an inter-governmental body or ACT government entities. The regulations exempt other entities, including several corporations that have major construction programs, including Australian Postal Corporation, Defence Housing Australia, NBN Co Limited, Snowy Hydro Limited and WSA Co Limited.

Box 2.6 Exempt bodies

A review of the Act and Regulations should consider whether these exemptions are still appropriate.

Timing

- 2.31 Referrals are currently made at a reasonably late stage of the works planning process, after other government approvals such as budget and environment / heritage. This reflects the PWC requirement that, in order to properly assess a project, the PWC needs assurance that the project will not change significantly between parliamentary expediency and implementation. From experience, the most common drivers for change during this period are planning approvals, environmental and heritage approvals, and changes to the budget.
- 2.32 The PWC expects that projects are at a P80 level of cost confidence, which is calculated by a probabilistic assessment of the likelihood and impact of a wide range of risks associated with the project. Achieving this level of cost confidence usually requires a reasonable level of design work. The advantage of using the P80 measure is that it is a widely used industry standard, and gives the PWC a useful level of assurance regarding the expected project costs. However the PWC notes agencies' concerns that even expert cost estimates are only estimates, and the costs for works will reflect the market at the time of tender.
- 2.33 However having oversight at this later stage of the project carries risks. Submissions do not always give other options considered, with proposals presented as the only possible option, and with significant investment already having occurred. It can be difficult for the project to be changed based on PWC feedback.
- 2.34 Any delays at the PWC stage can also incur costs. As a result, agencies approach the PWC process seeking to ensure they can 'pass' and the PWC has little opportunity to mitigate the risks associated with poor strategic planning. The PWC can be in the position where not approving works could potentially cost the Commonwealth millions of dollars.

- 2.35 If referrals were made at a strategic planning stage—where the agency had identified the need, scope and budget parameters, but prior to detailed design—the PWC scrutiny may be more effective at identifying the big project risks. There would also be less costs incurred if the PWC recommends that the project does not proceed.
- 2.36 Although an early design stage may mean agencies are not able to define what a project will cost, the PWC notes that budget and Cabinet submissions are made at this stage and funding is allocated. It may be useful for the PWC to have greater visibility of the approval process prior to referral, and a greater awareness of the nature and level of scrutiny of projects that is undertaken by government departments.
- 2.37 However, there are also risks in the PWC considering projects at an earlier concept stage. In order to ensure that the overall project budget is met, agencies are likely to over-estimate costs and include unnecessarily high-risk allowances.
- 2.38 The PWC's oversight may not be as effective where key design elements are yet to be determined. Traditionally, one of the PWC's strengths has been the ability to compare the details of projects and suggest less costly alternatives. If earlier scrutiny was considered appropriate, it should not prevent the PWC examining detailed designs when they become available.
- 2.39 There is also the possibility of having a two-phase PWC process; one at the strategic planning stage to assess need, and a later process to look at the specific design. This would give a greater degree of scrutiny to the PWC and would allow it to assess the actual design against the already-established need. A two-stage process would allow the PWC to put proposals into a broader strategic framework that may produce efficiencies—for example by simultaneously assessing multiple projects at a single site, such as a Defence base. For most projects however, a two-stage process would increase the time needed for PWC approval over the life of the project.
- 2.40 The PWC has two current non-legislative practices to mitigate the risks discussed above:
- Approval of 'early works'. The committee has developed a practice of approving 'early works', in exceptional circumstances, if those works are a necessary precondition of moving a larger project to the point where it can be properly scoped or designed.
 - Concurrent documentation. On request, the PWC approves 'concurrent documentation' which allows an entity to approach the market on a 'subject to parliamentary approval' basis. Concurrent documentation is usually approved immediately after the PWC's hearing but prior to parliamentary expediency, and is only granted where the PWC has no major concerns with the project. Concurrent documentation can reduce long lead times for the procurement process in circumstances that are unusually time-sensitive, but is not usual practice.
- 2.41 The legislation does not allow works to be 'commenced' prior to PWC inquiry and parliamentary approval. Commencement includes entering into a contract for the work, however it is not clear which of the pre-contractual activities—inviting to register interest, calling for pre-tenders or requests for tenders—would constitute 'commencement'.

Suggestions for reform

Box 2.7 Timing of referral

The timing of the referral to the PWC should be re-considered to determine at what point in the public works process is the most effective for PWC oversight; including whether a two-stage referral process is appropriate.

Box 2.8 Legislative changes to mitigate timing issues

The Act could expressly include provisions for:

- Concurrent documentation allowing tenders to be sought, subject to parliamentary approval
- Early works
- A requirement for a percentage of design or cost-confidence threshold before referral
- A requirement for all other approvals to be granted before referral

Thresholds

- 2.42 The current threshold for a major work to be referred to the PWC is \$15 million (or \$75 million for defence purposes⁹) as outlined in the Act and Regulations. The last time the threshold was increased was in 2006 when it was increased from \$6 million to \$15 million.
- 2.43 Since 2006 the building industry in Australia has experienced a significant increase in costs due to the rising cost of labour and ongoing supply issues. In recent years this has been exacerbated by the impact of the war in Ukraine and the pandemic.
- 2.44 In addition, CPI has risen from 84.9 to 132.6 between March 2006 and March 2023 further inflating the cost of carrying out public works in Australia.¹⁰ This means more public works are over the \$15 million threshold required for PWC referral.
- 2.45 While major works thresholds may only be adjusted by revision of the *Act*, the PWC is responsible for the management of the lower medium work threshold, raising it from \$2 million to \$5 million in January 2023.

Suggestions for reform

Box 2.9 Threshold adjustments

⁹ *Public Works Committee Regulation 2016*, Part II, Section 7(a).

¹⁰ Consumer price index (CPI) rates | Australian Taxation Office (ato.gov.au)

Consideration should be given to removing the threshold for referral from the legislation and having the threshold set by regulation, or ministerial determination, or by committee resolution.

Medium works

- 2.46 Because the examination of medium works is not expressly stated in the legislation, there is some ambiguity about the PWC's role and the obligation of entities. However the PWC considers that its oversight of these works is beneficial, reflecting a lower level of scrutiny for lower-value and lower-risk projects. The medium works process is a mechanism to ensure that agencies are not breaking down projects to avoid scrutiny.
- 2.47 Although an agreed practice has developed, this should be set out in the legislation to clarify the responsibilities of all parties. The legislation could reflect the more limited role of the PWC in relation to smaller projects. Placing medium works in the context of a committee inquiry would also allow for greater public transparency by providing for the publication of medium works notifications and approvals.

Suggestions for reform

Box 2.10 Medium works

The legislation should reflect up-to-date medium works practice, rather than the more informal agreement which currently guides this process. This would provide greater authority to the PWC and allow for medium works to be made available for public scrutiny.

Exemptions

- 2.48 There are several exemptions under the Act from the public works process. These are applied to individual public works and are in addition to the exclusions that can be made under the regulations from the definition of 'public work' and 'authority' discussed above.
- 2.49 The three exemptions are for works that are 'urgent', 'for defence purposes', and 'repetitive'. The exemptions are granted by three different entities, which leads to some confusion. Exemptions are required to be gazetted, however practice has been patchy, which means there is no public central record of exemptions that have been granted.

Defence purposes

- 2.50 Under section 18(8)(c) of the Act the Governor-General may declare a public work to be 'for defence purposes' and that the reference of the work to the PWC would be contrary to the public interest. The overwhelming majority of Defence-related public works are referred to the PWC. This exemption is used mainly for works relating to national security, where public scrutiny would not be appropriate. Since 2001 there have been 20 exemptions on the grounds of 'defence purposes'.

2.51 The use of the phrase ‘for defence purposes’ is quite narrow and does not reflect the main areas of concern for exemption from public works scrutiny. For example, it does not include works relating to policing, anti-corruption or intelligence.

Urgency

2.52 Under section 18(8)(b) of the Act the House of Representatives may resolve that it is expedient to carry out a work without it being referred to the PWC due to the urgent nature of the work. This bypasses the PWC processes and moves straight to parliamentary approval of the work. Since 2001 there have been 18 exemptions on the grounds of urgency.

Repetitive work

2.53 Under section 18(8A) of the Act the Minister may declare a work to be a repetitive work if:

- the work is substantially similar to other works, and
- the PWC has agreed to the declaration.

2.54 This exemption requires both Ministerial and PWC agreement and was introduced in 1981.¹¹ It has been used 17 times since 2001, primarily for airfield maintenance and repairs at different sites around Australia.

Suggestions for reform

2.55 Although these exemptions are functional, having three different mechanisms for granting the exemptions is unnecessarily complex. It may be appropriate that the Minister has the ability to declare an exemption from the public works process on the grounds of national interest (in a similar way to the exemption from treaty oversight by the Joint Standing PWC on Treaties).

2.56 Regardless of the mechanism, if the exemption is given by the executive then reasons for the exemption should be required to be tabled in Parliament.

Box 2.11 Exemptions

The exemptions should be modernised, broadened where appropriate, and amended to ensure the exemptions go through a consistent process. The concept of a single ‘national interest’ exemption should be considered further.

Modern committee practice

2.57 The legislation governing the PWC dates from before the establishment of the modern committee system in either the Senate or the House. The procedures listed below are currently fixed in the legislation, do not reflect modern committee practice, and reduce the efficiency and flexibility of the PWC:

- Formation of sub-committees

¹¹ *Public Works Committee Amendment Act 1981*

- Application of parliamentary privilege
- Offences and powers
- Allowances and expenditure
- Requirement to sign a declaration of office
- Ability to meet during sittings of either House.

Membership and quorum

- 2.58 Despite the growing workload of parliamentarians, the committee’s membership has remained unchanged since the original act of 1913 at three Senators and six members of the House of Representatives. There is no express requirement for any number of government or non-government members.
- 2.59 The quorum for the PWC is unusually high at five members. The high proportion of members required for a PWC quorum has caused difficulty in forming properly constituted meetings.
- 2.60 The PWC can establish sectional committees of as few as three members, with a quorum of two. The PWC utilises this for most public hearings. However, sectional committees must be established by the committee as a whole prior to the hearing. There can also only be two sectional committees at a time, and inquiries must be expressly referred to a sectional committee.
- 2.61 By comparison, other committees have a lesser proportional quorum requirement and more flexibility with sub-committees:

Table 2.1

Committee	Membership	Quorum	Subcommittees
JSCFADT	32	6	Unlimited
JCPAA	16	6	Sectional – unlimited in number
JSCOT	16	3	Unlimited
PJCIS	13	7	Unlimited

Suggestions for reform

Box 2.12 Committee practice

Instead of keeping committee practices fixed in legislation, the legislation could provide for the normal practice of the PWC to be governed by the standing orders, or by resolution of both Houses. This would allow practice to evolve in line with changes in general committee practice. The quorum should be lowered.

Other technical issues

Referral

- 2.62 Referral of a public work to the PWC is currently done on motion of either House of the Parliament under section 18(1) of the Act. This requires a parliamentary sitting day for referrals to occur, and a space in parliamentary business, which can lead to delays in the referral.
- 2.63 Many other committees receive referrals directly from the Minister rather than from the Parliament. This option should be explored for public works.
- 2.64 The PWC is unusual in that it can only make inquiries into specific public works that have been referred to it. It cannot do broader inquiries into matters that affect a variety of public works, or into the public works processes more generally. This limits the effectiveness of the PWC.
- 2.65 Reform should include considering giving the power to the PWC to do broader inquiries; either through self-initiation or by referral from the Minister or either house, in line with broader committee practice.

Prorogation and dissolution

- 2.66 The time from dissolution to the formation of a new Parliament is unpredictable, and often several months. During this time the PWC cannot consider public works. Given the nature of construction projects, this can mean a significant and costly delay in commencing public works. A review should consider options for continuing the work of the PWC through dissolution.

Expediency

- 2.67 The final step in the public works approval process is for the House of Representatives to resolve that it is expedient to carry out the work (section 18(7) of the Act). This cannot take place until the report is presented to both Houses of the Parliament, and gives an opportunity for parliamentary debate on the committee's report on the proposed public work.
- 2.68 In practice, debate on the expediency motion is rare. There may be a more streamlined way to approve the final work, including allowing the expediency motion to be moved in either the House or the Senate.

Suggestions for reform

Box 2.13 Technical reforms

Consideration should be given to amending the legislation to:

- Allow for the PWC to initiate its own inquiries
- Allow for referral to be done by a Minister when Parliament is not sitting
- Provide a mechanism for PWC oversight during the dissolution of Parliament

- Allow for the expediency motion to be moved in either the House or the Senate.

Recommendation 1

- 2.69** The Committee recommends that the government conduct a thorough and consultative review of the *Public Works Committee Act 1969*, with a view to repealing and replacing the legislation. The review should consider the issues raised in this report.

Mr Graham Perrett MP
Chair

A. Committee meetings and hearings

Private meetings may include deliberative meetings, private briefings, site inspections and in-camera hearings. Public indicates public hearings.

Table A.1 Committee meetings in 2023

Number	Date	Location	Meeting type
47th Parliament			
1	2 February 2023	Canberra/Videoconference	Public/Private
2	9 February 2023	Canberra	Private
3	10 February 2023	Canberra/Videoconference	Public/Private
4	27 February 2023 – 2 March 2023	Cocos (Keeling) Islands and Christmas Island	Private
5	3 March 2023	Western Australia/Teleconference	Private
6	3 March 2023	Western Australia/Videoconference	Public/Private
7	9 March 2023	Canberra	Private
8	15 March 2023	Canberra/Videoconference	Public/Private
9	23 March 2023	Canberra	Private
10	24 March 2023	Canberra	Private
11	30 March 2023	Canberra	Private
12	5 April 2023	Hobart	Public/Private
13	6 April 2023	Geelong/Point Cook, VIC	Private
14	17 April 2023	Canberra/Videoconference	Public/Private
15	21 April 2023	Canberra/Videoconference	Public/Private
16	8 May 2023	Canberra	Private
17	11 May 2023	Canberra	Private
18	12 May 2023	Sydney	Private
19	15 May 2023	Canberra/Videoconference	Public/Private
20	1 June 2023	Canberra	Private
21	15 June 2023	Canberra	Private

22	22 June	Canberra	Private
23	21 July	Canberra/Videoconference	Public/Private
24	3 August	Canberra	Private
25	10 August	Canberra	Private
26	16 August	Melbourne	Public/Private
27	21 August	Canberra/Videoconference	Public/Private
28	7 September	Canberra	Private
29	14 September	Canberra	Private
30	15 September	Canberra	Public/Private
31	19 September	Canberra/Videoconference	Public/Private
32	4 October	Adelaide	Public/Private
33	5 October	Whyalla, SA	Private
34	19 October	Canberra	Private
35	20 October	Canberra	Private
36	2 November	Sydney/Teleconference	Public/Private
37	16 November	Canberra	Private
38	30 November	Canberra	Private

B. Reports presented and value of works approved by the Committee

Table B.1 Presented reports 2023

Report	Project Title	Tabled	Cost (\$m)
1/2023	Department of Employment and Workplace Relations and the Australian Electoral Commission — Proposed Fit-out of New Premises at London Quarter Block 40, Section 100, Canberra City, ACT	7 March 2023	149.26
1/2023	Department of Defence — Cultana Training Area Redevelopment Phase 2, SA	7 March 2023	79.8
2/2023	Department of Defence — Cocos (Keeling) Islands Airfield Upgrade	28 March 2023	567.6
2/2023	Department of Foreign Affairs and Trade — Australian High Commission Project Abuja, Nigeria	28 March 2023	38.3
3/2023	Cocos (Keeling) Islands — West Island, Seawater Reverse Osmosis Plant Project	9 May 2023	19.6
3/2023	Australian Taxation Office Fit-out — Proposed Fit-out of Existing Leased Premises at 200 Collins Street, Hobart, Tasmania	9 May 2023	24.5
3/2023	Department of Foreign Affairs and Trade — Proposed Construction and Decommissioning of the Australian	9 May 2023	59.8

	Pavilion at the World Expo 2025 Osaka, Kansai, Japan		
4/2023	Airservices Australia — Aviation Rescue Fire Fighting Facilities, Navigation Aids and Digital Aerodrome Services project, Western Sydney International Airport	13 June 2023	98.9
5/2023	Department of Defence — Facilities to Support JP9101 Phase 1 Enhanced Defence High Frequency Communications System — 'Project Phoenix'	8 August 2023	280.2
6/2023	Department of Defence — Fishermans Bend Redevelopment	12 September 2023	160.9
7/2023	National Capital Authority — Commonwealth Avenue Bridge, Canberra, ACT, Renewal project	3 October 2023	137.5
8/2023	National Capital Authority — Scrivener Dam Dissipator Strengthening project	14 November 2023	38.5
8/2023	Australian Taxation Office — Proposed fit-out of New Leased Premises at 15 Sydney Avenue, Barton, ACT	14 November 2023	125.8
8/2023	Department of Defence — Edinburgh Defence Precinct Mid-Term Refresh	14 November 2023	311.9
8/2023	Department of Defence — Armoured Fighting Vehicles Facilities Program — Stage 2	14 November 2023	Project withdrawn
9/2023	Department of Defence — Defence Fuel Transformation Program — Tranche 2 Facilities project	28 November 2023	286.9

C. Post-implementation reports received

Table C.1 Post-implementation reports 2023

Project Title	Agency	PWC Report	PIR Received
101 George Street Parramatta Fit-Out	Department of Home Affairs	5/2021	12 January 2023
ATO proposed fit-out of leased premises 6-20 Gladstone Street, Moonee Ponds	Australian Taxation Office	2/2019	2 February 2023
ACT Headquarters Project	Department of Home Affairs	4/2017	15 February 2023
ACT Site Consolidation Project	Commonwealth Scientific and Industrial Research Organisation (CSIRO)	2/2014	11 August 2023
Facilities Security Enhancement Project (FSEP)	Australian Federal Police (AFP)	1/2017	18 August 2023
LAND200 Tranche 2 Battlefield Communications Systems Facilities Project	Department of Defence	4/2018	21 August 2023
Royal Australian Air Force Base Williamstown Redevelopment Stage 2 Project	Department of Defence	6/2015	1 September 2023
Fit-out of 808 Bourke Street, Docklands, Victoria	Department of Home Affairs	1/2022	12 July 2023
Land 121 Stage 2A – Unit Sustainment Facilities	Department of Defence	1/2016	15 November 2023

Post-implementation reports are mandatory for full referrals. Sometimes the Committee requests/receives 'post-implementation reports' at various stages during project delivery, or for medium works. These reports are not published on the Committee's website and are not listed in this table.

D. Medium works approved by the Committee

The table lists the medium works¹ approved by the Committee in 2023.

Table D.1 Medium works 2023

Project Title	Agency Name	Date notified to Committee
Fitout of the New Leased Office, Levels 9 to 11, 18 Marcus Clarke Street, Canberra ACT	Civil Aviation Safety Authority	22 December 2022
Fitout of new leased office premises, 40 Cameron Avenue, Belconnen ACT	Australian Communications and Media Authority	27 January 2023
PDS Project EST08221, Low Speed Wind Tunnel Replacement, Defence Science Technology Group, Fishermans Bend VIC	Department of Defence	30 January 2023
New Court Facilities, Peter Durack Commonwealth Law Courts Building, Level 4, Victoria Avenue, Perth	Federal Court of Australia	1 February 2023
HMAS Creswell Mid-Term Refresh Project	Department of Defence	14 March 2023
Fitout of ABF Customs House, Centre Road, Melbourne Airport, VIC	Department of Home Affairs	24 March 2023
Visitor Experience Enhancement Project, Denison Street, Deakin, ACT	Royal Australian Mint	27 April 2023
Reef Authority Office Fitout in Townsville Queensland	Great Barrier Reef Marine Park Authority	27 April 2023
Installation of Optical Fibre Link to the Pia Wadjari Remote Aboriginal Community and the Murchison Settlement, WA	Australian SKA Office	28 April 2023
Tranche 1 Facilities to Support Project SEA9100 Phase 1 Improved Embarked Logistics Support Helicopter	Department of Defence	2 May 2023

¹ Medium works are projects with an estimated cost of \$2 - \$15 million, or \$2 - \$75 million for Defence projects.

Project EST08496 Royal Australian Airforce Williamtown Military Working Dog Kennel Relocation, NSW	Department of Defence	25 May 2023
Facilities to Support the Relocation of Units from the Elizabeth North Training Depot	Department of Defence	26 May 2023
Facilities to Support Joint Project 8190 Phase 1 Deployable Bulk Fuel Distribution	Department of Defence	30 May 2023
EST09219, DSTG Maribyrnong Fire Damaged Demolition, Defence Site Maribyrnong	Department of Defence	1 June 2023
National Measurement Institute, for the Relocation of the Gas Mixing Facility in Lindfield, Sydney NSW	Department of Industry, Science and Resources	5 June 2023
EST09240 Tin City 6 Refurbishment, RAAF Darwin, Northern Territory	Department of Defence	9 June 2023
Remediation and Upgrade of the Australian Institute of Sport Arena, Bruce, ACT	Australian Sports Commission	15 June 2023
Hume Repository Extension Northern End, Hume ACT	National Library of Australia	10 July 2023
Fitout of Leased Office Accommodation for the National Headquarters, 5 Constitution Avenue, Canberra	National Anti-Corruption Commission	24 July 2023
EST08136 HMAS Creswell Water Reticulation, HMAS Creswell & Jervis Bay Range Facility, NSW	Department of Defence	26 July 2023
EST09535 Robertson Barracks L121 Works – Pavements, Robertson Barracks, Holtze, NT	Department of Defence	26 July 2023
Project EST08608, Victoria Barracks Brisbane Retaining Walls, Queensland	Department of Defence	26 July 2023
EST09110 Benalla Electrical Reticulation Upgrade, Benalla, Victoria	Department of Defence	26 July 2023
EST08570, RAAF Williamtown A0274 and A0277 Refurbishment, NSW	Department of Defence	26 July 2023
EST08237 Bradshaw Field Training Area Koolendong Road Upgrade, NT	Department of Defence	26 July 2023
EST08213 Water Infrastructure Upgrade, Exercise Staging and Support Base located at 68 Western Street Rockhampton QLD	Department of Defence	26 July 2023
EST08292 Military Working Dogs Construction, Lavarack Barracks, QLD	Department of Defence	26 July 2023

EST08306 Robertson Barracks Military Working Dogs Relocation, Robertson Barracks, NT	Department of Defence	26 July 2023
Project AIR5428 Phase 1 Additional Flight Training Devices at RAAF Base Pearce, Western Australia	Department of Defence	28 July 2023
Facilities to Support Guided Weapons and Explosive Ordnance Accelerated Storage – Tranche 1 – Defence Depot Myambat, Denman, NSW	Department of Defence	31 July 2023
Facilities to Support Guided Weapons and Explosive Ordnance Accelerated Storage – Tranche 1 – Defence Depot Jennings, NSW	Department of Defence	31 July 2023
Canberra Office Project, Levels 7 and 8, 18 Marcus Clarke Street, Civic ACT	Australian Maritime Safety Authority	28 August 2023
PDS Project EST07523, HMAS Stirling Maritime Structures Repairs, WA	Department of Defence	30 August 2023
EST08620 RAAF Base Wagga Wagga Refurbishment of Living in buildings 0435, 0436, 0437, 0438, 0440	Department of Defence	30 August 2023
PDS Project EST08519, RMC Duntroon Kapyong House Building Refurbishment, ACT	Department of Defence	30 August 2023
PDS Project EST08223, HMAS Creswell Health Clinic, NSW	Department of Defence	30 August 2023
PDS Project EST01395 ADFA Cadets Accommodation Refurbishment, Canberra Training Bases, Campbell, ACT	Department of Defence	30 August 2023
EST09414 – RAAF Townsville L121 Pavement and Building Works, RAAF Townsville, QLD	Department of Defence	30 August 2023
Scheme Water Supply to West and South Bullsbrook Properties within the PFAS Management Area adjacent to RAAF Base Pearce, Western Australia	Department of Defence	4 September 2023
Roads, Carparks and Path Network Upgrades, Canberra	National Capital Authority	26 September 2023
Cladding Replacement Project, Melbourne Airport Compound	Airservices Australia	6 October 2023
Project EST08709 – Fuel Systems Upgrade, RAAF Base Scherger, Queensland	Department of Defence	9 October 2023
Aviation Rescue Fire Fighting Station Uplift, Gold Coast Airport	Airservices Australia	9 October 2023

Commonwealth Law Courts building, Canberra - Roof Replacement Project	Department of Finance	20 October 2023
Nhulunbuy Housing Refresh Project, Nhulunbuy NT	National Indigenous Australians Agency	2 November 2023
The Australian Border Force Training College, Neutral Bay Administration Building Refurbishment	Department of Finance	3 November 2023
Submarine Rotational Force – West Priority Works Project – Early Works, HMAS Stirling, Western Australia	Department of Defence	13 November 2023
PDS Project EST08541, HMAS Cerberus Building and HVAC Refurbishment, VIC	Department of Defence	16 November 2023
New Commercial Facility Building, RAAF Base Amberley Queensland	Department of Defence	16 November 2023
PDS Project EST08610, RAAF Townsville Dehumidified Shelter R&M, QLD	Department of Defence	16 November 2023
PDS Project EST07015, CUTA Road Works, SA	Department of Defence	16 November 2023
Modular Training Facility, Royal Australian Air Force Base Williamtown, NSW	Department of Defence	16 November 2023
EST09424 – South Bandiana Land 121 Safe Driver Training Area (SDTA), Gaza Ridge Barracks, Victoria	Department of Defence	16 November 2023
Brownfields Nibok Accommodation Site and Asbestos Removal	Department of Home Affairs	16 November 2023
Boardwalk Replacement Project and External Works	Australian National Maritime Museum	20 November 2023
New Ways of Working Office Fitout, Level 9 and 10, 260 Elizabeth Street, Surry Hills, Sydney	Department of Health and Aged Care	20 November 2023
Sydney Office Fitout, 52 Goulburn Street, Sydney, NSW	Commonwealth Director of Public Prosecutions	20 November 2023
Construction and Fit-out Works for the Provision of a New National Operations Centre in the Melbourne Office, 700 Collins Street, Docklands, Melbourne	The Bureau of Meteorology	22 November 2023