LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Public Accounts Committee

Public Private Partnership Arrangements for the Darwin Correctional Precinct

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Chair's Preface

This Inquiry examined the adequacy of the procurement process for the Darwin Correctional Precinct; the costs and risks associated with delivering the Project as a Public Private Partnership (PPP); and whether or not a PPP procurement method delivered the best value for money. The Committee found that the procurement process largely conformed to the National Guidelines for PPPs, including an appropriately conducted competitive tendering process and a fair comparison with the costs of a traditional design and construction project, and consequently offered the best value for money between those options.

The Inquiry did not look behind the investment decision into issues such as whether building a different type of facility, or using some of the money for an entirely different purpose, would have been a better use of the Territory's money, so the Committee did not form any views on these questions.

This report also details the costs to the Territory of the project and the key risks for the Territory.

The key finding of the Committee was that even though the cost disclosures made throughout the project appeared to comply with applicable rules, these disclosures did not meet the level of accountability expected by the public when the Government is committing to future expenditure well in excess of half a billion dollars. This reveals a gap in the Territory's guidelines for public disclosures for PPPs. Useful precedents in this regard can be found in jurisdictions with more experience in this area, and the Committee has recommended that the Treasurer ensure adequate disclosure guidelines are developed before the Territory undertakes another PPP.

The Committee also shares the concerns raised by the Auditor-General that achieving the benefits that are meant to flow from the PPP model requires effective management of the arrangement throughout its life. In this instance, that means that the Department of Correctional Services needs to maintain adequate skills and planning to manage the Deed with SeNTinel for 30 years, with an option for a further 10 years. The Committee has therefore recommended several planning and reporting procedures to help ensure the Department maintains an adequate standard of supervision of the contract.

PPPs have become an increasingly common means of delivering public infrastructure in Australia. Although the Darwin Correctional Precinct Project is only the second PPP to be undertaken in the Northern Territory, it is likely that this form of infrastructure delivery will become more common as the Territory continues to develop and grow. It is, therefore, important that knowledge gained through this Inquiry is used to improve existing Territory PPP Guidelines so that disclosure practices in future PPPs are more consistent and transparent.

In the conduct of the Inquiry, the Committee was grateful to the departments of Infrastructure, Treasury and Finance, and Correctional Services for the provision of information. Thanks are also due to the Auditor-General for his advice throughout this Inquiry. I also extend my thanks to the Members of the Committee for their cooperative approach to the Inquiry, the Committee Office staff who supported the Committee, and the former Chair of the Committee, the Hon Peter Styles MLA, who led the Committee through the early stages of the Inquiry.

Ms Lia Finocchiaro MLA

Chair

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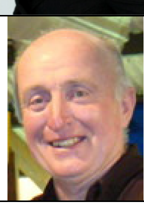	**Mr Gerry Wood MLA** Member for Nelson	
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* Hon Member for Sanderson, Mr Peter Styles, was Committee Chair from 25 October 2012 through to 26 March 2013 when Member for Drysdale, Ms Lia Finocchiaro, took over as Chair. Member for Stuart, Mrs Bess Price, joined the Committee on 26 March 2013.

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Acronyms and Abbreviations

AASB	Australian Accounting Standards Board
AI	Australian Interpretation
CPI	Consumer Price Index
D&C	Design and construct
DoI	Department of Infrastructure
DoJ	Department of Justice
EOI	Expression of Interest
FOI	Freedom of Information
LPI	Labour Price Index
NBRS	Noel Bell Ridley Smith
NPC	Net Present Cost
NSW	New South Wales
NT	Northern Territory
NTG	Northern Territory Government
NTSF	Northern Territory Secure Facilities
PPP	Public Private Partnership
PSC	Public Sector Comparator
QLD	Queensland
RFP	Request for Proposals
RLB	Rider Levett Bucknall
The National Guidelines	The National PPP Guidelines
The Territory	The Northern Territory Government
UK	United Kingdom
VFM	Value for Money
WA	Western Australia

Glossary of Terms

Term	Meaning
Abatements	Relate to adjustments in payments regarding to failures during the service period, eg through performance failure – these are not in relation to the use of the precincts.
Business Case	The document that articulates the rationale for undertaking a project.
CapEx	Capital expenditure
Commencement of the Lease	The date from which the lessee is entitled to exercise its right to use the leased asset ie in this project, the date the precinct becomes operational.
Competitive Neutrality	The competitive advantages that accrue to a government business by virtue of its public sector ownership.
Consortium	Those private sector persons who together intend to deliver a PPP.
Core Services	For social infrastructure, those services for which governments have particular responsibilities to people using the service and the community (e.g. hospitals, schools, etc.).
Discount Rate	The rate used to calculate the present value of future cash flows.
EOI	Expressions of interest for a project.
Fair Value	The amount for which an asset could be exchanged or a liability settled, between knowledgeable, willing parties in an arm's length transaction.
Finance Lease	An asset leasing arrangement that effectively transfers from the lessor to the lessee most of the benefits and risks associated with ownership of a leased asset.
Inception of the Lease	The earlier of the date of the lease agreement, or the date of commitment, by the parties to the principal terms of the lease.
Interactive Tender Process	The process of interaction between shortlisted bidders and key stakeholders during the RFP phase as outlined in the *Practitioners' Guide.*
National Commercial Principles for Social Infrastructure and Economic Infrastructure	Those principles of the Guidelines that set out the considered position of government across jurisdictions in relation to risk allocations under a PPP. This is set out in *National Commercial Principles for Social Infrastructure* and the *National Commercial Principles for Economic Infrastructure.*

Term	**Meaning**
National Guidelines	The suite of guidance material that forms the national guidance on PPPs.
National PPP Policy Framework	The document that details the scope and application of the National PPP Guidelines across governments in all jurisdictions
Net Present Cost	Sum of the present value of all costs over the period of interest, including residual values such as negative costs.
Net Present Value	The difference between the present value of cash inflows and the present value of cash outflows.
Nominal Value	Nominal value refers to an economic value expressed in fixed nominal money terms (that is, in units of a currency) in a given year or series of years.
Operating Lease	An asset leasing arrangement under which the lessor effectively retains most of the benefits and bears most of the risks associated with ownership of the leased asset.
Output Specification	The document that defines the outputs and performance levels in relation to construction and services for the project, and incorporates those aspects as identified in the *Practitioners' Guide.*
Pass Through Costs and Utilities Costs	These costs are borne by the Project Company and reimbursed by the Territory during the service period.
Present Value	The current worth of a future sum of money or stream of cash flows given a specified rate of return. Future cash flows are discounted at the discount rate, and the higher the discount rate, the lower the present value of the future cash flows. Determining the appropriate discount rate is the key to properly valuing future cash flows, whether they be earnings or obligations.
Procurement Options Analysis or Strategy	The document that outlines the rationale for adopting various procurement methods for a particular project.
Project Director	The person with overall responsibility for delivery of the project and management of all members of the project team.
Raw PSC	The base cost to government of producing and delivering the Reference Project.
Real Value	Real value adjusts nominal value to remove effects of general price level price changes over time.
Reference Project	The basis for calculating the PSC, reflecting government delivery of a project by traditional means.

Term	Meaning
Retained Risk	The value of those risks or parts of a risk that government bears under a PPP project.
RFP	A request for proposal issued by government for a project.
Risk Allocation	The allocation of responsibility for dealing with the consequences of each risk to one of the parties to the contract; or alternatively, agreeing to deal with a particular risk through a specified mechanism which may involve sharing that risk
Social Infrastructure	Physical assets that support the social development of a community, including education, health and public housing facilities.
Special Purpose Vehicle (SPV)	In establishing a project consortium, the sponsor or sponsors typically establish the private party in the form of a special purpose vehicle (SPV) which contracts with government. The SPV is an entity created to act as the legal manifestation of a project consortium.
Systematic Risk	Risk associated with the portion of an infrastructure investment's total risk that cannot be avoided by combining it with other investments in a diversified portfolio. It is measured as the correlation of the return on a security with the returns on the broad market.
Traditional Procurement	The delivery of the infrastructure and associated services by government using its normal procurement processes
Transferred Risk	The value of those risks (from government's perspective) that are likely to be allocated to the private party under a PPP project
Whole-of-life	The integration of up-front design and construction with ongoing maintenance and refurbishment elements over the life of the asset under the PPP arrangement

Terms of Reference

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Mr Peter Styles MLA
Chairman
Public Accounts Committee
Parliament House
DARWIN NT 0800

Dear Chairman

Re: Referral of a question in connection with the public accounts of the Northern Territory pursuant to standing order 21A (2) (d) (ii). PPP arrangements for the Darwin Correctional Precinct

I hereby refer the following matter to the Standing Committee of Public Accounts for inquiry and report:

(1) Upon the tender processes for the Darwin Correctional Precinct;
With particular reference to:

(a) whether the probity objectives were the most applicable for this project and whether they were successfully completed;
(b) the adequacy of the public sector comparator used in the tender process;
(c) the accuracy of the value for money comparison, and particularly the estimate of the cost to the Government of delivering the project under a traditional procurement method;
(d) the adequacy of disclosure of the costs of this; and
(e) any steps needed to ensure full disclosure

(2) Upon the annual cost of the project and identification of each component of these costs from this financial year to the expiration of the contract

(3) The extent and nature of the risks NT Government is exposed to as a result of this arrangement

(4) Whether or not the funding method used represented the optimum value for money

I ask that the Committee report on this matter on or before the second sittings of the Assembly in 2013.

Yours sincerely

JOHN ELFERINK

4/12/2012 09 :04
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PARLIAMENTARY COMMITTEES
05 DEC 2012
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Northern Territory Government

Executive Summary

Over the last two to three decades there have been significant changes to Australia's economic environment. These are reflected in a raft of microeconomic reform policies designed to improve the efficiency and productivity of the economy through the adoption of market principles. Historically, infrastructure provision in Australia has been dominated by the public sector. However, one outcome of microeconomic reform is an increased emphasis on developing alternative methods for funding infrastructure development, particularly methods which foster an increased role for the private sector, such as Competitive Tendering and Contracting (CTC) and Public Private Partnerships (PPPs). PPPs, in particular, are now regarded as vital to the development of Australian social and economic infrastructure.

In recognition of the potential for PPPs to deliver value for money, the Federal Government has developed a National Policy Framework for PPPs and a comprehensive set of National PPP Guidelines (the National Guidelines). The National Policy and Guidelines apply to all states and territories as well as to the Commonwealth Government. PPPs are defined as '... a long term contract between the public and private sectors where government pays the private sector to deliver infrastructure and related services on behalf, or in support, of government's broader service responsibilities'.[1] The private party provides the finance; designs and constructs the infrastructure according to the government's output specifications; and delivers non-core services such as facilities management and maintenance. PPPs are not the same as privatisation and, in a social infrastructure PPP, core services, such as correctional, educational or health services, are provided by the government.

Under the National Guidelines, all projects with a total capital value exceeding $50 million should be evaluated for their potential to be procured as a PPP. A critical factor in this evaluation is whether a PPP procurement is likely to provide better value for money than other forms of infrastructure delivery. Evaluation of a range of possible delivery methods is undertaken through a Procurement Options Analysis and, once a PPP procurement method is approved, the project is developed through a number of key phases as set out in the National Guidelines.

Value for money is assessed by comparing the cost of private sector proposals with the Public Sector Comparator. The Public Sector Comparator is developed through a hypothetical project called the 'Reference Project' and is used to estimate the whole-of-life cost of a public sector project if delivered by government. The Committee found that the Public Sector Comparator was constructed in line with the Guidelines.

The optimal allocation of risk is a key feature of PPP procurement and how risk is allocated between government and the private party has a significant impact on a project's success and on the extent to which value for money can be achieved. In a PPP, the private party generally bears most of the risks associated with designing, building and operating the infrastructure. In the Darwin Correctional Precinct PPP,

[1] Infrastructure Australia, National PPP Guidelines, *Overview*, 3

the estimated value of the risks transferred to SeNTinel amounts to well over 90 per cent of the value of risks identified. The transferral of risk to SeNTinel has provided the Territory with significant benefits, such as favourable re-financing terms, certainty regarding operating costs, and a reduction in whole-of-life costs in both the construction and the maintenance period. However, the Committee notes that there are also limits to the benefits accruing from risk transfer. For example, while SeNTinel may bear the costs associated with poor service delivery performance, or a delay in the commissioning of the Facility, the Territory would also be adversely affected if these risks eventuated. The Committee also noted that the inherent risks associated with a long term project need to be addressed. These include the potential for corporate memory to be lost through inadequate succession planning and the failure to adequately maintain ongoing documentation about the Project.

The potential to achieve better value for money through a PPP than through a public sector delivery is a prime motivator for adopting this form of procurement. Value for money is assessed both quantitatively and qualitatively. The quantitative assessment is measured by comparing the risk adjusted Net Present Cost (NPC) of the Request for Proposal responses against the NPC of the risk adjusted Public Sector Comparator. In the Darwin Correctional Precinct PPP, the value for money comparison showed that, at $798 million, SeNTinel's final bid provided better value for money than the Public Sector Comparator at $800.7 million. Although, quantitatively, the difference is only 0.4 per cent, the Committee noted that there are a number of qualitative factors in favour of the SeNTinel proposal which make the value for money assessment more robust, notably: immediate design and construction activity with consequent benefits for the local economy; reduced risk exposure; greater cost and time certainty; and an option to extend the delivery of facilities maintenance services for an additional 10 years, with the prices for these services having been pre-agreed.

As a social infrastructure project, the Darwin Correctional Precinct PPP is classed as a finance lease, an arrangement in which the government effectively borrows from the private sector partner in order to obtain an asset. Once the asset is commissioned the government makes repayments to the private sector partner over an extended period of time. In the Darwin Correctional Precinct PPP, the SeNTinel Consortium has been contracted to finance, design and construct the Facility and to provide maintenance and Facility management services for 30 years, with an option for a further 10. Once construction is completed and the Facility commissioned, the Territory will make quarterly payments to SeNTinel, for both construction and maintenance, over this 30 year period.

The price charged by SeNTinel for the design and construction of the Precinct is $495 million. The fair value of the Facility, which includes additional costs to SeNTinel associated with bringing the asset to completion, is $521.3 million. The present value of the quarterly payments the Territory will make is $629 million for design and construction and $169 million for management and maintenance of the Facility, making $798 million the total present value of the quarterly payments the Territory will make to SeNTinel. When the value of risks retained by the Territory and other Project costs are added to these payment amounts, the cost of design and construction is

$664 million and maintenance and management is $170 million, making $834 million the total of all costs to the Territory for the Project.

Public disclosures about the costs and contractual obligations incurred through the Darwin Correctional Precinct Project have been made through the Project Summary, media releases, Treasury Reports and Hansard. However, the Committee considers that there was a lack of coherence and consistency in the information that was presented. Although the National Guidelines note that full disclosure should be the default position, limited guidance is provided on how to achieve this and responsibility for the provision of disclosure guidelines is largely transferred to individual jurisdictions. NSW and Victoria have developed comprehensive guidelines to govern the disclosure of costs and contractual terms associated with PPPs. The Committee has recommended that guidelines, similar to those in place for NSW and Victoria, be developed to improve disclosures related to both costs and contractual terms.

In conclusion, the Committee found that the use of a PPP procurement method to fund and build the Darwin Correctional Precinct should provide better value for money than would have been achieved through a traditional design and construct procurement process. However, for this to be achieved the Department of Correctional Services needs to effectively manage the Contract with SeNTinel throughout its life. The Committee makes recommendations to facilitate this. The Committee also found that while the cost disclosures regarding the Project were in line with applicable guidelines, those guidelines, and the disclosures made under them, were inadequate for a project of this nature. The Committee therefore recommends that the Treasurer make adequate disclosure guidelines before undertaking another PPP.

Recommendations

Recommendation 1

The Committee recommends that the Department of Correctional Services:

a) Develop a Contract management plan for the agreement with SeNTinel in consultation with and agreed by Treasury prior to the handover of the Facility;

b) Report to the Minister for Correctional Services on the performance of that plan annually; and

c) Submit the plan to Treasury for review for consistency with best practice and any current guidelines every three years.

Recommendation 2

The Committee recommends that the Treasurer, in consultation with the Auditor-General, develop guidelines for the disclosure of costs and the contractual terms associated with PPPs, similar to the guidelines currently in place in NSW and Victoria. At the very least, this should require a project summary to be tabled in the Assembly.

1 Introduction

1.1 The Inquiry was referred to the Public Accounts Committee (PAC) by the Attorney-General.

Scope of the Inquiry

1.2 The terms of reference for this Inquiry asked the Committee to examine the tender processes for the Darwin Correctional Precinct (also known as the 'Northern Territory Secure Facilities'), the annual costs of the Project, the nature and extent of the risks to which the NT Government is exposed and whether or not the funding method used represented the optimum value for money.

1.3 The Committee therefore looked at what were the appropriate standards for tender processes and assessed whether these were followed for this project. It looked to the costs and risks of the Project under the arrangement and also the other costs and risks associated with the arrangement. It also examined the analysis that contributed to the selection of the procurement model, including the Public Sector Comparator, and whether the chosen funding model appeared to be optimal.

1.4 The terms of reference did not ask the Committee to examine whether the Territory needed a new prison, whether the Darwin Correctional Precinct would adequately meet demand, or what type of correctional facilities should be built. The Committee therefore did not take evidence or form any views on the wisdom or otherwise of building a new correctional facility. The Inquiry did not examine the merits of the investment decision, but the way that decision was implemented.

Conduct of the Inquiry

1.5 The Committee agreed to accept the reference from the Attorney-General at its meeting on the 5 December 2012.

1.6 The Committee requested and received a copy of the Darwin Correctional Precinct Project Deed and a large number of related documents over the period of the Inquiry. A list of documents received is at Appendix 1.

1.7 At its meeting on 17 December 2012, the Committee called for submissions by 1 February 2013. The call for submissions was advertised on the Committee's website and by advertisement in the NT News. The Committee also directly contacted the following organisations to advise them of the call for submissions:

- Assure Partners
- Axiom Corrections
- SeNTinel
- Renewal Management Board

- NT Department of Correctional Services
- Certified Practicing Accountants (CPA) Australia
- NT Department of Treasury and Finance
- Infrastructure Australia
- Department of Infrastructure
- Law Society, Northern Territory
- Department of the Chief Minister
- CPA Australia
- Department of Business
- Department of Health
- Department of the Attorney-General & Justice

1.8 The Committee received two submissions which are listed at Appendix 2.

1.9 The Committee held two public hearings in Darwin. Details of the hearings are included at Appendix 3.

Overview of the Report

1.10 An assessment of the appropriate tender processes for this type of project requires an understanding of recent developments in delivering major infrastructure and the relevant nationally agreed policies for PPPs. Chapter 2 therefore describes the historical policy context surrounding the emergence of PPPs and provides an overview of the National PPP Framework. Chapter 3 explores PPPs in more depth; it identifies the key features of PPPs, examines how they differ from traditional design and construct projects, and considers arguments for and against the PPP procurement method.

1.11 Chapter 4 forms a bridge between the contextual chapters and those which specifically address matters raised in the Reference. It provides a technical overview of the key phases of PPP procurement as required by the National Guidelines, and assesses the extent to which the Darwin Correctional Precinct procurement process accorded with these Guidelines. This overview includes an assessment of the procurement options analysis through which preliminary information is obtained for core components of a PPP, such as the extent to which it is likely to provide value for money; an assessment of risk; and the development of a preliminary Public Sector Comparator.

1.12 Chapter 5 assesses whether probity requirements for the tender process were appropriately met and is followed by an examination of the adequacy of the Public Sector Comparator in Chapter 6.

1.13 Chapter 7 assesses the extent and nature of the risks to which the Northern Territory Government is exposed as a result of adopting a PPP approach to deliver the Darwin Correctional Precinct. This includes a brief discussion of the principles and rationale for risk management in PPPs; a summary of the risks retained by the Territory; an assessment of both the benefits and the limits associated with the transfer of risk to the private party; and a recommendation for how risk can be further minimised over the term of the Contract.

1.14 Chapter 8 assesses the rigour of the value for money comparison while Chapter 9 provides a detailed breakdown of Project costs.

1.15 The adequacy of cost disclosures is discussed at length in Chapter 10. This chapter also considers methods for improving disclosure practices.

1.16 Chapter 11 concludes the report with a discussion of the extent to which the PPP funding method provided the Territory with optimum value for money.

2 Public Private Partnerships – Policy Context

Historical Policy Context

2.1 Over the course of the 20th Century, the Australian public sector had extensive involvement in the provision of infrastructure, much of which was built in major expansionary periods, such as during the post World War II economic boom. The traditional dominance of the public sector in infrastructure provision is partly explained by the sheer scale of many projects and a lack of depth in capital markets which effectively gave governments a natural monopoly. However, as a percentage of GDP, general government spending on investment has declined steadily since the 1970s.[2] One reason for this is the long replacement cycle of infrastructure assets such as roads, schools and hospitals. Another factor, especially over the last three decades, is the growing pressure on governments to reduce the level of public debt.[3] This has led to a raft of microeconomic reform policies designed to improve the efficiency and productivity of the economy through the adoption of market principles.[4]

2.2 One outcome of microeconomic reform is that governments in Australia are placing an increasing emphasis on developing alternative methods of funding infrastructure development, particularly those which foster an increased role for the private sector, such as Competitive Tendering and Contracting (CTC) and Public Private Partnerships (PPP). PPPs, in particular, are now considered to be vital to the development of Australian social and economic infrastructure.[5]

2.3 In Australia, the emergence of PPPs can be traced back to the late 1980s but there has been a significant increase in this form of delivery since around 2005 when the number of PPPs recorded across Australia jumped from an annual average of four (1988-2004), to 33 in 2005 and 44 in 2006.[6] It is also noteworthy that, prior to 2000, the majority of PPPs appear to have been for economic infrastructure projects whereas after 2000 the majority were for social infrastructure projects. Most PPPs have been undertaken in the Eastern States, with New South Wales (NSW) and Victoria leading the way.

2.4 The Victorian Government has played a major role in PPP policy development. In 2000, it released 'Partnerships Victoria', a policy based on the United Kingdom's (UK) private finance initiative (PFI) model. The Victorian Framework developed a comprehensive set of PPP guidelines; removed the delivery of core

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[2] C. Chan, D. Forwood, H. Roper, and C. Sayers, "Public Infrastructure Financing - An International Perspective", Productivity Commission Staff Working paper, (March 2009).

[3] C. Chan et al, 38; L.M. English, "Public Private Partnerships in Australia: An Overview of their Nature, Purpose, Incidence and Oversight", *UNSW Law Journal,* 29 no.3, (2006) 250-262.

[4] J. Borland, "Micro-economic Reform in Australia – An Introduction", Department of Economics, University of Melbourne, (2001).

[5] Infrastructure Australia, "Public Private Partnerships", Australian Government, (nd), http://www.infrastructureaustralia.gov.au/public_private/.

[6] D. McGeorge & K. Cadman, "Governments & Communities in Partnership – from Theory to Practice", at the *Governments and Communities in Partnership* conference, Centre for Public Policy, 2006. 200Melbourne, (2006).

state-subsidised hospital and corrective services from private sector provision; and consolidated a variety of PPP type arrangements under the formally adopted term, 'Public Private Partnership'.[7] The Victorian Framework is regarded as a watershed in the development and implementation of Australian PPPs and is frequently used to distinguish between first (pre-2000) and second (post-2000) generation PPPs.[8]

2.5 This distinction is important because it reflects a shift in how PPPs are perceived. Prior to 2000, they were primarily seen as a way for government to fund public infrastructure projects sooner than would otherwise be possible, ostensibly without the associated ballooning of public debt.[9] This was facilitated by the accounting treatment typically used for PPP arrangements. Most pre-2000 PPPs were for economic infrastructure projects[10] which have traditionally been treated by the government as operating lease agreements.[11] In an operating lease, the government's lease payments are generally recognised as an expense over the lease term. This means that the debt (the total value of payments payable by the government to the private sector provider) is not recorded as a liability in the government's financial reports.[12]

2.6 Since 2000, there has been a fundamental shift in the rationale for choosing a PPP delivery method, with the capacity of PPPs to achieve value for money through risk reduction, innovation and efficiency, assuming more importance than the positive impact that PPP accounting practices might have on government balance sheets.[13]

2.7 To some extent, the increased focus on value for money is likely to reflect improvements to the PPP model such as those achieved through the Partnerships Victoria policy. However, it is also likely to be related to the reduced tolerance for off balance sheet accounting practices which, while minimising the appearance of public debt, do not actually decrease it.[14] Changed attitudes regarding off balance sheet accounting are related to the introduction of the Australian-equivalent International Financial Reporting Standards in 2004-05. In Victoria, the application of these standards resulted in the lease agreements of several PPP arrangements being reclassified and, as a consequence, increased Victorian Government leased infrastructure assets by $605 million and their finance lease liabilities by around $1 billion.[15] The

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[7] English, "Public private Partnerships in Australia", 252

[8] J. Quiggin, "Public-Private Partnerships: Options for Improved Risk Allocation", Policy Forum: Financing Public Infrastructure, *Australian Economic Review*, 38 no. 4, (2005) 445-450; C.F. Duffield, "PPPs in Australia", in Ng, T.S. (Ed.), Public Private Partnerships: Opportunities and Challenges, Centre for Infrastructure and Construction Industry Development, University of Hong Kong, Hong Kong, (2005) 5-14., https://www.civil.hku.hk/cicid/3_events/32/papers/2.pdf; English, "Public private Partnerships in Australia", 252

[9] English, "Public private Partnerships in Australia", 254

[10] McGeorge & Cadman, "Governments & Communities in Partnership – from Theory to Practice", 4

[11] Chan et al, 163

[12] Chan et al, 163

[13] English, 254

[14] J. Quiggin, "Public–Private Partnerships: Options for Improved Risk Allocation", 445–50

[15] Chan et al, 163

reduced scope for using PPPs to minimise the appearance of the public debt associated with infrastructure provision has also been reinforced by the fact that, since 2000, the majority of PPPs have been for social infrastructure projects which use accounting practices that differ markedly from those used for economic infrastructure PPPs.

2.8 Social infrastructure PPPs are typically classed as finance leases and have a quite different accounting treatment to the operating leases typically used for economic infrastructure PPPs. In a finance lease, the government effectively borrows from the private sector provider in order to obtain an asset, whereas an operating lease is more like a rental arrangement in which the government makes payments to use an asset while the private sector partner retains ownership of the asset together with the risks and benefits incidental to that ownership.[16] In a finance lease arrangement, the government's lease payment is recognised as an asset and liability at an amount equal to the fair value of the leased property or, if lower, the present value of the minimum lease payments. Consequently, the capital costs associated with the project show up on the balance sheet as an asset at the commencement of the lease.[17]

The National Framework for PPPs

Background

2.9 The increased interest in the capacity of PPPs to deliver value for money occurred in conjunction with an increased level of policy interest in this form of procurement. This is reflected in the formation of the National PPP Forum and the National PPP Working Group in 2004. The Forum is a cross-jurisdictional initiative of Ministers from all states, territories and the Australian Government, and its Working Group now leads policy development and improvements in this area. The National PPP Forum and Working Group played a major part in the development of the National PPP Policy and Guidelines released by Infrastructure Australia in 2008.[18]

National PPP Policy

2.10 One of the major aims of the National PPP Policy is to provide a framework that facilitates best practice and a consistent national approach to PPP delivery. It is envisaged that this will benefit both the public and private sectors by minimising transaction costs, removing disincentives to participation and enabling a stronger pipeline of PPP projects through ensuring that only the most appropriate projects are considered for PPP delivery. The National Policy applies to all states and territories as well as to the Commonwealth

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16 Chan et al, 162

17 Australian Accounting Standards, 'AASB 117 Leases', *Fact Sheet*, (2007) http://www.cpaaustralia.com.au/cps/rde/xbcr/cpa-site/AASB-117-fact-sheet.pdf

18 Infrastructure Australia, 'Public Private Partnerships', Australian Government, http://www.infrastructureaustralia.gov.au/public_private/ (nd)

Government. The key objectives of the National PPP Policy Framework are to:[19]

- Encourage private sector investment in public infrastructure and related services where value for money for government can be clearly demonstrated;
- Encourage innovation in the provision of infrastructure and related service delivery;
- Ensure rigorous governance over the selection of projects for PPPs and the competition for and awarding of contracts;
- Provide a framework and streamlined procedures for applying PPPs across Australia; and
- Clearly articulate accountability for outcomes.

2.11 It requires governments to apply the National Guidelines to the procurement of PPP projects, which are defined as being where:[20]

- The private sector provides public infrastructure[21] and any related services; and
- There is private investment or financing.

2.12 The National Guidelines note that projects which have a total capital value exceeding $50 million should trigger evaluation of a PPP as a potential procurement method, as projects with this type of capital expenditure are likely to have the potential to provide value for money using a PPP delivery method.[22]

2.13 The Policy identifies several steps which must be taken in order to accurately assess the appropriateness of adopting a PPP procurement method. First, it requires governments to commit to investing in a particular project as a strategic priority before making the procurement decision. This is to ensure that the prioritisation of public sector projects is not distorted by the availability of private sector finance.

2.14 Second, any budget-sector agency proposing a project is required to provide a capital budget allocation (normally for the capital amount) from the outset. This means that all potential projects will be competing for the same finite funds and ensures that the prioritisation of projects accords with their strategic importance. Equally, it means that delivery models are not prejudiced because of their perceived budget impacts and ensures that if a PPP delivery method does not achieve value for money then the investment can still proceed under a different procurement methodology.

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[19] Infrastructure Australia, *Policy Framework, "*National Public Private Partnership Policy and Guidelines", (2008) 4, http://www.infrastructureaustralia.gov.au/public_private/ppp_policy_guidelines.aspx
[20] Infrastructure Australia, *Policy Framework,* 5
[21] In the Policy, public infrastructure refers to physical assets and related services; services mainly refers to non-core services such as facility maintenance but can also include core service elements.
[22] Infrastructure Australia, *Policy Framework,* 6

2.15 Third, in the business case stage, and prior to committing to a PPP arrangement, governments need to ensure that any affordability issues associated with long term payment obligations have been clarified and confirmed.

2.16 Fourth, a rigorous analysis of procurement alternatives must be undertaken so that a robust recommendation can be made about which method will provide the best value for money.

2.17 Fifth, when choosing the most appropriate method of project delivery, the following key issues need to be considered:

- The balance between core and non-core services and the extent to which asset related and ancillary services can be considered for inclusion in the scope of the private sector;
- The extent to which private sector involvement is likely to deliver value for money, taking into account value for money drivers such as: the scale and long term nature of the project; the complexity of the risk profile; the opportunity for risk transfer; whole of life costing; innovation; and the potential for better integration of design, construction and operational requirements with a single private party taking responsibility for the length of the contract period;
- Analysis of market capability and appetite – do private parties have the capability and motivation to deliver the project and related services?
- The extent to which the proposed procurement method will best meet the public interest.

2.18 In addition to the above, the Policy makes it clear that value for money should be the primary driver underpinning the choice of a PPP procurement method. It notes that 'The balance-sheet treatment of a project is not a reason for using a PPP delivery approach' and comments that, under current accounting standards, the majority of PPP projects would, in any case, be recorded on the Government's balance sheet.[23]

2.19 The Policy identifies seven key principles which apply to PPP procurement. These include: value for money; risk allocation; transparency; accountability public interest; output orientation; and engagement of the market. Principles with key relevance for this Inquiry, such as value for money, risk allocation, transparency, and accountability, will be discussed in detail elsewhere in this report.

National Guidelines

2.20 The National Guidelines apply across State, Territory and Commonwealth Government arrangements. They have been prepared and endorsed by Infrastructure Australia and the State, Territory and Commonwealth

[23] Infrastructure Australia, *Policy Framework,* 7

Governments and effectively consolidate the PPP guidance material of individual Australian jurisdictions to provide a unified national framework. Although they replace individual jurisdictional arrangements for PPPs, specific state or territory requirements, where different from, or in addition to, the National Guidelines, are detailed in Volume 6, 'Jurisdictional Requirements'. In general, responsibility for PPP policy, at the jurisdictional level, resides with the Treasury or Finance portfolios. In the Northern Territory, responsibility resides with Treasury.

2.21 In line with National PPP Policy, the National Guidelines aim to '... deliver improved services and better value for money, primarily through optimal risk transfer, management synergies, encouraging innovation, efficient asset utilisation and integrated whole-of-life asset management'.[24] The National Guidelines consist of a suite of publications as set out in Table 1 below.

Table 1: Components of the National Guidelines

Policy Document and Overview	
National PPP Policy Framework	
National Guidelines Overview	
National PPP Detailed Guidance Material	
Volume 1	Procurement Options Analysis
Volume 2	Practitioner's Guide
Volume 3	Commercial Principles for Social Infrastructure
Volume 4	Public Sector Comparator Guidance
Volume 5	Discount Rate Methodology Guidance
Volume 6	Jurisdictional Requirements
Volume 7	Commercial Principles for Economic Infrastructure
Roadmap for Applying the Commercial Principles	

Source: Infrastructure Australia, *National PPP Guidelines*, Roadmap for Applying the Commercial Principles, (2008).

2.22 This Inquiry has been conducted with close reference to the National Guidelines and includes an assessment of the extent to which the development of the Darwin Correctional Precinct Project complies with the National Guidelines.

[24] Infrastructure Australia, *Overview*, (2008)1

3 What is a Public Private Partnership?

3.1 The term Public Private Partnership has been used to describe a wide variety of contractual arrangements in which a private sector consortium works in partnership with the government to deliver public infrastructure and related services.[25] However, with the release of the National Policy and Guidelines, the meaning of the term PPP has narrowed considerably and, from an official policy perspective, only projects which deliver services that include both a public infrastructure element and a private financing element can now be considered as PPPs.[26] Other procurement methods, such as alliancing, outsourcing, and managing contractor, may well involve both the public and the private sector but if they are missing these two elements they are not classed as PPPs. Based on the National Guidelines, this report defines a PPP as:

> ... a long term contract between the public and private sectors where government pays the private sector to deliver infrastructure and related services on behalf, or in support, of government's broader service responsibilities.[27]

3.2 Although this definition is narrower than its antecedents it is broad enough to encompass the variety of models that are likely to be required for the effective delivery of different types of public infrastructure projects. Table 2 provides examples of two major PPP models, the first designed for social infrastructure and the second for economic infrastructure.

3.3 An economic infrastructure PPP typically involves a 'user-pays' structure rather than a service charge structure which is most often relevant to social infrastructure. Typically, the user-pays structure involves the payment of tolls, fares or user charges for the use by the public, or by the business community, of facilities such as roads, bridges, tunnels and potentially, ports, airports and trains/trams.

3.4 Social infrastructure projects typically relate to projects delivering services or accommodation in which the government payment is based upon availability of the specified services and the facility reverts to government, at no cost, at the end of the concession term. Examples of social infrastructure projects include schools, hospitals and prisons. The Darwin Correctional Precinct is a social infrastructure project.

[25] Chan et al, 144-145; English, "Public private Partnerships in Australia", 250-251; McGeorge & Cadman, "Governments & Communities in Partnership ", 7-8; Public Accounts and Estimates Committee, *Report on Private Investment in Public Infrastructure*, No. 240, Session 2003-06, Parliament of Victoria, Seventy First Report to the Parliament, (2006) 37-38

[26] Infrastructure Australia, *Overview,* 3

[27] Infrastructure Australia, *Overview*, 3

Table 2: Examples of PPP Models

Model	Private Sector Role	Government Role	Type of Infrastructure
Design Build Finance Maintain (DBFM)	Design & construction Finance Ancillary services/maintenance	Delivery of core public services	Social
Design Build Finance Operate (DBFO)	Design & construction Finance Service delivery to users	No operational role	Economic

Source: Adapted from Infrastructure Australia, *National PPP Guidelines*, Overview, (2008) 7

Key Features of PPPs

3.5 In a social infrastructure PPP, a private sector party (usually a consortium) is responsible for the design, construction, financing, and delivery of a public infrastructure asset and associated non-core services, such as building services, maintenance, and management of the facility. Usually, the private sector sponsors are required to create a special purpose vehicle (SPV) to finance and deliver a PPP project. The SPV has a legal status which allows for favourable treatment of accounting, regulatory and financial issues and is a common technique used in private financing to quarantine and administer risks.[28] Under a PPP, the government purchases the infrastructure services provided by the consortium while the asset is retained by the consortium until the end of the lease agreement when it is then transferred back to the government at no cost. Government payments begin once the asset is commissioned and the facility becomes operational. Compared to a traditional procurement method, in which up front capital costs are high, the payment profile is generally even and spread across a long time period, usually 20-30 years.[29] Some of the main differences between traditional procurement methods and PPPs are shown in Table 3.

Table 3: Traditional Procurement and PPPs

Traditional Procurement	PPPs
Government purchases an infrastructure asset	Government purchases infrastructure services
Short-term design and construction contracts (2-4 years)	One long-term contract integrating design, build, finance and maintenance
Input-based specifications	Output-based specifications

[28] Chan et al, 146
[29] Infrastructure Australia, *Overview*, 5-7

Government retains whole-of-life asset risk	Private sector retains whole-of-life asset risk
Payment profile has a spike at the start to pay for capital costs, with low ongoing costs	Payments begin once the asset is commissioned. The payment profile is relatively even, reflecting the level of service provision over the longer term of the contract
Government is usually liable for construction time and cost overruns	Private contractor is responsible for construction time and cost overruns
Government operates the facility	Government may or may not operate the facility
Government manages multiple contracts over the life of the facility	Government manages one contract over the life of the facility
Often no ongoing performance standards	Performance standards are in place. Payments may be abated if services are not delivered to contractual requirement
Handover quality less defined	End-of-term handover quality defined

Source: Infrastructure Australia, *National PPP Guidelines*, Overview, (2008) 6

3.6 Key features of the PPP approach are summarised below.[30]

- **Service focus:** In a PPP, the focus is on purchasing services rather than on purchasing the asset directly.
- **Core services:** Government generally retains control of core services such as health services or education provision.
- **Payment for services:** The essence of the PPP approach is that government buys services with an agreed quantity, quality, cost and timeframe. Where these requirements are not met, service payments to the private sector party may be reduced. This is consistent with a fundamental premise of PPPs, that the private party bears the risk of asset performance while government has the certainty of paying only for those services it receives. Government’s capacity to control the quality of service delivery through the payment structure is influenced by its control over demand for the services; the nature of that demand; and the extent to which it makes some direct payments.
- **Whole-of-life:** Under a PPP arrangement the private sector partner is responsible for the full integration of all components of the project for the life of the contract.
- **Financial discipline:** Private sector participation instils significant rigour and discipline.

[30] Infrastructure Australia, *Overview*, 5-6

- **Output specification:** Government specifies the outputs it requires rather than using prescriptive input terms. This facilitates innovation and efficiency in how the private sector meets these requirements.
- **Value for money:** Value for money is a key rationale for using a PPP delivery method and is assessed both quantitatively and qualitatively. Quantitative value for money is assessed by comparing the cost of government delivery of the project with the cost of private sector delivery (see Chapter 6, the Public Sector Comparator).
- **Public interest:** The public interest is considered as part of the investment evaluation and procurement methodology decisions but also throughout the life of the project.
- **Contract term:** PPPs generally occur over a long time period of 25-30 years. Determination of the optimal period takes into account both the ability to incentivise the private sector and the practicalities of debt funding.
- **Contract management:** Contract management needs to focus on the commercial relationship, long-term value for money, and performance management.
- **Risk allocation and standard commercial principles:** These principles represent the preferred position of governments across jurisdictions in relation to risk allocations under a PPP model. The principles form the basis of contract terms for projects.

Arguments for PPPs

3.7 Advocates for PPPs assert that this form of procurement provides access to a broader array of funding options, enables government to focus on core services, and offers a range of benefits not available through traditional methods of infrastructure delivery. The private finance element of PPPs means that infrastructure projects can be brought forward earlier than may otherwise have been possible. In addition, PPPs can deliver a project as part of a single package while public sector projects may have to stage capital development over the long term.[31]

3.8 The PPP approach is also seen to facilitate innovation, first, because the competitive nature of the tender process provides incentives for bidders to come up with the best and most cost effective ways to meet the project specifications[32] and second, because it provides access to a larger pool of knowledge, skills and resources than would be available through the public sector alone. PPPs also provide the private sector with opportunities for business development.[33] Over time, this should increase capacity and add

[31] Infrastructure Australia, *Overview*, 8
[32] Parliament of Victoria, PAC and Estimates Committee, 44
[33] Infrastructure Australia, *Overview*, 8

depth to the market by increasing the quality and quantity of contractors with sufficient expertise to deliver large infrastructure projects cost effectively and efficiently.

3.9 A major perceived benefit of PPPs is the optimal allocation of risk to the party best able to manage it. Advocates argue that this contributes to a substantial reduction in the risks held by government and is one of the reasons why PPPs are considered to provide better value for money than traditionally procured projects.[34] A second source of value for money is the practice of constructing PPPs as a package in which services related to long term maintenance and facilities management are bundled in with the design and construction components. This provides the consortium with an incentive to deliver high quality design and construction, as the consequences of not doing so will increase their management and maintenance costs over the service period.[35] An additional incentive to deliver high quality infrastructure arises from the requirement that consortia hand over the asset in good condition with all maintenance up-to-date. Consequently, the bundling of PPP services for major infrastructure projects is considered to '... provide whole-of-life cost savings, and increased efficiency by delivering services of a higher-quality or at a lower cost'.[36]

Arguments Against PPPs

3.10 Those who argue against PPPs often assert that the high transaction and management costs associated with this form of procurement cancel out any potential cost benefits and efficiencies. It has also been suggested that the benefits of bundling the design, construction and operation components of a project are just as easily obtained through more traditional procurement methods.

3.11 The primary rationale for adopting a PPP procurement method is the expectation that it will deliver better value for money than traditional procurement. However, there is still considerable dispute about whether this is the case, with Chan et al commenting that the '... extent to which PPPs provide value for money is inconclusive as the actual outcomes under alternative arrangements is always unknown'.[37]

3.12 Central to the value for money equation is the principle of optimal allocation of risk, however, one critic of PPPs has noted that while the general principle is sound the detailed treatment of risk is not always satisfactory.[38] For example, it is argued that even at the construction phase a complete transfer of risk is not always possible because '... governments bear substantial costs if a project

[34] Parliament of Victoria, PAC and Estimates Committee, 44; English, 254
[35] English, 254
[36] Chan et al, 143
[37] Chan et al, 143
[38] J. Quiggin, 'Forum: Public-Private Partnerships , Risk, PPPs and the Public sector Comparator', *Australian Accounting Review*, Vol 14, No. 2, (2004)

fails, or is behind time', and are, therefore, '... subject to pressure to extend additional finance to contractors who run into difficulties'.[39]

3.13 One major criticism of PPPs focuses on the use of discount rate methodology in the assessment of value for money, with English asserting that the methodology is faulty '... because the real issue is uncertainty and not risk, ... thus rendering calculations problematic'.[40] Criticism has also been made of the validity of other inputs used to determine the viability of adopting a PPP procurement method, with English commenting that:

> '... the length of contracts ... may render financial calculations and assumptions about costs, discount rates and risk allocation incomplete, resulting in inappropriate bases on which to draw conclusions about the viability of proceeding with the PPP option'.[41]

3.14 Another criticism of PPPs relates to a perceived lack of flexibility due to the long term nature of the contract. This has the potential to impact on government policy and budget funding and on the government's ability to manage future unforseen events and risks over the long term.[42] Equally, concerns have been expressed that public accountability for public expenditure may be compromised under PPP models.[43]

3.15 PPPs have also been criticised on the basis that they are primarily a means for governments to fund infrastructure without appearing to incur debt.

[39] Quiggin, 2004, 54
[40] English, 2006, 255
[41] English, 2006, 255
[42] Parliament of Victoria, PAC and Estimates Committee, 44
[43] English, 2006, 259-260

4 Overview of the PPP Process

4.1 This chapter outlines the requirements of the National Guidelines in relation to the procurement decision making process and the key phases of the Project, and assesses whether the development and delivery of the Darwin Correctional Precinct Project met these requirements.

4.2 Prior to beginning any infrastructure development it is first necessary to identify the services that are required and to develop a business case to support the investment decision. Although the business case may include a Procurement Options Analysis, the procurement decision is not made until after the investment decision has been approved. Essentially, this ensures that investment decisions are based on the need for services and the capacity to finance them and that '... the prioritisation of public sector projects is not distorted by the availability of private sector finance'.[44] The Procurement Options Analysis is generally part of a Procurement Strategy and is critical to determining which procurement method will provide the best value for money in meeting the government's service objectives.

Procurement Options Analysis

The National Guidelines

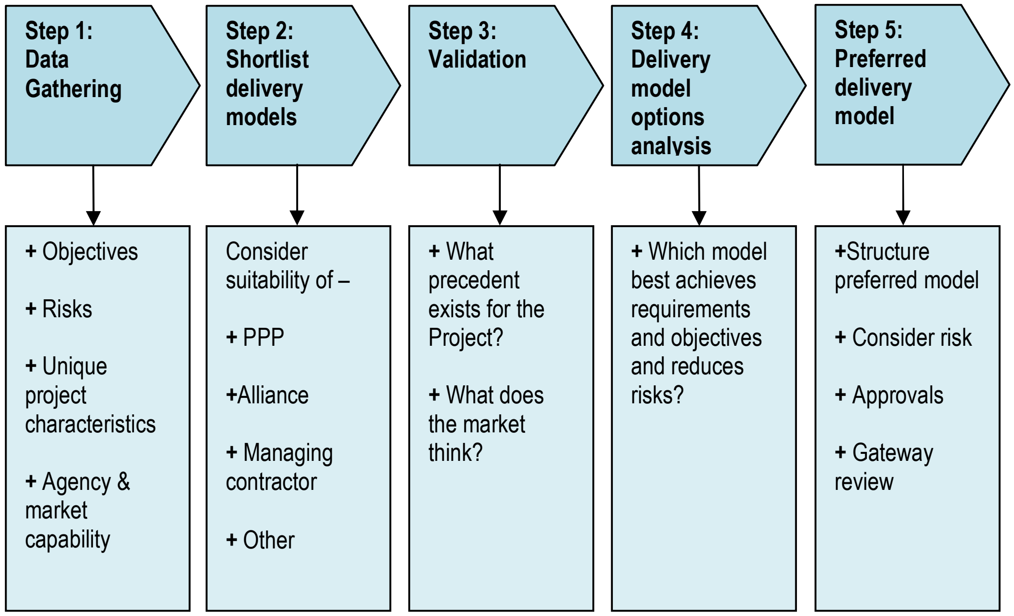
4.3 The Procurement Options Analysis has two key components: market engagement; and project delivery model options. The analysis should be underpinned by detailed information about the project, including a preliminary Public Sector Comparator.

4.4 Market engagement refers to preliminary discussions held with the private sector to establish the extent to which the market is both interested in, and capable of, delivering the project. Issues that are typically discussed in a market sounding exercise include: the scope of the project; project timelines; project-specific issues and requirements; and market interest and capability. Market engagement is normally subject to probity requirements which are generally specified within each jurisdiction's framework for infrastructure planning and delivery.

4.5 Volume 1 of the National Guidelines outlines a variety of project delivery models and provides detailed guidance on the processes that contribute to an informed procurement decision. These consist of five key steps as set out in Figure 1.

[44] Infrastructure Australia, *Policy Framework*, 7

Figure 1: The Decision Making Process



Source: Adapted from Infrastructure Australia, *National PPP Guidelines*, Volume 1, (2006) 21

4.6 The data gathered in Step 1 forms the basis and justification for the procurement methodology decisions. Much of this data can be derived from the information used to prepare for the business case. Typically, it includes:

- Policy context
- Objectives
- Agency capability
- Project characteristics
- Market analysis
- Funding
- Risk analysis
- Cost analysis

4.7 In Step 2, suitable delivery models are identified and shortlisted. The National Guidelines note the importance of keeping an open mind during this process and emphasise that the shortlisting of delivery methods should be based on a detailed analysis of how well each delivery model fits with the objectives and characteristics of the project. The shortlisting of delivery models should be based on a consideration of the scale, scope, risk, and whole-of-life service opportunities.

4.8 Step 2 is broken down into Step 2(a), (b) and (c).

4.9 Step 2(a) focuses on the consideration of PPP models and identifies factors that are likely to make a PPP an efficient option with the potential to achieve value for money. The key factor here is whether the design, construction, and delivery of post-construction services can be bundled into one package. This should be carefully analysed in relation to:[45]

- **Efficiency** – Are there efficiency gains from bundling such post-construction services together? What are they?
- **Quality** – Can the post-construction services be adequately defined (in terms of quality) and articulated in a contract?
- **Cost** – What are the transaction costs involved in bundling?

4.10 Step 2(b) focuses on Project Alliancing and the Managing Contractor Model and identifies the following factors as triggering consideration of Project Alliancing:[46]

- Significant uncertainty of unquantifiable risks that would result in large risk premiums under traditional delivery models;
- Risks that are best managed collectively by government and provider;
- Organisational capability, resources and culture suitable to this type of delivery.

4.11 Step 2(c) simply refers to the consideration of other models that might be suitable.

4.12 Step 3 refers to the need to validate the analysis in Step 2 through market sounding exercises and through comparing the results with benchmark projects, both locally and overseas.

4.13 In Step 4 each shortlisted model should be evaluated against project objectives, criteria, and any rankings associated with the criteria. Although the National Guidelines do not prescribe a methodology for selecting delivery models, a generic example is included in Appendix A of Volume 1. In addition, the National Guidelines note that analysis of shortlisted delivery models should consider the following factors:[47]

- All of the data gathered in Step 1 (or documented in the Procurement Strategy);
- The capability of the market and the agency to deliver successfully the project under each shortlisted model;
- How well each model is likely to achieve strategic outcomes and project objectives;
- Implications of each model for the agency or market;
- To what extent the chosen delivery model would still be relevant if circumstances changed;
- Unique or unusual project characteristics and risks peculiar to the shortlisted models;

[45] Infrastructure Australia, National PPP Guidelines, Volume 1, *Procurement Options Analysis*, (2008), 24
[46] Infrastructure Australia, Volume 1, *Procurement Options Analysis*, 24
[47] Infrastructure Australia, Volume 1, *Procurement Options Analysis*, 25

- Significant risks, associated with particular delivery models, that cannot be effectively managed, or that exceed organisational tolerance levels.

4.14 In Step 5, the chosen delivery model is tailored to the project and the risk assessment should be reviewed. Prior to commencing preparations for going to market, the preferred delivery model, together with the completed procurement strategy, should be approved by government. The National Guidelines also note the importance of communicating the delivery model to the market when public announcements about the project are made.

Compliance with the National Guidelines

4.15 Based on three Cabinet Submissions, the Committee found clear evidence that the investment decision was made prior to the procurement decision. Although, due to Cabinet confidentiality, the Committee did not receive the Cabinet documents, it did receive summaries of these submissions and copies of other contemporaneous documents. The background to the August 2010 Cabinet submission referenced a Cabinet decision made in 2008 to approve the development of a new 1000 bed multi-classification correctional facility on a Greenfield site in the Darwin Region, including a 25 bed secure mental health facility and behavioural management facility. In addition, in the summary of the October 2008 Cabinet Submission it was noted that: 'If a PPP procurement approach did not demonstrate value for money in the assessment phase, the Project would still proceed but through Government's capital works program'.[48]

4.16 A Procurement Options Analysis was undertaken and written up as part of three submissions to Cabinet meetings held in October 2008, August 2009, and August 2010. A review of summaries of these submissions shows that although the Procurement Options Analysis did not conform with every detail of the National Guidelines it did comply with the key elements.

Compliance with Step 1

4.17 The preliminary assessment of market engagement consisted of a summary of prison projects delivered in other jurisdictions and indicated that the scale of the Territory Project would be likely to attract private sector interest. The summary noted that jurisdictions which had chosen a PPP approach had based their procurement decision on value for money and the benefits flowing from innovation and life cycle maintenance.[49]

4.18 A detailed description of the scope and characteristics of the Project was developed. This included extensive discussion of the facilities to be provided by the new prison complex; a summary of the proposed scope of the Doug Owston

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[48] Treasury, *Summary of Cabinet Submissions October 2008 to August 2010, Procurement Options Analysis – Prison PPP,* Northern Territory Government, (2013), October 2008 Submission, 2

[49] Treasury, *Summary of Cabinet Submissions*, October 2008 Submission, 2 and Attachment C

Correctional Centre and the mental health and behavioural management facility; and an indicative project timeline.[50]

4.19 A Public Sector Comparator was developed, as outlined in Chapter 6.

Compliance with Step 2

4.20 The advantages and disadvantages of a variety of delivery models were canvassed, including: Construct Only; Design and Construct; Design, Construct and Maintain; Early Contractor Involvement; Alliance Contracting; and Public Private Partnership. Both the PPP and Design and Construct (D&C) method were shortlisted for further consideration. The data gathered in Step 1 clearly indicated that a PPP should be considered as there were significant opportunities for this form of delivery to provide cost savings across the whole life cycle through the innovation, risk pricing and whole-of-life trade-offs available through bundling the design, construction, finance and post-construction services into one package.[51]

Compliance with Step 3

4.21 This step requires the choice of delivery model to be validated through reference to local and overseas benchmarks of similar projects and through a market sounding exercise. Although a basic benchmarking process was undertaken this only referred to Australian projects and was primarily descriptive. Consequently, while it is asserted that other jurisdictional prison projects which took a PPP approach based their decision on value for money, and benefits related to innovation and lifecycle maintenance, no detailed information is provided to support this statement.[52]

4.22 A market sounding exercise was conducted, with the results indicating strong market interest. However, it also indicated that PPPs could be more difficult to establish due to the impact of the Global Financial Crisis on credit markets. These market driven changes could make value for money more difficult to achieve through a PPP than through traditional procurement. It was noted that establishing a PPP under these conditions may:[53]

- Require involvement of more financial institutions;
- Require higher percentage of project equity compared with debt;
- Result in less risk transfer to private sector;
- Result in shorter term financing requiring refinancing during project term;
- Require direct government contributions.

[50] Treasury, *Summary of Cabinet Submissions*, August 2009 Submission, 1-4 and Attachments A, B, C
[51] Treasury, *Summary of Cabinet Submissions,* October 2008 Submission, Attachments A and B
[52] Treasury, *Summary of Cabinet Submissions,* October 2008 Submission, Attachment C
[53] Treasury, *Summary of Cabinet Submissions*, August 2009 Submission, 1-2

Compliance with Step 4

4.23 The evidence from the Procurement Options Analysis strongly suggests that the analysis of shortlisted delivery models considered the key points highlighted in the National Guidelines. The characteristics, complexity and scope of the Project indicated that a PPP was the most suitable delivery method. However, due to the flow on implications of constraints in the global market, the Procurement Options Analysis recommended that a flexible procurement approach be adopted so that if a PPP was not achievable, the successful bidder's tender could form the basis for negotiating a D&C contract. This would ensure minimal loss of time. This approach was largely consistent with that adopted by larger jurisdictions and would be put to the Council of Australian Governments for approval as a short term departure from existing PPP processes.[54]

Compliance with Step 5

4.24 As per the National Guidelines, the chosen PPP delivery method was structured in more detail through the Expressions of Interest (EOI) and Request for Proposals (RFP) documentation. The adoption of a PPP procurement approach was approved by Cabinet on the 31st August, 2010. The media release announcing the construction of the new prison precinct included the information that the Project would be delivered through a PPP.[55]

Key Phases of PPP Procurement

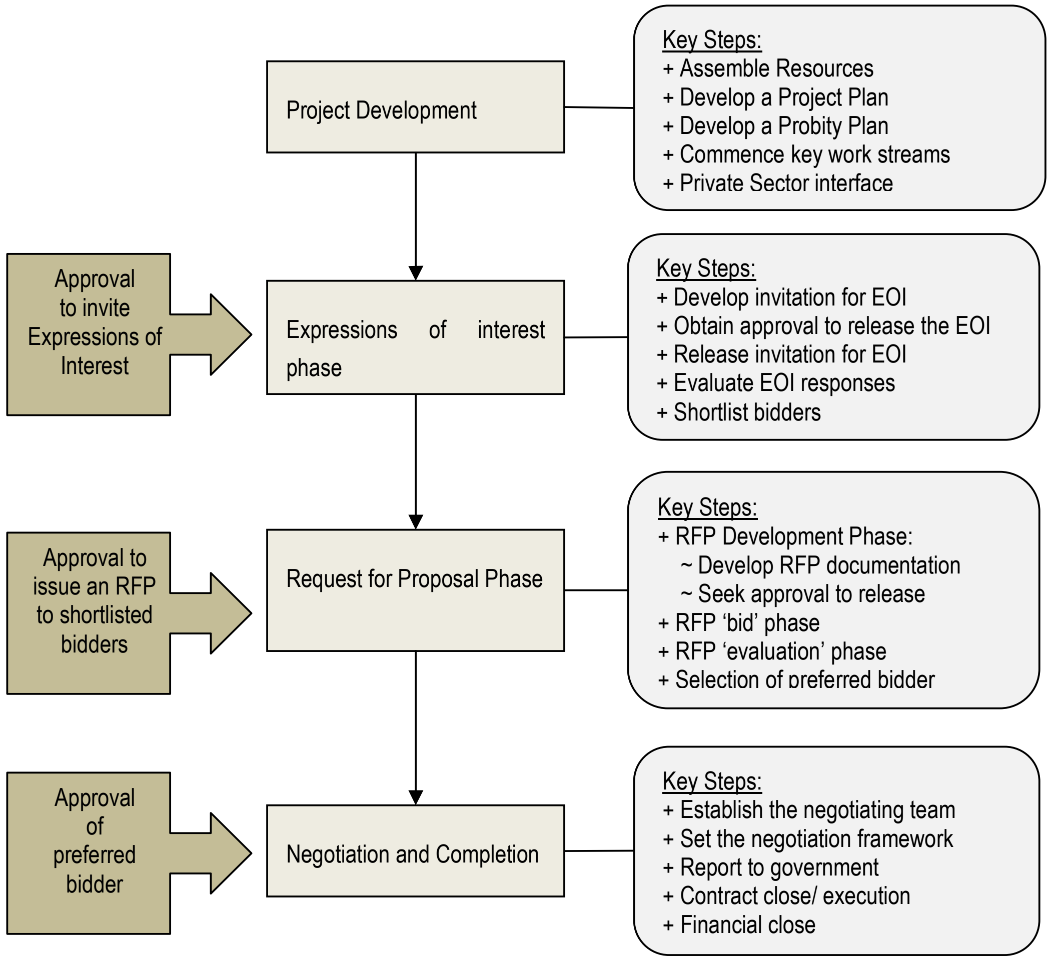
The National Guidelines

4.25 The National Guidelines provide detailed information on the phases and processes through which a PPP project normally progresses. Standardisation of PPP delivery processes provides the private sector with greater consistency and certainty and contributes to accountability and transparency in government processes. However, in some situations it may be more appropriate for a government to develop a project through a different process. If this is the case it is important to ensure that any variations are clearly communicated to all interested parties. Figure 2 summarises the first four phases of PPP delivery and the essential steps for each delivery phase.

[54] Treasury, *Summary of Cabinet Submissions*, October 2008, August 2009, August 2010 Submissions

[55] Northern Territory Government, "Invitation for Expressions of Interest - D10-0395", *NTSF PPP Project,* (nd); Northern Territory Government, "Request for Proposals - General Information and Instructions to Proponents Volume 1, Part A", *NTSF PPP Project,* (nd); Media Release, G. McCarthy, Minister for Correctional Services, P. Henderson, Chief Minister, 'New Prison to be Built at Holtz', 15 September 2010

Figure 2: Process for assessing PPP option



Source: Adapted from Infrastructure Australia, *National PPP Guidelines*, Volume 2, (2006) 5

Compliance with the National Guidelines

4.26 In the Darwin Correctional Precinct Project, the Committee found that the four phases identified in Figure 2 had been well documented through a variety of mechanisms including project plans, project director's reports and Project Steering Committee minutes. The next section of this chapter outlines how the Project complied with the key steps in each phase of the project delivery.

Project Development

4.27 **Assemble resources:** A clear governance structure was put in place. This included the:

- Budget Sub-Committee and Minister for Correctional Services (Treasury is the PPP authority as defined in the National Guidelines);
- Project Steering Committee (representatives from departments of Justice, Construction and Infrastructure, Health, and NT Treasury);

- Project Director;
- Project Control Group (departmental staff and specialist advisors).

A variety of specialist consultants were chosen based on their demonstrated experience, knowledge and expertise in major PPP projects of a similar nature and scope. These included: Mallesons Stephen Jaques (Legal); KPMG (financial); Noel Bell Ridley Smith & Partners Pty Ltd (Architectural); Umow Lai (Engineering/Security/ESD); and Rider Levett Bucknall (Quantity Surveying and Cost Management). [56]

4.28 **Develop a project plan:** The project plan and timetable were completed and endorsed by the Chief Executive of the Department of Construction and Infrastructure on 11 October, 2010.[57]

4.29 **Develop a probity plan:** A Probity Plan was developed for the Project. It was endorsed by the Project Steering Committee and by Merit Partners, the firm appointed as the Probity Auditor.[58]

4.30 **Commence key work streams:[59]**

- Full risk analysis undertaken;
- Development of EOI and RFP documentation;
- Public Sector Comparator development begun; KPMG engaged to draft the Public Sector Comparator Report.

4.31 **Private sector interface:** Informal engagement with the private sector occurred as part of the market sounding exercise, the purpose of which was to identify market interest and encourage participation.[60]

Expressions of Interest Phase

4.32 **Develop EOI invitation; obtain approval to release EOI; release EOI:** The Committee is satisfied that the EOI documentation was developed in accordance with the National Guidelines. Approval to release the EOI invitations was granted on 31 August 2010 and invitations for submissions were released on 14 September 2010.[61]

4.33 **Evaluate EOI responses and shortlist the bidders:** An Evaluation and Methodology Plan was completed on 30 September 2010. This plan provided the methodology for evaluation of both EOIs and RFPs. EOIs closed on 20

[56] Department of Construction and Infrastructure, “Project Plan V1.0”, *NTSF PPP Project*, Northern Territory Government, (5 November 2010); Northern Territory Government, *Darwin Correctional Precinct Public Private Partnership Project, Project Summary,* (October 2011) 7.
[57] Project Plan V1.0,
[58] *Summary of Cabinet Submissions*, August 2009 Submission.
[59] Project Plan V1.0
[60] Department of Construction and Infrastructure, “Project Steering Committee Minutes No. 2”, *NTSF PPP,* Northern Territory Government, (11 November 2010).
[61] Project Plan V1.0; Infrastructure Australia, Volume 2, 11-16; NTSF Invitation for Expression of Interest D10-0395.

October 2010 and the Evaluation Panel Findings and Recommendations were finalised on 10 November 2010. Three EOIs were received, and the Project Steering Committee endorsed the Panel's recommendation to shortlist all three consortia to the RFPs stage.[62] Cabinet endorsement for the shortlisting was received on 18 November 2010.

Request for Proposals Phase

4.34 **RFP development phase:** As recommended by the National Guidelines, the RFP documentation was undertaken concurrently with the development and evaluation of the EOIs. The Committee is satisfied that the RFP documentation met the criteria set out in the National Guidelines. As required by the National Guidelines, the Public Sector Comparator was finalised as part of this process, with the Public Sector Comparator Report being completed by KPMG on 9 November 2010.[63] Approval to release the RFP was granted by Cabinet on 18 November 2010.

4.35 **RFP bid phase:** The RFPs were released to the shortlisted proponents on 8 December 2010 and closed on 11 May 2011. Proponents included: Assure Partners, Axiom Corrections, and SeNTinel. The Committee is satisfied that the RFP bid phase conformed to the requirements of the National Guidelines. As recommended, the bid phase was characterised by a series of interactive workshops to provide proponents with the opportunity to discuss the development of their concepts and designs, and to seek clarification and feedback in the context of the Government's output requirements, prior to lodgement of their proposal.[64]

4.36 **RFP evaluation phase and selection of preferred bidder:** The Committee is satisfied that evaluation of the RFP process conformed to the National Guidelines. The Evaluation Panel Findings and Recommendations were endorsed by the Territory's specialist advisors and released on 25 July 2011. The Proponents were given an initial ranking, however, the Evaluation Panel identified a number of issues with each bid that would require further clarification or amendment prior to completing the evaluation process. Therefore, it recommended to the Project Steering Committee that the evaluation process be suspended pending the outcome of a Structured Negotiation Process. The Panel also recommended that this extension of the bid stage be used to confirm

[62] NTSF Project Steering Committee, Minutes No. 2; NTSF PPP Project Evaluation Panel, "Stage 1 – Expression of Interest (D10-0395), Evaluation Panel Findings and Recommendations", *NTSF PPP Project,* Northern Territory Government, (10 November 2010).
[63] Infrastructure Australia, Volume 2, 17-29; NTSF Request for Proposal Documentation.
[64] Department of Construction and Infrastructure, "Project Plan Version 1.2", *NTSF PPP,* Northern Territory Government, (28 March 2011); Department of Construction and Infrastructure, "Project Steering Committee Minutes No. 3", *NTSF PPP,* Northern Territory Government, (4 April 2011).

offers for an additional 200 beds. The Project Steering Committee approved the Panel's recommendations.[65]

4.37 Following the Structured Negotiation Process, the consolidated scores of the Proponents were reviewed by the Evaluation Panel and, where appropriate, reassessed to reflect any changed position against the criteria. The reassessment resulted in SeNTinel being ranked first and being nominated as the recommended bidder. SeNTinel was then invited to submit a revised proposal through an Exclusive Pre-Preferred Negotiation (EPPN) process. A response to the EPPN, providing the necessary clarifications and undertakings required by the Territory, was received on 24 July 2011.[66]

Negotiation and Completion

4.38 **Set negotiation framework:** A detailed negotiation programme of all major activities to achieve financial close was provided to SeNTinel. The negotiation programme was formulated with input from the Territory, its advisors and the consortium members. The negotiations primarily focused on aspects of the design and construction solution, the financing solution and the term of the Contract.

4.39 **Report to government; contract close; financial close:** On the 27 July 2011, the Budget Sub-Committee of Cabinet approved SeNTinel as the Preferred Proponent, subject to further negotiation and reducing CapEx by a further $100 million through design efficiencies and scope changes that would ensure best value for money outcomes for the Territory. On the 2 August 2011, SeNTinel accepted the appointment of Preferred Proponent and agreed to the terms and conditions of the Territory. A number of workshops and meetings were held with SeNTinel to finalise CapEx reductions and revised scope. The output specifications were rewritten pre-Financial Close to reflect the $100m CapEx reduction. Contractual Close occurred on the 30 September 2011 and Financial Close on the 5 October 2011.

[65] NTSF PPP Project Evaluation Panel, "Stage 2 – Request for Proposals (D10-0395), Evaluation Panel Findings and Recommendations", *NTSF PPP Project,* Northern Territory Government, (25 July 2011); Department of Construction and Infrastructure, "Project Steering Committee Minutes No. 4", *NTSF PPP,* Northern Territory Government, (25 July 2011).

[66] NTSF Project Steering Committee, Minutes No. 4; NTSF PPP, "Stage 2 – Request for Proposals – Evaluation Panel Findings and Recommendations".

5 Probity Objectives

5.1 Probity and integrity guidelines are set out in Volume 2, section 13 of the National Guidelines. The main requirements for meeting probity objectives include the development of a comprehensive probity plan and, for large complex projects, the appointment of a Probity Practitioner. In some cases, companies may also be required to sign a probity process deed to ensure that the participation of related companies in a tender does not impact on the probity, competitiveness or cost of a project.

5.2 The National Guidelines state that key elements in drafting a probity plan are:

- 'Plan the engagement and role of a probity auditor — one element of the role is to endorse the probity plan;
- Ensure that related parties have developed and implemented reasonable safeguards to ensure the probity of the bidding process;
- Formally specify levels of authority for making decisions and commitments and for the conduct of dealings with particular persons or bodies, including bidders;
- Formally specify principles and practices for access, dissemination, use and storage in relation to project information and records;
- Allocate responsibility and authority for management of probity, including responding to problems and queries;
- Set out principles and procedures that will promote probity with efficiency. Ensure in particular that the principles and procedures will not inhibit achievement of project objectives. A principle or procedure must be redesigned if, for example, it could result in incomplete questioning of material presented by a bidder; and
- Develop a strategy to promote a probity culture'. [67]

5.3 The Project adhered to the National Guidelines through the following actions:

- A Probity Plan was developed;
- A Probity Auditor, Mr Matthew Kennon of Merit Partners, was appointed;
- A Probity and Process Deed was drawn up. [68]

5.4 Merit Partners reported that nothing came to their attention that caused them to believe that the Northern Territory Government had undertaken the process other than with due probity.[69]

[67] Infrastructure Australia, Volume 2, 67
[68] Dept of C&I, "Probity Plan", NTSF PPP Project, NT Govt, 30 September 2010; Mallesons Stephens Jacques, "Probity and Process Deed", *NTSF PPP Project,* (2010).
[69] Kennon, M. "Report of Probity Services on RFPs for the NTSF Project", Merit Partners Pty Ltd, 2011

6 Public Sector Comparator

Overview

6.1 The Public Sector Comparator (PSC) is an estimate of the hypothetical, whole-of-life cost of a public sector project if delivered by government. The first step in obtaining this estimate is to construct a hypothetical project referred to in the National Guidelines as the 'Reference Project'.

6.2 The Reference Project is developed in accordance with the required output specification and the proposed risk allocation and is based on the most efficient form of government delivery, adjusted for the lifecycle risks of the project. It should be based on a project specific financial model and should provide the same level and quality of service that would be expected from bidders, to ensure that a like-for-like comparison is possible.[70]

6.3 It is particularly important that the Reference Project be based on the same scope as the PPP component of a project and that it only includes services that would be provided by the private party as part of the PPP contract.

6.4 Appropriate technical advisors should be engaged to assist in the development of output specifications for the RFP and contract and to assist with the assessment of bids. Equally, for the Reference Project to provide a realistic estimate of the cost of efficient public provision it is necessary for government to complete a detailed description of how the project would be delivered.[71]

6.5 The primary purpose of a PSC is to provide governments with a quantitative measure of the value for money that can be expected from accepting a private sector proposal, compared to that achievable through public sector delivery. Therefore, in preparing a PSC it is important to ensure that the assumptions underpinning the model are robust and that the model is flexible enough to allow new information to be incorporated as it comes to light.

6.6 The key characteristics of a PSC are that:

- It is expressed as the Net Present Cost of a projected cash flow based on the project specific discount rate[72] over the life of the contract;
- It represents the most efficient form of public sector delivery;
- It includes an adjustment for Competitive Neutrality; and
- It contains an assessment of the value of the risks that are to be transferred to bidders and the risks that are to be retained by government.

[70] Infrastructure Australia, National PPP Guidelines, Volume 4, *'Public Sector Comparator'*, 2008, 11
[71] Infrastructure Australia, Volume 4, 11
[72] As per the National Guidelines, the project specific discount rate is based on the Northern Territory 10 year bond rate which was 4.98% at financial close.

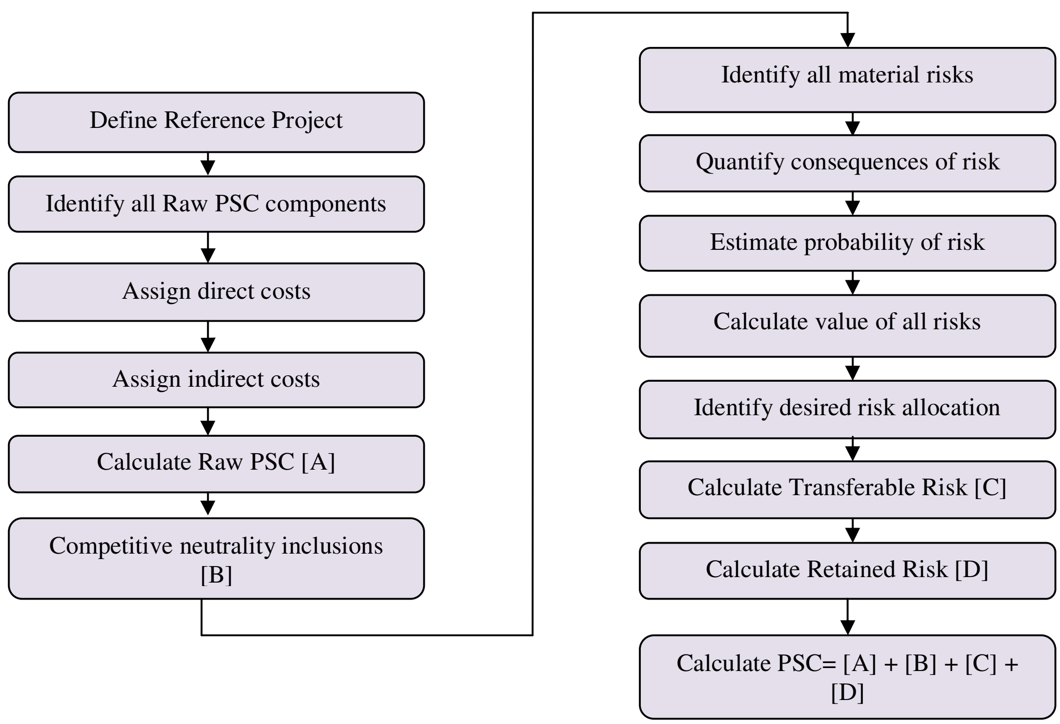
Methodology for Developing a Public Sector Comparator

6.7 Volume 4 of the National Guidelines provides detailed advice on the methods to be used when constructing a Public Sector Comparator and identifies a number of steps as being integral to its development:

- Step 1: Definition of the Reference Project;
- Step 2: Calculation of the raw PSC (includes direct and indirect costs);
- Step 3: Calculation of competitive neutrality costs (factors which provide advantages or disadvantages to the government or the private sector);
- Step 4: Risk Assessment; and
- Step 5: Identification and calculation of transferred and retained risk.

6.8 As shown in Figure 3, the final PSC is obtained by summing the costs of the raw PSC, the competitive neutrality inclusions, and the value of both transferable and retained risk.

Figure 3: Key Phases in the PSC Development Process



Source: Infrastructure Australia, *National PPP Guidelines*, Volume 4, (2006) 27

Compliance of the Darwin Correctional Precinct Public Sector Comparator with the National Guidelines

6.9 The Committee has undertaken a detailed review to assess the adequacy of the PSC. This assessment is based on the extent to which the processes used in its development comply with the requirements set out for each of the key steps in the National Guidelines. A summary of the findings is set out below.

Step 1: Define the Reference Project and Construct the PSC

6.10 The Reference Project was developed by the Territory in conjunction with its advisers. It consists of the following elements:[73]

- The site owned by the Territory at Taylor Rd, Holtze;
- Planning, design and construction of: an 800 bed low, low-open, medium and maximum security male and female correctional facility; 36 bed male and female mental health facility; and a Supported Accommodation and Program Centre;
- Delivery of services in accordance with draft Service Specifications in the draft Project deed.

6.11 The governance structure included:[74]

- Budget Subcommittee and Minister for Correctional Services and Construction;
- Project Steering Committee;
- Project Director;
- Evaluation Panel;
- Departmental Staff and Specialist Advisors;
- Probity Advisor.

Step 2: Constructing the Raw PSC

6.12 As specified in the National Guidelines, the construction of the PSC was based on a project specific financial model as demonstrated through the Reference Project. Specialist advisers were engaged to provide advice and expertise during each stage of the PPP procurement process from the development of the output specifications for the Request for Proposals, through to assistance with assessment of the bids. Consultants were chosen on the basis of their knowledge, expertise and demonstrated experience in major PPP projects of similar nature and scope.

6.13 The raw PSC includes the capital and operating costs associated with delivering the output specification over a defined period. It is an estimate of the cost to government of delivering the Reference Project before taking into account

[73] KPMG Corporate Finance (Aust) Pty Ltd, 'Northern Territory Secure Facilities PPP Project - Public Sector Comparator Report', (9 November 2010) 7-8
[74] Northern Territory Government, *Project Summary* 6

adjustments for competitive neutrality and risk.[75] The raw PSC is the amount which is provided to proponents in the RFP documentation.

6.14 Supporting documentation indicates that the raw PSC was developed in accordance with the National Guidelines.[76] Cost information for the raw PSC was prepared or contributed to by: the Territory; a quantity surveyor - Rider Levett Bucknall (RLB); a facilities management technical advisor - Rix Stewart; and an architectural advisor - Noel Bell, Ridley, Smith (NBRS). Raw cost estimates for the PSC Reference Project were provided by RLB in conjunction with the Territory. Recurrent cost estimates were provided by Rix Stewart and reflected the cost of services should they be delivered by the Territory.[77]

6.15 A detailed summary of the general assumptions (eg contractual close, dates related to design and construction, the discount rate), capital cost assumptions (eg raw construction cost estimates), and recurrent cost assumptions (eg utilities management, building and asset management, pest control) is set out in section 3 of the Public Sector Comparator Report.

Step 3: Competitive Neutrality Inclusions

6.16 As per the National Guidelines, an assessment was made to determine whether any of the costs should be classified as competitive neutrality adjustments. No such costs were identified and consequently this step was not incorporated into the calculation of the PSC.[78]

Step 4: Risk Assessment

6.17 The National Guidelines note that the assessment of risk should include the following processes:[79]

- Identification of risks;
- Identification of the consequences of each risk eventuating;
- Estimation of the probability of each risk eventuating; and
- Valuation of each risk;

6.18 A review of the Public Sector Comparator Report indicates that risk assessment and evaluation were carried out in accordance with the National Guidelines. The steps taken to achieve this are described in detail in section 4 of the Public Sector Comparator Report and are summarised below:[80]

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[75] Infrastructure Australia, Volume 4, 17.

[76] Department of Construction and Infrastructure, "Project Director's Report to the Project Steering Committee", Northern Territory Government, (April 2011); NTG, Project Summary, 8; KPMG Public Sector Comparator Report, 9 November, 2010; NTSF PPP, 'Project Plan', V1.0, 7; NTG, Project Summary, 8.

[77] KPMG, Public Sector Comparator Report', (9 November, 2010)

[78] KPMG, Public Sector Comparator Report, (9 November, 2010) 13

[79] Infrastructure Australia, Volume 4, 28

[80] KPMG, Public Sector Comparator Report', (9 November, 2010)14-15

- The development of a risk register by KPMG, an accredited accounting firm.
- The Risk Register was circulated to the Territory and specialist consultants for comment and update. The consultants included RLB, Rix Stewart, and NBRS, all of whom worked with the Territory in the preparation of cost information.
- Further review of the Risk Register through a Risk Workshop involving the above parties.
- Re-circulation of the Risk Register for final comment and update.

6.19 The Risk Register provides a detailed summary of potential risks as recommended by the National Guidelines. This includes the likelihood of each risk occurring, the consequences of each risk, the costs associated with quantifiable risks, risk mitigation strategies, and whether risk should be retained, transferred or shared.

6.20 In addition to examining whether the risk analysis framework was consistent with the National Guidelines, the Committee sought clarification from key witnesses regarding the methods used to assess risks.

6.21 First, the Committee queried why a simple, rather than an advanced, probability method was used to estimate the probability of each risk occurring. Clarification was sought because the National Guidelines suggest that advanced probability methods should be considered for large, complex projects, and those where the Net Present Cost of a bid is close to that of the PSC, all of which are characteristic of the Darwin Correctional Precinct Project. Mr Wagner, Chief Executive of the Department of Infrastructure, responded that the decision to use a simple probability method was based on advice from their financial advisors (KPMG) who have considerable expertise in this field. Mr Wagner also noted that had the Project been of a commercial nature then a far more complex method of assessing risk would have been used[81].

6.22 Second, the Committee requested clarification on whether a sensitivity analysis had been performed. The National Guidelines note that a sensitivity analysis should be performed on key cash flows and assumptions to determine the robustness of the PSC to potential changes in assumptions, risk components and the forecast operating environment over the term of the project.[82] Mr Wagner confirmed that a sensitivity analysis had been done and referred the Committee to reports prepared by KPMG. In addition, a letter from KPMG confirmed that as part of the analysis used to calculate the PSC, a range of sensitivities were tested around capital cost, operating costs and lifecycle costs.[83] The impact of these sensitivities was then calculated to provide

[81] Legislative Assembly of the Northern Territory, *Public Accounts Committee Hearing*, (26 March 2013), Mr Wagner, Chief Executive, Department of Infrastructure, Northern Territory Government, 13
[82] Infrastructure Australia, Volume 4, 37
[83] Letter from Mr Paul Thomson, KPMG to Mr David West, Project Director for the NTSF PPP Project, (26 February 2013)

information on the estimated impact that variations in these key variables might have on the overall PSC. During the Structured Negotiation Process, sensitivity analyses were also undertaken with respect to each of the three bids to show how '... each of the bids would vary with changes in a range of other assumptions including changes to timing, changes to treatment of the lifecycle funding, changes to the profile of the cash-flows from the Territory and changes to the term of the facilities management contract'.[84]

Step 5: Identification and Calculation of Transferred and Retained Risk

6.23 The framework for risk allocation is governed by the Commercial Principles for Social Infrastructure as they relate to PPPs (Volume 3 of the National Guidelines). More specific guidance on the risks which should be borne by government and those which should be borne by the private sector is provided in section 10 of the Practitioner's Guide (Volume 2). Volume 2 also includes an example of a risk allocation table at Appendix B.

6.24 A detailed risk register was developed as part of the PSC.[85] Although there is some slight variation in the category headings used to identify different types of risk, the areas covered in this table broadly conform to the principles and example provided in the National Guidelines.

Calculating the Risk-adjusted PSC

6.25 The Risk-adjusted PSC includes raw capital costs, raw recurrent costs, retained risk and transferable risk. It was calculated in accordance with the steps outlined in the National Guidelines. However, Step B, Competitive Neutrality Inclusions, was not included in the calculation as it was agreed that there were no costs that could be classified as competitive neutrality adjustments.[86]

Adjustments to the Public Sector Comparator

6.26 The National Guidelines require the PSC to be finalised prior to the release of the RFPs. Ideally, no changes should be made to the PSC after bids have been received unless a) the scope of the project changes; or b) it becomes apparent that a significant component has been mispriced or omitted.

6.27 The Committee heard that it was necessary to make a number of significant adjustments to the PSC. These resulted from an error in the original calculations for the floor area and an increase in the scope of the prison, with it becoming evident that more beds would be required. In response to the Committee's query about why changes were made to the PSC, Mr Wagner commented:

[84] Letter from Mr Paul Thomson, (26 February 2013)
[85] KPMG, Public Sector Comparator Report', (9 November, 2010) Appendix C, Risk Register
[86] KPMG, Public Sector Comparator Report', (9 November, 2010)13

> When the three bids came in it was evident ... all three bids were way over our footprint, our square meterage, and when we unpacked that and analysed it through our expert consultants, it was revealed we had made an error and had to increase the square meterage due to design efficiencies. That was adjusted, and I understand some of these figures have been passed on. That was for gross floor area, and because we had to bump up the gross floor area there were associated ongoing recurrent costs during the operational phase which were adjusted proportionally - additionally, the extra 200 beds. It started off as an 800, and then we were asked to increase that to 1000 - that was included.[87]

6.28 A summary of the adjustments made to the PSC after bids were received is included in the Value for Money Report and is set out below:[88]

- A revision in the PSC assumed floor area;
- An update to the on-costs applicable to the PSC design and construction costs;
- The inclusion of an additional 200 beds to align with the structured negotiation process bid responses;
- An extension of the operating term to 30 years to align with the operating term agreed with SeNTinel; and
- An update of the discount rate applied.

6.29 These adjustments fall within the National Guidelines as they primarily relate to a change in the scope of the project with consequent effects on the pricing of specific components.

Adequacy of the PSC

6.30 The above review shows that the PSC was constructed in line with the National Guidelines. At the same time, the significant adjustments made to the PSC subsequent to the Request for Proposals imply that the PSC as first developed was inadequate. However, the evidence given at the hearing, and in the evaluation documents, indicates that in large part these adjustments arose from the interactive tender process (ITP) and structured negotiations. This tender process, which is typical of a PPP procurement model, improved the scope of the Project to one that more efficiently achieved the desired outcomes and contributed to a final PSC that more accurately reflected Project costs and outcome requirements. The probity auditor did not raise any concerns about these changes, nor have any concerns been raised with the Committee. These changes arguably demonstrate the value of adopting a PPP procurement approach in which the tender process facilitates better outcomes through negotiation.

[87] PAC Hearing, 26 March 2013, Mr Wagner,10.

[88] KPMG Corporate Finance (Aust) Pty Ltd, 'Northern Territory Secure Facilities PPP Project – Final Value for Money Report [Draft V2]', (October 2011) 3-4

7 Risk Allocation and Exposure

7.1 Risk, defined as 'exposure to the chance of injury or loss',[89] is an intrinsic and unavoidable part of any infrastructure project. Consequently, how risk is allocated and managed has a significant impact on the success of a project and the extent to which value for money is achieved. Equally, the concept of risk informs how a project is structured and the type of procurement method chosen.

7.2 This chapter examines how the adoption of a PPP procurement method influences the extent and nature of the project risks associated with providing a new prison for the Northern Territory. Prior to this examination, it will provide a context for understanding risk management. This will include an overview of the risk methodology used for PPPs under the National Guidelines and will clarify various aspects of risk, such as the multiple factors which influence its allocation and management.

Principles and Rationale for Risk Management in PPPs

7.3 Risk is a central theme of the National Guidelines. Volume 3, Commercial Principles for Social Infrastructure, aims to provide '... a consistent and efficient risk allocation framework for the delivery of social infrastructure PPPs across jurisdictions'.[90] It contains 38 sections, covering all the areas which need to be addressed when developing a social infrastructure project. These include, but are by no means limited to, contractual issues, construction, design, performance monitoring, payment provisions, refinancing, insurance and force majeure. Although it does not include a specific section on risk this is largely because the concept of risk informs and underpins the principles as a whole. The fundamental purpose of the commercial principles is to minimise risk through detailed specification of the rights and responsibilities of each party and through clearly outlined principles and procedures in relation to the Contract. In this sense, the concept of risk forms the underlying rationale for the Commercial Principles. The National Guidelines provide more practical guidance on how to identify, quantify and allocate risk in: the Overview; Volume 2, the Practitioners' Guide; and Volume 4, Public Sector Comparator Guidance.

7.4 The primary principle governing risk transfer is that of optimal allocation. Essentially, this means assigning risks to the party best able to manage and control them.[91] Optimal risk allocation ensures that the cost of managing risk is minimised on a whole-of-life and whole-of-project basis and makes it possible to achieve value for money.[92]

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[89] The Macquarie Concise Dictionary, 3rd edition, The Macquarie Library Limited:New South Wales, 1998, 1003

[90] Infrastructure Australia, National PPP Guidelines, Volume 3, *Commercial Principles for Social Infrastructure*, (2008) vii

[91] Infrastructure Australia, *Policy Framework'*, 10

[92] Infrastructure Australia, *Overview*, 29

7.5 PPPs are service focused and the government only pays for services received. Consequently, PPPs '... presuppose that the private party bears the risks associated with designing, building and operating the infrastructure, including the risk of obsolescence and/or residual value'. Based on this premise, the government achieves value for money by taking back those risks it '... can manage for less than it would have to pay the private party to bear'.[93]

7.6 A full and comprehensive risk analysis informs and influences key project decisions and outcomes. Among other things, information about risk determines the payment mechanism and the contractual terms and conditions, and informs the construction of the PSC, the evaluation of value for money, and the development of risk management plans.[94] The National Guidelines note that:

> The payment mechanism is at the heart of social infrastructure PPPs as it puts into financial effect the allocation of risk and responsibility between government and the private party. It determines the payments that government makes to the private party and establishes the incentives for the private party to deliver the service required in a manner that gives value for money.[95]

Methodology for Risk Analysis and Allocation in PPPs

Risk Analysis

7.7 As briefly noted in Chapter 5, risk analysis includes the following four steps:

- Identification of risks;
- Identification of the consequences of each risk eventuating;
- Estimation of the probability of each risk eventuating;
- Valuation of each risk;

7.8 A detailed description of the risks most likely to be encountered in a PPP project is available in 'Risk Allocation', section 10, Volume 2 of the National Guidelines. Some of the key categories of risk relate to: the site; design, construction and commissioning; sponsor risk; force majeure; and financial risk. Types of risk will be addressed in more detail in the next section.

7.9 Initially, all project risks are identified. These risks are then designated as either immaterial (little or no economic effect on the project), or material (substantial economic effect). The process may be simplified by aggregating risks into fewer categories.

7.10 The extent of the information collected should reflect the materiality of the costs to be quantified, hence only material risks need to be included. Some attempt should be made to identify all material risks even those which are difficult or

[93] Infrastructure Australia, *Overview*, 29
[94] Infrastructure Australia, *Overview*, 29
[95] Infrastructure Australia, *Overview*, 29

impossible to quantify. Risks which cannot be sensibly quantified should become part of the qualitative assessment and their exclusion from the Public Sector Comparator should be noted.

7.11 The consequence of risk measures the difference between the base cost (or revenue) in the Raw Public Sector Comparator and the expected outcome if the risk eventuates.

7.12 Assessment of the consequences and financial impact of risk should identify the main consequences, financial impact and potential mitigation strategies for each risk. The assessment should be clearly documented as this information serves as a reference point for valuing risk in the Public Sector Comparator.

7.13 Once the material risks have been identified, and the potential consequences assessed, it is necessary to estimate the probability of each of the consequences occurring. This estimation should also take into account whether the probability is likely to change over time. For example, the probability of operating cost over runs may typically change over the term of the project, due to the reduced ability to forecast accurately over the long term.

7.14 The National Guidelines provide detailed advice on techniques for evaluating the probability of consequences from risk occurring. Both simple probability valuation techniques can be used and more advanced techniques. The former usually involve a subjective assessment based on past experience, current best practice and likely improvements in the future and should be supported by reliable information. A typical approach used in subjective assessments of the probability of a consequence occurring is the point estimate approach.

7.15 More advanced probability valuation uses statistical techniques such as the construction of probability distributions and interpretation of the resulting outputs. One accepted method of multivariable analysis cited in the National Guidelines is Monte Carlo simulation. This technique '... constructs an artificial probability distribution for total risk, or a subset of risks, based on assumed, or actual distributions for each of the individual risks. It then provides a single value for risk by simultaneously solving a number of different risk relationships'.[96]

7.16 As the information from the risk assessment analysis has such a strong influence on how the project is structured, the payment mechanism, and the contractual arrangements, it is important to ensure that the technique adopted to value the consequences of risk is the most appropriate. Factors that should be considered when adopting a risk valuation technique include the:[97]

- Significance of particular risks;
- Size of the project – larger projects are more likely to require an advanced probability technique;

[96] Infrastructure Australia, Volume 4, 36
[97] Infrastructure Australia, Volume 4, 37

- Complexity of the project – complex projects are more likely to require an advanced probability technique;
- Cost benefit analysis - the cost of using the technique should be evaluated against the potential value of the risk;
- Bids close to the Public Sector Comparator – in projects where the Net Present Cost of a bid is close to the Public Sector Comparator, more complex valuation techniques, such as Monte Carlo simulations, may assist in ranking the bids by increasing the accuracy of the bid evaluation process.

7.17 The value of each risk is calculated by multiplying the consequence by the probability and then adding a contingency factor.

Risk Allocation

7.18 Under the principle of optimal risk allocation, risks are allocated to the party with the best capacity to control and manage the risk at the least cost. Risks are retained by government, transferred to the private sector, or shared by both parties.

7.19 The allocation of risk has a direct impact on the Public Sector Comparator and hence on the evaluation of whether a PPP procurement method will deliver better value for money than a traditional procurement method.

7.20 Once all risks retained by the government have been identified the individual values of these risks are added together to determine the Net Present Cost of the Retained Risk component of the Public Sector Comparator.

7.21 For the risks transferred to the private sector, the government measures the costs it would expect to pay if it had retained those risks in the Reference Project and adds those costs as 'Transferred Risks' to the Public Sector Comparator.

7.22 The Net Present Cost of Transferred Risk is calculated in the same manner as that used for Retained Risks.

7.23 Risks are generally shared when neither party is in a position to adequately control and manage the risk. When this is the case, the risk allocation should reflect:[98]

- How the private party prices the risk;
- Whether it is reasonable for government to pay that price, taking into account the likelihood of the risk eventuating;
- The cost to government of retaining that risk; and
- The ability of government to mitigate any consequences if the risk materialises.

[98] Infrastructure Australia, *Overview*, 29

7.24 The sharing of risks does not always occur on a 50:50 basis but can be split in other ways. Some examples include:

- The use of caps on risk exposure;
- Time thresholds;
- Defining specific events; and
- Using a schedule of rates.[99]

7.25 In some instances, a pre-determined mechanism may be used which enables both parties to act together to mitigate and share the consequences of the specified risk.

7.26 A detailed description of the risks most likely to be encountered in a PPP project, the ways in which such risks are generally allocated, and some examples of mitigation strategies, is available in Volume 2 of the National Guidelines, section 10. A brief summary of the key risks and usual allocation is provided in Table 4 below.

Table 4: Types of Risk and Usual Allocation in Social Infrastructure Projects

Risk	Usual Allocation
Site risk	Generally private party
Design, construction and commissioning risk	Generally private party although government typically accepts risk for defects caused by flaws in the output specification.
Sponsor risk – the risk taken by government that the private party will not fulfil their contractual obligations	Government
Financial risk	Government
Hard and soft facility maintenance operations risk and the payment mechanism	Private party
Market risk	Government takes downside and upside demand risk. Private party generally bears price risk but govt may accept limited price risk through indexing of service fee and benchmarking certain services.
Industrial relations risk	Generally private party
Legislative and government policy risk	Government generally accepts some aspects of this risk

[99] Infrastructure Australia, *Overview*, 30

Risk	Usual Allocation
Force majeure risk	Usually shared
Asset ownership risk	Generally private party
Tax risk	Generally private party
Interest rate risk	Usually Government until financial close but private party after this date.

Source: Adapted from Infrastructure Australia, *National PPP Guidelines*, Vol 2, (2008) 51-55

7.27 A key part of risk management is the development of strategies to mitigate risk where this is feasible. Risk mitigation is concerned with minimising and controlling either or both the consequences and the probability of a risk eventuating. Factors that may help mitigate Retained Risks include the:[100]

- Ability to directly influence the probability of a risk eventuating;
- Use of proven technology and reputable contractors;
- Development of effective monitoring and risk management practices; and
- Maintenance of appropriate insurance coverage.

7.28 Risks which are of primary concern to government, such as the private party becoming insolvent (sponsor risk), can be mitigated contractually and through the evaluation process. For example, a rigorous assessment of the private party's past financial performance should be undertaken as part of the evaluation at the Request for Proposal's stage. Operational risk, the risk that the private party is unable to effectively manage the service delivery, is also of key concern to government. Although the private party bears the financial impact of poor performance, ultimately, government bears this risk, as it can affect the provision of adequate public services. Much of this risk can be mitigated through the contractual provisions which can include the abatement of service payments for non-performance.

A Summary of Risk Allocation in the Darwin Correctional Precinct PPP

7.29 Table 5 below summarises the allocation of key risks in the Darwin Correctional Precinct PPP.

Table 5: Summary of Risk Allocation in the Darwin Correctional Precinct PPP

Risk	The Territory	SeNTinel
Precinct – Physical State	Pollution not disclosed in the Deed	Any other pollution

[100] Infrastructure Australia, Volume 4, 46

Risk	The Territory	SeNTinel
Precinct – Native Title	Any claims	Nil
Design, construction and commissioning	Nil	Delays, costs and defects unless attributable to NT
Facility fit for purpose	Nil	If not fit for intended purpose
Operational Costs	Nil	If operational costs exceed budgeted cost over services phase
Lifecycle costs	Nil	Replacement and refurbishment of facility over services phase
Change in price of utility inputs and energy demand risk	Pays for electricity and water, subject to adjustments if cost is directly attributable to SeNTinel not complying with Project Deed	Cost of utilities other than gas but not diesel fuel for standby power where use resulted from failure of Government utilities provider to provide services
Force majeure	Shared	Shared
Re-financing risk	Shares limited refinancing losses and any gains	Shared
Inability to obtain insurance/material increases in premiums	Shared	Shared
Residual condition of facility	Nil	Bears risk that condition of facility is less than required by Project Deed

Source: Adapted from *Darwin Correctional Precinct PPP Project, Project Summary,* (2011)13

Risks the Territory is Exposed to in the Darwin Correctional Precinct PPP

7.30 The following assessment of risk exposure in the Darwin Correctional Precinct PPP is structured around the six broad categories used in the Risk Register developed for the Public Sector Comparator analysis. The final allocation of risk under the PPP contract is considered to be largely consistent with that assumed in the Public Sector Comparator Risk Register. Therefore, the following information reflects the Territory's view on the likelihood and consequences of these risks. These include: strategic; site; design; construction and commissioning; operating; and PPP specific risks. For each category, a table format is used to identify:

- The retained and shared risks to which government is exposed;
- The probability of the risk eventuating; and

- The expected cost impact of the risk.

7.31 Following each table, risks that are deemed significant within that category are discussed. Although there are a substantial number of risks, many have a low probability of occurrence; equally, the expected impact of the majority of these risks is minor. As discussing all risks listed in the tables would obfuscate rather than highlight the key points, the discussion is confined to risks which have either a higher likelihood of occurring or those which, while unlikely, would have a significant cost impact if they did eventuate. These risks are highlighted in grey.

Strategic Risk

Table 6: Strategic Risks Retained and Shared by the Territory

Retained Risk	Probability	Consequence
Land tenure – mineral extractive leases held over part of site	Unlikely < 10%	Critical >10%
Site rezoning risks	Unlikely < 10%	Critical >10%
Site subdivision risk	Unlikely < 10%	Critical >10%
Environmental impact statement – wider planning, environmental issues	Moderate 10%-50%	Moderate 2%-5%
Political risks – change in political appetite for project	Unlikely < 10%	Minor 0%-2%
Risk of poor design	Unlikely < 10%	Moderate 2%-5%
Native title claims	Unlikely < 10%	Minor 0%-2%
Sacred sites	Unlikely < 10%	Moderate 2%-5%
Prisoner labour	Unlikely < 10%	Minor 0%-2%
Shared Risk		
Delay in completion of facility – operational impact	Likely 50%-90%	Moderate 2%-5%
Community objections	Unlikely < 10%	Minor 0%-2%

7.32 Apart from two exceptions, all of the strategic risks were retained by the Territory. A 'delay in the completion of the facility' and 'community objections' were shared with the Proponent. In addition, all of these risks, except for Native Title claims and Sacred sites, were classed as unquantifiable and consequently were not attributed with a value for input into the risk component of the Public Sector Comparator.

7.33 Land tenure, site rezoning and site subdivision risks were all assessed as unlikely, however, if they had eventuated they would have had a substantial impact on the Project. For example, all three of these risks could have resulted in the need to find an alternative site. Land tenure risk was mitigated by: a decision to not renew existing short term leases held on the site; negotiation with existing leaseholders to agree an acquisition price for the lease; compulsory acquisition of other leases; allowing the quarry to continue by providing a buffer around the prison Precinct; and allowing continued extraction closer to the prison location until the area was needed. Site rezoning and site subdivision risk was mitigated by setting in motion the processes required to rezone and subdivide.

7.34 There was a moderate chance that wider planning environmental issues could have had an impact on the use of the site, with this having the potential to increase the cost to the Territory through causing a delay in construction. This risk was mitigated by undertaking a study to determine risk and through a plan to obtain an environmental impact statement on the prison Precinct.

7.35 Although the risk that completion of the Facility might be delayed was assessed as a shared risk, the Territory was not assessed as sharing the financial aspect of this risk. However, it would share the risk to the extent that a delay in completion of the Facility would mean that the government would face additional maintenance costs with respect to the existing prison in order to extend its useful life.

Site Risks

Table 7: Site Risk Retained and Shared by the Territory

Retained Risk	**Probability**	**Consequence**
Artefacts found on site	Unlikely < 10%	Minor 0%-2%
Risk of increased cost re completion of headworks	Likely 50%-90%	Minor 0%-2%
Shared Risk		
Ground contamination	Unlikely < 10%	Moderate > 2%-5%

7.36 The majority of site risks were transferred to the Proponent; only two out of eight were retained by government and one was shared by both parties. Although the risk of increased cost in relation to the completion of headworks is classed as likely, the overall consequences to the Project are considered minor. Mitigation for this risk included immediate initiation of the headworks and a request for surveyor estimates.

Design

Table 8: Design Risk Retained by the Territory

Retained Risk	Probability	Consequence
Inappropriate initial design specification	Unlikely < 10%	Moderate > 2%-5%
Change in scope of design	Unlikely < 10%	Minor >0%-2%
Legislative/regulatory change	Unlikely < 10%	Minor >0%-2%
Change in design requirement – due to changes in prison criteria	Likely 50%-90%	Minor >0%-2%

7.37 Eight design risks were identified, four of which were retained by the Territory and four transferred to the Proponent. The only retained risk classed as likely to occur was the risk that an incident in an Australian prison would result in a change in the design requirement. Although this is largely out of the control of the Territory, several mitigation strategies were suggested, including the ongoing involvement of Corrective Services in the Project Team and a decision to manage any longer dated significant changes as separate projects.

7.38 The probability that the scope of the design will change is small, however, any modifications to the design brief after it has been issued will lead to increased capital costs for the Territory.

Construction and Commissioning

Table 9: Construction and Commissioning Retained and Shared by the Territory

Retained Risk	Probability	Consequence
Industrial Action – Territory wide	Unlikely < 10%	Minor >0%-2%
Infrastructure capacity – headworks fail to meet requirements	Unlikely < 10%	Minor >0%-2%
Delay to construction due to perils eg extreme weather	Unlikely < 10%	Moderate > 2%-5%
Shared Risk		
Insolvency of prime contractor	Unlikely < 10%	Major > 5%-10%

7.39 Of the 13 risks associated with construction and commissioning, nine were transferred to the Proponent, three were retained by the Territory and one was shared between parties. The shared risk, the insolvency of the prime contractor, has the potential to result in the cessation of service, a forced change in ownership and/or possible corporate failure causing financial loss to the private party. However, it could also result in costs to the Territory due to the need to re-tender and the likely delays associated with this process. Strategies used to mitigate this risk include financial evaluation of major subcontractors, and the insertion of contractual provisions.

Operating

Table 10: Operating Risk Retained and Shared by the Territory

Retained Risk	**Probability**	**Consequence**
Industrial relations – facilities management (FM) staff, Territory wide	Moderate > 10%-50%	Moderate > 2%-5%
Scope risk FM Services – that NTCS changes services/requirements for FM	Moderate > 10%-50%	Moderate > 2%-5%
Change in law/policy	Unlikely < 10%	Minor >0%-2%
Technical Upgrade risk – future tech replacements not best practice	Unlikely < 10%	Minor >0%-2%
Force-majeure damage	Unlikely < 10%	Critical >10%
Shared Risk	**Probability**	**Consequence**
Significant prisoner damage to Facility	Moderate > 10%-50%	Minor >0%-2%
Risk of escape	Unlikely < 10%	Moderate > 2%-5%

7.40 The majority of operating risks were transferred to the Proponent; only five out of 19 were retained by government and two were shared by both parties.

7.41 The risk of Territory wide industrial action could have a detrimental effect on facilities management and result in prisoner lock down, with consequent delays in the delivery of facilities maintenance. The risk to the Territory has been mitigated through allocation of responsibility for facilities service provision to the Proponent and a long term agreement in which costs are locked in.

7.42 Scope risk, facilities management services, refers to the risk that the Territory may change the requirements or services to be provided by the Service Provider in respect of any component of the project. Meeting these revised specifications could result in an increase in the Service Provider's operational costs. Strategies for mitigation were through the contractual provisions and consisted of either the inclusion of appropriate modification provisions or a requirement that defined flexibility be factored into the Contract.

7.43 Force majeure refers to the risk of major damage due to unforeseen circumstances beyond the control of either party, such as an act of God. A force majeure event is unlikely but would result in increased cost and delays. No mitigation strategies to deal with this type of risk were specified.

PPP Specific Risks

Table 11: PPP Specific Risks Retained by the Territory

Retained Risk	Probability	Consequence
Insurance availability	Unlikely < 10%	Moderate 2%-5%
Change in cost of insurance	Moderate 10%-50%	Minor 0%-2%
Risk of uninsurable events	Unlikely < 10%	Major 5%-10%
Certainty of finance	Unlikely < 10%	Critical > 10%
Refinance risk	Moderate 10%-50%	Minor 0%-2%
Funding market conditions	Moderate 10%-50%	Moderate 2%-5%
Project Company insolvency	Moderate 10%-50%	Minor 0%-2%
Change in control	Moderate 10%-50%	Minor 0%-2%
Escalation	Likely 50%-90%	Minor 0%-2%
Inability to achieve VFM	Unlikely < 10%	Minor 0%-2%
Value of asset	Unlikely < 10%	Minor 0%-2%

7.44 There are eleven PPP specific risks all of which are retained by the Territory. Most of these risks are associated with funding, finance and insurance.

7.45 Although the impact on the Project of an uninsurable event occurring is classed as critical, the likelihood of this happening is very low. The Risk Register did not provide a mitigation strategy for such an event.

7.46 ‘Certainty of finance’ refers to the risk that finance becomes unavailable between preferred bidder appointment and financial close. If this risk had occurred costs may have increased or the Contract may not have been completed. Mitigation strategies to manage this risk included: requiring the funder to make a firm commitment during the bid process; and allowing bidders to add additional funders if required.

7.47 ‘Funding market conditions’ refers to the risk of increased costs due to adverse conditions in the funding markets, or less favourable terms to the Territory. If this risk had eventuated costs would have had to have been revised. This risk was removed by requiring bids to be underwritten.

7.48 'Escalation' refers to the risk that the escalation rate applied to the service fee will change. If this risk eventuated there would be an increase in costs, however the impact would be minor. The escalation rate is the percentage at which an annual change in the price levels of goods and services occurs, or is expected to occur, and consequently there is no scope for mitigation of this risk.

Other Risks

7.49 In addition to the risks identified above, the Committee noted an additional risk raised by the Auditor-General. This pertains to the long time-span of the Contract which implies a need for the Government to implement mechanisms that will ensure the Project continues to be managed with a high level of diligence and active oversight. It will be particularly important to develop succession plans to ensure that new project managers have adequate knowledge about the history of the Project and a thorough understanding of the terms of the Contract.

7.50 To some extent, the risks associated with the loss of knowledgeable personnel are mitigated by conditions in the Project Deed which create incentives for SeNTinel to build and maintain to a standard that will minimise whole of life costs. In this respect, the Committee noted Mr Coleman's comments about the additional value accruing to the Territory through their option to extend the maintenance contract for another 10 years:

> It forces the private sector maintenance provider to make sure that if he is stuck with it, it better last. So effectively it gives a much greater buffer and a greater level of, theoretical, assurance to the Territory that the things that they should have been doing and everybody thinks they are doing were actually being done. If they have to replace a $2m chiller, for example, they are going to have to wear it because it is already priced into the deal.[101]

Benefits and Limits of Risk Transfers

7.51 Under the Darwin Correctional Precinct PPP, the Territory does not bear any exposure to the risks transferred to SeNTinel under the Project Deed. These risks have been costed at their expected value, however, there is a 50 per cent chance that the value of these risks would have been higher than the estimate contained within the Public Sector Comparator.

7.52 In the Darwin Correctional Precinct PPP, the estimated value of project-specific risks transferred to the private sector is of the order of $50 to $60 million. However, the benefits of risk transfer are not limited to monetary value but incorporate other less tangible benefits. When risk is shifted to the private party, responsibility for that risk is also transferred. With the private party managing consequences from risks as they arise, government resources are freed up for

[101] Legislative Assembly of the Northern Territory, *Public Accounts Committee Hearing*, (17 December 2012), Mr Pat Coleman, Project Director, NTSF, 21

other activities. The Committee notes that, as reported by Mr Coleman, these benefits have already been demonstrated during the construction phase of the Darwin Correctional Precinct PPP:

> I can tell you for a fact that even on the current project, just on one item alone in the agreed $495m, the builder has absorbed a ... hit on cost blowout. That ... is something that, had this been a D&C and a traditional procurement contract, the first thing that would've happened was the builder would have a claim in ... and the Territory and the builder would be arguing, for however long, about who is going to pay for it.[102]

7.53 The Committee considers that the optimal allocation of risk which is typical of PPP procurement has delivered significant benefits to the Territory across a range of areas including: favourable refinancing terms; strong incentives for the use of good quality construction materials; and a measure of certainty regarding operating costs over the long term of the Contract.

7.54 The refinancing arrangements agreed to in the Contract with SeNTinel are particularly favourable to the Territory. If interest rates go down the Territory shares the benefit but if interest rates go up, the Territory's share of exposure is capped.

7.55 The bundling of facilities management and maintenance with the design and construction of the Facility, together with the Territory's option to extend the maintenance period for a further 10 year period, provides SeNTinel with an incentive to reduce whole-of-life costs both in the construction phase of the Project as well as during the 30 year maintenance period. The Committee noted Mr Coleman's comment that:

> It is one of the main differences between doing it as a PPP and doing it as a D&C. You have the benefit of ... making sure the maintenance of the asset is taken into account while it is being designed, therefore, theoretically, getting a much better result in value for money. You might have better quality fixtures and fittings and finishes and so on, than you would otherwise get if you did it as a straight D&C because there is another member of the consortium that has fixed the cost of maintaining it for 30 years. So, he takes a very close interest in saying 'I want stainless steel fittings, not chrome', for example.[103]

7.56 The use of bundling, and the consequent transfer of much of the Project's operating risk to SeNTinel, provides the Territory with a level of cost certainty that would not be available through a traditional design and construct procurement method. This is because SeNTinel bears the majority of risk arising from the potential for adverse events which, if they occurred, could contribute to cost increases in relation to Facility management. Such events might include industrial action, the Facility not being fit for purpose, and equipment breakdown that results in the Facility, or parts of the Facility, not being available for use.

7.57 A PPP procurement method facilitates this transfer of risk through contractual mechanisms such as the inclusion of clearly defined service requirements in a services specification which includes the application of an abatement regime.

[102] PAC Hearing, 17 December 2012, Mr Pat Coleman, 23
[103] PAC Hearing, 17 December 2012, Mr Pat Coleman, 13

The use of an abatement regime ensures that if SeNTinel fails to make all or part of the Facility available, the quarterly services amount the Territory pays to SeNTinel is reduced or 'abated' by a pre-determined percentage.

7.58 SeNTinel bears the majority of site, construction and operating risks. This means that there are a range of potential costs, for which the Territory is no longer at risk, including:

- Increased operational costs associated with a build solution that is not fit for the purpose of the Facility.
- Increased construction and operational costs associated with a misinterpretation of the design or a failure to build to the design specification.
- Increased escalation costs due to incorrect estimation of the time required to complete construction.
- Increased capital costs due to underestimation of cost of capital equipment.
- Costs associated with the Facility not achieving completion on schedule.
- Increased recurrent costs associated with the Facility not being available for use as intended eg costs associated with provision of temporary alternative accommodation/inefficient use of space.
- Costs associated with facilities maintenance due to industrial action specific to the facilities staff.
- Costs associated with funding alternative arrangements for facilities maintenance in the event that a facilities maintenance contractor becomes insolvent.
- Increased facilities management costs due to operating costs being higher than anticipated.

7.59 Quantification of the benefits listed above, and others not included, is set out in Table 12 which shows the percentage of risk that was quantified relative to the relevant raw costs.

Table 12: Percentage of Risk Allocated in the Public Sector Comparator

Project Component	Retained Risk	Transferred Risk	Total Risk
Design & Construction	0.87%	11.60%	12.46%
Recurrent – excl lifecycle	1.49%	10.68%	12.18%
Lifecycle	0.18%	3.43%	3.61%

Source: KPMG, *Public sector Comparator Report*, (26 November 2010) 15

7.60 In light of the evidence received, the Committee considers that the range of benefits arising from the transfer of risk is likely to exceed the actual quantification of those risks. However, while the transfer of risks offers a range of benefits, the Committee also considers that there are significant limits to these benefits which need to be acknowledged.

7.61 Firstly, while SeNTinel may bear the formal responsibility for a risk, that risk may still have consequences which the Government will need to manage if it eventuates. For example, commissioning risk, which refers to the possibility that the Facility cannot be completed, or does not comply with contracted obligations, has been transferred to SeNTinel. Although SeNTinel would face the increased costs associated with the occurrence of either of these scenarios, continued delays in commissioning would also impact negatively on the Territory which would have to manage ongoing issues in a facility which is currently unable to effectively meet Territory needs.

7.62 Secondly, as the Auditor-General outlined in his October 2012 Report, the Government bears the risk of an 'implied guarantee' that requires it to step in to rectify a failure of the contractor, notwithstanding the legal obligations of the contractor, because the consequences of allowing the contractor to fail are intolerable. An example of this was the Victorian PPP for the expansion of the Ararat Prison, where the Government incurred additional expenses after the project builder was placed into liquidation.

The Extent and Nature of Territory Government Risk Exposure

7.63 The Committee notes that a range of risks are retained under the Deed. However, as shown in Table 12 above, the percentage of risk retained by the Territory is minimal. In addition, it notes Mr Coleman's comments that the benefits of risk transfer are not confined to the design and construction of the Facility but flow on through the 30 year maintenance period:

> [the Territory] would not have the benefit, ... under the design and construct arrangement, of the automatic flow-on into the maintenance for 30 years and, potentially, the better value for money in the choice of materials and whatever to give it an improved lifecycle performance.[104]

7.64 In response to concerns about the risk of project company insolvency, a concern highlighted by the problems experienced by the Victorian prison project in Ararat, the Committee noted comments from Mr Wagner regarding strategies to minimise this risk:

> The whole PPP procurement process is a risk management process and we have looked at the Ararat example. Our broad approach is to ensure we get the project right in terms of our needs so the detailed output spec, and we put much effort into getting that part of it right. We have also, by way of contrast with the Ararat example, picked a tier 1 contractor - one of the larger contractors around Australia.

[104] PAC Hearing, 17 December 2012, Mr Pat Coleman, 15

> We will ensure we have adequate contract supervision throughout the build phase ... . We will progressively ensure what they are doing is right. ...
>
> The changes to the documents have also been well-documented. ... Whilst we had to negotiate the deed up front, we had to ensure any negotiation undertaken was well-documented so there are no arguments ongoing. Also, ... the proponent's bid was pretty well on the money and one of the huge risks on these things is they under-price it and then have cash flow problems. We are confident they have adequately addressed the pricing side of it.
>
> We are also using, for the first time, the financers. The Ararat experience has brought the financers to the fore and there was a meeting this morning with ... 19 of the 22 representatives of the financers - and they have a particular interest to ensure the contractor does not fall over half way through one of these processes. They are very confident at the moment.
>
> We get independent project team reviews. We have independent expert consultants and, in addition, as belts and braces, I have provided staff from my department to be on site to supervise - eyes and ears and feedback to the contract administrators any issues. We will deal with them progressively rather than letting it get big.
>
> In summary, these types of projects have inherent risk. It is how we manage them. I have tried to outline our approach and am confident it is going very well and all the parties I have been talking to - I try to get out there each month - are very happy with the progress.[105]

7.65 Notwithstanding that, overall, the risks to the Territory are small, the Committee nevertheless considers that the inherent risks associated with a long term project need to be addressed. In particular, these risks include the potential for corporate memory to be lost through inadequate succession planning and the failure to adequately maintain ongoing documentation about the project.

7.66 In his October 2012 Report, the Auditor-General noted his concerns about the risks associated with the failure to adequately manage the Contract over its whole term:

> It is important that this degree of diligence will need to be maintained until 2044. To reduce the risk of contract failure, the accompanying need for Territory intervention, and the accompanying risk of higher costs it is recommended that one agency has responsibility for the management of the Contract over its life.
>
> During the construction phase of the project, that responsibility should rest solely with the Department of Infrastructure.
>
> The most appropriate Agency in the period following commissioning of the precinct is the Department of Correctional Services. Responsibility should be allocated to one unit within that Department with that unit being responsible for ensuring that the Territory's interests are protected. Given the life of the Contract, it will be important to ensure that the transfer of knowledge, experience and skills occurs over the years to ensure that the Territory's interests are not compromised.[106]

7.67 The Committee requested Mr Middlebrook, the Commissioner of Corrective Services, to outline existing strategies to mitigate this risk. Mr Middlebrook

[105] PAC Hearing, 26 March 2012, Mr Wagner, 5

[106] McGuiness, F. *Auditor-General's October 2012 Report to the Legislative Assembly* (2012)31

noted that as part of their commissioning plan, the Department of Correctional Services has appointed a Contract administrator to monitor the Contract. In addition, the Department is currently carrying out succession planning for all positions including that of the Contract administrator. Mr Middlebrook further noted that:

> Corrections has also appointed the General Manager for that Facility. .... He is working very closely with the other officer with the project team, so much documentation is now taking place to ensure we have the full history captured to help us with that record and maintain oversight as we move forward.[107]

7.68 The Committee agrees with the Auditor-General's recommendation that the Department of Correctional Services should maintain responsibility for managing the Contract for the Darwin Correctional Precinct. Without diluting this responsibility, the Committee considers that Correctional Services should draw on the expertise of Treasury, as the agency responsible for PPP policy, to ensure best practice in the management of the Contract and establish processes to ensure accountability for the management of the Contract throughout its term.

Recommendation 1

The Committee recommends that the Department of Correctional Services:

a) Develop a Contract management plan for the agreement with SeNTinel in consultation with and agreed by Treasury prior to the handover of the Facility;

b) Report to the Minister for Correctional Services on the performance of that plan annually; and

c) Submit the plan to Treasury for review for consistency with best practice and any current guidelines every three years.

[107] PAC Hearing, 26 March 2012, Mr Middlebrook, Commissioner, Correctional Services, 4

8 Value for Money Assessment

Methodology for Assessing Value for Money

8.1 The National Guidelines notes that 'Value for money is a critical focus of PPP procurement' and that the assessment of value for money should be based on both quantitative and qualitative considerations.[108] Quantitative assessment of value for money is measured by comparing the risk adjusted Net Present Cost of the Request for Proposal responses against the Net Present Cost of the Risk adjusted Public Sector Comparator.

8.2 Net Present Cost is defined as 'The equivalent cost at a given time of a stream of future net cash outlays ...'.[109] These future net cash outlays are calculated by discounting the actual values at the appropriate Discount Rate. Volume 5 of the National Guidelines provides detailed guidance on how to determine what discount rate is appropriate.

8.3 A key concept used to determine the discount rate is systematic risk. This refers to 'Market-wide risks that affect all asset classes and cannot be reduced by Diversification', that is, they cannot be reduced by holding a range of assets in which gains from some assets offset losses from other investments.[110] Basically, the old adage 'Don't put all your eggs in one basket' does not safeguard you from systematic risk. Systematic risk contrasts with project specific risk. The latter refers to risk '... that is specific to an asset that may be reduced, or even eliminated by the use of Diversification.[111]

8.4 In a PPP arrangement, where systematic risk is transferred to the private sector, the National Guidelines recommend that a Nominal Risk Free Discount Rate be used to calculate the Net Present Cost of the Public Sector Comparator. The '... Nominal Risk Free Rate reflects the current cost of debt for both government and the private sector...' and should be based upon a long-term government debt instrument.[112]

8.5 The discount rate used to calculate the Net Present Cost of Request for Proposal responses will often be higher than that used by the government as it must take into account the value of the systematic risk borne by the private sector. This is essential for the value for money comparison as it enables the Net Present Cost of Request for Proposal responses to be compared with the Net Present Cost of the Public Sector Comparator on a like for like basis. Effectively, discounting future cash outlays at a higher discount rate cancels out the extra costs that private sector Proponents take on through their assumption of systematic risks. Detailed information on how to achieve an appropriate discount rate is set out in Volume 5 of the National Guidelines.

[108] Infrastructure Australia, Volume 4, 10
[109] Infrastructure Australia, Volume 5, iv
[110] Infrastructure Australia, Volume 5, v
[111] Infrastructure Australia, Volume 5, iii
[112] Infrastructure Australia, Volume 5, 37

8.6 Although the National Guidelines focus primarily on quantitative aspects of value for money assessment it is noted that qualitative factors can be particularly important where the lowest private bids are close to the Public Sector Comparator. Qualitative factors typically considered include:

- Service delivery and operational requirements;
- Interface/relationship and project management; and
- A range of design considerations.

8.7 In some instances, qualitative factors may cause a PPP to be considered the best value for money even where the quantitative assessment shows little or no benefit. For example, if the Net Present Cost of a PPP is equal to or slightly more than the Public Sector Comparator but has a delivery mechanism which provides greater cost certainty, and decreases the government's risk exposure, it may be considered to offer better value for money than the Public Sector Comparator.[113] If value for money decisions are influenced by qualitative factors it is recommended that these be documented to ensure that a verifiable decision trail is available for those involved in the decision making process.

Compliance with National Guidelines Methodology

8.8 The value for money comparison was primarily based on the methodology set out in the National Guidelines in Volumes 2 (Practitioners' Guide, section 12.2), 4 (Public Sector Comparator Guidance, sections 3.1 and 9.4) and 5 (Discount Rate Methodology Guidance).

8.9 National Guideline recommendations were followed with regard to the discount rates to be applied to the Public Sector Comparator, and to the SeNTinel bid. The discount rate applied to the Public Sector Comparator at Financial Close was the 10 year Northern Territory bond rate on the 5 October 2011, as advised by the Northern Territory Treasury (4.98%), and the discount rate applied to the SeNTinel Base Case Financial Model (6.16%) reflected relevant National Guidelines.[114]

8.10 There is one slight divergence from the National Guidelines which is worthy of mention. The National Guidelines recommend assessing financial value for money by comparing the Net Present Cost of the Risk Adjusted Public Sector Comparator with the Net Present Cost of the Request for Proposal responses. In addition, they recommend that the retained risk included in the Risk Adjusted Public Sector Comparator should be added to each Request for Proposal response. This ensures that the total project delivery cost is shown and enables a like for like comparison (Volume 4, p10). However, in this project, the Request for Proposal responses were compared to a 'Bidder Comparable Public Sector Comparator' rather than to the Risk Adjusted Public Sector Comparator. A Bidder Comparable Public Sector Comparator includes raw capital costs, raw

[113] Infrastructure Australia, Volume 2, 63
[114] KPMG, *Final Value for Money Report*, 4

recurrent costs, and transferable risk. It differs from the Risk Adjusted Public Sector Comparator in that retained risk is excluded from the Bidder Comparable Public Sector Comparator calculation.

8.11 Although the Risk Adjusted Public Sector Comparator and the Bidder Comparable Public Sector Comparator represent different approaches they both enable a like for like comparison. However, if the method recommended by the National Guidelines is adopted, the cost of both payments and risks will be shown for both the Public Sector Comparator and the Request for Proposal responses. This is not the case when using the Bidder Comparable Public Sector Comparator as the risk retained by government is excluded. This does not invalidate the value for money comparison as use of the Bidder Comparable Public Sector Comparator still allows an accurate comparison of the payments to be made. However, the proportional difference between the Request for Proposal responses and the Bidder Comparable Public Sector Comparator will be slightly larger than the proportional differences between the Request for Proposal responses and a Risk Adjusted Public Sector Comparator, ie, if value for money is expressed as a percentage of the assessed cost, that percentage figure will be slightly larger.

Results of the Value for Money Comparison

8.12 A brief summary of value for money assessment, throughout various phases of the Project, is provided in the Final Value for Money Report (draft 2) (KPMG). The value for money assessment included both quantitative and qualitative elements and found that SeNTinel's final negotiated bid offered better value for money than was demonstrated through the Bidder Comparable Public Sector Comparator. Table 13 shows the quantitative difference in cost between the Public Sector Comparator and SeNTinel's bid.

Table 13: Value for Money Analysis

VFM (AUD'M) (NPC values are stated as at 30 June 2011)	
Unadjusted NPC of the Sentinel model at Financial Close	800.7
Days in arrears adjustment	(2.7)
Revised NPC	798.0
Bidder comparable PSC	801.0
VFM	**3.0**
VFM%	**0.4%**

Source: Adapted from KPMG, *Final Value for Money Report, Draft 2*, (2011) 3

8.13 The qualitative factors assessed as contributing value for money are summarised below:[115]

- Immediate design and construction activity with consequent benefits for retention of construction trades and stimulus to the local economy.
- Reduced risk exposure – under the PPP the Territory has no exposure to the impact of risks borne by SeNTinel. However, if the Public Sector Comparator form of delivery had been adopted there was a 50% chance that the value of these risks would have been higher than the estimate contained within the Public Sector Comparator.
- Greater cost and time certainty - under the PPP arrangement there is a strong incentive for SeNTinel to complete the facilities on time, reducing the risk of unexpected delays in the availability of the new facilities.
- SeNTinel's management of the design and construction of the Facility, and their long term Contract for the management of non-core services, reduces the need for Territory employees to be involved in these areas . In particular, it frees up Corrections staff to focus on their core business.
- Option to extend delivery of facilities maintenance services for an additional 10 years with the prices for these services having been pre-agreed. These pre-agreed prices are significantly less than could be provided by the Territory under the delivery approach assumed in the Public Sector Comparator.
- Refinancing Gains and Losses.

8.14 The Committee notes that, on a purely financial basis, the value for money assessment, while positive, is clearly marginal. However, the qualitative factors in favour of the SeNTinel proposal, combined with the marginal financial benefit, means that SenNTinel's PPP proposal delivers clearly better value for money than other traditional contract models. Arguments can also be made that the Territory's avoidance of a range of risks make the proposal more attractive. In this respect, the Committee notes the relevance of Mr Wagner's comments:

> I also point out the national PPP guidelines state and recognise there can often be a line ball situation comparing the Public Sector Comparator and the PPP option. In fact, the guidelines recognise that governments may still choose to proceed with the PPP option even where little or no value for money is evident or quantified. This is a quote from the guidelines, 'For instance, a bid could be considered to offer value for money compared with the PSC because the PPP delivery mechanism, by its nature, provides greater cost certainty and decreases government's risk exposure'. That is nice summary of what finally and ultimately influenced the government, notwithstanding this line ball quantitative evaluation of value for money.[116]

[115] KPMG, *Final Value for Money Report,* 5
[116] PAC Hearing, 26 March 2012, Mr Wagner, 12

9 Optimum Value for Money

9.1 The tender assessment process indicated that SeNTinel's was the preferred proposal, and the value for money assessment indicated that the chosen proposal represented better value for money than the Public Sector Comparator. However, the chosen proposal could have provided a lower Net Present Cost if a different repayment profile had been chosen.

9.2 The Territory also considered a step down quarterly payment profile which reduced the Net Present Cost of the Project by approximately $21m and a "non-lumpy lifecycle profile" which reduced the Net Present Cost of the Project by approximately $4 million. However, these lower cost options were rejected as being less affordable in the short term.[117]

9.3 The Under Treasurer explained to the Committee why the lowest Net Present Cost option was not pursued:

> Why opt for something that is not the lowest net present cost (NPC). There are a number of reasons, as I understand it, for opting for a smoother, more even, profile over time... Clearly, it was a downward sloping payment profile. That is where you have had a higher payment up front and a lower payment down back - that was a lower net present cost. The problem with that, which was not reflected in the net present cost calculations, was if you have a downward sloping - a front-ended payment schedule and a thin payment schedule at the backend that, in fact, sees the government taking on greater risks. This is because the builder and maintainer of the facility does not have "skin in the game" at the end of the life of the facility and it is more likely, because they do not have as much skin in the game - they are not still waiting for a good share of return of their capital - they will then deliberately or inadvertently slacken off in their role and see responsibilities and risks and costs shift back to government.
>
> By having a flat profile it was believed, at the time, there were advantages when it came to risk management that had a value. Those values were not reflected in the NPC but they could have been, but they were qualitative considerations. That is probably the fundamental reason. However, at the time it was thought that by evening out and not having such a steep and high upfront cost it might cause less pain to the government of the day's budget and require less borrowing during a time when there were emerging budgetary difficulties. That influenced some people, although that should not have been quite a concern in one sense in that if you front-end a payment you are paying off more principal up the front end and that then does not affect your budgetary bottom line. The payment of principal does not affect your budgetary bottom line so it might have been an overstated concern there.
>
> A more realistic financing concern would be okay. If you had more upfront payments the government would have had to borrow that and the cost of those borrowings would have needed to be taken into account. The more borrowings up front the more, in some sense, financing risk and debt risk the government would have taken on.
>
> Primarily, the attraction in the fairly flat schedule is to ensure the private partner continues to have a very firm financial interest in the success of the

[117] KPMG, *Final Value for Money Report*

> operations, and that was effectively valued as sufficient to offset the apparent NPC differential.[118]

9.4 While accepting that managing the various risks outlined by the Under Treasurer may justify not choosing the proposal with the lowest Net Present Cost, the Committee found that affordability rather than risk was the rationale for the payment profile chosen in the documentation it examined.

9.5 The Committee notes that 'affordability' in this context means having to pay less now at the price of paying more in the future. Optimum value for money is obtained by reducing Net Present Costs as much as possible subject to any qualitative considerations.

9.6 The Committee therefore found that the PPP arrangement with SeNTinel provided better value for money compared to the proposals offered by other proponents, and to the Government constructing and maintaining the Facility itself. However, within the SeNTinel proposal the Government could have chosen a repayments schedule with a lower Net Present Cost and, therefore, notwithstanding the above benefits of the chosen repayment schedule, arguably greater value for money.

[118] PAC Hearing, 26 March, Mr Tregilgas, 9

10 Cost of the Project

10.1 The Darwin Correctional Precinct is a complex project requiring years of preparation and construction. The PPP arrangements under which the Facility will be built also provide for the maintenance and management of the Facility over 30 years (+ 10 year option) and payments for the Facility over 30 years from 2014.

10.2 Determining the cost of such a project is affected by three significant questions:

- How should payments that will occur well into the future be valued; and
- What costs, in addition to payments made to the consortium, should be included as project costs; and
- If looking at particular aspects of the whole project, such as design and construction, how are such costs to be isolated from the other costs and benefits of the project.

Warning on Costs

10.3 There is no simple, objective answer to the question of what a major infrastructure project costs. While there are effective methodologies for identifying costs for specific purposes, these methodologies are only good for that purpose. Such methodologies allow comparison of different projects and proposals by applying them consistently to different scenarios. They may be altogether misleading, however, if costs under one methodology are compared with costs under a different methodology.

10.4 For example, when speaking of the cost of a house people will commonly refer to its sale price, and this allows an effective comparison between one house and another. However, when considering how much money is required to buy a house, the cost is commonly considered to be the sale price plus stamp duty, legal fees, inspections and other transaction costs. Having established this ‘money needed to buy’ cost for a house, it would be most misleading to compare it with the sale price of another house to assess their relative value.

10.5 When also considering different financing models, and the range of risks inherent in a major infrastructure project, the methodologies for assessing costs become more complex and varied. They therefore become more misleading when taken out of context or inappropriately compared with different methodologies.

Future Costs

10.6 In most contexts, the appropriate way of valuing future payments is to apply a discount rate. This is done by decreasing the value of a future payment by a certain percentage for each year into the future.

10.7 This is done because having use of the money now rather than later has a value; for example, it can be invested or, for a home owner with a mortgage, it can reduce the level of debt and thereby reduce interest payments.

10.8 The vital issue is determining the rate at which to discount future payments. This will vary for different situations but, commonly, the discount rate applied will be the cost of the money, that is either the cost of getting the money or the opportunity cost of not putting the money to the best alternative use. According to the National Guidelines, the discount rate 'reflects the time value of money and the premium that is required by investors in the project to compensate them for the Systematic Risk inherent in the project'.[119]

Scope of Costs

10.9 The PPP arrangement gives a clearly defined cost for the design and construction of the precinct of $495 million, which is to be financed by SeNTinel and paid for by the Territory in quarterly payments of $13.65 million from the commissioning of the Precinct in 2014 until 2044.

10.10 However, there are other costs involved in such a project, such as costs relating to developing the proposal, tendering and management. Whether these costs are included as part of the cost of the Project depends upon the context. For example, when wanting to compare the cost of the agreement with alternative ways of delivering the Project it is useful to look at the payments to be made under the agreement, when wanting to determine the capital cost of the Project it is necessary to apply the appropriate accounting standards regarding direct costs, and when wanting to look at the overall cost of delivering the Project it is necessary to include all indirect costs.

10.11 By way of analogy, when looking at the cost of a house, one may look at the purchase price to compare it with other houses, the purchase price plus transaction costs such as stamp duty and legal fees to determine how much money you will need to buy it, the size of the mortgage payments to determine whether you can afford it, the value of those mortgage payments over time to determine if it is a good investment, or all those costs plus the time and stress involved in looking for houses if considering whether to enter the market.

Isolating Design and Construction from Other Costs

10.12 The Project is to be delivered by the Consortium as a complete package. While there are agreements and payments relating to specific aspects, both the proposal from the Consortium and acceptance by the Territory of the proposal as offering the best value for money were ultimately dependent on the whole proposal rather than the constituent parts.

10.13 While it is possible to isolate costs that are directly attributed to design and construction under the Deed of Agreement, it may be misleading to consider

[119] Infrastructure Australia, National PPP Guidelines, Volume 5, *Discount Rate Methodology,* (2008) 7

these figures as an accurate reflection of the cost as it is possible that they include benefits of the proposal that would not be received under a simple design and construction agreement (such as the Consortium building to a higher standard to keep down maintenance costs they will incur), or that the costs are not accurately attributed to different parts of the Project (such as the Consortium seeking a lower margin on construction which is recovered by a higher margin on the maintenance costs).

10.14 Consequently, any assessments of the design and construction costs are subject to uncertainty and variation depending on the approach taken to isolating the costs and benefits of design and construction from the costs and benefits of the agreement as a whole.

The Payments Under the Agreement with Sentinel

10.15 Under the Deed of Agreement with SeNTinel, the Territory is to make the following payments:[120]

Quarterly Service Amount Non Indexed: 120 payments of $13,650,620 from September 2014 to June 2044 totalling an amount with a nominal value**[121]** of $1,638 million.

These amounts are Capital Payments covering principal, interest and equity.[122]

Quarterly Service Amount CPI Indexed: 120 payments of $473,860 from September 2014 to June 2044, indexed according to the Consumer Price Index totalling a **real[123] amount of $56 million**.

These amounts are to cover a portion of facilities management costs and SPV management costs.[124]

Quarterly Service Amount LPI Indexed: 120 payments of $806,840 from September 2014 to June 2044, indexed according to the Labour Price Index totalling an **approximate real[125] amount of $97 million.**

These amounts are to cover a portion of facilities management costs and SeNTinel's management costs.[126]

[120] These payments may be subject to Abatement or Utility Usage Adjustment under Schedule 6 of the Deed.
[121] The sum of the number of dollars of each payment with no discounting for time or adjustment for inflation.
[122] Clause 1 Glossary, Schedule 6, Project Deed.
[123] The sum of the dollar amounts to be paid prior to adjustment for inflation. As the amounts to be paid will be adjusted for inflation from October 2011, this sum represents the value of all the payments in 2011 dollars without any discounting for time.
[124] Clause 1 Glossary, Schedule 6, Project Deed.
[125] The sum of the dollar amounts to be paid prior to adjustment for inflation. As the amounts to be paid will be adjusted for inflation in the price of labour from October 2011, which is likely to be slightly more than the consumer price index, this sum will likely be slightly less than the value of all the payments in 2011 dollars without any discounting for time.
[126] Clause 1 Glossary, Schedule 6, Project Deed.

Quarterly Lifecycle Amount CPI Indexed: 120 payments varying between $75,030 and $2,263,860 according to figures set in the Deed from September 2014 to June 2044, indexed according to the Consumer Price Index totalling a **real[127] amount of $146 million**.

These represent payments for Building Management Services for the periodic refurbishment and replacement of the Facility as necessary to maintain the look and amenity of the Facility under the Deed.[128]

The Costs of the Risks Retained by Government

10.16 The risks that the Government has retained under the arrangement remain a cost of the Project for the Government. According to the value for money assessment the Net Present Cost of the construction and recurrent risk retained by Government was around $5 million.

Other Costs of the Project

10.17 In addition to the payments made to SeNTinel for the Project, the Territory has the following additional costs (of which, at February 2013, $21.3 million has been spent and $9.8 is estimated future expenditure):

Additional whole of project costs

NTG Funded equipment	1.5
Project management costs, procurement costs and associated fees	12.9
Headworks Infrastructure	16.0
Losing bidder reimbursement	0.7
Total whole of project costs	**31.1**

The Cost of the Payments for the Design and Construction

10.18 As noted above, the Territory is to make 120 payments of $13,650,620 from September 2014 to June 2044 totalling an amount with a nominal value of $1,638 million to pay for the design and construction of the Facility.

10.19 To determine the present value of these future payments they must be discounted according to the timing of the payments.

10.20 Arguably an appropriate discount rate to determine the cost to the Territory of these future payments would be the PPP rate applied when determining the value for money assessment: the risk free rate plus the systematic risk taken by

[127] The sum of the dollar amounts to be paid prior to adjustment for inflation. As the amounts to be paid will be adjusted for inflation from October 2011, this sum represents the value of all the payments in 2011 dollars without any discounting for time.

[128] Northern Territory Government, *NTSF PPP Project Deed,* prepared by Mallesons Stephen Jaques, Clause 1 Glossary, Schedule 6, (30 September 2011).

SeNTinel. According to the value for money assessment conducted by KPMG, that rate at 30 June 2011 was 6.16%.

10.21 When discounted at 6.16%, the present value of the payments at 30 June 2011 was $629 million.

The Cost of Payments for Management and Maintenance

10.22 The management and maintenance of the Facility for 30 years from its construction is covered by the three indexed quarterly service amounts set out above, which have an approximate real value of $300 million.

10.23 When these payments are discounted at the PPP rate to 30 June 2011 their present value is $169 million.

The Cost of the Darwin Correctional Facility

10.24 As noted above, there are numerous methods of costing a major infrastructure project; each method having a different meaning and purpose. The following may be concluded from the above figures:

Price of the Design and Construction

10.25 Under the agreement with SeNTinel, the price charged for the design and construction of the Facility is $495 million (the figure quoted by the then Government in Hansard and press releases).

Fair Value of the Design and Construction

10.26 For accounting purposes, the fair value of the Facility when constructed (SeNTinel's design and construction and other capitalised costs) will be $521 million.

Cost to the Territory of the Payments for Design and Construction

10.27 Discounted as at 30 June 2011 at the discount rate for the PPP, the present value to the Territory of the future payments for design and construction was $629 million.

Cost to the Territory of the Payments for Design and Construction, and Management and Maintenance.

10.28 Discounted as at 30 June 2011 at the discount rate for the PPP, the present value to the Territory of the future payments for design and construction, and management and maintenance was $629 m (construction payments) + $169 m (recurrent payments) = **$798 million** (the cost of SeNTinels proposal given in the Project Summary).

Total Cost of Design and Construction to the Territory

10.29 The total of all the costs to the Territory identified as attributable to the design and construction of the Facility, both direct and indirect are:

Cost	$million
PV of Quarterly Service amounts non-indexed	629
Approximate PV of Risk retained by Government	4
Additional whole of project costs	31
Total	**664**

Total Cost of the Project, Including Design and Construction, Management and Maintenance, Additional Project Costs and Retained Risk

10.30 The total of all costs of the project are:

Cost	$million
PV of Quarterly Service amounts non-indexed	629
PV of Quarterly Service amounts indexed	169
Additional whole of project costs	31
Approximate PV of Risk retained by Government	5
Total	**834**

11 Adequacy of Cost Disclosures

11.1 In a modern democracy in the Westminster tradition, the concept of 'adequate disclosure' is informed by the accountability of the executive government to the legislature, and the presumption of freedom of information for citizens.

11.2 In recent years, there has been a proliferation of PPPs in Australia and overseas. As PPPs are highly complex and, by their nature, constitute an entity in which both public and private sector interests have a presence, it is not surprising that there has been growing debate about the extent to which disclosures relating to PPP projects adequately meet government requirements of accountability and transparency. Consequently, this chapter first reviews issues which are commonly raised in relation to disclosure and accountability in PPP arrangements. It then discusses the key Australian frameworks used to guide disclosure decisions. This is followed by a summary of the disclosures made to date for the Darwin Correctional Precinct and, subsequently, an assessment of the adequacy of disclosures made in relation to the broader principles underpinning government accountability and transparency.

Issues Associated with Disclosure and Accountability in PPPs

11.3 The National Guidelines note that '... full disclosure should be the default position for a PPP contract with the private sector ...', however, this is qualified by allowing for '... consideration of voluntary disclosure of the following:

- Trade secrets;
- Genuinely confidential business information; and
- Material which, if disclosed, would seriously harm the public interest. [129]

11.4 These exceptions point to the challenges governments face when balancing public accountability requirements with the private sector's interest in maintaining commercial confidentiality. This potential conflict is a natural outcome of fundamental differences in public and private sector reasons for entering into PPP arrangements; governments aim to serve the public through capital investment projects while private partners aim to generate profits.

11.5 It has been argued that the involvement of private partners in government decision making and program delivery has ramifications for how public accountability is maintained. Traditional mechanisms, based on '... vertical chains of authority in typical bureaucratic institutions, or principal-agent relations in short-term contracts ...', are unlikely to be effective in PPP arrangements.[130] This is partly because a PPP is an organisational partnership and, as such, is non-hierarchical and characterised by horizontal relationships in which decision

[129] Infrastructure Australia, National PPP Guidelines, Volume 2, *Practitioners' Guide*, (2008) 33.
[130] J. Forrer, J.E. Kee, K.E. Newcomer, and E. Boyer, "Public-Private Partnerships and the Public Accountability Question", *Public Administration Review*, May/June, (2010).

making is shared and a careful balance is developed between synergy and respective autonomy. Other factors which influence the ability to maintain accountability in relation to PPPs include the length of the contract (usually 25-30 years) and the fact that contracts cannot be easily severed due to the integration of responsibilities along a number of long term dimensions.[131]

11.6 A key concern with respect to accountability is that the transparency of the government's financial commitments will be reduced. This relates primarily to economic infrastructure projects which are usually not recorded on the government's balance sheet.[132] Off balance sheet arrangements can reduce accountability to both the Parliament and the public because key financial information is not made available to capital markets or to members of the public who may wish to monitor the government's financial performance.

11.7 A second factor viewed as compromising public accountability is the use of commercial confidentiality exclusions, as these limit public and parliamentary access to key information on major PPP contracts. At the same time, commercial in confidence exclusions can serve a legitimate purpose. Release of commercially sensitive information, particularly at inappropriate times, could jeopardise the commercial interests of the private sector. Equally, as noted in a NSW Parliamentary Inquiry into PPPs, in some situations it may be necessary for governments to withhold the public release of documents '... in order to preserve relationships during negotiations for other contracts'.[133]

11.8 However, a submission to the Victorian Public Accounts and Estimates Committee noted that it is important to minimise these restrictions where possible, as:

> If governments keep private investment contracts secret, or use commercial in confidence reasons to black out large chunks of the contracts, then community support for them will quickly turn into rejection.[134]

One method for managing this issue is suggested by Professor Richmond who comments:

> ... contracts should be released but the timing ought to be agreed with the Auditor-General and an agency should make a case for saying there are a hundred documents however this part of this document, or this document, should not be released at this time but it can be released in, say, three months time when we have finished the negotiations or the consortium has, so they are not disadvantaged by that.[135]

11.9 In addition to the above, there are strong arguments that disclosure practices, for both cost and contractual information on PPPs, are inadequate, and

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[131] Forrer et al, 478
[132] Chan et al, 181
[133] NSW Parliament, Public Accounts Committee, 'Inquiry into Public Private Partnerships', Report No. 16/53 (159), (June 2006) 53.
[134] Parliament of Victoria, Public Accounts and Estimates Committee, "Report on Private Investment in Public Infrastructure", (2006) 104.
[135] Professor D.Richmond, *Transcript of Evidence*, 16 February 2006, p33, cited in Parliament of New South Wales, Public Accounts Committee, "Inquiry into Public Private Partnerships", (2006) 53.

demonstrate inconsistencies in the type and amount of information they provide to the public.[136] Researchers, in particular, have commented on the paucity of information available and noted that this poses significant barriers to the independent and ongoing assessment of PPPs.[137] In the absence of such assessment it is difficult to ascertain the value that PPPs have to the community or to identify how the model could be improved.

11.10 Overall, the literature on disclosure practices suggests that there is a policy lag. With some exceptions, mechanisms for ensuring accountability and transparency in PPP arrangements are not well developed. Consequently, there appears to be considerable reliance on the standard disclosure requirements developed for traditional models of infrastructure delivery. These may not be effective in ensuring transparency and accountability in a PPP arrangement which is characterised by more complex organisational relationships. Although jurisdictions in which PPPs are more common, such as NSW and Victoria, have progressed PPP specific mechanisms to improve disclosure and increase public accountability, there is, as noted by Mr McGuiness, the Auditor-General, considerable scope for '... some leadership at the national level ...' to develop more uniform standards and to provide more detailed and formal guidance on disclosure practices.[138]

11.11 Accountability and transparency are fundamental to good government, and transparent processes are the mechanism which enables the electorate to assess the government's performance. Transparency of government processes provides an incentive for the careful husbanding of resources and reduces the potential for corrupt practices. It is essential for meaningful civic participation, as access to information enables individuals to:

- Assess government performance;
- Participate effectively in the policy and decision making processes of government; and
- Make informed choices.

11.12 The disclosure of information about public infrastructure projects is particularly important as the size of such investments is often substantial and the services delivered through these investments frequently affect large sections of the population.

11.13 Comprehensive disclosure is also essential if the public interest is to be protected, as independent evaluations of projects are the best way of ascertaining the extent to which PPPs do, in fact, deliver value for money. In the interim, adequate disclosure serves to reassure the community that the

136 NSW Parliament, Inquiry into Public Private Partnerships; English, Public private Partnerships in Australia'.
137 NSW Parliament, Inquiry into Public Private Partnerships, 50
138 Legislative Assembly of the Northern Territory, Public Accounts Committee Hearing, (26 March 2013) Mr F McGuinness, 7.

processes designed to ensure value for money have been appropriately followed.

11.14 There is some debate about the extent of the information that should be made publicly available. This is influenced by practical considerations, such as the complexity and length of documents relating to PPPs. Some commentators consider that project summaries are of little value for large projects which often generate information that stretches 'from the floor to the roof'.[139] However, the practice in some jurisdictions is to provide contracts in both full and summary form.

The National Guidelines - General Disclosure in PPPs

11.15 The National Guidelines note the following:[140]

- Full disclosure should be the default position for a PPP contract, taking into account potential exceptions such as trade secrets, confidential business information and material which could seriously harm the public interest if disclosed.
- Care should be taken with the timing of the disclosure of confidential or sensitive information. Confidentiality is particularly important during the bid stage and the disclosure of cost structures at this point in the process would compromise the competitive bidding process.
- A transparent bid process is essential if bidders are to have certainty and for the bid process to meet public procurement probity requirements.
- Governments must ensure that appropriate information is available for release during the service period. To facilitate this, contracts should include an acknowledgement by private parties that disclosure by government of information relating to the contracts under Freedom of Information (FOI) Acts will not breach confidentiality under the contracts.
- Private parties should provide contractual undertakings to use reasonable endeavours to assist government to meet its obligations under the relevant FOI Acts.
- In the interests of transparency, disclosure issues need to be considered and addressed throughout the procurement process.

Mandatory Frameworks for Cost Disclosures in PPPs

Territory Frameworks for Disclosure

11.16 The jurisdictional guidelines for the Northern Territory, as set out in Volume 6 of the National Guidelines, do not include specific criteria for either general or cost disclosures.

[139] Parliament of New South Wales, Inquiry into Public Private Partnerships, 51
[140] Infrastructure Australia, Volume 2, 33

The National Guidelines and Australian Accounting Standards Board Frameworks

11.17 The National Guidelines address cost disclosures within the context of general accounting issues (Volume 2, section 9.2) and note that the Treasury and/or Finance departments of individual jurisdictions are responsible for accounting policy guidelines.[141] These, in turn, are informed by the Australian Accounting Standards Board (AASB) Framework.[142] Consequently, the criteria guiding the disclosure of costs, in relation to public sector investment, are generally determined by the relevant accounting standards. These criteria ensure that cost disclosures meet legal requirements for disclosure in government financial statements.

11.18 Although accounting frameworks form the main source of criteria for cost disclosures, Australian accounting standards have not yet been developed for PPP accounting by the public sector.[143] In the interim, there has been significant reliance on international accounting standards together with relevant AASB standards, which are typically used where the substance of the standards is considered relevant to PPPs.

11.19 The National Guidelines refer to a range of accounting standards which may have relevance for PPPs. In particular, they recommend that cost disclosures be guided by Australian Interpretation 129, *Service Concession Arrangements* (AI 129). Of the range of Australian accounting standards discussed in the National Guidelines, the following are particularly relevant for the Darwin Correctional Precinct PPP:

- AASB 116 Property, Plant and Equipment;
- AASB 117 *Leases*;
- AASB 123 Borrowing Costs.

11.20 Social infrastructure PPPs, such as the Darwin Correctional Precinct, are commonly classified as a finance lease for accounting purposes. Based on AI 129 (paragraph 10), the Project's status as a service concession arrangement requires the Territory to make disclosures about the Project in the notes to the financial statements. This includes information about items that do not qualify for recognition in those statements. By contrast, recognition of the lease (i.e. recognition of the assets, liabilities, income or expenses resulting from the lease) in the Government's financial statements is not required until the lease term has commenced. The commencement of the lease term is defined as the date from which the lessee is entitled to exercise its right to use the leased asset. Hence, the actual cost of the Darwin Correctional Precinct PPP is not required to appear on the Government's balance sheet until construction has finished, with this projected to occur in mid 2014.

141 Infrastructure Australia, Volume 2, 47
142 Department of Treasury and Finance, *Treasurer's Annual Financial Report*, 2011-12, Northern Territory Government, (2012) 3.
143 Infrastructure Australia, Volume 2, 33

Adequacy of Current Guidelines

11.21 Although accounting standards provide specific criteria against which cost disclosures can be measured, the Committee heard evidence that such criteria may be too narrow to provide adequate disclosure about the costs of the Project as a whole. For example, Mr McGuiness noted that:

> ... [the guidance from Infrastructure Australia (National Guidelines)] does not provide too much in terms of what costs you include or exclude from a project such as this. Then people fall back on accounting standards, but the accounting standards really take the view those costs are directly related to the asset necessary to construct it and put it in operation. The application of accounting standards may exclude some costs which are seen as ancillary so this is fertile ground for debate.[144]

11.22 Accounting frameworks primarily guide the content of financial statements and play a key role in ensuring these meet legal requirements. Although they ensure a level of financial accountability they do not ensure the full disclosure of project costs and contractual obligations expected in a modern democracy. In addition, current accounting guidelines do not always require financial reports to specify the costs of each project individually which means that in certain types of financial reports, such as Budget papers, the costs from a number of projects may be aggregated.

11.23 The National Guidelines on general disclosure take into account the need to apply broader principles of accountability and transparency and note that full disclosure of PPP arrangements should be the default position, however, guidance on how to achieve this objective is limited. Responsibility for the provision of disclosure guidelines is largely transferred to individual jurisdictions, with the National Guidelines specifying that, ‘All PPPs will be subject to a government’s specific disclosure requirements arising from tenders and contracts as determined by individual jurisdictions’.[145]

11.24 Evidence to the Committee from the Under Treasurer, Mr Tregilgas, confirmed the lack of formal guidelines for PPPs and noted that:

> ... it is true the Territory does not yet have any formal guidelines regarding cost disclosure or the nature or the form of which costs should be presented. In some senses, what was done in the reporting which took place in 2011 was to basically report disclosed costs consistent with the reporting of costs from other capital works projects and things like that. [146]

11.25 The primary vehicles for government financial reporting include Budget Papers and Treasury Reports.

11.26 In a Budget Paper, the amount that is disclosed for a capital works project equals the cost of construction only; it does not include costs related to program

[144] Legislative Assembly of the Northern Territory, Public Accounts Committee Hearing, 26 March 2013, Mr F McGuinness, 6
[145] Infrastructure Australia, Volume 2, 33
[146] Legislative Assembly of the Northern Territory, Public Accounts Committee Hearing, 26 March 2013, Mr Tregilgas, 5

delivery. The program delivery costs of all projects undertaken by an agency are added together and this aggregate amount is disclosed.

11.27 For the Treasurer's Financial Reports, the value of the project to be disclosed includes both the cost of construction and the direct program delivery costs such as management, development, and design services which are capitalised, in accordance with AASB 123, as part of the value of the asset.

11.28 The application of these disclosure practices to the Darwin Correctional Precinct PPP means that the construction cost of $495 million (the amount SeNTinel charged the Territory for the Facility), and the $26 million costs capitalised as part of the value of the asset, will appear in the Treasurer's Annual Financial Report as both a financial lease asset and a liability after the Territory takes possession of the Facility. Since the financial close on the agreement, the Facility has been foreshadowed in the forward estimates in the Mid-Year Report and notes in the Budget Papers, and its value has been included within note 33 (c) of the Treasurer's Annual Financial Report 2011-12 on 'Other non cancellable contract commitments'.

11.29 In addition to issues about what costs should be disclosed, the Committee was informed by Mr Tregilgas that '... there was some uncertainty at the time about who should be putting this information out' and that:

> The nature and timing of disclosure in 2011 was really based on decisions made by the government of the day against no clear precedent, practice or guideline.[147]

Mr Tregilgas further noted that in developing guidelines it would be important to clarify which parties are responsible for disseminating information and what form the information should take.

11.30 The Committee considers that the lack of disclosure guidelines for PPP arrangements in the Northern Territory needs to be rectified. While PPPs have occurred infrequently in the Territory, they involve very significant sums of money and the Assembly should be adequately informed of the commitments being made.

Disclosure models in Other Jurisdictions

11.31 A number of jurisdictions have substantial experience in delivering public infrastructure through PPPs, particularly NSW and Victoria which, between 1988 and 2006, undertook 59 and 34 PPPs respectively.[148]

11.32 It is not surprising, therefore, that each of these jurisdictions have considered a range of issues associated with PPPs, including those pertaining to disclosure. A brief overview of the mechanisms NSW and Victoria have developed to increase transparency and accountability is included in Table 14 below.

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[147] Legislative Assembly of the Northern Territory, Public Accounts Committee Hearing, 26 March 2013, Mr Tregilgas, 7.

[148] McGeorge & Cadman, Governments & Communities in Partnership – from Theory to Practice, 4.

Table 14: NSW and Victorian – Mechanisms for Accountability and Transparency

Item	NSW	Victoria
Dedicated PPP website	NSW Public Private Partnerships http://www.treasury.nsw.gov.au/ppp	Partnerships Victoria http://partnerships.vic.gov.au/
Comprehensive state based PPP Guidelines	NSW Public Private Partnerships Guidelines (2012)	*Partnerships Victoria* Requirements
Template for Project Summary	No template but the NSW PPP Guidelines include a comprehensive list of items to be included in the summary	Template published on website
Access to project documentation	NSW provides access to the full contract (less confidentiality restrictions) and, in many instances, access to other project documentation. Full contracts and other documentation is held on the website of the agency managing the project but a weblink is provided on the list of contracts on the NSW PPP website	Victoria provides access to the full contract (less confidentiality restrictions) and, in many instances, access to other project documentation. This information is provided through links on the Partnerships Victoria website.
Contact details of Project Director	Supplied	Supplied

Source: NSW Public Private Partnership Guidelines; Partnerships Victoria Requirements[149]

11.33 In both NSW and Victoria, the development of a framework has also been informed by parliamentary inquiries, the reports of which are listed below:

- NSW Parliament, Public Accounts Committee, 'Inquiry into Public Private Partnerships', Report No. 16/53 (159), June 2006.
- Parliament of Victoria, Public Accounts and Estimates Committee, 'Report on Private Investment in Public Infrastructure', No. 240, Session 2003-06, October 2006.

11.34 Each report covers a diverse range of issues including those associated with disclosure. Disclosure issues were discussed in some detail and drew on expertise from a variety of sources including industry, academics, relevant experts, and previous Public Accounts Committee Reports addressing similar issues. In the case of NSW, recommendations from the Report resulted in

[149] Web links for these documents are included in the Bibliography.

legislative change through the *Freedom of Information Amendment (Open Government – Disclosure of Contracts) Act 2006 No 115*.[150] This amendment included detailed specification of the particulars of contracts which must be disclosed, including the timeframe within which disclosures must be made.

11.35 The mechanisms developed by NSW and Victoria provide a range of resources that provide detailed guidance on how to manage PPPs in an accountable and transparent fashion. These mechanisms include specific guidelines governing the timing of disclosures as well as recommendations regarding the content that should be included in public disclosures. Although Victoria and NSW have led the way in this respect, Western Australia and Queensland have also made some progress in this area. A summary of the guidelines for each of these jurisdictions is included in Table 15 below.

Table 15: Comparison of Disclosure Guidelines Across Jurisdictions

Public Disclosure of Full Contract (less confidential material)	
Victoria	Within 3 months of financial close; on Contracts website
NSW	Within 60 days of contract execution
WA	Within 6 months of financial close; on Treasury website
QLD	Not specified
Tabling of Project Summary to Parliament	
Victoria	Within 3 months of financial close or nearest Parliamentary sitting day
NSW	Within 90 days of receipt from Auditor-General
WA	Not specified
QLD	Following financial close
Public release of Project Summary	
Victoria	Within 3 months of financial close
NSW	After project summary has been tabled in Parliament it is placed on Treasury website
WA	Within 6 months of financial close; on Treasury website
QLD	Limited version – does not specify background
Provision of Project Summary to Auditor-General	
Victoria	Not specified
NSW	Within 45 days of contract becoming effective
WA	Not specified
QLD	Not specified

150 NSW *Freedom of Information Amendment (Open Government – Disclosure of Contracts) Act 2006 No 115,* http://www.legislation.nsw.gov.au/sessionalview/sessional/act/2006-115.pdf

Disclosure of significant amendments	
Victoria	Not specified
NSW	Within 60 days of amendment; must follow same disclosure procedure as project summary
WA	Not specified
QLD	Not specified
Other requirements	
Victoria	Not specified
NSW	Request for tender documents to be made publicly available. Project summary to appear in public notices once tabled.
WA	Not specified
QLD	Updates to Cabinet on performance of PPPs; PPP outputs in annual agency reports

Source: NSW PPP Guidelines; QLD PPP Guidance Material; WA PPP Project Disclosure Policy; Victoria, Partnerships Victoria Requirements[151]

11.36 Apart from providing the public with access to the complete and final version of the project contract and, in many instances, related contract documents, the main vehicle for releasing information to the public is the project summary. For the majority of the public this document is likely to be the easiest to understand and the one which is most accessible. Consequently, it is particularly important to ensure that it includes comprehensive information in a logical and coherent format.

11.37 NSW, Victoria and WA provide clear guidelines on how to achieve this. All three recommend a two part structure for the summary, part one providing the background and rationale for the project and part two focusing on the commercial features. Victoria and WA both provide a project summary template while NSW provides a detailed list of the project elements to be addressed (the Victorian project summary template is included in Appendix 4 and the NSW list of elements to be addressed in Appendix 5).

11.38 It is also important that the project summary be readily accessible. Tabling in the Parliament is an effective means of making a project summary permanently accessible on the public record, as is the practice in Victoria and NSW. Publication on a dedicated website can also assist.

Disclosures Made to Date

11.39 Public disclosures regarding costs, and the Project generally, have primarily been made in:

- The Project Summary;

[151] Web links to these documents are provided in the Bibliography

- Media Releases;
- The 2011-12 Mid-Year Treasurer's Report;
- Budget Papers;
- Hansard;
- 2011-12 Annual Reports from the Department of Justice and the Department of Construction and Industry (now Department of Infrastructure).

11.40 The type of disclosures made through each of these methods is briefly reviewed below.

The Project Summary

11.41 The Darwin Correctional Precinct Project Summary is modelled on the Victorian template. The key elements of the Project Summary are included below.

Background

- Key Characteristics of the Darwin Correctional Precinct Project
- Rationale for the New Era in Corrections approach to the design and Precinct
- Identification of Project objectives
- Outline of procurement approach and governance structure
- Summary of procurement process, including procurement outcomes, engagement of specialist advisors and probity framework
- Demonstrates quantitative value for money by comparing the NPC of the PSC with the NPC of SeNTinel's winning proposal

Commercial Features

- Contractual relationships
- Summary of risk allocation
- Summary of payment mechanism including specification of term of Contract and quarterly service payment.
- Summary of abatement regime
- Summary of default, termination, emergencies and step-in rights
- Summary of the works/construction program
- Table outlining indicative completion milestones

Media Releases

11.42 Although there were several media releases prior to the selection of SeNTinel as the preferred proponent, the one of primary interest is that made immediately after Financial Close by the then Treasurer, the Hon Delia Lawrie, MLA. This included a brief description of the Project and also noted that:

> The $495 million new prison is a Public Private Partnership (PPP) contract to design, build, finance and maintain the Territory's major correctional Facility over a 30 year period.[152]

The media release was accompanied by a two page summary of the Project and a capital cost comparison between SeNTinel's bid and the Public Sector Comparator. The name and phone number of a media contact person were provided but no name or contact number was provided in relation to the Project.

The 2011-12 Mid-Year Treasurer's Report

11.43 This report contained the following details:

- Described the scope and nature of the Facility and the Project's status as a PPP was noted;
- Date of Financial Close set for 5/10/11;
- The Territory will not make any payments until the Facility is operational and will recognise the asset and associated finance lease liability once construction of the Facility is complete;
- The financial effect of the Facility has been incorporated into forward estimates following Financial Close;
- The construction cost and associated finance lease liability of $495 million has been recognised in the financial statements in 2013-14 which results in a commensurate increase in the cash and fiscal balance deficits in that year;
- The first quarterly service payment of $15 million is expected to commence in early 2014-15 following the commissioning of the new Facility;
- Quarterly service payments in 2014-15 had been previously set aside in budget capacity and therefore have not contributed to the worsening operating outcomes in that year.

Budget Papers

11.44 The 2011-12 Budget Papers noted that it did not include costs for the Darwin Correctional Precinct but that these would be disclosed after Financial Close on the agreement. The 2012-13 Budget recognised $495 million for the Facility in the forward estimates.[153]

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[152] D. Lawrie, 'Prison Deal Heralds Construction', *Media Release,*(6/10/11)

[153] Department of Treasury and Finance, *Budget Paper 2 – Fiscal and Economic Outlook 2012-13*, Northern Territory Government, (2012) 40,/43; Department of Treasury and Finance, *Budget overview 2012-13*, Northern Territory Government, (2012) 16.

Hansard

11.45 Statements made in Parliament between 19/10/11 and 25/10/11, and on 1/12/11, by the then Treasurer, included a description of the Facility, some of the contractual arrangements, and key costs. The key costs disclosed included:[154]

- A '$495m prison to start construction this month'.
- The '$495m construct figure is the figure, ...'.
- '... as a public sector construction in normal procurement, it would have been in excess of $530m. Therefore, landing the Public Private Partnership at $495m was an extremely good outcome, with around a $50m saving'.
- An independent assessment of the scope changes undertaken by Rider Levett Bucknall found that '... the PPP cost of the prison is $51m less than the original estimate announced in 2008 when you take into account the adjustments for scope and construction cost escalations'.
- 'Rider Levett Bucknall provided a revised estimate of $546m ...'.
- 'This is a great correctional facility. We are getting it for $51m less than an independent assessment said it is actually valued at'.
- 'The Public Sector Comparator ... provided an estimated capital cost of $534m.'
- 'Net debt is estimated to increase in 2014-15 to $2.843bn from the May 2011 budget, largely due to the effect of the 2010-11 outcome on the recognition of the debt associated with the Darwin Correctional Facility in 2013-14,...'.
- 'This significant capital investment will increase net capital investment, the underlying cash deficit, and associated net debt by A$495m from 2013-14'.

2011-12 Annual Reports - Department of Justice and Department of Construction and Industry (now Department of Infrastructure)

11.46 The 2011-12 Annual Report of the Department of Justice noted: 'Output revenue of $1.4m for new prison project'.[155]

11.47 In the 2011-12 Annual Report of the Department of Construction and Infrastructure it was noted that 'DCI managed construction of the new prison

[154] Hansard ???
[155] Department of Justice, *Annual Report 2011-12,* Northern Territory Government, (2012) 139

facility at Holtze, valued at $450m and delivered under a Public Private Partnership contract model'.[156]

Adequacy of Cost Disclosures

11.48 The adequacy of cost disclosures in the Darwin Correctional Precinct PPP are first measured against the broad principles of accountability and transparency. From a more practical perspective, adequacy is measured against the disclosure practices of jurisdictions which have more experience of PPPs. Undertaking the latter is useful because it identifies specific mechanisms that can be adopted to improve the way disclosures are made. This section first addresses the adequacy of disclosures from a broad perspective and assesses the extent to which disclosures provided information to the public in a timely and transparent manner. A more specific assessment is then made of the efficacy of the Project Summary against similar documents generated for PPPs in NSW and Victoria.

The Adequacy of Disclosure from a Broad Perspective

11.49 Measured against the broad principles of accountability and transparency, the Committee considers that cost disclosures and, indeed, disclosures about the Project in general, could have been improved. Although disclosures in some forums, such as the 2011-12 Mid-Year Treasury Report and the Project Summary, were informative, the disclosure of information overall was not provided in the clear, accessible and transparent manner that the public has a right to expect.

11.50 In general, the presentation of information lacked coherence and consistency, for example, the costs disclosed in the annual reports are not the same as those disclosed in the 2011-12 Mid-Year Treasury Report.

11.51 The Media release included two attachments with useful information but did not include advice about where more detailed information could be obtained.

11.52 The disclosures made in Parliament were not accompanied by the tabling of a document such as the Project Summary. Although the then Treasurer described the Project and made brief references to the cost of the Facility and its future impact on net capital investment and net debt, partial, verbal disclosures do not carry the same weight as full written disclosure and can easily be misunderstood.

11.53 As noted in Chapter 10, there is no simple, objective answer to the question of what a major infrastructure project costs. This is a particularly vexed question when considering social infrastructure PPPs which include a payment schedule that usually occurs over a long period of time and in which the bundling of

[156] Department of Construction and Infrastructure, *Annual Report 2011-12*, Northern Territory Government, (2012) 9. The Committee has been advised that the amount of $450 million cited in this Report excluded GST.

services with the design, construction and financing of the Facility makes ascertaining the total Project cost even more difficult. However, this should not be an obstacle to full and comprehensive cost disclosure.

11.54 The cost of the Project that was cited most often was $495 million. This figure represents SeNTinel's estimated design and construction costs and was the price SeNTinel put on the design and construction of the Facility when calculating the Territory's non-indexed quarterly service payments. It does not include SeNTinel's other direct costs that are capitalised as part of the value of the financial lease attributed to the Project, which results in the value of the lease and corresponding liability that will be included in the Territory's financial statements when the Facility is occupied, which will be $521 million. It also does not include SeNTinel's other costs related to the design and construction of the Facility which the Renewal Management Board included in its costing of the Project (excluding GST), which gives the figure of $620 million. It should be noted that these figures only reflect accounting values or SeNTinel's costs and none of these figures indicate how much money the Territory will be paying for the Project through the quarterly service payments. These figures also do not include costs under the Project for the management and maintenance of the Facility for 30 years.

11.55 In contrast to states such as NSW and Victoria, the Northern Territory does not have a dedicated website through which information about PPPs can be disseminated to the public. Given the small number of PPPs undertaken in the NT this is understandable, however, it should be possible to situate information about PPPs on an existing website devoted to the provision of information about public infrastructure projects.

11.56 Although the Department of Business had a website which included a list of Awarded Contracts, at the time of this Inquiry, the information provided was minimal and the list did not include the Darwin Correctional Precinct PPP.

11.57 The Department of Infrastructure website included a section for current projects and the Darwin Correctional Precinct PPP was listed here under 'Buildings/Facilities'. However, it only provided a 1-2 page overview of the Project and the contact details of the Project Director; it did not include the full Project Summary or the full Contract and related documents as was standard practice in NSW and Victoria.

The Darwin Correctional Precinct Project Summary

11.58 Although the Project Summary is reasonably comprehensive, a review of the NSW and Victorian guidelines suggests that more detailed disclosure would further increase transparency. For example, it would be useful to include:

- An outline of the major obligations of both the private party and the Territory;
- A summary of the significant evaluation criteria used to assess the bids;
- A summary of the performance measures;

- Information about the rights to extend the lease;
- The processes enabling government modification of services or the Facility;
- Territory rights at expiry of contract including details of asset handover to the Territory; and
- How the service arrangement has been classified.

11.59 Equally, consideration should be given to the inclusion of items referred to in Australian Interpretation 129 as this is the standard recommended in the National Guidelines.

11.60 The overall quality of the Project Summary was good but dissemination could have been improved. Although the Project Summary was initially published on the NT Treasury website it was not published on the Department of Correctional Services or the Department of Infrastructure websites despite the central role played by these departments in the development of the Project. Both of these websites provide a brief one to two page overview of the Project but not the full Project Summary.

11.61 In addition to the items listed in paragraph 11.58, there are two additional items which are regarded as important by other jurisdictions and which therefore warrant consideration for inclusion in the Project Summary. The first item refers to a statement about material that is excluded from disclosure due to confidentiality or other reasons, and the second refers to the inclusion of a public interest evaluation.

11.62 In regard to the first item: the NSW project summary guidelines require the inclusion of a general statement regarding the nature of any material that has been excluded on the basis that it is subject to obligations of confidentiality or is ‘commercial in confidence’. This is based on legislative requirements as set out in the NSW *Freedom of Information Amendment (Open Government – Disclosure of Contracts) Act 2006 No 115* which requires class 3 contracts (of $5 million or more) to disclose: [157]

- The reasons for not publishing the contract or particular provisions in the contract;
- Information as to whether the contract or provisions will be published and, if so, when; and
- Where some but not all of the provisions of the contract have been disclosed, a general description of the types of provisions that have not been published.

11.63 In regard to the second item: the National Guidelines note that consideration of public interest matters is an important part of PPP planning and project development. NSW and Victoria manage this process through a public interest

[157] NSW *Freedom of Information Act*, (2006) Schedule 1, (4), p4

test which is undertaken as part of the procurement options analysis. The test includes eight criteria, one of which relates to accountability and transparency. NSW, Victoria and Western Australia include an overview of public interest considerations in the project summary.

11.64 In the Darwin Correctional Precinct Project, the public interest was considered at various stages of the decision making process. Although the Territory does not use a formal checklist it should still be feasible to include a short overview of the public interest evaluation in the Project Summary.

11.65 Evaluation of the public interest is a key tool in ensuring accountability, and including a summary of the evaluation in a public document provides reassurance to the public and builds trust. This is particularly important in PPPs where the public may have concerns about the effect private sector interests might have on how a project is delivered.

11.66 The Committee considers that costs and other disclosures could have been made more effectively and accurately. However, it notes that a major cause of the inadequate disclosure has been the absence of clear guidelines. This indicates a need to develop detailed guidelines that facilitate better dissemination of information about future PPPs.

Recommendation 2

The Committee recommends that the Treasurer, in consultation with the Auditor-General, develop guidelines for the disclosure of costs and the contractual terms associated with PPPs, similar to the guidelines currently in place in NSW and Victoria. At the very least, this should require a project summary to be tabled in the Assembly.

12 Efficacy of PPP Procurement for the Darwin Correctional Precinct

12.1 The evidence generated throughout this Inquiry strongly suggests that the use of a PPP procurement method to fund and build the Darwin Correctional Precinct provided better value for money than a traditional design and construct procurement. The Committee bases its conclusion on a range of factors set out below.

12.2 In the quantitative value for money comparison the Net Present Cost of the Project through a traditional government procurement approach, as assessed through the Public Sector Comparator, would be $801 million while the Net Present Cost if delivered by SeNTinel would be $798 million.

12.3 Although it could be argued that the cost difference between the Public Sector Comparator and SeNTinel's bid is too small to be of significance, qualitative factors also need to be taken into account. Chapter 8 demonstrated that qualitative factors made a significant contribution to the value for money available through the PPP procurement method. In addition, the Committee notes that a range of other factors have also enhanced value for money including:

- The certainty of payments over the long term;
- The bundling of facilities management and maintenance with construction and design, with this providing incentives to SeNTinel to build with regard to whole-of-life costs, including reducing maintenance costs over time;
- The Territory's option to extend the lease for an additional 10 years which provides SeNTinel with an incentive beyond its contractual obligations to maintain the Facility to last beyond the 30 year agreement; and
- The requirement, built into the Project Agreement, that 75 percent of the workforce must be sourced from within the Northern Territory, thus providing a boost to skills retention, employment and the local economy.

12.4 From a broader perspective, recent research comparing project time and cost outcomes for Australian PPPs with outcomes for traditional procurement delivery methods shows that '... PPPs provide superior performance in both the time and cost dimensions and that the PPP advantage increases (in absolute terms) with the size and complexity of the projects'.[158] Key findings included:

- The superior cost efficiency of PPPs over traditional procurement '... ranged from 30.8 percent when measured from project inception, to 11.4 percent when measured from contractual commitment to the final outcome'.

[158] P. Raisbeck, C. Duffield and M. Xu "Comparative performance of PPPs and traditional procurement in Australia", *Construction Management and Economics,* (2010) 28, 345

- 'Between the signing of the final contract and project completion, PPPs were found to be completed 3.4% ahead of time on average, while traditional projects were completed 23.5% behind time'.[159]

These findings were based on a reasonably substantial sample of 21 PPP projects and 33 traditional projects.

12.5 This research suggests that PPPs have the potential to provide better value for money than traditional design and construction procurement methods, particularly for projects which are large and complex. However, the success of such projects is also influenced by the management process. The lessons provided by the Ararat PPP clearly point to the need for proper evaluation of Proponents, active management, adequate contract supervision, and comprehensive documentation of negotiated changes to the Deed.

12.6 The Committee considers that the Darwin Correctional Precinct PPP has been satisfactorily managed to date. However, if value for money is to be maintained over the life of the Contract, a high degree of vigilance will be required, together with continuity of management through succession planning, and adequate maintenance of Project documentation.

12.7 The Committee is also concerned at the lack of clarity and consistency in the disclosure of Project costs and contractual information. This lack of clarity stems from the absence of disclosure guidelines for ensuring adequate public disclosure of such major projects. While this was only the second PPP undertaken by the Territory Government, the Committee considers that, given the size of such projects, the lack of adequate disclosure guidelines is unacceptable. Comprehensive disclosure guidelines should be established before further PPPs are undertaken in the Territory.

[159] P. Raisbeck et al, 345

Appendix 1: Documents Received

Number	Document Title
1	Northern Territory Secure Facilities (NTSF), Stage 2, Request for Proposals - Evaluation Panel Findings and Recommendations
2	NT Treasury RFP Financial Evaluation Report – Final Draft
3	NT RFP Financial Status Report – Final Draft
4	NT Structured Negotiation Phase – Addendum to RFP Financial Evaluation Report
5	NT Structured Negotiation Phase Financial Status Report – Draft
6	MALLESONS, Request for Proposals, Proposal Evaluation Report – includes five annexures
7	NTSF, Design Summary Assure Partners
8	NTSF, Design Summary Axiom Corrections
9	NTSF, Design Summary SeNTinel
10	Services - Management of the service delivery summary and Service Specific Solutions
11	RLB (Rider Levett Bucknall) Cost Report Details
12	RLB Cost Report Summary
13	Dept of Construction and Infrastructure Memorandum, NTSF PPP – RFP Evaluation – Weightings
14	Evaluation Panel Meeting Minutes, Meeting No.1 (NTSF PPP)
15	Evaluation Panel Meeting Minutes, Meeting No.2 (NTSF PPP)
16	Evaluation Panel Meeting Minutes, Meeting No. 3 (NTSF PPP) includes Att. 1: Evaluation Group Scoring
17	Evaluation Panel Meeting Minutes, Meeting No.4 (NTSF PPP) includes Att. 1: Consolidated Evaluation Panel Scores
18	Evaluation Panel Meeting Minutes, Meeting No.5 (NTSF PPP) includes Att. 1: Consolidated Evaluation Panel Scores
19	Confidentiality Undertaking Schedule (NTSF PPP)
20	New Secure Facilities - Evaluation Panel - Tender Opening Schedule for ASSURE , AXIOM and SeNTinel
21	NTSF PPP Project – Drawing Register
22	23.1 New Secure Facilities PPP SNP – Tender Receipt and Opening Listing Schedule for ASSURE, AXIOM and SeNTinel
23	24.1 New Secure Facilities PPP EPPN – Tender Receipt and Opening Schedule SENTINEL (Tender Opening in response to Exclusive Pre-Preferred Negotiation for SeNTinel) - unsigned
24	24.2 New Secure Facilities PPP EPPN – Tender Receipt and Opening Schedule SENTINEL (Tender Opening in response to Exclusive Pre-Preferred Negotiation for SeNTinel) - signed
25	New Secure Facilities PPP Project Plan (1-5)
26	NTSF PPP Evaluation and Methodology Plan
27	Memorandum, NT Secure Facility - Evaluation of Request for Proposals Stage 2 – Initial Recommendations of the Evaluation Panel (from Dept of Construction and Infrastructure)
28	NTSF PPP Project – Structured Negotiation Process, ASSURE
29	NTSF PPP Project – Acknowledgement – Structured Negotiation Process, ASSURE
30	NTSF PPP Project, Further Interactive Tender Process, ASSURE Partners – Meeting No.1
31	NTSF PPP Project – Structured Negotiation Process, AXIOM

Number	Document Title
32	Letter from AXIOM Corrections, Acknowledgement – NT Secure Facilities PPP Project – Structured Negotiation Process - Axiom Corrections
33	NTSF PPP Further Interactive Tender Process AXIOM Corrections – Meetings 1, 2 and 3
34	Acknowledgement – NTSF PPP Project – Structured Negotiation Process – SeNTinel
35	NTSF PPP Project Further Interactive Tender Process SeNTinel – Meetings 1 , 2 and 3
36	NTSF PPP Project – Offer to enter into an exclusive negotiation (“Exclusive Pre-Preferred Negotiation” or “EPPN”)
37	NTSF PPP Exclusive Pre-Preferred Negotiation Process SeNTinel – Meeting No 1
38	43.1 NT Secure Facilities PPP Project – Negotiation Schedule Part 1
39	43.2 NT Secure Facilities PPP Project – Negotiation Schedule Part 2
40	NTSF PPP Exclusive Pre-Preferred Negotiation Process SeNTinel – Meeting No 2
41	44.1 NTSF PPP Project Negotiation Schedule Part 1
42	44.2 NTSF PPP Project – Schedule 11 Termination Payment Negotiation Schedule – Part 2 - discussion points for Friday 22 July with SeNTinel
43	NT Government Enterprise Architecture – NTG ICT Standard – NTG – Data and Voice Cabling – Specifications and Guidelines
44	NTSF – ITP 6 – Request for Information General – Assure Partners
45	Territory Response – General - Axiom Corrections
46	Territory Response – Commercial – Axiom Corrections
47	Territory Response – Commercial – SeNTinel
48	Proposed Test Locations – Department of Construction and Infrastructure
49	NTSF Request for Information: Territory Response to all Consortia – 24 February 2011
50	Request for Information – General Questions – 28 January 2011
51	Roadworks – Alignment of the Secure Facility Access Road
52	Technical Specifications for Mattresses and Pillows – NTCS – Attachment A
53	Territory Response to ASSURE Partners
54	Territory Response to AXIOM Corrections
55	Territory Response to SENTINEL
56	NTG Department of Justice – Videoconference & Audio Visual Functional Brief
57	Request for Information – Clarification on Response Times and Rectification Times – Services
58	Territory Response to all Consortia – Notice of Intent – 6 April 2011
59	Notice of Intent - Doug Owston Correctional Centre, NTSF, Howard Peninsula
60	Interactive Tender Process (ITP) Minutes, Nos. 2-6
61	62.6, Agenda and Minutes, ITP No 7, 30 March 2011
62	NTSF Workshop No 1 – Meeting Notes, Agenda and Minutes, 15 December 2012
63	Technical Addendums
64	NTSF Request for Proposal documentation
65	NTSF PPP Project 6.2-6.3 Correctional Centre Design Philosophy Report
66	NTSF PPP Project – Various Clarifications Corrections
67	NT Prison Project Construction Cost Reconciliation Report

Number	Document Title
68	PPP Value for Money Calculations
69	Copy of PSC Information
70	Edited 25b Model Outputs Scheme – Project Deed
71	NTSF PPP Project – Discount Rate Guidance
72	NTSF PPP Project – Discount Rate Guidance – Mark-up – Addendum
73	Letter from KPMG: "Advice on certain accounting considerations in relation to Darwin Correctional Precincts Public Private Partnership ("PPP") Project" 29/11/11
74	Milliken Berson Madden – Master Plan Estimate Preliminary – NT Prisons
75	National PPP Guidelines – Northern Territory Requirements – November 2008
76	NTSF PPP Project – Invitation for Expressions of Interest
77	Report of Probity Services on Expressions of Interest for the NTSF PPP Project
78	Report of Probity Services on Request for Proposals for the NTSF PPP Project
79	NTSF PPP – Probity and Process Deed
80	Darwin Correctional Precinct Public Private Partnership Project – Project Summary Oct 2011
81	NTSF PPP Project Public Sector Comparator Report 1
82	NTSF PPP Project Public Sector Comparator Report 2 – Risk Register
83	Rider Levett Bucknall Reconciliation
84	NTSF PPP Project Stage 1 - Expressions of Interest – Evaluation Panel Findings and Recommendations
85	Documentation relating to the Interactive Tender Process for Axiom, Assure Partners, and SeNTinel. This included: minutes; agendas; Territory responses to the workshop outcomes; corrections made by the bidders as a result of the workshops; Territory responses to corrections made by the bidders; queries by the bidders to the Territory.
86	Architectural Specifications – includes 73 specifications eg floor plans, roof plans etc
87	Facility Master Plans – includes 7 master plans on various aspects of the facility
88	Project Deed – including Schedules 1 to 12
89	Builder Side Deed dated 30 September 2011
90	Facilities Management Side Deed dated 30 September 2011
91	Debt Finance Side Deed
92	Independent Certifier Deed
93	Territory Security
94	Securitisation Agreement
95	Payment Directions Deed
96	Interface Deed
97	Works Program – Annexure A
98	Design Development – Annexure B
99	Design Programme Rev A - Annexure B
100	Facility Master Plan – Territory annexure cover page
101	Facility Master Plan – Builder annexure cover page
102	Precinct Master Plan – plus Territory annexure cover page and Builder annexure cover page
103	Site Management Plan – plus Territory annexure cover page and Builder annexure cover page
104	Asset Management Plan – plus various annexures

Number	Document Title
105	LIP Plan - plus Territory annexure cover page & Builder annexure cover page
106	Financial Close Adjustment Protocol - Annexure
107	Functional Brief - includes cover page annexures for Territory and Builder plus: Functional Brief Volume 2 – Section 2 – Part A; Volume 2 – Section 3 – Part A; Volume 2 – Section 4 – Part A
108	Architectural Specifications -includes cover page annexures for Territory and Builder plus: Architectural Specifications Section 2 - Part B; Section 3 – Part B; Sec110tion 4 – Part B
109	Technical Specifications - includes cover page annexures for Territory and Builder plus: Technical Specifications Indicative Camera Coverage; Volume 2 – Section 2 - Part C; Volume 2 – Section 3 – Part C; Volume 2 – Section 4 – Part C
110	FF&E - includes cover page annexures for Territory and Builder plus: FF&E Specifications - Volume 2 – Section 2 - Part D; Volume 2 – Section 3 – Part D; Volume 2 – Section 4 – Part D
111	Services Specifications includes cover page annexures for Territory and Builder plus Services Specifications – Annexure
112	Design Life Expectancies – includes Territory annexure cover page and Design Life Expectancies – Output Specifications
113	Model Schedule Output – includes Territory Annexure cover page and Model Outputs Schedule
114	Precinct Planning - includes Territory annexure cover page
115	Construction Contract
116	Schedules to Construction Contract
117	Early Works Agreement
118	Builder Consent Deed
119	Sub-Independent Certifier Deed
120	Builder Parent Company Guarantee (LLC)
121	Liquidated Damages Side Letter
122	Facility Management Subcontract
123	Schedules to Facility Management Subcontract
124	Facility Management Consent Deed
125	FM parent Company Guarantee
126	Common Terms Deed
127	Security Trust Deed
128	Senior Bank Debt Facility Agreement
129	On-Loan Agreement
130	Security Deed
131	Share and Unit Mortgage
132	Featherweight Charge
133	Financier’s Certifier Deed
134	Debt Financial Close Letter
135	Equity Financial Close Side Letter
136	Attachment of Equity Financial Close Side Letter
137	BBPI Intercompany Loan Agreement
138	Subordination Deed
139	ISDA – International Swaps and Derivatives Association 2002 Master Agreement – Commonwealth Bank Australia (CBA)
140	ISDA – International Swaps and Derivatives Association 2002 Master Agreement – National Australia Bank (NBA)
141	ISDA – International Swaps and Derivatives Association 2002 Master

Number	Document Title
	Agreement – ANZ
142	ISDA – International Swaps and Derivatives Association 2002 Master Agreement – West London Branch (WestLB)
143	Senior Agent Fee Letter
144	Senior Lender Fee Letter
145	Security Trustee Fee Letter
146	Subscription Agreement
147	Joint Venture Agreement
148	Unitholders Agreement
149	Management Services Agreement
150	Financial Close Activation Instrument
151	Project Company Representative Notice
152	Development Permit Application
153	Sacred Site Certificate
154	Project Accounts
155	Utilisation Notice
156	Utilisation Schedule (Funds Flow Statement)
157	Performance Bonds (Baulderstone)
158	Sitzler Performance Bonds (Collated)
159	FM Performance Bond
160	Draft Pricing Plan – cover email 29.09.11
161	Draft Pricing Plan (Option 1 2) – FM Extension Contract
162	Foreign Investment Review Board
163	231.1 Model Outputs Schedule – includes Territory annexure cover page
164	Verification Certificate – BBPI SH and BBPI Sentinel
165	Verification Certificate – CIPL Sentinel Holdings
166	Verification Certificate – CIPL Sentinel Pty Ltd
167	Verification Certificate – Sentinel Partnership, Sentinel Financing Holdings, Sentinel Financing
168	Deloitte Tax DD Report 28.09.11
169	Cridlands Legal Due Diligence Report
170	ATO Private Ruling – JV (joint venture)
171	ATO Private Ruling – Project Co
172	ATO Private Ruling – Sentinel Finance Trust
173	ATO – Detailed Reasons – Sentinel Finance Trust
174	CoC (Confirmation of Insurance) – Contract Works (material damage)
175	CoC Delay in start up
176	CoC Honeywell International
177	CoC Hazardous Goods (Honeywell)
178	CoC Motor Fleet (Honeywell)
179	CoC Motor Fleet (Sitzler)
180	CoC Products Liability
181	CoC Professional Indemnity
182	CoC Workers Compensation (Honeywell)
183	CoC Workers Compensation (Sitzler)
184	ASIC (Australian Securities Investments Commission) Form 309 - Sentinel partnership
185	ASIC Form 309 – BBPI Sentinel Pty Ltd
186	ASIC Form 309 – CIPL Sentinel Pty Ltd
187	ASIC Form 309 - Sentinel Financing Pty Ltd
188	ASIC Certificate of Entry of a Charge – Territory (Chargee)
189	ASIC Certificate of Entry of a Charge – Territory (Chargee) BBPI SPV

Number	Document Title
190	NT Contracts Act Delegation – G F McCarthy
191	Power or Attorney for: Sitzler Pty Ltd; Baulderstone; Lend Lease Corp; BBPI Sentinel Holdings Pty Ltd; BBPI Sentinel Pty Ltd; BBPI GmBH; CIPL; Honeywell Ltd;
192	Assistant Secretary's certificate and board resolution
193	Freehills Opinion (Melb) to Territory
194	Freehills Opinion (Syndey) re Honeywell
195	Opinion – Cridlands MB Lawyers
196	Allens Arthur Robinson Legal Opinion
197	Legal opinion Morris, Nichols, Arsht and Tunnell LLP
198	Allen and Overy Opinion
199	Extract of Minutes (ratification)
200	NTSF Transaction Bible Index (Territory)

Appendix 2: Submissions Received

1. Catherine Matarazzo, Northern Territory and Queensland Regulatory Instrument Review, 18 December 2012
2. Ben Chadwick, Bid Director, SeNTinel Consortium, 1 February 2013

Appendix 3: Hearings

1. Public Hearing – Darwin – 17 December 2012
2. Public Hearing – Darwin – 26 March 2013

Appendix 4: Victorian Project Summary Template

Partnerships Victoria Requirements Annexure 8

Annexure 8

Project summary template

Since 2007 there has been a Victorian requirement that a project summary be prepared and publicly released within three months of financial close of all *Partnerships Victoria* projects. This template guides Procuring Agencies on the form and content of the project summary.

Estimated length of project summary: up to 20 pages

Template front cover

The *Partnerships Victoria* cover is to be consistent across projects. It includes the name of the project and current date (cover available from DTF).

Introduction

This explains the purpose of the project summary and links to other published material.

Partnerships Victoria explanation

An overview of the key principles of the *Partnerships Victoria* policy, the explanation also needs to include a disclaimer such as:

> 'This summary should not be relied on as a complete description of the rights and obligations of the parties to the project and is not intended for use as a substitute for the contracts'.

Part One: Project overview

1.1 Project [name of project] outcomes

Outline the State's need for the facility/service and the high-level benefits expected from the project. Describe the facility/services to be provided by the private party, including technical descriptions where appropriate.

1.2 A public private partnership

Outline the rationale for delivering the project as a public private partnership (PPP) and list the key partners (private and public).

1.3 Tender process

Outline the process for the selection of the private provider, including high-level assessment criteria. An outline of the bid assessment parties/committees may be warranted.

1.4 Value for money

Describe how value for money was achieved and the key drivers for this result. This analysis could include:

- quality of service delivery;
- design amenity;
- sustainability of the arrangement; and
- other value-for-money elements (including transfer of unquantifiable risks) that cannot be quantified in the Public Sector Comparator (PSC).

The total PSC amount and headline components underpinning this amount should be included as detailed in Table 1.

Table 1: Value-for-money comparison – public sector versus private sector delivery

Public Sector Comparator (PSC) Hypothetical, risk-adjusted estimate of the cost of the most efficient, likely and achievable form of public sector delivery		**Private sector delivery** (at financial close – net present cost of contract payments)
Estimated net present value of the financial cost of the project (PSC)*	$ **PSC average case** (mean of PSC cost estimates)	$
Estimated savings through comparison with winning bid	%	

* excluding State Retained Risk

Capital costs		**Operating costs**		**Revenues (if applicable)**		***Raw PSC***		**Competitive Neutrality**		**Risks**		**Total PSC**
	+		-		=		+		+		=$	

Notes to table

1. All numbers are expressed in net present values as at [date].
2. In accordance with the national PPP Guidance, a discount rate of [ ] % was used in calculating the net present value of the PSC and its components, and a discount rate of [ ]% was used in calculating the net present cost of private sector delivery.
3. The format and content of the table may need to change to reflect differing circumstances of projects.
4. Excludes State Retained Risk.

The final content of Table 1 will be approved by the Treasurer and the portfolio Minister responsible for the individual project in light of commercial-in-confidence considerations.

Figures released as part of the value-for-money statement should be consistent with the figures reported in other government documents. The Department of Treasury and Finance can provide separate advice on this.

1.5 Public interest considerations

This section should detail how the project addresses the eight elements of the public interest test. For each element, detail the main standards that must be met to protect the public interest, and whether appropriate mechanisms are available to provide an adequate level of protection.

A broad summary may be appropriate, supported by more detailed attachments.

1.6 Contract milestones

Outline the milestone dates for the project. Table 2 provides an indicative summary.

Table 2: Key date summary

Contract component	Due date
Contract commencement	dd month yyyy
Financial close	dd month yyyy
Technical completion	On or before dd month yyyy
Commercial acceptance	On or before dd month yyyy
Service delivery/Operations period	dd month yyyy – dd month yyyy
Contract expiry date	dd month yyyy

Part Two: Key commercial features

This list is indicative. Additional elements can be added as appropriate for each project.

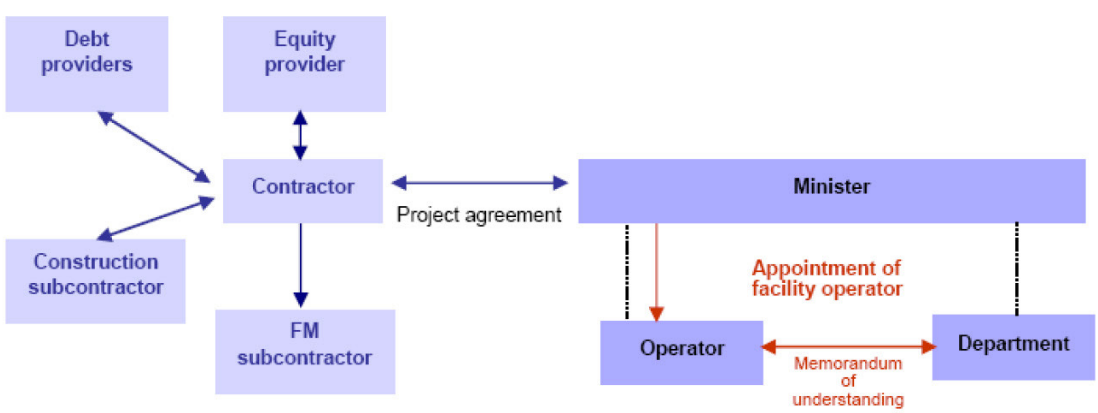
2.1 Parties to the contract

Outline the key parties to the contract.

2.2 Contractual relationships

Outline the key contractual relationships of the project. This may include a chart as shown in Figure 1.

Figure 1: Contract arrangements and relationships



2.3 Risk transfer

Outline the risk transfer under the project agreement. The risk allocation matrix, completed during the project procurement phase, will provide a basis for this analysis. A risk summary as in Table 3 may be included.

Table 3 Risk Summary

Risk	State	Private Party
Site risks		√
Design risk		√
Construction risk		√
Commissioning risk		√
Operating risk		√
Market risk		√
Industrial relations		√
Change in government policy/law	√	
Regulatory change		√
Force majeure	√	√
Asset ownership		√
Inflation post execution		√
Exchange rate post execution		√
Interest rate		√
Financing/refinancing post execution		√
Sponsor risk	√	
Termination	√	√
Residual value	√	

2.4 General obligations of the contractor

Outline the major obligations of the private party under the agreement. This may include:

- providing the facility/services as described in the project agreement;
- project-managing the design development, construction and commissioning of the facility/service; and
- managing risks associated with the ownership, financing, design development, construction, commissioning, operation, maintenance, support and delivery of the facility/service.

2.5 General obligations of the State

Outline the major obligations of the State under the project agreement for each project cycle stage. Major obligations of the State may include:

- reviewing and commenting on private party key deliverables during the design and construction stages;
- undertaking the required checking, verification and review of the private party's information to achieve sign-off at critical milestones;
- attending meetings with the private party (contract director, customers and third parties) as required under the project agreement; and
- making service payments to the private party under the project agreement.

2.6 Government costs and service payments

Outline the costs and service payment regime for the project.

2.7 State contributions

Detail any State contributions to the project (e.g. land).

2.8 Performance measures and abatement

Detail the key performance measures and how the private provider will be accountable for non-performance.

2.9 Default and termination regime

Detail the default and termination regime, including the State's rights of step in.

2.10 Finance and security arrangements

Detail the financing and security arrangements required in the contract.

2.11 State rights at expiry of contract

Detail the State's rights at contract expiry, including details of asset handover to the State.

2.12 Process for Government modification of services/facility

Detail processes for the State to seek facility and service modification over the period of the contract.

Appendices to include

Useful references and relevant contact details of the key parties.

Website: www.partnerships.vic.gov.au

Published: February 2009

Appendix 5: NSW Items for Inclusion in Project Summary

The contract summary will have two distinct parts:

- Background to the Project, including a summary of the rationale for the project, its value and the parties involved; and
- Elements of the Contract, which summaries the key commercial features of the project.

Background to the Project

- History of the project and its characteristics including a statement as to the nature of the relationship(s) between the Government and other parties created by the contract(s). (For example, “The NSW Government is seeking to ….; Party A can provide….; Party B wishes to finance… Party C is prepared to underwrite…);
- Fully identify the private party and its sponsors, including details of cross ownership of relevant companies;
- A list of the contract(s) with a statement of the nature and purpose of the contract(s), including a general description of the parties’ obligations (description of project to be completed or goods/services to be provided or property to be transferred);
- A general statement as to the nature of any material that has been excluded on the basis that it is subject to obligations of confidentiality or is ‘commercial in confidence’;
- The results of cost-benefit analyses;
- The results of the PSC compared with the successful private sector proposal;
- The significant evaluation criteria and the weightings used in tender assessment, including that of the PSC;
- The risk sharing in the construction and operational phases of the project, quantified in net present value terms (where possible) and specifying the major assumptions involved;
- Activities of the State and the contractor during the construction period; who is responsible for environmental, heritage, site risks, etc; staging and payment arrangements; site access, responsibility for completion and commissioning, etc.;
- A statement of the actual liabilities of the Crown; a statement of any indemnities and/or guarantees given by the Crown; and
- A summary of the Public Interest Evaluation.

Elements of the contract

- The commencement date of the contract; the term of the contract including the ability to extend the term and at whose option. This information would include details of future transfers of assets of significant value to Government at no or minimal cost, and details of the right to receive the asset as well as when this might occur;
- Description of change control provisions (i.e. what happens if ownership of a party changes);
- Service delivery (including maintenance) and quality requirements in terms suited to the non-technical reader. Performance measurement may be linked to an agreed set of standards or key performance indicators, which will generally relate to the quality, amount and frequency of service provision;
- What and when assets are to be transferred by the public sector to the contractor;
- Operation and/or maintenance provisions in the contract expressed in non-technical terms;
- The price to be paid by the public, and the basis for future changes in this price. This should include a statement setting out the basis on which price is computed or projected;
- Provisions for renegotiation;
- Significant guarantees or undertakings between the parties. This would include loans entered into or agreed to be entered into;
- A statement that the Auditor-General’s ability to carry out the audit function under the *Public Finance and Audit Act 1983* has not been diminished by the contract(s) by, for example, removing or limiting access to records, information, etc. that should otherwise be available;
- A description of the events of default;
- A description of termination rights (including for convenience, for default and any other grounds of termination);
- A statement as to contractual remedies available to the Government in respect of breach or losses otherwise caused by the other party or parties, and remedies against the Government in any circumstances;
- A description of exit/disengagement arrangements, including the basis for calculating the cost of disengagement;
- A description of the situations in which the Government may exercise its contractual right to step-in (i.e. assume all or some of the service delivery obligations of the private party for a period of time);
- A description of any pre-determined dispute resolution process;

- A description as to how insurance proceeds are to be used in the event they are called upon (e.g. reinstatement of the asset, payment to the financiers); and
- Any other key elements of the contractual arrangements if they have not been covered above.

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