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# Independent Review of the Major Service Provider Arrangements

Detailed Report

November 2021

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# Glossary of terms

AGIS	AGIS Group Pty Limited
ATL	Above the line
ATM	Approach to market
Beca	Beca Consultants Pty Ltd
BTL	Below the line
Business Rule	An enforceable directive that clearly sets out the required actions or expected behaviours of the MSPs (and their subcontractors) and the Commonwealth in the delivery of services under the MSP arrangements.
CASG	Capability Acquisition & Sustainment Group
cl	Clause
CoE	Centre of Excellence
CP	Capability Partner
Defence	Department of Defence
Downer EDI	Downer EDI Engineering Power Pty Ltd
DSO	Deed of Standing Offer
DSS	Defence Support Services
DSS Deed	DSS Standing Offer Panel Deed
DXC	DXC Technology Australia Pty Limited
Envista	Envista Pty Limited
ESSA	Enterprise Support Services Agreement
EY	Ernst and Young
FY	Financial Year
FIS	Financial Investigation Services
ICCPM	International Centre for Complex Project Management
ISC	Integrated support contract
IWPDP	Integrated Work Package Delivery Plan
Industry Paper	Industry Consultation Paper dated 24 February 2021
ILS	Integrated Logistic Support

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IWP	Integrated Work Package
Jacobs	Jacobs Australia Pty Limited
Jacobs-Beca	Jacobs and Beca
Joint Objectives	The joint objectives of the Commonwealth and the MSP set out clause 5.1 of the ESSA
KBR	Kellogg Brown & Root Pty Ltd
KEY Team	KBR and EY
MR	Management reserve
MPB	Materiel Procurement Branch
MSP	Major Service Provider
Minister	Minister for Defence Industry, the Honourable Melissa Price MP
NA3PO	Navy Army Aviation Acquisition Program Office
NCB	Naval Construction Branch
Nova	Nova Systems Australia Pty Ltd
PMO	Program Management Office (now referred to as the Strategic Panels PMO)
PMF	Performance Management Framework
PO	Purchase order
PSP	Property Services Provider
PwC	PricewaterhouseCoopers
RFQTS	Request for Quotation and Tasking Statement
QinetiQ	QinetiQ Pty Ltd
RCTI	Recipient created tax invoice
Review	Independent Review of the Major Service Provider arrangements
SCESSA	Subcontractor ESSA
Service Contract	Means a CP Service Contract or an IWP Service Contract per schedule 6 or 7 of the ESSA
Small Business Ombudsman	Australian Small Business and Family Enterprise Ombudsman
Small Business	Small Business has the same meaning as in the Australian Small Business and Family Enterprise Ombudsman Act 2015 (Cth) (less than 100 employees)

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SME	has the meaning given in the Commonwealth Procurement Rules, namely an Australian or New Zealand firm with fewer than 200 full-time equivalent employees
SMP	Services Management Plan
SOW	Statement of Works
SPAs	Service performance attributes
SPO	Systems Program Office
Systra	Systra Scott Lister Australia Pty Ltd
T&M	Time and materials
Team Downer	Downer EDI, AGIS, DXC, Systra, Envista and Providence Consulting Group
TMO	Team Management Office
Team Nova	Nova, QinetiQ and PwC
TMO	Team Management Office
TSN	Technical Support Network
WPS	Weighted Performance Score
YTD 20 21	31 March 2021

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# 1 Introduction

## 1.1 Purpose of review

The Major Service Provider (MSP) panel arrangement commenced on 1 February 2018 and supports the Capability Acquisition and Sustainment Group (CASG) by providing a more strategic approach to the provision of 'above the line' (ATL) services through the engagement and management of CASG's contracted workforce. This is achieved through industry partners that can deliver larger, long-term, integrated work packages across CASG.

The MSP arrangements were intended to provide the Department of Defence (Defence) with an efficient and streamlined process to access service providers, particularly small and medium enterprises (SMEs), to facilitate the procurement of a broad range of services to support the acquisition and sustainment of Defence's capital equipment and system projects. The MSP arrangements were intended to promote a strategic rather than transactional approach to Defence's contracted workforce.

The MSP arrangements have operated for over three full years, such that it is timely for Defence to review the efficiency of the arrangements, particularly in respect of fitness for purpose, value for money and potential areas for improvement.

The Commonwealth has commissioned an Independent Review (Review) of the MSP arrangements and has engaged the services of an independent contractor (Independent Adviser) to conduct the Review.

## 1.2 Objectives and framework

The Review has examined the MSP arrangements, including:

- the original intended structure;
- the transition to the MSP arrangements;
- the operation of the new arrangements in respect of work undertaken to date; and
- overall value for money and effectiveness, including in relation to the CP services, SP services and IWP services.

The Review has included an examination of both Commonwealth and MSP performance in respect of the MSP arrangements.

A steering committee was established to oversee the Review process and provide accountability to the Deputy Secretary CASG. The steering committee provided strategic advice and direction on the Review.

The steering committee was chaired by the CASG Group Business Manager. Core members comprised representatives from the CASG Domains, Procurement and Contracting, Integration and an external industry representative.

Representatives from the MSPs were invited members of the Steering Committee, participating as deemed appropriate by the Steering Committee.

## 1.3 Terms of Reference

In summary, the Review involved producing a report to CASG addressing a broad range of considerations including in respect of s47D

s47D

s47D The Terms of Reference for the Review are at [Appendix 1](#).

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## 1.4 Methodology

The methodology adopted by the Independent Adviser to identify the issues, options and recommendations contained in this Report comprised:

- an initial top-down analysis of background information in respect of the establishment of the MSP arrangements;
- analysis of material legal, commercial and financial documentation in respect of the establishment and operation of the MSP arrangements;
- consultations with stakeholder groups;
- identification of potential issues to be explored through further research; and
- analysis of data in respect of the MSP arrangements.

## 1.5 Stakeholder Consultations

The stakeholder groups consulted as part of the Review included.

- individuals responsible for the design of the MSP arrangements;
- individuals involved in the procurement of the MSPs;
- individuals who oversaw the implementation of the MSP arrangements;
- CASG personnel responsible for the current operation and control of the MSP arrangements;
- representatives from the Capability Acquisition & Sustainment Group;
- representatives from Defence domains and Australian Industry Capability Division;
- Defence Service Industry Groups; and
- MSP Consortium members.

To facilitate appropriate engagement, tailored consultation strategies were developed to address the information, communication and data collection requirements for each stakeholder group.

A detailed summary of the stakeholders consulted is at [Appendix 2](#).

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**Key findings and recommendations**

The implementation of a revised contracting model was likely to have a significant impact on the Defence services industry and in particular SMEs. Consultation with industry needed to facilitate a high level of engagement, to build understanding of Defence's objectives, the preferred service model and the benefits to be realised. Industry also needed to be educated on how the new model would impact on them and what changes industry would need to adopt to operate under the new arrangements. Despite the level of effort devoted to industry engagement, several areas for improvement have been identified.

**Recommendation 1**

Communication of the Review findings:

- a) **CASG should develop a clear and effective communications strategy for industry and other key stakeholders on the findings of the Review and proposed reforms to the MSP program (Section 2.1.1).**

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- b) **The PMO undertakes a consultation and education process within Defence to communicate the key findings<sup>3</sup> and recommendations arising from the Review and the changes to be implemented (Section 2.6.1).**

### 2.1.1 Industry communications strategy

CASG should develop a clear and effective communications strategy for industry and other key stakeholders on the findings of the Review and proposed reforms to the MSP program.

CASG should:

- engage directly with industry and manage the delivery of all key messages;
- provide appropriate information through multiple channels to ensure adequate reach and to build understanding;
- ensure the information being shared demonstrates to key stakeholders that their feedback has been considered <sup>s45</sup> and
- build understanding of the findings and recommendations of the Review; the rationale for decisions made and the expected outcomes; how the new arrangements will impact on industry and how existing practices need to be modified.

<sup>s45</sup>

Defence should continue to engage with industry through the implementation of the Review recommendations and provide a manageable communications channel to receive questions and feedback, share learnings and educate industry. The existing MSP webpage<sup>5</sup> on the Defence website reflects old information which has not been updated and <sup>s45</sup>

<sup>s45</sup>

### 2.1.2 Industry briefing

<sup>s45</sup>

An extensive debrief (written and face-to-face) should be undertaken with industry (and the industry bodies) to communicate the findings of the Review, the actions to be undertaken by Defence, the MSPs and industry to support the realisation of the program's objectives and address where possible industry's concerns.

CASG should ensure industry understands its concerns have been considered and where possible addressed. Industry needs to understand that those requirements that were inconsistent with the realisation of the MSP objectives and realisation of expected benefits may not have been fully addressed <sup>s45</sup>



<sup>3</sup> <sup>s45</sup>

<sup>4</sup>

<sup>5</sup> Source: <https://www1.defence.gov.au/business-industry/industry-programs/major-service-provider-arrangement>

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The direct consultation that occurred with industry as part of the Review was well received as reflected by the significant number of written submissions and face-to-face consultations undertaken (see Section 11.1.2). Defence should build on this positive engagement <sup>s45</sup>   
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## Recommendation 2

**The PMO develops and maintains an MSP webpage as a tool to share information with industry, receive and respond to industry queries.**

**The PMO establishes a secure channel to receive feedback or clarifications on the MSP arrangements (via a dedicated email or through the PMO website).**


Defence should update the MSP arrangements webpage and use it as a central point for sharing information on the MSP arrangements; contain links to important information sources (e.g. MSP supply chain) as well as links to critical documents (e.g. MSP master subcontracts). The PMO should be responsible for maintaining the website and establishing a regular program of communication with industry in accordance with the recommendations set out in this Report.

At present industry does not have a secure communications channel to raise concerns or seek guidance on potential issues <sup>s45</sup>   


## 2.2 DSS panel and MSP design considerations

As part of the planning for the new arrangements, consideration was given to potential implementation issues. The issues identified were not limited to the terms of the proposed new DSS panel, but the design of the proposed strategic partner arrangements. Issues<sup>6</sup> to be considered included:

<sup>s47D</sup> 

<sup>6</sup> <sup>s47D</sup> 

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## Key findings and recommendations

### Implementation of design recommendations

The MSP Phase 2 Detailed Analysis appears incomplete<sup>7</sup> and did not contain any conclusions or recommendations<sup>8</sup>, however, based on findings elsewhere in this Report:

- the specific controls or reporting obligations contemplated were not implemented with respect to cannibalising industry personnel. s45  
s45 ;
- the need for ongoing competition (avoiding monopolies) to support competitive pricing was recognised early in the MSP and DSS panel design and subsequently during implementation. The principle also extended to the MSPs' engagement of subcontractors (see Section 11.3.2);
- whilst the DSS panel sought pricing on a short term and long-term basis, the MSP arrangements sought only a flat rate, with no consideration of whether reduced labour rates should be reflected in the pricing of:
  - longer term IWPs (which may be more than five years);
  - task extensions, whether it be in terms of time; scopes of work or number of contracted resources; and
- Defence continues to specify resources, skill sets and skill levels for specific tasks, which limits the MSPs' ability to deliver innovative service solutions and reduce the cost of delivery (Section 11.3.5).

The circumstances under which a panelist can recruit an ex-CASG or Defence employee, has however been addressed in both the DSS panel deed and the ESSA.

s47E(d), s47D

### Document retention

The Review has encountered difficulties in locating all information and materials that were produced as part of the model design, industry consultation and subsequent tender processes. Individuals responsible for the design and implementation of the DSS panel and MSP arrangements were contractors or have since left Defence. Whilst some of these individuals have supported the Review with locating information, not all key documents were able to be located. This has impacted on the assessment of whether design issues were considered and mitigations were proposed but not implemented or whether mitigations were to be implemented post the tender process.

<sup>7</sup> s47D

<sup>8</sup> s45

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### Recommendation 3

**Tighter processes and controls be implemented over the central storage and retention of critical documents in accordance with existing Defence policy.**

Whilst Commonwealth policy and legislative requirements already exist in respect of document retention, it is incumbent upon project leads to ensure team members understand and comply with their obligations. This is critical where the project team is comprised of APS staff and contractors.

Where a project is to transition to a new team (as was the case with the MSP arrangements, with control transitioning from the RFT team to the PMO), there needs to be a clear handover of all relevant information to support the transfer of knowledge and the implementation of programs consistent with design parameters.

#### 2.2.1 First Principles Review

The First Principles Review identified the need for CASG to continue the reform of the Defence acquisition and sustainment capability to plan and execute future workload. To meet this challenge CASG would need to<sup>9</sup>:


- rebalance internal resources and reprioritise higher priority activities (including SPO reform);
- make more efficient and effective use of internal resources, including further strengthening skills and capabilities;
- tailor the way programs and projects are planned and executed, including using more innovative approaches and contracting models to engage industry; and
- ensure efficient and effective use of 'above the line' industry resources to work with APS and ADF staff in an integrated way to deliver Defence capability outcomes.

The design and ongoing management of the MSP model needs to consider these broader considerations.

#### 2.2.2 Issues with the CAS-SS panel and ISC arrangements

The following issues were identified with the CAS-SS panel and ISC arrangements that needed to be addressed in the design of the new arrangements<sup>10</sup>:

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<sup>9</sup> Source: CASG – Use of Above the Line Contractors

<sup>10</sup> s47D

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### 2.2.3 Service model principles

As part of the industry consultation, CASG proposed that the development of the MSP model should be based on the following principles:

- promote strategic, co-operative and constructive working relationships with industry;
- encourage joint Defence and industry planning and workforce development consistent with Defence's Strategic Workforce Plan;
- make the most efficient and effective use of 'above the line' resources to deliver projects utilising integrated APS, ADF and industry resources aligned to 'whole of CASG' outcomes and priorities;
- provide CASG with access to high quality industry personnel and expertise on a flexible basis to deliver projects which are subject to variable work volume;
- promote an enhanced and sustainable local industrial capability and capacity for 'above the line' industry resources and reduce the risk of unintended market distortions;
- minimise the operating costs of the model for both CASG and industry (including costs of tendering and other transaction costs);
- incentivise both individual contract performance and collaborative behaviours (between CASG and industry, and within industry), as well the delivery of overall CASG outcomes;
- maintain a viable and vibrant small and medium enterprise sector for 'above the line' subject matter expertise;
- deliver best value for money to Defence for its procurement of 'above the line' industry resources, including through greater bundling of services optimising economies of scale; and
- provide flexibility and agility to adjust CASG's use of industry resources as CASG continues to reform and the new Capability Life Cycle and Smart Buyer Framework is bedded down.

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### Analysis and Findings

The above principles have been largely captured in the ESSA, within the Joint Objectives and Overarching Principles. However, ‘reducing the risk of unintended market consequences’ and ‘bundling of services, optimising economies of scale’ have not been specifically captured as either an obligation of the MSP or an influencing principle`.

Supporting these requirements will, however, be key enablers to the realisation of the Joint Objectives (Section 4.2) and should therefore be taken into consideration in the MSPs’ annual Services Management Plans and be a consideration in subsequent performance assessments.

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The above principles have also not been captured in the Performance Management Framework, which

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## 2.3 MSP service model

Based on CASG’s review of the CAS-SS and ISC arrangements and consultations with industry, a new support services model was proposed to be established that would:

- provide a more strategic approach to the engagement of services, with greater visibility and control over market engagement and service delivery;
- be underpinned by a new panel offering a broader range of skill sets under the one panel (to support multi-function service requirements); and
- actively encourage healthy competition including supporting a viable and vibrant SME sector with the relevant expertise.

In April 2017, CASG issued an RFT<sup>12</sup> to establish the Defence Support Services (DSS) Panel, a standing offer panel arrangement. Through the RFT, tenderers were also able to submit an Expression of Interest (EOI) to be a Major Service Provider (MSP) to CASG.

CASG sought to establish strategic partnerships with selected MSPs to meet the Joint Objectives.

Under the RFT, the MSPs were to provide the following services (together the MSP Services):

- **Capability Partner (CP)** services, providing an agreed annual level of effort (primarily in relation to pre and immediately post-Gate Zero tasks);
- **Strategic Partner (SP)** services through the Strategic Panels PMO (including assisting the Commonwealth with workforce planning and management, industry and supply chain development and management, workforce development, and work package planning and development);
- **Integrated Work Partner (IWP)** services: IWPs were to be utilised for larger, more complex work packages, focused on outcomes-based deliverables; and
- **Other Services** (as defined under Clause 14 of the ESSA).

<sup>11</sup> s45

<sup>12</sup> Source: RFT: CASG/CD/RFT0444/17.

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The MSPs were to have a broad range of skill sets and skill levels across most or all the 'core' centre of expertise (CoE) categories (now referred to as Functions) and CASG domains. It was expected that the MSPs would be able to take on longer and more integrated packages of work.

The MSPs were to operate as long-term, strategic industry partners for above the line (ATL) support services for CASG. The obligations of the MSP would reflect several longer-term strategic objectives, over and above work package requirements.

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The MSP arrangements came into effect on 1 February 2018, with 4 consortia comprising 13 companies:

- **Jacobs Beca Team:** Jacobs Australia Pty Limited (Jacobs) and Beca Consultants Pty Ltd (Beca);
- **Team Nova:** Nova Systems Australia Pty Ltd (Nova), QinetiQ Pty Ltd (QinetiQ) and PricewaterhouseCoopers (PwC);
- **KEY Team:** Kellogg Brown & Root (KBR) and Ernst and Young (EY); and
- **Team Downer:** Downer EDI Engineering Power Pty Ltd (Downer EDI), AGIS Group Pty Limited (AGIS), DXC Technology Australia Pty Limited (DXC), Systra Scott Lister Australia Pty Ltd (Systra), Envista Pty Limited (Envista) and Providence Consulting Group (Providence).

## 2.4 Program Management Office

As part of establishing the MSP arrangements, the Commonwealth also intended to establish a dedicated Program Management Office (PMO), s47D

The proposed role of the PMO is considered in Section 10.3.

CASG noted that the success of the MSP arrangements would in large depend on the PMO:

- operating on a strategic basis to support the delivery of the Joint Objectives;
- providing effective planning, management, and allocation of workforce;
- implementing and administering a performance management framework to drive positive MSP behaviours and encourage continuous improvement and efficiency;
- working collaboratively with key stakeholders; and
- being responsive to changing conditions.

### Analysis and Findings

The PMO was not established in accordance with the guidance set out in the RFT and planning documentation.

The PMO was initially staffed with a lower level of (temporary) resources than outlined in the initial briefing papers. The PMO was to be led by a sufficiently senior (one-star) person to ensure guidance was complied with, however, this did not occur.

The smaller sized PMO resulted in:

- an insufficient level of education and support being provided during transition;

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- insufficient development of education and standard documentation to support projects on an ongoing basis;
- PMO resources being stretched in supporting the establishment of new IWPs;
- insufficient focus on the development of business rules and management of emerging issues;
- insufficient resources to provide appropriate oversight over the implementation of the MSP arrangements; and
- a perceived lack of leadership by the PMO and a lack of support to the branches and projects.<sup>13</sup>

As a result of the insufficient resourcing, the MSP arrangements were not implemented as intended and potential benefits are now not being fully realised as negative practices of the past were able to continue into the new arrangements.

The PMO continues to be understaffed and despite efforts to address the deficiencies<sup>14</sup> that arose during implementation, these issues continue to negatively impact the program today.

## 2.5 DSS Panel

Organisations appointed to the DSS Panel were to provide services under one or more individual Skill Sets and Skill Levels.

Pricing submitted by respondents was reviewed by the evaluation team. s47D, s47E(d)  
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## 2.6 Transition and implementation

As part of the industry briefing process industry was advised that implementation would be undertaken in a controlled manner. Establishment of business rules; provision of training and other education

<sup>13</sup> Source: Defence feedback provided through the consultation process.

<sup>14</sup> For example, Business Processes tools and templates were implemented in late 2019 and the outcomes framework in July 2020.

<sup>15</sup> s47E(d), s47G

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materials, internal briefings and the use of standard documentation was to be part of a transition plan intended to support the smooth implementation of the MSP arrangements. Transition to the MSP arrangements, however, was not conducted in a controlled and coordinated manner. Contributing factors included:

- the lack of an appropriately resourced and influential PMO and regularly convened steering committee to monitor and control the implementation process;
- the lack of a comprehensive implementation plan, developed prior to the launch of the MSP arrangements;
- the lack of continuity of key personnel responsible from the design of the MSP arrangements into the implementation period (post the MSP tender process);
- a lack of clear communication across Defence and industry as to how implementation was to occur;
- a lack of training for industry, APS and ADF staff;
- a lack monitoring of implementation activities and the inability of industry to raise any concerns with or seek clarification from the PMO.

These deficiencies had a negative impact on industry and the realisation of expected benefits from the MSP arrangements and has contributed in behavioural practices that are inconsistent with the proposed scheme design. These behaviours are considered further in Section 11 and Section 12.

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#### 2.6.1 Update to the MSP arrangements

**The PMO should undertake a consultation and education process within Defence to communicate the key findings<sup>16</sup> and recommendations arising from the Review and the changes to be implemented.**

The consultation and education process will require a fully resourced PMO (see Section 2.4) to undertake a comprehensive engagement process to confirm:

- the CASG policy requiring the use of the MSP arrangements;

<sup>16</sup> Including the practices and behaviours being adopted that are inhibiting benefits realisation.  
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- the findings of the Review and key changes that are being implemented to address identified issues and the improvements expected to be derived;
- the impact the recommendations will have on the MSP and CASG practices;
- the additional support to be provided by the PMO s47D  
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- behaviours that challenge the realisation of benefits s47D  
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#### Use of the MSP arrangements

Under Defence Accountable Authority Instruction 2 (AAI2) – Spending Defence Money – Procurement, Defence officials must use panels/standing offer arrangements established by Defence unless a Group Head or Service Chief has approved otherwise or a procurement is being undertaken from an indigenous supplier. s45, s47E(d)  
s45, s47E(d)

#### Recommendation 4

##### **Use of the DSS Panel should be monitored for compliance with Defence Accountable Authority Instruction 2.**

The procurement of any services through the DSS Panel which are capable of being provided through MSP arrangements should be monitored by the PMO to confirm the proposed arrangement represents better value for money than the MSP arrangements and has been appropriately authorised at the Group Head level as required by AAI2.

##### s47D PMO support

As noted under recommendations 2 and 5, briefing industry and Defence on the Review findings and recommendations will involve an extensive program of work. s47D  
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An implementation plan should be developed by the PMO to establish the proposed program of works. The implementation plan should be confirmed by the Steering Committee and progress against the plan reported regularly by the PMO to the Steering Committee (Section 10.2).

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## Recommendation 5

The PMO in conjunction with the MSPs s47D develops an implementation plan for approval by the Steering Committee.

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### 2.7 Risk Review

In October 2020, the MSP PMO in conjunction with the MSPs undertook a risk review of the MSP arrangements. The process identified 21 discrete risks grouped into 6 broad categories:

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Whilst the issues identified in the risk review are well understood by the PMO and the MSPs and strategies are being implemented to mitigate the risks, some of the actions to be effective need to be considered and approved by the MSP Steering Committee, with implementation directed and supported by higher levels within Defence, with clear messaging that compliance is not optional. The PMO will work with the MSPs to establish controls to monitor progress and compliance and report back to the Steering Committee.

## Recommendation 6

**CASG implements the strategies and mitigations to address identified risks set out in the October 2020 PMO / MSP risk review.**

The risk review recommendations will need to be reviewed for their consistency with the Review recommendations and the timing of their implementation phased to be consistent with the Review recommendations.

The Risk Review recommendations should be incorporated into an implementation plan to ensure a consistent approach, development of consistent policy and education materials, and to minimise the impact on the MSPs and Defence personnel.

### 2.8 Strategic Partner Services

#### 2.8.1 Service requirements

The Strategic Partner Services include:

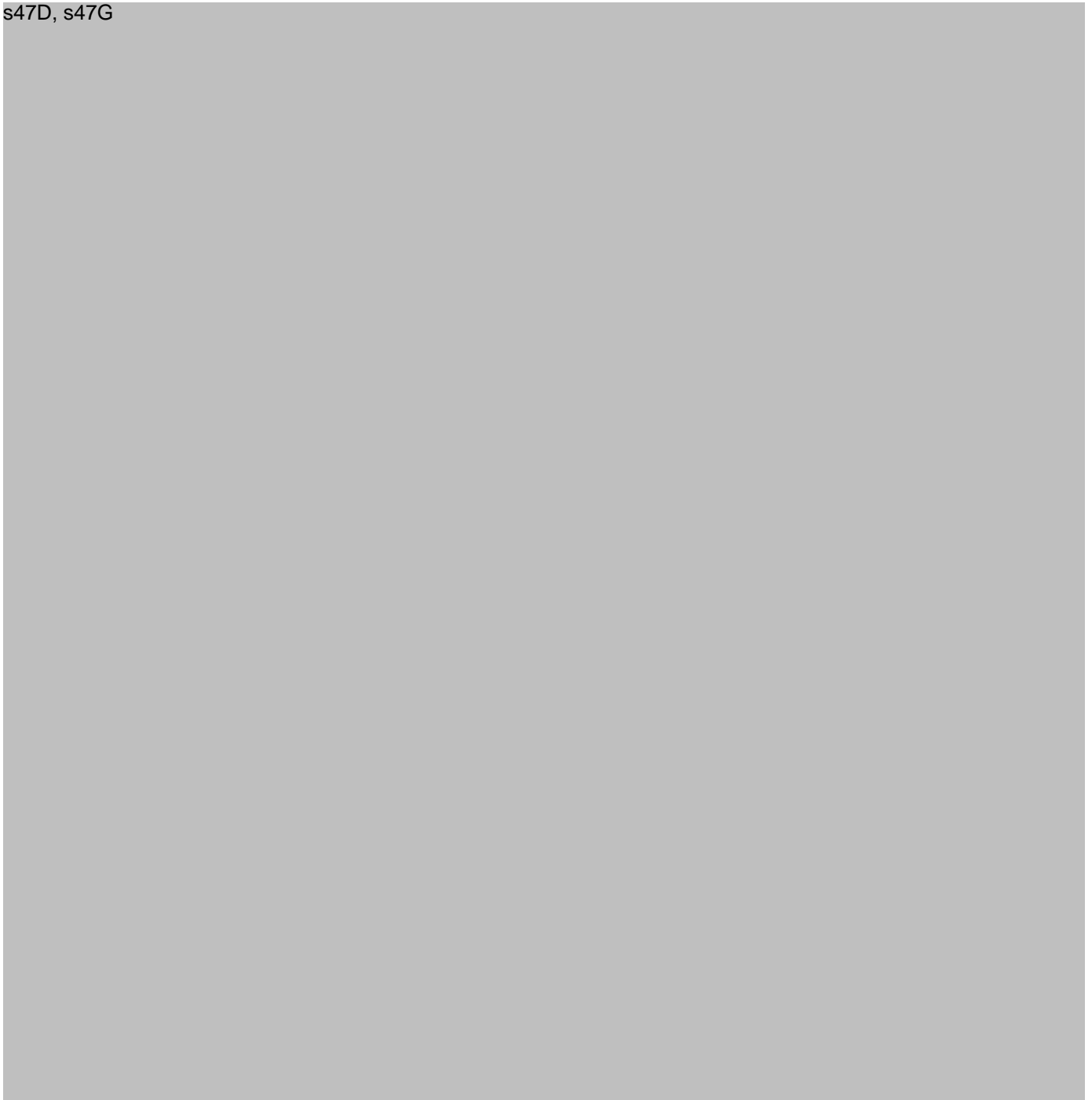
- participating in the governance and administration aspects of the MSP arrangements, including discussing service delivery, scopes of work, performance reviews, and dealing with issues;
- assisting the Commonwealth with workforce planning and development and planning and developing tasks or work packages;
- developing and implementing an industry development strategy;

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- managing, mentoring and developing SMEs in the MSP's supply chain;
- implementing mechanisms that allow Small Business on the DSS Panel to maintain and promote their own brand and to protect their intellectual property; and
- developing and implementing a workforce management and development strategy, including:
  - strategies to increase resources and capabilities to match Defence's future requirements;
  - graduate schemes, apprenticeship schemes and training programs; and
  - implementing skills transfer initiatives to APS and ADF personnel as well as within the MSP's own supply chain.

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#### 2.8.4 Key findings and recommendations


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**Recommendation 7**

The MSP review has identified a number of areas for review that will impact on the services to be provided under the MSP arrangements and the contract framework. These issues have summarised in Appendix 10. The PMO should undertake in consultation with the MSPs (and with appropriate legal advice as required) a review of the specific matters raised and implement appropriate revisions to ESSA or the Business Rules as agreed.

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## 2.9 Capability Partner Services

CP Services is a mechanism to make available to the Commonwealth (on a flexible basis) a contracted level of effort to deliver tasks, as directed by the Functions (or SPOs or the PMO as the case requires).

CP Services were to be structured around short-term tasking requirements, working on fixed rates. It was intended that CP Services would provide the MSPs a guaranteed minimum annual spend, with the workshare divided amongst all MSPs subject to performance.




The provision of CP Services is capped by the value of the annual CP Services budget set by CASG.

The Commonwealth determines, on an annual basis, a budget for each MSP to provide CP Services.

The CP Services Standing offer budget is allocated across the Functions. The supported Functions can issue CP Service tasking requests to the MSP s47D, s47G up to the value of their funding envelope.

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**Key findings and recommendations**

The CP Service arrangement provides the flexibility to meet CASG requirements (which cannot always be forecast with a high degree of accuracy), s47D

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## 2.10 Integrated Work Partner Services

### 2.10.1 Overview

In establishing the MSP arrangements, the Commonwealth was seeking a strategic partner capable of undertaking larger and more complex integrated work packages across most, or all, of the 'core' CASG Functions; throughout the Capability Life Cycle and across some or all the CASG domains.

The IWP model was intended to overcome the challenges and lack of flexibility experienced under the previous ISC arrangements. The model was also intended to evolve over time with the expectation that the MSPs would bring innovation and learnings from other private sector clients and industries to improve the efficiency of service delivery and provide improved risk management. The IWP services were to be based on a culture of continuous improvement, cost efficiency, transparency and open, honest and timely communication.

Three IWPs were contested as part of the MSP tender process, with two MSPs appointed (Team Nova and Team Downer). Since then a further s47E(d) IWPs have been put in place.

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Table 1: IWP Summary

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*Source: BM24398768*

The fee payable for IWP Services is calculated in accordance with the Price and Payment Schedule at Attachment B to the relevant Approved IWP Tasking Request. The IWP Contract Price is comprised of:

- the Core Team Fixed Payments;
- payments under Fixed Task Services;
- T&M Costs; and
- Reimbursable Expenses (if any).

#### 2.10.2 Effectiveness of the IWPs

The IWPs have been effective in terms of being able to mobilise large number of resources across a range of skills sets through the MSP, effectively removing the administrative and compliance burden from Defence,

The IWP construct is not, however, being utilised in a manner that optimises the potential benefits to the Commonwealth:

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### 3 Consortium arrangements

All four MSP consortiums have entered into agreements to govern the arrangements between the consortium members and outline their commitment to meet their joint obligations under the MSP arrangements. Whilst the terms of the arrangements between the consortium members are not the focus of the Review, s47D


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## 4 Contractual Framework

### 4.1 Enterprise Support Services Agreement

The obligations of the Commonwealth and the MSPs are set out in the Enterprise Support Services Agreement (ESSA). The ESSA establishes the overarching framework for the achievement of the Joint Objectives.

The ESSA is for an initial term of five years (expiring 1 February 2023) and may be extended for two additional periods of three years. The Commonwealth may also extend the services period based on amendments made to the ESSA, as agreed with MSPs.

The ESSA is a standing offer to provide the services outlined in the agreement. Any services to be performed by the MSPs will be in accordance with the terms of a Service Contract<sup>26</sup> that is put in place at the relevant time.

The ESSA provides a standardised:


- set of terms and conditions that are to apply to all Service Contracts;
- approach to the pricing of services; and
- set of performance metrics.

Each MSP consortium lead is the contracting entity to the Commonwealth. Services may be subcontracted to a consortium member (or any other subcontractor). Consortium member subcontract arrangements flow down the obligations under the ESSA. Each MSP consortium member is responsible as a subcontractor for the delivery of the MSP Services in accordance with the ESSA and any Service Contract.

The behaviour and performance of each MSP team member is taken to be the behaviour and performance of the MSP (for the purposes of assessing performance against the Performance Management Framework and compliance with the ESSA and any Service Contract).

#### **Key findings and recommendations**

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<sup>26</sup> Service Contracts comprise either a CP Service Contract or an IWP Contract, based on the standard templates attached as schedules to the ESSA.

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#### 4.2 Joint Objectives

The Joint Objectives of the Commonwealth and the MSP in entering the ESSA are to:

- a) recognise industry's importance as a fundamental input to capability;
- b) maintain a viable and vibrant Small Business sector for ATL subject matter expertise, through the MSP supply chain;
- c) more effectively engage with industry to better leverage resources and experience;
- d) make the most efficient and effective use of ATL industry resources in an integrated way to deliver the CASG and broader Defence capability outcomes;
- e) ensure that an enhanced and sustainable capability exists within both Defence and industry to support current and future Commonwealth work requirements;
- f) promote collaborative behaviours, strategic, co-operative and constructive working relationships;
- g) ensure that the Commonwealth has the appropriate IP rights in relation to any deliverables;
- h) deliver better value for money to the Commonwealth, including through highly competitive labour rates, pre-agreed terms and conditions for the various kinds of services and optimising economies of scale;
- i) minimise operating costs for both the Commonwealth and industry (including costs of tendering and other transaction costs); and
- j) maximise the continuity and stability of the MSP's personnel involved in the performance of services.

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The Joint Objectives also recognise the importance of ensuring the MSP makes a reasonable return<sup>27</sup> on its investment.

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The Joint Objectives as drafted are directional in nature and meant to influence the MSPs' actions and behaviours in the delivery of services. Ultimately the delivery of services is to be undertaken with the aim of satisfying the Joint Objectives.

The MSP RFT outlined that the Commonwealth was looking to engage a strategic partner. Consultations with the MSPs and advisers to the RFT indicated that the MSP arrangements were to be a collaborative model, rather than a prescriptive model focusing on the behaviours of the parties, specifically the need for the parties to<sup>28</sup>:

- cooperate, consult and collaborate with each other in the planning, tasking, managing and performing the MSP Services;<sup>29</sup>
- act and communicate with openness and honesty;
- contribute to and work cooperatively through, and in accordance with, the governance and management arrangements;
- establish and maintain an environment that fosters innovation, continuous improvement and cost efficiency;
- for the MSPs, adopt an "open book" approach in relation to the performance of the MSP Services;
- commit to the prompt, cooperative and mutual identification and resolution of disputes, differences and other issues; and
- communicate in a timely manner and share documents, information, views, opinions and data.

#### 4.3 Business Rules

The ESSA was not issued as part of the MSP RFT, rather it was co-developed with the short-listed respondents. The ESSA was to set out the obligations of the MSP over and above the requirements of the DSS Panel Deed.

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#### Business Rules

To date, there has been no material refinement of the ESSA structure or contents. A draft set of Business Rules was prepared as part of transition and implementation activities to address identified risks (see Section 10.7), however, these were not submitted to the Steering Committee for approval.

<sup>27</sup> A reasonable return is a return that appropriately reflects the properly managed risks assumed by the MSP.

<sup>28</sup> Source: cl5.2 of the ESSA

<sup>29</sup> This obligation would extend to the co-development of Statements of Work and the planning on projects which at present is not occurring on a consistent basis.

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This Report identifies several challenges with the existing contractual arrangements and options to address. The recommendations focus on:

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- amendments to facilitate the implementation of the MSP model as intended;
- addressing actions within the Commonwealth and the MSPs that are not supportive of realising the Joint Objectives (Sections 12 and 13); and
- addressing the unintended consequences of the MSP arrangements.

Ultimately these recommendations will support improved outcomes under the MSP arrangements and the realisation of the Joint Objectives. s47D

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### Recommendation 10

**Specific legal advice should be sought in respect of the legal issues raised in this Report and the appropriate course of action to strengthen the contractual arrangements.**

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4.5

### Services Management Plan

The provision of the MSP Services is to be in accordance with the ESSA, any Services Contract and the Services Management Plan (SMP).

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The SMP should outline how the MSP will deliver the Services, including any specific actions and activities to be undertaken each year to meet their obligations under the ESSA.

The SMP is to be reviewed and approved by the Commonwealth (presumably by the PMO). The SMP was to be reviewed and updated every 12 months, or at such other times agreed by the Parties.

As a result of the commencement of the Review, the SMP has not been updated in FY20/21.

The SMP will be an important control in respect of documenting the specific actions to be completed by the MSPs to support the implementation of the Review recommendations in accordance with a plan agreed with the PMO.

#### 4.6 **Key controls and compliance requirements**

In addition to delivering the MSP Services in a manner consistent with the realisation of the Joint Objectives the MSP must comply with various Commonwealth and Defence policy and legislative requirements including:

- Defence security requirements;
- Intellectual Property requirements;
- conflicts of interest requirements;
- privacy, work health and safety and subcontractor payment terms requirements; and
- Commonwealth and Defence policies of general application relevant or applicable to the ESSA or any Services Contract.

As noted in Section 4.2 the MSP arrangements were to be a collaborative model, rather than a prescriptive model. As a result, the contracting model relies upon:

- the MSPs implementing appropriate processes and controls to ensure compliance with policy and legislative obligations; and
- voluntary disclosure of potential issues to the PMO.

The PMO uses its regular Operations Board meetings to raise any issues identified with the MSP arrangements and to direct the MSPs in terms of expected behaviors.

At this stage no compliance or audit reviews have been undertaken on the MSPs' compliance with the ESSA.

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#### 4.7 Additional controls and Business Rules

The role of the MSP and structure of the contractual arrangements are not materially inconsistent with other whole of Government arrangements, which were relationship based, but required the contracted entity to represent the interests of the Commonwealth. s47D

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##### 4.7.1 Representing the interests of Defence

Cl 5.4.1 of the ESSA states the Parties must each act reasonably and in good faith towards the other. However, cl 5.4.2 does not require the MSP to subordinate its interests to the interests of the Commonwealth (in certain circumstances).

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<sup>30</sup> s47D

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#### 4.7.2 Consistency of services

Consistency of services standards is managed through the PMF, however, other aspects of consistency

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#### 4.7.3 Coordinated approach to industry development

The Joint Objectives include ensuring that an enhanced and sustainable capability exists within both Defence and industry to support current and future Commonwealth work requirements.

Activities aligned to this objective in the MSP Services Management Plans include

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There is no coordination of MSPs' activities or intended approach in respect of industry development or assessment of the collective effectiveness or consistency of approach to meeting industry objectives.

The current approach is lacking in a strategic overarching assessment of the future Defence needs and options to meet these needs and the organisations that have a strategic role to play to enabling these needs to be met.

### Recommendation 12

**A comprehensive and coordinated strategy be developed by CASG and the MSPs to meet the future labour needs of Defence and industry.**

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#### 4.7.4 Education and Training Materials

As noted in Section 2.2.2, many of the issues with the MSP arrangements are the result of a lack of education and training for Defence personnel and a lack of clear strategies to address certain issues.

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#### **Recommendation 13**

**The PMO coordinates with the MSPs to develop a suite of comprehensive training programs and training materials for Defence personnel and industry to build capability.**

Training materials need to be sufficiently detailed to serve as an actual aid to Defence personnel in implementation of the MSP arrangements and specific activities such as Outcomes-based contracting.


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#### 4.7.5 Reasonable return on investment

The ESSA allows the MSPs to make a reasonable return on their investment in being an MSP and performing the MSP Services, being a return that appropriately reflects the properly managed risks assumed by the MSP.

The ESSA does not specify what a “reasonable return” is. s47G

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#### 4.7.6 Data strategy

The PMO was to be responsible for data analytics and reporting. Whilst the ESSA requires the MSPs to make information available to the PMO<sup>32</sup>, there is at present limited data and other reporting (for strategic planning and control purposes) to the PMO from the MSPs.

The receipt of regular data and other information in a standardised format will assist the PMO with monitoring and providing greater control (and in a timely manner) over key elements of the MSP program, as well as providing greater visibility of the Defence pipeline and other matters that are of interest to industry.

Expanded reporting from the MSP arrangements should complement reporting from the DSS panel, such that industry can receive a full picture of the volume and value of services flowing to the SME sector and the skill areas where Defence demand is the greatest.

Data reporting may be monthly, quarterly or half yearly depending on the nature of the information.

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<sup>31</sup> s45, s47G

<sup>32</sup> Clause 6.2.1(c) of the ESSA  
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At present limited data is being consistently reported or captured by the PMO. Greater levels of data can be used to centrally monitor the benefits and effectiveness of the MSP arrangements.

**Recommendation 15**

**The PMO implements in consultation with the MSPs a data strategy focused on monitoring KPIs consistent with realisation of the Joint Objectives and value for money outcomes.**

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**4.7.7 Charging for management services**s47D  
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This is consistent with the approach adopted in a number of whole of government procurement arrangements.

**Recommendation**

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## 4.7.8 Subcontracting arrangements

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**Recommendation**

The emergence of aggregators and the single provider model is in part an unintended consequence of the MSP and DSS-panel arrangements and its predecessors. s47D

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## 4.7.9 Transition-In | Transition Out

Clause 26 of the ESSA sets out the obligations of the MSPs in respect of transition activities. The ESSA does not:

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#### 4.7.10 Other considerations

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#### 4.8 Interdependencies between the DSS panel deed and the ESSA

All members of the MSP Team must be members of the DSS Panel.

The MSP RFT included a reference that the ESSA would contain a master framework which includes amongst other matters the “continued operation of the DSS panel deed”. s47E(d)

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Whilst the ESSA makes multiple references to obligations under the DSS panel deed, it is not clear whether the MSPs must comply with these requirements in providing MSP services.

The DSS panel deed references in the MSP include references to additional requirements in respect of conflicts of interest and reporting obligations.

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## 5 Contract Management

### 5.1 Overview

Under the PMF, MSP performance is monitored and assessed through the quarterly measurement and reporting of performance against Key Result Areas (KRAs).

Two PMFs operate under the ESSA:

- the MSP PMF; and
- The IWP PMF.

The MSP PMF covers CP and SP services as well as the MSPs' obligations outside of IWP Services.

The IWP PMF covers the MSP performance under each IWP.

The MSP PMF is managed by the PMO, whilst the IWP PMF is managed by the relevant IWP lead (including consultation with the PMO).

Under both the MSP and IWP PMF, failure to deliver services to a minimum standard results in a financial penalty of up to 15% of the relevant fee for that service. If the MSP performs above the required standard a bonus may be payable.

15% of each monthly IWP invoice amount (less Reimbursable Expenses) is retained by Defence under the PMF (At Risk Amount) pending the quarterly assessments.

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s47D, s47E(d)

### 5.2 MSP Performance Management Framework

The MSP is required to manage and deliver the contracted services to a standard that meets the required level of performance outlined in the MSP PMF.

Under the MSP PMF, performance is monitored and assessed through the measurement and reporting of performance against the following Key Result Areas (KRAs):

- **KRA 1 - 'Best for Defence'** (14% weighting): the Service Provider's ability to demonstrate 'Best for Defence' behaviours as part of the MSP arrangement;

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- **KRA 2 – Relationships** (15% weighting): the Service Provider's ability to demonstrate positive working relationships with the Commonwealth and other third parties as part of the MSP arrangement;
- **KRA 3 - Service Delivery** (20% weighting): the Service Provider's ability to deliver high quality, effective and efficient MSP Services in accordance with the SMP;
- **KRA 4 - SME / Small Business Engagement** (21% weighting): the Service Provider's ability to demonstrate positive engagement with SMEs and Small Businesses off the DSS panel as part of the MSP arrangement, including quantity and type of work, flow-down of commercial terms, mentoring and development, use of indigenous business etc.;
- **KRA 5 – Capability and capacity** (18% weighting): the Service Provider's ability to demonstrate actions taken to improve the capability and capacity of Defence and industry workforce;
- **KRA 6 - MSP Administration** (12% weighting): the Service Provider's ability to meet MSP administration requirements (e.g. reporting, invoicing, conflict of interest management etc.).

Each KRA is further disaggregated into several Key Performance Indicators (KPI's), which reflect the specific actions and behaviours expected of the MSPs.<sup>33</sup>

Performance is self-assessed quarterly by the MSP and reviewed with the PMO.

Each KRA is weighted according to their relative importance, with KRA 4 (SME / Small Business Engagement: 21%) and KRA 3 (Service delivery: 32%) attracting the highest weightings. To the extent that the MSP's Weighted Performance Score (WPS) is less than 100%, the MSP will lose a portion of the At-Risk Amount.

If the MSP's Weighted Performance Score (WPS) exceeds 105%, the MSP is allowed to invoice Defence the calculated entitlement more than the At-Risk Amount.

Table 2 provides a summary of bonuses and repayments calculated under the MPF.

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Source: PMO

### 5.3 IWP Performance Management Framework

The structure of the IWP PMF is the same as the MSP PMF, however, using the following KRA's:

- **KRA 1: Best for Capability** (28% weighting) – measures the Service Provider's ability to demonstrate 'Best for Capability' behaviours as part of the IWP arrangement;
- **KRA 2: Relationship** (20% weighting) - the MSP's ability to demonstrate positive working relationships with the Commonwealth and other third parties as part of the IWP arrangement;
- **KRA 3: Service Delivery** (32% weighting) - the Service Provider's ability to deliver high quality, effective and efficient IWP Services;
- **KRA 4: IWP administration** (20% weighting) - the Service Provider's ability to meet IWP administration requirements.

The KRAs and KPIs under the IWP PMF are consistent with the MSP PMF.

### 5.4 Effectiveness of the PMF

The following sections address:

- whether the performance measures are aligned with the Joint Objectives;
- whether the KPIs are objective measures, capable of accurate measurement; and
- whether the structure of the PMF appropriately incentivises the MSPs.

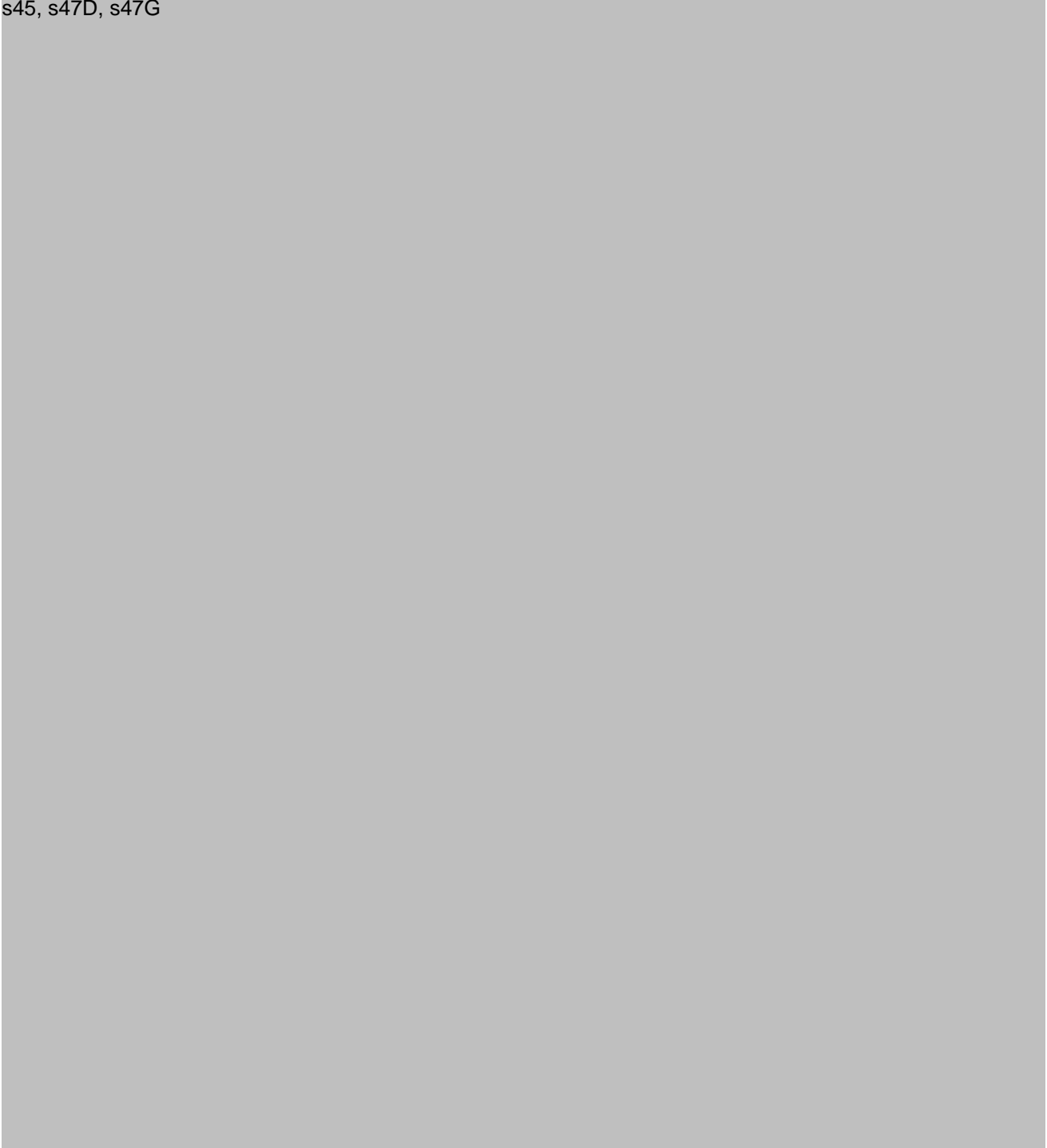
The findings reflect analysis of the terms of the PMF, the self-assessments completed by the MSPs and consultations with the MSPs, the PMO and across Defence.

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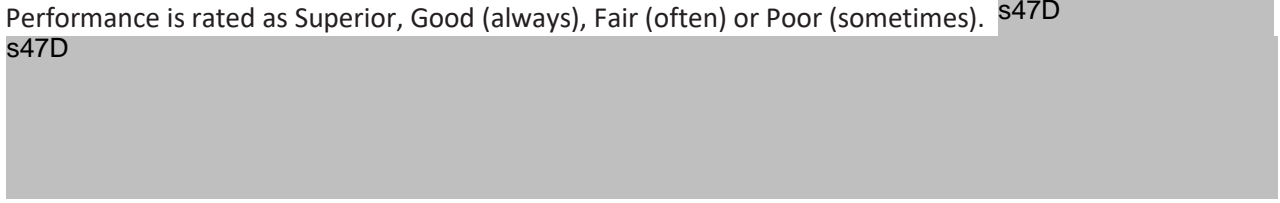
#### 5.4.1 Performance measures

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#### 5.4.2 Weighted Performance Score

Performance is rated as Superior, Good (always), Fair (often) or Poor (sometimes). s47D  
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## 6 Pricing Model

### 6.1 Overview of the Pricing Model

Under the terms of the ESSA, the MSP will be paid:

- an MSP Management Fee (for Strategic Partner Services);
- fees for providing Capability Partner Services;
- fees for providing Integrated Work Partner Services;
- fees for Additional Strategic Partner Services;
- fees for providing Other Services.

The MSPs operate under a commercial pricing model (Commercial Model) which determines the prices to be charged for provision of SP Services, the CP Services and the IWP Services.

The Commercial Model and calculation of pricing are based on the following principles:

- transparency of price build-up;
- agreed mark-ups on the rates of subcontractors who are DSS Panel members<sup>34</sup>; and
- adjustments to payments linked to performance as measured under the performance management framework.

The Commercial Model includes a schedule of rates that align with a subset of the skill sets and skill levels as set out in the ESSA for each of the MSPs. All MSP fees must be calculated at rates that do not exceed the approved rates per the ESSA, plus any mark-up allowed by the Commercial Model.

The MSPs are paid for MSP Services monthly in arrears.

The MSPs will have a percentage of its fees (At-Risk Percentage) linked to the assessment of its performance against an agreed set of criteria (see Section 5).

### 6.2 Contracting models

The following sections outline the contracting models currently used by Defence under the MSP arrangements.

#### 6.2.1 Time and Materials (T&M) contracts.

Under a T&M arrangement the Commonwealth is charged for the level of effort expended, plus approved expenses. T&M arrangements are appropriate for situations where the scope of the task is not well defined and it is difficult to manage the project as a fixed price or outcomes-based arrangement.

<sup>34</sup> s47D, s47G

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Fees to the Commonwealth are calculated based on agreed daily rates and the actual level of effort. T&M arrangements are low-risk for the MSP as the Commonwealth retains control of the outcome, retains all risk and is responsible for cost overruns when delays are experienced<sup>35</sup> or unplanned work is required.

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#### Advantages - Disadvantages

T&M arrangements can be implemented relatively easily with minimal definition of scope. It provides flexibility for the Commonwealth to amend scopes of work without lengthy pricing negotiations. However:

- most risks remain with the Commonwealth;
- greater levels of control over contracted resources are required, to ensure resources are being utilised and value for money is being delivered. s47D, s47E(d)

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#### Current Use

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<sup>35</sup> Where the delays are not the fault of the MSP.

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There are circumstance where time and materials contracting is an appropriate approach for some elements of CASG projects, especially where there is significant uncertainty. s47D

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however:

- there will always be circumstances where T&M may be required;
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#### 6.2.2 Not to Exceed (NTE) contracts

NTE is a level-of-effort based fee model, however, the deliverables are defined and agreed up front and a NTE price is agreed. NTE should provide a better level of understanding of cost drivers and risk considerations, as the MSPs will only take on risks they are able to appropriately manage.

Under NTE arrangements, the MSP includes a more accurate forecast of required effort. Risk can be managed through an estimate of additional resources or time, as control remains with the Commonwealth.

##### Advantages - Disadvantages

NTE arrangements can be implemented relatively easily and can provide greater price certainty for the Commonwealth, however, s47D

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## Current Use

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## 6.2.3 Fixed price contracts

Under a Fixed Price arrangement, the MSP is accountable for delivering specific deliverables by an agreed date for an agreed price. Pricing and payment should be aligned with project milestones and/or the provision of deliverables. The contracted amount should not depend on resources used or time expended, however, it is likely that an underlying budget is still prepared in support of the contracted amount. The Commonwealth pays the agreed fixed price regardless of the MSP resources used and level of effort.

## Advantages - Disadvantages

Fixed price arrangements provide for greater price certainty<sup>39</sup>, but less visibility over the basis of the pricing. s47D

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The development and implementation of effective fixed price work packages is also more time consuming than T&M. There is a greater need for comprehensive planning on the part of the Commonwealth to clearly specify the deliverables and undertake appropriate risk assessments and implement mitigations.

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<sup>38</sup> s47D

<sup>39</sup> Subject to any assumptions attached by the MSP to pricing.

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### Current Use

It was noted in a small number of IWPs certain scopes were priced on a fixed price basis. However, the pricing was still based on a disclosure of days by skill set and skill level.

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#### 6.2.4 Outcomes-based contracts

Under this model, the MSP assumes primary responsibility for planning and execution of activities to achieve a specific outcome or service level for an agreed price. The pricing and payment schedule is generally aligned with project milestones or key performance indicators. Pricing is disconnected from the level-of-effort and therefore requires a firm understanding of risk and what would be a reasonable price for the agreed scope of works.

Outcomes-based arrangements require a trusting and transparent relationship. The MSPs use pricing assumptions to manage unknown risks, particularly where factors outside the contractor's control may compromise the delivery of outcomes. The MSPs may seek to use a management reserve (as allowed under the ESSA) to manage such risks, s45, s47D

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#### Advantages - Disadvantages

Outcomes-based contracts provide greater price certainty and the MSP is incentivised to manage risk and look for opportunities to drive innovation and efficiency in service delivery.

Resources are not limited to working full time on just one project and the structure of the lacking Defence team can be tailored to the actual service requirements and not necessarily Defence's traditional structures.

Resources lacking Defence experience but offering technical expertise can be more easily introduced and embedded in a team offering sufficient Defence experience. These aspects should support greater efficiency in resource utilisation and a comparatively lower cost (subject to the pricing of risk).

The Commonwealth pays for agreed outcomes and in this regard has transferred risk to the MSP, however, it remains responsible for monitoring progress and risks to the project.

As with fixed price contracts, the MSP will incorporate a risk premium into their pricing to the extent that the Commonwealth process and service requirements introduce additional risk into the services.

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s47D Outcomes-based contracts do not easily accommodate changes in the scope of works and can be difficult to negotiate and may take significant time.

Outcomes-based contracts require comprehensive planning on the part of the Commonwealth to clearly specify the outcomes and support an appropriate assessment of risk by the MSP, otherwise the potential price benefits will be negated by the risk premiums. Ideally the statements of work will be co-developed with the MSP as well as comprehensive workforce planning.

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### 6.2.5 Management Reserve

The ESSA contemplates the use of a Management Reserve (MR) to manage risks arising from the uncertainty associated with the provision of services under an IWP.

The ESSA proposes:

- the allocation of the MR against key tasks by the MSP based on a risk matrix prepared by the MSP; and
- the MSP being entitled to submit a claim for payment if a risk event occurs.

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In a collaborative contracting model it is important that the management and costing of risk is understood, visible, and reduced to the maximum extent possible.

The ESSA contemplates the use of a Management Reserve to manage certain risks, however, feedback provided to the Review s45

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Risk should be managed by the organisation best placed to manage it.

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### 6.3 MSP labour rates


As part of the MSP tender process, respondents submitted their proposed labour rates (ceiling rate) across a range of skills and skill levels. As part of pricing evaluation an analysis was undertaken of the reasonableness and competitiveness of MSP Labour rates, using:

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#### 6.3.1 Comparative data analysis

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### 6.3.2 Mark-up rate analysis

Under the terms of the ESSA, the MSPs may apply a mark-up to the cost of subcontractors (excluding consortium members<sup>49</sup>), DSS panelists and non-DSS panelists. s47D, s47G

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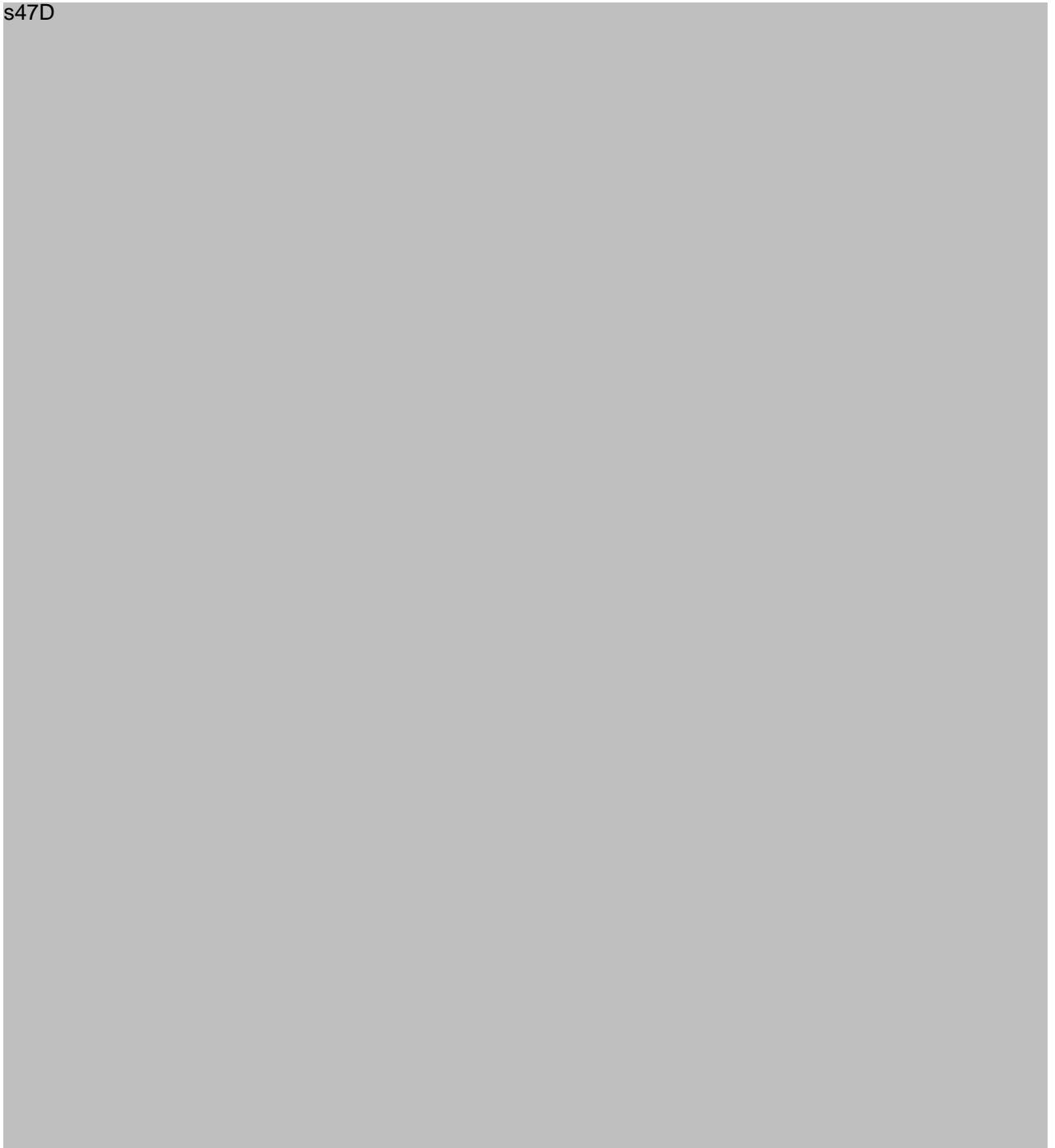
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#### 6.4 Rates escalation

The MSP rates are subject to annual escalation from 1 March 2020 to reflect changes in the cost of labour. Escalation is calculated by reference to movements in the Wage Price Index<sup>59</sup>. The Australian

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<sup>59</sup> Australia - ABS Catalogue 6345.0 (Government Administration and Defence, Private Administrative and Support Service

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market has been subject to low wage inflation in recent years, s47G

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#### 6.4.1 Subcontractor rates

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#### 6.4.2 s45

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## 6.5 Competitiveness of service provider rates

Services provided under the MSP arrangements may be provided by:

- the MSP and its consortium members;
- DSS panelists; or
- Non DSS providers.

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<sup>62</sup> Commercially sensitive information. Care should be taken with how this information is handled and with whom it is shared.

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#### 6.5.4 Non-DSS rates

Under the ESSA the rates (inclusive of the MSP mark-up) negotiated by the MSP with non-DSS providers must not exceed the contracted MSP ceiling rates. The rate charged to Defence using non-DSS providers will therefore be on par with the MSP.

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#### 6.5.5 Key findings and recommendations

Under the Joint Objectives, the MSP arrangements must:

- recognise industry as a fundamental input into capability;
- effectively engage with industry to better leverage resources and experience;
- make the most efficient and effective use of ATL resources;
- maintain a viable and vibrant small business sector for ATL services; and

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- ensure that an enhanced and sustainable capability exists within industry to support current and future Commonwealth requirements.

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#### Open book pricing

The ESSA requires the MSP to provide the Commonwealth with any information requested by it concerning the basis of any pricing on an Open Book Basis. At this stage no audit or formal review has been undertaken on MSP pricing.

Defence does not have any visibility over the cost-of-service delivery and the margins being realised by the MSPs.

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## 6.6 Use of Skill sets and skill levels

The MSP labour rates are based on the skill set and skill level framework included in the RFT. The skill sets and skill levels (ranging from entry level resources through to experts and pre-eminent advisers) provide a description of the expectations of the individual resource in terms of responsibility and skills.

The MSPs self-assess how their nominated resources should be classified. Whilst there are a broad range of considerations, the number of years' experience does tend to be more influential in the classification decision. The number of years' experience may not be directly comparable across industries and skill sets and some flexibility is therefore required in the classification of resources.

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### Key findings and recommendations

Reviewing and refining the skill sets and skill levels will not necessarily address the issues raised by Defence and the MSPs. s47E(d)

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## 7 Conflicts of Interest

### 7.1 Overview

#### 7.1.1 MSP obligations

Under the terms of the ESSA, the MSP and each MSP Team member is subject to obligations with respect to conflicts of interest and probity under the DSS Panel Deed. <sup>s47D</sup>

<sup>s47D</sup>

The MSPs and MSPs' Personnel must comply<sup>67</sup> with the Conflict-of-Interest requirements as detailed in:

- DI(G) PERS 25-6: Conflicts of Interest and Declarations of Interest;
- DI(G) PERS 25-7: Gifts, Hospitality and Sponsorship;
- DI(G) PERS 25-4: Post Separation Employment; and
- DI(G) ADMIN 67-2: Reporting and Management of Notifiable incidents.

DI(G) PERS 25-6 provides a comprehensive set of scenarios where conflicts of interest may arise, recognising the concepts of actual, potential and perceived COIs, which appears to be a broader interpretation of COI relative to the DSS panel.

DI(G) PERS 25-6 also refers to 25 additional documents relevant to confirming Defence's requirements and expectations in respect of COIs.

<sup>s47D</sup>

#### 7.1.2 Subcontractor obligations

Under the terms of the Template MSP Subcontractor Terms and Conditions of the ESSA (Schedule 3 of the ESSA), COI obligations in respect of subcontractors are limited to warranting:

- that at the Effective Date, no conflict of interest exists, or is likely to arise, in the performance of its obligations by itself or by any of its officers, employees, agents or subcontractors; and
- if during the subcontract term a conflict of interest arises, or appears likely to arise, the subcontractor shall promptly notify the MSP in writing and take steps as the MSP may require to resolve the conflict.<sup>68</sup>

COI are not defined under the Subcontractor Terms and Conditions and are not linked back to the Commonwealth policies.

There are no training or other requirements to ensure the MSPs or their subcontractors and relevant personnel understand the obligations under Commonwealth policies. The MSPs rely on their own internal conflict of interest management policies and training to ensure compliance with Commonwealth obligations.

<sup>67</sup> Per the requirements of clause 9.3.1(a) of Schedule 2 MSP Services Terms and Conditions

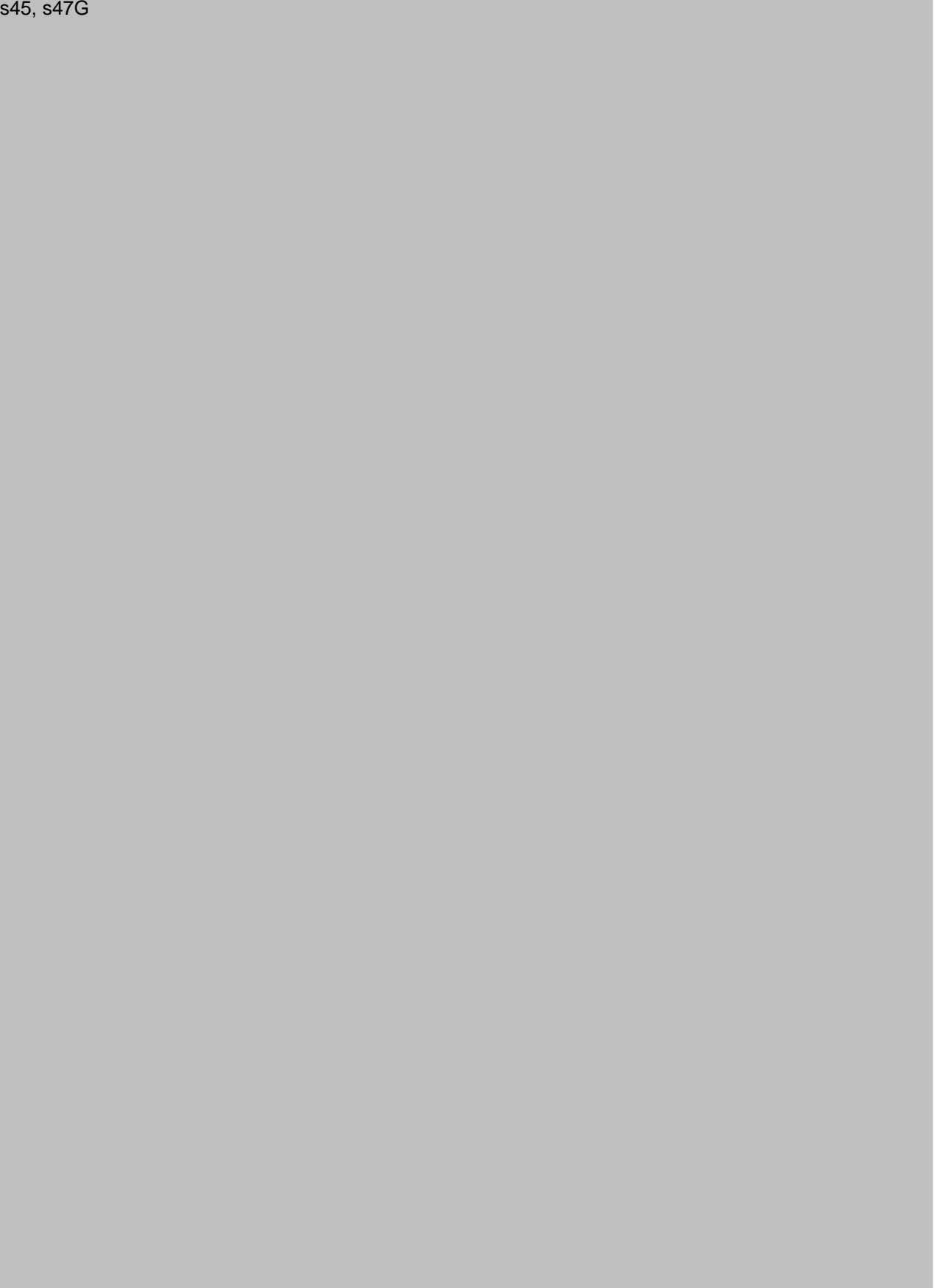
<sup>68</sup> Clause 25 of Schedule 3: Template MSP Subcontractor Terms and Conditions

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## 7.2 Analysis and Findings

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**7.2.1 Contractual requirements**

The operational requirements in respect of COI are set out in multiple locations and multiple documents, which potentially reduces transparency and understanding.

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There is no single source of information for the MSP, its consortium members, or subcontractors to understand all their obligations with respect to COIs.

The guidance and requirements provided in subcontracting arrangements are significantly less than what is contained the ESSA.

The policy compliance obligation imposed on the MSP is not replicated in the subcontractor contract.

**Controls - MSP**

In respect of subcontractor arrangements:

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#### MSP behaviours

Under DI(G) PERS 25-6 Defence personnel must not:

- make improper use of their authority, status, power, position, or access to information to solicit or obtain a benefit of advantage or to cause a disadvantage for any other person or group;
- gain a private benefit or advantage or cause a disadvantage for any other person or group; or

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<sup>71</sup> Obligations exist in respect of actual or potential, but not perceived conflicts.

<sup>72</sup> Multiple IWPs may exist within a particular Domain. Some IWPs may come together at a future date at which point previous BTL arrangements services may become a conflict for an MSP or their subcontractors.

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- accept any benefit that might lead a reasonable person to view such acceptance as conflict of interest.

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## ATL | BTL services

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Following consultation with industry, Defence proposed the ability of DSS panel members to provide services (whether ATL or BTL) would be governed by a probity framework which would be attached to the DSS panel deed.

The framework (Attachment F to the DSS Panel Deed) requires the Commonwealth to be notified of an actual or potential conflict of interest, and the Service Provider must provide the Commonwealth with a written statement:

- outlining the reasons why it considers that (in accordance with the principles the Probity Framework) it should be permitted to:
  - provide the goods or services;
  - engage the individual in question; or
  - accept the offer of employment or other business opportunity; and
- detail the mechanisms that the Service Provider proposes to implement to ensure that the Commonwealth can meet its legal and accountability obligations;

The framework creates specific obligations and provides Defence with specific powers including:

- treating certain information as confidential;
- the service provider and its personnel entering confidentiality undertakings to protect confidential information;
- controls over inappropriate contact, sharing of, or access to information between service providers preparing a response to tender and those service provider personnel involved in the preparation of the tender;
- implementing physical and technology-based controls to prevent inappropriate access to sensitive information and personnel;

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- document handling controls including controls over requests for information and the electronic transmission of information;
- controls over the employment or engagement of former Commonwealth employees and contractors;
- controls over offer of employment or business opportunities relating to any future RFQTS; and
- briefing relevant personnel on obligations under the probity framework.

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## 8 Performance and administration

### 8.1 Background

The following sections address specific questions included in the Terms of Reference for the Review that have not been addressed elsewhere in the Report.

### 8.2 Accessing appropriate resources

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The MSPs must be members of the DSS Panel and therefore have been assessed as having the requisite experience for the skill categories for which they have nominated themselves for the DSS Panel.

Section 9.6.1 outlines the processes the MSPs follow to identify resources to meet the Commonwealth's needs. s45

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<sup>73</sup> Consultations with related businesses of Consortium members were not aware of the MSP arrangements, despite having skills relevant to the program.

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### 8.3 Establishing IWPs

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#### Value for Money

The MSPs were appointed through an open approach to the market. The tender responses were evaluated in accordance with a Tender Evaluation Plan. The MSPs participated in a subsequent negotiation process to address issues identified in evaluation and were ultimately selected as the preferred tenderers.

Any services procured from the MSPs remains subject to Division 1 of the CPRs including:

- the procured services providing value for money;
- encouraging competition; and
- providing appropriate opportunities for SMEs to compete.

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Challenges in securing sufficient personnel with sufficient experience to meet Defence's requirements may create natural limits on the capacity of an MSP to perform at a consistently high level across multiple IWPs and s47D

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### PMO Support

As noted in Section 6.5 the PMO is now expanding the level of support being provided to support the realisation of improved pricing outcomes.

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### Data Strategy

At present limited data is being consistently reported or captured by the PMO. s47D

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#### 8.4 Managing the delivery of services

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Managing the performance of resources provided through the MSP resources is via:


- day to day, on the job guidance and feedback provide by APS and ADF personnel;
- feedback provided at contract end by the Defence project team to the MSP personnel or directly to the MSP's subcontractors;
- feedback provided through the Operations Board meetings; and
- the three monthly PMF assessment process.

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## 8.5 Managing subcontractors

Managing the performance of subcontractors is the primary responsibility of the MSPs, although day to day, on the job guidance and feedback is provide by APS and ADF personnel as well as the MSP leads.

Feedback provided by the MSPs indicated:

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The MSPs' approach to managing subcontractors and providing performance feedback is not clearly and consistently articulated s47D

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## 8.6 Contract administration

### 8.6.1 Payment terms

Commonwealth policy has shifted to 20-day payment terms for contracts valued up to and including \$1 million. Analysis of MSP master subcontracts indicated:

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### 8.6.2 Invoice authorisation - subcontractors

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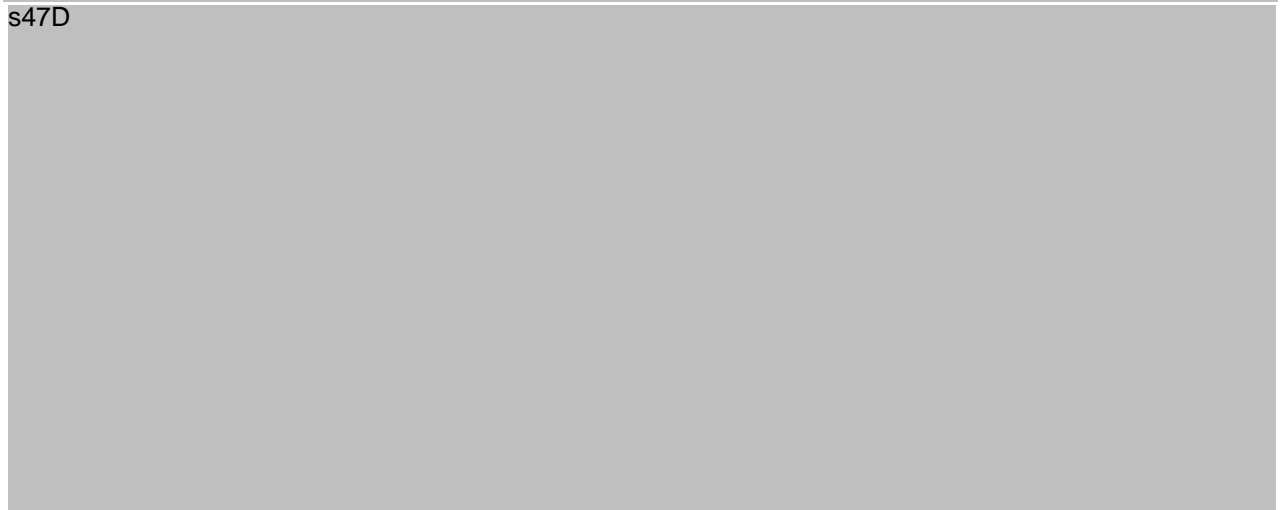
  
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## 8.7 SME brand development

Under cl5.5. of the ESSA, the MSPs are to “implement mechanisms that allow Small Businesses on the DSS Panel, that are working through the MSP’s supply chain, to maintain and promote their own brand and to protect their intellectual property”.

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<sup>77</sup> s45

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## 8.8.1 Small business and other SMEs

The MSPs have committed to working with Small Business and other SMEs in a way that will achieve the Joint Objectives and otherwise comply with the ESSA and any relevant Service Contract.

Through the provision of SP Services, the MSPs were required to develop and implement an industry development strategy, including:

- creating long-term strategic alliances (with the Commonwealth and other industry partners) and maximising the involvement of SMEs, Indigenous enterprises and other local industry activities;
- managing, mentoring and developing SMEs in the MSP's supply chain, in delivering services to the Commonwealth. s45

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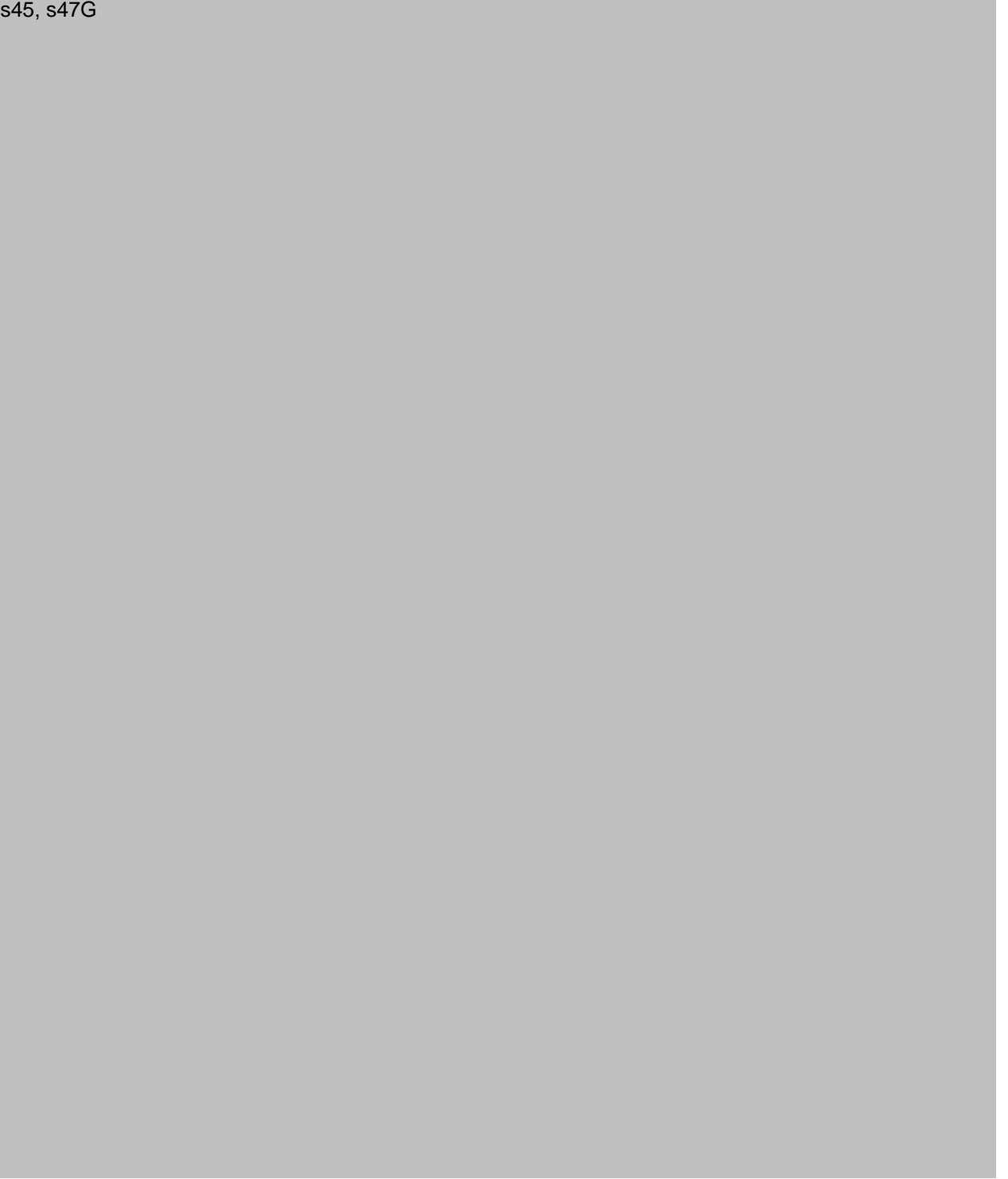
- implementing mechanisms that allow Small Business that are in the MSP's supply chain to maintain and promote their own brand and to protect their intellectual property.

Under KRA 4 of the PMF (SME / Small Business Engagement), the MSPs must demonstrate positive engagement with SMEs and Small Businesses off the DSS panel as part of the MSP arrangement, including quantity and type of work, flow-down of commercial terms, mentoring and development, and use of indigenous businesses.

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<sup>80</sup> s45, s47G

<sup>81</sup> Commercially sensitive information. Care should be taken with how this information is handled and with whom it is shared.

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## 9 Value for Money

### 9.1 Expected benefits

The MSP arrangements were expected to:

- promote strategic co-operative and constructive working relationships with industry;
- provide a more strategic approach to engaging, managing and developing industry;
- encourage joint Defence and industry planning and workforce development;
- make the most efficient and effective use of 'ATL' industry resources to deliver projects utilising integrated APS, ADF and industry resources aligned to 'whole of CASG' outcomes and priorities;
- provide CASG with access to high quality industry personnel and expertise on a flexible basis;
- promote an enhanced and sustainable local industrial capability and capacity for 'ATL' industry resources and reduce the risk of unintended market distortions;
- minimise the operating costs of the model for both CASG and industry;
- incentivise both individual contract performance and collaborative behaviours (between CASG and industry and within industry), as well as the delivery of overall CASG outcomes;
- maintain a viable and vibrant SME sector for 'ATL' subject matter expertise;
- deliver best value for money to Defence for its procurement of 'ATL' industry resources, including through greater bundling of services, optimising economies of scale;
- provide Defence with access to the workforce necessary to meet its growing needs whilst freeing itself of the burden of procuring resources and contract managing them; and
- provide flexibility and agility to adjust CASG's use of industry resources as CASG continues to reform, including implementing the new Capability Life Cycle and Smart Buyer framework.

The MSP model was also intended to address the loss of core capability within Defence to manage projects. Knowledge transfer and the development of CASG personnel was to be a critical outcome of the model.

### 9.2 Joint obligations

Under the Joint Objectives<sup>87</sup> the MSPs and the Commonwealth are required to:

- obtain value for money for the Commonwealth on an ongoing basis in relation to the provision of the MSP Services; and
- assign MSP resources on a best-for-project basis and continually strive to achieve the provision of the best overall value for money MSP Services to the Commonwealth.

### 9.3 MSP obligations

Under the terms of the ESSA, the MSP is obliged to realise value for money outcomes for the Commonwealth, including:

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<sup>87</sup> CI 1.2.2 of the ESSA.

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- through highly competitive labour rates, pre-agreed terms and conditions and optimising economies of scale<sup>88</sup>; and
- the MSP seeking and obtaining competitive pricing for any MSP Services it subcontracts including through the conduct of a competitive process with proposed subcontractors<sup>89</sup>.

The extent to which the MSP achieves value for money through its subcontractor arrangements should be measured through the KRAs set out in the Performance Management Framework.

#### 9.4 Defence obligations

The Commonwealth has specific obligations under the CPRs in respect of realising value for money.

Defence's obligations with respect to supporting the MSPs to realise value for money are less clear, although as noted in Section 12, certain Defence behaviours are inhibiting the ability of the MSPs to maximise the value for money outcomes from the MSP arrangements.

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#### 9.5

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<sup>88</sup> Source: Clause 5.1.1(g) of the ESSA.

<sup>89</sup> Source: Clause cl 15.3.2 of the ESSA.

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## 9.5.2 s47D

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The administrative ease with which Defence can secure resources through the MSPs' supply chains is of value, however, opportunities exist to improve upon current arrangements and behaviours.

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Access to resources in a timely manner

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Whilst the labour market for experienced resources is tight in certain markets (such as Adelaide and Canberra), s47D

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## 9.5.3 Minimise the operating costs of the model for both CASG and industry

The transfer of resourcing activities to the MSPs has delivered benefits through CASG personnel not being devoted to undertaking compliant procurements and managing contractors. s47E(d)

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### Tender processes

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s45 However, the existing tender processes have areas for improvement (see Section 11.3.6).

#### 9.5.4 Access to quality personnel on a flexible basis

Defence requires a flexible resourcing model to accommodate changes that may occur over the course of a project. This may be due to planned and unplanned factors, as well as challenges in existing planning practices.

The MSPs are focused on being responsive to Defence's resourcing requirements, which can be at short notice. Contractual and procurement arrangements provide the flexibility sought by Defence, however, the pursuit of a timely response combined with challenges with the MSP internal processes often results in the market not being fully tested for suitable candidates. This may pose a challenge to meeting the MSPs obligations to access 'high quality personnel and expertise' on a consistent basis.

The MSPs can respond to Defence on short notice, however, the existing contracting model requires resources to be contracted for a fixed period, rather than being on an "as required" basis.

CP Services provided a standing offer by the MSPs to provide a fixed value of resources annually. Whilst

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#### 9.5.5 Delivers best Value for Money

The MSP arrangements were to deliver improved value for money outcomes, including through:

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## 9.5.7 Knowledge transfer

As a result of the loss of skills and experience that has occurred within Defence, there is a risk insufficient experienced resources are available to fill key positions of control in respect of planning, managing and executing projects.

Under the Joint Objectives, the MSPs must “ensure that an enhanced and sustainable capability exists within both Defence and industry to support current and future Commonwealth work requirements”.

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<sup>97</sup> CI 1.21 Capability Lifecycle Manual.

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The transfer of knowledge from the MSPs to Defence personnel is an important aspect of the MSP arrangements. s47D

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#### 9.5.8 Alleviating workforce challenges in terms of capacity and capability

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Expansion of the existing supply chains per Section 9.6.1 will also enhance the MSPs' effectiveness in addressing capacity and capability challenges. s47D

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<sup>98</sup> s47D


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9.6 s47D, s47E(d)



9.6.1 Testing the market

The ESSA requires the MSPs to:

- deliver better value for money to the Commonwealth; and
- seek and obtain competitive pricing, including through the conduct of a competitive process with its proposed subcontractors.

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### 9.6.2 Strategic benefits

Whilst administrative cost savings and lower rates are potentially being realised under the MSP arrangements there are other benefits that are not being fully realised including benefits from:

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The realisation of these and other benefits are considered further in Section 9.5.

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#### 9.6.5 Reporting

Each MSP has developed a standardised monthly dashboard report which assists Project Leads with monitoring the effectiveness and efficiency of service delivery.

The dashboards are being used by Defence to monitor and report against a set of KPIs to improve performance and value for money outcomes. Current reporting includes:

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Reporting is done in aggregate and by individual IWP.

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#### 9.6.6 Risk Management

The MSPs were to play an important role in the delivery of major projects. Their capacity to provide strategic planning for the design and execution of work programs, provide access to an experienced resource pool, leverage established processes and documentation and capacity to integrate and work

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<sup>101</sup> s45, s47G

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alongside APS and ADF personal were expected to assist with stream lining project design and delivery and de-risking Defence projects.

The MSPs have the capacity to manage a greater level of risk, however, this still needs to represent value for money and comply with Defence policy.

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## 9.7 Are the best people being engaged?

The MSPs' approach to identifying suitable candidates is set out in Section 11.3.3 and 11.3.6.

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Recommendations are set out in Section 9.6.1 and 11.3.3 to strengthen the MSPs existing practices.

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## 9.8.1

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## 10 Governance and controls

### 10.1 Background

The MSP model was to provide a more strategically managed approach to the engagement and management of ATL services and should provide greater visibility and control over market engagement and service delivery.

To achieve the program objectives, the MSP model requires a high level of proactive, relationship driven interaction between Defence, the MSPs and industry. This was a significant shift in the service relationship and required a significant change in internal processes and behaviours.

Planning for the implementation of the MSP arrangements recognised the need for strong and appropriately resourced governance and management structures including:

- MSP Steering Committee;
- MSP PMO; and
- Operations Board.

### 10.2 MSP Steering Committee

Under the terms of the ESSA, the Commonwealth 'may' establish a Steering Committee.<sup>103</sup>

The role of the Steering Committee was to provide strategic oversight of the MSP arrangements in accordance with any terms of reference developed by the Commonwealth.

Considering the significant changes required to implement, monitor and refine the MSP arrangements and the underlying risks associated with the model, it was appropriate the Steering Committee include senior representation from key stakeholders across Defence.

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A Steering Committee was initially convened and draft Terms of Reference prepared, however, these have not been formally adopted and no Steering Committee meetings have been held since 2018.

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<sup>103</sup> Section 6.3.2.  
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### 10.3 MSP PMO

#### 10.3.1 PMO design

The PMO design discussion paper prepared as part of the MSP planning noted that whilst the management of the DSS panel would be largely reactive and transactional, control over the delivery of MSP services would require a far more proactive and highly relationship driven interaction, requiring high levels of collaboration to be effective.

The PMO functions would require more strategic skills, centralised (or centre-led) planning and tasking, data analytics, workforce planning and a greater level of coordination across the key stakeholder groups.

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#### 10.4 Operations Board

Under the terms of the ESSA, the Commonwealth may establish an Operations Board.

The role of the Operations Board was to have oversight of the planning and implementation of the MSP Services and of workload across the MSPs. The PMO Operations Board has been recently established and has been meeting monthly for six months.

The PMO uses the Operations Board to provide feedback on performance and operational issues impacting the MSP arrangements as well as any strategic initiatives (e.g. training and education) being supported by the MSPs.

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#### 10.6 Capacity to monitor and assess compliance

PMO monitoring of compliance is currently dependent upon disclosure by the MSPs (see Section 4.6).


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#### 10.7 Business rules

##### 10.7.1 Background

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##### 10.7.2 MSP selection for an IWP

In October 2018 a draft set of business rules was prepared, which focused on decisions in respect of allocation of IWPs, and to a lesser extent the expected behaviours of Defence and the MSPs. These draft rules (see below) were not formally approved or adopted, but are relevant to some of the issues

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that are emerging in the MSP arrangements and s47D  
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### 10.7.3 Other Business Rules

This Review has not considered in detail all aspects of the MSP arrangements where the establishment of Business Rules would support improved outcomes.

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## 11 Industry Feedback

### 11.1 Industry consultation process

#### 11.1.1 Overview

The Defence services industry was consulted via:

- an Industry Consultation Paper (“Industry Paper”); and
- face to face and phone interviews.

#### **Industry Consultation Paper**

The Industry Paper sought written responses to eleven questions that aligned to the key areas of focus of the Review.

The Industry Paper sought:

- general feedback on industry’s experience under the MSP arrangements from transition through to the current operations; and
- specific feedback on issues that had been previously raised with CASG by industry bodies and service providers s45

The contents of the Industry Paper are summarised in [Appendix 4](#).

The Industry Paper was approved for distribution by the Steering Committee.

The Industry Paper was distributed by email to members of the DSS panel on 25 February 2021. Responses closed on 19 March 2021. Based on the level of engagement post the initial submission date, industry was subsequently advised that submissions would be accepted up to 20 May 2021.

#### **Industry bodies**

Consultations were also undertaken with the following industry bodies:

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The industry bodies provided feedback on the challenges with the existing MSP arrangements as well specific feedback provided to them by their members. The industry bodies were requested to share the Industry Paper with their members and encourage their participation in the review process. An offer was made to meet with, or speak to, members who were concerned about providing a written submission.

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A meeting was held with s45

s45. The scope of the Review was discussed including the specific issues that had been included in the Terms of Reference. s45 outlined their concerns with the MSP arrangements including feedback they had received from industry in the past.

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s45 [REDACTED] was encouraged to reach out to those organisations that had made submissions to them and request that they participate in the industry consultation process or that they contact the Independent Adviser directly.

#### 11.1.2 Overview of Industry Responses

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#### 11.1.3 Industry clarification process

All industry submissions were reviewed by the Independent Adviser.

Clarifications were issued to respondents to confirm the Independent Adviser's understanding of the issues raised or to seek corroborating information.

Face to face meetings or phone consultations were also undertaken with organisations where the feedback required further supporting analysis and understanding.

A positive level of engagement was achieved with industry through timely and personalised engagement. The opportunity to speak to a representative of the Review team, reinforced with industry that the Review was a genuine attempt by Defence to improve the MSP arrangements and that all feedback was being taken into consideration, encouraged respondents to reach out to other organisations and encourage them to participate in the review process. Ultimately the level of engagement achieved supported the identification of evidence-based issues and the development of actionable recommendations.

Industry has actively participated in the consultation process. Defence needs to maintain this level of engagement post the Review.

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## 11.2 Summary findings

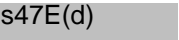
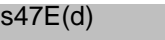

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11.3.3 s45  


#### Analysis and Findings

Under the CAS-SS arrangements, Defence was able to access approximately s47E(d)  There are currently s47E(d)  on the DSS panel. It was expected that through the MSPs, CASG would be able to obtain comparable access, but also access to additional, relevant skills gained in non-ADF industries, providing an opportunity to leverage the learnings and innovation in other leading industries. However, s45 

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#### 11.3.7 Subcontractor arrangements

Under the terms of the ESSA the MSPs may engage subcontractors:

- on the terms and conditions set out in Schedule 3 of the ESSA (Template MSP Subcontractor Terms and Conditions), or such other terms as the MSP determines; and
- on terms and conditions that enable both the MSP and the Commonwealth to achieve the Joint Objectives and otherwise meet their obligations under the ESSA.

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Under cl 11.1 of schedule 3 of the ESSA, the Contract Price is inclusive of GST and all taxes, duties and government charges imposed or levied in Australia or overseas.

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### Insurance

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- Public Liability cover of \$10 million; and
- Professional Indemnity (PI) cover of \$2 million.

The MSP Deed requires:


- Public Liability of \$10 million for each occurrence; and
- PI cover to the value of \$10 million per claim and in the aggregate for all claims in any 12-month policy period.

Under the ESSA the MSP may engage Subcontractors (including members of the DSS Panel) on the terms and conditions set out in Schedule 3: Template MSP Subcontractor Terms and Conditions, or such other terms as the MSP determines.



The Schedule 3 template does not specify the insurance requirements, rather the MSP is to fill in the insurance values on a project-by-project basis.

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The ESSA allows the MSPs to set their own insurance requirements. The ESSA has a higher public liability cover of \$10m compared to the DSS Deed (\$2 million). s45, s47G

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The DSS RFT indicated the long-term average annual expenditure under the CAS-SS panel was approximately \$300m per year, comprising:


- a. approximately 45% (\$135m per year) through CASG;
- b. approximately 50% (\$150m per year) through other Defence Groups or Services; and
- c. approximately 5% (\$15m per year) through other Australian Government agencies.

The DSS RFT advised that since 2014, CASG has also let around 15 Integrated Support Contracts (ISC) under which larger packages of support services were required. These ISCs had an average total annual expenditure of \$45m a year which was expected to double over the next 3 - 5 years. The average duration of these ISCs was 3 years. CASG expected that work packages of this nature would be undertaken by MSPs in the future.


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The ESSA requires the MSPs to disclose to the PMO any actual, potential, or perceived conflicts of interest.

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11.5.2 s45  


### 11.5.3 Indigenous development

The Indigenous Procurement Policy (IPP) applies to the MSP arrangements.

Under the terms of the ESSA<sup>144</sup>, the MSP must use best endeavours to increase its purchasing from Indigenous enterprises and employment of Indigenous Australians.


The MSPs must develop an Indigenous participation plan for approval.

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<sup>144</sup> Per clause 27 of the ESSA

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## 11.5.7 Knowledge transfer and continuous improvement

The Joint Objectives include ensuring that an enhanced and sustainable capability exists within both Defence and industry to support current and future Commonwealth work requirements.

It was expected that the structure of the MSP model combined with the flexibility MSPs would have under outcomes-based contracting and adopting a strategic approach in areas such as workforce planning would establish a platform for knowledge transfer, continuous improvement and the delivery of efficiencies to Defence.

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## 12 Defence behaviours


Consultations within industry and across Defence have identified several Defence behaviours that are impacting on the efficiency of the MSP arrangements and the realisation of the expected benefits.

### 12.1 Lack of visible senior commitment

The MSP program represented a transformational change that needed to be effectively supported by senior leadership; an effective Steering Committee and investment in a PMO with robust capabilities.

The governance structures need to be prominent in the promotion of the MSP program, encouraging adoption, overseeing implementation, identifying and managing resistance.

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### 12.3 Use of DSS panel

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s45. This proposed approach and its compliance with the ESSA is being reviewed by the PMO.

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Whilst guidance has been provided as to when the DSS panel may be used this policy does not appear to be complied with or enforced.

It is recognised that circumstances may exist which warrant the use of the DSS panel, however, such use needs to be controlled and authorised and must be in compliance with Defence policy.

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#### 12.5 Must have Defence experience

Defence personnel have not consistently embraced the potential benefits of using contractors who do not have Defence experience. This is contributing to a narrowing of the accessible workforce and negating the potential benefits of accessing experience and innovation gained in non-Defence industries. This attitude is inconsistent with feedback from senior Defence personnel who:

- want access to new blood with non-Defence expertise as a source of innovation and ideas for efficiency gains, improved planning, and risk management;
- understand that continuing to use the same personnel or only those who have come from Defence only delivers the same thinking and approaches currently used by Defence; and
- understand resources lacking Defence experience can be used as long as the MSP ensures there is adequate supervision by an experienced resource or an assessment is undertaken that the role doesn't actually need Defence experience.

Current use of resources not having Defence experience has resulted in positive feedback from Defence and needs to be built upon.

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12.7 Reviewing CVs

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but may also reflect:

- an ingrained behaviour; or
- changes in the skills required of the subcontractor between instructing the MSP and the presentation of candidates.

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12.8 Lack of experienced resources

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Defence is challenged by the volume of projects it is required to undertake, and the resources it has available to do them.

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## 12.10 Naming skills and skill levels

Defence's default practice is to contract MSPs based on a defined number of skills and skill levels.<sup>151</sup>

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## 12.11 Working across multiple projects

Defence is not consistently open to allowing contracted personnel to move between projects within the same branch or allow contractors to work on more than one project.

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<sup>151</sup> This is consistent with the findings of the analysis of a sample of IWP contracts as part of the Review.

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Contracting a resource full time for a fixed number of days is not necessarily the most effective contracting model and does not ensure the contracted resource is being fully utilised. Contracted resources may have the capacity to take on additional responsibilities. Better utilisation of resources will benefit Defence if appropriately managed.

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## 12.12 Long-term pricing

Defence is not optimising the terms under which the MSPs and subcontractors are being engaged.

Whilst multi-year contracts have been put in place under some projects, many IWPs were observed as contracting the MSPs (and in turn subcontractors) under short-dated contract terms (6 months), despite the underlying projects having multi-year expected lives.

Contracting on a short-term basis:

- does not optimise the pricing obtained from DSS panelists<sup>152</sup>;
- does not establish a basis to negotiate discounts from the MSPs for long-dated projects;
- increases project administration costs and diverts resources to contract extension activities;
- creates pressure at financial year end to negotiate contract extensions;
- does not secure resources long-term for critical projects;
- leaves Defence exposed to dependency issues and subcontractors seeking significant rate increases<sup>153</sup>; and
- does not provide visibility for industry to support planning and investment decisions.

Contracting behaviours are largely influenced by budget cycles<sup>154</sup> and planning behaviours<sup>155</sup>.

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<sup>154</sup> Funding for certain projects may only be funded on a 12-month basis, effectively capping contract terms.

<sup>155</sup> Some detailed project workforce planning is currently done on a 6 monthly rolling cycle.

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## 12.15 Partnering behaviours

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There are many factors as outlined in this report that are likely to be contributing to the above observations.

Re-establishing the MSP arrangements in accordance with the original model design will be a critical step to help addressing the existing relationship issues.

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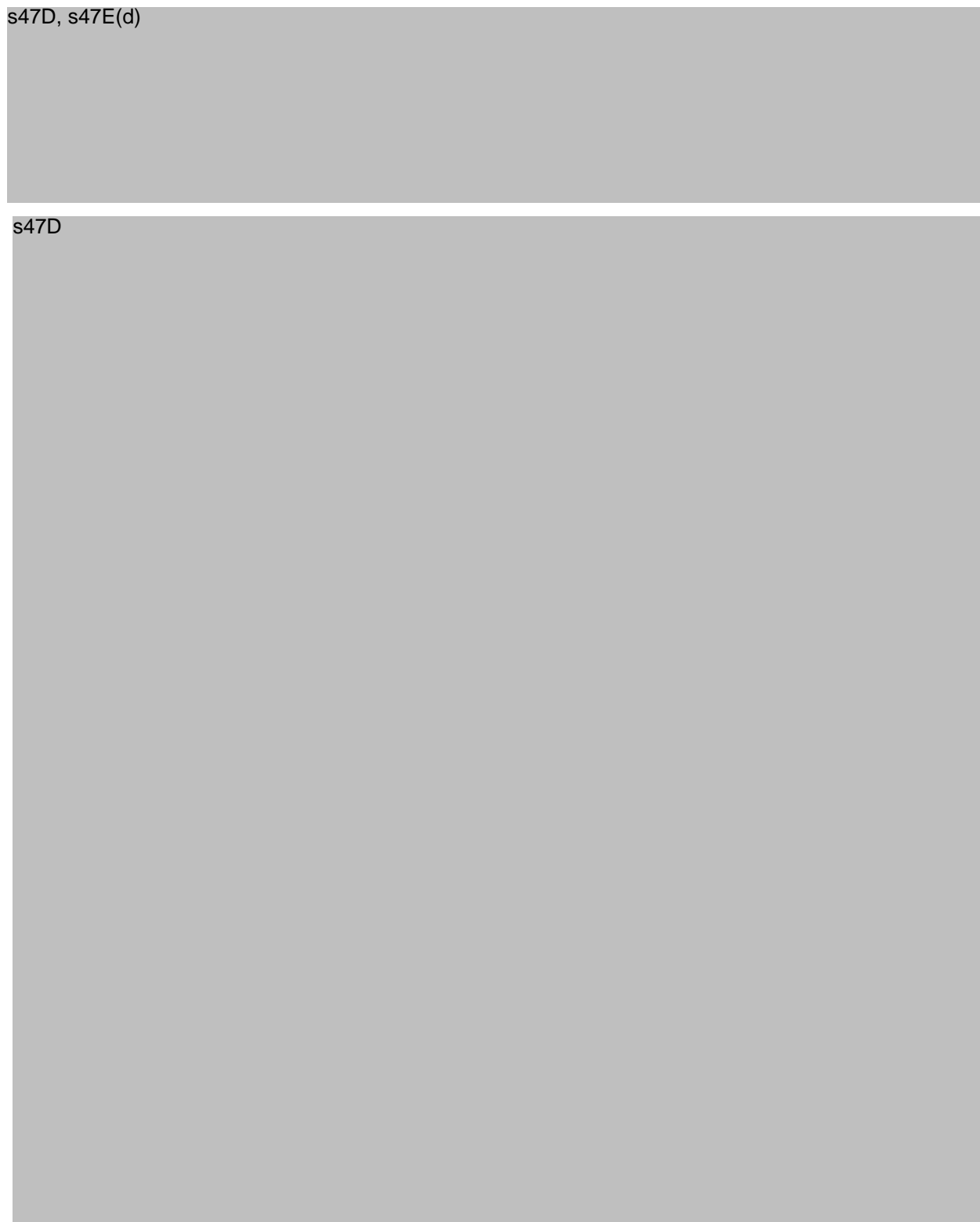
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## 13 MSP Behaviours

### 13.1 Retention of key persons

The ESSA requires the MSP to not change or remove Key Persons unless in accordance with the terms of the ESSA.

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### 13.2 Other feedback

In addition to the issues set out in the remainder of the Report several additional MSP behaviours have been observed by industry and Defence s45, s47D, s47E(d)  
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Many of the issues raised through the Review were historical in nature, or insufficient information was available or was willing to be provided to support further investigation.

Whilst the PMO has been receptive to receiving feedback from industry, s45  
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Better transparency over the operation and control of the MSP arrangements and increased levels of communication will be beneficial to improving the relationship between industry, the PMO and the MSPs.

Industry is a key stakeholder in the MSP arrangements. An appropriate level of resources needs to be devoted within the PMO to meeting and managing industry's expectations.

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## 14 Implementation strategy

Diagram 1 sets out a draft timetable for the implementation of the Review recommendations.

The draft timetable has been influenced by:

- the interdependencies that exist between the different activities;
- the timing for the exercise the extension right for the ESSA (three months before the expiry of the initial service period – January 2023).

The capacity to meet the timetable is dependent upon an appropriate level of resourcing within the PMO and the engagement of external legal and other advisers to undertake discrete activities to support the PMO.

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The timetable will need to be update for the Christmas | New Year period (potential 1 month extension).

A more detailed timetable is included in Appendix 8

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# APPENDICES

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## Appendix 1: Scope of Works

The Issues to be considered by the Review of the Major Service Provider (MSP) arrangements (the Review) are detailed below. Additional matters ancillary but relevant to the matters described below may also be considered by the Review. The Review will include consideration of lessons learned through the MSP arrangements, including what has worked well and what could be improved. The Review includes considerations around the performance of the Department of Defence and the MSPs, s47D

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## Appendix 2: Summary of Stakeholders Consulted

The stakeholder groups consulted as part of the Review included.

- individuals responsible for the design of the MSP arrangements;
- individuals involved in the procurement of the MSPs;
- individuals who oversaw the implementation of the MSP arrangements;
- CASG personnel responsible for the current operation and control of the MSP arrangements;
- representatives from the Capability Acquisition & Sustainment Group;
- representatives from Defense domains;
- Australian Industry Capability;
- Defence Service Industry Groups; and
- MSP Consortium members.

To facilitate appropriate engagement, tailored consultation strategies were developed to address the information, communication and data collection requirements for each stakeholder group.

### Industry Consultation

The Defence services industry was consulted via:

- the receipt of written responses to an Industry Consultation Paper (“Industry Paper”)
- face to face and phone interviews.

### Industry Paper

The Industry Paper sought written responses to eleven questions that aligned to the key areas of focus of the Review.

The Industry Paper sought:

- general feedback on industry’s experience under the MSP arrangements from transition through to the current operations; and
- specific feedback on issues that had been previously raised with CASG by industry bodies and service providers (e.g. poaching of staff).

The contents of the Industry Paper are summarised in Appendix 4.

The Industry Paper was approved for distribution by the Steering Committee.

The Industry Paper was distributed by email to members of the DSS panel on 25 February 2021. Responses closed on 19 March 2021. Based on the level of engagement post the initial submission date, industry was subsequently advised that submissions would be accepted up to 20 May 2021.

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The industry bodies provided feedback on the challenges with the existing MSP arrangements as well as specific feedback provided to them by their members. The industry bodies were requested to share the Industry Paper with their members and encourage their participation in the review process.

#### Australian Small Business and Family Enterprise Ombudsman

A meeting was held with the office of the Australian Small Business and Family Enterprise Ombudsman ("Small Business Ombudsman") on 12 March 2021. The scope of the Review was discussed including the specific issues that had been included in the Terms of Reference. The Small Business Ombudsman outlined their concerns with the MSP arrangements including feedback they had received from industry in the past.

#### Overview of Industry Responses

110 written submissions were received to the Industry Paper (see Appendix 4 for full list of respondents).

Respondents comprised:

- a broad cross section of micro (less than 5 employees), small (6-19 employees), medium (20-199 employees) and large organisations (200+ employees); and
- organisations who had not been engaged under an MSP over the last three years through to organisations who have been engaged more than 9 times.

Respondents covered a wide range of skill sets under the MSP arrangements, but with significant representation in the areas of project management; engineering skills; integrated logistics support; supply chain and Learning and Development.

#### List of respondents

Service Provider	#	Service Provider	#	Service Provider
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Face to face meetings or phone consultations were also undertaken with organisations where the feedback required further supporting analysis and understanding.

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## Appendix 3: Risk review

In October 2020, the MSP PMO in conjunction with the MSPs undertook a risk review of the MSP arrangements. The process identified 21 discrete risks grouped into 6 broad categories:

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## Appendix 5: Industry Consultation Paper

### Section A: Respondent Details

### Section B: MSP Arrangements

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## Appendix 6: SME workshare by MSP

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