



Australian Government  
Department of Finance

# Contestability Programme Guidelines

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# The Guidelines

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These Guidelines provide information that will support officers within entities to undertake specific parts of the Efficiency through Contestability Programme (the Programme). The Guidelines provide background information on: contestability; how the Programme will operate; and the roles of the Department of Finance (Finance) and other participants such as Portfolio Departments.

Each section of the Guidelines provides information about different aspects of the Programme, and each section can be read independent of other content.

In addition to these Guidelines, information about the Programme can be found at the [Contestability Programme Website](#), by calling the Contestability Programme Enquiry line on 02 6215 2991, by contacting Finance on [contestability@finance.gov.au](mailto:contestability@finance.gov.au).

## What is Contestability?

There are a range of views and definitions about what contestability is. While the definition of contestability is varied, within the Australian Government:

*Contestability refers to the prospect of competition in public sector functions to improve both the efficiency and effectiveness of contributing to achieving government's outcomes.*

While entities may have initially been delivering their functions both efficiently and effectively, over time with new Budget measures and a constantly evolving environment, this may no longer be the case for functions or elements of functions provided. Looking at functions with contestability in mind provides an opportunity to consider:

- what role should the government have;
- how functions align to government priorities;
- how to best achieve a function's intended effect;
- who is best placed to undertake a function; and
- how to encourage entities to continue to improve the efficiency and delivery of the function, through the possibility of competition.

## What is a Function?

In the context of the Contestability Programme a function is a self-contained body of work likely to be at the sub-programme level, and includes all areas in which the government employs staffing or resources to achieve an output. This may include functions that contribute to service delivery, policy development or functions that support activities such as corporate functions. A function is not a defined term within the Commonwealth's Outcomes and Programmes framework. For the Programme, functions will be classified according to the Australian Public Service Job Family Model, developed by the Australian Public Service Commission.

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Figure 1: Spectrum of Contestability Options

# Executive Summary

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Public sector reform goes beyond reducing costs and making savings. It is also about enabling the government to sustainably design and deliver programmes and services in an increasingly dynamic environment.

A 'contestability mindset' asks that each portfolio consider, function by function, if there is still a role for government in delivering the function, before considering alternative delivery models. The objective of public sector reform is not merely to replicate the current models of service provision by another organisation, but to streamline delivery models in order to improve performance.

The prospect of competition for public sector functions (including with other potential providers within government) will not only provide the opportunity to improve efficiency and effectiveness, but will help government better respond to the evolving expectations and needs of citizens.

With the prospect for competition, and therefore an ongoing incentive to increase government efficiency, there is opportunity to achieve better outcomes for citizens and greater value for public money. Through this prospect for competition, the Efficiency through Contestability Programme (the Programme) supports the public sector to adopt a 'contestability mindset'. The Programme considers government's role in undertaking a function, and whether the function could be undertaken more efficiently, or delivered through alternative arrangements.

The Government committed in the 2014-15 Budget to applying a Commonwealth-wide Contestability Programme to systematically review government functions, in whole or in part, with a view to entities improving the effective achievement of government outcomes. Through the Programme, entities will be asked to demonstrate how well they achieve government objectives and to explore alternative and innovative means to improve their efficiency. Utilising contestability to potentially improve how efficiently and innovatively an objective is achieved requires considering a spectrum of arrangements, both within and beyond the boundary of government. Alternative options range from improving internal processes; partnering with, or transferring functions to, other organisations inside or outside of government; through to a fundamental restructure of how the function is achieved.

**Figure 1: Spectrum of Contestability Options**

<b>System Improvement</b>
<ul style="list-style-type: none"><li>• Improve structures, e.g. flatter, less hierarchical structures; shared service arrangements</li><li>• Improve processes, e.g. streamline reporting requirements; joined up government</li><li>• Improve requirements, e.g. reduce unnecessary red tape and regulations</li><li>• Improve products or services, e.g. adopt user-centric design; move to digital solutions available 24/7</li></ul>
<b>Engagement Improvement</b>
<ul style="list-style-type: none"><li>• Improve government relations, e.g. shared footprint; integrated services</li><li>• Improved contractual practices, e.g. payment by outcomes</li><li>• Innovative public investment strategies, e.g. social investment bonds</li><li>• Develop behavioural and policy incentives to promote better compliance with or take-up of government initiatives</li></ul>
<b>Market Improvement</b>
<ul style="list-style-type: none"><li>• Build a market</li><li>• Partner with others e.g. Public Private Partnerships, cross-sector Alliances</li><li>• Form a Government Business Enterprise</li><li>• Privatised</li><li>• Outsource</li><li>• Mutualise</li></ul>

Functions that exist across one or more entities will also be examined, which will provide the opportunity to consider greater efficiency in arrangements for whole-of-government outcomes.

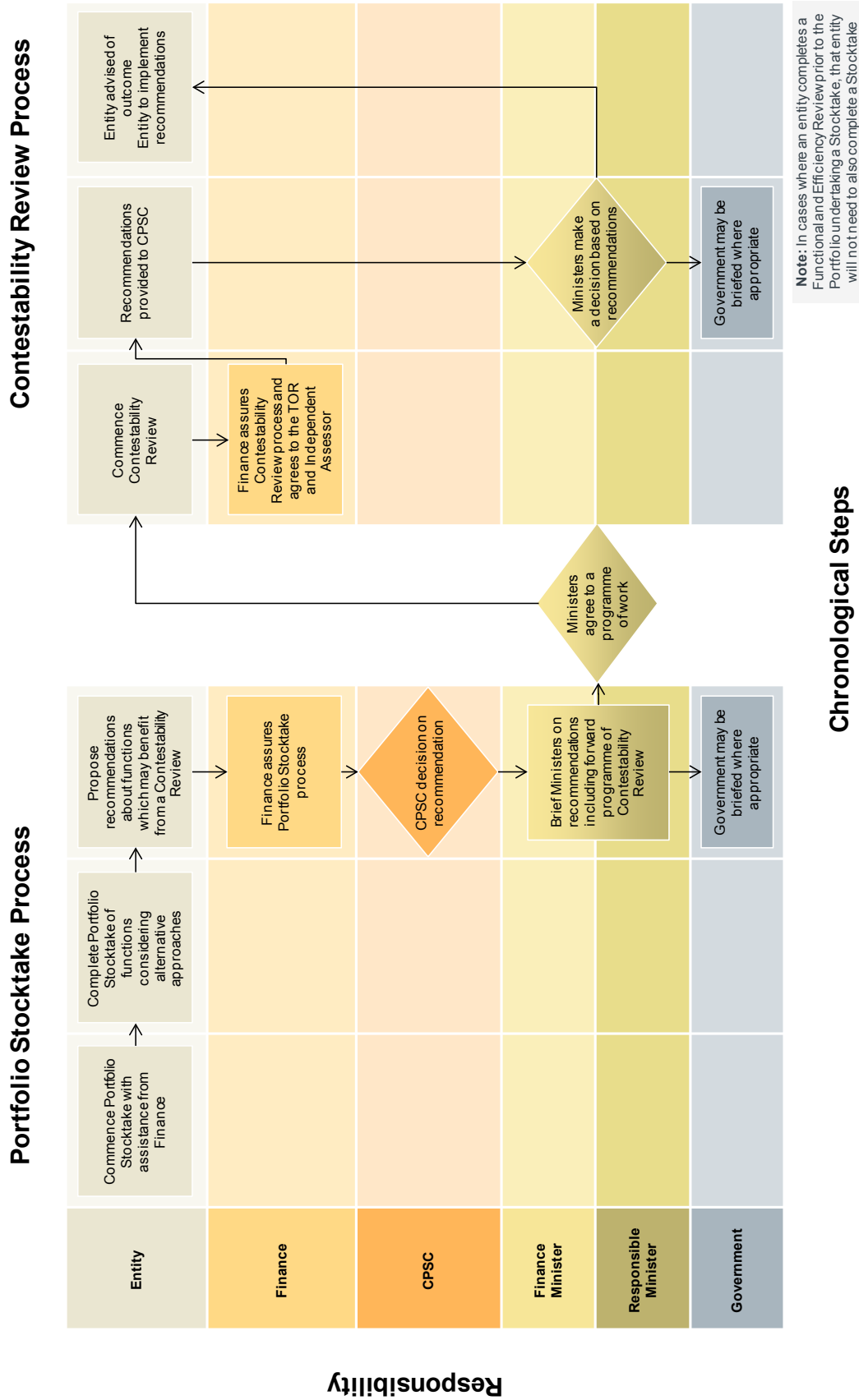
The Contestability Programme is made up of three elements:

1. **Portfolio Stocktakes**, which assess functions across a portfolio at a high level and identify the functions with the greatest potential to be delivered more efficiently through alternative means.
2. **Contestability Reviews**, which consider in detail how the identified functions could best be delivered through alternative means.
3. **Functional and Efficiency Reviews**, which consider the alignment of entity functions to government priorities; identify the functions with the greatest potential to be delivered more efficiently; and consider how these could be delivered through alternative means, operational improvements, and additional efficiencies.

As part of the Programme, based on Government's decision, entities may be required to undertake either a Functional and Efficiency Review or a Portfolio Stocktake. These may subsequently require entities to complete one or more Contestability Reviews on specific functions.

For more information on the links between the Portfolio Stocktake, Contestability Review and Functional and Efficiency Review processes, see Diagrams 1 and 2.

**Diagram 1**

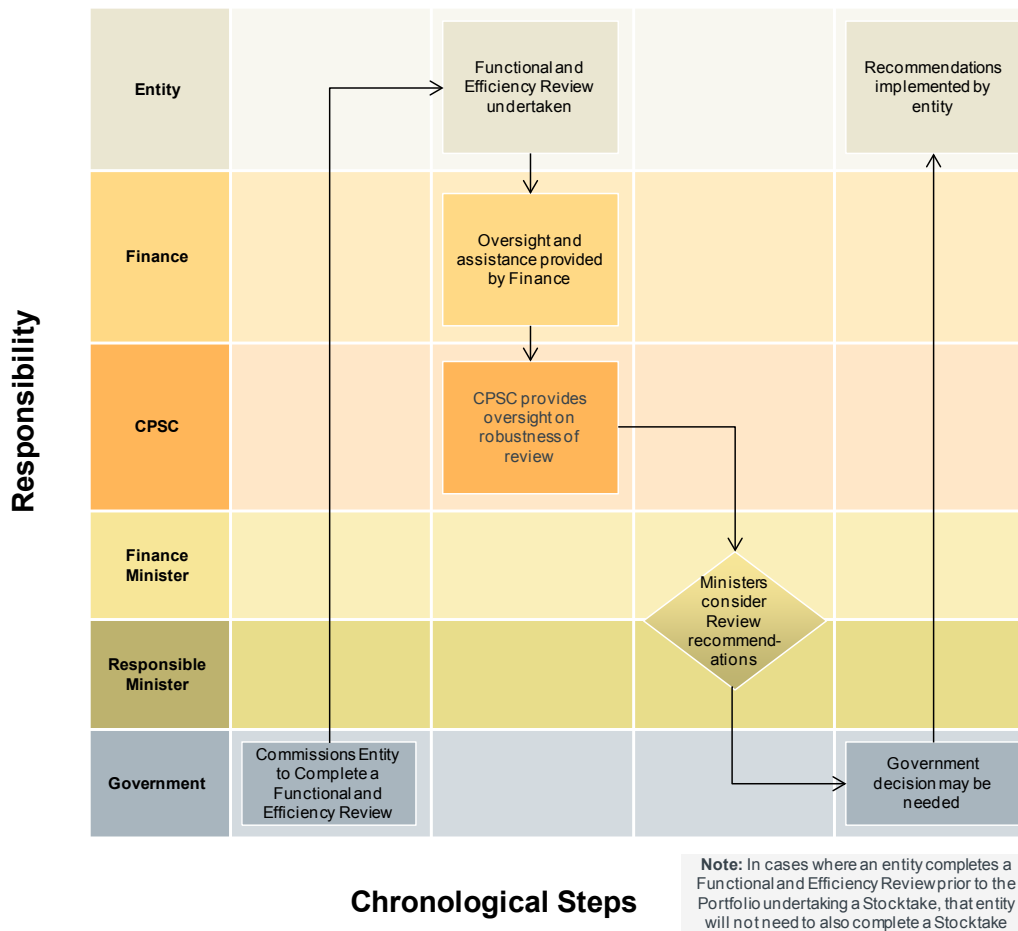


Responsibility



**Diagram 2**

**Functional and Efficiency Review Process**



Entities should draw upon existing information about their functions, which may include Portfolio Budget Statements, Annual Reports or other reviews as part of completing Portfolio Stocktakes, Contestability Reviews and Functional and Efficiency Reviews. Additionally, information produced from the Programme may be useful to other reviews, such as the Portfolio Charging Review being conducted by Finance.

## Portfolio Stocktakes

The Stocktake is the first process in assisting portfolios to improve existing processes, considering new models for providing services and outcomes, and exploring reasonable ways to increase efficiencies. At its conclusion, the Stocktake will provide a shortlist of options that may benefit from a more in-depth Contestability Review. Portfolio Stocktakes are undertaken at a portfolio level (led by the portfolio department in consultation with its portfolio entities) and must:

- Identify and list all of the functions undertaken by entities within the portfolio.
- Consider how to improve the efficiency of achieving the function, including whether there are any other organisations (within or outside of Government) that could provide each function (in whole or in part).
- Consider whether there are any reasons why new providers could not deliver functions more efficiently, or if there are any other impediments (such as cultural or security considerations).
- Consider if government should provide the function.
- Propose functions that may benefit from a Contestability Review.

Each Stocktake will be led by a Portfolio Stocktake Leader, designated at the Senior Executive Service Band 2 or 3 level. A template has been developed to support entities to complete the Portfolio Stocktake. When the Stocktake is complete, Portfolio Secretaries will submit the Stocktake to the Programme's governance committee, the Contestability Programme Steering Committee (CPSC). The Portfolio Stocktake Leader will be given the opportunity to engage with the CPSC about the completed Stocktake and the functions nominated for a potential Contestability Review. The CPSC will consider the functions identified in the Portfolio Stocktakes and propose any Contestability Reviews to the Finance Minister. The Finance Minister, in consultation with the relevant Minister, will determine the functions that will undertake a Contestability Review. The Finance Secretary will then write to the responsible accountable authority advising them of the subsequent steps to be taken to commence the Contestability Review.

## Contestability Reviews

Contestability Reviews will look at specific functions and consider:

- the objective of the function, how it is currently provided, and the associated costs;
- what other alternatives are available (including provision by other organisations, and options to improve efficiency within the current provider); and
- the costs, benefits, risks and any other considerations for each alternative.

Reviews may also occur for functions that exist across one or more entities, providing the opportunity to consider greater efficiency for whole-of-government outcomes. Reviews will identify and recommend the most efficient approach to providing the function, including a proposed implementation plan.

Each Review will be led by a Review Leader, at the Senior Executive Service Band 1 or 2 levels. Each Review will also be assessed by an Independent Evaluator, to be agreed in consultation with Finance, who will assess the final Review against the Terms of Reference and the intent of the programme. The Review will be submitted by the responsible Accountable Authority to the CPSC. Depending on the Review's recommendations, subsequent action may be required to agree and implement the recommendations.

## Functional and Efficiency Reviews

Entities will generally undertake Functional and Efficiency Reviews if they have been subject to significant changes in recent time. These changes could include, for example, changes to their priorities, structures or staffing (resourcing) levels. Terms of Reference will be determined by Government. An Independent Review Leader, selected by the relevant entity in consultation with Finance, will conduct each Review.

Reviews will comprehensively assess the efficiency and effectiveness of all aspects of an entity's operations, programmes and administration and consider:

- the role of the entity and whether current functions performed within it align with the Government's forward priorities and policy commitments;
- any barriers preventing the entity from achieving its current intended outcomes and, where relevant, propose solutions to address these concerns;
- the feasibility and efficiency of alternative approaches to address the Government's priorities including identifying the benefits, costs, risks and any other relevant considerations (including legal, regulatory and cultural considerations); and
- the proposed transition path to implement preferred alternatives, including how performance could be managed, APS staffing, capability considerations and potential governance arrangements.

Completed Functional and Efficiency Reviews will be submitted to the entity's relevant minister and to the Finance Minister. Where appropriate, Review recommendations will be provided to Government for consideration.

## New Policy Proposals

The principles of contestability should be applied to all new policy proposals. [\*Section 4: New Policy Proposals\*](#) provides information about how this should occur. Additional information about how to consider the concepts of contestability when developing a new policy proposal is available from the relevant Agency Advice Unit within the Department of Finance.

## Roles and Governance

While the Minister for Finance is ultimately responsible for the Programme, entities are responsible for undertaking Stocktakes and Reviews. Finance will provide advice and assistance to entities to complete the separate elements of the Programme. Entities will need to undertake these elements from within existing resources. The roles and responsibilities of the Programme's stakeholders is at Appendix A.

Oversight of the Programme will occur through the CPSC, chaired by the Department of Finance, with members at the First Assistant Secretary level from four other entities. The CPSC will oversee the Programme, including recommending the functions identified in the Portfolio Stocktake that would benefit from a Contestability Review to the Finance Minister. The three main roles the CPSC has in the Programme are to:

- recommend and develop a programme of work for functions that may benefit from a Contestability Review;
- ensure the robustness of the submitted Portfolio Stocktakes and Reviews, including adherence to these Guidelines and other requirements; and
- agree the Terms of Reference for Contestability Reviews.
- Finance is responsible for the general management of the Programme; providing secretariat support to the CPSC; supporting entities; and providing an assurance role in the process.

## Timing

Portfolio Stocktakes will commence in 2015 and portfolios are expected to take about three months to complete them. Contestability Reviews and Functional and Efficiency Reviews will be undertaken from 2015 through to mid-2017 and their timeframes will be settled in individual Terms of Reference.

The Programme is designed to be flexible to account for other reforms and government activities currently underway. This flexibility also acknowledges there may be Contestability and Functional and Efficiency Reviews which need to progress in advance of the planned process.

Several [case study initiatives](#)<sup>1</sup> that Commonwealth entities have implemented are available on the [Programme's website](#).<sup>2</sup> While these have been developed independent of the Programme, they provide examples of contestable thinking and an indication of the types of changes that may be considered to improve the efficiency of an entity's functions.

Overall, the Programme provides a real opportunity for considering the structures underpinning different functions of government. This can ensure future structures provide functions and services that maximise government resources with a better focus on contributing to achieving outcomes.

### For more information

In addition to these Guidelines, information about the Programme is available by contacting Finance at [contestability@finance.gov.au](mailto:contestability@finance.gov.au), calling the Contestability Programme Enquiry line on 02 6215 2991; or contacting your Agency Advice Unit within Finance.

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<sup>1</sup> Department of Finance, Efficiency through Contestability Programme, Case Studies <http://www.finance.gov.au/resource-management/governance/contestability/resources/>

<sup>2</sup> Department of Finance, Efficiency through Contestability Programme <http://www.finance.gov.au/resource-management/governance/contestability/>

# 1. Portfolio Stocktake

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A Portfolio Stocktake will provide the opportunity for entities to examine how well portfolio functions are aligned to government priorities, and whether each function is being delivered as efficiently and effectively as possible.

Finance will advise portfolios when they are to undertake a Portfolio Stocktake. The Stocktake will be coordinated by the Portfolio Department. Entities will be responsible for supporting their Portfolio Department in completing the Stocktake.

When completed, Portfolio Stocktakes will be used to determine functions that may benefit from a Contestability Review.

The process for conducting a Portfolio Stocktake involves six key steps:

## Figure 2: Portfolio Stocktake Steps

### 1: Scope

The Portfolio Stocktake Leader manages the Stocktake following the template provided by Finance.

### 2: Analyse

After identifying all of the functions an entity performs, entities should consider: how the function aligns to the Government's priorities; if there are ways of increasing the efficiency of the function; and if there are reasonable alternative approaches to delivering a function, including within the portfolio or by other entities or organisations.

### 3: Assess Options

Functions that the portfolio considers would benefit from the in-depth consideration provided in a Contestability Review or a Functional and Efficiency Review are nominated.

### 4: Recommend Action

When the Stocktake is complete, Portfolio Secretaries will submit the Stocktake to the CPSC. The Portfolio Stocktake Leader will be given the opportunity to engage with the CPSC about the completed Stocktake and the functions nominated for a potential Review.

### 5: Submit

The CPSC will consider the functions identified in the Portfolio Stocktakes and propose any Reviews to the Finance Minister.

### 6: Implementation

The Finance Minister in consultation with the relevant Minister will determine the functions that will undertake a Review.  
The Finance Secretary will then write to the responsible accountable authority advising them of the subsequent steps to be taken to commence the Review.

## **The Opportunity Portfolio Stocktakes present**

The Portfolio Stocktake process seeks to apply a common assessment to all government functions to determine, on a preliminary basis, whether contestable arrangements are feasible. This process will assist portfolios in considering new models of service delivery and in exploring reasonable ways to increase efficiencies.

A Stocktake can be thought of as a service catalogue of entity functions. The Stocktake, as a tool, can assist with developing strategic plans, benchmarking data into the future and serves as a living document for entities to improve their overall performance over time.

Stocktakes provide an opportunity to:

- examine functions and their ongoing importance to Government;
- identify synergies in functions across entities.
  - For example, there may be multiple functions supporting a particular group of stakeholders;
- consider which entity is best placed to provide a function; and
- assess if the function could be delivered or performed in a better way.
  - This is an opportunity to evaluate whether there is scope for change, or barriers, such as regulation or operational processes, that currently impede improved performance.

Information gathered during Portfolio Stocktakes will assist in determining future Contestability Reviews and Functional and Efficiency Reviews. Portfolio Stocktakes will also enable Finance to identify common functions across entities that could collectively benefit from a Contestability Review.

While in some circumstances the contestable provision of a function may not be feasible, it does not mean the function should simply continue to operate as it currently does. It is important that entities assess if the function is being delivered in the best way possible, and if not, what can be done to improve its efficiency. Entities are encouraged to take a broad view of how the efficiency and effectiveness of a function could be improved.

## **The Process**

In commencing the Portfolio Stocktake process, each portfolio department will nominate a Portfolio Stocktake Leader (expected to be at the SES Band 2 level) to conduct the Portfolio Stocktake. In this role they will liaise with portfolio entities, attend CPSC meetings and provide updates to Finance as necessary. Finance will advise when each portfolio is to conduct the Portfolio Stocktake. Each portfolio will be given approximately three months to conduct the Stocktake.

A Portfolio Stocktake template will be provided to the Portfolio Stocktake Leader by Finance to assist in undertaking the Stocktake. This template is designed to be disseminated to all portfolio entities and completed separately by each entity. In finalising the Portfolio Stocktake, a draft is required to be submitted to Finance to ensure that it meets the intent of the Programme in terms of completeness and rigour.

When the Stocktake is complete, Portfolio Secretaries will submit the Stocktake to the CPSC. The Portfolio Stocktake Leader will be given the opportunity to engage with the CPSC about the completed Stocktake and the functions nominated for a potential Contestability Review. The CPSC will consider the functions identified in the Portfolio Stocktakes and propose any Reviews to the Finance Minister. The Finance Minister in consultation with the relevant Minister will determine the functions that will undertake a Contestability Review. The Finance Secretary will then write to the responsible accountable authority advising them of the subsequent steps to be taken to commence the Review.

### **What is a function?**

The key consideration for entities commencing a Stocktake is to identify the functions they perform. In the context of a Stocktake, a function is a self-contained body of work likely to be at the sub-programme level, and includes all areas in which the government employs staffing or resources to achieve an output. This may include functions that contribute to service delivery, policy development or functions that support activities such as corporate functions.

Where an entity undertakes similar activities, for example provision of policy advice on a number of different subject matters, these could be grouped together under the one function, with the different subject matters noted.

Functions should be analysed on an entity basis, meaning that each entity in a portfolio should complete a separate template. The Portfolio Department will coordinate the separate responses by entities.

Entities should also consider if each function is aligned to government's priorities and if it should continue to be performed.

### **Design of the Portfolio Stocktake Template**

Finance will provide entities with a template to complete the Stocktake. The template aligns functions with the Australian Public Service Job Family Model (see Figure 3), developed by the Australian Public Service Commission. This alignment will assist entities in identifying their functions in a common and consistent way.

The Job Family Model, applied to the entity's functions, can provide a deeper view of how resources are aligned with broader government objectives.

The template categorises functions as either common or entity/portfolio specific.

### **What is a common function?**

Common functions such as Human Resources are undertaken across all entities/portfolios and simple information about these functions will be collected via the template.

In the event that the function is considered to be non-standard, for reasons identified by the entity/portfolio, further detail will need to be provided.



## What is an entity/portfolio specific function?

Entity/portfolio specific functions may be undertaken by a discreet number of entities/portfolios. Examples of such functions include Science and Health, and Intelligence functions. For these specific functions, specific information will be collected via the template.

The following APS Job Family Model diagram provides an overview of the categories of functions. Note the table is non-exhaustive and will vary between entities. A full list of functions for use is available in the Portfolio Stocktake template.

**Figure 3 – Australian Public Service Job Family Model**



Source: Australian Public Service Commission  
<http://www.apsc.gov.au/publications-and-media/current-publications/job-family-model>

## Where to find information about functions?

Entities should utilise existing information about its activities to commence this process. Useful sources of information may include:

- workforce planning resources, including the APS Job Family Model;
- annual reports;
- Portfolio Budget Statements;
- Chief Financial Officer (CFO) reporting;
- entity business architecture documents and organisational charts; and
- other internal planning resources such as financial systems.

While these sources of information should provide entities with a reasonable basis for identifying functions, judgement will still be required. Entities may find they need to revisit what is considered a function as they attempt to answer subsequent questions about a function.



## What information should entities provide about the functions?

Following the identification of what functions the entity undertakes, Portfolio Stocktakes should detail a number of key aspects to provide an explanation of the function:

- **Desired Outcome** - identify at a high level what outcome the function is attempting to achieve. In describing the outcome, this should not simply be the outputs the function generates but the effect the outcome seeks.
- **Delivery Arrangements** - briefly outline how each function is currently undertaken, including the different components that constitute the function, including whether the function is provided internally, by another provider, or a combination of the two.
- **Reviews** - entities should draw attention to any previous reviews, evaluations or other work undertaken (currently or previously) that may be of relevance in considering the function.

The information provided in the Stocktake does not need to be extensive, but enough to provide a high level overview of the function for someone without detailed prior knowledge.

## Could the function be made more efficient and effective?

### Key questions:

- ? Using existing resources, could this function be undertaken more efficiently?
- ? To make this function contestable, what needs to change?

The Stocktake stage of the Programme gives entities the opportunity to assess if the function could be provided more efficiently by the entity. While all government functions were likely introduced with a clear intention, over time, this clarity may become obscured. Entities should revisit the functions undertaken, their intended and actual impact, as well as consider if the function is aligned to government's current priorities. Entities should also consider government's future objectives and any challenges they will likely face in meeting these objectives. This presents an opportunity for entities to refocus on priority areas.

Entities should evaluate what they could do to improve the efficient delivery of the function and consider what obstacles currently prevent this from occurring. This may include regulatory or structural barriers, or processes that if modified could improve the function's efficiency. Entities should not rule out changes in function delivery or efficiency solely because of the implied legal, regulatory or contractual changes or impediments.

Where entities decide a function is no longer required or could be provided more effectively or efficiently, they should identify this in their Stocktake. In most cases an entity (through its Minister) will be able to implement this proposal. Where a Government decision is required to cease or modify the function, entities should record in the Portfolio Stocktake what will be required (such as legislative amendment) to implement this change. Finance will offer entities support to develop a proposal for Government consideration about recommendations to cease or modify functions.

Where there are grounds to believe the function's efficiency could be improved, a Contestability Review of that function may be warranted.

## Should contestable arrangements be considered?

Contestability refers to the prospect of competition in public sector functions to improve both the efficiency and effectiveness of contributing to achieving government's outcomes.

### Key questions:

- ? Has this function been reviewed in the past three years, is a review currently being undertaken, or is the function due for a review?
- ? Are there other organisations undertaking similar functions?
- ? To make this function contestable, what needs to change?
- ? If the whole function cannot be undertaken more efficiently, can a discreet element of the function be made efficient?

One of the aims of the Portfolio Stocktake process is to preliminarily assess whether a particular function could be contested. In some cases, a function may already be contested, but may still warrant a Contestability Review. For example, some functions are provided by an external provider. If this is the case, it should be noted in the Portfolio Stocktake. In cases where functions are not already contested, the Portfolio Stocktake should establish whether a function could be contested. The decision as to whether it should be contested will occur following more detailed analysis of the function if it is selected to undergo a Contestability Review.

### Are there alternative arrangements?

The first step in establishing whether a function could be contested is determining if alternative methods, including providers, could potentially deliver the function. This could be through a different policy instrument, innovative non-government approaches, or through another government entity or not-for-profit provider (see [Section 5: Contestability Options](#)).

In the Portfolio Stocktake, entities should identify if alternative arrangements could provide the function and the types of providers that could do so.

In determining whether alternative providers could deliver the function, entities should consider the components within a function. Entities should note where alternative providers could administer a part or all of the function.

When assessing alternative providers, Stocktakes should consider the outcome the function is attempting to achieve. Alternative methods may be able to achieve the same outcome, but using a different approach.

The information about alternative providers does not need to be extensive (such as getting quotes) in the Stocktake. It is sufficient to note alternative providers could potentially deliver the function.

A detailed analysis of the alternative policy instruments or approach is not required in the Stocktake. More detailed analysis would occur during a Contestability Review. At this stage, just noting the reasonable alternative approaches is sufficient.

**Are there any reasons why these alternative arrangements could not deliver the function as or more efficiently?**

In considering if a function could be contested, entities should also examine if there are any reasons why a reasonable alternative approach could not achieve the function as or more efficiently than it is currently being delivered. This could be due to unique experience or skills developed by the entity which could not reasonably be developed by other organisations, such as the entity's ability to leverage off existing infrastructure or IT systems.

Where there are reasons why alternative methods cannot provide the function efficiently, these should be clearly identified in the Portfolio Stocktake.

**Are there any other considerations that could preclude provision on a contestable basis?**

Entities should also consider if there are other sensitivities involved with the function that could preclude provision on a contestable basis.

These considerations could include concerns regarding security, privacy or cultural considerations. If an entity determines such considerations should preclude contestability occurring, it should clearly outline these in the Portfolio Stocktake.

## 2. Contestability Reviews

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Entities have a leading role in Contestability Reviews (Reviews) to explore how government functions can be delivered more efficiently, effectively and innovatively.

The process leading up to and for conducting a Review involves six key stages:

### Figure 4: Contestability Review Key Steps

<b>1: Scope</b>
<ul style="list-style-type: none"><li>• Determine the Review leader for the entity.</li><li>• Confirm Terms of Reference with Finance and the Contestability Programme Steering Committee (CPSC)</li></ul>
<b>2: Analyse</b>
<ul style="list-style-type: none"><li>• Consider the spectrum of contestability options that may be suitable for the function.</li></ul>
<b>3: Assess Options</b>
<ul style="list-style-type: none"><li>• Assess the shortlist of options for contestable provision including: assessing risks and opportunities; assessing benefits and costs in theory and in practice; assessing market maturity; and conducting stakeholder consultation.</li></ul>
<b>4: Recommend Action</b>
<ul style="list-style-type: none"><li>• Analyse implementation and management of the recommended option over the short, medium and long term.</li><li>• Identify the best options and make recommendations about potential implementation options.</li></ul>
<b>5: Submit</b>
<ul style="list-style-type: none"><li>• Submit a draft report to Finance to confirm it adheres to the Terms of Reference and Contestability Framework, and is rigorous.</li><li>• Submit the final report to the CPSC and, in turn, to the Finance Minister.</li></ul>
<b>6: Implementation</b>
<ul style="list-style-type: none"><li>• Pending approval from Government, implement the Review's recommendations.</li></ul>

## The opportunity Contestability Reviews present

Contestability Reviews provide the opportunity to consider whether certain functions can be delivered via alternative means. In conducting Reviews, entities will play a leading role in exploring how government functions can be delivered more efficiently, effectively and innovatively. Any reasonable scope for change may be explored, such as removing barriers that reduce efficiency or exploring innovative approaches (such as payment by outcomes, for example) in order to achieve Government priorities (see [Section 5: Contestability Options](#) for further information).

Generally, the entity responsible for the function under review will lead the Contestability Review. The Review process considers that the people currently responsible for delivering government functions are best placed to advise on how to improve them.

In some cases, where there are similar functions carried out by different entities, conducting one Review to cover all relevant entities may be appropriate. In these cases a lead Contestability Review entity will be nominated, with other entities identified to provide support.

### Neither the status quo nor outsourcing is necessarily best or inevitable

Conducting a Review does not imply that a function will necessarily be modified or that it will be transferred outside of government. Instead, a Review should consider how the functions can be delivered most efficiently in the future. This will require considering whether functions need to move from within to beyond the boundary of government (see [Section 5: Contestability Options](#)).

The prospect of competition enables entities to consider a potentially wider and more innovative range of opportunities to improve the efficiency and effectiveness of their functions. This empowers entities to propose changes in how a function is delivered.

Entities are encouraged to engage widely with stakeholders both within and outside of government for their Reviews. Engaging with stakeholders, other entities, independent reviewers as well as Finance will enhance the rigour of Reviews.

The government may continue to be the implicit underwriter of programmes and functions regardless of how these functions are delivered. This does not imply, however, that this status quo should be maintained. Assessing entity functions against various contestability options can lead to an improvement in a programme's sustainability and effectiveness, and provides an opportunity to think beyond changes at the margin. These changes can lead to better outcomes for stakeholders.

Risks may not be sufficiently managed through contracting out the provision of a function as it is, without any thought about the long-term structure of the function or other unintended consequences outsourcing may create. Reviews should also consider additional factors, such as contract management requirements, that are likely to be needed to enable changes to the current approach. As such, provision through an outsourcing option may not yield sufficient benefits over the long term.

For example, contracting out certain government functions that exhibit natural monopoly characteristics may neither reduce costs in the longer run nor resolve any issues associated with monopolies. Further, whether a function can be made contestable will rely on how well developed the relevant market is. In the absence of a mature market, alternative providers may not achieve benchmarks or provide sufficient choice to Government, however a Review can explore the scope to develop a market, and reduce any barriers to entry.

## Figure 5: Key Contestability Review Questions

### Step 1: Scope

- What are reasonable ways to achieve this function?
- What are the characteristics of these alternative models?
- How would each option indicatively work, and is this feasible?

### Step 2 and 3: Assess and analyse options

#### *Risk assessment*

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- What are the key risks associated with each option?
- What is the likelihood of the risks occurring?
- In the event that the risk occurred, what would be the likely outcome(s)?
- How can these risks be mitigated, and what would the associated costs be?

#### *Benefits and costs*

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- What are the costs associated with the provision of the function?
- In what form do these costs occur?
- What countervailing benefits are associated with the option?

#### *Market maturity*

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- Is there enough expertise in the market, or in the market structure proposed?
- Is there enough competition in the market or proposed market structure?
- What, if any, regulatory barriers exist that limit competition?
- What would help to further develop the market?

#### *Stakeholder consultation*

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- Have a wide variety of stakeholders been consulted in reaching conclusions?

#### *Other considerations*

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- Is there any legal, cultural, security or other issues which should be considered when assessing options?
- Which options do they affect, and how should they be assessed/valued?

### Step 4: Recommend Actions

#### *Contestability in a dynamic environment*

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- How do we ensure that contestability options are sustainable and adaptive in order to adjust to citizens' changing needs and expectations of Government?
- How dynamic is the market?
- To what extent might government influence an existing market?
- Is the Government in a position to develop a market?

### *Implementation*

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- Is there any subsequent analysis required to resolve implementation details?
- Will the new arrangements be subject to review? If so, when and by whom?
- What transition arrangements will be necessary?

### *Managing contestable provision*

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- Performance Management
- Staffing Skills
- Governance
- Regular Evaluation

### **Step 5: Submit to CPSC**

- Has the Review been evaluated by an independent evaluator, prior to submission to the CPSC?

### **Step 6: Implement and Evaluate**

- Entity implements recommendations as per Government decision, in line with the implementation plan in the Review.

### **Step one – Scope**

The Portfolio Stocktake process will identify potential functions to be reviewed. The Finance Minister, in consultation with the relevant minister, will confirm the functions and entities responsible for undertaking Contestability Reviews, as well as their timing.

The Finance Secretary will write to the entity about undertaking the Review. At this stage of the Review, the responsible entity will need to nominate a Review Leader. The Review Leader (expected to be at the Senior Executive Band 1 or 2 levels, dependent on the nature of the entity and the Review) will be responsible for finalising the Review's Terms of Reference (TOR) and managing the Review among other tasks. The TOR will establish the aim, scope, timing and governance and resourcing arrangements for the Contestability Review. Finance will develop the TOR with the responsible entity. The CPSC will approve the TOR.

During the Review, the responsible entity, in consultation with Finance, will be required to provide periodic updates on progress to the CPSC.

Throughout the Review process, Finance will assist entities by:

- providing guidance and assistance. This includes working alongside the entity drafting the Review's report;
- providing advice to the CPSC on the progress of the Review and any issues (and engage with other external stakeholders as appropriate); and
- providing an assurance role to the Review's considerations and recommendations.

## Step two - Analyse

The Review will initially assess the range of options that could achieve the function's purpose, and shortlist those most appropriate. All options for contestable provision should be considered in determining the appropriate shortlist of options that will be considered in the Review. [Section 5: Contestability Options](#) provides details on these options, including under which circumstances each might be appropriate.

Entities are required to analyse the shortlisted options to explore and establish the most efficient arrangements. Alternative mechanisms for service provision and delivery of outcomes could include, among others:

- **continued provision of the function** — this could mean continuing the function exactly as-is, however, the Review should also consider possible efficiency improvements to alter the functions operation, for example through changed governance or risk management arrangements, that could lead to efficiency gains/improvements;
- **transfer or consolidation of the function to another Commonwealth entity;**
- **commercial provision** — where the government continues to undertake the function but does so via a more commercial model, including through:
  - building a market — where the government seeks to build competition by splitting the provision of the function across a number of providers who are expected to compete with one another; or
  - joint ventures — where the government partners with other providers.
- **payment by outcomes** — where the function is effectively outsourced with payment for the function dependent on meeting certain outcome targets;
- **outsourcing** — where the function is provided by an organisation outside of the Commonwealth Government (such as a private business, not-for-profit organisation or state or local government); and/or
- **public sector mutuals and co-operatives** — where a function is delivered wholly or in part through a co-operative or mutual structure, which allows members to be involved in decision making and benefit from its activities, including through reinvesting any surpluses.

To understand each option's viability, the analysis requires robust consideration of how the options themselves would work in practice and their likelihood of success.

When assessing the viability of each shortlisted option the following should be considered:

- the aspects of a function that would be subject to contestable arrangements;
- the organisations that would be able to provide the function, or would compete for the provision of a function;
- how these providers would be managed;
- any constraints that need to be addressed or mitigated, such as community expectations;
- the mechanisms by which service providers or organisations would be funded; and
- the performance metrics which could be used to assess the effectiveness of the option.



Reviews may also need to analyse sub-options under those shortlisted. For example, if the analysis concludes that government should continue to provide a function, there may be a number of different entities that could provide the function, and the Review may need to consider each entity as a separate option.

Undertaking this initial analysis will help to build the case for the option(s) the Review recommends.

If an option is considered unviable at any stage it is expected the Review will explain why this option will not be considered for further analysis.

### **Step three – Assess options**

#### *Risk assessment*

To refine the shortlisted options further, the risks associated with each option will need to be assessed. Appropriately engaging with risk is important. Contestable provision may still be feasible even if there are risks. To ensure the Review's analysis is robust, the Review is required to consider how to mitigate risk, particularly if some risks are unavoidable.

For each risk, the Review needs to analyse:

- how significant the risk is;
- how likely it is the risk will occur;
- what the adverse effects would be;
- what can be done to minimise or mitigate the risk; and
- whether, on assessing the risk, the option can be endorsed.

Risks to consider include:

- risks to stakeholders — for example, loss of a service, reduction in required assistance, or a transfer of costs to end-users;
- fiscal and economic risks — for example, costs to government may be greater than anticipated;
- implicit risks to the government and other stakeholders — for example, reputational risks, the creation of perverse incentives, or potential underperformance of a function due to which the government may need to intervene;
- implementation risks — for example, timelines may not be met;
- policy risks — for example, the possible impacts on the efficiency and effectiveness of other parts of government; and/or
- market risks, including unintended impacts that may adversely affect the market.

The significance of the risk will ultimately depend on how critical the function is to the operation of government and its stakeholders, and to government's core capabilities and capacities.

Based on this risk analysis, the shortlist of options may be refined further.

### *Other considerations*

The shortlist of options may also be further refined as other considerations are brought to bear upon the options. The Review needs to clearly outline any additional considerations which need to be taken into account when recommending an option. Other considerations could include:

- Legal considerations — are legislative changes necessary to facilitate some options?
- Treaties — is the Government a party to a treaty (domestic or international) which creates an obligation for it to directly provide the function, rather than providing the function through a delegate?
- Security considerations — would the presented options introduce undue or unacceptable security risks in delivering the function? For instance, it may be inappropriate to deliver functions related to intelligence services through an alternative provider.
- Cultural considerations — would the presented options affect key stakeholders or otherwise render the option ineffective? For instance, outsourcing service provision to an overseas service provider may be considered inappropriate.

As with risks, where other considerations are identified, the Review should not automatically recommend against an option on these grounds. In many cases, it is expected these considerations can be managed.

Managing these considerations may include costs, and the Review needs to identify and consider how these costs balance with the option's benefits when making recommendations.

### *Benefits and costs*

The Review will need to analyse costs and benefits associated with the remaining options.

Reviews should identify and assess the costs and benefits of each refined option to provide a sound recommendation to Government and compare this to the current cost for the function (as a baseline).

The analysis of feasible options should detail all costs, including, but not limited to:

- the monetary costs of each option;
- what form the costs are likely to take (for example, a direct government payment, the costs of running a business, an equity stake in a business);
- the transition costs associated with different options;
- ongoing management costs;
- time costs;
- measures of service delivery capacity; and
- environmental costs.

For example, in terms of monetary costs, when considering an option to outsource provision of a function, the Review should consider the costs associated with establishing and transitioning to the outsourced arrangement, the actual costs of

paying the provider for the service and the ongoing costs associated with managing the provider.

Where costs are not precisely known, estimates (and any associated assumptions) should be provided. These could be based on costs encountered by other jurisdictions, including the states or international jurisdictions.

The Review should also clearly identify how the new or altered approach will improve efficiency and deliver better outcomes, by addressing whether it will allow:

- the current provider to improve efficiency and deliver better outcomes;
- the function to be provided by an alternative provider who can improve efficiency and deliver better outcomes;
- competition to occur between multiple providers to drive efficiencies and deliver better outcomes; or
- policy outcomes to be better defined through a competitive process.

*Note: These Guidelines do not discuss issues such as discount rates and how to technically evaluate differing impacts across time. Finance can provide assistance on a case by case basis as these issues arise in Reviews.*

### **Engaging with the market**

Reviews that engage with the market, where appropriate, will demonstrate greater rigour, transparency and analysis. Through engaging the market for potential ways to achieve the function, entities have the opportunity to seek alternative and innovative methods of delivering functions.

Market engagement is key to revealing what external options are available, how these options would operate, the maturity of the market, and associated costs.

In addition to gathering information, market engagement can help to:

- understand how mature the market is, including the market's ability to deliver different services (including considering its shorter and longer term capacities);
- understand alternative ways of achieving the function's outcome and options provided by the market (including the identification of new or innovative means of providing the function);
- assess the efficiency of the market and hence the relative efficiency of the public service in providing the function (for benchmarking purposes);
- assess the impact that the government may have on the market by outsourcing or otherwise utilising the market to provide the function;
- discern what opportunities the market offers for innovation; or
- test the market's interest in providing the function.
- Information from the market can be sought through:
  - establishing working groups — inviting a number of experienced individuals (from market participants or those with extensive experience of the market) to review assessments or provide information about the market;
  - joint research — linking with academic or other organisations with market knowledge to research possible approaches to undertake the function;

- market scanning — a review to better understand the market’s capability and potential options for providing the function;
- market sounding — a process to seek the views of market participants prior to undertaking any formal engagement;
- market assessment — a structured assessment of market capacity to undertake specific functions; and
- market testing (formerly known as competitive tendering and contracting) — a formal tender process to seek bids to provide functions to, or on behalf of, the government (this would usually occur following the Contestability Review during the implementation phase).

Early in the Review process, entities should form a view of what market information will be necessary and consider the most appropriate means of obtaining this information. More than one method may be needed to access market information. These strategies may also need to be reassessed during the Review.

### *Stakeholder consultation*

Stakeholder engagement is a core component of ensuring the robustness and contestability of the Review process. Portfolio entities have a unique advantage in being able to engage with relevant stakeholders. Leveraging this advantage will both improve the quality of and strengthen recommendations and ensure these recommendations are tested against what key stakeholders require from government.

The Review will need to demonstrate that stakeholders have been engaged; reflect the breadth of the stakeholder engagement; and give consideration to the costs and benefits these stakeholders bear under the status quo, and will bear under any alternative contestable arrangements.

## **Step four – Recommend action**

### *Contestability in a dynamic environment*

In making recommendations, Reviews should consider the impact of dynamic markets and changing objectives as government’s roles and responsibilities respond to changing citizen expectations. Accordingly, Reviews need to consider the short, medium and longer-term effects of different options, and how these align with the future role of government. Some options may entail shorter-term costs to achieve longer-term benefits and entities will need to bear in mind these tradeoffs in making recommendations.

### *Changing functions*

In assessing options, Reviews should consider how government functions evolve over time with changing citizen expectations and needs. It may accordingly be risky to recommend inflexible options with large establishment costs.

For example, the way citizens interact with government will evolve with changing mediums (digital, by phone, in person). As a result, Reviews which include the delivery of a service will need to consider how to adapt to citizens’ changing preferences.

### *Changing markets*

As part of market engagement, Reviews should also consider how the market is likely to evolve over time. In some cases, where other organisations or current market structures cannot currently provide a function, this capability may develop in the future.

If so, revisiting the function in the future for contestable provision may be recommended. Similarly, where a market is evolving rapidly and there is a high degree of uncertainty about how the market will evolve, the Review may also recommend reconsidering the function in the future.

### *Government's influence in the market*

Reviews should be aware of the government's ability to influence the market, as a regulator, purchaser of services, and as a competitor. In some areas the government, given its size, may be able to seek more tailored offering from market participants (rather than be constrained to standard products or services). In addition, and as discussed in [Section 5: Contestability Options](#), the government might be in a position to build a market for a good or service from which it can later benefit. Such options to build a market will usually entail upfront costs and legal and regulatory changes with potential benefits accruing to government as the market develops. This would also entail risks, which would need consideration if such recommendations were to be made.

Where government is a competitor, Reviews will need to consider competitive neutrality implications. Competitive neutrality requires that government business activities not enjoy a net competitive advantage over competitors by virtue of their public ownership. Please refer to [Section 5: Contestability Options](#) for further details.

### *Contestability options*

Any Review recommendations need to consider how alternative arrangements will be implemented and managed.

A key part of the successful implementation of contestable arrangements is ongoing improvements through consistent management to ensure that contestable arrangements are sustainable and adaptive. This includes considering any necessary transition arrangements and timeframes required to implement the recommendations, including staff skills and capabilities (and how these will be gained), governance structures and performance management requirements. Information about when the proposed arrangements would be reviewed after implementation should also be included.

Please refer to [Section 5: Contestability Options](#) for details to consider about alternative arrangements.

### **Step five – Submit**

Once the Review is complete, entities will submit to Finance a draft Review which will be assessed against its TOR, and these Guidelines. Once Finance has confirmed the Review has met these minimum requirements, the Accountable Authority of the entity will provide the final report to the CPSC.

Finance's primary role during the process is to ensure that an adequate level of analysis underpins the Review. Finance will liaise with the Review Leader as the Review progresses to address any concerns with its direction. Ultimately, it is the relevant entity conducting the Review that is responsible for its analysis and recommendations. Nevertheless, where Finance has ongoing concerns, it may notify the CPSC.

To maintain the independence, transparency and rigour of Reviews, each Review must be assessed by an Independent Evaluator. Finance will need to be consulted and agree to the selected Independent Evaluator. The Independent Evaluator will provide an assessment of the final Review against the Terms of Reference, Guidelines and the intent of the programme.

### **Step six – Implementation**

Where a Review recommends an approach which requires Government agreement (a decision from a Responsible Minister, the Prime Minister or the Government), the relevant entity(s) preparing the Review will typically be responsible for progressing such a decision. Finance can partner with the responsible entity to develop a submission to gain this decision.

## 3. Functional and Efficiency Reviews

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The Commonwealth Government, in line with the Smaller Government Agenda and as part of an ongoing review of entity activities, is considering how entity functions align with forward priorities, policy commitments, and planned reform programmes.

Entities will generally be selected to undertake a Functional and Efficiency Review (FER) where they have recently been subject to significant changes to their priorities, structures and/or staffing (resourcing) levels.

### Scope of the Review

Functional and Efficiency Reviews will consider:

- the role of the entity, its programmes, functions, outcomes and purpose;
- departmental expenditure;
- ability to achieve results; including
  - examining optimal management structures;
  - contract management; and
  - value for money in consultancies.

FERs will also consider:

- the role of the entity and whether current functions performed within it align with government forward priorities and policy commitments;
- any barriers preventing the entity from achieving its current intended outcomes and, where relevant, propose solutions to address these concerns;
- the feasibility and efficiency of alternative approaches for addressing government priorities including identifying the benefits, costs, risks and any other relevant considerations (including legal, regulatory and cultural considerations); and
- the proposed transition path to implement preferred alternatives, including how performance could be managed, APS staffing, capability considerations and potential governance arrangements.

The FERs will also assist in providing data to support the case for internal reform, developing implementation plans and ensuring performance information is available to measure the dividend from reinvestment between functions.

FERs will be led by an Independent Review Leader, and supported by an independent secretariat. The Independent Review Leader will comprehensively assess the efficiency and effectiveness of all aspects of an entity's operations, programmes and administration. The FERs will determine whether the functions and current resourcing level of the entity align with forward priorities.

FERs will also consider how a function can best be delivered. In doing so, a FER will assess whether a function is being delivered in the most efficient way possible and by the entity most able to do so. In some cases, a FER will look beyond the functions an entity undertakes and assess where similar functions are performed in other entities, and if these functions should be transferred or modified.

The actions resulting from FERs will support Commonwealth Ministers to align public resources to the government's portfolio objectives, achieve planned reforms, and address contemporary pressures while ensuring a responsible and streamlined public sector.

## **Governance**

Finance and the entity will agree to governance arrangements at the commencement of the Review process. This will include high-level engagement between departments and general oversight by the Contestability Programme Steering Committee (CPSC), led by Finance.

The Functional and Efficiency Independent Review Leader will report regularly on the Review to relevant stakeholders. Regular reporting provides assurance that the FER is progressing as agreed and provides opportunities for feedback and guidance from relevant stakeholders.



## 4. New Policy Proposals

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To support a transformation in the public sector’s approach to policy design, New Policy Proposals (NPPs) will be considered against the requirements of the Contestability Programme during their development. This will ensure that all government functions, new and existing, are exposed to contestable thinking.

The process that entities will undertake to ensure the spectrum of contestability options is adequately considered as part of the new policy development process is similar to that of the Portfolio Stocktakes, Contestability Reviews and Functional and Efficiency Reviews of existing functions (see the relevant Sections). It is expected that consideration of contestable options for new proposals and analysis already occurs as part of existing good policy development practices. This section seeks to further enforce these practices and outlines additional considerations to improve how contestability options are assessed during the policy development process.

Reviewing NPPs entails an initial scan of the proposal, to determine whether it aligns with government priorities and whether contestable provision is feasible. Following this, potential options for providing the function should be considered in detail.

Additional information on considering the spectrum of contestability options when developing NPPs is available from your entity’s budget coordination area or from your relevant Agency Advice Unit within Finance.

### Figure 6 - New Policy Proposals and Contestability

#### Initial scans

- What outcome is the proposal trying to achieve?
- Does the proposed function align with current government priorities?
- What is the most efficient way to achieve the intended outcome?
- Who would be best positioned to deliver the proposal?
- Are there reasons why other providers should not provide the function?

#### Detailed consideration of contestability issues

- Is the function currently provided, and if so, how?
- What alternative arrangements exist for the provision of this function?
- What are the benefits and costs associated with each alternative?
- What risks are associated with each alternative? Can these be mitigated?
- Are there any additional considerations such as legal or security considerations?
- Based on the above considerations, what is the preferred option for the future provision of the function and associated implementation requirements?

## Initial scans

In the early stages of developing a NPP, entities should undertake an initial consideration of whether there is potential for contestable provision of the function.

The initial scan is focused on providing an overview of the proposal, assessing whether the outcome the functions is trying to achieve aligns with government priorities, and determining whether there are aspects of the proposal which necessitate further analysis. The initial scan should focus on the following questions:

- What outcome is the proposal trying to achieve?
- Does the proposed function align with current government priorities?
- What is the most efficient way to achieve the intended outcome?
- Who would be best positioned to deliver the proposal?
- Have alternative providers been considered?
  - Providers could be internal to government (such as another entity with the experience or existing synergies to provide the function) or outside government (such as a not-for-profit provider, or a state or local government).
- Are there reasons why other providers should not provide the function?
  - Where other providers have been identified, entities should consider if there is any reason why they would not be able to provide the function. For instance, existing infrastructure such as IT systems is not available or in place for other providers, or there are security or other sensitivities which would preclude provision on a contestable basis.
  - In cases where the security or other risks are significant, but potentially manageable, a more detailed analysis taking into account these risks should be undertaken.

If this initial scan generates an option or options for contestability, a more detailed analysis should be undertaken when further developing the proposal. Where requested, Finance can provide assistance with considering contestability options during NPP development.

## Detailed consideration of contestability issues

Where a NPP warrants detailed analysis in relation to contestability, this should consider similar issues as discussed in [\*Section 2: Contestability Reviews\*](#):

- Is the function currently provided, and if so, how?
- What alternative arrangements exist for the provision of this function?
- What are the benefits and costs associated with each alternative?
- What risks are associated with each alternative? Can these be mitigated?
- Are there any additional considerations such as legal or security considerations that should be considered?
- Based on the above considerations, what is the preferred option for the future provision of the function and associated implementation requirements?

When preparing a proposal with significant contestability implications, entities are not expected to undertake a formal Contestability Review. However, they are expected to undertake an appropriate level of analysis to provide confidence that the recommendation placed before Government is the most efficient approach to provide the function. This analysis should be reflected in the NPP and associated advice.

### **Governance arrangements**

Finance will continue to monitor proposals as they are developed and brought forward. Where a proposal appears to have significant contestability potential which has not been sufficiently considered or analysed, Finance may request that the entity undertake additional analysis before the proposal is brought forward to Government.

While most proposals are expected to be brought forward in the form of a NPP, there may be decisions to expand government functions made outside these processes. Where such proposals raise the potential for providing the function through a contestable approach, the entity should contact Finance to inform and comply with these Guidelines and the intent of the Programme.

# 5. Contestability options

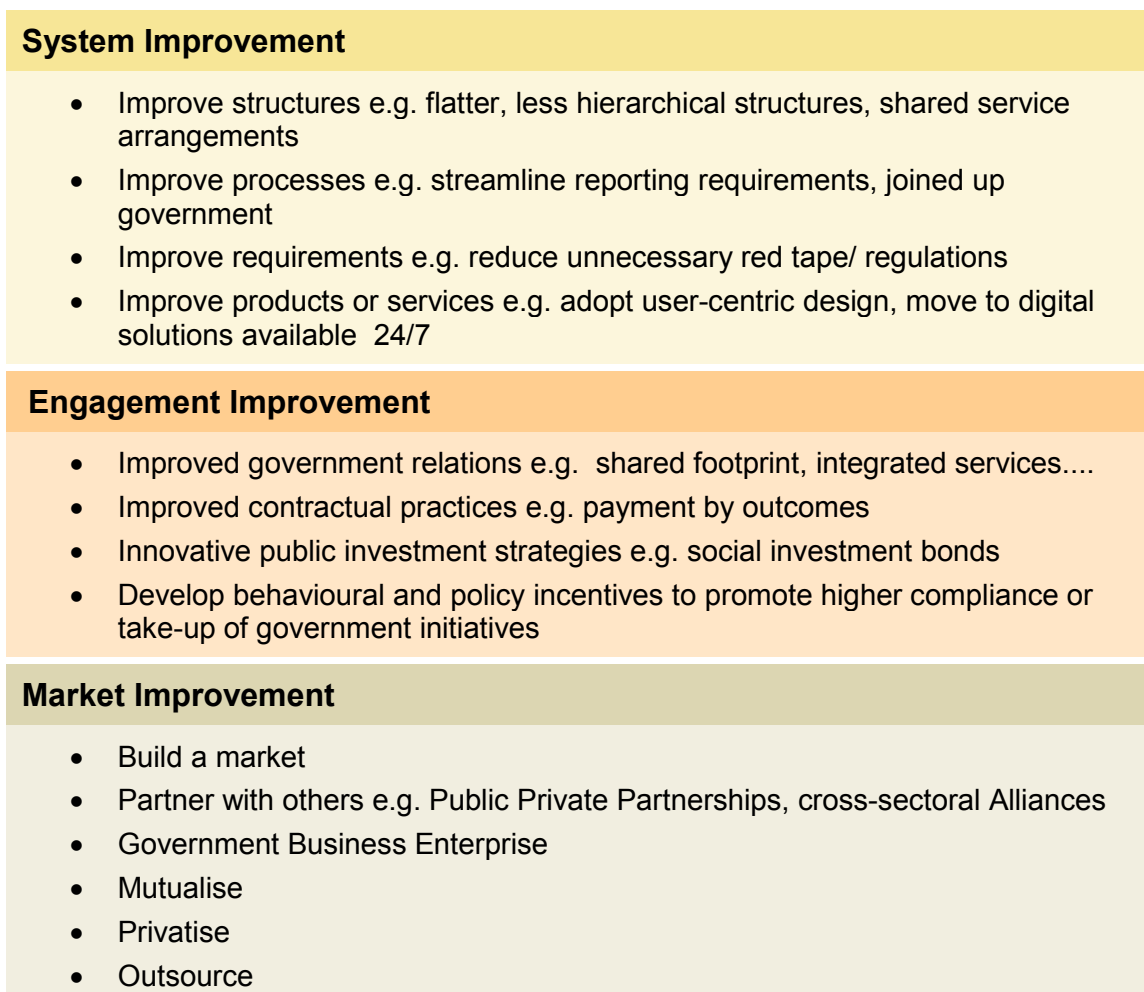
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One of the core aims of the Programme is exploring innovative approaches to and options for achieving government outcomes. This section presents a number of contestability options to consider, and associated risk, from within to beyond the boundary of government; but the list is non-exhaustive.

Considering the spectrum of contestability options requires careful consideration of how the public service's role and associated legal, regulatory and institutional structures may need to evolve. This section also provides an introductory overview of these changes.

In many cases, examining a government function through the lens of contestability will help to identify opportunities to improve the efficiency of a function provided by government. Examples of system and engagement improvements under continued government provision can include: improving procurement processes; re-negotiating existing contracts; designing allocation mechanisms; and developing better processes for matching citizens with services.

**Figure 1 - Spectrum of Contestability Options**



Transitioning from government to non-government provision may require designing new regulatory and policy structures. This will shift the government's role from funder and provider (or procurer) of services, to the role of designer, creator and regulator of a transaction environment between clients, government, and service providers. This can include government adopting a commissioning approach.

## **A commissioning approach**

Rather than delivering functions or activities itself, government can shift its focus to achieving specific outcomes and identifying who is best placed to do so. These might be social (education outcomes for disadvantaged students), business (compliance with taxation regulation) or environmental outcomes (levels of biodiversity).

Commissioning requires accurately and strategically identifying and defining outcomes the government seeks to achieve. This requires identifying which organisation, or set of organisations, is best placed to deliver these outcomes. These could be within the Commonwealth government (including existing providers), outside (including for-profit and not-for-profit providers) or a mixture.

A commissioning approach requires the public service to consider and test alternative modes of provision, and identify and utilise strengths of different providers and delivery models. The government then designs, implements and monitors arrangements and frameworks to ensure these entities achieve the intended outcomes. This focus on outcomes changes the focus of procurement arrangements from prescriptive contracts to ones which articulate the outcomes sought and assess performance against these.

## **Options for delivering functions within and beyond the boundary of government**

### **Continued government provision**

Each Review should consider continued government provision of the function as the baseline against which other options are assessed. The baseline option should be a continuation of the status quo — the entity currently providing the function continues to do so in largely the same manner as it currently does. Considering continuing the status quo may need to take into account the likely future operating environment.

Reviews may also analyse alternative options for continued government provision of the function, but with efficiency improvements. Where it is considered that the same (or an alternative) entity may be able to provide the function more efficiently, this option should also be assessed.

In considering continued government provision, Reviews should identify where the government operates as the monopoly provider of a function and include analysis as to whether continued government provision may reduce the scope for efficiency gains in the absence of competition, despite economies of scale, due to limited incentives to increase efficiency. Under some circumstances, regulating a monopoly government provider may be necessary in order to ensure the function is operating fairly, effectively and efficiently.

## Commercial provision

Under commercial provision, a government entity continues to provide the relevant function, but under a commercial structure. A commercial approach to achieving outcomes can allow greater independence from government and thus avoid some of the constraints which are inherent in the structures and requirements of government entities. This independence can enable entities to organise themselves in such a way that enables better alignment with the policy outcomes of the entity.

Commercial provision should be considered where, for example, government provides a service that is commercial in nature (i.e. government could charge for it). In contrast to outsourcing or privatisation, commercial provision allows the government to maintain the capability of providing the service. By maintaining this capability, government is able to provide a function on a commercial basis where outsourcing or privatisation are ruled out for reasons other than efficiency (e.g. due to cultural or security concerns).

There are a number of existing examples of commercial provision by government agencies including the Australian Government Solicitor and Aboriginal Hostels Limited.

Under commercial provision, prices should be tested to ensure that they are fair, as there is no exposure to competition. Government is also required to adhere to principles of competitive neutrality to ensure that the function remains contestable where possible, and that the provision of a function by government does not preclude or affect other providers.

## Outsourcing

Outsourcing is where one entity contracts another party to provide the function on its behalf. Currently, the Commonwealth Government engages private providers, not-for-profits, and other governments to deliver various functions.

In outsourcing, the government's role is to: procure services; manage contracts; evaluate performance, and develop a policy evidence base; and pay for the function.

Typically, outsourcing works best where the government is seeking a relatively common service for which there are a number of providers within a well-developed market. Not all functions will be suitable for outsourcing due to economic, cultural or other reasons.

While outsourcing is typically considered for standard services, it can allow government to leverage skills outside of itself to provide other functions as well. Outsourcing provides the flexibility to draw upon expertise and specialised skills, as needed.

Risks associated with outsourcing can include incomplete or unsatisfactory delivery by the provider, or a failure to achieve the outcomes desired by government. There is also the risk that if a market is underdeveloped and competition is limited, the problems and subsequent inefficiencies associated with monopolistic provision will continue, but with a higher price of risk passed on to the government (as the non-government sector prices risk more highly). These risks may reduce the opportunity for government to realise efficiency gains.

Outsourcing can obscure accountability unless contracts, incentives and mechanisms to evaluate performance are carefully developed, particularly for sensitive services. There are also risks associated with inflexible contracts which do not allow accounting for unanticipated events or services, therefore weakening the government's ability to respond to changes within dynamic policy environments.

### **Payment by outcomes**

Payment by outcomes is similar to outsourcing in that government pays an external organisation to provide a service (usually to the public). However, participating organisations are given greater freedom to decide how to achieve outcomes set by government. Payment by outcome approaches will typically attract more flexible and agile organisations with an ability to deliver well-defined outcomes at a lower cost than government. An example of a potential mechanism is social investment bonds, which can also provide investment opportunities for the private sector.

As payments are based on achieving outcomes, payment by outcomes can encourage alternative and potentially innovative ideas. These alternative approaches may help to improve outcomes as well as to lower cost, and where outcomes are well defined, can increase the likelihood that outcomes are achieved. Such approaches can also allow government and organisations to test untested approaches on a relatively small scale. Subsequent policy lessons can then be incorporated into future policy decisions and design.

Relative to outsourcing, payment by outcomes can have lower monitoring costs for the government and reporting costs for the organisation when done well.

Defining outcomes carefully is a key criterion for ensuring payment by outcomes is done well. The outcomes need to be clearly defined, clearly measurable and it must be unambiguous whether the provider has met any outcome. If contracts cannot sufficiently frame robust outcomes, a defined outcome approach may not be suitable.

In assessing defined outcome approaches, entities should also bear in mind the potential for increased cost. One of the benefits of a defined outcome approach is that it can shift some risk to the provider. This may be appropriate in some cases if a provider is better able to manage delivery risks than the government. However, as with outsourcing, potential providers may seek greater payments to accept the additional risk.

Analysis within a Contestability Review also needs to take into account any residual (non-monetary) risks to government if the provider is not successful in meeting the specified outcomes. For example, in the event that a provider fails to deliver on a key outcome, government may remain the implicit underwriter or insurer of last resort. While government would usually reduce or withhold payment to the provider in such circumstances, in extreme cases, failure to deliver key outcomes can have significant consequences for end users (for example, such as reduced access to health or disability services). This can pose reputational risks for the government.



## Building a market

When building a market, the government seeks to establish a number of providers for a given service. These providers would then be expected to compete with one another to provide services on behalf of the government. This competition can increase efficiency, innovation and consumer choice.

Building a market may be suitable when the government has historically been the only provider of the service, but there is renewed scope for the private or not-for-profit sectors to provide the service. Building a competitive market requires a staged approach.

First, government must be able to clearly define the service for which it seeks to build a market. Second, government must test the depth of the current market (or lack thereof). Third, when testing market depth, institutional and other barriers that have restricted market growth can be identified and government can develop strategies to remove these. This can include identifying what risks are mitigated with government provision and whether government is the incumbent provider because of a genuine risk of market failure or because government has been the provider historically. Fourth, once any barriers have been identified and removed, government will need to develop institutional frameworks (legal, policy, contractual for providers and consumers) and incentives to ensure a market can efficiently operate. Finally, in moving to market-based provision for any service, competition may lead to markets – the consumers and providers of any services – evolving in unanticipated ways. Institutions that support markets will need to be adequately flexible to account for such unanticipated change.

Once the government succeeds in encouraging other providers to enter a market, the government's role shifts from funder and provider (or procurer) of services to designer, creator and regulator of a transaction environment. A current example is the development of the National Disability Insurance Scheme, an element of which is to establish a number of providers of disability care and related services, which compete to provide services on behalf of the government.

When considering options to build a market, the analysis should acknowledge that building a market is a longer-term undertaking, and should note the associated risks. It is important to carefully offset short-term impacts and the costs of establishing a market against potential longer-term benefits once the market is established. This should include an analysis of the design of legal, regulatory and economic structures required to move to competitive market provision.

The option to build a market may be less appropriate where the nature of the service dictates it can best be provided by a single or small number of providers, or where there are particular risks around legal and regulatory change or risks associated with poorly designed incentives. This may be the case where there are significant fixed costs associated with providing the service (i.e. costs that need to be incurred regardless of how many customers are served or the level of the service provided). In such cases, providers will need to provide a significant quantity of services (or serve a significant number of customers) to justify entering the market. As a result, an effort to build a market around these types of services is unlikely to be highly competitive. Accordingly, the potential level of competition, and the impact this will have on the operation, costs, and benefits of the market should be considered.



## Joint ventures

Through joint ventures, government jointly holds responsibility for a function with an organisation external to government. Joint ventures can take a number of forms such as a jointly held company, or a contractual arrangement.

Joint ventures allow government to access the skills, experience or expertise of the non-government partner. This expertise may be critical to improving the efficiency of the function, but a joint venture arrangement also allows government to maintain a degree of control of the provision of the function. Joint ventures can also allow the joint venture partner to gain experience providing the function to government with reduced risk.

Joint ventures are usually for a specific time period and may be used as an intermediate step to a longer-term goal. This goal may be passing the function to an external party to provide or, conversely, allowing the government to provide the function more efficiently once it has acquired the necessary skills or experience via the joint venture.

While private sector involvement in a programme can make it easier to finance, the private sector will only invest where there is an expected return on investment. That is, the cost of the investment required to ensure a positive return to investors has to be borne by, either, end-users or the government. As such, some projects may be harder to finance than others through joint ventures.

Further, as with payment by outcomes and outsourcing, private firms will be cautious about accepting major risks beyond their control, and service prices will likely reflect this.

With all shifts to market provision of services, the private sector is likely to have more expertise and after a short time develop an advantage in data collection. It is important to ensure that there are clear and detailed reporting requirements imposed on private operators to manage such information advantages and ensure privacy and security requirements are met.

## Public Service Mutuals

A Public Service Mutual (PSM) is an organisation which wholly or in part delivers public services through a co-operative or mutual structure. Members of the organisation can be involved in organisational decision-making, and benefit from its activities, including determining how to reinvest surpluses. PSMs may be one or a combination of consumer-owned, employee-owned, and enterprise-owned.

PSMs can increase organisational diversity in public service markets, and can leverage existing experience in service delivery and client knowledge. In doing so, PSMs can increase consumer choice and control, by helping individuals and communities to formulate their own responses to problems in client-directed care markets. PSMs can accordingly address government and market failure, such as information asymmetry, to better meet the needs of consumers.

Where a market is already well developed, new PSMs would be required to compete in the competitive market. As other viable market players must, PSMs would need to develop marketplace credentials and skills, and prove their growth potential. Reviews considering PSMs are encouraged to include an analysis of how well developed markets are, whether PSMs could be financially sustainable, and whether there is a need for PSMs in a well-developed market.

On their own, PSMs may not have access to central government support on financial management. Financial planning support as PSMs transition to new tax and financial arrangements is important during initial business planning, as is considering how assets and other legacy factors will be dealt with.

Currently, PSMs remain unfamiliar to mainstream lenders. As such, new businesses that contract PSMs may assume some liabilities previously carried by the parent organisation. PSMs may also require funds for employees to "buy in" to the organisation, working and investment capital, and access to financial products and debt markets.

## **Considerations for the public service**

Where a Contestability Review identifies a preferred approach to delivering a function, its success will rely upon how well it is implemented. Many of these approaches present common implementation challenges.

## **Contestability and the policy environment**

In a dynamic policy environment, implementing contestable arrangements will not only assist in improving the efficiency and effectiveness of public sector functions but will also ensure a nimble government that responds to the expectations and needs of citizens.

The Contestability Programme supports the public sector to adopt a more commercial mindset by exposing public sector functions to the prospect of competition and ensuring that the public sector has an ongoing incentive to increase its efficiency.

Transitioning to contestable arrangements may involve significant change for entities. Managing how the role of entities evolve and change is important for successfully implementing contestable arrangements.

## **Managing risks when transitioning beyond government**

Building new legal and regulatory structures that harness competition can present risks that need to be carefully managed, particularly in areas where markets have not previously evolved. In recalibrating these structures, the government is required to overcome policy and transaction complexities, and ensure that legal, regulatory and financial structures develop well designed, reliable incentives for market players.

The transfer of risks from government to the private sector also presents a challenge in terms of how services are priced given the value of the risks undertaken, and whether government remains an insurer of last resort. Competitive models for delivering government functions may also fail to take advantage of the economies of scale government can achieve.

However, economies of scale may not provide adequate incentives to the provider to control costs and inefficiencies, whereas contestable approaches can focus on outcomes rather than inputs, thus raising the prospect for greater accountability and incentives to deliver.

## Defining outcomes

As the role of government changes to designer, creator and regulator of services in a transaction environment, accurately specifying the outcomes government seeks is critical. These outcomes form the basis of key performance indicators built into contracts against which providers are assessed, and the subsequent evidence on policy success.

A focus on outcomes and effects as opposed to process should allow for flexibility and innovation. In this way, and without prescribing *how* outcomes may be achieved, government may also leverage any existing efficiencies found in an entity to deliver better value for government and citizens.

## Commonwealth Procurement Rules

In some cases, contestable arrangements will require the formal procurement of services from external parties. This raises a number of issues around compliance with government procurement requirements.

The [Commonwealth Procurement Rules](#) are the keystone of the government's procurement policy framework. The rules enable entities to design procurement processes that are robust and transparent while permitting innovative solutions that reflect the scale, scope and risk of the desired outcome, and adhering to competitive neutrality.

When conducting procurements, officials must achieve value for money and are expected to appropriately manage risk. This requires considering the approach to procurement, evaluating available courses of action and recording and documenting relevant decisions. When making decisions, officials should be aware of their responsibilities to make proper use of public resources under the *Public Governance, Performance and Accountability Act 2013*.

## Accountability through governance and evaluation

As government's role evolves in a competitive service delivery environment, governance for contestable arrangements needs to be considered on a case-by-case basis. The appropriate governance arrangements will depend on the particular type of contestable arrangement established, and on how risks will be managed. Oversight itself needs a balance between being overly prescriptive, facilitating innovation, and ensuring consistency in service and programme standards.

Government entities remain accountable for the efficient performance of functions, and for providing outcomes even where functions are delivered by other organisations. Key to this is incorporating robust evaluation methods into programme oversight responsibilities.

Effective evaluation enables government to consistently improve effectiveness and efficiency within a dynamic environment – as policy needs, demands and risks evolve. Often, evaluation is difficult. However, as the public service's role also evolves, increasing this core capability will become a priority.

Additional information about performance monitoring and evaluation is available from Finance via the Public Management Reform Agenda website: <http://www.pmra.finance.gov.au/legislation-pgpa-act/>.

## Public service capabilities – skills of entities and staff

The skills required in the oversight of a function are different to the skills required for undertaking a function. Contestability Reviews should give consideration to these skill requirements, accessing skilled staff and building existing capacity.

When considering the skills required, entities may wish to develop a ‘pathway’ that defines how entities will move toward attaining skills as the government transitions from ‘doing’, to ‘monitoring’ and ‘regulating’. This will include identifying current capabilities. The move toward a new ‘capabilities frontier’ will need careful planning in terms of the investments and timeframes required. Developing and maintaining the skills and capabilities for a contestable environment are critical to ensuring the success of moving to contestable provision of government functions.

Specialist training and/or recruitment in competencies such as contract management, in addition to policy analysis, may be needed. Through contestability, there may be scope for entities to access the necessary skills and expertise from other entities within government, rather than from outside of government.

## Competitive neutrality

In order to support competition in developing markets, robust principles of competitive neutrality are critical. Competitive neutrality requires that government business activities not enjoy a net competitive advantage over competitors by virtue of their public ownership. Contestability Reviews are expected to give consideration to how competitive neutrality requirements will be met when transitioning to contestable approaches.

Competitive neutrality policies benefit consumers in markets where both governments and other providers deliver services. This will be especially important where competition policy has not yet reached and where markets remain underdeveloped, such as in disability and human services. In these areas, ensuring that the right competitive neutrality policy settings are in place will be crucial to securing the benefits for and from a diverse range of innovative providers.

Government can also ensure better compliance with competitive neutrality policy by requiring government businesses report publicly on compliance with policy.

*For further information on procurement and competitive neutrality policy, please contact Finance or the Department of the Treasury, and see their websites for related guidelines.*

## Looking ahead

The lens of contestability enables entities to consider the best means for improving efficiency and effectiveness in delivering a function. Entities can consider options along the broad spectrum of contestability, moving from within the boundary to beyond the boundary of government. In doing so, entities can define how the role of government evolves in the near future, as per the diverse needs of citizens, government’s policy objectives, and citizens’ expectations that government adapt to these needs.

# Appendix A - Roles and Responsibilities

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Key Personnel	Accountable To	Responsibilities
<b>Minister for Finance</b>	Government & Prime Minister	<ul style="list-style-type: none"> <li>• Accountability for the Programme</li> <li>• In consultation with the relevant minister, selecting the functions to undergo a Contestability Review and the entity responsible for its conduct</li> <li>• Approval of a programme of work for Contestability and Functional and Efficiency Reviews</li> <li>• Briefing Cabinet on Programme progress</li> </ul>
<b>Responsible Minister</b>	Finance Minister & Government	<ul style="list-style-type: none"> <li>• Ensuring completion of Portfolio Stocktakes</li> <li>• Ensuring completion of Contestability Reviews</li> <li>• Ensuring completion of Functional and Efficiency Reviews</li> <li>• Making recommendations to Government/the Prime Minister on Contestability Review outcomes and potential implementation arrangements</li> <li>• Making recommendations to Government/the Prime Minister on cessation of functions</li> <li>• Providing updates on the implementation of contestable arrangements</li> </ul>
<b>Finance Secretary</b>	Finance Minister	<ul style="list-style-type: none"> <li>• Responsibility for the conduct of the Programme</li> <li>• Advising Accountable Authorities of their functions selected for a Contestability or Functional and Efficiency Review</li> <li>• Resolving issues in the conduct of the Programme's elements</li> <li>• Providing updates to the Secretaries Board about the Programme</li> </ul>

Key Personnel	Accountable To	Responsibilities
Department of Finance	Finance Secretary	<ul style="list-style-type: none"> <li>Implementing the Programme, including developing guidelines and templates</li> <li>Analysing information submitted by entities to support the conduct of the Programme</li> <li>Providing secretariat support to the Contestability Programme Steering Committee</li> <li>Engaging with entities and other external stakeholders as appropriate</li> <li>Providing guidance and assistance to entities throughout a Review or Stocktake process</li> <li>Providing an assurance role to a Review's considerations and recommendations, including adherence to its Terms of Reference</li> </ul>
Responsible Secretary	Responsible Minister(s)	<ul style="list-style-type: none"> <li>Ensuring completion of Portfolio Stocktakes</li> <li>Ensuring completion of Contestability Reviews</li> <li>Advising their minister(s) on all aspects of the programme, including any recommendations and planned implementation arrangements</li> <li>Implementing Contestability Review and Functional and Efficiency Review recommendations.</li> </ul>
Contestability Programme Steering Committee (CPSC)	Finance Secretary	<ul style="list-style-type: none"> <li>Reviewing Portfolio Stocktakes</li> <li>Recommending to the Finance Minister a Programme of Contestability Reviews</li> <li>Approval of Contestability Review Terms of Reference</li> <li>Providing guidance and assurance of all Contestability Reviews</li> <li>Providing assurance of all Functional and Efficiency Reviews</li> <li>Providing progress updates to the Finance Secretary</li> </ul>
Portfolio Stocktake Leader (SES Band 2)	Contestability Programme Steering Committee & Responsible Accountable Authority	<ul style="list-style-type: none"> <li>Ensuring completion of Portfolio Stocktakes</li> <li>Attending CPSC meetings as required</li> <li>Providing progress updates to Finance and the CPSC as required</li> </ul>
Review Leader (SES Band 1 or 2 depending on entity and nature of Review )	Contestability Programme Steering Committee & Responsible Accountable Authority	<ul style="list-style-type: none"> <li>Ensuring completion of Contestability Reviews</li> <li>Attending CPSC meetings as required</li> <li>Providing progress updates to Finance and the CPSC as required</li> </ul>
Functional and Efficiency Independent Review Leader	Responsible Minister and Finance Minister	<ul style="list-style-type: none"> <li>Ensuring completion of a Functional and Efficiency Review</li> <li>Providing progress updates to Finance and the CPSC as required</li> <li>Providing updates to Finance Secretary as required</li> </ul>