Conflict between Independent Scrutinisers of Transport Megaprojects: Evidence from Australia

Stuart Kells[1][2]

Centre for Regulatory Studies, Monash University, Melbourne, Australia

If, in the context of an 'audit explosion', public sector projects are subject to multiple and uncoordinated forms of independent scrutiny, then the different scrutinisers could reach contradictory conclusions, adopt incompatible methods, and ultimately provide less effective oversight. In the Australian state of Victoria, three independent scrutiny mechanisms operate concurrently on transport megaprojects. The three mechanisms – performance auditing, probity auditing and gateway reviews – are not coordinated and yet have overlapping goals relating to integrity and value for money. This paper describes the three scrutiny mechanisms, before presenting evidence that the mechanisms can generate contradictory conclusions that remain unreconciled, and that the mechanisms conflict in ways that affect the viability of at least one of the mechanisms. The paper concludes with a discussion of implications for Europe and directions for future research.

Keywords: performance auditing, gateway reviews, probity auditing, transport megaprojects

1. Introduction

The role played by independent auditors, evaluators, inspectors and reviewers in public administration has a long history and, since ancient times, has been the subject of much discussion and analysis. In recent decades, major contributions to the academic literature on independent scrutiny institutions include Head et al., 2008; Hood et al., 1999; OECD, 1996; and Pollitt et al., 1999. The main themes in this literature concern the goals of oversight institutions (including efficiency, process integrity and accountability); the methods they use; their institutional form, and what degree of independence they enjoy; the status of their findings and recommendations; and their impact on public accountability and agency performance.

The overwhelming majority of studies of independent scrutiny mechanisms assume, most often implicitly, a 'vertical' or bilateral relationship between a single scrutiniser and one organisation, program or project (or a set of organisations, programs or projects) that is scrutinised.[3] The term that is most often used to describe public auditors – 'Supreme Audit Institutions' (SAIs) – reflects this singularity. Drawing on a standard German public finance textbook (Blankart, 2006), Blume

---

[3] For discussions of standard conceptual models of auditing, see Leeuw 1996 and Lonsdale 1999.

and Voight (2007) claimed that 'SAIs are monopolists...since competition between SAIs seems to be a rare exception' (page 7).

It may not be so exceptional, however, for public auditors (and public sector reviewers and inspectors more generally) to face competition. In this era of an 'audit explosion' and an 'audit society' (Power, 1999; Power, 2000; Bowerman et al., 2000) some advanced countries have experienced an increase in the number of bodies with independent audit and review functions. In several countries, multiple audit and review bodies now have overlapping mandates. For example, Williams et al. (2010) studied a British government accommodation project that was subject to scrutiny by independent 'gateway' reviews, the Home Office Audit and Assurance Unit, the National Audit Office (NAO) and the Parliamentary Accounts Committee. Kells and Hodge (2010) analysed jurisdictional overlaps between four public institutions with performance audit functions in a single Australian jurisdiction.

As a consequence of the growing institutional richness, new research questions have emerged regarding the conduct and impact of public sector oversight bodies. Multiplication of such bodies within a jurisdiction means that there are important institutional relationships beyond the vertical or bilateral ones. When different bodies inhabit the same institutional space, there is an additional horizontal dimension to their conduct. For example, scrutiny bodies that cohabit the same space can interact with each other (Henkel, 1991; Kells and Hodge, 2010). Possible modes of interaction include cooperation, competition, 'convergence' (where the bodies mimic each other) and 'divergence' (whether the bodies seek to differentiate themselves) (Henkel, 1991; Kells and Hodge, 2010). In Britain, Bowerman et al. (2003) documented ongoing 'turf battles' between overlapping public audit agencies such as the NAO and the Audit Commission.

In principle, interaction between scrutiny bodies might generate benefits for society. If, for example, multiple bodies are authorised to review the same projects and agencies, there are 'more hands to the pump' in the scrutiny task, and therefore scrutiny may be more thorough. Also, multiple bodies might engage in benign competition, to become more efficient, to exert more effort, or to innovate by adopting new techniques.

Another set of potential consequences, however, is less sanguine. With multiple scrutiny bodies, coordination problems might arise. There may be wasteful duplication of effort, or the reviewers could reach contradictory conclusions (a possibility given the importance of judgement in auditing and evaluation; see Barzelay, 1996; Keen, 1999; and Lindeberg, 2007), and therefore pull reviewees in opposing directions. The results might be higher participation costs for reviewees, and less effective oversight for the community.

These dangers have led to calls for greater coordination of public sector audit and review bodies. In its 2010 report on 'Assurance for high risk projects', the NAO called for greater integration across the various mechanisms, including gateway, that provided assurance to government and the community about the delivery of major public-sector projects (NAO, 2010). In Australia, SSA (2010) recommended the establishment of an 'integrity coordination board' to better integrate the activities of public sector 'watchdog' bodies such as the Victorian Auditor-General and the Victorian Ombudsman. The potential pitfalls from the lack of coordination identified by the SSA included making poor use of the available information, duplicated effort, contradictory findings and public confusion (SSA, 2010).

Less obvious is the risk that scrutiny bodies will adopt incompatible methods, or undermine each other's effectiveness. For example, some scrutinisers adopt more discreet and 'constructive' methods – Williams et al. (2010) called these the 'friendly' scrutinisers – while others do not. Suppose there are two review bodies, A and B, who have overlapping jurisdiction over an agency, 'TransCo', and who have the power to disclose each other's findings. Body A adopts 'friendly' methods. This means body A works constructively and discreetly with TransCo, and delivers its findings, including any that are adverse, directly to TransCo, without publicly

disclosing them. Accordingly, there is a high level of trust between TransCo and body A. TransCo's staff are candid and unguarded in their disclosures to body A, which is therefore uniquely able to identify correctly TransCo's shortcomings.

Body B, however, adopts a less 'friendly' approach. This body is dogged in the pursuit of TransCo's failings, and their publication. TransCo's staff are therefore very reserved when dealing with body B, and reluctant to offer up any more information than is strictly required. If body B has the power to discover and then publish body A's findings, however, it may do so, and thereby undermine the 'friendly' approach of body A. This would affect the relationship between TransCo and body A, and could have a transformative effect on body A's methods, or even its viability.

These are just a few of the potential complications that could arise from the multiplication of independent overseers of public sector projects. In light of the potential complications, this paper examines three independent scrutiny mechanisms which, in the Australian state of Victoria, operate concurrently on 'transport megaprojects' (Altshuler and Luberoff, 2003; Kay, 2009; Priemus et al., 2008) that are procured by public-sector agencies via competitive tendering. There is no single definition of 'megaproject', but the term generally refers to discrete projects that are multi-faceted or complex, and that involve large expenditures ranging from hundreds of millions of dollars into billions of dollars. The concept encompasses large-scale engineering and capital works projects, information-technology projects, and major services contracts. For the purposes of the present paper, a 'megaproject' is valued in excess of A$100 million.

In the transport sphere, relevant megaprojects include new railway infrastructure, freeways, major port infrastructure, public transport ticketing systems and long-term public transport system operating contracts. Relevant modes of procurement include 'public-private partnerships', alliancing, design and construct contracts, and franchise contracts.

The three scrutiny mechanisms are performance auditing, probity auditing and gateway reviews. The mechanisms have overlapping goals relating to probity and value for money. The paper describes the three mechanisms, before considering whether there is evidence of the kinds of pitfalls identified above. Transport megaprojects are an appropriate site to study interactions between the three mechanisms because such projects constitute a discrete sample of projects that have all been subject to the three scrutiny mechanisms extensively. The projects face similar risks, and are of high public interest around the world (Cour des Comptes, 2005; Cox, 2003; Flyvberg et al., 2003; Kay, 2009; Ware et al., 2007). Also, in Victoria, transport megaprojects have been an area of procurement innovation: Victoria's largest public-private partnership was a freeway project (Eastlink), and transport was the first Victorian government portfolio to adopt alliancing on a large scale as a method of major project procurement.

The principal contribution of the paper is in analysing empirically how three overlapping audit and review processes operate together. The paper seeks to deepen the literature on interactions between audit and review mechanisms. There are few analyses of this kind,[4] and none from Australia that relate specifically to transport megaprojects. The paper is also relevant to the literature on megaproject governance. For recent analyses of governance regimes for megaprojects, see Flyvberg et al. (2003), Klakegg et al. (2008, 2009), Miller and Hobbs (2005), Miller and Lessard (2001), Priemus et al. (2008) and Williams et al. (2010); for analyses specifically related to transport megaproject governance, see Priemus (2010) and other papers in the March 2010 special issue of the *European Journal of Transport and Infrastructure Research*, on 'Large Transport Infrastructure Projects: Improving Institutions and Decision Making'.

---

[4] Williams et al. (2010) examined several modes of project scrutiny but did not explore how they worked (or did not work) in concert. Klakegg et al. (2008, 2009) studied similar instances of project assessment, but also did not focus on coordination of or interaction between the various scrutiny mechanisms to which the projects were subject.

The paper is structured as follows. Section 2 describes the scope and method of the empirical study, and the context of transport megaproject procurement in Victoria. Section 3 describes three mechanisms of scrutiny of transport megaprojects that are used there. In Section 4, evidence of contradictory findings and conflict between the three mechanisms is presented. Section 5 concludes the paper with a discussion of implications for Europe and directions for future research.

2. Scope and method of the study

Three independent review mechanisms in the Australian state of Victoria were analysed. Data were collected from the Parliament of Victoria (from legislation, parliamentary reports and transcripts), the Victorian Auditor-General's Office (VAGO), Victorian Government departments and agencies, and professional standards bodies. Only publicly available sources were used.

Performance audits, probity audits and gateway reviews are the principal broad-scope review mechanisms that operate regularly on procurement of transport megaprojects in Victoria. Transport projects are also subject to investigations by the Victorian Ombudsman, but those investigations occur irregularly and display considerable variability in their subject matter and scope. The State Services Authority (SSA) and the Victorian Competition and Efficiency Commission have also conducted a small number of reviews relevant to transport, but these have not generally been procurement-focused or project-specific. Some issue-specific and narrow-scope review bodies (in areas such as sustainability and equity) have also examined aspects of transport projects, but the projects are not routinely subject to these reviews, and the reviews have not focused on value for money or probity in procurement.

Eleven transport megaprojects were examined: the Eastlink freeway project; the 'regional fast rail' project; the Tullamarine and Calder Interchange (TCI) project (freeway interchange); the M1 Upgrade (freeway upgrade); the Port of Melbourne Channel Deepening project; the New Ticketing System (NTS) (for public transport); the Southern Cross Station redevelopment; the metropolitan train franchise; the metropolitan tram franchise; the 'Improved local and cross-town bus services' project; and the South Morang rail extension project. The total value of the projects was approximately A$16 billion in 2010 dollars. All the projects were above the A$100 million size threshold, and the average size was A$1.45 billion. The rationale for focusing on transport megaprojects was outlined in the previous section.

The period of study was 2005–06 to 2009–10. During that time, all 11 projects were subject to VAGO performance audits. The results of the audits were published in the form of printed reports. The study involved an examination in detail of each of the reports to identify aspects of the performance audits' scope and method. Also during the study period, probity auditing and gateway reviews became widespread in Victoria. Those types of scrutiny also resulted in reports being produced, but those reports were not published. Nor was the public routinely informed about whether specific projects were subject to gateway reviews or probity audits. Accordingly, indirect means were used to determine if projects had been subject to these scrutiny mechanisms. VAGO's performance audit reports frequently refer to probity auditing and gateway reviews, and the detailed review of those reports was therefore also a source of information about the other scrutiny mechanisms. Using the performance audit reports as well as other public information, the author determined that no fewer than ten of the 11 projects in the study were subject to either probity auditing or gateway reviews (as well as performance auditing), and no fewer than five of the projects were subject to all three mechanisms. Precisely how many of the 11 projects were subject to all three mechanisms is likely to be significantly higher than five, given the extent of the obligation to undertake gateway reviews and probity auditing in Victoria, which is detailed in the next section.

There are several reasons why Victoria is a suitable location in which to study scrutiny of megaprojects. A state within a federation, Victoria is a first-world jurisdiction with a mixed economy. It has many institutional and cultural similarities (and some geospatial ones) with other advanced jurisdictions in Europe and North America. Victoria has a bi-cameral parliament and Westminster-style government. The state of Victoria is highly urbanised. The majority of the population (of five million people) live in Melbourne the capital, and most of the remainder dwell in regional municipalities such as Geelong, Ballarat and Bendigo, with radial transport links extending from Melbourne to these centres.[5]

Victoria's public-sector scrutiny institutions and methods are similar to Britain's and, to a lesser degree, those of other European countries. For example, performance auditing (also known as 'value for money auditing') is an important part of public administration in Victoria as well as in Sweden, Finland, the Netherlands and France. Another reason to study Victoria is the current level of transport infrastructure investment there. Across Victoria, a range of major road, rail and other transport projects are underway, with the goals of easing congestion and accommodating future growth. In 2008, the Victorian government released a 'Transport Plan' which featured projects to the value of A$38 billion.

Before outlining the framework of megaproject scrutiny in Victoria, it is useful to introduce some other features of public administration there. The state's principal minister (the premier) chairs a committee of senior ministers (the cabinet) which is the principal decision-making body in the executive branch of the government. With an annual operating budget of approximately A$50 billion, the Victorian government is responsible for delivering healthcare, education, police and transport services.[6] The executive branch of the Victorian government is organised into large, multi-portfolio departments. One of those departments, the Department of Treasury and Finance (DTF), promulgates whole-of-government procurement policies and requirements, and provides guidance and 'best practice advice' to agencies undertaking major tenders. Another department, the Department of Transport, has primary responsibility for transport policy and for the oversight of major transport projects. Other transport agencies in the state include VicRoads (Victoria's principal roads management agency), the Port of Melbourne Corporation, VicTrack (which owns much of the state's rail infrastructure) and the Transport Ticketing Authority.

3. Description of the three scrutiny mechanisms

3.1 Performance auditing

The Victorian Auditor-General is an independent officer of the state parliament. The Auditor-General is appointed for seven years (eligible for re-appointment) and may employ staff and delegate statutory powers and functions to those staff. Under Victoria's constitution, 'the Auditor-General has complete discretion in the performance or exercise of his or her functions or powers and, in particular, is not subject to direction from anyone in relation to whether or not a particular audit is to be conducted; the way in which a particular audit is to be conducted; [and] the priority to be given to any particular matter'.

Since the 1980s, the Victorian Auditor-General's Office (VAGO) has conducted performance audits of public-sector agencies, projects and programs. The adoption of a performance audit function reflected an international trend toward a more holistic approach to public sector auditing (Kells and Hodge, 2009). VAGO's current performance audit mandate is provided by

---

[5] Melbourne has the world's largest tram network (245 km), and extensive road and rail infrastructure. Melbourne's metropolitan train and bus networks feature almost 400 km of track and more than 4000 km of road routes respectively.

[6] Defence, immigration and border protection are national responsibilities.

section 15(1) of the *Audit Act 1994*, which states that 'The Auditor-General may conduct any audit he or she considers necessary to determine – (a) whether an authority is achieving its objectives effectively and doing so economically and efficiently and in compliance with all relevant Acts; or (b) whether the operations or activities of the whole or any part of the Victorian public sector…are being performed effectively, economically and efficiently in compliance with all relevant Acts.'

The performance audit mandate covers all departments and agencies in the Victorian public sector. The Auditor-General has considerable discretion regarding the use of this mandate. For example, he has discretion regarding how many performance audits he undertakes, what he audits, the scope of his audits, and what matters are disclosed in his audit reports.

The selection of performance audit topics is based on criteria such as materiality, risk and 'concerns raised by Members of Parliament, government agencies or the community' (VAGO, 2009). Transport megaprojects typically fit one or more of these criteria, and have therefore been an area of focus for VAGO in recent years. Approximately 30 VAGO performance audits are tabled in the state parliament each year.

VAGO's performance audits vary in scope and focus from one audit to the next, but the range of matters considered is broad. It includes project planning and funding, the procurement strategy, the conduct of the procurement (including the integrity of tender processes), negotiation with selected proponents, and all aspects of project delivery including value for money.

Like all audits, VAGO's performance audits are conducted 'after the fact', either subsequent to the completion of a project, or subsequent to the completion of a major component or phase of a project. Performance audits take a considerable length of time to complete (typically at least six to twelve months, and sometimes considerably longer). The principal direct cost of performance audits is the cost of salaries of VAGO staff, and the cost of consultants who are used from time to time to provide specialist input.

The *Audit Act* requires VAGO to comply with Australian auditing standards in undertaking performance audits. The current standards of most relevance are: *Standard on Assurance Engagements: ASAE 3500 Performance Engagements*; and *Standard on Assurance Engagements: ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information* (both issued by the Australian Auditing and Assurance Standards Board). The standards explicitly recognise that judgement plays an important role in the auditor's decision making.

Each performance audit results in a report that is tabled in state parliament, and is simultaneously published in printed form and on VAGO's website. The reports feature a standardised format that includes findings and recommendations, which are not binding on the government or its agencies.

3.2 Probity audits

'Probity' is a flexible term that has connotations of integrity, honesty, uprightness, adherence to proper process, and being open to scrutiny. In Australia, the terms 'probity auditor' and 'probity advisor' have become part of the standard vocabulary for procuring public infrastructure (Shead, 2001). A number of different definitions of 'probity auditor' and 'probity advisor' exist. Under one interpretation, the role of a probity advisor in a major tender is to establish administrative arrangements for managing conflicts of interest, communication with tenderers and the evaluation of bids, while the role of the probity auditor is to independently review these arrangements and how they are applied, and to furnish an opinion to the procuring agency about the overall probity of the tender process (VAGO, 2007).

Under DTF's procurement policies, 'A probity auditor may be used if the procurement is $10 million or more; sensitive; or complex' (DTF, 2009c). As transport megaproject tenders meet

EJTIR 11(1), January 2011, pp. 61-79
Kells
Conflict between Independent Scrutinisers of Transport Megaprojects:
Evidence from Australia

67

all three criteria (size, sensitivity and complexity), probity auditors are normally engaged to provide independent assurance about the tenders. According to DTF, 'The main task of the probity auditor is to provide to the Secretary, or his or her nominee, an independent and appropriate signoff on probity requirements, in hindsight, at designated milestones in the process' (DTF, 2009b).

Probity auditors must be independent of the project team. In most cases, and for all the largest projects, the role of probity auditor is performed by a private sector firm. DTF maintains a panel of suitable firms that departments and agencies can engage to provide probity practitioner services. These firms include lawyers, accountants, auditors and specialist probity firms.

In Victoria, government staff and agencies are subject to a number of probity obligations which are articulated in several instruments including: DTF 'Good Practice Guidelines' on the conduct of commercial engagements; other probity and procurement guidance issued by DTF and the Victorian Government Purchasing Board; the *Public Administration Act 2004*; the Code of Conduct for Victorian Public Sector Employees; the 'Conflict of interest policy framework' established by the Public Sector Standards Commissioner; and guidance issued by the Victorian Ombudsman on 'Conflicts of interest in the public sector'. In these instruments, the concept of probity is defined broadly and includes steps taken to achieve value for money. Probity auditors are required to apply the Victorian government's probity principles and to monitor adherence to other relevant probity requirements.

Probity auditors are given full access to project documentation and project team personnel. The probity auditors document their findings in probity audit reports, which typically are not published, but are provided to the head of the project or the head of the department or agency procuring the project.

3.3 Gateway reviews

Gateway reviews are a form of independent peer review that is increasingly being used around the world to improve the delivery of major public-sector projects. The concept was first developed by the British government, and a modified version of Britain's gateway program was adopted by the Victorian government in 2003. Victoria's gateway program initially applied to all 'major capital investments' in the state, but has since been expanded to encompass 'all high-risk programs and projects' including policy, infrastructure, organisational change and acquisition programs and projects, and ICT-enabled business changes (DTF, 2009a). The gateway program applies to all departments and agencies in Victoria.

Gateway reviews are undertaken by specially convened review teams at six key project stages or 'gates' (see Figure 1). At each stage, the review team asks a standard set of questions to determine if the project team has taken all the necessary steps, and has achieved good practice. The benchmarks are sourced from good practice standards and documents such as the international 'Project Management Body of Knowledge' (PMBOK) and guidance developed by DTF.

The scope of gateway encompasses: pre-project planning; business case development; project approval processes; market analysis and market soundings; procurement planning; management of the tender process; selection of one or more preferred proponents; negotiation with the preferred proponents; contract award; ongoing contract management; and evaluation of the project's benefits (value for money). The purpose of gateway reviews is to ensure that 'good practice' is achieved at each project stage.

Gateway review teams usually consist of three or four people (DTF, 2010b) and comprise a mixture of government and private sector staff. All members of each team are independent of the project being reviewed. The gateway unit in DTF appoints review teams as follows:

- for 'high-risk' projects, the gateway unit appoints an independent review team and review team leader from outside the procuring department or agency; and

- for 'medium risk' projects, the gateway unit appoints an independent review team leader from outside the department or agency to lead a review team consisting of independent departmental/agency staff who work outside the project team (DTF, 2010b).

According to DTF, 'the independence of the review team from the project, and in the case of high risk reviews, the independence of the review team from the department, is the key to delivering objective, high quality reviews and reports' (DTF, 2010b).
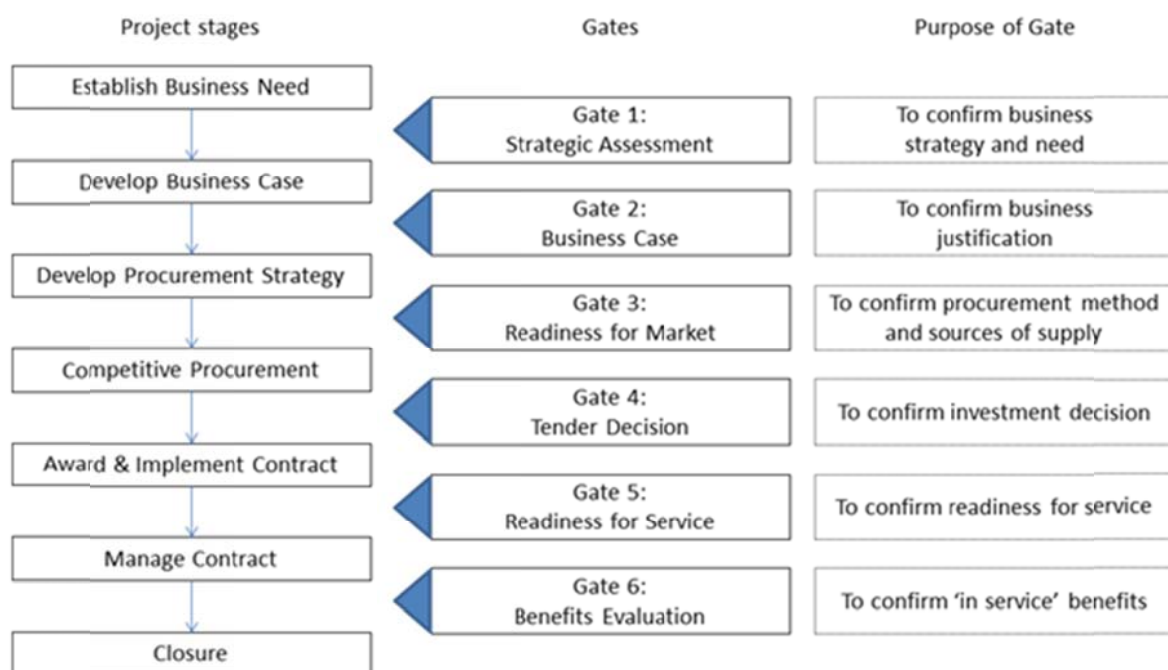

Figure 1. Project stages and the corresponding gateway 'gates'

Source: Adapted from DTF website, accessed 7 September 2009.

The gateway review team documents its findings, and uses these to develop a report which is provided to the project director or the 'senior responsible owner' of the project. The report includes recommended actions, along with green, amber or red 'traffic light' ratings (DTF, 2005): Green – 'The project is on target to succeed but may benefit from the uptake of the recommendations'; Amber – 'The project should go forward with actions on recommendations to be carried out before the next gate'; and Red – 'To achieve success the project should take the recommended action immediately'. Red light ratings are particularly sensitive because they imply significant criticism of the reviewed project.

The results of gateway reviews are not published. DTF argues that the confidentiality of gateway reports, and recommendations, is a key feature of the program, as it encourages reviewees to be forthcoming about issues and progress, and it encourages reviewers to be candid in their findings (DTF, 2005; DTF, 2009a).

As at January 2010, 326 gateway reviews had been conducted in Victoria. More than 165 projects were reviewed. The total value of the projects was more than A$30 billion (DTF, 2010a). Currently, around 50 gateway reviews are conducted each year in Victoria.

3.4 Discussion of the three scrutiny mechanisms

Figure 2 shows in a simplified way how the three scrutiny mechanisms relate to the state parliament and to the various components of the executive branch of government (the executive branch is the shaded area in the figure). All three mechanisms have the same target in common, but differ in the nature of their relationship with the public sector. Other characteristics of the three mechanisms are summarised in Table 1. The table shows that the mechanisms have a number of other similarities and differences.

The three mechanisms differ with regard to their timing and periodicity. Gateway reviews occur immediately before key project decisions, whereas performance audits and probity audits are retrospective. Performance audit reports in particular are published a considerable length of time after the events they analyse.
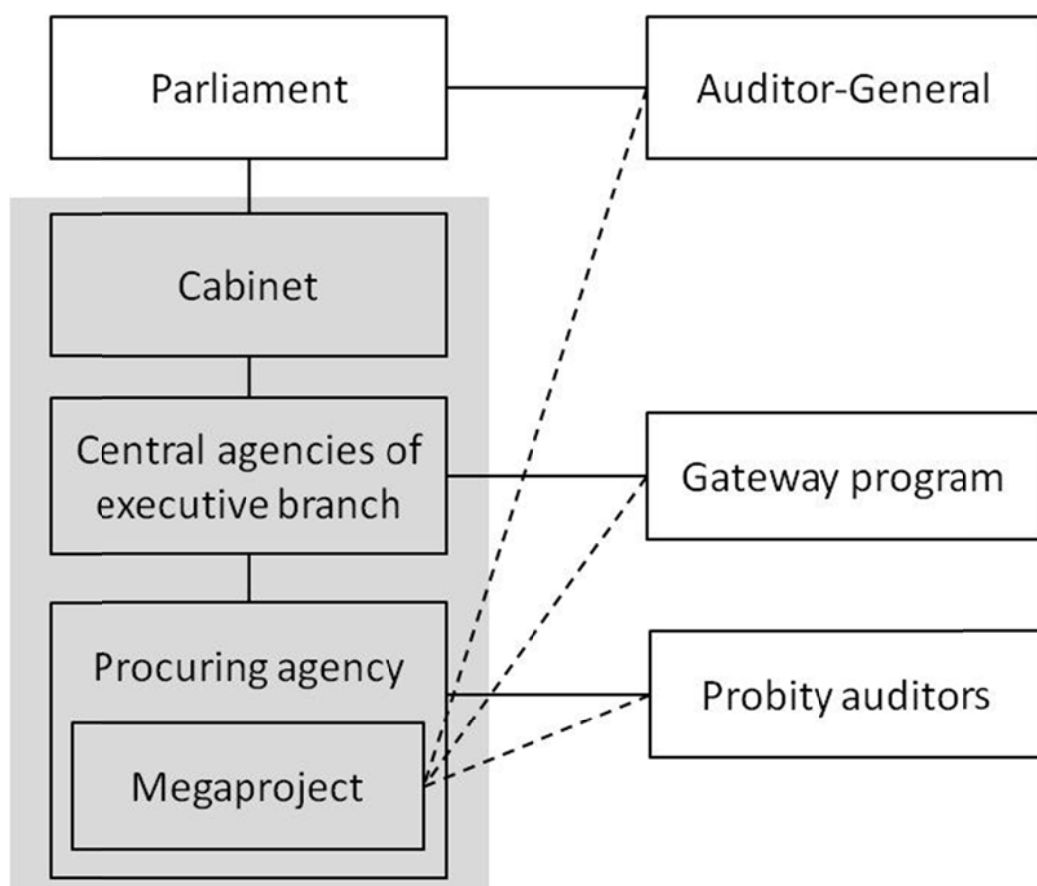

Figure 2. Principal institutional relationships

Source: Original figure.

Perhaps the most important difference is that gateway and probity audit reports are not published, whereas performance audit reports are. Publication has a number of effects: it contributes to the auditees' accountability to parliament and the wider community, subjecting the performance audit findings to open scrutiny, including scrutiny by the media; it may influence what the auditors are told and how they are told it; and the prospect of open scrutiny may lead auditees to make improvements they otherwise would not make.

In part because of the publication of performance audit results, and in part because, of all three types of scrutiniser, performance auditors are institutionally the most distant from the auditees (Figure 2), the relationship between performance auditor and auditee is more adversarial than that between gateway reviewer and reviewee, and that between probity auditor and auditee. From auditees, VAGO seeks formal responses to its draft performance audit reports, and publishes those responses in its final reports. The reports and responses indicate that the auditees are sometimes uncooperative with the audit process, and are frequently sensitive about the auditor's findings and conclusions. Compared with the other two types of review, performance auditing leans toward the 'blame culture' in the sense of Klakegg at al. (2008).

A pertinent question to ask is whether the three mechanisms are effective. This is a difficult question to answer definitively because data on the impact and effectiveness of the three mechanisms are not published. Even if such data were published, a problem of attribution would arise: because the three mechanisms have similar goals and features, it would be difficult to disentangle their separate influences on the success or failure of transport megaprojects and the integrity of tender processes. However, some tentative comments and inferences about the impact of the mechanisms can be made.

Victoria rates highly on indices of government transparency and integrity (SSA 2010). In transport, some probity issues have arisen, but there have been no major scandals in recent years, and no significant instances of corruption. This points to the review mechanisms being successful with regard to their probity and integrity goals.

However, it is difficult to draw causal links between the three mechanisms and the state's integrity outcomes. Victoria has many other integrity-enhancing features, such as strong legal institutions; cultural values that underpin a respect for the rule of law; a public sector code of conduct supported by sanctions; an independent judiciary; free media; and other checks and balances including parliament and the police. It is not clear whether the three mechanisms have a separate beneficial impact over and above the other integrity-enhancing factors at work in Victoria.

The review mechanisms have goals that extend into matters of value for money. While some projects (such as the TCI project) were delivered on time and under budget, delays and cost-overruns have occurred on other projects, as have other problems relating to value for money (Infrastructure Australia, 2008; VAGO, 2010; VAGO, 2006). It is therefore possible to conclude tentatively that the three mechanisms have not been entirely successful in overcoming these problems.

Several causes of this are possible. Addressing probity and integrity may be easier than achieving value for money, perhaps because the former goal may be amenable to more generic or 'boilerplate' solutions, while the latter goal may require more complex and idiosyncratic actions for each project. Arguably, the incentives of tenderers and other private sector participants are better aligned with the government's integrity goals than they are with the goal of maximising value for the community, sometimes at tenderers' expense. These differing alignments may encourage firms to cooperate with probity standards, while engaging in strategic behaviour to maximise private profits.

Table 1. Summary of the three independent scrutiny mechanisms

Mechanism	Mandate	Scope	Timing	Team	Methodology	Output
Performance audit	Formal legislative mandate	All aspects of projects including probity and value for money	After completion of a project or a major stage of a project	Ongoing public sector staff (audit office staff). Supported by external consultants and specialists as needed	Must adopt performance audit standards. Scope for discretion and judgement	Standardised report style, with some flexibility in reporting approach. Report is tabled in parliament and published
Probity audit	Initiative of executive branch	Probity (including value for money) in the procurement process	Ongoing oversight through the procurement process. Periodic review reports at discretion of auditor	Usually private sector probity specialists (consultants)	Applies probity standards and state government probity principles. Considerable discretion about methods used	Probity report including a conclusion ('sign off') about the probity of the process. Report is typically not published
Gateway review	Initiative of executive branch	Six key 'gates' in the procurement process, including 'benefits realisation'	Before each gate or key decision point in the procurement process	Specially convened mixed teams of public sector staff and private sector experts and consultants (for high risk projects)	Rigid review framework built around the six gates	Gateway review report including 'traffic light' rating. Provided to 'senior responsible owner'. Report is not published

Source: Original table.

4. Evidence of conflict between the three scrutiny mechanisms

This section explores interactions between the three mechanisms, and presents evidence, firstly, of contradictory findings, and, secondly, of the mechanisms adopting conflicting methods.

4.1 Contradictory findings

In the period of study, the three mechanisms had overlapping scopes: all three explicitly looked at 'value for money', as well as compliance with the rules covering tendering in Victoria. The mechanisms had similar goals and made similar claims about what they did and why. There were many examples where VAGO's performance audit reports covered the same ground as gateway reviews and probity audits. This included compliance with procurement rules and guidelines, integrity of tender processes, and the achievement of value for money. For example, VAGO's Eastlink performance audit covered 'whether the tender process was well managed', whilst in relation to Train and Tram Franchising, VAGO considered 'whether probity requirements were observed'. These are core matters of interest for gateway reviews and probity audits. The scope of VAGO's Fast Rail interim performance audit included 'the tender evaluation and selection process for the project' (ie. elements of gates 3 and 4). The final performance audit report for that project, 'Delivering regional fast rail services', encompassed project planning, procurement and delivery (ie. elements of all six gates).[7]

As VAGO falls outside the executive branch of government, the Victorian parliament is the only institution that has authority over all three scrutiny mechanisms. With regard to private-sector probity auditors, this authority is especially limited and indirect. While parliament is the source of relevant legislation and the executive branch's authority to operate, parliament does not perform a coordinating role or a directing role in relation to the three mechanisms. Rather, the mechanisms evolve and operate at different speeds and in a decentralised way. For example, the evolution of performance auditing reflects trends in public sector auditing, and the Auditor-General's use of his discretion with regard to how to perform his statutory roles, while probity audit methods and conventions are partly driven by commercial and professional trends outside government.

Because the three mechanisms covered the same matters in similar ways, and were not coordinated, there was the potential for the mechanisms to reach contradictory conclusions on those matters.

One way to avoid contradictory findings would be for the scrutiny mechanisms to 'self-organise', such as by treating each other's findings as substitutable for, or as acquitting the need to provide, their own findings. In other words, they could cede turf to each other in a limited way. In the period of study, however, the mechanisms did not do so, and nor did the formal arrangements for the mechanisms envisage such 'self organisation'. In the gateway program, gateway review teams were not afforded latitude to use probity audit reports to acquit part of the scope of the gateway reviews. Likewise, probity audit arrangements did not envisage using gateway reports to address probity audit criteria. Moreover, because probity audits and gateway reviews occur before performance audits, it is not feasible for them to cede ground to VAGO.

Conversely, it could in principle be practicable for VAGO, which has been undertaking performance audits since the 1980s, to cede ground to probity auditing and to gateway.

---

[7] 'The audit examined the adequacy of: the feasibility studies to properly inform the government's decision to proceed; the development phase to put in place contracts which provided a sound basis for the delivery of the agreed infrastructure upgrade [and] the delivery phase to manage all the fast rail components to deliver the planned improvements within the planned time lines and budgets' (VAGO, 'Results of special audits and other investigations', August 2006).

Nevertheless, this has not occurred. The emergence of probity auditing, and the implementation of the gateway program, were not associated with any reduction in the Auditor-General's role. VAGO's legislation was not revisited, for example, to make space for the new mechanisms. Nor did the Auditor-General voluntarily retreat from the subject matter covered by probity auditors and gateway reviews, or use probity auditing and gateway results to replace or reduce any of its own work. (VAGO did, however, use them to develop performance audit criteria and lines of inquiry.)

Accordingly, the potential for contradictory findings was not addressed either by coordination 'from above', such as by parliament, or coordination in the form of self-organisation among the scrutiny mechanisms. In this context, the study found evidence of conflict between performance auditing and probity auditing.

During the period of study, VAGO was frequently critical of the conduct and findings of probity auditors. For example, with respect to the TCI project, VAGO criticised the probity audit report on the grounds that it did not include 'an audit opinion, nor [was] there any reference to the fact that probity audit services were provided.' In VAGO's performance audit of Melbourne's New Bus Contracts, it criticised the brevity of the interim and final probity audit reports. In the Train and Tram Franchising projects, VAGO criticised the probity auditor's role in managing conflicts of interest.

The most intense area of criticism related to the boundaries and definition of probity auditor roles. Throughout the study period, there was pointed disagreement between VAGO and probity practitioners regarding the boundaries of probity audit and probity advice services. The heart of the disagreement was whether it was proper for a single probity practitioner to establish and advise on the probity framework for a megaproject, and then audit adherence to that framework. VAGO criticised the combining of probity auditor and probity advisor roles (or the lack of a clear distinction between these roles) in the following six transport megaprojects: train franchising; tram franchising; NTS; TCI project; M1 Upgrade; and Melbourne's new bus contracts.

This conflict was not a minor matter. A significant part of VAGO's NTS report, for example, was devoted to this issue, as was a significant part of the parliamentary hearings that were subsequently held regarding that report. VAGO used the failure to separate probity auditor and probity adviser roles as the basis of a series of negative conclusions about the probity arrangements for transport megaprojects in Victoria.

In this disagreement, parliament's Public Accounts and Estimates Committee (PAEC 2008) sided with VAGO, but the Government and DTF refused to endorse VAGO's position, instead issuing contrary guidance for agencies engaging probity practitioners. In the NTS performance audit report, VAGO recommended that DTF amend the 'Policy for the Conduct of Commercial Engagements' to provide that, for major and complex tenders, probity auditor and probity advisor functions should be provided by different parties. DTF rejected the recommendation, arguing that a probity auditor could prepare the probity plan and subsequently report on whether there had been compliance with the plan, and that it was a matter for departmental heads to determine, depending on the particular transaction, whether the separation of probity auditor from probity advisor was warranted, and whether these practitioners should be engaged externally or internally to Government.

This disagreement was not conclusively resolved. In December 2008, the Minister for Finance stated that DTF noted VAGO's recommendation that probity auditor and advisor roles be kept separate, but went on to state that 'the current policy titled Government Purchasing Board Policy

for the Conduct of Commercial Engagements [did] not require amendment.'[8] At the time of writing, the Auditor-General and DTF continue to hold opposing positions regarding probity auditing. Probity auditors who continue to provide probity advice are therefore exposed to criticism from the Auditor-General, while agencies that appoint probity auditors in accordance with DTF guidance are similarly exposed to adverse findings from the parliamentary auditor.

4.2 Conflicting methods

In addition to tension between performance auditing and probity auditing, the study also found evidence of tension between performance auditing and gateway reviews. Specifically, there was tension between, on the one hand, the gateway goals of encouraging candidness in reviewees and frank advice from gateway reviewers, and on the other hand the Victorian Auditor-General's wide powers to examine gateway review content and to publish some or all of that content. The goals of gateway are supported by the confidentiality of gateway review reports, but the Auditor-General is in no way bound to preserve that confidentiality, and has increasingly chosen not to do so.

In principle, there are several ways in which VAGO can disclose gateway content beyond merely mentioning that a gateway review has been conducted. For instance, VAGO can disclose: the number of findings or recommendations in a gateway report; the general subject matter of those findings and recommendations; specific details of the findings and recommendations; and the gateway 'traffic light' ratings. A variety of these modes of disclosure can be seen in VAGO's performance audit reports.

The NTS project was subject to two gateway reviews, and VAGO's NTS performance audit report (October 2007) included detailed information about the matters covered by the reviews. In the report, however, VAGO did not disclose the gateway findings or recommendations. Indeed, before December 2007, VAGO did not disclose any findings and recommendations from gateway reviews of transport megaprojects, despite the fact that gateway had been in operation since 2003. During this period, the Auditor-General effectively tied his own hands and adhered to a voluntary convention of not disclosing such gateway review content.

A change occurred in December 2007, when VAGO reported on its performance audits of the TCI project and the M1 Upgrade. The TCI project was subject to a gateway review, and VAGO noted in its performance audit report that the gateway review had identified 'exemplar' practices within the alliance structure for the project, and that all recommendations arising from the gateway review were agreed by management. Furthermore, VAGO recommended that the project 'should undergo a "Gate 6 – Benefits Realisation" review'.[9]

VAGO's reporting for the M1 Upgrade went further by disclosing a specific gateway finding as well as two gateway recommendations. In the performance audit report, VAGO stated that 'a Gateway Review in June 2006 recommended that the management of the project to strengthen the West Gate Bridge should be brought into the overall governance and management framework of the M1 project'. VAGO also noted that 'A Gateway Review undertaken in June 2006 identified VicRoads' limited experience with alliance contracting, and the resulting need to put in place a program of activities for key project team members to ensure that they have the required capabilities for their roles'.

---

[8] 'Response by the Minister for Finance to the Auditor-General's Reports issued during 2007–08', Government of Victoria, December 2008.

[9] In the TCI performance audit report, VAGO also published an agency response which referred to gateway findings in support of the decision to adopt an alliance approach: 'The risk analysis supported some form of relationship contract rather than the traditional "hard dollar" contract. This decision was supported by the DTF Gateway Review undertaken at the time.'

In May 2009, VAGO's performance audit of the Port of Melbourne Channel Deepening project disclosed five gateway review findings, whilst VAGO's June 2010 performance audit report on 'Management of Major Rail Projects' detailed gateway findings and recommendations relating to the South Morang Rail Extension project. Importantly, that performance audit report indicated for the first time the status assigned by the gateway review team to some of the gateway recommendations.

The South Morang Project was subject to gateway reviews in February and August 2009. VAGO reported that the February 2009 review found that the absence of a consolidated risk management plan and detailed risk register had: contributed to a lack of structure for managing project risks; resulted in overlaps between risk allowances and contingencies for some cost components; and made it difficult to accurately estimate the impact of risks on costs and timelines. VAGO further reported that the August 2009 gateway review found the project was in a 'critical situation' because the department had not made sufficient progress given its scale, significance and planned timelines. VAGO reported that the gateway reviewers found that the department 'needed to act immediately on several issues'. In other words, VAGO reported that the gateway review had given the project 'red lights'.

These findings indicate that the Victorian Auditor-General has shown an increasing willingness to disclose gateway report content in his transport megaproject performance audits. VAGO's relationship with gateway marks out a progression along the spectrum of increasing disclosure of gateway findings, that began with mentioning that a gateway review was conducted, then progressed to mentioning the matters covered in the review, then disclosing findings, then findings and recommendations and, finally and most sensitively, disclosing the criticality of the gateway recommendations.

This progression has several potential implications for the gateway review program. The confidentiality of gateway review reports is a mainstay of the program, and one that distinguishes it from performance auditing. Paradoxically, as the Auditor-General increasingly uses his powers to disclose gateway findings, gateway may become more like performance auditing: if an expectation arises that gateway results will ultimately be published, then reviewees are likely to be less candid, and the review relationship is likely to become more adversarial and less 'friendly' in the sense of Williams et al. (2010).

The methods used by VAGO and gateway in relation to gateway review content are in conflict. Could the conflict between VAGO and gateway be removed or prevented? Yes, but only with changes that would alter fundamentally the character of performance auditing or gateway reviews as they are practised in Victoria. Routinely publishing gateway review reports, for example, would transform gateway, while removing the Auditor-General's discretion to publish information from gateway reports would be a critical diminution of his powers, as would any attempt to reduce the Auditor-General's jurisdiction in matters of megaproject tendering.

5. Conclusion and implications for Europe

Transport megaproject procurement is one of the most reviewed aspects of public administration in Victoria. The multiplication of scrutinisers of transport megaprojects can be seen as further evidence of an 'audit explosion'.

The multiplication of scrutiny mechanisms has a number of implications for public administration and for society as a whole. This paper explored an instance where multiple independent scrutinisers examining the same projects have reached contradictory conclusions and adopted conflicting methods. While the scrutinisers were independent of the projects they examined, they were also in some respects interdependent.

There are a number of ways to interpret the paper's findings. One is to think of them as evidence of an SAI asserting its supremacy over newcomers, or over 'small fry' reviewers operating in its patch. Another is in the context of the evident trend toward greater public sector transparency. It is a commonplace to claim that appetites for government transparency and accountability are increasingly ravenous. Those appetites are being fed by more extensive whistleblower laws and freedom on information laws, as well as unauthorised WikiLeaks-style disclosures. In the context of that trend, 'friendly' mechanisms that rely on secrecy may become less palatable and, ultimately, less viable. Yet another interpretation of the results is that they are one more skirmish in the long war between an executive branch and its external auditor.

As was noted in Section 2, a number of European countries have adopted similar scrutiny mechanisms to those studied here; it is notable for example that 'friendly' review approaches have been used in defence procurement in Norway (Klakegg et al. 2008; Williams et al., 2009). Indeed, some countries in Europe have two or more mechanisms operating in concert that are analogous to the mechanisms studied here: in Britain, for instance, the National Audit Office conducts value-for-money audits of megaproject tenders[10], the government commissions gateway reviews, and international accounting and audit firms offer probity audit services. The paper's findings are therefore relevant to the design of megaproject scrutiny in Europe, and to European public sector scrutiny regimes more generally.

One clear lesson for Europe is that there is a place for coordination of multiple scrutiny mechanisms, or at least for establishing a clear and workable hierarchy between them. SSA (2010) recommended greater coordination of oversight bodies authorised by the legislature; the evidence presented here suggests that the need for coordination also extends to scrutiny mechanisms that originate from beyond the legislature. A further lesson is that, in designing oversight mechanisms, attention should be paid not just to vertical or bilateral relationships between reviewers and reviewees, but also to horizontal relationships between multiple reviewers.

The study's results have a number of implications with regard to megaproject governance. First of all, insofar as independent review is an aspect of the megaproject governance, the study is further evidence of the dynamic nature of that governance (Miller and Hobbs 2005, Williams et al. 2010). Secondly, to the extent that external review mechanisms provide useful input for megaproject decision-makers, contradictory recommendations would make the mechanisms less useful for avoiding project pitfalls. Thirdly, if there is reason to believe that gateway-style reviews are more useful in megaproject governance (because they provide more candid and timely input) and yet this type of review is most likely to lose out in conflicts with SAIs like VAGO, then megaproject governance may be adversely affected.

Underpinning the paper's findings are several cultural factors. For example, the idea of making candid disclosures to 'friendly' reviewers (Williams et al., 2010) such as gateway review teams is imbued with assumptions and relationships that may be culturally specific. Similarly, the willingness of the Auditor-General to disclose otherwise secret gateway results may depend on a particular cultural context; elsewhere, SAIs may not be inclined to disclose these results, or they may move much more quickly along the disclosure progression than did Victoria's Auditor-General. A question for future research is how these cultural elements and dynamics would play out differently outside the countries from the Anglo-American cultural sphere.

The paper provides a number of other possible lines of inquiry for future research. Such research would desirably characterise more fully the types of interaction that occur between multiple scrutiny mechanisms, including between gateway reviews and probity audits (possibly using

---

[10] The scope and method of the UK NAO's value for money audits are substantively equivalent to VAGO's performance audits.

survey evidence or interviews with practitioners); examine the extent to which gateway reviews and probity auditing can be seen as strategies of the executive branch to claim the megaproject scrutiny 'turf', or to otherwise influence independent performance auditing; examine how the scrutiny mechanisms have been applied with regard to a wider range of projects in the transport arena and beyond; and seek to better understand the costs and benefits of the three mechanisms individually and collectively.

References

Altshuler, A. and Luberoff, D. (2003). *Mega-projects. The changing Politics of Urban Public Investment*, Washington D. C., The Brookings Institution.

Barzelay, M. (1996). Performance Auditing and the New Public Management: Changing Roles and Strategies of Central Audit Institutions. in: OECD (1996), *Performance Auditing and the Modernisation of Government*, Paris, OECD.

Bowerman, M., C. Humphrey and Owen, D. (2003). Struggling for supremacy: the case of UK public audit institutions. *Critical Perspectives on Accounting*, Vol. 14, pp. 1–22.

Cour des Comptes (2005). *Les transports publics urbains*. Paris, Cour des Comptes.

Cox, W. (2003). Competitive Participation in U.S. Public Transport: Special Interests Versus the Public Interest. Paper Presented to the 8th International Conference on Competition and Ownership in Land Passenger Transport, Rio de Janeiro, September 2003 (revised).

DTF [Department of Treasury and Finance] (2005). The Victorian Gateway Experience. Presentation by Wayne Sharpe, 2005.

DTF (2009a). *Overview: Gateway Review Process*. Melbourne, Government of Victoria.

DTF (2009b). *Good Practice Guidelines: Conduct of Commercial Engagements*. Strategy and Policy, Government Services Group, DTF, Melbourne, Government of Victoria.

DTF (2009c). *Template: Procurement Process Report – Tenders*. Government Services Group, DTF, Melbourne, Government of Victoria.

DTF (2010a). *Gateway Newsletter*. January 2010, Melbourne, Government of Victoria.

DTF (2010b). Gateway website, www.gatewayreview.dtf.vic.gov.au, accessed 14 June 2010.

Flyvbjerg, B., N. Bruzilius and Rothengatter, W. (2003). *Megaprojects and Risk: An Anatomy of Ambition.* Cambridge: Cambridge University Press.

Head, B., A. J. Brown and Connors, C. (eds.) (2008). *Promoting Integrity: Evaluating and Improving Public Institutions*. Farnham and Burlington, Ashgate Publishing.

Henkel, M. (1991). The New 'Evaluative State'. *Public Administration*, Vol. 69, No. 1, pp. 121–36.

Hood, C., C. Scott, O. James, G. Jones and Travers, T. (1999). *Regulation inside government: Waste watchers, quality police, and sleaze-busters.* Oxford, Oxford University Press.

Infrastructure Australia (2008). *Review of Major Infrastructure Delivery*. Sydney, Infrastructure Australia, December 2008.

Kay, M. A. (2009). *Transportation megaproject procurement: benefits and challenges for PPPs and alternative delivery strategies, and the resulting implications for Crossrail.* Thesis (Master in City Planning and Master of Science in Transportation), Massachusetts Institute of Technology, Department of Civil and Environmental Engineering.

Keen, J. (1999). On the Nature of Audit Judgements: The Case of Value for Money Studies. *Public Administration*, Vol. 77, No. 3, pp. 509–25.

Kells, S. and Hodge, G. (2009). Public sector performance auditing: Reconceptualising the task. *Journal of Contemporary Issues in Business and Government*, Vol. 15, No. 2, pp. 33–60.

Kells, S. and Hodge, G. (2010). Redefining the performance auditing space. *Asia Pacific Journal of Public Administration*, Vol. 32, No. 1, pp. 1–26.

Klakegg, O. J., T. Williams, O. M. Magnussen and Glasspool, H. (2008). Governance frameworks for public project development and estimation. *Project Management Journal*, Vol 39, No. S1, pp. S27–S42.

Klakegg, O. J., T. Williams and Magnussen, O. M. (2009). *Governance frameworks for public development and estimation*. Newtown Square, Project Management Institute.

Klemperer, P. (2002). What Really Matters in Auction Design. *Journal of Economic Perspectives*, Vol. 16, No. 1, pp. 169–89.

Leeuw, F. L. (1996). Auditing and Evaluation: Bridging a Gap, Worlds to Meet? *New Directions for Evaluation*, Vol. 71, Fall, pp. 51–60.

Lindeberg, T. (2007). The Ambiguous Identity of Auditing. *Financial Accountability and Management*, Vol. 23, No. 3, pp. 337–50.

Lonsdale, J. (1999). Impacts. in: *Performance or Compliance? Performance Audit and Public Management in Five Countries*, Oxford, Oxford University Press.

Miller, R. and Hobbs, B. (2005). Governance regimes for large complex projects. *Project Management Journal*, Vol. 36, No. 3, pp. 42–50.

Miller, R. and Lessard, D. (2001). *The Strategic Management of Large Engineering Projects: Shaping Risks, Institutions and Governance*, Cambridge, MIT Press.

NAO [National Audit Office] (2010). *Assurance for high risk projects*. London, NAO.

OECD (1996). *Performance Auditing and the Modernisation of Government*. Paris, OECD.

PAEC [Public Accounts and Estimates Committee] (2008). *Review of the findings and recommendations of the Auditor-General's reports tabled July 2006 – February 2007*. Melbourne: Parliament of Victoria.

Pollitt, C., X. Girre, J. Lonsdale, R. Mul, H. Summa and Waerness, M. (eds) (1999). *Performance or Compliance? Performance Audit and Public Management in Five Countries*, Oxford, Oxford University Press.

Power, M. (1999). *The Audit Society: Rituals of verification*, Oxford, Oxford University Press.

Power, M. (2000). The Audit Society – Second Thoughts. *International Journal of Auditing*, Vol. 4, No. 1, pp. 111–19.

Priemus, H. (2010). Decision-making on Mega-projects: Drifting on Political Discontinuity and Market Dynamics. *European Journal of Transport and Infrastructure Research*, Vol. 10, No. 1, pp. 19–29.

Priemus, H., B. Flyvbjerg and van Wee, B. (2008). *Decision-Making on Mega-Projects. Cost-Benefit Analysis, Planning and Innovation*. Cheltenham, Edward Elgar.

Shead, B. (2001). Probity Auditing: Keeping the Bureaucrats Honest? *Australian Journal of Public Administration*, Vol. 60, No. 2, pp. 66–70.

Sloan, N. (1996). The Objectives and Performance Measurement of Performance Audit, in: OECD (1996), *Performance Auditing and the Modernisation of Government*, Paris, OECD.

SSA [State Services Authority] (2010). *Review of Victoria's integrity and anti-corruption bodies*. Melbourne, SSA.

VAGO [Victorian Auditor-General's Office] (2006). *Results of special audits and other investigations*, Melbourne, VAGO.

VAGO (2007). *The New Ticketing System tender*. Performance audit report. Melbourne, VAGO.

VAGO (2009). *Annual Plan 2009–10*. Melbourne, VAGO.

VAGO (2010). *Management of major rail projects*. Performance audit report. Melbourne, VAGO.

Ware, G. T., S. Moss, J. E. Campos and Noone, G. P. (2007). Corruption in Public Procurement: A Perennial Challenge. in: J. Edgardo Campos and Sanjay Pradhan (eds.) *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level*, Washington D.C., World Bank.

Williams, T., O. J. Klakegg, O. M. Magnussen and Glasspool, H. (2010). An investigation of governance frameworks for public projects in Norway and the UK. *International Journal of Project Management*, Vol. 28, pp. 40–50.