
Submission to the Trade, Defence and Foreign Affairs Reference Committee inquiry into Taipan Fatalities

Author: Andrew Lamb B.E.(Mat), www.linkedin.com/in/ajlamb

Subject:

Systematic failures in procurement business processes that lead to the knowing approval of fatally defective capability.

1. Executive Summary

This submission argues that systemic cultural and structural failures within Defence capability procurement have displaced end-user safety and operational integrity in favour of supplier accommodation and relationships.

Where known defects have been identified yet capability has proceeded into service without effective containment, the issue moves beyond administrative failure into potential criminal exposure under industrial manslaughter provisions.

The central structural defect is the separation of:

- Technical expertise from compliance determination
- Compliance determination from payment authority
- Safety reporting from enforceable remediation

This submission recommends the establishment of an **Independent Quality and Compliance Authority (under the Defence Capability Assurance and Oversight Bill Rev F)** with statutory authority to:

1. Determine compliance independently of program management
2. Withhold payment pending rectification
3. Suspend entry into service where safety risk is identified
4. Enforce warranty and defect remediation through withholding payment from any contract and contracting third party rectification at suppliers cost.
5. Protect defect reporting mechanisms

Without financial and structural leverage, quality systems cannot function.

2. The Cultural Drift in Procurement

Within commercial procurement, governance literature recognises the risk of supplier familiarity displacing the interests of the end user. When relationship preservation becomes prioritised over enforcement, regulatory capture can occur. Well documented accounts of the Challenger Space Shuttle document the Normalisation of Deviance which is endemic within Defence disregard for the Commonwealth Procurement Rules, Contract Requirements, Regulation and Legislation.

Within elements of Defence procurement, particularly in large programs, there is evidence that:

- Suppliers have not consistently been required to remediate defects prior to acceptance
- The RODUM (Report on Defective or Unserviceable Materiel) system has been underutilised or culturally discouraged
- Subject matter experts (SMEs) identifying safety risks have not retained binding authority over compliance outcomes

This drift creates a system where defect is normalised and risk is administratively managed rather than technically eliminated.

3. Foreseeable Risk and Fatal Consequence

On 30 August 2021, a 45M heavy tow vehicle left Dotswood Road near Townsville, resulting in the deaths of two occupants. That vehicle capability had reportedly been identified as foreseeably likely to result in fatalities yet proceeded into service.

Similarly, concerns were raised in relation to the TopOwl 5.10 helmet-mounted display system supplied by Thales Group. When imagery did not align with pilot expectation and training, Major Ian Wilson identified this as a safety risk.

In aviation, perceptual inconsistency is not cosmetic — it is operationally critical.

Where foreseeable fatal risk is identified and not contained prior to operational exposure, the governance question becomes:

- Who had authority to stop the program?
- Who had authority to withhold payment?
- Who bore legal responsibility for proceeding?

In the absence of structural independence, those questions become diffused across the program hierarchy.

4. Failure to Adopt Modern Quality Systems

Civilian manufacturing underwent structural reform during the late twentieth century through warranty-backed accountability and zero-defect methodologies.

A formative influence in modern quality systems was Kiichiro Toyoda of Toyota Motor Corporation, whose warranty approach aligned manufacturer accountability directly with customer operational outcomes.

The key structural lesson was this:

The party that bears the financial consequence of defect eliminates defect.

By the 1990s, zero-defect culture was widespread in industry, driven in part by product liability exposure.

Defence procurement has not embedded equivalent financial and structural accountability mechanisms. Compliance is frequently decoupled from payment, and acceptance may occur notwithstanding unresolved safety concerns.

Without payment leverage, quality enforcement is advisory rather than authoritative.

5. “Perceived Defects Are Actual Defects”

In modern acquisition, Defence purchases finished capability — not experimental prototypes co-designed with end users.

When:

- Display formats conflict with trained muscle memory
- Software versions alter cognitive processing pathways
- Data latency or imagery presentation undermines trained expectation

The defect is operationally real, even if technically compliant with documentation or a setting error that could have been corrected by a fully trained user.

A safety-critical system that requires the operator to relearn instinctive response pathways introduces foreseeable confusion under stress.

Civilian markets recognise this through consumer protection norms. Commercial procurement, although not directly subject to consumer law, increasingly mirrors its principles:

- Fitness for purpose
- Safe operation
- Good faith representation
- Warranty enforceability

Defence contracts must embed these principles structurally, not aspirationally.

6. Structural Defect: Separation of Authority

The core governance failure is structural.

Currently within Defence capability acquisition:

- Systems engineers or other stakeholders identify defect.
- Program management controls schedule.
- Finance controls payment.
- Senior approval authorities determine acceptance.

Where compliance determination is separated from payment authority, enforcement capacity is removed.

If a non-technical decision maker can override a technical defect determination without independent review, safety becomes subordinated to schedule or budget pressure.

Formal mechanisms such as SG02 non-compliance acceptance processes exist, but without independent oversight and transparent documentation, such mechanisms risk becoming instruments for normalising defect.

7. Industrial Manslaughter Exposure

Modern Work Health and Safety legislation includes industrial manslaughter provisions where:

- Negligent conduct, Exposes individuals to risk of death, And death results

Where foreseeable fatal risk is documented and approval actions knowingly proceed without plausible mitigation, legal exposure may arise not only for institutions but potentially for individuals.

A system that diffuses responsibility while concentrating approval authority creates structural moral hazard.

Independent compliance structures reduce this exposure by ensuring that:

- Risk identification triggers mandatory containment
 - Payment cannot proceed absent remediation
 - Entry into service requires independent safety certification
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8. Recommendation: Establishment of an Independent Quality and Compliance Authority

This submission recommends the establishment of an Independent Quality and Compliance Authority within the Defence Delivery Authority, structurally separated from program management and acquisition delivery.

The independent Authority must have:

1. Statutory independence from program management
2. Authority to determine compliance and defect status
3. Direct authority to withhold payment pending rectification
4. Power to suspend entry into service for safety-critical concerns
5. Mandatory supplier attendance and remediation trigger mechanisms
6. Protected defect reporting channels
7. Transparent reporting to Parliament through PM&C

The Authority should function as:

- The binding signatory at all project milestones
- The gatekeeper for entry into service
- The holder of warranty enforcement authority by financial deduction from any contract with the supplier
- The arbiter of safety compliance

This restores structural alignment between:

- Technical expertise
- Compliance authority
- Financial leverage

9. Major Ian Wilson and TopOwl 5.10

When Major Wilson identified the foreseeable hazard of a visual prompt inconsistent with flight instrumentation, the approval process should have been placed on hold a RODUM raised and Thales Invited to attend for the purpose of formally problem solving the issue raised.

The separation of Payment from Compliance and the Culture of attacking the messenger had undermined the end user safety first requirements and allow the accumulation of consequence and cost that has led to this and other inquiries.

The root cause of the two Dotswood Road Fatalities and 4 Taipan Fatalities is not the defect in the equipment but the structural failures within the procurement process that drives the approval of defective capability.

10. Conclusion

The fatalities associated with defective capability are not isolated events. They are indicators of systemic governance failure.

Defence cannot rely solely on internal hierarchy to correct structural cultural drift. Without independent compliance authority tied to financial enforcement, defect normalisation will persist.

The establishment of an Independent Quality and Compliance Authority under the Defence capability Assurance and Oversight Bill Revision F with payment-withholding powers is not an administrative refinement — it is a necessary reform to:

- Protect serving members
- Protect decision-makers from criminal exposure
- Restore public confidence
- Align Defence procurement with modern quality systems

Quality without authority is advisory.

Authority without financial leverage is ineffective.

Financial leverage without independence is compromised.

Structural reform is therefore essential to ensure capability reliability and safety.

Submission Package: Defence Capability Assurance and Oversight Bill 2025

Document Change Register

A	Source Document	Defence Capability Assurance and Oversight Bill	2023
B	Revision 2024	Reduction of financial cost in response to Govt Response	
C	Broaden to Operational Audit 9A	Revisions made in response to ongoing failure to meet commitment to ANAO Audit and Sexual Harassment	25/10/25
D	Added Section 14A-E	(Mandatory Contractual Terms and Withholding Authority) establishing DCAD contractual oversight and financial-assurance powers	01/11/2025
E	Addition 14I, 14H,33B,10D,14G14F	Compliance onus of proof moved to provider supplier linked to payment.	02/11/2025
F		Changes to make the DCAA the Defence Capability Assurance department within the Defence Delivery Agency	7/11/2025

Author: Andrew Lamb

Email; [REDACTED]

Phone: [REDACTED] **Executive**

Summary

Purpose:

The *Defence Capability Assurance and Oversight Bill 2025* establishes an independent quality and compliance reporting structure with the **Defence Delivery Department** to verify compliance, safety, quality and manage capability warranty and responsibility between the Australian Defence Force and the Capability Provider from conception to disposal.

Background:

Following a series of incidents where materiel entered service with known defects, including the 2021 45M fatalities, the 2023 Taipan TopOwl 5.10 fatalities and the approval of Aviation Refuelling Systems through fabricated documentation, it became clear that Defence lacked an independent assurance mechanism capable of confirming compliance between engineering intent and supplier performance. With the separation of the capability user from the Acquisition Team it has become necessary to ensure that the new operation will have robust structures to separate determination of compliance and quality from persons personally invested in the approval.

The Defence Capability Assurance Department (DCAD) within the Defence Delivery Department will be responsible for audit verification of all aspects of quality and compliance throughout product and capability lifecycle and a signatory authority at all stages of cradle to grave management.

Reform Objective:

The DCAD introduces a modern quality-assurance model within Defence by:

- Embedding assurance officers within Defence projects;
- Separating compliance oversight from procurement decision-making;
- Audit Defence Procurement Process, Procedure and Operation for established processes and the introduce new processes and procedures in response to ANAO Audit, Inquiry or direction from Minister, Parliament or other Authorised Department and
- Providing an independent reporting line through the Department of the Prime Minister and Cabinet (PM&C) to the Minister for Defence.

Outcome:

Defence retains control of defining capability expectation, the Defence Delivery Agency controls and manages commercial, and project delivery, while DCAD officers independently verify that suppliers meet process step, contractual, legislative, and safety requirements. This ensures that all capability accepted into service is compliant, safe, and fit for operational use.

This ensures that Defence Delivery Authority is meeting existing policy, guidelines, legislative requirements and is introducing new policies and guidelines with effect in a timely manner and ensures that Defence Expectation is accurately recorded in contracts and program objectives such that providers are able to provide evidence of compliance and retain responsibility for non-compliance through product life.

That the Minister and Cabinet has real time visibility of key performance metrics.

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Defence Capability Assurance and Oversight Bill 2025

A Bill for an Act to establish the Defence Capability Assurance Department, strengthen accountability and safety in Defence procurement, operational procedures and for related purposes.

PREAMBLE

Recognising the Commonwealth's duty to safeguard Defence personnel and public resources,
Acknowledging the consequences of past failures in capability assurance,
And affirming the need for a transparent, independent mechanism to verify compliance, The Parliament of Australia enacts as follows:

Part I — Preliminary

1. Short title

This Act may be cited as the *Defence Capability Assurance and Oversight Act 2025*.

2. Commencement

This Act commences on a day to be fixed by Proclamation.

3. Objects of this Act

The objects are to:

- (a) Establish the Defence Capability Assurance Department (DCAD);
- (b) Embed independent assurance capability within Defence Delivery Agency by secondment of existing personell;
- (c) Ensure engineering, safety, and legislative compliance of Defence capability; and
- (d) Strengthen public accountability for Commonwealth expenditure
- (e) Establish project stop, payment stop and cost recovery mechanisms for compliance management.

4. Definitions

- **Authority** means the Defence Capability Assurance Department established under section 5?
- **Assurance officer** means a person appointed to perform DCAD functions within the Defence Delivery Agency.
- **Capability project** means any project for the acquisition, upgrade, or sustainment of Defence materiel.

- **DAR** means the Design Acceptance Representative.
- **Defence organisation** means the Department of Defence and related agencies.
- **PM&C** means the Department of the Prime Minister and Cabinet.
- **Supplier / Provider** includes any entity providing goods or services to Defence under Commonwealth contract.
- defence domains means the following defence operational domains:
 - (a) information and cyber;
 - (b) maritime;
 - (c) air;
 - (d) space;
 - (e) land.
- DIO means that part of the Defence Department known as the Defence Intelligence Organisation.
- Director means the Director of the Defence Capability Assurance Department.
- **HEAD** means:
 - (a) in relation to the Defence Department—the Secretary of the Department; or
 - (b) in relation to the Defence Force—the Chief of the Defence Force; or ○
 - (c) in relation to the Defence Capability Assurance Department—the Director; or
 - (d) in relation to the Office of the Inspector General of Defence Capability Assurance—the Inspector General; or ○
 - (e) in relation to any other defence agency—the person holding, or performing the duties of, the principal office in respect of the agency.
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- **materiel** means any major equipment or system (including aircraft, vessels, vehicles, weapons and networks) intended for use for defence operational purposes.
- monitored Department means:
 - (a) the Defence Department; or
 - (b) the Defence Force; or
 - (c) the Defence Capability Assurance Agency.
- **Paid Work** means work for financial gain or reward (whether as an employee, a self employed person or otherwise).
- **Quality and Compliance Officer;** means a person conducting business as an agent of the CAD
- **Quarter** means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October.
- **Relevant Member**, in relation to a defence agency:
 - (a) means a member of the staff of the defence agency, whether:
 - (i) an employee of the defence agency; or
 - ○ (ii) a consultant or contractor to the defence agency; or
 - (iii) a person who is made available by another Commonwealth or State authority or another person to perform services for the defence agency; and
 - (b) for the Defence Force—includes a member of the Defence Force; and
 - (c) for the Defence Capability Assurance Department—includes a Board member of the and assistant secretary for the Defence Delivery Agency.

- **RULES** means rules made under section 106.
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Part II — Establishment of the Authority

5. Establishment of the DCAD

- (1) The **Defence Capability Assurance Department** is established.
- (2) The Authority consists of:
 - (a) The **DCAD Authority Office** (within PM&C); and
 - (b) The **DCAD Defence Branch** (embedded within the Defence Delivery Department by secondment).

6. Deleted

7. Independence

- (1) The DCAD operates independently from procurement and commercial decision-making.
- (2) DCAD officers may engage in tender evaluation or contract negotiation from technical compliance, quality and responsibilities.
- (3) DCAD will review the cost drivers of a tender at Defence request or any reasonable action to support the evaluation of tender, the technical capability or supply chain security of the good or service being provided.
- (3) DCAD activities shall focus on compliance, safety, and quality verification.
- (4) DCAD has sign off approval for all project milestones and payments on all procured goods and services from concept to disposal.
- (5) DCAD will have the authority to exercise remittance and set aside payment or part payment or deduct sums from any payment to the supplier, parent company or subsidiary for the purpose of rectification of contracted goods or service or failure to meet performance targets impacting capability availability.
- (6) DCAD will be the sole determining authority for supplier liability for costs incurred.

8. Governance

- (1) DCAD officers within Defence report through:
Officer → Manager → Director → Assistant Secretary → **DDA Secretary**
- (2) The DDA Secretary reports to:
 - (a) The Minister for Defence; and
 - (b) The Prime Minister, through the Secretary of PM&C.
- (3) DCAD officers take direction only through the DCAD chain of command.
- (4) DCAD are to accept work from Defence Procurement, Report results of audit to Defence, chair meeting take records and all reasonable actions to facilitate the timely progression of each project and procurement activity or engage in any other activity to facilitate quality and compliance.

Section 8A – Early Engagement in Procurement and Design

- (1) The DCAD shall be engaged at the initiation of every capability project to establish measurable assurance requirements, test methods, and verification criteria prior to tender release.
 - (2) No request for tender or contract shall be issued without a DCAD preliminary assurance approval.
 - (3) DCAD officers shall participate in design reviews, test readiness reviews and supplier qualification audits.
 - (4) The DCAD Secretary must certify that the procurement documentation provides sufficient quality and compliance assurance before the project proceeds to tender.
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Part III — Functions and Responsibilities

9. Functions of the DCAD

The Authority shall:

- (a) Confirm that engineering teams and DARs establish traceable conformance expectations;
- (b) Conduct desktop audits of supplier reports and test data against contracts, drawings, and standards;
- (c) Issue assurance findings identifying compliance or non-conformance;
- (d) Provide written assurance statements to Defence decision-makers;
- (e) Maintain a register of assurance outcomes and certifications;
- (f) Notify Defence and the Minister of material safety or compliance risks; and (g) Develop and promote Commonwealth capability assurance standards.
- (h) Take all reasonable actions to facilitate clear communication and timely execution of procurement.
- (i) Have oversight of quality and compliance of all procurement of Goods or Services from Cradle to Grave.
- (j) Have oversight of the DISP approval program and register.

9A. Audit of Defence Delivery Department Administration and Reform Commitments

- (1) The Defence Capability Assurance Department is responsible for auditing and verifying Defence compliance with commitments made in response to:
 - (a) recommendations of the Australian National Audit Office (ANAO);
 - (b) findings of Parliamentary Committees or Government Inquiries;
 - (c) undertakings given by Defence to Ministers, the Parliament, or the public to implement reforms or corrective measures;
 - (d) identified breaches or suspected breaches of the Public Governance, Performance and Accountability Act 2013 (PGPA Act), PSA Act 2022 or other Act; and
 - (e) inquiries, reviews or reports into workplace conduct, including those relating to sexual harassment, discrimination, or abuse within Defence.
- (2) The Authority shall review and assess processes, procedures, implementation and effectiveness:

- (a) the adequacy, timeliness and effectiveness of Defence's implementation of each agreed reform action;
- (b) whether corrective actions have achieved their stated intent and mitigated underlying causes;
- (c) the administrative systems and internal controls supporting compliance with the PGPA Act, APS Code of Conduct, and Defence values; and
- (d) any systemic issues or cultural barriers preventing sustained reform.

(3) The Authority must provide:

- (a) real time reporting of compliance through shared data based, based on traffic light compliance to the Secretary of the DCAD with weekly risk and non-compliance reporting.
- (b) quarterly reports to the Minister for Defence and the Secretary of PM&C summarising Defence's progress in implementing agreed reforms;
- (c) immediate notification to the Minister where serious or continuing non-compliance is identified; and
- (d) annual publication of an administrative assurance statement summarising Defence's performance against all audit and reform undertakings.

(4) Findings made under this section are to be considered binding for the purpose of the Commonwealth's assurance framework and may inform recommendations for administrative, disciplinary, or legislative action.

Section 9C – Supplier Prequalification

- (1) No supplier may bid for a Defence contract unless prequalified by the DCAD based on demonstrated compliance with Commonwealth quality, competency and safety standards. (2) DCAD shall maintain a live Approved Supplier Register DISP linked to historical performance ratings and audit results.
- (3) DCAD may suspend or downgrade suppliers based on audit findings until corrective action is verified.

10. Assurance Certification

- (1) No capability shall be accepted into Commonwealth service without a **DCAD Assurance Certificate**.
- (2) Such certification confirms successful approval by document audit of conformity with applicable contractual, engineering, safety, and legislative standards.
- (3) Completion of remediation of non-compliance on delivered capability and permanent changes to the process of production and supply such that all future product and services will be compliant.
- (4) No payment shall be made without DCAD Assurance Certificate.

10C – Progressive Verification and Conditional Milestones

- (1) DCAD certification shall be required at the completion of each major project milestone including design freeze, prototype acceptance, production readiness, and pre-delivery inspection.

- (2) Progress payments and milestone authorisations are contingent upon written DCAD confirmation of compliance.
- (3) Where a milestone is not achieved, the DCAD may issue a Corrective Action Directive with a defined closure date.
- (4) Projects failing to close corrective actions may not advance to the next milestone without ministerial exemption or remediation plan approved by the Secretary of the DCAD.

10D – Pre-Delivery Burden of Proof

1. No product, system, or service may be accepted into Commonwealth service until the supplier provides:
 - (a) Traceable evidence of conformity to design, safety and legislative standards;
 - (b) Signed declarations of compliance by the Chief Engineer or authorised certifier;
 - (c) Acceptance by audit approval by DCAD Certificate
 2. Absence of such evidence constitutes *non-delivery* for the purpose of Commonwealth payment, regardless of physical handover.
 3. The DCAD may reject acceptance on evidentiary grounds alone, without physical inspection, where supplier documentation fails to demonstrate compliance.
 4. The DCAD may reject acceptance due to compliance or safety failures.
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Part IV — Powers of the Authority

11. Powers

The Authority may:

- (a) Access Defence records, facilities, and personnel relevant to capability assurance; (b) Require suppliers to provide information or documentation.
- (c) Have the right of access to all providers premises for the purpose of capability, quality or compliance audit.
- (d) Have oversight over the Approved Defence Supplier / Provider list managed against agreed metrics where supplier / providers are excluded against targets.
- (e) Conduct or commission independent verification audits; and
- (f) Refer matters of concern to the Minister, Auditor-General, or law enforcement.

12. Investigations

- (1) The Authority may investigate any issue concerning capability safety, quality, or compliance.
- (2) Reports must be provided to the Chief of Defence, Minister and the Secretary of Defence. (3) Evidence of fraud or serious misconduct shall be referred to appropriate integrity agencies.

13 Defence Capability Assurance Department does not have privileges and immunities of the Crown

The Defence Capability Assurance Department does not have the privileges and immunities of the Crown in right of the Commonwealth.

14 Access to information, premises and materiel

The Secretary of the Defence Department and Chief of the Defence Force must each take all reasonable steps to ensure that the Defence Department and Defence Force provide the Defence Capability Assurance Department with access to information, premises and materiel, and any other access or assistance, as necessary for the Department to perform its functions.

Part IV — Powers of the Department (continued)

14A Mandatory Contractual Terms and Conditions

1. Application

- (a) This section applies to all contracts, subcontracts and supply arrangements entered into by, or on behalf of, the Commonwealth for Defence capability acquisition, sustainment or operation or any other Defence Entity Procuring Goods and Services.
- (b) This section prevails over any inconsistent contractual term.

14B Commonwealth as Principal Party

1. All Defence procurement contracts must be framed such that the Commonwealth is the principal and superior contracting party.
2. Risk, liability and defect correction remain with the contractor or supplier except where expressly varied on the advice of the Defence Capability Assurance Department (DCAD) and documented by Roles and Responsibilities Matrix and Contract Clause.
3. Contract terms shall incorporate provisions equivalent in effect to internationally recognised quality-assurance frameworks (As determined by the Capability Assurance Authority) adapted to the sovereign requirements of the Commonwealth.
4. All contracts must include, warranties, remedies, insurances and mechanisms of financial deduction from payment to supplier provider entity.

14C Role of the DCAD in Contract Assurance

1. The DCAD shall review and authorise all Defence contracts before execution to ensure that—
 - (a) risk is appropriately allocated to suppliers;
 - (b) quality, compliance and performance obligations are measurable and auditable; and
 - (c) defect and warranty provisions adequately protect the Commonwealth.
2. The DCAD shall determine—
 - (a) the funds to be withheld pending verification of compliance and performance; and
 - (b) the conditions for release of withheld funds based on validated milestones and defect rectification.
3. The DCAD may establish standardised withholding schedules reflecting—
 - defect-liability periods;
 - safety-critical elements;
 - supplier performance history; and
 - severity of non-conformance.

4. The DCAD shall ensure withheld funds are sufficient to cover rectification and any consequential costs arising from non-compliance.

14D Conditions Precedent to Payment

1. No payment shall be made to a supplier unless—
 - (a) deliverables have been inspected or audited and certified by the DCAD; and (b) the DCAD has issued an *Authorisation to Release Funds*.
2. The DCAD may direct that part or all payments be retained pending rectification of identified defects or non-compliance.

14E Enforcement and Remedies

1. Any contract inconsistent with this Part is void to the extent that it limits Commonwealth rights of recourse for defective or unsafe capability.
2. The DCAD may deduct remedies from any contract with the contracted entity, Parent or affiliated entity.
3. All reasonable action must be taken to ensure that the seller of goods and/or services has a financial incentive to correct defect and has the onus to take legal action at cost to avoid liability.
4. The DCAD may refer any breach of this Part to the Auditor-General, the Australian National Audit Office, or the Attorney-General for recovery or enforcement.

14F – Burden of Proof and Supplier Accountability

1. Presumption of Supplier Responsibility

- (a) Every supplier or provider entering a Defence contract bears the burden of proving that all goods and services supplied:
 - o conform to contractual requirements;
 - o comply with all applicable Australian laws, regulations and Defence standards; and
 - o are safe for intended and or foreseeable use.
- (b) Compliance is not presumed. Proof shall be established through certified data, test reports, and inspection results verified by the Defence Capability Assurance Department(DCAD).

2. Self-Certification and Validation

- (a) Prior to each milestone payment, the supplier must submit a *Supplier Declaration of Compliance* showing by objective quality evidence that deliverables meet all contractual and legislative obligations.
- (b) The DCAD shall independently validate such declarations through audits or inspections.
- (c) False or misleading declarations constitute a breach of statutory duty under this Act.

3. Burden of Evidence in Disputes

In any dispute concerning compliance, safety, or performance, the onus of evidence lies with the supplier to demonstrate conformity to specification and law.

4. Financial Consequences

- (a) Funds withheld under Section 14C shall not be released until proof of compliance is substantiated.

- (b) Suppliers shall be liable for costs incurred by the Commonwealth due to noncompliance or safety rectification.
5. (c) The Commonwealth will nominate and enforce cost penalty foreseeable and avoidable delays caused by supplier providers that represents the cost to the Commonwealth of maintaining and extending project management and lost capability.

14G – Performance Incentives and Penalties

1. Compliance Incentives

(a) Suppliers maintaining a verified 100% compliance record for 12 consecutive months may receive preferred-supplier status and reduced audit frequency. (b) Suppliers with repeated non-conformance shall be subject to increased audit scrutiny and bond retention.

2. Defect Bonds and Withheld Funds

(a) The DCAD shall determine and hold a *Defect Performance Bond* equal to between 5% and 20% of the contract value, proportional to supplier risk. (b) Bonds shall be released only after defect-liability periods expire without adverse findings.

3. Transparency of Performance

(a) The DCAD shall publish a Supplier Compliance Register ranking providers based on verified performance and reliability metrics. (b) Rankings shall be available to Ministers, Defence procurement teams, and industry for evaluation of future contract eligibility.

14H – Payment Contingent on Proof

- (1) No payment, partial or final, shall be made for any deliverable unless accompanied by a DCAD-endorsed proof of conformity record.
- (2) Absence of such proof constitutes non-conformance.
- (3) The Commonwealth shall not bear any evidentiary or cost burden in demonstrating noncompliance.

14I — Objective Quality Evidence (OQE)

1. Definition

For the purposes of this Act, *Objective Quality Evidence (OQE)* means physical or digital records that demonstrably verify that a product, process, or service meets all contractual, legislative, and safety requirements.

OQE includes, but is not limited to:

- validated inspection or test reports signed by a qualified authority;
- calibration certificates and traceability records;
- material and component conformance certificates;
- photographic, video, or sensor data linked to item serial numbers;
- system logs, configuration records, or software verification artefacts; and
- independent audit findings verified by the Defence Capability Assurance Department (DCAD).

2. Obligation to Provide OQE

- (a) The supplier or service provider shall provide complete OQE for each contract deliverable, prior to requesting any payment.
- (b) The OQE must:
 - (i) be in durable written or electronic document form;
 - (ii) be indexed and referenced to specific contract requirements;
 - (iii) identify the source, date, and verification method; and
 - (iv) be capable of independent re-validation by the DCAD.

3. Burden of Proof

- (a) The burden of proof of compliance, safety, and legal conformity rests with the supplier or provider.
- (b) Absence, incompleteness, or falsification of OQE constitutes non-delivery under Commonwealth law, regardless of physical delivery of goods or services.

4. Verification and Recordkeeping

- (a) The DCAD shall establish a secure assurance repository for storage of all OQE related to Defence contracts.
- (b) The DCAD may, at its discretion, conduct independent verification of OQE prior to acceptance or payment authorisation.
- (c) OQE records must be retained for a minimum of ten (10) years after contract completion or for the service life of the capability, whichever is longer.

5. Payment Contingent on OQE

- (a) No payment shall be made unless the DCAD has confirmed that OQE demonstrates conformity to all requirements.
- (b) Payment authorisation shall occur only after DCAD certification that OQE is complete, valid, and free from contradiction.

6. False or Misleading Evidence

- (a) Submitting false, fabricated, or misleading OQE constitutes an offence under this Act.
- (b) Penalty: 10 years imprisonment or 1,000 penalty units, or both.
- (c) Any supplier found to have submitted false OQE shall be disqualified from future Commonwealth procurement for a period not less than five years.

15 General directions

- (1) The Defence Minister may, by notifiable instrument, give directions to the Defence Capability Assurance Department about the performance of its functions.
- (2) A direction under subsection (1) must be of a general nature only.
- (3) The Defence Capability Assurance Department must comply with a direction under subsection (1).

Part V — Accountability and Reporting

16 Providing audit reports and advice to project staff and decision-makers

- (1) As soon as practicable after auditing a report or a risk assessment conducted by the Defence Capability Assurance Department in relation to a defence materiel program:
 - (a) the Department must give a copy of the report to:
 - (i) the persons within the Defence Department and Defence Force who are responsible for defining capability requirements in relation to the program or their nominee; and
 - (ii) the persons within the Defence Department and Defence Force who are responsible for the day-to-day management of the program; and
 - (b) the Department must ensure that a copy of the report is given to decision-makers for the program within the Defence Department and the Defence Force.
- (2) In performing its function under paragraph 11(1)(c) in relation to a particular defence materiel program, the Defence Capability Assurance Department (or its representative) is to:
 - (a) attend meetings when decision-makers for the program are considering matters relating to the program within the scope of the program as defined by CAD risk assessment; and
 - (b) provide any recommendations or advice relating to capability assurance at each meeting of decision-makers for the program at which matters relating to the program, that have been covered in a risk assessment report prepared by the Agency,
 - (C) have the authority to accept or reject compliance, where compliance is rejected advise is to be given on corrective measures for resubmission or documented expectation of the contract is to be changed through the authorising technical experts.
 - (D) the CAD reserves the right to reject a submission for compliance if there is a safety hazard

Section 16A – Real-Time Compliance Monitoring

- (1) The DCAD shall maintain a continuous monitoring system to record and visualise risk and compliance data across all projects.
- (2) Data shall be displayed in a standardised red/yellow/green dashboard accessible to the DCAD Secretary, Defence leadership, and Ministers.
- (3) The system shall issue automatic alerts for emerging non-conformances, overdue corrective actions, or repeat supplier issues.
- (4) The DCAD shall provide weekly compliance summaries to the Secretary of Defence and the Minister for Defence.

17 Reporting to the Defence Minister and National Security Committee of the Cabinet

- (1) The Defence Capability Assurance Department must, within the period of 14 days after the end of each month, prepare and give to the defence minister a report that sets out a summary of the risk program assessments completed by the Department during the month, program progression to timing plans and risks to programs
- (2) The Defence Capability Assurance Department must make copies of full reports for each risk program assessment available to the defence minister on the Minister's request.

(3) The Secretary of the Defence Department must ensure that, if submissions to the National Security Committee of the Cabinet concern matters relating to a defence materiel program that have been covered in a risk assessment report prepared by the Defence Capability Assurance Agency, the submissions are accompanied by a copy of the full report.

18 Reporting to the Committee

The Defence Capability Assurance Department must, within 30 days after the end of each quarter, prepare and give to the Committee a report that sets out a summary of:

- (a) the Audit and evaluation completed by the Department during the quarter; and
- (b) any risks assessed during the quarter as unacceptable by the Agency, or any instances during the quarter in which the Department has assessed that risk mitigation is highly desirable, in relation to a defence materiel program; and
- (c) any recommendations or advice it has provided to the Defence Department and the Defence Force during the quarter based on those audit assessments. **19 Industry partner**

(1) The Defence Capability Assurance Department must, on behalf of the Commonwealth, enter into a written agreement with a person or entity for the person or entity to do the following, in accordance with the terms and conditions set out in the agreement:

- (a) facilitate the performance of the Defence Capability Assurance Regulator function, including by maintaining, developing and regulating workforce and infrastructure standards as mentioned in subsection 11(2);
- (b) facilitate training to assist the Agency's implementation of the workforce standards mentioned in subsection 11(2);
- (c) Facilitate training to defence stakeholders, suppliers and providers on how to meet the approval requirements of the CAD
- (d) provide specialist expertise across the defence domains to assist the Department in the planning, and where necessary, the conduct or supervision of test and evaluation activities, as required.

(1A) Before entering into an agreement with a person or entity under subsection (1), the Defence Capability Assurance Department must take all reasonable steps to ensure that the person or entity does not have any interests (pecuniary or otherwise) that could conflict with the proper performance of the functions in paragraphs (1)(a) to (c).

(2) The Defence Capability Assurance Department must not enter into an agreement with a person or entity under subsection (1) unless the Department is satisfied that the person or entity is a sovereign Australian defence industry company, as determined in accordance with relevant policies of the Australian Government.

(3) The Defence Capability Assurance Department must ensure that an agreement under this section is in effect at all times on and after the end of the period of one month beginning on the day the first appointment of a Director of the Department is made by the Board.

(4) The Defence Capability Assurance Department must, on behalf of the Commonwealth, ensure that the person or entity who has entered into an agreement with the Department under subsection (1), in maintaining, developing and regulating workforce and infrastructure standards as mentioned in subsection 11(2), does not inhibit effective competition for the defence industry sector to deliver services required by the Department in the performance of its functions.

20. Annual Report

The Authority shall prepare an annual report for tabling in Parliament detailing:

- (a) Activities undertaken;
- (b) Findings and recommendations; (c) Systemic issues identified; and (d) Actions taken to address them.

Division 5—Staff, contractors and other persons assisting

21 Permanent staff

- (1) The staff of the Defence Capability Assurance Department must be persons:
 - (a) who are engaged under the *Public Service Act 1999*; or
 - (b) who are members of the Defence Force posted to the Defence Capability Assurance Agency.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Director and the staff referred to in paragraph (1)(a) together constitute a Statutory Agency; and
 - (b) the Director is the Head of that Statutory Agency.

22 Contractors

The Defence Capability Assurance Department may engage persons under a written agreement to assist the Department to perform or exercise the functions or powers of the Agency.

Contracted back fill and surge staff cannot be engaged as consultants and are to be engaged at a rate no higher than the cost of the APS/Defence permanent employee plus 100% short term allowance, plus 12.5% profit margin.

Contractors who provide all supporting means for conducting business on behalf the Commonwealth and do not have a defence email address may be considered consultants and engaged at commercial rates.

23 Other persons assisting the Defence Capability Assurance Department on a shorter-term basis

In addition to the persons mentioned in sections 21 and 22, the Defence Capability Assurance Department may be assisted by the following in the performance or exercise of its functions or powers:

- (a) persons engaged under the *Public Service Act 1999* and made available by the Secretary of the Defence Department.
- (b) other members of the Defence Force whose services are made available for the purpose under an arrangement between the Chief of the Defence Force and the Defence Capability Assurance Agency.
- (c) persons engaged as a contractor to perform services for the Defence Department or Defence Force, and whose services are made available for the purpose under an arrangement between the Secretary of the Department, or the Chief of the Defence Force, and the Defence Capability Assurance Agency.
- (d) persons or entities to provide training to Defence and providers / suppliers in compliance and approval process for program approval

- (e) persons or entities to provide legal support for the administration of duties and problem resolution.

Division 6—Other matters

24 Requirement to be cleared for security purposes

If a person performing duties for the Defence Capability Assurance Department is to deal with security classified information in that capacity, the person must be cleared for security purposes to a level that is appropriate having regard to the person's duties.

25 Defence Capability Assurance Department must comply with defence regulatory framework

To the extent that the performance of the Defence Capability Assurance Agency's functions involves the operation or use of materiel, the Department must ensure that it (and any person or entity assisting or engaged by it) complies with any applicable regulatory requirements of the Defence Force.

26. Immediate Notification of Emerging Risk

- (1) Any DCAD officer or Defence employee who identifies or suspects a condition that could lead to a safety hazard, performance degradation, or non-compliance must immediately notify the DCAD Secretary and record the issue in the assurance system.
- (2) Failure to report in a timely manner constitutes a breach of professional duty.
- (3) The DCAD Secretary shall evaluate the report within 24 hours and, if confirmed, issue a formal Corrective Action Directive.

27. Whistleblower Protection

Information provided in good faith to the Authority is protected under the *Public Interest Disclosure Act 2013*.

Part VI — Offences and Penalties

28. False Certification

Knowingly falsifying or misrepresenting assurance data or certification is an offence.

Penalty: 5 years imprisonment or 500 penalty units, or both.

29. Obstruction

A person who obstructs or misleads a DCAD officer commits an offence.

Penalty: 2 years imprisonment or 200 penalty units, or both.

30. Failure to Provide Information

A supplier who fails to provide information requested by the Authority commits an offence.

Penalty: 100 penalty units.

Part VII — Transitional and Miscellaneous

31. Transitional Arrangements

- (1) Existing quality and compliance staff may be reassigned to the DCAD Defence Branch.
- (2) Ongoing contracts remain valid, but new acquisitions require DCAD certification prior to acceptance.

32. Consequential Amendments

The Governor-General may make regulations to amend Defence procurement rules and related instruments to give effect to this Act.

33. Review of the Act

The Minister shall cause a review of this Act three years after commencement. The review's findings must be tabled in Parliament.

Explanatory Memorandum

Overview

The *Defence Capability Assurance and Oversight Bill 2025* establishes a dual-structure Authority to ensure that Defence capability projects meet contractual, engineering, and safety standards before entry into service.

The DCAD operates similarly to the Auditor-General's model—independent in governance yet embedded operationally—ensuring continuous oversight without impeding Defence delivery schedules.

Relationship with Existing Functions

This reform does **not** replace the Capability Acquisition and Sustainment Group (CASG) or Defence engineering divisions. Instead, it transfers the **assurance and verification responsibility** to DCAD along with seconded staff and resources, ensuring:

- Defence engineers set clear expectations.
- Suppliers deliver against those expectations; and
- An independent body confirms compliance before acceptance.

Implementation

The DCAD Authority Office (within PM&C) will be established immediately upon commencement. Embedded DCAD officers will transition progressively into Defence programs over 12 months.

Financial Impact

Initial establishment costs are offset by reductions in contract rectification, rework, and postdelivery liability. Long-term savings derive from reduced fatality, defect, and fraud risk.

Human Rights Statement

This Bill is compatible with human rights and enhances the right to life and safety of Commonwealth employees and contractors by ensuring safe capability systems.