# DELIVERING VALUE-FOR-MONEY IN THE OPERATING PHASE OF PUBLIC PRIVATE PARTNERSHIP: INTERVIEW FINDINGS

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## ABSTRACT

*Although it is the responsibility of private consortia to deliver agreed services under Public Private Partnership arrangements, government is accountable to tax payers for achieving Value-for-Money. The public partner must therefore provide effective contract management oversight during the operating phase to ensure intended outcomes are attained. Literature review is used to identify issues relating to Value-for-Money achievement. These are then explored through interviews with 34 senior public and private partner industry representatives from Australia and the United Kingdom. Key interview findings relate to the adoption of a flexible approach for achieving Value-for-Money; techniques for assessing Value-for-Money during the operating phase; and the importance of improving public employee capability and expertise in delivering Value-for-Money outcomes. Effective oversight by the public partner in managing Public Private Partnership contracts will increase the likelihood that intended Value-for-Money outcomes are achieved in practice.*

***Keywords*** *– Operating Phase, Operational Governance, PPP, Procurement, Public Partner, VfM*

## INTRODUCTION

There is no all-encompassing definition for Public Private Partnership (PPP) (Department of the Parliamentary Library 2003, p.2; New South Wales Parliament 2006, p.9) within general discourse or scholarly literature (English 2008, p.2; Urio 2010, p.26). There is, however, a plethora of characterisations. Some highlight the transactional nature of PPP, whereby contracts are entered into between the public and private partners, with consortia typically providing design, financing and/or construction and the delivery of services in exchange for publically-owned assets or user fees (Bloomfield 2006; Leiringer 2006).

Other interpretations, whilst acknowledging the transaction base, broaden the scope to include a 'working together approach' that relies upon co-operation to meet objectives in return for mutual gain through the sharing of risks, costs, resources and responsibili-



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ties (Klijn and Teisman 2003; Koppenjan 2005). For this paper, PPP is characterised as a collaborative endeavour (Smyth and Edkins 2006) involving public and private partners, developed through the expertise of each partner in order to meet identified public needs through appropriate resource, risk and reward allocation (Canadian Council for Public Private Partnerships 2009).

The Public Sector Comparator (PSC) is a hypothetical financial model used by governments to test the advantages (if any) of using private finance (Department of the Parliamentary Library 2003, p.7; National Audit Office 2009, p.46). The PSC estimates the total cost of a project's construction and operations (Allen Consulting Group 2006, p.19) against the expected costs of using other procurement methods (Grimsey and Lewis 2004, p.137) to determine the best Value-for-Money (VfM) proposition (Infrastructure Australia 2008, p.35). It is based on the most efficient (New South Wales Government 2001, p.45) and/or recent (Partnerships Victoria 2001b, p.6) method of determining VfM proposals (New South Wales Government 2001, p.45). Discounted cash flow modelling, usually through the calculation of Net Present Value, is normally the predominant quantitative tool for analysis, but qualitative assessment is not excluded.

PSC assessment, which is undertaken alongside the development of a project brief, contract and project specifications (Partnerships Victoria, 2001b, p.6), takes account of the likely project risks that are expected to be transferred to the private partner as well as those anticipated to be retained by the public partner (New South Wales Government 2001, p.45; Partnerships Victoria 2001b, p.7). In terms of operations, this means operating risk is transferred to the private partner. Willingness to accept these risks by the private partner may be encouraged through the use of incentives (Commonwealth Department of Administration and Finance 2006, p.2) such as defined quarterly service payments, or reducing royalty payments for higher levels of user demand. At the completion of the PSC test, if the PPP option is deemed to be cheaper in comparison with alternative procurement models, a PPP concession will be awarded to the private consortium that makes the best bid.

Broadly speaking, Western governments are advanced in the design and delivery methods of PPP as a viable, alternative form of procurement, thought to be suitable for a range of large-scale economic and social infrastructure projects. Whilst advanced in the early phases of the project lifecycle, most Australian state governments (since PPPs tend to be secured at state, rather than at federal level in Australia) are still developing effective approaches to achieving VfM outcomes during the operational phase of PPPs. To date, this has proved difficult because of the long-term nature of these arrangements (typically lasting upwards of 20 years) and the fact that few contracts have yet reached maturity in terms of the original concession period.

To achieve VfM outcomes during operating phase, PPP contract oversight (governance) must be prudently managed by the public partner. Although it is the responsibility of the private partner to deliver agreed service(s), the public partner is ultimately responsible for ensuring that these services are actually carried out and that they (at least) meet minimum standards. Effective ongoing partnership relations between the public and private partners are important for dealing with unforeseen issues as and when they arise.

Other types of uncertainty are inherent in PPP. For the public partner, one of the main benefits sought from PPP is risk transfer – or more explicit allocation of risks between the public and private partners; however, not all operational risks can be transferred in practice. Therefore, governments should accept and manage their risk positions. PPPs are also expected to deliver real benefits to communities throughout their operational performance. The public partner should be pro-active in taking necessary and timely corrective action to encourage better private partner performance when necessary to ensure that planned outcomes are achieved in practice. The active management of private partner performance, by the public partner during the operational phase of PPPs, is thus important.

Following this introduction, a short literature review provides contextual background. This is followed by an account of the interview administration and interviewee demographics. The findings are then presented and discussed. Recommendations are made for public sector governance practice for the operating phase of PPP.

## LITERATURE REVIEW

As with PPP, there is no single definition that fully encapsulates the concept of 'VfM'. For the private partner, it may simply represent the size of its profit margins in delivering contracted services. However, for government, VfM is based on the achievement of planned social outcomes, and hence the 'social dividend', through the delivery of contracted services. The New South Wales Treasury (in English 2006) offers the following definition for VfM: 'getting the best possible outcome at the lowest possible price'. In contrast, the UK Treasury (2006, p.7) provides additional detail, defining VfM as 'the optimum combination of whole-of-life costs and quality (or fitness for purpose) of the good or service to meet the user's requirement'. This differs from the following definition supplied by the Victorian Department of Treasury and Finance (2011, p.19):

> 'VfM denotes, broadly, a balanced benefit measure covering quality levels, performance standards, risk exposure, other policy or special interest measures, as well as price. Generally, VfM is assessed on a "whole of life" or "total cost of ownership" basis'.

Although the other definitions take into account full lifecycle costs, (stating that price should only be one factor when making a VfM determination), the latter is the favoured definition for this paper as it refers to the need for managing both performance and risk. Furthermore, with the New South Wales Treasury definition, it is unclear how 'getting the best possible outcome at the lowest possible price' can be successfully applied in situations where there are several options under consideration and where the preferred option (the one that is believed to provide the best possible outcome) does not offer the lowest possible price.

The achievement of VfM is considered to be one of the greatest drivers of risk transfer between the partners (Partnerships Victoria 2001a, p.4). It is claimed that, over time, this can lead to cost savings up to 66% throughout project lifecycles (Commonwealth Department of Administration and Finance 2006, p.2) depending on how well the PPP project phases are integrated and the extent to which assets are effectively managed (AECOM 2007, p.41). These claims are complementary to a study undertaken by Cambridge Economic Policy Associates (2005, p.39) which found that 96% of contractors and 85% of government officials believed that operational risks had been properly allocated. However, efficient allocation may not always be realised (Asian Development Bank 2008, p.2). For instance, Ergas (2009) claims that poorly allocated risk may unintentionally see potential cost savings turn into profits for project 'promoters', whist Davidson (2006) argues that the cost of 'transferring' financial risk to the private partner may actually be built into partnership deals (at the tendering stage) which would obviously detract from accomplishing genuine VfM outcomes, particularly during operational phases should ongoing under-performance occur.

Moreover, the concept of 'VfM' is based primarily on hypothetical calculations, often made at the business case stage of the project lifecycle, that may fail to fully account for unforeseen cost overruns or adjustments perhaps due to technical failures, obsolescence or lower than expected service user numbers (Edwards *et al* 2004, p.9; Grimsey and Lewis 2004, p.167; National Audit Office 2009, p.46-48). These are issues of uncertainty. There may also be failure by government to provide comprehensive and realistic pricing of all quantifiable and material risks. Grimsey and Lewis (2004, p.144) suggest that these risks are often misjudged and should be part of wider risk management practices. Eventually, all procurement relies on human judgement, skills and experience (National Audit Office 2009, p.47) and thus becomes subject to the errors, imperfections and biases in the decision-making processes of people. A 'solution seeking a problem' criticism of mega-project procurement is made by Flyvbjerg, Holm and Buhl (2002) who suggest that such judgements and decisions may be deliberately biased in order to achieve political ends.

In order to achieve VfM outcomes, co-operative relationships between partners must be established (Weihe in Hodge, Greve and Boardman 2010, p.520) as un-cooperative working environments (Klijn and Teisman 2003) can lead to operational difficulties between partners. Partnerships, therefore, should be based on establishing the 'right' working culture (Edwards, Bowen and Stewart 2005; National Audit Office 2009, p.55) that is beneficial to both partners and then maintaining good relations (Partnerships Victoria 2003, p.16; AECOM 2007, p.75) over the life of the contract to deliver agreed outcomes.

Developing good working relationships between partners can decrease levels of corrective action that may otherwise be taken to improve contract management outcomes (Ernst & Young 2008, p.13). This is important because the 'end goal' for PPPs is not cost reduction (i.e. simply abating for under-performance) – it is ensuring the private partner performs to the agreed standards under the contract (HM Treasury 2011, p.15) and that VfM is being delivered as expected.

With regard to public partner oversight management of PPP contracts, McCann (2014) identifies a range of public partner partnership and performance management factors that may contribute towards achieving VfM outcomes during the operating phase. These are shown in Table 1. The documentation and/or actions that can potentially be used as a foundation to build evidence-bases to assess whether VfM outcomes are being achieved in practice are shown in Table 2.

***Table 1: Public partner VfM contributors to PPP***

| **Public partner VfM contributors** | |
|---|---|
| ***Partnership management*** | ***Performance management*** |
| Proposed corrective actions for under-performance are mutually agreed with the private partner and these actions are implemented as agreed.<br>Development and continuation of productive relationships with service users, employees and applicable community groups.<br>Consortia informs the public partner of emerging risks and performance issues that have the potential to impact upon the achievement of planned VfM outcomes.<br>No occurrences of negligence, fraud and/or corruption.<br>Public partner employees adhere to all accountabilities and responsibilities under governance, probity and compliance frameworks.<br>Disputes are quickly resolved with little to no impact on service delivery obligations and litigation is avoided. | Public sector agency/departmental project obligations are delivered within budget and on time.<br>Services are delivered in line with business case/project brief objectives, concession deed, service specifications and subsequent contract amendments.<br>Agreed changes to service delivery are aligned/re-aligned with business case/project brief objectives, concession deed, service specifications and subsequent contract amendments.<br>Consistently high levels of service user and wider community satisfaction are reported.<br>Incidences of negligence, fraud and/or corruption are appropriately dealt with. |

(Source: McCann 2014)

***Table 2: Evidence-based foundations for assessing VfM for the public partner in PPP***

| **VfM evidence-base foundation** | |
|---|---|
| ***Partnership management*** | ***Performance management*** |
| Progress made against partnership/stakeholder management strategies and plans e.g. assessing whether key messages between the public and private partners or internal project teams and their working groups have been properly understood and complied with.<br>Assessing public partner employees' behaviour through staff appraisals to ensure they are effectively discharging their duties in line with project accountabilities and responsibilities e.g. the contract administration manual.<br>Outputs comply with relevant industry standards e.g. assessing partnership relations that may relate to people involvement and competence. | Project expenditure remains within prescribed budgetary limits.<br>Achievement of VfM outcomes as defined by the business case/project brief objectives, concession deed, service specifications and subsequent contract amendments.<br>Incident rates/Key Performance Indicator (KPI) failure rates decline.<br>Public partner accountabilities and responsibilities relating to the contract administration manual are satisfactorily discharged.<br>Outputs comply with relevant industry standards e.g. those that may relate to process improvement and facilities management.<br>Relevant audit findings/recommendations are implemented.<br>Implementation of opportunity risk proposals e.g. innovations that lead to improved VfM outcomes. |

(Source: McCann, 2014)

Partnership management is here defined as ‘a relationship involving the sharing of power, work, support and/or information with others for the achievement of joint goals and/or mutual benefits’ (Kernaghan in Trafford and Proctor 2006), whilst performance management is characterised by ‘the use of inter-related strategies and activities to improve the performance of individuals, teams and organisations’ (Management Advisory Committee 2001, p.14).

While many operational phase issues are yet to receive widespread attention in PPP literature, a VfM focus is not entirely absent. One Australian example is found in the Melbourne CityLink project, where the Victorian State Government sought to improve its VfM position on this PPP project through negotiation over scope changes with the private concessionaire, Transurban, which led to widening of the Southern and Eastern sections of the toll road and an extension to the original concession period (Clayton Utz, 2006; The Age, 2014).

Public benefits from the road-widening have been greater traffic capacity and improved safety. At the same time, the Victorian State Government negotiated with Transurban for a 50% share of any increase in CityLink toll revenues directly attributable to improvement work (‘compensatory enhancement’) carried out on contiguous non-toll road infrastructure, i.e. improvements which have led to increased usage of CityLink. In this instance, improvement work carried out by the Government and completed by 2011 has included the creation of extra lanes on the West Gate Bridge and on the West Gate and Monash freeways. Negotiations and calculations over the precise amount of compensation payable by Transurban are currently underway (The Age, 2014). This VfM improvement should be contrasted with conditions in the original concession agreement for CityLink, whereby the Victorian State Government agreed to avoid making alterations or traffic flow changes to roads in nearby areas that would improve alternative routes (‘rat runs’) and lead to greater avoidance of the toll road by road users. This example might be construed as a shift in public thinking about VfM in PPP, from plans and actions designed to attract and protect private concessionaires and their risk-taking, towards negotiating direct compensation for public work that will yield greater returns for the private partner.

A second example of VfM focus is found in a recent invitation from the Victorian Department of Treasury and Finance (2012) for contributions to discussion about future directions for PPPs in that state. Comments have been requested that will inform potential reforms to this model for public procurement. Contemplated reforms (Victorian Department of Treasury and Finance 2012, p.2) include:

- Shifting the PSC parameters from a purely financial pass/fail test to a more general affordability assessment (by including more qualitative and less tangible outcome criteria and adopting a more flexible understanding of ‘affordability’);
- Modifying financial arrangements to improve VfM outcomes (such as the ‘compensatory enhancement’ strategy noted above; and some level of public sharing in project debt financing, particularly during the construction phase);

- Expanding the PPP model by including additional ancillary and core services (e.g. including prisoner rehabilitation in prison PPPs, or combining transport and communications infrastructure projects where they can be physically co-located);
- Trialling a system of partial reimbursement of tender costs for bona fide PPP bidders (thereby encouraging more bidders and raising the level of competition between them); and
- Adopting a streamlined PPP model for smaller projects (to open up the PPP market and attract more private participants).

While no formal report of the responses to the Department's invitation is available, the areas for discussion suggest that public sector strategic thinking about PPP is shifting to more diverse and flexible perceptions of VfM.

The issues relating to the definition and achievement of VfM for the public partner in the operational phase of PPP are now explored in greater depth, through interviews conducted with appropriate experts from the public and private sectors.

## RESEARCH DESIGN

The research examined how PPP operational phase partnership, performance and risk management practices can be improved to achieve better VfM outcomes for the public partner. As part of the research, an integrating management model was conceptualised.

The phenomenological research divides into two phases and employs qualitative mixed methods techniques. Literature review across the three management disciplines was used to guide the initial conceptual management model. Semi-structured interviews were then used to confirm the issues embraced. The interview findings informed further model development and a second iteration of the model was presented to an expert focus group for scrutiny and comment. Feedback from this group was used to refine the final iteration of the model.

This paper focuses on the interview findings relating to expectations of VfM in PPP, which informed the initial iteration of the integrating model.

Interviews were held between October 2012 and March 2013. Fifty invitations were distributed and 34 people (68% response rate) agreed to participate in the formal process. Twenty-three interview participants (68%) were from the public sector and 11 (32%) from the private sector. Seven respondents took part in a second interview.

Statistical representativeness of the response sample is difficult, if not impossible, to determine since the eligible population is unknown. Against this, the sample was purposively determined; the respondents all demonstrated substantial experience and knowledge in PPP operational management, and analysis of the responses yielded a 'saturation point' i.e. a stage whereby no new significant issues or further diversity of answers were identified.

The majority of the public sector interview participants were project directors. They have responsibility for administering the public partner's interests in a PPP. However, a range of other government employees were invited to take part, including senior executives from central agencies, government departments and statutory authorities; a commercial manager; as well as a small number of PPP contract managers and a contract administrator. The research sample was drawn from eligible persons from the Australian Government, three Australian state jurisdictions and the Government of the United Kingdom (UK). Essentially this was a convenience sample, due to constraints of time and money.

Selected private sector participants were also invited to offer insights into what they think the public partner should be mindful of during the operating phase of PPPs. The types of private sector participants included senior executives and managers responsible for PPP service delivery; project engineers; and partners from top-tier advisory and legal firms. Many of these participants have substantial experience working in Australian and international PPP markets. Again, this constituted a purposive convenience sample.

The guideline VfM interview questions related to interviewees' understanding of the meaning of VfM in PPP, and their perceptions as to how this might be achieved. However, participants were encouraged to treat the interviews as open. Following this, the NVivo version 10 software application was used to conduct a thematic analysis of transcript data to identify important themes, using a hierarchical data coding process. Table 3 presents an overview of VfM categorisations arising from the thematic analysis and provides the basis for developing the main findings.

***Table 3: Categorisation of NVivo data – VfM content***

| **Node** | **Number of references** |
|---|---|
| Different approaches for achieving VfM | 15 |
| Nature of PPP agreements | 6 |
| Performance VfM definition | 4 |
| Risk VfM definition | 5 |
| Partnership VfM definition | 4 |
| Full project lifecycle VfM definition | 24 |
| Public Sector Comparator | 7 |
| Broader VfM considerations | 9 |

## FINDINGS

The findings of the thematic data analysis relate to the importance of the business case, challenges associated with defining 'VfM', the identification of VfM drivers and strategic considerations for managing contractual oversight in delivering VfM outcomes. Coded labels reflect the management discipline identities of each interviewee: partnership management focus for interview (PT); risk management focus (RK); and performance management focus (PF).

**Importance of the business case:**

For interviewees PF11, PT08, PT03 and PF01, a precursor to defining ‘VfM’ is to highlight the criticality of satisfactorily understanding social welfare problems before attempting to solve them through the use of capital asset investment or by other means (which should be determined before a PSC instrument is designed and applied and before a procurement method chosen). For instance, PF11 states that governments ought to take a more considered approach when determining ‘why projects should become projects’, including identifying the opportunity cost of what they deliver and, just as importantly, what such partnerships will not solve. PT03 asserts that in some instances, government departments fail to effectively address these issues, including not adequately identifying broader investment and project benefits. The rationale used in project proposals and business cases should thus be properly defensible on these wider grounds with all legitimate options being considered. These views are echoed by PF01:

> ‘The first decision on any piece of infrastructure isn’t how to procure it. The first decision is “what’s the problem?”…It’s all too easy to say that the answer is to build something. It’s not so easy to say the answer is not to build something. Sometimes people look to infrastructure and then for a problem to solve whereas it should be that the problem comes first and then an intervention comes second. The intervention may or may not include capital asset investment. It’s not until much later down the path that you start talking about how you’re going to buy this from the marketplace’.

Allied to these views, and to deliver VfM outcomes, project proposals and business cases should be considered in context of delivering infrastructure assets for their intended purpose as well as the value they will provide to existing networks (PF11; PT08; PF01) e.g. how a PPP-procured asset will connect to electrical, hydraulic, transportation networks, etc (although it is acknowledged that this cannot not always be the case, particularly with social infrastructure projects e.g. schools and hospitals – there may be merit in delivering these types of projects, in isolation to, or in the absence of, existing networks). This type of strategic thinking (including adequately defining the benefits derived from it) is identified as a key area for improvement for the public sector (PF11) as poorly conceived projects could ultimately result in government paying its private partner hundreds of millions (or even billions) of dollars for under-utilised assets and through regular service payments for delivering agreed services that do not fully address intended social needs.

**Defining VfM:**

For the interviewees, having a view on how to achieve VfM seems easier to them than trying to provide an interpretation of what it means. As a consequence, only a few participants (RK10; PT05; PT03; PT08) offered explanations. For RK10, VfM involves price, performance and quality, whereby VfM is obtained when ‘the solution drives the best price for the best performance for the best outcome’. This differs from the view of PT05 who talks about strategic fit and quantification of additional benefits obtained from a partnership beyond the financial elements: ‘VfM is quantifying the added extras of a partnership over and above the dollars in terms of quality and there is also an element of strategic fit'. The other interviewees frame their definitions by referencing the procurement arrangements of two Australian state governments. With regard to the jurisdictional aspects, PT03 is inclined to view VfM from a Victorian Government Purchasing Board-style characterisation where VfM is achieved through a 'balanced assessment of benefits and costs over the whole of life of the investment' and for PT08, VfM is defined by the New South Wales Public Authorities Financial Arrangements Act 1987, 'when the winning bid beats all others and beats the PSC'.

Interview participants also found it challenging to define 'VfM' from partnership and performance management perspectives that relate solely to the operational phase of PPPs as it is generally considered that the VfM concept is rooted in the entire lifecycle of the asset. However, some participants offer VfM considerations that can apply to both partnership and performance management during PPP operational governance:

- Partnership management – VfM may be achieved using the principle of reciprocity (PT06) i.e. through give and take where both partners may, from time to time (and for the right reasons), go 'above and beyond' the 'black letter' approach for each other to attain a desired outcome. In such circumstances where relationships work well and the right sorts of people are involved in managing the contract, it may be possible to add additional value over time e.g. by introducing new technology that has been developed outside of the PPP in order to get a better outcome (PT03). Furthermore, VfM can be demonstrated when the private partner identifies issues or potential issues and brings them to the attention of its public partner before they become major challenges that could severely impact upon government business (PF03); and
- Performance management – for the public partner, VfM is sought and obtained from its private partner through consistent delivery of contracted services e.g. delivering services on time and to agreed standards (PF07) and through efficient and effective public sector contract management oversight (PT05). PF09 provides a broader view: 'VfM is…about [the] quality of services offered, performance history, service delivery program, operational support, skilled personnel, ongoing maintenance and whole of life programs'.

With respect to risk management, known risks should be continually monitored and managed during the operational phase because risk appetite can change over time and existing risk positions may not be broken down or be static (RK04). Equally, it is important to identify the source of new risks, their drivers and to whom the consequences (or benefits) flow (RK04). New threat risks, or changes in the severity of previously identified risks, can quickly and adversely impact value propositions. Opportunity risks, and their exploitation to improve VfM, on the other hand, may arise with far less frequency and make substantial demands on the operational management resources of public partners in PPP.

## VfM drivers:

As part of the wider VfM discussion, a number of interviewees spoke about VfM drivers. Table 4 outlines these. Some relate predominantly to the procurement and delivery phases, whilst others are aimed more at the operational phase.

***Table 4: PPP VfM drivers identified by interview participants***

| | **VfM drivers** |
|---|---|
| Cost savings/return on investment | '[VfM is] about getting a competitive rate for what [government] receive[s], which needs to take into account the payment of management fees…and locking down…maintenance costs' (PF12).<br>'[VfM is securing] the lowest cost option for the highest benefit…it doesn't necessary mean the cheapest cost' (PT02).<br>'VfM isn't necessarily driven by the dollar…price comes into it because [government needs] to buy something – a ten million dollar investment may potentially lead to twenty million dollars of value in terms of prestige or improvements…you have to look at price in context. It cannot be the sole driver' (RK10). |
| Additional benefits | 'There are cases where we certainly look for a minimum set of requirements and where that might be exceeded as part of an offer of the outcome of the procurement process. For example on social infrastructure PPPs, there may be additional commercial elements to the project – it might be retail, it might be food and beverage, it might be services that we didn't brief on, didn't ask for but may be offered by the private partner as a VfM enhancement. We do value that. For us, it is VfM because it's something that we didn't ask for but it's something that we could actually like or want' (PT10). |
| Productivity gains | 'The dynamic VfM equation is what you do with the building – it's the function of what you perform out of the building. With office blocks, it's a relatively simple equation. A hospital, prison, court building or school is a much more dynamic environment where you're actually delivering quite sophisticated outcomes that are single-purpose…the function is the bigger element' (RK06).<br>'Having a facility that's more innovative and creative…actually drives performance of a facility. The [VfM] debate ought to be about the productivity of the facility' (PT12). |
| Service expectations/outcomes | '[VfM is about] service standards and how well [the private partner] meet[s] them and whether they meet higher service standards than would otherwise occur in the public system' (PT11).<br>'[VfM is assuring] private sector parties are meeting their obligations that are set out under the project agreement…and there isn't slippage or re-framing of issues, or weaselling out of payment issues' (PF13).<br>'VfM is about not having [performance or availability] failures' (PF03). |

Strategic underpinning of partnering not only extends to the parameters, definition and drivers of VfM but also to its measurement. For example, in describing VfM as a long-term proposition, PT13 states that, in relative terms, value cannot solely be determined by calculating a dollar spend on a year-by-year basis during the operational phase. On the other hand, measuring VfM, say over the first five years and then assessing how that period relates to the next 25 years of the concession, may be a better predictor of VfM using both quantitative and qualitative assessments (PF11)). Over and above analysing the financial benefits quantitatively, using qualitative assessments may provide greater certainty in terms of appraising the quality of relationship between the partners (as it should have become well established at that point) e.g. judging how supportive the private partner may be in interpreting ambiguous service standards. Such assessment may provide useful for public partner decision-making with regard to the potential for improving existing VfM outcomes and/or avoiding costly partnering disputes.

**Strategic considerations for managing contractual oversight:**

PF01 believes that, as soon as a contract is signed between the public and private partners, there may be an 'uphill battle' for the public partner to maintain its intended value objectives for the agreement. The attainment of VfM, according to PF01, is dependent upon the quality of the individuals involved in discharging their contract management responsibilities, defined as the ability to interrogate, question and push-back against the commercially-driven aims of the private partner. Thus, attempting to improve expected VfM outcomes during the operating phase may be just as challenging, since co-operation between the public and private partners may depend upon the extent to which change will benefit each partner, the motivation of the public partner to revisit value propositions over time, or the capability and resourcing of both partners to manage new requirements. Moreover, PT06 questions the rationale for seeking VfM enhancements during the operating phase over and above what is contracted for, and comments that, assuming the private partner is meeting all of the project KPIs, it is not contractually required to do anything more unless it wishes to do so.

Generally speaking, the interviewees who are inclined to adopt a give and take approach to operational management of PPPs (PF03; PT10; RK09; RK05; PT11; PF14; PF06; PF07; PF10) emphasise the significance of partners 'working together' to achieve mutually beneficial outcomes (PF06), particularly when there is something in the contract that cannot be easily enforced e.g. loosely worded KPIs that are subject to different interpretations. In such circumstances, PF07 suggests that the best course of action may be to take a co-operative, solutions-orientated approach; an approach that engenders 'commercial fairness' and mutual gain rather than trying to force an outcome where one party benefits at the other's expense (PF10). Working together in this way may lead to issues being resolved more easily and flexibly (PT11) without the need for formal dispute resolution clauses in concession agreements to be enacted. As PT10 explains:

> 'In this department, it's traditionally been that the contract is important but it's only used as a last resort. We're interested in the 25-30 year partnership element – that's what the public sector client tends to go into these for…strategic relationships. We're looking for a long-term partner for long-term service delivery.'

## Discussion

Although defining the concept of 'VfM' is clearly a subjective task, three broad themes emerge from the interview finding that, if adequately managed, can contribute to VfM achievement: the adoption of a flexible approach by the public partner for managing contractual oversight; how performance during the operating phase can be assessed (and improved if necessary); and how public employee capability and expertise in monitoring and managing desired VfM outcomes can be improved.

**Adopting a flexible approach for achieving VfM outcomes:**

Organisational culture, including selecting a practical approach for managing contract oversight, is likely to impact on whether intended VfM outcomes are achieved (Edwards, Bowen and Stewart 2005; Ernst & Young 2008, p.13; National Audit Office 2009, pp.54-55; Weihe in Hodge, Greve and Boardman 2010, p.520) during the operating phase of PPPs. This claim is supported by the interview findings. It appears that in practice, the realisation of VfM will require active management of tension that exists between the need for better partnership relations i.e. using a 'give and take' approach, or using a more formal, compliance-oriented i.e. a 'black-letter' approach to achieve stated outcomes. The degree to which one approach is selected over the other should depend on specific circumstances; decision-making can have far-reaching consequences and associated risks ought to be properly assessed. The challenge of selecting the right approach is articulated by RK05:

> 'Focusing on managing the contract to the exclusion of managing the relationship is likely to result in a loss of opportunities to improve VfM outcomes. Conversely, focusing on managing the relationship to the exclusion of managing the contract is likely to undermine a party's legal position and hence also detract from VfM. The key is to manage both the contract and relationship in a way that promotes VfM outcomes'.

From a performance management perspective, it may, under certain circumstances, be preferable for the private partner to be given an opportunity to resolve operational lapses rather than the public partner rigidly applying abatement for all instances of under-performance to encourage positive working relationships. In other words, knowing when to apply abatement and when to allow flexibility can be strategically important with respect to building and maintaining effective partnership relations. Such flexibility, however, should not occur to the detriment of longer-term achievement of VfM outcomes.

In addition to applying mechanisms for reducing negative behaviour and/or under-performance, public partner decision-makers should encourage positive behaviour in their partner through incentives that drive the 'right performance' culture (PF05). An example of this type of behaviour is, and defined by PF03, as where the private partner performs 'above and beyond the call of duty' – such as beating minimum response times for asset maintenance. Such behaviour may foster a stronger 'working together' culture between partners, and if consistently displayed by the private partner and sufficiently recognised by the public partner, this type of value adding could be formally recorded e.g. in a performance register, and used as part of wider criteria for assessing the feasibility of contract variations, for instance, or even future project tenders.

Flexible attitudes may also reduce the potential for serious conflict, where one partner fails to meet the expectations of the other e.g. where the intent of a service specification has been misunderstood or where a KPI has not been adequately defined. Disputes can occur because the private partner has a different idea of the service it is supposed to be delivering or how wording contained in contractual clauses should be interpreted. Different perceptions and interpretations can therefore have a profound effect on achieving VfM outcomes where the 'word' can outlive the 'intent' in agreements.

**Assessing VfM during the operating phase:**

An effective way for the public partner to hold its private partner accountable for performance is through the continuous application of contract administration and undertaking periodic strategic assessments to determine if VfM outcomes are being achieved. Without a strong understanding of the PPP service delivery environment, public partner contract managers will find it difficult to accurately evaluate operational performance (Edwards *et al* 2004: p.49). Therefore contract managers should develop pro-active approaches to ensure VfM propositions are maintained over time. Performance evaluation should be ongoing with the data collected potentially being used as a basis for developing control actions and managing emerging risks. This is particularly relevant where the private partner fails to maintain expected service standards, as stipulated under concession deeds, that then lead to penalty clauses being activated.

Interview participants (PF12; PF08; PT11; PF14; PT12; PF02; PF05; RK10) point to a variety of ways that performance/progress can be measured against the attainment of stated PPP outcomes during operations. These include:

- Reviewing progress against the public interest template – although these types of assessments are normally undertaken during conceptualisation and business case development, PT11 argues that such analysis could extend to the operational phase for determining whether the rights of users and consumers are still being protected as intended;
- Reviewing progress against business case objectives/justifications for contract amendments – despite being potentially effective ways to assess performance, PT11 and PT12 assert that government is not always proficient at conducting these types of appraisals. PPPs are, however, subject to the Gateway Review Process in Victoria (including Gate Six: Benefits Realisation – see Victorian Department of Treasury and Finance 2009) as well as in other Australian states;
- Reviewing progress against operational objectives – there may be certain objectives that have not been clearly established in business cases, or contracts, that government wants to track such as user satisfaction levels (PF08; RK10) by monitoring and measuring the quality of users' experiences; and
- Ex-post evaluations – in the UK, PPPs should undergo ex-post evaluations, for example, to assess the quality of the contract management function after handback (termination of a concession). However, this rarely happens in practice (PF14), and the recency of the use of PPP procurement does not yet yield a sufficient sample of completed concessions to explore the benefits of such evaluation. This means that valuable lessons learned that could be applied to other PPPs are being lost (or are not yet accessible) and that avoidable, costly mistakes are probably being repeated in other projects.

In all the interviews, it was clear that participants were more comfortable, and familiar, in dealing with the objective and measurable aspects of VfM. The more intangible public benefits sought in PPPs were less frequently raised by interviewees.

**Delivering VfM through improved public employee capability and expertise:**

The third theme relates to raising public employee capability, expertise (Edwards *et al* 2004, p.63; Organisation for Economic Co-operation and Development 2007, p.20) and accountability (RK06; PF12; PT10) in managing oversight of PPP contracts to achieve intended VfM outcomes.

Broadly speaking, performance and compliance can be improved through enforcing accountability and responsibility of management staff. For instance, employee performance and capability can be benchmarked against job descriptions as well as relevant outputs and outcomes specified in contract management manuals to assess the extent to which staff are effectively discharging their duties, with review forming part of regular employee appraisal processes. If the private partner is accountable to its stakeholders and shareholders for monitoring its own performance, service delivery outputs should be tested/validated by the public partner against the concessionaire's contractual obligations (even if a trusting relationship exists between the partners, it is prudent for the public partner – as custodian of VfM for the state – to ensure that the declared level of performance actually matches what has been delivered). This could include, for example, adherence to agreed policies, frameworks and procedures; progress made against work plans and technical assessments e.g. public safety reviews; the achievement of outputs and outcomes against KPIs and milestones; improvement made to the delivery of services arising from stakeholder feedback; and the implementation of audit recommendations. Other types of review could include periodic reviews to assess the level of progress made with regard to the achievement project business case objectives/justifications made for amending the contract; and overseeing benchmarking and competitive market testing to determine the relative quality and competitiveness of existing services with that of similar providers (although review mechanisms exist in contracts, testing may not always take place, in practice (PT05)). Many of these assessment processes require high levels of expertise to implement; proficiencies that may not be immediately nor consistently available through contracting out the assessment services to external consultants or contractors.

A further potential risk for the public partner, in relying too heavily on external contractors and consultants, is that they may not adequately (or be requested to) transfer appropriate technical knowledge to public employees (PT05), nor do so in a timely way, which may result in the public partner paying high market rates for longer than necessary or being left unexpectedly to deal with skills-gaps if external providers should leave suddenly. The public partner can bolster its contract management capabilities by distilling and documenting key commercial and project learning. This may include developing better knowledge continuity between project phases; creating and maintaining a document library for corporate and commercial documents; applying the contract management/administration manual more effectively; and improving succession planning and hand-over processes. On a wider scale, sharing of PPP information, knowledge and wisdom between public sector bodies would enhance public governance capability for PPP.

Although weighted towards a compliance-orientated approach to contract management, there may be merit in using a 'calendar of deliverables' to support junior public partner contract managers in managing tasks as specified under a concession deed. This is suggested by PF12 and derives from direct experience in designing and implementing an Access database for employees to use that links each task with a corresponding delivery date – a systematic approach that also involves assessing and then reporting on the extent to which each obligation is met using a pre-defined methodology. According to PF12, such a system can easily be configured to meet the requirements of individual PPP contracts in a way that 'takes users step-by-step through what they need to do, how it should be done and when to do it'. Furthermore, this type of approach is beneficial for mitigating some of the knowledge and experiential risks that the public partner faces; it can be used to build corporate, commercial and project knowledge; and be used to raise levels of accountability and performance of both contract management team members and the private partner.

A number of interviewees raised the subject of appropriate monetary reward for high public sector employee performance i.e. using financial incentives. PT06, for example, stated that for government to obtain and then retain experienced and capable project directors, remuneration ought to be competitive with that offered by the private sector. However, in practice, this may not be the case as at an Australian state level, pay levels do vary significantly (PT11). This implies differences between jurisdictions as well as staff awards in different contract management environments within the same state.

## CONCLUSIONS

It is essential that the public partner provides effective contract management oversight during the operating phase of PPP to ensure intended VfM outcomes are achieved. Analysis of interview data, gathered from appropriate experts both in Australia and the UK, demonstrates that the adoption of a flexible approach for achieving VfM; the selection and application of appropriate techniques for assessing VfM during the operating phase; and improving public employee capability and expertise in delivering VfM are key issues for attaining planned outcomes for tax payers. Less tangible PPP performance benefits should be more clearly articulated to contract managers so that they can be more explicitly drawn into the operational management process.

Further attention could usefully be given to whether there are jurisdictional patterns between the adoption of the public partner's preferred contract management style for achieving VfM and organisational culture during the operating phase in separate projects, particularly in mature PPP markets. Such research should focus on identifying

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critical success factors and their drivers, and the evidence that points towards achievement of VfM outcomes for each PPP project.

## LIMITATIONS AND CONTRIBUTION

This research adopts an intentional perspective on the operating phase of PPP and the public partner's involvement in this. This means that other PPP project phases (procurement, delivery and concession termination), which may have significant bearing on achieving VfM outcomes, are not dealt with.

The research contributes to the advancement of the 'body of knowledge', with respect to public partner governance of PPP in the operating phase by identifying critical success factors that lead to the achievement of VfM outcomes, thus building upon existing knowledge, policy and guidance of PPPs. This was achieved by conducting an in-depth qualitative study involving 34 interview participants working in Australian and international PPP markets. Given the experience of the participants, these views carry substantial weight.

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