

Independent Inquiry - Green Loans Program

*Review of procurement processes and
contractual arrangements*

June 2010
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Inherent Limitations

This report has been prepared as outlined in the Methodology Section. The services provided in connection with this engagement comprise an advisory engagement, which is not subject to assurance or other standards issued by the Australian Auditing and Assurance Standards Board and, consequently no opinions or conclusions intended to convey assurance have been expressed.

The findings in this report are based on a qualitative study and analysis of procurement processes and contract arrangements; the reported results reflect a perception of the Program, within the Department of the Environment, Water, Heritage and the Arts- DEWHA - (recently transferred to the Department of Climate Change and Energy Efficiency- DCCEE) but only to the extent of the sample interviewed, being DEWHA's representative sample of personnel.

Due to the inherent limitations of any internal control structure, it is possible that fraud, error or non-compliance with laws and regulations may occur and not be detected. Further, the internal control structure, within which the control procedures that have been subject to the procedures we performed operate, has not been reviewed in its entirety and, therefore, no opinion or view is expressed as to its effectiveness of the greater internal control structure. The procedures performed were not designed to detect all weaknesses in control procedures as they are not performed continuously throughout the period and the tests performed on the control procedures are on a sample basis. Any projection of the evaluation of control procedures to future periods is subject to the risk that the procedures may become inadequate because of changes in conditions, or that the degree of compliance with them may deteriorate.

No warranty of completeness, accuracy or reliability is given in relation to the statements and representations made by, and the information and documentation provided by, DEWHA personnel consulted as part of the process.

The author has indicated within this report the sources of the information provided. The author has not sought to independently verify those sources unless otherwise noted within the report.

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The findings in this report have been formed on the above basis.

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1 Executive Summary

The Secretary of the Department of the Environment, Water, Heritage and the Arts (DEWHA) commissioned an independent external process of review into the probity of contractual arrangements and procurement processes and decisions that form part of the final design and implementation of the Australian Government's Green Loans Program (the Inquiry). As a result of Machinery of Government changes on 8 March 2010, the reporting line for the Inquiry was transferred to the Secretary of the newly created Department of Climate Change and Energy Efficiency (DCCEE).

The Inquiry was undertaken by Patricia Faulkner, a former Secretary of the Victorian Department of Human Services, a department with responsibility for delivering a complex range of programs to citizens. She was supported by a team from KPMG. The Inquiry was conducted over the period February to April 2010.

The review was undertaken at a point in time and focused on procurement activity that occurred up to January 2010. It has not examined the actions that were being taken and have subsequently been taken to address those issues already identified by DEWHA and now DCCEE.

The Green Loans Program (the Program) was first proposed as part of the Government's *Solar, Green Energy and Water Renovations Plan for Australian Households* election commitment. The Program, as announced in May 2008, offered householders a free home sustainability assessment (HSA) conducted by accredited assessors. These HSA reports provided an action plan for reducing energy and water use. Up until March 2010, a householder could apply for an interest free¹ 'Green Loan' from Government accredited Financial Institutions of up to \$10,000 to address recommended actions in the HSA report.

The Program was designed and rolled out by the Renewables and Energy Efficiency Division (REED), then within DEWHA, with extensive support from external service suppliers and partners. Services procured included:

- research for program design;
- the accreditation, training and booking of home sustainability assessors;
- the design of sustainability assessment tools;
- the design of the communications with householders about the Program;
- the provision of subsidised loans; and
- the design of data bases to manage and assess the effectiveness of the program.

¹ The initial program design was for low interest loans for qualifying households by participating financial institutions. On 8 December 2008 this was changed to zero interest loans.

The majority of the procurements and arrangements that formed part of the program were undertaken and established in the period April 2008 to December 2009. During this period, REED also had responsibility for managing the majority of the 2009 stimulus package initiatives to be delivered by DEWHA, all within very tight timeframes.

1.1 Definition of probity

For the purpose of this Inquiry, a process/arrangement was defined as having been conducted with probity if done in compliance with the framework of legislation and guidelines that govern procurement processes in the Commonwealth Government (see Attachment B). These rules and guidelines are intended to achieve the following outcomes:

- Use of appropriately competitive process;
- Fairness and impartiality for potential service providers;
- Consistency and transparency of process;
- Identification and management of actual and perceived conflicts of interest; and
- Appropriate security and confidentiality arrangements.

1.2 Findings

The Inquiry found a widespread lack of compliance with the principles, guidelines and regulations relating to procurement in the rollout of the Program and hence a lack of probity. Key findings include:

- The majority (96% in number) of the procurements examined were procured through direct source (ie. without open competition) and in 75% of these cases only one supplier was approached.
- There is prima facie evidence of “contract splitting” – that is, where work from the same supplier has been split into separate components in order to avoid requirements for authorisation from senior management or more competitive tendering processes.
- Repeated and systematic breaches of Regulation 9 and Regulation 10 of the *Financial Management Act 1997* and the *Financial Management Regulations 2004* (FMA Act and Regulations), and non-compliance with the Commonwealth Procurement Guidelines (CPG’s) were identified. These breaches mean that the checks and balances designed to underpin an effective procurement approach were not exercised.
- Poor management of Requests for Quotation, including inconsistent treatment of tenderers, unaddressed conflicts of interest and lack of documentation to substantiate the selection process.

In addition to probity concerns, the review also identified a number of weaknesses in the contracting process, including:

- Poor contract management and lack of commercial terms in contracts – a high percentage of contracts examined had advance payment terms of 50% of contract amount payable on contract signing and, in several instances, payments were not made against contract milestones;
- Poor procurement planning and record keeping – some procurement activities were undertaken on an ad hoc basis rather than based upon well-defined business needs and project objectives. This led to a number of procurement terminations, contract cancellations and project deliverables not being utilised by the Program; and
- Significant cost escalations and weak budget control – for example, the costs of three contracts for IT project management, the contact service centre and logistics escalated by a factor of 4, 9 and 19 on the original contract terms, respectively.

The Inquiry also identified significant shortcomings in a number of specific program arrangements including:

- Poor documentation and process around the appointment of the Association of Building Sustainability Assessors (ABSA) as an Assessor Accrediting Organisation (AAO);
- The delay in implementing a Program audit process by DEWHA and the absence of a quality assurance program of assessors by the appointed AAO;
- Failure to build changing assumptions about program costs (eg. higher payments to assessors and changed administration fees for financial institutions) into budget forecasts;
- The arrangement, that existed for a short period of time, which allowed a large assessor organisation Fieldforce to make assessment bookings without going through the Call Centre was inappropriate; and
- Failure to obtain approval from the Minister for an increase in the financial institution subsidy fee.

1.3 Why did this occur?

The pressure to achieve outcomes within tight timeframes appears to have led to the adopting of “short cuts” to deliver the Program – that is, minimising steps which required approvals outside the program area. There was no evidence that any direction was given to adopt “short cuts”.

Consultations indicate that Executives at Assistant Secretary and First Assistant Secretary (FAS) level within DEWHA and corporate staff and the Program staff were broadly aware of problems with the administration of the Program and several attempts were made to pursue these concerns. Specifically, staff below Branch Head level escalated concerns about the compliance of staff working within the Program to the Branch Head level and above. However, there appears to have been inadequate and/or ineffective efforts to follow through when matters

were raised. In particular, we saw no evidence of attempts to escalate concerns about the Program to the highest levels within DEWHA. This changed in the later part of 2009 when new staff joined the division and instituted an examination and rectification of a number of weaknesses in the financial and procurement processes of the Program.

Given the number and nature of breaches and issues noted in respect of Program procurement processes, the Inquiry sought to consider the causal factors that contributed to the systematic breaches of the FMA Act and Regulations, departmental guidance and accepted probity principles for the Australian Government. There are a number of key factors which the Inquiry identified as contributing to poor procurement practices and outcomes:

- **Absence of effective Program supervision.** There were competing priorities within DEWHA to address the Government's Economic Stimulus measures and consequently, a Director, an Executive Level 2 (EL2), was left largely responsible for the Program. This situation was exacerbated by a high turnover of staff within the Division (notably eleven people serving as Assistant Secretary in a twenty-two month period).
- **Failure to establish a Program Centred Governance Model** until November 2009 contributed to inadequate governance, poor upfront program design and identification of business needs and services requirements, poor record-keeping and irregular updates on progress to executives. The Program operated largely in isolation from DEWHA's corporate support functions (eg. the Financial Management Branch including the Procurement Unit and the Chief Financial Officer, the Information Services Branch including the Chief Information Officer, the Legal Section, Public Affairs and Internal Audit).
- **Insufficient resourcing and specialist skills within Green Loans team.** The Green Loans team were subject matter experts and/or had generalist skills. It lacked the suitable procurement and project management expertise and experience to manage this kind of Program and financial management skills were poor.
- **Insufficient drawing upon expertise during the program design phase.** DEWHA designed and developed significant components of the Program "from scratch" without effectively leveraging knowledge from similar State based programs. Better engagement between the Green Loans team and DEWHA corporate support would have helped to better identify and address technology, financial, commercial and stakeholder risks.
- **Inadequate communication.** Significant issues and concerns were not communicated effectively and in a timely manner within the Green Loans Team or with the Department's Executive, its central corporate services or the Minister and the Minister's office.

2 Terms of Reference

2.1 Scope of Inquiry

The Terms of Reference for the Inquiry required the external reviewer, Patricia Faulkner, to report to the Minister and the Secretary of the DCCEE, on the probity of:

- contractual arrangements; and
- procurement processes and decisions,

that form part of the final design and implementation of the Program (from May 2008 to January 2010). The review was to examine those contractual arrangements and procurement processes that were material and/or key to the Program. The External Reviewer was informed by (but not limited to) relevant internal audits and other internal investigations.

2.2 Period of Inquiry

Documentation was reviewed and interviews were conducted from February 2010 to April 2010, to gather material and evidence that enabled the Inquiry to consider the contractual arrangements and procurement processes and decisions for the period from May 2008 to January 2010.

2.3 Procurements and arrangements

There has been an extensive range of procurement activity that has occurred during the period of the Inquiry within the Program. For the purposes of this Inquiry the procurements of suppliers have been classified into the following taxonomy using the thirteen service types listed below:

- | | |
|--------------------------------|--|
| 1. Research for Program Design | 8. HSA Instructor and Assessor Training |
| 2. Community Engagement | 9. Regional Training |
| 3. IT Project Manager | 10. Continuing Professional Development |
| 4. Assessment Tool / Report | 11. eGateway |
| 5. Contact Service Centre | 12. Audit |
| 6. Booking System | 13. Assessor Accrediting Organisation(s) |
| 7. Logistics | |

The design of the Program also featured some arrangements which were key components of the design and delivery of the Program. For the purposes of this Inquiry these arrangements have been grouped into the following taxonomy:

1. Appointment of Assessor Accrediting Organisation(s)

- 2 Engagement of Home Sustainability Assessors (Assessors)
3. Financial Institutions Subsidy Arrangements
4. Call Centre Booking Arrangements

2.4 Probity principles

In the context of this review the phrase probity has been applied in accordance with the ANAO Better Practice Guide *Fairness and Transparency in Purchasing Decisions – Probity in Australian Government Procurement* published in August 2007.

Probity during procurement is concerned with ensuring the integrity of procedures and processes put in place to provide fairness and transparency in a purchasing decision. This has also been applied when considering the establishment of the four ‘arrangements’ for the Program.

Finance Minister’s Guide No. 14 *Guidance on Ethics and Probity in Government Procurement* identifies the following probity principles:

- Use of appropriately competitive process;
- Fairness and impartiality;
- Consistency and transparency of process;
- Identification and management of actual and perceived conflicts of interest; and
- Appropriate security and confidentiality arrangements.

The principle of probity is overarching in ensuring due and proper process in procurement. Compliance with the CPG’s will result in probity principles being observed. The Inquiry has considered probity in respect of compliance with the broader legislative framework including the FMA Act and Regulations and the CPG’s.

3 Methodology

3.1 Approach

DEWHA is administered under the FMA Act and Regulations. DEWHA's programs, including the Greens Loans Program, are required to observe the following policies, procedures and guidelines in the conduct of procurement for the program:

- Commonwealth Procurement Guidelines (CPG's);
- DEWHA Chief Executive Instructions (CEI's); and
- DEWHA Financial Management and Accountability (Chief Executive) Delegations and Sub-delegations.

These policies, procedures and guidelines also apply in most respects for the engagement of providers with regard to the 'arrangements' to support the Program. Included at **Attachment B** is an overview of the Procurement Framework that was adopted as the normative model to conduct the Inquiry.

3.2 Analysis of documentation

The approach used techniques of detailed examination of Program documentation surrounding the contractual arrangements and procurement activity. The Inquiry considered an extensive range of material, in addition to those documents, in relation to contractual arrangements, procurement processes and decisions, including Ministerial Briefs, Green Loans Steering Committee papers and Executive Committee papers.

In selecting Green Loans supplier contract files for review, the Inquiry examined those contractual arrangements and procurement processes that were material and/or key to the Program design and implementation. Accordingly, the Inquiry has examined files for suppliers with a significant number of contracts for particular services, and suppliers who were identified as of interest during the interview process.

Reliance was placed on the accuracy and existence of information provided by DEWHA. The Inquiry did not independently audit or validate the information provided.

The Inquiry was unable to determine whether the population of procurement and contract material was complete as incomplete contract registers were in existence.

3.3 Consultation process

The Inquiry conducted twenty-four interviews with Departmental Officers (current and past) associated with the Program. All persons who were invited for an interview participated. Of the twenty-four persons interviewed, 6 officers no longer work within DEWHA or DCCEE. The interviews were limited to Departmental Officers and no external parties or suppliers were interviewed.

The consultations were extensive within the Program as there had been considerably high turnover in a number of staffing positions over the life of the Program. The scope of all discussions was in respect of matters applicable to their role and term of engagement within the Green Loans Program, with a particular focus on contractual arrangements, procurement processes and decisions. Included at **Attachment C** is a table that summarises the level of officers within DEWHA and the Program who were interviewed and their tenure within the Program.

The report was provided to DCCEE and DEWHA in Draft form to allow for errors of fact to be identified and to allow the Secretaries to satisfy themselves that the report acquitted the Terms of Reference.

DCCEE and DEWHA were responsible for selecting the process for reviewing the factual nature of the report.

3.4 Limitations

The findings of the Inquiry are based on listening to the perceptions and views of a defined group of people. The views are expressed as perceptions. Statements and representations made by Departmental Officers to the Inquiry, have not been independently validated but accepted as representations and qualitative views of those Officers who were directly or indirectly involved in the Program. Some Interviewees, at the conclusion of the Interview, provided supplementary information to the Inquiry. Where relevant, the additional material was examined to corroborate representations made through the interviews. Representations made to the Inquiry have been summarised and aggregated throughout the report.

3.5 Analysis of procurement and arrangement documentation

Through examination of the Green Loans Program Contract Register, discussions with the DEWHA central Procurement Unit and interviews with program staff, the Inquiry identified Departmental registry files for review in respect of procurement and arrangements documentation.

Determining the complete population of records from which the Inquiry could select samples was made difficult by the incomplete Contract Register maintained by the Program and the fact that registry files were maintained for contracts entered into and not necessarily for procurement activity undertaken.

Instructions by the Inquiry to DEWHA for documentation requested to be examined were purposely kept broad in order to capture as much information as possible.

DEWHA maintained a Secretariat to assist the Inquiry, amongst other reviews, to source documentation and files. This function contributed to a more effective and efficient Inquiry process.

4 The Green Loans Program

4.1 Background of the program

The Program was announced as part of the Government's *Solar, Green Energy and Water Renovations Plan for Australian Households* election commitment. Funding for the Program was announced in the 2008-09 Budget, with the objective to assist Australian families install solar, water saving, and energy efficient products. DEWHA was the responsible agency for the Program at this time. Total funds appropriated for the Program was \$300 million over the five-year period, 2008-09 to 2012-13. In the 2009-10 Budget, program funding was reduced to \$175 million over the remaining life of the Program.

Objectives of the Program

The key objectives of the Program are to:

- encourage wide-scale improvement of energy and water efficiency in existing homes;
- provide sound advice to households on the most appropriate actions to reduce the environmental impact of operating their home;
- provide financial assistance to households to gain access to the resources they need to invest in energy and water efficient technologies; and
- reduce annual greenhouse gas emissions.

Outputs of the Program

The key outputs of the Program are:

- consumer communication and engagement activities that identify and reach the target audience to encourage sustainable improvements of existing homes;
- an application process that ensures that only eligible applicants can receive subsidised Assessments and Green Loans;
- the provision of accurate and timely advice on environmental home improvements to Australian families from accredited experts;
- the efficient and timely provision of subsidised Green Loans to eligible applicants by participating Financial Institutions; and
- detailed Program monitoring and assessment to quantify environmental impacts, to track progress and achievements, and to inform policy development in the area of home sustainability.

Outcomes of the Program

The key outcomes of the Program are the reduction of greenhouse gas emissions and water consumption in existing homes through:

- the engagement of households in reducing the environmental impact of operating their home;
- a recognised industry of expert Assessors providing tailored information and guidance on energy and water saving actions; and
- a research industry analysing the environmental impact of homes and households.

(Source: Green Loans Program [Guidelines 2009](#). The Inquiry noted that the objectives of the Program have since been updated to reflect the February 2010 program changes)

4.2 How the Program works

The Program provides householders with a free home sustainability assessment conducted by accredited assessors. Home sustainability assessment reports prepared by the assessor, provide an action plan and recommendations for reducing energy and water use.

An industry body, currently ABSA, accredits assessors. Industry accreditation is a requirement for assessors to be contracted by the Program to undertake home sustainability assessments under the Program. The cost of the Professional Home Sustainability Assessment course is approximately \$3,000 (although the cost varies considerably) which is funded by the individual seeking assessor accreditation; the Program does not cover the cost of the training.

Up until March 2010, a householder could apply for an interest free² 'Green Loan' from a participating Financial Institution of up to \$10,000 over a maximum period of four years to make existing homes more energy and water efficient.

The original program design anticipated assessments to commence mid 2009 and the Program would be available until 31 December 2012 or until available funding was exhausted (whichever came first). Subsidised Green Loans were intended to be available until 31 March 2013 or until available funding was exhausted (whichever came first). The Program was initially capped at 360,000 assessments over four years.

Under the Green Loans Program:

- The householder (or an assessor on a householder's behalf) books an assessment through the call centre;

² The initial program design was for low interest loans for qualifying households by participating financial institutions. On 8 December 2008 this was changed to zero interest loans.

- The assessor visits the household per the booked time, enters details into the assessment calculator and discusses ways to save energy and water with the householder;
- The assessment report is prepared and later distributed to the household; and
- The assessment report lists up to ten items that up until 22 March 2010, were eligible to be purchased with the assistance of an interest free Green Loan, from one of the participating financial partners.

There have been several reviews examining components of the Program, including:

- the conduct of an audit of the assessor accreditation process and adherence to the terms of the Protocol for Assessor Accrediting Organisations between DEWHA and ABSA as the accrediting organisation;
- the conduct of an Independent Inquiry into the contractual arrangements and procurement processes of the Program (this report);
- a Senate Inquiry into the Program; and
- A Performance Audit by the Australian National Audit Office (ANAO).

4.3 Timeline of Green Loans Program events

Since the announcement of the Program in the 2008-09 budget, there have been a number of changes to the Program. The timeline of these changes provides useful background and context to the Program and has informed the scope of the Inquiry.

Included at **Attachment A** to this report is a timeline that summarises the chronology of events that were key changes or decisions taken within the Program.

Most notably, the Machinery of Government changes on 8 March 2010 transferred the Program to the newly created DCCEE from DEWHA. The scope of the Inquiry covers the period of time the Program was within DEWHA, however the report is presented to the Minister and Secretary for DCCEE.

5 Findings from analysis of Program procurements

5.1 Background

Over the period from July 2008 to January 2010, procurement processes have been a significant activity for the Program. Many components of the Program design and implementation were contracted externally.

This section of the report considers the procurement activity of the Program. Of the \$175 million in funds for the Program, the majority of expenditure was in respect of payments to contracted assessors. The review of the arrangement to engage assessors is included in **Section 6** of this report.

In selecting Green Loans supplier contract files for review, the Inquiry took into account the Terms of Reference to examine those contractual arrangements and procurement processes that were material and/or key to the Program design and implementation. Accordingly, the Inquiry has examined files for suppliers with a significant number of contracts for particular services, and suppliers who were identified as of interest during the interview process.

Attachment B outlines the procurement framework and procurement requirements within DEWHA.

5.2 Analysis of Program Suppliers

The Inquiry considered eighty-four procurement processes. As the record keeping was considered poor (see paragraph 5.4.7), it is difficult to determine the level of completeness of the population considered by the Inquiry.

The eighty-four separate procurement processes were in respect of only sixteen suppliers. To assist in the review of documentation the Inquiry classified the procurements into the following thirteen services.

- | | |
|--------------------------------|--|
| 1. Research for Program Design | 8. HSA Instructor and Assessor Training |
| 2. Community Engagement | 9. Regional Training |
| 3. IT Project Manager | 10. Continuing Professional Development |
| 4. Assessment Tool / Report | 11. eGateway |
| 5. Contact Service Centre | 12. Audit |
| 6. Booking System | 13. Assessor Accrediting Organisation(s) |
| 7. Logistics | |

The above services enabled the final design and implementation of the Program. Figure 5-1 sets out the relationship of these services to the Program design and implementation.

The numerical references in the diagram correspond to the services listed in the table above.

Figure 5-1: Relationship of Green Loans Program to service types

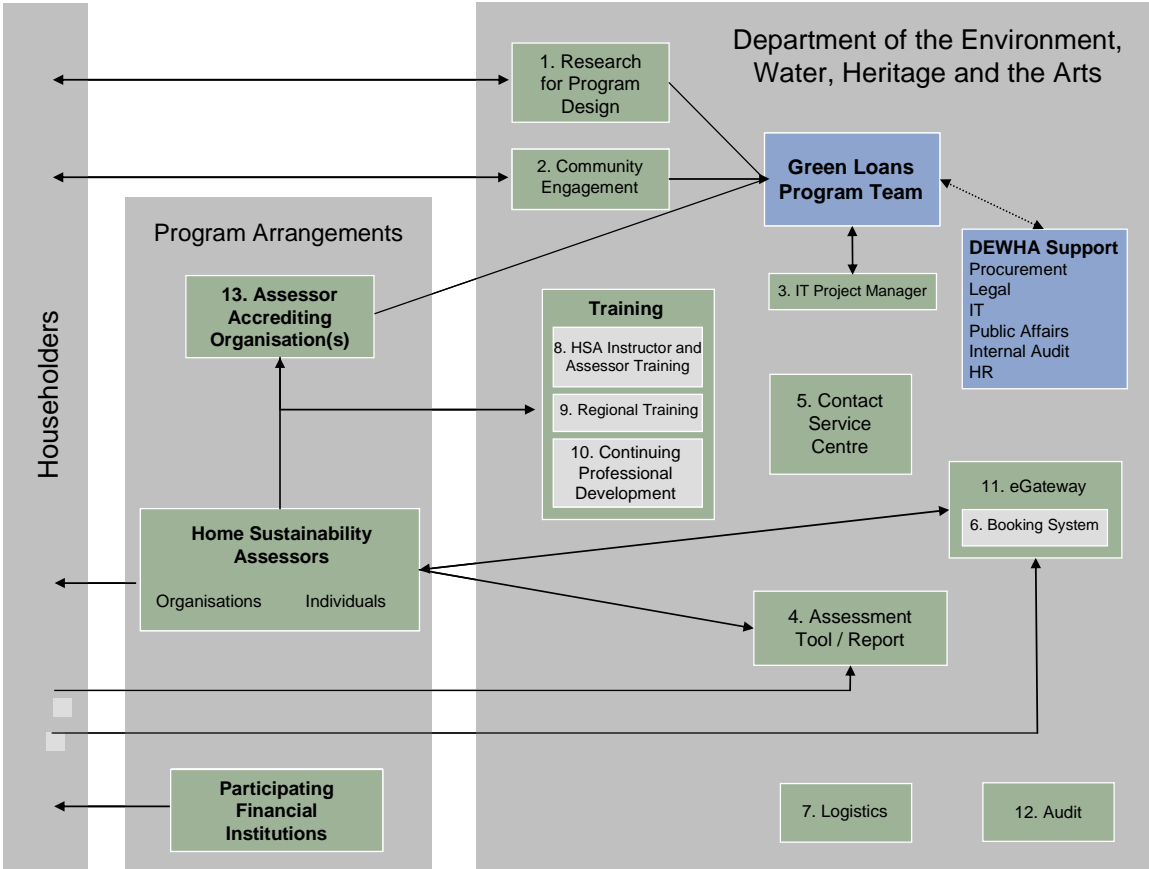


Table 5-1: Chronology of when the contracts tested were signed

Period	Number of contracts signed ³	Key services
April – June 2008	3	<ul style="list-style-type: none"> • Assessment Tool / Report • Community Engagement • HSA Instructor and Assessor Training
July – September 2008	8	<ul style="list-style-type: none"> • Assessment Tool / Report • HSA Instructor and Assessor Training • Research
October – December 2008	14	<ul style="list-style-type: none"> • Community Engagement • HSA Instructor and Assessor Training • Regional Training • Research
January – March 2009	6	<ul style="list-style-type: none"> • Assessment Tool / Report • Community Engagement • IT Project Manager • Research
April – June 2009	32	<ul style="list-style-type: none"> • Assessor Accrediting Organisation(s) • Assessment Tool / Report • Community Engagement • Contact Service Centre • CPD Training • HSA Instructor and Assessor Training • Research
July – September 2009	8	<ul style="list-style-type: none"> • Assessment Tool / Report • CPD Training • eGateway • Logistics
October – December 2009	5	<ul style="list-style-type: none"> • Assessment Tool / Report • CPD Training
January 2010	-	

³ Of the 84 procurements examined, 76 resulted in signed contracts. Six procurements did not result in signed contracts and 2 contracts were not on file at the time of the Inquiry – these are not included in this table.

The Inquiry examined supplier contract files for eighty-four procurement processes relating to sixteen suppliers contracted for the Program. Table 5-1 outlines the chronology of when contracts were entered into; Table 5-2 summarises the procurement processes reviewed by individual suppliers contracted and services provided to the Program.

Table 5 - 2: Number of suppliers providing contracted services

Supplier		Services (described in para 5.2)													
		1	2	3	4	5	6	7	8	9	10	11	12	13	Total
1	Supplier A	6			15										21
2	Supplier B	1			5				7	1				5	19
3	Supplier C	2									1				3
4	Supplier D	1									1				2
5	Supplier E	2													2
6	Supplier F	1			1						1				3
7	Supplier G										4				4
8	Supplier H		12												12
9	Supplier I			1								1			2
10	Supplier J				3										3
11	Supplier K					1						1			2
12	Supplier L							1							1
13	Supplier M									1					1
14	Supplier N									1					1
15	Supplier O									1					1
16	Supplier P									1					1
	No supplier contracted ⁴				1	1	1		2				1		6
Total Number of Procurements		13	12	1	25	2	1	1	9	5	7	2	1	5	84

5.3 Overall findings

The Inquiry identified a significant number of breaches and issues with procurement activity in the Program. The nature and number of breaches and issues identified by the Inquiry is considered systematic. The Inquiry noted that, for the majority of key service procurements reviewed, DEWHA sought proposals from only selected organisation/s without approaching the open market. No panel arrangements were established for the Program. Examined individually, some procurements reviewed would prima facie comply with the requirements of the CPG's, the FMA Act and Regulations and DEWHA's CEI's, however when considered in total for individual key services, the procurement activities were not in compliance with the CPG's or Departmental CEI requirements.

During the interviews conducted, representations were made which would indicate that inappropriate relationships with suppliers may have existed and the personal benefit of individual staff or contractors may have been a factor driving procurement behaviour. No supplementary information was provided to the Inquiry by interviewees to adequately support

⁴ Procurements were either terminated or in progress at the time of the Inquiry.

these representations. No Green Loans staff interviewed stated they had been in receipt of gifts, benefits and/or hospitality from suppliers. Specific questions were posed to those interviewed in respect of this matter.

Table 5-3 below was compiled from detailed analysis of supplier contract files and information associated with procurements that were terminated. This table excludes breaches relating to Program arrangements which are detailed in Section 6.

Table 5-3: Nature and number of breaches/issues related to elements of the procurement framework

Legislative framework/Instrument	Nature	Number of breaches/issues
FMA Act and Regulations	FMA Act Regulation 9 and 10 breaches (as per DEWHA delegations schedule)	36
Commonwealth Procurement Guidelines – Division 1 <i>NB: Only section 7.24/7.25 is mandatory</i>	Disclosure of contracts and contract variations >\$10,000 on AusTender	9
Commonwealth Procurement Guidelines – Division 1 <i>NB: Principles that relate to all procurements</i>	<ul style="list-style-type: none"> • Value for Money • Encouraging Competition • Efficient, Effective and Ethical Use of Resources • Accountability and Transparency 	Paragraph 5.4 considers these issues in more detail
Commonwealth Procurement Guidelines – Division 2 <i>NB: Mandatory for all procurements >\$80,000</i>	Direct Source is only permitted under certain circumstances for covered procurements (>\$80,000) Procurement splitting	17
DEWHA CEI's	Various requirements regarding procurement, contracting and payments	86
<i>Senate Order – Departmental and Agency contracts</i>	Disclosure required for all contracts >\$100,000 on DEWHA's website	1

It appears that there was obvious concern within DEWHA as to the adequacy and appropriateness of procurement practices in the Program. Through consultation and a review of supplementary information, on 15 November 2008, the FAS of REED corresponded with the Director (EL2) of Green Loans, copying the correspondence to the Branch Head of Green Loans, raising a range of concerns over:

- extensive use of sole suppliers;

- impact that alternate procurement paths may have on the delivery of the program; and
- managing the criticality of delivery and the probity of processes.

Words have been removed pursuant to legal advice provided to the Department of Climate Change and Energy Efficiency.

With the number and nature of breaches and issues noted in respect of Program procurement processes, the Inquiry sought to consider the causal factors that contributed to the systematic breaches of the FMA Act and Regulations, CPG's and other generally accepted probity principles in Federal Government. There are a number of key factors which the Inquiry identified as contributing to poor procurement practices and outcomes. These are summarised below and discussed in detail, together with other observations at **Section 7** of this report.

5.4 Analysis of Procurement and probity issues

5.4.1 FMA Act and Regulations breaches

The Inquiry has noted a total of thirty-six Regulation 9⁵ and Regulation 10⁶ breaches which are summarised in the Table 5-4 below. This table excludes breaches relating to Program arrangements which are detailed in Section 6.

Table 5-4: Regulation 9 and 10 breaches

Nature of Regulation 9 and 10 Breaches	Number of breaches
Regulation 9 approval not obtained	7
Regulation 9 approval not obtained for contract variations	1
Regulation 9 approval obtained after commencement of procurement	20
Regulation 9 approval obtained after services/goods delivered	2

⁵ Financial Management Regulations 1997 Regulation 9: approver must not approve a spending proposal unless the approver is satisfied, after reasonable inquiries, that giving effect to the spending proposal would be a proper use of Commonwealth resources (within the meaning given by subsection 44 (3) of the FMA Act).

⁶ Financial Management Regulations 1997 Regulation 10: If any of the expenditure under a spending proposal is expenditure for which an appropriation of money is not authorised by the provisions of an existing law or a proposed law that is before the Parliament, an approver must not approve the proposal unless the Finance Minister (or delegate) has given written authorisation for the approval.

Nature of Regulation 9 and 10 Breaches	Number of breaches
Actual payments exceeded Regulation 9 amount	3
Regulation 10 approval not obtained for service delivery and contract payment exceeding current appropriation period	3
Total	36

5.4.2 Contract splitting

The Inquiry has noted that the majority (seventy-three or 86.9%) of the eighty-four contracts reviewed are below the covered procurement threshold of \$80,000. In addition, all of these seventy-three non-covered contracts are procured through direct source⁷ without approaching the open market. The high proportion of non-covered contracts may be an indication of contracts being split to avoid the threshold of covered contracts which are subject to mandatory procurement procedures required under the CPG's.

Another possible driver for contract splitting prior to 1 July 2009 was to avoid the requirement of having Regulation 9's approved by an SES officer as an EL2 officer's delegation limit was \$50,000 at this time. The Inquiry has noted that fifty-one (or 66.2%) of the seventy-seven procurements commenced prior to 1 July 2009 were below the value of \$50,000.

In addition to the overall pattern observed above, the Inquiry has also noted specific instances of contract splitting based on the following indicators:

- Procurement numbers assigned to contracts in question are sequential or close in order;
- Contracts in question are for similar services or different components of the same service;
- Contracts in question are signed on the same day or within a very short timeframe;
- Contracts in question are with the same supplier; and
- The value of contracts in question fall just below the covered contract threshold of \$80,000, or for procurements commenced before 1 July 2009, fall just below the Regulation 9 delegation limit of \$50,000 for an EL2 officer.

Some examples of specific contract splitting instances observed include:

- Three audience research contracts with a combined value of \$236,000 that were all signed on the same day for similar services with individual contract value just below \$80,000. The supplier had submitted a single proposal for all three services.

⁷ CPG Section 8.3: direct sourcing refers to a procurement process, in which an agency may invite a potential supplier or suppliers of its choice to make submissions under prescribed conditions.

- Two contracts relating to promotional events with a combined value of \$133,000 that were signed with the same supplier on the same day with individual contract values below \$80,000.
- Four contracts relating to the development of the assessment tool with a combined value of \$189,420 were signed with the same supplier on the same day, with individual contract value falling below the \$50,000 EL2 delegation limit.
- Three contracts relating to the conversion of the existing assessment tool/report with a combined value of \$210,348.60 which were signed with the same supplier within a 2-day window.
- Four contracts totalling \$194,095 which were all related to the Assessor Accrediting Organisation (AAO) function and all signed with the supplier on the same day. Each of these contracts falls within a minimum percentage below the \$50,000 EL2 delegation limit.

5.4.3 Poor procurement planning

The Inquiry has noted that DEWHA entered into an unusually high number of contracts to deliver similar services, or various components of the same service. Some specific examples include:

- Thirteen contracts for research activities for program design and management;
- Twelve contracts for community engagement; and
- Twenty-four contracts for the development of the assessment tool and report.

One possible explanation for these multiple contracts is contract splitting. An alternative explanation could be poor procurement planning – that is, some procurement activities were undertaken on an ad hoc basis rather than based upon well-defined business needs and project objectives which if undertaken may have resulted in initial open market tendering.

The Inquiry has noted the following specific examples which suggest poor procurement planning:

- Procurement termination – the Inquiry noted four instances of procurement termination as follows:
 - The direct source procurement process for an assessment system with an estimated value of \$160,000 commenced in November 2008 and was terminated in April 2009. At the time of the termination, DEWHA had already gone through the RFQ process and received responses from two suppliers.
 - The direct source procurement process for an online booking system with an estimated value of \$700,000 commenced in October 2008. The procurement was terminated in March 2009. At the time of the termination, DEWHA had received proposals from 4 suppliers and had selected the preferred supplier.

- Two procurements relating to the development of accreditation for National Qualification appeared to have been terminated and did not lead to the signing of any contracts. At the time of the termination, DEWHA had received proposals from the single supplier.
- Contracts cancelled – the Inquiry noted 5 instances of contract cancellation and in all 5 instances, DEWHA had already made 50% of contract payments to the suppliers before the delivery of services.
- Significant cost escalations – the Inquiry noted 3 instances where the final contract value and service delivery timeframe had significantly exceeded the original contract terms. The three instances are as follows:
 - The initial value of the IT project manager contract was \$49,588. However, after 8 months and 3 contract variations, the contract value has escalated to \$462,000. The Program team noted that ‘during the procurement process it was not clear what level of service was required from external sources’.
 - The original contact service centre contract value was for \$770,000. Two contract variations were subsequently approved to increase the contract value to \$3.4 million and to extend the service delivery period through to 30 June 2010.
 - The interim logistics contract was originally for \$77,000 in July 2009 and the Program team proposed to increase the value to \$1.476 million in February 2010. The Regulation 9 approval was not signed at the time of the Inquiry fieldwork.
- Contract deliverables not utilised by the Program - the Inquiry noted that a service provider was awarded three contracts totalling \$286,100 to develop an assessment tool which was not utilised by the Program. DEWHA had subsequently engaged another supplier through sole direct source to develop the assessment tool which was later deployed by the Program.
- Delays in finalising the procurement process for program audit services were a result of poor upfront identification of business needs and services requirements.

5.4.4 Lack of commercial terms in contracts

The Inquiry observed instances of a lack of commercial terms in contracts or inappropriate practices in managing contract terms which have exposed DEWHA to disadvantaged financial positions. Specific examples observed include:

- High percentage of advance payments
 - A number of contracts examined contained advance payment terms requiring 50% and in some cases more of the contract values to be paid upon contract signing. In one instance, 100% of the contract amount was payable upon contract signing. As noted in Section 5.4.3 above, 5 contracts were cancelled after the 50% advance payment had already been made without services being delivered. There was no evidence on file to suggest that the Program team had instigated recovery of these payments.

- Value of contracts awarded exceeded original quotes
 - In relation to the regional training procurement, 2 of the suppliers submitted proposals that were at nil cost to DEWHA and another two suppliers proposed specific values. All 4 suppliers were awarded contracts with values higher than originally proposed.
- Payments not in accordance with contract milestones
 - In some cases, 100% of contract payments were made without receiving final deliverables, particularly when closer to financial year-end. In one instance, the final deliverables for a CPD contract were found to be substandard after full payment had already been made.
- Contract variations not raised
 - There were instances where contract variations were not raised when actual payment amounts and/or service delivery periods exceeded the original contract terms.

5.4.5 Poor management of supplier Request for Quotes (RFQ)

The Inquiry has observed the following instances where suppliers were treated inappropriately during the RFQ process, including:

- Contracts were awarded without evidence of a response to the RFQ from the successful supplier for four contracts relating to the development of the assessment tool.
- In one instance, correspondence on file and representations made at interviews suggest that a supplier may have been requested to use a specific subcontractor for services.
- In one instance, a proposal submitted one-day late from a supplier was accepted and as a result of the assessment of submitted proposals, DEWHA entered into a contract with this supplier. There is no evidence on file to support why DEWHA considered it appropriate to accept the late proposal.
- In one procurement process, communications through a Q&A process did not appear to be shared among the other potential tenderers. The Inquiry noted that this procurement process actually did not result in a contract.
- In one instance, an apparent conflict of interest was not addressed as the successful supplier was engaged to provide quality assurance over training materials developed by a number of organisations including itself.
- In two instances, there was no evidence on file to suggest that unsuccessful suppliers were notified of the outcome of the procurements either directly or through public notification on AusTender.

5.4.6 Direct source of suppliers – rationale not justified

Section 8.34b of the Commonwealth Procurement Guidelines (CPG) requires “a statement indicating the circumstances and conditions that justify the use of a procedure other than an open or select tender process” for all covered procurements. Section 23 of CEI 4.2 requires a written report on the justification ‘where a contract has been awarded through a direct sourcing procurement processes’.

The Inquiry has noted that eighty-one (or 96.4%) of the eighty-four contracts reviewed were procured through direct source. Of these eighty-one contracts, 8 were covered procurements that are subject to the mandatory procurement processes of the CPG’s.

Only 1 supplier was approached during the procurement process for sixty-one (or 75.3%) of the eighty-one contracts. All of the procurements reviewed were above \$2,000, which had they not been a direct source procurement, a minimum of three quotes would have been required under section 26 of Chief Executive Instructions 4.2.

The CPG’s provide a number of conditions under which the direct sourcing procurement method is considered to be justified. The Inquiry has noted that the following four CPG conditions can be considered as applicable to the Program, including:

- Section 8.33b – reasons of extreme urgency due to events unforeseen by the agency
- Section 8.33d(ii) – to protect patents, copyrights, or other exclusive rights, or proprietary information
- Section 8.33d(iii) – due to an absence of competition for technical reasons
- Section 8.33e - for additional deliveries of property or services by the original supplier

The Inquiry noted that the Green Loans team had generally quoted one or more of the above conditions as the rationale for direct sourcing procurements.

Although the above conditions are mandatory to only covered procurements (i.e. those over \$80,000), the Inquiry has applied the same conditions in determining the appropriateness of justifications provided for non-covered procurements as well. Based on the evidence presented, **none** of the direct source procurement reasoning was adequately substantiated to demonstrate support of the conditions outlined in the CPG’s.

In particular, the Inquiry has found that the documentation on file failed to substantiate the following:

- The circumstances of the extreme urgency and why they were due to events unforeseen by DEWHA;
- How the absence of competition for technical reasons was determined; and
- How the supplier/s approached for direct sourcing were selected.

5.4.7 *Poor record keeping*

The Inquiry found record keeping in relation to procurements to be inadequate. Procurement documentation including the request documentation, proposals received and evaluation documentation is generally scattered across various supplier 'contract' files. The Inquiry noted that some important procurement documentation provided by interviewees during the Inquiry process had not been kept on files. As a consequence, there are broken links and there is an incomplete picture of the Program's procurement decision-making processes. The Inquiry had to construct the key components of each of the procurement processes to identify key processes and decisions.

In addition, the contract register provided to the Inquiry was an incomplete and inaccurate record. The contract register contained a list of 153 files, 60 of which lacked key information such as supplier name and contract value. In addition, eleven of the ninety-five files reviewed by the Inquiry were not on the contract register.

5.4.8 *Contract disclosure issues*

The Inquiry noted the following disclosure issues, including:

- Nine procurements where contracts or contract variations over \$10,000 had not been disclosed on AusTender as required by Section 7.24 and 7.25 of the CPG's; and
- One instance where a contract over \$100,000 had not been published on DEWHA's website in accordance with the Senate Order 192 on Departmental and Agency Contracts.

6 Findings from the analysis of Program arrangements

In addition to the significant procurement activity within the Program, there are four arrangements which have been examined as a part of this Inquiry. Not all arrangements involved procurement activity or resulted in Deeds of agreement, contracts or a Memorandum of Understanding (MOU) being entered into. These arrangements are:

- Appointment of Assessor Accrediting Organisation(s)
- Engagement of Home Sustainability Assessors (Assessors)
- Financial Institution Subsidy Arrangement
- Call Centre Booking Arrangement

Detailed in the following sections is a commentary on each arrangement and the Inquiry's findings into probity and other Program issues in respect of these arrangements.

6.1 Appointment of Assessor Accrediting Organisation(s)

6.1.1 Background

To enable the delivery of the Program, DEWHA established a national accreditation scheme involving accrediting, registering and training Household Sustainable Assessors. DEWHA did not have the relevant capability and capacity in-house. For this reason, the Green Loans team sought expressions of interest for external organisations to become an AAO in November 2008.

ABSA submitted a proposal and was appointed as an AAO in February 2009. As an AAO, ABSA operates under DEWHA's Protocol for Assessor Accrediting Organisations.

DEWHA's primary rationale for selecting and engaging ABSA as an AAO for the Program was that they were considered the only national organisation who represented building sustainability assessors.

In February 2009, the Department of Finance and Deregulation (DoFD) advised DEWHA that the arrangement with ABSA as an AAO was not considered to be a 'procurement'. DEWHA has no financial obligation to ABSA as an AAO.

6.1.2 Issues

At the time of ABSA's appointment as an AAO in February 2009, ABSA had already been working closely with DEWHA on the initial research stage of program design and the development of the Program. ABSA were engaged by DEWHA through direct source procurement to deliver a number of projects such as development of the Training Delivery Plan, HSA instructor and assessor training materials and conducting training of Household Sustainability Assessors (HSAs).

Following its appointment as an AAO, ABSA continued to be contracted on a project by project basis to provide assessor training and contributing to the assessment tool. The Inquiry did not find any evidence to suggest that DEWHA had considered whether or not ABSA may be perceived to have had an unfair advantage and gained undue knowledge of the Program.

Based on the evidence presented, the Inquiry was unable to establish whether or not other organisations expressed a formal interest in undertaking the role as an AAO at the time that ABSA was appointed or how the evaluation for awarding this role to ABSA in February 2009 was completed. There was incomplete documentation surrounding the evaluation process.

In April 2009 the Master Plumber and Mechanical Services Association of Australia (MPMSAA) signalled their intention to apply to become an AAO. Based on evidence presented, the Inquiry was unable to determine whether DEWHA had progressed further on MPMSAA's Expression of Interest.

Furthermore, this Inquiry did not find any evidence to indicate that there is a formal contract or Deed in place for this arrangement. ABSA was appointed under the Household Sustainability Assessment Scheme Protocol for Accrediting Assessor Organisations through the provision of a letter (signed by an EL2) accepting ABSA's proposal to act as an AAO. This letter outlined the first year fee structure to be charged by ABSA. The fee structure proposed by ABSA was a model based on the number of assessor registrations, which differs from the actual structure ABSA has had in place since 1 July 2009. The current model charges assessors fees based on anticipated number of assessments to be performed in the upcoming year. In the absence of a contract or other formal agreement it is unclear as to whether or not DEWHA could or should monitor fees.

In the Invitation for Organisations to Express Interest in becoming an AAO, DEWHA outlined that AAO's will be expected to be self funded, using fees charged to assessors to provide services for assessors. The Australian Government was not expecting to fund the development or setup costs of assessor accrediting organisations. Following ABSA's appointment as an AAO in February 2009 DEWHA has procured services from the organisation as a supplier. These contracts have been for the following services:

- 21 April 2009 – Development of an Assessor Application Procedures Manual for use by Assessor Accrediting Organisations (\$48,950);
- 21 April 2009 – Development of an Assessment Procedures Manual for the HSAs (\$47,300);
- 21 April 2009 – Conduct Pilot Assessments - Identify and project manage the participation of Assessors to conduct HSAs (\$48,675);
- 21 April 2009 – Provide information to the existing home loan sustainability assessment industry on progress of the Program (\$49,170); and
- 17 June 2009 – Organisation of an HSA Conference (\$49,989).

In the absence of a contract or other formal agreement it is unclear whether or not the provision of the above services should or should not have been funded by DEWHA.

The above five procurements have been examined by the Inquiry in Section 5 of this report.

The Inquiry noted that ABSA has not implemented a quality assurance program for assessors under the AAO Protocol.

ABSA's proposal dated 2 February 2009 to apply to be an AAO indicated that *"to provide the most effective quality assurance services ABSA will need to have access to the procedures and the results of audits of assessments"*.

ABSA's proposal was accepted by DEWHA on 26 February 2009 in a letter signed by the EL2.

From review of ABSA's Senate Inquiry submission it would appear that from ABSA's viewpoint they had *"limited ability to provide quality assurance procedures for household sustainability assessment procedures given that they had only received anecdotal feedback from assessors and householders, and little informal and no formal feedback from DEWHA"*.

The program design was such that the AAO would conduct ongoing review and quality assurance of accredited Assessors and DEWHA would outsource an Audit Program to test the Assessor to make sure:

- services were provided at the specified level;
- the assessment report is generated; and
- that they are acting in compliance with the Code of Professional Practice;

and the Householder to make sure:

- they were entitled to receive the service;
- had obtained quotes for products and services supported by a Green Loan; and
- had applied Green Loans funds appropriately.

Neither the AAO quality assurance program or DEWHA's audit activities had commenced at the end of March 2010. However, the Inquiry noted that a Program auditor was appointed in April 2010 and that audit work has since commenced.

6.2 Engagement of Home Sustainability Assessors (Assessors)

6.2.1 Background

A core component of the Program is the delivery of free home sustainability assessments resulting in the provision of a report to the household. These assessments can only be undertaken by contracted Assessors. To become contracted, assessors must have undertaken the Professional Home Sustainability Assessment course and be registered with an assessor accrediting organisation.

Once accredited, Assessors seeking to conduct home sustainability assessments under the Program are required to sign a contract with DEWHA. DEWHA offered two forms of contract – individual or organisation contracts.

The organisation with the most assessors to sign an organisation contract was Fieldforce Services Pty Ltd (Fieldforce).

Under the contract, Assessors agree to provide assessment services according to the necessary standards and for the rates published in the Schedule of Fees. A \$200 fee is paid for each assessment. The Inquiry noted that DEWHA was unable to provide evidence of the Minister's approval of the \$200 assessment fee.

6.2.2 Probity and Program Issues

DEWHA considered different models for delivering the Green Loans Program.

Early in December 2008 DEWHA provided the Minister with a brief to inform the Minister of the risks and benefits of the different delivery models for the assessment services and to seek his decision on a preferred model.

For all options, DEWHA identified the need to audit all aspects of the Program to ensure contracted services are completed to required standard. Up to 2,000 assessors were envisaged.

ABSA was apparently the only organisation that had indicated an interest in taking on the role of Assessor Accrediting Organisation.

Accompanying the brief to the Minister was a legal risk assessment completed by a legal firm. This risk assessment was prepared prior to the Minister being briefed on the delivery models and clearly indicates that DEWHA was proposing a particular model. It is unclear as to why a comprehensive legal risk assessment was not also prepared for the other models. It is not considered to be appropriate, at that point in time, that significant funds were only invested in analysing the risks for one of the delivery model options available. The Inquiry was not provided with any detailed analysis to indicate that any thorough analysis of the alternatives had been undertaken.

A National scheme model (i.e. an assessor industry scheme which outsources different aspects of the scheme to different organisations but retains Commonwealth control) was preferred by DEWHA and recommended to the Minister in December 2008. On 18 December 2008 the Minister approved that the assessment component of the program should be a National Scheme with an April 2009 pilot. The brief noted that loans were expected to be available from January 2009 but had been moved to April 2009 at Government's request.

The legal risk assessment, which considered the proposed National Scheme model highlighted a number of key risks associated with the engagement of assessors. At that point in time, the Legal Risk Assessment identified proposed mitigation strategies.

The four key mitigation strategies proposed to control the risks directly associated with engaging assessors were:

1) Protocol for an Assessor Accrediting Organisation (AAO)

The Protocol was to include:

- an obligation to conduct full background checks of assessor applicants to a minimum requirement;
- An obligation to discipline Assessors when certain events arise or at the request of DEWHA; and

- an obligation to conduct ongoing quality assurance and background / spot checks of Assessors.

The Protocol for an Assessor Accrediting Organisation in place does address the above three issues.

As noted in Section 6.1.2 above, neither the AAO quality assurance program or DEWHA's Audit Program were in place at the end of March 2010. The Inquiry noted that a Program auditor was appointed in April 2010 and that audit work has since commenced.

2) Assessor Contract

A standard contract was to be developed for DEWHA to engage Assessors. The Contract was to:

- Include entitlement for DEWHA to require the Accrediting Organisation to discipline Assessors directly;
- impose limitations /restrictions on how Assessors procure assessments from households;
- negate employment relationship with the Commonwealth;
- include professional indemnity insurance coverage;
- impose obligations on assessors to have insurance coverage;
- include timeframes for production of assessment report; and
- ensure appropriate training and service standards.

The standard Assessor contract addresses the above issues, with the exception that:

- The Assessor contract (for an individual or an organisation) does not impose restrictions on how Assessors can source bookings from households.
- The Assessor contract (for an individual or an organisation) does not include timeframes for production of assessment reports.

3) Assessor Code of Professional Practice

A Code of Professional Code of Practice was to be published and maintained by the Assessor Accrediting Organisation.

An Assessor Code of Professional Practice is in place.

4) Department Audit Program

Department was to implement an audit program which would spot check to identify if submission of information was for a contrived assessment.

It was not until 23 April 2010 that DCCEE engaged a Program auditor to provide the Government and the community with confidence that:

- the Green Loans Program household sustainability assessments are a fair and reasonable assessment of the environmental impact of the building and household's use of the building;
- the Assessors have behaved appropriately during the course of their interaction with the Households and other stakeholders; and
- Green loan subsidies were provided for eligible items.

It is reasonable to assume that the Audit Program in place will test for any:

- submissions of contrived assessments;
- instances of poor quality assessments;
- overcharging by Assessors for assessments or travel related costs; and
- misuse of loan monies by Householders.

Financial management

The Inquiry noted that a Regulation 9 approval was not obtained until 30 June 2009, after some assessors had already been contracted. This Regulation 9 approval was only for the 2009-10 financial year. There is also no evidence on file to substantiate why a Regulation 10 approval was not sought for the full Program period of four years from 1 July 2009 to 30 June 2013.

The number of assessments in 2009-10 exceeded estimates used to prepare the initial Regulation 9 approval. As a consequence at the time of the Inquiry, DEWHA was addressing the requirement to prepare a Regulation 9 variation in response to the increase in the number of assessments.

Initial estimates of program cost were based upon payment to assessors of \$150 per completed assessment if the household had pre-completed a self assessment. A proposed self assessment tool had not been made available for self-assessments to be undertaken by the households. Therefore assessors are being paid \$200 per assessment which was not budgeted for in the spending forecasts.

6.3 Financial Institution Subsidy Arrangements

6.3.1 Background

A feature of the Program design was to provide eligible households with a low cost source of finance to implement home sustainability assessment recommendations. The Green Loans were made available through participating financial institutions. DEWHA commenced the consultation process with the financial institutions in July 2008 to investigate interest in the Program and suggestions to the subsidy model. However, based on limited documentation provided on the consultation process, the Inquiry found it unclear as to how the outcome of this consultation process was utilised in establishing proposed subsidy model options.

6.3.2 Issues

In December 2008, the Minister agreed to a proposal to offer interest free loans of up to \$10,000 with a maximum loan period of four years. DEWHA was to cover the interest costs and upfront administration fees. At this point in time, the Minister agreed that financial institutions would be paid administration fees of \$150 for unsecured personal loans and \$50 for secured redraw facilities.

In late 2008, DEWHA engaged a legal firm to provide a comprehensive legal risk assessment of the Program arrangements. The legal firm was also engaged in providing legal advice and to assist in drafting the Subsidy Deeds with financial institutions.

In February 2009, a draft deed was provided to the Australian Bankers' Association (ABA) and Abacus – Australian Mutuals (Abacus) for consideration by their members. Feedback from the ABA and Abacus was incorporated into the amended deed which was forwarded to ABA and Abacus in March 2009 for the purpose of inviting their members to participate in the Program.

Under the Subsidy Deed with the financial institutions, the upfront fee subsidy paid was \$200 per loan. This is not consistent with the approval by the Minister in December 2008 for a subsidy of \$50 for a secured loan and \$150 for an unsecured loan. Evidence presented to the Inquiry suggests that concerns were raised regarding the proposed subsidy model including inadequacy of fees in March 2009. Shortly after, a staff member of the Program team instructed the contracted legal firm to change the terms of the draft Deed to increase the administration fee from \$50/\$150 to \$200 per loan. There is no evidence to suggest that this change in fee was approved by the DEWHA Executive or the Minister. It was not until January 2010 that DEWHA informed the Minister about the subsidy fee change in a Ministerial Brief.

The legal firm engaged by DEWHA also completed a comprehensive legal risk assessment which highlighted a number of key risks associated with the arrangements with financial institutions.

The two key mitigation strategies proposed to control the key risks directly associated with engaging Financial Institutions were:

1) Standard contract with financial institutions

As part of the risk mitigation strategy, DEWHA was to develop a standard contract to be used with financial institutions to include:

- clear obligations and restrictions on financial institutions regarding DEWHA's requirements;
- specified requirements rather than prescribing Green Loan structures;
- incentives for compliance through payment mechanisms and preconditions;
- appropriate termination provisions, e.g. termination of contract for repeated incorrect claims;
- obligation to comply with the Green Loans Program Style Guide;

- obligation to comply with privacy laws and include appropriate termination provision for breach;
- payment of subsidy which is contingent on receipt of the Green Loan Declaration from the Financial Institutions;
- fee subsidy payable upon application and interest subsidy not payable until Green Loan is advanced;
- incorporate repayment requirement if Green Loan is repaid within three months;
- indemnity in favour of DEWHA; and
- provision of Green Loans is in accordance with its usual commercial lending, risk management and loan approval practices, requirements, process and standards.

The Inquiry noted that the standard Subsidy Deed addresses the above issues.

2) Department compliance monitoring / audit program

As part of the risk mitigation strategy, DEWHA was to implement an audit program which would spot check and conduct regular audit to monitor compliance of financial institutions and to ensure correct claims for subsidy and interest payments.

As noted above, DEWHA only engaged a Program auditor in late April 2010.

3) Other mitigation strategies

As part of the risk mitigation strategy, DEWHA was to:

- engage a number of financial institutions to secure national coverage, and may then decide not to accept any further Financial Institutions;
- consult with Financial Institutions during the drafting phase;
- maintain the flexibility to change the standard deed for a particular Financial Institution with regard to consistency; and
- engage a number of Financial Institutions to ensure alternative providers were available in the event of termination of a single Financial Institution.

The Inquiry observed evidence of the above mitigation strategies being implemented.

Financial management

As discussed in Section 6.3.2 above, there is no evidence to suggest that the DEWHA Executive or the Minister approved the increase in the administration fee. This was a departure from the assumptions underpinning the initial program design.

The consequence of increasing the subsidy from \$50/\$150 to \$200 for all loans was not analysed by the Green Loans team to understand the financial impact on the Program budget.

In addition, the Inquiry found no evidence of a Regulation 9 delegation being exercised to cover the interest or the administration fee component of the Green Loans to the financial institutions in 2009-10 at the time of the Inquiry. The Inquiry also found no evidence of a Regulation 10 delegation being exercised over the life of the program prior to the signing of Subsidy Deeds.

The delays in obtaining the Regulation 9 and Regulation 10 approvals was due to the necessity to determine whether or not a Regulation 14 approval was required. DEWHA was liaising with DoFD to resolve this issue.

6.4 Fieldforce Assessment Booking Arrangement

6.4.1 Background

Fieldforce is contracted by DEWHA as an assessor organisation to conduct household sustainability assessments. Fieldforce participated in the Assessor Pilot program in May 2009.

As an established organisation in the industry, Fieldforce has its own client base and a call centre to contact households promoting the Program and encouraging them to make assessment bookings. As a result of this demand creation activity by Fieldforce and other assessors, the Inquiry was advised that this had led to an unanticipated spike in household assessment demand in late 2009. DEWHA's contact service centre was under pressure to cope with large volume of assessment bookings. The Complaints Register maintained by the Program, representations at the Senate Inquiry and representations from Inquiry interviews, indicates that some Assessors often had to wait significant periods of time (in some cases hours) before getting through to an operator.

As an interim measure to release the pressure on DEWHA's contact service centre, DEWHA signed a MOU with Fieldforce in December 2009 which allowed Fieldforce to send through its bulk assessment bookings electronically on a weekly basis without having to access DEWHA's contact service centre. The arrangement with Fieldforce was intended to be an interim solution until DEWHA's online booking tool became operational (expected January 2010). The MOU was signed by an EL2 on behalf of DEWHA.

The data on call centre performance suggests that the average waiting time for call centre assessment booking in December 2009 was 2 minutes. With hindsight the anecdotal evidence of major delays to December 2009 is not supported by the facts.

During the Christmas and New Year holiday period in late 2009 and early 2010, DEWHA temporarily scaled down the service of its call centre and Assessors were not permitted to make new bookings. However during the same period, Fieldforce were able to make new assessment bookings through its MOU arrangement with DEWHA.

On 22 January 2010, DEWHA made a decision to cap Fieldforce assessment bookings to 6,000 per week.

Fieldforce communicated this arrangement to the market via a Media Release on 5 February 2010. On 19 February 2010, DEWHA informed Fieldforce that the interim booking arrangement was to cease, effective immediately.

6.4.2 Issues

Fairness and impartiality

Other assessors and organisations were not offered the same booking arrangements and had to spend long periods of time in telephone queues waiting to make assessment bookings. The call centre waiting time during January 2010 was on average 16 minutes, with the longest waiting time being 1 hour 35 minutes and in February 2010, the call centre wait time moved to an average of 1 hour. Fieldforce was able to continue making assessment bookings as they avoided the need to contact DEWHA's booking centre. In addition, other Assessors were not able to make new bookings for assessments over the Christmas and New Year break.

Transparency

DEWHA did not inform other Assessors or assessor organisations of the arrangement with Fieldforce. Fieldforce communicated this publicly via a Media Release on 5 February 2010.

Budget and Financial Management

DEWHA had no financial obligation to Fieldforce under the MOU.

Program management

The DEWHA Executive and Minister were not advised of the key decision to sign a MOU with Fieldforce for the call centre arrangement until after the arrangement had been executed. Officers within the Program appear to have acted alone in good faith in an attempt to try to relieve pressure on the call centre and address the consequences of previous poor program design and management issues.

7 Underlying causes of Inquiry findings

Set out in this report at **Section 5 and 6** are details of the deficiencies and issues that the Inquiry observed with respect to contractual arrangements, procurement processes and decision making of the Program. Consultation with Departmental Officers and consideration of other material, provided the Inquiry with insights as to the underlying causes of the deficiencies noted. Deficiencies have been classified into the following themes:

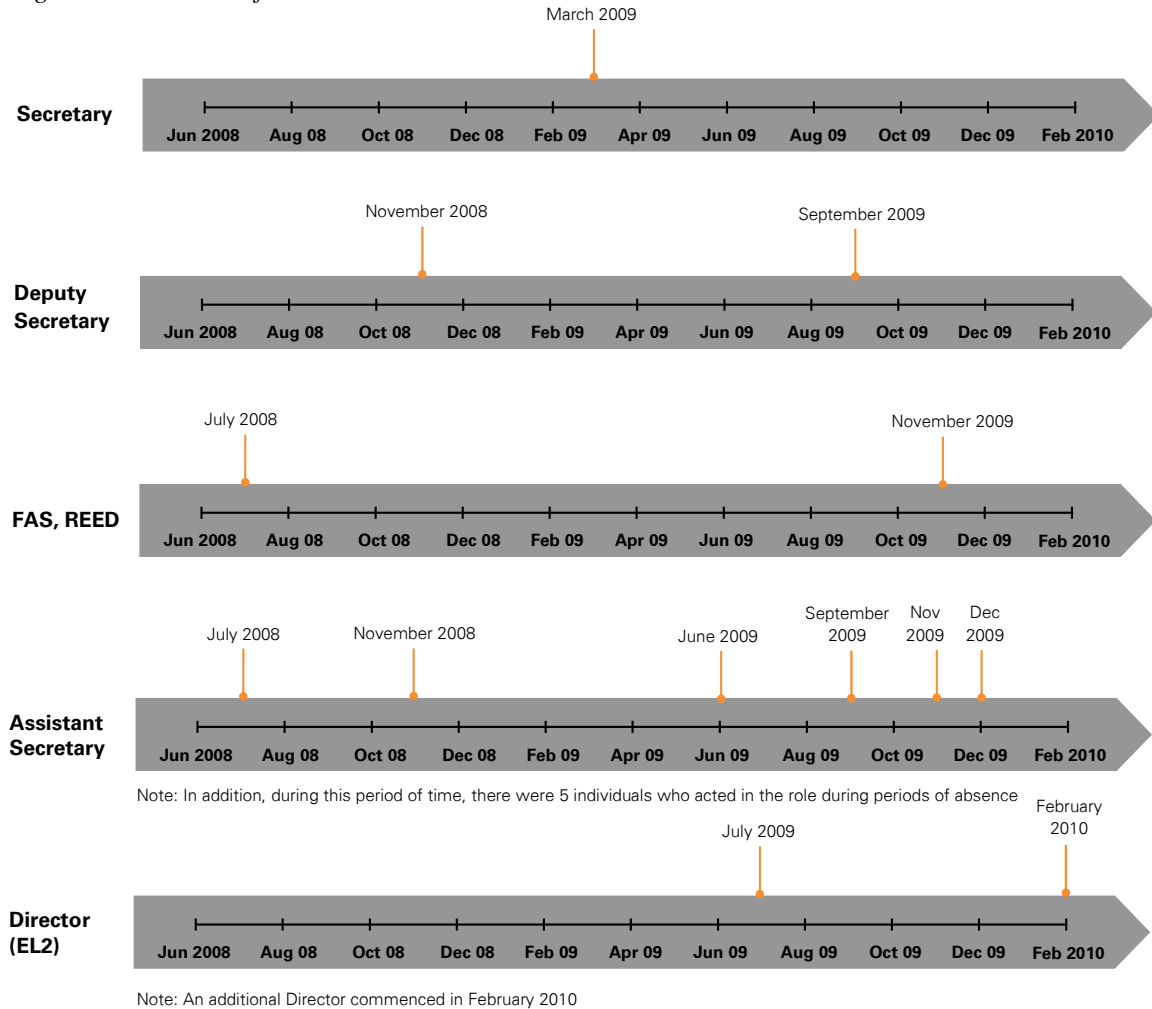
- Absence of effective Program leadership
- Absence of a Program Centred Governance Model
- Number and specialist skills of personnel for Green Loans team
- Quality of program design and management
- Quality of procurement planning
- Quality of communication

7.1 Absence of Effective Program Leadership

The Branch Head provides the leadership for the program and is a critical element of program governance. In addition, the hierarchy above the Branch Head and Program Director plays a role in both monitoring, supervising and advising the Program staff. Effective governance and leadership also requires effective co-ordination and interface with corporate functions within the Department. It provides the platform for corporate functions to actively engage with a program, at all stages.

There was a high turnover of Assistant Secretaries (Green Loans Branch Heads) in DEWHA throughout the period June 2008 to March 2010. During this twenty two-month period, eleven people occupied this position. The longest serving Branch Head worked for nine months in the position (November 2008 to June 2009). The second longest was an Acting EL2 who served five months in the role (July 2008 to November 2008). The third longest served three months (July 2009 – September 2009) with the remaining eight persons in the role for two months or less. The table below graphically depicts the tenure of those in the key Executive roles within DEWHA during the period of Inquiry:

Figure 7-1: Tenure of DEWHA Executives



Consultations revealed that people were ‘acting’ in positions for lengthy periods of time. Lack of consistent oversight and leadership was cited in interviews as a key factor in not achieving follow up in relation to deficiencies in contractual arrangements, procurement processes and decisions.

Staff from within the Program advised that from February 2009 the Branch Head and the FAS were focussed on the Government Stimulus package initiatives. Over this period the Branch Head was also responsible for other programs. The Home Insulation Program was a much larger program than Green Loans and received the priority attention. The Solar Hot Water Rebate program, Solar Homes and Communities Plan and the National Solar Schools program were also competing for the management attention of Branch Heads. Representations were made that Branch Heads were too busy to focus on the design and operation of the Program and devoted only minimal time to the Green Loans Program, commonly after hours in their own time. As a result the Director, an Executive Level 2 (EL2) was left largely responsible for the Program.

7.2 Absence of a program centred governance model

The Inquiry acknowledges that the Energy Efficiency Taskforce assembled in late November 2009, adopted the concept of a Program Centred Governance Model which led to the restructure of Program resourcing and a refocus of the Executive on the Program to enable improved oversight and administration.

In the absence of this governance model, prior to late 2009, there was insufficient attention given to program management and as a result accountability was not defined. The dedicated Branch Head was not in place until end of March 2010. Prior to this, Branch Heads had responsibilities for other programs as well.

Key components of program governance were not prepared, endorsed and circulated to key executives in a complete and timely manner. These include project plans, procurement plans, communication strategies, risk identification and risk management plans. In the absence of these documents being prepared and finalised and available at the appropriate stages in the programs design, development and implementation, there was not a clearly defined context within which to arrange suitable procurement approaches. This was evident in the poor planning which resulted in confusion as to what procurements were necessary and what technology solutions were required.

A Steering Committee was established in November 2008 but did not meet regularly. Members included FAS of REED, Assistant Secretary of REED, Director Green Loans (EL2), Acting FAS of CSD, Acting Chief Finance Officer, Acting Chief Information Officer and Senior Director Public Affairs. A Steering Committee should play a critical governance role, advising on the best approach to develop the program in a manner consistent with the program's objectives and the strategic direction of DEWHA. No minutes were kept of the meetings, only agenda papers were maintained. There were a lot of staffing changes at that time and there was no forward schedule of meetings. The Energy Efficiency Taskforce was established as a separate division in late 2009 to improve governance and oversight of a range of demand driven programs including Green Loans.

7.2.1 Program interface with Department corporate functions

There was a lack of engagement with corporate functions within DEWHA at critical times during the Program design and implementation phases which led to poor procurement practice.

Department's central Procurement Unit

Representations from members of the Program interviewed indicated that the Procurement Unit were not invited to work with the Program up front prior to the commencement of initial procurements to establish and agree on planned procurement approaches. However, when the Green Loans Director forwarded the Program Procurement Plan to the Procurement Unit in October 2008 and 7 November 2008, there is no sufficient evidence that the Procurement Unit provided feedback. This would have been an appropriate time for the Procurement Unit to understand the program design and question the proposed methods for procurements. The Procurement Unit generally assists and advises line areas; this is appropriate in mature skilled procurement environments but the Inquiry does not believe that the Green Loans team had a

suitable depth of experience of general procurement requirements. This may be as a result of the team having a core skill set focussed on policy.

The Inquiry also observed that the Program did not actively pursue approval of procurement matters. For example, when there was no response to matters sent to the central DEWHA Procurement Unit in October and November 2008 the Program assumed that this signified tacit approval. The Program Branch Head (July 2008 – November 2009) had assumed that the practice of receiving a Purchase Request Number (PRN) from the Procurement Unit was assurance that appropriate procurement practices had been followed by the program. (This is not the case, the PRN is merely a central record number issued).

The procurement arrangements within DEWHA are outlined at Attachment B. Of particular note is that the central Procurement Unit does not have a process in place to identify contract splitting.

Department's Chief Information Officer branch

The Green Loans team did not engage with the CIO unit in the early stage of program design with respect to system needs. It is a requirement of the DEWHA Chief Executive's Instructions to have the CIO unit involved in all IT systems development proposals. The Inquiry observed through the examination of procurement documentation that the technology direction of the Program kept changing. There was no evidence of an IT project management plan for the technology components of the Program.

Department's Legal Section

DEWHA's Legal Section were not responsible for monitoring implementation from a legal risk perspective.

Department's Chief Financial Officer Branch

The CFO Branch were not responsible for monitoring implementation from a financial perspective.

Department's People Management (PM) Branch

There were a number of representations made to the Inquiry by Green Loan Team members, that there were considerable instances of stress amongst the team.

Concern was expressed through the interviews at the perceived practice and culture of underperforming staff in DEWHA not being rated accordingly, within the scales prevailing at the time.

The Inquiry was advised that the PM Branch did engage with the Branch Head for the Program in April 2009 to extend an offer of support and advice in respect of recruitment and performance management. The PM Branch had Employment Assistance Programs available within the Department and this service was reiterated in February 2010 to the wider REED/EETF group, in recognition of the pressures and workloads.

The PM Branch of the Department has indicated that since mid 2008 significant effort and emphasis has been placed on Leadership Programs including managing performance and giving honest feedback, three presentations were made to REED staff. Notwithstanding these endeavours, representations were made to the Inquiry from staff at below Director level within the Program, that poor performance, including that of Directors and above did not appear to be adequately addressed. The Inquiry found that existing systems would make it hard to identify patterns of sick leave and turnover which may relate to stressful work conditions.

Department's Internal Audit Function

DEWHA's Internal Audit function was not involved 'real time' in auditing the design of the program or the design of the overall procurement plan.

Internal audit function did not plan to conduct a compliance audit to ensure procurement was consistent with Commonwealth procurement requirements. An incoming EL2 to the Program in July 2009 identified several arrangements in the Program that looked unusual and as a consequence commissioned an Internal Audit into procurement which was commenced in September 2009.

Department's Public Affairs Function

The Inquiry observed that the Public Affairs unit were not responsible for monitoring communications with stakeholders during implementation.

7.3 Number and specialist skills of personnel for Green Loans team

7.3.1 Number of personnel

Staff from within the Program advised that from February 2009 the Branch Head and First Assistant Secretary (FAS) were focussed on the Government Stimulus package initiatives. Over this period the Branch Head was also responsible for other programs. The Home Insulation Program was a much larger program than Green Loans and received the priority attention. The Solar Hot Water Rebate program, Solar Homes and Communities Plan and the National Solar Schools program were also competing for the management attention of Branch Heads. Representations were made that Branch Heads were too busy to focus on the design and operation of the Program and devoted only minimal time to the Green Loans Program, commonly after hours in their own time. As a result the Director, an Executive Level 2 (EL2) was left largely responsible for the Program.

There was only one EL2 position for the Program until early 2010 and representations were made to the Inquiry that it was unrealistic to expect one EL2, the program Director to be able to do everything required in a large complex Program like Green Loans which had time pressures and little support from the Branch Head. In November 2008, the Director (EL2) made a request for additional resources. The Inquiry did not obtain any evidence that this request was actioned. From July 2009 an Executive Level 1 (EL1), filled the EL2 position in an acting capacity; the Inquiry found, through the review of material actioned and processed by the person occupying the position of Director, that only one EL2 resource was not sufficient to meet the need.

7.3.2 *Assembling a team with required specialised skills for the design and implementation phase*

For a program of this size and nature, the Inquiry would expect skills required to include program design, program administration, procurement, IT, subject matter expertise, staff management and contract management.

The Inquiry observed that the Green Loans team were knowledgeable about the subject matter of the program but did not necessarily bring suitable experience to design and manage the program and arrange the procurements and design and set up arrangements. The Inquiry observed that the various Branch Heads who occupied the position and the Director of the Program, as well as members of the team, did not have prior experience or skills in implementing large programs including project management, financial management and procurement skills. The Program had a high level of procurement activity. The lack of procurement skills and experience in the Program was compounded by the nature of involvement with the central Procurement Unit in DEWHA (see paragraph 7.2.1).

Financial management

Financial Management of the Program has been poor. Budgeting and re-forecasting was not kept up to date when key changes occurred to the Program design (for example, when payments to assessors and financial institutions increased, interest rates started to rise and average loan values being funded exceeded original expectations). Managing the pipeline of assessments and the impact of the number of assessments being booked was not tracked against committed funds and appropriations.

7.4 Quality of program design planning and management

7.4.1 *Program design*

The Program was an election commitment and announced in the 2008-09 Budget with an initial planned program start date of 1 January 2009. Program planning timeframes were compressed. The Program is demand driven and yet did not have the suitable frameworks in place to monitor and forecast the demand scenarios. At the design phase, the program did not consider the nature and type of financial systems and reporting required, processes to manage the pipeline of assessments or processes to allocate work to assessors (particularly as the program did not originally cap the number of assessors).

The program designed and developed everything for the program from first principles. For example, development of training for assessors and development of the assessment tool. There was evidence that the Program didn't effectively leverage knowledge from similar State based programs despite the original Project Plan indicating the advantages of working co-operatively.

Staff working on the Program advised that they were keen to deliver a highly specified solution, when the Government may have wanted something simpler. Interviewees indicated that some procurements were unnecessary.

7.4.2 Project planning

There were several versions of the Program Project Plan. On 28 June 2008 the first version was issued, a final version was completed in August 2008. There is no evidence of final sign off and approval and the Project Plan fails to identify any management above the Assistant Secretary level (Branch Head) responsible for the program from a governance perspective. The project plan has a stakeholder plan and risk assessment. It also identified that the assessment systems should be based on ‘...existing NatHERS⁸ assessment...’⁹ industry and published software systems and the program should maximise cost effectiveness by ‘...working cooperatively with State and Territory funded programs...’¹⁰

A subsequent version of the Project Plan was released in January 2009 with a further Project Schedule developed and released on 5 January 2010 some two years after the Program’s design.

7.4.3 Risk assessment and management

There is no evidence who had carriage of the risk assessment document within the Program and who was actively responding and managing the risks and updating the documentation as a part of routine program governance.

DEWHA engaged a legal firm to conduct a legal risk assessment; the assessment was completed in November 2008. The report was provided to the Minister and Green Loans Program Steering Committee in December 2008. There was no evidence that the initial report and its content was reviewed or monitored by the Steering Committee or Program area. DEWHA’s Legal Section were concerned that the Program was moving ahead with program arrangements, prior to the receipt of legal advice. There is no evidence of the Program’s Assistant Secretary or First Assistant Secretary being involved in the risk assessment process or results. An update to the risk assessment was commissioned and completed in August 2009.

7.4.4 Program reporting

In November 2009, the Energy Efficiency Taskforce within DEWHA developed and provided a Program Metrics report to the Minister’s Office and the Energy Efficiency Taskforce Management. This was the first time such reporting had occurred and did not feature in the management of the program until this time.

7.4.5 Program guidelines

The Program commenced on 1 July 2009 (deferred from an initial planned date of 1 January 2009); the Program Guidelines were not approved by the Minister until April 2009. It was noted that the Program Guidelines were not revisited as a result of the April 2009 pilot program. It is better practice for Program Guidelines to be approved sufficiently in advance of the start date to reflect thorough and complete planning. The Program Guidelines provide the framework for program management and importantly to enable stakeholders and prospective

⁸ The Nationwide House Energy Rating Scheme (NatHERS) provides a framework that allows various computer software tools to rate the potential energy efficiency of Australian homes. NatHERS is administered by the Energy Efficiency Working Group and managed by DEWHA.

⁹ NatHERS Assessment – DEWHA

¹⁰ Green Loans Program Project Plan V1.0 August 2008

suppliers to understand the design and intent of the Program enabling them to engage effectively.

7.4.6 Complaints handling

Complaints handling protocols were not developed and put in place until November 2009.

7.5 Quality of procurement planning

The Inquiry's consultations and review of Program material identified that a Procurement Plan was prepared but it was not a comprehensive document and did not identify all services needed and explore the procurement methods proposed.

The Inquiry did not observe any sufficient evidence to suggest that the Procurement Unit were invited to be involved in the initial procurement planning processes. If the Steering Committee had been an effective governance meeting, other corporate functions could have provided feedback to the Program on planned procurement activity through the Committee.

Interviews highlighted cases where procurement processes had commenced and were then aborted, (for example, RFQ for the booking system). In some cases, contracts were signed and then terminated after advance payments had been made. This is an ineffective use of Departmental resources and an example of the consequences of poor procurement planning.

7.6 Quality of communication

7.6.1 Within Green Loans team (including Branch Head)

There were 4 instances where staff interviewed within the Program, (EL1's and APS') indicated that they had tried to raise procurement issues and concerns via email and face-to-face meetings with the EL2 and Branch Head of the Program (November 2008 to early 2009). They advised the Inquiry that they did not feel that appropriate actions were taken to address their issues raised in respect of procurement planning practices.

7.6.2 Between Green Loans Team and Department's Executive (Division Head, Deputy Secretary, Secretary)

Consultation and review of Program documentation indicated that DEWHA's Executive did not appear to have had visibility or focus on the Program. Discussions indicate that this was in part due to the competing priorities within DEWHA at the time of the roll out of the Government Stimulus package initiatives.

7.6.3 Between Green Loans Team and Department's central corporate services units (Legal, Procurement, CFO, CIO, Public Affairs,, Internal Audit)

The Legal Section advised that they had raised issues with the Branch Head of DEWHA's Strategic Advice Branch in late 2008; they were not sure whether these matters had been raised with the Branch Head of the Program.

The Procurement Director acted as the Departmental Chief Finance Officer from December 2008 to April 2009. During this time, no one officially acted in the role of Procurement Director.

Words have been removed pursuant to legal advice provided to the Department of Climate Change and Energy Efficiency.

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7.6.4 Between Department's Executive (Division Head, Deputy Secretary, Secretary) and Minister's Office

Statements were made through the Inquiry's process of consultation that suggested middle management within DEWHA were not communicating to DEWHA's Senior Executive and the Minister, the reality of what could or could not be realistically achieved within the set timeframes. Representations from Green Loans Program team members indicated that Program management had an optimistic attitude and not an appetite to say 'no' to the initially planned 1 January 2009 start date and later to the revised 1 July 2009 Program start date.

It was not until July 2009 that the Minister was appraised of key issues impacting on program delivery. The matters that were identified as outstanding included logistics systems and green reward card, audit services, e-gateway and financial product offerings in the market. From review of Ministerial Briefs and representations made during interviews, it was apparent that DEWHA had not been informing the Minister of the extent and implication of all matters impacting the effective rollout of the Program from 1 July 2009.

Ministerial correspondence in January 2010 highlighted that information previously provided to the Minister in earlier briefs was incorrect in respect of projections of program spending.

Attachment A – Chronology of Program Events

Key announcement date	Nature and impact of Program events and changes
2007	Election commitment. Program announced as part of the Government's <i>Solar, Green Energy and Water Renovations Plan for Australian Householders</i> .
From 10 April 2008	Scoping studies and other research activities with respect to a National Accreditation commenced.
13 May 2008	Funding for the Program announced in the 2008-09 Federal Budget. Green Loans Program, announced to assist Australian families to install solar, water saving and energy efficient products: <ul style="list-style-type: none"> • Home Sustainability Assessment (including Assessment Report); • Up to 200,000 low interest loans up to a maximum of \$10,000; • Green Renovation Pack; and • \$300 million funding over 5 years (2008-09 to 2012-13).
July 2008	Green Loans Team established within DEWHA in REED.
1 August 2008	Development of assessor training course commenced.
13 August 2008	Research commenced into information to be collected and stored in the database.
29 September 2008	Development of assessment tool commenced.
October 2008	Draft Procurement Plan developed by Green Loans Team.
3 October 2008	Contracted supplier commenced Community Engagement through attendance at home shows, etc.
8 October 2008	Research into the potential audience, issues, mechanisms for delivery of communication commenced.
24 November 2008	Contracts for provision of training of a minimum of 700 Household Sustainability Assessors commenced.
1 December 2008	Green Loans Program Legal Risk Assessment provided to Minister

Key announcement date	Nature and impact of Program events and changes
8 December 2008	Minister approval granted for: <ul style="list-style-type: none"> • Loan to be interest free; • Defined loan period – 4 years; and • Financial institutions payments: \$150 for unsecured personal loans, \$50 for secured redraw facilities.
18 December 2008	Minister approval granted for: <ul style="list-style-type: none"> • National Scheme for assessments with an April 2009 Pilot; • Components to be outsourced, control be retained by the Commonwealth; • Eligibility criteria for participation in the Program; and • Assessment component to be provided free of charge to participants.
February 2009	Letters provided to major Financial Institutions inviting them to participate in the program.
13 February 2009	Minister approved development of a program specific voucher redeemable at various stores as the preferred mode of delivering the green renovation pack.
17 February 2009	Second supplier contracted for development of Assessment Tool commenced.
February 2009	Accrediting Assessor Organisation (AAO) engaged.
31 March 2009	IT Project Manager engaged.
15 April 2009	Guidelines for the Program approved by Minister.
April 2009	Tender issued for Audit Services.
April 2009	Commenced Pilot Assessments.
May 2009	Registration of Assessors commenced by ABSA.

Key announcement date	Nature and impact of Program events and changes
12 May 2009	<p>Funding for the Program revised in the 2009-10 Federal Budget as follows:</p> <ul style="list-style-type: none"> • Up to 360,000 free Home Sustainability Assessments (including Assessment Report); • Up to 75,000 interest free loans up to a maximum of \$10,000; • \$50 Green Rewards Card; and • \$175 million over remaining 4 years (2009-10 to 2012-13).
15 May 2009	Supplier engaged to provide Contact Service Centre services.
1 July 2009	<p>Green Loans Program goes live.</p> <p>12 Financial Partners (predominantly Credit Unions) signed Subsidy Deeds.</p>
11 September 2009	Minister briefed on request from the AAO to cap the number of assessors.
6 October 2009	Minister agrees purchase of standard (hardware store) gift cards as interim measure to Green Rewards Cards.
27 October 2009	DEWHA recommends the Minister to support ABSA's decision to place a moratorium on the number of assessors it accredits from 1 December 2009.
24 December 2009	AAO ceased accepting applications for accreditation of Home Sustainability Assessors.

Key announcement date	Nature and impact of Program events and changes
19 February 2010	<p>Minister announced a reshaping of the Program that:</p> <ul style="list-style-type: none"> • Effective 22 March 2010, access to interest free loans under the Program would cease (agreements in place with 24 financial institutions); • Additional 600,000 household assessments, on top of the 360,000 assessments already available under the program; • Number of Assessors to be contracted by DEWHA limited to 5,000; • Weekly cap of 15,000 assessment bookings; • New cap announced which limits Assessors to booking 3 jobs per day and 5 jobs a week; and • Changed booking arrangements such that each booking to the call centre can only be made by or on behalf of individual assessors.
15 February 2010 – 22 March 2010	Financial Partners cease accepting applications for Green Loans.
26 February 2010	Prime Minister announces Machinery of Government changes of 8 March 2010 which transfer responsibility for Green Loans Program from DEWHA to DCCEE.
11 March 2010	Senate Inquiry set up, to report 21 June 2010.
April 2010	Appointment of a Program audit service provider

Attachment B - Procurement Framework

Green Loans Program - Overview of the procurement framework

DEWHA is administered under the *Financial Management and Accountability Act 1997* (the FMA Act). The Program is required to observe the following legislation, guidelines, policies, procedures in the conduct of procurement for the program.

- FMA Act (including DEWHA Financial Management and Accountability (Chief Executive) Delegations and Sub-delegations);
- Commonwealth Procurement Guidelines (CPG's);
- DEWHA Chief Executive Instructions (CEI's); and
- Senate Order 192 on Departmental and Agency Contracts.

Delegations

Delegation thresholds are a critical control in procurement and contracting. Prior to 1 July 2009 an EL2 officer in DEWHA had a \$50,000 Regulation 9 delegation limit. From 1 July 2009 onwards this threshold was lifted to \$80,000.

Commonwealth Procurement Guidelines

Division 1 of the CPG's requires all procurement to be undertaken with consideration of the following principles:

- Value for money
- Encouraging competition
- Efficient, effective and ethical use of resources
- Accountability and transparency

There is one mandatory section in Division 1 (7.24/7.25) which requires all contracts >\$10,000 to be published on AusTender.

Division 2 of the CPG's outlines mandatory procurement procedures for 'covered' procurements. Covered procurements for FMA Act agencies are any procurement over the threshold of \$80,000. In certain circumstances select tendering or direct sourcing is allowable for covered procurements if entities can demonstrate mitigating circumstances. Specific rules govern the use of select tendering and direct sourcing.

Open Tendering	Select Tendering	Direct Sourcing
<p>Involves publishing a request for tender and accepting for evaluation all submissions received by a deadline.</p> <p>Must be advertised on AusTender.</p> <p>Can involve a one-stage Request for Tender (RFT) or a two-stage process involving an Expression of Interest (EOI) followed by an RFT.</p>	<p>Involves issuing an invitation to tender to nominated potential suppliers.</p> <p>Is permitted for covered procurements when:</p> <ul style="list-style-type: none"> • it is the second round of an open tender (i.e. after an EOI); • potential suppliers are selected from a multi-use list of pre-qualified tenderers established through an open approach to the market; • the selection is from an established list of all potential suppliers that have been granted a specific licence or comply with a specific legal requirement. 	<p>An agency may invite a potential supplier or suppliers of its choice to make submissions.</p> <p>Can only be used in exceptional circumstances specified in the CPG's, for example:</p> <ul style="list-style-type: none"> • Section 8.33b – reasons of extreme urgency due to events unforeseen by the agency • Section 8.33d(ii) – to protect patents, copyrights, or other exclusive rights, or proprietary information • Section 8.33d(iii) – due to an absence of competition for technical reasons • Section 8.33e - for additional deliveries of property or services by the original supplier <p>It is accepted practice that where an exemption from the CPG's has been applied, clear reasons are documented on the procurement file so that the decision is transparent.</p>

To determine whether the value of a procurement will exceed the \$80,000 covered procurement threshold, certain sections of the CPG's outline how to value a procurement.

In Division 2 of the Commonwealth Procurement Guidelines section 8.8 states, *“Where a procurement is to be conducted in multiple parts with contracts awarded either at the same time*

or over a period of time, with one or more suppliers, the estimated of the property or services being procured must include the estimated total maximum value of all the contracts.”

Section 8.9 states, “*Where the total maximum value of a contract over its entire duration cannot be estimated and the procurement does not fall within an exemption listed, the procurement must be treated as being valued over the threshold”.*

Section 8.10 explicitly states that “***A procurement must not be divided into separate parts for the purpose of avoiding a procurement threshold”.***

Chief Executive Instructions (CEI’s)

CEI 4.2 – Procurement of Property and Services

Paragraph 23 - If a Direct Source procurement is planned the justification should be documented (any dollar value).

Paragraph 26 – outlines minimum quotes required for procurement other than panel or direct sourcing:

- 0 - \$1,999 none
- \$2,000 – \$9,999 three oral quotes
- \$10,000 - \$79,999 three written quotes
- >\$80,000 CPG’s apply

Procurement arrangements in DEWHA

DEWHA has a dedicated Procurement Unit. It was advised that the role of the Procurement Unit is to provide advice to line areas and that they rely upon information provided to them, they do not systematically monitor the procurement activity of the line areas within DEWHA. To assist line areas with procurement, the Unit has Toolkits for procurements valued less than and over \$80,000. There is no monitoring of procurement under \$80,000 by the Procurement Unit.

The Procurement Unit issues Procurement Request Numbers (PRN's) to Line Areas for all procurement valued greater than \$10,000. The PRN number is required when contracting is complete and payments to suppliers are being made in the financial management system.

The Procurement Unit supports the delivery of training in respect of Delegations through an e-learning tool which is compulsory for all EL1 and 2 officers of DEWHA. Delegation training for SES officers is not mandatory.

The Procurement Unit receives **all** Regulation 10 approvals and only those Regulation 9 approvals for procurements with a value of greater than \$80,000.

Any proposals to procure new IT systems or software must be approved by the Chief Information Officer of DEWHA in accordance with the CEI's.

There is no central contract management or monitoring within DEWHA.

Legal arrangements in DEWHA

The Legal Section within DEWHA provides a range of legal services including legal advice with respect to contracting. Contract advice is typically in respect of requests from Line Areas to change a standard contract template for procurements valued at greater than \$80,000. Short form contracts less than \$80,000 do not need to be reviewed by the DEWHA Legal Section unless standard contract terms are being altered.

Attachment C – Inquiry Interviewees

C.1 Analysis of people interviewed by role and tenure

The table below highlights the number of personnel who have held a position with Green Loans responsibility throughout the period July 2008 to January 2010. In addition the table identifies what positions (and duration of tenure) the interviewees have held.

Words have been removed by the Department of Climate Change and Energy Efficiency to protect the privacy of individuals.

C.2 List of people interviewed

The following Departmental SES officers were interviewed during the Inquiry. A further 10 EL and APS level staff were interviewed.

Words have been removed by the Department of Climate Change and Energy Efficiency to protect the privacy of individuals.

Words have been removed by the Department of Climate Change and Energy Efficiency to protect the privacy of individuals.

Attachment D – Glossary

Term	Definition
AAO	Assessor Accrediting Organisation
ABA	Australian Bankers' Association
Abacus	Australian Mutuals (Abacus)
ABSA	Association of Building Sustainability Assessors
ANAO	Australian National Audit Office
APS	Australian Public Service
Assessors	Home / Household Sustainability Assessors
CEI's	Chief Executive Instructions
CFO	Chief Financial Officer
CIO	Chief Information Officer
CPD	Continuing Professional Development
CPG	Commonwealth Procurement Guidelines
CSD	Corporate Strategies Division
DCCEE	Department of Climate Change and Energy Efficiency
DEWHA	The Department of the Environment, Water, Heritage and the Arts
DoFD	Department of Finance and Deregulation
EL1	Executive Level 1
EL2	Executive Level 2
EOI	Expression of Interest
FAS	First Assistant Secretary
FMA Act and Regulations	The <i>Financial Management Act 1997</i> and the <i>Financial Management Regulations 2004</i>
GLP	Green Loans Program
HIP	Home Insulation Program
HR	Human Resource
HSA	Home / Household Sustainability Assessment
ICT	Information and Communication Technology
MPMSAA	Master Plumber and Mechanical Services Association of Australia
MOU	Memorandum of Understanding
NABERS	National Australian Built Environment Rating System
NatHERS	Nationwide House Energy Rating Scheme
PRN	Procurement Request Number
REED	Renewables and Energy Efficiency Division
RFQ	Request for Quote
RFT	Request for Tender
SES	Senior Executive Service
The Program	The Green Loans Program