

**Review of Structure of and Contracting
Arrangements for the Pacific Judicial
Development Programme**

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New Zealand
October 2008

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ACRONYMS & ABBREVIATIONS

AMC	(AusAID) Managing Contractor
AusAID	Australian Agency for International Development
FCA	Federal Courts of Australia
GJS	Global Justice Solutions
MSC	Management Services Contract
NC	National Coordinator
NZAID	New Zealand Agency for International Development
PC	Programme Coordinator
PD	Programme Director
PDD	Project Design Document
PEC	Programme Executive Committee
PJDP	Pacific Judicial Development Programme
PJEP	Pacific Judicial Education Programme
SP	Service Provider

EXECUTIVE SUMMARY

The review team identified a number of issues in relation to the PJDP's management/governance and contracting arrangements along with some other issues that were coincidental to this. Issues relating to structural and contractual arrangements may not be instrumental in causing problems, but they have exacerbated them and pose a risk to the programme that should be mitigated if possible.

Despite challenges and a high burden on NZAID resources, the programme reportedly has delivered some good development results. There are a number of lessons to be learned, or for which the programme provides useful reminders.

With every contractual arrangement there is a risk that there will be disputes or areas that lack clarity or are interpreted differently by respective parties. The more contracts within a programme the greater the risks. Also managing interrelated accountabilities (ie Service Provider and Programme Director) through separate contracts with different entities is inherently problematic especially where the Programme Director role combines programme accountabilities with independent oversight. Similar or overlapping accountabilities split across different entities under separate contracts should be avoided where possible and different arrangements considered.

There is also a greater risk when dealing with "virtual"¹ organisations and due diligence needs to be undertaken to ensure clarity around capacity and resourcing obligations. The type of organisational arrangements can also have a bearing on how such matters as management fee payments are structured where inputs are provided by different entities.

It is the view of the Review Team that where possible structural and contractual arrangements should be re-organised in a manner that reduces risks around contractual conflict and high administrative and management requirements.

¹ In the context of this report, "virtual" refers to the fact that the contracted service provider did not use in-house capacity to resource the requirements of the programme and its contract but secured additional outside resources.

Although conflicts may only result from professional, personal or commercial differences between parties, contractual and structural arrangements can determine the impact if these risks eventuate.

If possible the contractual and service delivery arrangements of the PJDP should be re-organised to retain the potential benefits hoped for from the existing structure whilst mitigating the risks it carries, and which have eventuated.

The extent to which either of the following recommendations can be implemented may depend on legal or technical constraints. If the following options cannot be implemented, at the very least all parties involved in taking the programme forward need to jointly agree formally to clear separation of roles and responsibilities, lines of communication and mechanism(s) for dispute resolution.

RECOMMENDATIONS

It is recommended that:

1. the following options be considered for the structure and contractual arrangements of the PJDP for its next phase:

A) Preferred Option – Management Services Contract (MSC)

- Restructure the PJDP to use a single Service Provider which includes programme management roles of the existing PD role, and
- Contract a separate role to provide independent monitoring and technical advice to the PEC.

OR

B) Alternative Option – Separate PD and SP with revised roles

- Retain the PD role, but with an increased responsibility for programme planning and management, and
 - Reduce the planning and management responsibilities of the SP (eg annual planning) so that it is only providing a service contracting, administration and delivery role, and
 - Formalise additional independent monitoring in accordance with the original PDD.
- 2 NZAID include an organisational/institutional assessment as part of the tender assessment criteria for service provider roles, to ensure structure, track record and arrangements for providing resources are adequate and any risks are identified and that the selection panel uses this information in assessing suitability.
- 3 A Terms of Reference be developed for the PEC that clearly details their governance role and the responsibilities of the different types of members. It would also clearly state what matters would be handled by the contracting donor in that capacity outside of the PEC.

BACKGROUND

The Pacific Judicial Development Programme (PJDP) is a regional programme of assistance with a shared vision and agreed goals for strengthening the judicial system as a central pillar of good governance and the rule of law.

The Programme's focus extends to include support for process and system improvement. The Programme operates in the Cook Islands, Fiji (largely excluded following the Fiji coup), Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.

The PJDP is a five-year programme, which commenced in early 2006. It is jointly funded by NZAID and AusAID with an equal contribution of approximately AUD1 million per annum (i.e. AUD2 million per annum in total).

The overall goal of the PJDP is 'strengthened governance and rule of law in Pacific Island Countries through enhanced access to justice and professional judicial officers who act independently according to legal principles'. The purpose of the Programme is "to support Pacific Island Countries to enhance the professional competence of judicial officers and court officers, and the processes and systems they use".

The managing donor (NZAID) and governing body (PEC) have been closely involved with programme decision-making throughout the course of PJDP implementation (i.e. approximately 18 months). Over this period, the relationship between the Programme Director and Service Provider has required a significant amount of input from NZAID. Recently, this has resulted in NZAID not being able to negotiate contract extensions with the SP resulting in a cessation of programme delivery.

NZAID is in the process of re-tendering for the next phase of the PJDP, the findings of this review will be considered by the PEC and the selection panel in assessing tender proposals for the next phase of the PJDP.

The review report will directly serve the needs of NZAID and the PEC by providing a basis to make continuous improvements as necessary to the PJDP implementation structure and contracting model going forward. The review report's target audience is the PEC and NZAID.

It is not within the scope of this review to examine in any detail progress made at the outcome level. It is expected that a broader review, such as a Mid-Term Review (including field visits) will evaluate implementation progress of the programme if required. Although a mid-term review had been envisaged for the current year, this should be reconsidered given the current lack of programme delivery unless a review could be completed in time to feed in to the contract renewal process.

This review does not focus on the governance arrangements for the programme, ie the role and functioning of the PEC, which programme partners agree are functioning effectively. However, issues raised in relation to the PEC have been identified for future reference.

METHODOLOGY

The review team leader used semi-structured interviews with a range of people involved in the programme (refer consultation list Appendix II). The interviews were carried out over the telephone except for those involving NZAID staff, which were conducted in person.

All those interviewed were informed that the interviews were in confidence and the report would not contain direct quotes. Renee Simpson of NZAID assisted with organising, conducting and recording notes for the 22 interviews which lasted between 45 minutes to 75 minutes each.

A Design Advisor from AusAID's Design and Procurement Advisory Group who provided information to the review team on relevant lessons learned around various contracting models including that adopted by PJDP and peer reviewed the review report.

Constraints around the review process related to an interrupted schedule due to a two week out of country commitment for the lead reviewer and the difficulty in securing interviews with some key stakeholders within the timeframe allocated.

This review was undertaken by NZAID as the lead donor and contract manager to address specific issues in relation to the implementation of those contracted roles. The lead reviewer is from the Agency's Strategy, Evaluation and Advisory group which is independent from the programme group or the contracts team responsible for the PJDP.

KEY FINDINGS

The review process identified that the PJDP faces challenges in three areas and that these areas often overlap and interplay to exacerbate problems. The three areas are:

1. Overall structure of the PJDP and arrangements within that structure.
2. Adequacy of contracts in place and management thereof.
3. Personal and professional relationships of those in key roles within the programme.

Overall structure of the PJDP and arrangements within that structure

The current structure of the PJDP and a preferred option as recommended in this report are illustrated in Appendix I.

Overview of Structure

A Programme Executive Committee (PEC) is the overarching governing body. The Programme Executive Committee (PEC) provides overall guidance to the programme implementers. The PEC comprises three Chief Justices, one representing each sub-region; two representatives of lower levels of the judiciary including magistrates, justices of the peace and court support staff

and two donor representatives, one each from NZAID and AusAID. The Programme Director is a non-voting member. The Service Provider provides the Programme Coordinator (PC) as the secretary to the PEC. The PEC uses teleconferencing and only physically meets about twice per year for key meetings for the annual work plan. The PEC is responsible for governance of PJDP and overseeing the implementation of PJDP by the Programme Director and the Service Provider.

The delivery of the PJDP is designed to be managed by a collaborative arrangement comprising a Programme Director and a Service Provider. As lead donor NZAID manages the programme and implements it via two separate contracts. The first is a contracted PD who reports to the PEC and has responsibility for overall development, management and performance assessment of the Programme in accordance with the PEC's direction; providing advice and strategic direction over all policy, planning, performance assessment and reporting aspects of the Programme; and overseeing and directing the activities of the Service Provider in the implementation of the PJDP.

NZAID also contracts the Service Provider (SP). The contract is with Global Justice Solutions (GJS) however, GJS formed a consortium with Federal Courts of Australia (FCA) to provide key resources for the programme. In particular the Programme Coordinator (PC) role is provided by FCA. It would appear there are inadequate formal arrangements between the consortium partners making up the SP to address issues that have arisen around roles, responsibilities and accountabilities within the consortium. The responsibility of the SP is the implementation of PJDP in accordance with the Programme Director's direction. There is no direct contractual relationship between the PD and the SP. Both the PD and the SP report separately to NZAID on contract-related matters.

More detail on the roles of different stakeholders can be found in appendix II.

Role and Structure of PEC

There were differing views on who the Executive Committee represents and are accountable to. In particular, the extent to which members were sub-regional representatives for individual Pacific Island member countries, versus representing the Pacific Judicial Conference and its constituents.

In reality, the PEC members are not in a position to effectively represent individual countries outside of their home territory, however, they can carry a mandate from the Pacific Judicial Conference to represent judiciaries of the region. This regional approach can have delivery tailored to individual country needs through effective liaison between the Programme Director (PD) and National Coordinators (NC).

Although not a universal sentiment, a number of PEC members believe that the PEC has not always been able to operate as effectively at the strategic level for several reasons. It was acknowledged by all that PEC members have highly committed workloads and other obligations. It is difficult for them to meet and have sufficient time to digest agenda information for meetings before hand and then make pro-active strategic decisions. In addition, some PEC members believed they did not have adequate information about programme delivery to make as well informed decisions as they would like.

The PEC does not have a specific ToR to guide it and set out its areas of responsibility. Such a ToR could also be useful for giving guidance on matters such as the role of contracting donors and their participation and helping to differentiate roles of contract management versus programme guidance and these will be dealt with.

Although there is provision for the PEC to seek independent advice, members were either unaware of this or had not seen the opportunity or need to do so.

This may in part relate to the early comments about the manner in which meetings are prepared for and held. Of note was the fact that recent difficulties faced by the programme had resulted in a number of PEC members talking more frequently together around programme issues outside of the normal

meeting format. There was a degree of support from within the PEC for independent technical advice.

Non-donor members of the PEC generally considered that they had a good working relationship with the PD and no performance issues were expressed in relation to role execution. The PD was valued for having independence from any interests that may affect the way in which the SP delivers the programme.

Contract Arrangements

The contractual arrangements for the PJDP are very uncommon if not unique for an NZAID programme. Although not common, similar arrangements have been used by AusAID in other programmes and they initially promoted the model for the potential it had to reduce management oversight requirements on the contracting donor by assigning parts of this role to the independently contracted PD role.

In most situations where there is a requirement for a high level of project management and sub-contracting of delivery, NZAID would engage a Management Services Contractor (MSC) in the absence of available and adequate partner country or organisation systems or capacity. In this instance, as a regional programme there is no specific partner and nor is there a directly associated agency or institution (the previous PJED was based out of USP but this was not deemed appropriate for the current programme). AusAID has an equivalent arrangement (AMC) that it uses.

For the PJDP there is a Programme Director (PD) role which is contracted separately from the Service Provider (SP) role as opposed to a single MSC providing both roles. The rationale behind this is to be able to independently contract roles and responsibilities that would normally sit with the contracting agency in terms of programme oversight. The PD contract therefore includes: *“overall development, management and performance assessment of the*

programme".² The duties include strong input into the implementation of the programme activities as well as sitting on the PEC as a non-voting member.

In comparison with similar models and in light of advice around lessons learned by AusAID there are aspects of this arrangement which are impacting on the effective implementation of the PJDP. For separate contracted roles there needs to be clear distinction around areas such as: technical input to the programme, donor agency representation, independent technical advice to the governance body, and programme management. With the PJDP there are contractual responsibilities for the SP in terms of planning and managing service delivery therefore there is clear potential for tension or conflict arising from professional differences in opinion and differing incentives for alternative approaches.

Of particular note are the arrangements for the Pacific Regional Policing Initiative (PRPI). This programme is also funded jointly by AusAID and NZAID and has the same country spread. The programme is managed by AusAID and implemented via a managing contractor which includes a PD type role. A number of the people interviewed are familiar with or involved in the PRPI. There was a strong sense that the structure of the PRPI worked well and served its purpose well. Although it is not possible to say that the structure definitively makes the difference between the two programmes, it can be said that a number of issues that have become problematic with the PJDP would not have done so under the PRPI.

As stated, one reason to have a PD role separate from the SP is to undertake some of roles and responsibilities that would normally sit with the donor (ie AusAID/NZAID) around overall programme management and oversight. However, what is effectively delegated oversight has limitations when aspects such as contract ownership (over the SP) do not go with it. There is also the potential for conflict when this independent oversight role is combined with

² From Terms of Reference for Programme Director, Pacific Judicial Development Programme, Schedule 1 Scope of Services.

programme implementation and delivery responsibilities. It is difficult to be accountable for programme delivery and at the same time be an independent assessor or advisor.

Although NZAID has effectively delegated some programme management responsibility to the PD, the position reports to the PEC meaning that although NZAID is accountable there is a mixed reporting line. This is partly an issue with the different responsibilities of the PD that have been combined in a single role without adequate consideration to potential conflicts and where accountability lies for different aspects of the role. Without a TOR, it is not clear what the PD should be reporting to the PEC on and to what level the PEC should be giving programme direction via the PD. Generally it would be expected that a governance body such as the PEC would be providing high level strategic direction and not be involved in the details of programme management and operations.

A number of PEC members highlighted the benefit of having someone within the PD role with whom they had been able to establish an effective working relationship. It is important for them to have someone who acts as a key focal point and whom they believe can independently advise them and take cognisance of their wishes in terms of programme direction and guidance. It will be important to ensure that a good relationship and communication is maintained between the PEC and programme delivery in the future.

Where conflicts or tensions arise it could be expected that tight contractual arrangements and contract oversight could address these. Some of those interviewed for this review were of the view that there was a lack of common understanding around the PD's role in oversight of procurement for programme implementation and how NZAID should manage this or what its role should be in doing so. It can be expected that people in lead roles in a programme of this nature will have highly developed communication and mediation skills for addressing professional differences, however, issues could be managed more effectively within a single contract/single entity arrangement.

Two issues arise from this, the first is the appropriateness or workability of the PD's role in these instances and secondly ambiguity with the contracts themselves. The very fact that NZAID has had to become involved in mediation and arbitration between the contracted parties indicates inadequacies in the arrangements.

An example of the potential for conflict arising as a result of the contractual arrangements can be illustrated by the following in relation to sub contracting procurement and service delivery.

The Programme Director will issue instructions to the Service Provider to activate specific activities under the approved annual plan. In the usual and normal case all risk for performance and quality is with the Service Provider.

The above reference makes it clear that the SP would need good control over the implementation activities if they are to carry the risk. Of note, the above reference is from the PD's ToR rather than the SP's. The ability of the SP to control what they are accountable for in terms of performance and quality in this area is reinforced in their own ToR where it is stated:

The Service Provider is responsible amongst other things for:....

- *recruiting, contracting, deploying and managing procurement of goods and services, including technical assistance. In doing this the Service Provider as a minimum will:*
 - *procure goods and services in accordance with New Zealand government procurement guidelines and other value for money guidance; and*
 - *contract and deploy high quality technical assistance for agreed positions.*

And further:

the Service Provider will be responsible for selecting and contracting the pool of technical expertise.

The SP's ability to control quality and performance for which it is accountable would seem clear from the above, however, other provisions within the PD's ToR make this much less clear, for example:

For certain activities, the Programme Director may choose to oversee the sub-contractor procurement phase more closely... the Programme Director will require the Service Provider to ... facilitate the participation of the Programme Director, PEC, and participating judiciaries (if appropriate) in that process in a decision-making capacity.

In a situation where there are differences of professional opinion or approach there is obviously the potential for conflict with both parties attempting to carry out their roles as contained in their respective ToRs.

With a complex programme of the nature of the PJDP it is difficult to imagine there being no overlaps or gaps in roles and responsibilities of the PD and SP roles when they are both so wide in scope. Therefore there is a high risk that conflict will arise and the contracting donor will be called on to arbitrate. If similar arrangements were to be used again the scope of one or both roles should be narrowed. If for example the PD role is to have such a high level of programme oversight and control, then the SP role should be diminished in this area including technical input, strategic contribution and accountability associated with risk around service delivery where they have diminished control.

Narrowing the scope of the PD role could also help reduce the risk of conflict that can arise from the requirement for independent monitoring and technical advice on behalf the contracting donor, and their responsibility for programme

delivery. It is not envisaged that there would be any independent reporting from the PD directly to the non-contracting donor.

Service Provider Arrangements

In order to meet the resourcing requirements for the programme in terms of their contracted obligations the SP (Global Justice Solutions or GJS) entered into a consortium arrangement with the Federal Courts of Australia (FCA). Central to this arrangement was the provision by FCA of the Programme Coordinator (PC) for the programme.

It is not unusual for a service provider to secure additional resources for a large project in a number of different ways ranging from subcontracting, increasing core staffing levels and entering partnerships with complementary providers. In this instance there are some unusual aspects to the consortium. It is an arrangement between a commercial business (GJS) and non-commercial agency (FCA). Secondly, the nature of the consortium was surprisingly informal and without clearly agreed or legal arrangements that would normally be expected.

The lack of formally agreed roles and responsibilities and associated resourcing has resulted in tensions and disagreements between the consortium partners. Further compounding this has been a good working relationship between the PD and the PC provided through the consortium arrangement with FCA. This has resulted in the SP not operating as a cohesive unit and the contracted party (GJS) believing their ability to manage programme delivery has been compromised not only by the PD assuming part of the SP's contracted role, but also by their consortium partner acting in support of the PD to do so, as opposed to being an integral part of the SP.

Regardless of any disputes over responsibilities under the separate SP and PD contracts, the difficulties within the consortium arrangement have exacerbated issues. It cannot be stated definitively that the issues would not have arisen if it were not for the consortium arrangement, however, the informal nature of the

arrangement carried inherent risks that were not appreciated by all parties at the outset. In future, due diligence by NZAID should include careful consideration of lead contractor arrangements for resourcing their proposals regardless of whether the service provision includes a single or multiple contracts. How a proposal will be resourced should be considered for robustness of arrangements to ascertain track record, capacity, history of working together and inherent risk. These factors should be considered as tender evaluation criteria.

Personal and Professional Relationships and Other Matters Raised

Differences of personal opinion are a fact of life and professional differences can contribute constructively to robust debate achieving better results. The challenge for the PJDP has been that the contract arrangements and management within the programme structure have failed to adequately resolve such differences. This has played out as described in the previous sections of this report. The differences themselves should not be the topic of analysis or judgement.

During the process of undertaking this review, a number of other observations were made that were not directly within the review's scope. Some of these are noted as they still provide information of value for stakeholders or lessons that can be used in other settings.

One matter raised by some interviewees was the changing personnel representing AusAID and NZAID. Particularly in relation to NZAID as lead donor this has created some concerns in terms of communications styles and consistency of approach beyond the donors' roles as PEC members. As with the PD role a number of people highlighted the importance of relationships with individuals in the Pacific context as opposed to relationships with organisations.

The challenge of using a regional approach to meet the needs within sub-regions and individual countries was alluded to in different ways. This included

examples such as the different interfaces between the judiciary and customary justice systems in different countries and the greater cultural, social and linguistic diversity to cater for in Melanesia compared with Polynesia.

Although PEC members felt they could realistically represent the Pacific Judicial conference it was less realistic to expect them to represent the interests of individual judiciaries from countries other than their own. This highlighted the need for the programme to have close working relationships with the National Coordinators of each country. This is a key relationship area that should be explicitly identified in the relevant terms of reference and contract(s).

For regional programmes that are not directly associated with a regional agency or other body, there is a question around how institutional knowledge is held and passed on especially beyond the duration of the programme.

Confidentiality in relation to the separate contracts has provided frustrations in terms of open and transparent dealings between the contractor (NZ AID), the PEC, the contracted parties and between consortium partners. Regardless of the relevance of the information to solving or addressing issues the fact that it cannot be shared between the two principle parties does not build relationships and would be avoided with a single AMC/MSA arrangement.

The programme is regional in nature and intended to draw on the best resources throughout the region to deliver programmes. There is no question that the FCA has key contributing role in this regard. It is important that the contributions of NZ and other Pacific partners may have to offer is also capitalised on. Concern about ensuring that the most appropriate resources from the region were drawn on was raised during the review.

The Programme's thematic emphasis and mode of delivery was touched on by a number of those interviewed. However, the topics discussed were not in relation to the programme's structure and would be addressed through regular monitoring and reporting to the PEC or by way of a programme review at the appropriate time.

Implications for cost effectiveness and value for money

A number of people interviewed gave reasons why they believed the existing structures and programme delivery is not cost effective. Examples included the administrative overheads of developing, undertaking and administering two comprehensive contracts compared with a comparative single contract MSC/AMC model. Although there is some validity to this argument there are also other factors to take into account. If there was a single MSC/AMC contract in place there would be a greater need to provide an independent monitoring and technical advisory role which would involve an additional separate contract.

Importantly, a separate contract in the monitoring/technical advisory area would not be subject to the same risk of conflict and therefore management and arbitration that the existing arrangement suffers. On the basis of risk around potential costs associated with contract management, the MSC/AMC option would be preferable.

Further, NZAID's lack of experience in managing contractual arrangements akin to those in PJDP also increases the likelihood of either inadequate contract drafting or inefficient or ineffective contract management. This is not a slight on NZAID's contract management, but an acknowledgement that greater resource requirements and higher risk are associated with contractual arrangements where there is less experience and institutional knowledge.

An issue raised during interviews was the level use of short term TA for programme delivery compared with long term TA or additional faculty members. Although the issue was raised with respect to effectiveness in achieving outcomes, it does have implications for costs and effectiveness/value for money. It does not relate to the areas of programme structure that are the focus of this review, but is an issue that has seen differences of opinion between the PD and SP and within the SP consortium.

Implications for administrative effectiveness and efficiency

A number of interviewees expressed concerns that the nature of the consortium arrangement and location of some personnel had negative implications for administrative efficiency and effectiveness of the programme. In particular, having project management and administrative support based out of GJS's Perth office for a Pacific regional programme was of concern for some.

In reality this should only be a significant issue in circumstances where on location support is required, in these situations the time and cost associated with travel could be a concern but should not be an issue most of the time. If however, cost and time constraints associated with distance have prevented parties getting together to reach a common understanding or address issues face to face, this could be a contributing factor to problems within the programme.

One member of the PEC made a strong case to the review team that expediency to ensure cost effectiveness and administrative efficiency should not be at the expense of the programme's integrity or allow its principles to be undermined. The message was that the PEC had confidence in the independent role of the PD who could ensure the PEC constituents' interests were being met and there would be concern if a different structure did not meet this requirement.

"Programme Director" is perhaps an inadequate name for describing the role and creates conflicting expectations of its purpose. The role includes NZAID programme monitoring/management and contract management aspects (but without delegated authority) along with some programme director roles. Not necessarily a happy marriage or the best way to achieve different roles. It is not clear whether or not the PD is expected to represent NZAID in terms of policy input, as is the case with some Technical Advisors contracted along similar lines in some AusAID programmes.

The PD can monitor, quality assure, evaluate and then direct SP despite being a separate and external entity. In a normal MSC/AMC structure the directing role would sit within the SP and the others would be external. It is not normal in other situations to have a contracted independent reviewer also direct an SP. Rather they would make recommendations back to NZAID/governance body for consideration and possible direction.

CONCLUSIONS

Although the PJDP has been able to deliver many of its outputs, increasing problems at the managerial level have now resulted in a total cessation of programme activities. There is a stalemate in renewing the contracts of the implementing parties as the requirements of the PD and SP for doing so are not compatible and NZAID as contract manager has not been able to mediate a solution.

It is the view of the review team that the problems now facing the PJDP are a function of the existing contractual and management arrangements, being inadequate when faced with professional differences and communications issues within the programme, in particular:

- Poor or variable communication across different parts of the programme including between the PD and SP and to some extent the donor agencies.
- NZAID adopting a programme design developed with significant input from AusAID, which was endorsed by the PEC, but lacking experience in developing and managing contracts for such a PD/SP design, resulting in:
 - Contracts that do not clearly or fully clarify separate roles of the PD and SP in such a way that allows differences, including of professional opinion, to be effectively resolved or arbitrated.

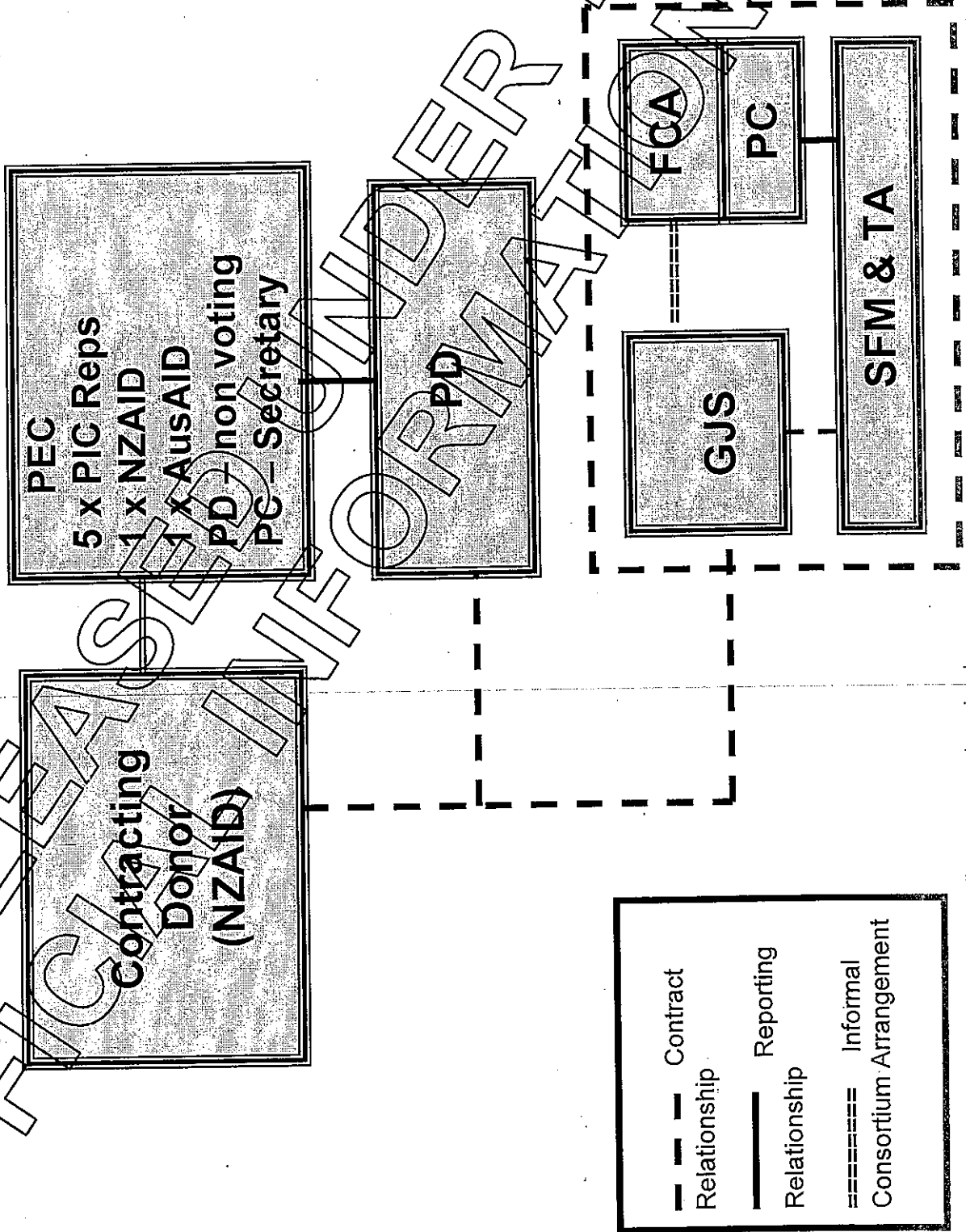
- A combination of responsibilities which are currently carried out by the PD that should be separated into separate contracts
- Reporting lines between PEC, managing donor, PD, SP and PC that are not well aligned with accountabilities.
- Limited resources within NZAID to administer two contracts that have required arbitration and significant administration when issues have arisen and not been dealt with between the programme contracted parties.
- Inadequately defined and documented SP consortium arrangements (including roles, responsibilities and dispute resolution procedures).

It is important to also acknowledge positive aspects to the programme and structures including: good working relationship between the PEC and the PD; and a high level of commitment to delivering the programme from all parties regardless of role. The independent and critical view that the PD has been able to bring to the table has been appreciated by PEC members.

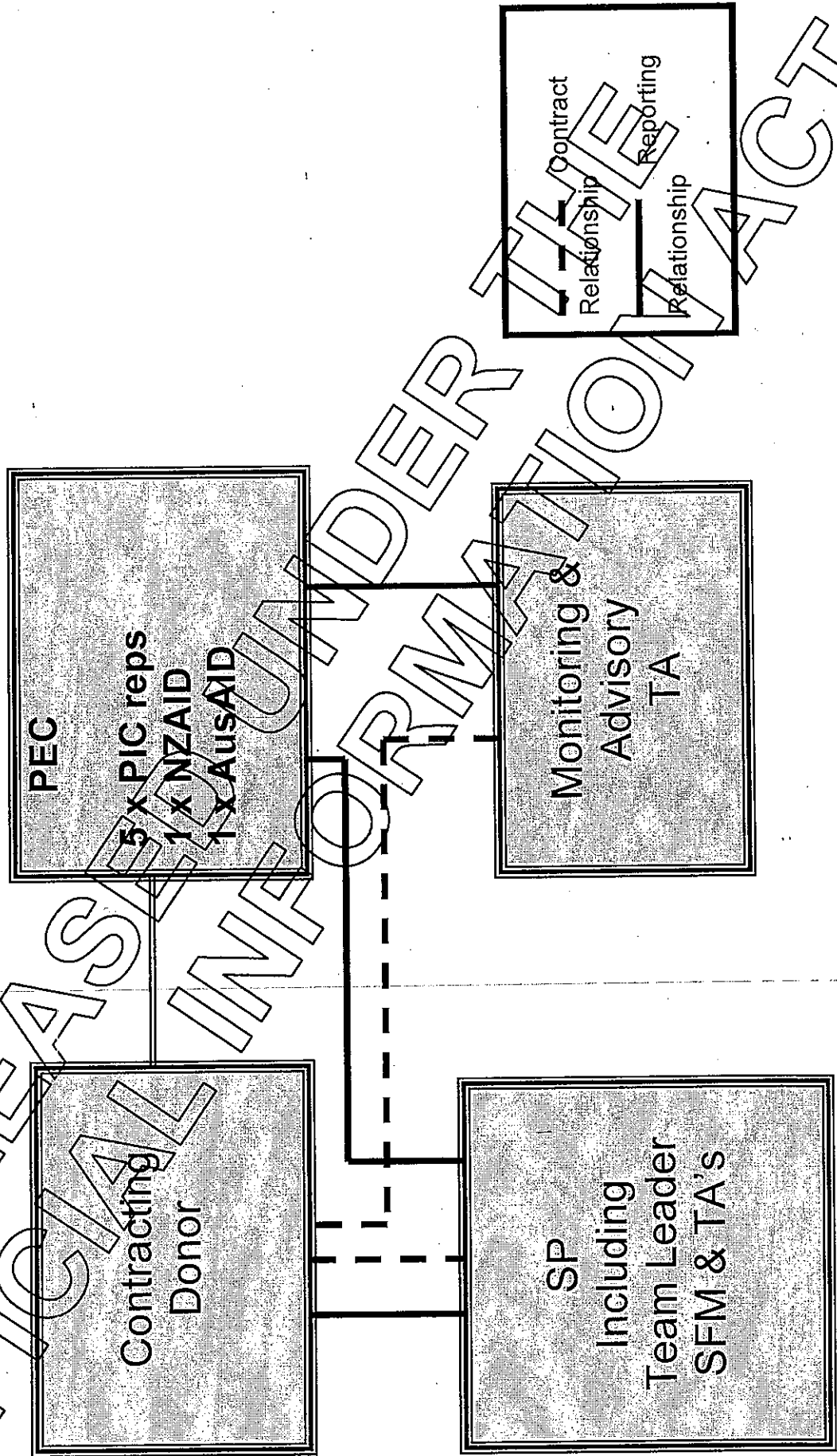
Although, the structure of separate PD and SP contracts is not a core problem *per se*, it greatly increased the risk of a number of the above factors eventuating, or impacting on the programme and reduced the ability to manage them when they did occur. For this reason it should not be continued if possible.

In addition an alternative arrangement using a single AMC/MSC model is likely to provide better value for money in terms of administrative efficiency and effectiveness at all levels. It is felt that possible advantages of the current structure could be achieved by other lower risk means.

PJDP – Indicative Current Structure



PJDP – Indicative Preferred Option Structure



Appendix II – Spheres of Responsibility & Lines of Communications

Stakeholder	Sphere of responsibility	Communicates with
PEC	Responsible for governance of PJDP and overseeing the implementation of PJDP by the Programme Director and the Service Provider	PD SP Participating PIC judiciaries Other stakeholders as necessary
Programme Director	Responsible for overall development, management and performance assessment of the Programme in accordance with the PEC's direction; providing advice and strategic direction over all policy, planning, performance assessment and reporting aspects of the Programme; and overseeing and directing the activities of the Service Provider in the implementation of the PJDP	PEC PD SP NZ AID DPM Law & Justice Participating PIC judiciaries Other stakeholders as necessary
Service Provider	Implementation of PJDP in accordance with the Programme Director's direction	PEC via PD PD SP NZ AID DPM Law & Justice Participating PIC judiciaries Other stakeholders as necessary
NZ AID DPM Law & Justice	NZ AID/Aus AID liaison point for Programme Director and Service Provider on PJDP implementation/administrative matters	PD SP Other stakeholders as necessary
Aus AID Manager – Pacific Law and Justice	In cooperation with NZ AID, responsible for providing funding and oversight to PJDP design, implementation and review	All stakeholders as necessary
Post	Provides in-country information and acts as local point of contact	PD SP Partner Government Other stakeholders as necessary
Partner Governments/ Participating PIC judiciaries	Agrees development outcomes and outputs in the formulation of the Annual Plan through consultation with Service Provider & Programme Director.	PEC PD SP Other stakeholders as necessary
Service Provider Consultants	Complete agreed tasks in the delivery of the PJDP Annual Plan	PD SP Other stakeholders as necessary

Appendix III – Consultation List for Review

	Name	Position
1	Chief Justice of Samoa	PEC
2	Chief Justice of Federated States of Micronesia	PEC
3	Senior Justice of the Peace, Cook Islands	PEC
4	Chief Registrar of the High Court, Tonga	PEC
5	Chief Justice of Vanuatu	PEC
6	Law and Justice Adviser	AusAID
7	Law & Justice Programme Manager	AusAID
8	Counsellor	AusAID
9	Design Adviser	AusAID
10	Team Leader	NZAID
11	Development Programme Manager	NZAID
12	FSU Manager	NZAID
13	Budget Adviser	NZAID
14	Payments Officer	NZAID
15	Contract Adviser	NZAID
16	Programme Director	PJDP - Programme Director
17	CEO, Global Justice Solutions	PJDP – Service Provider
18	Programme Coordinator (Federal Courts of Australia)	PJDP – Service Provider consortium
19	GJS Contract representative on PJDP	PJDP – Service Provider
20	Senior Faculty Member, GJS	PJDP - SFM
21	past TA	PJDP