



## Public Accounts Committee

Report 7/56 – June 2018

### Examination of Auditor-General's Performance Audit Reports February 2016 - September 2016



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The motto of the coat of arms for the state of New South Wales is "Orta recens quam pura nites". It is written in Latin and means "newly risen, how brightly you shine".

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## Membership

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# Terms of Reference

Under section 57 of the *Public Finance and Audit Act 1983*, the functions of the Committee include the examination of any report of the Auditor-General laid before the Legislative Assembly and any circumstances connected with those reports.

*Public Finance and Audit Act 1983*

## **57 Functions of the Committee**

(1) The functions of the Committee are:

...

(c1) to examine any reports of the Auditor-General laid before the Legislative Assembly,

(d) to report to the Legislative Assembly from time to time upon any item, or any circumstances connected with, those financial reports, reports or documents which the Committee considers ought to be brought to the notice of the Legislative Assembly.

At its meeting on 23 November 2017, the Committee adopted the following terms of reference:

That the Committee inquire into and report on any circumstances connected with the following reports of the Auditor-General which the Committee considers ought to be brought to the notice of the Legislative Assembly:

- Early Childhood Education
- Franchising of Sydney Ferries Network Services
- Managing unsolicited proposals in NSW
- Monitoring food safety practices in retail food businesses
- Performance frameworks in custodial centre operations
- Realising the benefits of the Service NSW initiatives
- Red Tape Reduction
- Reintegrating young offenders into the community after detention
- Sale and Lease of Crown Land
- Supporting students with disability in NSW public schools

# Chair's Foreword

This is the fourth report of the Public Accounts Committee's performance audit review program to be tabled in the 56th Parliament.

In accordance with its established performance review process, the Committee examines performance audits conducted by the Auditor-General, in order to further investigate action taken by agencies in response to the Auditor-General's recommendations. As part of the follow up, the Committee questions agencies on measures they have taken and, if required, conducts public hearings to gather additional information from agency representatives.

The process has proven to be an effective means of testing action taken on performance audits and maintaining a high level of scrutiny of the agencies under review.

This report reviews ten performance audits covering the period from February to September 2016, conducted into: Early Childhood Education; Franchising of Sydney Ferries Network Services; Managing unsolicited proposals in NSW; Monitoring food safety practices in retail food businesses; Performance frameworks in custodial centre operations; Realising the benefits of the Service NSW initiatives; Red Tape Reduction; Reintegrating young offenders into the community after detention; Sale and Lease of Crown Land; and Supporting students with disability in NSW public schools.

With some exceptions, the Committee is generally satisfied that the responsible agencies are now implementing the Auditor-General's recommendations, while identifying areas where more action is required.

The Committee has made ten recommendations to NSW Government agencies to address the unsolicited proposals process, performance frameworks in correctional facilities and the design of prisons, increased support for juvenile offender vocational training and reintegration into the community, and taking immediate action to implement the Greiner Review recommendations for red tape reduction.

I am pleased to present this Report and thank the Auditor-General and Audit Office staff for their assistance in this inquiry. I also wish to thank my Committee colleagues and Committee secretariat for their contributions and support.



**Bruce Notley-Smith MP**  
Chair

# Findings and Recommendations

Recommendation 1 \_\_\_\_\_ 11

The Committee recommends that the Department of Premier and Cabinet investigates possible models for establishing minimum financial thresholds when assessing unsolicited proposals.

Recommendation 2 \_\_\_\_\_ 12

The Committee recommends that the Department of Premier and Cabinet confers with the Auditor-General to develop a suitable methodology for quantifying and assessing unsolicited proposals.

Recommendation 3 \_\_\_\_\_ 12

The Committee recommends that the Department of Premier and Cabinet provides advice to Local Government NSW about how to establish a framework of best practice for assessing unsolicited proposals at local government level.

Recommendation 4 \_\_\_\_\_ 17

The Committee recommends that Corrective Services NSW provides an update to the Committee on the progress of its commissioning approach, including the rollout of the KPI framework, benchmarking process and service level agreements, by December 2018.

Recommendation 5 \_\_\_\_\_ 17

The Committee recommends that Corrective Services NSW publicly reports on the design capacity of each prison, while making clear any other relevant information that establishes precisely what is being measured.

Recommendation 6 \_\_\_\_\_ 22

The Committee recommends that Juvenile Justice publicly releases the findings of its Case Management Policy review, after the June 2018 review has been completed.

Recommendation 7 \_\_\_\_\_ 22

The Committee recommends that Juvenile Justice updates and maintains its publicly available data regarding reintegration outcomes by October 2018.

Recommendation 8 \_\_\_\_\_ 22

The Committee recommends that Juvenile Justice includes reintegration measures and outcomes in its 2019 annual report.

Recommendation 9 \_\_\_\_\_ 22

The Committee recommends that Juvenile Justice formalises its work with relevant agencies in the provision of vocational training. This includes articulating what it wants to achieve from the training being offered in detention centres, and how agencies will engage to do this.

Recommendation 10 \_\_\_\_\_ 26

The Committee recommends that the Government expedite action to respond to the recommendations of the Greiner Review as a matter of urgency.



# Glossary

CC	Correctional Centre
CFU	Community Funding Unit
CES	Community and Engagement Strategy
CIMS	Client Information Management System
CSNSW	Corrective Services NSW
DFSI	Department of Finance Services and Innovation
DISRD	Department of Industry, Skills and Regional Development
DPC	Department of Premier and Cabinet
ECPG	Early Childhood Policy Group
FACS	Department of Family and Community Services
FPAR	Food Premises Assessment Report
IPART	Independent Pricing and Regulatory Tribunal
JJ	Juvenile Justice
KPIs	Key Performance Indicators
NQF	National Quality Framework
PAC	Public Accounts Committee
PLFs	Performance Linked Fees
PMF	Performance Management Framework
SLA	Service Level Agreement
TfNSW	Transport for New South Wales

# Chapter One – Introduction

## Overview

- 1.1 The performance audits examined by the Committee for this inquiry were tabled by the Auditor-General in the period February to September 2016. The aim of the examination is to assess the required action taken by relevant agencies in response to the Auditor-General’s recommendations. The Committee considered evidence provided by each agency and also sought advice from the Auditor-General.
- 1.2 The Committee found significant work has been undertaken to address issues raised in the audits. It is clear that the agencies have taken the audit review process seriously and instigated action to implement accepted recommendations. Some recommendations will take time to fully action or are being addressed through the implementation of larger projects.

## Inquiry process

- 1.3 In accordance with its legislative responsibility outlined in section 57 of the *Public Finance and Audit Act 1983*, the Committee resolved at its meeting on 23 November 2017 to commence an examination of the Auditor-General’s performance audits from February 2016 to September 2016. The full terms of reference are included on page iii.
- 1.4 The process for these examinations included:
- Inviting a submission from responsible agencies twelve months after the tabling of the audit.
  - Referring agencies’ submissions to the Auditor-General for comment.
  - Where the Committee determined that further information was required, agency representatives and the Auditor-General were invited to a hearing to provide additional information.
- 1.5 The Committee examined ten performance audit reports and received 11 submissions in relation to its examination. A full list of submission authors can be found at Appendix One and copies of the submissions are available on the Committee’s website at: [Submissions](#).
- 1.6 On the basis of submissions received, the Committee determined that three performance audits had been satisfactorily completed, with the agencies concerned fully implementing the Auditor-General’s recommendations. These performance audits were:
- *Early Childhood Education*
  - *Realising the benefits of the Service NSW initiatives*
  - *Sale and Lease of Crown Land*

- 1.7 Details concerning these performance audits can be found on the website of the NSW Auditor-General at: [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au).
- 1.8 The Committee was not satisfied that recommendations contained in four of the remaining performance audit reports had been fully addressed. To conduct a more detailed examination of these reports, the Committee held a public hearing on 12 February 2018 to seek further information. The performance audits examined at the public hearing were:
- *Managing unsolicited proposals in NSW*
  - *Performance frameworks in custodial centre operations*
  - *Reintegrating young offenders into the community after detention*
  - *Red tape reduction*
- 1.9 The Audit Office provided written feedback on the submissions made by agencies on 15 November 2017. The Auditor-General, Ms Margaret Crawford, Deputy Auditor-General, Mr Ian Goodwin, and Assistant Auditor-General, Claudia Migotto also attended the public hearing and supplemented the evidence given.
- 1.10 A transcript of the hearing is located on the Committee's website at: [Transcript](#). Details of witnesses who appeared at the hearing are included at Appendix Two.
- 1.11 Additionally, the Committee sought further written clarification of aspects of agency responses to three performance audits, namely:
- *Franchising of Sydney Ferries Network Services*
  - *Monitoring food safety practices in retail food businesses*
  - *Supporting students with disability in NSW public schools*
- 1.12 Detailed agency responses to the Committee's further questions can be found on the Committee's website at: [Agency Responses](#)
- 1.13 Discussion of the audits examined is detailed in subsequent chapters of the report.

## Chapter Two – Committee's Consideration of Performance Audits not subject to Public Hearings

### Background

- 2.1 As outlined in Chapter One, and in accordance with the Committee's established procedure of considering performance audit reports in consolidated groupings, this report deals with ten Audit Office reports for the period February to September 2016.
- 2.2 The Committee's practice in reviewing the reports is to make a determination, based on agency responses and Audit Office advice, about how to exercise its scrutiny functions in relation to each audit report's recommendations. The options available are to: accept the initial agency response, with no further action required; seek further written elaboration of steps taken to carry out the report's recommendations; or invite agency representatives to provide more detailed information by appearing at a public hearing.
- 2.3 In the case of the performance audits under current review, the Committee determined that the agency responses and Auditor-General's comments on three of these audits required no further action. The Committee resolved to seek additional written responses to three further audits and to take formal evidence at a public hearing on the remaining four audits.
- 2.4 For the purposes of this Chapter, set out below is the Committee's consideration of the audit reports which were not deemed to require formal evidence to be taken at a public hearing. The performance audits subject to formal evidence are detailed in subsequent chapters. More comprehensive information about all audits can be found on the NSW Audit Office and Public Accounts Committee websites.

### No action required

#### *Audit Report 266*

- 2.5 The Audit Office report entitled *Realising the Benefits of the Service NSW Initiatives* deals with a program to establish a one-stop access point for NSW Government transaction services. Established in 2013, Service NSW is the shopfront umbrella for a range of service providers, including Roads and Maritime Services, NSW Fair Trading and the Registry of Births, Deaths and Marriages. These agencies represent approximately 80% of direct public transactions with Government.
- 2.6 According to the Audit Office, a single contact point for customer service delivery is valid and practical from a consumer's point of view and has achieved its objective through the establishment of Service NSW. Although the report made a number of recommendations for Service NSW to improve its business case and accountability processes, these were dealt with adequately in the agency response to the Audit. The Committee is satisfied that the agency has met its obligations and has no further comment to make.

*Audit Report 271*

- 2.7 The performance Audit into *Early Childhood Education* assesses how well the Department of Education targets early childhood education funding in achieving the Government's universal access objectives and performance benchmarks. The current benchmark is 95% of children being enrolled in at least 600 hours of quality education programs in the year before school. The audit report also examines whether the Department efficiently regulates the operation of early childhood education.
- 2.8 While the audit report found that the targeting of funding was not fully effective and identified data collection deficiencies, the subsequent Departmental response indicated that staff were being used more flexibly. Combined with technology improvements to better target resources and comply with the National Quality Framework, the reported changes address the intent of the audit report recommendations. Therefore, the Committee is satisfied that the agency has met its obligations and has no further comment to make.

*Audit Report 273*

- 2.9 The Audit Office report on the *Sale and Lease of Crown Land* examines whether the Department of Industry – Lands, manages the sale and leasing of Crown land effectively, within legislative and policy requirements. This includes processes for ensuring quality and transparency in decision making for leasing and sales, and engagement with stakeholders when leasing or selling Crown lands.
- 2.10 The Audit reported that there were deficiencies in the management of sales and leasing and in overall governance of decision-making. However, the agency response highlighted more recent changes in the executive structure which had mitigated identified problems by improving oversight of decision-making, co-ordinating work across the Land Division and clarifying responsibility for meeting Departmental objectives. The Committee is satisfied that the agency has met its obligations and has no further comment to make.

**Additional information requested***Audit Report 265*

- 2.11 In its report on the performance audit into *Franchising of Sydney Ferries Network Services*, the Audit Office stated that the contractual arrangements entered into were justified and satisfactorily managed by Transport for NSW (TfNSW). As part of the seven year franchise contract, TfNSW preserved all fare revenues, controlled price changes, routes and timetables and retained fleet ownership and maintenance. This arrangement had resulted in cost savings and service improvements with minimal risks.
- 2.12 The Audit Office also made a series of recommendations for future franchising or contract renewals to: streamline the franchising process; adopt appropriate Financial Base Case assumptions; align government priorities in performance information; increase incentives for service reliability, including revenue protection targets; and improve service provision assessment methodologies.

- 2.13 In the agency response, TfNSW provided in principle acceptance of the majority of recommendations and also indicated that current contracting and franchising processes were under review. Two recommendations were rejected due to existing contractual agreement constraints. These related to improving the measurement methodology for assessing vessel cleanliness and the development of procedures to ensure that service improvement projects specified by TfNSW not to be used as a contractual remedy.
- 2.14 As there were matters raised in the audit response requiring further elaboration, the Committee wrote to TfNSW seeking additional information. The TfNSW response on 21 December 2017 indicated that the next generation of ferry service contracts would incorporate the Audit Office recommendations. Additional details regarding vessel cleanliness assessment and service improvement projects were also provided, which has satisfied the Committee's concerns.

*Audit Report 270*

- 2.15 The audit report dealing with *Supporting Students with a Disability in NSW Public Schools* examines how well the Department of Education manages school transitions for students with a disability. This includes new enrolments as well as school changes, and assesses whether teachers are adequately supported to improve student educational outcomes.
- 2.16 While the audit findings were generally positive, the report also found that many teachers in regular classes did not feel adequately equipped with the required skills to support students with a disability. Furthermore, some teachers were reluctant to make adjustments to their teaching because they believed the students did not have the capacity to learn. In some cases, parents were advised that there was no place available at the local school.
- 2.17 The Audit recommended that more readily accessible information and a more effective consultation process should be made available for students with a disability and their families. A number of other recommendations aimed to provide additional skills training for teachers, improve effective use of resources and enhance learning outcomes monitoring for students.
- 2.18 In its response, the Department of Education addressed most recommendations, but provided limited information in relation to three dealing with: the provision of parental information; consultation; and options for enhancing recruitment practices. The Committee wrote to the Department, seeking further information about these recommendations.
- 2.19 The Departmental response, received on 25 January 2018, indicated that schools are in the process of transitioning to a new website service which will provide a comprehensive channel for all parents across NSW. This new website will provide detailed information to enhance collaboration between school staff, parents and carers, assist with community engagement and give guidance for supporting individual student learning needs. The website resource includes legislative and regulatory requirements and professional standards, to assist in attracting teachers.
- 2.20 The additional information provided has satisfied the Committee's concerns.

*Audit Report 274*

- 2.21 The performance audit into *Monitoring Food Safety Practices in Retail Food Businesses* assesses the extent to which the NSW Food Authority effectively ensures that the retail food sector complies with food safety standards. Specifically, the Audit examines whether the Authority employs an effective risk-based approach to monitor such compliance.
- 2.22 Audit findings revealed that while the Authority consistently reports a high rate of safety compliance, it does not obtain sufficient data from councils or have effective reliability controls to provide accuracy assurance for its reports. The Audit Office recommended that the Authority improve its risk-based approach by: monitoring the regulatory activities of councils and other enforcement agencies; clarify its own the roles and responsibilities as well as those of the other agencies; and update its own guidelines and operational methodologies.
- 2.23 The NSW Food Authority, in responding to the Audit, indicated that some of the recommendations were subject to the development of a new business case, including the creation of a single electronic platform. This approach requires extensive negotiations with respective enforcement agencies and the Authority reported that the final product could not be successfully implemented until mid-2018.
- 2.24 In order to assess the details of this proposal and provide further assurances, the Committee sought additional information, which was provided on 19 January 2018. The response from the Authority described its existing powers under the *Food Act 2003*, elaborated on the consultation and training processes undertaken, detailed the precise nature of inspection data to be collected as part of the new system and clarified the guidelines setting out the roles and responsibilities of all respective enforcement agencies.
- 2.25 The Committee acknowledges that New South Wales has a lower reported rate of foodborne illness than the national average and is pleased to see that there has been significant progress to make the enhanced inspection system operational. It is anticipated that the improved collection and monitoring processes will result in continuing improvements in food safety in NSW. The additional information provided has satisfied the Committee's concerns.

# Chapter Three – Managing Unsolicited Proposals in NSW

## Introduction

- 3.1 In NSW, the procurement of Government services and development or delivery of new Government infrastructure is normally achieved through competitive tendering, which is viewed as the best way to achieve value for money in a transparent and fair manner.
- 3.2 An alternative process to engage the private sector in the provision of new infrastructure and services is by way of unsolicited proposals. The NSW Government has established a framework for dealing with such unsolicited proposals, detailed in a document entitled “Unsolicited Proposals: Guide for Submission and Assessment” (‘the Guide’), released in January 2012. The Guide sets out governance arrangements for the assessment of unsolicited proposals from the private sector.
- 3.3 Under the Guide, an unsolicited proposal is defined as an approach to Government to build and/or finance infrastructure or provide goods and/or services where the Government has not requested the proposal.
- 3.4 The Audit Office noted that unsolicited proposals are inherently riskier than the more transparent and open competitive tendering process. The Guide sets out a four-stage process for assessing unsolicited proposals<sup>1</sup>:
- (i) **Pre-submission concept review stage (optional)** – the demonstration of the unique attributes of both the proposal and the proponent in order to progress successfully through the unsolicited proposal assessment process.
  - (ii) **Stage 1a** – Initial submission and preliminary assessment – assessment of the proposal by DPC staff to determine if it contains sufficient benefit to justify direct dealing and undertake stage 1b.
  - (iii) **Stage 1b** – Strategic assessment of the initial submission – assessment to identify any potential for further consideration and development with the proponent.
  - (iv) **Stage 2** – Detailed proposal – the Government and proponent work collaboratively to develop and assess a detailed proposal.
  - (v) **Stage 3** – Negotiation of final bidding offer – outstanding issues are finalised with the intention of entering a binding agreement should the Government accept the final offer.

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<sup>1</sup> NSW Auditor-General’s Performance Audit Report; Managing unsolicited proposals in New South Wales, March 2016, p 6.



## The performance audit

- 3.5 This Audit examined the adequacy of governance arrangements for unsolicited proposals from the private sector with reference to the NSW Government's 'Unsolicited Proposals: Guide for Submissions and Assessment' ('the Guide').

## Major audit findings

- 3.6 The overall conclusion reached by the Audit Office was that although the governance arrangements for unsolicited proposals were adequate, there was a need for greater transparency and public reporting on such proposals. The audit report noted that the Department of Premier and Cabinet ('DPC') had effectively coordinated unsolicited proposals through its Guide and provided support and advice to agencies.
- 3.7 While acknowledging that unsolicited proposals constitute a small proportion of Government procurement, the Audit found that agencies most commonly approached with unsolicited proposals had a good understanding of the process. However, this may not apply to agencies which receive only occasional proposals and therefore would be less familiar with key requirements of the process and how to administer it.
- 3.8 The Auditor-General also noted that the Guide could provide greater clarity in certain areas, such as the scope of DPC's oversight role and the definition of Government, as used throughout the Guide. In discussions with DPC, the Auditor-General understood that the term Government may, depending on where it is used, be a reference to: the Cabinet of the NSW Government, the Infrastructure Committee of Cabinet, Department of Premier and Cabinet or either of the overarching or proposal specific steering committees. The variable use of the term 'Government' may make it difficult to determine who is making critical decisions throughout the unsolicited proposals process.<sup>2</sup>
- 3.9 Another identified issue was the tension between respecting commercial-in-confidence provisions and ensuring transparency and accountability to the public. Given the risk potential and increased public interest in unsolicited proposals, the Audit Office suggested that DPC should provide greater reporting to promote public confidence in the process. The audit report noted a variety of disclosure models which DPC could consider, such as the Market-Led Proposal process applying in Victoria.<sup>3</sup>
- 3.10 The Auditor-General also found that there was little evidence about the extent to which the Government pays regard to relevant processes and approval requirements in related procurement policy documents, when forming governance arrangements for unsolicited proposals.

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<sup>2</sup> NSW Auditor-General's Performance Audit Report; Managing unsolicited proposals in New South Wales, March 2016, p 14.

<sup>3</sup> NSW Auditor-General's Performance Audit Report; Managing unsolicited proposals in New South Wales, March 2016, p 18.

**Auditor-General's recommendations**

- 3.11 The Auditor-General made four recommendations specifying: a greater need for transparency regarding the unsolicited proposal process; elaboration of the nature of the oversight role of DPC and; increased public reporting and documentation of unsolicited proposals received by the Government.
- 3.12 The report also recommended greater clarification and details of terminology within the Guide, as well as the requirement for the inclusion of probity advisers in the later stages of assessment. The recommendations are set out in the following table:

**Table 1 - Recommendations made by the Auditor-General in Report No. 268<sup>4</sup>****By March 2017, the Department of Premier and Cabinet should:**

No.	Recommendation
1	Revise the 'Unsolicited Proposals: Guide for Submission and Assessment' to address matters of detail discussed in this report, including to:
1.1	clarify the intended scope and meaning of the 'oversight' provided by DPC over the unsolicited proposal assessment process
1.2	clarify the application of the term 'government'
1.3	better explain how 'value for money' is addressed as one of five probity fundamentals, including the role of probity advisers in reviewing this probity fundamental
1.4	require probity advisers be appointed for unsolicited proposals that progress beyond Stage 1, except where a proposal satisfies prescribed criteria
1.5	clarify options for unsolicited proposals that are found not to meet the criteria for direct dealing.
2	Facilitate whole-of-government understanding of the unsolicited proposals process and related matters by releasing a Premier's Memorandum on this topic.
3	Expand the existing scheme of public reporting for unsolicited proposals received by government by:
3.1	publishing aggregate data about all proposals that are received, including reasons for being declined
3.2	publishing more detailed information for proposals that proceed beyond Stage 1 to reassure the public that governance and probity processes have been followed
3.3	publishing an audited contract summary for successful unsolicited proposals greater than \$100 million.
4	Clarify the requirement that government 'have regard to relevant processes and approval requirements in related policy documents' (as set out in section 3.7 of in 'Unsolicited Proposals: Guide for Submission and Assessment') including clarifying:
4.1	the policy intent of the expression 'have regard to'
4.2	who is responsible for giving regard to other relevant processes and approval requirements

<sup>4</sup> NSW Auditor-General's Performance Audit Report; Managing unsolicited proposals in New South Wales, March 2016.

No.	Recommendation
4.3	at what stage in the unsolicited proposal process regard should be given to other relevant processes and approval requirements
4.4	how consideration of these matters is documented.

### Agency response

- 3.13 In its written response, the Department of Premier and Cabinet accepted a majority of the Auditor-General's recommendations and has prepared an updated draft Guide for Cabinet consideration, requiring Cabinet Infrastructure Committee approval. However, according to DPC, its further implementation will await the findings and recommendations of the NorthConnex unsolicited proposal Performance Audit.
- 3.14 DPC rejected recommendation 3.2, requiring the publication of more detailed information, noting that it would continue to disclose brief details of proposals which proceed beyond Stage 1, as appropriate. In its response, DPC stated that proposals beyond Stage 2 (and 3) would generally contain commercially sensitive information and intellectual property and confidentiality would be maintained to encourage the continued submission of proposals.<sup>5</sup>
- 3.15 In evidence at the public hearing, DPC noted that the Department had taken steps to improve its reporting to the public. In particular, Mr Con Kargas, Principal Policy Officer, Economic Policy Group, noted that DPC would publish information about the 'proposal description, the identity of the proponent, the suggested governance structure and the reasons for progressing to stage 2',<sup>6</sup> to capture why the proposal was considered unique.
- 3.16 Furthermore, if the proposal is accepted by the Government at the end of stage 3, DPC would publish any contracts above \$100 million, pursuant to the *Government Information (Public Access) Act 2009* (GIPA).<sup>7</sup>
- 3.17 The Department also indicated that it has acted on recommendation 4, by amending the original guideline from 'having regard to relevant processes and approval requirements in related policy documents' to explicitly stating that unsolicited proposals will take into account other relevant policy documents.<sup>8</sup>

### Auditor-General's comments

- 3.18 In its written submission, the Audit Office was satisfied that the Department of Premier and Cabinet had updated the 'Unsolicited Proposals: Guide for Submission and Assessment' which reflected almost all of the accepted recommendations. However, the Auditor-General noted that while DPC's response indicated that it

<sup>5</sup> Submission No.4, Department of Premier and Cabinet, p. 4.

<sup>6</sup> Con Kargas, Principal Policy Officer, Economic Policy Group, Department of Premier and Cabinet, Transcript of evidence, 12 February 2018, p. 15.

<sup>7</sup> Con Kargas, Principal Policy Officer, Economic Policy Group, Department of Premier and Cabinet, Transcript of evidence, 12 February 2018, p. 15.

<sup>8</sup> Con Kargas, Principal Policy Officer, Economic Policy Group, Department of Premier and Cabinet, Transcript of evidence, 12 February 2018, p. 16.

would 'continue to work towards the implementation of the majority of the recommendations contained in the audit report',<sup>9</sup> it did not specify which recommendations would not be implemented.

- 3.19 The Auditor-General also noted DPC's rejection of recommendation 3.2 relating to publishing more detailed information for proposals which proceed past Stage 1, citing concerns with commercially sensitive information and potential deterrence effects with further proposals. Countering this, the Auditor-General made reference to examples of different reporting models which DPC could consider.

### The Committee's comments

- 3.20 The Committee notes DPC's progress in implementing the recommendations in the Auditor-General's report, in particular enhancing public reporting on the process and procedure of determining unsolicited proposals. However, the Committee has concerns about aspects of the unsolicited proposals assessment framework.
- 3.21 In questioning DPC about the potential for setting minimum financial thresholds when considering unsolicited proposals, the Committee was told that although the Department had decided not to apply a threshold, it would be receptive to innovative ideas on how to apply setting minimum thresholds, as is the case in South Australia, Tasmania and the ACT.
- 3.22 The Committee also asked DPC about the extent to which the cited criteria had to be met to qualify for a bid. In its evidence at the public hearing, the Department noted that all criteria had to be met for a successful bid, but that the most significant of these were uniqueness and value for money.<sup>10</sup>
- 3.23 In exploring this further, the Committee was struck by the lack of an evidence based weighting formula to differentiate between bids and to provide greater assurance about the objectivity of the process. This may be an area where the Audit Office could provide expert guidance.
- 3.24 In addition, the Committee is concerned about the lack of a consistent approach by local government in assessing unsolicited proposals, when the State Government already has a framework in place. DPC noted that it is receptive to assisting local government to provide advice to establish a streamlined framework when assessing unsolicited proposals in local government.<sup>11</sup>

### Recommendation 1

**The Committee recommends that the Department of Premier and Cabinet investigates possible models for establishing minimum financial thresholds when assessing unsolicited proposals.**

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<sup>9</sup> Submission No.4, Department of Premier and Cabinet, p. 1.

<sup>10</sup> Simon Draper, Deputy Secretary, Economic Policy Group, Department of Premier and Cabinet, Transcript of evidence, 12 February 2018, p. 18.

<sup>11</sup> Con Kargas, Principal Policy Officer, Economic Policy Group, Department of Premier and Cabinet, Transcript of evidence, 12 February 2018, p. 18.

**Recommendation 2**

The Committee recommends that the Department of Premier and Cabinet confers with the Auditor-General to develop a suitable methodology for quantifying and assessing unsolicited proposals.

**Recommendation 3**

The Committee recommends that the Department of Premier and Cabinet provides advice to Local Government NSW about how to establish a framework of best practice for assessing unsolicited proposals at local government level.

## Chapter Four – Performance Frameworks in Custodial Centre Operations

### Introduction

- 4.1 Performance frameworks consist of a variety of strategies and activities designed to monitor and improve the performance and outcomes of individuals and organisations.
- 4.2 Corrective Services NSW (CSNSW) has a primary role in reducing re-offending and enhancing community safety by delivering correctional services. A robust performance framework clearly aligned to these outcomes is essential to enable CSNSW to effectively achieve these goals.
- 4.3 CSNSW's performance framework consists of three primary elements:
- (a) Key Performance Indicators (KPIs) – quantitative performance requirements linked to organisational objectives and Government outcomes.
  - (b) Operating standards (public correctional centres) and specifications (private correctional centres) – legislative and national guideline requirements to minimise risk and provide a safe work environment.
  - (c) Performance Linked Fees (PLFs) – used in private correctional centres to incentivise good performance by linking financial payments to performance.

### The performance audit

- 4.4 This Audit assessed the effectiveness of CSNSW's performance framework in delivering custodial services, with a specific focus on reducing reoffending and enhancing community safety.

### Major audit findings

- 4.5 The Audit identified that CSNSW's performance frameworks have limited effectiveness, as they do not include KPIs or benchmarks at an individual public correctional centre level. Subsequently, CSNSW was unable to accurately measure the performance of each individual centre.
- 4.6 The Audit found that in 2014-15, CSNSW met five of its twelve organisational targets. CSNSW noted that the targets that were not achieved (which included nil prisoner-on-prisoner assaults and eight hours' time out of cells for inmates in secure facilities) reflect Government policy and can be difficult to deliver in a high-risk environment.
- 4.7 Additionally, the Audit determined that operating standards and specifications, as well as PLFs, were well defined and reported on. CSNSW has established actions and processes to address any reported variations.

**Auditor-General's recommendations**

4.8 The Auditor-General made 13 recommendations to the Department of Justice (CSNSW), 5 of which were to be implemented by December 2016 and 8 to be implemented by June 2016. The recommendations are set out in the following table:

**Table 2 - Recommendations made by the Auditor-General in Report No. 267: Performance Frameworks in custodial centre operations**

**By December 2016, the Department of Justice (Corrective Services NSW) should:**

No.	Recommendation
1	Adopt a commissioning approach for the delivery of custodial services. This should include: <ul style="list-style-type: none"> <li>consulting with service providers, including private and public providers on outcomes, output and performance requirements</li> <li>publishing Commissioning Intentions which define strategic and service level outcomes and a balanced set of KPIs, including time out of cells</li> <li>establishing Service Level Agreements for public correctional centres which set and align KPIs with the Commissioning Intentions, and set centre-specific KPIs and benchmarks appropriate for the purpose of the centre</li> <li>establishing contracts for new services or renewed tenders which set and align KPIs with the Commissioning Intentions, set targets informed by benchmarking, and set centre specific KPIs and benchmarks appropriate for the purpose of the centre</li> <li>report on prisoner-to-staff ratios once its benchmarking program is complete</li> </ul>
2	Complete its benchmarking exercise on public correctional centre performance
3	Use a 'balanced scorecard' ranking system to assess public and private correctional centre performance
4	Publish Service Level Agreements and public correctional centre performance reporting public
5	Strengthen the link between Performance Linked Fees (PLFs) and outcomes

**By June 2016, the Department of Justice (Corrective Services NSW) should:**

No.	Recommendation
6	Report on design correctional capacity (augmented for expansions and renovations consistent with standards)
7	Discontinue duplicated elements of Trends of Operations KPI reporting but maintain financial reporting aspects
8	Provide General Managers with the Custodial Corrections Quarterly Performance Report and offer guidance on its interpretation
9	Investigate alternative methods of operating standards review for lower security centres
10	Provide greater detail of private correctional centre performance in annual reports

<b>11</b>	Document the process for managing and setting actions in response to organisational and public prison KPI variation
<b>12</b>	Roll out the Department of Justice's performance management framework, including the adoption of employee performance agreements
<b>13</b>	Establish an Operations Oversight Committee to monitor the effectiveness of remedial action.

### Agency responses

- 4.9 In its response to the Audit, CSNSW accepted all recommendations except recommendation 6, which was taken 'under consideration'.<sup>12</sup>
- 4.10 Recommendation 6 stated that CSNSW should report on design capacity, as opposed to exclusively reporting on operational capacity. The stated reason for the lack of support for this recommendation by CSNSW was the complexity of design capacity and the risk of creating an oversimplification and misinterpretation of this metric.
- 4.11 When giving evidence at the public hearing Mr James Koulouris, Assistant Commissioner, Governance and Continuous Improvement, outlined the complexity of design capacity, noting that:
- 'With design capacity, it is very much about inputs – you have got a prison facility designed to fit so many at some point in time- whereas with the operational capacity it is more focused around the outcome'.<sup>13</sup>
- 4.12 CSNSW stated that design capacity was reported internally, as well as being a significant focus of all new prison builds and infrastructure strategies, stressing that the design capacity for these facilities will likely be 'quite apparent'.<sup>14</sup>
- 4.13 Furthermore, CSNSW has adopted a 'commissioning approach for the provision of custodial services'.<sup>15</sup> This includes the development of performance requirements for each prison as part of a KPI Performance Measurement Framework, as well as service level agreements for each prison.
- 4.14 It was noted that this work had been 'partially achieved',<sup>16</sup> with centre-specific targets and service level agreements being drafted as at 11 April 2017. CSNSW also indicated that they had begun the benchmarking exercise for public correctional centres, stating that all centres would have commenced benchmarking by mid-2018.
- 4.15 During the public hearing, CSNSW were asked about the status of this work and the timelines for completion. The agency responded that while a framework has

<sup>12</sup> Submission No. 3, Department of Justice, p.7.

<sup>13</sup> Mr James Koulouris, Assistant Commissioner, Governance and Continuous Improvement, NSW Department of Justice, Transcript of evidence, 12 February 2018, pp.6-7.

<sup>14</sup> Mr James Koulouris, Assistant Commissioner, Governance and Continuous Improvement, NSW Department of Justice, Transcript of evidence, 12 February 2018, p.7.

<sup>15</sup> Submission No. 3, Department of Justice, p.1.

<sup>16</sup> Submission No. 3, Department of Justice, p.1.



been developed that sets out 17 key KPIs, it will be 'at least 15 months before we get full implementation of the final centre'.<sup>17</sup>

- 4.16 This includes the benchmarking process which will determine the performance thresholds for each individual centre. The development of the KPI framework and benchmarking of individual prisons has been in progress for two years to date.
- 4.17 In supplementary evidence provided to the Committee, CSNSW indicated that the performance results of this benchmarking process will be made public once it has been fully implemented.

#### Auditor-General's comments

- 4.18 As previously stated, the Audit Office provided written feedback on the submissions made by agencies. In its written submission, the Audit Office noted that CSNSW's response lacked clear timeframes for when their commissioning approach would be finalised, including the benchmarking process and the development of service level agreements and centre specific performance targets.
- 4.19 In further evidence provided at the public hearing, the Auditor-General voiced disappointment at the delays, stating that 'there is a general desire to see this information provided more transparently'.<sup>18</sup> However, the Auditor-General also noted the significant volume of work that CSNSW had undertaken, and commended CSNSW on the involvement of staff in the development of relevant KPIs.
- 4.20 Written comments and additional evidence provided by the Audit Office at the public hearing reiterated the value of reporting on design capacity, as well as including design capacity as a consideration in the construction of new prisons.
- 4.21 The Audit Office referred to the shortcomings of the current reporting system with reference to evidence provided by the Inspector of Custodial Services, who noted that 'the elasticity of operational capacity allows for overcrowding to be made opaque to inquiry'.<sup>19</sup> The Auditor-General also stressed that having a clear understanding of design capacity will ensure that future infrastructure development will be aligned with projected demand in an accurate and meaningful way.

#### Committee comments

- 4.22 The Committee supports the work that CSNSW has undertaken to develop a framework of 17 KPIs that will be used as part of the benchmarking and monitoring process for each individual prison.
- 4.23 The Committee also supports the work CSNSW has undertaken to ensure that new contracts for privately operated prisons are outcomes focused, noting that the

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<sup>17</sup> Mr Kevin Corcoran, Assistant Commissioner, Custodial Corrections, NSW Department of Justice, Transcript of evidence, 12 February 2018, p.5.

<sup>18</sup> Ms Margaret Crawford, Auditor-General, Audit Office of NSW, Transcript of evidence, 12 February 2018, p.5.

<sup>19</sup> Additional written feedback provided by the Audit Office to the Committee, dated 15 November 2017.

same 17 KPIs used to benchmark public prisons will form the basis of the operating contracts for private prisons.

- 4.24 However, the Committee is concerned about significant delays in the roll-out of this framework and the subsequent benchmarking process. This has contributed to a continuing lack of transparent performance information being made publicly available.
- 4.25 As CSNSW can internally report on design capacity, and has a focus on ensuring the availability of this metric in new prisons, the Committee considers that it should also be made available for all existing prisons.
- 4.26 The Committee supports the view of the Audit Office, which emphasised the importance of reporting on design capacity for future infrastructure planning, as well as having clear oversight of any potential overcrowding issues.
- 4.27 While the Committee appreciates the nuances that inform design capacity, it is of the view that the metric can be reported in a way that increases transparency, without over-simplifying questions of operational capacity.

#### **Recommendation 4**

**The Committee recommends that Corrective Services NSW provides an update to the Committee on the progress of its commissioning approach, including the rollout of the KPI framework, benchmarking process and service level agreements, by December 2018.**

#### **Recommendation 5**

**The Committee recommends that Corrective Services NSW publicly reports on the design capacity of each prison, while making clear any other relevant information that establishes precisely what is being measured.**

# Chapter Five – Reintegrating Young Offenders into the Community after Detention

## Introduction

- 5.1 Juvenile Justice NSW (JJ) is responsible for looking after young people in detention, as well as supervising young offenders in the community. This includes the provision of a variety of programs and services aiming to rehabilitate and reintegrate young offenders into the community following release from detention.
- 5.2 Programs that focus on reintegration can have significant impacts, particularly in reducing the risk of young people entering the adult criminal justice system. This also has a flow-on impact, including an overall reduction of the cost of crime and the creation of safer communities.

## The performance audit

- 5.3 This Audit examined how well JJ prepares and assists young people reintegrating into the community after they have been released from detention. Specifically, the Audit looked at the following:
- (a) The capacity and effectiveness of JJ in preparing young people in detention for release back into the community.
  - (b) The capacity and effectiveness of JJ in linking young people to programs and support services after they are released.

## Major audit findings

- 5.4 In view of the complex needs of young people in detention, the Audit noted that JJ is reasonably effective in preparing and assisting juvenile offenders to reintegrate into the community. The Auditor-General also made the point that JJ does not always have the capacity to address any external factors that have a significant impact on reintegration outcomes, including the delivery of housing, education and employment opportunities.
- 5.5 The audit report identified room for improvement in strengthening discharge planning in detention centres. Additionally, the Audit found that some barriers that make reintegration more difficult are in the control of JJ and can be removed.

## Auditor-General's recommendations

- 5.6 The Auditor-General made 13 recommendations to Juvenile Justice NSW which are set out in the following table:

**Table 3 - Recommendations made by the Auditor-General in Report No. 269: Reintegrating young offenders into the community after detention****By July 2016 Juvenile Justice should:**

No.	Recommendation
1	Include reintegration outcomes and measures in its next strategic framework so that it clearly sets out the results it wants to achieve for young people leaving detention.
2	Publish data on its website on the reintegration outcomes of young people leaving detention.

**By December 2016, Juvenile Justice should:**

No.	Recommendation
3	As part of its upcoming case management review: <ul style="list-style-type: none"> <li>Clarify roles and responsibilities for discharge planning to minimise any delays.</li> <li>Examine ways of improving discharge planning for young people on remand.</li> </ul>
4	Work with the Department of Family and Community Services to improve access to information on shared clients and make it easier for young people to use homelessness referral line 'Link2home'.
5	Improve recording of referrals to services that do not receive funding from Juvenile Justice to better demonstrate areas of unmet need.

**By July 2017, Juvenile Justice should:**

No.	Recommendation
6	Clarify what it wants to achieve from recreation activities offered in detention centres including how it will engage community organisations to achieve this.
7	Work with the Department of Education and Department of Industry, Skills and Regional Development to: <ul style="list-style-type: none"> <li>Assess the impact of vocational education reforms on the availability of vocational training offered young people in detention centres</li> <li>Clarify what it wants to achieve from vocational training offered in detention centres including how it will engage the education sector to deliver this.</li> </ul>
8	Increase work release opportunities for young people in detention centres.
9	Find out what has worked well in detention centres that have developed good relationships with the local Aboriginal community and see what can be applied to other centres.
10	Undertake more joint planning with other agencies at the strategic level on young people reintegrating from detention into the community.
11	In consultation with the Justice Health and Forensic Mental Health Network, review the effectiveness of Community Integration Teams in engaging young people with health services in the community and consider expanding the program if results improve access to services.

**By December 2017, Juvenile Justice should:**

No.	Recommendation
12	Work with the Department of Education to roll out the State-wide framework for transitioning school-aged young people from detention centres into the community.
13	In consultation with the Department of Family and Community Services, review the effectiveness of Juniperina Juvenile Justice Centre's supported accommodation model to see whether it can be extended to other centres.

**Agency response**

- 5.7 The response from Juvenile Justice (JJ) accepted all 13 recommendations made in the audit report and outlined a new case management policy implemented to streamline a young person's case plans while in detention and transitioning back into the community.
- 5.8 This policy involves the introduction of Juvenile Justice Caseworkers who aim to provide a 'continuum of service for young people transitioning between community and custody'.<sup>20</sup> This includes the development of case plans, as well as working with young people to achieve successful reintegration in a consistent and ongoing way.
- 5.9 During the public hearing, Ms Melanie Hawyes, Executive Director, Juvenile Justice, confirmed that all caseworker positions were currently filled, including six Aboriginal identified roles.<sup>21</sup> This was reiterated in supplementary advice received by the Committee, noting that 'recruitment action is complete for all 22 case worker positions in centres'.<sup>22</sup>
- 5.10 In its response to the Audit, JJ noted that a review of the new case management policy was underway, to be completed by October 2017.<sup>23</sup> During the public hearing, Ms Hawyes confirmed that the review had been completed and stated that the 'review of case management itself and its effectiveness is something that [could be made] public following the June review'.<sup>24</sup>
- 5.11 Juvenile Justice responded to recommendations regarding coordination and collaboration with other agencies, outlining the ongoing meetings with all relevant agencies. This is in addition to JJ being represented on several cross-Government joint planning bodies. At the public hearing, JJ emphasised a high level of

<sup>20</sup> Submission No. 5, Department of Justice, p.1.

<sup>21</sup> Ms Melanie Hawyes, Executive Director, Juvenile Justice, NSW Department of Justice, Transcript of evidence, 12 February 2018, p.13.

<sup>22</sup> Answers to Questions on Notice provided by Juvenile Justice, 6 March 2018, p. 2.

<sup>23</sup> Submission No. 5, Department of Justice, p.3.

<sup>24</sup> Ms Melanie Hawyes, Executive Director, Juvenile Justice, NSW Department of Justice, Transcript of evidence, 12 February 2018, p.14.

cooperation, particularly for data sharing and ways to 'understand the cohort and be able to measure outcomes'.<sup>25</sup>

- 5.12 The agency noted that the first recommendation relating to the inclusion of reintegration outcomes and measures in its strategic framework had been delayed. During the public hearing, Ms Hawyes stated that JJ was attempting to develop a more nuanced measurement of reintegration outcomes that went beyond the 'crude measure'<sup>26</sup> of reoffending alone.
- 5.13 This includes work with the Bureau of Crime Statistics and Research (BOCSAR) to look at factors such as engagement in school, stable housing and ongoing employment. JJ indicated that this more complex measure of reintegration outcomes will be included in an annual report within the next 12 months.

#### **Auditor-General's comments**

- 5.14 The Auditor-General commended Juvenile Justice for its 'good work'<sup>27</sup> in the development of a new case management policy, and accepted that the results of the review undertaken in October 2017 would be released after the review point in June 2018.
- 5.15 The Audit Office noted the delay in reporting reintegration outcomes and stressed the importance of determining the timeframe for incorporating more nuanced reintegration outcomes into its strategic plan.
- 5.16 The Auditor-General also highlighted that while the existing data regarding reintegration outcomes may not be as fulsome as the data JJ will produce in the next 12 months, there is still value in making that data public in order to 'assist with refining the measures'<sup>28</sup> that may determine reoffending.
- 5.17 The Audit Office also noted in written feedback that while representatives from JJ regularly meet with the Department of Education to 'discuss.... educational reform and detainee access to education and training',<sup>29</sup> it was not clear what other actions beyond these meetings had occurred. This applies specifically to aims to be achieved from vocational training offered in JJ centres.

#### **Committee comments**

- 5.18 The Committee commends the work being done by Juvenile Justice as part of its new case management policy, particularly the introduction of Juvenile Justice Caseworker roles to improve discharge planning and increase support for young people transitioning back into the community.

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<sup>25</sup> Ms Melanie Hawyes, Executive Director, Juvenile Justice, NSW Department of Justice, Transcript of evidence, 12 February 2018, p.12.

<sup>26</sup> Ms Melanie Hawyes, Executive Director, Juvenile Justice, NSW Department of Justice, Transcript of evidence, 12 February 2018, p.10.

<sup>27</sup> Ms Margaret Crawford, Auditor-General, Audit Office of NSW, Transcript of evidence, 12 February 2018, p.10.

<sup>28</sup> Ms Margaret Crawford, Auditor-General, Audit Office of NSW, Transcript of evidence, 12 February 2018, p.12.

<sup>29</sup> Submission No. 5, Department of Justice, p.4.

- 5.19 The Committee supports the ongoing review of the policy to determine its effectiveness and potential improvement, and encourages Juvenile Justice to make the findings of this review public.
- 5.20 The Committee notes that Juvenile Justice is developing more nuanced measures of reintegration outcomes that go beyond measuring reoffending alone. However, while current data may not be as detailed as the data being developed, it is still useful in providing insight and increasing transparency, and should be publicly released.
- 5.21 While the Committee appreciates the complexity of the work undertaken by Juvenile Justice and the difficulties of measuring reintegration outcomes, it is critical to establish accurate reintegration outcomes, and to determine how these can be measured as part of the strategic framework.
- 5.22 Similarly, the Committee is of the view that both Juvenile Justice and vocational training providers would benefit from formalising what JJ is seeking to achieve with the provision of these services in a detention setting.

**Recommendation 6**

**The Committee recommends that Juvenile Justice publicly releases the findings of its Case Management Policy review, after the June 2018 review has been completed.**

**Recommendation 7**

**The Committee recommends that Juvenile Justice updates and maintains its publicly available data regarding reintegration outcomes by October 2018.**

**Recommendation 8**

**The Committee recommends that Juvenile Justice includes reintegration measures and outcomes in its 2019 annual report.**

**Recommendation 9**

**The Committee recommends that Juvenile Justice formalises its work with relevant agencies in the provision of vocational training. This includes articulating what it wants to achieve from the training being offered in detention centres, and how agencies will engage to do this.**

## Chapter Six – Red Tape Reduction

### Introduction

- 6.1 The term red tape describes poorly designed and implemented regulations, placing unnecessary constraints and cost burdens on business and government enterprises. The significance of the cost of red tape as a constraint on the economy has been estimated in New South Wales at 0.91 per cent of Gross State Product, compared to 0.96 in Victoria and 1.00 in Queensland.
- 6.2 Commencing in 2011, in an effort to improve business competitiveness, the NSW Government committed to a red tape reduction target of \$750 million by June 2015. In addition, the Government introduced a 'one-on, two-off' initiative between 2011 and 2015, requiring the number of repealed legislative instruments to be at least double the number of new instruments.<sup>30</sup>
- 6.3 Subsequent to the completion of this program in 2015, the NSW Government reiterated its commitment to best practice in preventing and reducing red tape for new and amending regulatory proposals and balancing costs and benefits to the community.

### The performance audit

- 6.4 This Audit examined the effectiveness of government actions to prevent and reduce red tape. In order to make this assessment, the Audit Office set out to determine whether: the savings initiatives reduced red tape; the 'one-on, two-off' initiative reduced red tape; and the Department of Premier and Cabinet (DPC) reviewed regulatory proposals to ensure the prevention and reduction of red tape.

### Major audit findings

- 6.5 Several deficiencies were found in the estimated savings, claimed to have exceeded the \$750 million target by \$146 million. The Audit revealed a lack of evidence based assumptions and verifiable data; a lack of clarity in links between reforms and benefits; that cost transfers were sometimes claimed as savings; and projected savings were not realised in implementation. According to the Audit Office, the overall impact of the claimed \$896 million savings is not accounted for and the benefit is unknown.
- 6.6 In another finding, the Audit revealed that the red tape reduction target was rarely the driver for new reform, but rather, accounted for benefits related to reforms that were progressed through other mechanisms and commitments. Initiatives also largely aimed to improve the efficiency of administrative processes, rather than remove, reduce or significantly change regulation itself.
- 6.7 A review of the numeric one for two trade-off resulted in 237 instruments repealed and 54 introduced. Although representing an overall ratio of roughly four repeals for every new instrument, most of these repeals related to redundant legislation with little or no regulatory burden. Furthermore, it added to legislative complexity,

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<sup>30</sup> NSW Auditor-General's Performance Audit Report; Red Tape Reduction, August 2016, p 2.



as the number of pages of legislation increased by 1.4 per cent per annum over the life of the policy, as opposed to a 1.1 per cent reduction over the previous decade.

- 6.8 The Audit Office highlighted that there is no central oversight of regulatory reform or red tape minimisation, such as the previously established Office of Better Regulation, which was abolished in 2013. The responsibility of individual departments for checking compliance is unique to New South Wales and does not effectively manage conflicts of interest, as departments may not consider regulatory proposals which conflict with their policy position.
- 6.9 The audit report also drew attention to the lack of a centralised exhaustive list of final regulatory decisions and assessments. According to the Auditor-General, public access improves regulatory outcomes and accountability by allowing the community to scrutinise government decisions as they are being made.

#### Auditor-General's recommendations

- 6.10 The Auditor-General made 5 recommendations addressed to the Department of Premier and Cabinet to be implemented by July 2017. The Audit report stated that these responsibilities may be transferred to other agencies, once implementation details have been clarified. The recommendations are set out in the following table:

**Table 4 - Recommendations made by the Auditor-General in Report No. 272: Red Tape Reduction**

**By July 2017, the Department of Premier and Cabinet should:**

No.	Recommendation
1	set a framework for reducing red tape which includes: <ul style="list-style-type: none"> <li>a) allocating responsibility for the development and oversight of red tape and regulatory reform programs to a dedicated unit within a central agency</li> <li>b) setting departments' outcomes-based performance indicators for reducing red tape and reporting on departments' performance against these indicators</li> <li>c) conducting a comprehensive stocktake of the number and cost of existing regulation with a review every five years</li> <li>d) reporting the annual net change in regulatory burden using costs reported in regulatory impact assessments and departmental performance reports</li> </ul>
2	re-establish a program of targeted reductions of unnecessary regulatory instruments, including non-legislative instruments, informed by reviews of areas of disproportionate regulatory burden
3	amend the Guide to Better Regulation so that it: <ul style="list-style-type: none"> <li>a) establishes more clearly the roles and responsibilities for DPC and line agencies in assessing new and amended regulatory proposals</li> <li>b) requires that regulatory proposals include an assessment of the overall change in regulatory burden</li> <li>c) requires non-compliant proposals to be subject to a post-implementation review</li> <li>d) sets minimum requirements for regulatory assessment and review of expedited regulatory proposals, such as for government commitments and sensitive and urgent matters, where these proposals otherwise would not have been exempt</li> </ul>

	e) establishes more clearly the processes and requirements specific to low, medium and high significance proposals, and in doing so minimises overlap and inconsistency with requirements in the Subordinate Legislation Act 1989
4	maintain a central public repository for all final regulatory decisions and regulatory impact assessments
5	report on completed regulatory assessments, exemptions and non-compliant proposals in an annual report.

### Agency responses

- 6.11 The Committee received identical responses to the audit recommendations from the Department of Premier and Cabinet and the Department of Finance, Services and Innovation (DFSI). The responses included a covering letter providing the context for the formal response to individual recommendations.
- 6.12 Following the issuing of the performance audit, the NSW Government established an independent panel to consider a number of the Report's recommendations and to review the regulatory framework in place in NSW. The panel, chaired by the Hon Nick Greiner AC, handed down its final report on 25 August 2017 (the Greiner Review).
- 6.13 The Government response to the Committee's examination indicated support for recommendations 1a), 4 and 5, a lack of support for recommendation 1c) and stated that the remaining recommendations were under consideration, pending the Government response to the Greiner Review.
- 6.14 In giving evidence at the Committee's public hearing, the DFSI Fair Trading Commissioner stated that the intent of the audit recommendations were not disputed and that the Government was implementing actionable Audit Office recommendations. However, this was contingent on what could be achieved within existing resources and structures and which would not pre-empt the outcomes of the Greiner review.<sup>31</sup>
- 6.15 The responses confirmed the completion of the progressive transfer of responsibilities for better regulation in NSW from the NSW Department of Premier and Cabinet to a dedicated unit within the Better Regulation Division of the Department of Finance, Services and Innovation. DPC remains responsible for assessing compliance with the Guide to Better Regulation, as well as reviewing regulatory proposals for Cabinet consideration.<sup>32</sup>
- 6.16 Additionally, in May 2017, the Better Regulation Division within DFSI created a publicly accessible online central repository for all final regulatory decisions and regulatory impact assessments published since July 2015. The Central Repository is maintained on the DFSI Better Regulation webpage. The repository currently

<sup>31</sup> Rosemary Webb, Deputy Secretary, Better Regulation Division and Fair Trading Commissioner, Department of Finance, Services and Innovation, Transcript of evidence, 12 February 2018, p. 21.

<sup>32</sup> Submission No. 8, Department of Premier and Cabinet, p.1.

contains documents from DFSI, Health, Industry, Justice, Land and Property Information, Planning and Environment and Transport and Infrastructure.<sup>33</sup>

### Auditor-General's comments

- 6.17 In its written submission, the Audit Office noted that the Government's commissioning of an independent review, drawing heavily on the audit report, has delayed action on a majority of its recommendations. The Auditor-General expressed satisfaction at the reestablishment of a Better Regulation Division, which has clarified the responsibilities for regulation within the administration.

### Committee comments

- 6.18 The Committee welcomes action taken to establish the DFSI Better Regulation Division and the enhanced use of data to evaluate regulatory practices and improve performance. Additionally, work seems to have progressed to make final regulatory decisions available via the publicly accessible online repository maintained on the DFSI website. However, the recommendation to provide an annual report on regulatory assessments has been delayed, as have the other recommendations, pending the final outcome of the Greiner Review.
- 6.19 The Committee notes that a brief generalised Government response to the Greiner review was issued in February 2018. The response states that the Government intends to appoint a Commissioner for Productivity, whose first task will be to consider the Greiner Review's recommendations and provide advice about the implementation of a new regulatory policy framework for NSW.
- 6.20 It is of great concern to the Committee that progress on a majority of audit recommendations is currently in abeyance, pending further action on the Greiner Review recommendations. The lack of accuracy in estimating cost savings and, indeed, the inability to document the number of pieces of real as opposed to redundant legislation introduced and removed must be rectified as a matter of urgency.
- 6.21 Moreover, giving full effect to the Audit Office recommendations will address the shortcomings highlighted in this performance audit report. It will also enable the Government to focus on areas of disproportionate regulatory burden, thus enhancing the efficiency and effectiveness of government policies and programs and reduce deleterious impacts on business, industry and the broader community. Making information about regulatory decisions more transparent and easily accessible will also assist in this regard.

### Recommendation 10

**The Committee recommends that the Government expedites action to respond to the recommendations of the Greiner Review as a matter of urgency.**

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<sup>33</sup> Submission No. 8, Department of Premier and Cabinet, p.5.

# Appendix One – Submissions

1 Transport for NSW

2 Service NSW

2a Service NSW

3 Department of Justice

4 Department of Premier and Cabinet

5 Department of Justice

6 Department of Education

7 Department of Education

8 Department of Premier and Cabinet

9 Department of Finance, Services and Innovation

10 Department of Industry

11 Department of Primary Industries

## Appendix Two – Witnesses

- Mr James Koulouris, Assistant Commissioner, Governance and Continuous Improvement  
Dept. of Justice, Corrective Services NSW
- Mr Kevin Corcoran, Assistant Commissioner, Custodial Corrections  
Department of Justice, Corrective Services NSW
- Ms Melanie Hawyes, Executive Director  
Department of Justice, Juvenile Justice NSW
- Mr Simon Draper, Deputy Secretary, Economic Policy Group  
Department of Premier and Cabinet
- Mr Con Kargas, Principal Policy Officer, Economic Policy Group  
Department of Premier and Cabinet
- Ms Rose Webb, Deputy Secretary, Better Regulation Division  
Dept. of Finance, Services and Innovation
- Mr John Tansey, Executive Director, Regulatory Policy  
Dept. of Finance, Services and Innovation
- Ms Gabrielle Mangos, Director, Regulatory and National Reform  
Dept. of Finance, Services and Innovation
- Ms Margaret Crawford, Auditor-General  
Audit Office of New South Wales
- Mr Ian Goodwin, Deputy Auditor-General  
Audit Office of New South Wales
- Ms Claudia Migotto, Assistant Auditor-General, Performance Audit  
Audit Office of New South Wales

## Appendix Three – Extracts from Minutes

### **MINUTES OF MEETING No. 34**

23 November 2017

9:15am, Room 1254

#### **Members Present**

Mr Bruce Notley-Smith (Chair), Mr Mark Taylor (Deputy Chair), Mr Lee Evans, Mr Stephen Bromhead, Mr Ryan Park, Mr Greg Piper.

*Staff in attendance:* Bjarne Nordin, Madeleine Dowd, Chris Herbert, Derya Sekmen, Ze Nan Ma.

1. \*\*\*

2. \*\*\*

3. \*\*\*

#### **4. Examination of the Auditor-General's Performance Audit Reports February 2016 – September 2016**

Resolved, on the motion of Mr Piper, to adopt the following proposed actions on performance audits 265-274:

- That the Committee adopts the draft Terms of Reference for an Examination of the Auditor-General's Performance Audit Reports February 2016- September 2016.
- That the Committee confirms that the public hearing will be conducted at Parliament House on 12 February 2018.
- That the Committee invites selected organisations on the proposed witness list to appear as witnesses at the public hearing on 12 February 2018.
- That the Committee authorises the publication of submissions received and orders that they be placed on the Parliament's website.

5. \*\*\*

6. \*\*\*

7. \*\*\*

#### **8. Next meeting**

The Committee adjourned at 10.09am until 9.00am, Monday 12 February 2018 in the Macquarie Room.

**MINUTES OF MEETING No. 35**

12 February 2018

9:00am, Macquarie Room

**Members Present**

Mr Bruce Notley-Smith (Chair), Mr Mark Taylor (Deputy Chair), Mr Lee Evans, Mr Stephen Bromhead, Mr Greg Piper, Mr Ryan Park.

Staff in attendance: Bjarne Nordin, Madeleine Dowd, Chris Herbert, Derya Sekmen.

1. \*\*\*

2. \*\*\*

3. \*\*\*

**4. Examination of the Auditor-General's Performance Audit Reports February 2016 - September 2016**

The public and press were admitted.

The following witnesses representing the Audit Office of NSW were admitted:

- Ms Margaret Crawford, Auditor-General, affirmed and examined.
- Mr Ian Goodwin, Deputy Auditor-General, sworn and examined.
- Ms Claudia Migotto, Assistant Auditor-General, Performance Audit, affirmed and examined.

The following witnesses representing Corrective Services NSW were admitted:

- Mr James Koulouris, Assistant Commissioner, Governance and Continuous Improvement, sworn and examined.
- Mr Kevin Corcoran, Assistant Commissioner, Custodial Corrections, sworn and examined.

Evidence concluded, the witnesses withdrew.

The following witness representing Juvenile Justice NSW was admitted:

- Ms Melanie Hawyes, Executive Director, affirmed and examined.

Evidence concluded, the witness withdrew.

The following witnesses representing the Department of Premier and Cabinet were admitted:

- Mr Simon Draper, Deputy Secretary, Economic Policy Group, affirmed and examined.
- Mr Con Kargas, Principal Policy Officer, Economic Policy Group, sworn and examined.

Evidence concluded, the witnesses withdrew.

The following witnesses representing the Department of Finance, Services and Innovation were admitted:

- Mr Simon Draper, Deputy Secretary, Economic Policy Group, affirmed and examined.
- Ms Rose Webb, Deputy Secretary, Better Regulation Division, affirmed and examined.
- Mr John Tansey, Executive Director, Regulatory Policy, affirmed and examined.
- Ms Gabrielle Mangos, Director, Regulatory and National Reform, affirmed and examined.

Evidence concluded, the witnesses withdrew.

5. \*\*\*

**6. Next Meeting**

The Committee adjourned at 2:25pm until 9:15am on Thursday 15 February 2018 in Room 1254.

**MINUTES OF MEETING No. 36**

15 February 2018

9:15am, Room 1254

Parliament House

**Members Present**

Mr Bruce Notley-Smith (Chair), Mr Mark Taylor (Deputy Chair), Mr Lee Evans, Mr Stephen Bromhead, Mr Greg Piper.

*Staff in attendance:* Elaine Schofield, Bjarne Nordin, Madeleine Dowd, Chris Herbert, Derya Sekmen.

**1. Apologies**

Mr Ryan Park.

2. \*\*\*

3. \*\*\*

4. \*\*\*

**5. Examination of the Auditor-General's Performance Audit Reports February 2016 – September 2016**

The Committee noted the following agency responses:

- 21 December 2017 letter from Transport for NSW providing further information regarding Audit Report No. 265 Franchising of Sydney Ferries Network Services.
- 22 January 2018 letter from Department of Education providing further information regarding Audit Report No. 270 Supporting students with disability in NSW public schools.
- 1 February 2018 letter from Department of Premier and Cabinet, additional response to *Managing Unsolicited Proposals in NSW*



6. \*\*\*

7. \*\*\*

8. \*\*\*

**9. Next meeting**

The Committee adjourned at 10:11am until 9:45am, 9 March 2018 at Parliament House.

**MINUTES OF MEETING No. 40**

7 June 2018

9.15am

Room 1254, Parliament House

**Members Present**

Mr Bruce Notley-Smith (Chair), Mr Mark Taylor (Deputy Chair), Mr Stephen Bromhead, Mr Lee Evans, Mr Greg Piper.

*Staff in attendance:* Elaine Schofield, Bjarne Nordin, Madeleine Dowd, Derya Sekmen.

**1. Apologies**

Mr Ryan Park.

**2. Confirmation of Minutes**

Resolved, on the motion of Mr Piper, that the minutes of meeting No. 39, held on 3 May 2018, be confirmed.

3. \*\*\*

4. \*\*\*

**5. Examination of Auditor-General's Performance Audit Reports February 2016 - September 2016**

**Consideration of Chair's Draft Report**

- Resolved, on the motion of Mr Evans, that the Committee considers the Chair's draft report as circulated.
- Resolved, on the motion of Mr Piper, that the Committee adopts the draft report signed by the Chair for presentation to the House, and authorises Committee staff to make appropriate final editing and stylistic changes as required.
- Resolved, on the motion of Mr Taylor, that once tabled the report be published on the Committee's webpage.

6. \*\*\*

7. \*\*\*

8. \*\*\*

PUBLIC ACCOUNTS COMMITTEE

Extracts from Minutes

**9. Next meeting**

The Committee adjourned at 9.46 until 9.15, Thursday 21 June 2018 in Room 1254.