

**Submission
No 56**

**INQUIRY INTO BUDGET PROCESS FOR INDEPENDENT
OVERSIGHT BODIES AND THE PARLIAMENT OF NEW
SOUTH WALES**

Organisation: NSW Government

Date Received: 10 December 2019

Submission to the Public Accountability Committee's Inquiry into the Budget process for independent oversight bodies and the Parliament of NSW

Department of Premier and Cabinet
NSW Treasury

DECEMBER 2019



**Premier
& Cabinet**

Introduction

The Inquiry's terms of reference include inquiring into and reporting on options for enhancing the process for determining the quantum of funding of the:

- Independent Commission Against Corruption (**ICAC**),
- Law Enforcement Conduct Commission (**LECC**),
- Audit Office of New South Wales,
- NSW Electoral Commission,
- NSW Ombudsman, and
- NSW Parliament (Legislative Council and the Department of Parliamentary Services),

including the transparency of this process, and any other related matter.

The bodies listed above, excluding NSW Parliament, are collectively referred to as 'independent oversight bodies' in this submission. While their functions vary, they share two important features: they are directly accountable to the Parliament and operate with some degree of statutory independence from the Executive government.

This submission seeks to assist the Committee by providing factual information about:

- the role of NSW Treasury,
- the role of the Department of Premier and Cabinet (**DPC**),
- the role of the NSW Parliament, and
- key principles for the Committee to consider,

in relation to the budget process for independent oversight bodies and NSW Parliament.

The role of NSW Treasury

Outcome Budgeting

'Outcome Budgeting' is a way of allocating resources based on the outcome to be achieved from a citizen's perspective, first announced in Budget 2017-18.

This approach puts the needs of the people at the centre of investment decision making.

The entire State spending has been mapped to the State Outcomes that the NSW Government wants to achieve for its citizens. Outcome Indicators have been assigned to every State Outcome to track results against spending.

As announced in Budget 2017-18:

The NSW Outcome Budgeting model builds on Treasury's experience in commissioning outcomes, international evidence and experience in moving towards performance budgeting. We've also looked at best practice examples from countries such as Canada, UK, New Zealand, USA and the Commonwealth Government. Outcome Budgeting will not only change policy and processes in the NSW Government but will also transform the practices of the public sector to deliver more tangible and meaningful results to the public.

This budgeting approach will encourage public sector agencies and service providers to coordinate and collaborate ... so that resources are optimally pooled and programs appropriately targeted to inclusively service the needs of everyone across NSW's communities (emphasis added).¹

Further information on Outcomes Budgeting can be found in the NSW Treasury Policy and Guidelines Paper TPP18-09 'Outcomes Budgeting' available on the NSW Treasury website.

¹ NSW Treasury, *Outcome Budgeting* (10 July 2018) <<https://www.treasury.nsw.gov.au/budget-financial-management/reform/outcome-budgeting>>.

NSW Budget process

The budget process is managed by NSW Treasury to support the achievement of the objects of the *Fiscal Responsibility Act 2012* (NSW), including to maintain the AAA credit rating of the State of NSW (section 3). It is a consistent process across all government agencies including the independent oversight bodies and the NSW Parliament.

Generally, an agency's base budget is confirmed on the basis of ongoing operational requirements over the medium term (four years) and adjusted for indexation each year.

An entity is required to make a submission to Government for any new or incremental funding required or other adjustments to these four-year budget estimates.

All new and incremental adjustments (policy or parameter changes) supporting the Government's resource allocation decisions are subject to a rigorous process to ensure the responsible expenditure of taxpayer funds.

Agency proposals are classified in line with Circular *TC14/28 Parameter and Technical Adjustments and Measures (New Policy)*. This Circular outlines agency requirements and provides a distinction between Parameter and Technical Adjustments (**PTAs**) and New Policy Proposals (**NPPs**). In addition to looking at the detailed financial and cost information, Treasury looks at how the proposal is going to impact positively on performance measure targets, whole-of-government objectives including State Outcomes, as well as improving key performance indicators and various outcomes of service delivery.

Budget Guidelines are sent out in advance of the budget process to inform agencies of the process context, criteria and key dates.

Every agency's funding needs are assessed having regard to the role and functions of that agency, with consideration to all other Government priorities and service delivery requirements.

Submissions are considered by the Expenditure Review Committee of Cabinet as part of the Budget process. The deliberations of the Committee are kept confidential in accordance with Cabinet conventions and consistent with the principle of collective Ministerial responsibility. The outcome of these deliberations is reflected in the annual Appropriation Bill which is presented to the Parliament for scrutiny, debate and approval.

In an election year, the usual Budget process is varied to accommodate the election and the possibility of a change in government.

In 2019:

- NSW Treasury wrote to all Clusters and independent oversight bodies outlining the preparation work required for the possibility of a June budget, while stating the final process and date was ultimately a decision for the Government formed after the election.
- In addition to election commitments and PTAs, clusters and independent oversight bodies were given an opportunity to submit genuinely urgent and unavoidable matters (budget proposals) for an incoming Government to consider as part of its budget preparation.
- Independent oversight bodies in the DPC cluster were able to submit a proposal, separate from proposals submitted by the cluster.
- Clusters and independent oversight bodies provided submissions to Treasury on budget enhancements. Independent oversight bodies provided their proposals, and PTAs, directly to NSW Treasury.
- Following the election, elected Ministers who wished to submit additional bids following briefings from their agencies, had an avenue to raise these with the Treasurer or the Premier. Given the fiscal context, Treasury did not open a formal second round for all agencies.

The role of the Department of Premier and Cabinet

DPC leads the NSW public sector to deliver on the NSW Government's commitments and priorities. It provides strategic coordination across clusters, and partners with NSW Government agencies to ensure that services are delivered on time, within budget and to the community's expectations.

DPC is the lead agency of the Premier and Cabinet cluster. Consistent with their statutory independence from the Executive Government, DPC is not responsible for determining the amount that is appropriated to independent oversight bodies, nor does the DPC Secretary have a direct role in relation to their governance or financial management.

The independent oversight bodies are, however, currently treated as part of the DPC cluster for budget reporting purposes.² DPC provides guidance for its cluster agencies, including the independent oversight bodies, during the Budget process. Their statutory functions are embedded in the Outcome Budgeting framework through the State Outcome 'Accountable and responsible government'.

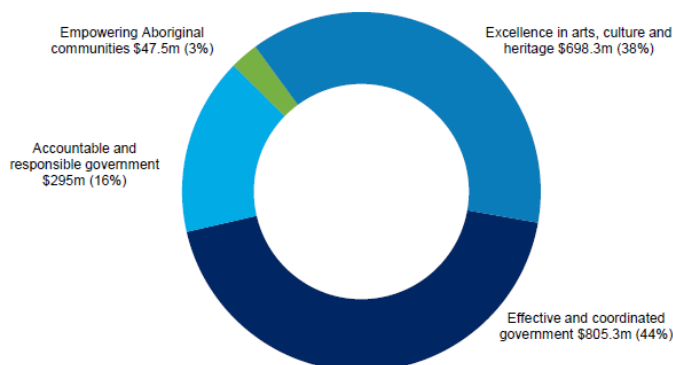
Table 1: State outcomes delivered by the Premier and Cabinet cluster

State Outcome	Description
Effective and Coordinated Government	Coordinating government policy initiatives, overseeing infrastructure investment and facilitating the delivery of key urban renewal precincts.
Accountable and responsible government	Ensuring a robust democracy, upholding the integrity of Government, fighting corruption, enhancing public sector capability and improving service delivery.
Empowering Aboriginal communities	Transforming the relationship between Aboriginal people and the NSW Government through the delivery of Opportunity, Choice, Healing, Responsibility and Empowerment (OCHRE).
Excellence in arts, culture and heritage	Developing and supporting arts and culture, increasing attendance at cultural events, and sustaining cultural precincts and infrastructure. Protecting, preserving and enabling public access to our State's heritage

² The Legislature, or the NSW Parliament, is not treated as part of any cluster for budget reporting purposes but is subject to the same Budget process as all other agencies.

A summary of DPC cluster expenses by State Outcome is set out in Chart 5.1 below:

Chart 5.1 Recurrent expenses by outcome 2019-20 (dollars and %)



Note: The sum of percentages does not equal one hundred due to rounding.

The 2019-20 Budget for DPC and all cluster agencies including independent oversight bodies is set out in Budget Paper No. 3.³

In the 2019-20 Budget process, independent oversight bodies provided their NPPs and PTAs to Treasury. DPC did not make any amendments or alterations to the submissions made by independent oversight bodies.

Treasury analysts were available to directly assist independent oversight bodies with their Budget submissions.

DPC was informed by both NSW Treasury and independent oversight bodies about the content of their NPPs and PTAs. DPC also had visibility in Prime (an electronic system for managing the State finances) of those matters. DPC does not have access in Prime to make any amendments or changes to the submissions of independent entities.

Prime is intentionally designed to allow independent oversight bodies to submit proposals directly to Treasury.

Supplementary funding

In recent years, DPC has provided supplementary funding to certain independent oversight bodies in addition to their annual appropriation.

For example, in FY2018-19 DPC provided \$1.7 million as supplementary funding to the ICAC.

In FY2019-20, DPC is providing an additional \$3.5 million as supplementary funding to the ICAC (\$1 million of which was approved in FY2018-19). Details of the supplementary funding provided by DPC to the independent oversight bodies between FY2009-10 and FY2018-19 are set out in **Annexure A**.

The additional funds are not a special appropriation. As such, the funds require reallocation from other areas within the DPC cluster.

Budget Savings

Several whole of government Budget savings and reform measures were included in the 2019-20 Budget.

³ Available at https://www.budget.nsw.gov.au/sites/default/files/budget-2019-06/Budget_Paper_3-Budget_Estimates-Budget_201920.pdf.

These savings are apportioned by DPC amongst the cluster, calculated on a pro rata basis according to the operational expenses of each entity and adjusted for any protected items. Further information about protected items can be found in *Treasury Circular NSWTC12-10*.

To allow the independent oversight bodies additional time to prepare for the forward year impacts of these reductions, DPC is absorbing all of the required savings for independent oversight bodies within the Premier and Cabinet cluster in FY2019-20.

If certain entities in the Premier and Cabinet cluster were exempt from these savings, and no adjustment to the requisite savings was made, the remaining cluster entities would be required to absorb those savings. Apart from the independent oversight bodies, the Premier and Cabinet cluster currently includes entities such as the Public Service Commission, the Art Gallery of NSW Trust, the Australian Museum Trust, the Library Council of NSW, the Sydney Opera House Trust, the Trustees of the Museum of Applied Arts and Sciences, Infrastructure NSW, the Greater Sydney Commission and Parliamentary Counsel's Office.

Parliament's Role

Budget Process

In New South Wales, the appropriation of money from the Consolidated Fund may only be done by an Act of the State Parliament.⁴

Each year an Appropriation Bill is prepared and tabled in Parliament alongside the Budget, currently known as Budget Paper 4.

The practice of separating the Appropriation (Parliament) Bill from the main Appropriation Bill is to ensure that if the main Appropriation Bill does not pass before the commencement of the financial year, the Appropriation (Parliament) Bill may be separately passed to ensure the continuity of Parliament.

The objective of the Appropriation Bill is to appropriate from the Consolidated Fund those funds required during the financial year for the services of the Government, including Departments of the Public Service and various special offices.

Special offices, including the ICAC, the LECC, the NSW Electoral Commission and the Ombudsman's Office, among others, have a single and separate sum appropriated to the Premier out of the Consolidated Fund for the services of that particular office. In the *Appropriation Act 2019*, these appropriations are set out in Part 4 – Appropriation (Special Offices).

The amount that each of these special offices receives represents a maximum amount that each of these offices can expend. Unlike grant amounts that are passed through from DPC to other agencies in the Premier and Cabinet cluster, funds provided to special offices are provided directly to those offices.

The annual Appropriation Bill is introduced in the Legislative Assembly and once passed in the Legislative Assembly is sent to the Legislative Council. It is subject to Parliamentary scrutiny and debate.

Oversight and Accountability

Each of the independent integrity bodies is subject to some form of oversight by a Parliamentary Committee. There is the Joint Standing Committee on Electoral Matters; the Committee on the ICAC; the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission; and the Public Accounts Committee.

⁴ *Constitution Act 1902* (NSW), s 45.

The functions of the ICAC Committee include, for example, monitoring and reviewing the exercise by the ICAC of the ICAC's functions, and reporting to both Houses of Parliament, on any matter appertaining to the ICAC connected with the exercise of its functions to which, in the opinion of the Committee, the attention of Parliament should be directed.⁵

It may be assumed that any inadequacies in the performance of integrity agencies' functions, and the reasons for those deficiencies, would be examined and reported on by the Committee through its inquiry process.

The LECC, the Ombudsman and the ICAC are also required to prepare and submit annual reports detailing the operations of each body directly to the Parliament in accordance with relevant legislative obligations.⁶ The Auditor-General presents the annual report of the Audit Office of NSW to the Legislative Assembly, pursuant to section 12A of the *Annual Reports (Statutory Bodies) Act 1984*. The NSW Electoral Commission must also prepare and submit an annual report to the Premier which is laid before both Houses of Parliament pursuant to the *Annual Reports (Statutory Bodies) Act 1984*.

Key issues for the Committee's consideration

Special funding arrangements for independent oversight bodies

It has been suggested to the Inquiry that funding for oversight bodies should not be determined as part of a normal Budget process that treats that level of funding as optional or subject to prioritisation against internal Government-of-the-day spending priorities.

It is well-established that the functions of independent oversight bodies are essential to the health of our democracy.

However, independent oversight bodies are funded from the Consolidated Fund, a finite resource from which all other essential government services are funded.

It is critical that the government of the day is able to assess the funding needs of all agencies in the context of the State's broader financial position and the need to ensure that all essential services are provided to a standard that meets public expectations. This is fundamental to Outcome Budgeting and any proposed funding model for independent oversight bodies should be carefully considered in this context.

The constitutional principles of representative and responsible government require that the body that is directly and immediately representative of the people has responsibility for financial measures. In other words, the Legislative Assembly must remain publicly and electorally accountable for the financial management of the State.⁷

Although this principle is usually raised in the context of the powers of the Legislative Council with respect to Money Bills, it is also relevant when considering funding models that would directly or indirectly limit the financial prerogative of the Legislative Assembly.

Transparency in the Budget process

The Committee may wish to consider whether the Budget process is sufficiently transparent or whether there is scope for increased transparency.

⁵ *Independent Commission Against Corruption Act 1988*, s 64.

⁶ *Law Enforcement Conduct Commission Act 2016*, s 139; *Independent Commission Against Corruption Act 1988*, s 76; *Ombudsman Act 1974*, s 30.

⁷ Anne Twomey, *The Constitution of NSW* (Federation Press, 2004) 534.

Any proposals for greater transparency must take into account the need for confidentiality of Cabinet deliberations in relation to the NSW Budget, which has been recognised by the courts as ‘an application of the principle of collective responsibility’.⁸

The Committee may wish to consider whether additional transparency is in fact necessary given that existing Parliamentary processes, including the annual Appropriations Bill, the Budget Estimates process and the Committee system, already ensure that the resourcing of independent oversight bodies is subject to a very high degree of public and Parliamentary scrutiny.

Accountability for financial management

There is also the consideration of whether appropriate accountability measures are in place regarding the use of public resources by independent oversight bodies.

Every statutory body is responsible for delivering outcomes for the people of NSW within its budget. It is important that the financial management practices and capabilities of independent oversight bodies are sound, and that they are accountable for the use of public resources and the way in which those finances are managed.

It is acknowledged that there may be unforeseeable matters that arise during any given financial year.

However, repeated requests for supplementary funding may indicate a problem with an entity’s financial management practices. All agencies are expected to assess and prioritise all expenditure to ensure that services are delivered within the budget available.

Independence

It is important that independent statutory bodies are, and are perceived to be, independent from the government agencies that are subject to their jurisdiction.

At a practical level, it is also difficult for the Premier and Cabinet cluster budget to be managed where ad hoc funding is sought by agencies within the cluster during the year, after the annual appropriation. The Premier and Cabinet cluster budget is finite, and any provision of supplementary funding must be sourced from within that budget.

DPC does not consider ad hoc supplementary funding requests as a sustainable funding approach, nor does it promote transparency or accountability for financial management.

The Auditor-General’s Review

The NSW Government has asked the Auditor-General of NSW to undertake an independent review of the effectiveness of the financial arrangements and management practices of the ICAC, the LECC, the Ombudsman’s Office and the NSW Electoral Commission. This review will help to ensure that the Government can respond to any funding and financial management issues affecting those integrity bodies and ensure that they are able to fulfil their important statutory functions.

⁸ *Egan v Chadwick* (1999) 46 NSWLR 563, per Spigelman CJ at [56].

Annexure A

Integrity Agency	Supplementary funding provided by the Department of Premier & Cabinet (DPC)											
	By Financial Year										Total over 10 Years	
	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19		\$000s
\$000s	\$000s	\$000s	\$000s	\$000s	\$000s	\$000s	\$000s	\$000s	\$000s	\$000s	\$000s	
Audit Office of NSW	-	-	-	-	-	-	-	-	-	-	-	-
NSW Electoral Commission	-	-	-	-	-	1,370	-	-	2,444	-	3,814	
Independent Commission Against Corruption	-	-	-	3,210	2,625	1,600	2,621**	129	1,683	1,716	13,584	
Ombudsman's Office	-	-	-	1,842	2,203	2,070	2,157	1,768	-	-	10,040	
Law Enforcement Conduct Commission*	-	-	-	-	-	-	-	-	-	-	-	
	0	0	0	5,052	4,828	5,040	4,778	1,897	4,127	1,716	27,438	

* The LECC was part of the Justice Cluster prior to 2018-19

** \$1,281,000 allocated by Treasury for voluntary redundancies

Source: Published Annual Reports