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## Indigenous Advancement Strategy – Children and Schooling Program and Safety and Wellbeing Program

**Type:** Performance audit

**Report number:** 11 of 2020-21

**Portfolios:** Prime Minister and Cabinet

**Entities:** National Indigenous Australians Agency

**Date tabled:** 28 September 2020

### Background

1. Through the Indigenous Advancement Strategy (IAS) the Australian Government funds and delivers a range of programs specifically for Indigenous Australians. In the 2019–20 Budget, the Australian Government allocated \$5.2 billion over four years from 2019–20 to 2022–23 to the IAS, for grant funding processes and administered procurement activities. The National Indigenous Australians Agency (NIAA) administers the IAS.
2. The Children and Schooling and the Safety and Wellbeing programs are two of the six IAS grant programs, with administered budgets of \$305.04 million and \$279.88 million respectively in 2019–20.
3. The objectives of the Children and Schooling program are to:
  - Get children to school, particularly in remote Indigenous communities, improving education outcomes and supporting families to give children a good start in life. This program includes measures to improve access to further education.

#### 4. The objectives of the Safety and Wellbeing program are to:

Ensure that the ordinary law of the land applies in Indigenous communities, and ensure that Indigenous people enjoy similar levels of physical, emotional and social wellbeing enjoyed by other Australians.

## Rationale for undertaking the audits

5. The IAS is one of the means through which the Australian Government has been trying to improve the lives of Indigenous Australians. Among the six IAS programs, the Children and Schooling and the Safety and Wellbeing programs have the second and third largest administered budgets respectively. ANAO performance audits, as well as Parliamentary inquiries and departmental reviews, have shown that there have been shortcomings in the administration of the IAS. Auditor-General Report No.35 2016–17 *Indigenous Advancement Strategy* concluded that the 'department's grants administration processes fell short of the standard required to effectively manage a billion dollars of Commonwealth resources'. This report discusses NIAA's progress in implementing relevant recommendations from Auditor-General Report No.35 2016–17 and provides assurance to Parliament and the public about the effectiveness of the administration of the IAS, focusing on the Children and Schooling and Safety and Wellbeing programs.

## Objective and criteria of the audits

6. The ANAO conducted separate audits of the IAS Children and Schooling program and the IAS Safety and Wellbeing program, the findings and conclusions of which are presented in this report. The objective of the audits was to assess the effectiveness of the Department of the Prime Minister and Cabinet's (PM&C's) and NIAA's administration of the IAS Children and Schooling and the Safety and Wellbeing programs.

7. To form a conclusion against the objective of the audits, the ANAO adopted the following high-level criteria:

- Have the programs been designed and implemented to support the Government's objectives?
- Are grant assessments consistent with the Commonwealth Grants Rules and Guidelines (CGRGs) and program guidelines?
- Is the management of grants consistent with the CGRGs and program guidelines?
- Does the performance framework support the effective administration of grants and enable ongoing assessment of progress towards outcomes?

## Conclusion

8. NIAA's administration of the IAS Children and Schooling and the Safety and Wellbeing programs has been largely effective.

9. The Children and Schooling program was designed and implemented to support the Australian Government's objectives for improved education. The Safety and Wellbeing program was largely designed and implemented to support the Australian Government's objectives for healthier and safer homes and communities. For both programs, the IAS Grant Guidelines are compliant with the Commonwealth Grants Rules and Guidelines (CGRGs), but are not consistent with Department of Finance's guidance relating to communication about program funding availability.

10. Assessments are compliant with the CGRGs and the IAS Grant Guidelines for both programs, but are not consistent with the principles underlying the CGRGs to achieve value with relevant money – between July 2016 and June 2019 a large majority of Children and Schooling and Safety and Wellbeing grant funding was allocated using a non-competitive approach and grants were reallocated to the same providers. NIAA has arrangements in place to ensure that regional priorities and potential gaps and duplications in service delivery are considered. Since 2018–19 NIAA has improved its timeliness in assessing applications.

11. The management of Children and Schooling and Safety and Wellbeing grants is now largely consistent with the CGRGs and the IAS Grant Guidelines. Changes introduced since 2019, including a new grant risk management framework, have the potential to improve the effectiveness of NIAA's management of grants. The redesigned key performance indicators (KPIs) have also improved NIAA's ability to measure progress against outcomes for both programs, but NIAA does not sufficiently validate self-reported provider data. Prior to this, grant agreements were not always appropriate and risk-based. Record-keeping practices in some areas remain poor.

12. The performance framework partially supports program administration and ongoing assessment of progress towards outcomes. There is alignment between the Children and Schooling program objectives in the portfolio budget statements (PBS) and NIAA's corporate plan. The Safety and Wellbeing program is described more broadly in the PBS than in NIAA's corporate plan. Performance information for the two programs is not fully appropriate and comprehensive information generated from processes to collect lessons learnt is not yet sufficiently integrated to effectively inform administration of the two programs.

## Supporting findings

### Program Design and Implementation

13. The objectives of the Children and Schooling program align with Australian Government policy objectives for improved educational outcomes for Indigenous Australians. The objectives of the Safety and Wellbeing program broadly align with Australian Government policy objectives of healthy homes and safe communities for Indigenous Australians. The development of a Policy and Investment Framework in 2019 has the potential to strengthen the coordination and strategic direction of the IAS, including the Children and Schooling and Safety and Wellbeing programs.

14. Appropriate governance arrangements have been established. Although the two key governance boards did not meet as regularly as scheduled during 2018 and 2019, evidence exists that they provided strategic and operational direction to the Children and Schooling and Safety and Wellbeing programs.

15. Until 2019 there were weaknesses in systems to support staff to assess and manage grants that NIAA has worked to address. As a result, systems are now largely fit-for-purpose, although mandatory grants administration training was still in the pilot stage in April 2020.

16. The IAS Grant Guidelines are compliant with the CGRGs but NIAA's communication about the programs' funding availability is not transparent, which is inconsistent with Department of Finance guidance.

## Grant Assessment

17. Selection processes are not applied in a manner that demonstrates that a value for money outcome has been achieved. Between July 2016 to June 2019, 90 per cent of the Children and Schooling program funding and 95 per cent of the Safety and Wellbeing program funding was allocated on a non-competitive basis. This is inconsistent with the principles of the CGRGs and with NIAA's guidance. Also 80 per cent of the Children and Schooling program funding and 87 per cent of the Safety and Wellbeing program funding was reallocated to the same providers after assessment.
18. Assessments are compliant with the CGRGs and the IAS Grant Guidelines.
19. NIAA considers regional strategies and potential gaps and duplications when assessing grants.
20. Advice provided to the minister complied with the requirements of the CGRGs. Since 2018–19 NIAA has improved its timeliness in assessing applications and providing advice to the minister.

## Grant Management

21. Grant agreements executed before 2019 were not always appropriate and risk-based. The new grant risk management framework introduced in early 2019 provides the basis for a better balance between risk and monitoring requirements in agreements. The revised KPIs have improved NIAA's ability to measure activities' achievements against grant objectives.
22. NIAA has mechanisms for monitoring the progress of grant activities, including provider performance reports and site visits. The effectiveness of these mechanisms is limited by poor record-keeping practices and insufficient validation of self-reported provider data. In early 2019 NIAA established a grant assurance function. The role of the function is being reconsidered to strengthen its ability to improve the quality and consistency of key grant processes.
23. NIAA has mechanisms in place to address situations where the purpose of the grant is not being fulfilled. Recent organisational and process changes have the potential to improve the detection and treatment of provider non-compliance with funding requirements.

## Performance Assessment and Management

24. A performance framework has been implemented for the programs. There is alignment between the Children and Schooling program objectives in the PBS and the relevant activities in NIAA's corporate plan. For the Safety and Wellbeing program, the scope of the program is broader in the PBS than in NIAA's corporate plan and NIAA's corporate plan does not explain why there are differences. Performance information for the two programs is not fully appropriate as it is only partially reliable and adequate. The programs' measures in NIAA corporate plan could be improved by ensuring that they address outcomes and, for the Children and Schooling program, the complete purpose of the activities.
25. An online reporting solution now enables NIAA to generate reports that support executive consideration of program performance.
26. NIAA collects lessons learnt through a variety of processes. The considerable amount of valuable information generated is not yet sufficiently integrated to effectively inform program administration.

# Recommendations

## Recommendation no.1

### Paragraph 2.55

The National Indigenous Australians Agency ensures that up-to-date information about grant funding available for the Children and Schooling and Safety and Wellbeing programs is publicly available.

**National Indigenous Australians Agency response:** *Agree.*

## Recommendation no.2

### Paragraph 3.16

The National Indigenous Australians Agency ensures that its approaches to grants assessment:

- achieves value with relevant money; and
- is consistent with its policy and guidance and with the principles underlying the Commonwealth Grants Rules and Guidelines.

**National Indigenous Australians Agency response:** *Agree.*

## Recommendation no.3

### Paragraph 4.23

The National Indigenous Australians Agency implements mechanisms to validate the data reported by providers, including self-reported data.

**National Indigenous Australians Agency response:** *Agree.*

## Recommendation no.4

### Paragraph 5.17

The National Indigenous Australians Agency ensures that:

- its methodology for calculating Children and Schooling and Safety and Wellbeing programs' performance information includes only KPIs relevant to the programs' objectives; and
- the annual performance statement discloses all limitations associated with the reported results.

**National Indigenous Australians Agency response:** *Agree.*

## Recommendation no.5

### Paragraph 5.24

The National Indigenous Australians Agency ensures that performance measures in its corporate plan are appropriate, including that the measures allow an assessment of outcomes.

**National Indigenous Australians Agency response:** *Agree.*

# Summary of entity response

## National Indigenous Australians Agency

The National Indigenous Australians Agency (the Agency) welcomes the overall conclusion that the Agency's administration of the Indigenous Advancement Strategy (IAS) Children and Schooling and the Safety and Wellbeing programs has been largely effective. We also appreciate the key findings that the IAS Grant Guidelines, grant assessments, and grant management are compliant with the *Commonwealth Grant Rules and Guidelines 2017* (CGRGs). We also welcome the report highlighting some of the significant work the Agency has undertaken since the establishment of the IAS, to improve the way funding is delivered and outcomes are achieved, for Aboriginal and Torres Strait Islander peoples.

Under the Children and Schooling program and Safety and Wellbeing program, the Agency funds over 1,200 activities across Australia. These services are aimed at addressing economic and geographic barriers while promoting early childhood development, school attendance and attainment, health and wellbeing and safe communities.

The Agency is proud of the work it undertakes and the commitment of its staff to improving the lives of all Aboriginal and Torres Strait Islander peoples. We will continue to work with communities to address their priorities. We will also continue working with service providers to minimise their administrative burden in line with the CGRGs and focus on achieving government policy objectives for Aboriginal and Torres Strait Islander peoples.

The Agency has agreed to all of the report's recommendations, noting that at the time of the audit a number of actions to address these were in place, had already been taken or were underway to make improvements consistent with the recommendations. In this regard, the Agency considers recommendations one and four are already completed. The Agency will continue to ensure the broader lessons are applied where applicable and we will retain our continuous improvement approach.

## Key messages from this audit for all Australian Government entities

27. Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

### Grants

- While the Commonwealth Grants Rules and Guidelines (CGRGs) intend to provide entities with flexibility to administer grants, this flexibility should not be used to the detriment of the principles of accountability and value for money that are at the core of the CGRGs. Competitive, merit-based processes can achieve better outcomes and value with relevant money. When non-competitive approaches are used, they should be supported by a robust and up-to-date business case that demonstrates how value with relevant money will be achieved.



## Policy/program design

- When designing a policy or a program, theories of change are a better practice tool that can guide investment decisions, ensure that relevant and meaningful key performance indicators are applied to measure progress and increase assurance that policy objectives of a program are met and expected results achieved. Entities should consider using theories of change to develop a clear understanding of how decisions or activities are expected to produce a series of results that will contribute to achieving government policy outcomes.

## Performance and impact measurement

- When relying on data provided by stakeholders (that is, when the data is self-reported) to monitor program performance, entities should validate the integrity of the data in stakeholders' records. This can be done by, for example, inspecting a sample of stakeholders' records. Entities should also verify that the collection mechanisms supporting the data are reliable. For instance, surveys are not always a reliable data collection tool when administered by the service provider and when targeting populations with low levels of literacy or who may be tempted to provide what they perceive to be the response desired by the provider.

# System Redevelopment – Managing Risks While Planning Transition

**Type:** Performance audit

**Report number:** 10 of 2020-21

**Portfolios:** Services Australia

**Entities:** Services Australia

**Date tabled:** 24 September 2020

## Background

1. Services Australia is responsible for the design, development, delivery, co-ordination and monitoring of government services and payments relating to social security, child support, students, families, aged care and health programs. Services Australia delivers payments and services to and on behalf of 34 Australian Government entities.
2. Services Australia is managing an information and communications technology (ICT) change program that is being implemented in the Welfare Payment Infrastructure Transformation (WPIT) Programme. The WPIT Programme includes redevelopment of ICT systems (delivering new technology) and redevelopment of business processes (operating structure, business rules and processes). The ICT stream is redeveloping the welfare payment system through a program of work that involves retaining and enhancing the functionality of existing elements of the system, adding new elements to the system, as well as replacing or decommissioning elements of the system. The WPIT Programme was originally estimated to cost around \$1.5 billion over seven years from 2015 to 2022.
3. The welfare payment system contains information about millions of Australians who have received welfare payments over the past three decades. Each year over the four year period from 2015–16 to 2018–19, the system calculated and made over \$110 billion in welfare payments to around 6 million Australians – job seekers, students, families, people with a disability, carers and older Australians – almost one-quarter of the expenses in the Commonwealth budget.

## Rationale for undertaking the audit

4. The primary basis for the WPIT Programme was that the current welfare payment system could not continue to operate and required replacement. Advice to government indicated that there was a number of risks associated with operating and adapting the system, as required to meet changing policy requirements. The Australian National Audit Office (ANAO) examined Services Australia's management of these system operating risks during the redevelopment process.
5. The replacement of some or all of a major ICT system also requires entities to manage risks associated with planning transition to the future system. This includes designing a future system that delivers the key functions of the current system, decommissioning replaced elements of the current system, and preserving the future use and value of information stored in the current system.

6. A number of Australian Government agencies operate and may need to replace some or all of a major ICT system, and face similar risks.

## Audit objective and criteria

7. The audit objective was to assess whether Services Australia appropriately managed risks to operating the current welfare payment system and appropriately prepared to transition to the future system. To form a conclusion against the audit objective, the following high-level criteria were adopted:

- Did Services Australia appropriately manage risks to operating the current welfare payment system?
- Did Services Australia appropriately prepare to transition to the future welfare payment system?

8. The audit focused on the welfare payment system, and did not examine the management of ICT systems supporting other government programs or corporate activities.

## Conclusion

9. Services Australia had largely appropriate arrangements to manage risks to operating the current welfare payment system, and to transition to the future system.

10. Services Australia had largely appropriate arrangements to manage risks to operating the welfare payment system. Services Australia established and maintained a risk management framework at the entity and group levels that applied to various elements of the welfare payment system. Payment correctness and system availability risks were managed. Services Australia did not apply an appropriate framework to manage cyber security risk, and did not monitor the cost of operating the system.

11. Preparations to transition to the future welfare payment system were largely appropriate. Services Australia established frameworks for planning transition to the future welfare payment system, and to plan the design of the future welfare payment system. However, delays to system elements decommissioning have put at risk expected benefits of the WPIT Programme. Services Australia has not yet established appropriate arrangements to migrate data to the future welfare payment system.

## Supporting findings

### Managing risks to operating the current welfare payment system

12. Services Australia established and maintained a risk management framework at the entity and group levels. This framework applied to the overall ICT environment, including various elements of the welfare payment system.

13. Services Australia had largely appropriate arrangements to manage risks to the operation of the welfare payment system. Payment correctness and system availability risks were managed. Services Australia did not apply an appropriate framework to manage cyber security risk, as it did not cyber security risk assess or accredit all elements of the system. Workforce capability risk management arrangements are being put in place. Services Australia did not monitor the cost of operating the system.

14. Risks associated with adapting the welfare payment system during the redevelopment process were appropriately managed. A clear change management process supported Services Australia to manage changes to the system, and most changes were implemented on time and within budget. There were arrangements in place for emergency system changes and low rates of failed and abandoned system changes, although Services Australia did not appropriately monitor the use of workarounds over time.

## Preparation to transition to the future system

15. Services Australia established an appropriate planning framework for the transition to the future welfare payment system. However, delays to decommissioning a key element of the system (the Income Security Integrated System) have put at risk one of the original objectives of the WPIT Programme and delay or negate realisation of all the expected benefits of the welfare payment system redevelopment. In June 2020, the decommissioning of this key element of the system was confirmed to be the main goal of the welfare payment system redeployment. However, almost half of the decommissioning was not expected to be completed by the end of the program.

16. Services Australia applied largely appropriate processes to support transition planning to the future welfare payment system. A lack of current system functionality documentation impacted Services Australia's capability to inform and commence the future system design. Critical elements of the future system are still in the design phase and this has had timing implications for the delivery of the redeveloped welfare payment system.

17. Services Australia has not yet established appropriate arrangements to migrate data to the future welfare payment system. Approaches to planning data migration commenced but were discontinued, and Services Australia has indicated that 'there is no significant data migration in the scope of WPIT Programme to date, nor in the currently planned Tranche 4 scope'.

## Recommendations

**Recommendation no.1** Services Australia risk assess, certify and accredit all elements of the current welfare payment system.

**Paragraph 2.33** **Services Australia response:** *Agreed.*

**Recommendation no.2** Services Australia implement arrangements to monitor the operating cost of the welfare payment system in order to manage operating costs and enable evidence-based ICT investment decisions.

**Paragraph 2.47** **Services Australia response:** *Agreed.*

<b>Recommendation no.3</b> <b>Paragraph 2.73</b>	Services Australia develop and implement a policy to assess, control and monitor workarounds for the current welfare payment system over time. <b>Services Australia response:</b> <i>Agreed.</i>
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<b>Recommendation no.4</b> <b>Paragraph 3.10</b>	Services Australia conduct a risk assessment of the decommissioning strategy, implement appropriate controls, and actively monitor and report until decommissioning is complete. <b>Services Australia response:</b> <i>Agreed.</i>
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<b>Recommendation no.5</b> <b>Paragraph 3.39</b>	Services Australia govern, plan, resource and risk manage data migration in order to preserve the use and value of existing information in the future welfare payment system. <b>Services Australia response:</b> <i>Agreed.</i>
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## Summary of entity response

Services Australia welcomes this report and considers that implementation of the recommendations will enhance the Agency's ICT risk management capability and support the implementation of the final tranche (Tranche 4) of the Welfare Payment Infrastructure Transformation programme.

Recognising the strategic importance of the redevelopment of our welfare payment systems and the expected benefits to our customers Services Australia agrees with the ANAO's recommendations and will work to further strengthen the governance, oversight and risk management arrangements supporting implementation of this programme.

18. Services Australia's full response can be found at Appendix 1.

# Purchase of the 'Leppington Triangle' Land for the Future Development of Western Sydney Airport

**Type:** Performance audit

**Report number:** 9 of 2020-21

**Portfolios:** Infrastructure, Transport, Regional Development and Communications

**Entities:** Department of Infrastructure, Transport, Regional Development and Communications

**Date tabled:** 21 September 2020

## Background

1. On 31 July 2018, the Australian Government purchased a 12.26 hectare triangular parcel of land for \$29,839,026 (GST exclusive) in Bringelly NSW. The land is referred to as the 'Leppington Triangle' and it sits adjacent to the Western Sydney International (Nancy-Bird Walton) Airport site (the 'Western Sydney Airport'). The land acquisition process was undertaken by the undertaken by the Western Sydney Unit within the Department of Infrastructure, Transport, Regional Development and Communications ('Department of Infrastructure' or 'the department').

## Rationale for undertaking the audit

2. For financial reporting purposes at 30 June 2019, the Department of Infrastructure valued the Leppington Triangle land at \$3,065,000 - a tenth of the price it had paid eleven months earlier. As required by the Australian Auditing Standards, the ANAO raised this with the department as a significant and unusual transaction. While the ANAO undertook further audit procedures as part of the financial statement audit, it was unable to conclude on key aspects of the transaction based on the information provided to it by the department. In this context a performance audit of the transaction was considered warranted.

3. An examination of the purchase of the Leppington Triangle land would also provide a case study of the extent of the due diligence exercised by the Western Sydney Unit in the department when performing its responsibilities. The Unit's responsibilities include administering the Australian Government's investments of \$5.3 billion in the Western Sydney Airport and \$2.9 billion in the Western Sydney Infrastructure Plan.

## Audit objective and criteria

4. The objective of the audit was to examine whether the Department of Infrastructure exercised appropriate due diligence in its acquisition of the Leppington Triangle land for the future development of the Western Sydney Airport.

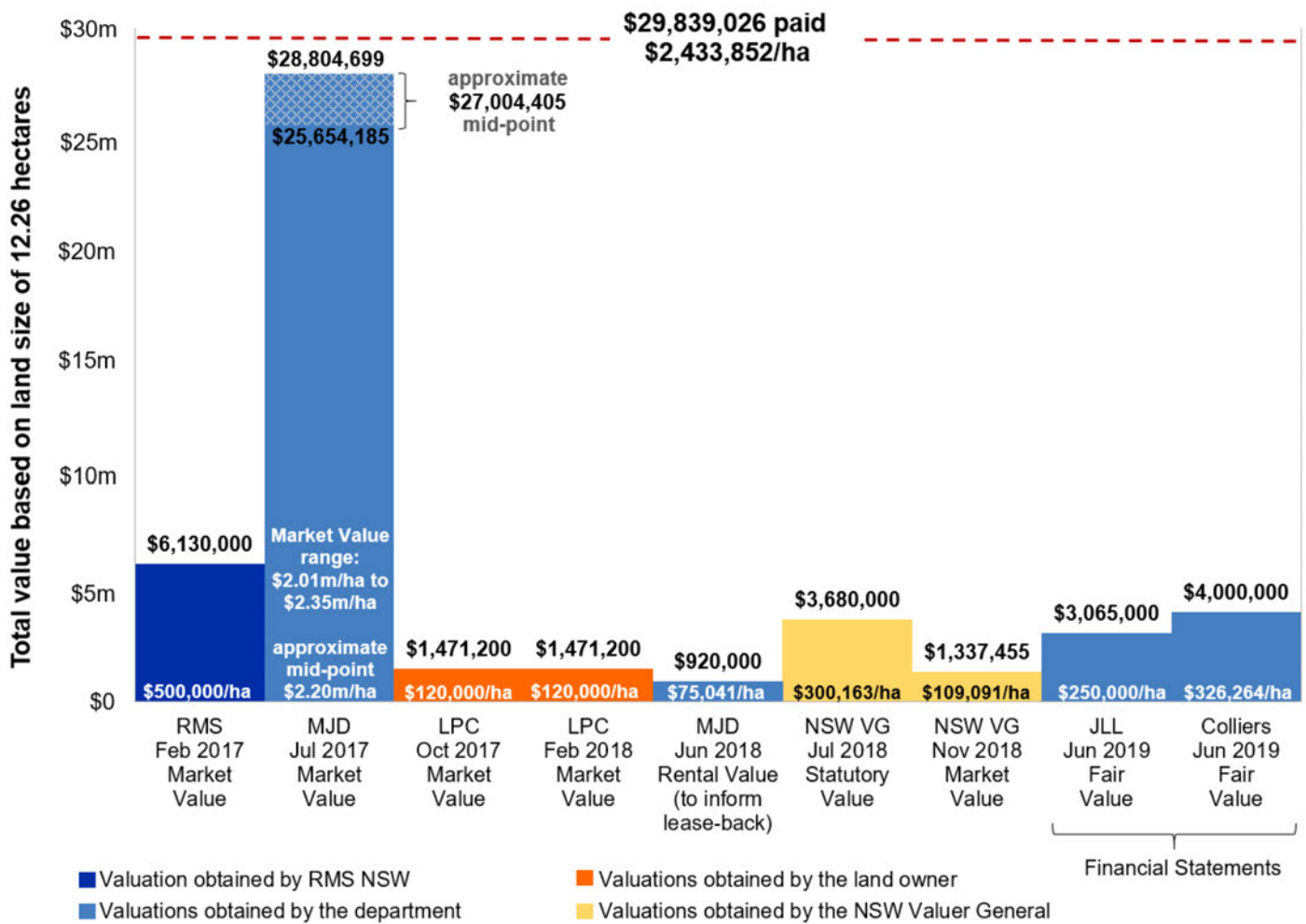
5. To form a conclusion against this objective, the following high-level criteria were applied:

- Was an appropriate acquisition strategy developed?
- Was an appropriate approach taken to valuing the land?
- Were decision-makers appropriately advised?

## Conclusion

6. The Department of Infrastructure did not exercise appropriate due diligence in its acquisition of the Leppington Triangle land for the future development of the Western Sydney Airport. In the course of this audit it became clear that aspects of the operations of the department, both during and after the acquisition, fell short of ethical standards.
7. An appropriate acquisition strategy was not developed. While a strategy was documented and approved:
  - it was focussed on incentivising an unwilling seller to dispose of their land some 32 years in advance of when it was anticipated to be needed for the airport expansion, an approach at odds with the department asserting that early purchase allowed it to capitalise on 'goodwill' from the landowner;
  - the underlying analysis overstated the identified benefits, did not quantify costs and did not address risks; and
  - the acquisition approach eventually employed departed from the approved strategy.
8. The approach taken by the Department of Infrastructure to valuing the Leppington Triangle was not appropriate. The approach inflated the value of the land, which in turn led to the Australian Government paying more than was proper in the circumstances.
9. Decision-makers were not appropriately advised on the land acquisition. Formal briefings omitted relevant information, such as: the purchase price; that the price exceeded all known market valuations of the land (see Figure S.1); and the method of acquisition. Advice from the department on value for money was inadequate and unreliable. Decision-maker approval was not evident for some of the actions taken. A subsequent departmental review of the acquisition process lacked rigour and did not provide a reasonable basis for concluding that the transaction was settled for an appropriate value.
10. The incomplete advice provided to decision-makers, and the inadequate response by the department when questions were raised by the ANAO, was inconsistent with effective and ethical stewardship of public resources.

### Figure S.1: Comparison of the price paid against nine valuations of the land



Source: ANAO analysis of Department of Infrastructure records.

## Supporting findings

### Land acquisition strategy

- The Australian Government expected that it would need the Leppington Triangle when a second runway is constructed at a future stage of the Western Sydney Airport's development. It estimated that a second runway would be required from around 2050.
- The Australian Government had sought to acquire the Leppington Triangle in 1989 as part of a larger parcel of land. During a 10-year dispute with the landowner the Australian Government agreed to exclude it from that acquisition process.
- The key impetus for starting work in 2016 on acquiring the Leppington Triangle was to capitalise on goodwill the department considered had been created by concessions made to the landowner on the route for the realignment of The Northern Road. The route was adjusted so as to run on mostly Australian Government land along the airport boundary rather than through the farm of the landowner. Due diligence and value for money was not demonstrated in the department's advice supporting the route adjustment.



14. Appropriate consideration was not given to costs and benefits when deciding to acquire the land early. The benefits identified by the department in its advice are questionable and there was no documented consideration of costs. The department did not demonstrate that the benefits of acquiring, and paying for, the land some decades in advance of need outweighed the cost to the Australian Government.

15. The strategy for acquiring the land contained a package of transactions intended to incentivise an unwilling seller, which was at odds with the department's advice that the early purchase was being pursued so as to capitalise on perceived goodwill from the landowner. Cost estimates were not included in the documented acquisition strategy. After approval was given within the department to progress an acquisition by compulsory process, the approach was changed, without further documented approval, to be an acquisition by agreement with the owner so as to achieve a target date of 31 July 2018.

16. There were shortcomings in the department's management of probity with its staff. A key requirement was for all Western Sydney Unit officers and advisors to declare conflicts of interest. While the declaration requirement was largely met, a senior officer did not appropriately action probity instructions in relation to a declared conflict. Probity risks were also increased by the approach taken by some staff when engaging directly with landowners.

## Land valuation

17. A single valuation of the market value of the land was obtained jointly with the landowner. No valuation of the other types of compensation that may be payable under a compulsory acquisition was obtained.

18. The land valuation was procured by approaching one supplier. The supplier was one of those suggested by the landowner and was then agreed to by the department on the basis that there were no conflicts of interest between the parties. The approach taken was not sufficiently robust in light of the procurement risks. While the cost of the valuation was low (less than \$4,000) the importance of the valuation to informing a multi-million dollar purchase meant that an openly competitive procurement approach was warranted.

19. The department gave the valuer inappropriate instructions on the valuation approach to be used and the basis on which the current market value of the land was to be assessed. Specific instructions not to carry out the usual enquiries and investigations associated with a market valuation resulted in a 'Restricted Assessment' being obtained, which provides a lower level of assurance than was appropriate for the Australian Government's purpose. The department did not provide the ANAO with accurate answers when questions were first asked about the valuation approach, which was not ethical behaviour.

20. A sales comparison method was used that, by instruction from the department, assumed a highest and best use reflected in speculative industrial re-zoning potential that was highly unlikely to occur given existing legal restrictions and the requirements associated with the future development of the airport. Negative impacts on land value (for example, airport noise) and restrictions associated with development controls affecting land around airports were not reflected in the valuation.

21. The resulting 'restricted valuation' was that the value of the land would likely fall within the range of \$28.5 million – \$32 million, should a fully researched valuation be undertaken (which did not happen). Overall, the valuation approach required of the valuer by the department increased the cost of the purchase to the Australian Government.

22. The recorded basis for the department accepting the draft valuation report, without edit, was confirmation from the landowner that the report could be finalised. The department did not take up the suggestions offered by the NSW government on the draft valuation report nor take action in response to advice that the NSW government had valued the land substantially lower.

## Advice to decision-makers

23. The departmental decision-maker was appropriately advised in 2016 when giving approval to pursue the acquisition of the Leppington Triangle by compulsory process. Thereafter, decision-makers were not advised as to the method of acquisition, which had changed. The land was acquired in July 2018 by way of agreement with the owner.

24. The approach taken by the department of omitting key information in the briefings to decision-makers and Ministers was inappropriate and inconsistent with acting ethically. Decision-makers were not appropriately advised as to the amount to be paid to the landowner. While some briefings outlined the basis on which the market value of the land would be calculated, all omitted to state that value. It was not made evident that the department intended to pay a per hectare rate some 20 times higher than that proposed by the NSW government for its portion of the Leppington Triangle.

25. Decision-makers were not appropriately advised as to the value for money of the terms of the land acquisition. Briefings lacked balance in that, while they presented confirming evidence as to the reasonableness of the proposed land price, they omitted evidence that the price was too high including reference to other valuations of the land. This approach was misleading and did not support informed decision-making. Overall, the lack of transparency evident in briefings concerning the basis for valuations and the price being paid was inconsistent with an ethical approach to public administration.

26. The ANAO identified the revaluation of the acquisition in the department's financial statements as a significant and unusual transaction and recommended a review be undertaken to determine if integrity and probity were maintained during the process. The ANAO also drew the attention of the department's Audit and Risk Committee to the issue.

27. A departmental review of the acquisition process did not adequately account for the difference between the purchase price of \$29.8 million and the land asset value of \$3.1 million. The review process lacked rigour in its approach and in terms of being conducted by officers directly involved with the transaction. The department's Audit and Risk Committee did not take any action in response to the matters raised by the ANAO.

## Recommendations

### Recommendation no.1

#### Paragraph 2.46

The Department of Infrastructure, Transport, Regional Development and Communications prepare comprehensive and balanced written analysis on the benefits, costs and risks of proposals to spend public money.

**Department of Infrastructure, Transport, Regional Development and Communications response:** *Agreed.*

**Recommendation  
no.2**

**Paragraph 2.98**

The Department of Infrastructure, Transport, Regional Development and Communications put in place meeting and communication protocols for when staff engage directly with individual landowners, developers or similar parties with heightened probity risks. The protocols should: include guidelines regarding suitable venues; require the presence of at least two departmental representatives; and require properly recorded minutes of meetings and conversations.

**Department of Infrastructure, Transport, Regional Development and Communications response:** *Agreed.*

**Recommendation  
no.3**

**Paragraph 3.84**

The Department of Infrastructure, Transport, Regional Development and Communications develop policies and procedures to govern its approach to obtaining purchase valuations.

**Department of Infrastructure, Transport, Regional Development and Communications response:** *Agreed.*

## Summary of entities' responses

28. The proposed audit report was provided to the Department of Infrastructure, Transport, Regional Development and Communications. The department's summary response is provided below and its full response is at Appendix 1.

29. Extracts of the proposed audit report were provided to the Department of Finance, Transport for NSW, the Leppington Pastoral Company, Landrum & Brown, M J Davis Valuations Pty Ltd and the former Secretary of the then Department of Infrastructure, Transport, Cities and Regional Development. Formal responses to the extracts were provided by the Department of Finance, Transport for NSW and Landrum & Brown and are at Appendix 1.

## Department of Infrastructure, Transport, Regional Development and Communications

The Department of Infrastructure, Transport, Regional Development and Communications (the Department) notes the ANAO report and agrees with the recommendations.

The Department is concerned by the findings of the report, and is taking actions to address any shortcomings in the processes and decision making arrangements identified in relation to the Leppington Triangle acquisition.

The Department has a long track record of operating consistent with expected standards of integrity and ethics. In light of the allegation of individual breaches of integrity, the matters raised by the ANAO in the report are being investigated to ensure all such matters are fully understood and appropriate action can be taken.

The Department has established an independent review of the transaction arrangements to ensure the findings of the audit are addressed. The Department has also commenced management reviews into matters of staff conduct identified by the ANAO, and will ensure the concerns raised are specifically addressed.

An external probity advisor will be appointed to support ongoing functions related to major projects and land acquisitions, and will assist with the development of guidance materials on obtaining purchase valuations in consultation with the Department of Finance, to ensure that protocols are in line with operations of the Lands Acquisition Act 1989.

The Department notes the ANAO view that the purchase could have been made at a much later date, and considers that consistent with earlier approaches at Badgerys Creek, and with other airports, acquisition of the land as early as practicable has benefits. The acquisition of the Triangle represented the final parcel of land that needed to be acquired for the airport site, creating a complex market situation.

The acquisition of the Triangle came about alongside the establishment of the Western Sydney Airport Company and the public release of the Government's Airport Plan which committed to a two runway airport.

Early acquisition provided certainty to stakeholders for long term planning, has allowed Western Sydney Airport Company to plan effectively for the entire development of the Airport as identified in the Airport Plan, and has reduced the risk of future challenges on the Airport development.

The Department agrees that the valuation strategy was unorthodox. However, we note that the strategy was developed in consultation with the Department of Finance and the Australian Government Solicitor and was designed to mitigate the risk of costly and lengthy legal challenges.

As the report notes, the land-holding company had previously challenged land acquisitions at the airport site with the Department spending over ten years in legal proceedings.

The Department's Audit and Risk Committee has been consulted on the audit. They advised the Financial Statements Sub Committee were made aware prior to the Audit and Risk Committee recommending the financial statements be signed by the Secretary, that the accounting treatment of the transaction and its inclusion in the Department's financial statements, had been accepted by the ANAO and that an unmodified audit opinion would be issued.

The Committee was further advised that the ANAO intended to undertake further audit procedures of the purchase, internal reviews on probity and integrity were being undertaken by the Department, and that the ANAO may conduct a performance audit on the matter at a later stage.

## Key messages from this audit for all Australian Government entities

Below is a summary of key messages, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

## Procurement

- Considerable benefits, including effective management of risks, can follow from employing an open approach to the market for low-value procurements where the procured advice will have a high-value impact.
- The *Lands Acquisition Act 1989* (LAA) applies to most Australian Government acquisitions of interests in relation to land. The LAA contains prescribed principles for assessing the amount of compensation payable for land that is compulsorily acquired but not for land that is acquired via an agreement with the landowner. Where the land was listed for sale in the open market, then it may be reasonable that the agreed amount not extend beyond the market price. Where the land was not listed for sale, then the general principles of compensation set out in the LAA for compulsory acquisitions offer entities a guide to transparently and ethically agreeing an amount of compensation that is just.

## Governance and risk management

- Balanced advice to decision makers includes identifying the costs and risks associated with a recommended course of action, not just the benefits.
- Good governance involves entity leaders developing a culture requiring and supporting actions which are not only in compliance with rule frameworks but also with the intent of those frameworks, including those which set standards for ethical practices.
- Effective stewardship of public resources requires that concerns expressed by integrity agencies be taken seriously, including by entities acting to identify and address poor practices.

# Administration of Financial Disclosure Requirements under the Commonwealth Electoral Act

**Type:** Performance audit

**Report number:** 8 of 2020-21

**Portfolios:** Finance

**Entities:** Australian Electoral Commission

**Date tabled:** 17 September 2020

## Background

1. The financial disclosure scheme was introduced in 1983 to increase overall transparency and inform the public about the financial dealings of political parties, candidates, senate groups and others involved in the electoral process. Regulation of the receipt and public disclosure of campaign funding and expenditure was seen as complementary and a necessary corollary to the introduction of public funding of political parties and candidates.
2. The financial disclosure scheme requires specified participants (entities) in the electoral process that receive funding, provide funding, or incur political, now electoral expenditure to lodge financial disclosure returns with the Australian Electoral Commission (AEC). Such information assists voters to make judgements knowing who funds political representatives and to what extent.

## Rationale for undertaking the audit

3. The administration of the financial disclosure requirements by the AEC was selected for audit because the purpose of the financial disclosure scheme is to preserve the integrity of the electoral system, maintain public confidence in the electoral process and reduce the potential for undue influence and corruption. The financial disclosure scheme is also a central pillar of the Australian arrangements to provide electors with sufficient information on which to base selection of their political representatives.

## Audit objective and criteria

4. The objective of the audit was to examine the effectiveness of the AEC's management of financial disclosures required under Part XX of the *Commonwealth Electoral Act 1918*, including the extent to which the AEC is achieving accurate and complete financial disclosures.
5. To form a conclusion against the audit objective the following high level audit criteria were used:
  - Has the AEC established effective arrangements to administer the financial disclosure scheme?
  - Has the AEC developed and implemented effective compliance monitoring arrangements?

## Conclusion

6. The AEC's management of the financial disclosures required under Part XX of the *Commonwealth Electoral Act 1918* is partially effective.
7. The arrangements that the AEC has in place to administer the financial disclosure scheme are limited in their effectiveness as:
  - a. across the four year period examined, while the AEC has obtained 5882 annual and election returns, as at 30 June 2020, 75 returns have not been obtained. There have also been delays with the submission of returns to the AEC with 22 per cent of annual returns and 17 per cent of election returns lodged after the legislated due date;
  - b. the AEC does not make effective use of available data sources to identify entities that may have a disclosure obligation that have not submitted a return;
  - c. there is insufficient evidence that the returns that have been provided are accurate and complete;
  - d. there is limited analysis undertaken of returns that are obtained; and
  - e. risks to the financial disclosure scheme are not managed in accordance with the risk management framework.
8. Compliance monitoring and enforcement activities are partially effective with the result that the AEC is not well placed to provide assurance that disclosure returns are accurate and complete.

## Supporting findings

9. Across the four year period examined by the ANAO the AEC has obtained 5882 annual and election returns, and as at 30 June 2020, has not obtained 75 returns. Compliance with legislated timeframes has also been an issue, with 22 per cent of annual returns and 17 per cent of election returns lodged after the legislated due date. Forty four entities have submitted annual returns on average over 30 days late on two or more occasions, with 12 (27 per cent) having lodged, on two or more occasions, on average over 120 days late. Additionally, the AEC does not make effective use of available data sources to identify entities that may have a disclosure obligation and have not submitted a return.
10. There is insufficient evidence that annual and election returns are accurate and complete. While the AEC checks that all fields have been completed and looks for some obvious errors it does not compare the figures disclosed with other data available from internal or external sources, instead relying on its annual compliance review program to provide sufficient evidence that the annual and election returns are accurate and complete.
11. The effectiveness of the analysis undertaken by the AEC is limited. Annual returns submitted by third parties and donors are not analysed. Election returns submitted by candidates, senate groups or election donors are not analysed. The analysis that is undertaken of annual returns submitted by political parties and associated entities is limited as there is no detailed analysis of the financial information, and effective data analytics and data matching techniques are not employed by the AEC.

12. Risks to the financial disclosure scheme have not been managed in accordance with the AEC's risk management framework. While the risk appetite and tolerance statement of this framework states that the AEC has a low/moderate risk tolerance for risks associated with the disclosure function there is no evidence that risks relating to all entities that have a disclosure obligation have been assessed and are being managed appropriately. Additionally, there is no treatment plan in place for the risk that has been identified by the AEC, being the risk of non-compliance by political parties.

13. While the AEC has identified some lessons that it could learn from other electoral bodies that regulate financial disclosure schemes, there is little evidence of any resulting changes having been made to how the Commonwealth scheme is administered. The AEC has also not taken adequate steps to implement agreed recommendations from a review it commissioned in 2012 of the disclosure compliance function (which concluded that the AEC needed to become more proactive in its approach).

14. The AEC does not apply an appropriate risk based approach to planning and conducting compliance activities.

- While most reviews are planned on the basis of a risk assessment, there are a number of limitations in the risk assessment methodology employed.
- Over the period assessed the AEC did not undertake a compliance review of any election donor returns or of any annual returns that included no financial disclosures (that is, a nil return).
- The number of reviews, and the resources allocated to them, have declined considerably across the five year period analysed. These reductions do not reflect an assessment that the risk of non-disclosure or non-compliance has reduced and this situation is also at odds with the significant growth that has occurred in the total value of receipts and other figures included in the financial disclosure returns provided to the AEC.

15. Planned compliance activities are not implemented in a timely and effective manner. Of the 168 reviews that were planned to have been conducted over the five year period examined by the ANAO, 58 (35 per cent) have not been completed. While completion rates have improved in the last two years this is due to the AEC significantly reducing the number of planned reviews, narrowing the scope of planned reviews, and reducing the value of the transactions being tested. There has also been a marked decline in the number of full reviews that are being conducted on large entities with disclosure obligations.

16. The AEC does not appropriately act upon identified non-compliance. It is not making effective use of its enforcement powers and as such has not implemented a graduated approach to managing and acting on identified non-compliance.



# Recommendations

**Recommendation  
no.1**

The Australian Electoral Commission improve the extent to which it is obtaining annual and election returns by taking:

**Paragraph 2.19**

- a. greater steps to identify entities with a reporting obligation, and drawing that obligation to the attention of those entities; and
- b. more effective action to obtain returns that have not been submitted by an entity with an identified disclosure obligation.

**AEC Response:** *Agreed with qualification*

**Recommendation  
no.2**

The Australian Electoral Commission use data analytics and data matching techniques to provide greater assurance over whether data included in returns can be relied upon, and as an indicator of returns that may require investigation.

**Paragraph 2.43**

**AEC Response:** *Agreed with qualification*

**Recommendation  
no.3**

The Australian Electoral Commission identify and develop treatment plans for risks relating to the financial disclosure scheme and manage the scheme in line with its revised risk management framework.

**Paragraph 2.52**

**AEC Response:** *Agreed*

**Recommendation  
no.4**

The Australian Electoral Commission apply the lessons learned that have been identified through:

**Paragraph 3.13**

- a. accessing specialist expertise to test the effectiveness of the processes and practices that are in place to identify undisclosed financial transactions; and
- b. establishing arrangements with other government agencies to share intelligence gathering, data interrogation and risk based sampling techniques.

**AEC Response:** *Agreed with qualification*

**Recommendation  
no.5**

The Australian Electoral Commission adopt a risk based approach to its compliance review program that:

**Paragraph 3.39**

- a. assesses the aggregate level of risk to inform decisions about the size and coverage of the program;
- b. includes all disclosures required under the updated legislative framework; and
- c. improves the effectiveness of the risk matrix used to select the majority of reviews, and better address risks of non-disclosure and incomplete disclosure.

**AEC Response:** *Agreed with qualification*

**Recommendation  
no.6**

The Australian Electoral Commission establish performance measures for its compliance program that are relevant, reliable and complete.

**Paragraph 3.73**

**AEC Response:** *Agreed*

**Recommendation  
no.7**

The Australian Electoral Commission implement a graduated approach to addressing non-compliance, including by making better use of its investigatory powers and seeking to have prosecutions undertaken by the Commonwealth Director of Public Prosecutions or civil penalties applied by the courts where serious or repeat non-compliance has been identified.

**Paragraph 3.90**

**AEC Response:** *Not agreed*

## Summary of entity response

An effective and transparent financial disclosure scheme is a key pillar of Australia's democratic framework, and the outcomes of this audit demonstrate there are aspects of the AEC's administration of the disclosure scheme that would benefit from further enhancements. The AEC acknowledges the audit team's work and notes the observations, which we will address in line with our responses to the recommendations.

However, the ANAO's categorisation of the AEC's management of the disclosure scheme as 'partially effective' is rejected. The proposed report contains some errors of fact and superficial analysis that lead to some flawed observations. It demonstrates a misunderstanding of the AEC's business and the legislation under which it operates. The ANAO's decision to conduct this audit prematurely – before recent legislative changes have had a chance to take effect – is akin to a building inspector assessing a two-storey house after only the first level had been completed. The result is a report that gives the Australian public an unduly negative and misleading impression of the effectiveness of the scheme.

The ANAO's finding that the AEC's management of the disclosure scheme is 'partially effective' runs counter to the extent of disclosure achieved by the AEC (obtaining 98.9% of annual returns and 99.6% of election returns during the four year period examined), the transparency of the current system, and the successful operation of the scheme within existing legislative boundaries.

The AEC view is that the ANAO has misunderstood the intent of the legislation. Over the period the AEC has been administering the requirements of the Electoral Act, the AEC has not detected systemic issues, wilful or large scale non-compliance with the legislation. And nor have others that scrutinise this scheme through our transparent sharing of the data. Our experience is that incomplete or incorrect disclosures are almost entirely caused by administrative mistakes or misunderstanding of disclosure obligations, which participants rectify. As a result, disclosure is achieved in line with the legislation.

The AEC's risk based approach to compliance reviews is the outcome of balancing the competing tensions of natural justice, apprehended bias and prudent use of Commonwealth funds with the preservation of public confidence in the transparency of the financial dealings of political parties and others involved in the electoral process.

Moreover, the AEC disagrees with the ANAO's view that it does not make effective use of its enforcement powers. The ANAO seems to have misinterpreted parliament's intent on this issue. The AEC's view, supported by data, is that the AEC has successfully achieved disclosure through consultation and education. The proposition the AEC should be more heavy-handed in its approach to enforcement is rejected, as prosecutorial action for amendments and other administrative mistakes would be disproportionate.

The AEC believes the ANAO's misunderstanding of the intent of the legislation exaggerates the nature of the recommendations and the perceived risk to electoral integrity.

## ANAO comment

17. The core elements of the financial disclosure scheme were introduced in 1983 and required disclosure reporting to the AEC and also provided the AEC with powers to undertake reviews and inquiries to maintain compliance with the disclosure provisions as well as a range of penalties aimed at discouraging non-compliance. Since its introduction, the financial disclosure provisions of the Electoral Act have been subject to four substantial amendments, most recently in 2018. The impact of those recent amendments on the AEC's practices was considered as part of the audit. Reflecting that the key elements of the AEC's responsibilities for administering the scheme are longstanding the audit examined administration of the disclosure scheme across four financial years spanning two federal elections and eleven by-elections.

18. To achieve the purpose of the disclosure scheme, it is important that reports be obtained from all those with a reporting obligation and that the reports obtained be timely, accurate and complete. While almost all returns sought by the AEC were obtained:

- reporting has not been sufficiently timely, with 22 per cent of annual returns and 17 per cent of election returns lodged after the due date with some entities submitting returns late on multiple occasions; and
- 78 per cent of returns reviewed by the AEC required amendment yet, rather than increasing its scrutiny of the reports that have been obtained, the AEC:
  - significantly reduced the number of planned reviews, narrowed the scope of planned reviews, and reduced the value of the transactions being tested;
  - did not undertake or did not complete 35 per cent of planned compliance reviews; and
  - has not undertaken a compliance review of any election donor returns or of any annual returns that included no financial disclosures (that is, a nil return).

## Key messages for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit that may be relevant for the operations of other Australian Government entities.

### Risk management

- Compliance programs should be developed on appropriate risk based priorities that address the full scope of regulatory responsibilities. This assists in providing assurance that regulators are appropriately allocating resources to identified risk areas.
- Agencies should select entities for a compliance review or similar engagement by applying an appropriate risk based approach that is capable of providing assurance that the overall purpose of the compliance review program is being achieved, and assessing the level of compliance of the regulated entities over time.
- Regulators should make appropriate use of their powers to support the objects of the legislative framework by applying a graduated approach to address non-compliance that includes the use of stronger sanctions when required.

### Implementation of recommendations

- Where resources are expended to review processes, procedures, activities, and identify opportunities for improvement the agency should ensure that: the outcomes from the engagement are implemented; the intended benefits of the engagement are realised; and value for money is achieved.

# Advances to the Finance Minister for the Period 1 August 2020 to 28 August 2020

**Type:** Assurance review

**Report number:** 7 of 2020-21

**Portfolios:** Finance

**Entities:** Department of Finance

**Date tabled:** 14 September 2020

## INDEPENDENT ASSURANCE REPORT

### ADVANCES TO THE FINANCE MINISTER 1 AUGUST 2020 TO 28 AUGUST 2020

## Conclusion

Based on the procedures I have performed and the evidence I have obtained, nothing has come to my attention that causes me to believe that, in all material respects:

- a. the Advances to the Finance Minister (AFM) 2020–21 Determination No. 2 (as registered on [legislation.gov.au](http://legislation.gov.au)) and the Finance Minister's AFM media release are not presented completely and accurately for the period 1 August 2020 to 28 August 2020 based on the criteria outlined in this report; and
- b. the internal controls related to the Department of Finance's administration of AFM were not suitably designed, implemented and operating effectively to achieve appropriate approval, recording and reporting of the AFM during the period.

My limited assurance conclusion has been formed on the basis of the matters outlined in this report.

I have undertaken a limited assurance review of the Department of Finance's reporting and administration of the AFM, in order to express a conclusion on the Determination made from 1 August 2020 to 28 August 2020, based on the following criteria:

- Have accounts and records been appropriately obtained and maintained to support the complete and accurate reporting of AFM, taking into consideration whether:
  - the Department of Finance has a central register of all applications and approvals;
  - all decisions for the AFM have been documented appropriately, including identifying the appropriation act under which the advance is made;
  - all accounts and records for the application for the AFM has been adequately maintained;
  - the Department of Finance has effective processes in place to obtain assurance from entities over the completeness and accuracy of the information provided to the Department of Finance;
  - the underlying financial information in relation to the AFM supports the description of the purpose for the amount advanced under the AFM as described in the Determination (as registered on [legislation.gov.au](http://legislation.gov.au)) and the Finance Minister's AFM media release; and
  - the Finance Minister's AFM media release presents complete and accurate information about the Determination made in the relevant week.
- Are the controls related to the Department of Finance's administration of AFM suitably designed, implemented and operating effectively to achieve appropriate approval, recording and reporting of AFM during the period, taking into consideration whether:
  - the Department of Finance has guidance or a framework that communicates clearly to entities as to the requirements to apply for the AFM, and whether this was complete, accurate, and compliant with the criteria set out in the Annual Appropriation Acts;
  - the Department of Finance has an appropriate risk framework for the AFM;
  - existing controls are capable of addressing the identified risks effectively;
  - the Department of Finance has implemented and operated effective controls over the approval process to ensure applications for the AFM are only approved when applying entities provide sufficient information to support compliance with the criteria set out in the Annual Appropriation Acts; and
  - the AFM approval process complied with the criteria set out in the Annual Appropriation Acts.

## Basis for conclusion

I have conducted the review in accordance with the ANAO Auditing Standards, which include the relevant Standards on Assurance Engagements ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* (ASAE 3000) and ASAE 3150 *Assurance Engagements on Controls* (ASAE 3150).

I believe that the evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

## Responsibilities of the Secretary of the Department of Finance

The Secretary of the Department of Finance is responsible for the administration of the AFM, the preparation of the above-mentioned Determination and maintenance of supporting accounts and records relevant to the reporting of the AFM in accordance with Supply Acts Nos. 1 and 2 2020–2021. The Secretary is also responsible for such internal control procedures as the Secretary determines necessary to enable the administration of the AFM and preparation of the above-mentioned Determination that is free from material misstatement, whether due to fraud or error.

## Independence and quality control

I have complied with the independence and other relevant ethical requirements relating to assurance engagements, and applied Auditing Standard ASQC 1 *Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, Other Assurance Engagements and Related Services Engagements* in undertaking this assurance review.

## Responsibilities of the Auditor-General

My responsibility is to express a limited assurance conclusion on whether the Finance Minister's and the Department of Finance's reporting of the AFM is complete and accurate, in all material respects, and internal controls related to the AFM were designed, implemented and operating effectively for the period from 1 August 2020 to 28 August 2020, as evaluated against the criteria. The ANAO Auditing Standards require that I plan and perform my procedures to obtain limited assurance about whether anything has come to my attention that the Department of Finance's reporting of the AFM is not complete and accurate, in all material respects, and internal controls related to the AFM were not designed, implemented and operating effectively for the period from 1 August 2020 to 28 August 2020.

An assurance engagement to report on the design and operating effectiveness of controls involves performing procedures to obtain evidence about the suitability of the design of controls to achieve the control objectives and the operating effectiveness of controls throughout the period.

The procedures performed in a limited assurance review vary in nature and timing from, and are less in extent than for, a reasonable assurance engagement and consequently the level of assurance obtained in a limited assurance review is substantially lower than the assurance that would have been obtained had a reasonable assurance engagement been performed. Accordingly, I do not express a reasonable assurance opinion on the reporting of the AFM or on the internal controls.

I have conducted my limited assurance review by making such enquiries and performing such procedures I considered reasonable in the circumstances, including:

- making enquiries of management and others within the entity, as appropriate;
- examining the internal control design specifications and documentation;
- examining supporting documentation for the determination; and
- evaluating the evidence obtained.

The procedures selected depend on my judgement, including the assessment of the risks that the reporting of the AFM is not complete and accurate or the controls are not suitably designed, implemented or operating effectively.

## Inherent limitations

Because of the inherent limitations of an assurance engagement, together with the internal control structure it is possible that, even if the controls are suitably designed and operating effectively, the control objectives may not be achieved so that fraud, error, or non-compliance with laws and regulations may occur and not be detected. Further, the internal control structure, within which the controls that I have assured are designed to operate, has not been assured and no opinion is expressed as to its design or operating effectiveness.

A limited assurance engagement throughout the specified period on operating effectiveness of controls is not designed to detect all instances of controls operating ineffectively as it is not performed continuously throughout the period and the tests performed are on a sample basis. A limited assurance engagement throughout the specified period does not provide assurance on whether complete and accurate reporting of the AFM or the outcome of the evaluation of controls will continue in the future.

Australian National Audit Office



Grant Hehir  
Auditor-General  
Canberra  
4 September 2020



# Design and Implementation of the Defence Export Strategy

**Type:** Performance audit

**Report number:** 6 of 2020-21

**Portfolios:** Defence

**Entities:** Department of Defence

**Date tabled:** 10 September 2020

## Background

1. The Joint Standing Committee on Foreign Affairs, Defence and Trade recommended in November 2015 that the Australian Government develop a 'defence exports strategy' to assist in reducing barriers to defence exports. The Australian Government provided in principle agreement to this recommendation on 1 September 2016. The Australian Government's Defence Export Strategy (the strategy) was launched on 29 January 2018.
2. The strategy sets out a strategic goal and five objectives for the development of defence exports by 2028. The strategy includes 26 initiatives that 'the Government will deliver to help achieve the Strategic Goal and the Objectives of the Strategy'. Together, the policies and initiatives in the strategy are described as a 'new defence export system'. The strategy states that the initiatives will be implemented in two phases, with Phase 1 to be implemented by the end of 2018, and Phase 2 to be implemented by the end of 2019.

## Rationale for undertaking the audit

3. The Australian Government has stated that 'a strong, resilient and internationally competitive Australian defence industry is essential to our national security.' The government's Defence Export Strategy is intended to implement key recommendations made by the Parliament's Joint Standing Committee on Foreign Affairs, Defence and Trade in its 2015 report on Australian defence industry and exports, and sets out an ambitious policy agenda to be delivered by 2028, including establishing Australia as one of the top ten global defence exporters. This audit provides the Parliament with independent assurance on Defence's design process for the strategy and its implementation to date, with a particular focus on the initiatives government expected to be delivered by the end of 2018 under Phase 1 of the strategy, and by the end of 2019 under Phase 2.

## Audit objective and criteria

4. The objective of the audit was to assess the effectiveness of Defence's design process and implementation to date of the Defence Export Strategy.

5. To form a conclusion against the audit objective, the ANAO adopted the following high level criteria:
- Did Defence help inform the design of the export strategy with sound and timely policy advice?
  - Has Defence established appropriate planning and governance arrangements to support implementation of the strategy?
  - Has Defence delivered the phase one and two initiatives set out in the strategy on time and on budget?
  - Has Defence established effective arrangements to monitor and report on the implementation of the initiatives under the strategy and achievement of defined objectives?

## Conclusion

6. Defence's design and implementation to date of the Defence Export Strategy has been partially effective.
7. The design process was largely effective. In designing the strategy Defence consulted with relevant stakeholders, but not all elements of the strategy had a firm evidentiary basis. Defence did not adequately draw the attention of decision-makers to key risks it had identified. Defence was responsive to government's initial decisions and directions but was unable to meet the timeframes set by the Minister for finalising the strategy.
8. Strategy implementation has been partially effective. While Defence established fit-for-purpose governance arrangements, planning arrangements were not established to appropriately support implementation of the strategy initiatives on time and on budget. Defence did not deliver all Phase 1 and Phase 2 initiatives in accordance with strategy timeframes and has not tracked expenditures relating to the strategy as a whole.
9. Monitoring and reporting on implementation has been partially effective. Defence has established some arrangements for monitoring and reporting on the implementation of initiatives under the strategy, but has not established effective arrangements for measuring the achievement of defined objectives. Defence has not established a performance framework or effective reporting arrangements to measure progress towards achieving the strategy's overarching goal and objectives and, as a result, the extent to which these have been achieved is not clear. Defence has established partially effective arrangements for monitoring and reporting on the implementation of initiatives in the strategy by the Australian Defence Export Office. Formal reporting on implementation progress to the Minister and Defence senior leaders has been limited.

## Supporting findings

10. Defence provided government with advice on the approach and rationale for developing a strategy, based on its consultation with government entities and industry. The approach to strategy development agreed by the Minister for Defence Industry was not fully addressed by Defence, with baseline data for defence exports not identified. Options for elements to be included in the strategy were discussed within Defence, the Minister's office was provided drafts for consideration, and the final strategy was presented to the Minister for approval. Available evidence indicates that Defence responded to government's initial decisions and directions in a timely manner but did not meet the expectation of the Minister in terms of finalising the strategy by September 2017.

11. The strategy objectives and initiatives developed by Defence were largely supported by research and consultation but were not informed by robust defence export data. The inclusion of objective five – growing Australia’s defence industry to become a top ten global defence exporter – reflects an announcement by the Minister for Defence Industry, and was not supported by analysis or data. Defence did not clearly map how the strategy initiatives would contribute to the achievement of strategy objectives.
12. Defence considered key risks and mitigation strategies during the strategy’s development, such as maintaining a strong export controls system and ensuring a focus on Defence capability outcomes. While Defence provided adequate detail to Defence Ministers, it did not provide all Ministers with adequate detail on risk and implementation challenges to more fully inform their decision-making.
13. Defence has established and implemented fit-for-purpose governance, co-ordination and stakeholder engagement arrangements to support delivery of the strategy. Roles and responsibilities for the strategy’s governance and implementation have been clearly identified. Defence has established co-ordination mechanisms within government and arrangements to engage with relevant external stakeholders. Stakeholders interviewed by the ANAO expressed a view that these mechanisms had improved collaboration across government for defence exports.
14. Defence prepared a draft implementation plan which addressed key implementation issues including risks, delivery milestones, roles and responsibilities. However the plan was not finalised or used and implementation was managed through business-as-usual mechanisms. Defence advised that tools such as checklists and ‘road maps’ were utilised instead to support implementation.
15. Of the eight phase one key milestones, Defence has delivered two initiatives on time, delivered four initiatives between five days and six months late, and not yet completed two initiatives. Defence does not monitor the phase one budget at an initiative level.
16. Of the three phase two initiatives, one initiative was not delivered on time. It is not possible to assess the timeliness for the remaining two initiatives because the strategy does not set out what completion of the initiative would involve. Defence does not monitor the phase two budget at an initiative level.
17. Of the five other key initiatives, Defence has made progress delivering four of these initiatives. The market intelligence capability is yet to be delivered.
18. Defence has not established a performance framework or effective reporting arrangements to measure progress towards achieving the strategy’s overarching goal and objectives. As of June 2020, Defence had not established baseline data for defence exports or a methodology for measuring defence exports. At the initiative level, a framework to assess the progress of strategy initiatives has been developed and mechanisms have been implemented for two initiatives to assess achievements and consider lessons learned from their specific activities.
19. There is limited reporting on progress in delivering the strategy to the Minister and Defence senior leaders, to demonstrate that the strategy is contributing to the outcomes that government expects. There is no reporting or publicly available information on Defence’s achievement towards strategy objectives, although there has been public reporting on the progress of some strategy initiatives.

## Recommendations

<p><b>Recommendation no.1</b></p> <p><b>Paragraph 4.6</b></p>	<p>That Defence extend the Defence Export Strategy's performance framework and develop an evaluation framework to measure and report on the achievement of the strategy's overarching goal and specified objectives.</p> <p><b>Department of Defence response:</b> <i>Agreed.</i></p>
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## Summary of the Department of Defence's response

Defence acknowledges the challenge in measuring achievement of the Defence Export Strategy (the Strategy)'s overarching goal and key objectives without an established defence exports baseline. Establishing a baseline is a complex undertaking and Defence has actively engaged across government, defence industry and the private sector to identify a way forward. The full implementation of the evaluation framework will take several years, allowing for the establishment of a baseline and measurement of changes over time.

As the focal point for coordinating whole-of-government defence export support for Australian defence industry, Defence welcomes the acknowledgement that fit-for-purpose governance, co-ordination and stakeholder engagement arrangements have been established and implemented to support delivery of the Strategy. Since the release of the Strategy in 2018, the Australian Defence Export Office has worked across government to deliver enhanced support to exporters. This has included leading delegations to 19 international tradeshows, recruitment of dedicated international resources, the inclusion of defence industry in Exercise Indo-Pacific Endeavour 2019 and increased industry involvement in the sale of surplus Australian Defence Force assets.

A strong exporting industrial base generates economic growth, creates jobs, and provides the capabilities required by the Australian Defence Force. Defence is committed to the goal of achieving greater export success to build a stronger, more sustainable and more globally competitive Australian defence industry to support Australia's Defence capability needs.

## Key messages from this audit for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

### Governance and risk management

- When an entity presents advice to government, it is important to ensure that government is made aware of all relevant facts, and of any risks that may impact on successful policy delivery.

## Policy/program design

- When developing objectives for a strategy or program, entities should develop objectives which are measurable and achievable. Where a baseline measurement is required to support the assessment of performance, entities should identify data requirements early, and ensure that adequate data exists.

## Policy/program implementation

- When implementing a strategy, an implementation plan can assist with defining what success looks like, and assist in tracking whether initiatives are on time and within budget.
- Where an entity tasks other entities in strategy or program delivery, an entity should develop clear governance and accountability mechanisms to ensure regular communication, promote coordination and reduce duplication.

## Performance and impact measurement

- When implementing strategies or new programs, entities should ensure regular reporting to senior leaders, including providing information on progress against timeframes and budget. Reports should include updates on emerging risks and implementation challenges, such as anticipated delays in milestone delivery.

# Regulation of the National Energy Market

**Type:** Performance audit

**Report number:** 5 of 2020-21

**Portfolios:** Treasury

**Entities:** Australian Energy Regulator

**Date tabled:** 3 September 2020

## Background

1. The National Energy Market commenced operation in 1998. In 2004, the Council of Australian Governments (COAG) established a governance framework to oversee the National Energy Market. The governance framework provides for participating jurisdictions to develop and implement Australian Energy Market Legislation relating to electricity and gas, and includes three market institutions that are accountable to the COAG Energy Council.
2. The Australian Energy Regulator (AER) is one of three energy market institutions, and is responsible for regulating the National Energy Market in accordance with the National Energy Laws. These laws aim to promote efficient investment in, and operation and use of, energy services for the long-term interests of energy consumers with respect to price, quality, safety, reliability and security. The National Energy Laws include the National Energy Retail Law, National Electricity Law and National Gas Law, and refer to national legislation that is implemented in each participating state and territory. Under the national legislation, the AER regulates wholesale and retail energy markets where competition exists, and provides economic regulation of monopoly networks through price-setting.
3. The National Energy Market is comprised of wholesale electricity and gas markets, the transmission and distribution networks and the retail sector. The energy supply chain begins with electricity and gas being generated or produced to be sold in wholesale markets. Energy retailers buy gas and electricity in the wholesale markets, and then bundle it with transportation services of transmission and distribution networks to sell to end-use customers. The retail energy markets allow retailers to supply and sell electricity, gas and energy services to residential and business customers.

## Rationale for undertaking the audit

4. There is ongoing community, political and media interest in energy supply, particularly rising energy prices and their impact on Australian households and businesses. In regulating the energy sector, the AER makes decisions that can affect energy prices, security and reliability. The audit findings can provide lessons for more effective monitoring, reporting and enforcement of compliance with National Energy Laws, Rules and Regulations by the AER.

## Audit objective and criteria

5. The audit assessed the effectiveness of the Australian Energy Regulator's regulation of energy markets. The high-level criteria were:

- Has the AER established and effectively communicated regulatory requirements to market participants and information to consumers to support informed decision-making?
- Has the AER identified compliance risks and developed an effective strategy to guide its regulatory activities?
- Has the AER effectively implemented a strategy and program of work to promote compliance, monitor compliance and address non-compliance, and fulfil other regulatory responsibilities?
- Has the AER established appropriate governance arrangements to manage the operation and performance of its regulation of the National Energy Market?

## Conclusion

6. The Australian Energy Regulator has been a partially effective regulator of energy markets.

7. The AER has partially appropriate governance arrangements to oversight its National Energy Market regulatory responsibilities. At the time of the audit, the AER was implementing a range of recommendations from previous reviews aimed at improving its governance, management and risk approaches. The AER has not established a performance monitoring, measurement and reporting framework that enables it to clearly demonstrate its effectiveness in regulating energy markets.

8. The AER has been partially effective in undertaking regulatory activities. It has supported market participants by providing extensive information to help them fulfil regulatory requirements, including through a range of reports on compliance and performance, hosting public registers, and conducting prescribed reviews and assessments. There is scope for the AER to improve timeliness in meeting legislative timeframes and content requirements for reports, and in documenting assessment decisions. The AER has not been able to demonstrate that the Energy Made Easy energy price comparator website has been effective or represents value for money.

9. The AER has been partially effective in identifying compliance risks. Its approach to collecting and storing compliance intelligence did not support timely, complete and efficient retrieval and analysis of this information for compliance monitoring and risk management purposes. The AER maintained a strategy to guide its compliance activities, comprised of a principles-based overarching strategy document and separate annual compliance priorities. The basis for, and effectiveness of, the AER's annual compliance priorities was not clear.

10. The AER has been partially effective in identifying and resolving non-compliance through education, compliance monitoring and enforcement activities. While many individual education activities sought to address non-compliance, the absence of an education strategy and evaluation framework made it difficult for the AER to demonstrate that its approach was effective. The AER conducts many compliance monitoring activities, but did not have a triaging process to assist in deciding whether to pursue inquiries and investigations on a risk-basis. The absence of a decision framework for selection and evaluation of enforcement outcomes has limited the AER's capacity to demonstrate that it has a proportionate and effective approach to resolving non-compliance.

# Supporting findings

## AER governance

11. The AER has established largely effective governance and oversight arrangements for its National Energy Market regulatory activities. The AER Board is responsible for oversight and making all decisions for its National Energy Market regulatory activities. The AER Board is supported by the ACCC through the AER division and structured governance arrangements. Between April 2019 and April 2020, the AER was progressing the implementation of recommendations from a number of reviews to improve governance and operational management arrangements, including to increase the strategic focus of the AER Board.

12. The AER has not established an effective performance monitoring, measurement and reporting framework that assists it to demonstrate its effectiveness as a regulator. The AER has two distinct arrangements for external reporting on its performance – the Commonwealth performance framework and the statements of expectations from the COAG Energy Council and Commonwealth Treasurer. These two frameworks were not well linked, and neither adequately captured the AER's purposes or provided a clear read from the purposes to the AER's deliverables. The frameworks were not complete, as reliability, quality, safety and efficiency elements were not explicitly measured, and there was limited consideration of security and price particularly with respect to the long term interests of consumers.

## Regulatory activities

13. The AER's development and communication of procedures and guidelines has been largely effective. In February 2020 the AER had 76 guidelines, schemes and models (instruments) on its website, of which 62 per cent were required by legislation and the remainder were developed by the AER to explain obligations to market participants and inform consumers. Of 17 instruments examined: the 12 required to include content established by legislation did so; and all four instruments required to be developed by a specific date did so. Of 14 instruments examined that were required to comply with a consultation procedure, the procedure was generally complied with except for four instances where the instrument was not published within required timeframes. Bi-annual surveys indicate that stakeholders are satisfied with consultation procedures but approximately one third considered that the procedures did not lead to consistent or predictable outcomes.

14. The AER established and maintained an energy price comparator website that is largely appropriate, but cannot demonstrate that the website is effective or value for money. The AER established the Energy Made Easy website in accordance with legislative requirements by 1 July 2012, in order to allow residential and small business customers to compare available energy offers. The website provided only basic comparisons until 2015, and did not support smart meter comparisons until April 2020. Establishment and maintenance was achieved through procuring website development and maintenance services. Due to significant increases in the value of contracts, numerous changes in requirements during development stages, and failure to deliver key functionality of the website, the procurements did not demonstrate value for money. The AER has not developed adequate performance measures and targets to measure the effectiveness of the website.



15. The AER has been partially effective in publishing timely and accurate performance and compliance reports. The AER has produced 15 types of reports, of which six addressed legislative requirements and nine were intended to increase transparency and inform stakeholders. The AER advised there were: report preparation procedures for 14 reports, of which six were not documented; and quality assurance processes for 14 reports, of which nine were not documented. Where procedures were documented they addressed some, but not all, of the report preparation or quality assurance processes. The AER met or mostly met the content requirements for all six report types required under legislation, and the timeliness requirements for three of the five report types examined. The AER could not fully ensure the accuracy of information presented in types of reports required by legislation due to information sources for reports often relying on self-reporting and public information, data quality concerns, and lack of processes to verify accuracy.

16. The AER has been largely effective in establishing and maintaining public registers. The AER was required to establish and maintain six registers on its website. All these registers have been established and most contained required content. The web content management system that hosts the registers includes some controls including user access, although there are opportunities to strengthen these controls. The AER has established a three-stage approval process for publishing content, which has not been consistently implemented. There were limited instances of incorrect information contained in, and delays in publishing on, the registers.

17. The AER has undertaken a number of activities to support contestability, reliability and security in the energy market. However, these activities have not been part of specific strategies and there has been little measurement of their impacts. Promoting competition, reliability and security is shared with other energy market institutions, and the AER has not clearly established its purpose, priorities and contributions to these objectives aligned to its roles in the energy market.

18. The AER's management of reviews and assessment processes has been partially effective, with the processes typically having not been completed in accordance with set timeframes. The AER's review of customer hardship policy guideline updates completed in 2019 were effectively managed and met timeframes. For the remaining four assessment processes examined, the AER: documented assessments of retail authorisations and exemptions, but did not adequately document assessments when making network decisions in all cases examined or approving network tariffs in 80 per cent of cases examined; and did not meet statutory or target timeframes in 50 per cent or more of assessment processes examined. Tools had been developed but were not adequately designed or sufficiently maintained to support the effective management, and specifically the timeliness, of the AER's assessment processes.

## Compliance arrangements

19. The AER did not fully establish and consistently apply robust systems and processes for gathering, storing, retrieving and analysing compliance intelligence from all sources. While the AER collected significant amounts of information, it was often captured or stored in ways that did not allow for efficient retrieval or analysis to inform the AER's compliance and enforcement activities. In instances where the AER had a structured, reliable and complete intelligence dataset (based upon sound capture and storage processes), this facilitated analysis to be performed that allowed the AER to better understand risks of non-compliance with the National Energy Market Laws, Regulations and Rules.

20. The AER established a partially appropriate risk-based framework for assessing, prioritising and managing risks of non-compliance in the National Energy Market. The framework requires risk assessments of each obligation contained in the National Energy Laws. However, many obligations have not been assessed and the framework does not sufficiently distinguish risk levels to support prioritisation and allocation of resources. The AER does not monitor and adjust risk assessments and related strategies and priorities.

21. From April 2014 to July 2019, the AER maintained a high-level compliance and enforcement framework, referred to as the Compliance and Enforcement Statement of Approach. This framework was updated in July 2019 and was renamed the Compliance and Enforcement Policy. Annual work programs, which covered regulatory and compliance activities, were in place during 2015–16, 2016–17 and 2017–18. For 2018–19, the AER continued to use its 2017–18 work program, and in July 2019 separately published annual compliance priorities for 2019–20. The high-level frameworks and work programs promoted compliance by defining the AER's compliance and enforcement activities, options, approach and priorities to stakeholders. However, the framework and work programs: did not address a number of key elements of the AER's purpose or the overarching strategy statement outlined in the corporate plan; were not supported by a performance or evaluation framework; and did not further develop strategies for individual elements of the overarching strategy.

## Compliance and enforcement activities

22. The AER has not developed an overarching education strategy, program of work or tools to assist in determining when education would be an effective mechanism to address non-compliance. The AER has used 10 types of educational activities in 39 instances. In 27 of the 39 instances (69 per cent) the AER intended that the education activity would address areas of non-compliance. In the remaining 12 instances (32 per cent) education activities did not address non-compliance, instead they were intended to educate and inform stakeholders. An evaluation was conducted by the AER of two of the 39 instances of education activities, although these evaluations did not seek to establish whether education activities effectively encouraged compliance or addressed non-compliance.

23. The AER has established partially effective arrangements to monitor compliance with the National Energy Laws. The arrangements consist of a broad range of monitoring activities which are not clearly instigated on a risk-basis. Few activities draw a conclusion about compliance and non-compliance. The arrangements are not supported by a triage process that would allow the AER to more efficiently deal with potential non-compliance, including escalating non-compliance issues of greater significance on a risk-basis.

24. The AER has been partially effective in addressing and resolving non-compliance, including through enforcement action. The AER has not established a triaging or decision-making framework that it consistently applies when deciding on enforcement action. Enforcement outcomes between 1 July 2015 and 30 June 2019 include: 56 infringement notices; two administrative undertakings; 6 enforceable undertakings; and 208 no action letters. Since 1 July 2019 the AER has commenced court proceeding for four separate matters. The AER has not assessed whether enforcement outcomes have resolved non-compliance.

## Recommendations

25. Six recommendations have been made.

# Recommendations

## Recommendation no.1

### Paragraph 2.23

The AER:

- a. develops risk reporting to the AER Board and ACCC Corporate Governance Board that presents the AER's risks and concisely reports on whether risks have been realised, current management arrangements are sufficient, overall risk ratings remain appropriate and any emerging risks; and
- b. implements arrangements to effectively identify and manage shared risks with other government and non-government entities.

**Australian Competition and Consumer Commission and the Australian Energy Regulator: *Agreed.***

## Recommendation no.2

### Paragraph 2.47

The AER develops a performance measurement and evaluation framework that:

- a. establishes the corporate plan as the primary planning document, which includes references to other key planning documents for the AER; and
- b. contains short, medium and long term measures that are consistent with section 16EA of the Public Governance, Performance and Accountability Rule 2014 and Resource Management Guide 131 Developing performance measures and supports the AER to report on its effectiveness with respect to its purpose and primary activities and strategies.

**Australian Competition and Consumer Commission and the Australian Energy Regulator: *Agreed.***

## Recommendation no.3

### Paragraph 3.78

The AER develops and uses tools that promote consistent:

- a. documentation of reviews and assessments, including tasks completed;
- b. management of reviews and assessments, including key timeframes; and
- c. provision of reliable information for performance reporting.

**Australian Competition and Consumer Commission and the Australian Energy Regulator: *Agreed.***

**Recommendation  
no.4**

The AER develops and implements an information management framework or arrangements for compliance intelligence that defines:

**Paragraph 4.11**

- a. the AER's main intelligence sources and how each is to be gathered so that information that is needed is created in a format that enables efficient business processes and maximises potential for use and reuse;
- b. the nature of information to be collected for each intelligence source with reference to a regulatory or compliance data model;
- c. where and how each intelligence source is to be stored in the AER's systems so that it is secure, accessible and retrievable for as long as required; and
- d. how and when the AER will use compliance intelligence to inform its activities, including documenting the extent to which compliance intelligence is complete and can be relied upon.

**Australian Competition and Consumer Commission and the Australian Energy Regulator:** *Agreed.*

**Recommendation  
no.5**

In setting its regulatory and compliance strategy and priorities, the AER:

**Paragraph 4.35**

- a. demonstrates the link between regulatory obligations and non-compliance risks in the National Energy Market and the priorities selected;
- b. explains how the achievement of its regulatory and compliance priorities delivers upon the AER's purpose;
- c. develops strategies for key elements of the AER's purpose and its regulatory and compliance objectives that demonstrate how activities are intended to contribute to the purpose, including strategies to drive competition, and promote reliability and security in the energy market and for the use of education to encourage compliance and address non-compliance;
- d. provides an evaluation framework, including performance indicators and targets to measure the effectiveness of strategies and activities in achieving the AER's purpose, regulatory and compliance objectives; and
- e. revises its risk approach and implements processes that enable effective assessment, prioritisation and management of non-compliance risks in the National Energy Market.

**Australian Competition and Consumer Commission and the Australian Energy Regulator:** *Agreed.*

**Recommendation  
no.6****Paragraph 5.29**

The AER develops risk-based triaging processes to support decision-making in relation to: undertaking further inquiries to establish compliance and non-compliance; and selecting the enforcement outcome when non-compliance had been established.

**Australian Competition and Consumer Commission and the Australian Energy Regulator: *Agreed.***

## Summary of entity response

The AER welcomes the ANAO's performance audit report on its Regulation of the National Energy Market. The audit is timely as, since the end of the period reviewed by the audit, the AER has welcomed four new Board members to our expanded Board, including a new Chair, and a new Chief Executive Officer has also joined. The new AER Board is currently in the process of revising the strategic priorities for the organisation.

We accept all six recommendations contained in the report and their implementation will be overseen by the AER Board and the Audit Committee for the ACCC and AER.

The report notes that in a number of areas, the AER had already started to address some issues identified by the ANAO. In making these changes, we benefited from discussions with the audit team. Below are some of the activities we are currently undertaking or have planned to implement the recommendations.

- We have undertaken a significant amount of work on risk management, with the development of an AER-specific approach to project risk, an overhaul of the AER risk register and the establishment of Board level processes for monitoring strategic risks.
- We have commenced the development of an AER-specific corporate plan, which will be informed by the new strategic priorities and form the centrepiece of the AER's new planning and reporting arrangements.
- We are currently rolling out a new project management framework, which will assist in projects being managed in a more consistent, structured and effective way, and will include the development of periodic status updates.
- Since July 2019, the AER has been implementing the recommendations of an internal review of its compliance and enforcement function, which are broadly consistent with the relevant recommendations of the ANAO. For example, we have developed a new agency-wide policy for assessing non-compliance, implemented improved governance arrangements and are currently developing a new risk assessment model.

As demonstrated above, we are committed to implementing the ANAO's recommendations and to improving the efficiency and effectiveness of our operations and governance arrangements.

# Key messages from this audit for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

## Governance and risk management

- Where multiple institutions operate in an industry (such as energy), regulators need clarity about the extent of their roles and influence on market outcomes, and to reflect those in governance, risk management and performance reporting frameworks.
- A transparent approach to shared risks that reflects cooperation between stakeholders and an understanding of the various tolerances and priorities of the market institutions can help ensure a broad perspective is taken to manage those risks.
- Obtaining structured feedback or intelligence from stakeholders can help regulators identify and manage key sector-wide risks. For example, the Australian Energy Regulator regularly engages with key stakeholders, including through a biennial survey.
- Regulators' compliance activities should be based on clearly articulated risk-based priorities. This assists in providing assurance that regulators are appropriately allocating resources to identified risk areas.

## Performance and impact measurement

- To promote transparency and accountability, regulators should publicly report on the number and outcomes of core compliance activities such as compliance assessments. Regulators should also report on the extent to which regulated entities comply, and fail to comply, with obligations under the legislation.
- Clear articulation of program objectives provides a basis to evaluate the extent to which outcomes are being delivered. This is particularly important for discretionary activities, so as to provide assurance regarding the proper use of public resources.

# Establishment and Use of ICT Related Procurement Panels and Arrangements

**Type:** Performance audit

**Report number:** 4 of 2020-21

**Portfolios:** Across Entities

**Entities:** Across Entities

**Date tabled:** 31 August 2020

## Background

1. Procurement is the process of acquiring goods and services. It is integral to the conduct of Australian Government activity and a core function of the Commonwealth public sector. In 2018–19 there were 78,150 contracts published on AusTender with a combined value of \$64.5 billion. Contracts in the Information Technology Broadcasting and Telecommunications category accounted for 6.1 per cent of the total value of reported contracts, representing over \$3.9 billion. Auditor-General Report No. 27 2019–20 *Australian Government Procurement Contract Reporting Update* reported that the number and value of panel contracts reported each year has increased significantly over the last ten years. In 2018–19, more than 36 per cent of reported contracts, involving over 17 per cent of reported contract values, were identified as having been drawn from a panel.

## Cooperative and coordinated procurements, including panel arrangements

2. 'Cooperative' procurement is the use of a procurement contract by more than one entity. Department of Finance (Finance) guidance states that cooperative procurement 'enables entities to reduce expenditure by sharing administration costs and utilising their combined economies of scale'.

3. Finance guidance states that 'coordinated' procurement arrangements are typically established for commonly used goods or services to increase efficiency, reduce cost, enhance service and quality and provide increased transparency, standard terms and conditions and improved contract management that benefits both the government and suppliers.

4. Cooperative and coordinated procurements generally result in an overarching contract, agreement or standing offer arrangement. A standing offer arrangement is often referred to as a panel arrangement. Finance defines a panel arrangement as 'a tool for the procurement of goods or services regularly acquired by entities'. Typically under a panel arrangement, multiple suppliers are appointed and each supplier is able to provide goods or services to an entity.

## Rationale for undertaking the audit

5. The use of cooperative and coordinated procurement arrangements, which can include panel arrangements, is intended to achieve efficiency and reduce risk, while supporting entities to achieve value for money outcomes. Previous ANAO audits have identified shortcomings with respect to some entities' application of the Commonwealth Procurement Rules (CPRs), including panel arrangements. Given the large number of procurements undertaken and the centrality of procurement to the operation of government and program delivery, entities' procurement practices should be efficient, effective, ethical and economical and suited to the size and complexity of the goods or services sought.

## Audit objective, criteria and scope

6. The objective of the audit was to assess the extent to which entities' establishment and use of ICT related procurement panels and arrangements supported the achievement of value for money outcomes.

7. To form a conclusion against the objective, the audit examined whether entities complied with the Commonwealth Procurement Rules (CPRs) and followed related guidance when:

- establishing ICT related procurement panels and arrangements; and
- using ICT related procurement panels and arrangements.

8. The audit assessed selected components of the establishment and use of two ICT related cooperative procurement panels:

- the IT Services panel established by the Department of Infrastructure, Transport, Regional Development and Communications (Infrastructure); and
- the Digital Marketplace panel established by the Digital Transformation Agency (DTA).

9. The audit also examined the establishment and use of the IBM Whole of Australian Government Arrangement (IBM Arrangement) managed by the DTA.

10. Use of the panels and IBM Arrangement was examined at Infrastructure, DTA and the following Commonwealth entities:

- Australian Electoral Commission;
- Australian Taxation Office;
- Department of Home Affairs;
- Department of Industry, Science, Energy and Resources; and
- Services Australia.

11. The ANAO examined a sample of 15 procurements – five from each of the two panels examined and five procurements made under the IBM Arrangement.

12. The audit also examined whether Infrastructure and DTA established effective monitoring arrangements to enable them to assess whether the panels or arrangements met their objectives.



13. During the course of the audit, the ANAO was advised by the Department of Finance of allegations of fraud related to the supply of information technology contractors. At the time of publishing this report investigations are ongoing.

## Conclusion

14. In establishing the three selected ICT related procurement panels and arrangements, Infrastructure and DTA could not fully demonstrate that the arrangements supported the achievement of value for money outcomes. In their use of the 15 selected ICT related procurement panels and arrangements, entities could demonstrate that the majority of procurements supported value for money outcomes, however in three cases it was difficult for entities to demonstrate this due to the absence of competition.

15. In relation to the establishment of the selected arrangements:

- Infrastructure complied with the CPRs and adopted related guidance when establishing its panel but could have adopted a more robust approach to the consideration of price, quality and risk to better support the achievement of a value for money outcome.
- DTA did not comply with all of the CPRs but did adopt a number of sound practices outlined in Finance guidance when establishing the Digital Marketplace panel. Its approach did not support the achievement of a value for money outcome or treat suppliers equitably. Once DTA identified these deficiencies it changed its processes. DTA's new approach complies with the minimum requirements of the CPRs, although DTA's consideration of price, quality and risk could be more robust to better demonstrate that its evaluation of suppliers achieves value for money outcomes.
- In establishing the IBM Whole of Australian Government Arrangement (IBM Arrangement) DTA largely complied with the requirements of the CPRs and the approach adopted a number of sound practices outlined in Finance guidance and supported the achievement of a value for money outcome. As the IBM Arrangement was only conducted with one supplier, the approach supported the achievement of a value for money outcome in the circumstances.
- Infrastructure and DTA obtained relevant approvals and complied with CPR reporting requirements. Given the scale and scope of its procurement arrangements, DTA should have been more active in identifying and managing key risks and probity arrangements in the establishment process.
- Infrastructure did not conduct systematic monitoring to assess whether its panel arrangement was meeting its objectives. The panel ceased operation in February 2020. DTA conducts a range of monitoring activities in relation to the Digital Marketplace panel and the IBM Arrangement. Monitoring indicates the Digital Marketplace panel objectives are largely being met and the IBM Arrangement is achieving some of its objectives although anticipated savings have not yet been achieved.

16. In relation to the use of the selected arrangements, entities largely complied with the CPRs to support the achievement of a value for money outcome. For one procurement, documentation did not fully demonstrate that the conditions for limited tender were met. In two other procurements, there was limited evidence supporting value for money considerations. In these three cases it was difficult for entities to demonstrate that the procurements achieved a value for money outcome. There were instances of entities not meeting requirements regarding the approval of variations to contracts, record keeping and AusTender reporting. There was also scope for some entities to strengthen their consideration and management of risk and probity.

17. When procuring from panels the CPRs remove the requirement for procurements over the relevant threshold to be offered to the wider market. This occurs whether or not the arrangement provides buyers with sufficient information to be an effective substitute for going to the wider market. The ability to achieve value for money for individual procurements from a panel is therefore impacted by the robustness of the processes used to assess suppliers when establishing the panel. For example, where a panel includes suppliers with low technical ability or high risk, or buyers cannot use price to help select the suppliers to approach, it is difficult to obtain a high degree of assurance that value for money has been appropriately assessed and achieved. It is also difficult to obtain such assurance when entities only approach one or a small number of suppliers. Procurements from panels and similar arrangements are often perceived as requiring less time and effort to conduct, particularly when the cost and time involved in running an open approach to market is considered, or when engaging a new supplier. When using panels and similar arrangements, entities need to adopt processes that are not just technically compliant with the CPRs but are also consistent with their intent, which is to drive value for money through competition.

## Supporting findings

### Establishment of ICT related procurement panels and arrangements – procurement planning and evaluation of suppliers

#### *Planning, determination of procurement method and approach to market*

18. Infrastructure's planning and approach to market for the establishment of the IT Services panel complied with the CPRs and demonstrated adoption of key sound practices identified in Finance guidance. Infrastructure documented reasons for establishing the panel and approached the market to conduct an open tender, which encouraged competition from the outset to support the achievement of a value for money outcome. Had Infrastructure established stronger thresholds in terms of price, quality and risk and included details in the request documentation, it would have been in a position to undertake a more robust assessment of value for money at the evaluation stage.

19. DTA's planning and approach to market for the establishment of its Digital Marketplace panel did not comply with all of the CPR requirements but did demonstrate the adoption of a number of key sound practices identified in Finance guidance. The planning and approach to market did not support the achievement of a value for money outcome. DTA documented clear objectives for establishing the panel and approached the market to conduct an open tender which encouraged competition. However, DTA's request documentation did not require suppliers to provide price information and DTA was therefore unable to conduct a value for money assessment in accordance with CPR requirements. Additionally, suppliers were able to join the panel based on different requirements – this resulted in not all suppliers being treated equitably, which is inconsistent with the CPRs.

20. DTA's planning and approach to market for the establishment of the IBM Arrangement complied with the CPRs and demonstrated adoption of key sound practices identified in Finance guidance. DTA documented clear objectives for establishing the arrangement and approached IBM via a limited tender as part of a coordinated approach to expand the number of Whole of Australian Government (WoAG) arrangements in place.

## ***Evaluation of suppliers and value for money consideration***

21. Infrastructure's evaluation of suppliers and consideration of value for money when establishing the IT Services panel complied with the CPRs. Had Infrastructure established strong thresholds in terms of price, quality and risk the department would have been able to undertake a more robust assessment of value for money.
22. DTA appointed sellers to the Digital Marketplace panel without a value for money assessment and suppliers were admitted based on different requirements – decisions which are not consistent with the CPRs. DTA identified that the panel had been established incorrectly and conducted a 'value for money (VFM) refresh' exercise. From 1 July 2018 existing and prospective suppliers have been required to provide one price for each of the categories applied for as well as technical information, which has enabled DTA to undertake a value for money assessment of suppliers. While DTA's new process is sufficient to achieve compliance with the minimum requirements of the CPRs, its consideration of price, quality and risk could be more robust to better demonstrate that its evaluation of suppliers supports the achievement of value for money outcomes.
23. In establishing the IBM Arrangement, DTA's evaluation approach complied with the CPRs and demonstrated adoption of key sound practices to support the achievement of a value for money outcome. Establishing the IBM Arrangement involved detailed contractual negotiations with both IBM and affected Commonwealth entities. Each entity involved in the negotiations reviewed the proposed terms and prices relevant to them and engaged with DTA to assist in forming the Australian Government negotiating position.

## **Establishment of ICT related procurement panels and arrangements – approval, reporting, risk management, probity and monitoring arrangements**

### ***Approvals, records and AusTender reporting***

24. Infrastructure and DTA obtained relevant approvals for each of the three selected arrangements. Infrastructure and DTA also complied with the CPRs when reporting details of these arrangements on AusTender.

### ***Management of risk and probity***

25. When establishing the selected arrangements Infrastructure and DTA established processes to manage risk and probity. Given the scale and scope of the procurements, DTA should have been more active in identifying and managing key risks for the Digital Marketplace panel and IBM Arrangement, and developed more robust probity arrangements for both arrangements.

### ***Monitoring arrangements***

26. Infrastructure did not conduct systematic monitoring to assess whether the panel objectives were met. The panel ceased operation in February 2020. DTA undertakes a range of monitoring activities in relation to the Digital Marketplace panel. Monitoring indicates that its objectives are largely being met. DTA's role in establishing and monitoring the ongoing use of the IBM Arrangement enabled it to ascertain that the arrangement is largely meeting its objectives. As the planned timeframe for establishing the IBM Arrangement was not achieved, planned savings have also not been achieved. As at June 2020, DTA was working with Finance to finalise arrangements for achieving anticipated savings from the IBM Arrangement.

## Use of ICT related procurement panels and arrangements

### *Planning, determination of procurement method and approach to market*

27. For the sample of 15 procurements reviewed by the ANAO there were seven where entities had not met the requirement in the CPRs to estimate the value of the procurement prior to determining the procurement approach. In all seven cases this did not impact the selection or reporting of the procurement method – the operation of the CPRs means that these procurements are automatically required to be reported on AusTender as employing the same procurement method used to establish the initial arrangement, regardless of the value of the procurement.

28. All entities documented the objective of the procurement and the goods or services procured were within the scope of the respective arrangement. For one limited tender procurement with IBM, ATO documentation did not fully demonstrate that the conditions for limited tender were met. Request documentation was prepared for nine of the 10 procurements. The documentation conveyed the key requirements of the procurement and included evaluation criteria that would enable the entity to assess the financial and non-financial benefits of the procurement to achieve a value for money outcome.

### *Evaluation of suppliers and value for money consideration*

29. Fourteen of the 15 procurements reviewed by the ANAO documented the evaluation of suppliers and consideration of value for money to meet the minimum requirements of the CPRs and related Finance guidance. For the one remaining procurement, documentation provided did not fully demonstrate that the conditions for limited tender were met. Given this, there is no assurance that the procurement achieved value for money. In the case of two of the 14 procurements, the limited available documentation supporting value for money considerations makes it difficult for entities to demonstrate that these procurements represented value for money.

30. Where there was request documentation, the evaluation of suppliers was consistent with the criteria contained in the request documentation. For most of the sampled procurements, buyers were not able to compare the prices suppliers provided in response to requests for quote with the suppliers' prices under the arrangement. This applied particularly to procurements made under the Digital Marketplace panel as buyers are not provided with the price suppliers provided to DTA when applying for inclusion on the panel.

31. Given that buyers procuring from the Digital Marketplace panel cannot see individual panellists' approved prices (to inform their decisions on which suppliers to approach) the degree of assurance available to them as to whether any procurement from the panel truly represents value for money is diminished, as the buyer is only able to select the best value for money of those suppliers approached (rather than the market as a whole). Assurance regarding the value for money of a procurement is improved by having access to meaningful pricing information.

### *Approvals, records and AusTender reporting*

32. All of the 15 procurements examined by the ANAO had appropriate evidence of approval for the initial procurement. Amendments relating to all but one procurement had appropriate records of approval. Record keeping requirements and AusTender reporting requirements were mostly met.

## Management of risk and probity

33. All entities had established processes to identify, analyse, allocate and treat risk when conducting procurements. For the 15 procurements examined by the ANAO, supporting documentation referenced the consideration of risk, although there was scope for some entities to strengthen their management and consideration of risk.

34. There was documentation indicating consideration of probity for 12 of the 15 procurements examined by the ANAO. There was evidence of all unsuccessful tenderers being advised for six of the eight relevant procurements examined that involved more than one supplier.

## Recommendations

35. This report makes four recommendations. Two are directed to the Digital Transformation Agency, one is directed to both the Department of Home Affairs and the Department of Industry, Science, Energy and Resources and one is directed to the Australian Taxation Office.

## Recommendations

### Recommendation no.1

Paragraph 2.54

The Digital Transformation Agency ensures that when establishing procurement panels suppliers are treated equitably and are appointed on the basis of a value for money assessment in accordance with the requirements of the CPRs.

**Digital Transformation Agency response:** *Agreed.*

### Recommendation no.2

Paragraph 2.71

The Digital Transformation Agency ensures that officials undertaking complex procurements have sufficient understanding of the procurement requirements, the nature of the arrangement being established and procurement related risks.

**Digital Transformation Agency response:** *Agreed.*

### Recommendation no.3

Paragraph 4.37

The Department of Home Affairs and the Department of Industry, Science, Energy and Resources give greater consideration to competition when selecting suppliers from a panel, particularly in the case of high value procurements or where there is likely to be a substantial increase in the value of a procurement, to drive value for money.

**Department of Home Affairs response:** *Agreed.*

**Department of Industry, Science, Energy and Resources response:** *Agreed.*

<b>Recommendation no.4</b>	The Australian Taxation Office ensure limited tender is used only where the conditions for limited tender outlined in the CPRs are met.
<b>Paragraph 4.47</b>	<b>Australian Taxation Office response:</b> <i>Agreed.</i>

## Summary of entities' responses

36. The proposed audit report was provided to the seven audited entities and the Department of Finance, which administers the Commonwealth Procurement Framework. An extract of the proposed report was also provided to the Department of Defence. Where entities provided a summary response, they are provided below.

### Department of Infrastructure, Transport, Regional Development and Communications

The Department welcomes the report and acknowledges the overall conclusions that the Department complied with the Commonwealth Procurement Rules when establishing the IT Services Panel, obtained relevant approvals and complied with reporting requirements.

The IT Services Panel ceased operation on 17 February 2020, however, the Department will consider the findings of the audit report, particularly in regard to strengthening the consideration of price, quality, risk and monitoring of objectives for any future ICT related procurement panels and arrangements.

### Digital Transformation Agency

The DTA agrees with the ANAO's findings and recommendations 1 and 2. The DTA will continue to take steps to improve the establishment and management of its panels in line with the ANAO's findings. The DTA supports the recommendations tabled by the ANAO.

### Australian Electoral Commission

The AEC strives to continually improve procurement processes, including those that use the mentioned ICT panel arrangements. The findings in the audit report indicate that the AEC's current processes are generally sufficient in satisfying all reporting requirements, however the AEC acknowledges that continual emphasis on recording appropriate evidence relating to communications with unsuccessful suppliers is required.

The AEC is committed to achieving value for money in all procurement processes, and this includes addressing financial and non-financial considerations. The AEC has implemented a number of initiatives to provide ongoing education to all staff, promoting compliance with Commonwealth Procurement Rules and covering many of the 'Key messages to Australian Government entities' noted in the report.

## Australian Taxation Office

The ATO welcomes this review and agrees with the ANAO's focus on achieving value for money, which is the core rule of the CPRs and underpins all the ATO's procurement processes.

The ATO has a robust procurement framework in place. Where limited tender procurement is to be used, we ensure it is permissible under the Commonwealth Procurement Rules and achieves value for money. We confirm this was the case for the relevant ATO procurements covered by this audit.

Noting this, the ATO agrees with the recommendation as presented in the section 19 report.

In relation to procurement 3, the ATO also notes that, under the CPR limited tender provisions at 10.3e, there was no requirement to approach the open market prior to extending the contract. In consideration of value for money in this procurement, sufficient weight should be given to the priority of ensuring continuity of services to the community.

For this procurement, given the specialised nature of SBR2 services in question, there was only one provider with the proven ability to deliver a compatible solution to the scale needed. Utilisation of another provider would have resulted in compatibility issues and high transition costs, presenting significant risks both to the continuity of critical services to the community and to containment of costs. These factors weighed heavily in the decision to utilise limited tender.

In addition, the market testing activity undertaken subsequent to the contract extension was to identify potential suppliers for a new and different service – being the replacement of SBR2. It was for a different purpose than the services obtained under the contract extension.

## Department of Defence

Defence acknowledges the findings contained in the audit report extract on *Establishment and Use of ICT Related Procurement Panels and Arrangements*.

Defence notes the ANAO's finding regarding DTA's records about Defence's compliance with the moratorium in place during the establishment of an expanded Whole-of-Government ICT procurement arrangement. Defence is pleased to confirm that the Department of Finance provided written and verbal permission for Defence's Accountable Officer to approve the creation of new and extension of existing IBM contracts during the moratorium, based on a risk assessment of operational need and urgency. Defence considers that new contracts or contract change proposals that Defence entered into with IBM during the moratorium aligned with this advice.

Defence primarily sought an exemption from the moratorium to mitigate potential operational risks to the Australian Defence Force that may have eventuated if a capability was not provided during the moratorium. Defence also received legal advice that if the contractual relationship with IBM was not maintained during this period, there was a risk of significantly increased program costs and delivery delays for government approved programs within Defence. Legal advice also indicated that Defence should not change provider during delivery of a capability as Defence would not be able to rely on protections such as warranties and IP rights afforded under extant contracting mechanisms.

Defence did not engage with the Finance Minister's office regarding the approach taken as the Department of Finance advised that they would brief the Finance Minister with a view to adjusting the delegation to allow small contracts, as well as second extensions, to be agreed by the Department of Finance, rather than the Finance Minister.

## Department of Home Affairs

The Department of Home Affairs (the Department) welcomes the ANAO's findings that the Department has established processes to identify, analyse, allocate and treat risk when conducting a procurement, and that the two selected procurements examined for the Department:

- documented the objective of the procurement and the services procured were within scope of the respective arrangement,
- provided the delegate with sufficient information to make an informed decision regarding approval and maintained appropriate records of approval, being:
  - a level of documentation commensurate with the scale, scope and risk of the procurement,
  - evidence of agreements with suppliers, in the form of a written contract/official order, and
  - records for limited tender that include the value and type of goods procured, circumstances justifying the use of limited tender and demonstration of value for money,
- documented the evaluation of suppliers and consideration of value for money to meet the requirements of the Commonwealth Procurement Rules and related Finance guidance, and
- complied with AusTender reporting requirements.

The Department will continue to consider approaching more than one supplier to provide services and will actively consider ways to enhance competitive tension in procurements when selecting suppliers from a panel, particularly in relation to high value procurements. The Department continues to review processes to ensure procurement processes are documented in a robust manner.

We note that in instances when a single supplier is approached under a panel arrangement, a competitive process usually precedes the direct source. This was the case with Home Affairs Procurement 1, in which the original contract was formed following a competitive request for quotation process through the Digital Marketplace in 2017. The justification for a subsequent direct approach is documented and includes a review of performance indicating if the supplier previously delivered a similar service to a high standard, whether the supplier holds the necessary clearances and if the supplier has a strong understanding of the Department's IT architecture and environment.

## Services Australia

Services Australia welcomes the ANAO's audit report on *Establishment and use of IT related procurement panels and arrangements* and notes that no recommendations have been made for our agency.

Nevertheless, in the interests of further strengthening our procurement practices, Services Australia will consider the report's findings, and incorporate any broader lessons where appropriate.



# Key messages from this audit for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

## Procurement

- When using panel arrangements, the CPRs remove the requirement for procurements over the relevant threshold to be offered to the wider market, irrespective of whether or not the arrangement provides buyers with sufficient information (such as pricing information) to be an effective substitute for going to the wider market. Given the obligation on officials to use and manage public resources in an efficient, effective, economical and ethical manner (proper use), entities need to ensure they adopt processes that are not just technically compliant with the CPRs but are also consistent with the intent of the CPRs, which is to drive value for money through competition.
- A key step in effective procurement is to have a clear understanding of the requirement for the procurement. Entities should ensure officials undertaking complex procurements have sufficient understanding of the procurement related objectives, procurement requirements, the nature of the arrangement being established and procurement related risks.
- When establishing procurement panels, entities need to ensure that suppliers are treated equitably and are appointed on the basis of a value for money assessment in accordance with the requirements of the CPRs.
- Close consideration of procurement scope in the initial planning stages is likely to better ensure that the procurement can accommodate future requirements and reduce the need for contract variations.
- When planning to procure from an existing arrangement, it is useful to document why the arrangement, and the individual supplier, were selected. This approach provides clarity in circumstances where there may be multiple alternative arrangements and suppliers. It is also useful to maintain documentation to support any assertions made. This can assist delegates ensure the arrangement and supplier selected are likely to result in a value for money outcome.
- When procuring from an existing procurement arrangement, entities need to ensure they estimate the procurement value for the procurement in accordance with the CPRs.
- Seeking multiple quotes generates competitive tension, helps drive value for money, and is consistent with the intent of the CPRs.
- It is important for entities to ensure risk management and probity considerations are commensurate with the scale, scope and risks of the procurement when procuring from pre-existing arrangements.
- When allocating a risk rating to a procurement it is useful to document why the procurement was given that rating. This can assist officials to ensure the risk assessment process was sufficiently thorough and can assist in monitoring risks over the course of the procurement.
- When answering tenderers' questions entities should ensure all suppliers are given the same information and at the same time, to ensure no potential supplier is given an advantage.

# Advances to the Finance Minister for the Period 27 June 2020 to 31 July 2020

**Type:** Assurance review

**Report number:** 3 of 2020-21

**Portfolios:** Finance

**Entities:** Department of Finance

**Date tabled:** 13 August 2020

## INDEPENDENT ASSURANCE REPORT

### ADVANCES TO THE FINANCE MINISTER 27 JUNE 2020 TO 31 JULY 2020

## Conclusion

Based on the procedures I have performed and the evidence I have obtained, nothing has come to my attention that causes me to believe that, in all material respects:

- a. the Advance to the Finance Minister (AFM) 2020–21 Determination No. 1 (as registered on [legislation.gov.au](http://legislation.gov.au)) and the Finance Minister’s weekly AFM media release are not presented completely and accurately for the period 27 June 2020 to 31 July 2020 based on the criteria outlined in this report; and
- b. the internal controls related to the Department of Finance’s administration of AFM were not suitably designed, implemented and operating effectively to achieve appropriate approval, recording and reporting of each AFM during the period.

My limited assurance conclusion has been formed on the basis of the matters outlined in this report.

I have undertaken a limited assurance review of the Department of Finance's reporting and administration of the AFM, in order to express a conclusion on the Determination made from 27 June 2020 to 31 July 2020, based on the following criteria:

- Have accounts and records been appropriately obtained and maintained to support the complete and accurate reporting of AFM, taking into consideration whether:
  - the Department of Finance has a central register of all applications and approvals;
  - all decisions for the AFM have been documented appropriately, including identifying the appropriation act under which the advance is made;
  - all accounts and records for the application for the AFM has been adequately maintained;
  - the Department of Finance has effective processes in place to obtain assurance from entities over the completeness and accuracy of the information provided to the Department of Finance;
  - the underlying financial information in relation to the AFM supports the description of the purpose for the amount advanced under the AFM as described in the Determination (as registered on [legislation.gov.au](http://legislation.gov.au)) and the Finance Minister's weekly AFM media release; and
  - the Finance Minister's weekly AFM media release presents complete and accurate information about the Determination made in the relevant week.
- Are the controls related to the Department of Finance's administration of AFM suitably designed, implemented and operating effectively to achieve appropriate approval, recording and reporting of AFM during the period, taking into consideration whether:
  - the Department of Finance has guidance or a framework that communicates clearly to entities as to the requirements to apply for the AFM, and whether this was complete, accurate, and compliant with the criteria set out in the Annual Appropriation Acts;
  - the Department of Finance has an appropriate risk framework for the AFM;
  - existing controls are capable of addressing the identified risks effectively;
  - the Department of Finance has implemented and operated effective controls over the approval process to ensure applications for the AFM are only approved when applying entities provide sufficient information to support compliance with the criteria set out in the Annual Appropriation Acts; and
  - the AFM approval process complied with the criteria set out in the Annual Appropriation Acts.

## Basis for conclusion

I have conducted the review in accordance with the ANAO Auditing Standards, which include the relevant Standards on Assurance Engagements ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* (ASAE 3000) and ASAE 3150 *Assurance Engagements on Controls* (ASAE 3150).

I believe that the evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

## Responsibilities of the Secretary of the Department of Finance

The Secretary of the Department of Finance is responsible for the administration of the AFM, the preparation of the above-mentioned Determination and maintenance of supporting accounts and records relevant to the reporting of the AFM in accordance with Supply Acts Nos. 1 and 2 2020–2021. The Secretary is also responsible for such internal control procedures as the Secretary determines necessary to enable the administration of the AFM and preparation of the above-mentioned Determination that is free from material misstatement, whether due to fraud or error.

## Independence and quality control

I have complied with the independence and other relevant ethical requirements relating to assurance engagements, and applied Auditing Standard ASQC 1 *Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, Other Assurance Engagements and Related Services Engagements* in undertaking this assurance review.

## Responsibilities of the Auditor-General

My responsibility is to express a limited assurance conclusion on whether the Finance Minister's and the Department of Finance's reporting of the AFM is complete and accurate, in all material respects, and internal controls related to the AFM were designed, implemented and operating effectively for the period from 27 June 2020 to 31 July 2020, as evaluated against the criteria. The ANAO Auditing Standards require that I plan and perform my procedures to obtain limited assurance about whether anything has come to my attention that the Department of Finance's reporting of the AFM is not complete and accurate, in all material respects, and internal controls related to the AFM were not designed, implemented and operating effectively for the period from 27 June 2020 to 31 July 2020.

An assurance engagement to report on the design and operating effectiveness of controls involves performing procedures to obtain evidence about the suitability of the design of controls to achieve the control objectives and the operating effectiveness of controls throughout the period.

The procedures performed in a limited assurance review vary in nature and timing from, and are less in extent than for, a reasonable assurance engagement and consequently the level of assurance obtained in a limited assurance review is substantially lower than the assurance that would have been obtained had a reasonable assurance engagement been performed. Accordingly, I do not express a reasonable assurance opinion on the reporting of the AFM or on the internal controls.

I have conducted my limited assurance review by making such enquiries and performing such procedures I considered reasonable in the circumstances, including:

- making enquiries of management and others within the entity, as appropriate;
- examining the internal control design specifications and documentation;
- examining supporting documentation for the determination; and
- evaluating the evidence obtained.

The procedures selected depend on my judgement, including the assessment of the risks that the reporting of the AFM is not complete and accurate or the controls are not suitably designed, implemented or operating effectively.

## Inherent limitations

Because of the inherent limitations of an assurance engagement, together with the internal control structure it is possible that, even if the controls are suitably designed and operating effectively, the control objectives may not be achieved so that fraud, error, or non-compliance with laws and regulations may occur and not be detected. Further, the internal control structure, within which the controls that I have assured are designed to operate, has not been assured and no opinion is expressed as to its design or operating effectiveness.

A limited assurance engagement throughout the specified period on operating effectiveness of controls is not designed to detect all instances of controls operating ineffectively as it is not performed continuously throughout the period and the tests performed are on a sample basis. A limited assurance engagement throughout the specified period does not provide assurance on whether complete and accurate reporting of the AFM or the outcome of the evaluation of controls will continue in the future.

Australian National Audit Office



Grant Hehir  
Auditor-General  
Canberra  
6 August 2020

# Procurement of Strategic Water Entitlements

**Type:** Performance audit

**Report number:** 2 of 2020-21

**Portfolios:** Agriculture, Water and the Environment

**Entities:** Department of Agriculture, Water and the Environment

**Date tabled:** 16 July 2020

## Background

1. The Murray-Darling Basin (the Basin) is a major water catchment area that includes parts of Queensland, New South Wales, Victoria, South Australia and the Australian Capital Territory. These are known as the Basin states.
2. The Basin is of major social, economic and environmental significance. There are approximately 2.6 million Australians living within the Basin and it supports the production of \$22 billion worth of food and fibre per year. The Basin supports 120 waterbird species, 46 native fish species and 16 internationally recognised and protected wetlands.
3. The *Basin Plan 2012* (the Basin Plan) sets limits on the amount of water available for urban, industrial and agricultural use, to ensure the ongoing health and resilience of the 'environment'. The Basin Plan sets out local water recovery targets for each Sustainable Diversion Limit (SDL) area and shared water recovery targets within the Basin states for SDL resource units in a zone. The recovery target must be met by recovering water from within that SDL resource unit area and must be fully recovered in order to successfully 'bridge the gap'.
4. In order to better balance the demands placed on the Basin water supply, the Australian Government has procured water entitlements for environmental purposes. Water for the environment is used to improve the health of rivers, wetlands and floodplains. Purchasing water to assist with bridging the gap is undertaken through the Sustainable Rural Water Use Infrastructure Program (SRWUIP) within the Department of Agriculture, Water and the Environment (the department).
5. The government's 2014 *Water Recovery Strategy for the Murray-Darling Basin* outlined how the government intended to meet the gap-bridging requirements, including that the strategy would 'focus on strategically important water purchases', in areas where water was still required. In January 2016, following ministerial approval, the department implemented arrangements to procure water entitlements directly from sellers through limited tender arrangements.
6. The recovery target (known as 'the gap') for surface water recovery under the Basin Plan is currently 2075 gigalitres. As at 31 December 2019, 46.7 gigalitres remain to be recovered.

## Rationale for undertaking the audit

7. Water regulation is a topic of parliamentary and public interest. The audit examines \$190 million of strategic water procurements through limited tender arrangements, to provide assurance to the Parliament and the public that these procurements were planned for and executed appropriately and achieved value for money.

8. This audit was also undertaken as part of the Auditor-General's continued focus on water regulation within the Commonwealth. This audit topic was included in the Australian National Audit Office (ANAO) 2018–19 Annual Audit Work Program. The Auditor-General also received requests from a number of members of Parliament for a performance audit on this topic, including the responsible Minister.

## Audit objective and criteria

9. The objective of the audit was to examine whether strategic water procurements by the department were conducted consistent with government policy, were supported by appropriate program design, were planned and executed appropriately, and achieved value for money.

10. To form a conclusion against the audit objective, the ANAO adopted the following high level criteria:

- Did the department have appropriate program design, planning and guidance in place to support strategic water procurements?
- Did the department execute the program consistent with approved policy, planning and guidance?
- Did the department achieve value for money?

11. This audit focused on completed strategic water procurements undertaken through limited tender arrangements between January 2016 and December 2019. A total of 27 transactions were considered.

## Conclusion

12. The department's strategic purchases of water through limited tender contributed to the government policy to bridge the gap and obtain water for the environment. The arrangements in place to support these procurements were not fully effective.

13. The program design and planning to support strategic water procurements was largely appropriate. The department developed guidance that aligned with the high level policy objective to assist in the assessment of limited tenders. However, it is not clear how the department assessed individual procurements to determine their strategic priority or considered how to encourage competition within the limited tender process.

14. The department did not consistently apply approved policy, planning and guidance to the assessment of all limited tender procurements. The department advised the Minister that it would assess limited tender offers against specific criteria, however, briefings to the Minister did not consistently address these criteria or provide appropriate advice.

15. It is not clear whether two of the seven instructions given to the department by the Minister were fully executed. Information provided to departmental delegates to seek approval to enter into contractual arrangements did not clearly outline the delegations required.

16. The department did not develop a framework designed to maximise the value for money of strategic water entitlements purchased through limited tender arrangements. Rather, the department relied on a methodology of valuations where gap-bridging water was required. The price the department paid for water entitlements was equal to or less than the maximum price determined by valuations. The department only negotiated price for one procurement.

17. The department has not reviewed the water recovery strategy or its approach to procurement of strategic water entitlements. The department has not adequately planned for evaluation of the strategic water purchasing program.

## Supporting findings

18. The department identified several options under which to procure strategic water entitlements. However, the department's design of the limited tender approach did not appropriately consider opportunities to generate competitive opportunities between sellers, and a communications strategy was not developed.

19. The department developed a draft framework for strategic surface water procurements, including through limited tenders, which aligned with high level policy objectives. This draft framework was not finalised or endorsed. For limited tender procurements conducted in 2016 to 2017, the department used the additional rules for the conditions for limited tenders for exceptionally advantageous circumstances. The department did not develop a definition for exceptionally advantageous.

20. The department developed internal policy and guidance materials to assist officials' review of limited tender procurement offers. These materials align with the principles of the draft framework and outlined the process to be followed when assessing limited tenders.

21. The department did not consistently apply the guidelines it developed to all limited tender procurements. Four offers were assessed and provided to the Minister for approval prior to the guidelines being fully developed and approved.

22. Briefings to the Minister did not provide a clear indication of how the procurements would obtain a triple bottom line outcome as in the original commitment. The department did not consistently provide complete information to enable departmental decision-makers to make informed decisions.

23. For the strategic water procurements examined, the department mostly executed the Minister's instructions. There are two instances where it is unclear whether the actions undertaken by the department and subsequent advice provided to the Minister fully addressed the intent of the instructions.

24. The department did not appropriately manage procurement risks. While the department identified risks associated with the broader water recovery strategy, there is limited evidence of risks being raised or managed for individual procurements.

25. The department undertook a due diligence process for most procurements within an appropriate timeframe. Two contracts were not dated by at least one relevant party.



26. The department did not develop a framework designed to maximise value for money. Rather, the department relied on a methodology of valuations of water entitlements where gap bridging was required. In the advice to the Minister and the departmental delegate, information relating to a value for money assessment as well as triple bottom line outcomes was limited. There is limited evidence of appropriate assessment to inform these statements. The department did not negotiate the price for the water entitlements it purchased in all but one instance. Probity management arrangements were different to those applied to open tenders and conflict of interest declarations were not clearly documented. The department has not adequately planned for evaluation of the strategic water purchasing program.

27. The department has not reviewed or updated the Water Recovery Strategy or the water purchasing program. An evaluation is planned for September 2020 following the conclusion of the Sustainable Rural Water Use and Infrastructure Program. The department has not yet developed an evaluation framework.

## Recommendations

28. The report makes four recommendations.

## Recommendations

### Recommendation no.1

Paragraph 3.35

The Department of Agriculture, Water and the Environment review and update internal procurement guidance to ensure delegations are accurately identified in approval briefs.

**Department of Agriculture, Water and the Environment response:** *Agreed.*

### Recommendation no.2

Paragraph 3.65

The Department of Agriculture, Water and the Environment develop assurance mechanisms for procurement processes to ensure all necessary documentation is completed and documented in a timely manner prior to execution of contracts.

**Department of Agriculture, Water and the Environment response:** *Agreed.*

### Recommendation no.3

Paragraph 4.43

The Department of Agriculture, Water and the Environment review and update arrangements for managing real or perceived conflicts of interest including assurance mechanisms to ensure these are consistently implemented and communicated.

**Department of Agriculture, Water and the Environment response:** *Agreed.*

**Recommendation  
no.4****Paragraph 4.49**

The Department of Agriculture, Water and the Environment implement a framework which requires the development of evaluation strategies early in the program design process and regular monitoring and review throughout the lifecycle.

**Department of Agriculture, Water and the Environment response:** *Agreed.*

## Summary of entity response

The department acknowledges the ANAO's overall findings and recommendations and appreciates the opportunity to comment on the audit report on the Procurement of Strategic Water Entitlements.

29. The department's full summary response, and the ANAO rejoinders to that response, can be found at Appendix 1.

## Key messages from this audit for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

### Policy/program implementation

- Entities should ensure that advice provided to Ministers and decision-makers clearly and consistently addresses key policy commitments and provides sufficient information to inform decisions. Quality assurance mechanisms can support the development of quality advice.

### Governance and risk management

- Probity is important as it helps ensure decisions are made with integrity, fairness and accountability, while attaining value for money. Entities should ensure appropriate policies are developed, regularly reviewed and demonstrably adhered to through appropriate reporting on compliance. This involves an active rather than passive approach to acting on probity risks.
- Entities should actively manage risk including regular review of identified risks and their mitigation strategies to ensure these remain appropriate and sufficient. Advice to Ministers and decision-makers should clearly outline key risks and mitigation strategies.

## Procurement

- Clear identification of both financial and non-financial considerations as well as determining the importance of each consideration supports entities to demonstrate the achievement of value for money outcomes.
- Entities should seek to negotiate on price to optimise value for money outcomes. Where a decision is made not to negotiate, the decision including reasons should be clearly documented.
- Entities and departmental officials must ensure delegations are executed in compliance with the Public Governance, Performance and Accountability Act 2013. Appropriate assurance mechanisms should be developed to identify non-compliance and rectify the cause.

# Advances to the Finance Minister for the Period 30 May 2020 to 26 June 2020

**Type:** Assurance review

**Report number:** 1 of 2020-21

**Portfolios:** Finance

**Entities:** Department of Finance

**Date tabled:** 8 July 2020

## INDEPENDENT ASSURANCE REPORT

### ADVANCES TO THE FINANCE MINISTER 30 MAY 2020 TO 26 JUNE 2020

## Conclusion

Based on the procedures I have performed and the evidence I have obtained, nothing has come to my attention that causes me to believe that, in all material respects:

- a. there were any Advance to the Finance Minister (AFM) Determinations made for the period 30 May 2020 to 26 June 2020; and
- b. the internal controls related to the Department of Finance's administration of AFM were not suitably designed, implemented and operating effectively to achieve appropriate approval, recording and reporting of AFM if there had been any during the period.

My limited assurance conclusion has been formed on the basis of the matters outlined in this report.

I have undertaken a limited assurance review of the Department of Finance's reporting and administration of the AFM, in order to express a conclusion on Determinations made from 30 May 2020 to 26 June 2020, based on the following criteria:

- Have accounts and records been appropriately obtained and maintained to support the complete and accurate reporting of AFM, taking into consideration whether:
  - the Department of Finance has a central register of all applications and approvals;
  - all decisions for any AFM Determination made have been documented appropriately, including identifying the appropriation act under which each advance is made;
  - all accounts and records for the applications for any AFM Determination have been adequately maintained; and
  - the Department of Finance has effective processes in place to obtain assurance from entities over the completeness and accuracy of the information provided to the Department of Finance.
- Are the controls related to the Department of Finance's administration of AFM suitably designed, implemented and operating effectively to achieve appropriate approval, recording and reporting of any AFM if there had been any during the period, taking into consideration whether:
  - the Department of Finance has guidance or a framework that communicates clearly to entities as to the requirements to apply for the AFM, and whether this was complete, accurate, and compliant with the criteria set out in the Annual Appropriation Acts;
  - the Department of Finance has an appropriate risk framework for the AFM;
  - existing controls are capable of addressing the identified risks effectively;
  - the Department of Finance has implemented and operated effective controls over the approval process to ensure applications for any AFM Determination are only approved when applying entities provide sufficient information to support compliance with the criteria set out in the Annual Appropriation Acts; and
  - the AFM Determination approval process complied with the criteria set out in the Annual Appropriation Acts.

## Basis for conclusion

I have conducted the review in accordance with the ANAO Auditing Standards, which include the relevant Standards on Assurance Engagements ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* (ASAE 3000) and ASAE 3150 *Assurance Engagements on Controls* (ASAE 3150).

I believe that the evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

## Responsibilities of the Secretary of the Department of Finance

The Secretary of the Department of Finance is responsible for the administration of the AFM, and maintenance of supporting accounts and records relevant to the reporting of the AFM in accordance with Appropriation Acts Nos. 1 to 6 2019–2020 and Appropriation (Coronavirus Economic Response Package) Acts Nos. 1 and 2 2019–2020.

The Secretary is also responsible for such internal control procedures as the Secretary determines necessary to enable the administration of the AFM that are free from material misstatement, whether due to fraud or error.

## Independence and quality control

I have complied with the independence and other relevant ethical requirements relating to assurance engagements, and applied Auditing Standard ASQC 1 *Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, Other Assurance Engagements and Related Services Engagements* in undertaking this assurance review.

## Responsibilities of the Auditor-General

My responsibility is to express a limited assurance conclusion on whether the Finance Minister's and the Department of Finance's reporting of the AFM is complete and accurate, in all material respects, and internal controls related to the AFM were designed, implemented and operating effectively for the period from 30 May 2020 to 26 June 2020, as evaluated against the criteria. The ANAO Auditing Standards require that I plan and perform my procedures to obtain limited assurance about whether anything has come to my attention that the Department of Finance's reporting of the AFM is not complete and accurate, in all material respects, and internal controls related to the AFM were not designed, implemented and operating effectively for the period from 30 May 2020 to 26 June 2020.

An assurance engagement to report on the design and operating effectiveness of controls involves performing procedures to obtain evidence about the suitability of the design of controls to achieve the control objectives and the operating effectiveness of controls throughout the period.

The procedures performed in a limited assurance review vary in nature and timing from, and are less in extent than for, a reasonable assurance engagement and consequently the level of assurance obtained in a limited assurance review is substantially lower than the assurance that would have been obtained had a reasonable assurance engagement been performed. Accordingly, I do not express a reasonable assurance opinion on the reporting of the AFM or on the internal controls.

I have conducted my limited assurance review by making such enquiries and performing such procedures I considered reasonable in the circumstances, including:

- making enquiries of management and others within the entity, as appropriate;
- examining the internal control design specifications and documentation;
- examining documentation that indicate if there was any AFM; and
- evaluating the evidence obtained.

The procedures selected depend on my judgement, including the assessment of the risks that the reporting of the AFM is not complete and accurate or the controls are not suitably designed, implemented or operating effectively.

## Inherent limitations

Because of the inherent limitations of an assurance engagement, together with the internal control structure it is possible that, even if the controls are suitably designed and operating effectively, the control objectives may not be achieved so that fraud, error, or non-compliance with laws and regulations may occur and not be detected. Further, the internal control structure, within which the controls that I have assured are designed to operate, has not been assured and no opinion is expressed as to its design or operating effectiveness.

A limited assurance engagement throughout the specified period on operating effectiveness of controls is not designed to detect all instances of controls operating ineffectively as it is not performed continuously throughout the period and the tests performed are on a sample basis. A limited assurance engagement throughout the specified period does not provide assurance on whether complete and accurate reporting of the AFM or the outcome of the evaluation of controls will continue in the future.

Australian National Audit Office



Grant Hehir  
Auditor-General  
Canberra  
2 July 2020

# Management of the Australian Government's Lobbying Code of Conduct – Follow-up Audit

**Type:** Performance audit

**Report number:** 48 of 2019-20

**Portfolios:** Attorney-General's

**Entities:** Attorney-General's Department

**Date tabled:** 26 June 2020

## Background

1. Lobbying activities refer to communications with government representatives in an effort to influence government decision-making. To help safeguard decision-making processes from factors such as undue influence or unfair competition, governments around the world, including the Australian Government, have introduced lobbying regulatory regimes.
2. The Australian Government's regime was established with the introduction of the *Lobbying Code of Conduct* (Code) in 2008. The policy objective of the regime is expressed in the Code as:  
  
... to promote trust in the integrity of government processes and ensure that contact between lobbyists and Government representatives is conducted in accordance with public expectations of transparency, integrity and honesty.
3. The regime specifies that this objective will be achieved through lobbyist and Government representative compliance with the Code's various provisions and its main administrative mechanism, the Register of Lobbyists (Register). The Register is a publicly available database of registered lobbyist organisations and lobbyists, and their clients. As at March 2020, the Register listed 257 lobbyist organisations, 590 individual lobbyists, and 1,792 clients.
4. Lobbyist organisations have administrative responsibilities associated with keeping the Register up to date, and lobbyist organisations and individual lobbyists must also comply with a number of lobbying principles and prohibitions under the Code. Government representatives are required to check the Register prior to meeting with a lobbyist, and to report any known breaches of the Code. The Attorney-General's Department (AGD) became responsible for administering the Code following a machinery of government change that transferred accountability from the Department of the Prime Minister and Cabinet (PM&C) in May 2018.
5. Auditor-General Report No.27 of 2017–18, *Management of the Australian Government's Register of Lobbyists*, assessed the effectiveness of PM&C's management of the Code, and concluded that:  
  
While the Department of the Prime Minister and Cabinet's arrangements to manage the Australian Government's Register of Lobbyists are consistent with the framework agreed by Government, improvements could be made to communications, compliance management and evaluation for the Code and the Register. It would also be timely to review the appropriateness of the current arrangements and Code requirements in supporting the achievement of the objectives established for the Code.



6. The Auditor-General recommended that the department review the appropriateness of current arrangements in supporting the achievement of the Code's objectives. This included:

- implementing a strategy to raise lobbyists' and Government representatives' awareness of the Code and their responsibilities;
- assessing risks to compliance with the Code and providing advice on the ongoing sufficiency of the current compliance management framework; and
- developing a set of performance measures and establishing an evaluation framework to inform stakeholders about the extent to which outcomes and broader policy objectives are being achieved.

7. PM&C partly agreed with the recommendation, indicating that it would implement the recommendation where it was consistent with a non-legislation based scheme.

## Rationale for undertaking the audit

8. This audit is a follow-up to the Auditor-General Report No.27 of 2017–18, *Management of the Australian Government's Register of Lobbyists*. The appropriate and timely implementation of agreed recommendations is an important part of realising the full benefit of an audit. The audit responds to public and Parliamentary interest in lobbying activities being carried out with integrity and transparency.

## Audit objective and criteria

9. The audit objective was to examine the effectiveness of AGD's implementation of the recommendation from Auditor-General Report No.27 of 2017–18.

10. To form a conclusion against the audit objective, the following high-level criteria were adopted:

- Does AGD have effective governance arrangements to oversee the implementation of the recommendation from Auditor-General Report No.27 of 2017–18?
- Has a strategy been implemented to raise awareness of the *Lobbying Code of Conduct* among lobbyists and Government representatives?
- Has AGD assessed risk to *Lobbying Code of Conduct* compliance and provided advice to the Australian Government on the sufficiency of the current compliance management framework?
- Have performance measures and an evaluation framework for the *Lobbying Code of Conduct* and Register of Lobbyists been developed?

## Conclusion

11. AGD did not implement the recommendation from Auditor-General Report No.27 of 2017–18, *Management of the Australian Government's Register of Lobbyists*.

12. Governance arrangements to oversee the implementation of the ANAO recommendation were limited in effectiveness. There was no implementation planning at any stage in the transition of accountability for the Code and ANAO recommendation from PM&C to AGD. Progress against the ANAO recommendation was first reported to the AGD Audit and Risk Management Committee (ARMC) in August 2019.

13. AGD did not develop a strategy to raise awareness of the Code. Registered lobbyists received information about some of their administrative responsibilities. Limited activities were undertaken to inform lobbyists and Government representatives of their compliance obligations under the Code.
14. AGD did not systematically assess risks to compliance with the Code and did not advise Government about the sufficiency of the current compliance framework in meeting the Code's objectives.
15. AGD did not develop an evaluation framework for the Code and did not develop performance measures. It did not assess or inform others about whether the current regime is achieving the regulatory objectives.

## Supporting findings

### Governance structures and processes

16. There was no plan for the implementation of the ANAO recommendation, or for the implementation of the machinery of government transfer of accountability for the Code from PM&C to AGD. The ANAO recommendation was broadly considered when designing and building a proposed IT system for the Register, but no attempt was made to map IT functionality to the specific components of the ANAO recommendation.
17. Arrangements for senior management and audit committee oversight of implementation for the ANAO recommendation were partly effective. Divisional responsibility for the Code within AGD was clearly established. The Executive Board and Senior Management Committee had visibility of the Code, however this was focused on technological issues associated with the transfer of the Register rather than the implementation of the ANAO recommendation. Progress against the recommendation was reported to the ARMC, but the commencement of this process was delayed.

### Communications to raise awareness

18. AGD did not develop a communications or stakeholder engagement strategy for the Code.
19. AGD's effectiveness in communicating regulatory requirements to lobbyists cannot be assessed in the absence of a communications strategy. Communication primarily occurred through a dedicated website and through correspondence with registered lobbyist organisations, with limited public information and stakeholder engagement. Communications focused on administrative responsibilities rather than broader compliance obligations, with no communication activities targeted at unregistered lobbyists.
20. Communications to Government representatives to raise their awareness of the Code and regulatory obligations were partly effective. AGD used the lobbying website to provide some information to Government representatives about compliance obligations, but did not undertake any broader communications activities with Government representatives, including with the Australian Government entities that employ them or the entities that have a responsibility to provide guidance to the Australian public sector.

## Assessment and management of compliance risks

21. AGD did not systematically consider or manage risks that impact the ability or willingness of regulated entities and individuals to comply with the Code. Risks in relation to AGD's ability to administer the Code were assessed at a basic level and only after actual risks associated with data accuracy were realised. There was no strategy to ensure that administrative risks, or risks to compliance with the Code, are effectively managed. In practice, activities and procedures such as email communications with lobbyist organisations, compliance dashboards and draft standard operating procedures aimed to manage some administrative risks.

22. AGD did not advise Government about the sufficiency of the compliance framework in meeting the Code's objectives.

## Performance measurement and evaluation

23. AGD did not develop an evaluation framework for assessing the regime's success in meeting objectives and did not develop performance measures.

24. AGD did not develop a monitoring program for the Code and did not establish any performance measures for AGD processes in administering the Code. A service standard was developed for timely updates to the Register, but performance against this standard is not yet measured or assessed.

25. No performance information was provided to the Parliament or the public about work undertaken in relation to the Code, and whether intended regulatory objectives are being achieved.

## Recommendations

### Recommendation no.1

#### Paragraph 2.38

Attorney-General's Department establish effective governance processes for the implementation of the recommendation made in Auditor-General Report No.27 of 2017–18, *Management of the Australian Government's Register of Lobbyists*. This includes ensuring appropriate senior management engagement; that responsible officers understand the recommendation's intent; and that an implementation plan with achievable activities and milestones is in place.

**Attorney-General's Department response:** *Agreed.*

### Recommendation no.2

#### Paragraph 5.27

Attorney-General's Department evaluate the sufficiency of the current regulatory regime for lobbying, and provide advice to Government about whether the regime is able to achieve the regulatory objective of promoting public trust in the integrity of government processes through ensuring that contact between lobbyists and Government representatives is conducted in accordance with public expectations of transparency, integrity and honesty.

**Attorney-General's Department response:** *Agreed.*

## Summary of entities' responses

26. The Attorney-General's Department's and the Department of the Prime Minister and Cabinet's summary responses to the report are provided below and their full response is at Appendix 1.

### Attorney-General's Department

The Attorney-General's Department welcomes the ANAO's audit report and the recommendations made for better management of the Australian Government Register of Lobbyists.

The department recognises the challenges that have been experienced by stakeholders as a result of significant IT issues during the transfer of responsibility for the Lobbyists Register from the Department of the Prime Minister and Cabinet. The department has focussed its efforts during this time on ensuring there is a reliable public-facing Register. The department has worked to support lobbyists during the transition and appreciates the patience and support of lobbyists through the transition.

The department has accepted the two recommendations made in this report and will work to ensure the integrity objectives of the Lobbyist Register are supported.

### Department of the Prime Minister and Cabinet

The Department of the Prime Minister and Cabinet (PM&C) welcomes the opportunity to review and respond to an extract of the proposed audit report on Management of the Australian Government's Lobbying Code of Conduct - Followup Audit (the Follow-up Audit).

In line with PM&C's partial agreement to the recommendations of AuditorGeneral Report No. 27 of 2017-18, Management of the Australian Government's Register of Lobbyists, the Follow-up Audit did not consider implementation activities which related more appropriately to a legislative scheme (rather than the code-based scheme in existence).

PM&C notes there are no recommendations directed to the Department.

## Key messages from this audit for all Australian Government entities

Below is a summary of key messages that have been identified in this audit and may be relevant for the operations of other Australian Government entities.

### Performance and impact management

- Entities should undertake timely reviews of long-running programs and activities to ensure they remain appropriately calibrated to effectively and efficiently achieve their intended outcomes.

## Governance and risk management

- Parliamentary tabling of responses to ANAO recommendations formalises an entity's commitment to Parliament to implement the recommendations. Entities should develop implementation plans that include intended actions, timeframes and measures of success.
- Effective governance arrangements for implementation of recommendations should include assignment of responsibility and reporting arrangements that provide the accountable authority with a clear line of sight of implementation.

# Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999

**Type:** Performance audit

**Report number:** 47 of 2019-20

**Portfolios:** Agriculture, Water and the Environment

**Entities:** Department of Agriculture, Water and the Environment

**Date tabled:** 25 June 2020

## Background

1. The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is Australia's primary national environmental legislation. It provides for the protection of the environment, in particular those aspects of the environment that are matters of national environmental significance. The EPBC Act defines nine matters of national environmental significance, which are:

- world heritage properties;
- national heritage places;
- wetlands of international importance;
- listed threatened species and ecological communities;
- listed migratory species;
- protection of the environment from nuclear actions;
- Commonwealth marine areas;
- the Great Barrier Reef Marine Park; and
- protection of water resources from coal seam gas development and large coal mining development.

2. Under the EPBC Act, all actions which may have a significant impact on matters of national environmental significance (defined as 'controlled actions') must receive prior approval from the Minister for the Environment (the Minister). This approval is received through an environmental assessment process, administered by the Department of Agriculture, Water and the Environment (the department). The process is comprised of the following three stages.

- Referral – the action is referred to the Minister to determine whether it is a controlled action and requires approval.
- Assessment – the Minister determines the method of assessing the potential impacts of the controlled action, and the assessment is carried out.
- Approval – the Minister decides whether to approve the action and any conditions to attach to an approval.

3. From the commencement of the EPBC Act to 30 June 2019, 6253 proposed actions have been referred to the Minister, with 5088 of those actions approved and 21 actions not approved. Referred actions include small-scale agricultural grazing, residential and tourism developments, and the construction of large mining developments worth over \$1 billion.

## Rationale for undertaking the audit

4. Effective administration of referrals, assessments and approvals of controlled actions under the EPBC Act reduces impacts on the environment and facilitates economic development. Previous ANAO audits have identified shortcomings in the department's administration of regulation under the EPBC Act in relation to the timeliness, consistency and effectiveness of regulatory actions.

5. The audit topic was listed in the ANAO Annual Audit Work Program in 2018–19 and 2019–20. The Joint Committee of Public Accounts and Audit identified the topic as an audit priority of the Parliament for 2019–20. The department requested that the ANAO commence the audit in July 2019 to inform the second statutory review of the EPBC Act, currently underway. The audit will provide an independent and up-to-date perspective on the department's administration of referrals, assessments and approvals of controlled actions and complement the statutory review of the Act.

## Audit objective and criteria

6. The audit objective was to assess the effectiveness of the Department of Agriculture, Water and the Environment's administration of referrals, assessments and approvals of controlled actions under the *Environment Protection and Biodiversity Conservation Act 1999*.

7. To form a conclusion against the objective, the ANAO adopted the following three high-level audit criteria.

- Are governance arrangements sound?
- Is the administration of referrals and assessments effective and efficient?
- Are conditions of approval appropriate and assessed with rigour?

## Conclusion

8. Despite being subject to multiple reviews, audits and parliamentary inquiries since the commencement of the Act, the Department of Agriculture, Water and the Environment's administration of referrals, assessments and approvals of controlled actions under the EPBC Act is not effective.

9. Governance arrangements to support the administration of referrals, assessments and approvals of controlled actions are not sound. The department has not established a risk-based approach to its regulation, implemented effective oversight arrangements, or established appropriate performance measures.

10. Referrals and assessments are not administered effectively or efficiently. Regulation is not supported by appropriate systems and processes, including an appropriate quality assurance framework. The department has not implemented arrangements to measure or improve its efficiency.

11. The department is unable to demonstrate that conditions of approval are appropriate. The implementation of conditions is not assessed with rigour. The absence of effective monitoring, reporting and evaluation arrangements limit the department's ability to measure its contribution to the objectives of the EPBC Act.

## Supporting findings

### Governance arrangements

12. Arrangements for collecting and managing information on compliance with the EPBC Act are not appropriate. The department does not have an appropriate strategy to manage its compliance intelligence, limiting its access to the regulatory information necessary for complete and accurate compliance risk assessments. Key limitations include poor linkages between sources of regulatory information and a lack of formal relationships to receive external information.

13. The regulatory approach to referrals, assessments and approvals has not been informed by an assessment of compliance risk. Strategic compliance risk assessments do not inform regulatory plans. In one instance, the department's activities to promote voluntary compliance were aligned with an identified risk of inadvertent non-compliance in the New South Wales agriculture sector. The approach to individual referrals, assessments and approvals is not tailored to compliance risk.

14. While the department has established sound oversight structures, they have not been effectively implemented. Procedures for oversight of referrals, assessments and approvals by governance committees are not consistently implemented. Conflicts of interest are not managed.

15. The department has not established appropriate performance measures relating to the effectiveness or efficiency of its administration of referrals, assessments and approvals. All relevant performance measures in the department's corporate plan were removed in 2019–20, and no internal performance measures relating to effectiveness or efficiency have been established. The department's reporting under the regulator performance framework in 2017–18 was largely reliable.

### Referrals and assessments

16. Systems and processes for referrals and assessments do not fully support the achievement of requirements under the EPBC Act. Procedural guidance does not fully represent the requirements of the EPBC Act and lacks appropriate arrangements for review and update. Information systems do not meet business needs and contain inaccurate data. Staff training is not supported by arrangements to ensure completion of mandatory requirements. There is no framework to prioritise work.

17. Referrals and assessments are not undertaken in full accordance with procedural guidance. Decisions have been overturned in court due to non-compliance with the EPBC Act and key documentation for decisions is not consistently stored on file. There is no quality assurance framework to assure the department that procedural guidance is implemented.



18. Proxy efficiency indicators developed by the ANAO indicate the efficiency of referrals and assessments has not improved over recent years. The department has no arrangements to measure its efficiency and the implementation of proposed efficiency improvement measures has not been appropriately tracked. Most referral, assessment method and approval decisions are not made within statutory timeframes.

## Conditions of approval

19. Departmental documentation does not demonstrate that conditions of approval are aligned with risk to the environment. Of the approvals examined, 79 per cent contained conditions that were non-compliant with procedural guidance or contained clerical or administrative errors, reducing the department's ability to monitor the condition or achieve the intended environmental outcome.

20. The department has not established appropriate arrangements to monitor the implementation of pre-commencement conditions of approval. The department's systems for monitoring commencement of actions are inaccurate. The absence of procedural guidance for reviewing documents submitted as part of pre-commencement conditions leaves the department poorly positioned to prevent adverse environmental outcomes.

21. Appropriate monitoring, evaluation and reporting arrangements have not been established. Performance measurement and evaluation activities do not assess the contribution of referrals, assessments and approvals to the objectives of the EPBC Act.

## Recommendations

### Recommendation no.1

#### Paragraph 2.18

The Department of Agriculture, Water and the Environment develop and implement a plan to collect and use regulatory information, and address gaps and limitations in information management, to better enable compliance information to be used to inform regulatory strategy and decision-making.

**Department of Agriculture, Water and the Environment response:** *Agreed.*

### Recommendation no.2

#### Paragraph 2.27

The Department of Agriculture, Water and the Environment conduct an up-to-date risk assessment of non-compliance across its environmental regulatory regimes and develop and implement arrangements to prioritise its strategic compliance assessments.

**Department of Agriculture, Water and the Environment response:** *Agreed.*

**Recommendation  
no.3**

**Paragraph 2.62**

The Department of Agriculture, Water and the Environment ensure that its oversight of referrals, assessments and approvals is conducted in accordance with procedures, and conflict-of-interest risks are identified and treated.

**Department of Agriculture, Water and the Environment response:** *Agreed.*

**Recommendation  
no.4**

**Paragraph 2.78**

The Department of Agriculture, Water and the Environment establish internal and external performance measures on the effectiveness and efficiency of its regulation of referrals, assessments and approvals.

**Department of Agriculture, Water and the Environment response:** *Agreed.*

**Recommendation  
no.5**

**Paragraph 3.59**

The Department of Agriculture, Water and the Environment establish and implement a quality assurance framework to assure itself that its procedural guidance is implemented consistently and that the quality of decision-making is appropriate.

**Department of Agriculture, Water and the Environment response:** *Agreed.*

**Recommendation  
no.6**

**Paragraph 3.83**

The Department of Agriculture, Water and the Environment establish efficiency indicators to assist in meeting legislative timeframes for referrals, assessments and approvals.

**Department of Agriculture, Water and the Environment response:** *Agreed.*

**Recommendation  
no.7**

**Paragraph 4.18**

The Department of Agriculture, Water and the Environment improve its quality controls to ensure conditions of approval are enforceable, appropriate for monitoring, compliant with internal procedures and aligned with risk to the environment.

**Department of Agriculture, Water and the Environment response:** *Agreed.*

**Recommendation  
no.8**

**Paragraph 4.53**

The Department of Agriculture, Water and the Environment develop guidance and quality controls to assure itself that pre-commencement conditions of approval are implemented and assessed consistently to protect matters of national environmental significance.

**Department of Agriculture, Water and the Environment response:** *Agreed.*

## Summary of entity response

The Department of Agriculture, Water and the Environment (the Department) agrees to implement all recommendations in the report and is committed to the continuous improvement of its processes and procedures. It will establish (where required) and strengthen (where already in place) sound governance arrangements to ensure successful implementation of improvements. This will support the efficient and effective administration of referrals, assessments and approvals of controlled actions under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

In fully implementing all recommendations, the Department will prioritise its resources to ensure that its response is flexible to any changes to the regulatory system as a result of the EPBC Act Review. Where improvements can be made in the short to medium term, the Department is committed to doing so in a timely manner. Where there is the potential for future systemic changes, the Department will design frameworks that are flexible to adapt to a new regulatory environment over the longer term.

## Key messages from this audit for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit that may be relevant for the operations of other Australian Government entities.

### Governance and risk management

- For regulatory activities to have the greatest impact on desired objectives, entities should target their efforts in proportion to compliance risk, based on an assessment of regulatory intelligence.
- Ongoing oversight and accountability for the implementation of recommendations from past inquiries, reviews and audits is necessary to realise the desired improvements.

### Program implementation

- Regulators should implement an appropriate quality assurance framework over their activities to provide assurance that their regulation is consistent, legally valid and contributes to the desired regulatory outcomes.
- Appropriate IT systems support regulators to be efficient, effective and make better use of collected regulatory intelligence.

### Performance and impact measurement

- To facilitate a meaningful assessment of progress and achievement, entities should ensure they are monitoring, evaluating and reporting on their effectiveness at achieving their objectives.
- The establishment of appropriate efficiency measures will better position regulators to identify and address the reasons for declining performance.

# Implementation of ANAO and Parliamentary Committee Recommendations – Education and Health Portfolios

**Type:** Performance audit

**Report number:** 46 of 2019-20

**Portfolios:** Education; Health

**Entities:** Across Entities

**Date tabled:** 25 June 2020

## Background

1. The operations and performance of Australian Government entities are subject to external scrutiny from the Joint Committee of Public Accounts and Audit (JCPAA) and other parliamentary committees, and the Australian National Audit Office (ANAO).
2. The JCPAA reviews all Auditor-General reports tabled in Parliament, including the recommendations and audited entities' proposed actions, and reports the results of its deliberations to both Houses of the Parliament. A key aspect of JCPAA inquiries is to hold Commonwealth entities accountable for the implementation of audit recommendations.
3. Other parliamentary committees investigate specific matters of policy, government administration or performance and may review part or all of an Auditor-General report or reports. Recommendations are then made to government.
4. The purpose of the ANAO is to support accountability and transparency in the Australian Government sector through independent reporting to the Parliament, and thereby contribute to improved public sector performance. The ANAO's performance audit activities involve the audit of all or part of an entity's operations to assess its economy, efficiency, effectiveness, ethicality or legislative and policy compliance. The ANAO identifies areas where improvements can be made to aspects of public administration and makes specific recommendations to assist public sector entities to improve their program management.
5. Government responses are required to be tabled in Parliament. Responses to recommendations inform the Parliament of government activities and provide accountability by formalising commitments regarding the implementation of recommendations.

## Rationale for undertaking the audit

6. Reports of parliamentary committees and the ANAO identify risks to the successful delivery of outcomes and areas where administrative or other improvements can be made. The appropriate and timely implementation of agreed recommendations is an important part of realising the full benefit of an audit or parliamentary inquiry.

7. This audit is the second in a series of audits that highlight whether entities have implemented recommendations in line with intended commitments made to the Parliament.

## Audit objective and criteria

8. The audit objective is to examine whether selected entities in the Health and Education portfolios implemented JCPAA and other parliamentary inquiry report recommendations and agreed ANAO performance audit recommendations.

9. The audit used a two-staged approach. The first stage involved a limited (negative) assurance engagement and the second stage, where required, a reasonable (positive) assurance engagement.

10. To form a conclusion against the audit objective, the following high level audit criterion was adopted for the first stage of the audit:

- Do entities have appropriate governance arrangements in place to respond to, monitor and implement recommendations?

11. Where this criterion was met, the audit could conclude that, based on the procedures performed and the evidence obtained, nothing came to the ANAO's attention that the governance arrangements in place were not effective for responding to, monitoring and implementing agreed recommendations.

12. Where the evidence obtained was insufficient to conclude on the appropriateness of the governance arrangements in place (stage one), an additional criterion was adopted (stage two):

- Were agreed recommendations effectively implemented?

13. The audit examined JCPAA, other parliamentary committee and ANAO performance audit recommendations from inquiries or reports with agreed recommendations related to 2016–17 for the following four entities:

- Department of Education (Education);
- Department of Health (Health);
- Australian Sports Commission (ASC); and
- National Health and Medical Research Council (NHMRC).

## Conclusion

14. Nothing came to the ANAO's attention that the entities had not implemented applicable parliamentary committee and ANAO recommendations. Entities implemented all parliamentary committee inquiry recommendations agreed in the period 1 July 2016 to 30 June 2017, but general arrangements for responding to, monitoring and managing recommendations from parliamentary committee inquiries require improvement.

15. Based upon the procedures performed and the evidence obtained, nothing came to the ANAO's attention that Education, Health, and the NHMRC did not have effective governance arrangements in place to respond to, monitor and implement Joint Committee of Public Accounts and Audit and ANAO recommendations. Evidence from these entities suggests that all ANAO recommendations have been implemented. The ASC did not have fully effective governance arrangements for all aspects of monitoring and implementing agreed ANAO recommendations, but did not have applicable recommendations for assessment. None of the entities had appropriate governance arrangements in place for all aspects of monitoring and implementing agreed recommendations from other parliamentary committee inquiries.

16. All 2016–17 recommendations from other parliamentary committees which one or more of the entities had responsibility for implementation had been implemented. Each of the entities had processes in place to plan implementation of agreed recommendations from other parliamentary committee inquiries. However, none of the entities maintained evidence to support implementation of recommendations in all instances, while Education, Health and the ASC did not have complete arrangements in place to test the implementation of recommendations.

## Supporting findings

### Governance

17. Based upon the procedures performed and the evidence obtained, nothing came to the ANAO's attention that Education, Health and NHMRC did not have appropriate governance in place to respond to, monitor and implement ANAO recommendations. The ASC did not have a system in place to track and provide regular feedback on progress against each individual ANAO recommendation, although provided its Finance, Audit and Risk Committee with regular updates on work associated with recommendations from a 2018 ANAO performance audit.

18. Except for governance of JCPAA recommendations by Education and Health, none of the entities had appropriate governance arrangements in place for responding to, monitoring and implementing all aspects of parliamentary committee recommendations. Health and ASC did not monitor implementation of parliamentary committee recommendations, or report the implementation status of these recommendations, to senior management or the audit committee. None of the entities had a closure process for other parliamentary committee recommendations.

### Implementation

19. All four entities had evidence of implementation planning for the recommendations for which they had responsibility.

20. None of the entities fully maintained appropriate evidence to confirm whether recommendations had been implemented. Entities did not maintain consistent processes for monitoring the implementation of other parliamentary inquiry recommendations and reporting on implementation progress to senior management or the audit committee.

21. All four entities have implemented all the agreed recommendations from other parliamentary committee reports for which they have responsibility.

22. Education did not test that implementation of its parliamentary committee recommendation had occurred. Health reviewed evidence for the implementation of most recommendations for which it was responsible, but did not review risks associated with the implementation of the recommendations. ASC tested implementation evidence for its four agreed recommendations from one inquiry report, however did not review risks associated with its implementation of one recommendation from another inquiry. The NHMRC could demonstrate testing of implementation including risks associated with activities related to both recommendations for which it had responsibility.

23. While no entities advised the relevant committee of implementation following the tabling of responses to the inquiry and government response, none of the agreed recommendations had a requirement for a report on implementation to be provided to the committee.

## Recommendations

### Recommendation no. 1

#### Paragraph 2.17

The Australian Sports Commission establish a system to record and monitor implementation of ANAO performance audit report recommendations, and support reporting on progress and closure of individual recommendations to its Finance, Audit and Risk Committee.

**Australian Sports Commission response:** *Agreed.*

### Recommendation no. 2

#### Paragraph 3.55

That Department of Education, Department of Health, Australian Sports Commission and National Health and Medical Research Council strengthen formalised governance arrangements to implement parliamentary committee inquiry recommendations in order to provide executive oversight of implementation, performance and accountability. Arrangements should include development of implementation plans, assignment of responsibility for progressing recommendations, and appropriate tracking and reporting of implementation status and closure.

**Department of Education, Skills and Employment response:** *Agreed.*

**Department of Health response:** *Agreed.*

**Australia Sports Commission response:** *Agreed in part.*

**National Health and Medical Research Council response:** *Agreed.*

## Summary of entity response

24. Summary responses from the selected entities are provided below, while the full responses are provided at Appendix 1.

## Department of Education, Skills and Employment

The Department of Education, Skills and Employment ('the department') welcomes the ANAO's report on Implementation of ANAO and Parliamentary Recommendations – Education and Health Portfolios. It is pleasing the ANAO concluded the governance arrangements supporting the implementation of ANAO and JCPAA recommendations continue to be effective.

The department is committed to continuous improvement and in response to the Secretary of the Prime Minister and Cabinet's letter on 7 August 2019, the department undertook a review of its committee inquiries arrangements. Following the review, the department implemented improvements to governance, assurance and reporting arrangements for parliamentary committee recommendations. The department is now established systems and processes in place for ANAO and JCPAA recommendations to also report on other parliamentary committee recommendations. This has been supported by new functions within the Parliamentary Workflow System that enable streamlined tracking of progress against committee recommendations.

We accept the audit report observations and recommendations regarding strengthening formalised arrangements for the implementation of parliamentary committee recommendations and will use these findings to continue to mature our governance practices.

## Department of Health

The Department of Health (department) welcomes the findings in the report and accepts the recommendation directed to the department. The department is committed to effective implementation of Australian National Audit Office (ANAO) and Parliamentary Committee recommendations and has already taken steps to address the issues identified in this audit.

It was pleasing to note there were no adverse findings in relation to the governance arrangements for ANAO and Joint Committee of Public Accounts and Audit recommendations. These arrangements are being further strengthened through the 2020 implementation of an improved Audit Recommendation Management System. I also note that all Parliamentary Committee inquiry recommendations for which the department was responsible had been implemented.

The audit found some shortcomings in governance when responding to, monitoring and implementing Parliamentary Committee inquiry recommendations. To address these findings the department has commenced a project to improve the governance arrangements for Parliamentary Committee inquiry recommendations and subsequent Government responses. A centralised model of monitoring and reporting Parliamentary Committee inquiries and subsequent government responses has been approved by the department's Executive Board and the process for implementation has commenced.

## Australian Sports Commission

The ASC welcomes the Auditor-General's findings that the ASC had implemented all recommendations during the period covered by the Audit.



The ASC notes the report's observation that the ASC did not have fully effective governance in place for all aspects of monitoring and implementing agreed ANAO recommendations. During the period covered by the audit, the report notes that there were no ANAO recommendations made within that period, for the audit team to assess. The ASC was able to provide examples of ANAO recommendations that fell outside of the audit period that were being effectively governed, as well as examples of Internal Audit Report recommendations that were being effectively governed.

We acknowledge that the audit found the ASC did not have a one size fits all centralised approach to tracking and monitoring recommendations. Our approach is risk based that relied on the action areas assigned to addressing recommendations to do so in an appropriate way. The completed implementation of all recommendations supports this approach. However, the ASC takes on board the ANAO's feedback and will strengthen a centralised approach to monitoring relevant agreed recommendations.

The ASC agrees with recommendation No 1 and agrees-in-part with Recommendation No 2.

## National Health and Medical Research Council

The National Health and Medical Research Council (NHMRC) is committed to appropriate and timely implementation of agreed ANAO and parliamentary committee inquiry recommendations and welcomes the audit findings, conclusions and the recommendation relating to NHMRC.

NHMRC has effective governance arrangements in place to monitor the implementation of ANAO performance audits, including regular reporting to NHMRC's Audit Committee. These arrangements will be extended to ensure that NHMRC also has in place a formalised governance system to monitor and implement parliamentary committee inquiry recommendations, including ensuring executive and audit committee oversight of implementation, performance and accountability. NHMRC is pleased to note the audit finding that the parliamentary committee recommendations identified for review had been implemented effectively by NHMRC.

## Key messages for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit that may be relevant for the operations of other Australian Government entities.

### Governance and risk management

- Accountable authorities should regularly review the functions of audit committees to ensure they are meeting the requirements of the Public Governance, Performance and Accountability Rule 2014 to review the appropriateness of systems of risk management and oversight and internal controls. The audit committee charters should then be updated to ensure they remain contemporary.

### Records management

- Records are a critical part of robust knowledge management practices, such as supporting transparency and accountability for past decisions and informing future decision-making.

# Management of Agreements for Disability Employment Services

**Type:** Performance audit

**Report number:** 45 of 2019-20

**Portfolios:** Social Services

**Entities:** Department of Social Services

**Date tabled:** 24 June 2020

## Background

1. The Australian Government spends approximately \$800 million annually on Disability Employment Services (DES) to provide open employment opportunities for people with disability. DES provides specialist employment assistance to help people with disability, injury or health conditions find and retain sustainable employment in the open labour market. DES also provides support to employers and has a key role in assisting people in receipt of income support to meet their mutual obligation and participation requirements.
2. DES was introduced in 2010 as part of the consolidation of two previous government programs, Vocational Rehabilitation Services and Disability Employment Network. Despite these reforms, labour force participation rates for people with disability have remained static for the past 20 years at around 53 per cent, compared to 83 per cent for people without disability.
3. In July 2018, following consultation with the disability services sector, a number of significant changes were introduced to the DES program with the aim of:
  - increasing choice over the employment services that a job seeker with a disability receives;
  - increasing competition and contestability in service delivery; and
  - improving incentives for providers to place job seekers in employment.
4. The Department of Social Services (DSS) engages providers to deliver DES services for eligible job seekers with disability. The Community Grants Hub within DSS is responsible for managing risk and compliance of the DES providers with the terms of the DES Grant Agreement. Accordingly, DSS has primary responsibility for managing DES, with assistance from Services Australia in assessing job seekers' eligibility, and the Department of Education, Skills and Employment (Employment) that hosts the DES payment system.

## Rationale for undertaking the audit

5. DES is a program with significant government funding (\$800 million annually), and has been subject to changes intended to improve employment outcomes for people with disability. Improved employment outcomes would have a considerable impact on the lives of people with disability. The audit addresses the effectiveness of the recent reforms through a focus on DSS' management of agreements with DES providers.

## Audit objective and criteria

6. The audit objective was to assess the effectiveness of the Department of Social Services' arrangements for managing Disability Employment Services provider agreements.
7. The high level criteria are:
  - Do DSS' arrangements for contracting with DES providers support the achievement of employment outcomes for people with disability?
  - Does DSS have effective arrangements for managing DES agreements?
  - Is DSS effectively assessing whether agreement outcomes are being achieved?

## Conclusion

8. DSS is largely effective in managing Disability Employment Services provider agreements.
9. DSS' arrangements with DES providers were largely appropriate to support the achievement of employment outcomes for people with disability. The department established processes to ensure DES agreements meet legislative and other relevant requirements. It also clearly defined outcomes to be achieved under the new arrangements, albeit without targets, but had not developed a framework to clearly measure the success of the DES reforms.
10. DSS has largely effective arrangements for managing DES agreements. These include largely appropriate processes for managing DES agreement risks, such as risk assessment templates and committee oversight, while the quality of risk reporting could be improved. Partially effective arrangements exist for managing compliance of DES providers, with further work still required to develop a framework for responding to non-compliance. Coordination arrangements are effective with Services Australia and largely effective with Employment.
11. DSS has largely effective processes for assessing and reporting DES outcomes, assuring the accuracy of DES payments, and systems for managing DES complaints. Opportunities for improvement include DSS broadening performance information to better measure success in improving employment outcomes for people with disability, and consolidating DES complaints data to address any systemic issues and improve service delivery.

## Supporting findings

### Arrangements with Disability Employment Services providers

12. The outcome of improving sustainable employment for people with disability is indicated in the DES reform proposal and implementation plan. The reform principles are well defined, and their intended effects are clear. DSS designed reform strategies that were responsive to the government's reform principles and addressed many of the issues raised during consultation.

13. DSS implemented arrangements to reflect the principles and outcomes of the DES reforms, including through a comprehensive grant agreement. DSS' administrative arrangements included an appropriate performance monitoring regime for DES providers. DSS did not develop an evaluation framework to measure the success of the DES reforms. DSS did not undertake a robust risk analysis and was not prepared for a substantial increase in expenditure.

14. The DES Grant Agreement has a clear legal basis. The new DES arrangements including the selection of the DES Provider Panel are consistent with the *Disability Services Act 1986*, the Commonwealth Grant Rules and Guidelines and other guidance and requirements.

## Managing Disability Employment Services agreements

15. DSS has largely appropriate processes for managing DES agreement risks but there is scope to improve the effectiveness of those processes. Largely effective high-level risk arrangements are in place for DES through the Assurance, Risk and Integrity in Employment Services Committee and established processes for risk assessment. However, the Community Grants Hub could better manage DES agreement risks by ensuring risk assessments are up to date and increasing information, support and training available to Funding Arrangement Managers to better address risks of non-compliance by providers. Appropriate arrangements in place to manage agreement risks include individual provider risk reports, quality assurance checks of those reports and site visits to further assess provider risk.

16. DSS is partially effective in assessing and managing the compliance of DES providers with agreement requirements. The focus of DES compliance activities is on payment assurance, although DSS also reviews complaints and tip-offs, investigates potential fraud, conducts job plan reviews and requires providers to obtain certification against the National Standards for Disability Services. To date, provider education and payment recoveries have been DSS' primary responses to non-compliance. DSS is developing an updated compliance and escalation framework to broaden the range of responses as the program matures. DSS should ensure the framework defines the different levels of non-compliance together with appropriate responses, and also develop a comprehensive approach to recording instances of non-compliance.

17. DSS has implemented effective coordination arrangements with Services Australia and largely effective coordination arrangements with Employment for managing DES Grant Agreements. Well-established processes support the coordination between Services Australia's assessment of job seekers and DSS' management of DES. Employment provides IT systems to support DES agreement management and several other services. These services are governed through agreements and active inter-departmental committees, but there is scope for DSS to gain greater assurance over the effectiveness of system controls.

## Disability Employment Services outcomes, provider payments and complaints management

18. DSS has largely effective processes for assessing and reporting outcomes for DES participants and service providers. The department publishes a detailed monthly report on DES caseload and participant employment outcomes. It assesses the relative performance of DES service providers using a regression model that adjusts for differences in client characteristics and local labour market conditions. However, DSS does not have an evaluation framework to effectively measure DES program performance or the success of the DES reforms. There is scope for DSS to strengthen DES performance reporting by including additional indicators of overall employment outcomes for DES participants and explicitly reporting against the three key performance indicators in the DES performance framework that cover efficiency, effectiveness and quality.

19. DSS has largely effective processes for assuring the accuracy of DES payments through assessment of a sample of payment claims. In 2018–19, the average accuracy rate for sampled claims was determined by DSS to be 95.9 per cent, exceeding the benchmark of 95 per cent. DSS would benefit from reviewing the evidentiary requirements supporting outcome claims.

20. DSS has largely effective policies and procedures for handling DES complaints. There is scope for DSS to consolidate and analyse complaints data to enable the department to identify and address any systemic issues arising in the management of DES grants.

## Recommendations

### Recommendation no.1

#### Paragraph 2.21

DSS develops an evaluation framework that includes clear, program-level performance metrics to enable evaluation of the DES reforms in achieving their intended purposes.

**Department of Social Services' response:** *Agreed.*

### Recommendation no.2

#### Paragraph 3.60

DSS strengthens its approach to managing DES provider compliance by:

- a. enacting strategies to reduce the value of payments for invalid claims, including through targeted compliance activities;
- b. clarifying processes for reporting, escalating and responding to non-compliance;
- c. developing an approach to comprehensively record breaches of the DES Grant Agreement; and
- d. reviewing its arrangement with the Joint Accreditation System of Australia and New Zealand to ensure the consistency of certification audits against the National Standards for Disability Services.

**Department of Social Services' response:** *Agreed.*

**Recommendation  
no.3**

**Paragraph 4.9**

DSS includes additional information on overall employment outcomes for DES participants in its Portfolio Budget Statements, Corporate Plan and Annual Report to better report on the impact of the DES reforms.

**Department of Social Services' response:** *Agreed.*

**Recommendation  
no.4**

**Paragraph 4.43**

DSS reviews the evidentiary requirements for DES outcome claims and associated payments.

**Department of Social Services' response:** *Agreed.*

**Recommendation  
no.5**

**Paragraph 4.72**

To inform DES policy decision-making and identify areas for improvement in service delivery, DSS establishes oversight arrangements for DES complaints, including:

- a. a process for capturing DES complaints data from all internal and external sources;
- b. regular analysis to identify complaints trends; and
- c. reporting on the results of DES complaints analysis to the DSS executive.

**Department of Social Services' response:** *Agreed.*

## Summary of entity response

21. DSS' summary response is provided below. Its full response can be found in Appendix 1.

I agree with the five recommendations. The department's work to implement these recommendations is already underway. The report's insights are timely and provide useful guidance as the department continues to strengthen management and oversight of the program, since the reforms commenced on 1 June 2018, to deliver improved employment results for people with disability efficiently and effectively.

## Key messages from this audit for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

## Program design

- Comprehensive stakeholder engagement helps entities to better understand the underlying policy challenges that reform initiatives aim to address. This in turn enables entities to focus on areas of improvement and can lead to more responsive program design.

## Performance and impact measurement

- Publishing information on program outputs and outcomes enhances transparency for program participants, other stakeholders and the general public. Keeping stakeholders informed of results supports effective engagement to optimise ongoing program design and delivery.
- Where an existing program undergoes reform, entities should determine from the outset how the impact of that reform will be measured. Evaluating the effectiveness of the reform itself, as well as the overall program, can help to build an evidence base to inform future policy changes.

## Governance

- Administrative processes should reflect the intent of policy reforms and satisfy legislative and other relevant requirements, as was the case for the 2018 DES reforms managed by DSS.
- When implementing market-based service reforms, Commonwealth entities should expect that the market will respond quickly to new incentives, which will require commensurately agile responses through compliance and fraud control arrangements.

# Fraud Control Arrangements in the Department of Social Services

**Type:** Performance audit

**Report number:** 44 of 2019-20

**Portfolios:** Social Services

**Entities:** Department of Social Services

**Date tabled:** 23 June 2020

## Background

1. The Australian Government (the government) defines fraud as:  
Dishonestly obtaining a benefit or causing a loss by deception or other means.
2. Fraud requires intent, and is more than carelessness, accident or error. Without intent, an incident may indicate non-compliance rather than fraud.
3. Fraud against the Commonwealth can be committed by Commonwealth officials or contractors (internal fraud) or by external parties such as clients, service providers, members of the public or organised criminal groups (external fraud). In some cases fraud against the Commonwealth may involve collusion between external and internal parties, and can include corrupt conduct such as bribery. However, not all corrupt conduct meets the definition of fraud.
4. Australian Government entities have long been required to establish arrangements to manage fraud risks. The government's requirements for fraud control are contained in the 2017 Commonwealth Fraud Control Framework (the Framework) pursuant to the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). The Framework comprises three tiered documents – the fraud rule, fraud policy and fraud guidance – with different binding effects for corporate and non-corporate Commonwealth entities. The Attorney-General's Department is responsible for administering the Framework.
5. As non-corporate Commonwealth entities, Australian Government departments must comply with the fraud rule and fraud policy. While the fraud guidance is not binding, the government considers the guidance to be better practice and expects entities to follow it where appropriate.
6. This audit is one in a series of three performance audits reviewing fraud control arrangements in selected departments – the Department of Social Services, the Department of Foreign Affairs and Trade and the Department of Home Affairs. The focus of this audit report is the Department of Social Services.



## Rationale for undertaking the audit

7. This audit series is intended to provide assurance to the Parliament regarding the fraud control arrangements of selected Australian Government departments. All Commonwealth entities are required to have fraud control arrangements in place because preventing, detecting and responding to fraud against the Commonwealth is necessary to ensure the proper use of public resources, financial and material losses are minimised, and public confidence is maintained. In addition, this audit series aims to assist all Commonwealth entities to consider the effectiveness of their fraud control arrangements, including areas where additional effort would improve consistency with whole of government better practice fraud guidance (discussed in paragraph 5) and the take-up of whole of government advice on new and emerging fraud risks (discussed in paragraph 10).

## Audit objective and criteria

8. The objective of the audit was to assess the effectiveness of the Department of Social Services' fraud control arrangements. The high level audit criteria were that the department:

- complies with the mandatory requirements set out in the Commonwealth Fraud Control Framework and arrangements are consistent with the government's better practice guidance; and
- promotes a fraud aware culture.

9. The ANAO did not assess whether specific controls are in place or the effectiveness of such controls in the selected entity.

10. The ANAO reviewed fraud control arrangements in place within the department during the period of audit fieldwork, September 2019 to early February 2020. On 18 February 2020 the Australian Government activated the *Emergency Response Plan for Novel Coronavirus (COVID-19)*. On 27 March 2020 the Australian Federal Police's Operation Ashiba and the Commonwealth Counter Fraud Prevention Centre in the Attorney-General's Department established the Commonwealth COVID-19 Counter Fraud Taskforce intended to support Commonwealth agencies to prevent fraud against the COVID-19 economic stimulus measures. The Commonwealth Fraud Prevention Centre circulated the *Fraud Control in COVID-19 Emergency and Crisis Management* fact sheet to Commonwealth entities, with information about key fraud risks related to COVID-19 response efforts.

11. The Department of Social Services was invited by the ANAO to make a representation in relation to its current or planned arrangements to address increased fraud risks resulting from the COVID-19 response. The department advised the ANAO in May 2020 that:

The department has been assessing and monitoring the increased fraud risk as a result of the COVID-19 response. The department is continuing to work with the Commonwealth Fraud Prevention Centre and COVID-19 Counter Fraud Taskforce to strengthen the department's control environment and implement new countermeasures to prevent fraud.

Guidance provided by the COVID-19 Counter Fraud Taskforce to assist in implementing fraud countermeasures during COVID-19 has informed the department's approach to addressing the increased fraud risk. This includes building awareness of fraud risks, implementing low friction countermeasures to prevent fraud where possible and carrying out targeted assurance checks to identify instances of fraud.

## Conclusion

12. Fraud control arrangements in the Department of Social Services are largely effective. The department's arrangements comply with the mandatory requirements of the Commonwealth Fraud Control Framework, are largely consistent with the whole of government better practice fraud guidance, and the accountable authority has taken steps to promote a fraud aware culture. Further attention is required to document a formal assurance mechanism between fraud risk and control owners, and to provide the expected level of assurance in the department's annual fraud certification.
13. The department has developed and implemented a fraud control framework, conducted fraud risk assessments, and has guidance and procedures to assist departmental staff to understand what constitutes fraud and to carry out their fraud prevention responsibilities. The department has also included performance indicators and an annual work program in its fraud control framework to assist it to monitor and review its fraud control arrangements.
14. The department has mechanisms in place to assess its fraud risks but has not fully addressed all fraud risks assessed as 'high' risk. The department's oversight of its fraud controls would be strengthened by documenting fraud control and treatment owners in its fraud risk assessments, and documenting a process for control owners to provide assurance to risk owners about control effectiveness.
15. The department has put in place controls to detect fraud, including reporting channels for use by staff and members of the public and the use of data analytics. The department's fraud investigation procedures are consistent with the Australian Government Investigations Standards.
16. The department has taken steps to promote a fraud aware culture and met the reporting requirements set out in the framework. The department's certification in the two most recent annual reports provided a lower level of assurance to Parliament than is expected under the PGPA Rule.

## Supporting findings

### Risk management, planning and prevention

17. Fraud risk is considered within the context of the department's overarching enterprise risk management framework. Fraud risk is categorised as a 'specialist risk'. This means fraud risks need to be considered by officers with a thorough understanding of the subject matter. The department's fraud control officers assist policy and program areas to consider fraud risk and to conduct fraud risk assessments. The department's fraud control arrangements are set out in a fraud control framework that includes a fraud control plan, an annual work program and performance indicators intended to measure the success of its fraud control arrangements.
18. The department could more closely align to the whole of government fraud guidance by including a summary of the department's fraud risks in its fraud control plan. Having this summary would assist staff to fulfil their responsibilities under the fraud control plan to report suspected fraud by providing a departmental-level overview of such risks.

19. The department has identified fraud risks and conducted fraud risk assessments at regular intervals. Fraud risk assessments cover risks related to internal operations that occur across the department, such as financial management and procurement, as well as risks specific to individual programs. The department's fraud control officers, who assist departmental staff to undertake fraud risk assessments, have or are working towards acquiring qualifications in fraud investigations and fraud control.

20. Fraud risks are assessed and given a fraud risk exposure rating based on the likelihood and consequences of the risk occurring but the department has not fully addressed all fraud risks assessed as 'high' risk. The department determines whether risks are 'acceptable' or 'unacceptable' but does not document the rationale for deciding that certain 'high' risks are 'acceptable'. Eight of the department's 15 'high' fraud risks that it had assessed as 'unacceptable' either did not have treatments identified to reduce the risk or those treatments were insufficient to reduce the risk exposure rating. The department has identified fraud risks that are shared with Services Australia and, in its capacity as administrator of the government's Community Grants Hub, has drafted but not yet finalised protocols for the management of fraud risks by client services.

21. The department has a range of preventive controls in place and tests its controls to ensure they are operational. The department's risk framework sets out responsibilities for risk, control and treatment owners but does not document either the control or treatment owner in the risk assessment. While the department has a process to identify improvements to existing controls, to meet the fraud guidance it should document a process for control owners to provide assurance to risk owners that the controls in place are useful, necessary and effective.

## Detection, investigation and response

22. The department uses a range of detective controls to find fraud. These include processes for departmental staff and members of the public to confidentially report allegations of fraud. The main detection method for internal and external fraud investigations, finalised in 2018–19, was through staff member detection. The department also identifies fraud through other detective controls such as internal audits and data analytics. These detective controls have identified suspected fraud that has then been subject to assessment and investigation.

23. The department's investigation procedures are consistent with the Australian Government Investigations Standards.

## Culture, assurance and reporting

24. The department has set expectations and promotes a fraud aware culture through: the Secretary's instructions; its fraud control framework; internal events during International Fraud Awareness week; and internal messaging to staff about fraud control and outcomes from significant fraud-related prosecutions. The department's audit and assurance committee charter allows the committee to review the department's fraud risks, and it has done so.

25. Completion of online fraud awareness training has been mandatory for all staff since August 2019. As of 1 November 2019, 96.8 per cent of staff had completed the training. As this mandatory requirement has recently been introduced there is value in the department closely monitoring completion rates to inform its approach to achieving full compliance.

26. In its 2017–18 and 2018–19 annual reports, the department provided a lesser level of assurance to the Parliament than is expected by the PGPA Rule. The Secretary's certification in those annual reports did not meet the expectations of the PGPA Rule because it did not state that all reasonable measures had been taken to deal appropriately with fraud relating to the entity, or identify what, if any, further measures needed to be implemented.

27. The department has complied with the mandatory reporting obligation in the Commonwealth Fraud Control Policy to provide information to the Australian Institute of Criminology annually, and has briefed its Minister twice on specific fraud risks or issues since 2016.

## Recommendations

### Recommendation no.1

#### Paragraph 2.50

The Department of Social Services document control and treatment owners in its fraud risk assessments, and document a process to facilitate the provision of assurance to risk owners that controls are useful, necessary and effective.

**Department of Social Services response:** *Agreed.*

### Recommendation no.2

#### Paragraph 4.24

The Department of Social Services accountable authority's annual report certification prepared pursuant to subsection 17AG(2) of the PGPA Rule 2014 should certify that all reasonable measures have been taken to deal appropriately with fraud relating to the entity, or indicate what further measures need to be implemented.

**Department of Social Services response:** *Agreed.*

## Summary of entity response

The Department of Social Services (the department) acknowledges the report and the opportunities the audit provides to strengthen our fraud control operations.

The department places a high priority on reviewing and improving fraud risk arrangements to protect the integrity of the department and our programs. The department has already begun taking steps that will address the recommendations identified in the report.

## Key messages from this audit for all Australian Government entities

28. This audit is one in a series of three performance audits reviewing fraud control arrangements in selected non-corporate Commonwealth entities:

- the Department of Social Services;

- the Department of Foreign Affairs and Trade; and
- the Department of Home Affairs.

29. Key messages from this audit series will be outlined in an ANAO Insights product available on the ANAO website.

# Fraud Control Arrangements in the Department of Home Affairs

**Type:** Performance audit

**Report number:** 43 of 2019-20

**Portfolios:** Home Affairs

**Entities:** Department of Home Affairs

**Date tabled:** 22 June 2020

## Background

1. The Australian Government (the government) defines fraud as:  
Dishonestly obtaining a benefit or causing a loss by deception or other means.
2. Fraud requires intent, and is more than carelessness, accident or error. Without intent, an incident may indicate non-compliance rather than fraud.
3. Fraud against the Commonwealth can be committed by Commonwealth officials or contractors (internal fraud) or by external parties such as clients, service providers, members of the public or organised criminal groups (external fraud). In some cases fraud against the Commonwealth may involve collusion between external and internal parties, and can include corrupt conduct such as bribery. However, not all corrupt conduct meets the definition of fraud.
4. Australian Government entities have long been required to establish arrangements to manage fraud risks. The government's requirements for fraud control are contained in the 2017 Commonwealth Fraud Control Framework (the Framework) pursuant to the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). The Framework comprises three tiered documents – the fraud rule, fraud policy and fraud guidance – with different binding effects for corporate and non-corporate Commonwealth entities. The Attorney-General's Department is responsible for administering the Framework.
5. As non-corporate Commonwealth entities, Australian Government departments must comply with the fraud rule and fraud policy. While the fraud guidance is not binding, the government considers the guidance to be better practice and expects entities to follow it where appropriate.
6. This audit is one in a series of three performance audits reviewing fraud control arrangements in selected departments – the Department of Home Affairs, the Department of Foreign Affairs and Trade and the Department of Social Services. The focus of this audit report is the Department of Home Affairs.

## Rationale for undertaking the audit

7. This audit series is intended to provide assurance to the Parliament regarding the fraud control arrangements of selected Australian Government departments. All Commonwealth entities are required to have fraud control arrangements in place because preventing, detecting and responding to fraud against the Commonwealth is necessary to ensure the proper use of public resources, financial and material losses are minimised, and public confidence is maintained. In addition, this audit series aims to assist all Commonwealth entities to consider the effectiveness of their fraud control arrangements, including areas where additional effort would improve consistency with whole of government better practice fraud guidance (discussed in paragraph 5) and the take-up of whole of government advice on new and emerging fraud risks (discussed in paragraph 10).

## Audit objective and criteria

8. The objective of the audit was to assess the effectiveness of the Department of Home Affairs' fraud control arrangements. The high level audit criteria were that the department:

- complies with the mandatory requirements set out in the Commonwealth Fraud Control Framework and arrangements are consistent with the government's better practice guidance; and
- promotes a fraud aware culture.

9. The ANAO did not assess whether specific controls are in place or the effectiveness of such controls in the selected entity.

10. The ANAO reviewed fraud control arrangements in place within the department during the period of audit fieldwork, September 2019 to early February 2020. On 18 February 2020 the Australian Government activated the *Emergency Response Plan for Novel Coronavirus (COVID-19)*. On 27 March 2020 the Australian Federal Police's Operation Ashiba and the Commonwealth Counter Fraud Prevention Centre in the Attorney-General's Department established the Commonwealth COVID-19 Counter Fraud Taskforce intended to support Commonwealth agencies to prevent fraud against the COVID-19 economic stimulus measures. The Commonwealth Fraud Prevention Centre circulated the *Fraud Control in COVID-19 Emergency and Crisis Management* fact sheet to Commonwealth entities, with information about key fraud risks related to COVID-19 response efforts.

11. The Department of Home Affairs was invited by the ANAO to make a representation in relation to its current or planned arrangements to address increased fraud risks resulting from the COVID-19 response. The department advised the ANAO in May 2020 that:

Existing fraud control mechanisms, including fraud and corruption risk assessments continue to be undertaken. Fraud control staff are available to business areas to look for fraud and guide the review of existing plans, this includes the identification of new threats and risks. The Department also has a number of historical risk assessments that identify a broad range of risks that could arise from a situation similar to COVID-19. The risk assessments include treatments to mitigate the risks. Many of these activities have been implemented as part of the Department's risk management to minimise the impact of risks against the Department in the current environment.

## Conclusion

12. Fraud control arrangements in the Department of Home Affairs are effective. The department's arrangements comply with the mandatory requirements of the Commonwealth Fraud Control Framework, are consistent with the whole of government better practice fraud guidance, and the accountable authority has taken steps to promote a fraud aware culture. Further attention is required to provide the expected level of assurance in the department's annual fraud certification.

13. The department has developed and implemented a fraud control plan, conducted fraud risk assessments and has guidance and procedures to assist officials to understand what constitutes fraud and to carry out their fraud prevention responsibilities.

14. The department has put in place controls to detect fraud, including reporting channels for use by staff and members of the public. The department's fraud investigation procedures are consistent with the Australian Government Investigations Standards.

15. The department has taken steps to promote a fraud aware culture and met the reporting requirements set out in the framework. The department's fraud certifications in the three most recent annual reports provided a lower level of assurance to Parliament than is expected under the PGPA Rule.

## Supporting findings

### Risk management, planning and prevention

16. The department considers fraud risk in the context of its overall risk management framework and policy. The department has identified nine strategic risks and nine enterprise risks, with eight of these risks cross-referenced in the department's fraud risk register. Departmental staff are required to consider these 18 risks when undertaking fraud risk assessments.

17. The department's fraud control plan does not contain a summary of its fraud control risks as suggested in the fraud guidance. Having this summary would assist staff to fulfil their responsibilities under the fraud control plan to understand fraud and report suspected fraud by providing a departmental-level overview of the risks to be aware of.

18. As required by the fraud rule, fraud risks are identified and assessments are conducted at regular intervals, including when there is a substantial change in the department's structure, functions or activities. The department uses a rolling program set out in its fraud risk schedule, to prioritise business areas requiring fraud risk assessments.

19. Staff undertaking fraud risk assessments have appropriate qualifications in fraud control, in line with the fraud guidance, or are awaiting training to be delivered.

20. Fraud risks are assessed and addressed through the department's fraud risk assessment process. The department identified 25 fraud risks through fraud risk assessments conducted during 2019. A risk register is used to record the department's fraud risks and the department monitors the implementation of treatments following a decision by a risk owner that a risk is to be reduced by tracking the implementation date and subsequent review dates.



21. The department has a range of preventive controls in place to prevent fraud and tests its controls to ensure they are effective. There is a 'line of sight' in the fraud risk register from the fraud risk through to the control and any treatment. Details of the fraud risk owner, control owner and treatment owner are recorded. This approach allows for clear identification of: each control intended to mitigate each fraud risk; and individual responsibilities.

22. Responsibilities and accountabilities for the assessment of enterprise and strategic risks, and associated controls, are clear and the department has developed assurance mechanisms between risk and control owners and its executive.

## Detection, investigation and response

23. The department has processes for departmental staff and members of the public to report allegations of fraud. The public reporting channel could more clearly indicate that it is to be used for suspected fraud in addition to other types of misconduct.

24. The department's main source of fraud detection is tip offs from within the department (for allegations of external fraud) and from staff member detection (for allegations of internal fraud). The department also detects fraud through other detective controls. These include internal audits and identity matching services.

25. Detective controls are listed in the department's fraud risk register. They are allocated to individual fraud risks and have a control owner who is responsible for the control's effectiveness in managing fraud risk.

26. The department's investigation procedures are consistent with the Australian Government Investigations Standards. The department has up-to-date procedures for managing internal and external investigations and clear guidance to assist officials to assess and prioritise cases. The Australian Border Force's procedures for case referral and investigation quality assurance were in effect until 2016 and 2017 respectively, and a review of these procedures remains underway. The department should ensure that future reviews are completed in a timely manner, within the date of effect of the procedures.

## Culture, assurance and reporting

27. The department has set expectations and promotes a fraud aware culture through the Secretary's Instructions, its fraud control plans, fraud awareness week activities and an integrity framework that includes mandatory reporting of suspected serious misconduct. The department's audit and risk committee charter allows the committee to review the department's fraud risks, and it has done so.

28. The department supports its staff to be fraud aware through mandatory training and a suite of guidance materials and advice. Relevant materials have included case studies, videos and departmental communications. As at September 2019, the reported completion rate for the department's mandatory fraud awareness training was around 80 per cent. The department has arrangements in place to monitor compliance.

29. In its 2016–17, 2017–18 and 2018–19 annual reports, the department provided a lesser level of assurance to the Parliament than is expected by the PGPA Rule. The Secretary's certification in those annual reports did not meet the expectations of the PGPA Rule because it did not state that all reasonable measures had been taken to deal appropriately with fraud relating to the entity, or identify what, if any, further measures needed to be implemented.

30. The department has complied with the mandatory reporting obligation in the Commonwealth Fraud Control Policy to provide information to the Australian Institute of Criminology annually, and has briefed its Minister on specific fraud risks and issues on an as needs basis.

## Recommendations

### Recommendation no.1

#### Paragraph 4.26

The Department of Home Affairs accountable authority's annual report certification prepared pursuant to subsection 17AG(2) of the PGPA Rule 2014 should certify that all reasonable measures have been taken to deal appropriately with fraud relating to the entity, or indicate what further measures need to be implemented.

**Department of Home Affairs response:** *Agreed.*

## Summary of entity response

The Department of Home Affairs (the Department) welcomes the ANAO's findings that fraud control arrangements in the Department are effective; that the Department's current fraud prevention arrangements comply with the requirements of the Commonwealth Fraud Control Framework 2017; and that the Department is implementing fraud control arrangements consistent with the Australian Government's better practice fraud guidance.

These findings are directly reflective of the level of commitment the Department has to fostering and maintaining an ethical culture of fraud awareness and prevention, and the proactive approach we promote to managing fraud risks across the Department. We recognise the important role all officials play in protecting valuable public resources.

In particular, we welcome the following positive findings from the ANAO:

1. **Fraud expertise:** Departmental staff undertaking fraud risk assessments have appropriate qualifications in fraud control, and the majority have additional qualifications in risk assessment and/or intelligence to effectively carry out their fraud prevention duties.
2. **Fraud detection, investigation and reporting:** The Department has reporting channels and processes to detect fraud and our investigation procedures are consistent with the Australian Government Investigations Standards. The Department has up-to-date procedures for managing internal and external investigations and clear guidance to assist officials to assess and prioritise cases.
3. **Promoting a fraud aware culture:** Governance and other arrangements have been implemented in the Department to promote a fraud aware culture. This is evidenced through my audit committee regularly discussing and engaging with fraud risk during committee meetings; the Department's three year integrity program; and fraud awareness week embedding a positive integrity culture through education and training on fraud and integrity awareness and ethical decision making.

The Department notes the ANAO's recommendation that the 'accountable authority's annual report certification prepared pursuant to subsection 17AG(2) of the *Public Governance, Performance and Accountability Rule 2014* (the Rule) should certify that all reasonable measures have been taken to deal appropriately with fraud relating to the entity, or indicate what further measures need to be implemented.'

The report acknowledges that the Secretary as accountable authority, did certify that *'[he has] taken reasonable measures to minimise the incidence of fraud within the Department and the Australian Border Force (ABF), and to investigate and recover the proceeds of fraud against the Department'*. The Secretary's letter of transmittal within the Department of Immigration and Border Protection and Department of Home Affairs Annual Reports from 2016-17 to 2018-19 also certify that the Department complied with the requirements of section 10 of the Rule. Section 10 requires the accountable authority of a Commonwealth entity to take **all** reasonable measures to prevent, detect and deal with fraud relating to the entity.

The Department is of the view that the absence of the word 'all' had no impact on the level of assurance provided to the Parliament between 2016–17 and 2018–19, particularly in the absence of prescribed wording for the certification in the Rule or in guidance provided by the Department of Finance.

The Department will ensure that future annual reports are consistent with the ANAO recommendation within this report when providing certification under section 17AG(2)(b)(iii) of the Rule.

## Key messages from this audit for all Australian Government entities

31. This audit is one in a series of three performance audits reviewing fraud control arrangements in selected non-corporate Commonwealth entities:

- the Department of Home Affairs;
- the Department of Foreign Affairs and Trade; and
- the Department of Social Services.

32. Key messages from this audit series will be outlined in an ANAO Insights product available on the ANAO website.

# Fraud Control Arrangements in the Department of Foreign Affairs and Trade

**Type:** Performance audit

**Report number:** 42 of 2019-20

**Portfolios:** Foreign Affairs and Trade

**Entities:** Department of Foreign Affairs and Trade

**Date tabled:** 19 June 2020

## Background

1. The Australian Government (the government) defines fraud as:  
Dishonestly obtaining a benefit or causing a loss by deception or other means.
2. Fraud requires intent, and is more than carelessness, accident or error. Without intent, an incident may indicate non-compliance rather than fraud.
3. Fraud against the Commonwealth can be committed by Commonwealth officials or contractors (internal fraud) or by external parties such as clients, service providers, members of the public or organised criminal groups (external fraud). In some cases fraud against the Commonwealth may involve collusion between external and internal parties, and can include corrupt conduct such as bribery. However, not all corrupt conduct meets the definition of fraud.
4. Australian Government entities have long been required to establish arrangements to manage fraud risks. The government's requirements for fraud control are contained in the 2017 Commonwealth Fraud Control Framework (the Framework) pursuant to the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). The Framework comprises three tiered documents – the fraud rule, fraud policy and fraud guidance – with different binding effects for corporate and non-corporate Commonwealth entities. The Attorney-General's Department is responsible for administering the Framework.
5. As non-corporate Commonwealth entities, Australian Government departments must comply with the fraud rule and fraud policy. While the fraud guidance is not binding, the government considers the guidance to be better practice and expects entities to follow it where appropriate.
6. This audit is one in a series of three performance audits reviewing fraud control arrangements in selected departments – the Department of Foreign Affairs and Trade, the Department of Home Affairs, and the Department of Social Services. The focus of this audit report is the Department of Foreign Affairs and Trade.

## Rationale for undertaking the audit

7. This audit series is intended to provide assurance to the Parliament regarding the fraud control arrangements of selected Australian Government departments. All Commonwealth entities are required to have fraud control arrangements in place because preventing, detecting and responding to fraud against the Commonwealth is necessary to ensure the proper use of public resources, financial and material losses are minimised, and public confidence is maintained. In addition, this audit series aims to assist all Commonwealth entities to consider the effectiveness of their fraud control arrangements, including areas where additional effort would improve consistency with whole of government better practice fraud guidance (discussed in paragraph 5) and the take-up of whole of government advice on new and emerging fraud risks (discussed in paragraph 10).

## Audit objective and criteria

8. The objective of the audit was to assess the effectiveness of the Department of Foreign Affairs and Trade's fraud control arrangements. The high level audit criteria were that the department:

- complies with the mandatory requirements set out in the Commonwealth Fraud Control Framework and arrangements are consistent with the government's better practice guidance; and
- promotes a fraud aware culture.

9. The ANAO did not assess whether specific controls are in place or the effectiveness of such controls in the selected entity.

10. The ANAO reviewed fraud control arrangements in place within the department during the period of audit fieldwork, September 2019 to early February 2020. On 18 February 2020 the Australian Government activated the *Emergency Response Plan for Novel Coronavirus (COVID-19)*. On 27 March 2020 the Australian Federal Police's Operation Ashiba and the Commonwealth Counter Fraud Prevention Centre in the Attorney-General's Department established the Commonwealth COVID-19 Counter Fraud Taskforce intended to support Commonwealth agencies to prevent fraud against the COVID-19 economic stimulus measures. The Commonwealth Fraud Prevention Centre circulated the *Fraud Control in COVID-19 Emergency and Crisis Management* fact sheet to Commonwealth entities, with information about key fraud risks related to COVID-19 response efforts.

11. The Department of Foreign Affairs and Trade was invited by the ANAO to make a representation in relation to its current or planned arrangements to address increased fraud risks resulting from the COVID-19 response. The department advised the ANAO in June 2020 that:

In response to COVID-19, DFAT undertook assessments of risk and whole of Government consultations to inform the focus for fraud operations.

The department has and will continue to concentrate on (a) ensuring continuity in case referrals and management under remote working; and (b) proactive engagement and communications with internal and external stakeholders emphasising practical up-front counter-measures to disrupt and reduce the impacts of fraud. An 'infographic' on how to manage fraud under COVID-19 in DFAT specific operations has been circulated to staff.

DFAT governance committees, including the Audit and Risk Committee and the Performance, Risk and Resourcing Committee, were briefed on the approach (in April and May respectively). Deputy Secretaries and First Assistant Secretaries have emailed internal and external stakeholders emphasising core principles for fraud prevention.

DFAT is participating in the whole of Australian Government Senior Officers Fraud Forum. The Fraud Control Section has sent a Cable to all staff and portfolio agencies sharing fraud related insights from the Australian Criminal Intelligence Commission. Further whole of Government products have and will continue to be circulated across the Department.

## Conclusion

12. Fraud control arrangements in the Department of Foreign Affairs and Trade are largely effective. The department's arrangements comply with the mandatory requirements of the Commonwealth Fraud Control Framework, are largely consistent with the whole of government better practice fraud guidance, and the accountable authority has taken steps to promote a fraud aware culture. Further attention is required to address low levels of compliance with mandatory fraud awareness training requirements and to improve consistency with internal requirements by identifying fraud control owners and updating investigations procedures.
13. The department has developed and implemented a fraud control plan, completed fraud risk assessments and has guidance and procedures to assist officials to understand what constitutes fraud and to carry out their fraud prevention responsibilities.
14. The department has mechanisms in place to assess and provide assurance of its controls. Internal reporting and oversight would be strengthened by: requiring business areas to report on progress to reduce fraud risks above the tolerance level; and ensuring that responsibility for controls is assigned by position, in line with internal guidance.
15. The department has put in place controls to detect fraud, including reporting channels for use by staff and members of the public. The department's fraud investigation procedures are largely consistent with the Australian Government Investigations Standards, with attention required to update some procedures.
16. The department has taken steps to promote a fraud aware culture and meets the reporting requirements set out in the framework. While there is internal messaging to staff about fraud control and a program of mandatory fraud awareness training, completion rates for that training are consistently low. Recent remediation measures are credited with improved compliance, but continued attention is required as failure to adequately address non-compliance with mandatory requirements communicates to staff that compliance is optional.

## Supporting findings

### Risk management, planning and prevention

17. The department considers fraud risk in the context of its overarching risk management framework. Fraud risks must be considered by departmental officials when they are conducting risk assessments. The Secretary's expectation for work areas to control fraud in their activities is documented in the fraud control plan. The department's fraud toolkit for staff provides information and instructions to assist staff to meet this expectation.

18. As required by the fraud rule, fraud risks are identified and the assessments are conducted at regular intervals. The department conducted a fraud risk assessment in 2017 prior to the development of the fraud control plan. In 2019, a fraud risk assessment for seven (mostly financial) business processes was conducted. Both fraud risk assessments involved consultation with relevant areas across the department. Departmental staff have or are in the process of gaining qualifications in fraud control.

19. Fraud risks are assessed and given a fraud risk exposure rating based on the likelihood and consequences of the risk occurring. Depending on the assessed exposure rating and having regard to the department's tolerance level, these risks are then addressed with responses ranging from monitoring to actively treating the risk. Of the 91 fraud risks identified in the department's 2017 fraud risk assessment, seven (7.7 per cent) were identified in internal reporting as 'critical' fraud risks. One additional 'critical' risk was identified in the department's 2019 fraud risk assessment. The department took action to address these 'critical' fraud risks and reported on the actions taken to mitigate these risks to its Executive.

20. The department has a range of preventive controls in place to prevent fraud and tests its controls to ensure they are operational. The department has undertaken control reviews and has mechanisms in place to provide assurance around its control environment. These mechanisms could be better supported by clear assignment of control owners, by position, in line with the department's risk management guide.

### Detection, investigation and response

21. The department has processes for departmental staff and others (such as members of the public and funding recipients) to confidentially report allegations of fraud. The department's main source of fraud detection is tip offs from within the department (for allegations of internal fraud) or from sources external to the department (for allegations of external fraud). The department has a publicly available procedure for handling Public Interest Disclosures. The department also detects fraud through other detective controls. These include internal audits, data analytics and forensic examination.

22. The department's investigation procedures are largely consistent with the Australian Government Investigations Standards. The department's policy and procedures for conducting investigations of suspected internal fraud require updating.

## Culture, assurance and reporting

23. The department has set expectations and promotes a fraud aware culture through: a fraud strategy statement; a *Fraud Control Toolkit for Funding Recipients*; a fraud control plan; a conduct and ethics manual for departmental staff; a *Fraud Control Toolkit for Staff*; fraud awareness programs for funding providers; and internal messaging to all staff from the Secretary about fraud control. The department's audit and risk committee charter and work plan allow the committee to review the department's fraud risks. The committee has done so and provided reports to the Secretary.

24. Completion rates for the department's mandatory fraud awareness training are consistently low – in the range of 31 to 65 percent between 2018 and 2020.

25. The department has provided assurance about its fraud control arrangements through reporting. The department has:

- met annual report requirements under subsection 17AG(2) of the Public Governance, Performance and Accountability Rule 2014;
- complied with mandatory reporting obligations in the Commonwealth Fraud Control Policy to provide information to the Australian Institute of Criminology annually; and
- implemented the fraud guidance recommendation to keep the Minister informed about entity fraud control arrangements and significant issues.

## Recommendations

### Recommendation no.1

#### Paragraph 2.47

The Department of Foreign Affairs and Trade's department-level fraud risk assessments identify control owners by position, in line with its risk management guide.

**Department of Foreign Affairs and Trade response:** *Agreed.*

### Recommendation no.2

#### Paragraph 3.24

The Department of Foreign Affairs and Trade update its policy and processes for fraud investigations to fully meet Australian Government Investigations Standards requirements.

**Department of Foreign Affairs and Trade response:** *Agreed.*

### Recommendation no.3

#### Paragraph 4.23

The Department of Foreign Affairs and Trade improves staff compliance relating to mandatory fraud awareness training.

**Department of Foreign Affairs and Trade response:** *Agreed.*



## Summary of entity response

The Department of Foreign Affairs and Trade (DFAT) welcomes the report, which is part of a series of three audits on selected Commonwealth entities assessing the effectiveness of fraud control arrangements. We welcome the findings that fraud control arrangements are largely effective and the department's arrangements comply with mandatory requirements of the Commonwealth Fraud Control Framework.

DFAT is committed to continuous improvement in our framework to prevent, detect and respond to fraud. Fraud undermines our ability to achieve objectives and reduces the effectiveness of the Australian Government's policies and programs. We accept the audit report recommendations regarding identification of control owners by position, updating aspects of investigations procedures and improved staff compliance relating to mandatory fraud awareness training. DFAT will address these recommendations through ongoing update in our fraud control policies, procedures and guidelines.

## Key messages from this audit for all Australian Government entities

26. This audit is one in a series of three performance audits reviewing fraud control arrangements in selected non-corporate Australian Government entities:

- the Department of Foreign Affairs and Trade;
- the Department of Home Affairs; and
- the Department of Social Services.

27. Key messages from this audit series will be outlined in an ANAO Insights product available on the ANAO website.

# Design and Establishment of the Regional Investment Corporation

**Type:** Performance audit

**Report number:** 41 of 2019-20

**Portfolios:** Across Entities

**Entities:** Across Entities

**Date tabled:** 17 June 2020

## Background

1. The Regional Investment Corporation (RIC) was established by the *Regional Investment Corporation Act 2018* and offered loans from 1 July 2018. It is a corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
2. The establishment of RIC was the response to a June 2016 Coalition election commitment to fast-track the delivery of \$4 billion in Commonwealth drought and water infrastructure loans. Previously loans were delivered via the states and territories.
3. RIC concessional loans to farm businesses are one of 11 measures to support farmers facing drought. RIC also administers the National Water Infrastructure Loan Facility (NWILF) which is intended to help states and territories expand water infrastructure.

## Rationale for undertaking the audit

4. RIC was set up in 2018 with \$4 billion in Commonwealth financing to streamline administration of farm business and water infrastructure concessional loans. The ANAO previously examined the Department of Agriculture, Water and the Environment's administration of concessional loans and found several deficiencies and areas for improvement. This audit will examine the effectiveness of the design and establishment of RIC. It will include assessment of whether lessons from prior programs were adopted in the design of RIC and the extent to which its loan arrangements are effective.

## Audit objective and criteria

5. The objective of this audit was to assess the effectiveness of the design and establishment of the RIC. To form a conclusion against the audit objective, the ANAO adopted the following high level audit criteria:
  - was the design process effective?
  - are governance arrangements sound?
  - are loan arrangements effective?

## Conclusion

6. The design and establishment of RIC was largely effective. RIC is at the early stages of its roll-out of the farm business loans, the NWILF and other products. To optimise the outcomes from its products, RIC needs to improve its governance via enhanced risk management and developing a compliance and assurance strategy. Planned monitoring and evaluation requires review.
7. The design process to establish RIC was largely effective. The Department of Agriculture, Water and the Environment (the department) partially applied lessons from prior programs in developing RIC and managed constitutional constraints on Commonwealth loan delivery. However, it did not analyse the effectiveness of prior loans programs and more robust data should have been used to forecast loan uptake and default rates.
8. The department's advice on establishing the new entity was sound. The government chose the most costly entity option for RIC. The department followed legislative requirements to establish RIC, obtained stakeholder input on farm business loan settings and provided input for the Board to decide on the external service provider.
9. RIC's governance arrangements are partially sound. In establishing RIC, the department developed key governance structures and documents for RIC to support its initial operations. RIC is refining its governance arrangements. To ensure sound governance, RIC needs to enhance its risk management and oversight of external service provider data. Improvements are needed to the arrangements for performance management of the loans, including determining methodologies for each performance measure.
10. RIC has established largely effective loan delivery arrangements. A compliance and assurance strategy is needed to ensure compliance with RIC policies and procedures and annual tracking of farm business loan scheme net costs should be established. Uptake of the farm business loans has been increasing and work is underway to reduce processing times. However, there are no loans under the NWILF yet.

## Supporting findings

### The design process

11. Claims of inconsistent delivery of farm business loans across Australia was a key driver for the establishment of RIC. Establishment of RIC was partially informed by lessons from previous programs and stakeholder input. Previously recognised constitutional constraints on Commonwealth delivery of concessional farm business loans were managed. A prior ANAO audit recommendation to evaluate an earlier concessional drought loan scheme was not completed. Data deficiencies in loan uptake and default modelling noted in the prior audit were not actioned as part of the assumptions for RIC.
12. The advice provided to government on RIC's design was sound. The department had an appropriate framework for providing advice that allowed identification of key issues, informed by input from other government entities. Three entity structure options were assessed against consistency with the election commitment, ongoing cost and legal risk. The government made a decision that RIC would be a corporate Commonwealth entity to provide independent oversight of the concessional loans despite this being the highest cost option.

13. RIC was established in accordance with legislative requirements and offered loans from 1 July 2018. RIC Board appointments largely reflect the required skill sets. To support RIC's establishment, the department engaged stakeholders on farm business loan settings. It also undertook market engagement for the farm business loan external service provider, with the final decision taken by the RIC Board. The Board decided that RIC's head office would be in Orange.

## Governance arrangements

14. RIC's risk management arrangements are not yet appropriate and improvements should include regular reporting on the risk register to the Executive, relevant committees and the RIC Board.

15. Arrangements for administering the farm business loans have been clearly defined in a Memorandum of Understanding between the department and RIC. Responsibilities for administration of the NWILF are clearly defined in a Memorandum of Understanding between the relevant entities. Interest rates for the loan products are reviewed twice-yearly as required by legislation and appropriate accounting treatments for the loans have been established.

16. Performance measures are not yet well developed. RIC has plans in place to review and revise the performance measures over time. The data sources and methodology for evaluating the farm business loans should be specified. Performance measures for the loans should reflect delivery and program objectives, and be publicly reported.

17. RIC has largely appropriate controls in place over its own internal information and communications technology (ICT) environment and systems. While the contract with the service provider stipulates that the provider must put in place appropriate data controls, RIC does not have visibility of these arrangements or their adequacy.

## Loan arrangements

18. Appropriate loan service delivery arrangements are in place. There is clear public information on loan eligibility and conditions. The contract with the external service provider (Bendigo Bank) specifies responsibilities and includes provision for RIC to contract additional products. Amendments have been made to loan products in response to the continuing drought with two planned loan products not yet commenced.

19. RIC has been undertaking and planning suitable loan promotion activities, however, the effectiveness of these would be clearer if these activities were assessed against loan uptake data.

20. RIC has a suite of policies and procedures for loan assessments and approvals. The RIC Audit Committee has established an internal audit program that includes review of aspects of loan assessment and approvals. However, a compliance and assurance strategy is needed to ensure assessments and approvals are consistent with the policies and procedures.

21. RIC has not yet set any benchmarks or key performance indicators for the time taken to assess farm business loan applications. Loans that were approved in the second quarter of 2019–20 took an average of 184 days from application to settlement. Uptake of the farm business loans has been increasing and work is underway to reduce the time taken to process loans. The net cash impact of the farm business loans scheme should be monitored annually. There are as yet no loans under the NWILF.

## Recommendations

22. This report makes four recommendations, three directed to RIC and the fourth to the Department of Agriculture, Water and the Environment.

## Recommendations

**Recommendation no.1**  
Paragraph 3.10

RIC should finalise its risk management policy, including risk reporting requirements and more clearly articulate its risk appetite in line with the adoption of the Commonwealth Framework.

**Regional Investment Corporation response:** *Agreed.*

**Recommendation no.2**  
Paragraph 3.68

RIC should update performance measures for the farm business loan scheme and implement baseline data and evaluation methodologies as required.

**Regional Investment Corporation response:** *Agreed.*

**Recommendation no.3**  
Paragraph 4.38

RIC should develop and implement a compliance and assurance strategy which covers the accuracy and completeness of loan data from the external service provider and compliance with key RIC policies and procedures for loan assessment and approval.

**Regional Investment Corporation response:** *Agreed.*

**Recommendation no.4**  
Paragraph 4.59

At the end of each financial year, the Department of Agriculture, Water and the Environment should review the overall difference between the expenses and revenue for the farm business loans and advise the government of the scheme's impact on Commonwealth underlying cash.

**Department of Agriculture, Water and the Environment response:** *Agreed.*

## Summary of entity response

23. Summary responses from audited entities are below. Entities' full responses are at Appendix 1.

## Department of Agriculture, Water and the Environment

The department acknowledges the ANAO's findings and recommendations and appreciates the opportunity to comment on the audit report on the Design and Establishment of the Regional Investment Corporation (RIC).

The report notes that the department's role in the design and establishment of the RIC was largely effective and constraints on the program were managed. The report also identifies that the department provided sound advice to the government on the RIC's design and the RIC was established in accordance with legislative requirements.

The department has adopted a continuous improvement approach to its practices and considered the findings of earlier audits when establishing the RIC. The department considers there are useful findings arising from this audit for any future program or scheme design.

The report places appropriate importance on the need for governance arrangements within the RIC to strengthen risk management and compliance of the scheme, whilst noting the RIC is still maturing and a relatively new entity.

The department considers that the recommendations will improve the loan programs administered by the RIC. The department will continue working closely with the RIC to ensure its loans continue to support growth and resilience in Australian farm businesses and rural and regional communities.

## Regional Investment Corporation

The Regional Investment Corporation (RIC) welcomes the audit's overall conclusions and findings. The RIC is pleased that the ANAO found that the design and establishment of the RIC was largely effective, the department's advice on establishing the new entity was sound and the RIC has established largely effective loan delivery arrangements.

The RIC agrees with the recommendations of the report directed to the RIC.

The RIC acknowledges the importance of appropriate governance arrangements to administer loan schemes and is taking action to update key governance and risk management documentation as the organisation's maturity transitions from initial operations.

The RIC is also updating performance measures for the farm business loan scheme and developing its compliance and assurance strategy to better inform performance reporting against delivery and program objectives and consistency with program guidelines, policies and procedures.

The RIC is committed to ensuring its staff are aware of, and fully comply with, their reporting requirements for risk and governance, enabling the RIC to meet its business, legislative and accountability requirements.

## Department of Finance

Finance notes the recommendation and findings provided in the extract of the report.

# Advances to the Finance Minister for the Period 25 April 2020 to 29 May 2020

**Type:** Assurance review

**Report number:** 40 of 2019-20

**Portfolios:** Finance

**Entities:** Department of Finance

**Date tabled:** 11 June 2020

## INDEPENDENT ASSURANCE REPORT

### ADVANCES TO THE FINANCE MINISTER 25 APRIL 2020 TO 29 MAY 2020

## Conclusion

Based on the procedures I have performed and the evidence I have obtained, nothing has come to my attention that causes me to believe that, in all material respects:

- a. there were any Advance to the Finance Minister (AFM) Determinations made for the period 25 April 2020 to 29 May 2020; and
- b. the internal controls related to the Department of Finance's administration of AFM were not suitably designed, implemented and operating effectively to achieve appropriate approval, recording and reporting of AFM if there had been any during the period.

My limited assurance conclusion has been formed on the basis of the matters outlined in this report.

I have undertaken a limited assurance review of the Department of Finance's reporting and administration of the AFM, in order to express a conclusion on Determinations made from 25 April 2020 to 29 May 2020, based on the following criteria:

- Have accounts and records been appropriately obtained and maintained to support the complete and accurate reporting of AFM, taking into consideration whether:
  - the Department of Finance has a central register of all applications and approvals;
  - all decisions for any AFM Determination made have been documented appropriately, including identifying the appropriation act under which each advance is made;
  - all accounts and records for the applications for any AFM Determination have been adequately maintained; and
  - the Department of Finance has effective processes in place to obtain assurance from entities over the completeness and accuracy of the information provided to the Department of Finance.
- Are the controls related to the Department of Finance's administration of AFM suitably designed, implemented and operating effectively to achieve appropriate approval, recording and reporting of any AFM if there had been any during the period, taking into consideration whether:
  - the Department of Finance has guidance or a framework that communicates clearly to entities as to the requirements to apply for the AFM, and whether this was complete, accurate, and compliant with the criteria set out in the Annual Appropriation Acts;
  - the Department of Finance has an appropriate risk framework for the AFM;
  - existing controls are capable of addressing the identified risks effectively;
  - the Department of Finance has implemented and operated effective controls over the approval process to ensure applications for any AFM Determination are only approved when applying entities provide sufficient information to support compliance with the criteria set out in the Annual Appropriation Acts; and
  - the AFM Determination approval process complied with the criteria set out in the Annual Appropriation Acts.

## Basis for conclusion

I have conducted the review in accordance with the ANAO Auditing Standards, which include the relevant Standards on Assurance Engagements ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* (ASAE 3000) and ASAE 3150 *Assurance Engagements on Controls* (ASAE 3150).

I believe that the evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

## Responsibilities of the Secretary of the Department of Finance

The Secretary of the Department of Finance is responsible for the administration of the AFM, and maintenance of supporting accounts and records relevant to the reporting of the AFM in accordance with Appropriation Acts Nos. 1 to 6 2019–2020 and Appropriation (Coronavirus Economic Response Package) Acts Nos. 1 and 2 2019–2020.



The Secretary is also responsible for such internal control procedures as the Secretary determines necessary to enable the administration of the AFM that are free from material misstatement, whether due to fraud or error.

## Independence and quality control

I have complied with the independence and other relevant ethical requirements relating to assurance engagements, and applied Auditing Standard ASQC 1 *Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, Other Assurance Engagements and Related Services Engagements* in undertaking this assurance review.

## Responsibilities of the Auditor-General

My responsibility is to express a limited assurance conclusion on whether the Finance Minister's and the Department of Finance's reporting of the AFM is complete and accurate, in all material respects, and internal controls related to the AFM were designed, implemented and operating effectively for the period from 25 April 2020 to 29 May 2020, as evaluated against the criteria. The ANAO Auditing Standards require that I plan and perform my procedures to obtain limited assurance about whether anything has come to my attention that the Department of Finance's reporting of the AFM is not complete and accurate, in all material respects, and internal controls related to the AFM were not designed, implemented and operating effectively for the period from 25 April 2020 to 29 May 2020.

An assurance engagement to report on the design and operating effectiveness of controls involves performing procedures to obtain evidence about the suitability of the design of controls to achieve the control objectives and the operating effectiveness of controls throughout the period.

The procedures performed in a limited assurance review vary in nature and timing from, and are less in extent than for, a reasonable assurance engagement and consequently the level of assurance obtained in a limited assurance review is substantially lower than the assurance that would have been obtained had a reasonable assurance engagement been performed. Accordingly, I do not express a reasonable assurance opinion on the reporting of the AFM or on the internal controls.

I have conducted my limited assurance review by making such enquiries and performing such procedures I considered reasonable in the circumstances, including:

- making enquiries of management and others within the entity, as appropriate;
- examining the internal control design specifications and documentation;
- examining documentation that indicate if there was any AFM; and
- evaluating the evidence obtained.

The procedures selected depend on my judgement, including the assessment of the risks that the reporting of the AFM is not complete and accurate or the controls are not suitably designed, implemented or operating effectively.

## Inherent limitations

Because of the inherent limitations of an assurance engagement, together with the internal control structure it is possible that, even if the controls are suitably designed and operating effectively, the control objectives may not be achieved so that fraud, error, or non-compliance with laws and regulations may occur and not be detected. Further, the internal control structure, within which the controls that I have assured are designed to operate, has not been assured and no opinion is expressed as to its design or operating effectiveness.

A limited assurance engagement throughout the specified period on operating effectiveness of controls is not designed to detect all instances of controls operating ineffectively as it is not performed continuously throughout the period and the tests performed are on a sample basis. A limited assurance engagement throughout the specified period does not provide assurance on whether complete and accurate reporting of the AFM or the outcome of the evaluation of controls will continue in the future.

Australian National Audit Office



Grant Hehir  
Auditor-General  
Canberra  
5 June 2020

# Implementation of the Commonwealth Scientific and Industrial Research Organisation (CSIRO) Property Investment Strategy

**Type:** Performance audit

**Report number:** 39 of 2019-20

**Portfolios:** Industry, Science, Energy and Resources

**Entities:** Commonwealth Scientific and Industrial Research Organisation (CSIRO)

**Date tabled:** 4 June 2020

## Background

1. The Commonwealth Scientific and Industrial Research Organisation (CSIRO) has significant holdings of land and buildings. Its portfolio includes more than 665,878 square metres of built environment, 19,000 hectares of land, 333,000 hectares of pastoral leases and 935 buildings. The 58 CSIRO sites include farms, laboratories, glasshouses, manufacturing equipment, supercomputers and telescopes. For financial reporting purposes, the CSIRO's property portfolio is valued at \$1.68 billion.
2. In December 2012 the CSIRO Board endorsed a 10-year CSIRO property investment strategy (the 2012 Property Strategy) to consolidate the organisation's national footprint and align 'infrastructure, science directions and partnerships'. The strategy's key objectives included:
  - stabilising operating expenses and costs of repairs and maintenance;
  - reducing the size of the CSIRO's portfolio;
  - co-locating sites and buildings to encourage partnership in the delivery of science; and
  - delivering fit-for-purpose scientific facilities.

## Rationale for undertaking the audit

3. To undertake its specialised science capabilities, the CSIRO requires fit-for-purpose facilities that support science and that will attract and retain leading researchers and scientists. A 10-year property investment strategy was adopted in 2012, at an estimated cost of more than \$500 million, to consolidate property holdings and reduce CSIRO's footprint by 20 per cent with the aim of eliminating the forecast annual increase in operating costs over 2012–13 levels. In 2019, the CSIRO adopted a new 10-year property investment strategy.

## Audit objective and criteria

4. The objective of the audit was to assess whether the CSIRO designed and is implementing its property investment strategy in a way that is delivering the intended benefits, and how any lessons learned are being reflected in a new strategy that is being developed. To form a conclusion against the audit objective, the ANAO has adopted the following high level criteria:

- Is the CSIRO on track to reduce the organisation's property footprint by 20 per cent, and eliminate the forecast annual increase in property operating costs, compared with 2012–13 levels?
- Did the CSIRO establish effective governance arrangements to support the implementation of its 2012 Property Strategy?
- Was the development of the 2019–29 Property Strategy (2019 Property Strategy) appropriately informed by analysis and review of the implementation of the 2012 Property Strategy, and the results that have been achieved?

## Conclusion

5. The CSIRO did not design and implement its 2012 property investment strategy in a way that is delivering the intended benefits. The 2019 Property Strategy was not sufficiently informed by lessons learned and does not include any performance targets.

6. The CSIRO's approach to measuring its property footprint and operating costs is not effective. The evidence indicates that the CSIRO will not achieve the aim of reducing its property footprint by 26 per cent and eliminate the forecast annual increase in operating costs compared with 2012–13 levels.

7. The CSIRO was not effective in establishing governance arrangements to support the implementation of its 2012 Property Strategy. The CSIRO effectively established its capital investment program, but it did not establish effective arrangements to support its capital divestment program, risk management and reporting to its Board. There have been significant delays with the delivery of the planned divestments (with some divestments having been cancelled). The planned divestments were key to CSIRO reducing its property footprint as well as to provide funds for the capital investment required for its proposed property consolidations, both of which were expected to facilitate a greater proportion of the CSIRO's resources to be spent on scientific and industrial research.

8. The development of the CSIRO's 2019 Property Strategy has been informed by some lessons learnt, but it was not informed by an appropriate review and analysis of its 2012 Property Strategy. The CSIRO has not established quantifiable targets to measure and be accountable for its performance in delivering the 2019 Property Strategy.

## Supporting findings

### Measurement of the property footprint and operating costs

9. The CSIRO's approach to measuring its property footprint was not effective. The CSIRO developed a National Footprint Tool and financial modelling as a precursor to developing its 2012 Property Strategy but the approach did not inform the measurement of its property portfolio footprint. The CSIRO has not undertaken an overarching review of its property utilisation since 2012. The CSIRO does not include all its leased locations and does not measure land as part of its property portfolio footprint, despite land being central to its research activities.

10. The CSIRO's property footprint has not reduced in accordance with the targets set in the 2012 Property Strategy. The 2012 Property Strategy targeted a 26 per cent reduction in the property footprint and reduction in the number of sites to 41. Planned divestments have been delayed or are no longer planned to progress, and consolidation activity has also been slower than envisaged in the 2012 Property Strategy. As a result, the CSIRO's:

- number of sites increased by five per cent from 2012–13 to 2018–19;
- building footprint decreased by 10 per cent between 2013 and 2019, although the CSIRO has not included some of its locations in its calculation meaning the aggregate reduction is less across the entire property portfolio; and
- land holdings decreased by one per cent between 2013 and 2019.

11. The CSIRO has not developed an effective approach to measure its property operating costs. Some property operating costs are met by CSIRO business units and others are the responsibility of corporate areas but there are no arrangements in place for all costs to be periodically aggregated and analysed. This is significant given eliminating the forecast annual increase in operating costs over 2012–13 levels was a key rationale for adopting the 2012 Property Strategy.

12. The CSIRO's property operating costs in 2018–19 were, in real terms, 43 per cent higher than they were in 2012–13, with an average annual growth rate across this period of seven per cent. The ANAO's analysis is that the CSIRO's property operating costs in 2021–22 are likely to be higher in real terms than they were in 2012–13.

## Governance arrangements

13. The CSIRO has established a partly effective framework and arrangements to implement the 2012 Property Strategy. Of note is that the CSIRO:

- developed principles to implement its property strategy, undertook some consultation and identified roles and responsibilities for the management of its property portfolio;
- implemented appropriate governance arrangements for capital works projects but it did not establish effective governance arrangements for divestment projects;
- established effective change management arrangements; and
- did not have a risk management plan in place for the 2012 Property Strategy and has not appropriately managed the risks to implementation including the risk to revenue from divestment projects not progressing as planned.

14. The CSIRO identified appropriate milestones and deliverables for medium and major capital works projects with planned expenditure of at least \$567 million funded in part by property divestments valued at \$401 million. Deliverables were identified but the CSIRO did not establish milestones for the divestments planned for Victoria (Highett and Geelong Belmont) or New South Wales (Armidale Arding) sites. Of 18 capital investment projects between 2013 and 2019, 11 were underway or completed, four were planned and three were not proceeding. Of 12 divestments, three were underway, one had been completed, two were planned and six were not proceeding. Between 2012–13 and 2019–20, the CSIRO spent at least \$295 million on major investments and achieved divestment revenue totalling \$98 million.

15. The CSIRO's reporting to its Board on progress with the implementation of the strategy has not been appropriate. The reporting has not been regular, has not contained information requested by the Board and has not reported on delivering the aims of the 2012 Property Strategy including the realisation of costs and benefits. The CSIRO has provided adequate reports on the costs against budget of capital works projects and the progress of capital works projects and divestments.

## Development of a new CSIRO property investment strategy

16. The development of the new property strategy was not informed by: thorough analysis; a review of the implementation of the 2012 Property Strategy and principles agreed by the CSIRO Board; and its commitment to the Government to reduce its property footprint and operating costs. The CSIRO did not develop any quantifiable targets to measure its performance on delivering the 2019 Property Strategy.

17. The CSIRO established a largely appropriate consultation process, but feedback on the need for more detailed planning, including on divestments and cost analysis, was not incorporated into the strategy. A communications plan was developed for the new strategy.

## Recommendations

**Recommendation no. 1** The CSIRO develop a consistent, transparent and effective approach to measure the entirety of its property portfolio footprint.

**Paragraph 2.19** CSIRO response: *Agreed.*

**Recommendation no. 2** The CSIRO establish effective governance arrangements for the management of divestment projects including establishing a consistent framework and undertaking detailed planning.

**Paragraph 3.20**

CSIRO response: *Agreed.*

**Recommendation no. 3** The CSIRO develop a property strategy risk management plan to monitor, assess and guide the mitigation of property strategy implementation risks.

**Paragraph 3.52**

CSIRO response: *Agreed.*

**Recommendation no. 4** The CSIRO Executive report at least annually to its Board on the progress in implementing its property strategy and the realisation of benefits.

**Paragraph 3.73**

CSIRO response: *Agreed.*

**Recommendation no. 5** The CSIRO establish quantifiable performance targets for its 2019 Property Strategy.

**Paragraph 4.13**

CSIRO response: *Agreed.*

## Summary of entity response

18. CSIRO did not provide a summary response. CSIRO's full response can be found at Appendix 1.

## Key messages for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit that may be relevant for the operations of other Australian Government entities.

## Asset management

- The delivery of complex investment and divestment projects requires strong governance arrangements that incorporate robust planning and appropriate lead times for decision making.
- Setting targets in asset management strategies, and tracking and reporting against targets, provides a clear focus for performance in delivering benefits.
- Major asset management strategies require strong oversight by accountable authorities, such as boards, which should periodically review implementation.
- Entities should actively identify, manage and monitor risks in accordance with organisational risk appetite, risk management policies and guidelines.



# Interim Report on Key Financial Controls of Major Entities

**Type:** Financial statement audit

**Report number:** 38 of 2019-20

**Date tabled:** 28 May 2020

1. The ANAO prepares two reports annually that provide insights at a point in time to the financial statements risks, governance arrangements and internal control frameworks of Commonwealth entities, drawing on information collected during audits. These reports explain how entities' internal control frameworks are critical to executing an efficient and effective audit and underpin an entities capacity to transparently discharge their duties and obligations under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Deficiencies identified during audits that pose a significant or moderate risk to the entities ability to prepare financial statements free from material misstatements, are reported.
2. This report is the first in the series of reports and focuses on the results of the interim audits, including an assessment of entities' key internal controls, supporting the 2019–20 financial statements audits. This report examines 24 entities, including all departments of state and a number of major Australian government entities. The entities included in the report are selected on the basis of their contribution to the income, expenses, assets and liabilities of the 2018–19 Consolidated Financial Statements (CFS). Significant and moderate findings arising from the interim audits are reported to the responsible Minister(s), and all findings are reported to those charged with governance of each entity.

## Impact of COVID-19

3. The potential impact of the COVID-19 pandemic, and the Australian Government's and global responses to the situation, on auditing frameworks, audit risks and audit opinions are covered throughout this report. However, it is important to acknowledge that the audit findings compiled in this report, were at a time largely before the COVID-19 pandemic. It is the ANAO's intention to work co-operatively with audited entities to resolve any issues resulting from the COVID-19 pandemic, and audit teams will continue to assess the situation for each entity and revise audit approaches accordingly during what remains of the financial statements audit cycle.
4. The ANAO Auditing Standards require audit opinions to be modified where sufficient appropriate audit evidence is unable to be gathered and the possible effects of undetected misstatements arising from the lack of evidence are material. As a consequence of the COVID-19 pandemic, there may be a higher likelihood of disclaimers of opinions for entities' 2019–20 financial statements. Where this occurs, it will be reported to Parliament in the second report of this series.

# Summary of audit findings and related issues

## Summary of audit findings

5. A total of 72 findings were reported to the entities included in this report as a result of interim audits, comprising of eight moderate and 64 minor findings. This is an overall increase in the number of findings but a decrease in both the significant and the moderate finding categories compared to the 2018–19 interim audit results. One significant legislative breach was also reported.
6. Fifty per cent of findings relate to the management of IT controls, particularly the management of privileged user access. The continued level of findings indicates that the IT control environment warrants further attention by entity management.

## Policies reviews for compliance with finance law, gifts and benefit disclosures and cyber resilience

7. The ANAO observed that entities had processes in place for monitoring and reporting instances of non-compliance with finance law. Following changes in mandatory external reporting of non-compliance, there has been a trend towards entities reducing the level of internal reporting of non-compliance captured and reported to audit committees and accountable authorities.
8. The Australian Public Service Commissioner issued guidance requiring Commonwealth entities to publish quarterly, a register of all gifts and benefits valued at greater than \$100, received by the agency head. It was observed that entities have largely made good progress in implementing these recommendations.
9. The Protective Security Policy Framework (PSPF) contains the Essential Eight mitigation strategies and recommended controls intended to strengthen cyber resilience and capacity of Government to mitigate cyber threats. Review of entities' implementation and compliance with these strategies found that there continues to be limited improvement in the level of compliance with the controls, since being first mandated in 2013.

## Entity internal controls

10. The interim audit phase includes an assessment of the effectiveness of each entity's internal controls as they relate to the risk of misstatement in the financial statements. At the completion of interim audits for the 24 entities included in this report, the key elements of internal control were assessed as operating effectively for 17 entities. For the remaining seven entities, the key elements of internal control were operating effectively to support the preparation of financial statements that are free from material misstatement, except for particular finding/s outlined in chapter 4.

# Management of staff leave

## Summary of developments

11. The increase in audit findings relating to human resource management and administration, and the significance of these as a proportion of all financial statements audit findings, has prompted the ANAO to undertake targeted assurance activities over the management of staff leave. The activities have been performed to facilitate an assessment of compliance of the management of leave accruals, and balances with human resource policies and requirements, and to further inform assurance activities for future audits. The entities selected were the Departments of: Home Affairs; the Prime Minister and Cabinet; and the Treasury.
12. The analysis performed to date has identified weaknesses in processes relating to staff leave and associated monitoring controls. In particular, improvements can be made in the timeliness of submission and approval of leave requests and the application of requirements including minimum and maximum entitlements. The ANAO has also identified that the Department of Home Affairs' leave policy does not contain current information or requirements following the February 2019 Workplace Determination.
13. These observations potentially impact entities' operations and financial reporting. Taking leave prior to approval being given may impact the ability of entities to effectively manage resources and deliverables, while also potentially overstating the related employee liability balances in the financial statements.
14. The ANAO will continue to progress the assessment of the above criteria and will report the results in Auditor-General report: *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2020* and in a separate report to Parliament.

## Reporting and auditing frameworks

### Summary of developments

15. As a consequence of the COVID-19 pandemic and revised accounting standards for revenue and leases, Commonwealth entities will need to review and update the information, systems, processes and controls relied on in the preparation of their 2019–20 financial statements. The ANAO will revise its risk assessments and modify planned audit procedures in response to the changes made by Commonwealth entities.

## Cost of this report

16. The cost to the ANAO of producing this report is approximately \$480,000.

# Procurement of Garrison Support and Welfare Services

**Type:** Performance audit

**Report number:** 37 of 2019-20

**Portfolios:** Home Affairs

**Entities:** Department of Home Affairs

**Date tabled:** 28 May 2020

## Background

1. In 2012, the Australian Government established Regional Processing Centres (RPCs) in the Republic of Nauru (Nauru) and Papua New Guinea (PNG). The centres were established through Memoranda of Understanding (MOUs) between the Australian Government and the Nauruan and PNG governments respectively. Under both agreements, the Australian Government was to bear all costs incurred under the MOUs.
2. Since 2012, the Department of Home Affairs (the department) has been responsible for the procurement of garrison support and welfare services functions for the RPCs and the establishment and ongoing management of associated contractual arrangements. Garrison support includes security, cleaning and catering services. Welfare services include individualised care to maintain health and well-being, such as recreational and educational activities.
3. In March 2014, the department contracted Broadspectrum (Australia) Pty Ltd (BRS) for the provision of garrison support and welfare services in both Nauru and PNG. This contract expired on 31 October 2017. In preparation for the cessation of the BRS contract, the department commenced processes to procure garrison support and welfare services for both Nauru and Manus Island and subsequently entered into four contracts with Canstruct International Pty Ltd; JDA Wokman Ltd; NKW Holdings Ltd; and Paladin.
4. The department's estimate of the total cost of regional processing arrangements in Nauru and Papua New Guinea, since establishment, is \$7085.14 million.

## Rationale for undertaking the audit

5. On 19 February 2019 and 18 March 2019, the Auditor-General received correspondence from the Hon Shayne Neumann MP, Shadow Minister for Immigration and Border Protection, requesting 'an urgent audit into the circumstances surrounding the Department of Home Affairs' procurement of garrison support and welfare services in Papua New Guinea.'

6. Implementation of the Australian Government's policies on offshore detention of refugees and asylum seekers over the last ten years has cost billions of dollars. The operation of RPCs have been a subject of substantial parliamentary and public interest. The ANAO's two previous audit reports into the department's management of offshore garrison support and welfare contracts identified a range of shortcomings and deficiencies. Since the tabling of the audit reports, the department has entered into further contracts totalling in excess of \$1 billion; and it is timely to assess whether the department has improved its procurement and performance management processes.

## Audit objective and criteria

7. The audit objective was to assess whether the Department of Home Affairs has appropriately managed the procurement of garrison support and welfare services for offshore processing centres in Nauru and PNG (Manus Island).

8. To form a conclusion against the audit objective, the following high-level criteria were adopted:

- procurements were conducted in accordance with the Commonwealth Procurement Rules and value for money principles;
- contractor performance is adequately reported and monitored; and
- the department has implemented recommendations and actions arising from previous Joint Committee of Public Accounts and Audit (JCPAA) and ANAO reports on the procurement of garrison support and welfare services.

## Conclusion

9. The Department of Home Affairs' management of the procurement of garrison support and welfare services for offshore processing centres in Nauru and PNG was largely appropriate.

10. Procurement activities for the provision of garrison support and welfare services on Manus Island and Nauru were largely undertaken in accordance with the CPRs. The department utilised provisions of the CPRs to allow for an exemption from requirements for the use of open tender procurements on Manus Island and Nauru. The department did not document its reasons for requesting quotations from Paladin, JDA and NKW as required by the CPRs. The department demonstrated the achievement of value for money for the Nauru procurement, but for Manus Island it did not appropriately benchmark costs for similar services, and the effectiveness of negotiations with providers was unclear due to the department's substantial expansion of the services required during the negotiation process. A probity management framework was established but it was not effectively applied in all instances.

11. Contractor performance reporting and monitoring was partly adequate. There were no performance monitoring or reporting requirements for an average of more than eight months during the time that the respective contractors operated under Letters of Intent prior to the signing of contracts. Once established, contracts contained detailed management plans and reporting frameworks which were appropriately applied by the department in most instances to monitor contractor performance. Payments to contractors during the contract negotiation period were not supported by Letters of Intent in all instances.

12. The department has substantially implemented the recommendations of Auditor-General Report No. 16 2016–17 and JCPAA *Report 465: Commonwealth Procurement* by developing training programs to address skill and capability gaps and by implementing a wide range of procurement and contract management guidance and instructional material. The department has significantly improved its record keeping practices and has reported to the JCPAA on its implementation of the ANAO's recommendations.

## Supporting findings

13. For Manus Island, the accountable authority of the department took action under paragraph 2.6 of the CPRs on the basis of human health and security to exempt the procurement process from the open competition requirements. The department was aware of 11 providers that could have potentially offered some or all elements of the required garrison support and welfare services but it did not document its reasons for requesting quotations from the three selected providers.

14. The department used paragraph 10.3 of the CPRs to conduct a limited tender for Nauru. However, the department had almost 18 months' notice in May 2016 of BRS' intention not to continue or extend its contract from October 2017. Whilst the Nauruan government imposed a new layer of decision making and approval processes over regional processing service delivery contracts in August 2017, it is not clear why the department could not have secured a replacement supplier using a more competitive procurement method over this period.

15. Risk management plans were established and largely implemented for all four procurements, but planning should have specifically addressed fraud and corruption risks in the given environments.

16. The department developed a probity management framework, but it was not effectively applied in all instances. Key declaration and acknowledgement forms were not completed by all applicable personnel.

17. The department demonstrated the achievement of value for money for the Nauru procurement. Costs under the most recent contract for services, and various scenarios based on population trends and service assumptions, were used to effectively benchmark tenderer costs. Negotiations resulted in the inclusion of additional services with a modified pricing impact.

18. The department did not demonstrate the achievement of value for money for the PNG procurements. Although the department had limited options for comparing tenderer costs, most of the benchmarks it used were not appropriate. Negotiations with NKW achieved significant savings, noting that the initial tendered costs had been assessed as not representing value for money. The effectiveness of negotiation for Paladin was unclear as savings achieved for some items were offset by increases to others, the addition of a mobilisation payment and the department's substantial expansion of the services required during the negotiation process.

19. The department's due diligence inquiries were limited to financial strength assessments of all four tenderers. The financial risk for each was assessed as moderate to high.

20. Once contract management plans and performance management frameworks were established, the four contractors met all associated reporting requirements in a timely manner. However, reporting requirements did not apply while contractors were operating under Letters of Intent. As a result, contractors were not required to submit performance reports for an average of more than eight months after they first began providing services.

21. The department established a largely fit-for-purpose framework for monitoring contractor performance reporting. Contractors completed self-assessments on a monthly basis against agreed performance metrics, which were then validated through a process of review against supporting evidence and third party data. For Nauru, the permanent presence of departmental officials enabled ongoing verification of performance, whilst for Manus Island, site visits were intended to occur monthly but did not occur in all instances. Reports to the delegate contained trend analysis and highlighted any emerging issues and corrective action required. Feedback was provided to each contractor on a monthly basis and included notification of any penalties to be applied for performance failures where applicable under the contract. The department was not able to provide any rationale as to why it did not establish abatement and PIN clauses consistently across the four contracts.

22. Payments to Canstruct and Paladin were made in accordance with the relevant Letters of Intent (LOIs), but the department did not enforce the conditions of payment for Canstruct. Not all payments to JDA were supported by an LOI or applicable agreement. Payments to NKW were made above the LOI approved limit. Other payments were made to NKW outside the LOI without a contract.

23. The department has undertaken a body of work aimed at addressing recommendations arising from the respective previous ANAO reports on procurement and contract management activities for the offshore processing centres. Specifically:

- there is a suite of procurement-focused training programs tailored to workplace requirements;
- a procurement-specific page on the department's intranet contains a wide range of guidance and instructional material; and
- evidence from the fieldwork conducted for this audit indicates the department has significantly improved its record keeping practices and that staff now use the TRIM electronic data and records management system.

24. The department complied with the recommendation of the Joint Committee of Public Accounts and Audit (JCPAA) by providing the JCPAA with a report in March 2018 on its implementation of the ANAO's recommendations.

## Recommendations

### Recommendation no.1

#### Paragraph 2.23

The Department of Home Affairs develop policy guidance to ensure that, where a limited tender procurement is undertaken, decisions in relation to the providers to receive requests for quotation are accurately and concisely documented.

**Department of Home Affairs response:** *Agreed.*

**Recommendation  
no.2****Paragraph 3.11**

The Department of Home Affairs develop policy guidance to ensure that, where Letters of Intent are issued to contractors pending the finalisation of contracts, interim performance reports are prepared when an assessment of key contract risks and deliverables suggests it would be prudent to do so.

**Department of Home Affairs response:** *Agreed.*

## Summary of entity response

The Department of Home Affairs (the Department) welcomes the ANAO's conclusions that the management of the procurement of garrison support and welfare services for offshore Regional Processing Centres (RPCs) in Nauru and Papua New Guinea (PNG) was largely appropriate, and that the Department has substantially implemented the recommendations of previous ANAO and parliamentary reports.

The management of offshore RPCs is highly complex, dynamic and involves working in collaboration with host governments in Nauru and PNG. Unlike onshore procurements, offshore procurement timeframes are impacted by bilateral government considerations, and the sovereignty of the host nation must be respected.

For Nauru, the Department was working with the Government of Nauru on timing and also had to work in line with the requirements of the Government of Nauru and Nauruan legislation. This was reflected in the introduction of the Nauru RPC Corporation Act 2017, which requires the Nauru RPC Corporation and the Nauru Cabinet to approve regional processing service delivery contracts. This requirement impacted the available timeline and the Department was not the sole authority managing the timeline.

For PNG, on 5 July 2017, advice was received from the PNG Government that PNG was not in a position to continue with any contract negotiations for current or new contracts they were undertaking. This provided the Department with limited time to procure services to support the health and welfare of transferees in Manus Island and Port Moresby. The previous provider was due to cease operations on 31 October 2017 and transition-out due to commence on approximately 1 August 2017, the PNG Government was due to have their contractors in place by this time to transition into the new contract. Failure to engage new service providers would have resulted in no services to support the health and welfare of approximately 850 transferees on the closure of the Manus RPC.

In these circumstances, the Department welcomes the ANAO finding that the Department demonstrated the achievement of value for money for the Nauru procurement, that benchmarks used by the Department were appropriate and negotiation processes effective. In relation to the PNG procurements, the Department is of the view that negotiation processes were appropriate, in light of the changed sovereign nation's operating model, the significantly restricted timeframe and the constantly changing operating environment.



The Department is committed to working within the parameters established under the Commonwealth Procurement Rules (CPRs) to procure services to support activities at our offshore RPCs and we note the ANAO's finding that procurement activities for the provision of garrison support and welfare services on Manus Island and Nauru were largely undertaken in accordance with the CPRs.

As part of the procurement process, a probity management framework was developed for these procurements requiring each departmental officer involved in the procurements to complete a conflict of interest declaration at the outset of the procurement and declare any further real or perceived conflicts of interest that eventuate during the procurement process. From the Department's point of view, it is not unusual practice for a departmental officer to have multiple roles during a procurement process, both over the term of the procurement and concurrently, and we note the ANAO's observation regarding officers' ongoing obligations in terms of declaring real and perceived conflicts of interest.

The Department recognises that performance management is a vital element of successful contract management and notes the ANAO's conclusion that once contract management plans and performance management frameworks were established, contractors met all associated reporting requirements in a timely manner, and the Department established a largely fit-for-purpose framework for monitoring contractor performance.

The Department agrees with the two recommendations made by the ANAO in this report and has undertaken to implement them as a priority.

## Key messages from this audit for all Australian Government entities

25. Below is a summary of key messages, including instances of good practice, which have been identified in this audit that may be relevant for the operations of other Australian Government entities.

### Procurement

- In order to ensure that they meet the intent of the Commonwealth Procurement Rules to allow competitive procurement processes, entities should commence planning of complex procurements early in the process to minimise the reliance on exemption clauses. Where decisions are made to conduct a limited tender, entities must clearly document why particular providers are selected to receive requests for quotation.
- Where price or scope of bids is well outside expectations, or there is a wide variation between tenders, this may indicate misunderstandings in industry about requirements. It is prudent in this situation to review scope and price expectations before progressing negotiations with a tenderer.
- Where interim arrangements such as Letters of Intent are utilised, entities should ensure that appropriate monitoring and reporting mechanisms are utilised.
- Where significant price increases occur during negotiations, there should be consideration of value and benefits gained for the additional cost proposed against the scope requirements of the project and transparent reporting of the price increase justification to decision makers.
- The alignment of training programs with procurement complexity is a useful method for enabling supervisors to determine whether their staff possess appropriate skills and qualifications.

# Advances to the Finance Minister for the Period 1 July 2019 to 24 April 2020

**Type:** Assurance review

**Report number:** 36 of 2019-20

**Portfolios:** Finance

**Entities:** Department of Finance

**Date tabled:** 7 May 2020

## INDEPENDENT ASSURANCE REPORT

### Advances to the Finance Minister 1 July 2019 to 24 April 2020

## Conclusion

Based on the procedures I have performed and the evidence I have obtained, nothing has come to my attention that causes me to believe that, in all material respects:

- a. the Advance to the Finance Minister (AFM) 2019–20 Determination Nos. 1 to 7 (as registered on [legislation.gov.au](http://legislation.gov.au)) and the Finance Minister's weekly AFM media releases are not presented completely and accurately for the period 1 July 2019 to 24 April 2020 based on the criteria outlined in this report; and
- b. the internal controls related to the Department of Finance's administration of AFM were not suitably designed, implemented and operating effectively to achieve appropriate approval, recording and reporting of each AFM during the period.

My limited assurance conclusion has been formed on the basis of the matters outlined in this report.

I have undertaken a limited assurance review of the Department of Finance's (Finance) reporting and administration of the AFM, in order to express a conclusion on Determinations made from 1 July 2019 to 24 April 2020, based on the following criteria:

- Have accounts and records been appropriately obtained and maintained to support the complete and accurate reporting of AFM, taking into consideration whether:
  - Finance has a central register of all applications and approvals;
  - all decisions for the AFM have been documented appropriately, including identifying the appropriation act under which each advance is made;
  - all accounts and records for the applications for the AFM have been adequately maintained;
  - Finance has effective processes in place to obtain assurance from entities over the completeness and accuracy of the information provided to Finance;
  - the underlying financial information in relation to the AFM supports the description of the purpose for each amount advanced under the AFM as described in the relevant Determinations (as registered on [legislation.gov.au](http://legislation.gov.au)) and the Finance Minister's weekly AFM media releases; and
  - the Finance Minister's weekly AFM media releases present complete and accurate information about the Determinations made in the relevant week.
- Are the controls related to the Department of Finance's administration of AFM suitably designed, implemented and operating effectively to achieve appropriate approval, recording and reporting of AFM during the period, taking into consideration whether:
  - Finance has guidance or a framework that communicates clearly to entities as to the requirements to apply for the AFM, and whether this was complete, accurate, and compliant with the criteria set out in the Annual Appropriation Acts;
  - Finance has an appropriate risk framework for the AFM;
  - existing controls are capable of addressing the identified risks effectively;
  - Finance has implemented and operated effective controls over the approval process to ensure applications for the AFM are only approved when applying entities provide sufficient information to support its compliance with the criteria set out in the Annual Appropriation Acts; and
  - the AFM approval process complied with the criteria set out in the Annual Appropriation Acts.

## Basis for conclusion

I have conducted the review in accordance with the ANAO Auditing Standards, which include the relevant Standards on Assurance Engagements ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* (ASAE 3000) and ASAE 3150 *Assurance Engagements on Controls* (ASAE 3150).

I believe that the evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

## Responsibilities of the Secretary of the Department of Finance

The Secretary of the Department of Finance is responsible for the administration of the AFM, the preparation of the above-mentioned Determinations and maintenance of supporting accounts and records relevant to the reporting of the AFM in accordance with Appropriation Acts Nos. 1 to 6 2019–2020 and Appropriation (Coronavirus Economic Response Package) Acts Nos. 1 and 2 2019–2020.

The Secretary is also responsible for such internal control procedures as the Secretary determines necessary to enable the administration of the AFM and preparation of the above-mentioned Determinations that are free from material misstatement, whether due to fraud or error.

## Independence and quality control

I have complied with the independence and other relevant ethical requirements relating to assurance engagements, and applied Auditing Standard ASQC 1 *Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, Other Assurance Engagements and Related Services Engagements* in undertaking this assurance review.

## Responsibilities of the Auditor-General

My responsibility is to express a limited assurance conclusion on whether the Finance Minister's and the Department of Finance's reporting of the AFM is complete and accurate, in all material respects, and internal controls related to the AFM were designed, implemented and operating effectively for the period from 1 July 2019 to 24 April 2020, as evaluated against the criteria. The ANAO Auditing Standards require that I plan and perform my procedures to obtain limited assurance about whether anything has come to my attention that the Department of Finance's reporting of the AFM is not complete and accurate, in all material respects, and internal controls related to the AFM were not designed, implemented and operating effectively for the period from 1 July 2019 to 24 April 2020.

An assurance engagement to report on the design and operating effectiveness of controls involves performing procedures to obtain evidence about the suitability of the design of controls to achieve the control objectives and the operating effectiveness of controls throughout the period.

The procedures performed in a limited assurance review vary in nature and timing from, and are less in extent than for, a reasonable assurance engagement and consequently the level of assurance obtained in a limited assurance review is substantially lower than the assurance that would have been obtained had a reasonable assurance engagement been performed. Accordingly, I do not express a reasonable assurance opinion on the reporting of the AFM or on the internal controls.

I have conducted my limited assurance review by making such enquiries and performing such procedures I considered reasonable in the circumstances, including:

- making enquiries of management and others within the entity, as appropriate;
- examining the internal control design specifications and documentation;
- examining supporting documentation for determinations; and
- evaluating the evidence obtained.

The procedures selected depend on my judgement, including the assessment of the risks that the reporting of the AFM is not complete and accurate or the controls are not suitably designed, implemented or operating effectively.

## Inherent limitations

Because of the inherent limitations of an assurance engagement, together with the internal control structure it is possible that, even if the controls are suitably designed and operating effectively, the control objectives may not be achieved so that fraud, error, or non-compliance with laws and regulations may occur and not be detected. Further, the internal control structure, within which the controls that I have assured are designed to operate, has not been assured and no opinion is expressed as to its design or operating effectiveness.

A limited assurance engagement throughout the specified period on operating effectiveness of controls is not designed to detect all instances of controls operating ineffectively as it is not performed continuously throughout the period and the tests performed are on a sample basis. A limited assurance engagement throughout the specified period does not provide assurance on whether complete and accurate reporting of the AFM or the outcome of the evaluation of controls will continue in the future.

Australian National Audit Office



Grant Hehir  
Auditor-General  
Canberra  
4 May 2020

# Grant Program Management by the Australian Renewable Energy Agency

**Type:** Performance audit

**Report number:** 35 of 2019-20

**Portfolios:** Industry, Science, Energy and Resources

**Entities:** Australian Renewable Energy Agency (ARENA)

**Date tabled:** 30 April 2020

## Background

1. The Australian Renewable Energy Agency (ARENA) is a corporate Commonwealth entity within the Industry, Science, Energy and Resources Portfolio. ARENA is established under the *Australian Renewable Energy Agency Act 2011* (ARENA Act) with the objectives to:
  - improve the competitiveness of renewable energy technologies; and
  - increase the supply of renewable energy in Australia.
2. The ARENA Act provides over \$2.2 billion of Australian Government funding from 2012–13 to 2021–22. ARENA's functions under the Act include:
  - providing financial assistance for research, development, demonstration, commercialisation or deployment of renewable energy technologies, or the storage and sharing of information and knowledge about renewable energy technologies; and
  - collecting, analysing, interpreting and disseminating information and knowledge relating to renewable energy technologies and projects.
3. As at January 2020 ARENA had approved 538 applications seeking \$1.669 billion in funding. Funded projects have included research, development, demonstration, commercialisation or deployment activities across nine types of renewable energy technologies. ARENA undertakes a range of knowledge sharing activities, including publishing reports and datasets on its website.

## Rationale for undertaking the audit

4. Substantial funding has been committed to renewable energy activities through ARENA. As ARENA approaches the end of its legislated funding, it is important to provide the Parliament with assurance over the effectiveness of ARENA's grants management in improving the competitiveness of renewable energy technologies and increasing the supply of renewable energy in Australia.

## Audit objective and criteria

5. The objective of the audit was to assess the effectiveness of grant program management by ARENA. The following high-level criteria were used to form a conclusion against this objective:

- Does grant selection support the achievement of ARENA's objectives?
- Are grant funding agreements managed effectively?
- Does evaluation of grant programs indicate that ARENA is achieving its objectives?

## Conclusion

6. While ARENA's grant program management is largely effective, its evaluation and performance reporting frameworks do not clearly demonstrate that its grant funding is increasing the supply and competitiveness of renewable energy in Australia beyond what would otherwise have occurred.

7. Strategic planning and grant project selection largely aligns with ARENA's objectives. ARENA's performance measurement framework does not provide a reliable basis to demonstrate to the Parliament and the public that ARENA is achieving its objectives.

8. ARENA's management of grant funding agreements is largely effective. Improvements are required to ARENA's management of variations and its integration of electronic systems with its business processes.

9. ARENA's external evaluations since 2017 do not clearly demonstrate the extent to which ARENA's programs are impacting on its legislative objectives of improving the supply and competitiveness of renewable energy in Australia.

## Supporting findings

### Strategic plans and application assessment

10. In 2018–19 ARENA's corporate plan, general funding strategy, annual work plan and investment plan were mostly clear and consistent with ARENA's objectives. The performance framework as set out in the corporate plan did not provide a reliable basis to demonstrate to the Parliament and the public that ARENA is achieving its objectives.

11. ARENA's grant guidelines are appropriate and aligned with strategic plans except in relation to describing its assessment of additionality to determine whether proposed projects would achieve outcomes that would not otherwise occur without public funding. Clearly outlining how it assesses additionality would assist ARENA to demonstrate value for money in decision-making and avoid funding activities that would proceed without ARENA support.

12. Individual application assessments examined by the ANAO were generally consistent with grant guidelines and ARENA's internal assessment framework. ARENA would be able to provide greater assurance over its grant selection by improving its use of information systems and standardising its assessment and decision-making processes, and record keeping.

## Grant management

13. ARENA's arrangements for monitoring the performance of individual funding agreements are largely appropriate. ARENA's ability to provide assurance over the quality of its grants management would be enhanced by improved variation processes and increased integration of its business processes and information systems.
14. Governance arrangements for the oversight of grant funding agreements are robust. Funding agreement governance structures include an appropriate level of senior management oversight. Key data sources and reports were automated and digitised in late 2019, reducing the risk of the presentation of incorrect or incomplete information.
15. Risk and issues management processes are largely appropriate. The overall management of risks and issues in funding agreements has been improved by recent transitions of some of these activities onto information systems. Further integration of risk and issue management into business processes on information systems would enhance ARENA's risk and issue management.

## Evaluation and performance

16. In 2018–19 ARENA's evaluation and performance policies and procedures were not appropriate. Evaluation and performance measurement activities were not aligned. The assurance process over the performance framework was not effective. Some improvements have been made to these policies and procedures in 2019–20.
17. The eight outcome evaluations undertaken since 2017 generally conclude that ARENA is delivering its programs, but only three provided clear conclusions about the impact of these programs on ARENA's objectives. There is scope for ARENA to improve its evaluations so that they present clear, impact focused conclusions against ARENA's legislative objectives. This and the implementation of recommendations on performance measures and additionality will enhance ARENA's ability to attribute its outcomes to its legislative objectives and functions.
18. While lessons from ARENA's evaluations were mostly actioned appropriately, there is scope for ARENA to strengthen its arrangements for closing recommendations.

## Recommendations

<b>Recommendation no.1</b>	The Australian Renewable Energy Agency improves the reliability and completeness of its performance measurement and reporting framework.
<b>Paragraph 2.26</b>	<b>Australian Renewable Energy Agency response:</b> <i>Agreed.</i>



**Recommendation  
no.2**

**Paragraph 2.43**

The Australian Renewable Energy Agency clearly outlines in its grant guidelines how it assesses the additionality of project applications so that it can better demonstrate that the projects it funds would not have proceeded without public funding.

**Australian Renewable Energy Agency response:** *Agreed.*

**Recommendation  
no.3**

**Paragraph 3.20**

The Australian Renewable Energy Agency continues the integration of its assessment and grant management processes with its information systems to strengthen its assurance over its grant management activities.

**Australian Renewable Energy Agency response:** *Agreed.*

**Recommendation  
no.4**

**Paragraph 3.31**

The Australian Renewable Energy Agency improves its funding agreement variation policies and processes to ensure appropriate consideration of value for money, merit against grant program criteria and probity when making decisions on variations.

**Australian Renewable Energy Agency response:** *Agreed.*

**Recommendation  
no.5**

**Paragraph 4.11**

The Australian Renewable Energy Agency implements policies and processes to provide effective assurance that its performance measurement framework and reporting is fully consistent with the Commonwealth performance **framework**.

**Australian Renewable Energy Agency response:** *Agreed.*

**Recommendation  
no.6**

**Paragraph 4.39**

The Australian Renewable Energy Agency assesses and actively manages conflicts of interests of organisations engaged to conduct its evaluations and disclose, where relevant, any conflicts in evaluation reports and material provided to decision-makers.

**Australian Renewable Energy Agency response:** *Agreed.*

# Summary of entity response

## Australian Renewable Energy Agency

It is pleasing that the ANAO has concluded that ARENA's management of its grants programs is largely effective, that grant project selection is aligned with ARENA's objectives, and that management of grant funding agreements is largely effective. ARENA agrees to all recommendations and has commenced implementation.

## Key messages from this audit for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit that may be relevant for the operations of other Australian Government entities.

### Governance and risk management

- An integrated approach to probity management supports integrity in decision-making across an entity's various functions.

### Grant programs

- Continual review and amendment of funding strategies will assist entities to ensure that grants programs are appropriately targeting areas of greatest impact as circumstances change over time.
- Well-designed grant application processes that incorporate advice from subject matter experts enable decision-makers to effectively assess potential projects.
- To assist in demonstrating proper use of public money in grant funding decisions, entities should include an assessment of whether proposed projects may commence in the absence of public funding.

### Performance and impact measurement

- Establishing an appropriate performance framework up front will position an entity to assess the extent to which it is achieving its purpose. Purpose statements should draw on an entity's objectives and functions and include how it will achieve its purpose and the expected benefits. Performance measures should be clearly aligned with the purpose statement and be relevant, reliable and complete to enable an assessment of the entity's overall progress against its purpose.

# Aboriginal and Torres Strait Islander Participation Targets in Intergovernmental Agreements

**Type:** Performance audit

**Report number:** 34 of 2019-20

**Portfolios:** Infrastructure, Transport, Regional Development and Communications; Prime Minister and Cabinet

**Entities:** Department of Infrastructure, Transport, Regional Development and Communications; National Indigenous Australians Agency

**Date tabled:** 23 April 2020

## Background

1. Since 2009 the Australian Government has sought to generate economic opportunities for Aboriginal and Torres Strait Islander people through intergovernmental agreements with state and territory governments. Primarily this has occurred through national partnership agreements (NPAs) and project agreements negotiated under the 2009 *Intergovernmental Agreement on Federal Financial Relations*, or through initiatives delivered under such agreements.
2. Over the past five years, a common approach has been to incorporate minimum targets for Aboriginal and Torres Strait Islander participation. Such targets usually involve direct employment targets, targets for the use of Aboriginal and Torres Strait Islander businesses as suppliers, or a combination of both. Current intergovernmental initiatives with participation target requirements include:
  - the Northern Australia Roads and Beef Roads Programs (Northern Australia Roads Programs), City and Regional Deals, and the 2019 Land Transport Infrastructure Projects NPA, which are managed by the Department of Infrastructure, Transport, Regional Development and Communications (Infrastructure); and
  - the 2019 Northern Territory Remote Housing NPA, which is managed by the National Indigenous Australians Agency (NIAA).
3. In 2017 the Senate Finance and Public Administration References Committee held an inquiry into the Community Development Program. The committee recommended that the Australian National Audit Office (ANAO) conduct an audit of the use of, and compliance with, Aboriginal and Torres Strait Islander employment targets in state and territory contracts in remote locations where the Australian Government has made a funding contribution for a particular purpose.

## Rationale for undertaking the audit

4. Aboriginal and Torres Strait Islander participation targets are increasingly being applied to major projects funded by the Australian Government through intergovernmental agreements. To achieve the government's policy objectives, effective frameworks are needed to coordinate the use of such targets, and entities implementing targets need to ensure they are set and monitored appropriately. It was timely to undertake an audit of the administration of participation targets as the number and geographical breadth of projects with target requirements are expected to grow in coming years due to the inclusion of target requirements in the 2019 Land Transport Infrastructure Projects NPA. The audit also included a focus on application of targets in remote areas, to address the Senate Finance and Public Administration References Committee's recommendation that the ANAO conduct an audit of the use of, and compliance with, employment targets in remote contracts.

## Audit objective and criteria

5. The audit objective was to assess the effectiveness of the administration of Aboriginal and Torres Strait Islander participation targets in intergovernmental funding agreements in achieving policy objectives.
6. To form a conclusion against the audit objective, the ANAO adopted the following high level audit criteria:
- Are participation target requirements for intergovernmental agreements being coordinated effectively?
  - Are participation targets being effectively implemented in intergovernmental agreements?

## Conclusion

7. The administration of Aboriginal and Torres Strait Islander participation targets in intergovernmental funding agreements has been partially effective in achieving policy objectives. Entities are increasingly using Aboriginal and Torres Strait Islander participation targets in intergovernmental funding agreements. While administration of participation targets is improving, entities need to improve reporting and assurance arrangements to be effective.

8. Infrastructure's and NIAA's coordination of participation target requirements for intergovernmental agreements has become largely effective. Infrastructure, in consultation with NIAA and the Department of Education, Skills and Employment, established an appropriate Indigenous Employment and Supplier-Use Infrastructure Framework for the 2019 Land Transport Infrastructure Projects NPA. This can be used as a model for other agreements that do not have appropriate frameworks, such as City and Regional Deals. NIAA has not implemented the Council of Australian Governments' commitment to report annually on the outcomes of jurisdictional procurement policies.

9. Infrastructure's and NIAA's implementation of participation targets in intergovernmental agreements is partially effective. Appropriate participation targets are being negotiated for agreements and there are early indications that entities are collaborating on supply-side strategies to support the achievement of targets. The 2019 Land Transport Infrastructure Projects NPA and Northern Territory Remote Housing NPA require more transparent reporting of outcomes. Further work is needed to establish public reporting mechanisms and appropriate risk-based assurance arrangements for agreements.

## Supporting findings

### Coordinating participation targets

10. While limited progress was made under the 2009 Indigenous Economic Participation NPA, since 2014 significant opportunities have been identified for including Aboriginal and Torres Strait Islander participation targets in intergovernmental agreements. After first implementing participation targets in certain infrastructure initiatives in remote and regional areas, from 2019 the government extended the scope of such targets to cover most major intergovernmental infrastructure projects receiving Australian Government funding.

11. Frameworks for including participation targets have been developed for some agreements but not all. An appropriate participation target framework has been established for the 2019 Land Transport Infrastructure Projects NPA, building on lessons learnt from the Northern Australia Roads Programs framework. Relevant frameworks are currently being developed for the 2019 Northern Territory Remote Housing NPA. An appropriate framework has not been established for City and Regional Deals.

12. Most jurisdictions have adopted Aboriginal and Torres Strait Islander procurement policies. In February 2018 the Council of Australian Governments agreed to publish jurisdictional policies and outcomes annually, but NIAA has not implemented this commitment.

### Implementing participation targets

13. Infrastructure and NIAA are negotiating appropriate participation targets for projects under intergovernmental agreements. Targets have generally been agreed based on the Aboriginal and/or Torres Strait Islander working-age populations of the areas in which projects will be delivered. Infrastructure has agreed lower targets for some land transport infrastructure projects based on consideration of local factors and potential barriers to achieving outcomes.

14. There are early indications that entities are working together to identify supply-side strategies to support the achievement of participation targets. Frameworks developed for the Northern Australia Roads Programs and 2019 Land Transport Infrastructure Projects NPA reference supply-side strategies. Consideration has also been given to supply-side supports for City and Regional Deals and the 2019 Northern Territory Remote Housing NPA.

15. Appropriate reporting arrangements for intergovernmental agreements with participation targets have not yet been established. The 2019 Land Transport Infrastructure Projects NPA and Northern Territory Remote Housing NPA have committed to more transparent reporting of outcomes. However, for all agreements further work is needed to establish appropriate public reporting mechanisms, and to feed reported information into the Council of Australian Governments' annual reporting on outcomes from jurisdictional policies.

16. Appropriate assurance arrangements have not been established for the Northern Australian Roads Programs, City and Regional Deals and the 2019 Northern Territory Remote Housing NPA. The participation target framework developed for the 2019 Land Transport Infrastructure NPA has the potential to provide adequate assurance.

## Recommendations

### Recommendation no.1

#### Paragraph 2.35

Department of Infrastructure, Transport, Regional Development and Communications finalise a framework, in consultation with the National Indigenous Australians Agency and other relevant entities, to support the implementation of Aboriginal and Torres Strait Islander participation targets in City and Regional Deals.

**Department of Infrastructure, Transport, Regional Development and Communications response:** *Agreed.*

**National Indigenous Australians Agency response:** *Agreed.*

### Recommendation no.2

#### Paragraph 2.53

National Indigenous Australians Agency implement the Council of Australian Governments' commitment to publish jurisdiction-specific procurement policies and Aboriginal and Torres Strait Islander employment and business outcomes annually.

**National Indigenous Australians Agency response:** *Agreed.*

### Recommendation no.3

#### Paragraph 3.62

Department of Infrastructure, Transport, Regional Development and Communications and National Indigenous Australians Agency ensure appropriate risk-based assurance arrangements are in place for intergovernmental agreements with Aboriginal and Torres Strait Islander participation target requirements.

**Department of Infrastructure, Transport, Regional Development and Communications response:** *Agreed.*

**National Indigenous Australians Agency response:** *Agreed.*

## Summary of entity response

17. Summary responses from audited entities are below. Entities' full responses are at Appendix 1.

### Department of Infrastructure, Transport, Regional Development and Communications

The Department of Infrastructure, Transport, Regional Development and Communications (the Department) welcomes the ANAO report and agrees with the recommendations.

The report recognises that a commitment to Aboriginal and Torres Strait Islander participation targets has been included in all City and Regional Deals. The Department is well advanced in developing a principles based framework to support the implementation of these targets and risk based assurance of the commitments made.

City and Regional Deals are a genuine partnership between the three levels of government and the community to work towards a shared vision for productive and liveable cities and regions. City and Regional Deals work to align the planning, investment and governance necessary to accelerate growth and job creation, stimulate urban and regional renewal and drive economic reforms. The uniqueness and diversity of cities and regions across Australia means that we will get the best outcomes for each place by tailoring our approach to designing and delivering Deals. Given this, the specific arrangements for each City or Regional Deal and their component commitments may vary.

However, the Department recognises the benefit of a broad Framework for addressing Aboriginal and Torres Strait Islander participation targets.

The delivery mechanisms for Deal investments are also made in the context of constitutional and legal requirements around use of Commonwealth funds. Where appropriate, preference is given to using existing programs and/or intergovernmental arrangements, such as the Land Transport Infrastructure National Partnership Agreement (NPA), or programs through other agencies. The Framework and future targets established for City and Regional Deals will be developed in that context, using existing program arrangements where these are in place.

The Department is pleased to note the ANAO finding that the Indigenous Employment and Supplier-use Infrastructure Framework for the 2019 NPA should be used as a model for other intergovernmental agreements.

The Indigenous Employment and Supplier-use Infrastructure Framework is a result of three years of consultation with Indigenous stakeholders, including the Prime Minister's Indigenous Advisory Council, Indigenous representative bodies, land councils and businesses across Australia. It builds on the Department's earlier efforts from the Northern Australia Roads and Beef Roads Program, and the Western Sydney and Townsville City Deals.

The Department remains committed to closing the gap between Indigenous and non-Indigenous Australians by ensuring Indigenous Australians share in the economic opportunities created by Australia's infrastructure investment, including through the 10 year rolling Infrastructure Investment Program and City and Regional Deals.

## National Indigenous Australians Agency

The National Indigenous Australians Agency (NIAA) welcomes the Australian National Audit Office (ANAO) report on Aboriginal and Torres Strait Islander Participation Targets in Intergovernmental Agreements and supports the recommendations of the report.

It is pleasing to see the ANAO has highlighted the Indigenous Employment and Supplier-use Infrastructure Framework, jointly developed by the (now) NIAA and the (now) Department of Infrastructure, Transport, Regional Development and Communications for the National Partnership Agreement on Land Transport Infrastructure Projects, as a model for other agreements that do not have such frameworks in place.

In order to make good on the Agreements, all parties, including governments and the private sector, need to assist in developing the supply of Indigenous workers and businesses (where needed) and ensure effective assurance mechanisms are put in place.

## Key messages from this audit for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

### Policy/program design

- When developing a social procurement policy, it is good practice to develop a framework that outlines: how the policy should be applied; how outcomes will be monitored and reported; expectations regarding compliance and assurance activities; and when and how the policy's effectiveness will be reviewed. For the 2019 Land Transport Infrastructure NPA, Infrastructure and NIAA (previously the Department of the Prime Minister and Cabinet) collaborated to develop an appropriate framework for applying Aboriginal and Torres Strait Islander participation targets to projects funded under the NPA (the Indigenous Employment and Supplier-Use Infrastructure Framework).

### Performance and impact measurement

- For intergovernmental agreements negotiated under the Federal Financial Relations framework, governments have established key policy objectives relating to enhanced accountability and transparency. To meet these objectives, it is important to establish consistent, accessible public reporting on the achievement of outcomes and outputs.

### Governance and risk management

- To ensure reporting on social procurement policies is correct and intended outcomes are achieved, entities should establish appropriate risk-based controls and assurance activities, such as:
  - outlining evidentiary requirements in policies (for example, processes for verifying the indigeneity of individuals and businesses) and resulting contracts;
  - requiring contractors to declare that reporting is accurate and communicating the consequences of making false or misleading declarations;
  - requesting documentation from contractors to support reported participation outcomes (to minimise burden, such requests could be made on a targeted or random basis); and
  - undertaking targeted or random compliance audits of contractors' records (to minimise cost, such audits could be combined with other contract management activities, such as site visits or financial audits).



# Tertiary Education Quality and Standards Agency's Regulation of Higher Education

**Type:** Performance audit

**Report number:** 33 of 2019-20

**Portfolios:** Education, Skills and Employment

**Entities:** Tertiary Education Quality and Standards Agency

**Date tabled:** 16 April 2020

1. In 2018, 1.56 million students were enrolled in courses leading to an Australian higher education award. In that year, international students represented about 31 per cent of total student numbers of Australian higher education providers.

2. The Tertiary Education Quality and Standards Agency (TEQSA) was established in 2012 by the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act). TEQSA's purpose is to 'protect student interests and the reputation of Australia's higher education sector through a proportionate, risk-reflective approach to quality assurance that supports diversity, innovation and excellence'. TEQSA's core regulatory functions include the registration of higher education providers and the accreditation (approval) of the courses offered by those providers. In 2019–20 TEQSA received \$17.5 million of Australian Government funding.

3. For registration and accreditation purposes, providers and courses must comply with the Higher Education Standards Framework (Threshold Standards) 2015, which sets out the minimum standards to operate in the higher education sector. Providers teaching international students must also comply with a further set of 11 standards (the international student standards) under the National Code of Practice for Providers of Education and Training to Overseas Students under the *Education Services for Overseas Students Act 2000* (ESOS Act).

## Rationale for undertaking the audit

4. The higher education sector receives over \$15 billion of Australian Government funding a year, and the annual contribution of international students to the Australian economy is estimated to be around \$35 billion. There has been significant public interest in the integrity of admissions standards, academic misconduct (including contract cheating) and the integration of international students into Australian campuses. These issues have a direct impact on the reputation of the higher education sector and the interests of students, the protection of which is TEQSA's key regulatory purpose.

## Audit objective and criteria

5. The objective of the audit was to assess the effectiveness of TEQSA's regulation of higher education. To form a conclusion against the audit objective, the Australian National Audit Office (ANAO) adopted the following criteria:

- Did TEQSA have an effective process to assign and maintain appropriate risk ratings to higher education providers?
- Did TEQSA have effective and timely approvals processes, including for registering higher education providers and accrediting courses?
- Did TEQSA have effective compliance and enforcement processes?
- Did TEQSA provide appropriate support to the higher education sector to address key sector-wide risks?

## Conclusion

6. The effectiveness of TEQSA's regulation of higher education was mixed.

7. TEQSA's processes to assign and maintain risk ratings to higher education providers were largely effective. Risk indicators and data were aligned with the relevant provisions of the *Tertiary Education Quality and Standards Agency Act 2011* and the majority of the higher education threshold standards. Limitations in source data meant that, for the majority of providers, risk assessments were usually based on two-year old data.

8. TEQSA's approvals processes were effective but not always timely. Key approvals were undertaken consistent with legislative requirements regarding relevant higher education standards. TEQSA met the statutory timeframes for initial registration and accreditation approvals in all but one instance. TEQSA did not meet its targets for re-registration and re-accreditation approvals for low-risk providers.

9. TEQSA's compliance and enforcement processes were partially effective. It has undertaken a small number of enforcement actions to address non-compliance with statutory requirements. While TEQSA has an appropriate suite of compliance activities, documentation of most of its recent compliance assessments was poor and it has yet to implement a compliance monitoring framework. TEQSA's public reporting of enforcement actions was appropriate but it does not report on the number of compliance assessments undertaken or their outcomes.

10. TEQSA provided appropriate support to the sector to address the majority of key sector-wide risks.

## Supporting findings

### Risk assessment

11. The indicators and data used by TEQSA to assess individual provider risk are aligned with the key areas of risk to providing quality higher education, as outlined in the TEQSA Act. However, the accuracy of provider risk assessments is reduced as the source data used in the assessments is usually two years old. This can impact on the accuracy of the provider risk profile.

12. The 2019 risk ratings were assigned in accordance with TEQSA's process. TEQSA did not document consideration of complaints in its risk assessments and did not make any adjustments to any risk ratings because of complaints.
13. Risk ratings were reviewed in a timely way through an annual risk assessment cycle.

## Regulatory approvals processes

14. Key approvals processes were undertaken consistent with legislative requirements regarding applicable higher education standards. Decisions were informed by analysis of, and advice about, providers' compliance with the standards.
15. The risk mitigation measures attached to key approvals were appropriate as they aligned with the risk of non-compliance with relevant standards identified through the assessment process.
16. TEQSA's performance statement in its 2018–19 annual report provides an adequate level of information regarding timeliness of key TEQSA Act approval processes, including comparisons to previous years. It also includes information on approval outcomes, although the information could be presented in a more consistent way to allow comparisons between different types of approvals.
17. The timeliness of approvals was mixed. TEQSA met the statutory timeframes for initial registration and accreditation approvals in all but one instance. It did not meet its targets for re-registration and re-accreditation approvals for low-risk providers.

## Compliance and enforcement

18. TEQSA has not undertaken any periodic compliance planning, but it is in the early stages of developing priorities to guide future compliance activity. TEQSA's completed compliance assessment activity has not been informed by provider risk ratings. Compliance activity has mainly been informed by media and provider self-reporting.
19. TEQSA's key compliance activities have been partially effective. TEQSA has an appropriate suite of compliance activities and, from late 2019, has commenced an increased number of compliance assessments. However, these assessments have not always been adequately documented. Reports submitted by providers as part of formal conditions have not been assessed in a timely manner and TEQSA has not established a transparent process for managing material change notifications.
20. TEQSA has undertaken a small number of enforcement actions to address non-compliance with statutory requirements.
21. TEQSA did not report on the number of compliance activities commenced or completed or the outcomes of compliance processes. TEQSA provides limited reporting on the outcomes of some of its enforcement processes.

## Sector-wide risks

22. TEQSA has regularly engaged with a wide range of key stakeholders for a variety of purposes, including to identify emerging risks to the Australian higher education sector.

23. TEQSA has taken appropriate action to support the sector to address the majority of identified key risks. It has not yet taken any specific actions to respond to cyber security risk.
24. TEQSA has reported on its actions to address identified risks but has not reported on the outcomes of the actions undertaken.

## Recommendations

**Recommendation no.1** TEQSA establishes and implements a comprehensive compliance monitoring framework, supported by appropriate operational processes.

**Paragraph 4.6** Tertiary Education Quality and Standards Agency response: *Agreed.*

**Recommendation no.2** TEQSA ensures that it adequately documents its analysis and the outcomes of each stage of its compliance assessments in a timely manner.

**Paragraph 4.21** Tertiary Education Quality and Standards Agency response: *Agreed.*

**Recommendation no.3** TEQSA ensures material submitted by providers as part of formal conditions is assessed in a timely manner.

**Paragraph 4.28** Tertiary Education Quality and Standards Agency response: *Agreed.*

**Recommendation no.4** TEQSA establishes and implements a transparent process for managing material change notifications, including documenting the assessment of all notifications.

**Paragraph 4.35** Tertiary Education Quality and Standards Agency response: *Agreed.*

**Recommendation no.5** TEQSA ensures that its annual performance reporting includes information on the number of provider compliance activities undertaken and the outcomes of compliance activity.

**Paragraph 4.54** Tertiary Education Quality and Standards Agency response: *Agreed.*

## Summary of entity response

25. TEQSA's summary response is provided below. Its full response can be found in Appendix 1.

The Tertiary Education Quality and Standards Agency (TEQSA) welcomes the Australian National Audit Office's performance audit report on its regulation of higher education and thanks the audit team for their efforts and diligence in conducting the audit.

TEQSA has only recently had its resourcing increased following a period of significant reduction in resourcing and reduced capacity. One recent initiative was to establish a dedicated Compliance and Investigations team. The timing of the audit presented an opportunity to reflect on areas for improvement and we are pleased that the findings confirm areas of focus where TEQSA already has work well underway.

In finding TEQSA's regulatory activities to be effective or largely effective in all but one instance, the ANAO's report confirms that TEQSA is meeting its purpose under the TEQSA Act to regulate higher education according to the principles of regulatory necessity, risk and proportionality. TEQSA acknowledges the areas for improvement and recommendations in relation to its compliance and enforcement activities.

TEQSA accepts all five recommendations in relation to its compliance and enforcement activities, with action already planned or underway to make improvements consistent with these recommendations. This includes work already undertaken to strengthen TEQSA's existing compliance monitoring framework, improvements to the planning of compliance assessments and ensuring the timely assessment of material submitted by providers. TEQSA has also implemented processes for consistent handling of material change notifications and reporting of compliance activity, with a full regulatory operations report to be published in July 2020.

## Key messages from this audit for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

### Governance and risk management

- Regulators should have a clear and consistent process for understanding which regulated entities pose the highest risk of significant non-compliance with key regulatory requirements. An effective risk assessment process should include strong linkages between risk ratings and regulatory activities, including compliance assessments.
- Obtaining structured feedback or intelligence from stakeholders can help regulators to identify and manage key sector-wide risks. For example, TEQSA regularly engages with key stakeholders, including through an annual survey.

### Policy/program implementation

- Regulators' compliance activities should be based on clearly articulated risk-based priorities. This assists in providing assurance that regulators are appropriately allocating resources to identified risk areas.

## Performance and impact measurement

- To promote transparency and accountability, regulators should publicly report on the number and outcomes of core compliance activities such as compliance assessments.

## Records management

- Key compliance assessment and enforcement records should be fit-for-purpose and contain sufficient information to support regulatory decisions.

# Value for Money in the Delivery of Official Development Assistance through Facility Arrangements

**Type:** Performance audit

**Report number:** 32 of 2019-20

**Portfolios:** Foreign Affairs and Trade

**Entities:** Department of Foreign Affairs and Trade (DFAT)

**Date tabled:** 16 April 2020

## Background

1. Australia's Official Development Assistance (ODA) budget in 2019–20 is \$4.044 billion. In 2018–19, expenditure on aid by the Department of Foreign Affairs and Trade (DFAT) made up 90.8 per cent of Australia's total ODA spend (valued at \$3.976 billion). DFAT's ODA expenditure represented 65 per cent of the department's total expenditure.
2. There has been an increase in the value of aid delivered through DFAT's major suppliers. The value of aid delivered through DFAT's top four suppliers over the period 2008–09 to 2018–19 moved from \$236.4 million to \$751.1 million, representing an increase in value from 7.8 per cent to 19 per cent of DFAT's total aid spend.
3. DFAT uses contracting arrangements, termed 'facilities', to deliver programs of work aimed at achieving broad developmental outcomes. A key capability expected of a managing contractor is the ability to develop and implement aid activities.
4. As at January 2020, DFAT managed 20 commercial facilities with a total approved value of \$2.791 billion. Seventeen of these facilities were delivered by the top four providers and valued at \$2.716 billion, representing approximately 97 per cent of the total approved value of facility contracts.
5. The Kemitraan Indonesia Australia untuk Infrastruktur (KIAT) facility in Indonesia and the Papua New Guinea–Australia Governance Facility (PAGP) are two of the largest facilities managed by DFAT.
  - The KIAT infrastructure facility commenced in 2017, with an expected expenditure of approximately \$300 million over 10 years. KIAT aims to assist the Government of Indonesia to improve social and economic infrastructure.
  - The PAGP was established in April 2016. The facility is valued at approximately \$750 million over six years. It delivers the majority of Australia's bilateral governance initiatives in Papua New Guinea.

## Rationale for undertaking the audit

6. Facility contractors are delivering \$2.8 billion in aid on behalf of Australia over the life of 20 major investments. Effective implementation of Australia's aid program supports the Australian Government's long-term policy objectives. Transparency about the purpose, results and costs of these investments, and value for money achieved, helps to maintain confidence that they represent a proper use of public resources.

## Audit objective and criteria

7. The audit objective was to examine DFAT's achievement of value for money objectives in the delivery of Official Development Assistance (aid) through facility arrangements. To form a conclusion against the audit objective, the ANAO adopted the following high-level criteria:

- Does DFAT's design of frameworks for the delivery of aid through facilities support value for money objectives?
- Does DFAT's implementation of facility arrangements support efficiency and effectiveness in the delivery of aid?
- Does DFAT appropriately evaluate and report on value for money achieved through facility arrangements?

## Conclusion

8. DFAT's achievement of value for money in the delivery of aid through facilities is largely effective, with a need for greater focus on the collection, monitoring and analysis of aid administration costs.

9. DFAT's processes for the design and procurement of facilities are largely effective. Improvements have been made to arrangements for reviewing facility investment designs since the establishment of the KIAT and PAGP facilities in the period 2014–2016, reflecting increased contestability and risk awareness. Design processes do not, however, include appropriate consideration of facility administration costs as part of the formal assessment of value for money. Procurement processes for KIAT and PAGP were conducted in accordance with Commonwealth Procurement Rules and were effective in establishing fit-for-purpose contractual arrangements.

10. DFAT's implementation of the KIAT and PAGP facility arrangements are partially effective in supporting value for money in the delivery of aid. Arrangements for collaborative partnering and high-level decision-making have been established, but supply chain risks are not being appropriately monitored in all instances. DFAT does not effectively analyse facility financial data at an aggregate level to determine whether administration costs are proportionate to the value of aid delivered and is therefore unable to determine whether the KIAT and PGF are realising overall expected efficiencies.

11. DFAT has effective frameworks for evaluating and reporting whether aid investments are achieving their intended purpose. There are suitable frameworks and processes in place for assessing progress in the implementation of investments and contractor performance, but there is scope to improve the transparency of evaluation and reporting on the performance of facility arrangements.

## Supporting findings

### Design

12. DFAT's design of aid delivery through facilities largely supports the achievement of value for money objectives. Design processes followed the department's investment planning requirements, but did not include appropriate consideration of cost baselines and savings projections, or information about the proportion of aid funding to be allocated to administration costs. Since 2017, improvements to the oversight of investment proposals have contributed to increased contestability and awareness of risk.



13. DFAT's procurement of managing contractors for the KIAT and PAGP facilities was consistent with policy requirements and supported the achievement of value for money. Approaches to market maximised competition, tender evaluation processes appropriately considered provider capacity and price, and fit-for-purpose contractual arrangements were established.

## Implementation

14. Governance arrangements for the KIAT facility and PAGP are largely effective in supporting the achievement of value for money. DFAT has established appropriate structures for decision-making and coordination with the respective managing contractors. There is inconsistent evidence that value for money assessments are being conducted for individual aid activities developed under the PAGP, and inconsistent compliance with requirements for the monitoring of risk in facility supply chains.

15. DFAT's implementation of processes for monitoring and analysing facility costs are partly effective. DFAT does not routinely monitor administration costs for the purposes of analysing costs across facilities, and is therefore unable to determine whether the KIAT and PAGP are realising expected efficiencies. Audit analysis indicates that the costs associated with establishing and operating each of the two facilities are tracking higher than budgeted as a proportion of expenditure on aid activity.

## Evaluation

16. DFAT has suitable frameworks for evaluating the performance of aid investments such as facilities. These are effective in supporting internal and public reporting on DFAT's performance in achieving the results expected by government. There are opportunities for improvement in relation to the collection of data against a standard set of quantitative efficiency indicators.

17. DFAT's reporting on the achievement of value for money in the delivery of aid through facility arrangements is largely transparent in the detail of its reporting on individual aid investments. Performance reporting on contractors occurs only at the aggregate level. Transparency would be enhanced through increased reporting on the Government's spend on the non-aid component of facility contracts.

## Recommendations

### Recommendation no.1

### Paragraph 2.30

That DFAT planning processes for the design of facilities include consideration of facility administration costs as part of the formal assessment of value for money.

**Department of Foreign Affairs and Trade response:** *Agreed.*

**Recommendation  
no.2**

**Paragraph 3.30**

That DFAT ensures that the assessment of individual aid activities under a facility are subject to appropriate value for money assessment and approvals processes.

**Department of Foreign Affairs and Trade response:** *Agreed.*

**Recommendation  
no.3**

**Paragraph 3.72**

That DFAT establishes processes to enable visibility, monitoring and analysis of facility administration and supply chain costs.

**Department of Foreign Affairs and Trade response:** *Agreed.*

## Summary of the Department of Foreign Affairs and Trade response

18. DFAT's summary response is provided below. The department's full response can be found at Appendix 1.

The Department of Foreign Affairs and Trade (DFAT) welcomes the report, which followed an internal DFAT review of the operation of facilities conducted in 2017–18. We welcome the findings that Facility design and contractor procurement processes are well structured, partnering with managing contractors is effective and suitable frameworks have been established for evaluating the performance of aid investments.

DFAT is committed to continuous improvement as part of our strategy to deliver an effective and efficient development assistance program. We accept the audit report observations and recommendations regarding a broader consideration of costs during planning, improved value for money approval processes within facility structures and managing risks associated with supply chain management.

## Key messages from this audit for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

### Policy and program design

- The design phase is a key period in which to influence the achievement of value for money outcomes. Design processes should establish baselines so that the achievement of objectives can be measured with reference to the amount of funds expended on aid and administration.

## Procurement

- Open tender procurement processes are the primary way to demonstrate value for money in contracting. It is important to promote a competitive market and to encourage as many potential bidders as possible to submit proposals.

## Performance and impact measurement

- DFAT makes extensive use of monitoring and evaluation frameworks to assess whether aid investments are on track and delivering against strategic objectives. Evaluations inform the development of annual work plans and new aid program activities.
- Evaluation plans set out standards and actions for collecting and analysing a range of data, and may include training for staff and contractors to ensure data is of sufficient scope and quality.
- A performance framework for an investment should support the collection of data against a consistent set of quantitative efficiency indicators. Applying an agreed set of indicators across all investments enables an entity to assess the overall performance of a program.
- Transparency about value for money achieved in the implementation of government programs is increased when the indirect costs of delivering a program of activity are reported.

# Management of Defence Housing Australia

**Type:** Performance audit

**Report number:** 31 of 2019-20

**Portfolios:** Defence; Finance

**Entities:** Defence Housing Australia; Department of Defence; Department of Finance

**Date tabled:** 9 April 2020

## Background

1. Defence Housing Australia (DHA) is a Government Business Enterprise (GBE) established under the *Defence Housing Australia Act 1987* (DHA Act) with a main function of providing housing and housing-related services to members of the Australian Defence Force (ADF) and their families. As a GBE, DHA is expected to operate as a commercial organisation and deliver financial returns to the Commonwealth. As of 30 June 2019, DHA had 17,948 properties under management, a property portfolio valued at \$11.2 billion, and housed around 15,800 ADF members in DHA-supplied housing. The DHA Board is the governing body and accountable authority under the *Public Governance, Performance and Accountability Act 2013*.

## Rationale for undertaking the audit

2. The provision of adequate and suitable housing and related services for members of the ADF is regarded as essential to meet the operational needs and requirements of the Department of Defence (Defence). When DHA was established, it was expected that its provision of adequate and suitable housing to ADF members would have a positive effect on retention rates in Defence.

3. The Australian National Audit Office (ANAO) has not previously undertaken a performance audit of DHA. On 22 October 2018, the Joint Committee of Public Accounts and Audit requested, under subsection 17(2) of the *Auditor-General Act 1997*, that the Auditor-General consider conducting a performance audit of DHA. The audit was foreshadowed in the Auditor-General's *Annual Audit Work Program 2018–19*.

## Audit objective and criteria

4. The objective of the audit was to assess whether DHA administers its functions efficiently and effectively, and in accordance with the Government Business Enterprise guidelines. To form a conclusion against the objective, the ANAO adopted the following high-level audit criteria:

- Have DHA and Defence established a fit-for-purpose services agreement?
- Has DHA entered into value-for-money purchasing arrangements?
- Does DHA provide services to Defence personnel effectively?
- Does DHA provide services to Defence personnel efficiently?
- Has DHA established effective governance arrangements to support the provision of housing and housing-related services to ADF members and their families?

## Conclusion

5. While DHA has reported to Defence and shareholder ministers that it is both efficient and effective in the provision of housing to Defence, DHA has not established whether it has been effective in improving ADF member retention or benchmarked the efficiency of its main function. The DHA Board has not addressed specific enterprise-level risks in a timely manner.
6. DHA and Defence have established long-standing service agreements for the provision of Defence housing but they are not wholly fit-for-purpose. Defence requirements may exceed what DHA can provide under its legislation. While there are agreed performance measures, these are indicators of activity and do not provide an adequate basis for assessing whether DHA's delivery of housing services has met the agreements' objectives.
7. DHA has appropriate processes in place to assure itself that it achieves value for money in property acquisitions. The assurance provided to the accountable authority regarding value for money in purchasing arrangements more generally would be enhanced by improved management of financial delegations and powers of attorney.
8. DHA has been largely effective in the delivery of the services it provides under the DHA Act and in returning a dividend to the Commonwealth. While DHA's performance in delivering services is monitored and reported on regularly, no work has been done to assess the effect of DHA's services on ADF member retention, which was a major reason for creating DHA.
9. While DHA has reduced the rate of growth of its operational expenditure in recent years it does not have established measures for assessing its operating efficiency nor has it benchmarked its main function.
10. The DHA Board has not established effective governance arrangements to support the provision of housing and housing-related services to ADF members and their families. In regards to specific enterprise-level risks examined by the ANAO, the DHA Board:
  - took until November 2019 to finalise a new business model addressing risks to business sustainability identified in 2015 – a matter that was resolved only after ministers intervened and set a deadline;
  - only recently refocused its attention on risks relating to DHA's scope of power, which were originally identified over a decade ago; and
  - had not sought assurance from DHA management regarding compliance with state and territory residential tenancy legislation.
11. Further, with one exception, there is no evidence that key policies were endorsed by or issued with the authority of the Board. The approval of key policies and frameworks, and the strategic oversight of non-financial risks such as those relating to scope of powers and legal compliance, are key responsibilities of the Board as the accountable authority.

## Supporting findings

### Service agreements

12. The agreements DHA and Defence have established – the Defence Services Agreement (DSA) and Agreement on Members Without Dependents Choice Accommodation (MCA) – are current and are to remain in force until 2023 and 2022 respectively. DHA has not clearly established whether some of the persons to whom it provides housing to satisfy Defence requirements under the DSA and MCA, such as single ADF members, philanthropic organisations and military exchange personnel, are encompassed by the DHA Act.

13. While Defence policy underpinning the agreements focuses on the provision of traditional housing for ADF families, Defence and DHA are taking steps to accommodate changes in the expectations of Defence's workforce.

14. Defence monitors DHA service delivery using DHA reports against key performance indicators set out in the DSA and MCA agreements. These indicators focus on DHA activity and do not provide an adequate basis for assessing whether the agreements' objectives have been met.

15. Both agreements provide for review at five-year intervals. Defence undertook a performance review of DHA in 2012 to inform the first review of the DSA in 2013. The performance review's emphasis was on the effectiveness of DHA's delivery and did not consider the cost to Defence or opportunities to improve DHA efficiency. Defence advised that it had commenced a subsequent review of the DSA in 2017–18 but the review had not been completed. DHA advised that the MCA was last reviewed in 2016.

### Value for money in purchasing arrangements

16. DHA management has established a single, organisation-wide procurement model with policies, procedures and an electronic workflow system. There is scope to improve the controls underpinning the current authorised procurement policy and the selection of an approver in the electronic workflow used for procurement. Compliance checking conducted by DHA indicates multiple instances of non-compliance with procurement policy, including non-compliance with delegations.

17. DHA has conflict of interest policies for its board and staff. The staff policy requires annually updated declarations, with about one-in-five staff failing to complete this declaration as of April 2019. DHA did not retain records for the completion of declarations for the 13 Senior Executive Service officers employed. In March 2020, DHA advised that it had improved the completion rate for conflict of interest declarations by staff across all classifications except DHA Level 5.

18. A 2019 DHA internal audit identified weaknesses in the governance framework for delegations and a risk that powers of attorney were not being used in accordance with their legal basis. DHA has advised the ANAO that it is reforming the delegations framework and the use of powers of attorney.

19. DHA management assures itself that its property and land acquisition processes provide value for money by having independent valuations conducted for each land or property purchase, completing due diligence checks prior to committing to purchase, and having higher value purchases approved by senior staff. In terms of the valuations obtained, prices paid for:

- five of the seven property transactions examined by the ANAO were equal to or less than the valuation estimate; and
- thirteen of the 18 retail acquisitions examined by the ANAO were below the valuation estimate and equal to the valuation estimate in five cases.

## Effectiveness of service delivery

20. DHA has measures of effectiveness in place to assess its provision of housing for members of the Defence Force and their families. Although a major reason for creating DHA was to improve the standard of Defence housing so as to address low ADF member retention rates, there has been no work done to assess the effect of DHA's services on retention rates.

21. Internal reporting indicates that DHA delivers the services required under its service agreements with Defence, consistent with its main function under the DHA Act. This performance is reported and monitored regularly.

22. DHA has paid nearly \$2 billion in dividends to the Commonwealth over the last two decades. DHA paid over half of this (\$1.1 billion) before 2004–05 as special dividends. Since then, the mean dividend payment has been about \$44.2 million. In the last few years, profitability of the enterprise and hence, dividends have been declining. In 2018–19, DHA paid a dividend of \$24.5 million.

## Efficiency of service delivery

23. DHA has three measures to assess its performance in terms of business efficiency, as required by the GBE Guidelines, and it reports publicly on these. One of these measures, return on capital employed, has fallen each year since 2015–16.

24. DHA has not developed a performance measure of its operating efficiency and cannot report on how much it costs on average to produce the services it delivers to Defence. DHA advised the ANAO that it has recently developed a model to identify and allocate corporate costs across its business activities.

25. DHA data indicates that it has controlled its operating expenditure since 2015–16. DHA has not yet made the savings identified by its Project Symphony in late 2018 but has developed savings initiatives to be implemented over the next 18 months as part of a revised business model agreed by shareholder ministers in December 2019.

26. DHA has not benchmarked its internal processes by direct comparison with other organisations providing comparable services. However, it has undertaken regular comparative analyses of the property management fees that it charges to its sale and leaseback investors, which were found to be higher than industry standards. It has also examined its customer service standards and reported high performance. In 2012, DHA analysed the costs of DHA Service Residences compared with the use of Rent Allowance. This study indicated that Defence received better value from Service Residences. This work has not been updated.

## Governance and management of entity-level risks

27. DHA has developed a new business model that will involve reducing planned acquisitions and developments and increasing the number of leases from the market to align with DHA's operational requirements. The new model, which will take 18 months to implement, was finalised some four years after DHA had been warned that its former business model was not sustainable, and after the DHA Board had received a specific request and deadline from ministers.
28. The DHA accountable authority – the DHA Board – has not issued accountable authority instructions (AAIs) or similar under the PGPA Act. With one exception, there is no evidence that key DHA policies have been endorsed by or issued with the authority of the Board.
29. The DHA Board was advised over a decade ago (2008) of a risk of DHA exceeding its statutory powers in developing land, particularly where the greater proportion is intended for sale and not for housing ADF members. The Board has not acted to control this risk and has not ensured that DHA has operated only within its authority. As a statutory body with specific powers conferred by the Parliament, it is necessary that DHA maintain a focus on operating within the limits of its enabling legislation and Commonwealth power. DHA advised the ANAO in August 2019 that it had not informed responsible ministers of the advice about these legal issues.
30. DHA received legal advice in 2013 that, under the DHA Act, it can maintain civilian tenancies properly only in narrow circumstances for short-term vacancies. A legal risk arises as DHA maintains some civilian tenancies in circumstances which it identifies as permanent.
31. DHA was unable to provide evidence that the DHA Board had endorsed a long-standing DHA policy of providing a discount to ADF members who purchase a residence from DHA under its sale and leaseback arrangement. The application of this policy cost DHA \$1.5 million (over 13 years). Defence was unaware of the policy. DHA advised the ANAO that DHA management had decided in September 2019 to discontinue the policy and had revised DHA's incentives approval policy. These changes had been noted by the Board.
32. In 2016 DHA identified that, in a number of state and territory jurisdictions, its standard lease agreement with sale and lease back investors was not in the form prescribed by legislation in those jurisdictions. As of late 2019, efforts to resolve these issues were underway but not yet complete. There is no evidence that, subsequent to the matter being drawn to its attention, the DHA Board sought assurance from management regarding compliance with state and territory residential tenancy legislation, or considered the risks of non-compliance.

## Recommendations

### Recommendation no.1

#### Paragraph 2.22

DHA and Defence align Defence requirements for housing philanthropic organisations assisting the ADF, and foreign exchange and visiting military personnel, with the DHA Act.

**Defence Housing Australia response:** *Agreed.*

**Department of Defence response:** *Agreed.*



**Recommendation  
no.2**

**Paragraph 2.45**

DHA and Defence agree key performance indicators that relate to and support the measurement of performance against all the objectives of the service agreements.

**Defence Housing Australia response:** *Agreed.*

**Department of Defence response:** *Agreed.*

**Recommendation  
no.3**

**Paragraph 5.34**

DHA, with Defence, update its 2012 study on the comparative costs to DHA, Defence and ADF members of provision of a Service Residence and use of Rent Allowance.

**Defence Housing Australia response:** *Agreed.*

**Department of Defence response:** *Agreed.*

**Recommendation  
no.4**

**Paragraph 6.44**

DHA follow the procedural advice it has received on decision-making on land development proposals and civilian tenancy to ensure that its activities remain within its statutory powers and within Commonwealth constitutional power, and record its deliberations on such decisions.

**Defence Housing Australia response:** *Agreed.*

## Summary of entity responses

33. DHA and Defence's summary responses are provided below. A summary response was not provided by the Department of Finance. Full responses from DHA, Defence and Finance can be found at Appendix 1.

### Defence Housing Australia

Defence Housing Australia (DHA) welcomes the ANAO's audit report into the Management of Defence Housing Australia.

As DHA's Accountable Authority, the Board agrees with the four recommendations of the report and is committed to their implementation. The Board is pleased to advise steps have already been taken to address the recommendations and findings in the report.

DHA understands there are opportunities for improvement in some governance arrangements.

### Department of Defence

Defence acknowledges the findings contained in the audit report on the Management of Defence Housing Australia (DHA) and agrees to the recommendations.

Defence agrees that DHA has been largely effective in the delivery of services provided under the DHA Act, whilst also returning a financial dividend to the Commonwealth.

Defence research undertaken by the Directorate of People Intelligence and Research continues to identify 'family and home benefits' as one of the top five elements of its 'Employment Package.' Accordingly, Defence will continue to work with DHA to ensure it continues to provide adequate and suitable housing for and housing related services to Defence Force members and their families.

While Defence is satisfied that the current Key Performance Indicators (KPIs) in the Service Agreement and Members Choice Accommodation Agreement allow DHA's service delivery to be effectively monitored and financially controlled, it recognises the need to regularly review these KPIs to ensure they remain contemporary and relevant.

## Key messages from this audit for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit that may be relevant for the operations of other Australian Government entities.

### Contract management

- Entities whose function is set out in legislation need to ensure, when making an agreement for the provision of services under that legislation to particular groups, that servicing those groups is included in the scope of their enabling legislation.

### Performance measurement

- Where an entity agrees a set of objectives in a contract involving the execution of its main function, it should seek to measure and record its performance against those objectives. In particular, it would be useful for an entity to assess its own operating efficiency (cost/unit of output) and, where practicable, benchmark its processes against comparable functions carried out by other organisations.

### Procurement

- Entities involved in procurement should implement processes that provide assurance of a high degree of staff adherence to conflict-of-interest policy and procedure and should ensure that financial delegations and related powers are in good order and complied with.

### Governance

- An accountable authority needs to pay careful attention to the scope and limits of the powers provided under the legislation that governs their entity's activities, including any risk that their activities may take the entity outside the constitutional limits to Commonwealth power. This should be a key focus of the accountable authority.

# Bilateral Agreement Arrangements Between Services Australia and Other Entities

**Type:** Performance audit

**Report number:** 30 of 2019-20

**Portfolios:** Across Entities

**Entities:** Across Entities

**Date tabled:** 2 April 2020

## Background

1. On 1 February 2020, Services Australia was established as an Executive Agency within the Social Services portfolio with responsibility for: the design, development, delivery, co-ordination and monitoring of government services and payments relating to social security, child support, students, families, aged care and health programs (excluding Health provider compliance). It also provides the Australian Government with advice on the delivery of government services and payments; and collaborates with other agencies, providers and businesses to deliver convenient, accessible and efficient services to individuals, families and communities.
2. In 2018–19 Services Australia's total income was \$4.8 billion, of which \$4.5 billion was Budget appropriation and \$277.5 million was from own source revenue and gains, primarily funded through cost recovery arrangements with other Australian Government entities under section 74 of the *Public Governance, Performance and Accountability Act 2013*.
3. Services Australia delivers services across four areas: delivery of payments and services on behalf of another entity (such as income support payments); delivery of services to another entity (for example, corporate shared services such as payroll or ICT); provision of shared premises arrangements; and exchange of data or information.
4. Services Australia delivers payments and services to and on behalf of 34 Australian Government entities. These services are underpinned by bilateral agreements between Services Australia and each entity.
5. To provide coverage of the four types of services delivered by Services Australia, three other entities were included in this audit: the Department of Veterans' Affairs (DVA), the Department of Agriculture, Water and the Environment (Agriculture), and the National Disability Insurance Agency (NDIA). Collectively, these entities represent all four types of services that Services Australia either delivers on behalf of other entities or provides to entities.

## Rationale for undertaking the audit

6. Services Australia is responsible for whole of government service delivery policy, ICT and ICT procurement policy and is expanding service delivery for other entities, particularly shared services and ICT. An audit of Services Australia's bilateral agreements provides a baseline for the effectiveness of existing arrangements and identifies areas for improvement at a time when Services Australia is reviewing its bilateral arrangements with other Australian Government entities.

## Audit objective and criteria

7. The audit objective was to examine the effectiveness of bilateral agreement arrangements between Services Australia and other entities. To form a conclusion against the audit objective, the ANAO adopted the following high level criteria:

- Were the bilateral agreements effective in supporting the delivery of the payment or service objectives?
- Were effective arrangements in place to support the successful implementation of payments and services under bilateral agreements?

## Conclusion

8. The bilateral agreement arrangements between Services Australia and Agriculture, DVA and NDIA are largely effective.

9. Services Australia's Bilateral Agreements Framework underpins a wide range of bilateral agreements that effectively support the delivery of payments and services, except for some agreements that did not include appropriate risk statements or review points.

10. Partly effective arrangements were in place to support the delivery of payments and services under the bilateral arrangements between Services Australia and the three entities. Approaches for managing bilateral arrangements across the entities were largely effective, including for recovering costs. In managing agreements, some improvements are required in risk management, specifying roles and responsibilities, and issues escalation and resolution. There was limited effectiveness in performance monitoring and reporting arrangements between Services Australia and the three entities, with missing service levels, inconsistent reporting and a lack of analysis of performance reports by the three entities receiving services.

## Supporting findings

### Services Australia's bilateral agreements

11. Services Australia's Bilateral Agreement Framework and associated templates and guidance, supports the effective implementation and management of its bilateral agreements. The branch that oversees the Framework provides advice and support to business areas on developing and implementing bilateral agreements, and undertakes regular status reporting to the Services Australia executive on the agreements under the Framework.

12. The bilateral agreements largely contain the elements expected to be in agreements of this nature. A statement on how the parties will manage risk was not included in 19 of the 64 agreements examined (30 per cent), and eight agreements (13 per cent) did not contain a review clause.

13. Most of the bilateral agreements examined contained appropriate performance measures or service levels. The service levels were largely specific, affordable, relevant and time-based, however there is an opportunity for the entities to ensure service levels are measurable by including targets against all service levels. In addition, eight of 26 sets of measures reviewed were not complete as they did not cover issues such as accuracy or integrity, or cover all services delivered.

## Bilateral agreement management

14. Approaches for managing bilateral arrangements between Services Australia and other entities were effective with Agriculture, and partially effective with DVA and the NDIA. Only four of the 13 bilateral agreement documents reviewed for the three entities contained all 11 elements expected in a bilateral agreement with the main exceptions in risk management, performance measures, and roles and responsibilities. The entities had effective management and oversight of bilateral arrangements through governance committees, and some risk management plans linked to broader departmental processes. Issues escalation/dispute resolution processes and practices were in place for the bilateral arrangements, with varying levels of effectiveness across the four entities. Particular opportunities for improvement included:

- for the NDIA arrangement: strengthening issues escalation processes and practices; strengthening risk plans to comprehensively cover bilateral arrangements; and, when updating the bilateral agreements, more fully addressing risk management, issues escalation, performance measures, and roles and responsibilities;
- for the DVA arrangement, a stronger focus on managing risk by Services Australia and DVA, and inclusion of review, roles and responsibilities, performance measures and risk management, across five of the six agreement documents; and
- Agriculture implementing a risk management plan that addresses its risks in overseeing the Farm Household Allowance.

15. Effective performance monitoring and reporting arrangements are not consistently in place between Services Australia and Agriculture, DVA and the NDIA for the bilateral agreements:

- Agriculture and Services Australia have a set performance measures in place but Services Australia does not consistently report on these measures and Agriculture does not undertake any analysis of the reporting.
- Not all services delivered by Services Australia for DVA and the NDIA have performance measures in place, and not all of those measures in place are reported on by Services Australia. DVA and the NDIA do not undertake any analysis of that reporting.

16. Services Australia's cost recovery processes are largely effective and accurate, however value for money was not able to be demonstrated due to limited information on costing calculations. DVA has appropriate processes in place to provide assurance that charges are accurate, however the NDIA provided limited evidence to support a robust assurance process for invoices received from Services Australia.

## Recommendations

17. The audit makes three recommendations – all directed at Services Australia and two also at the other three audited entities.

# Recommendations

## Recommendation no.1

Services Australia works with other Australian Government partner entities to ensure that bilateral agreements include:

### Paragraph 2.43

- a. statements committing to cooperatively communicating and managing risks associated with the delivery of the program or service;
- b. agreement review clauses with clear timeframes; and
- c. effective performance measures and reporting mechanisms.

Services Australia response: *Agreed.*

Department of Agriculture, Water and the Environment response: *Noted.*

Department of Veterans' Affairs response: *Agreed.*

National Disability Insurance Agency response: *Agreed.*

## Recommendation no.2

In bilateral agreement arrangements between Services Australia and Agriculture, DVA and the NDIA, each entity develops more robust approaches to risk planning and management within the bilateral agreement arrangements, including:

### Paragraph 3.48

- a. implementing relevant risk management plans;
- b. regularly discussing and reporting on risk at governance forums; and
- c. developing strategies to identify shared risks and how these will be managed.

Services Australia response: *Agreed.*

Department of Agriculture, Water and the Environment response: *Agreed.*

Department of Veterans' Affairs response: *Agreed.*

National Disability Insurance Agency response: *Agreed.*

**Recommendation  
no.3****Paragraph 3.105**

In bilateral agreement arrangements between Services Australia and Agriculture, DVA and the NDIA, each entity ensures that appropriate performance measures (service levels) are:

- a. incorporated into services schedules where required;
- b. accurately and regularly reported against;
- c. regularly discussed at governance forums; and
- d. analysed and verified by the entities on a regular basis.

**Services Australia response:** *Agreed.*

**Department of Agriculture, Water and the Environment response:** *Agreed.*

**Department of Veterans' Affairs response:** *Agreed.*

**National Disability Insurance Agency response:** *Agreed.*

## Summary of entities' responses

### Services Australia

Services Australia welcomes this report and the ANAO's finding that the bilateral agreement arrangements between Services Australia and the Department of Agriculture, Water and the Environment, the Department of Veterans' Affairs and the National Disability Insurance Agency are largely effective.

The ANAO's report will inform the agency's approach to collaboration with Australian Government partner entities. The agency notes it will continue to transform its service delivery model, placing the customer at the centre of service delivery, which will have the potential to impact how it engages with partner entities. This will include reviewing its approach to governance arrangements and agreements with partner entities.

### Department of Agriculture, Water and the Environment

The department welcomes the audit report, and acknowledges the ANAO's overall findings and recommendations.

The report places appropriate importance on the need for timely and robust data and for strengthening risk management processes for the Farm Household Allowance (FHA) program. The department considers the recommendations will foster improvements in these areas.

The department will continue working closely with Services Australia to effectively manage the delivery of FHA, with a sound approach to assessing whether FHA is continuing to meet its policy objectives.

## Department of Veterans' Affairs

The Department of Veterans' Affairs (DVA) notes the outcome of the audit and thanks the Australian National Audit Office for the opportunity to participate. The outcome of this audit will be of interest to DVA as it will be to other entities under this shared services arrangement.

## National Disability Insurance Agency

The NDIA agrees with the recommendations made in the Australian National Audit Office (ANAO) Audit Report on *Bilateral Agreement Arrangements between Services Australia and Other Entities*.

The NDIA is committed to further improving services delivered to participants, recognising the need for this to be cost effective. To that end, the NDIA will work with Services Australia to implement Whole of Government transformation initiatives, such as the Shared Services Program, for the benefit of participants.

In addition, the NDIA is currently reviewing its Memorandum of Understanding and Services Schedules with Services Australia. The renegotiation of these documents provides the opportunity for an increased focus on risk management, improved service delivery and greater cost transparency.

## Key messages from this audit for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

### Accountability in bilateral agreement arrangements

- Bilateral relationships in a service delivery context must be fit-for-purpose and reflect the type of arrangement, for example purchaser-provider or partnership. To ensure the effective discharge of respective accountabilities, roles and responsibilities must be clearly defined, risks understood and addressed, and reporting frameworks in place that reflect the type of relationship.

### Purchaser-provider arrangements

- The providing entity is responsible for delivering services to the agreed expectations and service levels set out in the bilateral agreement, and should demonstrate value for money for the services provided to the other entity. The purchasing entity should actively monitor the services provided to ensure they are meeting the agreed requirements and expectations, including costs.
- Reporting arrangements should reflect these respective responsibilities. The purchasing entity should negotiate clear and reportable performance measures, supported by timely, relevant and accurate data, and regular analysis of performance including assurance of reporting accuracy by the entity receiving the services.
- The purchasing entity should be aware of the provider entity's service delivery risks, and potential impact on meeting service levels, to mitigate risks to achieving broader program objectives.



## Appropriated partnership arrangements

- One entity is accountable to a particular minister or the Australian Government for delivering services and for prioritising that service delivery within its funding budget. The other entity has policy responsibility for the program, so the bilateral agreement must enable effective oversight of the services being delivered by the other entity.
- Reporting arrangements should reflect these respective responsibilities. Both entities should implement clear and reportable performance measures, supported by timely, relevant and accurate data, and regular analysis of performance as discussed above.
- While risks are common or shared, the two entities can have different risk tolerances and organisational priorities. Through the bilateral agreement arrangements, the entities should be aware of each other's risk tolerance and approaches, and manage instances where the tolerances and priorities significantly differ – which may require direction from government.

# Regulation of Charities by the Australian Charities and Not-for-profits Commission

**Type:** Performance audit

**Report number:** 29 of 2019-20

**Portfolios:** Australian Taxation Office

**Entities:** Australian Charities and Not-for-profits Commission; Australian Taxation Office

**Date tabled:** 31 March 2020

## Background

1. The Australian Charities and Not-for-profits Commission (ACNC) is the principal regulator of charities at the Commonwealth level. The ACNC was established in December 2012 under the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act). Its establishment followed a series of reviews and inquiries into the not-for-profit (NFP) sector since the mid-1990s.
2. The benefits expected from establishing a national regulator and reforming the regulatory framework for the NFP sector are reflected in the three objects of the ACNC Act, which are to:
  - maintain, protect and enhance public trust and confidence in the Australian NFP sector;
  - support and sustain a robust, vibrant, independent and innovative Australian NFP sector; and
  - promote the reduction of unnecessary regulatory obligations on the Australian NFP sector.
3. The ACNC Act provides for the ACNC to regulate registered charities only (some 57,600 as of 3 February 2020), not the wider NFP sector.
4. The ACNC's regulatory activities include: registering charities; maintaining a public register of charities; providing advice and assistance to charities; undertaking monitoring, compliance and enforcement activities; and working with Commonwealth entities and other jurisdictions to reduce the regulatory burden on charities.
5. The ACNC Commissioner is responsible for administering the ACNC Act, and is supported by staff made available by the Commissioner of Taxation (who is the accountable authority of the ACNC). The ACNC is funded from the ATO's departmental appropriations, and had a budget of \$16.2 million in 2018–19. As at 30 June 2019, the ACNC had 95 full-time equivalent staff.

## Rationale for undertaking the audit

6. In Australia, governments, business and the public provide significant funding and other support to charities to help them deliver their charitable purposes. This audit was undertaken to provide assurance on whether the ACNC is regulating registered charities effectively, including for the benefit of recipients, donors and the wider community.

## Audit objective and criteria

7. The audit objective was to assess the effectiveness of the ACNC's regulation of charities. The three high-level criteria were:

- Has the ACNC been effective in registering charities and maintaining the Charity Register?
- Has the ACNC been effective in supporting charities to meet their ongoing compliance obligations?
- Has the ACNC been effective in strengthening the sector and reducing the regulatory burden on charities?

## Conclusion

8. The ACNC has been largely effective in delivering its regulatory responsibilities for registered charities.

9. The ACNC has been largely effective in registering charities and partially effective in maintaining the Charity Register. The ACNC has processed applications in a timely manner, but should better document assessment processes under its 'light touch' approach to registration. The ACNC has commenced a project to improve the usefulness of the information on the Charity Register, and should conduct additional checks on the integrity of that information.

10. The ACNC has been largely effective in supporting charities to meet their ongoing compliance obligations, particularly by providing guidance and monitoring charities' compliance. It has been less effective in addressing non-compliance. Improvements to the ACNC's compliance processes and measurement of outcomes would better support the objective of maintaining, protecting and enhancing public trust and confidence in the charities sector.

11. Within its remit and authority, the ACNC has been largely effective in promoting the reduction of unnecessary regulatory obligations on registered charities, but was less able to demonstrate its effectiveness in supporting and sustaining a robust, vibrant, independent and innovative not-for-profit sector.

## Supporting findings

### Registering charities and maintaining the Charity Register

12. The ACNC's registration processes have been designed on the basis of largely negative assurance – that is, to rely on information and assertions provided by an applicant of compliance with registration requirements, including the five Governance Standards, unless there is evidence to the contrary. The ACNC supports this approach by making a range of guidance material available to potential applicants. Some of the procedural checks that the ACNC requires on applicants' information and assertions were not well-documented. The ACNC should verify whether its 'light touch' approach to registration is appropriate.

13. The ACNC processed the vast majority of registration applications received in 2017–18 and 2018–19 well within its published service standard of 15 business days. Applications that took longer than 15 business days were not characterised by any particular complexity.

14. The ACNC has been partially effective in maintaining the Charity Register. While business-as-usual processes are in place to maintain important aspects of the Register, the ACNC has identified a number of outstanding data integrity and quality assurance issues that impact on the reliability and completeness of some information. A project to make the Register a more valuable resource for users is also underway – known as the ‘Charity Marketplace’.

## Supporting ongoing compliance by charities

15. Consistent with the main focus of its Regulatory Approach Statement, the ACNC has been largely effective in assisting charities to understand and meet their ongoing compliance obligations. The ACNC has well-established arrangements for providing guidance and support to charities. It also has regular processes for prompting and encouraging charity compliance, although in 2018–19 the number of registered charities that lodged their Annual Information Statement on time (70 per cent) fell short of the ACNC’s performance target (75 per cent).

16. The ACNC has been largely effective in monitoring charities’ compliance in accordance with its stated regulatory approach, but less effective in undertaking risk-based compliance and enforcement activities. The ACNC relies mainly on external parties to identify compliance concerns, and is improving its arrangements for allocating available resources to identified compliance priorities. Complexity in determining whether charities are ‘federally regulated entities’ has limited the ACNC’s use of enforcement powers and reporting of enforcement results for deterrence purposes.

17. Current performance information does not provide a clear indication on whether the ACNC has been effective in maintaining, protecting and enhancing public trust and confidence in the charities sector. The ACNC has discontinued its most direct means of measuring public trust and confidence – a biennial survey.

## Strengthening the sector and reducing the regulatory burden on charities

18. In late 2018, the ACNC initiated a project to interpret the intent of the second object of the ACNC Act. The ACNC has undertaken a number of activities focussed on promoting good governance practices and providing data to the sector, which may have assisted in supporting and sustaining a robust, vibrant, independent and innovative sector.

19. The ACNC has been active in promoting the reduction of unnecessary regulatory obligations on the charities sector. A number of specific initiatives have been introduced, especially to harmonise or streamline charities’ reporting arrangements – including through a data exchange tool called the ‘Charity Passport’. Further and ongoing benefits to charities requires the participation of other Commonwealth entities and jurisdictions.

20. The ACNC has not produced complete and relevant performance information to indicate the extent to which it has been effective in supporting and sustaining a robust, vibrant, independent and innovative not-for-profit sector. Performance information on the objective of promoting the reduction of unnecessary regulatory obligations on charities is more relevant and complete – and is largely positive.

# Recommendations

## Recommendation no.1

### Paragraph 2.30

The Australian Charities and Not-for-profits Commission strengthens its processes for assessing applications for charity registration by:

- a. Ensuring that the application form seeks appropriate information on which to assess compliance with legislative requirements.
- b. Revising its risk management framework for registration applications to identify whether additional documentation or evidence should be sought from applicants on a risk basis.
- c. Ensuring that all required procedural checks are clearly documented and able to be evidenced in its case management system or records.
- d. Amending its main decision-making form to make explicit reference to whether all legislative requirements for registration have been met.
- e. Verifying whether its 'light touch' approach to registration is appropriate.

**Australian Charities and Not-for-profits Commission response:** *Agreed.*

**Australian Taxation Office response:** *Noted.*

## Recommendation no.2

### Paragraph 2.58

The Australian Charities and Not-for-profits Commission investigates feasible and cost-effective approaches to improving the integrity of the information on the Charity Register, including, as appropriate, automating as many of the outstanding data integrity tasks as possible through its existing processes and systems.

**Australian Charities and Not-for-profits Commission response:** *Agreed.*

**Australian Taxation Office response:** *Noted.*

**Recommendation  
no.3**

**Paragraph 3.56**

To better support the objective of maintaining public trust and confidence in the charities sector, the Australian Charities and Not-for-profits Commission enhances its compliance framework and operational practices by:

- a. Using its processes for monitoring the annual information provided by charities to support its assessment that charities are complying with the Governance Standards.
- b. Adopting a more proactive approach to identifying charity compliance risk, including drawing more extensively on data collected annually from charities.
- c. Better aligning available resources to identified risks, such that higher risk cases are investigated or otherwise resolved in a timely way.
- d. Ensuring that available regulatory powers are used to address identified non-compliance, including by determining more consistently whether the enforcement powers apply in relevant cases.

**Australian Charities and Not-for-profits Commission response:** *Agreed.*

**Australian Taxation Office response:** *Noted.*

**Recommendation  
no.4**

**Paragraph 3.75**

The Australian Charities and Not-for-profits Commission amends its current set of performance indicators relating to the first object of the ACNC Act, with a focus on more directly measuring the impact of its regulatory activities on levels of public trust and confidence in the charities sector.

**Australian Charities and Not-for-profits Commission response:** *Agreed.*

**Australian Taxation Office response:** *Noted.*

## Summary of entity responses

21. The ACNC's and ATO's summary responses are provided below, while their full responses are reproduced at Appendix 1.

### Australian Charities and Not-for-profits Commission

The ACNC welcomes the audit report, which identifies that the ACNC is largely effective in delivering its regulatory responsibilities for registered charities. To a significant extent, this reflects our own assessment of areas that require improvement and, in many instances, are already underway.

It is timely that seven years after the establishment of the ACNC, we review our approach to regulation to verify whether it remains fit-for-purpose. The audit recommendations will assist the ACNC to focus this work and ensure our settings with regards to risk, entitlement to ongoing charity registration, data management, and unnecessary regulatory burden are appropriate. They will also assist us in ensuring that resources are allocated to their best effect to deliver effective and efficient regulation that demonstrably supports public trust and confidence in the charities sector.

The ACNC agrees with the four recommendations contained in the report. We will undertake to complete a review and address the recommendations during 2020–2021 with a view to complete implementation of the recommendations in 2021–22.

## Australian Taxation Office

The ATO welcomes this review and considers the report supportive of our overall approach to providing the government and the community with assurance that charities are operating for purpose and correctly accessing Commonwealth tax concessions.

The review recognises the important role the ACNC has in registering and regulating charities. The report makes recommendations for a robust registration process and an enhanced compliance framework that monitors adherence to governance standards and identifies risk. In addition, the report recommends investigating approaches to improving the integrity of data on the charity register. These processes provide the ATO with greater assurance that charities are correctly accessing concessions and operating for purpose.

The ATO notes the four recommendations contained in the report.

# Case Management by the Office of the Commonwealth Director of Public Prosecutions

**Type:** Performance audit

**Report number:** 28 of 2019-20

**Portfolios:** Attorney-General's

**Entities:** Office of the Commonwealth Director of Public Prosecutions

**Date tabled:** 30 March 2020

## Background

1. The Office of the Commonwealth Director of Public Prosecutions (CDPP) was established on 5 March 1984 by the *Director of Public Prosecutions Act 1983*. The CDPP provides a prosecution service for alleged offences against the laws of the Commonwealth. Crimes prosecuted range from tax and social security fraud to money laundering, organised crime, terrorism and espionage. Evidence of an alleged crime is compiled in a brief of evidence and referred to the CDPP by investigative agencies. In 2018–19, 46 Commonwealth and 16 state and territory agencies referred briefs to the CDPP.
2. The day-to-day work of the CDPP includes providing pre-brief advice to agencies, assessing the briefs that they provide, and prosecuting offences in state and territory courts.
3. Of the 2,579 referrals made to the CDPP in 2018–19, 49 per cent were 'brief assessment' referrals. In a brief assessment referral, the CDPP reviews the evidence provided by the investigative agency and determines whether charges should be laid. An additional 29 per cent were 'arrest' referrals. An arrest referral occurs when an investigative agency with arrest powers – for example, the Australian Federal Police – has already charged the defendant. The balance of referrals includes requests for pre-brief advice, breaches, extradition matters, matters referred post-committal and some appeals. Upon receipt, referrals are classified by the CDPP as complexity one to four, with four representing the most complex matters.
4. The *Prosecution Policy of the Commonwealth* is the overarching policy guiding the CDPP's prosecution service, including the decision to proceed with a prosecution in 'brief assessment' matters or to maintain the charges in 'arrest' matters. Once a *prima facie* case has been established, a decision needs to be made by the CDPP as to whether there is a reasonable prospect of conviction. Evidence must be admissible, substantial and reliable. Prosecutors must also consider whether a prosecution would be in the public interest. Of 1,263 brief assessment referrals finalised by the CDPP in 2018–19, a decision to proceed with a prosecution occurred in 82 per cent of referrals.



## Rationale for undertaking the audit

5. The efficiency of the criminal justice system is a matter of public interest. Lengthy court processes can adversely affect witnesses and victims, along with other participants in prosecutions. Efficient and effective Commonwealth prosecution activities increase the likelihood of deterring potential offences against Commonwealth law and regulations, support Commonwealth regulators in enforcing compliance and are essential in maintaining respect for Commonwealth law. How prosecution services are organised; how the decision to prosecute is made; the nature of the relationship between prosecutors and investigative agencies; and the way prosecutors operate within the court system, influence overall efficiency.

6. Undertaking an audit of the case management efficiency of the CDPP also addresses Parliamentary interest. The topic was included in the Joint Committee of Public Accounts and Audit's list of audit priorities for 2018–19, with a request that the audit include prosecutions by the CDPP of corporate crimes, with a specific focus on matters referred to the CDPP by the Australian Securities and Investments Commission.

## Audit objective and criteria

7. The audit objective is to examine the efficiency of the CDPP's case management. The audit is focused on the pre-brief and brief assessment phases of the CDPP's work and examines the extent to which the CDPP uses its resources efficiently in evaluating referred matters.

8. To form a conclusion against the audit objective, the following high-level criteria were adopted:

- Does the CDPP have arrangements to support the efficient assessment of referred briefs?
- Does existing performance data indicate that the CDPP assesses briefs efficiently?
- Is the CDPP effectively monitoring and reporting on its case management performance?

## Conclusion

9. Based on the available data, the efficiency of the CDPP's brief assessment is declining. The increasing average cost of outputs, flowing from a reduction in referrals, has not been fully offset by improvements in quality and timeliness.

10. The CDPP has established key elements to support the efficient assessment of briefs. Governance structures are appropriate and investigative agency engagement largely supports the objective of improving brief quality. Case management systems and digital processes are developing and operational guidelines are extensive. While the average timeframe for the completion of assessments is 78 days, which is consistent with the CDPP's target, there are inefficiencies in the administration of key activities within the assessment workflow. Management reporting does not provide sufficient visibility over key drivers in efficient brief assessment practice.

11. Analysis of available efficiency-related performance data indicates that, in the period 2014–15 to 2018–19, the CDPP's average number of brief assessment referrals processed per prosecutor decreased. The average cost per output (brief assessment and other types of referrals) increased. However, the average time taken to assess briefs markedly improved over the same period, and on average investigative agencies are more satisfied.

12. The CDPP is partly effective in monitoring and reporting on case management performance. Most of the requisite data is collected, but key efficiency drivers and the average cost of outputs are not sufficiently monitored. An 85 per cent within 90 days brief assessment service standard is embedded in practice and monitored, but the target does not drive timeliness across the full spectrum of brief complexity. The annual performance reporting framework provides a partial representation of how well the CDPP is achieving its purpose.

## Supporting findings

### Arrangements to support the efficient assessment of briefs

13. The CDPP has an appropriate governance structure. Governance frameworks include clear accountabilities, processes for oversight, delegated decision-making and systems for risk management. For 2019–20, the CDPP established budgets at the practice group level for key expense items.

14. The CDPP's processes for engagement with investigative agencies largely support the efficient assessment of briefs upon referral. Agency engagement is a core focus of strategic planning and case management practice, and systems and tools have been developed for this purpose. Stakeholder satisfaction with CDPP engagement is improving, on average. In practice, the nature and extent of liaison activities vary between investigative agencies and there is no overarching engagement strategy.

15. The CDPP has systems which can support the efficient assessment of briefs. Case management systems are developing and embed decision-making workflows. Digital practices and associated systems have been established to encourage the submission of e-briefs, which facilitate efficient case management and evidence analysis. A management reporting system enables analysis of brief assessment volumes and statistics.

16. The CDPP's operational policies and procedures are designed to support the efficient assessment of briefs. The CDPP has a large volume of operational guidelines and policies to support brief assessments and prosecutions. The CDPP is rationalising and digitising these materials, and some are embedded in the case management system, caseHQ.

17. The CDPP's operational practices partly support the efficient assessment of briefs. The average timeframe for the completion of assessments is 78 days. Although this is consistent with the CDPP's target of 85 per cent completed within 90 days, there are inefficiencies in relation to the assignment of briefs to branches and work groups; lack of initial triage for early identification of critical deficiencies in evidence that may prevent or delay a timely assessment; inconsistent follow-up with investigative agencies after the issuing of requisitions for additional evidence; and inconsistent records management practices. Management reporting does not allow supervisors to fully monitor and act on deficiencies in brief assessment practice in order to ensure efficiency in these areas.

## Performance analysis of brief assessment efficiency

18. Analysis of available performance data indicates that the average cost of a brief assessment has increased, noting that timeliness and stakeholder satisfaction have improved. The volume of brief assessments and other referrals processed by the CDPP decreased in the five years to 2018–19 due to a decline in referrals. Annual agency level expenses are unchanged. The average complexity of matters referred to the CDPP has increased, however, after weighting for complexity there is a decline in the average number of brief assessments referred per prosecutor employed. In the same five-year period, there were efforts to reduce backlog and timeliness in brief assessment improved. Investigative agency feedback reflects higher satisfaction levels.

## Performance monitoring and reporting

19. The CDPP routinely collects some efficiency data, but can improve its monitoring and use of this information in order to drive improvement. Data on efficiency drivers, such as brief quality and assessment outcomes, is collected but not monitored. A funding model could calculate average costs, but such analysis is not done. Efficiency benefits such as brief assessment timeliness, backlog and stakeholder satisfaction are monitored. The 85 per cent within 90 days brief assessment service standard is embedded in brief assessment practice and has effectively driven behaviour for complexity two and three matters, however the usefulness of the service standard is reduced by its inappropriateness for complexity one and four matters, lack of awareness among investigative agencies, and lack of diagnosis of delay.

20. The performance framework established by the CDPP is partly effective. The three annual performance measures are relevant, but there are weaknesses in reliability. The measures provide a partly complete representation of the extent to which the CDPP is achieving its purpose as there are no qualitative, long-term or efficiency measures.

## Recommendations

### Recommendation no.1

#### Paragraph 2.79

The CDPP revise management dashboard reporting to ensure that supervisors can readily access key efficiency-related information, including case officer activities during triage and suspension periods, actions taken to encourage early resolution, and time recording compliance.

**Office of the Commonwealth Director of Public Prosecutions response:**  
*Agreed.*

### Recommendation no.2

#### Paragraph 4.20

The CDPP establish a process to utilise existing data to monitor case management efficiency in terms of the average cost involved in processing referrals, including in conducting brief assessments and prosecutions.

**Office of the Commonwealth Director of Public Prosecutions response:**  
*Agreed.*

**Recommendation  
no.3**

**Paragraph 4.36**

The CDPP establish appropriate timeliness targets for each brief complexity category, formally communicate these to investigative agencies, and detail the results and methodology in the annual report.

**Office of the Commonwealth Director of Public Prosecutions response:**  
*Agreed.*

**Recommendation  
no.4**

**Paragraph 4.56**

The CDPP improve the reliability and completeness of performance criteria presented in its corporate plan and annual performance statements by establishing:

- a. a process to provide assurance that prosecutors are adhering to the Prosecution Policy of the Commonwealth when assessing briefs and conducting prosecutions;
- b. a consistent, robust and transparent methodology for the surveying of investigative agency satisfaction; and
- c. a case management efficiency criterion in the annual performance statement.

**Office of the Commonwealth Director of Public Prosecutions response:**  
*Agreed.*

## Summary of entity response

21. The Office of the Commonwealth Director of Public Prosecution's summary response to the report is provided below, and its full response is at Appendix 1.

The CDPP is proud of the work undertaken by its staff in the last 5 years in delivering a timely and high quality prosecution service to the Australian community in a rapidly evolving law enforcement and national security landscape.

The CDPP welcomes and agrees with the ANAO's recommendations but does not agree with its finding and conclusion that the efficiency of the CDPP's brief assessment referral practice is declining. The Report's conclusion is based on the CDPP receiving fewer brief assessment referrals than 5 years ago, the CDPP's expenses remaining at a similar level and with similar numbers of prosecutors employed. The Report fails to sufficiently recognise qualitative and quantitative improvements in the CDPP's brief assessment practice. Additionally, the ANAO's analysis does not take into account the number of people actually working on brief assessments, instead using our total workforce numbers for their efficiency calculations. The Report also fails to sufficiently recognise the broader imperatives driving the CDPP's current operations. The CDPP submits that the Report's analysis on this aspect is overly simplistic and regrettably, ultimately unhelpful.

The CDPP responds to the work that is referred to it by 68 federal, state and territory investigative agencies. In the last 5 years the law enforcement world has changed markedly, and the CDPP has changed with it. We are seeing a trend away from large numbers of straightforward brief assessment cases being referred and prosecuted in the lower courts. As recognised by the ANAO, we now have a practice with an increase in more complex serious criminal cases. This counter trend is driving an increase in requests for pre-brief advice, more arrest based referrals and more cases being dealt with on indictment in the higher courts.

We have two main responses to the ANAO Report. Firstly, efficiency has improved in CDPP's brief assessment practice. A comparison of actual prosecutor time spent on brief assessment referrals converted to FTE, indicates a drop in FTE of approximately 30% from 2014-15. A significant backlog of overdue files has been eliminated in that period. The average number of hours expended on assessing briefs of the same complexity has declined or stayed the same. And, the average time taken from receipt of the case to finalising the assessment has halved from 151 days to 78 days, even though these assessments are becoming more complex. Partner agency satisfaction, unsurprisingly, is at a very impressive 87%.

Secondly, with less time needed for brief assessment work, which is only a part of the work of prosecutors, prosecutors and other staff are reallocating effort to where it is needed – an expanding pre-brief advice service, an expanding Witness Assistance Service for our most vulnerable witnesses (often children in child exploitation cases), navigating the complexities of litigating multi-defendant white collar, terrorism and organised crime cases or cases with national security sensitivities, undertaking significant digital transformation and business improvement work and agency training, liaison and law reform. The modern law enforcement landscape has thrown up new priorities, challenges and costs of business for the CDPP, which are not sufficiently recognised, as they were largely outside the scope of the audit.

# Australian Government Procurement Contract Reporting Update

**Type:** Information

**Report number:** 27 of 2019-20

**Portfolios:** Across Entities

**Entities:** Across Entities

**Date tabled:** 11 March 2020

## Background and rationale

1. Procurement is an important and substantial activity for the Australian Government. In 2018–19, there were 78,150 contract notice (parents and amendments) publications with a combined value of \$64.5 billion reported by relevant entities on the AusTender website. Over the ten years up to and including 2018–19, contract values totalling \$490.8 billion were reported.
2. The *Auditor-General Act 1997* enables the Auditor-General at any time to cause a report to be tabled in either House of the Parliament on any matter. This is the second information report prepared by the ANAO on Australian Government procurement contract reporting. It incorporates more recent data than the December 2017 report (up to 30 June 2019 compared with 30 June 2017) and also includes analysis of historic trends over a longer period of time (10 years compared with five).

## Key information

3. Nearly two thirds of Australian Government entities are required to centrally report data on AusTender on contracts they have awarded with a value above prescribed reporting thresholds. There is no centralised reporting on the value of procurement activity undertaken by 34 per cent of Australian Government entities as they are not covered by the CPRs. This includes some entities that are engaged in significant procurement activities.
4. For 2018–19, 78,150 parent contracts and amendments were reported, valued at \$64.5 billion. The total contract value reported over the five years up to and including 2018–19 was \$305.3 billion, an average of \$61.1 billion per year. A feature of the reporting of contract notices has been considerable volatility in the value of amendments from year to year.
5. Delays with AusTender reporting are common, with 17 per cent of publications in 2018–19 taking longer than the prescribed 42 days. Delays are often significant, with it being common for reporting to take more than twice as long as it is supposed to.

6. Competition is a key element of the procurement framework. More than half of all contracts have been reported as resulting from a limited tender rather than an open tender. The Commonwealth Procurement Rules (CPRs) seek to limit the use of non-competitive approaches for higher value procurements. They do this by establishing thresholds above which procurements must be conducted through an open approach to the market, subject to listed exemptions. Analysis of AusTender data indicates that:

- 44 per cent of procurements for contract notices above the relevant thresholds specified in the CPRs is let through limited tender; and
- Non-Corporate Commonwealth Entities report greater use of limited tender approaches to non-construction services procurement than Corporate Commonwealth Entities non-construction services procurement, and for all entities construction services procurement.

7. Contracting through procurement panels has been growing significantly both in terms of the number of contract notices and their value. It remains common for a relatively small proportion of suppliers on a panel to be awarded the majority of contract value when the panel is accessed. There are also indications that some panels are being accessed after their reported end date.

8. Entities report that the majority of the contracts involve the procurement of services rather than goods. Procurement contract notices in a small number of areas represent the majority of total reported contract value, with it also being common for a small number of suppliers to dominate in most of those categories. Over the ten year period analysed, the total contract values reported for consultancies reached its lowest in 2013–14 and has grown each year over the last five years. Reporting also indicates a small number of suppliers are dominant providers.

# Management of Spectrum Reallocation to Support the Deployment of 5G Services

**Type:** Performance audit

**Report number:** 26 of 2019-20

**Portfolios:** Infrastructure, Transport, Regional Development and Communications

**Entities:** Department of Infrastructure, Transport, Regional Development and Communications; Australian Communications and Media Authority

**Date tabled:** 27 February 2020

## Background

1. Electromagnetic spectrum (spectrum) is the range of all possible frequencies of electromagnetic radiation. Most electronic devices, including smartphones, satellites, tablets, televisions, radio and radars rely on spectrum frequencies to carry information.
2. The Department of Communications and the Arts (department) is the lead policy authority on matters relating to the allocation of spectrum and has key responsibilities under the *Radiocommunications Act 1992* (Radiocommunications Act). The Australian Communications and Media Authority (ACMA) is the entity responsible for regulating radiocommunications in Australia.
3. In December 2017, the ACMA made a recommendation to the Minister for Communications and the Arts (minister) for the reallocation of spectrum in the 3.6 GHz band through an auction process. The 3.6 GHz band is part of a larger band that has been identified by various countries for mobile broadband network capabilities, including the early deployment of 5G – the next generation of wireless broadband technology – that is expected to improve the reliability and performance of fixed and mobile broadband networks.
4. The 3.6 GHz auction process was designed for the sale of 125 MHz of spectrum in 14 sectors covering metropolitan and regional areas of Australia. A total of 350 lots were available for sale at the auction. The auction commenced on 20 November 2018 and concluded on 6 December 2018. The auction outcomes were publicly announced by the ACMA on 10 December 2018.

## Rationale for undertaking the audit

5. Most electronic devices rely on spectrum frequencies to carry information. This spectrum is a limited resource. The social and economic benefits of 5G are expected to be wide ranging, and the department and the ACMA need to work closely with industry, government and the community to make spectrum available in a manner that maximises the benefits of 5G, while minimising the impacts on existing communications services and customers. The auction of the 3.6 GHz band was the first spectrum reallocation targeted at the deployment of 5G services, and the department and the ACMA are preparing for future 5G spectrum releases.



## Audit objective and criteria

6. The objective of the audit was to examine the effectiveness of spectrum reallocation to support the deployment of 5G services. The audit examined the following high-level criteria:

- whether the department and the ACMA effectively prepared for the reallocation of spectrum in the 3.6 GHz band; and
- whether the ACMA effectively administered the reallocation of spectrum in the 3.6 GHz band.

## Conclusion

7. The reallocation of spectrum in the 3.6 GHz band to support the deployment of 5G services was largely effective.

8. The department and the ACMA were largely effective in preparing for the reallocation of spectrum in the 3.6 GHz band. The design of the process was informed by international practice and previous auction experience. Reallocation preparation processes were largely consistent with legal obligations, policy and guidance and were sufficiently transparent. While options for the future use of the 3.6 GHz spectrum were identified based on public consultation, the methodology used to assess each option did not integrate coverage of all relevant legislative objects and government policy. The incorporation of existing spectrum holdings in an adjacent band into auction allocation limits was completed late and did not demonstrate sufficient consideration of differences in spectrum utility between the two bands.

9. Activities to administer the reallocation of spectrum in the 3.6 GHz band were largely effective. Auction guidance, application and eligibility requirements were developed and implemented. The outcome of the auction process was largely consistent with objectives outlined in the relevant legislation, policy and guidance material. Unexpected market changes impacted on the competitive environment for the auction and had material consequences in relation to the level of revenue achieved. Both entities are implementing relevant learnings into preparation processes for future reallocations.

## Supporting findings

### Preparation for the reallocation of spectrum

10. Governance arrangements for the reallocation process are established by the legislative framework. There would have been benefit in the department and the ACMA developing arrangements for cooperation and coordination of the 3.6 GHz reallocation process. A probity plan for the process was prepared, however probity issues arising during the process were not managed in line with this plan.

11. The reallocation preparation process was largely consistent with relevant legal obligations, policy and guidance. The preparation process was aligned with applicable requirements under the Radiocommunications Act and the *Australian Communications and Media Authority Act 2005* (ACMA Act), except for requirements to identify, notify and consult with all potentially affected incumbent licence holders. Options for the future use of the 3.6 GHz spectrum were identified based on public consultation and analysed against relevant guidance. The methodology used to assess each option focused on costs and benefits in a way that did not integrate coverage of all relevant legislative objects and government policy.

12. The design of the reallocation process was informed by internationally recognised better practice and previous spectrum auction experience.

13. The reallocation preparation process was sufficiently transparent to meet the legitimate needs of stakeholders, but was impacted by the incorporation of existing holdings in an adjacent spectrum band into allocation limits for the 3.6 GHz auction. Allocation limits were set at 60 MHz in metropolitan areas and 80 MHz in regional areas, with existing holdings in the 3.4 GHz band to be incorporated into these limits. Whilst the 3.4 GHz band was technically suitable for the deployment of 5G, the utility of the smaller and fragmented holdings in the 3.4 GHz band were not necessarily equivalent to the utility of the large contiguous spectrum potentially available in the auction of the 3.6 GHz band. The incorporation of existing 3.4 GHz holdings into the reallocation limits impacted the ability of several bidders to participate in metropolitan and regional markets for the auction.

## Execution of the reallocation process

14. The auction was conducted in a manner that largely aligned with reallocation requirements. Clear application and eligibility timelines were established, and met by all bidders, and associated guidance ensured all bidders were fully informed. Technology effectively supported the auction process. Issues which emerged immediately prior to the application deadline resulted in a reduction in the number of auction participants and all metropolitan lots were sold at reserve (starting) prices. Legal advice indicated that the department and the ACMA were limited in the actions they could take in response to these emerging issues, however they did not consider all relevant financial consequences in key decisions undertaken.

15. The outcome of the auction process was largely consistent with objectives outlined in the relevant legislation, policy and guidance material. The unexpected changes to the competitive environment for the auction had material consequences in relation to the level of revenue achieved.

16. Both the department and the ACMA have identified lessons learnt from the 3.6 GHz reallocation process, have articulated actions to improve processes, and are in the process of incorporating these into the planning processes for future reallocations.

## Recommendations

17. Two recommendations have been made.

## Recommendations

### Recommendation no.1

#### Paragraph 2.19

The department and the ACMA:

- a. agree an approach for cooperation and coordination in undertaking respective responsibilities in the process for future spectrum reallocations; and
- b. ensure that appropriate probity management principles are applied in a timely and consistent manner to future reallocation activities.

**Department of Communications and the Arts response:** *Agreed in part.*

**Australian Communications and Media Authority response:** *Agreed.*

### Recommendation no.2

#### Paragraph 2.43

For future reallocation processes, the ACMA implement a methodology for the highest value use assessment that provides for appropriate coverage of efficiency and public benefit objectives, and integrates cost-benefit analyses with all policy objectives and guidance.

**Australian Communications and Media Authority response:** *Agreed.*

## Summary of entity response

18. Summary responses from the department and the ACMA are provided below. Full responses can be found at Appendix 1.

### Department of Communications and the Arts

The Department of Communications and the Arts agrees with the ANAO that there is scope for greater cooperation and coordination between the Department and ACMA in managing future spectrum reallocations (recommendation 1(a) of the ANAO report). As noted in the ANAO report, the Department conducted a “lessons learned” exercise following the conclusion of the 3.6 GHz auction and is continuing to implement relevant learnings into preparation processes for future reallocations. The Department therefore agrees with recommendation 1(a) of the report.

The Department notes that the text underpinning recommendation 1(b) is directed at ACMA’s probity processes, and that the ANAO raised no concerns about the Department’s probity management for the 3.6 GHz auction. Similarly, the Department notes that recommendation (2) is a matter for ACMA rather than the Department.

The Department does not agree with a number of assertions made in the body of the report. In particular, the Department notes that it would not be consistent with the current legislative framework for the Minister and ACMA to make decisions about spectrum allocations with the goal of maximising revenue. Further, the Department disagrees with the ANAO's arguments about the equitability implications of the Minister's decision to set allocation limits taking into account holdings across the adjacent 3.4 GHz band.

The Department notes that as part of the ANAO's performance audit, confidential legal advice – over which the Department claims legal professional privilege – was disclosed to the Auditor-General under compulsion of law. The Department notes that disclosure of this legal advice in these circumstances does not waive legal professional privilege. The Department maintains the confidentiality of this legal advice and its claim to legal professional privilege over these documents.

### *ANAO comment on the Department of Communications and the Arts response*

19. Paragraph 2.13 footnote 18 notes that accountable authorities of Commonwealth entities have a responsibility under paragraph 15(1)(a) of the PGPA Act to govern an entity in a way that promotes the proper use of Commonwealth resources for which the authority is responsible. As noted in paragraph 3.27, the object of the Radiocommunications Act is to 'maximise...the overall public benefit derived'. The ANAO analysis reflects that this broad legislative object encompasses a range of factors including potential financial consequences. As noted in paragraph 3.37, the department considered the potential financial consequences of the proposed merger between TPG Telecom (TPG) and Vodafone Hutchinson Australia (VHA) on the 3.6 GHz auction process and concluded they were likely to be 'suboptimal'.

20. The implications of incorporating existing 3.4 GHz holdings into the allocation limits for the auction are discussed at paragraphs 2.60 to 2.71.

## Australian Communications and Media Authority

The Australian Communications and Media Authority (ACMA) recognises and appreciates the efforts of the Australian National Audit Office staff who conducted the audit.

The ACMA welcomes the report's findings that the reallocation of spectrum in the 3.6 GHz band to support the deployment of 5G services was largely effective, and the outcome of the auction process was largely consistent with objectives outlined in the relevant legislation, policy and guidance material.

The ACMA accepts the two recommendations presented in the proposed audit report.

## Key messages from this audit for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit that may be relevant for the operations of other Australian Government entities.

## Governance and risk management

- Projects involving multiple entities would benefit from coordinated and consistent approaches to governance, risk management and monitoring the achievement of objectives. This will enable agencies to respond to emerging issues in a timely manner and to ensure that a full context is provided for decision making.
- The value of risk management lies in the way it can inform key decisions and the understanding of the interaction between risks and controls rather than in the risk registers themselves. A consistent and transparent approach to shared risks can help to ensure a broad perspective is taken in response to emerging issues.

## Policy/program implementation

- Where public consultation is required to inform change, it is important that this consultation is structured, targeted, and allows sufficient time to receive and consider submissions. Maintaining a complete record of public consultations, submissions and the resultant changes adopted provides for transparent decision making.

## Performance and impact measurement

- Undertaking a review of what 'went well' and what 'requires improvement' allows an entity to ensure that lessons learnt from an activity are captured. Important characteristics for the success of the review include; timeliness, objectivity, completeness and a focus on implementing necessary change.

# Aboriginal and Torres Strait Islander Participation Targets in Major Procurements

**Type:** Performance audit

**Report number:** 25 of 2019-20

**Portfolios:** Across Entities

**Entities:** Across Entities

**Date tabled:** 20 February 2020

## Background

1. Over the past three decades the Australian Government has sought to use its position as a major procurer of goods and services in the Australian economy to generate economic opportunities for Aboriginal and Torres Strait Islander people.
2. In May 2015 the government introduced the Indigenous Procurement Policy (IPP), which includes a requirement for Australian Government entities to apply mandatory minimum requirements (MMRs) for Aboriginal and Torres Strait Islander participation to high value contracts in certain industry categories. Responsibility for the IPP transferred from the Department of the Prime Minister and Cabinet (PM&C) to the newly created National Indigenous Australians Agency (NIAA) on 1 July 2019 through a machinery-of-government change.
3. In 2017 the Senate Finance and Public Administration References Committee (the committee) held an inquiry into the Community Development Program. The committee recommended that the Australian National Audit Office (ANAO) conduct an audit of Australian Government contracts that relate to service delivery in remote locations with a specific focus on the use of, and compliance with, Aboriginal and Torres Strait Islander employment targets.

## Rationale for undertaking the audit

4. The MMRs are the Australian Government's principal mechanism for applying Aboriginal and Torres Strait Islander participation targets in major procurements. As the MMRs have been in operation since July 2015, and binding on contractors since July 2016, their administration by the policy owner (PM&C until June 2019 and NIAA since July 2019) and application by government entities should be relatively mature.
5. This audit was undertaken to provide assurance that the MMRs are being effectively administered and entities are complying with them. The audit includes a focus on the application of the MMRs in remote areas, to address the Senate Finance and Public Administration References Committee's recommendation that the ANAO conduct an audit of Australian Government contracts relating to service delivery in remote locations. The audit timing also presents an opportunity for NIAA to address any identified areas for improvement prior to expanding the MMRs to cover eleven additional industry categories from 1 July 2020.

## Audit objective and criteria

6. The audit objective was to assess the effectiveness of the administration of the MMRs for Aboriginal and Torres Strait Islander participation in major government procurements in achieving policy objectives.
7. To form a conclusion against the audit objective, the ANAO adopted the following high level audit criteria:
  - Are the MMRs designed to achieve the government's policy objectives?
  - Are the MMRs being implemented and monitored effectively?
  - Are entities complying with the MMRs in major procurements?
8. Six entities were selected for examination in the entity compliance component of the audit, based on the number and nature of MMR contracts they held: Department of Defence (Defence); Department of Education (Education); Department of Employment, Skills, Small and Family Business (Employment); Department of Home Affairs (Home Affairs); Department of Infrastructure, Transport, Cities and Regional Development (Infrastructure); and NIAA.

## Conclusion

9. While the MMRs for Aboriginal and Torres Strait Islander participation were effectively designed, their administration has been undermined by ineffective implementation and monitoring by the policy owner and insufficient compliance by entities.
10. The design of the MMRs supports the achievement of the government's policy objectives. The MMR policy settings are reasonable and supported by evidence.
11. The MMRs have not been implemented and monitored effectively due to inadequate implementation planning and delays in establishing a centralised monitoring system. While the policy owner has publicised the MMRs, it has not provided entities and contractors sufficient guidance on complying with the MMRs. The current regime for enforcing compliance with MMR reporting requirements is not operating effectively and, as a result, the policy outcomes have not been evaluated.
12. Selected entities' compliance with the MMRs fell short of the standard required for managing major procurements. In the procurement phase, while selected entities mostly recognised when the MMRs applied, they failed to comply with all required steps. In the contract management phase, entities have not established appropriate performance reporting arrangements. Where reporting has been occurring, entities have not gained appropriate assurance over reported performance.

## Supporting findings

### Policy design

13. The design of the MMRs aligns with the government's policy objectives, which were to drive growth in Aboriginal and Torres Strait Islander businesses and employment.

14. The design of the MMRs was partially informed by stakeholder views and previous experience. The MMRs addressed concerns raised with the previous Indigenous Opportunities Policy, and PM&C consulted government entities with significant procurement activities. PM&C did not consult non-Indigenous businesses that would be affected by the MMRs and did not adequately consider previous experience with implementation challenges.

15. The industry coverage criteria and contract value threshold for the MMRs support the government's policy objectives by achieving broad coverage while limiting compliance burden. Categories for exempting or excluding contracts from the MMRs are appropriate. Applying the policy to Commonwealth corporate entities and companies would broaden opportunities for Aboriginal and Torres Strait Islander people to gain skills and economic benefit from large government projects.

16. The criteria established under the MMRs for setting participation targets are appropriate. The minimum target requirements allow contractors flexibility to choose targets appropriate to their situation. The criteria for remote targets allow flexibility to set targets above the minimum requirements that are appropriate to the services being procured and the remote area in which they will be delivered.

## Policy implementation and monitoring

17. PM&C did not develop an appropriate implementation plan for the MMRs in 2015. NIAA has developed an implementation plan for the 2020 expansion of the MMRs.

18. Current arrangements for communicating the MMRs are partially effective. PM&C and NIAA have promoted awareness of the MMRs to relevant stakeholders through their communication activities. However, they have provided ineffective guidance and advice to entities and contractors on how to comply with the MMRs throughout the contract lifecycle to ensure intended outcomes are achieved.

19. PM&C has established a central database, the IPP Reporting Solution, which has the potential to monitor compliance and report on implementation of the MMRs. However, the system has not delivered on this potential due to delays in its rollout and low levels of uptake by entities and contractors. As a result, information in the system for MMR contracts is incomplete and cannot be used to assess contractors' previous MMR performance or report on implementation.

20. The most recent evaluation of the IPP was completed in 2019. It did not evaluate the MMRs or assess their contribution to closing the gap in Aboriginal and Torres Strait Islander and non-Indigenous economic outcomes due to the lack of monitoring data on MMR contracts.

## Entity compliance in major procurements

21. Selected entities mostly provide appropriate guidance to staff on complying with the MMRs. Once NIAA has updated its guidance information on the MMRs, there is scope for central procurement teams within entities to provide greater support to officers managing MMR procurements to ensure they comply with requirements.

22. None of the selected entities fully complied with the MMRs during the procurement phase. Entities generally recognised the need to apply the MMRs to major procurements but did not comply with all required steps. Key compliance issues identified were: excluding contracts for invalid reasons; and not creating a contractual requirement to meet targets.



23. Entities agreed MMR participation targets that met or exceeded the minimum levels for most assessed contracts. For contracts that included a remote delivery component, entities did not comply with the requirement to ensure targets deliver significant participation outcomes.
24. Entities have not established appropriate performance reporting arrangements, as less than half of the contractors that are required to report on their compliance with the MMRs have been doing so. Contractors have not been using the IPP Reporting Solution for reporting.
25. Entities have not established appropriate controls and risk-based assurance activities to gain assurance over contractors' reported MMR performance.

## Recommendations

### Recommendation no.1

#### Paragraph 3.17

National Indigenous Australians Agency develops tailored guidance on managing the MMRs throughout the contract lifecycle in consultation with entities and contractors.

**National Indigenous Australians Agency response:** *Agreed.*

### Recommendation no.2

#### Paragraph 3.35

National Indigenous Australians Agency implements a strategy to increase entity and contractor compliance with MMR reporting requirements to ensure information in the IPP Reporting Solution is complete.

**National Indigenous Australians Agency response:** *Agreed.*

### Recommendation no.3

#### Paragraph 3.46

National Indigenous Australians Agency implements an evaluation strategy for the MMRs that outlines an approach to measuring the impact of the policy on Aboriginal and Torres Strait Islander employment and business outcomes.

**National Indigenous Australians Agency response:** *Agreed.*

**Recommendation  
no.4****Paragraph 4.19**

All audited entities review and update their procurement protocols to ensure procuring officers undertaking major procurements that trigger the MMRs comply with required steps in the procurement process.

Department of Defence response: *Agreed.*

Department of Education, Skills and Employment response: *Agreed.*

Department of Home Affairs response: *Agreed.*

Department of Infrastructure, Transport, Regional Development and Communications response: *Agreed.*

National Indigenous Australians Agency response: *Agreed.*

**Recommendation  
no.5****Paragraph 4.37**

All audited entities establish processes, or update existing processes, to ensure contract managers and contractors regularly use the IPP Reporting Solution for MMR reporting.

Department of Defence response: *Agreed.*

Department of Education, Skills and Employment response: *Agreed.*

Department of Home Affairs response: *Agreed.*

Department of Infrastructure, Transport, Regional Development and Communications response: *Agreed.*

National Indigenous Australians Agency response: *Agreed.*

**Recommendation  
no.6****Paragraph 4 48**

After guidance has been provided by the policy owner, all audited entities establish appropriate controls and risk-based assurance activities for active MMR contracts.

Department of Defence response: *Agreed.*

Department of Education, Skills and Employment response: *Agreed.*

Department of Home Affairs response: *Agreed.*

Department of Infrastructure, Transport, Regional Development and Communications response: *Agreed.*

National Indigenous Australians Agency response: *Agreed.*

## Summary of entity responses

26. Summary responses from audited entities are below. Entities' full responses are at Appendix 1.

### National Indigenous Australians Agency

The National Indigenous Australians Agency (NIAA) welcomes the Australian National Audit Office's (ANAO) report on Aboriginal and Torres Strait Islander Participation Targets in Major Procurements.

It is pleasing the ANAO has concluded that the design of the mandatory minimum requirements (MMR) element of the Indigenous Procurement Policy (IPP) supports the achievement of the Government's policy objectives and that the policy settings are reasonable and supported by evidence.

The IPP is a key plank of the Government's approach to driving growth in Aboriginal and Torres Strait Islander businesses and employment, by creating opportunities for Indigenous Australians to enter the government's supply chain. The positive impact the IPP has made, in a relatively short period of time, has attracted the attention of many governments in Australia and abroad.

The NIAA considers the audit would have benefited from greater acknowledgement of the scale of the reform. The IPP represents a significant change to how the Australian Government procures goods and services. It challenges procurement officers to step outside often deeply ingrained and, in some cases, rigid procurement processes to consider how they could preference their procurement activities to benefit Aboriginal and Torres Strait Islander people while still achieving value for money for the Government.

The ANAO has identified a number of opportunities for the NIAA to improve the implementation of the MMR. While the NIAA has been active in informing and supporting stakeholders to implement the MMR, it is acknowledged that there is a need to build on existing MMR guidance materials and communications strategies by adopting a more tailored approach.

The NIAA also acknowledges that our ability to report fully on the impact of the MMR is hampered by the underuse of the IPP Reporting Solution (IPPRS) by the entities managing these contracts. While the NIAA stands by the IPPRS as an effective tool to manage the MMR, the NIAA is committed to seeing it continually evolve as lessons are learnt and new technology is released.

The NIAA agrees with each of the recommendations and will increase implementation efforts in the lead up of the expansion of the MMRs from 1 July 2020.

### Department of Defence

Defence acknowledges the findings contained in the audit report on *Aboriginal and Torres Strait Islander Participation Targets in Major Procurements* and agrees to the recommendations.

Overall, Defence considers the findings presented by the ANAO are weighted toward observations of non-compliance with limited consideration given to better practice. The Defence Indigenous Procurement Strategy outlines Defence's commitment and pathway to delivering Indigenous Procurement Policy outcomes. As the Commonwealth's largest procurer, Defence continues to exceed portfolio targets for contracts awarded to Indigenous suppliers. A number of Defence contracts voluntarily include Mandatory Minimum Requirements (MMRs), despite being exempt or categorised outside of a specified industry sector. Inclusion of this information would present a more balanced view of Defence's management of Aboriginal and Torres Strait Islander participation targets in major procurements.

Defence is proud to have been awarded the 2017 and 2019 Supply Nation Government member of the year award, in recognition of its significant commitment towards supporting the long term growth and sustainability of the Indigenous business sector. Defence will continue working with National Indigenous Australians Agency to improve the implementation and monitoring of the MMRs.

## Department of Education, Skills and Employment

The Department of Education, Skills and Employment (the department) acknowledges the Australian National Audit Office's (ANAO) report and its conclusions on Aboriginal and Torres Strait Islander Targets in Major Procurements and welcomes its findings.

The department notes and agrees with recommendations made by the ANAO within its report and will use these recommendations to further strengthen its commitment to leveraging the department's annual procurement spend to drive demand for Indigenous goods and services, stimulate Indigenous economic development and grow the Indigenous business sector.

## Department of Home Affairs

The Department is committed to assist in the implementation of the Government's policy objective to drive growth in Aboriginal and Torres Strait Islander businesses and employment.

The Department agrees with the three recommendations made to audited entities by the Auditor-General aimed at increasing compliance with the MMRs and will review and update its existing guidance and processes to better support compliance with the MMRs.

## Department of Infrastructure, Transport, Regional Development and Communications

The Department of Infrastructure, Transport, Cities and Regional Development (the Department) acknowledges the ANAO's overall conclusions and welcomes the recommendations to improve guidance and monitoring of Aboriginal and Torres Strait Islander participation in major procurement projects. The audit process was a valuable exercise and the feedback provided by the ANAO will assist the department in refining its approach to strengthen future compliance.

The Department remains committed to ensuring compliance with Aboriginal and Torres Strait Islander participation targets in major procurement. While the ANAO report indicates that the Department excluded two contracts from the Mandatory Minimum Requirements (MMRs) for an invalid reason, these contracts were excluded on the basis of advice provided by the policy owner. In line with the recommendations the Department would welcome clearer guidance from the policy owner in future on the application of exclusion categories for the MMRs.

The Department also notes the requirement to deliver significant Aboriginal and Torres Strait Islander employment or supplier use outcomes in remote area contracts is very difficult to achieve on a contractual basis in some of Australia's external Territories which have very low Aboriginal and Torres Strait Islander populations.

## Key messages from this audit for all Australian Government entities

Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

### Procurement

- Policy owners can increase levels of compliance with procurement-connected policies by providing comprehensive and clear guidance on how to comply with requirements, including worked examples and case studies.
- Policy owners are accountable for: establishing mechanisms for monitoring compliance and assessing the impact of the policy; implementing an appropriate regime for addressing non-compliance; and ensuring policies achieve their intended outcomes.
- Central procurement areas within entities can support compliance by: promoting the requirements internally; ensuring that procurement templates are up to date; and providing operational support to procuring officers and contract managers.

### Contract management


- Entities should not take performance reported by contractors at face value. To maintain the integrity of reporting arrangements, entities should establish appropriate controls and risk-based assurance activities. Further, entities should not treat compliance with mandatory government requirements as secondary to other contractual considerations.


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