



**Public Accounts Committee**

**Review of the Reports of the  
Auditor General 2011-2012**

**Report No. 20  
November 2012**

Legislative Assembly  
Parliament of Western Australia

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## **Public Accounts Committee**

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# Review of the Reports of the Auditor General 2011–2012

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Report No. 20

Presented by

**Hon John Kobelke, MLA**

Laid on the Table of the Legislative Assembly on 15 November 2012

## Chair's Foreword

**F**or the most part, agencies continue to acquit themselves quite well when it comes to implementing the recommendations made by the Auditor General in his audit reports. Having said that, there is a role for a body such as the Public Accounts Committee to examine agency performance and ensure that the actions being taken by agencies are both achievable and worthwhile.

The Auditor General provides a valuable service in identifying shortcomings with respect to agency performance; however, his important work would be undermined if agencies failed to respond adequately to the issues the Auditor General identifies.

This simple truth was a significant contribution to the decision taken by the Committee to change the way in which we handle the follow-up of the Auditor General's reports. The revised process has seen a more direct approach involving shorter timeframes, increased interaction with the agencies concerned and, where appropriate, public hearings to fully examine issues raised in the audit reports.

Whereas previously agencies could overwhelm with bureaucratic non-answers, the revised approach has allowed the Committee a number of options for clarifying contradictory responses or, where appropriate, critiquing what we consider to be inadequate consideration of the issues raised by the Auditor General.

In this review, we have drawn attention to the contradictory responses provided by the Department of Health to questions about the impact of changes to the payment of Family Tax Benefit Part A will have on demand for child health services in Western Australia. An initial response from the Department had indicated that approximately 16,000 additional children would present for health checks as a result of the changes and that additional funding of around \$1.3 million each year would be needed to meet the increased demand. However, when we sought additional detail on this issue a few months later, the Department told us that there would be a minimal impact arising from the changes. Furthermore, the information provided to us by Health in its response contradicted advice from the Commonwealth Government. Namely, the Commonwealth suggests that 3-year old health checks will be required to continue to receive the benefit whereas the Department states that it is 4-year old health checks.

We have also drawn attention to a dispute between the Auditor General and the Department of Racing, Gaming and Liquor (DRGL) surrounding the Auditor General's report on the responsible service of alcohol. DRGL disputed a recommendation on the basis that the recommendation related to an issue over which it did not have legal power. As we note in the body of the report, the Auditor General was aware of DRGL's position at the time of the audit and we conclude that legal advice should have been

sought before completing the audit. This would have ensured that the Auditor General was making appropriate recommendations. As it currently stands, in the absence of legal advice, the appropriateness of the recommendation remains an open question.

Finally, I would once again like to note the unprecedented amount of audit-related work the Public Accounts Committee of the 38<sup>th</sup> Parliament has been able to complete. We handover to the next Committee a manageable number of audits for follow-up and have, for the most part, bedded down a revised follow-up process. It is my hope that the PAC in the next Parliament will continue with this good work and build upon the reforms made over the last four years.

HON J.C. KOBELKE MLA  
CHAIR

# Contents

Ministerial Response	ix
Findings and Recommendations	xi
<b>1 The Reports</b>	<b>1</b>
<hr/>	
Universal Child Health Checks – Report 11 of 2010	1
Background	1
Auditor General’s findings and recommendations	1
Agency response	3
DoH’s shifting position on Family Tax Benefit Part A	3
Committee conclusion	4
Implementing the Provisions of the Liquor Control Act in Licensed Premises – Report 1, 2011	5
What the Auditor General examined	5
The Auditor General’s findings	6
The Auditor General’s recommendations	7
The Department of Racing, Gaming and Liquor’s Response	8
DRGL disagreed with the Auditor General’s interpretation of the Act	8
Recommendation 1: DRGL and WA Police should formally agree on their roles for monitoring, enforcement and education under the Act, including monitoring responsible service of alcohol in licensed premises, and define how they will collaborate	9
Recommendation 2: DRGL and WA Police should develop a joint system for tracking and planning the monitoring of licensed premises	10
Recommendation 3: DRGL and WA Police should develop a guideline to assist in the identification of drunk persons	10
Recommendation 4: DRGL and WA Police should improve evidence-gathering to reliably show that a person was drunk while on licensed premises	10
The Auditor General’s view on DRGL’s position	11
The Committee’s opinion	12
The issue	12

The responses from both DRGL and the Auditor General did not adequately clarify their respective positions	12
Neither party sought legal advice	13
The Auditor General was aware that DRGL did not believe it had power to deal with the responsible service of alcohol	13
The Auditor General misrepresented a statement from DRGL's Annual Report	14
Given DRGL's views on its powers, the Auditor General's lack of legal advice is regrettable	15
The purpose of Recommendation 1 is unclear	15
Legislation, not interpretation	16
Concluding remarks	17
Information Systems Audit Report – Reports 10, 2012 and 4, 2011.	18
Background	18
The Committee's approach	18
The 2012 IT security audit revealed that the problems were continuing	20
The Department of Finance is now the central agency responsible for IT Security	20
Only one full-time staff member has been dedicated to IT security	21
A CIO for the public sector will not be established	21
DoF has an important role to play in increasing IT security awareness	22
A cyber security policy is now in place	22
Public Sector Performance Report – Report 5, 2011: Agency compliance with procurement requirements	23
Background	23
Auditor General's findings and recommendations	23
Agency Responses	24
Public Sector Performance Report – Report 5, 2011: Managing the Priority Start Building Policy	30
Background	30
Auditor General's findings and recommendations	31
Agency responses	33
Second Public Sector Performance Report – Report 7, 2011: Use of ICT Contractors in Government	34
Background	34

Auditor General's findings and recommendations	35
Agency responses	36
Second Public Sector Performance Report – Report 7, 2011: Acceptance of Gifts and benefits by Public Officers in the Department of Health	38
Background	38
Auditor General's findings and recommendations	39
Agency response	39
Ensuring Compliance with Conditions on Mining – Report 8, 2011	42
Background	42
Key findings and recommendations	43
Agency response	44
1 Committee's functions and powers	49



## **Ministerial Response**

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Public Accounts Committee directs that the Ministers for Health and Training and Workforce Development report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

## Findings and Recommendations

### Recommendation 1

Page 5

That the Minister for Health:

- clarify whether child health checks that meet the requirements for the receipt of Family Tax Benefit Part A are required for three year olds or four year olds;
- outline how many additional child health checks are estimated to arise as a result of this change; and
- the impact on the Department of Health's budget and staffing levels in order to meet anticipated increased demand for child health checks.

### Recommendation 2

Page 5

That the Minister for Health:

- Outline the extent to which the Department of Health has resources and appropriate staff to provide the recommended child health checks for all children across Western Australia; and
- Provide specific details as to the location, employment arrangements and roles of the additional services funded in the 2012–2013 state budget.

### Recommendation 3

Page 33

That the Minister for Training and Workforce Development provide an update for both the outcome and impact of the initiatives the Department for Training and Workforce Development has undertaken with its partners to address the recommendations made by the Auditor General.

### Recommendation 4

Page 42

That the Minister for Health tables a copy of the audit report examining the performance of the new Acceptance of Gifts Policy once it is completed by the Department of Health in January 2013.

# Chapter 1

## The Reports

### Universal Child Health Checks – Report 11 of 2010

#### Background

Western Australia has around 200,000 children aged between 0 to 6 years.<sup>1</sup> An estimated 17 per cent of all children are believed to have some developmental problem that requires intervention. Timely checking of children's development during the first five years of life can help detect and prevent problems. Developmental problems that are not diagnosed and treated early have been known to result in behavioural disorders, poor learning outcomes at school and juvenile delinquency; impacting adversely on the social and economic well-being of the entire community.<sup>2</sup>

The Department of Health (DoH) has a free child health check program that offers seven health and development checks to children aged between birth and school entry that is supported by a state-wide evidence based policy.

The Auditor General examined this program and focused on three questions:

- Does DoH have clear objectives for delivering its universal health checks and are they being met?
- Does DoH understand the universal need/demand for child health checks and the resources required to meet this?
- Is DoH using its resources to deliver universal health checks efficiently and effectively?

#### Auditor General's findings and recommendations

Key findings of the audit include:

- Many children are missing out on health checks or not getting them at the right time, because DoH has prioritised some checks over others. There is a mismatch between policy which requires every child to receive all checks and the actual service delivery, and DoH is prioritising the first four checks at the expense of the others, meaning developmental delays are being detected late.

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<sup>1</sup> Auditor General for Western Australia, *Universal Child Health Checks*, Report 11, November 2010, p. 5.

<sup>2</sup> Ibid.

## Chapter 1

- DoH has not demonstrated that what they are delivering with limited resources represents value for money. The Department does not conduct an analysis over the benefits and costs of prioritising some checks over others, and without a full suite of appropriate performance targets and measures, it is not able to determine how well it is doing in this area.
- Take-up of universal health checks is voluntary, relying on parent engagement, yet the services are not easily accessible to all families.
- Services to families vary depending on location with some centres offering more checks than others.
- Because DoH's service and financial information is not robust, planning for future funding and workforce requirements is based on estimates and assumptions.
- More children could be reached if nurses were better supported to deliver services more efficiently. Many child health nurses do not have access to adequate information technology (IT) resources and nurses spend considerable time doing clerical tasks instead of checking on children.
- Poor facilities management means there is lack of capacity to house nurses and many centres are in a state of disrepair.

The Auditor General recommended that DoH should demonstrate that it is delivering value for money by setting targets for each child health check and report accordingly in its annual report.<sup>3</sup> It should also improve its patient management system and financial reporting to provide better business information for service management and planning, and performance monitoring. Further, it should use its existing information system (HCARe) more effectively as a stop gap until an improved system is in place, and it should review its current practices to determine value for money.

The audit recommended that to increase the number of children receiving health checks, DoH should better promote the importance of comprehensive child health checks to parents, particularly for children aged between eighteen months and three years. It was also recommended that the Department implement different models of service delivery to improve accessibility in response to changing community needs.

To improve consistency of service and support offered to families wherever they live, the Auditor General recommended the establishment of monitoring mechanisms to support nurses in delivering services, and to consider partnering with other agencies to make better use of other services that are funded to deliver complementary services, such as parenting information and toddler groups. It was also recommended that

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<sup>3</sup> Ibid., p.8.

Health provide adequate IT support for all child health and school nurses; review its approach to administrative tasks and free-up nurses to concentrate on delivering services. Health was further recommended to review its management of child health facilities to ensure buildings are fit for purpose and located in the right place.

### **Agency response**

In a detailed response, DoH reported a range of measures it was taking to address the four broad recommendations of the Auditor General.<sup>4</sup> These measures include developing a project plan to identify and establish performance targets for the delivery of all seven health care checks, and reporting against these in its annual report. The Department noted that this exercise will take into account the voluntary nature of the service and the effect of new Commonwealth Government policies. The Department highlighted that the motivation for families to access the service declined with time, and a principal reason for this trend was growing parental confidence s as children grew older or as families grew.

We were further advised that the Department was working with other Australian jurisdictions in developing performance measures for child health checks. The Department reported that it would carry out an evaluation of its targets and processes in May 2012 and include its performance measures framework in its annual report in July 2012.

The Department reported that it was improving its patient management and financial reporting systems to provide better business information for service management and planning, and performance monitoring. Initiatives were underway to enhance the patient management system via developing an ICT tool that stores accessible and shared information across multiple sites. The ICT initiatives are planned to be developed in tandem with an activity-based funding system which provide a clearer link between the dollars spent and the services provided to patients and the community.<sup>5</sup>

### **DoH's shifting position on Family Tax Benefit Part A**

In its initial response to the Committee in August 2011, the Department pointed out that a recent Commonwealth Government initiative linking 3 and 4 year old health checks to the payment of Family Tax Benefit A will have an effect upon the performance targets sets by DoH for the program. This policy will make the payment of Family Tax Benefit Part A conditional on completion of a child health check for any family with a child turning four in 2011–2012. The Department noted that this was expected to provide a powerful inducement to families to access the health check, and was expected to lead to a significant increase in demand. DoH reported that, on the then current staffing levels, it would not be able to meet this increased demand

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<sup>4</sup> Dr D Russell-Weisz, Acting Director General, Department of Health, Letter, 19 August 2011.

<sup>5</sup> Mr Kim Snowball, Director General, Department of Health, Letter, 23 April 2012.

## Chapter 1

without both 'service redesign' and the 'investment of additional resources'.<sup>6</sup> The Department estimated that an additional 15,558 children would present in a financial year (14,105 for the 3 year old check and 1,480 for the 4 year old school entry health assessment), who may not otherwise have done so. The cost impact upon the Department was estimated to be \$1.3 million per annum, for nine full time child health nurses.<sup>7</sup>

In response to what appeared to be an unequivocal admission that the Department would not be able to meet the challenges imposed by the reforms being introduced to the payment of the Family Tax Benefit, we sought information on how DoH intended to handle increased demand for child health services. In response, DoH told us (in full) that:

*The Commonwealth Government's policy links payment of Family Tax Benefit A to only the 4 year old health check and is narrowly targeted to families in receipt of Commonwealth Government income support. Families may choose to receive the check from a General Practitioner under a Medicare item or from a Department of Health Community Child Health nurse.*

*The Department of Health has analysed the potential impact of this policy and concluded that there would be minimal impact upon (sic) Department of Health.*<sup>8</sup>

Clearly, there is some disagreement between the position adopted by the Department in August 2011 and the position it adopted some eight months later. It is possible that DoH received clarification regarding the link between completing the child health check and payment of Family Tax Benefit Part A, which resulted in changes to the estimated impact on the Department. Regardless of whatever clarification the Department may have received, there is a discrepancy between DoH's view as to when the health check is required and the position of the Commonwealth Government. According to DoH, the health check is required for 4 year olds, whereas the Commonwealth Government's Department of Human Services suggests that the check is required for 3 year olds.<sup>9</sup>

### **Committee conclusion**

We had hoped to schedule a hearing with represents from DoH to discuss the issues raised in the Auditor General's report and the Department's response to it.

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6 Dr D Russell-Weisz, Acting Director General, Department of Health, Letter, 19 August 2011.

7 Dr D Russell-Weisz, Acting Director General, Department of Health, Letter, 19 August 2011.

8 Mr Kim Snowball, Director General, Department of Health, Letter, 23 April 2012.

9 Department of Human Services (Commonwealth), *Healthy Start for School health check*, Available at: <http://www.humanservices.gov.au/customer/enablers/centrelink/family-tax-benefit-part-a-part-b/healthy-start-for-school-health-check>. Accessed on 30 October 2012.

Unfortunately this proved impossible due to scheduling conflicts. For the most part, we took the view that DoH's initial response to the audit was comprehensive and provided a detailed overview of some of the challenges facing the child health area in Western Australia, whilst also highlighting steps being taken to address the Auditor General's recommendations.

We were less taken by the Department's response to our second letter, which contradicted key information provided to us in the Department's earlier correspondence and did not provide any explanation for the change in position.

#### **Recommendation 1**

That the Minister for Health:

- clarify whether child health checks that meet the requirements for the receipt of Family Tax Benefit Part A are required for three year olds or four year olds;
- outline how many additional child health checks are estimated to arise as a result of this change; and
- the impact on the Department of Health's budget and staffing levels in order to meet anticipated increased demand for child health checks.

#### **Recommendation 2**

That the Minister for Health:

- Outline the extent to which the Department of Health has resources and appropriate staff to provide the recommended child health checks for all children across Western Australia; and
- Provide specific details as to the location, employment arrangements and roles of the additional services funded in the 2012–2013 state budget.

### **Implementing the Provisions of the Liquor Control Act in Licensed Premises – Report 1, 2011**

#### **What the Auditor General examined**

The Auditor General's focus was on whether WA Police and the Department of Racing, Gaming and Liquor (DRGL) were implementing key provisions of the *Liquor Control Act 1988* (the Act). The audit examined whether the agencies were effectively educating licensees and staff, monitoring the operation of licensed premises and taking appropriate enforcement action for breaches of the Act. The audit looked at three lines of inquiry:

## Chapter 1

- Do WA Police and DRGL understand the patterns and causes of alcohol-related incidents in and around licensed premises?
- Do WA Police and DRGL promote compliance with the Act?
- Do WA Police and DRGL effectively enforce the Act?<sup>10</sup>

The Auditor General limited the scope of the audit to those parts of the Act that deal with the reduction of anti-social behaviour and minimising harm in licensed premises, particularly the responsible service of alcohol. The processes used to assess and grant liquor licenses were not examined, nor were the inspection of licensee records relating to liquor transactions and subsidies audited.

### **The Auditor General's findings**

The Auditor General found that improving training and education for licensees and their staff would increase compliance. Specifically, it was found that:

- DRGL does not prioritise educational visits to high risk new premises.
- Bar staff may not be adequately trained to serve alcohol responsibly.
- DRGL does not require managers and licensees to update their knowledge and skills through refresher training.
- DRGL and WA Police are promoting compliance through consultation with licensees.<sup>11</sup>

The Auditor General found that there were gaps in the monitoring of some key provisions of the Act. Specifically, it was found that:

- Monitoring should identify whether licensed premises are complying with the Act.
- The agencies' current approach to monitoring does not identify emerging problems before they escalate:
  - The agencies do not assess risk adequately.
  - It is not clear how much visible monitoring is provided by WA Police, and coverage of regional areas is inconsistent.

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10 Auditor General for Western Australia, *Raising the Bar: Implementing key provisions of the Liquor Control Act in licensed premises*, March 2011, p. 6.

11 Auditor General for Western Australia, *Raising the Bar: Implementing key provisions of the Liquor Control Act in licensed premises*, March 2011, p. 7.



- Frontline police are not well-prepared to monitor licensed premises and have other policing priorities.
- Information systems do not assist the agencies in monitoring premises or working together.<sup>12</sup>
- Neither agency is effectively monitoring the responsible service of alcohol:
  - It is difficult to prove that a patron is drunk.
  - WA Police and DRGL focus on issues other than the responsible service of alcohol.

The Auditor General found that enforcement activity has not fully supported compliance with the Act. Specifically, it was found that:

- The Act provides a range of enforcement options and outcomes.
- The level of fines and prosecutions against licensees and their staff does not fully support improved compliance:
  - The bulk of enforcement effort is directed towards individual drinkers rather than licensees and their staff.
  - Some fines issued to licensees remain unpaid, and the amount of the fine does not always create a deterrent.
  - Police fail in around half of prosecutions against licensees and their staff.
- The obligation to serve alcohol responsibly has not been effectively enforced against licensed premises.
- Until recently, the low level of fines against licensees and their staff had not been offset by other enforcement options such as complaints to the Liquor Commission. Since the establishment of LEU, levels of enforcement through fines and other enforcement options have increased.<sup>13</sup>

### **The Auditor General's recommendations**

To improve the understanding by licensees and staff of their responsibilities under the Act, DRGL should make sure all bar staff are appropriately trained, and require periodic refresher training for licensees and their staff.

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12 Auditor General for Western Australia, *Raising the Bar: Implementing key provisions of the Liquor Control Act in licensed premises*, March 2011, p. 7.

13 Auditor General for Western Australia, *Raising the Bar: Implementing key provisions of the Liquor Control Act in licensed premises*, March 2011, p. 7.

## Chapter 1

To improve the monitoring of licensed premises WA Police and DRGL should:

- formally agree on their roles for monitoring, enforcement, and education under the Act, including monitoring the responsible service of alcohol in licensed premises, and define how they will collaborate;
- develop a joint system for tracking and planning the monitoring of licensed premises state-wide in response to a formalised risk analysis;
- develop a guideline to assist police, licensees, bar staff and security staff in the identification of drunk patrons; and
- improve evidence-gathering to reliably show that a person was drunk while on licensed premises or when being served alcohol.

To improve enforcement of the Act, WA Police should:

- target enforcement effort towards the responsible service of alcohol by licensees and their staff;
- make greater use of all enforcement mechanisms under the Act; and
- review the outcomes of fines and prosecutions, the collection of evidence, and the preparation and prosecution of cases in order to improve success rates for enforcement.<sup>14</sup>

## **The Department of Racing, Gaming and Liquor's Response**

### **DRGL disagreed with the Auditor General's interpretation of the Act**

DRGL rejected the Auditor General's interpretation of the 'objects and responsibilities' of the Act applied when framing the performance audit.<sup>15</sup> The Department expressed the view that it was:

*[a] misinterpretation of the Liquor Control Act and diminishes the importance of this jurisdiction, to suggest that ensuring licensees and their staff serve alcohol responsibly is the key element of the legislation or one that should be the primary focus, as the Auditor General's conclusions imply, of the licensing authority in exercising the responsibilities of administering and enforcing the Act. In fact, the Act places no obligations on the licensing authority in relation to*

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14 Auditor General for Western Australia, *Raising the Bar: Implementing key provisions of the Liquor Control Act in licensed premises*, March 2011, p. 8.

15 Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, Letter, 9 August 2011.

*"responsible service of alcohol" unless conditions are imposed on a licence specifically in relation to service practices.*

*The Auditor General's findings and recommendations must be considered against an interpretation of the legislation applied by the Auditor General that was ill-conceived. The responsibility of the licensing authority is a complex jurisdiction with wide ranging responsibilities, which are constrained by the scope of the Act through:*

- i. the granting of licences to fit and proper persons to sell, supply and consume liquor on licensed premises that conform to proper standards; and*
- ii. placing obligations on licensees.<sup>16</sup>*

**Recommendation 1: DRGL and WA Police should formally agree on their roles for monitoring, enforcement and education under the Act, including monitoring responsible service of alcohol in licensed premises, and define how they will collaborate**

DRGL expressed the view that the Act already provides a clear 'delineation of responsibility with respect to enforcement'. The Department continued:

*The intention of the Act is that licensed premises conform to proper standards and that records are maintained relating to liquor transactions and subsidies. In this regard, Part 6 of the Act outlines the functions of inspectors and other officers of the licensing authority, including the powers of authorised officers.*

*The duties of police, and the role of the Commissioner of Police, are outlined in section 155, which places an emphasis on the prevention of sale, supply and consumption of liquor contrary to the Act and ensuring the proper and lawful exercise of any licence, grant or permit issued under the Act. These powers are not granted to inspectors and other officers of the licensing authority.*

*[...]*

*Notwithstanding the Department's view that further clarity about the roles of Police and inspectors and other officers of the licensing authority is unnecessary, since the establishment of the Police LED in 2007, the Department has been working closely with senior Police to*

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<sup>16</sup> Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, Letter, 9 August 2011.

## Chapter 1

*develop a formalised approach to collaboration. In this regard, senior Departmental officers and senior LED officers meet fortnightly. Those meetings are now being documented and outcomes identified.*

*Further, a working group was established in May 2011 tasked with responsibility of preparing a Memorandum of Understanding (MOU) to further detail the relationship and collaboration of the two agencies. It is anticipated that the MOU will be completed in September 2011.<sup>17</sup>*

### **Recommendation 2: DRGL and WA Police should develop a joint system for tracking and planning the monitoring of licensed premises**

The Department reported that it had sought funding to update its Information Technology infrastructure and acknowledged that the infrastructure had exceeded its planned lifespan and required urgent replacement. The proposed replacement system would enable the Department to manage and monitor all aspects of the industries DRGL oversees. Although the funding request was unsuccessful, DRGL reports that it continues to work with Treasury to secure funding in the future.

### **Recommendation 3: DRGL and WA Police should develop a guideline to assist in the identification of drunk persons**

The Department noted that, in an exercise separate from the audit, it published a pamphlet in December 2010 aimed at raising awareness in the industry about the signs of intoxication. It has also provided information to industry associations and training providers designed to better assist staff working in the liquor industry better identify intoxicated patrons.

### **Recommendation 4: DRGL and WA Police should improve evidence-gathering to reliably show that a person was drunk while on licensed premises**

DRGL reported that, as part of a department-wide productivity and functional review, the:

*Compliance Division is currently reviewing the model used for regulation and compliance activity. This review, amongst other things, will examine the allocation and scheduling of Compliance inspections for licensed premises throughout the State; the standard operating procedures used for evidence-gathering; and systems to support forward planning and risk analysis.*

*Commenced in early June 2011, this productivity review is a significant project for the Department, incorporating all Divisions of the agency,*

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<sup>17</sup> Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, Letter, 9 August 2011.

*and is expected to take a considerable time. At this stage, it is expected that the review will be completed within the next 18 months.*<sup>18</sup>

### **The Auditor General's view on DRGL's position**

We provided a copy of DRGL's initial response to the Auditor General and sought in particular a view regarding the notion that recommendations had been made against an 'ill-conceived' interpretation of the Act. The relevant part of the Auditor General's response is reproduced below:

*DRGL expressed a concern that the Auditor General's report implies that the responsible service of alcohol is the key element of the Act. The Auditor General's report explains in the audit conclusion that a primary objective of the Act is to minimise the harm associated with the sale and consumption of alcohol through the licensing of premises and regulating how the premises operate. The report seeks to make clear that the responsible service of alcohol is one of the key provisions of the Liquor Control Act, but not the only provision relating to minimising harm.*

*For example, the audit conclusion states "DRGL and WA Police monitor and enforce some key provisions of the Act but neither agency is effectively monitoring or enforcing the responsible service of alcohol". On pages 12 and 13 the report explains that under the Act serving alcohol responsibly is one of the requirements for well managed premises. The audit scope and focus (page 16) covered education, monitoring and enforcement by DRGL and WA Police across a range of provisions, one of which was responsible service of alcohol.*

*The emphasis on the responsible service of alcohol in the report recommendations reflects that during the course of the audit it became clear there were gaps in the monitoring and enforcing of the responsible service of alcohol. The recommendations therefore address these gaps.*<sup>19</sup>

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18 Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, Letter, 9 August 2011.

19 Mr Colin Murphy, Auditor General, Letter, 14 November 2011.

## Chapter 1

### **The Committee's opinion**

#### **The issue**

Whilst reviewing the audit report and the response provided by DRGL, it became apparent that there was a gap between the Department's understanding of its functions and powers in relation to the responsible service of alcohol on licensed premises and the Auditor General's view with respect to those functions and powers.

In summary, DRGL has taken the view that the Act does not empower it to enforce the responsible service of alcohol and that this power is explicitly conferred upon WA Police. In his report, the Auditor General does not appear to share this view, although in subsequent correspondence the Auditor General told us that he did not disagree with DRGL's interpretation of its powers.

These differences in views are significant as they suggest that either the Auditor General was incorrect in the formulation of his recommendations or that DRGL had been failing to carry out its functions as prescribed in the Act.

#### **The responses from both DRGL and the Auditor General did not adequately clarify their respective positions**

In considering the responses from both DRGL and the Auditor General, we accepted the Auditor General's view that the report 'seeks to make clear that the responsible service of alcohol is **one** of the key provisions of the Liquor Control Act, but not the only provision relating to minimising harm.'<sup>20</sup> (Emphasis added). In doing so, we rejected the notion put forward by DRGL that the Auditor General had suggested that 'ensuring licensees and their staff serve alcohol responsibly is the key element of the legislation or one that should be the primary focus, as the Auditor General's conclusions imply, of the licensing authority'.<sup>21</sup>

Having said that, we were not satisfied that the responses provided to us had adequately clarified the respective positions of both parties. The argument implicit in DRGL's statement that the recommendations were based on an 'ill-conceived' interpretation of the Act suggests that recommendations about the responsible service of alcohol should not have been directed to DRGL, as the Department has no authority under the Act to regulate that issue. Of the four recommendations directed at DRGL, it was the first – relating to the role delineation between DRGL and WA Police and the responsible service of alcohol – that we thought was most relevant to the Department's comments.

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<sup>20</sup> Mr Colin Murphy, Auditor General, Letter, 14 November 2011.

<sup>21</sup> Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, Letter, 9 August 2011.

It was also not clear to us that the Auditor General had fully dealt with the concerns about Recommendation 1 – in particular – in his response.

In reaching this conclusion, we accepted that the actual content of the audit report reflected the reality that the responsible service of alcohol was only one of many of DRGL's responsibilities; however, it did not seem that this understanding is reflected in the Auditor General's recommendations, which mostly suggest DRGL (in conjunction with WA Police) make improvements to alcohol service and the management of intoxicated persons.

### **Neither party sought legal advice**

Given that there were a number of issues which, in our opinion, required clarification we asked both the Auditor General and DRGL if they were in possession of legal advice to support their respective positions. Neither party had sought legal advice.

The Auditor General explained that legal advice had not been sought in conducting the audit 'as the meaning and scope of [the Act] appeared clear on the face of the legislation'.<sup>22</sup>

The Department reported that it was not in possession of any legal advice on the delineation of responsibility between the Director of Liquor Licensing and the Commissioner of Police. It was suggested 'the fact that the Department is not funded (and never has been) to provide the broader compliance role suggested by the Auditor General, supports the Department's long standing approach to its liquor compliance activities'.<sup>23</sup>

### **The Auditor General was aware that DRGL did not believe it had power to deal with the responsible service of alcohol**

The Auditor General reported that:

*[in] reporting to Parliament I was aware of DRGL's views that it's (sic) resourcing and the powers of its inspectors placed practical constraints on its capacity to monitor and enforce the responsible service of alcohol in licensed premises. I did not disagree with this position and reflected it in my report.<sup>24</sup>*

Contrary to this view, it is not clear to us that the Auditor General's concurrence with DRGL's position was reflected in the audit report. In a section headed 'Neither agency is effectively monitoring the responsible service of alcohol', the Auditor

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22 Mr Colin Murphy, Auditor General, Letter, 7 September 2012.

23 Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, Letter, 10 September 2012.

24 Mr Colin Murphy, Auditor General, Letter, 7 September 2012.

## Chapter 1

General makes three references to the powers of the Department. In two of those three instances, it is clear that the Auditor General does not accept DRGL's position uncritically:

*DRGL inspectors focus on enforcing building safety and administrative issues, rather than operational issues such as the responsible service of alcohol. However, the DRGL 2009-10 Annual Report states that DRGL 'provides inspection and audit functions to ensure that the service of liquor is conducted in a responsible manner'. The Act allows DRGL inspectors to enforce any offence, but DRGL consider they do not have the power or resources to enforce the responsible service of alcohol.*<sup>25</sup>

And

*DRGL considers that the Act restricts its inspectors to monitoring building safety and administrative issues, but has not sought legal advice to confirm this view. The Act states that the function of DRGL inspectors is to ensure that licensed premises conform to proper standards. The inspectors can issue infringements for any offence under the Act. DRGL inspectors do not have powers of arrest like WA Police, but are authorised under the Act to demand information from any person in relation to an offence, including name, address and age.*<sup>26</sup>

### **The Auditor General misrepresented a statement from DRGL's Annual Report**

As we noted above, it is not clear that the Auditor General was uncritical in reporting DRGL's views. Indeed, a quote from the Department's 2009–10 Annual Report is offered in the audit report, it would seem, in rebuttal to DRGL's position (emphasis added):

*However, the DRGL 2009-10 Annual Report states that DRGL **'provides inspection and audit functions to ensure that the service of liquor is conducted in a responsible manner'**.*<sup>27</sup>

The manner in which the quote has been presented by the Auditor General suggests that the 'responsible service of alcohol' is an issue that is audited and inspected by the Department. The full passage, however, reveals a significantly

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25 Auditor General for Western Australia, *Raising the Bar: Implementing key provisions of the Liquor Control Act in licensed premises*, March 2011, p. 23.

26 Auditor General for Western Australia, *Raising the Bar: Implementing key provisions of the Liquor Control Act in licensed premises*, March 2011, p. 24.

27 Auditor General for Western Australia, *Raising the Bar: Implementing key provisions of the Liquor Control Act in licensed premises*, March 2011, p. 23.



broader focus on issues of industry-wide regulation – including gambling and wagering – and would not have supported the implicit rebuttal provided by the version of the quote included in the audit report (emphasis added):

*The Department provides a range of **inspectorial and audit functions for casino and community gaming, liquor licensing and the betting industries to ensure that the service of gambling and liquor is conducted in a responsible manner.***<sup>28</sup>

**Given DRGL’s views on its powers, the Auditor General’s lack of legal advice is regrettable**

In the audit report, the Auditor General states that the Act ‘allows DRGL inspectors to enforce any offence’; later it is observed that ‘DRGL considers that the Act restricts its inspectors to monitoring building safety and administrative issues, but has not sought legal advice to confirm this view’.

As we have already explained, this is not uncritical acceptance by the Auditor General of the Department’s position; however, if legal advice had been sought by the Auditor General the matter could have been clarified much earlier.

We would have expected in cases like these – where the legal position on which the Auditor General is building his recommendations is subject to push back from the agency being examined – that the Auditor General would have sought legal advice to clarify its position. That this did not happen is unfortunate, because there is legitimate concern that Recommendation 1, in particular, has been misdirected.

**The purpose of Recommendation 1 is unclear**

The Auditor General acknowledged that he did not disagree with DRGL’s view regarding its powers, although as we have already explained it does not seem that there was uncritical acceptance of this position by the Auditor General. The acceptance by the Auditor General of the Department’s position in respect of its powers appears to be inconsistent with the position the Auditor General takes in the first recommendation directed at DRGL and WA Police. If DRGL does not, as the Auditor General acknowledges, have the power to enforce the responsible service of alcohol then the recommendation that WA Police and DRGL ‘formally agree on their roles for monitoring, enforcement, and education [...] including monitoring the responsible service of alcohol...’ would seem redundant.

Indeed, it seems unfair to make a recommendation about an issue to an agency that the Auditor General acknowledges does not have the power to remedy.

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<sup>28</sup> Department of Racing, Gaming and Liquor, *Annual Report 2009–2010*, p. 18.

## Chapter 1

There are other problems, too. A reasonable interpretation of the words of the Auditor General in the audit report makes it clear that both WA Police and DRGL were being held responsible for gaps in the monitoring and enforcement of the responsible service of alcohol. The Auditor General does not express an opinion endorsing the Department's suggestion that its powers are limited, and when the Department's views of its powers are presented in the report, they are followed by commentary rebutting DRGL's position. We must therefore conclude that, as presented in the audit report, the Auditor General was of the view that the Department both had the power to enforce provisions relating to the responsible service of alcohol and had been failing to carry out this role under the Act. We make this conclusion despite the position taken by the Auditor General in his letter to us subsequent to the tabling of the audit report.

This then raises a further problem: if the Auditor General held this view, why was the language used in the finding so weak and why was the recommendation so vague? If an agency had the power to regulate certain activities and was failing to do so, this would seem to be a significant failure on the part of the agency. We would expect the language used by the Auditor General in that case to reflect the level of significance of the failure.

### **Legislation, not interpretation**

In the context of the discussion about DRGL's powers and whether legal advice had been sought to clarify those powers, the Auditor General made the comment that:

*I think this issue relates to DRGL's interpretation of my report and its recommendations rather than interpretation of the legislation.<sup>29</sup>*

To some extent, we think that the Auditor General is correct. Many of the concerns raised by DRGL arise from the way in which it has interpreted the report. On the one hand, we disagree with the Department when it suggests that the Auditor General took the view that the responsible service of alcohol is the key element of the Act. On the other hand, we think that there are some shortcomings relating to how the Auditor General formulated recommendations relating to the service of alcohol, and how the disagreement over the powers of the Department to regulate responsible alcohol service was handled.

Gaining legal advice would have resolved those problems and would have helped to achieve three outcomes.

Firstly, it would have settled the question about the appropriateness of directing recommendations to DRGL – rather than WA Police – about the responsible service of alcohol. Here, we are talking in particular about Recommendation 1.

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<sup>29</sup> Mr Colin Murphy, Auditor General, Letter, 7 September 2012.

Secondly, it would have removed the uncertainty introduced when the Department's view that it did not have the power to regulate the service of alcohol was rebutted by the language the Auditor General used on pages 23 and 24 of the audit report. Legal advice would have clarified the matter one way or another.

Finally, and perhaps most importantly, legal advice would have assisted the Auditor General to formulate much more specific recommendations that dealt directly with the shortcomings identified during the audit. The Auditor General pointed out (in relation to Recommendation 1) that:

*The recommendation does not focus solely on DRGL nor is it prescriptive about how the gap we observed should be resolved. A number of options would be possible from the recommendation – changed roles, changed resourcing, changes to legislation – all of which are properly issues for the agencies to pursue.<sup>30</sup>*

To the extent to which this is true, the Auditor General is of course correct; however, in the absence of legal advice, it is a recommendation made without a solid understanding of the shortcoming it is intended to address. As a result, the recommendation is also too vague and, as DRGL suggests, may have been directed inappropriately at the Department.

## **Concluding remarks**

The Auditor General fills an important role in our democracy, providing independent oversight of the operations of the executive government on behalf of the Parliament. The importance of the role is reflected in the extent of the powers granted to the Auditor General to carry out his role. During the four years of this 38<sup>th</sup> Parliament, the Public Accounts Committee has enjoyed a close working relationship with the Auditor General and his staff, and this is the first occasion on which we have felt it necessary to raise some criticism about an audit. We acknowledge that the issues discussed here are not massively significant, but they are worth examining precisely because of the important role given to the Auditor General by the Parliament.

It is also important to acknowledge that the Auditor General may not be incorrect in his interpretation of the Act. In the absence of legal advice this will remain an open question.

Rather, it is important to highlight that the lack of legal advice undermined the authority of the Auditor General to make definitive recommendations and introduced a level of uncertainty and vagueness in language throughout the report, which lessened the report's impact. We would expect that the processes used by the Auditor General

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<sup>30</sup> Mr Colin Murphy, Auditor General, Letter, 7 September 2012.

## Chapter 1

to settle issues of contention with agencies prior to tabling a performance audit report would remove the possibility for disagreements such as this and recognise that this is how such matters are normally handled.

### **Information Systems Audit Report – Reports 10, 2012 and 4, 2011.**

#### **Background**

The security afforded to the information stored on Western Australian Government Information Technology (IT) networks has long been an area of concern to the Committee. In 2011, we provided a summary of the reports completed by the Auditor General during the previous several years in which IT security was consistently found to be below acceptable levels. An updated version of that summary is reproduced on the following page; it should be immediately clear from it that there have been systemic problems with the way in which government agencies secure their IT infrastructure and the information they store on it.

The Auditor General's most recent report examined whether agencies are conducting online transactions in a secure manner, compliant with the standards set by the Payment Card Industry. Four of the nine agencies examined were not meeting industry standards in a number of key areas and they had not effectively managed the risk of cardholder data being compromised.

The Auditor General also conducted a follow-up to an audit he conducted in 2011 focusing on agency defences against cyber-attacks. He found some improvement – mostly from steps taken by the government's internet provider – but was able to overcome the layer of protection offered by the ISP. He found that agencies remain vulnerable to the same weaknesses identified in the 2011 audit.

#### **The Committee's approach**

Rather than requesting each individual agency examined by the Auditor General provide an update on the steps being taken to implement the recommendations made in the audits, we have chosen to approach the issue of IT Security as one that can best be handled on a 'whole of government' basis. Following the tabling of last year's IT Security Report by the Auditor General, we wrote to the Premier and suggested that consideration be given to the immediate establishment of a Chief Technology Officer (CTO) and Chief Information Officer (CIO) which would be responsible for managing issues like IT security for the entire public sector. In writing to the Premier, we observed that establishing the two positions had been a recommendation of the government's Economic Audit Committee in 2009. We noted that one of the reasons why IT security was so poor in the public sector was the lack of government-wide information security policy coordination.

**Previous IT Security reporting by the Auditor General**

**In 2007**, the Auditor General examined wireless networks in eight agencies and found serious information security weaknesses in seven of those agencies. In particular, none of the agencies were monitoring for unauthorised installation of wireless access points or external interception of the agency's wireless signals.

**In 2008**, the Auditor General examined seven agencies to ascertain the adequacy of their policies for the disposal of hard drives. None of the agencies were found to have policies or procedures for the removal of data from computer equipment prior to disposal. The Auditor General purchased 10 ex-government computers at auction and was able to recover sensitive and confidential data from four of these computers.

**In 2009**, the Auditor General examined the protection of personal and sensitive information. None of the five agencies examined were found to have adequate controls in place to protect the information held on networks and in databases. Three of the five agencies lacked IT security policies; none of the agencies were consistently applying administrative controls (police checks, confidentiality agreements); and network security was found to be poor, which resulted in active network accounts for former employees and generic accounts that allowed access to networks by unidentified individuals. The Auditor General also found fundamental weaknesses in security controls, including the retention of manufacturer default passwords for databases, and some databases with no password access at all.

**In 2010**, Auditor General examined the security afforded to laptop and portable storage devices (PSDs) and found that each of the seven agencies examined lacked comprehensive management, technical and physical controls over their laptops and PSDs.

**In 2011**, the Auditor General examined 15 agencies in order to ascertain whether they had configured their IT systems (and had supporting policies and procedures in place) to detect, manage and appropriately respond to cyber-attacks. None of the agencies were found to have adequate systems in place and only one agency detected the Auditor General's attacks. Internal networks—that is, the networks used by staff to store and retrieve agency data—at three agencies were accessed using vulnerabilities identified in the previously undetected attacks.

Another test carried out by the Auditor General involved leaving USB devices in agency common areas (i.e. meeting rooms, lunch areas). In eight agencies, the USB devices were plugged into computers and sent information on agency networks back to the Auditor General.

Collectively, the Auditor General's reports from the preceding four years paint a particularly concerning picture about the state of information security in the Western Australian public sector and serve to highlight the lack of awareness of information security amongst public servants.

## Chapter 1

In response, the Premier indicated that the government was still considering the creation of the CTO and CIO positions, although he noted that properly addressing the issues raised by both the Auditor General and the EAC was a priority of the government. He also reported that he expected decisions about the roles of CTO and CIO would be made soon.

The Premier also informed us that the following actions had been taken in direct response to the 2011 Auditor General report:

- Directors General and Chief Executive Officers had been reminded of their responsibilities for ensuring their agencies implement appropriate IT and internet security, and advised them of the cyber security directives and resources available to help them meet their obligations.
- The Public Sector Commissioner continues to provide limited cyber security advice to agencies and continues engagement with agencies through the Inter Agency Information Security Management Group.
- The Public Sector Commissioner is also planning for the development of a Cyber Security Policy Framework.

### **The 2012 IT security audit revealed that the problems were continuing**

Although the Auditor General found some improvements to the way in which agencies were securing themselves from cyber threats, it was still clear that problems remained. On that basis, the Committee resolved to conduct a hearing with the appropriate agency in order to discuss what steps were being taken to address the problems.

### **The Department of Finance is now the central agency responsible for IT Security**

In July 2012, the Department of Finance (DoF) was given responsibility for the provision of assistance to government agencies to meet their IT security obligations. What this means in practice is that DoF will provide agencies with ‘advice, tools, guidelines, education, templates and monitoring’ but that the individual agencies themselves will still remain individually responsible for ensuring that their IT security is of a sufficiently robust standard.<sup>31</sup> As part of the decision to give this responsibility to DoF, the government would appear to have chosen against the option of creating either the CIO or CTO positions for the public sector.<sup>32</sup>

The appointment of DoF as the central agency responsible for IT Security goes some way to addressing one of the key issues that we were aware of; namely, agencies felt

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31 Ms Anne Nolan, Director General, Department of Finance, *Transcript of Evidence*, 12 September 2012, p. 3.

32 Ms Anne Nolan, Director General, Department of Finance, *Transcript of Evidence*, 12 September 2012, p. 3.

that they did not have anywhere to turn in search for advice or assistance relating to IT security matters. We were aware, for instance, that agencies had sought help and advice from the Auditor General when negative findings were made as part of the audit process. Of course, this is not the role of the Auditor General and the fact that agencies were seeking assistance from his office gives some insight into the deficient nature of the IT security assistance that was being provided to agencies.

### **Only one full-time staff member has been dedicated to IT security**

When responsibility for IT security was transferred from the PSC to DoF in July 2012, a small policy unit consisting of three full time equivalent (FTE) staff was also transferred. Only one of these new staff members is dedicated specifically to IT security, the other two are responsible for the government's internet standards and the Commonwealth Government's national identity security program.

Given that DoF has itself described its role as being to advise, monitor and develop tools, guidelines and policies, we would expect that the size of the team dedicated to the task would grow, particularly if an effective monitoring function is to be established.

As would be expected, individual agencies have larger numbers of people dedicated to IT security. The Department of Education, for example, employs 7.2 FTEs in this role; the Department of Health retains three FTEs and the Department of Transport a single FTE.<sup>33</sup> Although the number of resources dedicated to IT security in the Departments of Education and Health seem appropriate – given the number of staff at both agencies and given the vulnerability of children accessing the internet, even in schools – the limited number of resources dedicated by the Department of Transport was something of a surprise and may not adequately reflect the critical nature of the infrastructure administered by Transport.

### **A CIO for the public sector will not be established**

Despite being a recommendation of the Economic Audit Committee in 2009, the Government has made the decision not to establish a CIO position for the entire public sector. Although ultimately this is a policy decision for the government of the day, consideration should be given to the merit of nominating a single person with the title of CIO to lead a division of government dedicated to improving all aspects of IT service delivery in the public sector, most particularly IT security. Creating this position would have the benefit of creating a high-profile role with the status necessary to lead reforms in the area of IT security.

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<sup>33</sup> Ms Anne Nolan, Director General, Department of Finance, Letter, 21 September 2012.

## Chapter 1

### **DoF has an important role to play in increasing IT security awareness**

In the lead-up to our Hearing with DoF, we were concerned that the level of security awareness within the Western Australian public sector matches the potential danger posed by unauthorised access to information via hacking activities. That eight agencies in 2011 fell victim to the 'trap' set by the auditors when they left USB devices in public places suggests that staff members are not aware of the dangers and that agencies have failed to lock down their systems by blocking USB devices.

In recent years, USB devices posing as gifts have been used by hostile intelligence services against British businesses. Once inserted into computers, the USB devices transfer a 'Trojan' program that enables remote access to computers. If staff members are not aware of the security risks associated with accepting these 'gifts' stopping unauthorised access can prove very difficult.

According to DoF, there has been an increase in the level of engagement by senior managers in relation to IT security in recent months. This no doubt reflects the influence of seminars that the Department has recently been conducting in an effort to communicate the importance of the issue across all sectors of the government. There was, however, also an admission that 'more needed to be done' at Director General and CEO levels.<sup>34</sup>

### **A cyber security policy is now in place**

We had been concerned about the absence of a centralised and detailed IT security policy for some time, particularly given the expressed view from some agencies that they did not know where to look for guidance when either responding to a cyber-incident or trying to improve cyber security. It was therefore pleasing to receive a copy of the Department's completed *Cyber Security Policies, guidelines and resources* document, which has been made available to all government agencies.

The document is based on the ISO 27,000 series of international standards, which is recommended by the Auditor General and is the standard required in the *Australian Government Information Security Manual* published by the Defence Signals Directorate. The document consists of the suite of advice, policies and templates that agencies should use in order to improve the management of their IT security.

In addition to the development of the policy documents, DoF has also established a common-use arrangement that provides IT security advice, auditing, compliance, training and testing services, which agencies are required to access to gain support for their security management.

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<sup>34</sup> Mr Rod Alderton, Executive Director, Government Procurement, Department of Finance, *Transcript of Evidence*, 12 September 2012, p. 4.



## **Public Sector Performance Report – Report 5, 2011: Agency compliance with procurement requirements**

### **Background**

The Western Australia public sector spends billions of dollars each year on goods and services. The Auditor General emphasised that it is important that public agencies ensure value for money and fair access for suppliers by engaging in good procurement practices as set out in government policies and guidelines. This also reduces the risk of fraud. The drivers of the procurement framework are efficiency, effectiveness and transparency, fair and equitable access to all government procurement by all potential suppliers, and sound management of the entire procurement process.<sup>35</sup>

Nine agencies were examined against the principles of good procurement practice:

- Botanic Gardens and Parks Authority (BGPA)
- Chemistry Centre of Western Australia (CCWA)
- Department of Culture and the Arts (DCA)
- Department of Water (DoW)
- Department of State Development (DSD)
- Perth Market Authority (PMA)
- Subiaco Redevelopment Authority (SRA)
- Western Australian Institute of Sport (WAIS)
- Western Power (WP)

### **Auditor General's findings and recommendations**

The audit concluded that compliance by the audited agencies with government policies and good practice was inconsistent and agencies could be missing opportunities to secure best value for money.

- Five agencies – BGPA, DCA, DoW, DSD and SRA – consistently used the right method to buy goods and services. The other four agencies frequently used methods of procurement that did not adequately demonstrate they were seeking value for money.

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<sup>35</sup> Auditor General for Western Australia, *Public Sector Performance Report 2011*, Report 5, June 2011, p. 5.

## Chapter 1

- Seven of the nine agencies that were audited had granted themselves exemptions on at least one occasion from competitive market testing. Twelve per cent of all the procurement examined were made via exemptions. Testing of the exemptions revealed that 22 per cent did not satisfy all the requirements for granting of sole source of supply and value for money procurement could therefore not be ensured. WP was responsible for most of these inappropriate exemptions.
- Four agencies (less than half of the agencies examined) – DCA, DoW, DSD and WP – managed procurement strategically. The other five did not, meaning they did not identify all opportunities to achieve value for money.
- Seven agencies – BGPA, DCA, DoW, DSD, SRA, CCWA and WP – maintained reasonable accountability controls. Three agencies did not. Several control weaknesses were identified, the main one being poor record keeping which meant that some agencies could not demonstrate good procurement practices.
- Three agencies – BGPA, DoW and DSD – consistently reported publicly on their awarding of procurement contracts valued at over \$20,000. Four did not. This reduced the transparency of their procurement activities. Two agencies were exempt. Consistent reporting was defining as reporting at least 90 per cent of all relevant procurements.

The audit recommended that agencies should follow State Supply Policies and good practice principles, and that they should specifically:

- value procurements correctly so they use the right method
- analyse procurement data as part of strategic management
- use conflict of interest declarations and registers consistently
- maintain all key records, including quotes, evaluation reports and contracts
- publicly report all relevant procurement.

### **Agency Responses**

We wrote to each of the nine agencies examined in the Audit Report and asked what actions were being taken to implement the Auditor General's recommendations.

#### *Botanical Gardens and Parks Authority*

The Botanical Gardens and Parks Authority (BGPA) reported that it is taking measures to address the recommendations of the Auditor General, including analysing and

monitoring procurement spend. It noted that it was awaiting further information from the close of the 2011–12 financial year to undertake further analysis.<sup>36</sup>

Regarding management of conflict of interest, the agency stated that its Procurement Users' Guide includes specific mention of conflicts of interest, obligations by contract managers, and the reporting and disclosure of same. To enhance the quality of its records, BGPA reported that it has reviewed its previous documentation process and has undertaken additional checks. This has given the agency confidence that future audits will be able to review all required procurement related documentation.

The agency also indicated that it has updated the documents used when recommending exemption from State Supply Policy to include a Declaration of Interest statement.

Having reviewed BGPA's response, and having taken into consideration advice from the Auditor General, we were satisfied that the Authority was demonstrating sufficient progress with respect to implementing the Auditor General's recommendations and resolved to conclude the formal follow-up of the matter.

#### *Chemistry Centre Western Australia*

In its response CCWA indicated that it accepted all of the Auditor General's recommendations and that it has a programme to address the recommendations.<sup>37</sup>

It reported that it uses the correct method to procure goods and services. We were further advised that the agency has commenced a programme to overhaul its preferred supplier list so that it is put to tender or an exemption is prepared from the open tender to support 'sole supplier status'. CCWA indicated that it was working with the Department of Finance and it expected to complete this process for all relevant contracts by February 2012.

CCWA staff members who are regularly involved with procurement have commenced training in the discipline since 1 July 2011, and the agency regularly requests procurement training opportunities with the Department of Finance. To ensure robust processes are in place for managing conflicts of interest for all purchases, a 'Conflict of Interest Register' has been established. To maintain good records of its procurement activities, especially those of a high value, CCWA advised that it has:

1. Set up registers outlining exemptions to supply policy and providing for supplier feedback and complaints

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<sup>36</sup> Ms Marcelle Broderick, Acting Chief Executive Officer, Botanical Gardens and Parks Authority, Letter, 20 March 2012.

<sup>37</sup> Mr Ross Blakery, Director Business and Corporate Services, Chemistry Centre of Western Australia, Letter, 21 October 2011.

## Chapter 1

2. Put in place contracts with major suppliers. It reported that this process would not be complete until January 2012 for external Laboratories and some major suppliers of maintenance for specialised equipment such as Aligent.
3. Appointed a Procurements and Contracts Officer in October 2011 to ensure accountability controls are properly maintained. In tandem with the Exemptions Register, CCWA will require all staff to provide a Declaration of Interest when they recommend exemptions from State Supply Policy.

Finally, CCWA advised that following the appointment of the Procurements and Contracts Officer, it now publicly reports all contracts priced at more than \$20,000, or seeks exemptions where release of contract details presents a significant operational risk.

We were satisfied with the program of action that CCWA has undertaken to implement the recommendations of the Auditor General, and accordingly concluded follow-up of the matter.

### *Department of Culture and the Arts*

The Department of Culture and the Arts reported that it has accepted all of the recommendations of the Auditor General, and in consequence, it has either implemented many of them or provided extensive training to staff to increase awareness of State Supply Policy.<sup>38</sup>

We were informed that implementation has been done as follows:

1. Procurement analysis is being done and a Project Group has been established to improve buying behaviour.
2. An extensive training programme has been undertaken across the Department by the Department of Finance Contract Manager to increase awareness of State Supply policy and procedures. This training is included in the induction program for new staff.
3. A conflict of interest and complaints register has been established.

The Department also advised that work was being undertaken with the Department of Finance Contract Manager to ensure the Department's internal policy is consistent with State Supply policy. This information is maintained electronically on the Department's intranet, and is accessible to all staff. The procedures also include a requirement for staff to complete a Declaration of Interest for non-Common User Contracts under

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<sup>38</sup> Ms Allanah Lucas, Director General, Department of Culture and the Arts, Letter, 24 October 2011.

\$20,000. This work was anticipated to be completed in the first quarter of 2012. Further, DCA reported that it was working on expanding its Manager Education program to all portfolio agency managers and senior staff in the Culture and Arts portfolio. This program which includes awareness training on procurement and contracting policy and procedure requirements was expected to be delivered in the first half of 2012.

We concluded follow-up of this matter as we were satisfied that DCA has undertaken a program of action to implement the recommendations of the Auditor General.

#### *Department of Water*

In its response, the Department of Water (DoW) advised us that in line with the recommendations of the Auditor General, it has reviewed and refined its Procurement and Purchasing Policy.<sup>39</sup> It asserted that it consistently complied with each of the five specific principles articulated in the audit, including using the right procurement method for all procurement to ensure open and effective competition. We were told that where a Common User Arrangement is in place, it is utilised and where it is not available, the market is tested and quotations sought. All procurement requests above \$20,000 must involve a procurement officer from Government Procurement in the Department of Finance. In circumstances where DoW may seek exemption from competitive quotes, it advised that State Supply guidelines are followed, and a register is maintained of all exemptions.

DoW reported that it employs the three methods identified in the audit report to strategically manage its procurement. These are: analysis of past procurement spending, use of aggregated procurement arrangements and regular monitoring. We were further informed that DoW applied the four methods identified in the report to promote and demonstrate high standards of probity, and that staff are trained, communication with potential suppliers is consistent, conflicts of interest are well managed and commercially confidential information is protected.

The agency noted that it has clear procurement policies and delegation schedules in place that identify who can approve what; who can be part of the procurement process at each point. These processes are clearly communicated to all staff via the departmental intranet, procurement awareness training and review of purchases. All procurement processes above \$20,000 are referred to the Department of Finance's Procurement Manager for review and assistance in development, evaluation and award. Procurement details for awarded contracts worth \$20,000 and more are published on the Tenders WA website in accordance with the policy for open and effective competition.

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<sup>39</sup> Ms Maree De Lacey, Acting Director General, Department of Water, Letter, 25 October 2011.

## Chapter 1

We were satisfied that DoW was implementing the recommendations of the Auditor General and we accordingly concluded follow-up of this matter.

### *Department of State Development*

The Department of State Development (DSD) provided us with a response which indicated that the agency will continue to comply with best practice procurement principles through staff training, compliance monitoring and analysis of procurement spending.<sup>40</sup> DSD specifically advised that it will uphold the four principles of good procurement practices, namely open and effective competition, managing strategically, having good probity and accountability controls and reporting publicly all procurements above \$20,000.

We concluded follow-up of this matter as the actions DSD has taken to implement the recommendations of the Auditor General were satisfactory.

### *Perth Market Authority*

The Perth Market Authority (PMA) accepted all the recommendations made by the Auditor General in its response to us, and set out the actions and initiatives it has started.<sup>41</sup> These actions included reviewing numerous aspects of the Authority's procurement and financial processes and developing a programme to address the recommendations. PMA also reported that it commissioned Deloitte Touche Tohmatsu to provide advice during the review and it has enhanced its relationship with the Department of Finance. PMA has developed a Procurement Manual with the assistance of the firm RSM Bird Cameron which sets out the policies, procedures, flowcharts and templates to conduct procurement activities consistent with standing State Supply Commission Guidelines. The Authority further told us that it has restructured its organisation and increased its operational staff in finance and employed a specialised Procurement Officer.

The Authority advised us that its implementation programme was expected to be completed by 30 June 2012.

We were satisfied with the report provided by PMA regarding its implementation of the recommendations of the Auditor General. We accordingly concluded follow-up of this matter.

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<sup>40</sup> Mr Stephen Wood, Acting Director General, Department of State Development, Letter, 26 October 2011.

<sup>41</sup> Mr Stephen Ward, Chief Executive Officer, Perth Marketing Authority, Letter, 9 November 2011.

*Subiaco Redevelopment Authority*

SRA provided us with a report outlining the measures it has taken to implement the recommendations of the Auditor General.<sup>42</sup>

One finding highlighted by the audit was that the Authority did not analyse or monitor its procurement spend as part of its strategic management procurement. In this regard, SRA reported that following discussions with the Office of the Auditor General and the Department of Finance, it is now able to improve its procurement spend analysis and monitoring using the Department of Finance's Smarter Buying Guidelines – Procurement Reform Kit.

Regarding the recommendation for the Authority to demonstrate high standards of accountability by establishing a register for supplier complaints, it advised that a central registry has been created and any supplier feedback will be noted. SRA disputed the finding that it failed to publicly report relevant contracts on Tenders WA. It argued that it could not consistently report because the sample size was extremely small, and that the contract was with Western Power, a service authority, and as such, there was no possibility of any public competitive process. SRA stated, however, that it will continue to publicly report relevant contracts on Tenders WA and advised that it has implemented a monthly reconciliation process between Tenders WA and SRA's contract reporting.

In addition, we were informed that the Authority has created and maintains a register to manage issues such as conflict of interest, and all staff requesting exemptions are now required to complete a Declaration of Interest.

We were satisfied with the response provided by SRA setting out the measures it has taken to address the recommendations of the Auditor General and accordingly we concluded follow-up of this matter.

*Western Australian Institute of Sport*

The Committee will report on the outcome of its review of WAIS' response in the next Review of the Reports of the Auditor General.

*Western Power*

Western Power (WP) provided us with a detailed response providing a status report on its implementation of the recommendations of the Auditor General.<sup>43</sup> It reported that to ensure that all procurement processes conformed to Board policies and good

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<sup>42</sup> Mr Ryan Keys, Acting Chief Executive Officer, Subiaco Redevelopment Authority, Letter, 4 November 2011

<sup>43</sup> Mr Mark Thompson, Branch Manager, Group Commercial, Western Power, Letter, 7 November 2011.

## Chapter 1

practice, it now requires serious breaches to approved processes to be reported to the Executive. An interim breach register has been established for reporting purposes and an online compliance register was being developed for similar purposes. This additional reporting feature was expected to be operational by the end of December 2011. A revised Procurement Policy incorporating these changes was scheduled to be submitted to the Finance and Risk Committee in the third quarter of the 2011–12 financial year.

The agency reported that it has revised its Waiver of Competition process and supporting documents to ensure, among other things, increased accountability for the justification for a waiver. Exemption endorsement is limited to Branch Manager level and above, with the financial authority to approve the expenditure. The agency also indicated that further reporting of use and compliance of Waivers of Competition to the Executive would occur on a quarterly basis commencing in the third quarter of financial year 2011–12.

The audit recommended that WP should require staff to provide a 'Declaration of Interest' when recommending exemptions from competitive procurement. WP accepted this recommendation and advised that a general declaration of conflict of interest is signed by employees as part of their employment contract, and when necessary, supplemented with a tender specific declaration when participating in other tender reviews. The agency further reported that it has amended the request for 'Waiver of Competition' memorandum, and incorporated a specific declaration associated with a specific request.

WP also accepted the recommendation that it should ensure its complaints procedure includes a mechanism for capturing supplier feedback and complaints. It reported that it has developed an online procurement complaints process which allows complainants to directly enter their details including the nature of their complaint. The system went live in May 2011.

We concluded follow-up of WP as we were satisfied that the agency has taken adequate measures to implement the recommendations of the Auditor General.

## **Public Sector Performance Report – Report 5, 2011: Managing the Priority Start Building Policy**

### **Background**

The construction industry is a major player in the economy of the state of Western Australia, contributing approximately \$18.5 billion (9.8 per cent) of the State's gross



domestic product in 2009-10, and employing some 129,100 people or 10.7 per cent of the total workforce.<sup>44</sup>

The industry is a significant employer of apprentices, accounting for 12,788 apprentices and trainers as of December 2010. Approximately 32.8 per cent of Western Australian apprentices and trainees are employed in the construction industry.

The Priority Start Building Policy (the Policy) is intended to ensure that Government provides a significant contribution in the engagement of apprentices in the building and construction industry'. Since its implementation in June 2007, the Policy has been applied to 259 contracts with a total value of \$2 billion.<sup>45</sup> The Policy is implemented via the Department of Training and Workforce Development (DTWD), relevant agencies and head contractors responsible for different activities.

The audit assessed whether agencies were meeting the objectives of the Policy by applying Policy requirements in their building and infrastructure construction contract, and whether the required numbers of apprentices were employed for the life of the contracts, and if Policy implementation was reviewed and improved where necessary.

The audit examined Policy administration in DTWD, and tested implementation of the Policy by three agencies responsible for work contracts and some government trading enterprises. These were the Department of Housing; the transport portfolio including Main Roads Western Australia, the Public Transport Authority and Department of Transport; the Department of Treasury and Finance including Building Management and Works, and Strategic Projects; Geraldton Port Authority; Regional Power Corporation (Horizon Power); and Water Corporation.

### **Auditor General's findings and recommendations**

The audit established that agencies were not meeting the objectives of the Priority Start – Building policy to support employment of apprentices in the construction industry. It revealed:

- DTWD's oversight of the Policy was poor. Its predecessor, the Department of Education and Training conducted a superficial review of the Policy in January 2009 because it did not address fully the problems identified in the review.<sup>46</sup> Without robust monitoring and reviewing, flaws in the Policy and its implementation may not be identified and addressed, and inconsistencies in policy operation may continue.

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<sup>44</sup> Auditor General for Western Australia, *Public Sector Performance Report*, Report No. 5, June 2011, p. 24

<sup>45</sup> Ibid.

<sup>46</sup> Ibid., p. 25.

## Chapter 1

- Agencies are not consistent in their implementation of the Policy. Consistency in implementation optimises employment opportunities to apprentices and is fair to all contractors. 58 contracts were examined and revealed several weaknesses including:
  - five contracts that did not require contractors to employ apprentices either in the preceding year or for the duration of the contracts, as required by the Policy
  - agencies awarding five contracts without checking that the head contractors had current registration with DTWD. There was no evidence that these contractors had employed any apprentices in the preceding year
  - 19 contracts did not require contractors to employ an appropriate number of apprentices. Contracts are the means by which agencies are able to enforce compliance with the Policy.
  - the Department of Treasury and Finance did not provide its 2009–10 annual report to DTWD to demonstrate the Program met the intent of the Policy. The failure to report was not followed up.
  - DTWD did not check whether the required number of apprentices was employed for the duration of each contract. Contractors may not be replacing apprentices who leave before contracts are complete. Head contractors should advise DTWD when apprentices are replaced.

The Auditor General recommended that agencies should:

- ensure the Policy is applied to all eligible contracts
- require all successful bidders to have current registration with DTWD
- correctly specify in contracts the appropriate number of apprentices to be employed
- promptly inform DTWD when contracts are awarded.

The Department of Treasury and Finance should provide DTWD with all data and reports required.

DTWD should:

- conduct a thorough review of the operation and effectiveness of the Policy
- improve procedures for ensuring that complete and accurate records are kept

- develop risk based monitoring plans and procedures to identify potential non-compliance
- establish regular management reporting and monitoring processes to ensure Policy implementation is efficient and effective.

### **Agency responses**

#### *Department of Training and Workforce Development*

DTWD indicated in its response that it accepted all of the recommendations made by the Auditor General.<sup>47</sup> In conducting a thorough review of the operation and effectiveness of the Policy as recommended by the audit, DTWD reported that it has established a Steering Committee with representatives from key industry stakeholders and Government agencies to undertake the review.

As to the need to improve procedures to ensure complete and accurate records are kept, DTWD advised that all procedures have been reviewed, a draft procedure manual completed and a continuous improvement process implemented.

To identify potential non-compliance, DTWD reported that it has implemented a system of desk top monitoring of apprentices and checks Tenders WA on a weekly basis to determine if the contracts listed should comply with the Policy.<sup>48</sup> The Department has also identified systems changes to improve the link between the apprenticeship and traineeship database (TRS) and Priority Start Building (PSB) database to allow for monitoring of PSB apprentices.

To ensure Policy implementation is efficient and effective through regular management reporting and monitoring processes, DTWD reported that it has commenced compiling monthly reports identifying applications, registrations, agency notification and overdue Component B to the Director. We were further advised that fortnightly meetings with staff responsible for implementing PSB policy have commenced.

### **Recommendation 3**

That the Minister for Training and Workforce Development provide an update for both the outcome and impact of the initiatives the Department for Training and Workforce Development has undertaken with its partners to address the recommendations made by the Auditor General.

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<sup>47</sup> Dr Ruth Shean, Director General, Department of Training and Workforce Development, Letter, 11 November 2011.

<sup>48</sup> Ibid., p. 3.

## Chapter 1

### *Department of Housing*

Housing provided us with a detailed response which outlined its acceptance of the Auditor General's recommendations and set out the measures the Department and its partners were undertaking to address the recommendations.<sup>49</sup>

Through the use of a Memorandum of Understanding with DTWD, Housing reported that it has been able to meet the requirements of the Priority Start Policy since February 2009. The Apprenticeship Training Unit (ATU), which is managed by Building Management and Works (BMW) on behalf of DTWD, has been facilitating Housing's requirements under the Policy since 2011. This arrangement requires all tenders for work exceeding \$300,000 to include in tender documentation an estimate of the number of apprentices needed. The contract details and estimated number of contracts are provided to the ATU in writing, and once the project contract is awarded (and the price known), the estimate is reviewed and revised if necessary. Housing then advises ATU in writing of the contract detail, successful contractors' contact details and the final number of contracts required for the contract. ATU is then required to provide DTWD with a monthly report summarising the placement of apprentices under the Policy on behalf of Housing. The Department informed us that this arrangement and associated processes have been established to ensure compliance with the Policy.

Further, DH advised that it has established a Working Party of representatives from across the Department that initiate construction, engineering or maintenance projects. The Party which ensures on-going compliance with the Policy will work with DTWD to address the four recommendations of the report.

After considering the report from DH, we were satisfied that the agency is taking appropriate steps to address the recommendations of the Auditor. We accordingly concluded follow-up of this matter.

## **Second Public Sector Performance Report – Report 7, 2011: Use of ICT Contractors in Government**

### **Background**

This report expands on an audit report published by the Auditor General in October 2010 by looking at how a further six agencies used ICT contractors to meet their ICT needs. The October 2010 report examined ICT Procurement in Health and Training.<sup>50</sup>

The Western Australian public sector spends more than \$600 million annually procuring ICT goods and services, a key component of which is the temporary

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<sup>49</sup> Mr Grahame Searle, Director General, Department of Housing, Letter, 8 December 2011.

<sup>50</sup> Auditor General for Western Australia, *Second Public Sector Performance Report*, Report No. 7, September 2011, p.9

employment of ICT contractors. The benefits of utilising ICT contractors include providing public agencies with the flexibility to access expert advice and capacity to implement ICT business solutions.<sup>51</sup>

The audit examined whether agencies are strategically managing ICT contractors to achieve agency objectives consistent with Government policy and guidelines. It looked at how well the following six agencies planned, procured and managed ICT contractors:

- Department of Education (DoE)
- Department of Mines and Petroleum (DMP)
- Western Australia Land Information Authority (Landgate)
- Lotteries Commission (Lotterywest)
- Electricity Retail Corporation (Synergy)
- Tourism Commission (Tourism WA)

The audit also examined the role of the Department of Finance (DoF) in pre-qualifying and monitoring supplier Common Use Arrangements (CUA).

#### **Auditor General's findings and recommendations**

While the audit found that Landgate planned, managed and procured its ICT contractors well, the other agencies had weaknesses, specifically:

- DMP, Lotterywest, Synergy and Tourism WA lacked either a comprehensive or up-to-date strategic ICT plans
- DMP, Lotterywest and Synergy did not fully comply with procurement policy for some of their contracting arrangements
- Potential conflicts of interest were not effectively recognised and managed at DoE, DMP and Synergy.
- The audit also found DoF to have a robust pre-qualification process to list suppliers on CUAs 1408 and 22008 and to administer it well overall. DoF agrees that it can improve monitoring of suppliers through the life of CUAs to ensure they remain appropriately qualified to deliver the services.

The Auditor General recommended that agencies should:

- Ensure that they have up-to date and comprehensive strategic ICT plans.

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<sup>51</sup> Ibid, p. 4.

## Chapter 1

- Comply with relevant government policy, guidelines and good practice for procurement.
- Proactively manage the risk of conflicts of interest by maintaining conflict of interest and gift registers. Where contracting arrangements present potential conflicts, these should be recognised and mitigation strategies documented through the strategic plan or conflict of interest/risk register.

### **Agency responses**

#### *Department of Education*

DoE advised that it accepted the Auditor General's recommendations and that it was taking actions accordingly.<sup>52</sup>

The Department reported that it was preparing a draft policy providing guidance on the dollar value of items that must be declared and who can approve retention of the items. As to the recommendation that DoE should adopt best practice and maintain gifts registers for each business unit and school, the agency informed us that it will expressly include the comments of the Auditor General in its draft gifts policy. The draft prohibits employees from accepting gifts that will or are likely to result in a conflict of interest in the performance of their duties. This includes gifts from contractors or suppliers involved in contract negotiations or tender processes. Each business or school will maintain a gift register. Once the policy is endorsed, a folder will be created in TRIM in Central and Regional Offices, and all declarations from staff will be stored in this folder. As schools do not have TRIM, each school will be required to create its own hard copy folder containing the declaration forms.

#### *Department of Mines and Petroleum*

DMP reported that it was reviewing its ICT strategy and related documents via measures which include revising its formal reporting mechanism to the Corporate Executive ICT sub-committee, and enhancing its sourcing strategy and risk management documentation to align business objectives. We were also advised that contract managers are required to conduct a periodic review of their respective contracts, evaluating them against objectives and associated performance measures.

DMP further advised that it avoids sourcing strategic ICT consultancy and associated services from the same contractor. A risk register has also been created as part of the updated sourcing strategy documentation, and where contract arrangements present potential conflicts, these will be recognised and mitigation strategies documented via the ICT strategic plan or conflict of interest/risk register as appropriate.

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<sup>52</sup> Ms Sharyn O'Neill, Director General, Department of Education, Letter, 7 December 2011

To ensure that there is a documented business case supporting the procurement of ICT services over \$150,000, DMP reported that a new electronic procurement and contract management system was being implemented. For contracts valued at over \$150,000 it will require sign-off confirming that a comprehensive business case has been prepared. The new system includes identification of potential conflicts of interest and risk mitigation strategies. DMP informed us that it now has a process in place to ensure that all procurement processes involve officers of the Department of Finance stationed at DMP and are conducted under contract or licence agreement arrangements.

#### *Lotteries Commission*

Lotterywest reported that it was implementing a program of the recommendations of the Auditor General.<sup>53</sup> It has an ICT Strategic Plan whose activities include:

- Conducting research into general and lottery specific ICT trends
- Consulting with stakeholders to ensure alignment of business and technical needs
- Drafting the ICT Strategic Plan and inviting stakeholder input
- Finalising and implementing the ICT document.

The agency also informed us that it was ensuring that purchasing compliance involved completing the development of the contract management plan originally left incomplete. It reported that it expected to complete implementing all the relevant recommendations of the audit by June 2012.

#### *Synergy*

Synergy advised us that it accepted the recommendations of the Auditor General and reported that it has appointed a Chief Information Officer and has commenced the development of a comprehensive ICT strategy which is expected to be approved by mid-2012.<sup>54</sup> We were further informed that a Vendor Relationship Management Team responsible for defining and governing procurement policies and processes is in place. A conflict of interest and gifts register has also been established together with a new gift policy which deals more explicitly with the way Synergy treats gifts.

#### *Tourism Commission*

Although the audit found that Tourism WA was managing its ICT contractors to achieve its objectives and its procurement to comply with State Services Commission policy and

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<sup>53</sup> Ms Jan Stewart, Chief Executive Officer, Lotteries Commission of Western Australia, Letter, received 29 March 2012

<sup>54</sup> Mr Trevor James, Chief Executive Officer, Synergy, Letter, 14 December 2011

## Chapter 1

DoF guidelines, it noted that the agency has not updated its ICT strategic plan to reflect its current ICT environment and sourcing strategy.

Tourism WA addressed a response to us and reported that it has updated its ICT strategic plan and now has a comprehensive ICT strategy and plan consistent with government policy and guidelines.<sup>55</sup>

Satisfied that these agencies had taken measures to implement the recommendations of the Auditor General, we concluded follow-up of this matter.

### **Second Public Sector Performance Report – Report 7, 2011: Acceptance of Gifts and benefits by Public Officers in the Department of Health**

#### **Background**

Public officers are commonly offered gifts during the course of their work. Potential conflicts of interest do arise when the recipients of the gifts are in a position to influence decisions that favour the donors. To deal with this, agencies are required to provide clear guidance to staff on the appropriate circumstances under which to accept or not accept gifts. They are also expected to ensure they have controls, such as gift registers and monitor procurement and contracting decisions, to prevent gifts being used to influence public officers inappropriately.<sup>56</sup>

The Auditor General conducted a preliminary audit examining the issue of public officers in the Department of Health accepting gifts, free accommodation and travel. This followed a request by Government and the Opposition after the Minister for Health presented a report in Parliament in May 2011, indicating that since July 2010, 25 gifts and 234 offers of travel benefits had been accepted. The value of the gifts ranged from \$30 to \$350, while that of free travel and accommodation ranged from \$400 to \$17,000 per offer. The report revealed that 29 per cent of these gifts and travel benefits were donated by companies that were reported to be in a financial or commercial relationship with the Department. These figures, according to the Auditor General, were significantly higher than any other agency in the public sector.<sup>57</sup> The audit examined 25 gifts as well as 22 highest value cases of free travel and accommodation in the Department's report.

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<sup>55</sup> Ms Staphanie Buckland, Chief Executive Officer, Tourism Western Australia, Letter, 15 December 2011

<sup>56</sup> Auditor General for Western Australia, *Second Public Sector Performance Report 2011*

<sup>57</sup> Ibid



### **Auditor General's findings and recommendations**

The Department of Health defines free travel as sponsorship rather than a gift, and treats travel and gifts differently.

The audit established that:

- Although all the sponsored travel applications examined explained the benefits of the travel and were approved in terms of policy, the risks around conflicts of interests were not identified and managed as per policy.
- Gifts were accepted in breach of policy. Policy did not allow gifts above a 'negligible value' to be accepted, yet the Department reported to Parliament that 25 gifts valued from \$30 to \$350 were accepted by staff. The report was based on information from different business areas within the Department that may or may not have had registers. As a result, the reliability of the information could not be ascertained.
- The Department did not have a program to monitor compliance with its policies for travel or gifts. This left the department unaware of practices that could be inappropriate and which had a potential to cause reputational damage.
- No officers who reported having accepted gifts or travel benefits during the period were later involved in awarding contracts to the donor companies.
- The Department has reviewed and amended its travel policy and practices to better reflect the risk associated with sponsored travel and conflicts of interest. It has also committed to introducing awareness-raising with sponsored travel and compliance monitoring activities. It was also in the process of reviewing its gifts policy, in consultation with the Public Sector Commission.

The Auditor General recommended the Department of Health to:

- Implement its revised policy and procedures as a priority.
- Schedule compliance monitoring for six months to a year after its new policies and procedures are implemented, then take action in response to the breaches and any other identified issues.
- Preclude officers that have received gifts or travel benefits from participating in, or influencing commercial decisions about donor organisations.

### **Agency response**

DoH provided a detailed report outlining the measures it has taken to address the recommendations of the Auditor General. The Department accepted the

## Chapter 1

recommendation that it should as a matter of priority implement its revised policy and procedures, review compliance monitoring for six months to a year following implementation of its new policies and procedures and take action in response to breaches and any other identified issues, and preclude officers who have received gifts or travel benefits from participating in, or influencing commercial decisions about the donor organisation. In this regard the Department reported that it has revised its *'Attendance at Functions and acceptance of Gifts, Prizes of Inducements Policy'* which is now called *'Acceptance of Gifts Policy'*, published in December 2011. We were also advised that the *'WA Health Staff Air Travel Policy'* was being revised to ensure compliance with the Auditor General's findings and recommendations. This includes strengthening the monitoring and compliance of this policy and ensuring any potential, perceived and actual conflict of interests are identified and managed. This revised version was expected to be completed by January 2012.<sup>58</sup>

DoH further told us that all officers who have been offered travel benefits from an external donor will be excluded from commercial decisions involving business with the donor. They will further be required to complete a conflict of interests risk assessment form, containing a series of questions whose answers will guide managerial approval. If it is demonstrated that there is any conflict of interest, the traveller is required to develop a risk mitigation strategy with their manager.

Both the revised *'Acceptance of Gifts Policy'* and *'WA Health Staff Air Travel Policy'* will be implemented in full by early 2012. The policies will be coordinated by the Department's Corporate Governance Directorate, which will also ensure that compliance is reviewed, and auditing and regular monitoring is undertaken.

The Auditor General provided us with feedback on the response from DoH and advised that the Department has made reasonable progress in implementing the relevant recommendations.<sup>59</sup> In a recent report on the purchase and management of pharmaceuticals in public hospitals, the Auditor General also confirmed that the *'Acceptance of Gifts Policy'* has been approved and implemented and the Department's Corporate Governance Directorate is conducting a compliance review relating to the acceptance of gifts and travel by Departmental staff from Pharmaceutical companies. The Department has also recently provided the Auditor General with an approved version of the *'WA Health Staff Air Travel Policy.'*<sup>60</sup>

We asked DoH to provide us with a copy of its gift register for the first nine months of 2012. Data from the register are reproduced below. It is immediately apparent that the South Metropolitan Area Health Service (SMAHS) is recording significantly larger

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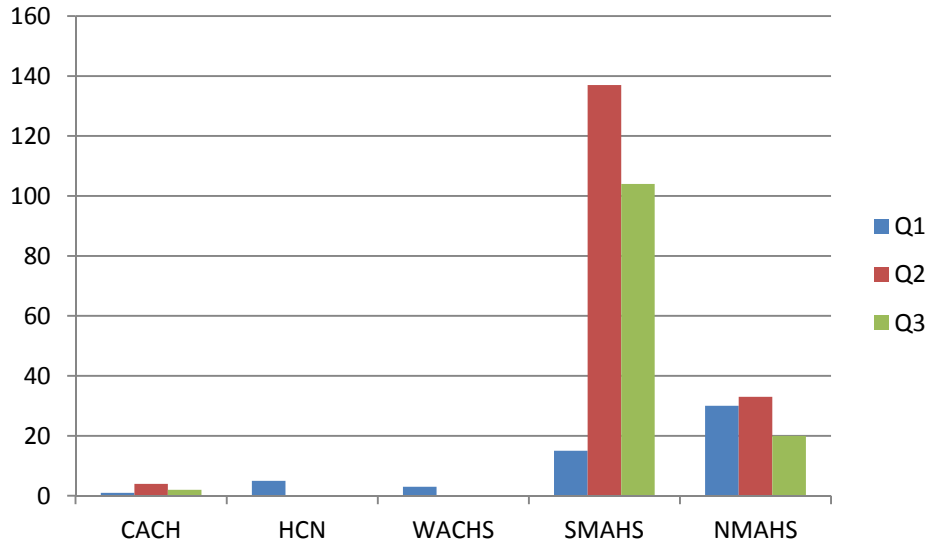
<sup>58</sup> Mr Kim Snowball, Director General, Department of Health, Letter, 16 December 2011

<sup>59</sup> Mr Colin Murphy, Auditor General, Letter, 28 June 2012.

<sup>60</sup> Auditor General for Western Australia, *Pharmaceuticals: Purchase and Management of Pharmaceuticals in Public Hospitals*, Report No. 7, June 2012

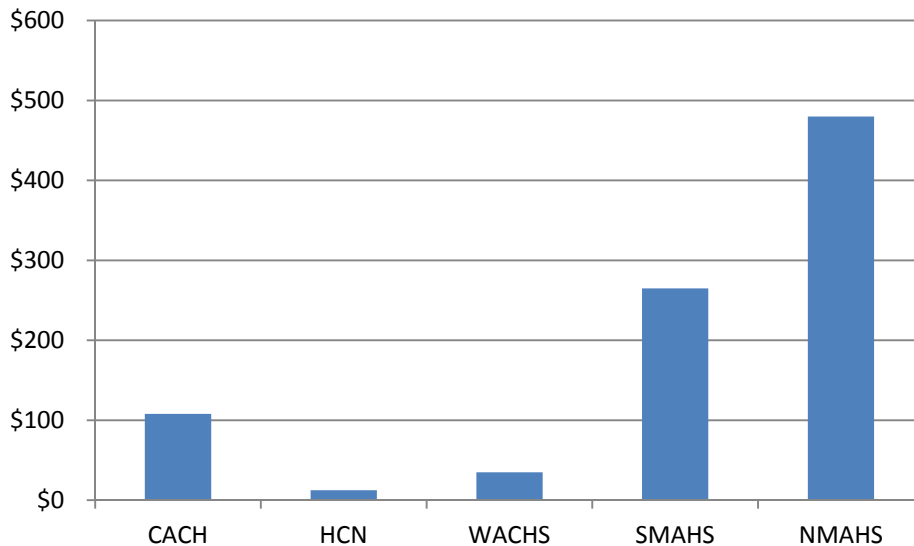
numbers of gifts received when compared to other divisions of the Department (see **Figure 2.1**).

**Figure 2.1: Number of gifts recorded by DoH employees between Jan–Sep 2012<sup>61</sup>**



Equally apparent is the higher average value of gifts received by the North Metropolitan Area Health Service (NMAHS) over the same period (see **Figure 2.2**).

**Figure 2.2: Average estimated value of gifts recorded by DoH staff members Jan–Sep 2012<sup>62</sup>**



61 Mr Kim Snowball, Director General, Department of Health, Letter, 18 October 2012.

62 Ibid.

## Chapter 1

DoH has confirmed that compliance monitoring of the new gifts register and gifts policy will result in the completion of an audit report in January 2013.

### **Recommendation 4**

That the Minister for Health tables a copy of the audit report examining the performance of the new Acceptance of Gifts Policy once it is completed by the Department of Health in January 2013.

## **Ensuring Compliance with Conditions on Mining – Report 8, 2011**

### **Background**

Mining is one of the key elements of Western Australia's economy, directly employing 70,000 people and generating \$4.9 billion in royalties in 2010-2011.<sup>63</sup> It is the economic mainstay and social support for towns and regions bringing jobs, infrastructure investment and development. The sector is forecast to increase sustainably in the coming years.

Mining however, also generates risks, which need to be mitigated by proper regulation, management, and best practice. Poor conduct and regulation can result in serious environmental and other long term consequences, resulting in the State inheriting significant rehabilitation costs.

The State employs a range of tools and agencies to deal with the risks and impacts presented by mines and their associated activities. It has a system of regulation to scrutinise and assess mining proposals, place conditions on them when contracts are granted, and to monitor and enforce those conditions. Agencies responsible for monitoring compliance with the conditions placed on mines are the Department of Mines and Petroleum (DMP), the Department of Environment and Conservation (DEC), the Department of State Development (DSD), the Department of Indigenous Affairs (DIA), and the Office of Environmental Protection (OEPA)

The audit examined whether the monitoring and enforcement activities of key government agencies provide adequate assurance that mining in Western Australia meets the conditions placed upon it. It focused on four questions:

- Are there clear legislated and regulatory powers to oversee and manage mining activities?
- Does the State receive the required financial, economic and social returns from mining?

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<sup>63</sup> Auditor General for Western Australia, Summary of Report, *Ensuring Compliance with Conditions on Mining, Report 8 September 2011*.

- Does agency activity provide effective environmental protection?
- Does compliance with conditions relating to mine closure and rehabilitation minimise risks to the State?

### **Key findings and recommendations**

The audit established that:

- Financial returns to the State are well managed and DMP ensures that royalties and rents are received as required.
- The monitoring and reporting of compliance with environmental offsets is inadequate.
- While DSD now tracks local content for State Agreement projects, it could do more to assess whether the levels achieved show that companies have met their obligations under the Acts to maximise local content.
- DIA has not effectively monitored or enforced compliance with conditions on mines under the *Aboriginal Heritage Act 1972*. As a result, heritage sites may have been lost or damaged without the State knowing or acting.
- Monitoring and enforcement of environmental conditions need significant improvement. Agencies could not provide assurance that conditions were being met at the time of the audit.
- DMP approached the enforcement of environmental conditions by taking minimum action required to obtain industry cooperation and compliance. While this can be effective, there are weaknesses which needed to be addressed.
- There is a risk that non-compliance with environmental conditions will not be identified and addressed on all the 26 State Agreement mines in the State because DSD and DMP have clear but differing views about their roles. DSD does not conduct active monitoring and enforcement, and expects that DMP will do so. DMP considers that it does not have the legislative powers to fulfil a monitoring and enforcement role on State Agreement projects where the *Mining Act* is not specifically applied.
- While stronger requirements for mine closure and rehabilitation planning have been introduced to reduce the risk of poor end-of mine outcomes, the State is still exposed to significant financial risks.

The audit recommended that Government and agencies should:

## Chapter 1

- Finalise policy arrangements for environmental offsets to ensure transparency in their application and monitoring
- Resolve and formalise arrangements for monitoring and enforcement of conditions on State Agreement Act projects
- Finalise changes to arrangements for mine closure financial securities to reduce financial risk to the State.

It should be noted that since the tabling of this audit, the Mining Rehabilitation Fund Amendment Bill has been introduced in Parliament which proposes a more equitable levy system to meet rehabilitation costs.

DIA should ensure that mining operators comply with conditions under Section 18 of the *Aboriginal Heritage Act 1972*. This will include conducting adequate monitoring and inspections.

DMP was recommended to:

- Improve processes for monitoring and inspection of compliance with environmental conditions
- Collect and analyse information on all non-compliance and report appropriately. This will include introducing the full post-approval capabilities of its data management system.

### **Agency response**

All the five agencies covered by the audit provided us with their responses to the recommendations of the Auditor General.

#### *Department of Mining and Petroleum (DMP)*

DMP accepted the recommendation that policy arrangements for environmental offsets be finalised to ensure transparency in their application and monitoring. It reported that it has contributed directly to the development of the Government's Environmental Offsets Policy published in September 2011, and the accompanying guidelines.<sup>64</sup> The agency told us that it supported the existence of an effective regulatory framework for State Agreement projects which clarifies the regulatory responsibilities of the various State Government agencies, in particular DMP, DSD and the Environmental Protection Authority (EPA). It advised that together with DSD it has commenced reviewing environmental compliance monitoring and enforcement policies and practice for State Agreement projects.

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<sup>64</sup> Dr Tim Griffin, Acting Director General, Department of Mines and Petroleum, Letter, 25 January 2012

It accepted the need to finalise changes to arrangements for mine closure financial securities to reduce financial risks to the State, and reported that it has undertaken a major review into the adequacy of the current securities system for mine sites in Western Australia. This process is expected to result in a preferred mining securities model that directly addresses the Auditor General's recommendations. The policy recommendations and future implementation of the new arrangement was scheduled to be presented before Government for consideration in February 2012.

DMP accepted the requirement of an effective and robust compliance system and noted that its compliance and monitoring system had not resulted in serious environmental harm. We were advised that the agency is pursuing a risk-based approach to regulatory effort, targeting those areas of potentially unacceptable environmental risks first. DMP also reported that it has taken a number of initiatives to improve information management and reporting on non-compliance. The focus is on individual mine site performance.

Having carefully considered the response provided by DMP, we sought additional detail about the steps being taken by the Department to improve the way in which it delivers its compliance functions. In its response, DMP sought to highlight its Reforming Environmental Regulation (RER) program, which is intended to fully integrate a risk and outcomes-based approach to achieve best practice in regulatory services. This reform has been developed to extend across all of the department's environmental regulatory services, including assessments, enforcement, information provision, and compliance monitoring.

In addition to progressing with the RER, DMP also reported that it had commissioned external reviews to benchmark its regulatory system. For instance, on 14 May 2012, DMP released an independent review of the regulatory framework governing uranium mining in Western Australia. This report was the outcome of an independent review initiated and commissioned by DMP to review the framework and provide recommendations to establish World Best Practice.

We sought information on how DMP was improving the way in which it handled the Annual Environmental Reports (AERs) submitted by mining companies. The Auditor General had noted that only 55 per cent of sampled operators submitted their AERs. In order to address this shortfall, DMP was upgrading IT capability to allow mining companies to submit their AERs online; however, even before this occurred the number of companies submitting had subsequently increased to 86 per cent. DMP expressed confidence that the number of companies submitting would increase again once online lodgement went live.

In his report, the Auditor General noted that very few of the submitted AERs were ever actually reviewed by DMP. In response, the Department has significantly expanded the

## Chapter 1

scope and functionality of the online AER lodgement system it is currently developing. The system will allow public access to the AERs and, more importantly, will have capability to screen all AERs received to ensure they meet a consistent standard. Mining operators will be unable to lodge incomplete AERs. The system will also require mining operators to confirm or not confirm compliance with all statutory conditions of approval and will automatically flag to DMP those AERs where non-compliance has been reported. This will, according to DMP, be an essential feature in prioritising which AERs are reviewed first and the level of review necessary.

In his audit report, the Auditor General noted that DMP had not defined how many mining sites require inspection or how frequently those sites should be inspected. In response to our request for more information about how DMP would improve the rate of its compliance inspections, DMP reported that it had set a target of inspecting 100 per cent of high risk mine sites each year. Inspections will be prioritised using a model that combines mine site complexity and environmental management factors with the time since last inspection. Examples of mine site complexity factors include the estimated life of mine, disturbance footprint, presence of problematic materials (such as potentially acid forming material, dispersive soils, sodic soils, etc) and potential impacts to sensitive environments. Environmental management factors include the rate of progressive rehabilitation, management strategies for problematic materials, capacity for on-site monitoring and onsite environmental knowledge.<sup>65</sup>

### *Department of State Development (DSD)*

DSD also reported that it was involved with the development of an Environmental Offsets policy as recommended by the Auditor General.<sup>66</sup> DSD noted that it does not issue environmental approvals and claims that it does not require environmental offsets for project approvals under State Agreements, and has not entered into any offset arrangements. The agency told us that it supports the resolution and formalisation of arrangements for monitoring and enforcement of conditions on State Agreement projects. To this end, the Department confirmed that it was jointly reviewing with DMP, policies for compliance and enforcement as they relate to the State Agreement projects. This process, scheduled to be finalised by mid-2012, will clarify the roles and responsibilities of various agencies in this segment.

### *Department of Indigenous Affairs (DIA)*

DIA reported that it has undertaken a program of action to implement the recommendations of the Auditor General as they relate to Section 18 of the *Aboriginal*

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<sup>65</sup> Dr Tim Griffin, Acting Director General, Department of Mines and Petroleum, Letter, 24 September 2012.

<sup>66</sup> Mr Stephen Wood, Director General, Department of State Development, Letter, 24 January 2012



*Heritage Act (AHA) 1972.*<sup>67</sup> This program includes the establishment of a Heritage Compliance Unit with a team of 16 trained members across regional and metropolitan Western Australia. It also involves enhancing compliance capacity in regional offices through training officers in heritage compliance and imparting them with skills to respond quickly to allegations of breaches of *AHA*. The Compliance Unit was also reported to be in the process of establishing an audit program that will enable it to conduct targeted and random audits across operators granted consents under *AHA*. First audits were anticipated to be completed before the end of January 2012. We were advised that further efforts were underway to encourage proponents to engage heritage knowledge possessed by traditional owners and their representatives.

*Department of Environment and Conservation (DEC)*

DEC reported that it plays a supporting rather than a direct role in either approving or determining compliance with conditions of mining approvals.<sup>68</sup> The Department advised that its involvement with the recommendations of the Auditor General were therefore limited to this extent. It informed us that its main involvement relates to the recommendation to finalise policy arrangements for environmental offsets to ensure transparency in their application and monitoring.

We sought additional information from DEC regarding the proposed Environmental Offsets Register. As at September 2012, DEC reported that the WA Government Environmental Offsets Guidelines were in an advanced draft form, having been approved for targeted consultation with peak industry and environmental groups by the Directors General Working Group that supports the Ministerial Taskforce on Approvals, Development and Sustainability.

The offset register was reported by DEC to be under development and was targeted for completion by July 2013. The register is intended to provide the public, government and industry with a single point of access to information on environmental offsets imposed under Western Australian legislation or agreements, or required under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and partly or wholly administered by a Western Australian government agency. DEC reported that it was likely that the register will be delivered via the DEC website, however no final decision on this has been made at this time.

*Office of the Environmental Protection Authority (OEPA)*

OEPA provided us with a consolidated response with the Environmental Protection Authority and noted, that the audit did not directly investigate the monitoring and

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<sup>67</sup> Mr Duncan Ord, Acting Director General, Department of Indigenous Affairs, Letter, 16 January 2012.

<sup>68</sup> Mr Keiran McNamara, Director General, Department of Environment and Conservation, Letter, 14 February, 2012.

## Chapter 1

enforcement of conditions set under Part IV of the *Environmental Protection Act 1986*, that it undertakes.<sup>69</sup> However, the agency indicated that the findings have some implications for the Environmental Protection Authority as it has regard for DMP regulatory framework to manage some environmental risks and impacts. In determining whether to assess mining and petroleum related proposals the EPA considers the extent to which DMP's statutory decision-making process meet the EPA's objectives and the principles of environmental impact assessment. The EPA therefore considers it important that DMP rigorously monitor and enforce the environmental conditions it places on project approvals. OEPA reported that it has met with DMP since the release of the audit report to discuss the issue and ensure that the approvals processes provide robust environmental protection through a complementary approach.

The agency reported that it was working closely with DEC to develop environmental offsets guidelines and a register. These guidelines were anticipated to be completed by March 2012, and the register will be established soon after. We were also advised that the Environmental Impact Assessment (EIA) process is one of the main approval processes in which offsets are used. The OEPA has its own policies and guidelines which guide its application of environmental offsets. OEPA reported that it has initiated a review of EPA policy to ensure that it is consistent with the Western Australian Government Policy and Guidelines. The review is expected to be finalised by September 2012. Regarding the monitoring of the implementation of offsets, EPA advised that it has recently moved to ensure that any environmental offsets are included in the conditions of approval that it recommends to the Minister. Inclusion of offsets as conditions in Ministerial Statements ensures implementation will be monitored by the OEPA through its compliance auditing process.

Following consideration of responses from the agencies examined by the Auditor General, we resolved to conclude our follow-up of the issue.

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<sup>69</sup> Mr Kim Taylor, General Manager, Office of the Environmental Protection Authority, Letter, 6 January 2012.

# Appendix One

## Committee's functions and powers

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The Public Accounts Committee inquires into and reports to the Legislative Assembly on any proposal, matter or thing it considers necessary, connected with the receipt and expenditure of public moneys, including moneys allocated under the annual Appropriation bills and Loan Fund. Standing Order 286 of the Legislative Assembly states that:

The Committee may -

- 1 Examine the financial affairs and accounts of government agencies of the State which includes any statutory board, commission, authority, committee, or trust established or appointed pursuant to any rule, regulation, by-law, order, order in Council, proclamation, ministerial direction or any other like means.
- 2 Inquire into and report to the Assembly on any question which -
  - a) it deems necessary to investigate;
  - b) (Deleted V. & P. p. 225, 18 June 2008);
  - c) is referred to it by a Minister; or
  - d) is referred to it by the Auditor General.
- 3 Consider any papers on public expenditure presented to the Assembly and such of the expenditure as it sees fit to examine.
- 4 Consider whether the objectives of public expenditure are being achieved, or may be achieved more economically.
- 5 The Committee will investigate any matter which is referred to it by resolution of the Legislative Assembly.