

Legislative Council Inquiry into Road Tolling – Audit Office of NSW Response to Questions on Notice

Question 1

The Hon. DANIEL MOOKHEY: You made certain findings about the way that unsolicited proposals were working and could be improved in that performance audit [Managing Unsolicited Proposals in New South Wales], is that correct?

Ms MIGOTTO: That is correct.

The Hon. DANIEL MOOKHEY: What were the recommendations you made in respect of that proposal?

Ms MIGOTTO: I did not come prepared today to talk in detail to that particular performance audit, so I would be happy to take that question on notice.

Response: There were no specific findings or recommendations on the NorthConnex proposal in the performance audit report – Managing Unsolicited Proposals in New South Wales (2016). The recommendations from the report are below.

Recommendations

By March 2017 the Department of Premier and Cabinet should:

1. Revise the 'Unsolicited Proposals: Guide for Submission and Assessment' to address matters of detail discussed in this report, including to:
 - 1.1. clarify the intended scope and meaning of the 'oversight' provided by DPC over the unsolicited proposal assessment process
 - 1.2. clarify the application of the term 'government'
 - 1.3. better explain how 'value for money' is addressed as one of five probity fundamentals, including the role of probity advisers in reviewing this probity fundamental
 - 1.4. require probity advisers be appointed for unsolicited proposals that progress beyond Stage 1, except where a proposal satisfies prescribed criteria
 - 1.5. clarify options for unsolicited proposals that are found not to meet the criteria for direct dealing.
2. Facilitate whole-of-government understanding of the unsolicited proposals process and related matters by releasing a Premier's Memorandum on this topic.
3. Expand the existing scheme of public reporting for unsolicited proposals received by government by:
 - 3.1. publishing aggregate data about all proposals that are received, including reasons for being declined
 - 3.2. publishing more detailed information for proposals that proceed beyond Stage 1 to reassure the public that governance and probity processes have been followed
 - 3.3. publishing an audited contract summary for successful unsolicited proposals greater than \$100 million.
4. Clarify the requirement that government 'have regard to relevant processes and approval requirements in related policy documents' (as set out in section 3.7 of in 'Unsolicited Proposals: Guide for Submission and Assessment') including clarifying:
 - 4.1. the policy intent of the expression 'have regard to'
 - 4.2. who is responsible for giving regard to other relevant processes and approval requirements

- 4.3. at what stage in the unsolicited proposal process regard should be given to other relevant processes and approval requirements
- 4.4. how consideration of these matters is documented.

Question 2

The Hon. DANIEL MOOKHEY: There was a non-competitive tender process between the New South Wales Government and a private toll operator for the widening of the M5. Are you aware of that?

Mr GOODWIN: No, I am not aware.

The Hon. DANIEL MOOKHEY: Has the Auditor-General looked into any of this or have you had a view that this is something which would attract a performance audit?

Mr GOODWIN: I think I would need to take that one on notice.

Response:

The Audit Office has not examined the tender process for the widening of the M5.

The Auditor-General considers a range of issues when deciding on the forward program of performance audits. These include materiality, potential for impact, community concern and whether the topic is in response to a specific request from members of parliament or the community. These factors would need to be taken into account in deciding whether this topic is considered a priority for a performance audit.

Question 3

The Hon. JOHN GRAHAM: I know that this is almost impossible to answer but if you can give any guidance I would appreciate it: how low would the government share have to drop for that question of control to start to become relevant? Is it 30 per cent, 25 per cent?

Mr GOODWIN: I do want to be helpful. Certainly if you had 25 per cent it would be hard necessarily to exert influence, which is what you are looking for, but it does come down to the substance of the arrangement and the controlling interests on the government's board versus necessarily the holding interest.

The Hon. DANIEL MOOKHEY: Have you resolved this question in respect to the electricity transactions given that almost an identical corporate structure would be adopted for SMC as for Transgrid; that is, 51 per cent private, 49 per cent? Or is it the other way around?

Mr GOODWIN: If you wanted to explore the intricacies of that transaction I would need to come back to you on notice on that.

Response:

The new Ausgrid entity is no longer controlled by the NSW Government and is now being audited by a private sector accounting firm. At the date of completion, the pre-existing Ausgrid entity became the Alpha Distribution Ministerial Holding Corporation. The Audit Office will continue to audit this entity. This entity is the lessor in the 99-year finance lease of 50.4 per cent of the leased assets. The State's residual interest in Ausgrid (49.6 per cent) will be recognised as an equity investment in the Electricity Retained Interest Corporation – Ausgrid.

Publicly available information indicates that in October 2016, 50.4 per cent of Ausgrid was leased to a private sector consortium, with the NSW Government retaining a 49.6 per cent interest in the assets.

Publicly available information indicates that 100 per cent of Transgrid was leased to a private sector consortium in November 2015.

Question 4

Dr MEHREEN FARUQI: Thank you very much for coming in today. I understand that the Audit Office has previously reviewed public transport fare increases. Am I right in saying that?

Ms MIGOTTO: I am not aware of that occurring in recent times. I could take that on notice.

Response:

The Audit Office of NSW does not specifically review public transport fare increases. The Independent Pricing and Regulatory Tribunal (IPART) is responsible for determining the maximum fare increases for buses, trains, light rail and ferry services for metropolitan, regional and some rural transport.

The NSW Auditor-General's Report to Parliament: Volume Nine 2016 reported information on public transport patronage and revenue (p.5).

Question 5

Dr MEHREEN FARUQI: I am also interested in the idea of follow the money. You said that the Audit Office of New South Wales does not have those powers. Which State's audit offices have those powers at the moment?

Mr GOODWIN: I am certainly aware at the Commonwealth level, the Auditor-General of Australia does have those powers and they are powers that were recently provided. I should probably provide a contextual comment, which I feel I should have done at the beginning, which is that I have taken on my role at the Audit Office of New South Wales in January this year, having moved from the Commonwealth, where I was since 2004. Certainly at the Commonwealth level they have those "follow the money" powers. I believe also that in Western Australia and Queensland those powers exist and possibly, I believe, in Tasmania, but I would need to confirm that. That is a matter upon the public record that can be confirmed.

Dr MEHREEN FARUQI: If you could confirm that on notice that would be appreciated.

Response:

'Follow the money' provisions are features in Audit Acts in most Australian jurisdictions. These provisions were inserted into relevant acts in:

- Western Australia in 2006;
- Tasmania in 2008;
- Commonwealth, Queensland, Victoria, and Northern Territory in 2012; and
- The Australian Capital Territory in 2014.

Question 6

The Hon. Dr PETER PHELPS: There was some academic criticism of the Sydney transport model. Has the audit office looked at the efficacy of the model, which is used as the primary planning engine for Roads and Maritime Services? You can take the question on notice.

Ms MIGOTTO: It may have been included in contextual matters in one of our previous performance audits. We will take that question on notice.

Response:

The Audit Office has not examined the efficacy of the Sydney transport model in its previous performance audit reports.

Question 7

The Hon. DANIEL MOOKHEY: You did an earlier performance audit, which I think you undertook in 2014, in respect to the preparation of the original business case for the WestConnex. Do you recall that performance audit?

Mr GOODWIN: Yes.

The Hon. DANIEL MOOKHEY: I will leave it to you either in person or on notice to provide the Committee with a full list of all the recommendations or alternatively the document about that.

Response:

Recommendations from the WestConnex: Assurance to the Government (2014) report are below.

Recommendations

1. Infrastructure NSW should ensure the Major Projects Assurance Framework is fully and effectively implemented for all major capital projects (\$100 million or more), including:
 - Gateway reviews with Infrastructure NSW involvement using the Government-endorsed methodology
 - regular monitoring by and reporting to the Government through Infrastructure NSW (pages 18, 33 and 36).
2. NSW government sector agencies should, commencing June 2015, develop Governance and Assurance Plans at the beginning of all major capital projects and submit these for endorsement by Infrastructure NSW. These plans should clarify assurance steps and responsibilities including the management of potential conflicts (page 18).
3. Infrastructure NSW, NSW Treasury and Transport for NSW should introduce a 'review readiness' hold point for Gateway reviews by June 2015, so that Review Panels can put a review on hold until required documentation and personnel are available to them (page 33).
4. The WestConnex Delivery Authority should develop, by March 2015, a project plan for approval by Infrastructure NSW which:
 - sets out the various project components and the associated Major Projects Assurance Framework review and reporting requirements
 - provides for the business case to be formally and thoroughly revisited for Stages 2 and 3 of the project as well as any other major changes to the scope (page 36).
5. The WestConnex Delivery Authority should, by June 2015, either:
 - more clearly separate roles and responsibilities for delivery, commissioning and assurance or
 - develop and document robust processes and procedures to manage the conflicts that arise from a lack of such separation (page 41).
6. NSW government sector agencies should ensure the governance arrangements for future major capital projects include a clear separation of those responsible for delivery, commissioning and assurance (page 41).