

AUDITOR-GENERAL'S REPORT

PERFORMANCE AUDIT

Severance Payments to Special Temporary Employees

Department of Premier and Cabinet



The Legislative Assembly
Parliament House
SYDNEY NSW 2000

The Legislative Council
Parliament House
SYDNEY NSW 2000

In accordance with section 38E of the *Public Finance and Audit Act 1983*, I present a report titled **Severance Payments to Special Temporary Employees: Department of Premier and Cabinet**.

A handwritten signature in black ink that reads 'Peter Achterstraat'.

Peter Achterstraat
Auditor-General

Sydney
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Foreword

The Premier, Ministers and the Opposition Leader have advisers and assistants whose primary role is to provide support and advice on policy direction, and to liaise with public sector agencies as well as private sector business representatives and other interest groups.

The vast majority of these staff are employed as Special Temporary Employees (STEs) under part 2.5 of the *Public Sector Employment and Management Act 2002*, while others are transferred temporarily from public service agencies.

As at 31 December 2009, there were 216 STEs in NSW. They are employed by the Director-General, Department of Premier and Cabinet with their salaries paid from public funds.

The selection procedures for STEs are not through the normal public service processes but are at the discretion of the office holder.

Over the last three and a half years there have been three Premiers, 18 changes in ministerial appointments and a change in Opposition Leader.

During this period, STE turnover including resignations has averaged 34 per cent each year. Three in every five of these STEs received a severance payment and the rest resigned.

This audit examines whether severance payments to STEs have been made in accordance with clear rules and are not excessive. It also looks at severance pay arrangements in other jurisdictions.

Peter Achterstraat
Auditor-General

June 2010

Audit conclusion and recommendations

The focus of our audit

The Premier, Ministers and the Opposition Leader have advisers and assistants whose primary role is to provide support and advice on policy direction, and to liaise with public sector agencies as well as private sector business representatives and other interest groups.

As at 31 December 2009 there were 252 of these staff comprising 36 permanent public servants on temporary transfer and 216 Special Temporary Employees (STEs).

While the hiring of STEs is exempt from the normal public service processes, the management of these staff is governed by both the *Public Sector Employment and Management Act 2002* (PSEM Act) and administrative guidelines developed by the Department of Premier and Cabinet (DP&C).

The PSEM Act says the employment of an STE terminates:

- when the office holder dies or loses office
- on the day appointed for the next general election
- if the STE resigns
- if the services of the STE are dispensed with.

The Director-General, DP&C may choose to retain the services of an STE despite the above circumstances.

The PSEM Act allows the Director-General (as the Director of Public Employment) to make determinations on all STE employment conditions, including severance payments. Severance entitlements are set out in guidelines issued by the DP&C. When an STE's employment is terminated for any reason other than resignation, misconduct or poor performance, they receive a payment. The amount an STE receives in severance pay is determined by their salary and length of service.

Between 1 July 2006 and 31 December 2009, 257 STEs had their employment terminated or resigned. Of these, 147 received severance payments worth around \$5.9 million. The majority of these terminations followed the 2007 election (even though the government did not change) and the two changes in Premier.

In this audit we looked at the 257 STEs whose employment terminated between 1 July 2006 and 31 December 2009. We wanted to determine whether severance payments to STEs were made in accordance with clear rules and were not excessive.

Audit conclusion

Have severance payments been made in accordance with clear guidelines and received the appropriate tax treatment?

In reviewing both the severance pay guidelines and a sample of payments, we found the guidelines to be clear and all except two payments were made in accordance with them. In these two cases the severance payment was stipulated in the employment contract guaranteeing the STE a minimum of six months pay on termination, irrespective of the length of service.

One of the contracts was approved by the then Director-General, DP&C. The Director-General has the statutory power to do this. The other contract was approved by a properly delegated officer of DP&C. A file note indicates that nine days after the second contract was approved the then Director-General requested the then Premier to approve its special severance conditions. The file note indicates that the Premier approved the arrangement and noted: 'This is not a change in policy. One-off exemption only.'

The two STEs were terminated after less than a year in the job. Together they received \$235,000 in severance. This was \$177,800 more than what they would have received if severance was paid in accordance with the guidelines.

The ability to negotiate individual severance arrangements outside the guidelines is not transparent and establishes a precedent that others may seek to follow. In future, all STEs should receive severance payments in accordance with the guidelines.

In addition, the guidelines do not require the reason for termination to be given or an indication of whether the STE's job has been abolished. In the interest of accountability and transparency the reasons for these decisions should be clearly recorded in writing.

We also found that since 1995, all STE severance payments have been treated as redundancies for tax purposes. That is, severance pays have been taxed at a reduced rate. Yet the usual practice was for a new person to be employed after the STE was terminated. As a result, some severance payments may have been taxed incorrectly. The DP&C advises the roles, responsibilities and salaries of the new STEs often changed, but we do not know whether this made the outgoing STEs' terminations genuine redundancies. The DP&C also advises that taxation advice on this matter is being obtained.

Furthermore, the DP&C has set and published salary bands for the lower five levels of STE, but has not done so for the two most senior levels. In the interests of transparency, the salary bands for all STE levels should be set and published.

Are severance entitlements excessive?

The number of weeks of severance pay per year of service an STE receives has increased since 2006 and is now equal to the amount public service officers get. Public service officers are sometimes referred to as permanent public servants. They are not part of the government's Chief or Senior Executive Services and are not departmental temporary employees.

Prior to 2006, STE severance entitlements were less than those of public service officers. Unlike these officers, STEs are temporary employees for a period limited to the term of the office holder's appointment unless extended by the Director-General, DP&C. STEs can also be hired and promoted without competitive selection.

The then Director-General, DP&C took the view that STE severance payments should increase to correspond with the severance component of the voluntary redundancy scheme applying to public service officers and long-term temporary employees engaged for an indefinite period. In our view, however, it is not clear why this increase was necessary as STEs have different employment conditions in other respects.

The severance payments available to NSW STEs are generally greater than those available to similar staff in other jurisdictions. Other jurisdictions, however, provide higher payments where a staff member has served 17 years or more.

Some other jurisdictions, including the Commonwealth, provide different rates of severance pay depending on the reason for termination. These pay a lower rate to staff terminated for reasons other than the office holder dying, resigning or losing office. The underlying principle seems to be that terminations where the office holder changes are closer to redundancy, but are not treated as a bona fide redundancy for taxation purposes. Consideration should be given to adopting a two-tiered payment system in NSW.

Recommendations

It is recommended that the Director-General, Department of Premier and Cabinet:

1. set salary bands for all STE levels and publish these on the DP&C website (page 9)
2. record in writing:
 - the reason for termination under the *Public Sector Employment and Management Act 2002*
 - whether or not the job has been abolished (page 12)
3. only pay STEs severance in accordance with the guidelines (page 13)
4. obtain taxation advice on whether STE severance pay should be treated as a redundancy for tax purposes (page 14)
5. review the NSW severance guidelines before the next general election in March 2011 and consider:
 - the effect, if any, of the taxation advice
 - adopting different levels of severance pay depending on the reasons for termination (page 17).

Response from the Department of Premier and Cabinet

Thank you for the opportunity to respond to your performance audit on severance payments to special temporary employees (STEs).

The Department of Premier and Cabinet (DPC) welcomes the opportunity provided by this performance audit to consider the operation of the severance payments scheme that applies to STEs.

The legislative basis for the employment of STEs was enacted in 1998 (now under the Public Sector Employment and Management Act 2002), and since then has proven very effective as a vehicle for the recruitment and management of the staff employed by the Director General of DPC to work in the offices of Ministers and the Leader of the Opposition, to assist them in discharging their roles and responsibilities as holders of public office.

Given the statutory scheme, the Director General has a critical role in ensuring the availability of suitable personnel for employment as STEs. Appropriate terms and conditions include salaries, other employment benefits and separation arrangements.

Relevantly, the Director General, in his capacity as the Director of Public Employment, has determined that the basic features of the voluntary redundancy scheme for NSW public sector employees generally (four weeks pay in lieu of notice and three weeks pay for every year of continuous service up to 39 weeks) should apply when the employment of STEs is terminated for reasons other than unsatisfactory performance.

While the employment arrangements for STEs are unique in certain respects, such as their recruitment and termination being at the discretion of the office holder, other key features apply identically to public service staff.

In relation to the recommendations in the Performance Audit, the following comments are made.

Recommendation 1, which requests DPC to set salary bands for all STE levels and publish these on the DPC website, is supported.

Recommendation 2 proposes that the Director General DPC record in writing (a) the reason for the termination under the Public Sector Employment and Management Act and (b) whether or not the job has been abolished. These recommendations are supported.

Recommendation 3 relates to the payment of STEs severance in accordance with the guidelines. As Director General, I will retain the right, consistent with my statutory powers, to make exemptions to the guidelines when appropriate. As evidenced by the Audit Report, this occurs very rarely, but I intend to retain this flexibility. If these powers are exercised the Director General will document the reasons.

Recommendation 4 relates to taxation advice on whether STE severance payments should be treated as a redundancy for tax purposes. This is supported.

Recommendation 5 requests that DPC review the NSW severance guidelines before the next general election in March 2011 and consider (a) the effect, if any, of the taxation advice it is obtaining and (b) adopting different levels of severance pay depending on the reasons for termination. This is supported.

(signed)

*Brendan O'Reilly
Director General*

Dated: 3 June 2010

Key findings

1. Staff of political office holders

The Premier, Ministers and the Opposition Leader have advisers and assistants whose primary role is to provide support and advice on policy direction, and to liaise with public sector agencies as well as private sector business representatives and other interest groups.

As at 31 December 2009 there were 252 of these staff comprising 36 permanent public servants on temporary transfer and 216 STEs under the PSEM Act. The total number of staff working for office holders has remained relatively constant since 1 July 2006.

Employed as STEs While the hiring of STEs is exempt from the normal public service processes, the management of these staff is governed by both the PSEM Act and administrative guidelines developed by the DP&C.

STEs were created as a special class of temporary employee in 1998. They are employed for a period not exceeding the term of the office holder's own appointment, unless employment is extended by the Director-General, DP&C. In this way, they are similar to members of the Chief Executive Service (CES) and the Senior Executive Service (SES), who are on fixed-term contracts which can be extended.

Prior to the creation of STEs, staff working for office holders had to be re-employed every four months.

While there are individual variations in staffing, a typical Cabinet Minister's staff will comprise a Chief of Staff, a senior media adviser, three to six other advisers, and two or three clerical staff (see appendix 2).

As the employer, the Director-General, DP&C sets the salaries of STEs.

| Exhibit 1: STE grades by salary band, and terminations | | | |
|--|---|----------------------------------|--------------------------------|
| Grade | Salary band 31-12-09 | Terminated 1-7-06 to 31-12-09 | Resigned 1-7-06 to 31-12-09 |
| MS7 | There are no salary bands for MS6, OS6 and MS7. Salaries are determined by the Director-General, DP&C, on a case by case basis. | 20 | 12 |
| MS6/OS6 | | 14 | 10 |
| MS5/OS5 | \$119,573 - \$146,145 | 19 | 18 |
| MS4/OS4 | \$99,644 - \$119,572 | 24 | 18 |
| MS3/OS3 | \$79,717 - \$99,643 | 36 | 21 |
| MS2/OS2 | \$53,144 - \$79,716 | 31 | 26 |
| MS1/OS1 | \$39,857 - \$53,143 | 3 | 5 |

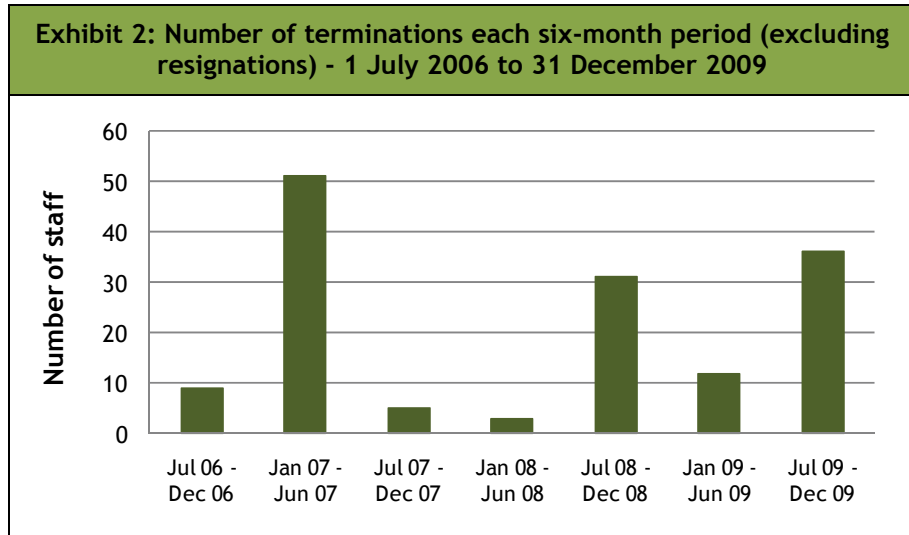
Source: Department of Premier and Cabinet, 2010

To give an indication of the upper limit, the highest salary on termination in our sample was \$290,000. This was for a MS6. MS7 and OS6 are used only for Chiefs of Staff. Salaries for MS6 staff may exceed those for MS7 staff. We found the highest MS7 salary on termination was \$278,000. All STE salaries were below \$290,000 as at 31 December 2009.

| | |
|---|---|
| | <p>It is common practice across the public sector to set salary bands for various jobs. Further, the Commonwealth publishes an annual report which includes the salary bands and allowances of all levels of their STE equivalents.</p> <p>In the interests of transparency, the salary bands for all STE levels should be set and published.</p> |
| Recommendation | The Director-General, DP&C should set salary bands for all STE levels and publish these on the DP&C website. |
| The PSEM Act says when STE employment terminates | <p>The PSEM Act says the employment of an STE terminates:</p> <ul style="list-style-type: none"> ▪ when the office holder dies or loses office ▪ on the day appointed for the next general election ▪ if the STE resigns ▪ if the services of the STE are dispensed with. <p>The Director-General, DP&C may choose to retain the services of an STE despite the above circumstances.</p> |
| Severance is specified in guidelines | <p>The severance entitlements for STEs are set out in guidelines issued by the Director-General, DP&C and included in the Ministers' Office Administration Handbook.</p> <p>Currently, STEs are entitled to severance pay when they are terminated for any reason, other than misconduct, poor performance or resignation. STEs do not receive severance pay, however, if they are immediately re-employed by the Director-General, DP&C. This may occur, for example, if the government is returned after an election or if there is only a minor change in the office holder's responsibilities.</p> <p>The current guidelines provide:</p> <ul style="list-style-type: none"> ▪ four weeks payment in lieu of notice regardless of time served, or five weeks for those aged 45 years and over with five or more years of continuous service ▪ three weeks pay per year of continuous service to a maximum of 39 weeks. <p>The guidelines also require recipients of severance pay to repay some of it if they return to the NSW public sector or a NSW political office within the period covered by the payment. For example, a STE who receives 25 weeks severance pay but is re-employed after 10 weeks would have to repay 15 weeks of the severance pay.</p> <p>The guidelines are attached at Appendix 3.</p> |
| During the period, 60 per cent of staff who left were terminated and got severance pay | <p>Between 1 July 2006 and 31 December 2009:</p> <ul style="list-style-type: none"> ▪ no STEs had their employment terminated due to misconduct or poor performance ▪ 110 STEs resigned ▪ 147 STEs had their employment terminated and received severance pay of \$5.9 million ▪ on average STEs served four years prior to their employment being terminated. |

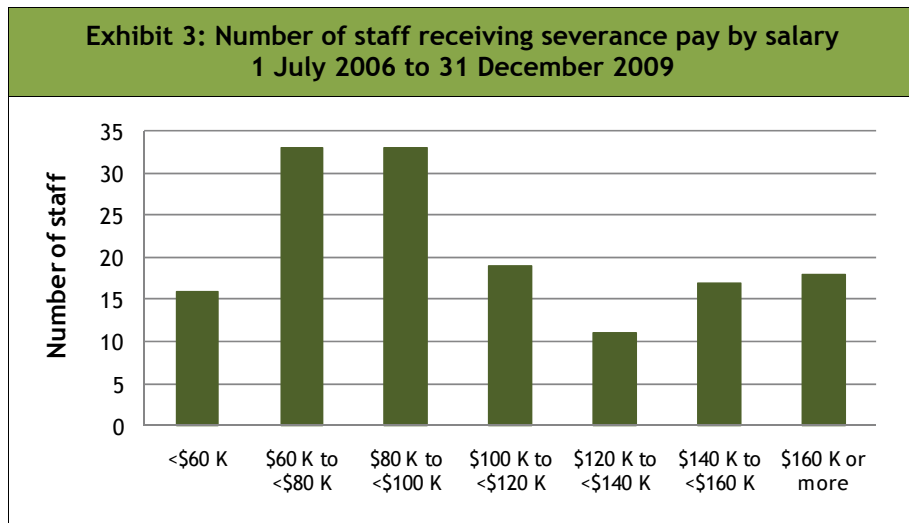
One in every five STEs had their employment terminated each year on average over the period 1 July 2006 to 31 December 2009.

Terminations peaked after the 2007 election and following the two changes of Premier.



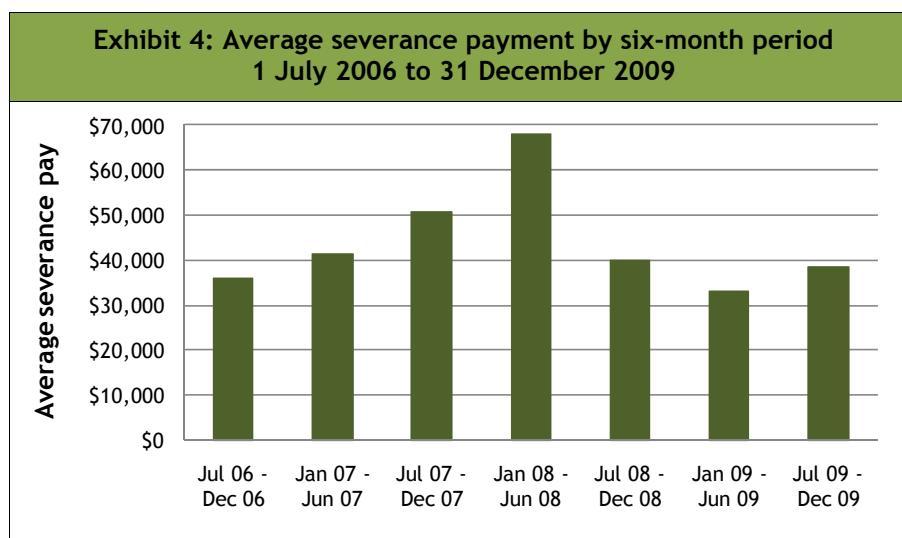
Source: Department of Premier and Cabinet, 2010

The majority of STEs were on salaries of \$80,000 or more when terminated.



Source: Department of Premier and Cabinet, 2010

The average severance payment over the period 1 July 2006 to 31 December 2009 was \$40,200, with the highest individual payment being \$143,300.



Source: Department of Premier and Cabinet, 2010

A summary of STE severance data is provided at Appendix 5.

Not all STEs are terminated when an office holder ceases to hold office. Some may be retained and some may go to work for other office holders. For example, when Premier Iemma resigned:

- fifteen STEs received severance pay
- fifteen were either retained by Premier Rees, or obtained work in another Minister's office.

2. Have severance payments been made in accordance with clear guidelines and received the appropriate tax treatment?

In reviewing both the severance pay guidelines and a sample of payments, we found the guidelines to be clear and all except two payments were made in accordance with them. In these two cases the severance payment was stipulated in the employment contract guaranteeing the STE a minimum of six months pay on termination, irrespective of the length of service.

One of the contracts was approved by the then Director-General, DP&C. The Director-General has the statutory power to do this. The other contract was approved by a properly delegated officer of DP&C. A file note indicates that nine days after the second contract was approved the then Director-General requested the then Premier to approve its special severance conditions. The file note indicates that the Premier approved the arrangement and noted: 'This is not a change in policy. One-off exemption only.'

The two STEs were terminated after less than a year in the job. Together they received \$235,000 in severance. This was \$177,800 more than what they would have received if severance was paid in accordance with the guidelines.

The ability to negotiate individual severance arrangements outside the guidelines is not transparent and establishes a precedent that others may seek to follow. In future, all STEs should receive severance payments in accordance with the guidelines.

In addition, the guidelines do not require the reason for termination to be given or an indication of whether the STE's job has been abolished. In the interest of accountability and transparency the reasons for these decisions should be clearly recorded in writing.

We also found that since 1995, all STE severance payments have been treated as redundancies for tax purposes. That is, severance pays have been taxed at a reduced rate. Yet the usual practice was for a new person to be employed after the STE was terminated. As a result, some severance payments may have been taxed incorrectly. The DP&C advises the roles, responsibilities and salaries of the new STEs often changed, but we do not know whether this made the outgoing STEs' terminations genuine redundancies. The DP&C also advises that taxation advice on this matter is being obtained.

Furthermore, the DP&C has set and published salary bands for the lower five levels of STE, but has not done so for the two most senior levels. In the interests of transparency, the salary bands for all STE levels should be set and published.

Are the guidelines clear?

The PSEM Act allows the Director-General, DP&C (as the Director of Public Employment) to determine severance payments for STEs. The levels of payment are determined by the Director-General periodically.

The guidelines issued by the Director-General, DP&C clearly spell out:

- when STEs are eligible to receive severance pay
- the number of weeks of pay they are entitled to receive.

The guidelines do not require the reason for termination to be given.

Terminations occur when the office holder or their Chief of Staff advise DP&C that a STE's services are no longer required. The DP&C advises that:

- in most cases the relevant Chief of Staff does this in writing, usually by email
- it then communicates this to the STE, usually orally and in writing.

In our review of 49 files, we found it was not always clear whether:

- the STE had been terminated because the office holder ceased to hold office or had been dispensed with
- the job had been abolished.

In the interests of accountability and transparency, the reasons for terminations and whether the job has been abolished should be recorded clearly. In our view, it is not sufficient to record only that the STE's services were no longer required.

In the period 1 July 2006 to 31 December 2009, 147 STEs received severance pay. The DP&C estimates that 53 per cent resulted from the office holder resigning or losing office, and the remaining 47 per cent were dispensed with.

Recommendation

It is recommended that the Director-General, DP&C record in writing:

- the reason for termination under the *Public Sector Employment and Management Act 2002*
- whether or not the job has been abolished.

Are payments made in accordance with the guidelines?

We examined data on STEs who left between 1 July 2006 and 31 December 2009. In 47 of the 49 terminations we examined in detail, entitlements were calculated in accordance with the guidelines.

Two terminated STEs had contracts of employment which entitled them to six months salary regardless of the length of service if terminated for any reason, other than misconduct, poor performance or resignation.

One STE was terminated after working 10 months, receiving 19 weeks more severance pay than available under the guidelines. The other was terminated after seven months and received 20 weeks more severance pay.

| Exhibit 5: Staff receiving special severance pay arrangements | | | |
|--|---------------------------------------|---|-------------------|
| | Payout (six months salary) | Standard severance pay in the guidelines | Difference |
| Officer 1 | \$139,000 | \$35,500 | \$103,500 |
| Officer 2 | \$96,000 | \$21,700 | \$74,300 |

Source: Service First and Department of Premier and Cabinet, 2010

Developing unique conditions of employment for individual STEs establishes a precedent and an expectation that prospective employees can negotiate special conditions in excess of what is normally available.

Recommendation

The Director-General, DP&C should only pay STEs severance in accordance with the guidelines.

Has the correct tax been paid on severance payments?

Since 1995 all severance payments to STEs have been treated as a redundancy for tax purposes. This followed a direction from a former Director-General, DP&C that the taxation treatment of the final pays of STEs terminated due to the change of government was to be in line with taxation rulings for redundant staff.

However, in 2001 a DP&C review found severance payments to STE equivalents in other jurisdictions were not treated as redundancy payments and were taxed at a higher rate because:

- the term of their employment was fixed, being tied to the term of the Member of Parliament
- the positions did not become redundant.

A redundancy exists only when an employer abolishes the job.

| Exhibit 6: Chief of Staff terminations |
|--|
| <p>All office holders have a Chief of Staff.</p> <p>Between 1 July 2006 and 31 December 2009, eight Chiefs of Staff were dispensed with. In each case, the office holder subsequently filled the vacant position.</p> <p>These jobs were clearly not abolished, yet the severance payments were treated as redundancies for taxation purposes.</p> |

Source: Department of Premier and Cabinet, 2010

The internal review recommended the DP&C seek advice about the appropriate taxation treatment of STE severance payments. The DP&C reports that this advice has not been obtained.

During the course of this audit, we were advised that taxation advice on this matter was being obtained.

Recommendation The Director-General, DP&C should obtain taxation advice on whether STE severance pay should be treated as a redundancy for tax purposes.

3. Are severance entitlements excessive?

The number of weeks of severance pay per year of service an STE receives has increased since 2006 and is now equal to the amount public service officers get. Public service officers are sometimes referred to as permanent employees, and are not Senior Executive Service or departmental temporary employees.

Prior to 2006, STE severance entitlements were less than those of public service officers. Unlike these officers, STEs are temporary employees for a period limited to the term of the office holder's appointment unless extended by the Director-General, DP&C. STEs can also be hired and promoted without competitive selection.

The then Director-General, DP&C took the view that STE severance payments should increase to correspond with the severance component of the voluntary redundancy scheme applying to public service officers and long-term temporary employees engaged for an indefinite period. In our view, however, it is not clear why this increase was necessary as STEs have different employment conditions in other respects.

The severance payments available to NSW STEs are generally greater than those available to similar staff in other jurisdictions. Other jurisdictions, however, provide higher payments where a staff member has served 17 years or more.

Some other jurisdictions, including the Commonwealth, provide different rates of severance pay depending on the reason for termination. These schemes pay a lower rate to staff terminated for reasons other than the office holder dying, resigning or losing office. The underlying principle seems to be that terminations where the office holder changes are closer to redundancy, but are not treated as a bona fide redundancy for taxation purposes.

Consideration should be given to adopting a two-tiered payment system in NSW.

Are severance entitlements similar to those applying to other NSW public servants?

When STEs were created as a special class of temporary employee in 1998 the Government likened aspects of their employment to those applying to the Chief Executive Service (CES) and the Senior Executive Service (SES). STEs are employed for a period limited to the term of the office holder's own appointment unless their employment is extended by the Director-General, DP&C. They have a unique salary scale, and the DP&C advises they only get paid overtime in exceptional circumstances. STEs are excluded from industrial arbitration and from taking legal proceedings in relation to their employment.

In determining appropriate severance arrangements for STEs at the time, the then Director-General, DP&C determined they would be entitled to a lower number of weeks of severance pay than public service officers who accepted voluntary redundancy.

In 2001, the then Director-General, DP&C increased the severance pay entitlements of STE's, but decided it should remain below the number of weeks of severance pay available to public service officers because:

- STE salaries recognise the short-term nature of the work
- STEs are employed and can be promoted without competitive selection
- STEs are employed for a fixed term with no guarantee of continuing employment
- STE termination is not a redundancy.

In 2006, the same Director-General came to the view that STE severance payments should increase to correspond with the severance component of the voluntary redundancy scheme applying to public service officers and temporary employees engaged for an indefinite period who have worked continuously for more than a year.

| Exhibit 7: Changes to STE severance pay entitlements | | |
|---|---|---|
| | 2001-2006 | 2006-present |
| Payment in lieu of notice | Four weeks pay, or five if 45 years and over with five or more years of service | No change |
| Severance entitlement | Two weeks pay per year to a maximum of 26 weeks | Three weeks pay per year to a maximum of 39 weeks |

Source: Department of Premier and Cabinet, 2010

In certain circumstances public service officers who accept voluntary redundancy may also receive an extra payment for quickly accepting the offer, and assistance in finding alternative employment.

STEs also receive severance pay if they lose their job as a result of a change in government at an election, that is, at the end of their term of appointment.

STE severance is greater than that available to the CES and SES who:

- do not get severance pay at the end of their contract
- may be compensated for the time left on their contract if terminated early to a maximum of 38 weeks, through a determination of the Statutory and Other Offices Remuneration Tribunal.

Other fixed-term temporary employees in the NSW public service are not entitled to severance pay or pay in lieu of notice at the end of their term.

Are severance entitlements similar to those that apply to staff in other jurisdictions?

We compared the NSW severance scheme to most other Australian jurisdictions. All have similar schemes to NSW in that they provide severance pay to staff who are terminated as a result of:

- the staff member's services being dispensed with
- the political office holder dying, resigning or losing office, including at an election.

There is, however, variation in severance pay arrangements between jurisdictions.

Appendix 4 outlines the severance pay entitlements of STE equivalents in the jurisdictions we examined.

The Commonwealth, Victoria, South Australia and Western Australia generally pay less severance to a staff member dispensed with by an office holder (Appendix 4a) than they do to a staff member terminated when the office holder dies, resigns or loses office (Appendix 4b).

We also found NSW entitlements to be higher than other jurisdictions for staff dispensed with who have served between three and 19 years (Appendix 4a).

In the alternate situation where the termination occurs because the office holder ceases to hold office (Appendix 4b):

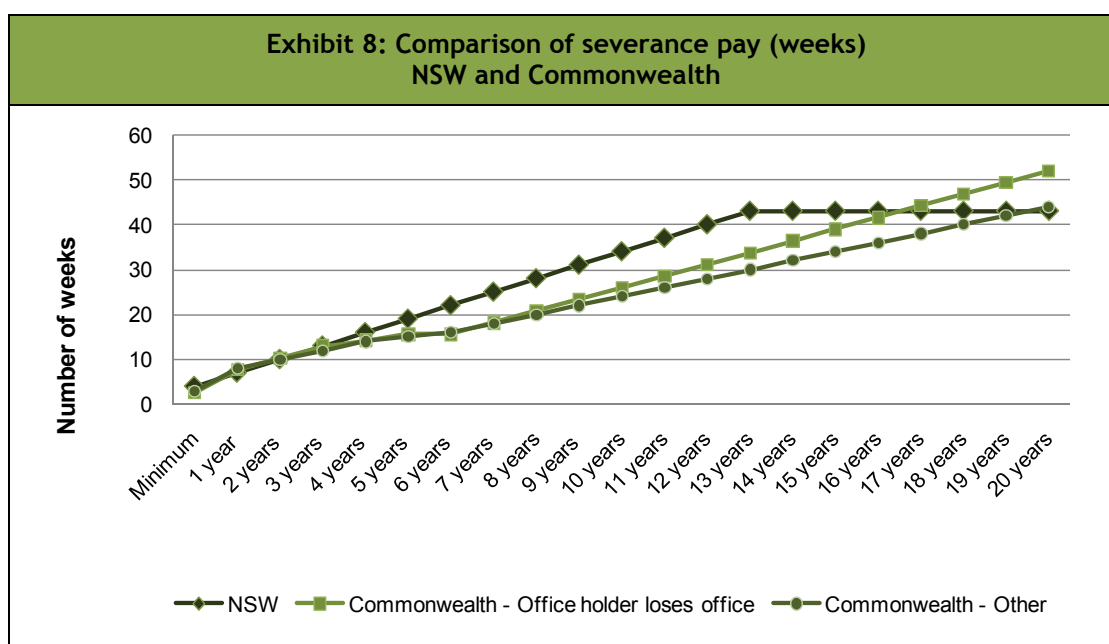
- the Commonwealth increases the severance component by 30 per cent, but does not provide pay in lieu of notice
- Victoria provides an additional two weeks pay per year of service and more in certain circumstances, to a maximum of 84 weeks
- South Australia pays the maximum entitlement of 16 weeks irrespective of length of service
- Western Australia entitles staff to two weeks per year of service and four weeks in lieu of notice to a maximum of 46 weeks.

In these circumstances, NSWs' severance entitlements are:

- the highest or equal highest of all jurisdictions for those serving eight, nine, 12 or 13 years
- higher than all but one other jurisdiction for those serving five to 16 years.

Comparing NSW and the Commonwealth illustrates the effect of the two-tiered system. NSW entitlements are higher in years:

- three to 19 for staff dispensed with by the office holder
- four to 16 for staff terminated due to the office holder ceasing to hold office.



Source: Audit Office Research, 2010

The Commonwealth provides higher severance entitlements where the office holder changes because these payments are not treated as a bona fide redundancy for taxation purposes.

Recommendation The Director-General, DP&C should review the NSW severance guidelines before the next general election in March 2011 and consider:

- the effect, if any, of the taxation advice it is obtaining
- adopting different levels of severance pay depending on the reasons for termination.

Appendices

Appendix 1: About this audit

| | |
|-------------------------|---|
| Audit objective | The audit objective is to determine whether the Department of Premier and Cabinet has ensured severance payments to the staff of political office holders are made in accordance with clear rules and are not excessive. |
| Lines of inquiry | <p>In reaching our opinion against the audit objective, we sought to answer the following questions:</p> <ol style="list-style-type: none">1. Have severance payments been made in accordance with clear guidelines and received the appropriate tax treatment?2. Are severance entitlements excessive? |
| Audit criteria | <p>In answering the lines of inquiry, we used the following audit criteria (the 'what should be') to judge performance. We based these standards on our research of current thinking and guidance on better practice. They have been discussed, and wherever possible, agreed with those we are auditing.</p> <p>For line of inquiry 1, we assessed whether:</p> <ul style="list-style-type: none">▪ NSW guidelines were clear▪ severance payments have been made in accordance with the guidelines and received appropriate tax treatment. <p>For line of inquiry 2, we assessed whether severance entitlements are similar to those that apply to:</p> <ul style="list-style-type: none">▪ other NSW public servants.▪ staff of political office holders in other Australian jurisdictions. |
| Audit focus | <p>The focus was on staff leaving positions in political offices during the period 1 July 2006 to 31 December 2009. We looked at some historical information to understand how the current arrangements were arrived at. The audit did not examine:</p> <ul style="list-style-type: none">▪ severance payments before 1 July 2006▪ redundancy payments made to public servants whose substantive position was abolished while they were working for a political office holder. |
| Audit approach | <p>We acquired subject matter expertise through:</p> <ul style="list-style-type: none">▪ interviews and examination of relevant documents▪ analysis of data on terminations and severance pay▪ review of 49 files of terminated staff▪ comparisons with other jurisdictions▪ examination of guidelines. |
| Audit selection | We use a strategic approach to selecting performance audits which balances our performance audit program to reflect issues of interest to Parliament and the community. Details of our approach to selecting topics and our forward program are available on our website. |

- Audit methodology** Our performance audit methodology is designed to satisfy Australian Audit Standards on Assurance Engagements ASAE 3500 *Performance Engagements*, and to reflect current thinking on performance auditing practices.
- We produce our audits under a quality management system certified to International Standard ISO 9001. Our processes have also been designed to comply with the auditing requirements specified in the *Public Finance and Audit Act 1983*.
- Acknowledgement** We gratefully acknowledge the co-operation and assistance provided by the Department of Premier and Cabinet and Service First.
- Audit team** Our team leader for this performance audit was Rod Longford, who was assisted by Bettina Ocias. Jane Tebbatt provided direction and quality assurance.
- Audit cost** Including staff costs, printing costs and overheads the estimated cost of the audit is \$149,000.

Appendix 2: Political office holder staffing

| Staffing (Full Time Equivalent) as at 31 December 2009 STEs plus staff transferred temporarily from public service agencies | | | | | | | | |
|--|--------------|-----------|------------|------------|-------------|-------------|-------------|------------|
| Portfolio* | Total | MS7 | MS6 | MS5 | MS4 | MS3 | MS2 | MS1 |
| Premier | 23 | 1 | 4 | 6 | 4 | 6 | 2 | |
| Deputy Premier and Health | 9.5 | 1 | | 3 | 1 | 2 | 1.5 | 1 |
| Attorney General | 12 | 1 | | 1 | 2 | 5 | 2 | 1 |
| Treasurer | 7 | 1 | | 1 | 2 | 2 | 1 | |
| Transport | 14 | 1 | | 1 | 4 | 5 | 2 | 1 |
| Education and Training | 10.8 | 1 | | 2 | 1 | 1.6 | 5.2 | |
| Planning | 13 | 1 | | 3 | 4 | 2 | 2 | 1 |
| Environment | 7 | 1 | | 1 | | 3 | 1 | 1 |
| Community Services | 12.2 | 1 | | | 3.2 | 5 | 2 | 1 |
| Police | 9 | 1 | | | 2 | 4 | 2 | |
| Industrial Relations | 9 | 1 | | | 2 | 4 | 2 | |
| State and Regional Development | 6 | 1 | | 1 | | 3 | 1 | |
| Ageing and Disability | 8 | 1 | | | 4 | 2 | 1 | |
| Primary industries | 7.8 | 1 | | | 1 | 2.8 | 2 | 1 |
| Tourism | 7.8 | 1 | | 2 | | 0 | 3.8 | 1 |
| Housing | 9 | 1 | | 1 | 1 | 2 | 4 | |
| Local Government | 9 | 1 | | | 2 | 4 | 2 | |
| Water | 10 | 1 | | | 3 | 2 | 4 | |
| Gaming and Racing | 9.7 | 1 | | 2 | 1 | 2 | 2.7 | 1 |
| Fair Trading | 7.8 | 1 | | | 3.8 | 2 | 1 | |
| Juvenile Justice | 8.2 | 1 | | | 2.6 | 3 | 1.2 | 0.4 |
| Ports and Waterways | 8.0 | 1 | | 1 | | 3 | 3 | |
| Small Business | 6.6 | 1 | | | 1 | 2 | 2.6 | |
| Total government staff | 224.4 | 23 | 4 | 25 | 44.6 | 67.4 | 51.0 | 9.4 |
| Opposition | Total | - | OS6 | OS5 | OS4 | OS3 | OS2 | OS1 |
| Total opposition staff** | 17.6 | - | 2 | 0 | 2 | 2 | 10.6 | 1 |

Source: NSW Department of Premier and Cabinet, 2010

* Most senior portfolio.

** Includes staff in office of Leader of the Opposition and office of Leader of The Nationals

Notes: MS7 comprises Chiefs of Staff.

MS6 includes Senior Policy Advisors and Senior Media Advisors.

MS5 includes Policy Advisors and Media Advisors.

MS4 includes Policy Advisors and Media Advisors.

MS3 includes Policy Advisors, Media Advisors, Research/Parliamentary Liaison Officers and Private Secretaries/Office Managers.

MS2 comprises Office Managers and Administrative Assistants.

MS1 comprises Receptionists.

Appendix 3: STE severance pay guidelines



Department of Premier and Cabinet
Ministerial and Parliamentary Services

Severance payments for Special Temporary Employees (STEs)

STEs are entitled to severance payments on a full time equivalent basis when their employment in a Minister's office is terminated for any reason (other than for reasons of misconduct and/or poor performance or at the employee's own request or through the employee's resignation).

STEs who receive a severance payment will be required to refund to the Crown any portion of the payment applying to the period of re-employment should they be re-employed in any capacity in a NSW public sector service within the period covered by the severance payment, e.g., an STE who received 20 weeks' severance pay and then secured employment with a NSW public agency after 10 weeks, would be required to re-pay 10 weeks of the severance pay. The repayment should be made to the new employing agency.

All periods of continuous service with NSW public sector services are included when calculating severance pay which is based on the length of continuous service, provided no previous severance or redundancy payment has been made for any of this service. References to continuous service within this section mean continuous service in NSW public sector agencies in accordance with Part 3.2 of the Public Sector Employment and Management Act 2002.

Where an STE resigned from a public sector agency in order to take up employment with another agency, service may be regarded as continuous for the purpose of severance payments, even though the employee may have taken a period of leave or break in service of up to 2 months prior to taking up duty with the new agency.

Components of Severance Payments

The components of severance payments to STEs are set out below:

- Notice or payment in lieu in accordance with the following table:

| Continuous service | Period of notice or payment in lieu | Period of notice or payment in lieu for employees aged 45 years and over with 5 or more years of completed service |
|--|--------------------------------------|--|
| Any period of service for an indefinite period | 4 weeks (full time equivalent basis) | 5 weeks (full time equivalent basis) |

- Any benefit allowable as a contributor to a retirement fund.
- Pro rata annual leave loading in respect of leave accrued (full time equivalent basis) at the date of termination.
- Severance payment (full time equivalent basis) at the rate of 3 weeks per year of continuous service with a maximum of 39 weeks, with pro rata payments for incomplete years of service to be on a quarterly basis.

Appendix 4: Severance pay (weeks) to STE equivalents, selected Australian jurisdictions

| 4a. Dispensed with by the political office holder | | | | | | |
|---|-----|------|------|-----|----|------|
| Service | NSW | Cwth | Vic* | Qld | SA | WA** |
| Minimum | 4 | 3 | 1 | 6 | 0 | 4 |
| 1 year | 7 | 7 | 8 | 8 | 8 | 4-12 |
| 2 years | 10 | 10 | 12 | 10 | 10 | 4-12 |
| 3 years | 13 | 12 | 12 | 12 | 12 | 4-12 |
| 4 years | 16 | 14 | 12 | 14 | 14 | 4-12 |
| 5 years | 19 | 15 | 12 | 15 | 16 | 4-12 |
| 6 years | 22 | 16 | 12 | 16 | 16 | 4-12 |
| 7 years | 25 | 18 | 12 | 18 | 16 | 4-12 |
| 8 years | 28 | 20 | 12 | 20 | 16 | 4-12 |
| 9 years | 31 | 22 | 12 | 22 | 16 | 4-12 |
| 10 years | 34 | 24 | 16 | 24 | 16 | 4-12 |
| 11 years | 37 | 26 | 16 | 26 | 16 | 4-12 |
| 12 years | 40 | 28 | 16 | 28 | 16 | 4-12 |
| 13 years | 43 | 30 | 16 | 30 | 16 | 4-12 |
| 14 years | 43 | 32 | 16 | 32 | 16 | 4-12 |
| 15 years | 43 | 34 | 16 | 34 | 16 | 4-12 |
| 16 years | 43 | 36 | 16 | 36 | 16 | 4-12 |
| 17 years | 43 | 38 | 16 | 38 | 16 | 4-12 |
| 18 years | 43 | 40 | 16 | 40 | 16 | 4-12 |
| 19 years | 43 | 42 | 16 | 42 | 16 | 4-12 |
| 20 years | 43 | 44 | 16 | 44 | 16 | 4-12 |
| Maximum entitlement | 43 | 52 | 16 | 56 | 16 | 12 |

Source: Audit Office Research, 2010

* The Premier or Minister can decide that a person dispensed with may get the higher payout available to officers terminated due to the Minister ceasing to hold office (see next table).

** Severance in this range is at the discretion of the Minister.

Notes: Includes pay in lieu of notice where provided. Refers only to staff who have completed probation. Most jurisdictions provide pro-rata payments for part-year service and some provide additional entitlements for older staff (not included). Excludes payment of accrued entitlements, superannuation etc.

| 4b. Terminated when the office holder ceases to hold office (eg reshuffle, election) | | | | | | |
|---|-----|------|-----|-----|----|----|
| Service | NSW | Cwth | Vic | Qld | SA | WA |
| Minimum | 4 | 2.6 | 8 | 6 | 16 | 4 |
| 1 year | 7 | 7.8 | 10 | 8 | 16 | 6 |
| 2 years | 10 | 10.4 | 16 | 10 | 16 | 8 |
| 3 years | 13 | 13 | 18 | 12 | 16 | 10 |
| 4 years | 16 | 14.3 | 20 | 14 | 16 | 12 |
| 5 years | 19 | 15.6 | 22 | 15 | 16 | 14 |
| 6 years | 22 | 15.6 | 24 | 16 | 16 | 16 |
| 7 years | 25 | 18.2 | 26 | 18 | 16 | 18 |
| 8 years | 28 | 20.8 | 28 | 20 | 16 | 20 |
| 9 years | 31 | 23.4 | 30 | 22 | 16 | 22 |
| 10 years | 34 | 26 | 36 | 24 | 16 | 24 |
| 11 years | 37 | 28.6 | 38 | 26 | 16 | 26 |
| 12 years | 40 | 31.2 | 40 | 28 | 16 | 28 |
| 13 years | 43 | 33.8 | 42 | 30 | 16 | 30 |
| 14 years | 43 | 36.4 | 44 | 32 | 16 | 32 |
| 15 years | 43 | 39 | 46 | 34 | 16 | 34 |
| 16 years | 43 | 41.6 | 48 | 36 | 16 | 36 |
| 17 years | 43 | 44.2 | 50 | 38 | 16 | 38 |
| 18 years | 43 | 46.8 | 52 | 40 | 16 | 40 |
| 19 years | 43 | 49.4 | 54 | 42 | 16 | 42 |
| 20 years | 43 | 52 | 56 | 44 | 16 | 44 |
| Maximum entitlement | 43 | 62.4 | 84 | 56 | 16 | 46 |

Source: Audit Office Research, 2010

Notes: Includes pay in lieu of notice where provided. Refers only to staff who have completed probation. Most jurisdictions provide pro-rata payments for part-year service and some provide additional entitlements for older staff (not included). Excludes payment of accrued entitlements, superannuation etc.

Appendix 5: Summary data

| Staff as at 31 December 2009 | |
|---|---------------|
| Headcount | |
| Number of STEs | 216 |
| Number transferred temporarily from public service | 36 |
| Total headcount | 252 |
| Equivalent Full Time | |
| Number of ministerial staff | 224.4 |
| Number of opposition staff | 17.6 |
| Total EFT | 242.0 |
| STE salaries | |
| Average | \$96,000 |
| Number on \$100,000 or more | 98 |
| Number on \$160,000 or more | 17 |
| STEs that left between 1 July 2006 and 31 December 2009 | |
| Total number of STEs that left | 257 |
| Number of terminations | 147 |
| Number of resignations | 110 |
| Average length of service on termination (not including resignations) | 4 years |
| Average annual turnover | |
| ▪ terminations plus resignations | 34% |
| ▪ terminations only | 19% |
| Breakdown of continuous service length of staff terminated | |
| <1 year | 19% |
| 1-<2 years | 20% |
| 2-<3 years | 6% |
| 3-<4 years | 10% |
| 4-<5 years | 12% |
| >5years | 33% |
| Number working 15 years or more | 1 |
| Total termination paid out | \$5.9 million |
| Termination pay outs | |
| ▪ max | \$143,300 |
| ▪ average | \$40,200 |
| Salary on termination | |
| ▪ max | \$290,000 |
| ▪ average | \$106,500 |

Performance Audits by the Audit Office of New South Wales

Performance Auditing

What are performance audits?

Performance audits determine whether an agency is carrying out its activities effectively, and doing so economically and efficiently and in compliance with all relevant laws.

Performance audits may review a government program, all or part of a government agency or consider particular issues which affect the whole public sector.

Where appropriate, performance audits make recommendations for improvements.

If you wish to find out what performance audits are currently in progress, visit our website at www.audit.nsw.gov.au.

Why do we conduct performance audits?

Performance audits provide independent assurance to Parliament and the public that government funds are being spent efficiently and effectively, and in accordance with the law.

Performance audits seek to improve the efficiency and effectiveness of government agencies so that the community receives value for money from government services.

Performance audits also assist the accountability process by holding managers to account for agency performance.

What are the phases in performance auditing?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team will develop audit criteria and define the audit field work.

At the completion of field work we will meet with agency management to discuss all significant matters arising out of the audit. Following this, we will prepare a draft performance audit report.

We meet with agency management to check that facts presented in the report are accurate and that recommendations are practical and appropriate. Following this, a formal draft report is provided to the CEO for comment. The relevant Minister is also provided with a copy of the final

report. The final report, which is tabled in Parliament, includes any comment made by the CEO on the conclusion and the recommendations of the audit.

Depending on the scope, performance audits can take several months to complete.

Copies of our performance audit reports can be obtained from our website or by contacting our Office.

How do we measure an agency's performance?

During the planning phase, the team develops the audit criteria. These are standards of performance against which the agency or program is assessed. Criteria may be based on best practice, government targets, benchmarks, or published guidelines.

Do we check to see if recommendations have been implemented?

Agencies are requested to report actions taken against each recommendation in their annual report so that we can monitor progress.

The Public Accounts Committee (PAC) may conduct reviews or hold inquiries into matters raised in performance audit reports. These inquiries are usually held 12 months after the report is tabled.

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards. This includes ongoing independent certification of our ISO 9001 quality management system.

The PAC is also responsible for overseeing the activities of the Audit Office and conducts a review of our operations every three years.

Who pays for performance audits?

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament and from internal sources.

Further information

Further information can be obtained from our website www.audit.nsw.gov.au or by contacting us on 9275 7277.

Performance Audit Reports

| No | Agency or Issues Examined | Title of Performance Audit Report or Publication | Date Tabled in Parliament or Published |
|-----|--|---|--|
| 201 | Department of Premier and Cabinet | <i>Severance Payments to Special Temporary Employees</i> | June 2010 |
| 200 | Department of Human Services - Ageing, Disability and Home Care | <i>Access to Overnight Centre-Based Disability Respite</i> | 5 May 2010 |
| 199 | Department of Premier and Cabinet NSW Treasury WorkCover NSW | <i>Injury Management in the NSW Public Sector</i> | 31 March 2010 |
| 198 | NSW Transport and Infrastructure | <i>Improving the Performance of Metropolitan Bus Services</i> | 10 March 2010 |
| 197 | Roads and Traffic Authority of NSW | <i>Improving Road Safety: School Zones</i> | 25 February 2010 |
| 196 | NSW Commission for Children and Young People | <i>Working with Children Check</i> | 24 February 2010 |
| 195 | NSW Police Force NSW Department of Health | <i>Managing Forensic Analysis - Fingerprints and DNA</i> | 10 February 2010 |
| 194 | Department of Premier and Cabinet Department of Services, Technology and Administration NSW Treasury | <i>Government Advertising</i> | 10 December 2009 |
| 193 | Roads and Traffic Authority of NSW | <i>Handback of the M4 Tollway</i> | 27 October 2009 |
| 192 | Department of Services, Technology and Administration | <i>Government Licensing Project</i> | 7 October 2009 |
| 191 | Land and Property Management Authority Maritime Authority of NSW | <i>Administering Domestic Waterfront Tenancies</i> | 23 September 2009 |
| 190 | Department of Environment, Climate Change and Water NSW Environmental Trust | <i>Environmental Grants Administration</i> | 26 August 2009 |
| 189 | NSW Attorney General's Department NSW Department of Health NSW Police Force | <i>Helping Aboriginal Defendants through MERIT</i> | 5 August 2009 |
| 188 | NSW Department of Health | <i>Tackling Cancer with Radiotherapy</i> | 23 June 2009 |
| 187 | Roads and Traffic Authority of NSW | <i>Improving Road Safety - Heavy Vehicles</i> | 13 May 2009 |
| 186 | Grants | <i>Grants Administration</i> | 6 May 2009 |
| 185 | Forests NSW | <i>Sustaining Native Forest Operations</i> | 29 April 2009 |
| 184 | NSW Police Force | <i>Managing Injured Police</i> | 10 December 2008 |
| 183 | Department of Education and Training | <i>Improving Literacy and Numeracy in NSW Public Schools</i> | 22 October 2008 |
| 182 | Department of Health | <i>Delivering Health Care out of Hospitals</i> | 24 September 2008 |
| 181 | Department of Environment and Climate Change | <i>Recycling and Reuse of Waste in the NSW Public Sector</i> | 11 June 2008 |

| No | Agency or Issues Examined | Title of Performance Audit Report or Publication | Date Tabled in Parliament or Published |
|------|---|---|--|
| 180 | Follow-up of 2003 Performance Audit | <i>Protecting Our Rivers</i> | 21 May 2008 |
| 179 | NSW Office of Liquor, Gaming and Racing; NSW Police Force | <i>Working with Hotels and Clubs to reduce alcohol-related crime</i> | 23 April 2008 |
| 178 | Greyhound and Harness Racing Regulatory Authority | <i>Managing the Amalgamation of the Greyhound and Harness Racing Regulatory Authority</i> | 3 April 2008 |
| 177 | Office of the Director of Public Prosecutions | <i>Efficiency of the Office of the Director of Public Prosecutions</i> | 26 March 2008 |
| 176* | Better Practice Guide | <i>Implementing Successful Amalgamations</i> | 5 March 2008 |
| 175 | Department of Commerce Department of Primary Industries | <i>Managing Departmental Amalgamations</i> | 5 March 2008 |
| 174 | Department of Education and Training | <i>Ageing workforce - Teachers</i> | 13 February 2008 |
| 173 | NSW Police Force | <i>Police Rostering</i> | 5 December 2007 |
| 172 | Department of Primary Industries | <i>Improving Efficiency of Irrigation Water Use on Farms</i> | 21 November 2007 |
| 171 | Department of Premier and Cabinet Department of Commerce | <i>Government Advertising</i> | 29 August 2007 |
| 170 | RailCorp | <i>Signal Failures on the Metropolitan Rail Network</i> | 15 August 2007 |
| 169 | NSW Police Force | <i>Dealing with Household Burglaries</i> | 27 June 2007 |
| 168 | Ministry of Transport | <i>Connecting with Public Transport</i> | 6 June 2007 |
| 167 | Follow-up of 2001 Performance Audit: Ambulance Service of New South Wales | <i>Readiness to Respond</i> | 6 June 2007 |
| 166 | Follow-up of Performance Audit Department of Education and Training | <i>Using Computers in Schools for Teaching and Learning</i> | 9 May 2007 |
| 165 | Homelessness | <i>Responding to Homelessness</i> | 2 May 2007 |
| 164 | Department of Juvenile Justice NSW Police Force | <i>Addressing the Needs of Young Offenders</i> | 28 March 2007 |
| 163 | Legal Aid Commission of NSW | <i>Distributing Legal Aid in New South Wales</i> | 13 December 2006 |
| 162 | NSW Health | <i>Attracting, Retaining and Managing Nurses in Hospitals</i> | 12 December 2006 |
| 161 | Follow-up of 2003 Performance Audit | <i>The Police Assistance Line</i> | 6 December 2006 |

* Better Practice Guides

Performance audits on our website

A list of performance audits tabled or published since March 1997, as well as those currently in progress, can be found on our website www.audit.nsw.gov.au.

If you have any problems accessing these reports, or are seeking older reports, please contact our Office Services Manager on (02) 9275 7116.