
New South Wales Auditor-General's Report

Performance Audit

Red tape reduction

Department of Premier and Cabinet

Department of Finance, Services and Innovation



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In accordance with section 38E of the *Public Finance and Audit Act 1983*, I present a report titled **Red tape reduction: Department of Premier and Cabinet, Department of Finance, Services and Innovation.**

A handwritten signature in black ink, reading 'A. T. Whitfield'.

A T Whitfield PSM
Deputy Auditor-General
25 August 2016

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Executive summary

Red tape refers to unnecessary costs to the community, business and government resulting from poorly designed and implemented regulation. Indicators suggest that the extent of red tape nationally is significant and has increased over time. In 2015–16, the World Economic Forum ranked Australia 80 out of 140 countries on the extent of regulatory burden as perceived by business executives, down from 60 in 2010–11 (Exhibit 1). According to the Queensland Competition Authority (2013), the estimated cost of regulation in New South Wales is 0.91 per cent of Gross State Product – compared to 0.96 in Victoria and 1.00 in Queensland.

Between 2011 and 2015 the NSW Government committed to a program of red tape reductions aimed at improving business competitiveness. The program comprised:

- a red tape reduction target of \$750 million by June 2015
- a ‘one-on, two-off’ initiative, between 2011 and 2015, requiring the number of repealed legislative instruments to be at least double the number of new instruments.

In addition to these now completed commitments, the NSW Government continues to require new and amending regulatory proposals, with some exceptions, to meet regulatory best practice. The aim is to prevent and reduce red tape by ensuring regulation provides the greatest benefit to the community relative to the costs imposed.

This audit assessed whether government initiatives and processes to prevent and reduce red tape were effective. To make this assessment the audit answers the following questions:

- Did savings initiatives effectively reduce red tape?
- Did the ‘one-on, two-off’ initiative effectively reduce red tape?
- Does the Department of Premier and Cabinet effectively review regulatory proposals to ensure they prevent and reduce red tape?

Conclusion

Overall, NSW Government initiatives and processes to prevent and reduce red tape were not effective. Reported red tape savings were inaccurate and the regulatory burden of legislation increased. Without a full stocktake of regulation, the NSW Government does not know the impact of its regulations on businesses and individuals, or how effectively it has reduced this impact.

Red tape reduction targets resulted in some savings. However, estimates of these savings were, in some cases, based on unverified or unsubstantiated assumptions, cost-transfers, or pre-implementation projections that are yet to be achieved. The targets also did not drive new reform or significant rollback of regulation. The scope of the red tape reduction program allowed for time saved from changes to administrative processes to be the primary driver of the total value of red tape reduced.

Despite the NSW Government meeting the numerical target for reducing the number of legislative instruments, legislative complexity and regulatory burden increased during implementation of the ‘one-on, two-off’ regulation reduction initiative.

The government’s red tape reduction principles are not consistently applied to regulatory impact assessments for new and amending regulatory proposals. There is also a lack of up-to-date guidance to agencies and no central oversight of the assessment process to ensure all options and alternatives are genuinely considered. Clarity on functions is needed to underpin improvements in this area.

Claimed red tape savings were inaccurate

Agencies were required to estimate the value of red tape savings initiatives contributing to the \$750 million red tape reduction target. Individual submissions claiming savings of more than \$5 million were externally verified by a consultant. In June 2015, the NSW Government reported that it had exceeded its \$750 million red tape reduction target by \$146 million based on these submissions. However, our examination of savings estimates in the sample we assessed found the following key problems:

- key assumptions were not supported by evidence and data, nor adequately verified
- the link between reforms and benefits was not clearly explained and quantified
- cost transfers were sometimes claimed as savings
- full projected savings were claimed immediately but not always realised in implementation.

The net burden of red tape, and the overall impact of claimed savings, was not accounted for in an overall stocktake of legislative and non-legislative regulatory burden. Accordingly, the impact of the claimed \$896 million savings in reducing the overall burden of red tape in New South Wales is unknown.

Targets did not drive new red tape reforms

The scope of the red tape reduction initiative allowed for the majority of initiatives that contributed to the target to be underway or proposed in response to other policy commitments. As such, the target was rarely the driver for new reform, but rather, accounted for benefits related to reforms that were progressed through other mechanisms and commitments. Initiatives also largely aimed to improve the efficiency of administrative processes, rather than remove, reduce or significantly change regulation itself.

Overall legislative regulatory burden increased, despite the numeric test being met

Over the life of the 'one-on, two-off' initiative, the Department of Premier and Cabinet (DPC) reported that overall net legislative regulatory burden increased by \$16.1 million. Changes to the Public Health Regulation 2012 (\$14 million), Fair Trading Regulation 2012 (\$5.3 million) and the *Tattoo Parlours Act 2012* (\$0.5 million) drove this increase and the added regulatory burden from these changes was not significantly offset by reduced burden in other areas.

The numeric test was met with 237 instruments repealed and 54 introduced – an overall ratio of roughly four repeals for every new instrument. However, most of these repeals related to redundant legislation with little or no regulatory burden.

Legislative complexity increased

The 'one-on, two-off' initiative did not reduce legislative complexity, as the stock of legislative regulation increased. The number of pages of legislation – a proxy indicator for statute complexity – increased over the life of the policy by 1.4 per cent per year on average. By comparison, over the preceding ten years, the number of pages of legislation had decreased by 1.1 per cent per year on average.

A new red tape reduction framework is required

Given the completion of the red tape reduction commitments, a new framework for reducing red tape is required. This would benefit from a stocktake of the existing number and cost of regulation, and establishing and reporting against red tape minimisation performance targets. This best-practice approach would bring New South Wales in line with other Australian jurisdictions.

Regulatory impact assessments do not consistently demonstrate that red tape reduction principles have been applied

Regulatory impact assessments, developed by departments to accompany regulatory proposals, do not consistently provide a considered assessment of the impacts, benefits and costs of introducing regulation. The analyses and information included in these assessments does not fully justify the additional regulatory burden or consider viable alternatives, and opportunities to minimise red tape are often missed. The current process for regulatory assessment is seen as a ‘tick-the-box’ exercise which adds little value to the decision-making process – particularly in the following circumstances:

- for election commitments or government decisions where the regulatory outcome is unlikely to change
- for complex proposals where understanding and assessing costs and benefits is problematic and time consuming
- for legislative remakes.

No designated oversight function for red tape reform or red tape reduction

Since the abolition of the Better Regulation Office, responsibility for ensuring compliance with regulatory principles and driving regulatory reform rests primarily with departments. This arrangement is unique to New South Wales, as comparable jurisdictions have a designated unit for this purpose. This arrangement also does not effectively manage conflicts of interest. Departments could implement regulation as a means to advance their policy goals without independent and objective oversight of the impact of such approaches on the overall regulatory burden on businesses and individuals.

Regulatory decisions are not transparent

Unlike the Australian Government, the NSW Government does not publish in one place an exhaustive list of final regulatory decisions and assessments. Public access improves regulatory outcomes and accountability by allowing the community to scrutinise government decisions as they are being made.

Recommendations

Responsibilities for overseeing red tape reduction initiatives and regulatory assessment frameworks that were previously undertaken by the Better Regulation Office have yet to be completely transitioned to other units either within DPC or line agencies. Accordingly, while we assign responsibility for these recommendations to DPC, they may be transferred to other agencies once responsibilities are clarified.

By July 2017 the Department of Premier and Cabinet should:

1. set a framework for reducing red tape which includes:
 - a) allocating responsibility for the development and oversight of red tape and regulatory reform programs to a dedicated unit within a central agency
 - b) setting departments' outcomes-based performance indicators for reducing red tape and reporting on departments' performance against these indicators
 - c) conducting a comprehensive stocktake of the number and cost of existing regulation with a review every five years
 - d) reporting the annual net change in regulatory burden using costs reported in regulatory impact assessments and departmental performance reports
2. re-establish a program of targeted reductions of unnecessary regulatory instruments, including non-legislative instruments, informed by reviews of areas of disproportionate regulatory burden
3. amend the Guide to Better Regulation so that it:
 - a) establishes more clearly the roles and responsibilities for DPC and line agencies in assessing new and amended regulatory proposals
 - b) requires that regulatory proposals include an assessment of the overall change in regulatory burden
 - c) requires non-compliant proposals to be subject to a post-implementation review
 - d) sets minimum requirements for regulatory assessment and review of expedited regulatory proposals, such as for government commitments and sensitive and urgent matters, where these proposals otherwise would not have been exempt
 - e) establishes more clearly the processes and requirements specific to low, medium and high significance proposals, and in doing so minimises overlap and inconsistency with requirements in the *Subordinate Legislation Act 1989*
4. maintain a central public repository for all final regulatory decisions and regulatory impact assessments
5. report on completed regulatory assessments, exemptions and non-compliant proposals in an annual report.

Introduction

Background

What is red tape?

Regulation often imposes costs, or regulatory burden, on those it regulates, the broader community and government. Poorly designed and implemented regulation can lead to unnecessary costs to the community, business and government. This is commonly referred to as red tape. Red tape impedes productivity and economic growth and restricts competition by stifling business creation.

Effective regulation is an essential part of well-functioning economies and supports the achievement of policy objectives, such as:

- economic objectives – rules that limit entry into industries and what prices businesses can charge. For example, taxi drivers, lawyers and financial advisors require licences to protect consumers from low-quality or unethical providers
- social and environmental objectives – rules governing how business operations are carried out with a view to correcting market failures. For example, emissions standards may be set to reduce pollutants from manufacturing plants
- public health and safety objectives – rules to protect the health and wellbeing of citizens. For example, vehicles are required to be periodically inspected to ensure they are roadworthy and safe.

Regulatory best practice principles are designed and implemented by governments to help regulators effectively strike a balance between the objectives and outcomes of regulation, and the costs it imposes.

How big is the problem?

The extent and impact of red tape is difficult to quantify, though indicators suggest that it presents a significant and worsening problem in Australia.

According to the World Economic Forum, Australia's ranking in global competitiveness and burden of government regulation has been slipping (Exhibit 1).

Exhibit 1: Australia's ranking in key World Economic Forum global indicators (out of 140 countries)

Year	Competitiveness ranking	Burden of government regulation ranking
2010–11	16	60
2011–12	20	75
2012–13	20	96
2013–14	21	128
2014–15	22	124
2015–16	21	80

Source: WEF Global Competitiveness Reports and database - <http://reports.weforum.org/global-competitiveness-report-2015-2016/competitiveness-rankings/>.

Red tape is also perceived by Australian businesses to be a significant problem. The Australian Chamber of Commerce and Industry's 2015 National Red Tape Survey reported that 73 per cent of businesses surveyed perceived an increase in local, State and Australian Government regulatory burden in the last 12 months, with 68 per cent believing their industry was overregulated.

However, studies suggest regulatory burden in New South Wales is lower than in other Australian jurisdictions. As shown in Exhibit 2, New South Wales' regulatory burden as a percentage of Gross State Product (GSP) is less than Victoria's and Queensland's (these figures must be interpreted with care as they have been derived from regulatory arrangements that are not directly comparable between jurisdictions).

Exhibit 2: Comparison of regulatory burden

	NSW	Victoria	Queensland
Reduction (%)	20	25	20
Reduction (\$m)	750	715	500
Total burden (\$m)	3,750	2,860	2,511
Gross State Product (\$m)	410,774	298,123	251,144
Burden as a percentage of GSP (%)	0.91	0.96	1.00

Source: Queensland Competition Authority 2013, Measuring and reducing the burden of regulation, p. 97.

The Productivity Commission's 2008 regulation benchmarking study supports the view that NSW has proportionally lower regulatory burden than in other jurisdictions. New South Wales had the lowest number of legislative pages compared to Victoria and Queensland (Exhibit 3 below). Measuring the volume of legislative pages gives a proxy indicator for obligations imposed on business as well as the time and effort to become familiar with requirements (statute complexity). Again, comparisons should be made with caution as this does not account for the operation of the legislation or page formatting.

Exhibit 3: Number of regulatory instrument pages in 2008

	NSW	Victoria	Queensland
Pages	32,700	44,214	49,419

Source: Productivity Commission 2008, Benchmarking Regulation – quality and quantity, pp. xv-xvi.

NSW Government red tape reduction commitments

In 2011, the NSW Government committed to reducing regulatory costs to businesses and the community by \$750 million by June 2015. This target was part of the 2021 State Plan goal to reduce red tape by 20 per cent and increase the competitiveness of doing business in New South Wales. All directors-general were also required to meet individual red tape targets and departments were provided with advice regarding eligible red tape savings (Exhibit 4).

Since this initiative, the NSW Government has continued to give priority to reducing red tape. One of the Premier's Priorities is to make it easier to start a business. To create a business-friendly environment for New South Wales' entrepreneurs, the government is focusing on reducing or removing barriers, costs and complexity and making regulatory obligations easier to understand and implement.

Exhibit 4: Definition of red tape savings

The Guidelines for estimating savings under the red tape reduction target defined red tape savings as:

'any reduction in the costs imposed on business, not-for-profit organisations or the community arising from changes in government regulatory requirements or other government interactions that do not reduce the net benefits offered by the regulation or service'.

Examples include the following costs:

- administrative costs, for example, costs demonstrating compliance or participating in a process
- substantive compliance, for example, cost relating to equipment and training required to meet standards
- fees and charges, for example, licence and permit fees
- delay costs, for example, the time taken to approve a licence.

Source: Department of Premier and Cabinet 2009, Guidelines for estimating savings under the red tape reduction target, pp. 4–7.

The NSW Government also committed to a 'one-on, two off' initiative which required the following tests to be met:

- numeric – in any year, the number of repealed legislative instruments (Principal Acts and Regulations) is at least double the number of new instruments
- regulatory burden constraint – for each portfolio, the increase in regulatory burden from new legislation is fully offset by legislative repeals.

For the purposes of the red tape reduction target and 'one-on, two-off' initiative, DPC has advised that the definition of red tape excluded:

- criminal law
- savings to government
- national model legislation
- tax law
- staged repeals of legislation under the *Subordinate Legislation Act 1989*.

DPC's role in administering the red tape reduction program

DPC oversaw implementation of the red tape reduction target and the 'one-on, two-off' initiative.

In assessing progress toward the target, DPC provided guidance to agencies on in-scope reforms (see Exhibit 4) and developed principles to support transparent and proportional effort in assessing cost savings. DPC provided agencies with an assessment template to help standardise the more than 300 savings assessments received, collated and reviewed these agency submissions, and engaged an external consultant to verify individual savings estimates of more than \$5 million.

In addition, DPC accounted for changes to numeric and net burden targets for the 'one-on, two-off' initiative. Changes to the net regulatory burden (in legislation) were also verified by an external consultant.

DPC's role in assessing the impact of regulatory proposals

Regulatory impact assessments and guiding principles to reduce unnecessary regulation are a feature of regulatory oversight in all Australian jurisdictions, and aim to prevent and reduce red tape by ensuring that:

- regulations are efficient and effective in a changing and complex world
- the policy development process consistently delivers regulations (or other policy solutions) that provide the greatest benefit to the community, relative to the overall costs imposed.

In New South Wales, the Guide to Better Regulation requires new and amending regulatory proposals, with some exceptions, to demonstrate that better regulation principles were applied. Under the guide, the Minister for Regulatory Reform, supported by the Better Regulation Office, was responsible for 'gatekeeping' which required:

- Better Regulation Statements to be prepared by departments for significant regulatory proposals
- advice to be provided to Cabinet on all proposals with a regulatory impact
- scrutiny of regulatory proposals being put to the Executive Council.

The Minister provided advice to the Premier on whether the regulatory burden proposed was justified and whether the following principles were applied:

1. The need for government action is established.
2. The objective of government action is clear.
3. The impact of action is understood.
4. The effectiveness and proportionality of the action is understood.
5. Consultation with business and the community is undertaken.
6. The simplification, repeal, reform or consolidation of existing regulation should be considered.
7. Actions are reviewed periodically for continued efficiency and effectiveness.

DPC has advised that the transition of these responsibilities to the now Minister for Innovation and Better Regulation is continuing. Functions undertaken by the Better Regulation Office up to mid-2013 were also transferred across other units within DPC and arrangements to establish continuing roles and responsibilities are still underway.

Audit objective and criteria

This audit assessed whether government initiatives and processes to prevent and reduce red tape were effective. To make this assessment the audit answers the following questions:

- Did savings initiatives effectively reduce red tape?
- Did the 'one-on, two-off' initiative effectively reduce red tape?
- Does the Department of Premier and Cabinet (DPC) effectively review regulatory proposals to ensure they prevent and reduce red tape?

The audit reviewed:

- the assessments for 23 red tape savings initiatives which collectively comprised 73 per cent of the total dollar savings contributing toward the \$896 million in savings claimed
- DPC's tally of added and repealed legislative instruments between 2011 and 2015, and its assessment of the total change in regulatory burden in dollar terms during this time
- 11 new and amending regulatory proposals, of varying significance, that were reviewed prior to formal consideration by government.

Terminology used in this report

In this report we refer to several processes and requirements in New South Wales for assessing regulatory proposals for their benefit, costs, proportionality and impact. This includes Better Regulation Statements (a requirement under the Guide to Better Regulation) and Regulatory Impact Statements (a requirement under the *Subordinate Legislation Act 1989*). We sometimes collectively refer to these processes as 'regulatory impact assessments.' Where we are referring to a specific requirement, we make this clear.

Key findings

1. Did savings initiatives effectively reduce red tape?

In this section we assess whether the red tape savings target effectively reduced red tape.

The NSW Government's claim to have reduced the impact of red tape on businesses and the community by \$896 million is not based on robust assessments of the value of savings initiatives, and at least half of this claimed achievement is based on weak or unverified assumptions, or has demonstrably not been fully achieved.

While many savings initiatives would likely have reduced the time spent by some businesses and individuals in complying with government regulation, the information used to calculate their overall value was not always based on primary evidence or data. We determined that \$369.1 million of the claimed savings from the sample we assessed was based on weak and untested assumptions or poorly described benefits. In addition, we found evidence that \$71.2 million in savings claimed in this sample were cost transfers, and a further \$27.5 million were as yet not fully realised due to delayed implementation.

Target-setting did not drive new reform resulting in the removal or reduction of legislative and non-legislative regulation. Because administrative costs were within scope of the initiative, savings were often based on streamlining or digitising processes required to comply with regulation, rather than removing or rolling back the regulation itself. Many of these initiatives had been previously identified by departments or DPC and already commenced. That said, the targets and reporting requirements may have expedited delivery of some initiatives.

Red tape savings continue to be made despite there being no current target. A new framework is required to support departments' red tape reduction efforts.

Recommendations

By July 2017 the Department of Premier and Cabinet should:

- set a framework for reducing red tape which includes:
 - allocating responsibility for the development and oversight of red tape and regulatory reform programs to a dedicated unit within a central agency
 - setting departments outcomes-based performance indicators for reducing red tape and reporting on departments' performance against these indicators
 - performing a comprehensive stocktake of the number and cost of existing regulation with a review every five years
 - reporting the annual net change in regulatory burden using costs reported in regulatory impact assessments and departmental performance reports.

1.1 Claimed red tape savings were inaccurate

In June 2015, the NSW Government reported that it had exceeded its \$750 million red tape reduction target by \$146 million (Exhibit 5).

Exhibit 5: Reported red tape savings

Year	Reforms (no.)	Business savings (\$m)	Community savings (\$m)	Total Savings (\$m)
2011	18	13.5	5.2	18.7
2012	56	179.7	31.0	210.7
2013	91	204.1	55.2	259.2
2014	93	109.2	217.2	326.4
2015	44	38.7	42.1	80.8
Total	302	545.2	350.7	895.8

Note: figures may not add due to rounding.

Source: Department of Premier and Cabinet, 2011-2015, Implemented Reforms – Red Tape Reduction Target.

However, we found that over half of the assessments of savings claimed were not robust and often overestimated savings (see Exhibit 6). The problems with these assessments are:

- key assumptions were not adequately verified
- the link between reforms and benefits was not clearly explained
- cost transfers were claimed as savings
- full projected savings were claimed immediately but not always realised.

In reviewing the assessments we were mindful of DPC's principles for estimating savings which included that:

- cost savings are indicative estimates, but areas of uncertainty should be highlighted
- cost savings should be presented transparently
- data sources and assumptions should be clearly stated
- a consistent methodology should be applied across all cost savings
- double-counting should be avoided
- consultation with relevant stakeholders is recommended to help ensure claimed savings are reasonable and representative.

We assessed 23 savings initiatives, which collectively comprised 73 per cent of total dollar savings gained from the 303 red tape reduction initiatives (Exhibit 6). In selecting this sample, we focused on higher-impact initiatives (in dollar terms), and those which were externally verified by DPC’s consultant because they were valued at over \$5 million. We assessed the robustness of the assessment as either weak or reasonable based on the information available to DPC and its consultant. Appendix 3 summarises our assessment of savings initiatives.

Exhibit 6: Audit Office confidence in savings

Assessment	Number of initiatives (No.)	Savings (\$m)	Percentage of savings (%)
Reasonable	12	187.5	21
Weak	11	467.8	52
<ul style="list-style-type: none"> key assumptions were not adequately verified 	5	276.9	31
<ul style="list-style-type: none"> the link between reforms and benefits was not clearly explained 	2	92.2	10
<ul style="list-style-type: none"> cost transfers were claimed as savings 	2	71.2	8
<ul style="list-style-type: none"> full projected savings were claimed immediately but not realised 	2	27.5	3
Total assessed	23	655.3	73
Not assessed	280	240.7	27
Total	303	896	100

Note: The Audit Office has applied rounding to some figures.

Source: Audit Office analysis.

Key assumptions were not proven and verified adequately

In many cases, the external consultant’s verification improved the robustness of agencies’ estimates by revising down estimates that lacked supporting data, or by correcting errors of fact. For example, the agency submission on the time saved by businesses and individuals from the abolition of registration stickers was revised down by the consultant, reflecting a lack of data to support the claim that businesses would save an average of 15 minutes as a result of the change. The consultant also corrected the agency’s use of light and heavy vehicles in its estimation of savings, given the policy change only applies to light vehicles. This reduced the overall savings claim by \$7.4 million, and we assessed this lower savings figure as reasonable.

However, there were still many key assumptions in the agencies’ savings assessments that were not based on primary evidence including research, data and surveys, and which were also not verified by DPC’s consultant.

For example, 80 per cent of vehicle owners who undertake regular service were assumed to benefit from the extended validity of pink slips from six weeks to six months, according to the consultant’s verification of the agency’s savings estimate. This figure is taken from an Independent Pricing and Regulatory Tribunal (IPART) report which assumes that motorists benefit from avoided trips to the mechanic by increasing the opportunities for pink slips to be completed at the same time as a service. While this is a genuine reform that is likely to have benefited a significant proportion of motorists, IPART did not cite any research, consultation or primary data in support of the assumption that as many as 80 per cent of people who regularly service their cars would not already have combined a regular service with a pink slip inspection prior to introduction of the reform.

The link between reforms and benefits was not always clearly explained and quantified

In some cases, the project description did not clearly explain how the initiative resulted in claimed benefits. For example, the State Environmental Planning Policy initiative (2014)

claimed savings of \$52.4 million from reduced time delays due to the replacement of Development Approvals with Complying Development Certificates for certain developments. In 2014–15, Complying Development Certificates were three times faster than Development Approvals, on average.

However, it is not clear which developments are now eligible to be assessed under Complying Development Certificates and the number of transitioned developments completed per year.

Similarly, the Service NSW Accelerated Distribution Strategy – Digital Migration initiative claimed savings of \$39.8 million resulting from travel time savings for transactions performed digitally rather than face-to-face. The assessment claims that benefits will be derived faster because of the initiative, however, it does not explain how this occurs.

Cost transfers were incorrectly claimed as savings

In two cases we found that transfers in costs between groups were incorrectly claimed as savings.

First, the Agency Housing Diversity Package claimed savings of \$8.4 million largely from avoiding land holding costs to developers. Holding costs were avoided by allowing the settlement of land before construction completion. However, holding costs – which are an established and readily quantifiable cost for any land holder – were merely transferred to home buyers as they awaited their home to be built. So, net savings for business and the community is nil.

Second, removing the supplier fee on state contracts initiative claimed \$62.8 million in savings. However, there is evidence that suppliers were previously recouping this fee in their charges to government, resulting in a nil net change to red tape when the fee was abolished. We found an example of this occurring in our June 2014 performance audit of government telecommunications purchasing power. The report notes that telecommunications suppliers were passing on supplier fees to government agency purchasers, and in some cases continued to do so after the fee was abolished.¹

Full projected savings were claimed immediately but not realised

The scope of the red tape reduction target enabled full implementation savings to be claimed immediately. For example, if an initiative was projected to deliver \$1 million worth of saving after the tenth year, then \$1 million savings could be claimed in the current year of reporting on red tape savings. The Online TAFE Enrolments and Learning Management and Business Reform (LMBR) Parent Portal – Online Payment initiative are examples which used this approach.

This approach is problematic for two reasons:

- claiming of future savings does not give a true indication of actual savings realised
- project delays presents a risk to actual savings.

For example, the LMBR Parent Portal – Online Payment claimed savings of \$11.4 million per year from, in part, avoided travel time by the assumed 25 per cent of parents that pay school fees face-to-face. This estimate was based on the portal being rolled-out to all NSW Government schools by December 2014. However, as we reported in our December 2014 report on the Learning Management and Business Reform program, the project has encountered a number of delays and technical issues meaning that projected savings were not realised.²

¹ Audit Office of New South Wales 2014, Making the most of government purchasing power – telecommunications, p. 13.

² Audit Office of New South Wales 2014, The Learning, Management and Business Reform Program.

The net burden of red tape was not fully accounted for

The NSW Government has not undertaken a stocktake of the total red tape burden in New South Wales, and does not know how high the overall costs of its regulations are to businesses and individuals. This means that it is not possible to assess the impact of the government's claimed savings under the red tape reduction target within the context of the overall costs of NSW Government regulation to businesses and the community.

That said, at a specific initiative level, where information was available, attempts were made to account for both the costs and the savings from those initiatives. For example, DPC's consultant estimated net savings of \$4.4 million resulting from changes to the *Child Protection (Working with Children) Act 2012*. This assessment accounted for additional costs such as introducing a fee for a Working with Children Check Clearance and additional savings such as reduction in delay costs.

1.2 Targets did not drive new reform

As allowed within the scope of the red tape reduction program, the majority of initiatives that contributed to the target had been previously identified by departments or DPC and already commenced. As such, the target was rarely the driver for regulatory reform, but rather, counted benefits related to reforms that were instigated by other policy priorities. In addition, red tape reduction initiatives largely aimed to improve the efficiency of administrative processes for complying with existing regulation rather than to remove or significantly overhaul regulation itself.

Extending the validity of Pink Slips was one of the few examples of the target driving a new reform to be identified and delivered. IPART initially proposed this reform in its September 2014 report, 'Reforming licensing in NSW.' The NSW Government requested this review to help achieve its red tape target.

Conversely, major projects such as LMBR, Opal cards and Service NSW were all developed as a result of other priorities or commitments. It is likely that the targets and reporting requirements gave agencies incentives to expedite delivery of some initiatives such as these. However, given there were not significant new regulatory changes as a result of the red tape reduction program, the benefits of the program to businesses and the community are diminished because the focus of the program was in seeking reports on existing activity from line agencies, rather than establishing and driving new regulatory reform priorities.

Some new reforms were identified through DPC's targeted industry sector reviews of cafes and restaurants, clothing retail, housing construction, print manufacturing, and road freight. The reviews involved 'standing in the shoes' of a new business to understand the cumulative burden of regulation and practical problems faced by business, and recommending practical solutions. These reviews provided useful and targeted information by taking a user perspective of reform impacts. Overall, 40 per cent of recommendations from these reviews related to simplifying requirements. However, it appears that few of these recommendations were progressed as part of the red tape reduction program, and opportunities to capitalise on this work may have been missed.

In administering the program, DPC effectively targeted areas of red tape significance as identified by business (Exhibit 7). DPC allocated targets to portfolios based on the following criteria:

- community contact using number of licences as a proxy
- historical record of red tape reform
- confidence in savings initiatives identified by the department and DPC.

However, two areas that were overlooked but identified as significant were environment and industrial relations.

Exhibit 7: Priority of portfolios

Rank	Complex regulators	Complex portfolios	Portfolios with the highest targets
1	Planning	Planning and development	Finance and services (including WorkCover)
2	Environment	Workplace health and safety and workers compensation	Transport
3	Industrial relations	Employee wages, conditions and superannuation	Planning

Sources: NSW Business Chamber 2013, Red Tape Survey, p. 3; Department of Premier and Cabinet, Departmental targets.

1.3 A new red tape reduction framework is required

A more focused framework for reducing red tape would bring New South Wales into line with comparable work underway in other jurisdictions to reduce the impact of unnecessary or overly burdensome regulation. Departments continue to give priority to red tape reductions despite the initiative's completion and the absence of a current target. Between June and December 2015, DPC reported additional savings of \$83.5 million.

A framework will build on this work and provide departments with clearer guidance and impetus to reduce red tape in the future. The framework would benefit from a greater understanding of the stock of regulation and cost of complying with regulation to:

- ensure transparent reporting of the net impact of any red tape reduction achievements
- ensure focused effort on areas with high red tape burden
- provide a benchmark against which departments can track red tape reduction performance.

A recent Victorian Auditor-General's Office report on red tape reduction initiatives in Victoria highlights the risks to transparency and public accountability of continuing to report on red tape reduction measures in the absence of a baseline measure and clear focus on genuine regulatory rollback:

"The significant level of uncertainty around these estimates of red tape and the significant changes in the scope of red tape programs undermine the validity and clarity of these targets:

- Such targets convey a level of precision that is misleading and that, at the very least, needs to be fully explained to each program's intended beneficiaries.
- The breadth and diversity of those now covered by red tape programs makes a single, unexplained target of little meaning to these intended recipients."³

No jurisdiction, with the exception of the Australian Government (Exhibit 9), has fully accounted for the number and cost of regulation. This is largely due to the presumed complexity and cost of a comprehensive stocktake. Exhibit 8 shows the Australian Government's framework for reducing red tape, which combines outcomes-based KPIs, measures of good regulatory performance and transparent public reporting on the change in regulatory burden in an annual report.

³ Victorian Auditor-General's Office 2016, Reducing the Burden of Red Tape, p.18.

Exhibit 8: Australian Government's red tape reduction framework

The Australian Government's performance framework consists of the following elements:

- Outcomes-based key performance indicators (KPIs), including:
 - regulators do not unnecessarily impede the efficient operation of regulated entities
 - communication with regulated entities is clear
 - actions undertaken by regulators are proportionate to the risk being managed
 - compliance and monitoring approaches are streamlined and coordinated
 - regulators are open and transparent in their dealings with regulated entities
 - regulators actively contribute to the continuous improvement of regulatory frameworks.
- Measures of good regulatory performance – used by regulators to assess their achievement of KPIs.
- Annual red tape reduction report – this reports on:
 - net change in regulatory burden from regulatory decisions taken, implemented and yet to be implemented
 - number of regulatory impact statements, the percentage of compliance with Regulatory Impact Analysis, requirements.

Sources: Australian Government 2014, Regulator Performance Framework, p. 5; The Australian Government 2015, Annual Deregulation Report.

A best practice approach to reducing red tape would include a stocktake to establish a baseline measure of regulatory burden. New South Wales could re-establish a red tape reduction program in the absence of a stocktake. However, savings targets have been shown to be an ineffective feature of any program lacking a baseline measure or a strong focus on genuine regulatory reform and rollback.

An alternative option could be to build on past work with targeted reviews. This could involve a focus on improving performance in areas of disproportionate regulatory burden by monitoring the number and scale of regulators, performance against regulatory impact assessment requirements and better regulation principles.

Exhibit 9: Australian Government's stocktake of regulation

The first Annual Deregulation Report (2014) conducted a stocktake of Commonwealth regulations to estimate the number of regulations and cost of complying with them.

In 2013, there were 85,719 regulations consisting of:

- quasi regulation (84 per cent) – rules developed by administrative agencies, such as codes of practice, guidance and accreditation schemes
- subordinate instruments (14 per cent)
- primary legislation (two per cent).

The cost of compliance was estimated at \$65.4 billion or 4.2 per cent of Gross Domestic Product. This estimate was based on a sample of burden rather than estimating the cost of individual regulation.

The measure includes the cost incurred by businesses, community organisations, families and individuals to comply with the essential rules and regulations that every society needs to operate effectively. However, as well as appropriate and necessary regulation, inside the total figure are costs of complying with unnecessary red tape.

Sources: The Australian Government 2014, Annual Deregulation Report, pp. 26 – 34.

2. Did the ‘one-on, two-off’ initiative effectively reduce red tape?

In this section we assess whether the ‘one-on, two-off’ initiative effectively reduced red tape.

The ‘one-on, two-off’ initiative did not effectively reduce red tape.

Net legislative red tape burden increased by \$16.1 million over the life of the initiative. While this increase was driven by three legislative instruments deemed to be in the public interest, this increase was not offset by a significant reduction in overall legislative regulatory burden. The NSW Government met its numeric target, with approximately four legislative instruments repealed for every one introduced. However, most were repeals of redundant legislation with little or no regulatory impact.

The ‘one-on, two-off’ initiative did not reduce legislative complexity as the stock of legislative regulation increased. The number of pages of legislation – a proxy indicator for statutory complexity – increased over the life of the policy by 1.4 per cent per year on average. Over the preceding ten years, the number of pages of legislation had decreased by 1.1 per cent per year on average.

DPC accounted for and verified changes in the net number of legislative instruments and regulatory burden across NSW Government. External review, conducted by a consultant, improved the robustness of underlying assumptions and savings estimates. The consultant also categorised the level of confidence in the estimate as strong, medium or weak to account for uncertainties.

Recommendation

By July 2017, the Department of Premier and Cabinet should re-establish a program of reductions in unnecessary regulatory instruments, including non-legislative instruments, informed by targeted reviews of areas of disproportionate regulatory burden.

2.1 Overall regulatory burden increased over the life of the initiative

In 2015, DPC reported that overall net legislative regulatory burden in New South Wales had increased by \$16.1 million since 2011.

Exhibit 10: ‘One-on, two-off’ initiative reporting

Year	Added legislation	Repealed legislation	Numeric test met?	Regulatory burden constraint met?	Change in regulatory burden
2011	14	152	Yes	Yes	-\$1.8 m
2012	13	37	Yes	No	\$17.2 m
2013	10	16	No	Yes	-\$2.1 m
2014	13	24	No	No	\$2.8 m
2015	4	8	Yes	Yes	No change
Total	54	237	Yes	No	\$16.1 m

Source: Department of Premier and Cabinet 2015, Overview – Red Tape Reporting.

The following new and amended legislative instruments drove this increase:

- Public Health Regulation 2012 (\$14 million) – required the owners of commercial public swimming pools and spas to improve water treatment and testing to reduce the risk of transmission of diseases.
- Fair Trading Regulation 2012 (\$5.3 million) – required new product information standards for petrol stations to display the price of all fuels sold.
- *Tattoo Parlours Act 2012* (\$0.5 million) – introduced a licensing scheme to mitigate risks of outlaw motorcycle gang involvement in the tattoo industry.

The introduction of these instruments was assessed as being in the public interest because they addressed emerging or uncontrolled risks with proportionate controls. However, the overall reduction in legislative regulatory burden through ‘one on, two off’ was not enough to offset this proportionally small increase.

2.2 The numeric test was met, but most repeals related to redundant legislation

The NSW Government met its numeric test – at least two legislative instruments are repealed for every one introduced in any year – in all years except 2013 and 2014 (Exhibit 10). Over the life of the initiative, 237 instruments were repealed and 54 were introduced – an overall ratio of approximately four repeals for every new instrument.

Although 237 instruments were repealed, this did not lead to significant red tape reduction because most related to redundant instruments which were repealed under the Parliamentary Counsel’s Office Staged Repeal of Statutory Rules. The aim of that program is to simplify legislation by identifying and repealing unnecessary instruments.

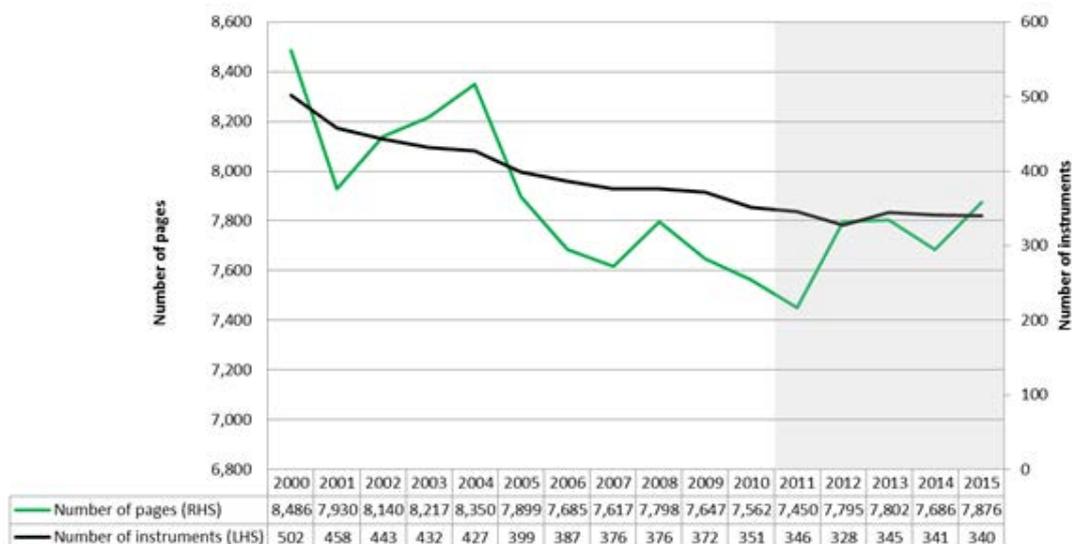
In terms of oversight of the ‘one-on, two-off’ initiative, DPC accurately accounted for and verified changes in the net number of legislative instruments and regulatory burden on behalf of NSW Government agencies. External review, conducted by DPC’s consultant, improved the robustness of regulatory burden estimates. The consultant also specified its level of confidence in the estimate as strong, medium or weak to account for uncertainties.

2.3 Legislative complexity increased over the life of the initiative

The ‘one-on, two-off’ initiative did not assist in reducing legislative complexity. According to the Parliamentary Counsel’s Office, minimising the stock of legislation that is unnecessary or out of date is a principle of good regulation because it makes it easier to navigate legislative requirements. Exhibit 11 shows the number of legislative instruments and pages in force between 2000 and 2015. The shaded area represents the life of the ‘one-on two-off’ initiative (2011 to 2015).

During the initiative, the number of instruments fell from 346 to 340 – a decrease of 0.4 per cent per year on average. However, this reduction was slower than the preceding ten years. Between 2000 and 2010, the number of instruments fell from 502 to 351 or 3.5 per cent per year on average.

Exhibit 11: Number of legislative instruments and pages in force



Note: As at 1 September each year.

Source: New South Wales Parliamentary Counsel's Office.

In addition, the number of pages of legislation – another proxy indicator for statutory complexity – increased from 7,450 to 7,876, or an average of 1.4 per cent per year, over the life of the policy. Over the preceding ten years, the number of pages of legislation had decreased by 1.1 per cent per year on average.

2.4 The initiative did not account for non-legislative (quasi) regulation

Quasi regulations are the rules developed by administrative agencies or bodies that help to achieve the overarching principles set out in principal acts and regulations. These can include (but are not limited to) codes of practice, guidance, industry-government agreements and accreditation schemes.

As the initiative's scope was limited to principal legislation, quasi regulation was not accounted for. However, if the proportion of quasi regulation in New South Wales is similar to that administered by the Australian Government (84 per cent of the total number of regulations) then it is significant. We were not able to estimate quasi regulation in New South Wales as it is not tracked on a whole-of-government basis.

3. Does DPC effectively review regulatory proposals to ensure they prevent and reduce red tape?

In this section we assess whether DPC effectively reviews regulatory proposals to ensure they prevent and reduce red tape.

DPC checks regulatory proposals to ensure they meet minimum requirements, however, there is no up-to-date framework or mandate for DPC to quality-assure proposals to ensure they undertake genuine regulatory enquiry and reduce red tape.

Most regulatory impact assessments in the 11 proposals we reviewed did not apply best practice regulatory principles. Opportunities to effectively minimise reduce red tape through this process were not taken up. The regulatory assessment process is considered by agencies to be a 'tick-the-box' exercise which adds little value to the decision-making process, particularly in the following circumstances:

- election commitments or government decisions where the regulatory outcome is unlikely to change
- complex proposals where understanding and assessing costs and benefits is difficult and time consuming
- legislative remakes.

There is no central oversight of regulatory reform or red tape minimisation. Since the abolition of the Better Regulation Office in mid-2013, responsibility for ensuring compliance with regulatory principles rests solely with departments. This arrangement is unique to New South Wales as most jurisdictions have a designated unit for checking compliance. This arrangement also does not effectively manage conflicts of interest. For example, departments may not adequately consider regulatory proposals contrary to their policy position.

Recommendations

By July 2017 the Department of Premier and Cabinet should:

- renew and update the Guide to Better Regulation so that it
 - establishes more clearly the roles and responsibilities for the Department and line agencies in assessing new and amended regulatory proposals for red tape burden
 - requires that regulatory proposals include an assessment of the overall change in regulatory burden
 - requires non-compliant proposals to be subject to a post-implementation review
 - sets minimum requirements for regulatory assessment and review of expedited regulatory proposals, such as for government commitments and sensitive and urgent matters, where these proposals otherwise would not have been exempt
 - establishes more clearly the processes and requirements specific to low, medium and high significance proposals, and in doing so minimises overlap and inconsistency with requirements in the *Subordinate Legislation Act 1989*
- maintain a central public repository for all final regulatory decisions and regulatory impact assessments
- report on completed regulatory assessments, exemptions and non-compliant proposals in an annual report.

3.1 Regulatory assessments did not adequately minimise red tape or demonstrate that additional burden was justified

No genuine regulatory inquiry

In the sample of regulatory proposals we assessed, regulatory impact assessments developed by NSW Government departments did not represent a genuine regulatory inquiry.

Under DPC's Guide to Better Regulation (the Guide), all new and amending regulatory proposals must demonstrate that the better regulation principles have been applied. According to the Guide, these principles are the cornerstone of the government's commitment to good regulation and minimisation of red tape.

Current practices do not operate to support this commitment and are considered a 'tick-the-box' exercise by agencies responsible for addressing the better regulation principles in regulatory proposals, which adds little value to the decision-making process. We found this in a number of cases, including the following:

1. for government commitments where the regulatory outcome is unlikely to change. Some proposals claimed an exemption from regulatory process because it was an election commitment. However, under the Guide, no such exemption exists
2. for complex proposals where understanding and assessing costs and benefits is difficult and resource intensive
3. for legislative remakes. Notably, remakes of Regulations require a Regulatory Impact Statement under the *Subordinate Legislation Act 1989*, with some exceptions such as machinery of government changes, direct amendments or repeals, and legislation that is uniform or complements Commonwealth legislation or another State or Territory.

Similar issues were raised in a 2012 Productivity Commission report that found the regulatory process was 'merely a formal framework for consultation' or a requirement to be 'ticked-off'.

In a number of proposals we assessed, it appeared that a full account of the likely regulatory impact would not have added value because a policy decision had been made that the regulation needed to proceed regardless. In comparison to this situation in New South Wales, the Australian Government's Guide to Regulation recognises that full and immediate regulatory impact assessments do not add value in every situation. It outlines circumstances where exemptions are reasonable and post-implementation reviews may be used instead.

Exhibit 12: The Australian Government Guide to Regulation

The Australian Government requires all Cabinet Submissions, including regulatory proposals to undertake a Regulatory Impact Statement (RIS). Where a RIS is deemed non-compliant, or compliant but not prepared for, then a Post Implementation Review (PIR) must be completed.

The framework also allows exemptions for circumstances where the immediate completion of a RIS would not be worthwhile. These exemptions include:

- Prime Minister's exemptions – the following circumstances may be exempt from an assessment, but a post implementation review should be completed within two years of the decision:
 - urgent and unforeseen events requiring a decision before an adequate assessment can be undertaken
 - matters of Budget or other sensitivity and the development of a RIS could compromise confidentiality or cause unintended market effects
- costing extension – where a RIS is complete apart from costings and the agency requires additional time to complete costings. Once costs are agreed they are published
- independent reviews – where an independent review or other similar mechanism has undertaken a process and analysis equivalent to a RIS
- election commitments – a RIS covering matters subject to an election commitment will not be required to consider a range of policy options. In this situation the assessment should focus on the commitment and the manner in which the commitment is implemented. A PIR may be required
- carve-outs – can be used when anticipated regulatory changes are minor, likely to occur on a regular basis, or are machinery in nature
- Cabinet Secretary exemptions – where costs are identified but not offsets
- revenue raising and protection measures – in this case the RIS need only address the best means of implementing the measure, as full cost benefit analysis is not possible without knowing how the revenue will be spent.

Sources: Australian Government 2014, The Australian Government Guide to Regulation; Australian Government 2016, Guidance Note: Post-Implementation Reviews.

Not all regulatory principles were met

We assessed 11 regulatory proposals against regulatory principles established in DPC's Guide to Better Regulation (the Guide). All of the proposals were Cabinet-in-Confidence and therefore we are only able to present our aggregate findings.

Most of the regulatory proposals we assessed did not meet the following principles:

1. The development of viable options – almost half of the proposals we assessed did not develop a range of viable options as required by the Guide (Exhibit 13). These options should include no action and maintaining status quo.
2. Costs and benefits are identified – almost half of the proposals did not adequately identify the costs and benefits. The Guide requires that compliance, economic, social and environmental costs be identified as well as direct and indirect impacts. However, most proposals only qualitatively described the impact to those directly affected.
3. Costs and benefits are evaluated – none of the proposals had evaluated costs and benefits, despite reasonably expecting many to have done so based on their significance. Under the Guide, quantitative or dollar values for costs and benefits must be determined where possible. But the level and depth of analysis applied should depend on the significance of the problem, the type of impacts and availability of data on cost and benefits, and techniques available.
4. Performance monitoring and reporting is considered – only two proposals set performance indicators. Under the Guide, outcomes and output indicators should be set and reported to determine whether the regulation's objectives are achieved. Setting these indicators is vitally important for the periodic review of effectiveness and efficiency.

5. Government action considers effectiveness and proportionality – only one of the proposals considered that objectives would be achieved without imposing undue costs as required under the Guide. The development of a number of viable options would provide a reference point for proposals to demonstrate effectiveness and proportionality.
6. The option of simplification, repeal, reform or coordination of existing regulation is considered – improving the efficiency of existing regulation was considered for proposals related specifically to the harmonisation of legislation with other jurisdictions and repeals of existing legislation. They were generally not considered for new proposals.

However the proposals consistently met the following principles:

1. Consultation with business and the community informs regulatory development – almost all proposals consulted widely and effectively which led to improved regulation design.
2. Those affected were identified – most proposals identified the stakeholder groups affected.
3. The objective of government action was clear – most proposals outlined the intended outcome of the regulation.
4. The need for government action was established – all proposals outlined the reasons for action. However, the Guide did not provide sufficient information on how to assess whether the need for action was legitimate. For example, that the reasons were related to a risk to public health and safety that could best be addressed with a regulatory response.

Exhibit 13: Number of proposals that met better regulation principles out of 11 reviewed

Principle	Number
The need for government action was established	11
The objective of government action was clear	10
The impact of government action was understood and costs and benefits were considered	
• viable options were developed	6
• those affected were identified	10
• cost and benefits were identified	6
• costs and benefits were evaluated	0
• monitoring and reporting of performance was considered	2
The effectiveness and proportionality of action was considered	1
Consultation with business and the community informed regulatory development ¹	8
The simplification, repeal, reform or consolidation of existing regulation was considered ²	6
Regulation was periodically reviewed and, if necessary, reformed to ensure its continued efficiency and effectiveness ³	1

1 Out of nine proposals as information on two proposals was not available.

2 Out of ten proposals – information was not available for one proposal.

3 Out of one proposal as only one proposal was a result of a periodic review.

Source: Audit Office analysis.

Regulatory proposals' level of significance was not clear

It was difficult to determine whether regulatory proposals met the requirement that a Better Regulation Statement (BRS) be completed to accompany significant proposals, because the definition lacks specificity in quantifying significance (see below).

Under the Guide, all significant new and amending regulatory proposals are required to demonstrate that the better regulation principles have been met through a BRS, and responsible ministers are to determine significance. This is in addition to requirements of portfolio ministers under the *Subordinate Legislation Act 1989* to determine whether a RIS is required and ensure the requirements of the RIS are met. For non-significant proposals, application of the principles needs only to be provided in the Cabinet Minute.

Under the Guide portfolio ministers should generally assess a proposal as significant if it:

1. introduces a major new regulatory initiative
2. has a significant impact on individuals, the community, or a sector of the community
3. has a significant impact on business, including by imposing significant compliance costs
4. imposes a material restriction on competition
5. imposes a significant administrative cost to government.

In contrast to the approach in New South Wales of requiring the responsible minister to determine significance, one of the Queensland Productivity Commission's Office of Best Practice Regulation's roles is to determine whether a proposal is significant and therefore requires a Regulatory Impact Statement, or whether a Preliminary Impact Assessment is sufficient. The Victorian Department of Treasury and Finance's Guide to Regulation also has a clear guideline on what is a significant social/economic burden (\$2 million per year). These approaches improve the clarity around requirements and overcome any conflicts of interest.

3.2 No designated oversight of continued regulatory reform and red tape minimisation

Under the Guide, DPC, through the then Better Regulation Office, had a role in cutting red tape and advising on whether the principles were met and whether proposed regulatory burden was justified. Since the abolition of the Better Regulation Office, the impetus and accountability for ongoing regulatory reform has not been wholly transferred to other units within DPC or to another agency.

We were advised that DPC no longer consistently assesses and comments on whether principles are met or proposed regulatory burden is justified. In an arrangement unique to New South Wales, this role is now the responsibility of regulators themselves. The arrangement lacks adequate scrutiny due to potential for conflicts of interest. For example, departments may implement regulation as a means to advance their policy goals without independent and objective oversight of the impact of such approaches on the overall regulatory burden on businesses and individuals.

Other jurisdictions have a designated unit, which in some cases is independent to policy-makers and regulators, to advise on whether principles are met and whether regulatory burden is justified (Appendix 5).

DPC still advises Cabinet on whether it agrees with regulatory proposals, including checking whether the requirement for assessing regulatory burden has been met. However, the advice provided did not consistently consider key regulatory principles in detail for most of the regulatory proposals assessed. We were advised that time constraints on processing Cabinet proposals were a key factor impacting on the quality of advice provided by DPC.

Guidelines are out dated

The regulatory guideline requires updating. It was last updated in 2009, whereas Victoria, Queensland and the Australian Government's guides were updated in 2014, 2014 and 2013, respectively. It contains references to ministers and bodies that no longer exist such as the

Minister for Regulatory Reform and the Better Regulation Office, and therefore does not assign clear and delineated roles in the present context.

Regulatory decisions are not transparent

DPC does not publish in one place, or hold in a central repository, an exhaustive list of final regulatory decisions, RISs and BRSs. Public access improves regulatory outcomes and accountability by allowing the community to scrutinise government decisions. In contrast, the Australian Government publishes a listing of all its decided regulatory proposals, and those decided by Council of Australian Governments and Ministerial Councils, on its Best Practice Regulation Updates website (<http://ris.dpmc.gov.au>). This website is maintained by the Office of Best Practice Regulation. The website publishes non-compliant RISs regardless of whether they may attract unfavourable scrutiny.

We were advised that Consultation RISs are made available on departmental websites for a fixed period of time and in the government Gazette. DPC only publishes a selection of RISs on its website once a decision has been made.

The Australian Government also publishes an annual best practice regulation report which outlines the number of proposals exempted, including the reasons for exemption, and the number of non-compliant proposals. The report provides information on whether regulations have been subjected to a post-implementation review as required under the guidelines.

Appendices

Appendix 1: Response from the Department of Premier and Cabinet



Reference: A1706813

Ms Margaret Crawford
Auditor-General of NSW
Audit Office NSW
Level 15
1 Margaret Street
SYDNEY NSW 2000

Dear Auditor-General

Thank you for your letter dated 22 July 2016 and for the opportunity to respond to the Performance Audit Report on Red Tape Reduction. I appreciate the work of the Audit Office NSW in conducting investigations to highlight how we can improve our policy programs and service delivery.

Red Tape Reduction is an important element of policy making and service delivery. We want to lighten the load of regulation on business and the economy, while also protecting consumers, the environment, the vulnerable, and correcting market failures. The ultimate test of that regulatory balance is how the community views regulation of its daily activities.

The Audit Report has made recommendations to provide greater transparency and direction in the Government's ongoing work to reduce red tape. I note specifically the recommendation for a comprehensive stocktake of existing regulation in order to provide a baseline for the assessment of regulatory burden. The report recognises that the complexity and cost of undertaking such a stocktake is high. We understand that of Australian jurisdictions only the Commonwealth Government has attempted such a task. We note that the report suggests an alternative approach which would involve targeted reviews focusing on areas of disproportionate regulatory burden. Accordingly we support the targeted approach rather than the comprehensive stocktake given the likely overall benefits.

I also note the report's recommendation for greater use of post-implementation reviews to ensure regulations are performing as intended without undue costs on business and the community. Many acts already contain statutory revision clauses and we are open to considering how these review provisions could be strengthened to incorporate the Better Regulation Principles. This could work with the Staged Repeals process which already considers the performance of existing regulations that are approaching the end of their legislated sunset period.

Finally, the report has raised some issues with underlying data quality and data validation in the calculation of red tape savings. Estimating the benefits of red tape reduction requires a degree of judgment. The report put forward some alternate judgements on the estimation of some costs. Whilst acknowledging these differences we would note that the program governance arrangements required that reforms worth \$5 million or more were verified by an independent consultant and that the report agreed that this process resulted in improved robustness of savings estimates.

Once again, I thank the Audit Office for this report which will help inform the future of policy in this area. I look forward to the Department of Premier and Cabinet working with the Department of Finance, Services and Innovation in further developing the agenda for Better Regulation.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Blair Comley'.

Blair Comley PSM
Secretary

22 August 2016

52 Martin Place, Sydney NSW 2000 ■ GPO Box 5341, SYDNEY NSW 2001
Tel: (02) 9228 5555 ■ www.dpc.nsw.gov.au

Appendix 2: Response from the Department of Finance, Services and Innovation



McKell Building – 2-24 Rawson Place, Sydney NSW 2000
Tel 02 9372 8877 | TTY 1300 301 181
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Office of the Secretary

Ms Margaret Crawford
Auditor-General of NSW
Audit Office of NSW
Level 15
1 Margaret Street
SYDNEY NSW 2000

Ref FTMIN16/1867

Dear Ms Crawford *Margaret*

Thank you for your letter dated 22 July 2016 and the opportunity for the Department of Finance, Services and Innovation (DFSI) to respond to your final report of the performance audit of red tape reduction initiatives between 2011 and 2015.

The NSW Government is committed to ensuring NSW laws are reasonable and responsive to the needs of the community, and that they don't impose unnecessary red tape.

The completion of this report provides an opportunity to examine the existing NSW regulatory policy framework and consider areas for improvement. Accordingly, in the coming months Government is considering initiating a review of the policies, institutions and tools that underpin regulatory quality. The report's recommendations will help inform this review should it proceed.

The review could also consider mechanisms for systematic reviews of regulatory stock, in particular regulation of areas of disproportionate regulatory burden, to ensure that regulations deliver the intended policy objectives efficiently and effectively, while also accommodating digitalisation and innovation.

In addition, in keeping with the recommendations in your final report concerning improving the transparency of regulatory impact assessments (recommendations 4 and 5), DFSI is considering establishing a central repository for records of significant regulatory assessments.

Finally, as part of its new better regulation role, DFSI has already put in place measures to support and deliver on the three pillars of the NSW Better Regulation program: digital government, smarter policy making and improved regulatory practice. These measures include the annual 'Spring Clean Bill', the Commerce Regulation program, the establishment of the Data Analytics Centre and the Easy to do Business program.

These programs are designed to provide outcome based results and will continue to deliver on impactful regulatory reform for NSW while the evaluation is undertaken.

Yours sincerely

Martin Hoffman
Secretary *17/9/16*

Appendix 3: Audit Office assessment of red tape reduction target savings initiatives

Initiative	Brief description of red tape reduction	Agency savings estimate (\$million)	Consultant's savings estimate (\$million)	Variance (\$million)	Key issue	Audit Office confidence in assessment
Working with Children Check	New process for background checks. Clearance valid for five years as opposed to applying each time. Savings accrue from avoiding waiting for clearance before starting a new job.	-11.6	4.4	16.0	N/A	Reasonable
Online TAFE Enrolments	Online enrolment removed the need for students to enrol on campus during business hours.	16.3	16.1	-0.2	Project delays mean that projections of completed online enrolments is optimistic.	Weak
Personal Property Securities	The Personal Property Securities Register saves time by allowing searches in one register rather than multiple ones.	13.7	13.7	0.0	N/A	Reasonable
National Electronic Conveyancing	Electronic method of property conveyancing settlement has removed the need for face-to-face meetings.	46.8	46.8	0.0	Basis for assumptions not provided.	Weak
National Business Names Register	Replaces State/Territory registers removing the need for businesses to register and pay multiple.	22.8	22.8	0.0	Basis for assumptions not provided.	Weak
Remove supplier fee on State contracts	Phasing out of the management fee charged to suppliers providing goods and services under State contracts.	63.4	62.8	-0.6	Transfer of costs – fees were already being passed onto government through higher contract costs, rather than being absorbed by the business. So the fee removal does not represent a saving to business.	Weak
Legal eServices	Providing for online submission of 40+ civil matters forms for Supreme, District and Local Courts to save time at the registry office.	1.9	16.2	14.3	No basis for projected take-up of online forms evidenced.	Weak

Initiative	Brief description of red tape reduction	Agency savings estimate (\$million)	Consultant's savings estimate (\$million)	Variance (\$million)	Key issue	Audit Office confidence in assessment
Ageing, Disability and Home Care Supplier Directory	A single set of guidelines for the engagement, selection and pre-qualification of specialist funded disability services. This reduces the number of tenders and tender-like processes being used to identify suitable providers to deliver specialist funded disability services.	4.4	4.4	0.0	N/A	Reasonable
Retirement village standard contract	Allows more effective and efficient comparison between costs and conditions before entering a contract resulting in time savings and reduced legal costs.	7.2	7.0	-0.2	N/A	Reasonable
Amendments to travel compensation Trust Fund Deed	Travel time, administrative and compliance savings by removing the burden associated with the Travel Compensation Fund's regulatory scheme.	7.2	11.5	4.3	N/A	Reasonable
Contingent workforce prequalification scheme	Time savings from simplifying tender application process and reduced contract management fee.	4.1	4.1	0.0	N/A	Reasonable
Small business estimated wage reporting	Removal of the requirement that small businesses provide wage estimates to have their workers compensation policy renewed.	6.5	21.0	14.5	N/A	Reasonable
Workers compensation reform premium discount	Changes to the operating environment of the scheme lead to the reduction in average premium rates charged to NSW businesses.	227.0	89.5	-137.5	No basis for the assumption that administrative costs would reduce in proportion with reductions to scheme liabilities.	Weak

Initiative	Brief description of red tape reduction	Agency savings estimate (\$million)	Consultant's savings estimate (\$million)	Variance (\$million)	Key issue	Audit Office confidence in assessment
Amendments to the State Environment Planning Policy Amendment (Commercial and Industrial Development)	State Environmental Planning policy changes resulting in new industrial buildings up to 20000m ² and additions to existing industrial and commercial buildings and internal fitouts being classified as complying development (eligible for a fast track development approval process). Initiative also included the expansion of exempt development including signage and advertising.	33.8	44.5	10.7	N/A	Reasonable
Abolition of registration labels for light vehicles	Time savings from avoiding the need to remove and replace registration stickers.	19.3	11.9	-7.4	N/A	Reasonable
Jury Management System	Reduction in waiting times in Jury Assembly Rooms by 75 per cent through airport-style electronic check-ins, on-the-spot excusals and personal online profiles for jurors.	5.1	10.5	5.4	N/A	Reasonable
LMBR Parent Portal	Allows parents to avoid paying school fees face-to-face.	10.6	11.4	0.8	Savings unlikely to be realised due to project delays. No basis provided for estimated avoided face-to-face transactions of 25 per cent of parents.	Weak
State Environmental Planning Policy (Exempt and complying development codes)	Faster approval time with the replacement of Development Approvals with Complying Development Certificates for certain developments.	71.4	52.4	-19.0	How benefits are derived from the initiative is unclear.	Weak

Initiative	Brief description of red tape reduction	Agency savings estimate (\$million)	Consultant's savings estimate (\$million)	Variance (\$million)	Key issue	Audit Office confidence in assessment
Housing Diversity Amendments	Allows contract for the sale of land below 450m ² to be settled before construction starts. Developer can then avoid holding costs of land.	10.0	8.4	-1.6	Transfer costs – costs of holding land are transferred from developers to purchasers, resulting in no net saving.	Weak
Service NSW Accelerated Distribution Strategy – Digital Migration Savings	Accelerated realisation of travel time savings for people /businesses completing transactions online (digitally) rather than at a service centre.	90.0	39.8	-50.2	How benefits are derived from the initiative is unclear.	Weak
Extending the validity of light vehicle safety inspection reports from 42 days to six months	Extended the validity of pink slips from six weeks to six months for 3.72m light vehicle registrations older than five years. Avoided travel time by allowing pink slips to be done at same time as a service.	120.2	101.6	-18.6	No evidentiary basis for the assumption that 80 per cent of motorists will not already combine a service with a pink slip prior to the reform.	Weak
Integrated ticketing project - Opal card	Commuter time savings by no longer having to wait in queues during peak times to buy tickets.	48.4	44.2	-4.2	N/A	Reasonable
Improving housing supply (Riparian Corridors)	Revision to Riparian Corridors Guidelines (transition zone between land and a river) allows more development in these zones.	19.8	10.3	-9.5	N/A	Reasonable
Total		838.3	655.3	-183.0	73%	of total claimed savings of \$896m
Total weak		680.4	467.8	-212.6	52%	
Total reasonable		157.9	187.5	29.6	21%	

Appendix 4: Audit Office assessment of regulatory proposals

Proposal	Need for action established	The objective of government action is clear	Impact of costs and benefits considered					Action effective and proportional	Consultation	Simplification, repeal and reform considered	Periodically reviewed
			Options developed	Those affected identified	Costs and benefits identified	Costs and benefits evaluated	Monitoring and reporting of performance				
Review of <i>Home Building Act 1989</i>	✓	✓	✓	✓	✓	✗	✓	✓	✓	✓	
<i>Swimming Pools Act 1992</i>	✗	✓	✗	✓	✓	✗	✗	✗	✓	✗	N/A
<i>Property, Stock, and Business Agent Act 2002</i>	✗	✓	✗	✓	✗	✗	✗	✗	✓	✗	N/A
Protection of the Environment Legislation Amendment Bill 2011	✗	✓	✗	✗	✗	✗	✗	✗	✗	✗	N/A
Legislative amendments to deliver the Gas Plan	✓	✓	✓	✓	✓	✗	✗	✗	✓	✓	N/A
Strategic Release Framework for Coal and Petroleum	✓	✓	✓	✓	✓	✗	✗	✗	✓	✓	N/A
Integrated Mining Policy Finalisation of Stage 1 and 2	✓	✓	✓	✓	✓	✗	✗	✗	✓	✓	N/A
Integrated Mining Policy - Finalisation of Economic Assessment and Planning Agreement Guidelines	✓	✓	✓	✓	✓	✗	✗	✗	✓	✓	N/A
<i>Companion Animals Amendment Act</i>	✓	✓	✓	✓	✗	✗	✗	✗	✓	✓	N/A
Health Practitioners Regulation	✓	✓	✗	✓	✗	✗	✗	✗	?	?	N/A
Liquor Amendment	✓	✗	✗	✓	✗	✗	✓	✗	?	✗	N/A
Repeal of legislation in the Fair Trading portfolio	Exempt under the guidelines as relating to repeal										

Appendix 5: Interjurisdictional analysis of regulatory roles and responsibilities

Jurisdiction	NSW	Victoria	Queensland	Commonwealth
Regulatory assessment – dedicated roles and responsibilities	<p>Department of Premier and Cabinet:</p> <ul style="list-style-type: none"> checks that Cabinet and Executive Council Submissions have complying Better Regulation documentation attached for non-exempt regulatory proposals advises Cabinet whether regulatory assessment requirements have been met. advises on regulatory and economic policy issues, as required by the Secretary or the Premier. <p>Better Regulation Division, Department of Finance, Services and Innovation:</p> <ul style="list-style-type: none"> administers the 'Guide to Better Regulation.' is responsible for education and guidance on Better Regulation Principles and complying documentation. 	<p>Commissioner for Better Regulation (previously the Victorian Competition and Efficiency Commission):</p> <ul style="list-style-type: none"> assesses the adequacy of regulatory impact statements and legislative impact assessments assists agencies responsible for preparing impact assessments assists agencies with the design, application and administration of regulation and opportunities to improve the quality of regulation in Victoria undertakes research and advises on regulatory issues at the request of the Treasurer or the Secretary of the Department of Treasury and Finance. <p>Red tape Commissioner</p> <ul style="list-style-type: none"> makes recommendations about where red tape can be reduced. 	<p>Office of Best practice Regulation (Queensland Productivity Commission):</p> <ul style="list-style-type: none"> assesses whether a regulatory proposal would benefit from a consultation RIS by administering exclusions and determining significance of proposals assesses the adequacy of consultation and decision RIS assesses adequacy of post-implementation reviews provides training and guidance to agencies. 	<p>Office of Best Practice Regulation:</p> <ul style="list-style-type: none"> advises agencies on the Australian Government and COAG RIS requirements of proposals assesses RISs for compliance with the Australian Government and COAG requirements assesses Australian Government post-implementation reviews provides training to policy makers on the RIS process. <p>18 Regulation Reform Units headed by senior departmental officials have been established in each portfolio within departmental resources. These are the first point of contact and have been tasked with driving and supporting implementation of the regulatory reform agenda within their portfolios.</p>

Jurisdiction	NSW	Victoria	Queensland	Commonwealth
Regulatory assessment outputs	Not attributable to a dedicated central unit. ¹	In 2014–15, the former VCEC provided final advice on: ² <ul style="list-style-type: none"> 13 RISs (for subordinate legislation) 1 Legislative Impact Assessment (for primary legislation) 11 Regulatory Change Measurements (to measure reductions in regulatory burdens).³ 	In 2014–15: <ul style="list-style-type: none"> completed 529 assessments including a review of 8 RISs. 	In 2014–15 assessed: <ul style="list-style-type: none"> 55 RISs 8 COAG RISs 17 post-implementation reviews.
Dedicated resourcing for regulatory assessment and oversight	The Better Regulation Division, Department of Finance, Services and Innovation, has two full time equivalent staff.	In 2014–15 the Victorian Competition and Efficiency Commission had 5.6 full time equivalent staff for regulation review.	The Office of Best Practice Regulation currently has 6 full time equivalent staff.	In 2015–16 the Office of Best Practice Regulation had provision for 22 full time equivalent staff.

¹ Regulatory assessments are undertaken by responsible Departments. See Chapter 4 for further detail.

² The number of RISs/LIAs prepared is demand driven and depends on a range of factors - the Victorian election in November 2014 may have affected the number of impact assessments prepared in 2014/15.

³ From November 2014 RCMs were no longer required.

Source: VCEC Annual Report 2013–14; advice from the Office of Best Practice Regulation, Queensland Productivity Commission; Queensland Department of Prime Minister and Cabinet (2013), 'Regulatory Impact Assessment System Guidelines', pp. 17–18; Department of Treasury and Finance (2014) 'Victorian Guide to Regulation', pp. 5–6; Department of Prime Minister and Cabinet (2013–14) 'Best Practice Regulation Report', pp. 6–7; Australian Government (2014) 'The Australian Government Guide to Regulation', p. 10.

Appendix 6: About the Audit

Audit objective

This audit assessed whether government initiatives and processes to prevent and reduce red tape were effective.

Audit scope and focus

The audit assessed 23 savings initiatives which represented 73 per cent of total claimed savings and 11 regulatory proposals of various significance and portfolios.

Audit exclusions

The audit did not examine:

- the merits of government policy objectives
- how well regulators apply better regulation principles
- Gazetted Guidelines, Ministerial Orders and other documents that are regulatory in nature but not provided to the DPC.

Audit criteria

To answer the audit objective the following questions were asked:

1. Did savings initiatives effectively reduce red tape?
2. Did the 'one-on, two-off' initiative effectively reduce red tape?
3. Does DPC effectively review regulatory proposals to ensure they prevent and reduce red tape?

Audit approach

The audit consisted of:

- interviews with staff from the Department Premier and Cabinet and the Department of Finance, Services and Innovation, NSW Treasury, Independent Pricing and Regulatory Tribunal (IPART), and regulators such as the Environmental Protection Agency, NSW Fair Trading and SafeWork NSW
- analysis of better practice guidelines, policies, annual reports, reviews, Cabinet Minutes, submissions, State Plan reporting, Regulatory Impact Statements and Better Regulation Statements in New South Wales and other jurisdictions
- consultation with other industry and community groups such as Business Council of Australia and the NSW Business Chamber.

Audit methodology

Our performance audit methodology is designed to satisfy Australian Audit Standards ASAE 3500 on performance auditing. The Standard requires the audit team to comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance and draw a conclusion on the audit objective. Our processes have also been designed to comply with the auditing requirements specified in the *Public Finance and Audit Act 1983*.

Acknowledgements

We gratefully acknowledge the co-operation and assistance provided by the Department Premier and Cabinet and the Department of Finance, Services and Innovation.

We would also like to thank the Business Council of Australia, NSW Business Chamber, NSW Treasury, Independent Pricing and Regulatory Tribunal (IPART), the Environmental Protection Agency (EPA), NSW Fair Trading and SafeWork NSW for their expert advice.

Audit team

Claudia Migotto, Trevor Puckering and Kevin Hughes conducted the performance audit. Giulia Vitetta was the Engagement Reviewer.

Audit cost

Including staff costs, travel and overheads, the estimated cost of the audit is \$165,583.

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.

The activities examined by a performance audit may include a government program, all or part of a government agency or consider particular issues which affect the whole public sector. They cannot question the merits of government policy objectives.

The Auditor-General's mandate to undertake performance audits is set out in the *Public Finance and Audit Act 1983*.

Why do we conduct performance audits?

Performance audits provide independent assurance to parliament and the public.

Through their recommendations, 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 focus on assisting accountability processes by holding managers to account for agency performance.

Performance audits are selected at the discretion of the Auditor-General who seeks input from parliamentarians, the public, agencies and Audit Office research.

What happens during the phases of a performance audit?

Performance audits have three key phases: planning, fieldwork and report writing. They can take up to nine months to complete, depending on the audit's scope.

During the planning phase the audit team develops an understanding of agency activities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the agency or program activities are assessed. Criteria may be based on best practice, government targets, benchmarks or published guidelines.

At the completion of fieldwork the audit team meets with agency management to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with agency management to check that facts presented in the draft report are accurate and that recommendations are practical and appropriate.

A final report is then provided to the CEO for comment. The relevant minister and the Treasurer are also provided with a copy of the final report. The report tabled in parliament includes a response from the CEO on the report's conclusion and recommendations. In multiple agency performance audits there may be responses from more than one agency or from a nominated coordinating agency.

Do we check to see if recommendations have been implemented?

Following the tabling of the report in parliament, agencies are requested to advise the Audit Office on action taken, or proposed, against each of the report's recommendations. It is usual for agency audit committees to monitor progress with the implementation of recommendations.

In addition, it is the practice of Parliament's Public Accounts Committee (PAC) to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report is tabled. These reports are available on the parliamentary website.

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards.

Internal quality control review of each audit ensures compliance with Australian assurance standards. Periodic review by other Audit Offices tests our activities against best practice.

The PAC is also responsible for overseeing the performance of the Audit Office and conducts a review of our operations every four years. The review's report is tabled in parliament and available on its website.

Who pays for performance audits?

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

Further information and copies of reports

For further information, including copies of performance audit reports and a list of audits currently in progress, please see our website www.audit.nsw.gov.au or contact us on 9275 7100.

Our vision

Making a difference through audit excellence.

Our mission

To help parliament hold government accountable for its use of public resources.

Our values

Purpose – we have an impact, are accountable, and work as a team.

People – we trust and respect others and have a balanced approach to work.

Professionalism – we are recognised for our independence and integrity and the value we deliver.

Professional people with purpose

Making a difference through audit excellence.

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