AUDITOR GENERAL
FOR WESTERN AUSTRALIA

AUDITOR GENERAL'S REPORT

Third
Public Sector Performance Report 2007

Serving the Public Interest

Report 7 – June 2007

AUDITOR GENERAL
FOR WESTERN AUSTRALIA

THE PRESIDENT
LEGISLATIVE COUNCIL

THE SPEAKER
LEGISLATIVE ASSEMBLY

THIRD PUBLIC SECTOR PERFORMANCE REPORT 2007

I submit to Parliament my third Public Sector Performance Report for 2007 under the provisions of sections 18(2) and 25 of the *Auditor General Act 2006*.

COLIN MURPHY
AUDITOR GENERAL
27 June 2007

Contents

Auditor General's Overview

This is the third and final Public Sector Performance (PSP) Report for the 2006-07 reporting year. Our PSP reports cover a broad range of important government operations with the aim of keeping the Parliament and public informed about public sector performance. Although the reports cover areas of operations that are quite different in nature, they nevertheless deal with management practices and principles that have common application across government.

In this report we examine three topics – the Management of Land Tax and Metropolitan Regional Improvement Tax (MRIT), the Provision of Legal Aid and the Administration of Grants. In each of the three areas we found adequate performance though we did identify areas where improvements can be made:

1. The Department of Treasury and Finance (DTF) through the Office of State Revenue is responsible for the assessment and collection of Land Tax and MRIT. Together, these two taxes will raise over $450 million in 2006-07. Our main concern was the rate that land tax assessments have to be re-assessed (10 per cent) due to database inaccuracies arising from the large numbers of land transfers and ownership changes. Although DTF is working to address the cause of the inaccuracies we foresee an ongoing problem.

2. The Legal Aid Commission has responsibility for ensuring the general community has access to legal advice and to legal representation in the case of those who are socially or economically disadvantaged. In 2005-06, 170 000 individual services were provided at a cost of $37 million, nearly half of which went to grants of aid for legal representation. Some improvements can be made to the process for granting aid for legal representation and for ensuring adequate case progress and continuing eligibility for aid.

3. The Department of Culture and the Arts and the Pilbara Development Commission are just two of many government agencies that issue grants. Together, these two agencies issue grants exceeding $25 million per annum. Effective grant programs ensure that funds are allocated and spent in accordance with stated objectives. We found that procedural improvements to both the eligibility and acquittal procedures are needed.

Management of Land Tax and Metropolitan Region Improvement Tax

Overview

Land Tax and Metropolitan Region Improvement Tax (MRIT) account for 16 per cent of the $2.38 billion in property taxes collected in 2005-06. The Office of State Revenue (OSR), which is part of the Department of Treasury and Finance (DTF), is responsible for administering these taxes. Latest OSR estimates are that these taxes will collect $462 million from 127 000 taxpayers in 2006-07. This represents eight per cent of total estimated State taxation revenue in 2006-07. Land and MRIT revenue collected have increased eight per cent per annum in each of the six years since 2000-01.

Key Findings

- Approximately 10 per cent of land tax assessments issued for the 2006-07 assessment year had to be re-assessed. This high rate is principally caused by data inaccuracies in the Revenue Collection Information System (RCIS) database used to generate assessments.
- In addition to the above, in 2006-07, OSR issued 2 159 adjusted assessments for prior tax years. The net impact was a reduction of $1.7 million in tax raised. In 2005-06 OSR issued 6 109 adjusted assessments for prior tax years with a net increase in tax raised of $1.2 million. Adjusted assessments principally arise from correcting data inaccuracies in RCIS.
- Addressing the data inaccuracies is a slow process. OSR estimates clearance of the current backlog will take 18 months.
- Audit testing identified a three per cent error rate in the granting of exemptions from land tax. Although this error rate is low, it nevertheless suggests the likely loss of significant revenue as a result of un-issued land tax assessments.
- OSR has implemented a Land Data Integrity Project to address the underlying cause of the data inaccuracies. The project, which is expected to be completed in 2007-08 aims to address incompatibilities, quality, timing and format issues in the data sourced from external agencies.
- Land tax and MRIT debts are collected on a timely basis. Tax liabilities including late payments are managed effectively with less than 0.1 per cent of the average $368 million in revenue raised each year being written off.
- MRIT is being used for the purposes intended in the *Planning and Development Act 2005*.

What should be done?

OSR should seek ways to clear the backlog in land and ownership errors at a rate faster than the current estimate of 18 months.

Response by the Department of Treasury and Finance

DTF supports some of the findings and recognises that its land database for land tax assessment purposes is not fully accurate for various reasons at any point in time. Nevertheless, the DTF considers that the impact of any discrepancies is minimal in the overall context of the operation of the land tax scheme.

Response by the Department of Planning and Infrastructure and Western Australian Planning Commission

DPI and WAPC had no comments to make on the findings.

Background

What is Land Tax?

Land tax is an annual tax calculated on the unimproved value of all land owned which is not subject to an exemption. In general, land tax is not paid on your principal place of residence. Table 1 shows the categories of land that are subject to land tax as well as those subject to concessions or exemption.

Unimproved value is the market value of the land under normal sales conditions, assuming that no structural improvements have been made on the property (that is, excludes buildings and fixtures). These values are determined annually by the Valuer General. Valuations are based on sales evidence of local or similarly zoned/used land at or about the date of valuation. Generally residential land values are mass appraised using the Valuer General's computer system VALSYS. High value residential, commercial and industrial valuations are based on manual site assessment and using the analysis of the relevant sales evidence. All of the values are subject to objection to the Valuer General and further review before the State Administrative Tribunal.

OSR managed and maintains a database of over 1.2 million land items. They process over 100 000 land transfers each year and apply over 65 000 exemptions and concessions annually. Currently, over 600 000 land items have an exemption or concession applied.

What is Taxable Land? Taxable land is land you owned at 30 June and includes:	**What is Exempt Land?** Land may be exempt or entitled to a concession if it is used:
• Vacant land • Residences which are not used by all of the owners as their private residence • 'Secondary' residences such as holiday homes, holiday units or hobby farms • Rental homes or units • Shops, offices and factories • Land held in trust • Entitlement to land under any lease or license from the Crown • Land used for business, commercial, professional or trade purposes under arrangements with the Crown, Crown instrumentalities, local authorities or public statutory bodies.	• As your residence, or if constructing a residence • As owner's residence prior to death • As tenant for life appointed under the will • By owner's disabled relative • By disabled beneficiary of the trust • For rural business (that is, farming) • As a retirement village • As a mining tenement • For educational purposes • For religious purposes • By non-profit societies, clubs and associations; • By war widows • Held under an approved conservation covenant • As a caravan park, park home site or camping ground.

Table 1: Land subject to land tax, concessions or exemptions

Source: OSR

What is Metropolitan Region Improvement Tax (MRIT)?

MRIT is an annual tax paid by persons subject to land tax on properties in the Perth Metropolitan Region. The rate of tax is set by the *Metropolitan Improvement Tax Act 1959*. The tax is included in the land tax assessment sent to applicable land owners. In 2006-07 the rate of MRIT was 0.15 cent for every dollar of the unimproved value of the land. MRIT in 2006-07 is expected to total $71 million.

MRIT is used to finance the cost of providing land for roads, open spaces, parks and similar facilities in the Perth Metropolitan Region. The Western Australian Planning Commission (WAPC) manages the use of MRIT in accordance with the *Planning and Development Act 2005*.

What Did We Do?

The examination of land tax and MRIT sought to assess whether there is:

- accurate identification of applicable land and of the land owners liable for the taxes
- accurate calculation and timely issue of assessments
- timely payment of tax debt and recovery of overdue tax debt
- appropriate use of the MRIT by the WAPC.

To do this we sampled assessments issued in the 2006-07 assessment year and exemptions applied for the same year. We reviewed relevant reports, statistics and files at OSR. We also sampled expenditures made from the MRIT for the 2005-06 financial year.

What Did We Find?

Accuracy in the identification of land and owners subject to tax

Land and ownership records

OSR's land and ownership database contains inaccuracies. This is evident from a re-assessment rate of around 10 per cent for the 2006-07 tax assessments. OSR considers the rate acceptable given the large number of changes in land ownership and the fact that information (such as taxpayer residency changes) may not be made available to OSR until

after some taxpayers receive their assessment. OSR also reported re-assessment rates from other Australian jurisdictions ranged from eight to 16 per cent. However it is not clear that the methodology used to calculate re-assessment rates in the other jurisdictions is comparable.

The underlying causes of these errors are data incompatibilities, data quality and data format issues that arise in the uploading of data to the RCIS database from the Western Australian Land Information Authority's (Landgate) database.

Landgate creates and maintains the State's official land and ownership records. These records are periodically sent to OSR, who convert this data into a usable format and load it into RCIS to update their own records.

Each data upload from Landgate results in a large number of work items being generated to address identified variances. A work item is a 'flag' to indicate that there has been a data mismatch or other mistake that must be further investigated and resolved before OSR can determine whether the land owners are liable for tax.

Between January and February 2006, the number of identified mismatches increased from 58 722 to 189 528 due to a full reconciliation between RCIS and Landgate of all land and ownership data (refer figure 2). OSR subsequently established a Land Data Integrity Project and a Land Data Management (LDM) team to resolve the land and ownership variances in the RCIS database.

The Integrity Project aims to address the underlying problems that cause the data variances. This has involved improvements to the RCIS to make it better able to accept and validate land and ownership data received from Landgate. In addition, OSR is working with Landgate to obtain timelier data on changes to land ownership. However, significant reductions in the number of new variances that emerge each month are not yet evident (see figure 1). Since the major reconciliation between RCIS and Landgate of all land and ownership data in February 2006 an average of 6 408 new variances has been emerging each month.

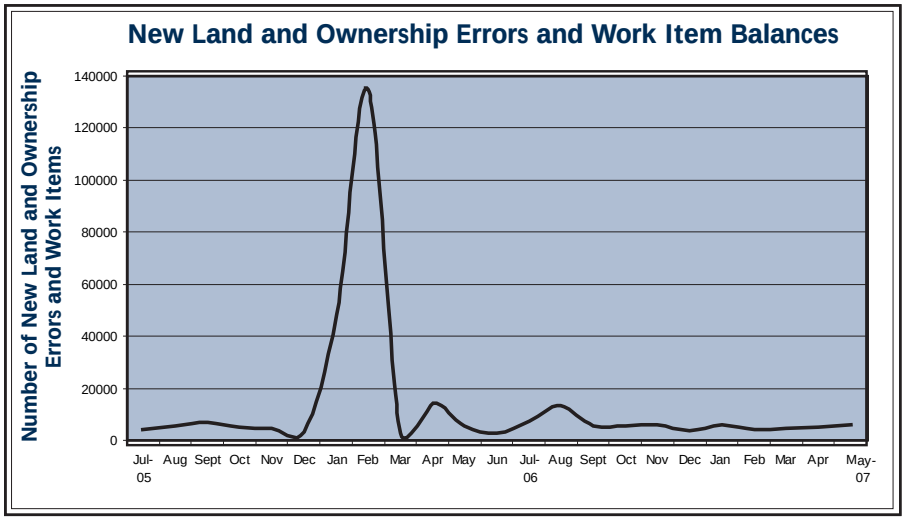

Figure 1: New land and ownership error and work items generated from July 2005 to May 2007

Source: Land Data Management Team, OSR

Addressing the identified data variances can be a slow process. At February 2007, the number of land and ownership variances had reduced to 115 868 (figure 2). However, OSR has estimated that 45 000 of the variances relate to Crown land and therefore have no impact on land tax revenue. Automated processes through RCIS are expected to resolve a further 8 000 variances.

At the current rate of clearance it will be a further 18 months before all are resolved. We noted however that the LDM team have prioritised work to enable them to focus on those that have an immediate potential impact on tax assessments. The OSR advised that the previously mentioned underlying data problems will always result in some variances that will need to be resolved.

The work done by the LDM team in 2005-06 resulted in approximately $5.3 million in additional tax revenue being collected. Between July 2006 and February 2007, approximately $2.5 million in additional tax assessments have been issued. The value of additional tax assessments on the remaining variances is estimated at several million dollars.

The subsequently issued tax assessments would cause justifiable dissatisfaction amongst affected land owners, particularly where they involve back-year assessments. However, the pamphlet which accompanies the assessment notice sent to the taxpayer makes it clear that it is their responsibility to notify the OSR should there be any incorrect information contained within the assessment notice (eg omissions or deletions of land or changes to exemptions).

Back-year assessments can cover up to the previous five years if the land owners had not advised OSR of land that had been incorrectly omitted in prior assessments. However, if no prior assessments had been issued, then OSR will only back-assess one year.

Audit was unable to establish the extent that land owners have expressed their dissatisfaction to OSR regarding the receipt of re-assessments as OSR's phone enquiries and complaints register does not specifically record this information.

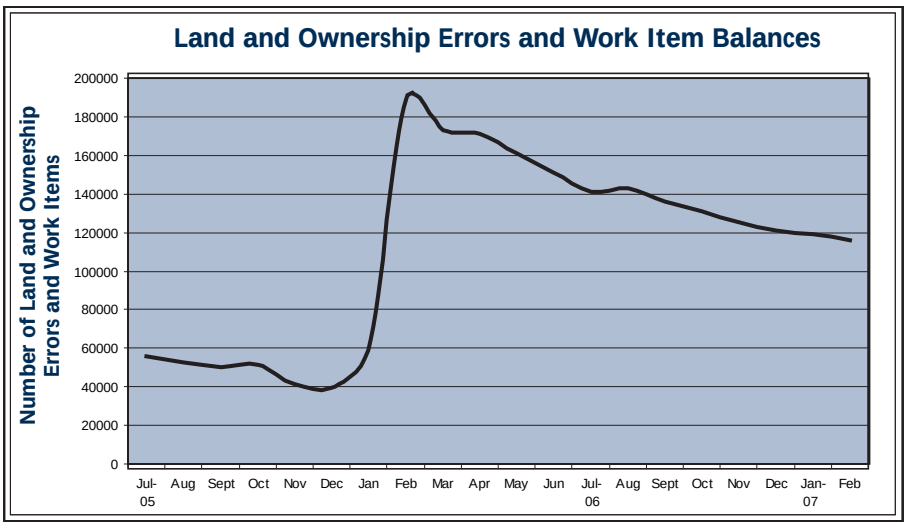

Figure 2: Land and ownership error and work item balances from July 2005 to February 2007

Source: Land Data Management Team, OSR

Land tax exemptions and concessions

As shown at table 1, many reasons exist for exempting land owners from land tax and MRIT. Our testing found that three per cent of approved exemptions were incorrect. Our testing, which was statistically based suggests that exemption errors are resulting in the likely loss of significant revenue in un-issued land tax assessments.

OSR has not done a full audit of the accuracy and validity of land tax exemptions granted since the inception of RCIS approximately nine years ago. However, OSR have run some limited tests of the RCIS database, one of which identified 397 company and trust owners who received a residential exemption. Such owners rarely qualify for an exemption. OSR has advised that it will soon be reviewing the basis of these exemptions.

During 2006, OSR identified the need to undertake a thorough review of exemptions. This will be completed during the 2007-08. In the meantime the compliance division within OSR, as part of their role in the development and implementation of tax evasion and avoidance detection strategies, provides an interim strategy for the verification of the exemptions applied by obtaining external data and verifying this against the land and ownership data in RCIS.

Residential exemptions account for approximately 80 per cent of the exemptions and concessions given each year, with primary production exemptions accounting for about 17 per cent. Generally exemptions are determined before the commencement of the annual land tax billing process. The majority are determined and applied automatically by the annual running of a database comparison program.

We noted the Comparisons program in applying the majority of primary production exemptions does not check whether primary production land is used solely on a commercial basis to produce income as required by the *Land Tax Assessment Act 2002*. OSR have advised that it is impractical to check the income status of all rural land owners. Instead it relies on the application of less accurate criteria to determine eligibility for the exemption.

Accuracy in the calculation and timely issue of assessments

We found that the unimproved land values shown on tax assessments match the land values as advised by the Valuer General and that the calculated tax liability as shown on tax assessments is correct. However, as previously mentioned, land and ownership variances significantly impact on the overall level of accuracy of assessments initially issued to land owners. It can also cause inaccuracies in calculation of tax and delays in the issue of tax assessments and subsequent receipt of tax revenue.

Thirteen per cent (15 282) of the 117 643 assessment notices initially issued by OSR for the 2006-07 assessment year had to be reissued. A further nine per cent (10 328) were amended to nil. This results in a total re-assessment rate of 22 per cent. However, approximately 12 per cent of these are outside of OSR's control because they arise mainly from delays in land owners advising government of change in circumstances. The remaining 10 per cent are errors in assessment that should have been identified by OSR prior to issue.

OSR becomes aware of the need for re-assessment from either land owners voluntarily advising them after an assessment was issued that they were exempt or, through their own internal data checking processes that identify errors after an assessment was issued.

Another form of re-assessment is prior year assessment. We noted that OSR issued 2 159 adjusted assessments for prior tax years in 2006-07. The net impact was a reduction of $1.7 million in tax raised. In 2005-06 they issued 6 109 adjusted assessments for prior tax years with a net increase in tax raised of $1.2 million.

Timely payment of tax debt and recovery of overdue tax debt

We found that the majority of taxpayers pay their land tax and MRIT on time. On average less than three per cent ($10 million) of tax revenue is overdue at 30 June each year. Less than 0.1 per cent ($90 000) of total tax revenue is written off each year.

Appropriate use of MRIT

The Western Australian Planning Commission (WAPC) is the main land use planning body in Western Australia. Its role is the development and management of urban, regional planning and land development strategies in Western Australia. Its activities and responsibilities are governed under the *Planning and Development Act 2005*. It received $54 million in MRIT in 2005-06 and is expected to receive $71 million in 2006-07.

The WAPC uses the revenue it receives from MRIT and other property related activities such as property and rental sales income, which is paid into a Metropolitan Region Improvement Fund (MRIF) to implement the Metropolitan Region Scheme (MRS). This involves the WAPC planning projects in the metropolitan area, reserving and acquiring properties for future roads, public infrastructure, parks, recreation areas and re-development projects. This capital acquisition and associated property maintenance program in the metropolitan region represents the major revenue and expenditure activity of WAPC.

Our testing of a sample of the 108 projects funded from the MRIF in the 2005-06 financial year, including re-current expenditure found:

- project expenditure has been correctly approved and allocated
- the projects and expenditure relate to the implementation of the MRS
- recurrent expenditure has been correctly approved and relates to the MRS
- there is monthly reporting to the WAPC Executive Finance and Property Committee on expenditure from the fund.

Legal Aid in Western Australia

Overview

The Legal Aid Commission of Western Australia (the Commission) has responsibility for ensuring the general community has access to legal advice, and to legal representation in the case of those who are socially or economically disadvantaged.

The Commission uses funds from both the Commonwealth and State governments to fulfil this responsibility. It provides a range of services including general information and advice, a duty lawyer service in various Courts, and legal representation. In 2005-06, 170 000 individual services were provided at a cost of $37 million.

Most of these services are provided without requiring applicants to satisfy any means or merit tests. However, grants of aid for legal representation are subject to these tests. In 2005-06, grants for legal representation represented only about five per cent of the total number of the Commission's services but accounted for almost half of its annual expenditure.

This examination looked at the process for making and managing grants for legal representation, with a focus on whether the right people are obtaining grants and whether the Commission is able to demonstrate that the representation is of a satisfactory quality. We also looked at the strategic information used by the Commission in optimising its services.

Key Findings

- Grants of aid for legal representation are made in a timely manner.
- Grants of aid generally comply with the relevant legislation and guidelines though improvements are needed to some aspects of the administrative process. The main ones are:
  - adequate verification of applicants eligibility under income and asset tests
  - regular quality reviews of decisions to grant aid for legal representation to ensure appropriate decisions are made by assessors
  - regular reviews by grant managers of case progress and of continued eligibility for funding.
- The Commission has a satisfactory understanding of the demand placed on its services. However, like all other Australian Legal Aid Commissions, it lacks information as to whether this 'expressed demand' is representative of total need for legal assistance.

Recommendations

The Commission should address the weaknesses mentioned above so as to provide assurance that as many disadvantaged people as possible have access to legal representation.

Agency Response

The Legal Aid Commission supports the findings and recommendations covering administrative practices presented in this report.

Background

The Legal Aid Commission of Western Australia (the Commission) was set up to ensure the community's access to legal aid, with a particular focus on providing legal representation to as many socially and economically disadvantaged people in the community as possible.

Commission funding comes mainly from the Commonwealth and State governments, but also from the Law Society's Legal Contribution Trust and contributions from clients. The Commission provides legal assistance for both Commonwealth and State legal matters. Types of assistance available are:

- infoline, a telephone information line through which callers can obtain information and access to other services
- duty lawyers, who work at various criminal, family and civil Courts to provide free, on-the-spot assistance to people who have no legal representation
- legal advice and minor assistance, to help people resolve legal problems without going to Court
- assessment and case management, which involves the assessment of applications for grants of aid for legal representation (Grants) and the management of those Grants
- legal representation, for free or at a reduced cost, provided by either a private practitioner or Commission lawyer under the terms of a formal grant of aid (also referred to here as Grants).

Eligibility for legal representation is determined by various means and merit tests. All other services are available to the general public either free of charge or for a fee of $5 for pensioners and $20 for others.

In 2005-06 the Commission provided more than 170 000 individual services at a total cost of almost $37.1 million. In dollar terms, Legal Aid grants accounted for almost half of this amount, or $17.3 million. Over eight and a half thousand grants were made, however this represented only five per cent of the total number of services provided that year. Nearly 60 per cent of the grants were made for applicants to be represented by private practitioners, with the rest being made for representation by lawyers working in the Commission's in-house practice.

Of the remaining services, Infoline accounts for 41 per cent, duty lawyers for another 25 per cent, legal advice and minor assistance for 17 per cent and assessment and case management for eight per cent.

What Did We Do?

We examined the Legal Aid Commission's processes for making and managing grants of aid for legal representation. We also looked at how the Commission plans to ensure the most effective distribution of its limited funding amongst the different types of legal services it provides.

Our examination of the grants process involved assessing compliance with the *Legal Aid Commission Act 1976* (the Act) and the eligibility and priority guidelines set by the Commonwealth and State governments as well as the Commission's own practices and procedures.

What Did We Find?

Grants for Legal Representation

In 2005-06 the Commission handled 12 761 applications for grants for legal representation of which 8 611 were successful. Most assessments are done by Commission staff who are not lawyers. These staff also manage the grants through to finalisation.

The Grants Assessment Process

Ensuring fairness and transparency in administrative decisions depends upon a consistent and equitable assessment process. The provision of aid to an ineligible applicant reduces the funds available for grants to eligible applicants. The main eligibility criteria for grants are:

- *The type of legal matter and its Commonwealth or State priority*. Certain criminal and family matters have the highest priority, and most civil matters have the lowest. These priorities are set by the Commonwealth and the State governments.
- *Legal merits of the application*. Applications can be rejected if the Commission believes the proposed legal action is unlikely to succeed, or is likely to confer no practical or material benefit on an applicant or the expenditure is otherwise considered inappropriate because of competing demand for its limited Legal Aid resources.
- *Applicant income and assets*. Applicants must earn or own less than a certain amount in various income and assets categories. The categories are set by the Commonwealth but used for both Commonwealth and State matters. The thresholds are set by the Commission with reference to Western Australian poverty and median house price benchmarks.

Satisfactory assessment against the criteria

The Commission's assessment decisions in our sample generally complied with the relevant guidelines. They were also timely. However, we found some weaknesses in the process relating to assessment of applicant income and means.

The Commission receives applications for legal representation either directly from the applicant or via private practitioners. Authorised Commission staff then assess the applications against the criteria and make a decision to either grant aid or refuse it.

Applicants who are dissatisfied with the decision can request a re-consideration. If still unhappy, they can request an independent review by an expert panel. In 2005-06, 3 873 applicants were refused aid. Of these, 1 144 requested reconsideration of which 424 were successful. Of the 720 that remained unsuccessful, 108 requested independent review of which 15 were successful. The main reason for a change of decision was the supply by applicants of additional information that demonstrated their need.

The high rate of appeals (11 per cent) and successful outcomes (38 per cent) is evidence that applicants have real opportunity to demonstrate their need for assistance. However, it also demonstrates the difficulty that assessors face in determining relative need.

In our sample of assessments we found only one instance where a person who was entitled to a grant was refused it. The error was rectified very quickly after the applicant requested the assessor reconsider their decision.

The Commission puts considerable effort into ensuring the timeliness of assessments of grant applications. We found that in 95 per cent of applications sampled, the applicant was notified of the assessor's decision within the 14 days set by the Act. In the remaining cases we were unable to make a finding because we could not confirm the date the application was received.

Insufficient evidence to validate applicant income and asset disclosures

Fourteen per cent of sampled files that resulted in grants did not include the supporting documentation required by the Commission to verify that applicants met the means test.

The Commission's application form requires applicants to disclose their income and assets. Applicants must also certify that the disclosures they make are true and correct. In addition, the Commission requires applicants to verify these disclosures by providing bank statements, payslips, a copy of their pension or health care card and, where the applicant is self-employed, their most recent tax return or notice.

In the absence of verification, the Commission has to rely on the applicant's integrity for making accurate statements. This risk is mitigated by the fact that most grants of aid are for less than $1 000, though a single legal matter may require several grants before being finally resolved.

No quality reviews of assessments of applications

In December 2006, the Commission documented a policy of management reviews in its *Assignments File Management Standards Policy*. This was done in response to a recommendation arising from the Auditor General's 2005-06 financial audit.

The policy states that the Assignments Management Team will review a sample of each assessor's files twice a year to ensure compliance with standards. A small number of assessments were subsequently reviewed by management, but the work was not completed due to staff shortages and the need to deal with daily work priorities. The Commission advised us that after a process of reviewing and updating of its file management review tool an assessment of assessors files was scheduled to commence in June 2007.

Commission staff advised that the absence of management reviews is mitigated by the reviews that arise when applicants request reconsideration of grant refusals. We accept this does reduce the risk. However:

- in 2005-06 reconsiderations were requested for only 1 144 of the 3 873 rejected applications
- reconsiderations are often done by the same assessor who made the original assessment
- the reconsideration process will not identify mistakes made where applications are successful.

The Grants Management Process

A good grants management process provides assurance that eligible applicants receive a satisfactory standard of legal representation and that any change in financial circumstances is identified and factored into decisions about future aid and contributions toward the cost of legal representation. Such contributions are important to ensuring that the maximum number of eligible people obtain aid.

The Commission staff who grant an application manage the matter through to finalisation. This involves:

- monitoring the progress of the case. In practice, this involves follow-up with the assigned practitioner at defined intervals if no progress is reported
- approving new grants where additional work is required
- reviewing the continuing financial eligibility of the client
- deciding on whether clients should make a financial contribution to the cost of the representation and if so, how much.

Inadequate monitoring of Grants by assessors.

We found inconsistent monitoring of case progress and review of the continuing financial eligibility of the client.

Files often come up for review when a lawyer presents an account for payment or when he or she requests an extension of the original grant. In addition, the Commission requires assessors to regularly review files to monitor case progress and to ensure continued eligibility of the applicant. These reviews are required at least every six months for files involving criminal and family law matters and every nine months for files relating to civil law matters.

In our sample:

- twelve per cent of the files contained no evidence of any review of progress taking place within the stipulated times
- there was no evidence of any financial eligibility checks on any of the files that remained unresolved for more than six months. As noted below it is not uncommon for an applicant's financial circumstances to change while their legal matter is being handled by a lawyer.

Insufficient evidence of decisions on contributions from applicants

The Commission's normal practice is to offer a grant on condition the applicant agrees to make a contribution based on the Commission's assessment of the applicant's means. The Commission makes an initial decision about the applicant's capacity to contribute when the grant is made, and a final decision when the legal matter is finalised.

In 76 per cent of the files we sampled where a final decision was required there was no evidence of it being made. Almost a third of these files contained information that suggested the applicants' financial circumstances had improved and that they might have been able to make a contribution. However, there was no evidence that Commission staff followed up this information.

Any failure to obtain an appropriate contribution from an applicant who has the capacity to pay reduces the Commission's ability to fund other applicants.

Some quality controls exist

Assisted persons may receive legal representation from in-house lawyers or they may select a private practitioner from the Legal Aid panel. In either case they have a right to expect that the legal assistance they receive through the Commission is of a reasonable standard. The Commission has basic procedures in place to provide assurance that in-house legal services are adequate. However, it relies on the quality standards that apply to all lawyers and the work of the Legal Practice Board to provide comfort about the adequacy of services delivered by private practitioners.

The Commission's staff lawyers operate as a legal practice and are one of 38 in the State that are certified as meeting the Law Society of Western Australia's voluntary Quality Practice Standard. The Standard covers the taking of instructions, the assigning of matters to staff, file review and management, supervision, and file closing as well as induction

processes for new staff, access to reference materials and procedures for handling complaints. Certification involves annual external audits. The Commission's most recent audit was conducted in February 2007. Its certification was renewed.

The Commission does not obtain the same ongoing assurance about services provided by private practitioners although they are assigned 60 per cent of grants for legal representation. However, it does investigate complaints it receives about private practitioners.

The Commission can require reports and can request detailed information to assess the quality of services. However, it has chosen not to. It considers that such action would be unfair and would impose an unreasonable burden on those lawyers prepared to accept legal aid assignments. The Commission advised this view is consistent with the results of a survey of private practitioners, conducted last year for the Commonwealth Attorney General's Department which looked at the participation of private practitioners in legal aid. The survey found one in three firms practising family or criminal law have moved away from providing legal aid services and more will move away in the future. The main reasons given for this disengagement were dissatisfaction with the level of fees paid and red tape associated with processing a legal aid grant.[1]

The Commission's concern about not discouraging private practitioners from undertaking legal aid work is understandable. Nevertheless, some quality oversight, particularly of high cost, high priority matters would seem prudent. In this regard, we noted that other jurisdictions have or are planning to introduce standards for managing the quality of legal representation provided by private practitioners. For instance:

- the United Kingdom's Legal Services Commission has developed three quality of advice tools: Peer Review to assess competency of advice; File Assessment, to monitor five areas of performance including quality of advice; and Quality Profiles, to indicate how individual service providers have performed over a period of time
- Legal Aid Ontario has set minimum experience and ongoing professional development requirements for admission to and retention on its panels of lawyers.

The Commission advised that it will continue to monitor developments nationally and internationally and to liaise with relevant professional bodies on appropriate means to safeguard quality.

[1] *Study of the participation of private legal practitioners in the provision of legal aid services in Australia*, TNS Social Research consultants, December 2006.

Strategic Information

We found the Commission has a satisfactory understanding of the demand placed on its services. However, it lacks information as to whether this 'expressed demand' is representative of total need for legal assistance.

Service providers need to understand both expressed and felt demand for the service provided. The Commission's capacity to influence the setting of government priorities on legal aid matters is dependent on having such an understanding. However, the Commission lacks information about 'felt' demand. That is, of the problems that give rise to a need for legal assistance but which do not result in people seeking help.

The Australian Senate has been critical of the lack of information about total need for assistance in two inquiries into legal aid and access to justice.[2] The most recent inquiry recommended the Commonwealth Government fund a national survey of demand in cooperation with State legal aid commissions and community legal centres.

The Senate's views are supported by:

- the National Legal Aid, the body representing all Australian Legal Aid Commissions which recently stated that there is a level of need for legal aid that is not known and not met. It considers that this information is key to understanding the real and future need for legal aid services and resources
- a study by the Law and Justice Foundation of NSW in 2006 titled 'Justice Made to Measure' which found that where people were confronted with legal problems:
  - one-third did nothing
  - 16 per cent handled the event themselves
  - one-quarter sought help from persons in other professions such as doctors, accountants and psychologists
  - only 12 per cent sought help from traditional legal advisers such as lawyers or community legal centres.

We understand, however, that the National Legal Aid has decided to fill this gap by commissioning its own research on felt demand. As yet, timelines for this research have not been finalised.

[2] Legal and Constitutional References Committee – Inquiry into the Australian Legal Aid System, 3rd report – June 1998 and Legal Aid and Access to Justice.

The Administration of Grants

Overview

Western Australian public sector agencies issue grants valued in the hundreds of millions of dollars annually. In the last 10 years this Office has examined the administration of more than 60 grant programs in 12 agencies. Agencies need to ensure that grants are provided for the intended purpose, funds are awarded equitably and accountability requirements are met.

This examination looks at the multi-million dollar grants programs of the Department of Culture and the Arts (DCA) and the Pilbara Development Commission (PDC). DCA issues grants to support artistic and cultural activities while PDC grants aim to support social and economic development in the region.

Key Findings

- DCA and PDC are adequately administering their grant programs.
- However, weaknesses exist in some aspects of the administration process, specifically:
  - a lack of documentation to demonstrate that applicants' eligibility for funding was assessed
  - funding agreements and other documentation that contained errors and inconsistencies
  - inadequate review of acquittal reports or follow-up of late reports. Acquittal reports provide evidence that funds are spent appropriately.

What Should Be Done?

DCA and PDC should ensure that:

- there is documentary proof that an applicant's eligibility for funding was assessed
- late acquittal reports are followed up promptly.

In addition, PDC should ensure that:

- written funding agreements are clear and accurate
- acquittal reports provided by grant recipients provide all the necessary information to show that the funds were spent appropriately.

Agency Responses

Both the Department of Culture and the Arts and the Pilbara Development Commission accepted the findings and recommendations presented in this report.

Background

The Department of Culture and the Arts (DCA) and the Pilbara Development Commission (PDC) are two of many government agencies that provide grant funding.

DCA administers eight grant programs under the ArtsWA banner. In 2005-06, the Department provided funding of $12.4 million to 18 not-for-profit organisations to support their artistic and cultural programs. The Department awarded a further $6.6 million in specific purpose grants to individuals and groups.

PDC administers two components of the State's Regional Investment Fund (RIF): the Pilbara Priority Partnership Fund commonly known as the Pilbara Fund (PF) and the Pilbara Regional Development Scheme (PRDS). In 2005-06, $5.8 million was distributed from the Pilbara Fund and almost $400 000 from the Pilbara Regional Development Scheme. Grants went to support projects aimed at improving sustainable social and economic development in the region.

Table 1 shows the grants awarded under each program in 2005-06.

Grants Program	Total funds provided (2005-06)	Number of grants awarded (2005-06)
ArtsWA grants administered by DCA		
Arts Development	$3 512 401	265
Contemporary Music	$1 425 921	219
Strategic partnerships	$617 815	111
Young People and the Arts	$306 115	99
Designer Fashion	$294 021	90
Indigenous Arts	$247 795	55
Artflight	$189 174	191
Major organisation program funding	$12 445 183	18
TOTAL	**$19 038 425**	**1 048**
Regional Investment Fund grants administered by PDC		
Pilbara Priority Partnership Fund (PF)	$5 859 285	42
Pilbara Regional Development Scheme (PRDS)	$397,400	10
TOTAL	$6 256 685	52

Table 1: Grants programs and grants assessed and awarded in 2005-06

In 2005-06, DCA awarded more than 1 000 ArtsWA grants totalling approximately $19 million and PDC awarded 52 RIF grants totalling $6.25 million.

What Did We Do?

We reviewed the administration of grants by the DCA and the PDC. We interviewed agency personnel, reviewed documents and examined records for a sample of grants awarded in 2005-06. Our examination was based on published good practice principles and guidelines. These included *Funding and purchasing community services*[1] and *Guidelines for standardised grant documentation*[2]. Key aspects of our examination were that:

- grants programs have clearly defined objectives
- eligibility criteria are clearly established and applied
- grant programs are properly publicised
- applications are assessed in a transparent and equitable manner
- the terms and conditions of the funding arrangement are documented
- funding agreements are managed to ensure that funding conditions are met
- funded projects and activities are appropriately monitored and acquitted to provide assurance that moneys are only used in accordance with agreed terms and conditions
- the success of programs is assessed and reported against the defined purpose.

What Did We Find?

Objectives

We found that the ArtsWA and RIF grant programs had clearly defined and documented program objectives.

The primary objective of ArtsWA funding is to foster a vibrant and viable arts industry and to make the arts accessible. Grant programs address different areas of artistic endeavour and offer grants to meet particular objectives. The primary objective of the Regional Investment Fund is to build stronger regional communities and make significant investments in key areas of infrastructure. Broad program objectives are to facilitate social and economic development (PF) and to encourage, promote and support sustainable development (PRDS).

[1] Western Australian Government policy document (October 2002).
[2] State Supply Commission document (downloaded February 2007).

Eligibility

DCA and PDC grant programs had defined eligibility criteria that were aligned with program objectives. Eligibility guidelines adequately supported the assessment of applications.

Each ArtsWA program has clearly defined criteria that identify who is eligible to receive grants and the range of activities that can be funded. Grants were awarded to individuals, small groups and large organisations. Funded activities included travel, performance, production, marketing and professional development.

Eligibility criteria for the RIF addressed stated program objectives. Projects funded from the PF were also required to promote partnerships between different sectors in the community and/or different levels of government. Projects funded from the PRDS had to fit within the framework of the PDC Strategic Plan and have the support of Local Government and key regional stakeholders. In 2005-06 grants were awarded for a broad range of purposes including projects to improve cultural activities, training, safety and security, health care, community development, infrastructure and regional coordination, to attract investment in the region and to provide support for children, indigenous groups, senior citizens and people in remote communities.

Publicity

We found that DCA and PDC had adequately publicised the availability of grant programs. The type of advertising to promote the availability of grants was appropriate as was the timing in relation to deadlines for applications to be submitted. RIF grant programs were publicised through advertisements in regional newspapers in the months prior to the due date for applications. Information was also provided on the PDC website. ArtsWA grant rounds were advertised in metropolitan and regional newspapers. ArtsWA grants are also publicised through magazines and newsletters, radio, the ArtsWA website and emails and promoted through presentations, workshops and networking.

Applications

Both agencies provided suitable guidance for applicants. This included detailed information about grant programs and specific grants, eligibility criteria and assessment processes, deadlines, grant conditions, answers to frequently asked questions including how and when decisions would be made, and the information required to support applications. Information was provided via agency brochures and guidelines, pre-printed application forms that are easily understood, agency websites and through advice available from agency staff.

Assessment and selection

Information required for assessment of grant applications by DCA and PDC was sufficiently detailed to enable assessors to confirm the eligibility of the applicant and the suitability of the activity to be funded. However, evidence was generally unavailable to demonstrate that either DCA or PDC were undertaking proper assessments of the eligibility of applicants. For example, there was no evidence on the files we reviewed, to demonstrate that applications had been vetted to ensure applicants met all eligibility criteria. Such evidence could be a simple checklist or a 'sign-off' by project officers.

For both agencies we found that once applications proceeded to full assessment against the funding criteria:

- appropriate information and guidelines were provided to Board, Committee and panel members involved in assessing applications and making recommendations
- meeting procedures were clear
- decision-makers disclosed potential conflicts of interest and records noted that they refrained from discussing applications where that interest lay.

It was evident from DCA records that the merit of competing applications had been assessed. However, PDC's documentation of merit assessments was inadequate and we were unable to determine the basis on which recommendations had been made.

We noted there have been very few complaints made in relation to grant assessments by DCA and PDC. Both agencies have complaint handling processes in place.

Applications for grants exceeded funds available and not all applicants were successful. Excluding strategic partnerships and funded organisations which go through a process of development, review and negotiation, 46 per cent of applications for ArtsWA grants and 24 per cent of applications for RIF funds were unsuccessful.

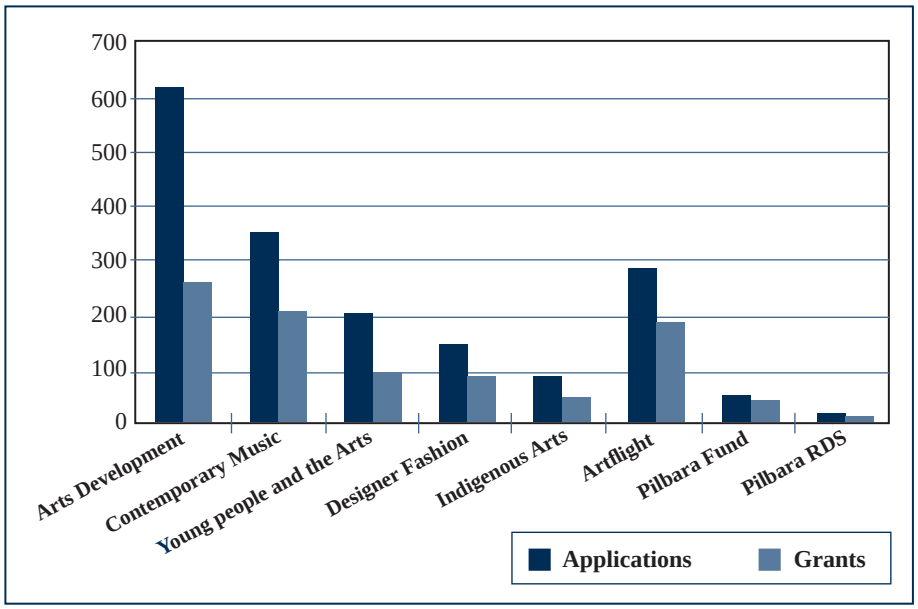

Figure 1: Applications and grants awarded – ArtsWA and RIF – 2005-06

In 2005-06, DCA assessed 1 711 applications and awarded 919 ArtsWA grants while PDC assessed 68 applications and awarded 52 grants.

Funding agreements

We found that the management of funding agreements was generally sound, however, PDC needs to improve document control in this area.

Documentation in DCA was sufficient to provide assurance that administration is effective and that key decisions are appropriately considered and documented. Revised ArtsWA funding agreements were introduced at the beginning of 2007 following review by DCA and the State Solicitor's Office. These agreements meet the principles and guidelines set out by the State Supply Commission.

PDC funding agreement templates also meet these principles and guidelines however document control in a number of areas could be improved:

- many funding agreements contained errors that may lead to confusion over the terms and conditions of the agreement, increase the potential for disputes to arise and place grant funds at risk of not being legally recoverable in the event of a dispute. Of the funding agreements we examined:

- all contained errors in referring to clauses that had not been correctly inserted or documents that had not been annexed
- 40 per cent had no date inserted where the agreement stated "This Grant Agreement is made on …"
- eight per cent did not have a common seal affixed
- 40 per cent contained standard letters from the PDC to the recipient referring to a different form of agreement to the one on file.

- 65 per cent of agreements examined lacked clear and specific detail of funding deliverables. This may result in grant funds being used for purposes other than those intended by PDC. In most cases agreement deliverables could have been improved by including information contained in funding applications
- approximately half of the files where the agreement had been varied lacked consistent documentary evidence to substantiate the variation requests and approvals.

Monitoring and acquittal

Monitoring and acquittal in DCA was satisfactory although follow-up of late acquittals was inconsistent. The review of acquittal information and the follow-up of late acquittals by PDC were found to be inadequate.

Individual grants should be effectively monitored and acquitted. Grant recipients should supply sufficient and timely information to show that funds were used and results achieved in accordance with the terms and conditions of the funding arrangement. Providing a late acquittal itself constitutes a breach of the grant agreement. Agencies should follow-up late and or inadequate acquittal reports and document their review of financial and performance reports to ensure accountability from recipients and to provide an adequate trail for audit and process improvement purposes.

We found that:

- 30 per cent of ArtsWA acquittals examined were late and follow-up by DCA was inconsistent. Approximately half the late acquittals had not been followed up despite being between six and 15 weeks late
- there were inadequacies in the follow-up and review of acquittal information by PDC including:
  - 90 per cent of RIF acquittals were late. Half of these were not followed up and half were followed up between three and eight months after the acquittal was due

- inadequate review of acquittal information exemplified by a recipient informed that ‘the acquittal report provided has met all conditions’ despite the absence of supporting documentation, discrepancies between figures and expenditure for purposes not specified in the grant application
- inaccuracies in correspondence with 22 per cent of files examined containing letters that referred to an acquittal period different from that specified in the grant agreement.

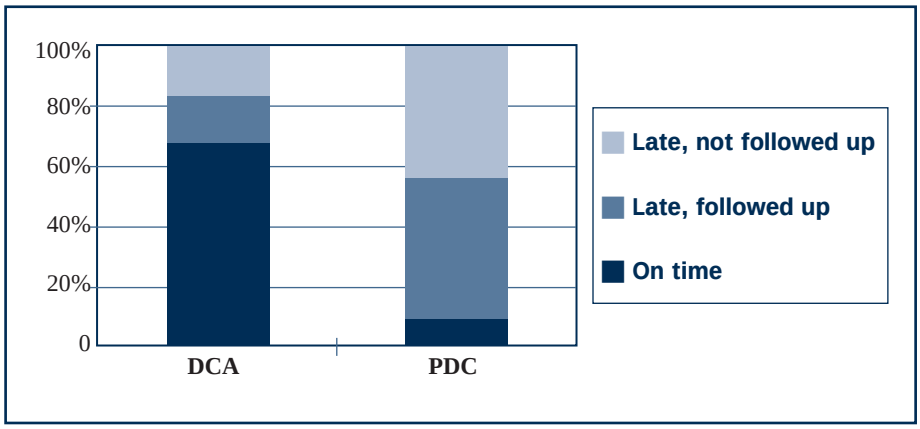

Figure 2: Timeliness of acquittal reports and follow-up by DCA and PDC

DCA and PDC both followed up 50 per cent of late acquittals, however substantially more PDC acquittals were late (90 per cent and 30 per cent for PDC and DCA respectively).

Program review

We found evidence of program reviews being carried out or planned for both ArtsWA and RIF grant programs. Such reviews are important to ensure that funding programs are achieving their stated objectives, particularly when the provision of funding is ongoing. They contribute to improved management procedures, greater accountability, better use of resources and refined program objectives. Evidence of program review included:

- in DCA:
  - a review of the arts development policy framework, Championing Creativity, will commence in 2007 and be implemented when the current policy ends in 2008
  - activities relating to the evaluation of two ArtsWA grant programs and the review of policies, stakeholder communication channels, funding and reporting processes are included in the Development and Strategy Directorate Operational Plan for 1 January 2007 to 30 June 2008

- the interim report for the evaluation of the Contemporary Music program is available on the ArtsWA website
- evaluation frameworks and tools have been included in the development of new grant programs such as the Disability and the Arts Inclusion Initiative and MAMASWA, the Western Australian component of the national Multicultural Arts Marketing Ambassadors Strategy

- for PDC
  - reviews by the Department of Local Government and Regional Development of RIF funding rounds from 2001-02 to 2004-05 and from 2005-06 to 2008-09 are being undertaken to advise the Minister in preparation for a third round
  - PDC is in the process of engaging a consultant to undertake an outcome evaluation of the Pilbara Fund and identify areas of possible improvement.

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