

Machinery of government changes and maladministration risks

Machinery of government (MoG) changes occur when the Government decides to change the way responsibilities are allocated and structured across departments and other public service agencies. Examples of MoG changes include abolishing or creating a public service agency, merging or absorbing agencies or parts of agencies, and moving functions and resources, including people, between agencies.

On paper, MoG changes are easy – they do not require legislation, and they can be initiated at any time simply through an Administrative Arrangements Order (AAO) made by the Governor on the advice of the Premier. AAOs can be (and often are) drafted, made, published and commenced very quickly, and they are not ‘disallowable instruments’ – meaning that unlike regulations and other subordinate legislation, the Houses of Parliament are not given the opportunity to veto them.

In practice, however, implementation of MoG changes can be complex, and the changes can have considerable short and long-term implications on the ground.

In this edition of In Focus, we highlight aspects of MoG changes that relate to agencies’ administrative conduct, with a particular focus on maladministration risks agencies should watch out for. These include:

- [The importance of good change management](#) with appropriate planning and governance
- [The potential for administrative confusion and errors following a MoG change](#)
- Managing [conflicts of interest](#) at a personal and organisational level
- [Risk to the ‘control environment’](#) during MoG change
- [Records management](#), including the transfer of records between agencies and the disposal of records
- Dealing with requests made under the [Government Information \(Public Access\) Act 2009](#)
- Ensuring [complaint-handling](#) pathways are clear, available and accessible
- Complying with the requirements of the [public interest disclosures](#) scheme
- [Agency distraction and disruption, and the potential impacts of MoG changes on service and program delivery.](#)

We do not comment on the political or policy merits of MoG changes, in any specific case or in general. Nor do we seek to assess whether and when the costs of MoG changes might outweigh the benefits.



The importance of good change management

On paper, and as a matter of law, MoG changes occur in an instant. In reality, the situation is usually much more complex, and the complete on-the-ground implementation of a MoG change will often take a considerable period of time to work through.

The importance of sound change management processes, with proper planning and governance, cannot be overstated. What is appropriate in this regard may differ with the scale and complexity of the change. More complex MoG changes, and those that impact a large portion of the sector, will typically require the establishment of a steering committee that likely includes the secretaries of the affected agencies. These large-scale changes may also require the involvement of representatives from central agencies. Small-scale or less complex MoG changes that impact only particular parts of one or two smaller agencies are generally led by an agreed lead agency, perhaps at deputy secretary level.

In any case, steering committees established to guide MoG changes should include representatives from all agencies impacted – to manage the transition of staff, resources, and responsibilities with the least disruption to business as usual.

The Cabinet Office has helpfully published the [Machinery of Government Changes Guide](#) (*MoG Changes Guide*), which steps agencies through MoG planning, implementation and post-implementation processes. At over 60 pages, the *MoG Changes Guide* is very detailed, and it is a critical tool for agencies to work through when they are undergoing a MoG change.¹

The potential for administrative confusion and errors following a MoG change

In the transition period that follows a MoG change, when the legal position has changed but the reality on the ground is taking time to catch up, agencies and officials need to be especially mindful of the potential for significant confusion (both internally and externally) which could lead to administrative and legal errors.

A particular risk arises because AAOs change the way certain references are ‘construed’ (ie read) in other legislation, regulations and other statutory instruments, as well as any ‘other instrument’, contracts and agreements.² The references that can be changed are those that mention ministers, public sector agencies, or public sector roles.

The changes in references are typically made on a ‘global’ basis – that is, the change is made to all instruments that may contain such a reference, without needing to identify each particular instrument or reference. Especially if these references are not quickly up-dated to reflect the changes made by the AAO, this has the potential to lead to some confusion and uncertainty, which can increase the risk of public sector maladministration:

1. There will be a divergence between what legislation and other instruments say, and what they mean

Documents whose meanings are changed by an AAO continue to exist in their original terms. This means that legislation, policies, delegations, contracts and a whole slew of other documents may no longer mean what they say. That includes Acts of Parliament and subordinate legislation, which will still appear on the legislation website in their original form.



At the time of being ‘mogged’, those agencies and affected staff who administer legislation, contracts and other instruments with changed references, will need to work through the AAOs to ascertain precisely how they have been changed.

Going forward, and for the world at large, however, there is no mechanism by which anyone reading that legislation would know that it has been affected by an AAO, or in what way, without manually searching the AAOs (which are published separately on the website). Working through past reference changes can be a challenging process, particularly given that:

- Whether or not a reference is changed will depend on whether it already existed at the time the AAO was made.
- Multiple reference changes may be layered by a chain of MoG changes over many years.
- Understanding a change of reference will often require a detailed understanding of the substantive MoG change itself. For example, an AAO will commonly provide that a reference to a department is to be read as one thing ‘if used in relation to’ some generally-described matters (such as ‘the transferred part’ of an agency),³ and is to be read as something else if used in relation to other matters.⁴

Unless and until legislation and other instruments are amended to align with the post-MoG legal reality, there will be risk of confusion and uncertainty – and therefore potentially error – in applying those documents.

If, for example, an agency’s delegation instrument provides that some public servant has power to make a certain decision, but in fact an AAO has been made that means it is no longer *that* public servant but some other public servant who now has this function, any decision by the first public servant to exercise that function will be unauthorised and unlawful. This is so even if the first public servant is acting under an honest mistake. As well as constituting a form of maladministration,⁵ there may be other legal consequences, including for third parties affected by the decision, if it is found to have been legally invalid.

Given these risks, in our view, agencies should seek to review and update all instruments that have been ‘amended’ by AAOs as soon as possible. That includes legislation and regulations, as well as agencies’ policies, delegations, ministerial directions and so on. In the case of legislation, the Parliament’s statute law revision program (which provides for a miscellaneous amendments bill to be passed by Parliament each sitting period) provides a straightforward vehicle for this to be done.

Given the risks of unauthorised decisions and actions, it is particularly critical that agencies review and reissue decision-making delegations and authorisations expeditiously.⁶

In the meantime, agencies and public officials need to be alive to the possibility that, when they see a reference to a minister, agency or public official in an Act or other document, it may mean something other than what it says.

2. There may be ‘clunky’ reference changes that could create unintended consequences in practice

A related issue is that, because reference changes are made on a global basis, they can sometimes operate in ways that lead to perverse or otherwise unintended outcomes. There are any number of possible examples:

- A change could result in a person being required to consult or obtain their own approval for a decision (ie where an Act says that Secretary X must consult with Secretary Y before making a



decision, but an AAO is made providing that Secretary Y is to be read as Secretary X).

- A change could result in a change to the composition of a board or committee that is perverse or impractical (for example, if the effect is to reduce the number of board members, but the quorum for board meetings is unchanged).

For this reason, the *MoG Changes Guide* emphasises the important role of agency legal teams in identifying legislation or parts of legislation that may be affected by an AAO, and providing advice on any necessary review or amendments that should be made to legislation or governance documents.

3. There may be a failure to appreciate the limits on what an AAO has done (and what else needs to be done as a consequence of the MoG change)

Although AAOs are extremely powerful, there are limits to what they can do. Public officials need to be mindful about what AAOs cannot do, and the fact that additional steps may be required to give effect to consequential changes beyond those contained in the AAO order. For example:

- AAOs do not change reference constructions in every document – only in statutory and other ‘instruments’, contracts and agreements. If there are references in other agency documents that need to be updated, then that needs to be done manually.
- AAOs cannot change references that refer to ministers or public officials by name (and not merely by their office). For example, each state-owned corporation will have two named shareholding ministers. If a MoG change affects a shareholding minister, there may need to be a process to remove a shareholding minister and appoint a new shareholding minister, and this cannot be assumed to have been effected by a general ministerial reference change in an AAO.
- AAOs only operate in respect of changes to the ‘public service’. Other changes associated with a MoG (such as changes to the governance of a statutory body) would need to be implemented in the usual way and may, for example, require legislative amendment.⁷

Conflicts of interest

Avoiding conflicts of interest is imperative in the public sector – and where this is not possible, they must be disclosed and managed.

MoG changes can result in new conflicts of interest arising. They can also impact the way existing conflicts were being controlled. When implementing MoG changes, agencies should implement strategies to identify any new or updated conflicts, and review controls of existing conflicts.

Integrity agencies repeatedly make findings relating to failures to declare and appropriately manage conflicts. Such failures can undermine confidence and trust in the public sector.

As an example, an employee of one government agency may not have a conflict in that role, or they may have a conflict that is being appropriately managed. If that employee were to move to a new agency, or if their agency became part of some larger agency, those staff movements, changed reporting lines or new functional responsibilities may require declarations and management of new or updated conflicts of interest.

Agencies should be monitoring any known conflicts of interest during the planning and post-implementation stages of a MoG change – this includes reminding staff of the need to identify and declare any new conflicts, and otherwise ensuring that staff abide by relevant provisions of the *Code*



of *Ethics and Conduct for NSW Government Sector Employees*⁸ and any supplementary agency-specific codes.

MoG changes can also bring about 'conflicts' in a broader sense. In its 2021 report *'Machinery of government changes'*, the Audit Office of NSW considered how the former Department of Planning, Industry and Environment had managed MoG changes. It noted '...there were risks associated with placing functions and agencies that represent potentially competing policy interests within the same 'cluster', such as environment protection and industry.'

The Audit Office also observed that there was an absence of any 'evidence of plans to manage these issues... as a part of the machinery of government change process'.⁹ This highlights that, even if the decision to make a MoG change is outside of the control of the affected agencies, the execution of the change and the management of its impacts *are* the agencies' responsibility.

Risk to the control environment

The disruption caused by MoG changes can create greater potential for wrongdoing, including corrupt conduct. The NSW Independent Commission Against Corruption (ICAC) has highlighted this issue, reporting a potential relationship between corrupt conduct and organisational change. Large-scale change in particular can impact the control environment (that is, the internal controls agencies have in place to minimise risk) and 'create a climate of discontent, confusion and uncertainty in which corruption can flourish'.¹⁰

Recent ICAC investigation reports also note organisational change as a factor that may have contributed to corrupt conduct. For example, a 2021 investigation found that serious corrupt conduct had occurred in relation to the sourcing of software systems for the Western Sydney Institute of TAFE. In that matter, the corrupt conduct occurred in a context of broad organisational reform. MoG changes had moved the agency from one portfolio to another, which created uncertainty and confusion about which policies or procedures were applicable.¹¹

Restructures often focus agencies' attention on considerations like efficiency and cost. While it is important to ensure that change occurs as swiftly as possible in order to avoid unnecessary impact on staff morale and service delivery, the environment of rapid change can increase agencies' exposure to the risk of corruption in matters like staff appointments and procurement.

MoG changes can also impact on other areas of corruption prevention. For example, changes could result in a failure to backfill a vacant role that is responsible for certain corruption controls. Staff movements linked to MoG changes – including allocating staff to new positions, taking staff offline or allocating people to responsibilities that are beyond their capacity – can also cause issues around reporting lines (which may become less clear), decision-making delegation and inadequate supervision. All of these factors can make corruption prevention more difficult. MoG changes can also cause delays to planned integrity initiatives including training, audits, and risk assessments, which may be deferred or placed on hold while the agency is busy with change activities.¹²

The merging of agencies may necessitate a consolidation of systems and processes, and in some cases, this may not happen – at least initially. Disconnected systems could then make it easier for a person to find opportunities for wrongdoing. As an example, it could be more difficult to detect fraudulent transactions if a master vendor file, supplier due diligence, purchase orders, credit card processing and goods receipting are all managed in different systems.



Records management

As stated in the *MoG Changes Guide*: ‘Deciding what happens to agency information, records, data, and records management systems is a key component of due diligence.’¹³

It is imperative that agencies meet the requirements of the *State Records Act 1998*. This includes creating, keeping and maintaining records, and the continued right to access those records, including under the *Government Information (Public Access) Act 2009* (GIPA Act).

In a June 2023 report, the Queensland Audit Office urged agencies to focus on records management when undertaking MoG changes. The report noted that in one case, an agency identified more than 87,000 records that were not correctly transferred or disposed of following MoG changes, increasing the risk of sensitive information being lost.¹⁴

Some risks and challenges associated with the transfer of records between agencies include:

- differing and incompatible systems impacting the ability to access records
- delay transferring records with changes to agency functions
- failure to maintain proper record labelling and record management controls relating to privacy, security or confidentiality
- lost or missing records
- failure to properly dispose of records and/or decommission systems.

Case study – MoG changes and lost records – Audit Office of NSW

In February 2023, the Audit Office of NSW published its *Bushfire recovery grants* audit report which scrutinised the administration of the Bushfire Local Economic Recovery program by the Department of Regional NSW and the former Resilience NSW.

The Audit Office reported that projects worth a total of \$73.2 million were funded through a Sector Development Grants (SDG) scheme. In relation to the SDG scheme, the Audit Office found that while the department implemented probity processes, it did not manage conflicts of interest effectively including because the completed version of the conflict of interest register was lost:

‘The department advised that the completed version was likely lost due to the machinery of government changes which involved the movement of the program team from DPC to the Department of Planning, Industry and Environment, and subsequently to the department. As part of these changes, the department advised that the record management system was changed, which resulted in the loss of several documents including the latest conflict of interest register during the transfer. The conflict of interest register should have been maintained as a state record.’¹⁵

This case study illustrates the potential for unauthorised disposal of records during transfer of records following MoG changes.

Records management in the context of MoG changes will require internal coordination involving staff from a range of areas including ICT and governance. Agencies will need to ensure that relevant policies and procedures are updated in addition to informing State Records NSW of any changes to contacts and the Senior Responsible Officer for records management.



The *MoG Changes Guide* notes that agencies are expected to manage records and information according to an agreed plan. Where records are to be transferred between agencies, the plan will need to identify, among other things: which records are to be transferred; who is responsible for the transfer and receiving of records; a timeline for completion; and any records that can be disposed of or archived under the *State Records Act 1998*.

The transfer of records between agencies in a MoG change may include both physical records and digital records. This can include:

- employee records including payroll, superannuation, and leave forms and entitlements
- administrative records of the specific function being transferred (both physical paper-based files and digital files)
- any supporting information or documentation required to manage the records being transferred
- any digital records, including data or data sets (including metadata) or supporting systems such as email, network drives, internet or intranet or social media associated with the function being transferred
- any hardware or software that the records management system depends upon
- any legacy records or systems that may be held
- records located outside of dedicated records management systems and applications including case management, finance systems, cloud-based sites, network folders, and staff communication applications.

The *MoG Changes Guide* recommends that any Memorandum of Understanding (MoU) between agencies that are transferring and receiving records sets out responsibilities for handling requests under the GIPA Act, and arrangements for access to records if required, in addition to an agreement about how costs will be dealt with.

State Records NSW has published detailed guidance on [Managing records in administrative change](#) that covers a range of scenarios including transfer of functions between agencies, creation of a new function, and the amalgamation of public offices.

Government Information (Public Access) Act 2009

When planning for MoG changes, agencies will need to consider how they will continue to deal with requests for information made under the GIPA Act following a MoG change.¹⁶

If agencies are to share resources, appropriate governance arrangements should be put in place. This could include implementing delegations and authorisations that temporarily allow the staff of one agency to undertake GIPA Act functions on behalf of another. Agencies may also wish to consider whether one agency should be designated as the parent or subsidiary agency of the other for the purpose of GIPA Act functions. Where new parent or subsidiary relationships are to be established, or where there are existing parent or subsidiary relationships between agencies, amendments to the *Government Information (Public Access) Regulation 2018* may be needed.

Agencies should also consider how open access obligations will be met, including the need to update agency information guides.



Where an agency ceases to exist, the provisions in the GIPA Act that relate to successor agencies will need to be considered in order to facilitate the continued handling of existing applications, as well as any new applications relating to information held by the now-defunct agency.¹⁷

Ministers are also agencies for the purposes of the GIPA Act,¹⁸ and consideration must be given to the impact of MoG changes on records held by ministers and their offices, and also on any GIPA Act applications that are on foot. The ‘successor agency’ provisions in the GIPA Act¹⁹ may also be relevant here, and care must be taken to ensure that the correct successor agency or agencies are identified where required. Under the *Members of Parliament Staff Act 2013*, the Premier’s department may determine what should happen to the records of a former minister’s office (whether that is a transfer to the appropriate public office or, after 7 years, disposal of the records).²⁰ The transfer of records to another public office should also be consistent with any decision made under the GIPA Act about which agency is the successor agency of another.

Importantly, agencies are required to assist applicants and to document their reasons for both the administrative or procedural issues and the GIPA Act decision.²¹

The NSW Information and Privacy Commission has published a range of [resources](#) covering NSW agencies’ obligations under the GIPA Act. Relevant resources include the following:

- [Delegation or authorisation of GIPA Act functions](#)
- [What is an agency?](#)
- [How the GIPA Act applies to agencies' wholly-owned subsidiaries](#)
- [Open access obligations on parent agencies under the GIPA Act.](#)

Complaint handling

As an Ombudsman, complaint handling is central to our functions, and it is an area we encourage agencies to focus on during MoG changes. In general, complaints can provide early warning of issues impacting the public that an agency may not otherwise be aware of. Agencies impacted by MoG changes need to ensure that complaint pathways remain available and easy for the public to access, making sure that clear information is provided to the community about how and where to make complaints, and how complaints will be handled. Agencies should also consider how any open complaints will be dealt with during and after implementation of a MoG change.

Reviewing complaint handling policies and procedures is an important starting point when clarifying complaint-handling roles and responsibilities for existing complaints, and for new complaints made after MoG changes take effect.

Complaints that are not handled well can escalate quickly. One obvious point to make is that agencies need to update any complainants where a matter is to be transferred from one agency to another, or where MoG changes cause delay or otherwise impact a complaint handling process.²² Agencies should consider any legislative requirements relating to complaints.

Before they transfer or otherwise reallocate complaint matters, agencies should consider the nature of the complaints and whether any issues will arise as a result of the transfer or reallocation, such as a conflict of interest. This might be the case, for example, where a complaint is made about one agency to another agency and those agencies are then amalgamated.

As noted above, agencies subject to MoG changes should consider the impact on records management – in particular, preparing for the transfer of matters dealt with in any technology-based complaints handling systems.



The comments above concern complaints agencies receive from members of the public. The general principles are also relevant to:

- Internal review matters, including cases underway when MoG changes have affect.
- Systems and processes agencies must have in place to handle complaints from employees.

Public interest disclosures

The new *Public Interest Disclosures Act 2022* (PID Act) commenced on 1 October 2023. The PID Act provides for the protection of people who make public interest disclosures, and for making and dealing with the disclosures. It was drafted to ensure a clear and easy process for public officials who are making a disclosure – ensuring they know who they can make a disclosure to, and what will happen when they do.

The PID Act applies to agencies. The definition of agency includes:

- a public service agency²³
- a statutory body representing the Crown²⁴
- a public authority whose conduct or activities an integrity agency is authorised by another Act or law to investigate or audit²⁵
- a state owned corporation or a subsidiary of a state-owned corporation.²⁶

The PID Act provides for a body to be declared to be or not to be an agency by regulation.

If an agency is included within a certain ‘portfolio’ or ‘network’ of agencies as part of MoG changes, the agencies involved will need to consider their status under the PID Act, and particularly whether they need to enter into any form of agreement to allow for the overarching agency to perform key functions on behalf of smaller agencies. The involved agencies will also need to make sure that those staff working with the PID Act have certainty around the status of their agency.

Agencies were required to have a PID policy in place when the PID Act commenced. The policy needs to specify, among other things, agencies’ procedures for:

- dealing with disclosures that are (or may be) voluntary PIDs
- taking steps to assess and minimise the risk of detrimental action as a result of voluntary PIDs
- recordkeeping and reporting in relation to voluntary PIDs.

The policy also must specify the responsibilities of the head of the agency, disclosure officers and managers under the PID Act. Agencies should also consider whether any changes to policies are required in the context of MoG changes, as well as any related training needs.

It is important that staff working for an agency impacted by MoG changes are told how to report serious wrongdoing in the new agency. They should also be given information on how to access the PID policy that now applies to them.

Case study – impact of MoGs on whistleblowing – NSW Ombudsman

In October this year, our office tabled a special report summarising investigations finalised in the preceding 12 months. One of the investigations related to the handling of PIDs by the Department of Planning and Environment and the Department of Regional NSW.



In our investigation report we noted that MoG changes and internal restructures may have made it harder for staff to make PIDs. For example, there was confusion about which policy applied, who PIDs could be reported to and, importantly, who was responsible for supporting whistleblowers.²⁷

This investigation highlights, among other things, the importance of giving focus to whistleblowing including PIDs when there are MoG changes.

Public officials who make PIDs must be provided with ongoing protection and support. If an agency is impacted by MoG changes, it should ensure continual support for those involved in a PID. It should also, in a timely manner, consider and assess the risk of detrimental action against the person who made the disclosure, the person who is the subject of the disclosure and also those staff responsible for handling and investigating the disclosure.

Agency distraction and disruption, and the potential impacts of MoG changes on service and program delivery

The process of ‘tidying up house’ and consolidation of systems and processes associated with MoG changes can bring about opportunities for change and improvement to service and program delivery. However, MoG changes can also be highly disruptive by nature, especially when they involve the rapid merging of organisations that have different cultures and systems.²⁸

In its *State Finances 2019* report, the Audit Office of NSW highlighted key risks and challenges of MoG changes, including (but not limited to):

- loss of corporate knowledge when key staff change
- impacts on service delivery caused by unclear roles and responsibilities
- poorly defined services performed on behalf of other agencies during the transition
- tight timeframes for implementing the changes effectively while maintaining business as usual functions.

The Audit Office highlighted the importance of promptly identifying and managing these risks, which can all impact the immediate and longer-term functioning of an agency.²⁹

Case study – impact on staff and service delivery – Queensland Audit Office

In its June 2023 *Implementing machinery of government changes* report, the Queensland Audit Office raised concerns about the ongoing costs and risks associated with MoG changes. It reported that MoG changes can take over 2 years to implement, with the initial focus being on the transfer of operational requirements including budgets, staff, assets, and systems.

MoG changes can shift the focus and attention of staff from improving efficiencies and delivery of services to the implementation of those changes. The report noted ‘A risk that is difficult to quantify, but is very real, is the grief and frustration employees will experience as they respond, while continuing business as usual in their desire to do the right thing for the community.’³⁰

The *MoG Changes Guide* encourages agencies to communicate and consult with staff and key stakeholders about MoG changes, including the ‘why’ ‘what’ and ‘when’.³¹



Case study – the importance of communication with staff about changes – NSW Ombudsman investigation

Our office has conducted several investigations into the administration of water compliance and enforcement functions, which previously were shared among several government departments and had been subject to frequent restructures and MOG changes.

In our November 2017 progress report to Parliament into a then ongoing water administration related investigation, we noted that some of the problems we were seeing stemmed from around 20 MoG changes and poorly managed restructures over 2 decades, where the responsibility for managing ground and surface water resources was moved from one agency to another.³² We observed that the combined effect had a devastating impact on staff, continuity of service, retention of expertise, and the ability of the responsible agencies to maintain their systems and corporate strategy.

In drawing out whole-of-government lessons from the investigation in our subsequent special report to Parliament of August 2018, we highlighted the lack of adequate and timely information made available to affected staff about the changes as a key challenge.³³

During one of the MoG changes in 2016, when the water compliance functions were being moved between agencies, there was substantial confusion among staff, including managers, about which functions were going and which were staying with the original agency. The confusion persisted almost to the day of transfer. Staff told us that communication from the executive level was cryptic, and matters that were most important to them were communicated the least. We noted in the report that the desire to avoid industrial action came at the expense of proper and thoughtful communication with staff. As a result, communications were delayed, non-responsive and sanitised. Staff became disengaged, and morale slumped.

We acknowledged that there are constraints on what the executive can communicate to staff regarding the change process, and that there are often legitimate reasons why communications need to be carefully considered before being disseminated – for example, to ensure internal consistency. However, we emphasised the importance of regular and informative communication that is focused on key questions of importance to staff in maintaining staff morale and wellbeing during a significant a process of change like a MoG change.

Members of the community are also often impacted by MoG changes. The community relies on government help and support, and MoG changes can disrupt government's ability to provide those services to the community. It is vitally important to consider the impact of MoG changes on external stakeholders, in particular those who may be experiencing vulnerability. Agencies should consider how to support community members who are also navigating changes – including new agency information, systems, and processes – to ensure they can continue to access those services.

On a practical level, agencies should also carefully consider the continuity of strategy, programs and projects, as well as membership of committees and other similar bodies. The final case study below illustrates this challenge.

Case study – impact on strategy – NSW Ombudsman review

We reviewed the NSW Department of Communities and Justice's (DCJ) plan to reduce the overrepresentation of Aboriginal children in out-of-home-care (Aboriginal Outcomes Strategy – AOS). As DCJ had stopped reporting publicly on the implementation of its plan, and did not report



on its outcomes, we independently assessed and reported on what was done and whether the targets were achieved. We found that much of what was planned did not occur, and that at some point over the 5 years DCJ had effectively abandoned the strategy.

In our February 2023 report we noted that the previous responsible department (the former Department of Family and Community Services – FACS) was abolished and replaced by DCJ in 2019 as part of MoG changes. Almost the entire FACS staff transferred to the new department. DCJ told us that these changes affected ongoing implementation of the AOS and the evaluation process:

‘Due to the machinery of government changes and the merger of the former Department of Family and Community Services with the former Department of Justice, to form the Department of Communities and Justice as of 1 July 2019, the AOS Subcommittee overseeing implementation of the AOS did not meet after June 2019. As such, initiatives such as the Phase 2 and Phase 3 evaluations and developing an implementation plan for the last 18 months of the AOS did not progress.’

DCJ provided further information in its response to our draft report:

‘The AOS was well-intended and the DCJ established a board sub-committee to oversee the AOS. A Machinery of Government Change in 2019 resulted in the chair of the sub-committee moving to another agency and continuity was lost. At the same time multiple reviews of Aboriginal over-representation in child protection resulted in a range of competing strategies and plans. Without clear governance, the projects all continued but were disconnected from each other.’³⁴

Endnotes

¹ NSW Government, *Machinery of Government Changes Guide* (Guidance, November 2022) <[Machinery of Government Changes Guide \(nsw.gov.au\)](#)>. See further: Part 3.1 of the *MoG Changes Guide* for MoG change principles, Part 4.2 MoG change steering committee and Part 4.0 on the role of central agencies.

² *Constitution Act 1902*, s 50E.

³ See for example, clause 12 of the *Administrative Arrangements (58th Parliament) Order (No 4) 2023* <[Administrative Arrangements \(58th Parliament\) Order 2023 - NSW Legislation](#)>.

⁴ Sometimes it may be unclear (at least to those outside of the relevant agency) which particular parts of the agency have been transferred or affected. For example, a recent AAO provides that ‘the Environment line team in the Corporate Services Group are transferred from the Department of Planning and Environment to the Environment Protection Authority Staff Agency.’ The Order then provides that:

(2) *A reference in a document to the Secretary of the Department of Planning and Environment must be read as a reference to—*

...

(b) *if used in relation to the Environment line team in the Corporate Services Group—the Chief Executive Officer of the Environment Protection Authority...*



Presumably, it will be clear to those in the relevant department which staff are included in the ‘Environment line team’ and therefore were transferred to the relevant agency. However, ascertaining which parts have moved may be less obvious to the world at large (as ‘the Environment line team’ is not an agency, but is presumably the internally-used name for a group of staff within an agency).

Some previous orders also explicitly conferred decision-making discretion. For example, when Service NSW was demerged from DPC, the relevant order provided that:

*The group of staff in the Department of Premier and Cabinet who, **in the opinion of the Director-General of that Department**, are employed to enable the Chief Executive Officer of Service NSW to exercise his or her functions under the Service NSW (One-stop Access to Government Services) Act 2013 are removed from the Department of Premier and Cabinet and added to the Service NSW Division. [emphasis added].*

While the practice of including such discretionary provisions in AAOs appears not now to be used, there will be references in legislation and other documents still in existence that are affected by those previous orders.

⁵ Under the *Ombudsman Act 1974*, any conduct that is ‘contrary to law’, is conduct about which an adverse finding may be made following investigating under s 26.

⁶ Audit Office of NSW, *State Finances 2019* (Report, October 2019) <[State Finances 2019 | Audit Office of New South Wales \(nsw.gov.au\)](#)>.

⁷ Again this point is made clearly in the *MoG Changes Guide* Part 7 on legal matters.

⁸ NSW Public Service Commission, *Behaving Ethically: A guide for NSW government sector employees* (Guidance) <[The Code of Ethics and Conduct for NSW government sector employees](#)>.

⁹ Audit Office of NSW, *Machinery of government changes* (Report, December 2021) <[Machinery of government changes | Audit Office of New South Wales \(nsw.gov.au\)](#)>.

¹⁰ NSW ICAC, *Corruption and Integrity in the NSW Public Sector: an assessment of current trends and events* (Report, December 2018) 11 <<https://www.icac.nsw.gov.au/>>. Also see NSW ICAC, *Keeping it Together: systems and structures in organisational change* (Report, March 2017).

¹¹ NSW ICAC, *Investigation into the Sourcing of Software Systems for the Western Sydney Institute of TAFE* (Report, October 2021) <<https://www.icac.nsw.gov.au/>>.

¹² *Ibid* n 10.

¹³ *MoG Changes Guide* Part 10, p 45.

¹⁴ Queensland Audit Office, *Implementing machinery of government changes* (Report, June 2023) <[Implementing machinery of government changes \(Report 17: 2022–23\) \(qao.qld.gov.au\)](#)>

¹⁵ Audit Office of NSW, *Bushfire recovery grants* (Report, February 2023) 21 <[Bushfire recovery grants.pdf \(nsw.gov.au\)](#)>.

¹⁶ See further *MoG Changes Guide* Part 10.3.

¹⁷ GIPA Act, Schedule 4, clause 14.

¹⁸ GIPA Act, s 4(1)(b).

¹⁹ GIPA Act, Schedule 4, clause 14.

²⁰ Schedule 2, clause 8(2).

²¹ GIPA Act, s 16.

²² More information about effective complaint handling can be found on our website: [Effective complaint handling - NSW Ombudsman](#).

²³ PID Act s 16(1)(a).

²⁴ PID Act s 16(1)(c).

²⁵ PID Act s 16(1)(e).

²⁶ PID Act s 16(1)(f).



²⁷ NSW Ombudsman, *Formal investigations summary report 2022-23* (Report, October 2023) <[Formal investigations summary report 2022-23 \(nsw.gov.au\)](#)>.

²⁸ NSW Ombudsman, *Water: compliance and enforcement* (Report, August 2018) <[Water: compliance and enforcement. A Special Report to Parliament under section 31 of the Ombudsman Act 1974. 17 August 2018. \(nsw.gov.au\)](#)>.

²⁹ Ibid n 6.

³⁰ n 14, p 1.

³¹ See further *MoG Changes Guide* Part 4.8.

³² NSW Ombudsman, *Investigation into water compliance and enforcement 2007-17* (Report, November 2017) <[Investigation into water compliance and enforcement 2007-17. A special report to Parliament under s31 of the Ombudsman Act 1974. \(nsw.gov.au\)](#)>.

³³ Ibid n 28.

³⁴ NSW Ombudsman, *Aboriginal Outcomes Strategy focus area 2 (out-of-home care) – were the targets achieved?* (Report, February 2023) 10 <[Aboriginal Outcomes Strategy focus area 2 \(Out-of-home care\) - were the targets achieved \(nsw.gov.au\)](#)>.

